



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, MARCH 30, 2022

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

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

AGENDA

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

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

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

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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

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

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

CONSENT AGENDA

- [1.](#) Consideration of Resolution No. 2022-022 Increasing 1.0 Limited Duration FTE within the Deschutes County Health Services Budget.
- [2.](#) Consideration of Dedication Deed, Document No. 2022-276
- [3.](#) Consideration of Purchase Agreement, Document No. 2022-285, Dedication Deed, Document No. 2022-286, and Temporary Construction Easement, Document No. 2022-287, from Jeffrey L. and Elizabeth M. Mishler for Right of Way for the Hunnell Road: Loco Road to Tumalo Road Improvement Project
- [4.](#) Consideration of Purchase Agreement, Document No. 2022-292, and Permanent Slope Easement, Document No. 2022-293 from the Nobert and Joan Volny Trust for Right of Way for the Hunnell Road: Loco Road to Tumalo Road Improvement Project
- [5.](#) Consideration of Board Signature for Order No. 2022-018, authorizing the Deschutes County Property Manager to execute the documents associated with the sale of County-owned property located at 16623 and 16631 Box Way, La Pine, Oregon 97739
6. Consideration of Board Signature on Letters of Reappointment for Sharon Leighty and Dan Ellingson to the Deschutes County Historical Landmarks Commission.
7. Consideration of Board Signature on Letters of Appointment to Judy Trago and Jim Fister, and Letters of Thanks to Mike Maier and Bill Anderson, for service on the Deschutes County Budget Committees.

ACTION ITEMS

- [8.](#) **9:05AM** Public Hearing and Order Considering Stilson Annexation to Rural Fire District #2
- [9.](#) **9:15 AM** Consideration of Board Signature of Order No. 2022-020, Appointing Nick Lelack as Deschutes County Treasurer

10. **9:25 AM** Consideration and Board chair signature of Notice of intent to award contract for audit services
11. **9:50 AM** 1st Reading: Ordinance 2022-001 and Ordinance 2022-002 – Central Oregon Irrigation District (COID) Plan Amendment/Zone Change
12. **10:00 AM** Reading of a Proclamation Declaring April 2022 as Child Abuse Prevention Month
13. **10:20 AM** Consideration of Board Signature of Order No. 2022-019, recognizing Juneteenth as a paid Deschutes County holiday consistent with Section 10.070 of the Deschutes County HR Personnel Rules.

LUNCH RECESS

14. **1:00 PM** Approval of Grant Agreement #2022-262 to construct advance wastewater collection system improvements in Terrebonne.
15. **1:30 PM** Request approval to apply for OHA Aid and Assist grant fund

OTHER ITEMS

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

EXECUTIVE SESSION

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

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

ADJOURN



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



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: 03/23/2022

SUBJECT: Consideration of Resolution No. 2022-022 Increasing 1.0 Limited Duration FTE within the Deschutes County Budget.

RECOMMENDED MOTION:

Move Approval of Resolution No. 2022-022 Increasing 1.0 Limited Duration FTE within the Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Health Services Department presented to the Board of County Commissioners on 3/09/2022, with regards to accepting the Central Oregon Regional Childhood Immunization Rate Quality Improvement Project Grant funds and increasing 1.0 limited duration Public Health Nurse II FTE. The FTE is in support of the childhood immunization program.

BUDGET IMPACTS:

This FTE increase is covered through savings for the current Fiscal Year and the Central Oregon Regional Childhood Immunization Rate Quality Improvement Project Grant looking forward.

ATTENDANCE:

Daniel Emerson, Budget Manager, Finance

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Increasing *
FTE within the 2021-2022 * RESOLUTION NO. 2022-022
Deschutes County Budget *

WHEREAS, Deschutes County Health Services Department presented to the Board of County Commissioners on 3/09/2022, with regards to accepting the Central Oregon Regional Childhood Immunization Rate Quality Improvement Project Grant funds and increasing 1.0 limited duration Public Health Nurse II FTE, and

WHEREAS, Deschutes County Policy HR-1 requires that a creation of or increase in FTE outside the adopted budget be approved by the Board of County Commissioners; now therefore,

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

Section 1. That the following FTE be added:

Job Class	Type	Duration if Limited Duration	FTE
Public Health Nurse II	Limited Duration	3/1/2022-3/31/2025	1.00
Total FTE			1.00

Section 2. That the Human Resources Director make the appropriate entries in the Deschutes County FTE Authorized Positions Roster to reflect the above FTE changes.

DATED this _____ day of March, 2022.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ATTEST:

ANTHONY DEBONE, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, March 30, 2022

SUBJECT: Consideration of Dedication Deed, Document No. 2022-276

RECOMMENDED MOTION:

Move approval of Document No. 2022-276.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County accepted a statutory bargain and sale deed (Deed No. 2022-05934) from Prineville Water Co., Inc. for a ±0.11 acre tract of land (Tax Lot 171316C004000) at the intersection of McGrath Road and Peacock Lane. The subject property contains a portion of the as-travelled roadway for Peacock Lane, a County road.



FIGURE - Tax Lot 171316C004000

Upon execution and recording of Document No. 2022-276, the subject property will be established as public right of way appurtenant to both Peacock Lane and McGrath Road.

BUDGET IMPACTS:

None

ATTENDANCE:

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

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

03/30/2022 Item #2.

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

DEED OF DEDICATION

Deschutes County, a political subdivision of the State of Oregon, Grantor, does hereby dedicate to the public for roadway and utility purposes that parcel of land described in Exhibit "A" attached hereto and by this reference incorporated herein.

The true consideration for this conveyance is other consideration.

Dated this _____ of _____, _____

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

STATE OF OREGON)
) SS.
County of Deschutes)

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

Dated this _____ day of _____, _____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

ACCEPTANCE

Deschutes County, acting by and through its Board of County Commissioners, does hereby accept the foregoing Deed of Dedication as a public road pursuant to ORS 92.014.

Dated this _____ of _____, _____

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

STATE OF OREGON)
) SS.
County of Deschutes)

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

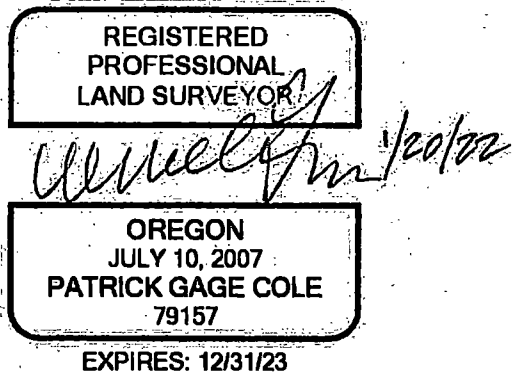
Dated this _____ day of _____, _____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A

A parcel of land located in the Southwest Quarter (SW1/4) of Section 16, Township 17 South, Range 13 East, Willamette Meridian, Deschutes County, Oregon, more particularly described as follows:

All that portion of the Southwest Quarter (SW1/4) of said Section 16 lying southerly of McGrath Road.





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, March 30, 2022

SUBJECT: Consideration of Purchase Agreement, Document No. 2022-285, Dedication Deed, Document No. 2022-286, and Temporary Construction Easement, Document No. 2022-287, from Jeffrey L. and Elizabeth M. Mishler for Right of Way for the Hunnell Road: Loco Road to Tumalo Road Improvement Project

RECOMMENDED MOTION: Move approval of Document Nos. 2022-285, 2022-286, and 2022-287.

BACKGROUND AND POLICY IMPLICATIONS: The Board of County Commissioners authorized the Road Department to negotiate with owners of properties impacted by the Hunnell Road: Loco Road to Tumalo Road Improvement project for the acquisition of right of way by Resolution No. 2021-048. During preliminary design of the project, it was determined that a portion of Tax Lot No. 161233B000100, owned by Jeffrey L. Mishler and Elizabeth M. Mishler, would be impacted by the Project. The Road Department has negotiated with the property owner for right of way acquisition. The property owner has agreed to the following:

Instrument: Dedication Deed
Area: 14,812 sq. ft.
Compensation: \$45,471.00
Other Obligations: None

Instrument: Temporary Construction Easement
Area: 2,250 sq. ft.
Compensation: \$929.00
Other Obligations: None

BUDGET IMPACTS:

County will make payment to the property owner in the amount of \$46,400.00, which was budgeted in the Department's Fiscal Year 2021-2022 Road Capital Improvement Plan budget.

ATTENDANCE:

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

REVIEWED

LEGAL COUNSEL

03/30/2022 Item #3.

For Recording Stamp Only

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

DEED OF DEDICATION

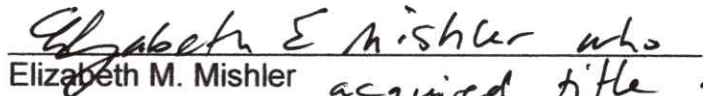
Jeffrey L. Mishler who acquired title as Jeffery L. Mishler and Elizabeth M. Mishler, as tenants by the entirety, Grantor, does hereby dedicate to the public for roadway and utility purposes that parcel of land described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference incorporated herein.

The true consideration for this conveyance is **Forty-Five Thousand Four Hundred Seventy One Dollars (\$45,471.00)**.

DATED this 18th day of March, 2022.



Jeffrey L. Mishler who acquired title
as Jeffery L. Mishler



Elizabeth M. Mishler
acquired title as
Elizabeth M. Mishler

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Jeffrey L. Mishler who acquired title as Jeffery L. Mishler, acknowledged the foregoing instrument.

Dated this 18th day of March, 2022.

Sarah Johnson

NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/14/2023



STATE OF OREGON)
) SS.
County of Deschutes)

Elizabeth E. Mishler who acquired title as Elizabeth M. Mishler (Signature)

Before me, a Notary Public, personally appeared ~~Elizabeth M. Mishler~~,
acknowledged the foregoing instrument.

Dated this 18th day of March, 2022.

Sarah Johnson

NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/14/2023



ACCEPTANCE

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

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

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

Dated this ____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

ACCEPTANCE

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

DATED this _____ day of _____, 2022.

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

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

After recording return to:
Deschutes County Road Department
61150 S.E. 27th Street
Bend, Oregon 97702

TEMPORARY CONSTRUCTION EASEMENT

Jeffrey L. Mishler who acquired title as Jeffery L. Mishler and Elizabeth M. Mishler, as tenants by the entirety, Grantor, does hereby grant to Deschutes County, Oregon, Grantee, its successors and assigns, a Temporary Construction Easement for construction purposes, over and across the Grantor’s property as described in Exhibit “A” and depicted on Exhibit “B”, attached hereto and by this reference incorporated herein.

The true consideration for this conveyance is **Nine Hundred Twenty-Nine Dollars (\$929.00)** and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

The Grantee’s use of the easement shall include the right for the Grantee, its employees, agents, assigns, contractors and employees of contractors, to enter and use the easement area for construction work in connection with the Hunnell Road: Loco Road to Tumalo Road Improvement project.

The term and duration of this temporary construction easement shall be from start date of construction to the completion of the Hunnell Road: Loco Road to Tumalo Road Improvement project, or two (2) calendar years following the date all required signatures are obtained, whichever is sooner.


This document is intended to grant easements on the property described, not to convey fee title or any interest in the underlying property except as expressly stated herein. The easements granted shall not prevent Grantors from the use of said property provided, however, that such use shall not be permitted to interfere with the rights herein granted. Grantor shall not be permitted to endanger the lateral support of any facilities constructed within or adjacent to the easements granted herein.

Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, including any and all damages to Grantor’s remaining property, if any, which may result from the acquisition or use of said property and the construction or improvement in the public way.


Grantors hereby covenant to and with Grantee that they are the owners of said property, which is free from all encumbrances, except for easements, conditions and restrictions of record, and

will warrant and defend the easement rights herein granted from all lawful claims whatsoever, except as stated herein.

DATED this 18th day of March, 2022.



Jeffrey L. Mishler who acquired title
as Jeffrey L. Mishler



Elizabeth M. Mishler
title as
Elizabeth
M. Mishler

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Jeffrey L. Mishler who acquired title as Jeffery L. Mishler, acknowledged the foregoing instrument.

Dated this 18th day of March, 2022.

Sarah Johnson

NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/14/2023



STATE OF OREGON)
) SS.
County of Deschutes)

Elizabeth E. Mishler who acquired title as Elizabeth M. Mishler (EB)

Before me, a Notary Public, personally appeared ~~Elizabeth M. Mishler~~,
acknowledged the foregoing instrument.

Dated this 18th day of March, 2022.

Sarah Johnson

NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/14/2023



ACCEPTANCE

Deschutes County, acting by and through its Board of County Commissioners, does hereby accept the foregoing Temporary Construction Easement.

DATED this _____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

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

Dated this _____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Deschutes County Road Department
Hunnell Road Improvement Project: Loco Road to Tumalo Road
File Number 005B
Tax Lot 161233B00100

PARCEL 1 – TEMPORARY CONSTRUCTION EASEMENT

A parcel of land lying in LOT 1, BLOCK 2, "POHAKU RANCH" in the Northwest one-quarter of Section 33, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, and being a portion of that property described in that Statutory Warranty Deed to Jeffery L. Mishier and Elizabeth M. Mishier, as tenants by the entirety, recorded August 7, 2020 as Instrument No. 2020-39381, Deschutes County Official Records, said parcel described as follows:

COMMENCING at a point on the easterly right of way line of Hunnell Road, said point being South 45°04'00" West, 1088.59 feet of the North one-quarter corner of Section 33, Township 16 South, Range 12 East, Willamette Meridian, said point also being 30.00 feet easterly when measured at right angles to Hunnell Road Centerline Station 147+42.15 per Deschutes County Survey No. 20520;

Thence leaving said easterly right of way line North 40°55'45" East, 77.69 feet to the BEGINNING of this description;

Thence continuing North 40°55'45" East a distance of 150.00 feet to a point;

Thence South 49°04'15" East, 15.00 feet to a point;

Thence South 40°55'45" West, 150.00 feet to a point;

Thence North 49°04'15" West, 15.00 feet to the BEGINNING of this description.

Containing 2,250 square feet, more or less.

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

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



RENEWS: 12-31-2021
Signed: 09-14-2021

EXHIBIT "B"

LOCATED IN LOT 1, BLOCK 2, "POHAKU RANCH" IN THE NORTHWEST ONE QUARTER OF SECTION 33, TOWNSHIP 16 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON

CURVE TABLE				
CURVE	RADIUS	DELTA	LENGTH	LONG CHORD
C1	450.00'	21°30'40"	168.95'	N32°27'08"E, 167.96'
C2	510.38'	19°05'00"	169.99'	N33°39'58"E, 169.21'



SCALE
1" = 100'

LOT 4,
BLOCK 1
"POHAKU RANCH"

LOT 5,
BLOCK 1
"POHAKU RANCH"

RIGHT OF WAY DEDICATION
± 14,812 SQ.FT.

POINT OF BEGINNING
PARCEL 1
STA: 147+42.15
OFF: 30.00' R
FROM WHICH THE NORTH
ONE-QUARTER CORNER
OF SECTION 33, T16S,
R12E, W.M., BEARS
N45°04'00"E, 1088.59'

PC: 147+64.79

PRC: 149+33.74

STA: 155+36.77
OFF: 30.00' R

S89°49'38"W
8.76'

HUNNELL ROAD
N24°07'28"E

PUBLIC LOCAL ACCESS ROAD
N23°45'00"E, 407.37'

N09°18'29"W
66.98'

S49°04'15"E
15.00'

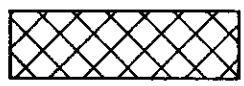
TAX LOT 161233B000100
LOT 1, BLOCK 2,
"POHAKU RANCH"
MISHLER, JEFFERY L &
ELIZABETH M
INSTR. NO. 2020-39381

N40°55'45"E, 342.40'
S40°55'45"W, 150.00'
N49°04'15"W, 15.00'
N21°41'48"E

LEGEND



① TEMPORARY
CONSTRUCTION EASEMENT
± 2,250 SQ.FT.



RIGHT OF WAY DEDICATION
± 14,812 SQ.FT.

● - FOUND MONUMENT PER CS20520

SEE ATTACHED LEGAL
DESCRIPTION



**Harper
Houf Peterson
Righellis Inc.**

ENGINEERS • PLANNERS
LANDSCAPE ARCHITECTS • SURVEYORS

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

DCO-01 TMW 09/03/2021 PAGE 1 OF 1

<p style="text-align: center; color: blue;">REVIEWED</p> <hr/> <p style="text-align: center;">LEGAL COUNSEL</p>	<p>For Recording Stamp Only</p>
<p>After recording return to: Deschutes County Road Dept. 61150 S.E. 27th Street Bend, Oregon 97701</p>	

PURCHASE AGREEMENT
HUNNELL ROAD: LOCO ROAD TO TUMALO ROAD IMPROVEMENT PROJECT
Jeffrey L. Mishler who acquired title as Jeffery L. Mishler and Elizabeth M. Mishler, as tenants by the entirety
File No.: 005

THIS AGREEMENT is made and entered into by and between **Deschutes County, Oregon**, a political subdivision of the State of Oregon, ("County"); and **Jeffrey L. Mishler who acquired title as Jeffery L. Mishler and Elizabeth M. Mishler, as tenants by the entirety**, ("Grantor"), on the following terms and conditions:

RECITALS

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

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

TERMS OF AGREEMENT

1. Grantor shall convey to County the real property described in the attached **Exhibit 5A** by dedication deed for the purchase price of **Forty-Five Thousand Four Hundred Seventy-One Dollars (\$45,471.00)**.
2. Grantor shall convey to County a temporary construction easement for the real property described in the attached **Exhibit 5B** for the purchase price of **Nine Hundred Twenty-Nine Dollars (\$929.00)**.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project or two (2) calendar years following the date all required signatures are obtained, whichever is sooner.

GRANTOR OBLIGATIONS

1. Grantor shall provide County with fully signed and executed dedication deed and temporary construction easement for subject property with this Agreement. Upon receipt of purchase payment, Grantor shall immediately deliver possession of property to County.
2. Grantor makes the following representations:
 - a. Grantor has no notice from any government agency of any violation of law relating to the property.
 - b. The property has never been used for the storage or disposal of hazardous waste materials.
 - c. Grantor is not a "foreign person" as that term is defined in IRS Code Section 1445.
3. If the subject property is subject to any mortgage, deed of trust, land sales contract, or other similar encumbrance, Grantor should review that document to determine whether that document contains any provision under which default may be triggered by the Grantor's signing of this Agreement or any conveyance instrument.
4. Grantor understands that all fences and other improvements that are constructed or reconstructed on real property retained by Grantor pursuant to this Agreement will be the property of Grantor and will be maintained and repaired by the Grantor after completion of the project.
5. Grantor understands that any construction lying outside of the traveled portion and shoulders but within the right of way of the county road which is made for the

use and benefit of the remaining property, either under the terms of this agreement or the construction plans, shall be completed in conformance with normal engineering construction practices.

6. As soon as Grantor delivers the dedication deed and temporary construction easement to County, Grantor shall remove from the property all personal property, fixtures, and improvements retained by Grantor under the terms of this Agreement. If personal property, fixtures, or improvements are required to be moved, Grantor may be entitled to relocation benefits and assistance which will be provided outside of this Agreement in accordance with the Uniform Relocation Act requirements in conformance with the ODOT Right-of-Way Manual.
7. Grantor acknowledges that performance of County's obligations under this Agreement constitute just and full compensation for the property (dedication) and any damage to property retained by Grantor.

COUNTY OBLIGATIONS

1. Within thirty (30) calendar days of execution of this Agreement and receipt of fully signed and executed dedication deed and temporary construction easement, County will deliver payment to Grantor in the amount of **Forty-Six Thousand Four Hundred Dollars (\$46,400.00)**. County will take immediate possession of property upon delivery of payment.
2. County will be responsible for payment of all recording fees or other costs required for recording conveyance instruments.

GENERAL PROVISIONS

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

(Signature Page to Follow)

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

GRANTOR

DATED this 18th day of March, 2022.

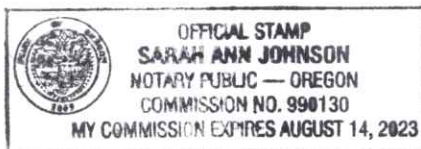
Jeffery L. Mishler
Jeffrey L. Mishler who acquired title
as Jeffery L. Mishler

Elizabeth E. Mishler who
Elizabeth M. Mishler acquired title as
Elizabeth M. Mishler

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Jeffrey L. Mishler who acquired title as Jeffery L. Mishler, acknowledged the foregoing instrument.

Dated this 18th day of March, 2022.



Sarah Johnson
NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/14/2023

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared ~~Elizabeth M. Mishler,~~ Elizabeth E. Mishler who acquired title as Elizabeth M. Mishler (S)

acknowledged the foregoing instrument.

Dated this 18th day of March, 2022.



Sarah Johnson
NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/14/2023

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

DATED this _____ day of _____, 2022.

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

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE-CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

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

Dated this _____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Deschutes County Road Department
Hunnell Road Improvement Project: Loco Road to Tumalo Road
File Number 005B
Tax Lot 161233B00100

PARCEL 1 – TEMPORARY CONSTRUCTION EASEMENT

A parcel of land lying in LOT 1, BLOCK 2, "POHAKU RANCH" in the Northwest one-quarter of Section 33, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, and being a portion of that property described in that Statutory Warranty Deed to Jeffery L. Mishier and Elizabeth M. Mishier, as tenants by the entirety, recorded August 7, 2020 as Instrument No. 2020-39381, Deschutes County Official Records, said parcel described as follows:

COMMENCING at a point on the easterly right of way line of Hunnell Road, said point being South 45°04'00" West, 1088.59 feet of the North one-quarter corner of Section 33, Township 16 South, Range 12 East, Willamette Meridian, said point also being 30.00 feet easterly when measured at right angles to Hunnell Road Centerline Station 147+42.15 per Deschutes County Survey No. 20520;

Thence leaving said easterly right of way line North 40°55'45" East, 77.69 feet to the BEGINNING of this description;

Thence continuing North 40°55'45" East a distance of 150.00 feet to a point;

Thence South 49°04'15" East, 15.00 feet to a point;

Thence South 40°55'45" West, 150.00 feet to a point;

Thence North 49°04'15" West, 15.00 feet to the BEGINNING of this description.

Containing 2,250 square feet, more or less.

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

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



RENEWS: 12-31-2021
Signature: 09-14-2021

EXHIBIT "B"

LOCATED IN LOT 1, BLOCK 2, "POHAKU RANCH" IN THE NORTHWEST ONE QUARTER OF SECTION 33, TOWNSHIP 16 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON

CURVE TABLE				
CURVE	RADIUS	DELTA	LENGTH	LONG CHORD
C1	450.00'	21°30'40"	168.95'	N32°27'08"E, 167.96'
C2	510.38'	19°05'00"	169.99'	N33°39'58"E, 169.21'



SCALE
1" = 100'

LOT 4,
BLOCK 1
"POHAKU RANCH"

LOT 5,
BLOCK 1
"POHAKU RANCH"

RIGHT OF WAY DEDICATION
± 14,812 SQ.FT.

POINT OF BEGINNING
PARCEL 1
STA: 147+42.15
OFF: 30.00' R
FROM WHICH THE NORTH
ONE-QUARTER CORNER
OF SECTION 33, T16S,
R12E, W.M., BEARS
N45°04'00"E, 1088.59'

PC: 147+64.79

PRC: 149+33.74

STA: 155+36.77
OFF: 30.00' R

HUNNELL ROAD
N24°07'28"E

PUBLIC LOCAL ACCESS ROAD
N23°45'00"E, 407.37'

N09°18'29"W
66.98'

S49°04'15"E
15.00'

①
± 2,250 SQ.FT.

TAX LOT 161233B000100
LOT 1, BLOCK 2,
"POHAKU RANCH"
MISHLER, JEFFERY L &
ELIZABETH M
INSTR. NO. 2020-39381

PC: 149+33.74

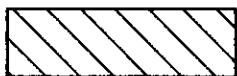
N40°55'45"E, 342.40'

S40°55'45"W
150.00'

N49°04'15"W
15.00'

N21°41'48"E

LEGEND



① TEMPORARY
CONSTRUCTION EASEMENT
± 2,250 SQ.FT.



RIGHT OF WAY DEDICATION
± 14,812 SQ.FT.

● - FOUND MONUMENT PER CS20520

SEE ATTACHED LEGAL
DESCRIPTION



**Harper
Houf Peterson
Righellis Inc.**

ENGINEERS • PLANNERS
LANDSCAPE ARCHITECTS • SURVEYORS

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

DCO-01 TMW 09/03/2021 PAGE 1 OF 1



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, March 30, 2022

SUBJECT: Consideration of Purchase Agreement, Document No. 2022-292, and Permanent Slope Easement, Document No. 2022-293 from the Nobert and Joan Volny Trust for Right of Way for the Hunnell Road: Loco Road to Tumalo Road Improvement Project

RECOMMENDED MOTION: Move approval of Document Nos. 2022-292 and 2022-293.

BACKGROUND AND POLICY IMPLICATIONS: The Board of County Commissioners authorized the Road Department to negotiate with owners of properties impacted by the Hunnell Road: Loco Road to Tumalo Road Improvement project for the acquisition of right of way by Resolution No. 2021-048. During preliminary design of the project, it was determined that a portion of Tax Lot No. 1612330000903, owned by the Nobert and Joan Volny Trust, would be impacted by the Project. The Road Department has negotiated with the property owner for right of way acquisition. The property owner has agreed to the following:

- Instrument: Permanent Slope Easement
Area: 700 sq. ft.
Compensation: \$500.00
Other Obligations: None

BUDGET IMPACTS: County will make payment to the property owner in the amount of \$500.00, which was budgeted in the Department's Fiscal Year 2021-2022 Road Capital Improvement Plan budget.

ATTENDANCE:

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

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

PURCHASE AGREEMENT
HUNNELL ROAD: LOCO ROAD TO TUMALO ROAD IMPROVEMENT PROJECT
Joan Volny, Trustees of the Norbert and Joan Volny Trust dated March 31, 1998
File No.: 008

THIS AGREEMENT is made and entered into by and between **Deschutes County, Oregon**, a political subdivision of the State of Oregon, (“County”); and **Joan Volny, Trustees of the Norbert and Joan Volny Trust dated March 31, 1998** (“Grantor”), on the following terms and conditions:

RECITALS

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

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

TERMS OF AGREEMENT

1. Grantor shall convey to County a permanent slope easement for the real property described in the attached **Exhibit A** by slope easement for the purchase price of **Five Hundred Dollars (\$500.00)**

GRANTOR OBLIGATIONS

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

fixtures, or improvements are required to be moved, Grantor may be entitled to relocation benefits and assistance which will be provided outside of this Agreement in accordance with the Uniform Relocation Act requirements in conformance with the ODOT Right-of-Way Manual.

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

COUNTY OBLIGATIONS

1. Within thirty (30) calendar days of execution of this Agreement and receipt of fully signed and executed permanent slope easement, County will deliver payment to Grantor in the amount of **Five Hundred Dollars (\$500.00)**. County will take immediate possession of property upon delivery of payment.
2. County will be responsible for payment of all recording fees or other costs required for recording conveyance instruments.

GENERAL PROVISIONS

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

(Signature Page to Follow)

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

GRANTOR

DATED this 10th day of March, 2022.

**Joan Volny, Trustees
of the Norbert and Joan Volny Trust
dated March 31, 1998**

Joan Volny Trust
Joan Volny, Trustee

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Joan Volny, Trustee, acknowledged the foregoing instrument.

Dated this 10th day of March, 2022.

Janet Foster
NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/14/2023

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

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE-CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

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

Dated this ____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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

DATED this _____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE-CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

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

Dated this _____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Deschutes County Road Department
Hunnell Road Improvement Project: Loco Road to Tumalo Road
File Number 008
Tax Lot 1612330000903

SLOPE EASEMENT

A parcel of land lying in the Southwest one-quarter of Section 33, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, and being a portion of that property described in that Statutory Special Warranty Deed to Norbert J. Volny and Joan Volny, Trustees of the Norbert and Joan Volny Trust dated March 31, 1998, recorded November 12, 2009 as Instrument No. 2009-47903, Deschutes County Official Records, said parcel being that portion of said property lying between lines at right angles to Hunnell Road Centerline Stations 118+82.29 and 119+52.29 and included in a strip of land 40.00 feet in width, lying on the westerly side of said center line, which center line is described as follows:

BEGINNING at Hunnell Road Centerline Station PI 113+14.31, said point being South 85°36'41" East, 15.04 feet from a 5/8 inch iron rod marking the SW 1/16 corner of Section 33, Township 16 South, Range 12 East, Willamette Meridian and the initial point of "SUN CLOUD ESTATES" a duly recorded subdivision in the Deschutes County Official Records; thence North 00°07'56" East, 1329.92 feet to Hunnell Road Centerline Station PI 126+44.23, said point being North 89°58'50 East, 15.00 feet from a 5/8 inch iron rod with a yellow plastic cap (illegible) marking the CW 1/16 corner of said Section 33.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Westerly Side of Center Line
118+82.29		119+52.29	40.00 in a straight line to 40.00

Containing 700 square feet, more or less.

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

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

REGISTERED PROFESSIONAL LAND SURVEYOR

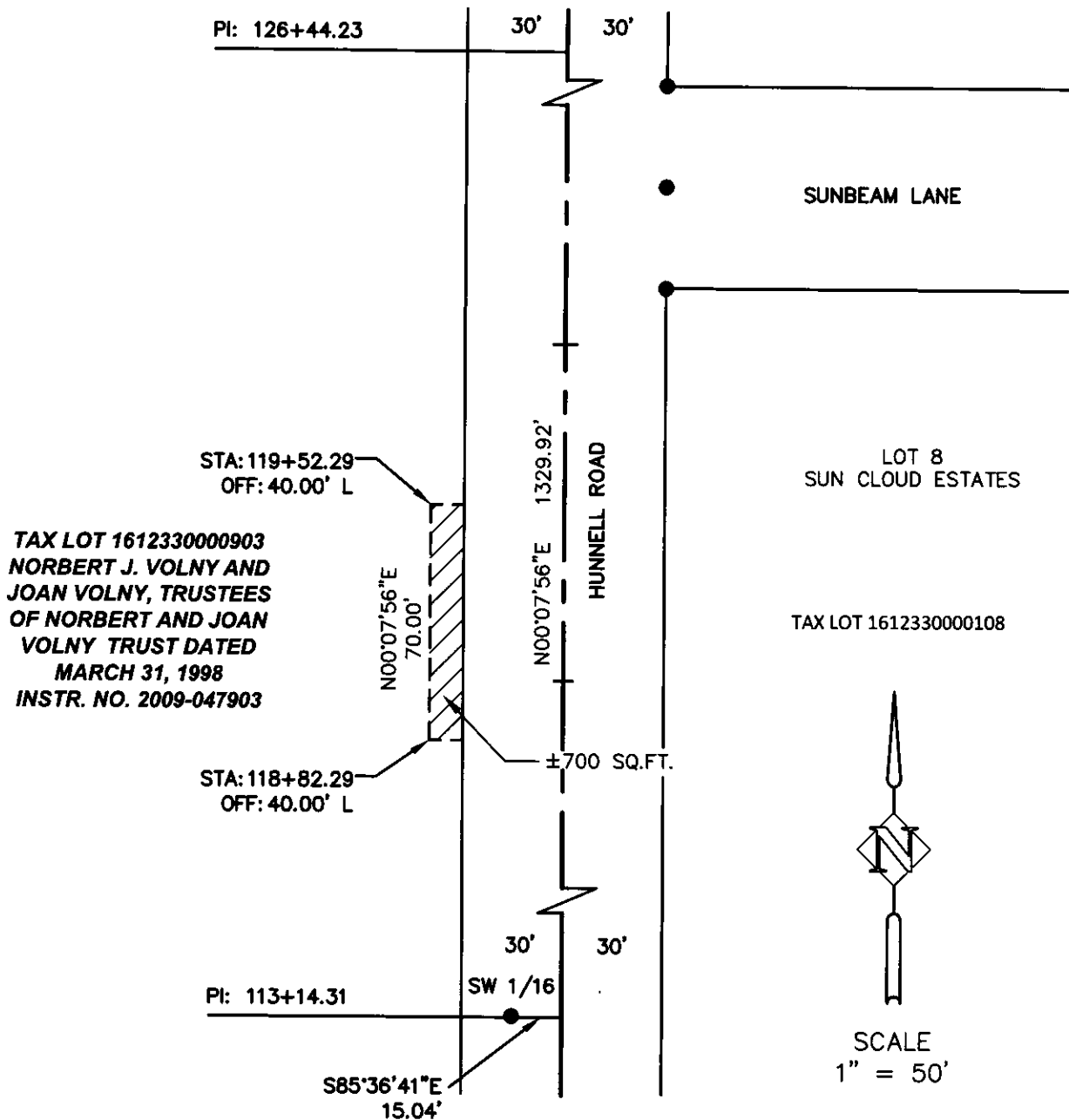


OREGON
JANUARY 8, 2019
REED CARLSON BEAUDUY
93377

RENEWS: 12-31-2021
SIGNED 09-01-2021

EXHIBIT "B"

LOCATED IN THE SOUTHWEST ONE QUARTER OF SECTION 33,
TOWNSHIP 16 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN,
DESCHUTES COUNTY, OREGON



TAX LOT 1612330000903
NORBERT J. VOLNY AND
JOAN VOLNY, TRUSTEES
OF NORBERT AND JOAN
VOLNY TRUST DATED
MARCH 31, 1998
INSTR. NO. 2009-047903

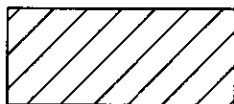
LOT 8
 SUN CLOUD ESTATES

TAX LOT 1612330000108



SCALE
 1" = 50'

LEGEND



SLOPE EASEMENT
 ± 700 SQ.FT.

● - FOUND MONUMENT PER CS20520

SEE ATTACHED LEGAL
 DESCRIPTION



Harper
Houf Peterson
Righellis Inc.

ENGINEERS • PLANNERS
 LANDSCAPE ARCHITECTS • SURVEYORS

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

DCO-01 RCB 08/16/2021 PAGE 1 OF

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

After recording return to:
Deschutes County Road Department
61150 S.E. 27th Street
Bend, Oregon 97702

PERMANENT SLOPE EASEMENT DEED

Joan Volny, Trustees of the Norbert and Joan Volny Trust dated March 31, 1998, Grantor, does hereby grant to Deschutes County, a political subdivision of the State of Oregon, Grantee, a permanent easement over, across and through that certain parcel of land described in Exhibit "A" and depicted in the attached Exhibit "B", attached hereto and by this reference incorporated herein, to construct and maintain slopes and other roadway facilities.

This Permanent Slope Easement is intended to grant the easement on the property described, not to convey fee title or any interest in the underlying property except as expressly stated herein. The easement granted shall not prevent Grantors from the use of said property provided, however, that such use shall not be permitted to interfere with the rights herein granted. Grantor shall not be permitted to endanger the lateral support of any facilities constructed within or adjacent to the easements granted herein.

Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property and the construction or improvement in the public way.

Grantor(s) hereby covenant(s) to and with Grantee that it/they/are the owner of said property, which is free from all encumbrances, except for easements, conditions and restrictions of record, and will warrant and defend the easement rights herein granted from all lawful claims whatsoever, except as stated herein.

The true consideration for this conveyance is **Five Hundred Dollars (\$500.00)**.

DATED this 10 day of March, 2022.

**Joan Volny, Trustees
of the Norbert and Joan Volny Trust
dated March 31, 1998**

Joan Volny Trust
Joan Volny, Trustee

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Joan Volny, Trustee, acknowledged the foregoing instrument.

Dated this 10th day of March, 2022.

Sarah Jensen
NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/14/2023

ACCEPTANCE

Deschutes County, acting by and through its Board of County Commissioners, does hereby accept the foregoing Permanent Slope Easement on behalf of the public pursuant to ORS 93.808.

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

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

Dated this ____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Deschutes County Road Department
Hunnell Road Improvement Project: Loco Road to Tumalo Road
File Number 008
Tax Lot 1612330000903

SLOPE EASEMENT

A parcel of land lying in the Southwest one-quarter of Section 33, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, and being a portion of that property described in that Statutory Special Warranty Deed to Norbert J. Volny and Joan Volny, Trustees of the Norbert and Joan Volny Trust dated March 31, 1998, recorded November 12, 2009 as Instrument No. 2009-47903, Deschutes County Official Records, said parcel being that portion of said property lying between lines at right angles to Hunnell Road Centerline Stations 118+82.29 and 119+52.29 and included in a strip of land 40.00 feet in width, lying on the westerly side of said center line, which center line is described as follows:

BEGINNING at Hunnell Road Centerline Station PI 113+14.31, said point being South 85°36'41" East, 15.04 feet from a 5/8 inch iron rod marking the SW 1/16 corner of Section 33, Township 16 South, Range 12 East, Willamette Meridian and the initial point of "SUN CLOUD ESTATES" a duly recorded subdivision in the Deschutes County Official Records; thence North 00°07'56" East, 1329.92 feet to Hunnell Road Centerline Station PI 126+44.23, said point being North 89°58'50 East, 15.00 feet from a 5/8 inch iron rod with a yellow plastic cap (illegible) marking the CW 1/16 corner of said Section 33.

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Containing 700 square feet, more or less.

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

**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

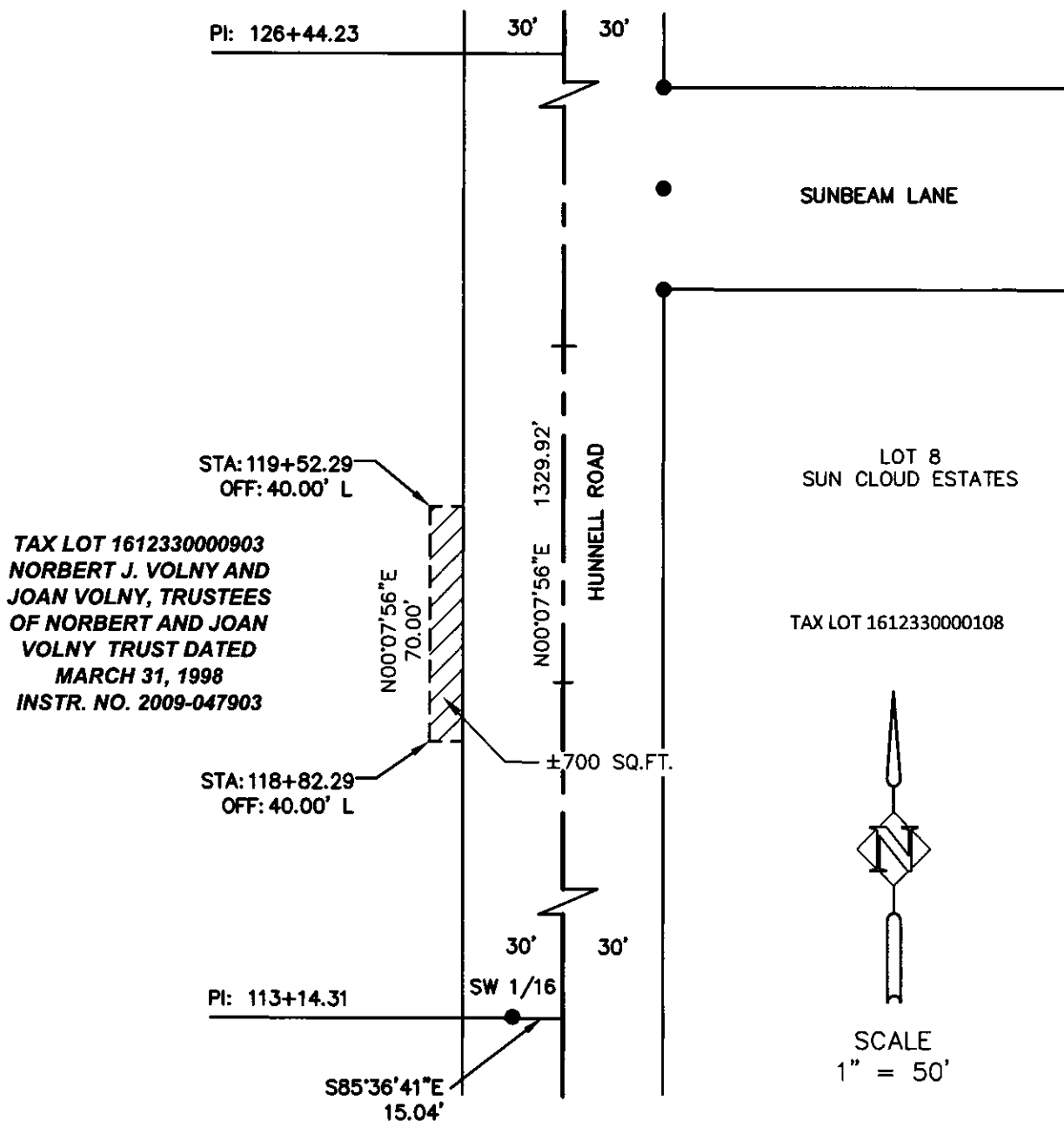


OREGON
JANUARY 8, 2019
REED CARLSON BEAUDUY
93377

RENEWS: 12-31-2021
SIGNED 09-01-2021

EXHIBIT "B"

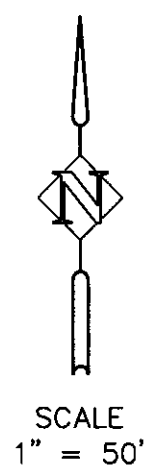
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DESCHUTES COUNTY, OREGON



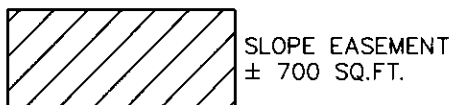
TAX LOT 1612330000903
NORBERT J. VOLNY AND
JOAN VOLNY, TRUSTEES
OF NORBERT AND JOAN
VOLNY TRUST DATED
MARCH 31, 1998
INSTR. NO. 2009-047903

LOT 8
SUN CLOUD ESTATES

TAX LOT 1612330000108



LEGEND



● - FOUND MONUMENT PER CS20520

SEE ATTACHED LEGAL
DESCRIPTION



Harper
Houf Peterson
Righellis Inc.

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DCO-01 RCB 08/16/2021 PAGE 1 OF



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, March 30, 2022

SUBJECT: Consideration of Board Signature for Order No. 2022-018, authorizing the Deschutes County Property Manager to execute the documents associated with the sale of County-owned property located at 16623 and 16631 Box Way, La Pine, Oregon 97739

RECOMMENDED MOTION:

Move to approve and sign Board Order No. 2022-018, authorizing the Deschutes County Property Manager to execute the documents associated with the sale of County-owned property located at 16623 and 16631 Box Way, La Pine, Oregon 97739

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County owns property in the Newberry Business Park in La Pine known as Map and Tax Lot 221014AB00138 located at 16623 Box Way, and Map and Tax Lot 221014A00139 located at 16631 Box Way. Each Tax Lot is 0.43-acres and the Real Market Value (RMV) by the Assessor’s Office is \$48,880 per lot.

MountainStar Family Relief Nursery have made an offer to purchase the property described. Their vision is to permanently place a modular building on the property and to open a center by fall 2022, which would include employing five new staff. Upon opening, it is estimated the center would start out serving 10 children (potentially 10 different families) through their preschool program. By spring 2023, the number of families served would increase to an estimate of 18 through a relief nursery classroom, and potentially 12 more families through their outreach program.

Highlights of the offer includes,

- 1. \$56,192 sale/purchase price (equates to \$65,336/acre or \$1.50 PSF)
2. \$3,000 refundable earnest money (becomes nonrefundable after buyer removes contingency)

- 3. 20-day (business days) contingency/due diligence period
- 4. Closing to occur on or before May 6, 2022 unless otherwise agreed upon in writing

In 2019, the County and City of La Pine (City) entered into an Intergovernmental Agreement (IGA) that provided the City full power and authority for the marketing, promotion and sale negotiations for County-owned property located in the industrial area (La Pine Industrial, Newberry Business Park and Finley Butte Industrial Park) for the purpose of economic development. The IGA provides for a 50/50 split of gross proceeds from sales.

The City and Sunriver La Pine Economic Development (SLED) support the transaction including the sales price and the City Manager, Geoff Wullschlager has signed the Purchase and Sale Agreement to acknowledge the pending sale.

BUDGET IMPACTS:

Sale proceeds totaling \$56,192. The IGA provides for the City to cover realtor fees.

ATTENDANCE:

Kristie Bollinger, Property Manager

REVIEWED

LEGAL COUNSEL

03/30/2022 Item #5.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Designating Kristie Bollinger, the Deschutes County Property Manager, as the Deschutes County Representative for the Purpose of Signing Documentation for the Sale of Deschutes County Owned Property Located at 16623 and 16631 Box Way, La Pine, Oregon 97739

*
*
*
*

ORDER NO. 2022-018

WHEREAS, the Board of County Commissioners of Deschutes County has authorized the sale of property located at 16623 and 16631 Box Way, La Pine, Oregon 97739 to MountainStar Family Relief Nursery; and

WHEREAS, Deschutes County received an offer from MountainStar Family Relief Nursery to purchase property (Purchase and Sale Agreement or PSA) for Fifty Six Thousand One Hundred Ninety Two Dollars (\$56,192), subject to a due diligence period scheduled to expire in twenty (20) business days from the date the PSA is executed; and

WHEREAS, MountainStar Family Relief Nursery will pay Three Thousand Dollars (\$3,000) in Earnest Money upon execution of the PSA that will be applied to the purchase price at closing; and

WHEREAS, closing the transaction will occur on or before May 6, 2022, unless a later date is agreed upon in writing, at which time documents necessary to conclude the transaction need to be signed on behalf of Deschutes County as the seller; now, THEREFORE,

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

Section 1. Kristie Bollinger, the Deschutes County Property Manager, is designated as the Deschutes County representative for the purpose of signing the necessary documents for the sale of property located at 16623 and 16631 Box Way, La Pine, Oregon 97739.

SIGNATURES ON FOLLOWING PAGE

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

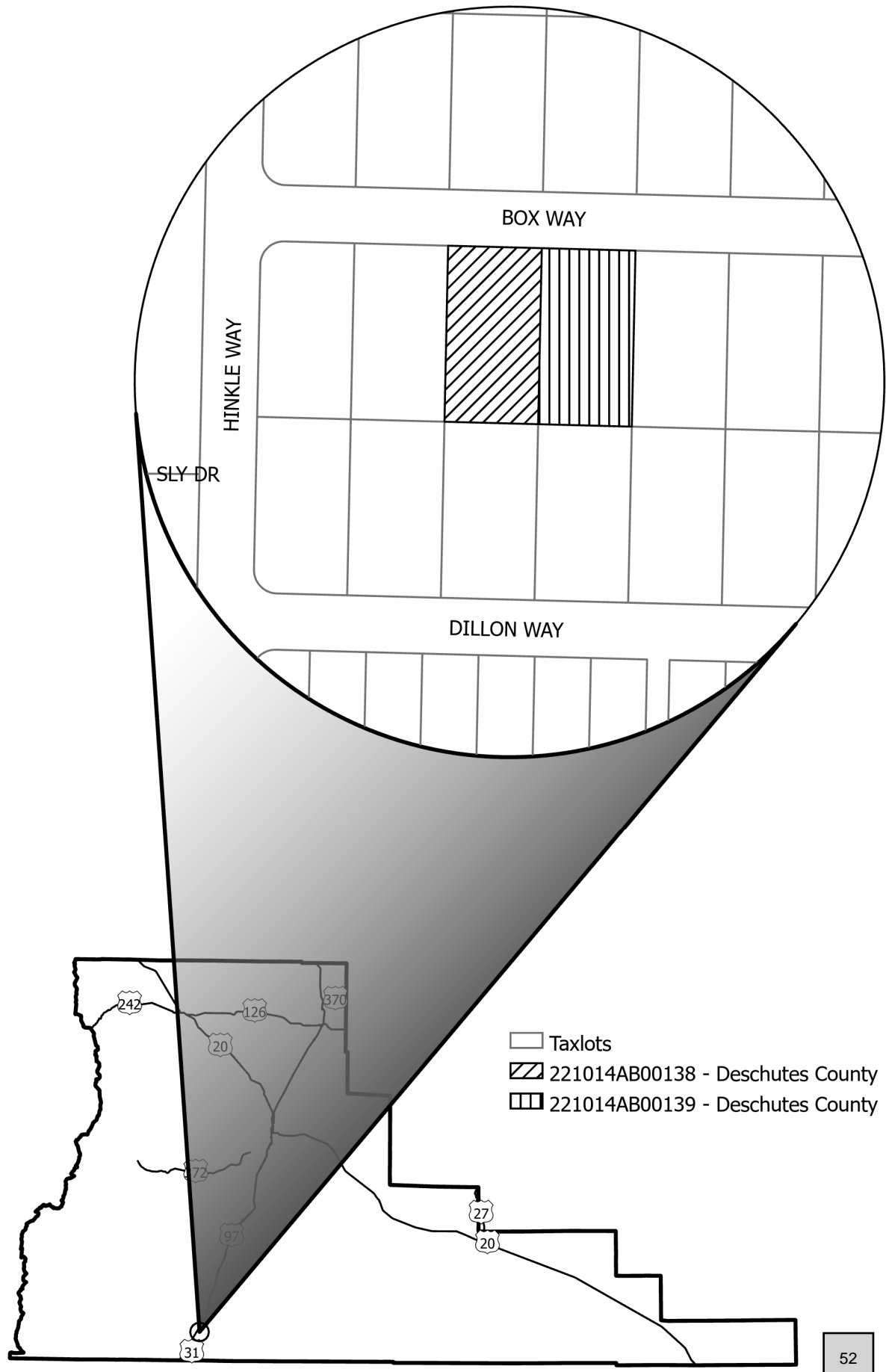
PHIL CHANG, Commissioner



DESCHUTES COUNTY VICINTY MAP

Maptax #221014AB00138 & 139
Doc# 2003 - 0967 - 0.43 Acres (Each)

03/30/2022 Item #5.





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 30, 2022

SUBJECT: Public Hearing and Order Considering Stilson Annexation to Rural Fire District #2

RECOMMENDED MOTION:

Move approval of Order 2022-017

BACKGROUND AND POLICY IMPLICATIONS:

Frederick Stilson filed a petition to annex property into Rural Fire District #2. The District approved the petition. The Assessor's Office and/or County Clerk certified the petition and Community Development reviewed it for consistency with the County's comprehensive plan.

BUDGET IMPACTS:

None

ATTENDANCE:

Dave Doyle, Legal Counsel

REVIEWED
dam
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

Order Approving Frederick Stilson
annexation into Rural Fire District #2 *
* ORDER NO. 2022-017
*

WHEREAS, Frederick Stilson (“Petitioner”) submitted a petition requesting annexation of the property, identified in Exhibit A in the petition attached to this Order, into Rural Fire District #2 (“District”); and

WHEREAS, either the Deschutes County Clerk’s Office and/or Assessor’s Office verified that the petition was signed by a registered voter or a landowner, respectively, for the property as indicated in Exhibit B in the petition attached to this Order; and

WHEREAS, pursuant to ORS 198.857(4), the Deschutes County Community Development Department determined the petition is consistent with the Deschutes County Comprehensive Plan, as described in Exhibit C in the petition attached to this Order; and

WHEREAS, the Board held a duly noticed public hearing on March 30, 2022, to determine whether, in accordance with the County Comprehensive Plan, any applicable service agreement between a local government and the affected district, and the criteria prescribed by ORS 197.175, the affected area would benefit by annexation of said territory into the District; now, therefore

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

Section 1. The petition for annexation and all exhibits attached to this Order are hereby incorporated by reference.

Section 2. The petition for annexation is hereby approved, and the property identified in Exhibit A is declared annexed and included in the District.

Section 3. A copy of the signed Order will be forwarded to the Oregon Department of Revenue, Oregon Secretary of State Archives Division, Deschutes County Assessor’s Office and County Clerk’s Office, and the District.

Section 3. The purpose of this District is to provide fire protection services.

Dated this ___ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DeBONE, VICE CHAIR

ATTEST:

Recording Secretary

PHIL CHANG, COMMISSIONER

PETITION TO ANNEX PROPERTY TO DESCHUTES COUNTY RURAL FIRE PROTECTION DISTRICT #2

To: The Board of County Commissioners Deschutes County, Oregon

The undersigned, in support of this Petition, state as follows:

1. This Petition for Annexation is filed pursuant to ORS 198.705 to 198.955
2. This annexation Petition affects only Deschutes County and Deschutes County Rural Fire Protection District #2 (DCRFPD #2)

3. The principal act for DCRFPD #2 is ORS 478.0-01, et seq.

4. The territory that is subject to this petition for annexation is primarily inhabited. The attached petitions in support of this annexation are signed by land owners and registered voters in the area proposed to be annexed as indicated opposite their respective signatures, and that all signatures were obtained on or after the 10 day of February, 2022

5. It is requested that the proceedings be taken for the annexation of said territory to Deschutes County Rural Fire Protection District #2, Deschutes County, Oregon. A description of the boundaries of the territory to be annexed is attached hereto and marked Exhibit "A".

6. That said petition has been signed by 15 percent of the electors, or 100 electors whichever number is lesser, or 15 owners or owners of 10 percent of the land, (whichever is greater) within the area proposed to be annexed.

Dated this 10th day of February, 2022

NAME Frederick Stilson NAME _____

ADDRESS 63454 Saddleback Drive ADDRESS _____
Bend, OR 97703

PHONE 541.419.2556 PHONE _____

Approved by the Board of directors of Deschutes County Rural Fire Protection District #2 this _____ day of _____

Approved by City of Bend

Board of Directors DCRFPD #2

By: [Signature]
TOO RILEY, FIRE CHIEF

By: [Signature]
Pres. DCRFPD #2

EXHIBIT A

03/30/2022 Item #8.

NAME OF DISTRICT: Deschutes County Rural Fire Protection District #2



	PRINT NAME	DATE SIGNED	PROPERTY ADDRESS/ RESIDENCE ADDRESS (If Different)	LANDOWNER IN THE PROPOSED TERRITORY/ REGISTERED VOTER IN THE PROPOSED TERRITORY
1	Frederick Stilson <small>Print Name</small> <small>Signature</small>	2.10.2022 <small>Date</small>	63454 Saddleback Drive, Bend, OR <hr/> PROPERTY ADDRESS 97703 <hr/> RESIDENCE ADDRESS (If Different)	Landowner Yes <input type="checkbox"/> No <input type="checkbox"/> Acreage _____ Registered Voter Yes <input type="checkbox"/> No <input type="checkbox"/> Pre <input type="checkbox"/>
2	<small>Print Name</small> <hr/> <small>Signature</small>	<small>Date</small>	PROPERTY ADDRESS <hr/> RESIDENCE ADDRESS (If Different)	Landowner Yes <input type="checkbox"/> No <input type="checkbox"/> Acreage _____ Registered Voter Yes <input type="checkbox"/> No <input type="checkbox"/> Pre <input type="checkbox"/>
3	<small>Print Name</small> <hr/> <small>Signature</small>	<small>Date</small>	PROPERTY ADDRESS <hr/> RESIDENCE ADDRESS (If Different)	Landowner Yes <input type="checkbox"/> No <input type="checkbox"/> Acreage _____ Registered Voter Yes <input type="checkbox"/> No <input type="checkbox"/> Pre <input type="checkbox"/>
4	<small>Print Name</small> <hr/> <small>Signature</small>	<small>Date</small>	PROPERTY ADDRESS <hr/> RESIDENCE ADDRESS (If Different)	Landowner Yes <input type="checkbox"/> No <input type="checkbox"/> Acreage _____ Registered Voter Yes <input type="checkbox"/> No <input type="checkbox"/> Pre <input type="checkbox"/>
5	<small>Print Name</small> <hr/> <small>Signature</small>	<small>Date</small>	PROPERTY ADDRESS <hr/> RESIDENCE ADDRESS (If Different)	Landowner Yes <input type="checkbox"/> No <input type="checkbox"/> Acreage _____ Registered Voter Yes <input type="checkbox"/> No <input type="checkbox"/> Pre <input type="checkbox"/>

County of Deschutes ss. 14 day of February, 2022
 State of Oregon
 I, Frederick Stilson, certify that I circulated
 this petition, and every person who signed this petition did so
 in my presence.
 Notary Public for Oregon
 My Commission Expires: April 25 2025
Heather Anne Ochoa
 Signature

Security Deposit

Special District Formation or Reorganization

EXHIBIT A

03/30/2022 Item #8.

rev 01/18
ORS 198.775

Formation
 Annexation
 Withdrawal
 Dissolution

District and Precinct Information		
Name of District DCRFPD #2 Deschutes County Rural Fire Protection District #2		
Number of Precincts in District	Amount of Deposit per Precinct	Total Deposit (max of \$10,000)

Chief Petitioners					
I/We hereby declare if the costs of the attempted formation annexation, withdrawal or dissolution of Frederick Stilson _____ district exceeds the deposit, I/we will pay to the county treasurer the amount of the excess cost (ORS 198.775)					
Name print Frederick Stilson			Signature		
Residence 63454 Saddleback Drive			Mailing Address if different 62522 McClain Drive		
City Bend	State OR	Zip Code 97703	City Bend	State OR	Zip Code 97703
Amount of Contribution/Value of Secured Deposit \$100			Kind of Contribution*		
			<input checked="" type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Continued on the reverse side of this form

EXHIBIT A

03/30/2022 Item #8.

Person/Organizations Providing Any Part of Cash/Security Deposit

Name print Same			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Additional Description

*Provide additional description of security deposit below, on the back of this form or on separate sheets. Additional contributors may be listed on separate sheets and attached.

1212 SW
Simpson Ave
Bend, Oregon 97702
(541) 322-6300
FAX 322-6321



Todd Riley
Fire Chief

To: Gary Marshall, on behalf of DCRFPD#2
From: Todd Riley, Fire Chief
Re: Annexation of Saddleback property
Date: February 14, 2022

I have received and reviewed the annexation request for 63454 Saddleback Dr., Bend, OR 97703. Bend Fire & Rescue will provide fire and EMS services to the above property if it annexed into Fire District #2's boundaries.

Sincerely,


Todd Riley

EXHIBIT A

03/30/2022 Item #8.

EXHIBIT "A"

Name: Frederick Stilson

Address: 63454 Saddleback Drive, Bend, OR 97703

Tax Lot Number: 1711140000201

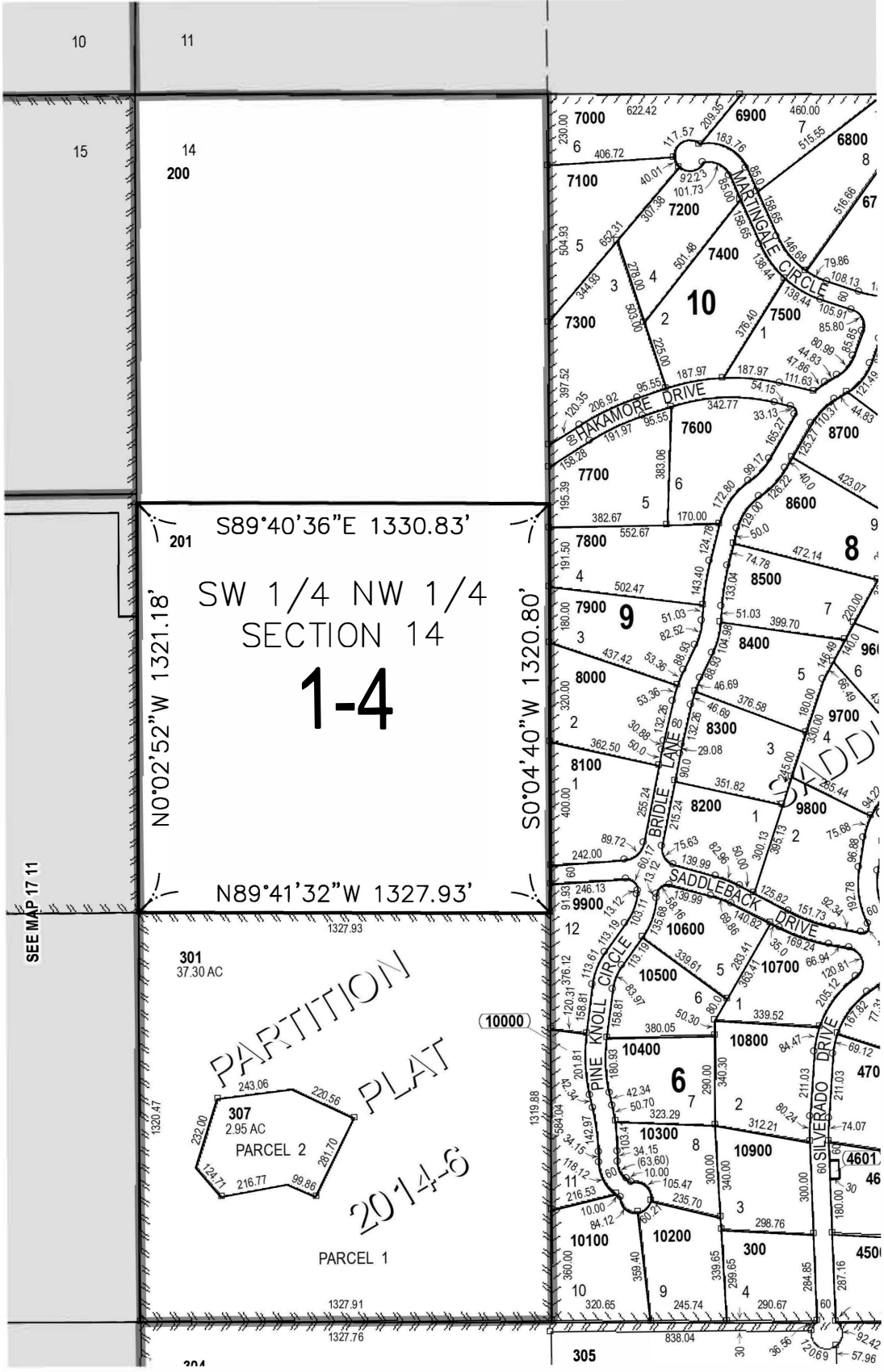
Property described as:

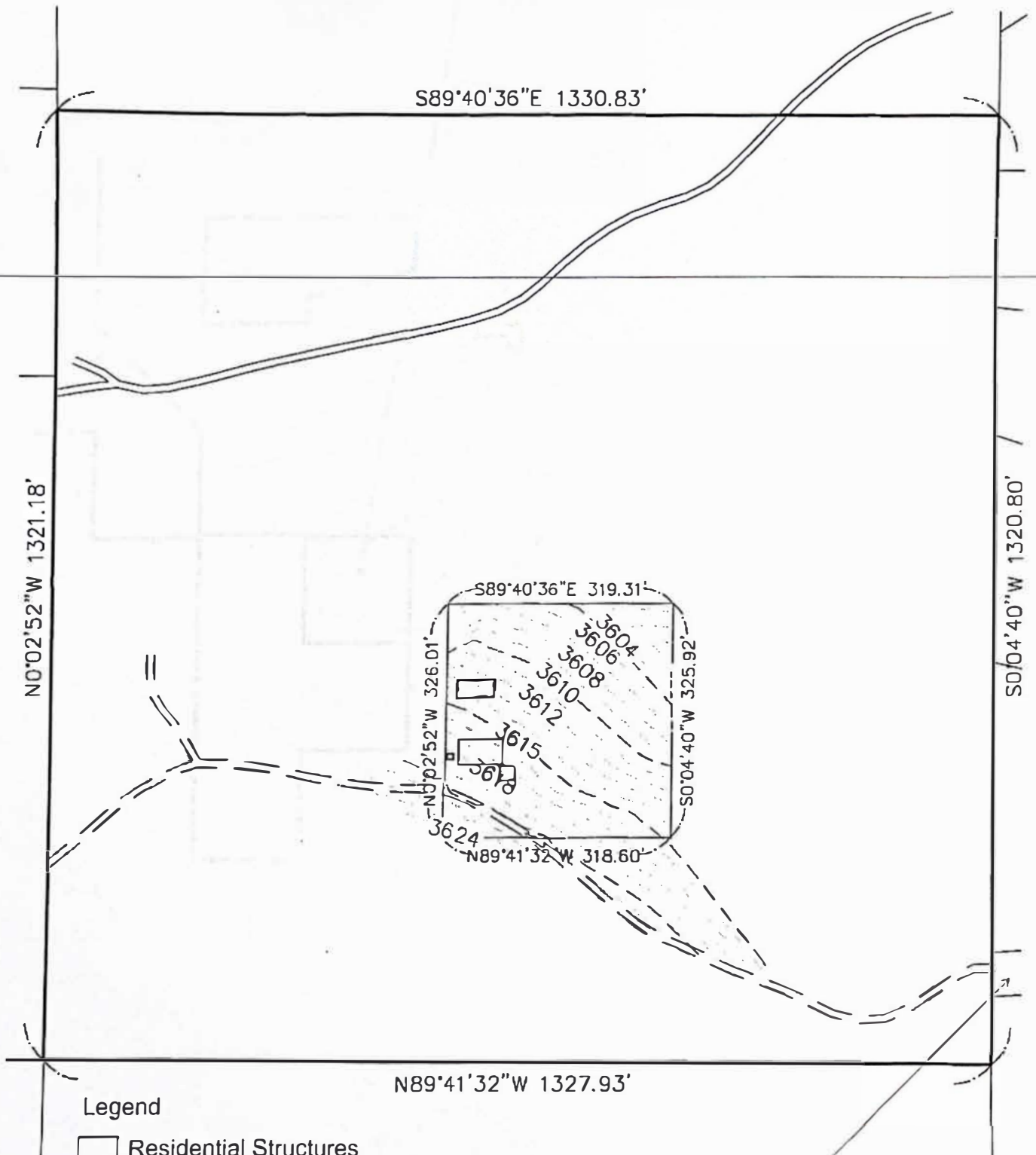
40 acres located at the end of Saddleback Drive, West of Johnson Road.




Legal Description:

The Southwest Quarter of the Northwest Quarter (SW 1/4-NW 1/4) of Section 14, Township 17 South, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.

[Faint text]
 [Faint text]
 [Faint text]

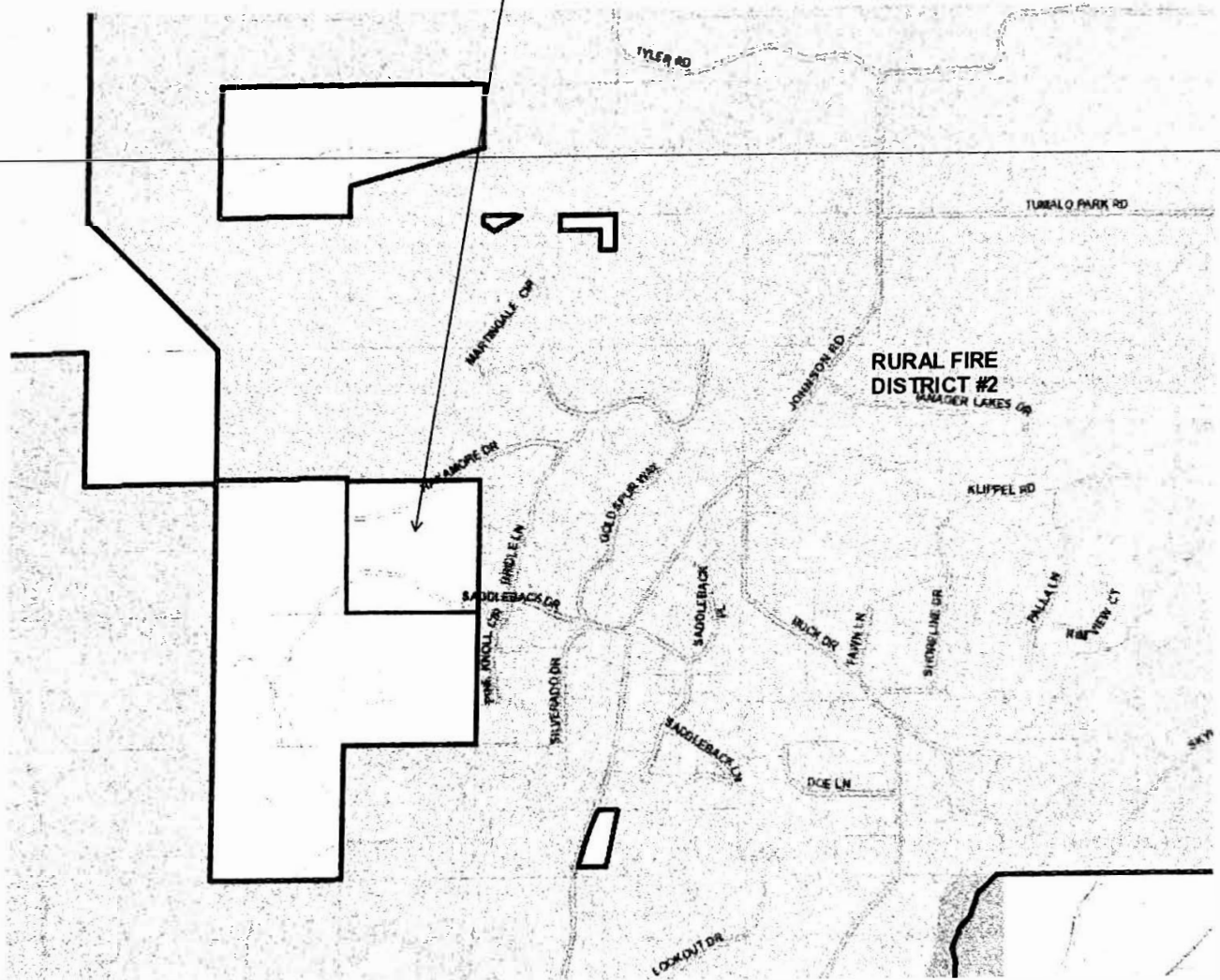




- Legend
-  Residential Structures
 -  Well
 -  Septic Drainfield

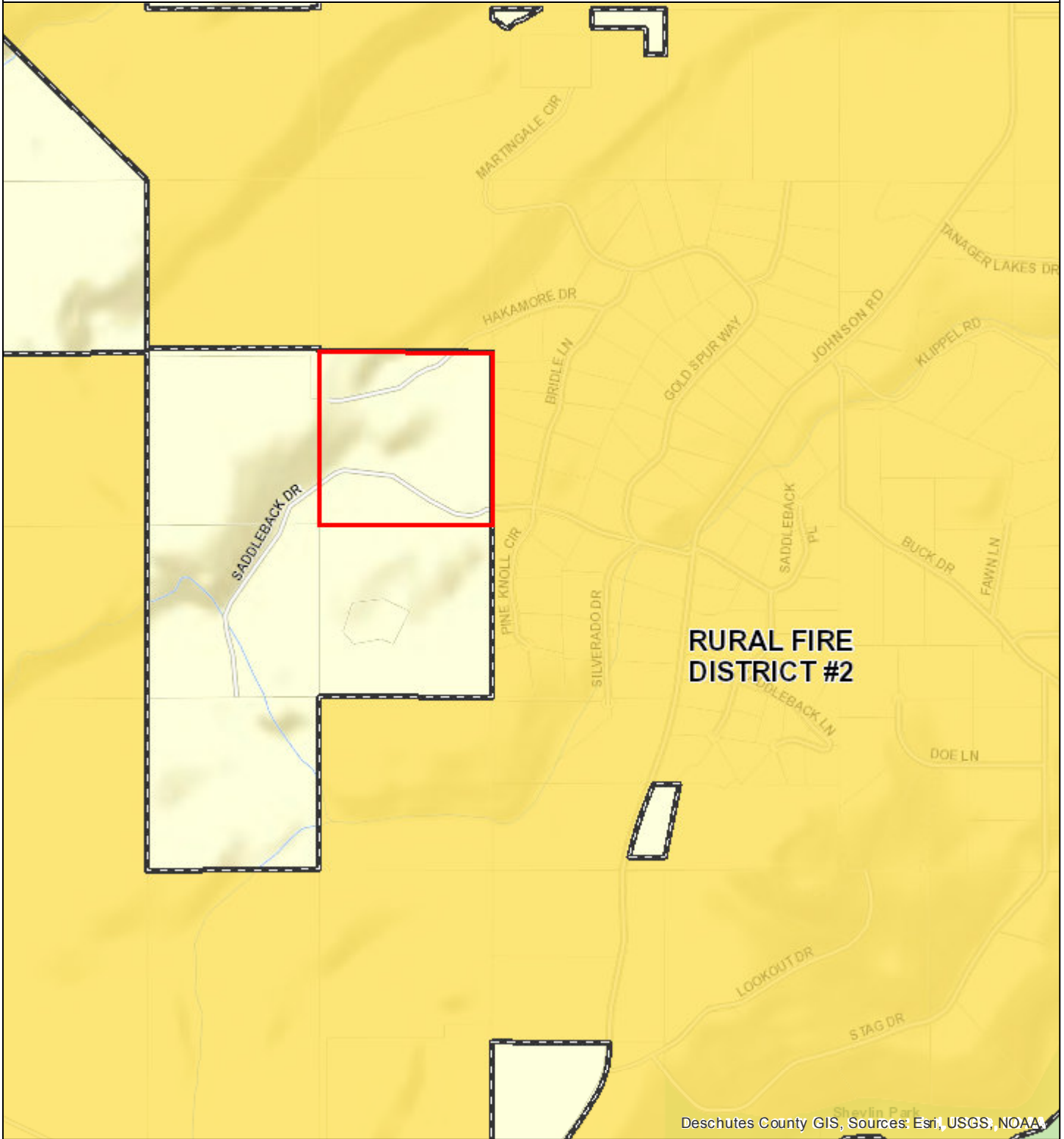
Saddleback Drive

Subject Property: 63454 Saddleback Drive, Bend, OR 97703



Deschutes County Property Information - Dial

Fire Tax District Map for account 113273



RURAL FIRE DISTRICT #2

Deschutes County GIS, Sources: Esri, USGS, NOAA

Map and Taxlot: 171114000201





EXHIBIT B

03/30/2022 Item #8.

DESCHUTES COUNTY ASSESSOR'S OFFICE

CARTOGRAPHY DEPARTMENT

1300 NW Wall Street, Suite 204 | Bend, Oregon 97703

Office: (541) 388-6508 | **Fax:** (541) 382-1692

Website: <https://www.deschutes.org/assessor>

Property Info: <https://dial.deschutes.org/>

March 2, 2022

Steve Dennison

Deschutes County Clerk

Re: **Petition for Rural Fire Protection District #2** (Frederick Stilson)

Please be advised the attached petition meets the requirements of ORS 198.

Sincerely,

Gregg Rossi

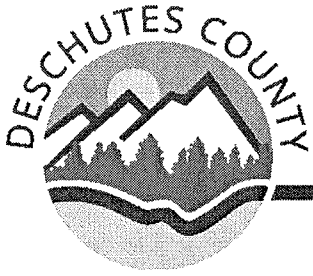


Gregg Rossi | Chief Cartographer

Deschutes County Assessor's Office, Cartography Dept.

1300 NW Wall St. Suite 204 | Bend, Oregon 97703 PO Box 6005 | Bend, Oregon 97708

Tel: (541) 617-4703 | Fax: (541) 382-1692



County Clerk

**Petition for Annexation to
Deschutes County Rural Fire Protection District #2
(63454 Saddleback Dr, Bend, Taxlot 1711140000201)**

Clerk's Certification

I, Steve Dennison, Deschutes County Clerk, do hereby certify that the signatures on the attached petition sheet are not voters within the proposed area to be annexed. There are zero (0) voters within the proposed area to be annexed. There are zero (0) valid signatures on the attached petition within the area proposed for annexation.

Dated this 3rd day of March, 2022.

Steve Dennison
Deschutes County Clerk



COMMUNITY DEVELOPMENT

TO: Deschutes County Board of Commissioners

FROM: Will Groves, Planning Manager

DATE: March 7, 2022

SUBJECT: Land Use Compatibility, 63454 Saddleback Drive, Rural Fire Protection District #2 Annexation

The materials contained in the petition propose to annex lands to the Rural Fire Protection District #2.

This annexation is consistent with Title 18, Deschutes County Zoning Ordinance, and Title 23, Deschutes County Comprehensive Plan. There are no local land use regulations or policies that specifically address this annexation¹.

¹ Policy 3.6.1 “encourages the formation of special service districts to serve rural needs rather than have the County serve those needs.” Policy 3.8.1 recognizes the importance to “cooperate with public agencies and local park districts to provide park and recreation lands, facilities and opportunities.”



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, March 30, 2022

SUBJECT: Consideration of Board Signature of Order No. 2022-020, Appointing Nick Lelack as Deschutes County Treasurer

ATTENDANCE:
David Doyle, County Legal Counsel



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of March 30, 2022

DATE: March 24, 2022

FROM: Dave Doyle Legal Counsel 388-6625

TITLE OF AGENDA ITEM:
Board approval and signature of Order No. 2022-020 Appointing Nick Lelack as Deschutes County Treasurer.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:
Greg Munn is resigning his elected position of Treasurer effective April 1, 2022. No replacement has yet to be hired to replace Greg. The person hired, to become eligible to hold the position of Treasurer, must reside in Deschutes County for one-year. ORS 236.210 provides that the County Commissioners fill vacancies in elected county offices. Order Number 2022-020 would appoint Nick Lelack as the Treasurer effective April 2, 2022. Nick Lelack plans to delegate the function of Treasurer, on a time limited basis to Wayne Lowery, who will be operating as County CFO pursuant to a personal services agreement.

FISCAL IMPLICATIONS:
None to Deschutes County.

RECOMMENDATION & ACTION REQUESTED:
Board approval of Order No. 2022-020.

ATTENDANCE: Nick Lelack, Admin

DISTRIBUTION OF DOCUMENTS:
BOCC
Finance

REVIEWED

LEGAL COUNSEL

03/30/2022 Item #9.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Appointing Nick Lelack as Deschutes
County Treasurer

*
*
*

ORDER NO. 2022-020

WHEREAS, Greg Munn is resigning as Deschutes County Treasurer as of April 1, 2022; and

WHEREAS, no replacement for Greg Munn has yet to be hired as the Deschutes County Finance Director, and therefore there is a vacancy in that position and it is unknown at this time when the person hired will be eligible to be appointed as County Treasurer due to the one-year Deschutes County residency requirement; and

WHEREAS, the Board of Commissioners desires that the new Finance Director become County Treasurer when he/she becomes eligible to hold that position; and

WHEREAS, as part of appointment as Finance Director, the designated person will agree to run for the Office of County Treasurer ideally for the term which starts on January 1, 2023; and

WHEREAS, the Board of Commissioners, pursuant to ORS 236.210, intends to appoint County Administrator Nick Lelack as County Treasurer as a temporary solution to fill the County Treasurer position until the new Finance Director is hired and has the opportunity to run for Office of County Treasurer; and

WHEREAS, Nick Lelack intends to delegate the duties of County Treasurer on a time-limited basis to Wayne Lowery, now, therefore,

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

Section 1. Nick Lelack is appointed as Treasurer of Deschutes County effective April 2, 2022.

Section 2. This Order shall take effect upon adoption.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

PHIL CHANG, Commissioner

ATTEST:

Recording Secretary



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 30, 2022

SUBJECT: "Consideration and Board chair signature of Notice of intent to award contract for audit services"

RECOMMENDED MOTION:

Move approval and authorize the Chair signature of the Notice of Intent to Award Contract for external audit services (Doc# 2022-267) with Moss Adams LLP.

BACKGROUND AND POLICY IMPLICATIONS:

The current contract for external audit services with Eide Bailly LLP expired with the preparation of the fiscal year 2021 annual comprehensive financial report for the County. The current auditor has audited the County for eight years under a prior RFP and extensions. The County's audit committee issued the current RFP on January 3, 2022 soliciting proposals for external audit services for a five-year period (FY 2022-2026) with two one-year options.

We received two proposals by the deadline of February 14, 2022. The audit committee had a subcommittee review the proposals and made recommendations to the full audit committee on March 11, 2022. The six member subcommittee was comprised of four members of the audit committee, the finance director, and the accounting manager. The criteria for scoring the proposals were 70% weighted towards services and 30% towards cost.

The subcommittee selected the auditor Moss Adams LLP as the best proposal. The audit committee at their March 11, 2022 meeting voted to support the recommendation of this external auditor to the Board.

BUDGET IMPACTS:

*The total cost by Fiscal Year in the proposal was
FY 2022 \$ 150,042 (this represents a 12% increase over the \$133,605 FY 2021 cost)
FY 2023 \$154,544
FY 2024 \$159,180
FY 2025 \$163,955
FY 2026 \$168,874*

The above costs include the County and the six county service districts and COLES. The county service districts and COLES receive separate audited annual reports and are charged for their share of the audit costs.

ATTENDANCE:

David Givans, County Internal Auditor

DISTRIBUTION:

*Original: David Givans
Copy: Audit committee, Legal counsel,
Bidders on bidders list (by email)*

Eide Bailly LLP

*c/o Lealan I. Miller, Partner
877 W. Main Street, Suite 800
Boise, ID 83702
LMiller@eidebailly.com*

Moss Adams LLP

*c/o Amanda McCleary Moore, CPA; Partner
975 Oak Street, Suite 500
Eugene, OR 97401
Amanda.mccleary-moore@mossadams.com*



BOARD OF COUNTY COMMISSIONERS

P.O. Box 6005 • Bend, OR 97708-6005
1300 NW Wall St, Suite 206 • Bend, OR 97703
(541) 388-6570 • Fax (541) 385-3202

www.deschutes.org
board@deschutes.org

Patti Adair
Anthony DeBone
Phil Chang

Moss Adams LLP
c/o Amanda McCleary Moore, CPA; Partner
975 Oak Street, Suite 500
Eugene, OR 97401
Amanda.mccleary-moore@mossadams.com

Sent via email

RE: Deschutes County Request for Proposal: Audit Services (Fiscal Years 2022-2026)

NOTICE OF INTENT TO AWARD CONTRACT

On March 30, 2022 the Board of County Commissioners of Deschutes County, Oregon, considered proposals for the above-referenced service. The Board of County Commissioners determined the successful proposer for the service was Moss Adams LLP of Eugene, Oregon.

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279B.135. A copy of this Notice is being provided to each firm or person that submitted a bid or proposal for the project. Any firm or person which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice may submit a written protest within seven (7) calendar days after the issuance of this Notice of Intent to Award Contract to the Board of County Commissioners of Deschutes County, Oregon, at Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703. **The seven (7) calendar day protest period will expire at 5:00 PM on Wednesday, April 6, 2022.**

If no protest is filed within the protest period, this Notice of Intent to Award Contract becomes an Award of Contract without further action by the County unless the Board of County Commissioners for good cause, rescinds this Notice before the expiration of the protest period. The successful bidder or proposer on a Deschutes County project is required to execute four (4) copies of the Contract, which will be provided when the contract is negotiated. In addition to the execution of Contract, the contractor will be required to provide one or more certificates of insurance together with endorsements naming Deschutes County as an additional insured.

All contract copies will need to be returned to the County for execution. After all parties have signed the contract, a copy of the contract will be forwarded to you along with a notice to proceed.

If you have any questions regarding this Notice of Intent to Award Contract, or the procedures under which the County is proceeding, please contact Deschutes County Legal Counsel Bend, OR 97703, telephone (541) 388-6625 or FAX (541) 383-0496, or email to: david.doyle@deschutes.org.

Be advised that if no protest is received within the stated time period that the County is authorized to process the contract administratively.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
DESCHUTES COUNTY

Patti Adair, Chair

Enclosures:

cc w/enc: Transmitted by Email on March 30, 2022, to All Bidders (3 pages)

External Audit Services RFP

Bidders List
(Alphabetical)

Eide Bailly LLP
c/o Lealan Miller, CPA; Partner
877 W. Main Street, Suite 800
Boise, ID 83702
(208) 383-4756 fax: (208) 344-7435
lmiller@eidebailly.com

Moss Adams LLP
c/o Amanda McCleary-Moore, CPA; Partner
975 Oak Street, Suite 500
Eugene, OR 97401
(541) 686-1040 fax: (541)686-9673
Amanda.mccleary-moore@mossadams.com



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, March 30, 2022

SUBJECT: 1st Reading: Ordinance 2022-001 and Ordinance 2022-002 – Central Oregon Irrigation District (COID) Plan Amendment/Zone Change

RECOMMENDED MOTION:

Move to approve 1st reading of Ordinance 2022-001 and Ordinance 2022-002

BACKGROUND AND POLICY IMPLICATIONS:

The Board of County Commissioners (Board) will consider a first reading of Ordinance 2022-001 and Ordinance 2022-002 on March 30, 2022 for a request for a Plan Amendment and Zone Change (file nos. 247-21-000400-PA, 401-ZC) for a 36.65-acre property to the east of the City of Bend, submitted by COID. The address associated with the subject property is 61781 Ward Rd, Bend, OR 97702.

BUDGET IMPACTS:

None

ATTENDANCE:

Tarik Rawlings, Associate Planner



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

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

DATE: March 21, 2022

SUBJECT: Consideration of First Reading of Ordinance 2022-001 and Ordinance 2022-002 - Central Oregon Irrigation District (COID) Plan Amendment and Zone Change

The Board of County Commissioners (Board) will consider a first reading of Ordinance 2022-001 and Ordinance 2022-002 on March 30, 2022 to consider a request for a Plan Amendment and Zone Change (file nos. 247-21-000400-PA, 401-ZC) for a 36.65-acre property to the east of the City of Bend.

I. BACKGROUND

The applicant, COID, is requesting a Comprehensive Plan Amendment to redesignate the subject property from Agriculture to Rural Residential Exception Area and a Zoning Map Amendment to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The applicant's reasoning for the request is that the property was mistakenly identified as farmland, does not contain high-value soils or other characteristics of high value farmland, and therefore should be redesignated and rezoned for residential use. The applicant has provided a soil study that identifies non-high value soils on a majority (~64%) of the subject property. Additionally, the applicant has provided findings within the burden of proof that demonstrate compliance with state and local requirements and policies.

A public hearing before a Hearings Officer was conducted on August 31, 2021 with the Hearings Officer's recommendation of approval issued on October 13, 2021. The Board held a public hearing on January 26, 2022 and initiated a 21-day open record period, which concluded February 16, 2022 at 4:00pm. On March 2, 2022, the Board deliberated to approve the requests.

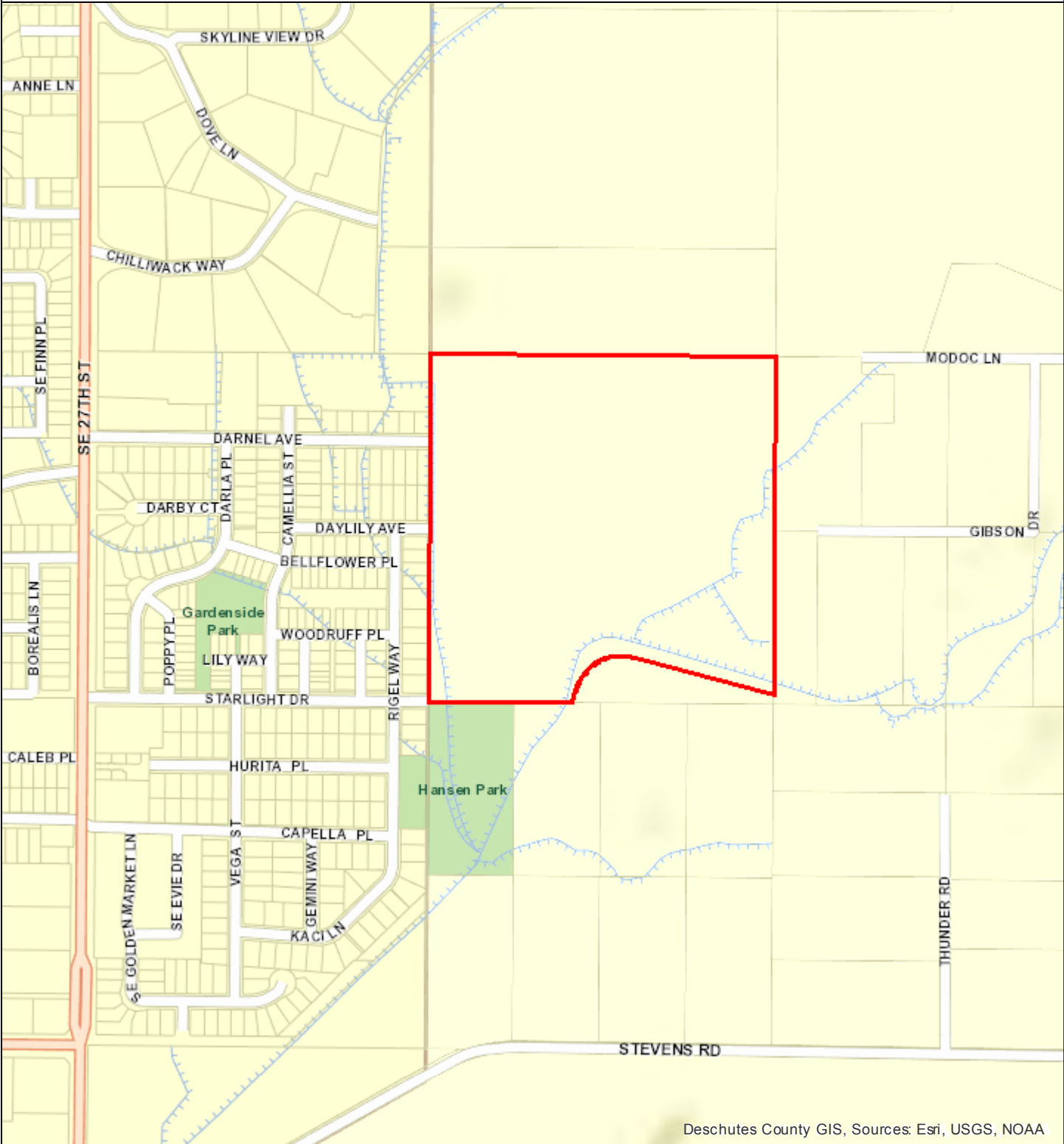
II. NEXT STEPS / SECOND READING

The Board is scheduled to conduct the second reading of Ordinance 2022-001 and Ordinance 2022-002 on April 13, 2022, fourteen (14) days following the first reading.

ATTACHMENTS:

1. Area Map
2. Draft Ordinance 2022-001 and Exhibits
 - Exhibit A: Legal Description
 - Exhibit B: Proposed Plan Amendment Map
 - Exhibit C: Comprehensive Plan Section 23.01.010, Introduction
 - Exhibit D: Comprehensive Plan Section 5.12, Legislative History
 - Exhibit E: Hearings Officer Recommendation/Decision
3. Draft Ordinance 2022-002 and Exhibits
 - Exhibit A: Legal Description
 - Exhibit B: Proposed Zone Change Map
 - Exhibit C: Hearings Officer Recommendation/Decision

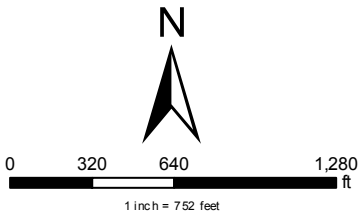
247-21-000400-PA, 401-ZC



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 8/5/2021



REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 23, the Deschutes County Comprehensive Plan, * ORDINANCE NO. 2022-001
to Change the Comprehensive Plan Map Designation *
for Certain Property from Agriculture to Rural
Residential Exception Area and Prescribing an
Effective Date on the 90th Day After the Date of
Adoption.

WHEREAS, Central Oregon Irrigation District (COID) applied for a Comprehensive Plan Amendment (247-21-000400-PA) to Deschutes County Code (“DCC”) Title 23, to change the Comprehensive Plan Map Designation for the subject property from an Agricultural (AG) designation to a Rural Residential Exception Area (RREA) designation; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on August 31, 2021 before the Deschutes County Hearings Officer and, on October 12, 2021 the Hearings Officer recommended approval of the Comprehensive Plan Map change;

WHEREAS, pursuant to DCC 22.28.030(C), the Board of County Commissioners (“Board”) heard the application for a comprehensive plan designation change from Agriculture (AG) to Rural Residential Exception Area (RREA) through a *de novo* public hearing held on January 26, 2022 after notice was given in accordance with applicable law; and

WHEREAS, Deschutes County Ordinance 2000-017 ordained the Plan Map to be a component of Title 23 and, therefore, any amendment to the Plan Map is an amendment to Title 23; now, therefore,

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

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

Section 2. AMENDMENT. DCC Section 23.01.010, Introduction, is amended to read as described in Exhibit “C” attached and incorporated by reference herein, with new language underlined.

Section 3. AMENDMENT. Deschutes County Comprehensive Plan Section 5.12, Legislative History, is amended to read as described in Exhibit “D” attached and incorporated by reference herein, with new language underlined.

Section 4. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached as Exhibit “E” and incorporated by reference herein.

///

Section 5. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption.

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

Date of 1st Reading: ____ day of _____, 2022.

Date of 2nd Reading: ____ day of _____, 2022.

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

Effective date: ____ day of _____, 2022.

ATTEST

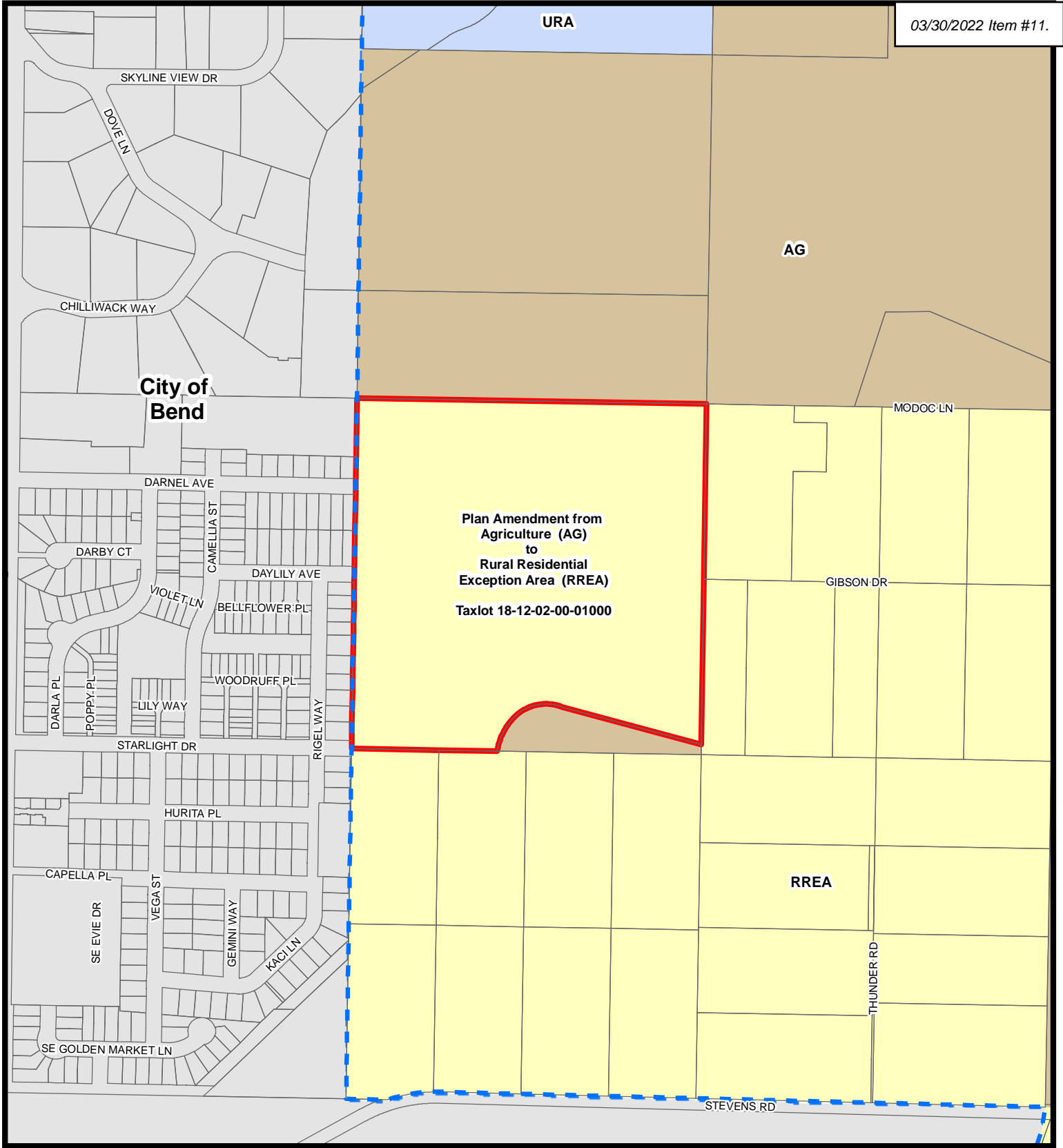
Recording Secretary

Exhibit "A"

Legal Description

A parcel of land situated in the Northeast Quarter of the Southwest Quarter of Section Two (2), Township Eighteen (18) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County Oregon, more particularly described as follows:






All of that portion of the Northeast Quarter of the Southwest Quarter of Section 2 lying north of the centerline of the Central Oregon Canal.



PROPOSED COMPREHENSIVE PLAN MAP

Exhibit "B"
to Ordinance 2022-001

Legend

-  Proposed Plan Amendment Boundary
- Comprehensive Plan Designation**
-  AG - Agriculture
-  RREA - Rural Residential Exception Area
-  URA - Urban Reserve Area
-  Bend Urban Growth Boundary

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Patti Adair, Chair

Tony DeBone, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 2022
Effective Date: _____, 2022

Chapter 23.01 COMPREHENSIVE PLAN

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
- T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-005, are incorporated by reference herein.
- CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- DD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- EE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- FF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- GG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.
- HH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- II. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- JJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- KK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- LL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- MM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- NN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- OO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- PP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- QQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- RR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.
- SS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

TT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-02, are incorporated by reference herein.

UU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.

VV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.

WW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.

(Ord. 2022-001 §1, 2022; Ord. 2021-008 §1; Ord. 2021-005 §1, 2021; Ord. 2021-002§3, 2020; Ord. 2020-013§1, 2020; Ord. 2020-009§1, 2020; Ord. 2020-006§1, 2020; Ord. 2020-007§1, 2020; Ord. 2020-008§1, 2020; Ord. 2020-003 §1, 2020; Ord. 2020-002 §1, 2020; Ord. 2020-001 §26, 2020; Ord. 2019-019 §2, 2019; Ord. 2019-016 §3, 2019; Ord. 2019-006 § 1, 2019; Ord. 2019-011 § 1, 2019; Ord. 2019-004 §1, 2019; Ord. 2019-003 §1, 2019; Ord. 2019-001 §1, 2019; Ord. 2019-002 §1, 2019; Ord. 2018-008 §1, 2018; Ord. 2018-005 §2, 2018; Ord. 2018-011 §1, 2018; Ord. 2018-006 §1, 2018; Ord. 2018-002 §1, 2018; Ord. 2017-007 §1, 2017; Ord. 2016-029 §1, 2016; Ord. 2016-027 §1, 2016; Ord. 2016-005 §1, 2016; Ord. 2016-022 §1, 2016; Ord. 2016-001 §1, 2016; Ord. 2015-010 §1, 2015; Ord. 2015-018 § 1, 2015; Ord. 2015-029 § 1, 2015; Ord. 2015-021 § 1, 2015; Ord. 2014-027 § 1, 2014; Ord. 2014-021 §1, 2014; Ord. 2014-12 §1, 2014; Ord. 2014-006 §2, 2014; Ord. 2014-005 §2, 2014; Ord. 2013-012 §2, 2013; Ord. 2013-009 §2, 2013; Ord. 2013-007 §1, 2013; Ord. 2013-002 §1, 2013; Ord. 2013-001 §1, 2013; Ord. 2012-016 §1, 2012; Ord. 2012-013 §1, 2012; Ord. 2012-005 §1, 2012; Ord. 2011-027 §1 through 12, 2011; Ord. 2011-017 repealed; Ord.2011-003 §3, 2011)

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

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

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

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

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

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

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

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

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

2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener’s Error in Ord. 2020-022
<u>2022-001</u>	<u>TBD/TBD</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)</u>

DECISION OF THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: 247-21-0000400-PA, 401-ZC

HEARING: August 31, 2021, 6:00 p.m.
Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

**APPLICANT/
OWNER:** CENTRAL OREGON IRRIGATION DISTRICT

LOCATION: Map and Taxlot: 1812020001000
61781 WARD RD, BEND, OR 97702

**ATTORNEY
FOR APPLICANT:** Tia M. Lewis
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond Street, Suite 500
Bend, OR 97702

**TRANSPORTATION
ENGINEER:** Joe Bessman
Transight Consulting, LLC

REQUEST: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

HEARINGS OFFICER: Stephanie Marshall

STAFF CONTACT: Tarik Rawlings, Associate Planner¹
Phone: 541-317-3148
Email: Tarik.Rawlings@deschutes.org

RECORD CLOSED: September 23, 2021

¹ This matter was originally assigned to Brandon Herman, Assistant Planner. It was re-assigned to Mr. Rawlings prior to the public hearing.

I. STANDARDS AND APPLICABLE CRITERIA

Title 18 of the Deschutes County Code, the County Zoning Ordinance:

- Chapter 18.04, Title, Purpose, and Definitions
- Chapter 18.16, Exclusive Farm Use Zones (EFU)
- Chapter 18.32, Multiple Use Agricultural Zone (MUA10)
- Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

- Deschutes County Comprehensive Plan
 - Chapter 2, Resource Management
 - Chapter 3, Rural Growth Management
 - Appendix C, Transportation System Plan

- Oregon Administrative Rules (OAR), Chapter 660
 - Division 6, Forest Lands
 - Division 12, Transportation Planning
 - Division 15, Statewide Planning Goals and Guidelines
 - Division 33, Agricultural Land

- Oregon Revised Statutes (ORS)
 - Chapter 215.211, Agricultural Land, Detailed Soils Assessment

II. FINDINGS OF FACT

A. LOCATION: The subject property has a situs address of 61781 Ward Road, Bend, and is further identified as Tax Lot 1000 on Assessor’s Map 18-12-02.²

B. LOT OF RECORD: Tax Lot 1000 is 36.65 acres in size and has not previously been verified as a legal lot of record. Per DCC 22.04.040 Verifying Lots of Record, lot of record verification is required for certain permits:

- B. Permits requiring verification**
 - 1. Unless an exception applies pursuant to subsection (B)(2) below,**

² Several commentators expressed concern regarding the address of the subject property, particularly related to future access if and when the property is developed in the future. Staff stated at the public hearing that an address coordinator will be assigned with respect to future development permit application(s) and the address(es) will be vetted through emergency services.

verifying a lot parcel pursuant to subsection (C) shall be required to the issuance of the following permits:

- a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);**
- b. Any permit for a lot or parcel that includes wetlands as show on the Statewide Wetlands Inventory;**
- c. Any permit for a lot or parcel subject to wildlife habitat special assessment;**
- d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel'**
- e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;**

In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, the Hearings Officer held to a prior Zone Change Decision (*Belveron* ZC-08-04) that a property's lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, the applicant will be required to receive lot of record verification prior to any development on the subject property. Therefore, the Hearings Officer finds this criterion does not apply.

C. ZONING AND PLAN DESIGNATION: The subject property is zoned Exclusive Farm Use (EFU) and is designated Agricultural (AG) in the Deschutes County Comprehensive Plan. The property does not have any Goal 5 resource designations.

D. PROPOSAL: The applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from an Agricultural (AG) designation to a Rural Residential Exception Area (RREA) designation. The applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the subject property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The applicant asks 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. The applicant states that no exception to Statewide Planning Goal 3, Agricultural Land, is required because the subject property is not agricultural land. The application does not include a development proposal. The applicant notes that it could subdivide the property under Title 17 or through the County's cluster subdivision rules in Title 18, or could hold the property for future urbanization consistent with the development pattern of the surrounding lands.

The applicant's attorney stated at the public hearing that the proposed re-designation and rezoning would allow the property to be considered in the next UGB expansion by the City of Bend. She stated there were no immediate plans to develop the property in the near future.

Submitted with the application is an Order 1 Soil Survey of the subject property, titled "Soil Assessment for 37.7-Acre Parcel Lot 1000, Bend, Oregon" (hereafter referred to as the "soil study") prepared by soil scientist Andy Gallagher, CPSSc/SC 03114 of Red Hill Soils. The applicant also submitted a traffic analysis prepared by Transight Consulting, LLC titled "61781 Ward Road Rezone" hereby referred to as "traffic study." Additionally, the applicant submitted an application form, a burden of proof statement, and other supplemental materials, all of which are included in the record for the subject applications.

E. SITE DESCRIPTION: The subject property is approximately 36.65 acres in size and is adjacent to both Bend's city limits and Urban Growth Boundary (UGB) to the west. The property is relatively level with mild undulating topography and collapsed lava tube features. Vegetation consists of juniper, sage brush, and grasses. A portion of the site was historically mined for dirt and fill for maintenance purposes of Central Oregon Irrigation District's (COID) delivery systems. The site is undeveloped except for COID's main canal located along the southern border and offshoot irrigation ditches in the southwestern and southeastern portions of the subject property. Access to the site is provided by stubbed local street connections including Darnel Avenue and Daylily Avenue, located in residential subdivisions in the City of Bend to the west.

The subject property does not have water rights, and has not been farmed or used in conjunction with any farming operation in the past. The Natural Resources Conservation Service (NRCS) map shown on the County's GIS mapping program identifies two soil complex units on the property: 36A, Deskamp loamy sand and 58C, Gosney-Rock outcrop-Deskamp complex. The predominant soil complex on the subject property is 58C, which is not a high-value soil as defined by DCC 18.04; 36A is not considered a high-value soil when irrigated.

The subject property has no irrigation, no historical use of being farmed, and is overgrown with western Juniper, sagebrush, rabbit brush and bunch grasses. COID has intermittently used the property over the years to mine for dirt that was used for maintenance and repairs of the District's delivery systems.

As discussed in detail below in the Soils section, an Agricultural Soils Capability Assessment (Order 1 soil survey) was conducted on the property by Certified Professional Soil Scientist Andy Gallagher which determined that the property is not agricultural land; Class 3 irrigated and Class 6 non-irrigated soils exist in small pockets interspersed with lava tubes and rocky, shallow soils, creating severe limitations for any agricultural use on the property or in conjunction with other neighboring lands.

There is a private easement along the COID canal. In addition, as noted in the Bend Park and Recreation District's public comment, BMPRD has a planned trail, the Central Oregon Historic Canal Trail, identified in its comprehensive plan that runs through the subject property.

F. SOILS: According to Natural Resources Conservation Service (NRCS) maps of the area,

the subject property contains two different soil types as described below. The subject property contains 58C – Gosney-Rock Outcrop-Deskamp complex and 36A – Deskamp loamy sand.

The applicant submitted a soil study report (applicant's Exhibit 5, Soil Assessment for 37.7-Acre Parcel Lot 1000, Bend, Oregon, dated December 2, 2020), which was prepared by a qualified soils professional approved by the Department of Land Conservation and Development (DLCD), which can be used by property owners to determine the extent of agricultural land as defined in Oregon Administrative Rule (OAR) 660-033 Agricultural Land,

The certified soils scientist and soil classifier conducted field work which included 41 test pits and observations of surface rock outcrops and determined the subject property is comprised of soils that do not qualify as Agricultural Land⁴. The purpose of this soil study was to inventory and assess the soils on the subject property⁵ and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The NRCS soil map units identified on the property are described below.

36A, Deskamp loamy sand, 0 to 3 percent slopes: This soil complex is composed of 85 percent Deskamp soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils are somewhat excessively drained with a rapid over moderate permeability, and about 5 inches of available water capacity. Major uses of this soil type are irrigated cropland and livestock grazing. The agricultural capability rating for 36A soils are 3S when irrigated, and 6S when not irrigated. This soil is high-value when irrigated. Approximately 33.7 percent of the subject parcel is made up of this soil type.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. The major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 66.3 percent of the subject parcel is made up of this soil type..

58C is not a high value soil as defined by DCC 18.04 ("High Value Farmland"). 36A is considered a high value soil when irrigated. There is no irrigation on the property.

³ As defined in OAR 660-033-0020, 660-033-0030

⁴ As defined in OAR 660-033-0020, 660-033-0030.

⁵ The canals were not rated for capability class, but for purposes of the assessment were included with the acreage that is not suited to agricultural production.

Through numerous soil test pits and observations on the property Soil Scientist Andy Gallagher remapped the soils using a high intensity Order 1 soil survey and concluded that the subject property is comprised predominantly of Class 7 and 8 soils (nearly 64%) and is not agricultural land. The Class 3 irrigated and 6 non irrigated soils exist in small pockets interspersed with lava tubes, rocky, shallow soils creating severe limitations for any agricultural use on the property or in conjunction with other neighboring lands. An excerpt of Mr. Gallagher's summary and conclusions of his findings follows:

In the revised Order-1 soil mapping, the Deskamp (Class 3 irrigated and 6 nonirrigated) are mapped as a consociation and only make up 29 percent of the parcel. The Gosney soils along with very shallow soils and rock outcrops are mapped as the Gosney-Rock Outcrop Complex because all three components of the complex are capability Class 7 or 8. This complex makes up 63.7 percent of the parcel. The irrigation canals make up 7.4 percent of the area. Based upon the findings of this Order-1 soil survey, the subject parcel is predominantly Class 7 and 8 soils and therefore is not "agricultural land" within the meaning of OAR 660-033-0020(1)(a)(A).

The soil mapping and on-site studies also show the subject property is not agricultural land within the meaning of OAR 660-033-0020(1)(b) as it is not adjacent to or intermingled with land in capability classes 1-6 within a farm unit. The class 3 irrigated and 6 non irrigated soils on the subject property have not been farmed or utilized in conjunction with any farming operation in the past. These soil units exist in small pockets interspersed with lava tubes, rocky, shallow soils creating severe limitations for any agricultural use either alone or in conjunction with other lands.

No rebuttal evidence was presented to refute the applicant's evidence regarding soils. The applicant's soils study has been verified by DLCD.

G. SURROUNDING LAND USES: The subject property is surrounded by urban development to the west within the Bend city limits; to the east and south are County exception lands zoned MUA10 developed with homes and small-acreage irrigation for pasture and hobby farm uses; and irrigated farmland zoned EFUTRB to the north and northeast. The adjacent properties are outlined below in further detail:

North: North and northeast of the subject property is an area of EFU-zoned property. The adjacent property to the north, Tax Lot 1001 (Assessor's Map 18-12-02) is a 12.45-acre EFU-zoned property that is partially irrigated and developed with a nonfarm dwelling (approved under County file CU-01-75). Northeast is Tax Lot 201 (Assessor's Map 18-12-02), a 53.30-acre farm parcel that is irrigated, receiving farm tax deferral, and developed with a single-family dwelling and accessory structures.

East: East of the subject property are two parcels zoned MUA10. Tax Lot 1102 (Assessor's Map 18-12-02) is a 5.55-acre parcel developed with a single-family dwelling, accessory

structures, and is partially irrigated. Tax Lot 1001 (Assessor's Map 18-12-02) is a 2.5-acre parcel developed with a single-family dwelling, accessory structures, and is partially irrigated.

West: West of the subject property are residential subdivisions located in the City of Bend and developed to urban standards. These include Rosengarth Estates and Gardenside PUD in the RS Zone. Northwest is a 2-acre parcel zoned RL and developed with a residence.

South: The abutting parcel southeast of COID's main canal is a 3.34-acre lot zoned EFUTRB and developed with a single-family dwelling and is partially irrigated. Southwest is Hansen Park (Tax Lot 1404 of Assessor's Map 18-12-02), a 5-acre undeveloped park zoned MUA10 and owned by Bend Metro Parks and Recreation District. East of Hansen Park is a 5-acre parcel zoned MUA10 and developed with a residence (Tax Lot 1407 of Assessor's Map 18-12-02).

H. PUBLIC AGENCY COMMENTS: The Planning Division mailed notice of the applications on June 11, 2021 to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the Transight April 13, 2021, traffic study to change the comp plan designation from Agriculture to Rural Residential Exception Area (RREA) and the zoning from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10) for 36.65 acres at 61781 Ward Rd, aka 18-12-02, TL 1000. Staff finds the study needs to be modified to comply with the Transportation Planning Rule and Deschutes County's accepted practices to analyze plan amendments and zone changes.

For "reasonable worst-case scenario" the County compares and contrasts the highest trip generator permitted outright in both the current zone and the requested zone. DCC 18.16.020 lists those uses permitted outright in EFU. DCC 18.16.025 lists other outright permitted uses that meet applicable criteria in either DCC 18.16.038, 18.16.042, and review under DCC 18.124. The TIA cites to marijuana production facility, which the County has analyzed under the Warehouse category of the Institute of Traffic Engineers (ITE) Trip Generation Manual. However, the County has opted out of the state's marijuana processing program and thus this use and its analog of Warehouse should not be used. Instead, staff would utilize Winery (DCC 18.16.025(F)) as a reasonable worst case scenario.

DCC 18.32.020 lists outright permitted uses for MUA-10. The highest trip generator is a cluster development of single-family homes within one-mile of a UGB, per DCC 18.32.040(A), as the traffic study correctly notes.

The study needs to be redone to show the difference between winery and a cluster development to determine if there is a significant effect and any difference in the number of p.m. peak hour trips. This would also require the volumes for the trip distribution figures to be redone as well.

Upon receipt of the County Senior Transportation Planner's initial comment, above, the applicant submitted a revised traffic study, dated June 8, 2021. No further comments were offered by the County's Senior Transportation Planner.

Bend Park and Recreation District, Henry Stroud, AICP, Planner

The Bend Park and Recreation District has a planned trail, the Central Oregon Historic Canal Trail, identified in our comprehensive plan that runs through the subject property. While we understand that this application is just for a zoning change, the District would like to work with the applicant to acquire a trail easement for the COHCT prior to any future development of the property.

The following agencies did not respond to the notice: Deschutes County Assessor, Bend Fire Department, City of Bend Planning Department, City of Bend Public Works Department, ODOT Region 4, and City of Bend Growth Management Department.

I. PUBLIC COMMENTS: The Planning Division mailed notice of the conditional use application to all property owners within 750 feet of the subject property on June 11, 2021. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on June 25, 2021. Public comments were received from neighboring property owners. Public comments are summarized as follows:

The first comment was received from Jeff Sundberg, a resident and owner of property located at 61710 Gibson Drive, Bend, OR 97702 on June 15, 2021:

Hi Brandon,

I received a letter from Deschutes County regarding COID applying for new permits. I live at 61710 Gibson Drive, Bend, Or, 97702. I live next to the property in question, 61781 Ward Road. It looks like COID is requesting to go from agricultural and farm use zoning to rural residential exception area and multiple use agricultural zoning.

Does this mean they want to put in a housing development?

I was wondering if this response by email will suffice if I want to be notified of public hearings related to this application or if I still have to write a letter requesting to be notified of any decision or public hearing.

*Does any of this change my easement with COID or should I contact them directly?
Thanks and let me know anything you can about this land change please.*

Staff responded to Mr. Sundberg's email on June 16, 2021 as follows:

Hi Jeff,

Thanks for reaching out.

As you noted, this is an application for a Comprehensive Plan/Zoning change so I am unaware of what COID intends to do with the property in the future. If they were to take the residential route, a minimum subdivision lot size of 10 acres still applies to the property. Because you received the Notice of Application, you are also on the list to receive the Notice of Public Hearing, which is tentatively set for July 27th.

With regards to your easement agreement, I am not inclined to think this will change anything but contacting COID directly is a good idea.

Let me know if you have any other questions.

Take care,

Brandon

The second comment was received from Kecia Weaver, a resident of 21435 Modoc Lane, Bend, OR 97702 on June 18, 2021:

"My name is Kecia Weaver I live at 21435 Modoc Lane Bend, OR 97702 with my spouse who is listed property owner, Patrick McCoy. On 6/17/21 I read the notice of application for the above listed property. I would like to formally dispute the requested zoning changes. I have several concerns, to include the following:

- 1) *Irrigation/Water Rights – As a small farm operator with seasonal livestock I am concerned that the proposed changes may further draw from my water access which has been limited and may be further limited due to drought conditions. More users in the proposed Multiple Use Agriculture may further draw down water allocations.*
- 2) *Wildlife Habitat – Having lived here for over 6 years. I know the proposed area to be home to deer, rabbits, birds and other wildlife which will be disturbed.*
- 3) *Extensive residential development in the immediate area- Over the past few months, extensive development has been proposed both to the north and south of our neighborhood specifically several hundred acres south of Stevens Road and north of Bear Creek Road adjacent to Ward Road.*
- 4) *Traffic concerns – increased traffic will occur in the area with other proposed developments. I am concerned the points of entrance and egress to this proposed area will add to the impact to our neighborhood as well.*
- 5) *Overall rapid growth concerns for Deschutes County- As observed by pitfalls of the*

rapid growth in the City of Bend over the past decade, I would encourage Deschutes County to adhere to a slower growth model.

- 6) *Decrease in property value- This proposed change will drastically impact the view to the west of my property when it is developed.*

With respect to the natural beauty and appeal of this County we have chosen to call home and as a taxpayer and voter, I implore the Deschutes County planning department to deny this application at this time. I wish to be notified of all public hearings related to this application and any decision. My address is 21435 Modoc Lane Bend, OR 97702."

The third comment was received from Patrick McCoy, a neighboring property owner and resident of 21435 Modoc Lane, Bend, OR 97702 on June 18, 2021:

"My name is Patrick McCoy a home and landowner at 21435 Modoc Lane Bend, OR 97702. On 6/17/21 I received the notice of application for the above listed property. With little time to research to this proposal, based on the information I have obtained, I would like to formally dispute the requested zoning changes. My concerns are numerous and I will highlight the following:

- 1) *Irrigation/Water Rights – As a small farm operator with seasonal livestock I am concerned that the proposed changes may further draw from my water access which has been limited and may be further limited due to drought conditions. More users in the proposed Multiple Use Agriculture may further draw down water allocations.*
- 2) *Wildlife Habitat – Having lived here for over 6 years. I know the proposed area to be home to deer, rabbits, birds and other wildlife which will be disturbed.*
- 3) *Extensive residential development in the immediate area- Over the past few months, extensive development has been proposed both to the north and south of our neighborhood specifically several hundred acres south of Stevens Road and north of Bear Creek Road adjacent to Ward Road.*
- 4) *Traffic concerns – increased traffic will occur in the area with other proposed developments. I am concerned the points of entrance and egress to this proposed area will add to the impact to our neighborhood as well.*
- 5) *Overall rapid growth concerns for Deschutes County- As observed by pitfalls of the rapid growth in the City of Bend over the past decade, I would encourage Deschutes County to adhere to a slower growth model.*
- 6) *Decrease in property value- This proposed change will drastically impact the view to the west of my property when it is developed.*

With respect to the natural beauty and appeal of this County we have chosen to call home and as a taxpayer and voter, I implore the Deschutes County planning department to deny this application at this time. I wish to be notified of all public hearings related to this application and any decision. My address is 21435 Modoc Lane Bend, OR 97702."

The fourth public comment was received from Kyle Weaver on June 18, 2021:

"I am writing to express by objection to the proposed changes east of 27th in the pursuit of yet another neighborhood development. The East side of Bend is the current hotspot for housing expansion but some caution must be taken and not simply rubber stamping these applications through and knocking down yet more trees and eliminating farm lands and mountain views. Neighborhoods are popping up in all directions all over town and the construction industry frenzy is full throttle with little interest in these types of nature/aesthetic concerns. I don't begrudge people making some money and Bend is certainly a desirable place to live, but things need to be planned out in a more thoughtful and deliberate fashion. There is nothing wrong with taking a slower and more measured approach as we all consider Bend's growth in the coming years. I have lived in Bend for just over 20 years and have family and friends in the proposed development area and it would drastically reduce their enjoyment of their property. I urge you to decline this request on behalf of many other community members who feel the same way."

The fifth public comment was received from Treva Weaver on June 18, 2021:

"Re: 1812020001000 Central Or. Irrigation District

I am opposed to the proposed land use change by the above referenced owner.....

The loss of open space in Central Oregon continues as the growth proponents seem mainly interested in jumping on the bandwagon and making as much profit as possible. The East side of Bend, where I have lived the past 21 years, has hundreds, if not thousands of housing sites already started or proposed. Until all this land is developed and houses sold, there is no need to venture east of 27th where this property is located.....My great grandfather came to Oregon at age 9 in 1846 and our family has very deep roots in this state. I spend a large amount of time at my daughter's home which is directly east of the proposed development. We enjoy riding our horses in her arena and also enjoy family gatherings in her backyard. The view would be drastically changed if this land is developed. What is wrong with leaving some land in its natural state? It will be many many years before additional housing is needed in this area. Please decline this request change and leave some land in its more natural state."

The sixth public comment was received from John Schaeffer, a neighboring property owner at 61677 Thunder Road, Bend, OR 97702 on June 19, 2021:

"I am writing on behalf of myself and several neighbors in the Stevens Road – Thunder Road neighborhood. We are opposed to COID's proposed changes to the Comprehensive Plan and Zoning for taxlot 1812020001000. We realize this is not a request for development but know that it will lead to development in the next few years, that it is the first step in making the property more marketable, should it be brought into the UGB during the next update.

Development has been increasing in this area, especially with the inclusion of the Stevens Road tract in the current UGB, and its subsequent sale by the state. We feel it is important to leave some natural open areas for people and animals near the city limits. This is especially critical now that the Stevens Road tract is being developed, along with all the other development in this area. A few years ago, it was possible to take our dogs walking in the Stevens Road tract and meet few people. The use in this area has increased remarkably over the last several years, consistent with Bend's growth.

The COID parcel is isolated and not readily accessible by cars, with varied topography, including a small canyon. It has significant native vegetation and, when I was there a couple of days ago, there were many birds, much more than in the nearby areas where there are houses and the vegetation has been cleared.

Right now, the average size of the parcels between the city limits to the west and Ward Road to the east, and between Stevens Road to the south and to approximately where Skyline View Drive would be if extended into the area on the north, is 8 acres. If you consider only the MUA zoned parcels, the average size is 4.8 acres. If the COID property was developed to that level, this would mean 7-8 houses in the area. I do not know what would be allowed under the Rural Residential Exception area but suspect it would probably be even denser housing.

As Bend continues to grow at what may be an unsustainable pace the value of open space increases. We urge you to consider open space as a relevant and beneficial resource when you weigh the issues inherent in this kind of a zoning change.

*Sincerely,
John Schaeffer and Patti Bailey
James and Janet Lake
Julie Naslund, Michael, and Miles Nevill
Mike Quick
Jill Harrell and Mike King"*

The seventh public comment was received from Cathy DeCoursey, a property owner and resident of 61718 Rigel Way, Bend, OR 97702 on June 21, 2021:

"I am responding to a letter I received regarding COID's application to rezone the property behind me. File # 247-21-0000400-PA, 401-ZC. 36.65 Acres. My understanding is they want to change the zoning from Agriculture and Exclusive Farm Use Zone to Rural Residential Exception Area and Multiple Use Agricultural. I've read the Application prepared by Tia M. Lewis. I have 3 concerns:

- 1. The water supply says wells are to be drilled for household use. There are 2 very old (55yrs) Well Reports included in her submission. I find this very odd that 7 new homes will be drilling and using well water for approximately 5 acre mini ranches. Surely the water table has lowered over time? The depth of one shows 619 feet. One report seems to be missing*

- the gallons per minute amount. Would you explain where the household and irrigation water will be coming from for these 7 lots?*
2. *At what point can the MUA-10 Zoning be changed to create a subdivision of smaller sized lots?*
 3. *Will there be more than 7 lots created? The stubbed access roads listed are already narrow and congested with parked cars and traffic coming and going to 27th which has no turn lanes onto or off of Darnel.*

Thank you for your time and response."

The eighth public comment was received from Jennifer Neil, a property owner and resident of 61723 Rigel Way, Bend, OR 97702 on June 21, 2021:

"My name is Jennifer Neil, and I am Bend homeowner concerned about the above-mentioned proposed land use. The proposed land use will change what is a small, open space next to the Central Oregon canal from farm use to more residential use. I'm saddened to not only lose the space I walk on twice a day, but to see it turned into more overpriced homes that the city and the community is not able to support. The area of SE Bend where this property is located has already out-grown all of the infrastructure to support more housing. It has become extremely difficult to access my home because of the traffic and congestion along 27th street. This congestion will only increase with the addition of the new High School. Finally, I'm also very concerned that 4 of my neighbors, who are also homeowners and have properties directly next to this proposed land use change, did not receive any notice of this land use. I notified them! I hope that the city planners will consider the impact more houses will have in this area, and improve the infrastructure first that is already necessary before destroying more open space."

The ninth public comment was received from Brent N. Wilkins, an owner and resident of property at 61764 SE Camellia Street, Bend, OR 97702, on June 21, 2021:

"I am a resident of the Rosengarh Subdivision. I am submitting these written comments relating to the proposed zoning changes by the Central Oregon Irrigation District ("COID") for the real property located at 61781 Ward Road, Bend, OR 97702 ("Property").

For the reasons noted below, including due to the level of development in East Bend in close proximity to the Property, the Property's rural nature that serves as a place of recreation, and the high level of traffic and lack of a left-hand turn lane from the major arterial (27th Street) that will likely service the Property if/once developed, I ask that the Deschutes County Planning Division ("Planning Division") not approve COID's application. I request to be notified of any decision or public hearing related to this application, and this notice may be sent to:

*Brent N. Wilkins
61764 SE Camellia Street
Bend, OR 97702*

As noted on page 3 of COID's Burden of Proof Statement, COID will have the ability to attempt to develop and subdivide the Property into a subdivision if the permit is granted. This would potentially occur through Title 17 or Title 18 of Deschutes County's rules. This permit should not be granted as further development in the proximity of the Property will not serve the County or community.

A. Development & Traffic Impacts

The Property at issue is surrounded by areas that have been recently developed. This includes the DR Horton subdivision off of Pettigrew Drive, the Hayden Homes Subdivision off of Pettigrew Drive, as well as the Rosengarth Subdivision. 27th Street has not been able to keep up resulting increased traffic flow as a result of the development to date. Excluding this Property, there is now significant further development occurring in this immediate area that 27th Street will service. The development at this time includes a new commercial lot being developed at 27th Street and Reed Market that will consist of multiple businesses, a new subdivision between Reed Market and Starlight Drive on the east side of 27th Street, and significant development off of 27th Street on Stevens Road. The Property will also heavily utilize 27th Street through the likely extension of Darnel Avenue and/or Daylily Avenue.

The collective effect of all of this development is that the rural nature of East Bend is being lost and 27th Street is becoming unsafe. 27th Street at this time does not adequately handle the levels of traffic that occur each morning around 8:00 am, each afternoon around 5:00 pm as well as when school lets out, and during the weekends. I have routinely sat in my car for more than two minutes trying to turn left onto 27th Street. I have also waited more than a minute to even to try to turn right onto 27th Street. A photograph showing the line of traffic on 27th Street is enclosed. (See Ex. 1). Also, there is no left turn lane when turning left from 27th Street onto Darnel Avenue from 27th. This has resulted in unsafe conditions, including vehicles passing the turning vehicle on the right where there is no developed shoulder or lane. There are tracks on the ground where this happens, and it is not safe for those vehicles, the turning vehicle, or oncoming traffic. Eastside Gardens is also located at 27th Street and Darnel Avenue. Vehicles pull in and out of that parking lot at that intersection and from the parking lot itself. This cause an irregular, unsafe traffic flow that will only be exacerbated by further use.

Moreover, due to Darnel Avenue serving as a primary access point for homes throughout the existing neighborhoods and Gardenside Park, there is already a high level of traffic and vehicles often driving fast. There is also significant on street parking that restricts views for drivers and pedestrians. This includes large 'sprinter' vans, large trucks, and sometimes trailers. (See Ex. 2). There are numerous young families in the neighborhoods, including along Camellia Street, Darnel Avenue and Gardenside Park. These families have children that run, play, skateboard, ride scooters, and bike throughout the neighborhood, including on the streets. The existing neighborhood traffic levels poses a danger to children. The proposed permit will likely result in increased traffic within the neighborhood and pose additional risk to these young families and

children. Any consideration of the Permit, and any possible approval, must address this dynamic.

Finally, with the recent approval of the Southeast Area Plan for the 'Elbow', the level of traffic in East Bend and 27 Street will only increase. This will also result in the displacement of birds and other wildlife, which is further covered below, and will need a place to go.

B. Preservation

The Property at issue is an area that is highly utilized for recreation and embodies Central Oregon high desert landscape. In the winters, the area can serve as a place for cross-country skiing. (See Ex. 3). People regularly ride bikes, run, and go for walks. The aerial photo that was enclosed with the Notice of Application also shows the walking path through the middle of the Property. The wildlife that calls this place home includes ducks, jackrabbits, geese, and numerous other birds. There is also a rimrock canyon on the Property that is quite unique and should be preserved (See Ex. 4). The Property also has views of the Cascades, Powell Butte, and Newberry Caldera (See Ex. 5). It is also quite peaceful and has a gentle, rolling landscape full of trees, grasses, and sagebrush. (See Ex. 6). During the mornings and evenings one can go for walks and hear the songs of birds and enjoy an escape from the busy work day and pace of life. In other words, changing the Property's zoning classification and leading to the possibility (if not the eventual or imminent likelihood) of development that will further change the rural nature of Bend is not in the public's interest for rezoning standards or otherwise.

C. Conclusion

The existing development and use of 27 Street, the development already approved and under construction, and the future development of Stevens Road and the 'Elbow' makes changing the Property's zoning classification to not be in the public interest. There simply is not adequate infrastructure to support all of these additions in a safe manner. Until the access to the neighborhoods from 27th Street is improved, no further development or changes of zoning classifications should occur. Approving the permit will also likely result in the irreparable loss of rural landscape and habitat once the Property is developed, including possibly without any restrictions or preservation criteria.

In sum, the proposed permit application should be denied, or at least not approved in its current form. At a minimum, a hearing should be set for in person comments and for further deliberation to occur."

The public comment from Mr. Wilkins includes 10 photographs depicting the various conditions outlined in his written comment. These photographs and the full written comment are included in public record for the subject application.

The tenth public comment was received from Crystal Garner on June 22, 2021:

"I would like to request a hearing for the proposed land development for 61781 Ward Rd, Bend, OR 97702. We live about 4 houses down from this property, it is a great and safe place for our family and so many others in the neighborhood to take walks, ride bikes, and walk dogs. The thought of this land being developed on and losing those opportunities, as well as possibly compromising the safety of our children in our neighborhood bring a heavy heart to so many of us. Please consider a hearing to recant this decision."

The eleventh public comment was received from William Kepper on June 29, 2021:

"Sorry for the late response to the changes associated with Map and Taxlot: 1812020001000. The notification was not received timely. The notification is vague to exactly what changes will occur. If the changes have anything to do with the cultivation of marijuana or hemp we and our neighbors are against it. It would destroy ours and our neighbors quality of life. There are numerous small children and teenagers in the neighborhoods who should not be subjected to these types of grow farms. Also there is a child day care facility close by off 27th Street. I hope I'm wrong about the 'Rural Residential Exception Area and Multiple Use Agricultural, respectively' statement. Thanks for listening to my concerns. I'd appreciate additional information on exactly what Multiple Use Agricultural Zone (MUA10) means."

The twelfth public comment was received from David Morrison on August 30, 2021:

Tarik,

I may wish to participate in this hearing if I have questions or concerns not addressed by others. I plan to participate via Zoom. My wife is dealing with serious health issues and may require attention at any time which might cause me to miss all or some.

So, I would like to go on record as 100% against re-zoning said COID property at this time. I feel that with the already in the works developments south of Stevens Rd and north of Bear Creek Rd, that the road system is already severely inadequate. Also, with the drought conditions and worsening water supplies in not just Bend but all of Deschutes and surrounding counties, I would like to see this request 'tabled', to be revisited in no fewer than 5 years. The county needs to greatly improve roads and water supply issues before allowing more and more building and deteriorating areas that will make this area more desirable to live in. I enjoy watching all of the natural wildlife that lives in this space, they will disappear with development, as will our natural view that was the biggest reason for us purchasing our property which is immediately adjacent to said property.

I am also concerned about the stated address of said property, Ward Rd is no where near the property. If it should be re-zoned, where exactly will it be accessed?

I fear the continued rapid growth will quickly and severely deteriorate the quality of life for all of Bend.

Thank you for considering my our [sic] concerns, David & Nancy Morrison

J. LAND USE HISTORY: There is no history of prior land use permits having been granted for the subject property.

K. UTILITY SERVICES: The subject property is served by Pacific Power and water will be provided by a well (see Exhibit 7 for will serve letter and well logs).

L. PUBLIC SERVICES: The subject property is in the Deschutes County Rural Fire Protection District #2 (Exhibit 6). The Bend Rural Fire Protection Station 304 is located a few miles northeast of the subject property near the corner of Hamby and Neff Roads. The Pilot Butte Station on NE 15th Street and Highway 20 is also within a few miles of the subject property. The Deschutes County Sheriff provides police and public safety services. Access to the subject property is provided from the stubbed local street connections of Darnel Avenue and Daylily Avenue to the west. The Bend Municipal Airport is located several miles northeast of the property. The property is within the Bend-La Pine School District and is in the Buckingham Elementary School boundary, the Pilot Butte Middle School boundary and the Bend High School boundary. The property is outside of the Bend Parks and Recreation District boundary; however, Bend Parks and Recreation District has plans to develop Hansen Park Trailhead located south of the subject property that will serve the Central Oregon Historic Canal Trail system.

M. NOTICE REQUIREMENT: On August 6, 2021, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property and agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, August 8, 2021. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on July 26, 2021.

The applicant complied with the posted notice requirements of DCC 22.24.030(B). The applicant submitted a Land Use Action Sign Affidavit, dated June 25, 2021, indicating the applicant posted notice of the land use action on June 25, 2021.

Deschutes County sent notice of the proposed change to its comprehensive plan and land use regulation to the Oregon Department of Land Conservation and Development, received by DLCD on July 26, 2021.

N. REVIEW PERIOD: The subject applications were submitted on April 20, 2021, and deemed complete by the Planning Division on May 20, 2021. According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

III. CONCLUSIONS OF LAW

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDING: The applicant, also the property owner, has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The applicant filed the required Planning Division’s land use application forms for the proposal. The application is reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code. The Hearings Officer finds these criteria are met.

Section 18.136.020, Rezoning Standards

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

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

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

Per prior Hearings Officers decisions [Powell/Ramsey (file no. PA-14-2 / ZC-14-2) and Landholdings (file no. 247-16-000317-ZC, 318-PA)] for plan amendments and zone changes on EFU-zoned property, this paragraph establishes two requirements: (1) that the zone change conforms to the Comprehensive Plan and (2) that the change is consistent with the plan's introductory statements and goals. Both requirements are addressed below:

- 1. Conformance with the Comprehensive Plan: The applicant proposes a plan amendment to change the Comprehensive Plan designation for the subject property from Agriculture to Rural Residential Exception Area. The proposed rezoning from EFU-TRB to MUA-10 will need to be consistent with its proposed new plan designation.***

2. *Consistency with the Plan's Introductory Statement and Goals. In previous decisions, the Hearings Officer found the introductory statements and goals are not approval criteria for the proposed plan amendment and zone change. However, the Hearings Officer in the Landholdings decision found that depending on the language, some plan provisions may apply and found the following amended comprehensive plan goals and policies require consideration and that other provisions of the plan do not apply as stated below in the Landholdings decision:*

"Comprehensive plan statements, goals and policies typically are not intended to, and do not, constitute mandatory approval criteria for quasi-judicial/and use permit applications. Save Our Skyline v. City of Bend, 48 Or LUBA 192 (2004). There, LUBA held:

'As intervenor correctly points out, local and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. [Citations omitted.] Local governments and this Board have frequently considered the text and context of cited parts of the comprehensive plan and concluded that the alleged comprehensive plan standard was not an applicable approval standard. [Citations omitted.] Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. [Citation omitted.] Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations. [Citations omitted.]'

LUBA went on to hold in Save Our Skyline that it is appropriate to 'consider first whether the comprehensive plan itself expressly assigns particular role to some or all of the plan's goals and policies.' Section 23. 08. 020 of the county's comprehensive plan provides as follows:

The purpose of the Comprehensive Plan for Deschutes County is not to provide a site-specific identification of the appropriate land uses which may take place on a particular piece of land but rather it is to consider the significant factors which affect or are affected by development in the County and provide a general guide to the various decision which must be made to promote the greatest efficiency and equity possible, while managing the continuing growth and change of the area. Part of that process is identification of an appropriate land use plan, which is then

interpreted to make decision about specific sites (most often in zoning and subdivision administration) but the plan must also consider the sociological, economic and environmental consequences of various actions and provide guidelines and policies for activities which may have effects beyond physical changes of the land (Emphases added by applicant.)

The Hearings Officer previously found that the above-underscored language strongly suggests the county's plan statements, goals and policies are not intended to establish approval standards for quasi-judicial land use permit applications.

*In Bothman v. City of Eugene, 51 Or LUBA 426 (2006), LUBA found it appropriate also to review the language of specific plan policies to determine whether and to what extent they may in fact establish decisional standards. The policies at issue in that case included those ranging from aspirational statements to planning directives to the city to policies with language providing 'guidance for decision-making' with respect to specific rezoning proposals. In Bothman LUBA concluded the planning commission erred in not considering in a zone change proceeding a plan policy requiring the city to '[r]ecognize the existing general office and commercial uses located * * * [in the geographic area including the subject property] and discourage future rezonings of these properties.' LUBA held that:*

**** even where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require *** consistency with applicable plan provision.' (Emphasis added.) The county's comprehensive plan includes a large number of goals and policies. The applicant's burden of proof addresses goals for rural development, economy, transportation, public facilities, recreation, energy, natural hazards, destination resorts, open spaces, fish and wildlife, and forest lands. The Hearings Officer finds these goals are aspirational in nature and therefore are not intended to create decision standards for the proposed zone change."*

Hearings Officer Karen Green adhered to these findings in the Powell/Ramsey decision (file nos. PA-14-2/ZC-14-2), and found the above referenced introductory statements and goals are not approval criteria for the proposed plan amendment and zone change. This Hearings Officer also adheres to the above findings herein. Nevertheless, depending upon their language, some plan provisions may require "consideration" even if they are not applicable approval criteria. Save Our Skyline v. City of Bend, 48 Or LUBA 192, 209 (2004). I find that the following amended comprehensive plan goals and policies require such consideration, and that other provisions of the plan do not apply:"

The comprehensive plan goals and polices that the Landholdings Hearings Officer found to apply include the following...

The applicant utilizes the analysis provided in prior Hearings Officers' decisions to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed below in the Comprehensive Plan section of this Decision. The Hearings Officer finds the above provision is met, based on Comprehensive Plan conformance as set forth in subsequent findings.

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

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

The applicant is proposing to change the zone classification from EFU to MUA-10. Approval of the application is consistent with the purpose of the MUA-10 zoning district, which stated in DCC 18.32.010 as follows:

"The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use."

The subject property is not suited to full-time commercial farming as discussed in the findings above. The MUA-10 zone will allow property owners to engage in hobby farming. The low-density of development allowed by the MUA-10 zone will conserve open spaces and protect natural and scenic resources. In the Landholding's case, the Hearings Officer found:

I find that the proposed change in zoning classification from EFU is consistent with the purpose and intent of the MUA-10 zone. Specifically, the MUA-10 zone is intended to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area. Approval of the proposed rezone to MUA-10 would permit applications for low-density development, which will comprise a transition zone between EFU rural zoning, primarily to the east and City zoning to the west.

The maximum density of the approximately 36.65-acre property if developed with a cluster development under Title 18 is 7 lots. This low density will preserve open space, allow owners to engage in hobby farming, if desired, and preserve natural and scenic resources and maintain or improve the quality of air, water, and land resources. The MUA-10 zoning provides a proper transition zone from City, to rural zoning to EFU zoning.

The applicant's burden of proof statement also includes analysis in the Introduction section at pages 1-2. There, the applicant stated, in relevant part:

For the past several years, Deschutes County has recognized the value in rezoning non-productive agricultural lands and has issued decisions in support of plan amendments and zone changes where the applicant demonstrates the property is not agricultural land and, therefore, Statewide Goal 3, Agricultural Lands, does not apply. These cases are the foundation for the subject request. Cases pertinent to the proposed request include:

Kelly Porter Burns Landholdings LLC ("Landholdings")/File nos. 247-16-000317-ZC/318-PA

On November 1, 2017, the Board approved Kelly Porter Burns Landholdings LLC's request to change the plan designation on certain property from Agricultural to Rural Residential Exception Area and to change the zone designation from EFU-TRB to MUA-10 zone. The property consists of about 35 acres and abuts the applicant's property to the west (Exhibit 1).

Based on the Order 1 soil survey for the property and the submitted evidence, the Hearings Officer found that the Landholdings property does not constitute agricultural land and does not merit protection under Goal 3, and therefore, approved the change in Plan designation and Zoning of the property from Agriculture/EFU-TRB to RREA/MUA-10.⁶

Division of State Lands Decision/File Nos. PA-11-7 and ZC-11-2

The Division of State Lands case was a 2013 approval by the Board for a plan amendment from Agriculture to Rural Residential Exception Area and a zone change from EFU-TRB to Multiple Use Agricultural (MUA-10). Based on the Order 1 soil survey for the property and the submitted evidence, the Board found that the property was not agricultural land and therefore, Goal 3 did not apply (Exhibit 2).

⁶ The Board adopted as its findings the Hearings Officer's decision with one exception: that if the property is divided, it must be developed as a cluster development and the two irrigation ponds must be included in the common area. In addition, the Board required the applicant to sign a Conditions of Approval agreement to "assure that future residential development of the property will be harmonious with existing development in the area and so that a part of the property may be developed at urban densities if and when the property is annexed to the City of Bend."

Paget Decision/File Nos. PA-07-1, ZC-07-1

The Paget decision was a 2007 approval of a plan amendment from Agriculture to Rural Residential Exception Area and a zone change from EFU to MUA-10. The Board adopted the Hearings Officer's decision, which found that the property did not constitute "agricultural land" and therefore, the plan amendment and zone change to MUA-10 was consistent with Goal 3 (Exhibit 3).

The Daniels Group/File Nos. PA-08-1, ZC-08-1

The Daniels Group decision was a 2011 Board decision approving a change to the Comprehensive Plan map from Surface Mine and Agriculture to Rural Residential Exception Area and a zone change from EFU-LB and Surface Mining to Rural Residential (RR-10). The Board found that the property did not constitute "agricultural land" as defined in Goal 3, was not subject to protection under Goal 3, and therefore, the plan amendment and zone change did not require an exception to Goal 3. (Exhibit 4).

The Hearings Officer finds the applicant has demonstrated the change in classification is consistent with the purpose and intent of the MUA-10 Zone. A change in classification will preserve the rural character of the subject property, due to the low density of development allowed in the MUA-10 zone, while permitting development consistent with that character. As set forth in the findings below, the subject property is not suited to full-time commercial farming but could be used for hobby farming. Low density development will also conserve open spaces and protect natural and scenic resources. The Hearings Officer finds that approval of the proposed rezone to MUA-10 would permit applications for low-density development, and will comprise a transition zone between the City and EFU zoning to the east.

The Hearings Officer's findings regarding agricultural land and Goal 3 exception are set forth in the findings below.

- C. *That changing the zoning will presently serve the public health, safety and welfare considering the following factors:***
- 1. *The availability and efficiency of providing necessary public services and facilities.***

FINDING: There is no proposal to develop the property at this time. The above criterion asks if the proposed zone change will *presently* serve public health, safety, and welfare. The applicant provides the following response in the submitted burden of proof statement:

Necessary public facilities and services are available to serve the subject property, including electrical power from Pacific Power and well logs showing water services are available to serve the property. Exhibit 7.

Transportation access to the property is available from the stubbed local street connections of Darnel Avenue and Daylily Avenue to the west in the City of Bend Urban Growth Boundary. MUA-10 zoning and a standard subdivision would allow the creation of up to 3 residential lots and a cluster development would allow up to 7 residential lots. If developed with a cluster development, the property could generate up to 49 additional daily trips, which according to the traffic report by Transight Consulting is a slight increase in trips, but the impact of these trips is negligible on the transportation system and the functional classification of all the adjacent roadways will not be affected with the proposed rezone. The existing road network is available to serve the use of the property if developed.

The property receives police services from the Deschutes County Sheriff and is in Rural Fire Protection District #2 with the nearest fire station nearby. Neighboring properties contain residential uses, which have water service from a municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare.

Neighboring properties contain residential and commercial uses, which have water service from a quasi-municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare.

Public commentators expressed concern about access to the subject property. One commentator stated that Ward Road is $\frac{3}{4}$ mile away and that the property is not accessible other than via a canal road, which is gated. Other commentators stated that access from City of Bend roads (Daylily Avenue and Darnel Avenue) that are currently stubbed at the edge of the eastern boundary of the Bend UGB, through existing subdivisions will be dangerous. The applicant's attorney stated that there are no current plans to develop the property. The applicant may offer the property for sale or develop as MUA-10 zone. Alternatively, the applicant could hold onto the property until the next Bend UGB expansion process.

The Hearings Officer finds that no access to the subject property is required to be established for purposes of consideration of the re-designation and rezoning applications. Any future development will have to establish access in compliance with applicable zoning regulations and the comprehensive plan.

Prior to development of the property, the applicant will be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permit, building permit, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

The Hearings Officer finds this criterion is met.

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

FINDING: The applicant's submitted burden of proof statement addresses potential impacts on surrounding land uses as related to each individual policy and goal item within the County's Comprehensive Plan in subsequent findings. Analysis of consistency with each applicable goal and policy is set forth in the findings below.

The Hearings Officer finds that the MUA-10 zoning is the same zoning of many other properties in the areas east and south of the subject property. As the Hearings Officer found above, MUA-10 zoning provides a proper transition zone from the City to EFU zoning. The requested zone change will not impose new impacts on EFU-zoned land to the north of the subject property because that property is a small parcel, approximately 12 acres in size, that is not engaged in commercial farm use and is developed with a nonfarm dwelling. Further, MUA-10 zoning will have minimal impacts on EFU-zoned land adjacent to the northeast corner of the subject property.

As determined by the applicant's soil scientist, Andy Gallagher, it is not practical to farm the subject property because it is comprised primarily of Class 7 and 8 soils and is characterized by a cut-up landscape. The Hearings Officer finds the subject property is not land that could be used in conjunction with the adjacent property. Any future development of the subject property will be subject to building setbacks.

The Hearings Officer finds this criterion is met.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDING: The applicant is proposing to rezone the property from EFU to MUA10 and re-designate the property from Agriculture to Rural Residential Exception Area. The applicant has provided the following response in the submitted burden of proof statement:

1. Mistake: *The EFU zoning designation was likely based on the best available soils data that the County had at the time in the County in the late 1970's when the comprehensive plan and map were adopted and where agricultural zoning was applied to land with no history of farming⁷⁸.*

⁷ Gallagher's soils analysis report for the subject property determined that the subject property was previously mapped by the USDA-SCS Soil Survey of the Deschutes County Area and compiled by NRCS into the Web Soil Survey. The property was previously mapped at 1:20,000 scale, which is generally too small a scale for detailed land use planning and decision making, according to Gallagher.

⁸ Source: Agricultural Lands Program, Community Involvement Results, Community Development, Deschutes County. June 18, 2014.

2. Change in Circumstances: *There clearly has been a change in circumstances since the property was last zoned in the 1970s:*

Soils: *New soils data provided in the Gallagher soils report shows the property does not have agricultural soils.*

Farming economics and viability of farm uses in Central Oregon *have significantly changed. Making a profit in farming, particularly on smaller parcels such as the subject property, is difficult as stated below in the stakeholder interview of the Deschutes County Farm Bureau in the County's 2014 Agricultural Lands Program, Community Involvement Results:*

Today's economics make it extremely difficult for commercial farmers in Deschutes County to be profitable. Farmers have a difficult time being competitive because other regions (Columbia Basin, Willamette Valley) produce crops at higher yields, have greater access to transportation and consumer markets, and experience more favorable growing climates and soils. Ultimately, the global economy undermines agricultural opportunities in the county because commodities derived from outside the region can be produced at a lower cost. Water limitations also play a role. Junior water right holders are constrained as the summer progresses and they lose their rights to those with higher priority dates.

Decline in farm operations *have steadily declined in Deschutes County between 2012 and 2017, with only a small fraction of farm operators achieving a net profit from farming in 2017. (Exhibit 8).*

Encroaching development *east of Bend's Urban Growth Boundary has brought both traffic and higher density residential uses and congestion to the area.*

The applicant's attorney argued at the public hearing that it is not economical or fiscally responsible to retain the subject property as agricultural/farm land given the fact that it is non-productive land.

Patrick McCoy testified at the public hearing that there are several other parcels/tracts that are "getting ready to do the same thing" as the applicant. He also stated that a 59-acre parcel was allowed to "go dead" to meet requirements for a rezone. He is concerned about slowing down growth in this area and further expressed concerns that the subject property is landlocked. Mr. McCoy stated that there is a lot of development occurring within a 2-mile radius of his property.

Matt Carey testified at the public hearing that development is increasingly encroaching on green space and animals are getting pushed out. He also expressed concerns about access to the subject property.

Kecia Weaver testified that high schoolers participate in 4H and FFA, raising animals and that smaller parcels of land are used for agriculture on a small scale. She values slow growth and maintaining the rural concept, to preserve open spaces. Ms. Weaver is concerned about the rapid development of large acreage and the impact on deer, rabbits, hawks, eagles and bats. She stated that Ward Road is .75 miles away from the subject property, which is not accessible other than via a gated canal road. Ms. Weaver requested that the applications be denied to slow the growth. She further stated that the applications could be considered at the time the UGB expansion is underway.

The Hearings Officer makes the following findings. First, whether or not owners of other properties may, or may not, request a change of comprehensive plan designation and zoning is not relevant to the Hearings Officer's consideration of the current applications. Each application must be considered on its own merits.

Second, concerns regarding development encroachment support a finding of change of circumstances. Given the evidence that shows the subject property is not comprised of agricultural soils, and is not land that could be used in conjunction with adjacent property, the requested rezone will provide an appropriate transition between urban City development and rural EFU properties.

Third, the Hearings Officer does not have authority to deny the requested applications on the basis of concerns about growth. While understandable, the applications may be granted where, as here, all applicable criteria are met.

Fourth, the applicant's attorney commented at the public hearing that delaying the applications until the City considers its next urban growth boundary (UGB) expansion will preclude the subject property from consideration.

Fifth, with respect to 4H and FFA activities, the Hearings Officer finds that the requested rezone to MUA-10 will continue to allow for hobby farming.

Sixth, concerning wildlife concerns, the Hearings Officer finds the subject property is not within a Wildlife Area combining zone; there are no specific wildlife preservation regulations applicable to the property. There is no evidence that the requested rezone, and of itself, will impact wildlife.

Finally, with respect to access, the Hearings Officer finds that no development is proposed at this time and, therefore, access need not be finally determined. If the subject property is developed in the future, the record shows that access from stubbed streets to the west may be considered.

For all the foregoing reasons, and based on evidence in the record that shows declining farm operations and limited numbers of financially successful farm operations (Exhibit 8), the

Hearings Officer finds that a change of circumstances since the time the property was last zoned exists. This criterion is met.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.2 Agricultural Lands

Goal 1, Preserve and maintain agricultural lands and the agricultural industry.

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

The applicant is pursuing a plan amendment and zone change on the basis that the subject property does not constitute "agricultural lands," and therefore, the subject lands are not necessary to preserve or maintain as such. In the Landholdings decision (and Powell/Ramsey decision) the Hearings Officer found that Goal 1 is an aspirational goal and not an approval criterion.

As demonstrated in this application, the subject property does not constitute "agricultural land" and therefore, is not necessary to preserve and maintain the County's agricultural industry. The Gallagher soils report shows the subject property to consist predominantly (63.7%) of Class 7 and 8 non-agricultural soils (Gosney-Rock Outcrop complex). According to Mr. Gallagher, these soils have severe limitations for agricultural use as well as low soil fertility, shallow and very shallow soils, abundant rock outcrops and lava tubes, low available water capacity, and major management limitations for livestock grazing. In addition, the minor amount of Deskamp soils (Class 3 irrigated and 6 nonirrigated) are in small isolated pockets and severely restricted by lava tubes, shallow rocky soils, irrigation ditches and property lines that they cannot be used in farming in conjunction with the non-productive Gosney-Rock outcrop. The property also is physically remote from productive farmland as it is adjacent to the City of Bend's urban development to the west and rural residential development to the east and south. Mr. Gallagher concludes that the "landscape is so cut up it is impractical to farm".

The Hearings Officer finds Mr. Gallagher's report supports a finding that the subject property does not constitute agricultural land. The subject property is not land that could be used in conjunction with the adjacent property. The requested plan amendment and rezone will not contribute to loss of agricultural land in the surrounding vicinity. The agricultural industry will not be negatively impacted by re-designation and rezoning of the subject property. Therefore, the Hearings Officer finds the applications are consistent with Section 2.2, Goal 1, "preserve and maintain agricultural lands and the agricultural industry."

Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal

findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.

FINDING: The applicant is not asking to amend the subzone that applies to the subject property; rather, the applicant is seeking a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to MUA10. The Hearings Officer finds this Policy is inapplicable.

Policy 2.2.3 Allow comprehensive plan and zoning map amendments for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.

FINDING: The applicant is seeking approval of a plan amendment and zone change to re-designate and rezone the property from Agricultural to Rural Residential Exception Area. The applicant is not seeking an exception to Goal 3 – Agricultural Lands, but rather seeks to demonstrate that the subject property does not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

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

Deschutes County has allowed this approach in previous Hearings Officer's decisions including Porter Kelly Burns Landholdings (247-16-000317-ZC/318-PA), Department of State Lands (PA-11-7/ZC-11-2), Pagel (PA-08-1/ZC-08-1), and the Daniels Group (PA-08-1, ZC-08-1). Additionally, the Land Use Board of Appeals (LUBA) allowed this approach in Wetherell v. Douglas County, 52 Or LUBA 677 (2006), where LUBA states, at pp.678-679:

“As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 nor Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798, 802 (1990).”

LUBA's decision in Wetherell has appealed to the Oregon Court of Appeals and the Oregon Supreme Court but neither court disturbed LUBA's ruling on this point. In fact, the Oregon Supreme Court changed the test for determining whether land is agricultural land to make it less stringent. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007). In that case, the Supreme Court stated that:

“Under Goal 3, land must be preserved as agricultural land if it is suitable for ‘farm use’ as defined in ORS 215.203(2)(a), which means, in part, ‘the current employment of land for the primary purpose of obtaining a profit in money’ through specific farming-related endeavors.” Wetherell, 342 Or at 677.

The Wetherell court held that when deciding whether land is agricultural land “a local government may not be precluded from considering the costs or expenses of engaging in those activities.” Wetherell, 342 Or at 680. The facts presented in the subject application are sufficiently similar to those in the Wetherell decisions and in the above-mentioned Deschutes County plan amendment and zone change applications. The subject property is primarily composed of Class 7 or 8 nonagricultural soils making farm-related endeavors not profitable. This application complies with Policy 2.2.3.

The Hearings Officer finds that the facts presented by the applicant in the burden of proof for the subject applications are similar to those in the *Wetherell* decisions and in the aforementioned Deschutes County plan amendment and zone change applications. Therefore, the Hearings Officer finds the applicant established the property is not agricultural land and does not require an exception to Goal 3 under state law. The Hearings Officer finds the applications are consistent with Policy 2.2.3.

Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.

FINDING: This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. The policy is not directed to an individual applicant, as the Hearings Officers found in the *Landholdings* decision and *Powell/Ramsey* decision. The Hearings Officer finds that, based on the County’s previous determinations in plan amendment and zone change applications, the proposal is consistent with this Policy.

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

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: This plan policy requires the County to identify and retain agricultural lands that are accurately designated. The policy is not directed to an individual applicant, as the Hearings Officers found in the *Landholdings* decision and *Powell/Ramsey* decision. The Hearings Officer finds that the subject property was not accurately designated as demonstrated by the soil study, NRCS soil data, and the applicant’s burden of proof. Further discussion on the soil analysis provided by the analysis is set forth in the findings under the OAR Division 33 criteria below. The Hearings Officer finds the proposal is consistent with this Policy.

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.

FINDING: The applicant is not proposing a specific development application at this time. Therefore, the Hearings Officer finds the applicant is not required to demonstrate water impacts associated with development. Rather, the applicant will be required to address this criterion during development of the subject property, which would be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat). The Hearings Officer finds this Policy does not apply to the subject applications.

Chapter 3, Rural Growth

Section 3.2, Rural Development

Growth Potential

As of 2010, the strong population growth of the last decade in Deschutes County was thought to have leveled off due to the economic recession. Besides flatter growth patterns, changes to State regulations opened up additional opportunities for new rural development. The following list identifies general categories for creating new residential lots, all of which are subject to specific State regulations.

- ...
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

FINDING: This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance above. In response to this section, the applicant’s burden of proof provides the following:

As shown above, the County’s Comprehensive Plan provisions anticipate the need for additional rural residential lots as the region continues to grow. This includes providing a mechanism to rezone farm lands with poor soils to a rural residential zoning designation. While the rezone application does not include the creation of new residential lots, the applicant has demonstrated the subject property is comprised of poor soils that are adjacent to rural residential MUA-10 zone uses to the east and south as well as urban residential zones within the Bend city limits to the west. Rezoning the subject property to MUA-10 is consistent with this criterion, as it will provide for an orderly and efficient transition from the Bend Urban Growth Boundary to rural and agricultural lands.

The MUA-10 Zone is a rural residential zone and as discussed in the Findings of Fact above, there are many adjacent properties to the south and east that are zoned MUA-10. Additionally, the properties to the west are within urban residential zones within the city limits of Bend. The Hearings Officer notes this policy references the soil quality, which is discussed above.

The Hearings Officer finds that rezoning the subject property to MUA-0 is consistent with Section 3.2, Chapter 3 of the Deschutes County Comprehensive Plan as it will provide for an orderly and efficient transition from the Bend UGB to rural and agricultural lands.

Section 3.3, Rural Housing

Rural Residential Exception Areas

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.

FINDING: The applicant provided the following response in the burden of proof:

Prior Hearings Officer's decisions have found that Section 3.3 is not a plan policy or directive⁹. Further, no goal exception to Statewide Planning Goal 3 is required for the rezone application because the subject property does not qualify as farm or forest zoning or agricultural lands under the statewide planning goals. The County has interpreted the RREA plan designation as the proper "catchall" designation for non-resource land and therefore, the Rural Residential Exception Area (RREA) plan designation is the appropriate plan designation to apply to the subject property¹⁰.

⁹ See PA-11-17/ZC-11-2, 247-16-000317-ZC, 318-PA, and 247-18-000485-PA, 486-ZC

¹⁰ The Hearings Officer's decision for PA-11-17/ZC-11-2 concerning this language of Section 3.3 states:
To the extent that the quoted language above represents a policy, it appears to be directed at a fundamentally different situation than the one presented in this application. The quoted language addresses conversions of "farm" or "forest" land to rural residential use. In those cases, the language

Based on past Deschutes County Hearings Officer interpretations, the Hearings Officer finds that the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Hearings Officer finds the proposed RREA plan designation is the appropriate plan designation to apply to the subject property.

Section 3.7, Transportation

**Appendix C – Transportation System Plan
ARTERIAL AND COLLECTOR ROAD PLAN**

...

Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.

...

Policy 4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system.

FINDING: This plan policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The County will comply with this direction by determining compliance with the Transportation Planning Rule (TPR) aka OAR 660-012, as described below in subsequent findings.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

indicates that some type of exception under state statute and DLCD rules will be required in order to support a change in Comprehensive Plan designation. See ORS 197.732 and OAR 660, Division 004. That is not what this application seeks to do. The findings below explain that the applicant has been successful in demonstrating that the subject property is composed predominantly of nonagricultural soil types. Therefore, it is permissible to conclude that the property is not “farmland” as defined under state statute, DLCD rules, and that it is not correctly zoned for exclusive farm use. As such, the application does not seek to convert “agricultural land” to rural residential use. If the land is demonstrated to not be composed of agricultural soils, then there is no “exception” to be taken. There is no reason that the applicant should be made to demonstrate a reasons, developed or committed exception under state law because the subject property is not composed of the type of preferred land which the exceptions process was designed to protect. For all these reasons, the Hearings Officer concludes that the applicant is not required to obtain an exception to Goal 3.

- (7) "Forest lands" as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:**
 - (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and**
 - (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.**

FINDING: The subject property is not zoned for forest lands, nor are any of the properties within a two-mile radius. The property does not contain merchantable tree species and there is no evidence in the record that the property has been employed for forestry uses historically. None of the soil units comprising the parcel is rated for forest uses according to NRCS data. The Hearings Officer finds that the subject property does not constitute forest land.

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

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

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

FINDING: Goal 3 defines "Agricultural Land," which is repeated in OAR 660-033-0020(1). The Hearings Officer's findings below are incorporated herein by reference.

OAR 660-033-0020, Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:

- (1)(a) "Agricultural Land" as defined in Goal 3 includes:**
 - (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon¹¹;**

¹¹ OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

FINDING: The applicant's decision not to request an exception to Goal 3 is based on the premise that the subject property is not defined as "Agricultural Land." In support, the applicant offers the following response in the submitted burden of proof statement:

The subject property is not properly classified as Agricultural Land and does not merit protection under Goal 3. The soils are predominately Class 7 and 8 soils as shown by the more detailed soils report prepared by soils scientist Andy Gallagher, which State law, OAR 660-033-0030, allows the County to rely on for more accurate soils information. Mr. Gallagher found that approximately 64% of the soils on the subject property (about 24 acres) is Land Capability Class 7 and 8 soils that have severe limitations for farm use. He also found the site to have low soil fertility, shallow and very shallow soils, abundant rock outcrops and rock fragments in the surface, lava tubes, and irrigation ditches, low available water capacity, and limiting areas suitable for grazing and restricting livestock accessibility, all of which are considerations for the determination for suitability for farm use. Because the subject property is comprised predominantly of Class 7 and 8 soils, the property does not meet the definition of "Agricultural Lands" under OAR 660-033-0020(1)(a)(A) listed above, that is having predominantly Class I-VI soils.

The Hearings Officer finds that the soil study provided by Mr. Gallagher of Red Hill Soils is an accurate representation of the data for the subject property. Therefore, the Hearings Officer finds, based on the submitted soil study and the above OAR definition, that the subject property is comprised predominantly of Class 7 and 8 soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above.

(B) *Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and*

FINDING: The applicant's decision not to request an exception to Goal 3 is based on the premise that the subject property is not defined as "Agricultural Land." The applicant provides the following analysis of this determination in the burden of proof.

This part of the definition of "Agricultural Land" requires the County to consider whether the Class 7 and 8 soils found on the subject property are suitable for farm use despite their Class 7 and 8 classification. The Oregon Supreme Court has determined that the term "farm use" as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors. The costs of engaging in farm use are relevant to determining whether farm activities are profitable and this is a factor in determining whether land is agricultural land. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007).

The subject property does not have water rights, has not been farmed, or used in conjunction with any farming operation in the past. The Natural Resources Conservation Service (NRCS) map shown on the County's GIS mapping program identifies two soil complex units on the property: 36A, Deskamp loamy sand and 58C, Gosney-Rock outcrop-Deskamp complex. The predominant soil complex on the subject property is 58C. 58C is not a high value soil as defined by Deschutes County Code. 36A is considered a high value soil when irrigated. However, as discussed in detail below, there is no irrigation on the property and an Agricultural Soils Capability Assessment (Order 1 soil survey) conducted on the property by soil scientist, Andy Gallagher, determined that the property is not agricultural land; that the class 3 irrigated and 6 non irrigated soils exist in small pockets interspersed with lava tubes, rocky, shallow soils creating severe limitations for any agricultural use on the property or in conjunction with other neighboring lands. (See Exhibit 5 for Mr. Gallagher's Soil Assessment Report).

A review of the seven considerations listed in the administrative rule, below, shows why the poor soils found on the subject property are not suitable for farm use that can be expected to be profitable:

Soil Fertility:

Mr. Gallagher made the following findings regarding soil fertility on the subject property:

*"Important soil properties affecting the soil fertility and productivity of the soils are **very limiting to crop production** [emphasis added by applicant] on this parcel. The soils here are low fertility, being ashy sandy loams with a low cation exchange capacity (CEC) of 7.5 meq/100 gm and organic matter is very low for Gosney 0.75% and low for Deskamps 1.5%. These soils do not have a large capacity to store soil nutrients especially cations, and nitrogen fertilizers readily leach in sandy soils. The soil depth is further limiting because it limits the overall volume of soil available for plant roots and limits the size the overall nutrient pool. Additionally, the soil available water holding capacity is very low for Gosney less than 1.8 inches for the whole soil profile, and for the very shallow soils it is half this much. The Deskamps soils have only about 2 to 4 inches AWHC translate into low productivity for crops. NRCS does not provide any productivity data for non-irrigated crops on these soils. The productivity of irrigated alfalfa is 4 tons per acre for Deskamps, and no rating for Gosney is same as a zero. There are perhaps 7 acres that could produce alfalfa with irrigation that could produce 28 tons alfalfa under irrigation and high fertility but after costs this would amount to no profit."*

The fact that these soils are low fertility unless made fertile through artificial means supports the applicant's position that the Class 7 soils and the entire property is not suitable for farm use. The costs to purchase and apply fertilizer and soil amendments and the costs to sample and test soils are a part of the reason why it is not profitable to farm the subject property.

Unsuitability for Grazing:

Mr. Gallagher also reviewed whether the parcel is suitable for grazing and found:

*"This 37.7-acre parcel is **not suited to grazing on a commercial scale** [emphasis added by applicant]. The soils here have major management limitations including ashy and sandy surface texture. The majority of the area has soils that are very shallow to shallow with many rock outcrops and rock fragments in the surface. Wind erosion is a potential hazard is moderately high when applying range improvement practices. Because the soil is influenced by pumice ash, reestablishment of the native vegetation is very slow if the vegetation is removed or deteriorated. Pond development is limited by the soil depth. The restricted soil depth limits the choice of species for range seeding to drought-tolerant varieties. Further, range seeding with ground equipment is limited by the rock fragments on the surface. The areas of very shallow soils and rock outcrop limit the areas suitable for grazing and restrict livestock accessibility.*

Total Range Production from NRCS Websoil survey and estimate based soil percentages in revised soil map units

Soil Map Unit	Total annual range production pounds per acre		
	Unfavorable year	Normal year	Favorable year
36A	700	900	1100
58C	411	558	705
Dk	700	900	1100
GR ¹	315	441	567

¹ Estimated based on weighted average of soils

Total range production is the amount of vegetation that can be expected to grow annually in a well-managed area that is supporting the potential natural plant community. It includes all vegetation, whether or not it is palatable to grazing animals. It includes the current year's growth of leaves, twigs, and fruits of woody plants. It does not include the increase in stem diameter of trees and shrubs. It is expressed in pounds per acre of air-dry vegetation. In a normal year, growing conditions are about average. Yields are adjusted to a common percent of air-dry moisture content. The productivity provided for Dk map unit is from Websoil survey for the Deskamp soil and that provided for the GR map unit is based on 40% very shallow soils, 35% Gosney and 25% rock outcrop.

Based on previous NRCS map has a weighted average annual productivity of 669 pounds per acre in a normal year. Based on the revised Order-1 map the annual productivity is even lower, 540 pounds per acre. The animal use months (AUMs) for this 37.7 acre parcel is 5.5 based on the revised soil map and a monthly value of 910 pounds forage per 1 AUM equivalent to pounds per cow calf pair. This model assumes the cow's take to be 25% of annual productivity in order to maintain site productivity and soil health (NRCS 2009). This

limits the grazing to one cow calf pair roughly 5 to 6 months annually. **This is not an economical model for livestock production** [emphasis added by applicant].

Inappropriate grazing causes a reduction in desirable grasses and where present cheatgrass will increase and granite prickly gilia increases and grasses decline. Cheatgrass becomes dominate along with grey rabbitbrush. Ground fire potential increases with increasing cheatgrass. Cutting of juniper leads to an increase in grey rabbitbrush and an increase in cheatgrass with or without grazing. Idaho fescue is eliminated from areas where trees are removed due to harsh microclimate and cheatgrass replaces it. The addition of inappropriate grazing would lead to a decline in the other deep-rooted perennial bunchgrasses and an increase in annuals and granite prickly gilia."

Climatic Conditions

According to Mr. Gallagher, climatic conditions of this area make is [sic] difficult for production of most crops, as stated below:

*"The low annual precipitation, high summer temperature and evapotranspiration rates, and shortened frost-free growing season make this **a difficult climate for production of most crops** [emphasis added by applicant]. Irrigation is needed on area farms to meet crop needs given only 8 to 10 inches precipitation that falls mainly between November and June, with a long summer drought. The soil temperature regime is mesic. The average annual air temperature is 46 degrees F with extreme temperatures ranging from -26 to 104 degrees F. The frost-free period is 50 to 90 days. The optimum period for plant growth is from late March through June. Freeze-free period (average) 140 days. (NRCS 2020) These harsh climatic conditions coupled with very low soil available water holding capacity limits the potential of irrigated crop production to the Deskamps soils."*

Existing and Future Availability of Water for Farm Irrigation Purposes:

No new irrigation water rights are expected to be available to the Central Oregon Irrigation District (COID) in the foreseeable future. In order to obtain water rights, the applicant would need to convince another COID customer to remove water rights from their property and sell them to the applicant and obtain State and COID approval to apply the water rights to the subject property. In such a transaction, water rights would be taken off productive farm ground and applied to the nonagricultural soils found on the subject property. Such a transaction runs counter to the purpose of Goal 3 to maintain productive Agricultural Land in farm use.

Given the poor quality of these soils, it is highly unlikely that Central Oregon Irrigation District would approve a transfer of water rights to this property. In addition, no person intending to make a profit in farming would go to the expense of purchasing water rights, mapping the water rights and establishing an irrigation system to irrigate the lands on the subject property.

Given the dry climate, it is necessary to irrigate the subject property to grow an alfalfa crop and to maintain a pasture. A farmer would need to spend significant sums of money to purchase water rights, irrigation systems, maintain the systems, pay laborers to move and monitor equipment, obtain electricity, pay irrigation district assessments and pay increased liability insurance premiums for the risks involved with farming operations.

Irrigating the soils found on the subject property as described by Mr. Gallagher, that have low fertility, low capacity to store nutrients, and very low available water holding capacity translates into low productivity for crops that would amount to no profit.

Existing Land Use Patterns

Existing land use patterns in the area are primarily non-agricultural related land uses including urban development to the west within the Bend City limits, County exception lands zoned MUA-10 developed with homes and small acres of irrigation for pasture and other hobby farm uses to the east and south, and irrigated farmland zoned EFU-TRB to the north and northeast.

The EFU-zoned properties to the north and northeast include:

North and northeast of the subject property is a pocket of EFU-zoned property. The adjacent property to the north, tax lot 18-12-02-1001, is a 12.45-acre EFU-zoned property that is partially irrigated and developed with a nonfarm dwelling (file no. CU-01-75). Northeast is tax lot 18-12-02-201, a 53.30-acre farm parcel that is irrigated and engaged in hay production, receiving farm tax deferral, and developed with a dwelling and outbuildings.

The close proximity to the City of Bend and residential areas limit the types of agricultural activities that could reasonably be conducted for profit on the subject property. The subject property would not be suitable for raising animals that are disturbed by noise. Additionally, the property owner would bear the burden of paying for harm that might be caused by livestock escape, in particular livestock and vehicle collisions. Any agricultural use that requires the application of pesticides and herbicides would be very difficult to conduct on the property given the numerous homes located in close proximity to the property. In addition, the creation of dust which accompanies the harvesting of crops is a major concern on this property due to the close proximity residential use.

Technological and Energy Inputs Required:

According to Mr. Gallagher:

*"The very shallow and shallow soils and abundant rock outcrops limit practical agricultural crop production on all but about 7 acres out of the 10 acres of Deskamps soils. The Deskamps soils are into four separate delineations that are separated by rocky and shallow soils and rock outcrops and lava tubes as well as irrigation ditches. **The landscape***

is so cut up it is impractical to farm [emphasis added by applicant]. *The best case scenario for crop production is for an area approximately seven acres along the north edge of the parcel that is spotted with rock outcrops and is of a very irregular shape. This area could at most produce about 28 tons of alfalfa under high fertilizer inputs and high irrigation water inputs. Current hay prices are from \$200.00 to \$250.00 per ton which would give an annual gross of about \$5,600.00 to \$7,000.00, before expenses. After expenses are deducted for land costs, site preparation, planting, costs of production like irrigation, fertilizer, weed control, costs of harvest including swath, rake, and bale, stack, and costs of handling, storage and marketing there would be **no profit associated with producing hay crops on such a small area*** [emphasis added by applicant]."

Accepted Farming Practices:

Farming lands comprised of soils that are predominately Class 7 and 8 is not an accepted farm practice in Central Oregon. Dryland grazing, the farm use that can be conducted on the poorest soils in the County, typically occurs on Class 6 non-irrigated soils that have a higher soils class if irrigated. The applicant would have to go above and beyond accepted farming practices to even attempt to farm the property for dryland grazing. Crops are typically grown on soils in soil class 3 and 4 that have irrigation, which this property has neither.

The Hearings Officer finds that many of the factors surrounding the subject property, such as the proximity to the Bend city limits, current residential and non-agricultural related land uses in the area, soil fertility, spotty/small areas of Class 3 (irrigated) and Class 6 (non-irrigated) soils, and lack of availability of water rights, result in an extremely low possibility of successful farming on the subject property.

The Hearings Officer finds that the subject property, primarily comprised of Class 7 and 8 soils, is not suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration the soil fertility, suitability for grazing, climactic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy outputs required and accepted farming practices. Substantial evidence in the record supports a determination that the subject property cannot be employed for the primary purpose of obtaining a profit in money through farming-related endeavors, considering the costs of engaging in farm use. *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007).

Soils on the subject property can only be made fertile through artificial means, which is cost prohibitive from a profitability standpoint. The subject property is not suitable to grazing on a commercial scale given management limitations and expected low production of suitable vegetation. Climactic conditions result in difficulty for production of most crops. Given the fact that no new irrigation water rights are expected to be available to the COID in the foreseeable future and the poor quality of soils on the subject property, it is unlikely COID would approve a transfer of water rights to the property. Existing land use patterns also limit the suitability of grazing animals on the subject property which is in close proximity to the

City of Bend. A limited, approximately 7-acre portion of the subject property that could, at most, produce 28 tons of alfalfa with high fertilizer and water inputs, would not generate any profit after expenses are deducted for land costs, site preparation, planting and costs of production (irrigation, fertilizer, weed control, cost of harvest and cost of handling storage and marketing). Accepted farm practices in Central Oregon do not include farming lands comprised of soils that are predominantly Class 7 and 8. In order to conduct dryland grazing on the subject property, the applicant would have to take measures beyond accepted farming practices, including attempting to obtain a water rights transfer.

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

FINDING: The applicant offers the following response in the submitted burden of proof statement:

The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. The nearest agriculturally zoned land engaged in farm use to the subject property is located northeast on tax lot 18-12-02-201. This property is a 53.30-acre farm parcel that is irrigated and engaged in hay production, receiving farm tax deferral, and developed with a dwelling and outbuildings. The farm operations on tax Lot 201 operate independently and are not dependent upon the subject property to conduct its farm practices. This is evidenced by the subject property being owned by the applicant since 1930 and has never been farmed, much less combined with tax lot 201 in any way for agricultural purposes. Farming operations on tax lot 201 will be able to continue to occur if the subject property is rezoned to MUA-10. Further, the poor quality soils and lack of irrigation are not suited to agricultural production and make the subject property unsuitable for farm practices on the nearby agricultural land.

The Hearings Officer finds the subject property is not necessary for the purposes of permitting farm practices on the nearby Tax Lot 201 (Assessor's Map 18-12-02) based on the factors discussed in the previous finding.

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

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

The subject property is not and has not been a part of a farm unit that includes other lands not currently owned by the applicant. The property has no history of farm use and contains soils that make it unsuitable for farm use and therefore, no basis to inventory the subject property as agricultural land.

Goal 3 applies a predominant soil type test to determine if a property is "agricultural land". If a majority of the soils is Class 1-6 in in Central or Eastern Oregon, it must be classified "agricultural land." 1000 Friends position is that this is a 100% Class 7 -8 soils test rather than a 51% Class 7 and 8 soils test because the presence of any Class 1-6 soil requires the County to identify the entire property "agricultural land." Case law indicates that the Class 1 -6 soil test applies to a subject property proposed for a non-agricultural plan designation while the farm unit rule looks out beyond the boundaries of the subject property to consider how the subject property relates to lands in active farming in the area that were once a part of the area proposed for rezoning. It is not a test that requires that 100% of soils on a subject property be Class 1-6.

The farm unit rule is written to preserve large farming operations in a block. It does this by preventing property owners from dividing farmland into smaller properties that, alone, do not meet the definition of "agricultural land." The subject property is not formerly part of a larger area of land that is or was used for farming operations and was then divided to isolate poor soils so that land could be removed from EFU zoning. As demonstrated by the historic use patterns and soils reports, it does not have poor soils adjacent to or intermingled with good soils within a farm unit. The subject property is not in farm use and has not been in farm use of any kind. It has no history of commercial farm use and contains soils that make the property generally unsuitable for farm use as the term is defined by State law. It is not a part of a farm unit with other land.

The subject property is predominately Class 7 and 8 soils and would not be considered a farm unit itself nor part of a larger farm unit based on the poor soils and the fact that none of the adjacent property is farmed.

As shown by the soils capability study by Mr. Gallagher, the predominant soil type found on the subject property is Class 7 and 8, nonagricultural land (63.7%). The predominance test says that the subject property is not agricultural soil and the farm unit rule does not require that the Class 7-8 soils that comprise the majority of the subject property be classified as agricultural land due to the presence of a small amount of Class 1-6 soils on the subject property that are not employed in farm use and are not part of a farm unit. As a result, this rule does not require the Class 7 and 8 soils on the subject property to be classified agricultural land because a minority of the property contains soils rated Class 6.

The Hearings Officer finds that there are no bases on which to find that the subject property shall be inventoried as agricultural lands under this criterion. The property does not relate to land in active farming, and there are no parcels in the area that were once part of the subject property. A majority of the soils (63.7%) are not Class 1-6. Therefore, under the predominance test, the subject property is not agricultural. The farm unit rule does not mandate a different result. The subject property is not employed in farm use and is not now, nor in the past, part of a farm unit.

- (c) **"Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.**

FINDING: The subject property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4. The Hearings Officer finds this criterion is inapplicable.

OAR 660-033-0030, Identifying Agricultural Land

- (1) **All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.**
- (2) **When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands". A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).**

FINDING: The applicant addressed the factors in OAR 660-033-0020(1) above. As the Hearings Officer has found herein, the property is not "agricultural land," as referenced in OAR 660-033-0030(1), and contains barriers for farm use including poor quality soils and lack of irrigation.

The Hearings Officer finds that substantial evidence in the record shows the subject property is not "agricultural land" because the property is predominantly Class 7 and 8 soils. As the Hearings Officer found above, the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands.

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

FINDING: The Hearings Officer finds that evidence in the record, including examination of lands outside the boundaries of the subject property, shows the subject property is not “agricultural land.” Substantial evidence shows that the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands.

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

FINDING: The soil study prepared by Mr. Gallagher (Exhibit 5) provides more detailed soils information than contained in the NRCS Web Soil Survey. Exhibit 5 includes the Soil Assessment Completeness Review conducted by DLCD pursuant to OAR 660-033-0045(6)(a), dated February 12, 2021, confirming the report prepared by Mr. Gallagher meets the requirements for agricultural soils capability reporting.

Mr. Gallagher’s soils assessment report provides a high intensity Order-1 soil survey and soil assessment – a detailed and accurate soils assessment on the subject property based on numerous soil samples – to determine if the subject property is “agricultural land” within the meaning of OAR 660-033-0020. As explained in Mr. Gallagher’s report, the NRCS soil map of the subject property shows two general soil mapping units, 58C and 36A. The more detailed Order-1 survey conducted by Mr. Gallagher included 41 soil test pits, in addition to observations of surface rock on the parcel. The results of the previous and revised soils mapping units with land capability class are provided in **Table 1** below.

The soils report is related to the NCRS Land Capability Classification (LCC) system that classifies soils class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS. The soils report provides more detailed soils information than contained on the Web Soil Survey operated by the NRCS, which provides general soils data at a scale generally too small for detailed land use planning and decision making.

The NRCS mapping for the subject property is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the property contains approximately 33.7% 36A soil and contains 66.3% 58C soil. The soils study conducted by Mr. Gallagher finds the soil types on the subject

property vary from the NRCS identified soil types. The soil types described by Mr. Gallagher (as quoted from Exhibit 5) and the characteristics and LCC rating are shown in **Table 1** below.

GR Gosney-Rock Outcrop Complex

Capability Class: 7 and 8 mapped as complex

These soils are mapped together in a complex because both components are Capability Class 7 or greater, and it was not practical to map them separately. These soils are estimated to be about 25 percent Rock Outcrop and 75 percent Gosney. They have lower productivity than NRCS map unit 38B because they do not contain a mappable area of Deskamp soils that were mapped separately. The productivity reported in Table 2 for Gosney-Rock Outcrop are 20 percent less than the 58C map unit to account for more shallow and very shallow soils in the GR map unit in the revised map unit. Based on the observations here, the map unit is about 40 percent very shallow soils, 35 percent Gosney soils, and 25 percent rock outcrops.

Gosney loamy sand and stony loamy sand (0 to 15 percent slopes)

Description: *Gosney series consists of shallow (10 to 20 inches) to hard basalt bedrock, somewhat excessively drained soils on lava plains. These soils have rapid permeability. They formed in volcanic ash over hard basalt bedrock. Slopes are 0 to 15 percent. The mean annual precipitation is less than 12 inches, and the mean annual temperature is about 45 degrees F.*

Capability Class: 7

Soil Variability: *Depth to bedrock is from surface exposures of bedrock to 20 inches depth. There may be small inclusions of soils like Deskamp that are moderately deep (>20 inches to 40 inches). Many of the pedons are very stony. This unit includes very shallow soils <10 inches.*

Very shallow phase 0-15 percent slopes

Description: *This component of the complex is less than 10 inches to basalt.*

Capability Class: 7

Soil Variability: *Depth to bedrock is from 1 to 10 inches. These soils are very shallow and of similar parent material to Gosney. These soils have lower available water holding capacity and an estimated 40 percent lower productivity.*

Rock Outcrop (0 to 15 percent slopes)

Description: *This part of the map unit is areas where bedrock is at the surface.*

Capability Class: 8

Soil Variability: *In places, rocks are right at the surface and often times bedrock is standing several feet above the surface of the adjacent soils. In some areas (borings 39-41) there is rimrock, large boulders and other surface stone where suspected lava tubes collapsed.*

Dk Deskamp loamy sand

Description: *This map unit is mainly moderately deep, somewhat excessively drained soils with rapid permeability on lava plains. These soils formed in ash and have hard basalt at 20 to 40 inches. Slopes are 1 to 15 percent. The A and AB horizon are loamy sand. The 2B is loamy sand and gravelly loamy sand. The NRCS soils survey mapped Deskamp and Gosney in a complex described as 50% Deskamp and 35% Gosney. In this Dk unit I delineated the Deskamp component of the former complex and mapped it as a consociation based on more detailed soil sampling than the NRCS soil survey. This soil covers approximately 11 acres of the parcel and is broken up into several small delineations two of which are less than an acre. These small and isolated areas are impractical to farm. The largest delineation is 8.5 acres and has at least three areas of rock outcrop that were delineated within.*

Capability Class: *3-irrigated and 6 non-irrigated*

Soil Variability: *There are small inclusions of rock outcrop and of deep soils with sandy skeletal family. Any rock outcrop I observed in the field was delineated from the Deskamp unit, but because not all rock outcrops could be resolved at the one boring per acre average sampling intensity, given the brushy conditions.*

CN Irrigation Canals

Description: *These canals are non-soil areas that consist of water and steep banks. When canals are dry they are hard rock bottom.*

Capability Class: *Not Rated*

Based on Mr. Gallagher's qualifications as a certified Soil Scientist and Soil Classifier, the Hearings Officer finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject property. The state's agricultural land rules, OAR 660-033-0030, allow the County to rely on the soil capability analysis prepared by Mr. Gallagher, which is more detailed than the NRCS soil maps and soil surveys and the Web Soil Survey operated by the NRCS as of January 2, 2012. The Hearings Officer finds that the Order-1 soil survey is related to the NRCS land capability classification system.

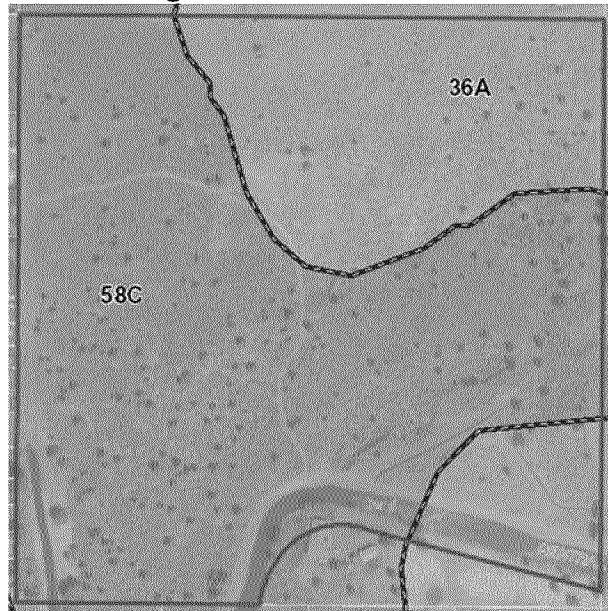
The Hearings Officer finds that the more detailed soils information in the report prepared by Mr. Gallagher assists the County to make a better determination of whether the subject property qualifies as agricultural land. As set forth above, DLCD completed a Soil Assessment Completeness Review pursuant to OAR 660-033-0045(6)(a), confirming the report prepared by Mr. Gallagher meets the requirements for agricultural soils capability reporting.

For all the foregoing reasons, the Hearings Officer finds the subject property is not "agricultural land,"

Table 1 - Summary of Order I Soil Survey

Previous Map Symbol	Revised Map Symbol	Soil Series Name	Capability Class	Previous Map*		Revised Map	
				Ac	-%-	Ac	-%-
36A	Dk	Deskamp loamy sand0 to 3 percent slopes	3 irrigated 6 non-irrigated	12.2	32.3	10.9	28.90
58C	--	Gosney-Rock outcrop-Deskamp complex, 0 to 15 percent slopes	6, 7 and 8	25.5	67.7	0	0
--	GR	Gosney-Rock Outcrop Complex	7 and 8	0	0	24	63.7
	CN	Irrigation Canal	not rated	0	0	2.8	7.4
Total				37.7	100	37.7	100

*Soils that were previously mapped as components of a complex that are mapped as consociations in revised map.

Figure 1 - NRCS Soil Data

- (c) ***This section and OAR 660-033-0045 apply to:***
- (A) ***A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and***

FINDING: The applicant is seeking approval of a non-resource plan designation on the basis that the subject property is not defined as agricultural land.

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

FINDING: The applicant submitted a soils study by Mr. Gallagher of Red Hill Soils dated December 2, 2020. The soils study was submitted following the ORS 215.211 effective date. Staff received acknowledgement via email on February 16, 2021, from Hilary Foote, Farm/Forest Specialist with the DLCDC that the soils study is complete and consistent with DLCDC's reporting requirements.

The Hearings Officer finds this criterion to be met based on the submitted soils study and confirmation of completeness and consistency from DLCDC.

- (e) ***This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.***

FINDING: The applicant has provided a DLCD certified soils study as well as NRCS soils data. The Hearings Officer finds that the applicant has complied with the soils analysis requirements of OAR 660-033-0045 in order to obtain DLCD certification. DLCD's certification establishes compliance with OAR 660-033-0045.

The Hearings Officer finds this criterion is met.

DIVISION 12, TRANSPORTATION PLANNING

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

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

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

FINDING: As referenced in the agency comments section in the Findings of Fact above, the Senior Transportation Planner for Deschutes County initially requested a revised traffic study for the applications. The applicant submitted an updated report from Transight Consulting LLC dated June 8, 2021, to address identified concerns and no further comments were received from the County's Senior Transportation Planner. The update includes adjustments to the review of potential high impact land use scenarios to include comparisons between a winery and a cluster development, deemed the "worst case scenario" outright uses allowed in EFU and MUA10 Zones, respectively.

In response to these criteria, the applicant's burden of proof provides the following statement:

Attached as Exhibit 9 is a transportation impact analysis memorandum prepared by traffic engineer, Joe Bessman, PE. Mr. Bessman made the following key findings with regard to the proposed zone change and concluded that a significant affect does not occur with the proposed rezone:

- *Rezoning of the 36.65-acre COID property from EFU-TRB to MUA could generate up to 49 additional weekday daily trips, including only five additional trips during the weekday p.m. peak hour.*
- *The change in trips does not meet Deschutes County, ODOT, or City of Bend thresholds of significance at any nearby locations.*
- *The site will be served with stubbed local street connections west through the Marketplace Subdivision that connect to the SE 27th Street corridor. This access configuration does not impact Deschutes County streets.*
- *The nearest classified intersection of SE 27th Street/SE Reed Market Road has a very low crash rate. There are no documented safety needs within the project vicinity.*

Based on this review a significant affect does not occur with the proposed rezone given the minor potential impacts in transitioning from EFU to MUA zoning.

Based on the traffic analysis and findings by Mr. Bessman, the application complies with the TPR.

Updated findings below, submitted by Transight Consulting on June 8, 2021, are set forth in the revised traffic study:

- *Rezoning of the 36.65-acre COID property from EFU-TRB to MUA provides similar potential impacts to the existing zoning, with the potential for a trip reduction within a “worse case” trip generation scenario.*
- *The reduction in trips does not meet Deschutes County, ODOT, or City of Bend thresholds of significance at any nearby locations.*
- *The site will be served with stubbed local street connections west through the adjacent Marketplace Subdivision that connect to the SE 27th Street corridor. This access configuration does not impact Deschutes County streets.*
- *The nearest classified intersection of SE 27th Street/SE Reed Market Road has a very low crash rate. There are no documented safety needs within the project vicinity.*

Based on this review a significant affect does not occur with rezoning from EFU to MUA zoning. With the range of outright allowable uses identified within ORS 215.213(1) and 215.283(1) as a “property right” additional trip generation scenarios could be shown resulting in a trip reduction. Regardless of the scenario, the overall impact of the rezone is negligible on the transportation system and the rezone reflects the more appropriate use of the property given its unsuitability for farming.

Public comments received by the County indicate concerns with potential traffic impacts as a result of the proposed plan amendment and zone change. These comments are non-specific in nature, do not include any findings contrary to the findings set forth in the Transight Consulting, LLC analyses, and do not include any information that is inconsistent with the Transight Consulting, LLC’s reports. Public comments express a generalized concern about traffic impacts associated with additional growth if the subject property is developed. The Hearings Officer notes that additional transportation/traffic review will be required at the time of any future development application(s).

The Hearings Officer finds that the proposed rezone will not significantly affect an existing or planned transportation facility for the following reasons: (1) it will not change the functional classification of an existing or planned transportation facility; (2) it will not change standards implementing a functional classification system; and (3) it will not result in any of the following effects – types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility, degradation of the performance of an existing or planned transportation facility such that it would not meet performance standards identified in the TSP or comprehensive plan, or degradation of the performance of an existing or planned transportation facility that is otherwise projected not to meet performance standards identified in the TSP or comprehensive plan.

The Hearings Officer finds that, based on OAR 660-012-060(1), the County is not required to put in place measures as provided in Section (2) of this rule. The applicant has demonstrated compliance with the TPR. These criteria are met.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

FINDING: The Statewide Planning Goals are addressed below, as set forth in the applicant's burden of proof:

Goal 1, Citizen Involvement. *Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the applicant to post a "proposed land use action sign" on the subject property. Notice of the public hearings held regarding this application will be placed in the Bend Bulletin. A minimum of two public hearings will be held to consider the application.*

Goal 2, Land Use Planning. *Goals, policies, and processes related to zone change applications are included in the Deschutes County Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code. The outcome of the application will be based on findings of fact and conclusions of law related to the applicable provisions of those laws as required by Goal 2.*

Goal 3, Agricultural Lands. *The applicant has shown that the subject property is not agricultural land because it is comprised predominantly of Class 7 and 8 soils that are not suitable for farm use. Therefore, the proposal is consistent with Goal 3.*

Goal 4, Forest Lands. *Goal 4 is not applicable because the subject property does not include any lands that are zoned for, or that support, forest uses.*

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. *Deschutes County DIAL property information and Interactive Map show the subject property has "wetlands" that correspond with COID's irrigation distribution system within the property including the developed canals and ditches. According to the Comprehensive Plan (Chapters 2, Resource Management and 5, Supplemental Sections), in 1992 Deschutes County Ordinance 92-045 adopted all wetlands identified on the U.S. Fish and Wildlife Service National Wetland Inventory (NWI) Maps as the Deschutes County wetland inventory. In addition, as described in the Comprehensive Plan, the NWI Map "shows an inventory of wetlands based on high-altitude aerial photos and limited field work. While the NWI can be useful for many resource management and planning purposes, its small scale, accuracy limitations, errors of omission that range up to 55 percent (existing wetlands not shown on NWI), age (1980s), and absence of property boundaries make it unsuitable for parcel-based decision making."*

The Comprehensive Plan has no specific protections for wetlands; protections are provided by ordinances that implement Goal 5 protections (for example, fill and removal zoning code regulations). In the case of Irrigation Districts performing work within wetlands, DCC

18.120.050(C) regarding Fill and Removal Exceptions allows fill and removal activities as a use permitted outright as stated below:

- C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.

Because the proposed plan amendment and zone change are not development, there is no impact to any Goal 5 resource. Any potential future development of a wetland – no matter what zone the wetland is in – will be subject to review by the County’s fill and removal regulations.

Goal 6, Air, Water and Land Resources Quality. *The approval of this application will not impact the quality of the air, water, and land resources of the County. Any future development of the property would be subject to local, state and federal regulations that protect these resources.*

Goal 7, Areas Subject to Natural Disasters and Hazards. *According to the Deschutes County DIAL property information and Interactive Map the entire Deschutes County, including the subject property, is located in a Wildfire Hazard Area. The subject property is also located in Rural Fire Protection District #2. Rezoning the property to MUA-10 does not change the Wildfire Hazard Area designation. Any future development of the property would need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.*

Goal 8, Recreational Needs. *This goal is not applicable because no development is proposed and the property is not planned to meet the recreational needs of Deschutes County. The Bend Parks and Recreation District has an undeveloped park site, Hansen Park, located to the south of the property with plans to develop the park trailhead that would serve the Central Oregon Historic Canal Trail System. The proposed rezone does not impact the recreational needs of Deschutes County as no development is proposed.*

Goal 9, Economy of the State. *This goal does not apply to this application because the subject property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely affect economic activities of the state or area.*

Goal 10, Housing. *The County’s Comprehensive Plan Goal 10 analysis anticipates that farm properties with poor soils, like the subject property, will be converted from EFU to MUA-10 or RR-10 zoning and that these lands will help meet the need for rural housing. Approval of this application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County Comprehensive Plan.*

Goal 11, Public Facilities and Services. *The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Pacific Power has confirmed that it has the capacity to serve the subject property and the proposal will not result in the extension of urban services to rural areas.*

Goal 12, Transportation. *The application complies with the Transportation System Planning Rule, OAR 660-012-0060, the rule that implements Goal 12. Compliance with that rule also demonstrates compliance with Goal 12.*

Goal 13, Energy Conservation. *The approval of this application does not impede energy conservation. The subject property is located adjacent to the city limits for the City of Bend. If the property is developed with residential dwellings in the future, providing homes in this location as opposed to more remote rural locations will conserve energy needed for residents to travel to work, shopping and other essential services provided in the City of Bend.*

Goal 14, Urbanization. *This goal is not applicable because the applicant's proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-10 Zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was recently acknowledged when the County amended its comprehensive plan. The plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.*

Goals 15 through 19. *These goals do not apply to land in Central Oregon.*

The Hearings Officer finds consistency with Goal 1 (Citizen Involvement) has been established with the public notice requirements required by the County for these applications (mailed notice, posted notice and two public hearings). Similarly, the Hearings Officer finds consistency with Goal 2 (Land Use Planning) based on the applications' consistency with goals, policies and processes related to zone change applications as set forth in the Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code.

Based on the findings above, the Hearings Officer finds consistency with Goal 3 (Agricultural Lands) has been demonstrated because the subject property is not Agricultural Land. The property is not comprised of Forest Lands; Goal 4 is inapplicable.

With respect to Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), the Hearings Officer finds that the property does not include any scenic and historic areas. Moreover, while the property is currently open and undeveloped, the County Goal 5 inventory does not include the subject property as an "open space" area protected by Goal 5. Members of the public expressed concern regarding potential impact on wildlife. However, the Hearings Officer notes that the property does not include a wildlife overlay (WA)

designation and, more importantly, no development is proposed at this time. Rezoning the subject property will not, in and of itself, impact wildlife on the subject property.

The property does include areas mapped as wetlands by the NWI, which constitute Goal 5 natural resources. Fill and removal activities conducted by an irrigation district are allowed outright under DCC 18.120.050(C). The Hearings Officer again notes that no specific development activities, including fill and removal, is proposed at this time. Because the proposed plan amendment and zone change do not constitute development, there is no impact to any Goal 5 resource. The Hearings Officer finds that future development activities will be subject to local, state and federal regulations that protect delineated wetlands. For these reasons, the Hearings Officer finds consistency with Goal 5.

The Hearings Officer finds consistency with Goal 6 (Air, Water and Land Resources Quality) because there is no demonstrable impact of approval of the application to rezone the subject property from EFU to MUA-10. Future development activities will be subject to local, state and federal regulations that protect these resources.

With respect to Goal 7 (Areas Subject to Natural Disasters and Hazards), the Hearings Officer finds consistency with this Goal based on the fact that rezoning the property to MUA-10 does not change the Wildfire Hazard Area designation that is applicable to the entirety of Deschutes County. The subject property is within the Rural Fire Protection District #2. Any application(s) for future development activities will be required to demonstrate compliance with fire protection regulations.

The Hearings Officer finds consistency with Goal 8 (Recreational Needs) given the fact that no development is currently proposed and that rezoning, in and of itself, will not impact recreational needs of Deschutes County. Members of the public testified regarding concerns of loss of the currently vacant property as open space and for recreational uses. The Hearings Officer notes that the record includes evidence regarding an undeveloped Bend Park and Recreation District park site, Hansen Park, located to the south of the property. There are plans to develop a park trailhead that would serve the Central Oregon Historic Canal Trail System. The Hearings Officer finds that the proposed rezone does not impact these recreational amenity plans.

The Hearings Officer finds Goal 9 (Economy of the State) is inapplicable because the subject property is not designated as Goal 9 economic development land.

The Hearings Officer finds the applications are consistent with Goal 10 (Housing) because the Comprehensive Plan Goal 10 chapter anticipates that farm properties with poor soils will be converted from EFU to MUA-10 or RR-10 zoning, making such properties available to meet the need for rural housing. Although no development of the subject property is proposed at this time, rezoning the subject property from EFU to MUA-10 will enable consideration of the property for potential rural housing development in the future.

The Hearings Officer finds the applications are consistent with Goal 11 (Public Facilities and Services). The record establishes that Pacific Power has capacity to serve the subject property and the proposal will not result in the extension of urban services to rural areas.

Based on the findings above regarding the Transportation System Planning Rule, OAR 660-012-0060, the Hearings Officer finds the applications are consistent with Goal 12 (Transportation).

The Hearings Officer finds the applications are consistent with Goal 13 (Energy Conservation) because there is no evidence approval of the applications will impede energy conservation. Rather, if the property is developed with residential dwellings in the future, energy conservation will be increased – not impeded – as residents will not be required to travel as far to work, shopping and other essential services provided in the City of Bend.

The Hearings Officer finds the applications are consistent with Goal 14 (Urbanization). The subject property is not within an urban growth boundary and does not involve urbanization of rural land because the MUA-10 zone does not include urban uses as permitted outright or conditionally. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The state acknowledged compliance of the MUA-10 zone with Goal 14 when the County amended its comprehensive plan.

The Hearings Officer finds that Goals 15-19 do not apply to land in Central Oregon.

For all the foregoing reasons, the Hearings Officer finds compliance with the applicable Statewide Planning Goals has been demonstrated.

IV. DECISION & RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer finds the applicant has met the burden of proof necessary to justify the request for a Comprehensive Plan Map Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area and a corresponding request for a Zone Map Amendment (Zone Change) to reassign the zoning of the subject property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

The Deschutes County Board of Commissioners is the final local review body for the applications before the County. DCC 18.126.030. The Hearings Officer recommends approval of the applications based on this Decision of the Deschutes County Hearings Officer.



Stephanie Marshall, Deschutes County Hearings Officer

Dated this __12th__ day of October, 2021

Mailed this 13th day of October, 2021

owner	agent	inCareOf	address	cityStZip	type	cdd id
Central Oregon Irrigation District			1055 SW Lake Ct	Redmond, OR 97756	HO Decision	21-400-PA, 401-ZC
Tia M. Lewis	Schwabe, Williamson & Wyatt, P.C.		360 SW Bond Street, Suite 500	Bend, OR 97702	HO Decision	21-400-PA, 401-ZC
Joe Bessman	Transight Consulting		Via Email		HO Decision	21-400-PA, 401-ZC



COMMUNITY DEVELOPMENT

NOTICE OF HEARINGS OFFICER'S DECISION

The Deschutes County Hearings Officer has approved the land use application(s) described below:

- FILE NUMBERS:** 247-21-000400-PA, 401-ZC
- LOCATION:** The subject property has an assigned address of 61781 Ward Rd, Bend, OR 97702; and is identified on the County Assessor's Map No. 18-12-02, as Tax Lot 1000.
- OWNER/
APPLICANT:** Central Oregon Irrigation District (COID)
- ATTORNEY
FOR APPLICANT:** Tia M. Lewis
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond Street, Suite 500
Bend, OR 97702
- SUBJECT:** The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).
- STAFF CONTACT:** Tarik Rawlings, (541) 317-3148, tarik.rawlings@deschutes.org
- RECORD:** Record items can be viewed and downloaded from:
www.buildingpermits.oregon.gov
- APPLICABLE CRITERIA:** The Hearings Officer reviewed this application for compliance against criteria contained in Chapters 18.04, 18.16, 18.32 and 18.136 in Title 18 of the Deschutes County Code (DCC), the Deschutes County Zoning Ordinance, the procedural requirements of Title 22 of the DCC, Chapters 2, 3 and Appendix C of the Deschutes County Comprehensive Plan, Divisions 6, 12, 15, and 33 of the Oregon Administrative Rules (OAR) Chapter 660, and Chapter 215.211 of the Oregon Revised Statutes.

DECISION: The Hearings Officer finds that the application meets applicable criteria, and recommends approval of the applications.

As a procedural note, the hearing on August 31, 2021, was the first of two required de novo hearings per DCC 22.28.030(c). The second de novo hearing will be heard in front of the Board of County Commissioners at a date to be determined.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the base appeal deposit plus 20% of the original application fee(s), and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Board of County Commissioners an adequate opportunity to respond to and resolve each issue.

Copies of the decision, application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

owner	agent	inCareOf	address	cityStZip	type	cdd id
Central Oregon Irrigation District			1055 SW Lake Ct	Redmond, OR 97756	HO NOD	21-400-PA, 401-ZC
Tia M. Lewis	Schwabe, Williamson & Wyatt, P.C.		360 SW Bond Street, Suite 500	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Joe Bessman	Transight Consulting		Via Email		HO NOD	21-400-PA, 401-ZC
Kecia Weaver			21435 Modoc Lane	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Patrick McCoy			21435 Modoc Lane	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Matt Carey			61765 Gibson Drive	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Jeff Sundberg			61710 Gibson Drive	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Kyle Weaver			61375 Kobe St	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Treva Weaver			1020 SE Teakwood Dr	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
John Schaeffer			61677 Thunder Road	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Cathy DeCoursey			61718 Rigel Way	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Jennifer Neil			61723 Rigel Way	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Brent N. Wilkins			61764 SE Camellia Street	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
Crystal Garner			21262 Capella Pl	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
William Kepper			12167 Daylily Ave	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
BEND FIRE DEPT.	LARRY MEDINA		1212 SW SIMPSON, SUITE B	Bend, OR 97702	HO NOD	21-400-PA, 401-ZC
BEND GROWTH MANAGEMENT DEPT.			709 NW WALL ST., STE. 102	Bend, OR 97701	HO NOD	21-400-PA, 401-ZC
BEND PLANNING DEPT.			P.O. BOX 431	Bend, OR 97709	HO NOD	21-400-PA, 401-ZC
BEND PUBLIC WORKS DEPT.			575 NE 15TH ST.	Bend, OR 97701	HO NOD	21-400-PA, 401-ZC
DESCHUTES CO. ASSESSOR			ELECTRONIC		HO NOD	21-400-PA, 401-ZC
DESCHUTES CO. SR. TRANS. PLANNER	PETER RUSSELL		ELECTRONIC		HO NOD	21-400-PA, 401-ZC
ODOT REGION 4 PLANNING			63055 N. HWY. 97, BUILDING M	BEND, OR 97703	HO NOD	21-400-PA, 401-ZC
HAROLD K MARKEN REV TRUST ETAL	MARKEN,HAROLD K CO-TTEE ETAL		21485 BEAR CREEK RD	BEND, OR 97701	HO NOD	21-400-PA, 401-ZC
WEST, KEVIN & JENNIFER			PO BOX 1923	BEND, OR 97709	HO NOD	21-400-PA, 401-ZC
QUICK,MICHAEL HAROLD & DELORES MARIE			21374 STEVENS RD	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
OCCUPANT			61710 GIBSON DR	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
MORRISON, DAVID I & NANCY L			21415 MODOC LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
FERNS,TIMOTHY J & RONDA L HALVORSEN-			61730 GIBSON DR	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
CAREY, MATTHEW A & SHARI A			61765 GIBSON DR	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
MCCOY, PATRICK E			21435 MODOC LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
WARRENBURG FAMILY LIVING TRUST	WARRENBURG, ROBERT JR & LAURA TTEES		61740 GIBSON DR	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
NELSON, HARRY R			21485-A MODOC LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
HARRELL,JILL KINGHAM			61676 THUNDER RD	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
LAKE,JAMES E & JANET M			61661 THUNDER RD	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
BAILEY-SCHAEFFER TRUST	BAILEY,PATTI L & SCHAEFFER,JOHN M TTEES		61677 THUNDER RD	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
NASLUND, JULIE & NEVILL, MICHAEL			61645 THUNDER RD	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
PETERS, ROBERT W & USA M			21360 STEVENS RD	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
LUCAS FAMILY REV LIVING TRUST	LUCAS,GERALD & MARGARET TTEES		21390 STEVENS RD	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
PASLAY, BRIAN & NANCY			21370 STEVENS RD	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
BEND METRO PARKS & RECREATION DIST			799 SW COLUMBIA ST	BEND, OR 97702-3218	HO NOD	21-400-PA, 401-ZC
LARSEN, MICHAEL ET AL			10927 SW MATZEN DR	WILSONVILLE, OR 97070	HO NOD	21-400-PA, 401-ZC
SOCKEYE E LLC ET AL			61165 RIVER BLUFF TRAIL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
RASMUSSEN, MONIQUE & RICHARD			61195 BONNY BRIDGE	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
WOLF,DAVID G			PO BOX 5807	BEND, OR 97708	HO NOD	21-400-PA, 401-ZC
CARR, BRUCE			21265 SE DOVE LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
LOUIS G ROGERSON & JANICE M ROGE... ETAL	ROGERSON,JANICE M TRUSTEE ETAL		21280 DOVE LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
GROVE, HILARY VERONICA			21273 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
KEPPER, WILLIAM EDSON & KAREN GRACE			21267 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
TILTON, PATRICIA J & CHRISTOPHER L			21261 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
NORMAN, JENNIFER & PAUL			21255 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
TUTTLE/GALOTTI REVOCABLE LIVING TRUST	TUTTLE, CRAIG H TTEE ETAL		61757 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
SWAFFORD FAMILY TRUST	SWAFFORD, MATTHEW J & JEANETTE E TTEES		61753 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
FEURERMAN, JACOB & MATHENY, ELISSA			21257 BELLFLOWER PL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
ARBAUGH, KYLE			21261 BELLFLOWER PL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
MCCOUSTON, ROBIN SUE & KEVIN JAMES			19882 PORCUPINE DR	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
LEONG, KIRBY C W & LYNN Y			1044 KAMEHAME DR	HONOULULU, HI 96825	HO NOD	21-400-PA, 401-ZC
VON ZANGE, SCOTT A			21297 BELLFLOWER PL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
BODI, AMY & DAVID			21250 WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
LOPEZ, RONALD L & LAURA MARIE	C/O LAURA LOPEZ		PO BOX 1492	GRANTS PASS, OR 97528	HO NOD	21-400-PA, 401-ZC
BETTENCOURT LIVING TRUST	BETTENCOURT, JOHN & SANDRA J TTEES		587 STONE CORRAL CT	ANGELS CAMP, CA 95222	HO NOD	21-400-PA, 401-ZC
OLSON, TIMOTHY J			21262 WOODRUFF PL	BEND, OR 97702-3601	HO NOD	21-400-PA, 401-ZC
PEPPER, CLIVE & SUSAN			21266 WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
JOHNSON, ALLEN H			21270 WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
KATHERINE JAMPOL CROWE REV LIV TRUST	CROWE, KATHERINE JAMPOL TTEE		21274 WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
EAST BEND PLAZA LLC			3188 N HIGHWAY 97 #101	BEND, OR 97703	HO NOD	21-400-PA, 401-ZC
SUE, MARK & KARI			21298 SE WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
VREM FAMILY TRUST	VREM, RICHARD C & SANDRA J TTEES		1310 DIAMOND DR	ARCATA, CA 95521	HO NOD	21-400-PA, 401-ZC
PATTERSON, NICOLAS F & MEHTA, SMITA R			61710 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
KENNELLEY, KEVIN S & TRACY L			61706 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
PREWITT, KURTUS S			61702 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
GARDENSIDE HOME OWNERS ASSOC			PO BOX 23099	TIGARD, OR 97281-3099	HO NOD	21-400-PA, 401-ZC
BURKE, BRENDA N ET AL	C/O NORTHWEST COMMUNITY MGMT CO (A)		4931 DELOS WAY	OCEANSIDE, CA 92056	HO NOD	21-400-PA, 401-ZC
DISPENZA JUDITH ANN			322 BUCHANON	HOLLYWOOD, FL 33019	HO NOD	21-400-PA, 401-ZC
STAVRO, CRISTINA NICOLE			61708 SE MARGOLD LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
BLAIR, COURTNEY L			61712 MARGOLD LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
PHYLLIS H MEDNICK TRUST	MEDNICK, PHYLLIS H TTEE		61705 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
JDD PROPERTIES LLC			2463 NW MORNINGWOOD WAY	BEND, OR 97703-7022	HO NOD	21-400-PA, 401-ZC
CHARLES P LARSON SOLE PROP 401K PLAN	LARSON, CHARLES P & LAURIE P TTEES		270 VISTA RIM DR	REDMOND, OR 97756	HO NOD	21-400-PA, 401-ZC
NEIL, JENNIFER			61723 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
BOATWRIGHT, STEVEN F & PAMELA F			61706 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
CHERKOSS, ARNE I & LAUREL A			61712 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
CATHY DECOURCEY TRUST	DECOURCEY, CATHERINE L TRUSTEE		61718 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
JOHNSON- GOODMAN REVOCABLE FAM TR	JOHNSON, GEORGE H TRUSTEE ET AL		61724 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
LEAGELD, DAVID S & RUTH M			61730 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
ROGERS, LANI			61742 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
GAYLA L SCHAMBURG TRUST	SCHAMBURG, GAYLA L TTEE		61748 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
GIBSON, SALLY J			61754 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
DICKINSON, SANDRA			61760 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
MOTT, BRIAN H ET AL			3311 NW MORNINGWOOD CT	BEND, OR 97703	HO NOD	21-400-PA, 401-ZC
BEND PARKS & RECREATION DIST			799 SW COLUMBIA ST	BEND, OR 97702-3218	HO NOD	21-400-PA, 401-ZC
OCCUPANT	C/ DESCHUTES COUNTY SHERIFF'S OFFICE		63333 HWY 20 W	BEND, OR 97703	HO NOD	21-400-PA, 401-ZC
BERMUDEZ, GUILLERMO J & ALICIA F			9855 NW SKYLINE HEIGHTS DR	PORTLAND, OR 97229	HO NOD	21-400-PA, 401-ZC
MCCLUNG, DONNA S			21254 LILY WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
CARROLL, DAVID L & SPONGBERG, CAROL A			61707 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
SLATER, BARBARA F & SLATER, DEBRA M			61703 CAMELIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
GARDENSIDE HOME OWNERS ASSOC	C/O NORTHWEST COMM MGMT CO LLC (A)		PO BOX 23099	TIGARD, OR 97281-3099	HO NOD	21-400-PA, 401-ZC
JUDITH K WHITEHEAD REVOCABLE TRUST	WHITEHEAD, JUDITH K TTEE		61703 TULIP WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
HEBREW 135 LLC			21810 PALOMA DR	BEND, OR 97701	HO NOD	21-400-PA, 401-ZC
GRAEBER, ALYSSA			14936 SE GLADSTONE ST	PORTLAND, OR 97236-2441	HO NOD	21-400-PA, 401-ZC
HANSEN, KAREN			61715 TULIP WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
BOBBY & USA BYRD REVOCABLE TRUST	BYRD, BOBBY R & LISA N TTEES		21253 VIOLET LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
ORANGE CAT PROPERTIES LLC			61535 S HIGHWAY 97 #STE 5-604	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
SCHRON, JACQUELINE S & CAMERON	C/O JAMES P OLMSTED, MEMBER (A)		21245 VIOLET LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
SHOOP, DANIEL H & KIMBERLY L			21241 VIOLET LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
BROUGH, THOMAS J			21237 VIOLET LN	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC
WELLS, TODD W & EMILY W			61754 DARLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-ZC

ANTONSEN, CHET & SKAAR, THOMAS C		612 NE SAVANNAH DR #3	BEND, OR 97701	HO NOD 21-400-PA, 401-2C
TODD, VICKI & KEVIN		61694 RIGEL WAY	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
TODD, VICTORIA & KEVIN		61694 RIGEL WAY	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
SEBRING, MILDRED I		20709 TANGO CREEK AVE	BEND, OR 97701	HO NOD 21-400-PA, 401-2C
PARKS, JOHN B & MARLENE A		21285 STARLIGHT DR	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
BEVERLY E GORDON REV TRUST	GORDON, BEVERLY E TTEE	21281 STARLIGHT DR	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
PROSSER FAMILY REVOCABLE LIVING TRUST	PROSSER, STEVE JAMES TTEE ETAL	21277 STARLIGHT DR	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
COWAN, PAUL VERNON		21273 STARLIGHT DR	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
WEBB, DARRELL D & LINDA J		471 SW SCHAEFFER RD	WEST LINN, OR 97068	HO NOD 21-400-PA, 401-2C
ROBERT & JOAN FAIRBANKS TRUST	FAIRBANKS, JOAN L TTEE	21268 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
GRACIA, CHRISTOPHER E & JILL M		21272 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
MOORE, BRIAN A		21276 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
MARGARET ANN MOORE IRREVOCABLE TRUST	MOORE, BRIAN TTEE	21276 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
VANBUREN, C LANCE & LORENA KAY		21284 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
ENGLUND ESTATES LLC		8300 SW PETERS RD	PORTLAND, OR 97224	HO NOD 21-400-PA, 401-2C
MARSH TRUST	MARSH, WALLACE A JR & ELSIE A TTEES	21261 STARLIGHT DR	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
WEYBRIGHT FAMILY TRUST	WEYBRIGHT, DANIEL R & BARBARA TTEES	21257 STARLIGHT DR	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
PENDERGAST, TYLER M & AMY M		21253 STARLIGHT DR	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
BOURDAGE, JOSHUA K & MARISA K		21252 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
TELLER, STEVEN D & CYNTHIA C		21256 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
HAWKINS, LYBE L		21260 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
FERNANDEZ, XIMENA C		1059 NE PARKVIEW CT	BEND, OR 97701-6940	HO NOD 21-400-PA, 401-2C
BOATMAN, SARAH & SCOTT		5170 APELLIA ST	KAPAA, HI 96746	HO NOD 21-400-PA, 401-2C
STOCKLAND, ADAM T & SARAH J		21279 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
SCHAAB, PHOEBE A		21275 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
THOMAS, DAVID J & COLLEEN A		21271 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
HERZOG, MICHAEL E		21267 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
DRYHOLLER LLC		2021 NE 8TH ST	BEND, OR 97701	HO NOD 21-400-PA, 401-2C
GUTIERREZ, TREDE & DYLAN		21259 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
BILYEU, JEFFERY DEAN & KAREN		21255 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
SMITH, KYLE S ET AL		21251 HURITA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
CATAPANO, ERIC A		21250 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
TRAN, QUANG P		21254 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
HANSEN, DALE A & PAMELA R		21258 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
GARNER, JASON & CRYSTAL		21262 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
HALE, KRISTAN N & ALEXIS GRACE		21266 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
SIEVEYSON, PENNY JO		21270 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
WHITE, SARA M		11225 SW CYNTHIA CT	BEAVERTON, OR 97008	HO NOD 21-400-PA, 401-2C
ZINNER, JOSHUA P & HILLARY L		21278 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
BAERT, CHRISTOPHER & JESSICA L		21282 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
BIEL, JESSICA & HOOVER, JEVIN TYLER		61664 RIGEL WAY	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
CARMACK, CYNTHIA A		61660 KACI LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
RIDER, GREGORY E & SUZANNE M		21281 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
WELLEN, ROBERT & KATHERINE		202 STERLINGTOWN LN	UNION, ME 04862	HO NOD 21-400-PA, 401-2C
CANO, FRANCISCO & MELISSA		21273 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
BJORK, CHARLES & PAMELA		21269 CAPELLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
CERRUTI, BLAKE C & HEATHER E		61655 GEMINI WAY	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
S&H ANDERSON 1-03 LLC		3214 NE 42ND ST #STE C	VANCOUVER, WA 98663	HO NOD 21-400-PA, 401-2C
TEH, RONNIE W & CAPECE, SONIA		61656 KACI LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
LEAHY, BRIAN & KIM K		2949 NW BORDEAUX LN	BEND, OR 97703	HO NOD 21-400-PA, 401-2C
DOUGHMAN, ROBERT J & KATHRYN M		61648 KACI LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
DOWNEY, SCOTT & DIXIE		PO BOX 782	WILSONVILLE, OR 97070	HO NOD 21-400-PA, 401-2C
PUPO, LUCAS K ET AL		61637 KACI LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
JKC HOMES LLC		PO BOX 25822	EUGENE, OR 97402	HO NOD 21-400-PA, 401-2C
VANBLARIQOM, JEROME BRADLEY ET AL		21285 DAYLILY AVE	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
COLE, PATRICIA RENEE QUINLAN		21279 DAYLILY AVE	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
CAFFEY, ALEXANDER H ET AL		1358 47TH AVE	SAN FRANCISCO, CA 94122	HO NOD 21-400-PA, 401-2C
ROSENGARTH FAMILY REVOCABLE TRUST	ROSENGARTH, SHARRON G TTEE	21279 DOVE LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
CROSSE, STEVEN E & DIMITRIA		21283 DOVE LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
ROSENGARTH FAMILY TRUST	ROSENGARTH, TONY J & NANCY A TTEES	21259 CHILLIWACK WAY	BEND, OR 97701	HO NOD 21-400-PA, 401-2C
ANTONSEN, CHET & SKAAR, THOMAS C		62765 POWELL BUTTE HWY	BEND, OR 97701	HO NOD 21-400-PA, 401-2C
SLOCUM, WILLIAM T JR & MECHELLE M		21281 BELLFLOWER PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
SPATES, DEMETRIUS C		21273 BELLFLOWER PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
WIGGINS, BRITTNEY D		21285 BELLFLOWER PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
LEAH SULLIVAN LIVING TRUST ET AL	SULLIVAN, LEAH TTEE	8412 SWEETWATER CIR	HUNTINGTON BEACH, CA 92646	HO NOD 21-400-PA, 401-2C
WEAVER, SANDRA		21278 WOODRUFF PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
RADKEY, ROBERT & HEDDY		PO BOX 1869	BANDON, OR 97411	HO NOD 21-400-PA, 401-2C
BETTY LOU BIBER TRUST	BIEBER, BETTY LOU TTEE	61727 SE YARROW LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
CHARLES & JEANNE CLAWSON FAMILY TRUST	CLAWSON, CHARLES R & JEANNE A TTEES	61719 YARROW LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
BRANDENHORST, JOHN D III		61724 MARIGOLD LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
ST CLAIR, JULIE		61716 MARIGOLD LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
BARLONG, IRIS M		61703 YARROW LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
PATTON, SYDNEY JOAN		61715 YARROW LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
COCCO FAMILY REVOCABLE TRUST	COCCO, CHESTER R & VIRGINIA S TTEES	60350 WINDSONG LN	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
WILLIAMS, TROY & VANHORN, CAITLYN		61776 DARLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
GAROUTTE, MICHAEL S & FRAZIER, LINDA		61772 DARLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
WAYBRIGHT, TREVOR A & JOY A		61768 DARLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
KOCH, DANIEL & LETA		61764 DARLA PL	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
ROSENGARTH DEVELOPMENT LLC		21259 CHILLIWACK WAY	BEND, OR 97702-7717	HO NOD 21-400-PA, 401-2C
FLINT, MARIE KAY		61760 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
ALEXA DELLINGER TRUST	DELLINGER, ALEXA B TTEE	21286 DARNEL AVE	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
ZHU, XIAOGANG & LI, MINGWEI		62977 MARSH ORCHID DR	BEND, OR 97701	HO NOD 21-400-PA, 401-2C
FREDRICKSON, KATIE		21278 DARNEL AVE	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
GREENWALD, JAY A & MARY F		21272 DARNEL AVE	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
SIGNATURE HOMEBUILDERS LLC		PO BOX 1886	BEND, OR 97709	HO NOD 21-400-PA, 401-2C
GERALD S ALVES & EILEEN B ALVES REV TR	ALVES, GERALD S & EILEEN B TTEES	21262 DARNEL AVE	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
ZORNADO, BRANDON & SHELLEY		21258 DARNEL AVE	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
BENNETT, BRIAN ETAL		1381 NW TRENTON AVE	BEND, OR 97703	HO NOD 21-400-PA, 401-2C
ROBERT E SAUTER REVOCABLE LIVING TRUST	SAUTER, ROBERT E TTEE	PO BOX 8644	BEND, OR 97708	HO NOD 21-400-PA, 401-2C
GEORGETON, LEE C & KRISTIN J		61793 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
MILLS, ROBERT B & GRIFFIN, EMDEN R		61789 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
ROSS FAMILY TRUST	ROSS, PAUL E & EMILY KATHLEEN TTEES	61781 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
RILEY, ANTON & GINA		108 MOFFETT BLVD #C113	MOUNTAIN VIEW, CA 94043	HO NOD 21-400-PA, 401-2C
SHAHVAR, RACHEL NATALIE		61773 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
CHOPRA, PANKAJ & ANITA		61769 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
HAUCK, RANDY J & MICHELLE L		5101 BOULDER WAY	YAKIMA, WA 98901	HO NOD 21-400-PA, 401-2C
LEASE, ARIANNA & BRIAN ET AL		61761 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
WILKINS, BRENT N		61764 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
LEE, ROBERT ALLAN		61768 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
TED & SUE MIGDAL 2003 REVOCABLE TRUST	MIGDAL, THEODORE N & SUSAN A TTEES	1053 LA GRANDE AVE	NAPA, CA 94558	HO NOD 21-400-PA, 401-2C
KRUKEMEYER, MARY		61776 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
MCCULLOUGH, KATHRINE ANNE		61780 SE CAMELLIA ST	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
LI GARDNER LLC		61333 KING JEHU WAY	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
PHARAOH, NATHANAEL SR & LEAH		21261 DARNEL AVE	BEND, OR 97702	HO NOD 21-400-PA, 401-2C
CRIMMINS, JOANNA MARIE		1005 LEE AVE	SAN LEANDRO, CA 94577	HO NOD 21-400-PA, 401-2C
HAWK, DEBRA JO		8402 SLEEPY HOLLOW RD NE	WOODBURN, OR 97071-9571	HO NOD 21-400-PA, 401-2C
CROGHAN, RYLEY G & HALLEY T		21273 DARNEL AVE	BEND, OR 97702	HO NOD 21-400-PA, 401-2C

WINDELL, CALEB & JOHNS, MICHELLE
FRUMENTO, AMANDA C
VINOVICH, SEURINA A & MICHAEL
HESTERBERG, MARISSA D & MARK A
BLYTHE, JESSE J & CASSIE J
JOHANSEN, DAVID L & PATRICIA J
CYP CAR NIPPERT LIVING TRUST
FLANNERY, JULIE LINCOLN
BRADSHAW TRUST
SWEET, JUSTIN LEE & KELSEE ANN
UPTAIN, KYLE STEVEN & KIMBERLY ANN
BROOKFIELD, MARGARET
WOOD, JUSTIN & AMBER
SPRINGER FAMILY TRUST
SPRINGER FAMILY TRUST

NIPPERT, JAMES E TTEE ET AL
BRADSHAW, SCOTT HASTINGS TTEE ET AL

SPRINGER, RICHARD L & GEORGIA A TTEES
SPRINGER, RICHARD L & GEORGIA A TTEES

C/O GEORGIA A SPRINGER TTE

21277 DARNEL AVE
21281 DARNEL AVE
21285 DARNEL AVE
21289 DARNEL AVE
21314 SE DAYLILY AVE
4069 CRESSIDA PL
21302 SE DAYLILY AVE
21296 SE DAYLILY AVE
2500 SUNNY GROVE AVE
21284 SE DAYLILY AVE
21278 SE DAYLILY AVE
1414 NW BALTIMORE AVE
21266 SE DAYLILY AVE
3450 SHALLOW SPRINGS TERR
3450 SHALLOW SPRINGS TERR

BEND, OR 97702
BEND, OR 97702
BEND, OR 97702
BEND, OR 97702
BEND, OR 97702
WOODBRIDGE, VA 22192
BEND, OR 97702
BEND, OR 97702
MCKINLEYVILLE, CA 95519
BEND, OR 97702
BEND, OR 97702
BEND, OR 97703
BEND, OR 97702
CHICO, CA 95928
CHICO, CA 95928

HO NOD 21-400-PA, 401-ZC
HO NOD 21-400-PA, 401-ZC
HO NOD 21-400-PA, 401-ZC
HO NOD 21-400-PA, 401-ZC
HO NOD 21-400-PA, 401-ZC
HO NOD 21-400-PA, 401-ZC
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HO NOD 21-400-PA, 401-ZC
HO NOD 21-400-PA, 401-ZC
HO NOD 21-400-PA, 401-ZC

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18, the Deschutes County Zoning Map, to * ORDINANCE NO. 2022-002
Change the Zone Designation for Certain Property *
From Exclusive Farm Use to Multiple Use
Agricultural and Prescribing an Effective Date on the
90th Day After the Date of Adoption.

WHEREAS, Central Oregon Irrigation District (COID) applied for a Deschutes County Comprehensive Plan Map (247-21-000400-PA) and Deschutes County Zoning Map (247-21-000401-ZC) change, to rezone certain property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on August 31, 2021 before the Deschutes County Hearings Officer and, on October 12, 2021 the Hearings Officer recommended approval of the comprehensive plan map and zone change; and

WHEREAS, on this same date, the Board of County Commissioners (“Board”) adopted Ordinance 2022-001 amending DCC Title 23, changing the plan designation of the property from Agriculture (AG) to Rural Residential Exception Area (RREA); and

WHEREAS, a change to the Deschutes County Zoning Map is necessary to implement the plan amendment adopted in Ordinance 2022-001; and

WHEREAS, pursuant to DCC 22.28.030(C), the Board heard *de novo* the application for zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10) to conform to the newly adopted plan amendment; now, therefore,

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

Section 1. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from Exclusive Farm Use (EFU) to Rural Residential Exception Area (RREA) for certain property described in Exhibit “A” and depicted on the map set forth as Exhibit “B”, with both exhibits attached and incorporated by reference herein.

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached as Exhibit “C”, and incorporated by reference herein.

///

Section 5. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption.

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

Date of 1st Reading: _____ day of _____, 2022.

Date of 2nd Reading: _____ day of _____, 2022.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Patti Adair				
Anthony DeBone				
Phil Chang				

Effective date: _____ day of _____, 2022.

ATTEST

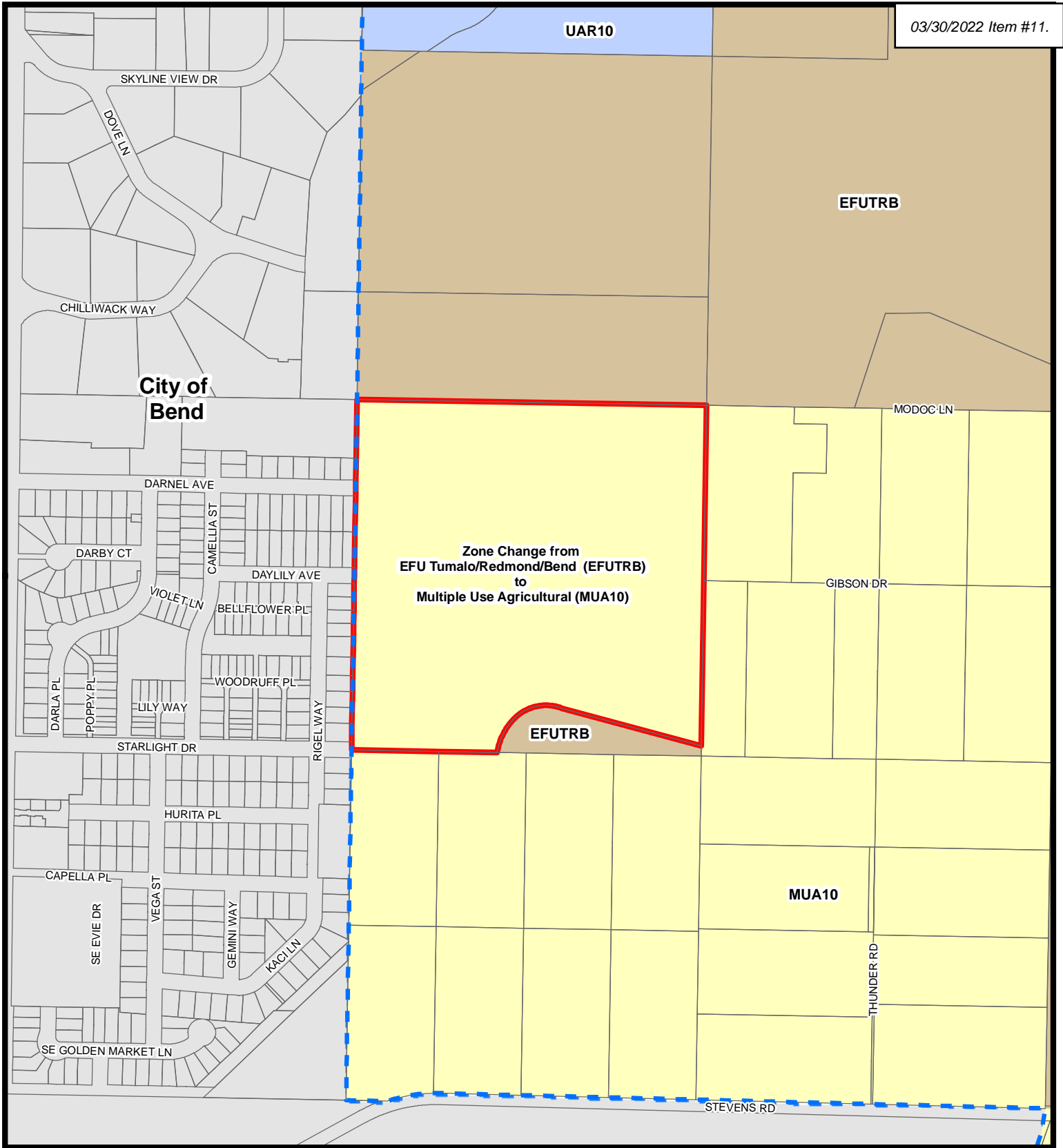
Recording Secretary

Exhibit "A"

Legal Description

A parcel of land situated in the Northeast Quarter of the Southwest Quarter of Section Two (2), Township Eighteen (18) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County Oregon, more particularly described as follows:

All of that portion of the Northeast Quarter of the Southwest Quarter of Section 2 lying north of the centerline of the Central Oregon Canal.



**Zone Change from
EFU Tumalo/Redmond/Bend (EFUTRB)
to
Multiple Use Agricultural (MUA10)**

Legend

Proposed Zone Change Boundary

Zoning

EFUTRB - Tumalo/Redmond/Bend Subzone

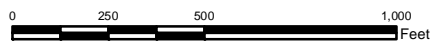
MUA10 - Multiple Use Agricultural

UAR10 - Urban Area Reserve

Bend Urban Growth Boundary

**PROPOSED
ZONING MAP**

Exhibit "B"
to Ordinance 2022-002



December 17, 2021

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Patti Adair, Chair

Tony DeBone, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 2021
Effective Date: _____, 2021

DECISION OF THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: 247-21-0000400-PA, 401-ZC

HEARING: August 31, 2021, 6:00 p.m.
Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

**APPLICANT/
OWNER:** CENTRAL OREGON IRRIGATION DISTRICT

LOCATION: Map and Taxlot: 1812020001000
61781 WARD RD, BEND, OR 97702

**ATTORNEY
FOR APPLICANT:** Tia M. Lewis
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond Street, Suite 500
Bend, OR 97702

**TRANSPORTATION
ENGINEER:** Joe Bessman
Transight Consulting, LLC

REQUEST: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

HEARINGS OFFICER: Stephanie Marshall

STAFF CONTACT: Tarik Rawlings, Associate Planner¹
Phone: 541-317-3148
Email: Tarik.Rawlings@deschutes.org

RECORD CLOSED: September 23, 2021

¹ This matter was originally assigned to Brandon Herman, Assistant Planner. It was re-assigned to Mr. Rawlings prior to the public hearing.

I. STANDARDS AND APPLICABLE CRITERIA

Title 18 of the Deschutes County Code, the County Zoning Ordinance:

- Chapter 18.04, Title, Purpose, and Definitions
- Chapter 18.16, Exclusive Farm Use Zones (EFU)
- Chapter 18.32, Multiple Use Agricultural Zone (MUA10)
- Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

- Deschutes County Comprehensive Plan
 - Chapter 2, Resource Management
 - Chapter 3, Rural Growth Management
 - Appendix C, Transportation System Plan

- Oregon Administrative Rules (OAR), Chapter 660
 - Division 6, Forest Lands
 - Division 12, Transportation Planning
 - Division 15, Statewide Planning Goals and Guidelines
 - Division 33, Agricultural Land

- Oregon Revised Statutes (ORS)
 - Chapter 215.211, Agricultural Land, Detailed Soils Assessment

II. FINDINGS OF FACT

A. LOCATION: The subject property has a situs address of 61781 Ward Road, Bend, and is further identified as Tax Lot 1000 on Assessor’s Map 18-12-02.²

B. LOT OF RECORD: Tax Lot 1000 is 36.65 acres in size and has not previously been verified as a legal lot of record. Per DCC 22.04.040 Verifying Lots of Record, lot of record verification is required for certain permits:

- B. Permits requiring verification**
 - 1. Unless an exception applies pursuant to subsection (B)(2) below,**

² Several commentators expressed concern regarding the address of the subject property, particularly related to future access if and when the property is developed in the future. Staff stated at the public hearing that an address coordinator will be assigned with respect to future development permit application(s) and the address(es) will be vetted through emergency services.

verifying a lot parcel pursuant to subsection (C) shall be required to the issuance of the following permits:

- a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);**
- b. Any permit for a lot or parcel that includes wetlands as show on the Statewide Wetlands Inventory;**
- c. Any permit for a lot or parcel subject to wildlife habitat special assessment;**
- d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel'**
- e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;**

In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, the Hearings Officer held to a prior Zone Change Decision (*Belveron* ZC-08-04) that a property's lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, the applicant will be required to receive lot of record verification prior to any development on the subject property. Therefore, the Hearings Officer finds this criterion does not apply.

C. ZONING AND PLAN DESIGNATION: The subject property is zoned Exclusive Farm Use (EFU) and is designated Agricultural (AG) in the Deschutes County Comprehensive Plan. The property does not have any Goal 5 resource designations.

D. PROPOSAL: The applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from an Agricultural (AG) designation to a Rural Residential Exception Area (RREA) designation. The applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the subject property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The applicant asks 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. The applicant states that no exception to Statewide Planning Goal 3, Agricultural Land, is required because the subject property is not agricultural land. The application does not include a development proposal. The applicant notes that it could subdivide the property under Title 17 or through the County's cluster subdivision rules in Title 18, or could hold the property for future urbanization consistent with the development pattern of the surrounding lands.

The applicant's attorney stated at the public hearing that the proposed re-designation and rezoning would allow the property to be considered in the next UGB expansion by the City of Bend. She stated there were no immediate plans to develop the property in the near future.

Submitted with the application is an Order 1 Soil Survey of the subject property, titled "Soil Assessment for 37.7-Acre Parcel Lot 1000, Bend, Oregon" (hereafter referred to as the "soil study") prepared by soil scientist Andy Gallagher, CPSSc/SC 03114 of Red Hill Soils. The applicant also submitted a traffic analysis prepared by Transight Consulting, LLC titled "61781 Ward Road Rezone" hereby referred to as "traffic study." Additionally, the applicant submitted an application form, a burden of proof statement, and other supplemental materials, all of which are included in the record for the subject applications.

E. SITE DESCRIPTION: The subject property is approximately 36.65 acres in size and is adjacent to both Bend's city limits and Urban Growth Boundary (UGB) to the west. The property is relatively level with mild undulating topography and collapsed lava tube features. Vegetation consists of juniper, sage brush, and grasses. A portion of the site was historically mined for dirt and fill for maintenance purposes of Central Oregon Irrigation District's (COID) delivery systems. The site is undeveloped except for COID's main canal located along the southern border and offshoot irrigation ditches in the southwestern and southeastern portions of the subject property. Access to the site is provided by stubbed local street connections including Darnel Avenue and Daylily Avenue, located in residential subdivisions in the City of Bend to the west.

The subject property does not have water rights, and has not been farmed or used in conjunction with any farming operation in the past. The Natural Resources Conservation Service (NRCS) map shown on the County's GIS mapping program identifies two soil complex units on the property: 36A, Deskamp loamy sand and 58C, Gosney-Rock outcrop-Deskamp complex. The predominant soil complex on the subject property is 58C, which is not a high-value soil as defined by DCC 18.04; 36A is not considered a high-value soil when irrigated.

The subject property has no irrigation, no historical use of being farmed, and is overgrown with western Juniper, sagebrush, rabbit brush and bunch grasses. COID has intermittently used the property over the years to mine for dirt that was used for maintenance and repairs of the District's delivery systems.

As discussed in detail below in the Soils section, an Agricultural Soils Capability Assessment (Order 1 soil survey) was conducted on the property by Certified Professional Soil Scientist Andy Gallagher which determined that the property is not agricultural land; Class 3 irrigated and Class 6 non-irrigated soils exist in small pockets interspersed with lava tubes and rocky, shallow soils, creating severe limitations for any agricultural use on the property or in conjunction with other neighboring lands.

There is a private easement along the COID canal. In addition, as noted in the Bend Park and Recreation District's public comment, BMPRD has a planned trail, the Central Oregon Historic Canal Trail, identified in its comprehensive plan that runs through the subject property.

F. SOILS: According to Natural Resources Conservation Service (NRCS) maps of the area,

the subject property contains two different soil types as described below. The subject property contains 58C – Gosney-Rock Outcrop-Deskamp complex and 36A – Deskamp loamy sand.

The applicant submitted a soil study report (applicant's Exhibit 5, Soil Assessment for 37.7-Acre Parcel Lot 1000, Bend, Oregon, dated December 2, 2020), which was prepared by a qualified soils professional approved by the Department of Land Conservation and Development (DLCD), which can be used by property owners to determine the extent of agricultural land as defined in Oregon Administrative Rule (OAR) 660-033 Agricultural Land,

The certified soils scientist and soil classifier conducted field work which included 41 test pits and observations of surface rock outcrops and determined the subject property is comprised of soils that do not qualify as Agricultural Land⁴. The purpose of this soil study was to inventory and assess the soils on the subject property⁵ and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The NRCS soil map units identified on the property are described below.

36A, Deskamp loamy sand, 0 to 3 percent slopes: This soil complex is composed of 85 percent Deskamp soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils are somewhat excessively drained with a rapid over moderate permeability, and about 5 inches of available water capacity. Major uses of this soil type are irrigated cropland and livestock grazing. The agricultural capability rating for 36A soils are 3S when irrigated, and 6S when not irrigated. This soil is high-value when irrigated. Approximately 33.7 percent of the subject parcel is made up of this soil type.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. The major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 66.3 percent of the subject parcel is made up of this soil type..

58C is not a high value soil as defined by DCC 18.04 ("High Value Farmland"). 36A is considered a high value soil when irrigated. There is no irrigation on the property.

³ As defined in OAR 660-033-0020, 660-033-0030

⁴ As defined in OAR 660-033-0020, 660-033-0030.

⁵ The canals were not rated for capability class, but for purposes of the assessment were included with the acreage that is not suited to agricultural production.

Through numerous soil test pits and observations on the property Soil Scientist Andy Gallagher remapped the soils using a high intensity Order 1 soil survey and concluded that the subject property is comprised predominantly of Class 7 and 8 soils (nearly 64%) and is not agricultural land. The Class 3 irrigated and 6 non irrigated soils exist in small pockets interspersed with lava tubes, rocky, shallow soils creating severe limitations for any agricultural use on the property or in conjunction with other neighboring lands. An excerpt of Mr. Gallagher's summary and conclusions of his findings follows:

In the revised Order-1 soil mapping, the Deskamp (Class 3 irrigated and 6 nonirrigated) are mapped as a consociation and only make up 29 percent of the parcel. The Gosney soils along with very shallow soils and rock outcrops are mapped as the Gosney-Rock Outcrop Complex because all three components of the complex are capability Class 7 or 8. This complex makes up 63.7 percent of the parcel. The irrigation canals make up 7.4 percent of the area. Based upon the findings of this Order-1 soil survey, the subject parcel is predominantly Class 7 and 8 soils and therefore is not "agricultural land" within the meaning of OAR 660-033-0020(1)(a)(A).

The soil mapping and on-site studies also show the subject property is not agricultural land within the meaning of OAR 660-033-0020(1)(b) as it is not adjacent to or intermingled with land in capability classes 1-6 within a farm unit. The class 3 irrigated and 6 non irrigated soils on the subject property have not been farmed or utilized in conjunction with any farming operation in the past. These soil units exist in small pockets interspersed with lava tubes, rocky, shallow soils creating severe limitations for any agricultural use either alone or in conjunction with other lands.

No rebuttal evidence was presented to refute the applicant's evidence regarding soils. The applicant's soils study has been verified by DLCD.

G. SURROUNDING LAND USES: The subject property is surrounded by urban development to the west within the Bend city limits; to the east and south are County exception lands zoned MUA10 developed with homes and small-acreage irrigation for pasture and hobby farm uses; and irrigated farmland zoned EFUTRB to the north and northeast. The adjacent properties are outlined below in further detail:

North: North and northeast of the subject property is an area of EFU-zoned property. The adjacent property to the north, Tax Lot 1001 (Assessor's Map 18-12-02) is a 12.45-acre EFU-zoned property that is partially irrigated and developed with a nonfarm dwelling (approved under County file CU-01-75). Northeast is Tax Lot 201 (Assessor's Map 18-12-02), a 53.30-acre farm parcel that is irrigated, receiving farm tax deferral, and developed with a single-family dwelling and accessory structures.

East: East of the subject property are two parcels zoned MUA10. Tax Lot 1102 (Assessor's Map 18-12-02) is a 5.55-acre parcel developed with a single-family dwelling, accessory

structures, and is partially irrigated. Tax Lot 1001 (Assessor's Map 18-12-02) is a 2.5-acre parcel developed with a single-family dwelling, accessory structures, and is partially irrigated.

West: West of the subject property are residential subdivisions located in the City of Bend and developed to urban standards. These include Rosengarth Estates and Gardenside PUD in the RS Zone. Northwest is a 2-acre parcel zoned RL and developed with a residence.

South: The abutting parcel southeast of COID's main canal is a 3.34-acre lot zoned EFUTRB and developed with a single-family dwelling and is partially irrigated. Southwest is Hansen Park (Tax Lot 1404 of Assessor's Map 18-12-02), a 5-acre undeveloped park zoned MUA10 and owned by Bend Metro Parks and Recreation District. East of Hansen Park is a 5-acre parcel zoned MUA10 and developed with a residence (Tax Lot 1407 of Assessor's Map 18-12-02).

H. PUBLIC AGENCY COMMENTS: The Planning Division mailed notice of the applications on June 11, 2021 to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the Transight April 13, 2021, traffic study to change the comp plan designation from Agriculture to Rural Residential Exception Area (RREA) and the zoning from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10) for 36.65 acres at 61781 Ward Rd, aka 18-12-02, TL 1000. Staff finds the study needs to be modified to comply with the Transportation Planning Rule and Deschutes County's accepted practices to analyze plan amendments and zone changes.

For "reasonable worst-case scenario" the County compares and contrasts the highest trip generator permitted outright in both the current zone and the requested zone. DCC 18.16.020 lists those uses permitted outright in EFU. DCC 18.16.025 lists other outright permitted uses that meet applicable criteria in either DCC 18.16.038, 18.16.042, and review under DCC 18.124. The TIA cites to marijuana production facility, which the County has analyzed under the Warehouse category of the Institute of Traffic Engineers (ITE) Trip Generation Manual. However, the County has opted out of the state's marijuana processing program and thus this use and its analog of Warehouse should not be used. Instead, staff would utilize Winery (DCC 18.16.025(F)) as a reasonable worst case scenario.

DCC 18.32.020 lists outright permitted uses for MUA-10. The highest trip generator is a cluster development of single-family homes within one-mile of a UGB, per DCC 18.32.040(A), as the traffic study correctly notes.

The study needs to be redone to show the difference between winery and a cluster development to determine if there is a significant effect and any difference in the number of p.m. peak hour trips. This would also require the volumes for the trip distribution figures to be redone as well.

Upon receipt of the County Senior Transportation Planner's initial comment, above, the applicant submitted a revised traffic study, dated June 8, 2021. No further comments were offered by the County's Senior Transportation Planner.

Bend Park and Recreation District, Henry Stroud, AICP, Planner

The Bend Park and Recreation District has a planned trail, the Central Oregon Historic Canal Trail, identified in our comprehensive plan that runs through the subject property. While we understand that this application is just for a zoning change, the District would like to work with the applicant to acquire a trail easement for the COHCT prior to any future development of the property.

The following agencies did not respond to the notice: Deschutes County Assessor, Bend Fire Department, City of Bend Planning Department, City of Bend Public Works Department, ODOT Region 4, and City of Bend Growth Management Department.

I. PUBLIC COMMENTS: The Planning Division mailed notice of the conditional use application to all property owners within 750 feet of the subject property on June 11, 2021. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on June 25, 2021. Public comments were received from neighboring property owners. Public comments are summarized as follows:

The first comment was received from Jeff Sundberg, a resident and owner of property located at 61710 Gibson Drive, Bend, OR 97702 on June 15, 2021:

Hi Brandon,

I received a letter from Deschutes County regarding COID applying for new permits. I live at 61710 Gibson Drive, Bend, Or, 97702. I live next to the property in question, 61781 Ward Road. It looks like COID is requesting to go from agricultural and farm use zoning to rural residential exception area and multiple use agricultural zoning.

Does this mean they want to put in a housing development?

I was wondering if this response by email will suffice if I want to be notified of public hearings related to this application or if I still have to write a letter requesting to be notified of any decision or public hearing.

*Does any of this change my easement with COID or should I contact them directly?
Thanks and let me know anything you can about this land change please.*

Staff responded to Mr. Sundberg's email on June 16, 2021 as follows:

Hi Jeff,

Thanks for reaching out.

As you noted, this is an application for a Comprehensive Plan/Zoning change so I am unaware of what COID intends to do with the property in the future. If they were to take the residential route, a minimum subdivision lot size of 10 acres still applies to the property. Because you received the Notice of Application, you are also on the list to receive the Notice of Public Hearing, which is tentatively set for July 27th.

With regards to your easement agreement, I am not inclined to think this will change anything but contacting COID directly is a good idea.

Let me know if you have any other questions.

Take care,

Brandon

The second comment was received from Kecia Weaver, a resident of 21435 Modoc Lane, Bend, OR 97702 on June 18, 2021:

"My name is Kecia Weaver I live at 21435 Modoc Lane Bend, OR 97702 with my spouse who is listed property owner, Patrick McCoy. On 6/17/21 I read the notice of application for the above listed property. I would like to formally dispute the requested zoning changes. I have several concerns, to include the following:

- 1) *Irrigation/Water Rights – As a small farm operator with seasonal livestock I am concerned that the proposed changes may further draw from my water access which has been limited and may be further limited due to drought conditions. More users in the proposed Multiple Use Agriculture may further draw down water allocations.*
- 2) *Wildlife Habitat – Having lived here for over 6 years. I know the proposed area to be home to deer, rabbits, birds and other wildlife which will be disturbed.*
- 3) *Extensive residential development in the immediate area- Over the past few months, extensive development has been proposed both to the north and south of our neighborhood specifically several hundred acres south of Stevens Road and north of Bear Creek Road adjacent to Ward Road.*
- 4) *Traffic concerns – increased traffic will occur in the area with other proposed developments. I am concerned the points of entrance and egress to this proposed area will add to the impact to our neighborhood as well.*
- 5) *Overall rapid growth concerns for Deschutes County- As observed by pitfalls of the*

rapid growth in the City of Bend over the past decade, I would encourage Deschutes County to adhere to a slower growth model.

- 6) *Decrease in property value- This proposed change will drastically impact the view to the west of my property when it is developed.*

With respect to the natural beauty and appeal of this County we have chosen to call home and as a taxpayer and voter, I implore the Deschutes County planning department to deny this application at this time. I wish to be notified of all public hearings related to this application and any decision. My address is 21435 Modoc Lane Bend, OR 97702."

The third comment was received from Patrick McCoy, a neighboring property owner and resident of 21435 Modoc Lane, Bend, OR 97702 on June 18, 2021:

"My name is Patrick McCoy a home and landowner at 21435 Modoc Lane Bend, OR 97702. On 6/17/21 I received the notice of application for the above listed property. With little time to research to this proposal, based on the information I have obtained, I would like to formally dispute the requested zoning changes. My concerns are numerous and I will highlight the following:

- 1) *Irrigation/Water Rights – As a small farm operator with seasonal livestock I am concerned that the proposed changes may further draw from my water access which has been limited and may be further limited due to drought conditions. More users in the proposed Multiple Use Agriculture may further draw down water allocations.*
- 2) *Wildlife Habitat – Having lived here for over 6 years. I know the proposed area to be home to deer, rabbits, birds and other wildlife which will be disturbed.*
- 3) *Extensive residential development in the immediate area- Over the past few months, extensive development has been proposed both to the north and south of our neighborhood specifically several hundred acres south of Stevens Road and north of Bear Creek Road adjacent to Ward Road.*
- 4) *Traffic concerns – increased traffic will occur in the area with other proposed developments. I am concerned the points of entrance and egress to this proposed area will add to the impact to our neighborhood as well.*
- 5) *Overall rapid growth concerns for Deschutes County- As observed by pitfalls of the rapid growth in the City of Bend over the past decade, I would encourage Deschutes County to adhere to a slower growth model.*
- 6) *Decrease in property value- This proposed change will drastically impact the view to the west of my property when it is developed.*

With respect to the natural beauty and appeal of this County we have chosen to call home and as a taxpayer and voter, I implore the Deschutes County planning department to deny this application at this time. I wish to be notified of all public hearings related to this application and any decision. My address is 21435 Modoc Lane Bend, OR 97702."

The fourth public comment was received from Kyle Weaver on June 18, 2021:

"I am writing to express by objection to the proposed changes east of 27th in the pursuit of yet another neighborhood development. The East side of Bend is the current hotspot for housing expansion but some caution must be taken and not simply rubber stamping these applications through and knocking down yet more trees and eliminating farm lands and mountain views. Neighborhoods are popping up in all directions all over town and the construction industry frenzy is full throttle with little interest in these types of nature/aesthetic concerns. I don't begrudge people making some money and Bend is certainly a desirable place to live, but things need to be planned out in a more thoughtful and deliberate fashion. There is nothing wrong with taking a slower and more measured approach as we all consider Bend's growth in the coming years. I have lived in Bend for just over 20 years and have family and friends in the proposed development area and it would drastically reduce their enjoyment of their property. I urge you to decline this request on behalf of many other community members who feel the same way."

The fifth public comment was received from Treva Weaver on June 18, 2021:

"Re: 1812020001000 Central Or. Irrigation District

I am opposed to the proposed land use change by the above referenced owner.....

The loss of open space in Central Oregon continues as the growth proponents seem mainly interested in jumping on the bandwagon and making as much profit as possible. The East side of Bend, where I have lived the past 21 years, has hundreds, if not thousands of housing sites already started or proposed. Until all this land is developed and houses sold, there is no need to venture east of 27th where this property is located.....My great grandfather came to Oregon at age 9 in 1846 and our family has very deep roots in this state. I spend a large amount of time at my daughter's home which is directly east of the proposed development. We enjoy riding our horses in her arena and also enjoy family gatherings in her backyard. The view would be drastically changed if this land is developed. What is wrong with leaving some land in its natural state? It will be many many years before additional housing is needed in this area. Please decline this request change and leave some land in its more natural state."

The sixth public comment was received from John Schaeffer, a neighboring property owner at 61677 Thunder Road, Bend, OR 97702 on June 19, 2021:

"I am writing on behalf of myself and several neighbors in the Stevens Road – Thunder Road neighborhood. We are opposed to COID's proposed changes to the Comprehensive Plan and Zoning for taxlot 1812020001000. We realize this is not a request for development but know that it will lead to development in the next few years, that it is the first step in making the property more marketable, should it be brought into the UGB during the next update.

Development has been increasing in this area, especially with the inclusion of the Stevens Road tract in the current UGB, and its subsequent sale by the state. We feel it is important to leave some natural open areas for people and animals near the city limits. This is especially critical now that the Stevens Road tract is being developed, along with all the other development in this area. A few years ago, it was possible to take our dogs walking in the Stevens Road tract and meet few people. The use in this area has increased remarkably over the last several years, consistent with Bend's growth.

The COID parcel is isolated and not readily accessible by cars, with varied topography, including a small canyon. It has significant native vegetation and, when I was there a couple of days ago, there were many birds, much more than in the nearby areas where there are houses and the vegetation has been cleared.

Right now, the average size of the parcels between the city limits to the west and Ward Road to the east, and between Stevens Road to the south and to approximately where Skyline View Drive would be if extended into the area on the north, is 8 acres. If you consider only the MUA zoned parcels, the average size is 4.8 acres. If the COID property was developed to that level, this would mean 7-8 houses in the area. I do not know what would be allowed under the Rural Residential Exception area but suspect it would probably be even denser housing.

As Bend continues to grow at what may be an unsustainable pace the value of open space increases. We urge you to consider open space as a relevant and beneficial resource when you weigh the issues inherent in this kind of a zoning change.

*Sincerely,
John Schaeffer and Patti Bailey
James and Janet Lake
Julie Naslund, Michael, and Miles Nevill
Mike Quick
Jill Harrell and Mike King"*

The seventh public comment was received from Cathy DeCoursey, a property owner and resident of 61718 Rigel Way, Bend, OR 97702 on June 21, 2021:

"I am responding to a letter I received regarding COID's application to rezone the property behind me. File # 247-21-0000400-PA, 401-ZC. 36.65 Acres. My understanding is they want to change the zoning from Agriculture and Exclusive Farm Use Zone to Rural Residential Exception Area and Multiple Use Agricultural. I've read the Application prepared by Tia M. Lewis. I have 3 concerns:

- 1. The water supply says wells are to be drilled for household use. There are 2 very old (55yrs) Well Reports included in her submission. I find this very odd that 7 new homes will be drilling and using well water for approximately 5 acre mini ranches. Surely the water table has lowered over time? The depth of one shows 619 feet. One report seems to be missing*

- the gallons per minute amount. Would you explain where the household and irrigation water will be coming from for these 7 lots?*
2. *At what point can the MUA-10 Zoning be changed to create a subdivision of smaller sized lots?*
 3. *Will there be more than 7 lots created? The stubbed access roads listed are already narrow and congested with parked cars and traffic coming and going to 27th which has no turn lanes onto or off of Darnel.*

Thank you for your time and response."

The eighth public comment was received from Jennifer Neil, a property owner and resident of 61723 Rigel Way, Bend, OR 97702 on June 21, 2021:

"My name is Jennifer Neil, and I am Bend homeowner concerned about the above-mentioned proposed land use. The proposed land use will change what is a small, open space next to the Central Oregon canal from farm use to more residential use. I'm saddened to not only lose the space I walk on twice a day, but to see it turned into more overpriced homes that the city and the community is not able to support. The area of SE Bend where this property is located has already out-grown all of the infrastructure to support more housing. It has become extremely difficult to access my home because of the traffic and congestion along 27th street. This congestion will only increase with the addition of the new High School. Finally, I'm also very concerned that 4 of my neighbors, who are also homeowners and have properties directly next to this proposed land use change, did not receive any notice of this land use. I notified them! I hope that the city planners will consider the impact more houses will have in this area, and improve the infrastructure first that is already necessary before destroying more open space."

The ninth public comment was received from Brent N. Wilkins, an owner and resident of property at 61764 SE Camellia Street, Bend, OR 97702, on June 21, 2021:

"I am a resident of the Rosengarh Subdivision. I am submitting these written comments relating to the proposed zoning changes by the Central Oregon Irrigation District ("COID") for the real property located at 61781 Ward Road, Bend, OR 97702 ("Property").

For the reasons noted below, including due to the level of development in East Bend in close proximity to the Property, the Property's rural nature that serves as a place of recreation, and the high level of traffic and lack of a left-hand turn lane from the major arterial (27th Street) that will likely service the Property if/once developed, I ask that the Deschutes County Planning Division ("Planning Division") not approve COID's application. I request to be notified of any decision or public hearing related to this application, and this notice may be sent to:

*Brent N. Wilkins
61764 SE Camellia Street
Bend, OR 97702*

As noted on page 3 of COID's Burden of Proof Statement, COID will have the ability to attempt to develop and subdivide the Property into a subdivision if the permit is granted. This would potentially occur through Title 17 or Title 18 of Deschutes County's rules. This permit should not be granted as further development in the proximity of the Property will not serve the County or community.

A. Development & Traffic Impacts

The Property at issue is surrounded by areas that have been recently developed. This includes the DR Horton subdivision off of Pettigrew Drive, the Hayden Homes Subdivision off of Pettigrew Drive, as well as the Rosengarth Subdivision. 27th Street has not been able to keep up resulting increased traffic flow as a result of the development to date. Excluding this Property, there is now significant further development occurring in this immediate area that 27th Street will service. The development at this time includes a new commercial lot being developed at 27th Street and Reed Market that will consist of multiple businesses, a new subdivision between Reed Market and Starlight Drive on the east side of 27th Street, and significant development off of 27th Street on Stevens Road. The Property will also heavily utilize 27th Street through the likely extension of Darnel Avenue and/or Daylily Avenue.

The collective effect of all of this development is that the rural nature of East Bend is being lost and 27th Street is becoming unsafe. 27th Street at this time does not adequately handle the levels of traffic that occur each morning around 8:00 am, each afternoon around 5:00 pm as well as when school lets out, and during the weekends. I have routinely sat in my car for more than two minutes trying to turn left onto 27th Street. I have also waited more than a minute to even to try to turn right onto 27th Street. A photograph showing the line of traffic on 27th Street is enclosed. (See Ex. 1). Also, there is no left turn lane when turning left from 27th Street onto Darnel Avenue from 27th. This has resulted in unsafe conditions, including vehicles passing the turning vehicle on the right where there is no developed shoulder or lane. There are tracks on the ground where this happens, and it is not safe for those vehicles, the turning vehicle, or oncoming traffic. Eastside Gardens is also located at 27th Street and Darnel Avenue. Vehicles pull in and out of that parking lot at that intersection and from the parking lot itself. This cause an irregular, unsafe traffic flow that will only be exacerbated by further use.

Moreover, due to Darnel Avenue serving as a primary access point for homes throughout the existing neighborhoods and Gardenside Park, there is already a high level of traffic and vehicles often driving fast. There is also significant on street parking that restricts views for drivers and pedestrians. This includes large 'sprinter' vans, large trucks, and sometimes trailers. (See Ex. 2). There are numerous young families in the neighborhoods, including along Camellia Street, Darnel Avenue and Gardenside Park. These families have children that run, play, skateboard, ride scooters, and bike throughout the neighborhood, including on the streets. The existing neighborhood traffic levels poses a danger to children. The proposed permit will likely result in increased traffic within the neighborhood and pose additional risk to these young families and

children. Any consideration of the Permit, and any possible approval, must address this dynamic.

Finally, with the recent approval of the Southeast Area Plan for the 'Elbow', the level of traffic in East Bend and 27 Street will only increase. This will also result in the displacement of birds and other wildlife, which is further covered below, and will need a place to go.

B. Preservation

The Property at issue is an area that is highly utilized for recreation and embodies Central Oregon high desert landscape. In the winters, the area can serve as a place for cross-country skiing. (See Ex. 3). People regularly ride bikes, run, and go for walks. The aerial photo that was enclosed with the Notice of Application also shows the walking path through the middle of the Property. The wildlife that calls this place home includes ducks, jackrabbits, geese, and numerous other birds. There is also a rimrock canyon on the Property that is quite unique and should be preserved (See Ex. 4). The Property also has views of the Cascades, Powell Butte, and Newberry Caldera (See Ex. 5). It is also quite peaceful and has a gentle, rolling landscape full of trees, grasses, and sagebrush. (See Ex. 6). During the mornings and evenings one can go for walks and hear the songs of birds and enjoy an escape from the busy work day and pace of life. In other words, changing the Property's zoning classification and leading to the possibility (if not the eventual or imminent likelihood) of development that will further change the rural nature of Bend is not in the public's interest for rezoning standards or otherwise.

C. Conclusion

The existing development and use of 27 Street, the development already approved and under construction, and the future development of Stevens Road and the 'Elbow' makes changing the Property's zoning classification to not be in the public interest. There simply is not adequate infrastructure to support all of these additions in a safe manner. Until the access to the neighborhoods from 27th Street is improved, no further development or changes of zoning classifications should occur. Approving the permit will also likely result in the irreparable loss of rural landscape and habitat once the Property is developed, including possibly without any restrictions or preservation criteria.

In sum, the proposed permit application should be denied, or at least not approved in its current form. At a minimum, a hearing should be set for in person comments and for further deliberation to occur."

The public comment from Mr. Wilkins includes 10 photographs depicting the various conditions outlined in his written comment. These photographs and the full written comment are included in public record for the subject application.

The tenth public comment was received from Crystal Garner on June 22, 2021:

"I would like to request a hearing for the proposed land development for 61781 Ward Rd, Bend, OR 97702. We live about 4 houses down from this property, it is a great and safe place for our family and so many others in the neighborhood to take walks, ride bikes, and walk dogs. The thought of this land being developed on and losing those opportunities, as well as possibly compromising the safety of our children in our neighborhood bring a heavy heart to so many of us. Please consider a hearing to recant this decision."

The eleventh public comment was received from William Kepper on June 29, 2021:

"Sorry for the late response to the changes associated with Map and Taxlot: 1812020001000. The notification was not received timely. The notification is vague to exactly what changes will occur. If the changes have anything to do with the cultivation of marijuana or hemp we and our neighbors are against it. It would destroy ours and our neighbors quality of life. There are numerous small children and teenagers in the neighborhoods who should not be subjected to these types of grow farms. Also there is a child day care facility close by off 27th Street. I hope I'm wrong about the 'Rural Residential Exception Area and Multiple Use Agricultural, respectively' statement. Thanks for listening to my concerns. I'd appreciate additional information on exactly what Multiple Use Agricultural Zone (MUA10) means."

The twelfth public comment was received from David Morrison on August 30, 2021:

Tarik,

I may wish to participate in this hearing if I have questions or concerns not addressed by others. I plan to participate via Zoom. My wife is dealing with serious health issues and may require attention at any time which might cause me to miss all or some.

So, I would like to go on record as 100% against re-zoning said COID property at this time. I feel that with the already in the works developments south of Stevens Rd and north of Bear Creek Rd, that the road system is already severely inadequate. Also, with the drought conditions and worsening water supplies in not just Bend but all of Deschutes and surrounding counties, I would like to see this request 'tabled', to be revisited in no fewer than 5 years. The county needs to greatly improve roads and water supply issues before allowing more and more building and deteriorating areas that will make this area more desirable to live in. I enjoy watching all of the natural wildlife that lives in this space, they will disappear with development, as will our natural view that was the biggest reason for us purchasing our property which is immediately adjacent to said property.

I am also concerned about the stated address of said property, Ward Rd is no where near the property. If it should be re-zoned, where exactly will it be accessed?

I fear the continued rapid growth will quickly and severely deteriorate the quality of life for all of Bend.

Thank you for considering my our [sic] concerns, David & Nancy Morrison

J. LAND USE HISTORY: There is no history of prior land use permits having been granted for the subject property.

K. UTILITY SERVICES: The subject property is served by Pacific Power and water will be provided by a well (see Exhibit 7 for will serve letter and well logs).

L. PUBLIC SERVICES: The subject property is in the Deschutes County Rural Fire Protection District #2 (Exhibit 6). The Bend Rural Fire Protection Station 304 is located a few miles northeast of the subject property near the corner of Hamby and Neff Roads. The Pilot Butte Station on NE 15th Street and Highway 20 is also within a few miles of the subject property. The Deschutes County Sheriff provides police and public safety services. Access to the subject property is provided from the stubbed local street connections of Darnel Avenue and Daylily Avenue to the west. The Bend Municipal Airport is located several miles northeast of the property. The property is within the Bend-La Pine School District and is in the Buckingham Elementary School boundary, the Pilot Butte Middle School boundary and the Bend High School boundary. The property is outside of the Bend Parks and Recreation District boundary; however, Bend Parks and Recreation District has plans to develop Hansen Park Trailhead located south of the subject property that will serve the Central Oregon Historic Canal Trail system.

M. NOTICE REQUIREMENT: On August 6, 2021, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property and agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, August 8, 2021. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on July 26, 2021.

The applicant complied with the posted notice requirements of DCC 22.24.030(B). The applicant submitted a Land Use Action Sign Affidavit, dated June 25, 2021, indicating the applicant posted notice of the land use action on June 25, 2021.

Deschutes County sent notice of the proposed change to its comprehensive plan and land use regulation to the Oregon Department of Land Conservation and Development, received by DLCD on July 26, 2021.

N. REVIEW PERIOD: The subject applications were submitted on April 20, 2021, and deemed complete by the Planning Division on May 20, 2021. According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

III. CONCLUSIONS OF LAW

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDING: The applicant, also the property owner, has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The applicant filed the required Planning Division’s land use application forms for the proposal. The application is reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code. The Hearings Officer finds these criteria are met.

Section 18.136.020, Rezoning Standards

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

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

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

Per prior Hearings Officers decisions [Powell/Ramsey (file no. PA-14-2 / ZC-14-2) and Landholdings (file no. 247-16-000317-ZC, 318-PA)] for plan amendments and zone changes on EFU-zoned property, this paragraph establishes two requirements: (1) that the zone change conforms to the Comprehensive Plan and (2) that the change is consistent with the plan's introductory statements and goals. Both requirements are addressed below:

- 1. Conformance with the Comprehensive Plan: The applicant proposes a plan amendment to change the Comprehensive Plan designation for the subject property from Agriculture to Rural Residential Exception Area. The proposed rezoning from EFU-TRB to MUA-10 will need to be consistent with its proposed new plan designation.***

- 2. *Consistency with the Plan's Introductory Statement and Goals. In previous decisions, the Hearings Officer found the introductory statements and goals are not approval criteria for the proposed plan amendment and zone change. However, the Hearings Officer in the Landholdings decision found that depending on the language, some plan provisions may apply and found the following amended comprehensive plan goals and policies require consideration and that other provisions of the plan do not apply as stated below in the Landholdings decision:*

"Comprehensive plan statements, goals and policies typically are not intended to, and do not, constitute mandatory approval criteria for quasi-judicial/and use permit applications. Save Our Skyline v. City of Bend, 48 Or LUBA 192 (2004). There, LUBA held:

'As intervenor correctly points out, local and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. [Citations omitted.] Local governments and this Board have frequently considered the text and context of cited parts of the comprehensive plan and concluded that the alleged comprehensive plan standard was not an applicable approval standard. [Citations omitted.] Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. [Citation omitted.] Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations. [Citations omitted.]'

LUBA went on to hold in Save Our Skyline that it is appropriate to 'consider first whether the comprehensive plan itself expressly assigns particular role to some or all of the plan's goals and policies.' Section 23. 08. 020 of the county's comprehensive plan provides as follows:

The purpose of the Comprehensive Plan for Deschutes County is not to provide a site-specific identification of the appropriate land uses which may take place on a particular piece of land but rather it is to consider the significant factors which affect or are affected by development in the County and provide a general guide to the various decision which must be made to promote the greatest efficiency and equity possible, while managing the continuing growth and change of the area. Part of that process is identification of an appropriate land use plan, which is then

interpreted to make decision about specific sites (most often in zoning and subdivision administration) but the plan must also consider the sociological, economic and environmental consequences of various actions and provide guidelines and policies for activities which may have effects beyond physical changes of the land (Emphases added by applicant.)

The Hearings Officer previously found that the above-underscored language strongly suggests the county's plan statements, goals and policies are not intended to establish approval standards for quasi-judicial land use permit applications.

*In Bothman v. City of Eugene, 51 Or LUBA 426 (2006), LUBA found it appropriate also to review the language of specific plan policies to determine whether and to what extent they may in fact establish decisional standards. The policies at issue in that case included those ranging from aspirational statements to planning directives to the city to policies with language providing 'guidance for decision-making' with respect to specific rezoning proposals. In Bothman LUBA concluded the planning commission erred in not considering in a zone change proceeding a plan policy requiring the city to '[r]ecognize the existing general office and commercial uses located * * * [in the geographic area including the subject property] and discourage future rezonings of these properties.' LUBA held that:*

**** even where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require *** consistency with applicable plan provision.' (Emphasis added.) The county's comprehensive plan includes a large number of goals and policies. The applicant's burden of proof addresses goals for rural development, economy, transportation, public facilities, recreation, energy, natural hazards, destination resorts, open spaces, fish and wildlife, and forest lands. The Hearings Officer finds these goals are aspirational in nature and therefore are not intended to create decision standards for the proposed zone change."*

Hearings Officer Karen Green adhered to these findings in the Powell/Ramsey decision (file nos. PA-14-2/ZC-14-2), and found the above referenced introductory statements and goals are not approval criteria for the proposed plan amendment and zone change. This Hearings Officer also adheres to the above findings herein. Nevertheless, depending upon their language, some plan provisions may require "consideration" even if they are not applicable approval criteria. Save Our Skyline v. City of Bend, 48 Or LUBA 192, 209 (2004). I find that the following amended comprehensive plan goals and policies require such consideration, and that other provisions of the plan do not apply:"

The comprehensive plan goals and polices that the Landholdings Hearings Officer found to apply include the following...

The applicant utilizes the analysis provided in prior Hearings Officers' decisions to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed below in the Comprehensive Plan section of this Decision. The Hearings Officer finds the above provision is met, based on Comprehensive Plan conformance as set forth in subsequent findings.

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

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

The applicant is proposing to change the zone classification from EFU to MUA-10. Approval of the application is consistent with the purpose of the MUA-10 zoning district, which stated in DCC 18.32.010 as follows:

"The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use."

The subject property is not suited to full-time commercial farming as discussed in the findings above. The MUA-10 zone will allow property owners to engage in hobby farming. The low-density of development allowed by the MUA-10 zone will conserve open spaces and protect natural and scenic resources. In the Landholding's case, the Hearings Officer found:

I find that the proposed change in zoning classification from EFU is consistent with the purpose and intent of the MUA-10 zone. Specifically, the MUA-10 zone is intended to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area. Approval of the proposed rezone to MUA-10 would permit applications for low-density development, which will comprise a transition zone between EFU rural zoning, primarily to the east and City zoning to the west.

The maximum density of the approximately 36.65-acre property if developed with a cluster development under Title 18 is 7 lots. This low density will preserve open space, allow owners to engage in hobby farming, if desired, and preserve natural and scenic resources and maintain or improve the quality of air, water, and land resources. The MUA-10 zoning provides a proper transition zone from City, to rural zoning to EFU zoning.

The applicant's burden of proof statement also includes analysis in the Introduction section at pages 1-2. There, the applicant stated, in relevant part:

For the past several years, Deschutes County has recognized the value in rezoning non-productive agricultural lands and has issued decisions in support of plan amendments and zone changes where the applicant demonstrates the property is not agricultural land and, therefore, Statewide Goal 3, Agricultural Lands, does not apply. These cases are the foundation for the subject request. Cases pertinent to the proposed request include:

Kelly Porter Burns Landholdings LLC ("Landholdings")/File nos. 247-16-000317-ZC/318-PA

On November 1, 2017, the Board approved Kelly Porter Burns Landholdings LLC's request to change the plan designation on certain property from Agricultural to Rural Residential Exception Area and to change the zone designation from EFU-TRB to MUA-10 zone. The property consists of about 35 acres and abuts the applicant's property to the west (Exhibit 1).

Based on the Order 1 soil survey for the property and the submitted evidence, the Hearings Officer found that the Landholdings property does not constitute agricultural land and does not merit protection under Goal 3, and therefore, approved the change in Plan designation and Zoning of the property from Agriculture/EFU-TRB to RREA/MUA-10.⁶

Division of State Lands Decision/File Nos. PA-11-7 and ZC-11-2

The Division of State Lands case was a 2013 approval by the Board for a plan amendment from Agriculture to Rural Residential Exception Area and a zone change from EFU-TRB to Multiple Use Agricultural (MUA-10). Based on the Order 1 soil survey for the property and the submitted evidence, the Board found that the property was not agricultural land and therefore, Goal 3 did not apply (Exhibit 2).

⁶ The Board adopted as its findings the Hearings Officer's decision with one exception: that if the property is divided, it must be developed as a cluster development and the two irrigation ponds must be included in the common area. In addition, the Board required the applicant to sign a Conditions of Approval agreement to "assure that future residential development of the property will be harmonious with existing development in the area and so that a part of the property may be developed at urban densities if and when the property is annexed to the City of Bend."

Paget Decision/File Nos. PA-07-1, ZC-07-1

The Paget decision was a 2007 approval of a plan amendment from Agriculture to Rural Residential Exception Area and a zone change from EFU to MUA-10. The Board adopted the Hearings Officer's decision, which found that the property did not constitute "agricultural land" and therefore, the plan amendment and zone change to MUA-10 was consistent with Goal 3 (Exhibit 3).

The Daniels Group/File Nos. PA-08-1, ZC-08-1

The Daniels Group decision was a 2011 Board decision approving a change to the Comprehensive Plan map from Surface Mine and Agriculture to Rural Residential Exception Area and a zone change from EFU-LB and Surface Mining to Rural Residential (RR-10). The Board found that the property did not constitute "agricultural land" as defined in Goal 3, was not subject to protection under Goal 3, and therefore, the plan amendment and zone change did not require an exception to Goal 3. (Exhibit 4).

The Hearings Officer finds the applicant has demonstrated the change in classification is consistent with the purpose and intent of the MUA-10 Zone. A change in classification will preserve the rural character of the subject property, due to the low density of development allowed in the MUA-10 zone, while permitting development consistent with that character. As set forth in the findings below, the subject property is not suited to full-time commercial farming but could be used for hobby farming. Low density development will also conserve open spaces and protect natural and scenic resources. The Hearings Officer finds that approval of the proposed rezone to MUA-10 would permit applications for low-density development, and will comprise a transition zone between the City and EFU zoning to the east.

The Hearings Officer's findings regarding agricultural land and Goal 3 exception are set forth in the findings below.

- C. *That changing the zoning will presently serve the public health, safety and welfare considering the following factors:***
- 1. *The availability and efficiency of providing necessary public services and facilities.***

FINDING: There is no proposal to develop the property at this time. The above criterion asks if the proposed zone change will *presently* serve public health, safety, and welfare. The applicant provides the following response in the submitted burden of proof statement:

Necessary public facilities and services are available to serve the subject property, including electrical power from Pacific Power and well logs showing water services are available to serve the property. Exhibit 7.

Transportation access to the property is available from the stubbed local street connections of Darnel Avenue and Daylily Avenue to the west in the City of Bend Urban Growth Boundary. MUA-10 zoning and a standard subdivision would allow the creation of up to 3 residential lots and a cluster development would allow up to 7 residential lots. If developed with a cluster development, the property could generate up to 49 additional daily trips, which according to the traffic report by Transight Consulting is a slight increase in trips, but the impact of these trips is negligible on the transportation system and the functional classification of all the adjacent roadways will not be affected with the proposed rezone. The existing road network is available to serve the use of the property if developed.

The property receives police services from the Deschutes County Sheriff and is in Rural Fire Protection District #2 with the nearest fire station nearby. Neighboring properties contain residential uses, which have water service from a municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare.

Neighboring properties contain residential and commercial uses, which have water service from a quasi-municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare.

Public commentators expressed concern about access to the subject property. One commentator stated that Ward Road is $\frac{3}{4}$ mile away and that the property is not accessible other than via a canal road, which is gated. Other commentators stated that access from City of Bend roads (Daylily Avenue and Darnel Avenue) that are currently stubbed at the edge of the eastern boundary of the Bend UGB, through existing subdivisions will be dangerous. The applicant's attorney stated that there are no current plans to develop the property. The applicant may offer the property for sale or develop as MUA-10 zone. Alternatively, the applicant could hold onto the property until the next Bend UGB expansion process.

The Hearings Officer finds that no access to the subject property is required to be established for purposes of consideration of the re-designation and rezoning applications. Any future development will have to establish access in compliance with applicable zoning regulations and the comprehensive plan.

Prior to development of the property, the applicant will be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permit, building permit, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

The Hearings Officer finds this criterion is met.

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

FINDING: The applicant's submitted burden of proof statement addresses potential impacts on surrounding land uses as related to each individual policy and goal item within the County's Comprehensive Plan in subsequent findings. Analysis of consistency with each applicable goal and policy is set forth in the findings below.

The Hearings Officer finds that the MUA-10 zoning is the same zoning of many other properties in the areas east and south of the subject property. As the Hearings Officer found above, MUA-10 zoning provides a proper transition zone from the City to EFU zoning. The requested zone change will not impose new impacts on EFU-zoned land to the north of the subject property because that property is a small parcel, approximately 12 acres in size, that is not engaged in commercial farm use and is developed with a nonfarm dwelling. Further, MUA-10 zoning will have minimal impacts on EFU-zoned land adjacent to the northeast corner of the subject property.

As determined by the applicant's soil scientist, Andy Gallagher, it is not practical to farm the subject property because it is comprised primarily of Class 7 and 8 soils and is characterized by a cut-up landscape. The Hearings Officer finds the subject property is not land that could be used in conjunction with the adjacent property. Any future development of the subject property will be subject to building setbacks.

The Hearings Officer finds this criterion is met.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDING: The applicant is proposing to rezone the property from EFU to MUA10 and re-designate the property from Agriculture to Rural Residential Exception Area. The applicant has provided the following response in the submitted burden of proof statement:

1. Mistake: *The EFU zoning designation was likely based on the best available soils data that the County had at the time in the County in the late 1970's when the comprehensive plan and map were adopted and where agricultural zoning was applied to land with no history of farming⁷⁸.*

⁷ Gallagher's soils analysis report for the subject property determined that the subject property was previously mapped by the USDA-SCS Soil Survey of the Deschutes County Area and compiled by NRCS into the Web Soil Survey. The property was previously mapped at 1:20,000 scale, which is generally too small a scale for detailed land use planning and decision making, according to Gallagher.

⁸ Source: Agricultural Lands Program, Community Involvement Results, Community Development, Deschutes County. June 18, 2014.

2. Change in Circumstances: *There clearly has been a change in circumstances since the property was last zoned in the 1970s:*

Soils: *New soils data provided in the Gallagher soils report shows the property does not have agricultural soils.*

Farming economics and viability of farm uses in Central Oregon have significantly changed. *Making a profit in farming, particularly on smaller parcels such as the subject property, is difficult as stated below in the stakeholder interview of the Deschutes County Farm Bureau in the County's 2014 Agricultural Lands Program, Community Involvement Results:*

Today's economics make it extremely difficult for commercial farmers in Deschutes County to be profitable. Farmers have a difficult time being competitive because other regions (Columbia Basin, Willamette Valley) produce crops at higher yields, have greater access to transportation and consumer markets, and experience more favorable growing climates and soils. Ultimately, the global economy undermines agricultural opportunities in the county because commodities derived from outside the region can be produced at a lower cost. Water limitations also play a role. Junior water right holders are constrained as the summer progresses and they lose their rights to those with higher priority dates.

Decline in farm operations *have steadily declined in Deschutes County between 2012 and 2017, with only a small fraction of farm operators achieving a net profit from farming in 2017. (Exhibit 8).*

Encroaching development *east of Bend's Urban Growth Boundary has brought both traffic and higher density residential uses and congestion to the area.*

The applicant's attorney argued at the public hearing that it is not economical or fiscally responsible to retain the subject property as agricultural/farm land given the fact that it is non-productive land.

Patrick McCoy testified at the public hearing that there are several other parcels/tracts that are "getting ready to do the same thing" as the applicant. He also stated that a 59-acre parcel was allowed to "go dead" to meet requirements for a rezone. He is concerned about slowing down growth in this area and further expressed concerns that the subject property is landlocked. Mr. McCoy stated that there is a lot of development occurring within a 2-mile radius of his property.

Matt Carey testified at the public hearing that development is increasingly encroaching on green space and animals are getting pushed out. He also expressed concerns about access to the subject property.

Kecia Weaver testified that high schoolers participate in 4H and FFA, raising animals and that smaller parcels of land are used for agriculture on a small scale. She values slow growth and maintaining the rural concept, to preserve open spaces. Ms. Weaver is concerned about the rapid development of large acreage and the impact on deer, rabbits, hawks, eagles and bats. She stated that Ward Road is .75 miles away from the subject property, which is not accessible other than via a gated canal road. Ms. Weaver requested that the applications be denied to slow the growth. She further stated that the applications could be considered at the time the UGB expansion is underway.

The Hearings Officer makes the following findings. First, whether or not owners of other properties may, or may not, request a change of comprehensive plan designation and zoning is not relevant to the Hearings Officer's consideration of the current applications. Each application must be considered on its own merits.

Second, concerns regarding development encroachment support a finding of change of circumstances. Given the evidence that shows the subject property is not comprised of agricultural soils, and is not land that could be used in conjunction with adjacent property, the requested rezone will provide an appropriate transition between urban City development and rural EFU properties.

Third, the Hearings Officer does not have authority to deny the requested applications on the basis of concerns about growth. While understandable, the applications may be granted where, as here, all applicable criteria are met.

Fourth, the applicant's attorney commented at the public hearing that delaying the applications until the City considers its next urban growth boundary (UGB) expansion will preclude the subject property from consideration.

Fifth, with respect to 4H and FFA activities, the Hearings Officer finds that the requested rezone to MUA-10 will continue to allow for hobby farming.

Sixth, concerning wildlife concerns, the Hearings Officer finds the subject property is not within a Wildlife Area combining zone; there are no specific wildlife preservation regulations applicable to the property. There is no evidence that the requested rezone, and of itself, will impact wildlife.

Finally, with respect to access, the Hearings Officer finds that no development is proposed at this time and, therefore, access need not be finally determined. If the subject property is developed in the future, the record shows that access from stubbed streets to the west may be considered.

For all the foregoing reasons, and based on evidence in the record that shows declining farm operations and limited numbers of financially successful farm operations (Exhibit 8), the

Hearings Officer finds that a change of circumstances since the time the property was last zoned exists. This criterion is met.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.2 Agricultural Lands

Goal 1, Preserve and maintain agricultural lands and the agricultural industry.

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

The applicant is pursuing a plan amendment and zone change on the basis that the subject property does not constitute "agricultural lands," and therefore, the subject lands are not necessary to preserve or maintain as such. In the Landholdings decision (and Powell/Ramsey decision) the Hearings Officer found that Goal 1 is an aspirational goal and not an approval criterion.

As demonstrated in this application, the subject property does not constitute "agricultural land" and therefore, is not necessary to preserve and maintain the County's agricultural industry. The Gallagher soils report shows the subject property to consist predominantly (63.7%) of Class 7 and 8 non-agricultural soils (Gosney-Rock Outcrop complex). According to Mr. Gallagher, these soils have severe limitations for agricultural use as well as low soil fertility, shallow and very shallow soils, abundant rock outcrops and lava tubes, low available water capacity, and major management limitations for livestock grazing. In addition, the minor amount of Deskamp soils (Class 3 irrigated and 6 nonirrigated) are in small isolated pockets and severely restricted by lava tubes, shallow rocky soils, irrigation ditches and property lines that they cannot be used in farming in conjunction with the non-productive Gosney-Rock outcrop. The property also is physically remote from productive farmland as it is adjacent to the City of Bend's urban development to the west and rural residential development to the east and south. Mr. Gallagher concludes that the "landscape is so cut up it is impractical to farm".

The Hearings Officer finds Mr. Gallagher's report supports a finding that the subject property does not constitute agricultural land. The subject property is not land that could be used in conjunction with the adjacent property. The requested plan amendment and rezone will not contribute to loss of agricultural land in the surrounding vicinity. The agricultural industry will not be negatively impacted by re-designation and rezoning of the subject property. Therefore, the Hearings Officer finds the applications are consistent with Section 2.2, Goal 1, "preserve and maintain agricultural lands and the agricultural industry."

Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal

findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.

FINDING: The applicant is not asking to amend the subzone that applies to the subject property; rather, the applicant is seeking a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to MUA10. The Hearings Officer finds this Policy is inapplicable.

Policy 2.2.3 Allow comprehensive plan and zoning map amendments for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.

FINDING: The applicant is seeking approval of a plan amendment and zone change to re-designate and rezone the property from Agricultural to Rural Residential Exception Area. The applicant is not seeking an exception to Goal 3 – Agricultural Lands, but rather seeks to demonstrate that the subject property does not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

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

Deschutes County has allowed this approach in previous Hearings Officer's decisions including Porter Kelly Burns Landholdings (247-16-000317-ZC/318-PA), Department of State Lands (PA-11-7/ZC-11-2), Pagel (PA-08-1/ZC-08-1), and the Daniels Group (PA-08-1, ZC-08-1). Additionally, the Land Use Board of Appeals (LUBA) allowed this approach in Wetherell v. Douglas County, 52 Or LUBA 677 (2006), where LUBA states, at pp.678-679:

“As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 nor Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798, 802 (1990).”

LUBA's decision in Wetherell has appealed to the Oregon Court of Appeals and the Oregon Supreme Court but neither court disturbed LUBA's ruling on this point. In fact, the Oregon Supreme Court changed the test for determining whether land is agricultural land to make it less stringent. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007). In that case, the Supreme Court stated that:

“Under Goal 3, land must be preserved as agricultural land if it is suitable for ‘farm use’ as defined in ORS 215.203(2)(a), which means, in part, ‘the current employment of land for the primary purpose of obtaining a profit in money’ through specific farming-related endeavors.” Wetherell, 342 Or at 677.

The Wetherell court held that when deciding whether land is agricultural land “a local government may not be precluded from considering the costs or expenses of engaging in those activities.” Wetherell, 342 Or at 680. The facts presented in the subject application are sufficiently similar to those in the Wetherell decisions and in the above-mentioned Deschutes County plan amendment and zone change applications. The subject property is primarily composed of Class 7 or 8 nonagricultural soils making farm-related endeavors not profitable. This application complies with Policy 2.2.3.

The Hearings Officer finds that the facts presented by the applicant in the burden of proof for the subject applications are similar to those in the *Wetherell* decisions and in the aforementioned Deschutes County plan amendment and zone change applications. Therefore, the Hearings Officer finds the applicant established the property is not agricultural land and does not require an exception to Goal 3 under state law. The Hearings Officer finds the applications are consistent with Policy 2.2.3.

Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.

FINDING: This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. The policy is not directed to an individual applicant, as the Hearings Officers found in the *Landholdings* decision and *Powell/Ramsey* decision. The Hearings Officer finds that, based on the County’s previous determinations in plan amendment and zone change applications, the proposal is consistent with this Policy.

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

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: This plan policy requires the County to identify and retain agricultural lands that are accurately designated. The policy is not directed to an individual applicant, as the Hearings Officers found in the *Landholdings* decision and *Powell/Ramsey* decision. The Hearings Officer finds that the subject property was not accurately designated as demonstrated by the soil study, NRCS soil data, and the applicant’s burden of proof. Further discussion on the soil analysis provided by the analysis is set forth in the findings under the OAR Division 33 criteria below. The Hearings Officer finds the proposal is consistent with this Policy.

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.

FINDING: The applicant is not proposing a specific development application at this time. Therefore, the Hearings Officer finds the applicant is not required to demonstrate water impacts associated with development. Rather, the applicant will be required to address this criterion during development of the subject property, which would be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat). The Hearings Officer finds this Policy does not apply to the subject applications.

Chapter 3, Rural Growth

Section 3.2, Rural Development

Growth Potential

As of 2010, the strong population growth of the last decade in Deschutes County was thought to have leveled off due to the economic recession. Besides flatter growth patterns, changes to State regulations opened up additional opportunities for new rural development. The following list identifies general categories for creating new residential lots, all of which are subject to specific State regulations.

- ...
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

FINDING: This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance above. In response to this section, the applicant’s burden of proof provides the following:

As shown above, the County’s Comprehensive Plan provisions anticipate the need for additional rural residential lots as the region continues to grow. This includes providing a mechanism to rezone farm lands with poor soils to a rural residential zoning designation. While the rezone application does not include the creation of new residential lots, the applicant has demonstrated the subject property is comprised of poor soils that are adjacent to rural residential MUA-10 zone uses to the east and south as well as urban residential zones within the Bend city limits to the west. Rezoning the subject property to MUA-10 is consistent with this criterion, as it will provide for an orderly and efficient transition from the Bend Urban Growth Boundary to rural and agricultural lands.

The MUA-10 Zone is a rural residential zone and as discussed in the Findings of Fact above, there are many adjacent properties to the south and east that are zoned MUA-10. Additionally, the properties to the west are within urban residential zones within the city limits of Bend. The Hearings Officer notes this policy references the soil quality, which is discussed above.

The Hearings Officer finds that rezoning the subject property to MUA-0 is consistent with Section 3.2, Chapter 3 of the Deschutes County Comprehensive Plan as it will provide for an orderly and efficient transition from the Bend UGB to rural and agricultural lands.

Section 3.3, Rural Housing

Rural Residential Exception Areas

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.

FINDING: The applicant provided the following response in the burden of proof:

Prior Hearings Officer's decisions have found that Section 3.3 is not a plan policy or directive⁹. Further, no goal exception to Statewide Planning Goal 3 is required for the rezone application because the subject property does not qualify as farm or forest zoning or agricultural lands under the statewide planning goals. The County has interpreted the RREA plan designation as the proper "catchall" designation for non-resource land and therefore, the Rural Residential Exception Area (RREA) plan designation is the appropriate plan designation to apply to the subject property¹⁰.

⁹ See PA-11-17/ZC-11-2, 247-16-000317-ZC, 318-PA, and 247-18-000485-PA, 486-ZC

¹⁰ The Hearings Officer's decision for PA-11-17/ZC-11-2 concerning this language of Section 3.3 states:
To the extent that the quoted language above represents a policy, it appears to be directed at a fundamentally different situation than the one presented in this application. The quoted language addresses conversions of "farm" or "forest" land to rural residential use. In those cases, the language

Based on past Deschutes County Hearings Officer interpretations, the Hearings Officer finds that the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Hearings Officer finds the proposed RREA plan designation is the appropriate plan designation to apply to the subject property.

Section 3.7, Transportation

**Appendix C – Transportation System Plan
ARTERIAL AND COLLECTOR ROAD PLAN**

...

Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.

...

Policy 4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system.

FINDING: This plan policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The County will comply with this direction by determining compliance with the Transportation Planning Rule (TPR) aka OAR 660-012, as described below in subsequent findings.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

indicates that some type of exception under state statute and DLCD rules will be required in order to support a change in Comprehensive Plan designation. See ORS 197.732 and OAR 660, Division 004. That is not what this application seeks to do. The findings below explain that the applicant has been successful in demonstrating that the subject property is composed predominantly of nonagricultural soil types. Therefore, it is permissible to conclude that the property is not “farmland” as defined under state statute, DLCD rules, and that it is not correctly zoned for exclusive farm use. As such, the application does not seek to convert “agricultural land” to rural residential use. If the land is demonstrated to not be composed of agricultural soils, then there is no “exception” to be taken. There is no reason that the applicant should be made to demonstrate a reasons, developed or committed exception under state law because the subject property is not composed of the type of preferred land which the exceptions process was designed to protect. For all these reasons, the Hearings Officer concludes that the applicant is not required to obtain an exception to Goal 3.

- (7) "Forest lands" as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:**
 - (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and**
 - (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.**

FINDING: The subject property is not zoned for forest lands, nor are any of the properties within a two-mile radius. The property does not contain merchantable tree species and there is no evidence in the record that the property has been employed for forestry uses historically. None of the soil units comprising the parcel is rated for forest uses according to NRCS data. The Hearings Officer finds that the subject property does not constitute forest land.

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

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

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

FINDING: Goal 3 defines "Agricultural Land," which is repeated in OAR 660-033-0020(1). The Hearings Officer's findings below are incorporated herein by reference.

OAR 660-033-0020, Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:

- (1)(a) "Agricultural Land" as defined in Goal 3 includes:**
 - (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon¹¹;**

¹¹ OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

FINDING: The applicant's decision not to request an exception to Goal 3 is based on the premise that the subject property is not defined as "Agricultural Land." In support, the applicant offers the following response in the submitted burden of proof statement:

The subject property is not properly classified as Agricultural Land and does not merit protection under Goal 3. The soils are predominately Class 7 and 8 soils as shown by the more detailed soils report prepared by soils scientist Andy Gallagher, which State law, OAR 660-033-0030, allows the County to rely on for more accurate soils information. Mr. Gallagher found that approximately 64% of the soils on the subject property (about 24 acres) is Land Capability Class 7 and 8 soils that have severe limitations for farm use. He also found the site to have low soil fertility, shallow and very shallow soils, abundant rock outcrops and rock fragments in the surface, lava tubes, and irrigation ditches, low available water capacity, and limiting areas suitable for grazing and restricting livestock accessibility, all of which are considerations for the determination for suitability for farm use. Because the subject property is comprised predominantly of Class 7 and 8 soils, the property does not meet the definition of "Agricultural Lands" under OAR 660-033-0020(1)(a)(A) listed above, that is having predominantly Class I-VI soils.

The Hearings Officer finds that the soil study provided by Mr. Gallagher of Red Hill Soils is an accurate representation of the data for the subject property. Therefore, the Hearings Officer finds, based on the submitted soil study and the above OAR definition, that the subject property is comprised predominantly of Class 7 and 8 soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above.

(B) *Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and*

FINDING: The applicant's decision not to request an exception to Goal 3 is based on the premise that the subject property is not defined as "Agricultural Land." The applicant provides the following analysis of this determination in the burden of proof.

This part of the definition of "Agricultural Land" requires the County to consider whether the Class 7 and 8 soils found on the subject property are suitable for farm use despite their Class 7 and 8 classification. The Oregon Supreme Court has determined that the term "farm use" as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors. The costs of engaging in farm use are relevant to determining whether farm activities are profitable and this is a factor in determining whether land is agricultural land. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007).

The subject property does not have water rights, has not been farmed, or used in conjunction with any farming operation in the past. The Natural Resources Conservation Service (NRCS) map shown on the County's GIS mapping program identifies two soil complex units on the property: 36A, Deskamp loamy sand and 58C, Gosney-Rock outcrop-Deskamp complex. The predominant soil complex on the subject property is 58C. 58C is not a high value soil as defined by Deschutes County Code. 36A is considered a high value soil when irrigated. However, as discussed in detail below, there is no irrigation on the property and an Agricultural Soils Capability Assessment (Order 1 soil survey) conducted on the property by soil scientist, Andy Gallagher, determined that the property is not agricultural land; that the class 3 irrigated and 6 non irrigated soils exist in small pockets interspersed with lava tubes, rocky, shallow soils creating severe limitations for any agricultural use on the property or in conjunction with other neighboring lands. (See Exhibit 5 for Mr. Gallagher's Soil Assessment Report).

A review of the seven considerations listed in the administrative rule, below, shows why the poor soils found on the subject property are not suitable for farm use that can be expected to be profitable:

Soil Fertility:

Mr. Gallagher made the following findings regarding soil fertility on the subject property:

*"Important soil properties affecting the soil fertility and productivity of the soils are **very limiting to crop production** [emphasis added by applicant] on this parcel. The soils here are low fertility, being ashy sandy loams with a low cation exchange capacity (CEC) of 7.5 meq/100 gm and organic matter is very low for Gosney 0.75% and low for Deskamps 1.5%. These soils do not have a large capacity to store soil nutrients especially cations, and nitrogen fertilizers readily leach in sandy soils. The soil depth is further limiting because it limits the overall volume of soil available for plant roots and limits the size the overall nutrient pool. Additionally, the soil available water holding capacity is very low for Gosney less than 1.8 inches for the whole soil profile, and for the very shallow soils it is half this much. The Deskamps soils have only about 2 to 4 inches AWHC translate into low productivity for crops. NRCS does not provide any productivity data for non-irrigated crops on these soils. The productivity of irrigated alfalfa is 4 tons per acre for Deskamps, and no rating for Gosney is same as a zero. There are perhaps 7 acres that could produce alfalfa with irrigation that could produce 28 tons alfalfa under irrigation and high fertility but after costs this would amount to no profit."*

The fact that these soils are low fertility unless made fertile through artificial means supports the applicant's position that the Class 7 soils and the entire property is not suitable for farm use. The costs to purchase and apply fertilizer and soil amendments and the costs to sample and test soils are a part of the reason why it is not profitable to farm the subject property.

Unsuitability for Grazing:

Mr. Gallagher also reviewed whether the parcel is suitable for grazing and found:

*“This 37.7-acre parcel is **not suited to grazing on a commercial scale** [emphasis added by applicant]. The soils here have major management limitations including ashy and sandy surface texture. The majority of the area has soils that are very shallow to shallow with many rock outcrops and rock fragments in the surface. Wind erosion is a potential hazard is moderately high when applying range improvement practices. Because the soil is influenced by pumice ash, reestablishment of the native vegetation is very slow if the vegetation is removed or deteriorated. Pond development is limited by the soil depth. The restricted soil depth limits the choice of species for range seeding to drought-tolerant varieties. Further, range seeding with ground equipment is limited by the rock fragments on the surface. The areas of very shallow soils and rock outcrop limit the areas suitable for grazing and restrict livestock accessibility.*

Total Range Production from NRCS Websoil survey and estimate based soil percentages in revised soil map units

Soil Map Unit	Total annual range production pounds per acre		
	Unfavorable year	Normal year	Favorable year
36A	700	900	1100
58C	411	558	705
Dk	700	900	1100
GR ¹	315	441	567

¹ Estimated based on weighted average of soils

Total range production is the amount of vegetation that can be expected to grow annually in a well-managed area that is supporting the potential natural plant community. It includes all vegetation, whether or not it is palatable to grazing animals. It includes the current year’s growth of leaves, twigs, and fruits of woody plants. It does not include the increase in stem diameter of trees and shrubs. It is expressed in pounds per acre of air-dry vegetation. In a normal year, growing conditions are about average. Yields are adjusted to a common percent of air-dry moisture content. The productivity provided for Dk map unit is from Websoil survey for the Deskamp soil and that provided for the GR map unit is based on 40% very shallow soils, 35% Gosney and 25% rock outcrop.

Based on previous NRCS map has a weighted average annual productivity of 669 pounds per acre in a normal year. Based on the revised Order-1 map the annual productivity is even lower, 540 pounds per acre. The animal use months (AUMs) for this 37.7 acre parcel is 5.5 based on the revised soil map and a monthly value of 910 pounds forage per 1 AUM equivalent to pounds per cow calf pair. This model assumes the cow’s take to be 25% of annual productivity in order to maintain site productivity and soil health (NRCS 2009). This

limits the grazing to one cow calf pair roughly 5 to 6 months annually. **This is not an economical model for livestock production** [emphasis added by applicant].

Inappropriate grazing causes a reduction in desirable grasses and where present cheatgrass will increase and granite prickly gilia increases and grasses decline. Cheatgrass becomes dominate along with grey rabbitbrush. Ground fire potential increases with increasing cheatgrass. Cutting of juniper leads to an increase in grey rabbitbrush and an increase in cheatgrass with or without grazing. Idaho fescue is eliminated from areas where trees are removed due to harsh microclimate and cheatgrass replaces it. The addition of inappropriate grazing would lead to a decline in the other deep-rooted perennial bunchgrasses and an increase in annuals and granite prickly gilia."

Climatic Conditions

According to Mr. Gallagher, climatic conditions of this area make is [sic] difficult for production of most crops, as stated below:

*"The low annual precipitation, high summer temperature and evapotranspiration rates, and shortened frost-free growing season make this **a difficult climate for production of most crops** [emphasis added by applicant]. Irrigation is needed on area farms to meet crop needs given only 8 to 10 inches precipitation that falls mainly between November and June, with a long summer drought. The soil temperature regime is mesic. The average annual air temperature is 46 degrees F with extreme temperatures ranging from -26 to 104 degrees F. The frost-free period is 50 to 90 days. The optimum period for plant growth is from late March through June. Freeze-free period (average) 140 days. (NRCS 2020) These harsh climatic conditions coupled with very low soil available water holding capacity limits the potential of irrigated crop production to the Deskamps soils."*

Existing and Future Availability of Water for Farm Irrigation Purposes:

No new irrigation water rights are expected to be available to the Central Oregon Irrigation District (COID) in the foreseeable future. In order to obtain water rights, the applicant would need to convince another COID customer to remove water rights from their property and sell them to the applicant and obtain State and COID approval to apply the water rights to the subject property. In such a transaction, water rights would be taken off productive farm ground and applied to the nonagricultural soils found on the subject property. Such a transaction runs counter to the purpose of Goal 3 to maintain productive Agricultural Land in farm use.

Given the poor quality of these soils, it is highly unlikely that Central Oregon Irrigation District would approve a transfer of water rights to this property. In addition, no person intending to make a profit in farming would go to the expense of purchasing water rights, mapping the water rights and establishing an irrigation system to irrigate the lands on the subject property.

Given the dry climate, it is necessary to irrigate the subject property to grow an alfalfa crop and to maintain a pasture. A farmer would need to spend significant sums of money to purchase water rights, irrigation systems, maintain the systems, pay laborers to move and monitor equipment, obtain electricity, pay irrigation district assessments and pay increased liability insurance premiums for the risks involved with farming operations.

Irrigating the soils found on the subject property as described by Mr. Gallagher, that have low fertility, low capacity to store nutrients, and very low available water holding capacity translates into low productivity for crops that would amount to no profit.

Existing Land Use Patterns

Existing land use patterns in the area are primarily non-agricultural related land uses including urban development to the west within the Bend City limits, County exception lands zoned MUA-10 developed with homes and small acres of irrigation for pasture and other hobby farm uses to the east and south, and irrigated farmland zoned EFU-TRB to the north and northeast.

The EFU-zoned properties to the north and northeast include:

North and northeast of the subject property is a pocket of EFU-zoned property. The adjacent property to the north, tax lot 18-12-02-1001, is a 12.45-acre EFU-zoned property that is partially irrigated and developed with a nonfarm dwelling (file no. CU-01-75). Northeast is tax lot 18-12-02-201, a 53.30-acre farm parcel that is irrigated and engaged in hay production, receiving farm tax deferral, and developed with a dwelling and outbuildings.

The close proximity to the City of Bend and residential areas limit the types of agricultural activities that could reasonably be conducted for profit on the subject property. The subject property would not be suitable for raising animals that are disturbed by noise. Additionally, the property owner would bear the burden of paying for harm that might be caused by livestock escape, in particular livestock and vehicle collisions. Any agricultural use that requires the application of pesticides and herbicides would be very difficult to conduct on the property given the numerous homes located in close proximity to the property. In addition, the creation of dust which accompanies the harvesting of crops is a major concern on this property due to the close proximity residential use.

Technological and Energy Inputs Required:

According to Mr. Gallagher:

*"The very shallow and shallow soils and abundant rock outcrops limit practical agricultural crop production on all but about 7 acres out of the 10 acres of Deskamps soils. The Deskamps soils are into four separate delineations that are separated by rocky and shallow soils and rock outcrops and lava tubes as well as irrigation ditches. **The landscape***

is so cut up it is impractical to farm [emphasis added by applicant]. *The best case scenario for crop production is for an area approximately seven acres along the north edge of the parcel that is spotted with rock outcrops and is of a very irregular shape. This area could at most produce about 28 tons of alfalfa under high fertilizer inputs and high irrigation water inputs. Current hay prices are from \$200.00 to \$250.00 per ton which would give an annual gross of about \$5,600.00 to \$7,000.00, before expenses. After expenses are deducted for land costs, site preparation, planting, costs of production like irrigation, fertilizer, weed control, costs of harvest including swath, rake, and bale, stack, and costs of handling, storage and marketing there would be **no profit associated with producing hay crops on such a small area*** [emphasis added by applicant]."

Accepted Farming Practices:

Farming lands comprised of soils that are predominately Class 7 and 8 is not an accepted farm practice in Central Oregon. Dryland grazing, the farm use that can be conducted on the poorest soils in the County, typically occurs on Class 6 non-irrigated soils that have a higher soils class if irrigated. The applicant would have to go above and beyond accepted farming practices to even attempt to farm the property for dryland grazing. Crops are typically grown on soils in soil class 3 and 4 that have irrigation, which this property has neither.

The Hearings Officer finds that many of the factors surrounding the subject property, such as the proximity to the Bend city limits, current residential and non-agricultural related land uses in the area, soil fertility, spotty/small areas of Class 3 (irrigated) and Class 6 (non-irrigated) soils, and lack of availability of water rights, result in an extremely low possibility of successful farming on the subject property.

The Hearings Officer finds that the subject property, primarily comprised of Class 7 and 8 soils, is not suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration the soil fertility, suitability for grazing, climactic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy outputs required and accepted farming practices. Substantial evidence in the record supports a determination that the subject property cannot be employed for the primary purpose of obtaining a profit in money through farming-related endeavors, considering the costs of engaging in farm use. *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007).

Soils on the subject property can only be made fertile through artificial means, which is cost prohibitive from a profitability standpoint. The subject property is not suitable to grazing on a commercial scale given management limitations and expected low production of suitable vegetation. Climactic conditions result in difficulty for production of most crops. Given the fact that no new irrigation water rights are expected to be available to the COID in the foreseeable future and the poor quality of soils on the subject property, it is unlikely COID would approve a transfer of water rights to the property. Existing land use patterns also limit the suitability of grazing animals on the subject property which is in close proximity to the

City of Bend. A limited, approximately 7-acre portion of the subject property that could, at most, produce 28 tons of alfalfa with high fertilizer and water inputs, would not generate any profit after expenses are deducted for land costs, site preparation, planting and costs of production (irrigation, fertilizer, weed control, cost of harvest and cost of handling storage and marketing). Accepted farm practices in Central Oregon do not include farming lands comprised of soils that are predominantly Class 7 and 8. In order to conduct dryland grazing on the subject property, the applicant would have to take measures beyond accepted farming practices, including attempting to obtain a water rights transfer.

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

FINDING: The applicant offers the following response in the submitted burden of proof statement:

The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. The nearest agriculturally zoned land engaged in farm use to the subject property is located northeast on tax lot 18-12-02-201. This property is a 53.30-acre farm parcel that is irrigated and engaged in hay production, receiving farm tax deferral, and developed with a dwelling and outbuildings. The farm operations on tax Lot 201 operate independently and are not dependent upon the subject property to conduct its farm practices. This is evidenced by the subject property being owned by the applicant since 1930 and has never been farmed, much less combined with tax lot 201 in any way for agricultural purposes. Farming operations on tax lot 201 will be able to continue to occur if the subject property is rezoned to MUA-10. Further, the poor quality soils and lack of irrigation are not suited to agricultural production and make the subject property unsuitable for farm practices on the nearby agricultural land.

The Hearings Officer finds the subject property is not necessary for the purposes of permitting farm practices on the nearby Tax Lot 201 (Assessor's Map 18-12-02) based on the factors discussed in the previous finding.

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

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

The subject property is not and has not been a part of a farm unit that includes other lands not currently owned by the applicant. The property has no history of farm use and contains soils that make it unsuitable for farm use and therefore, no basis to inventory the subject property as agricultural land.

Goal 3 applies a predominant soil type test to determine if a property is "agricultural land". If a majority of the soils is Class 1-6 in in Central or Eastern Oregon, it must be classified "agricultural land." 1000 Friends position is that this is a 100% Class 7 -8 soils test rather than a 51% Class 7 and 8 soils test because the presence of any Class 1-6 soil requires the County to identify the entire property "agricultural land." Case law indicates that the Class 1 -6 soil test applies to a subject property proposed for a non-agricultural plan designation while the farm unit rule looks out beyond the boundaries of the subject property to consider how the subject property relates to lands in active farming in the area that were once a part of the area proposed for rezoning. It is not a test that requires that 100% of soils on a subject property be Class 1-6.

The farm unit rule is written to preserve large farming operations in a block. It does this by preventing property owners from dividing farmland into smaller properties that, alone, do not meet the definition of "agricultural land." The subject property is not formerly part of a larger area of land that is or was used for farming operations and was then divided to isolate poor soils so that land could be removed from EFU zoning. As demonstrated by the historic use patterns and soils reports, it does not have poor soils adjacent to or intermingled with good soils within a farm unit. The subject property is not in farm use and has not been in farm use of any kind. It has no history of commercial farm use and contains soils that make the property generally unsuitable for farm use as the term is defined by State law. It is not a part of a farm unit with other land.

The subject property is predominately Class 7 and 8 soils and would not be considered a farm unit itself nor part of a larger farm unit based on the poor soils and the fact that none of the adjacent property is farmed.

As shown by the soils capability study by Mr. Gallagher, the predominant soil type found on the subject property is Class 7 and 8, nonagricultural land (63.7%). The predominance test says that the subject property is not agricultural soil and the farm unit rule does not require that the Class 7-8 soils that comprise the majority of the subject property be classified as agricultural land due to the presence of a small amount of Class 1-6 soils on the subject property that are not employed in farm use and are not part of a farm unit. As a result, this rule does not require the Class 7 and 8 soils on the subject property to be classified agricultural land because a minority of the property contains soils rated Class 6.

The Hearings Officer finds that there are no bases on which to find that the subject property shall be inventoried as agricultural lands under this criterion. The property does not relate to land in active farming, and there are no parcels in the area that were once part of the subject property. A majority of the soils (63.7%) are not Class 1-6. Therefore, under the predominance test, the subject property is not agricultural. The farm unit rule does not mandate a different result. The subject property is not employed in farm use and is not now, nor in the past, part of a farm unit.

- (c) **"Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.**

FINDING: The subject property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4. The Hearings Officer finds this criterion is inapplicable.

OAR 660-033-0030, Identifying Agricultural Land

- (1) **All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.**
- (2) **When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands". A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).**

FINDING: The applicant addressed the factors in OAR 660-033-0020(1) above. As the Hearings Officer has found herein, the property is not "agricultural land," as referenced in OAR 660-033-0030(1), and contains barriers for farm use including poor quality soils and lack of irrigation.

The Hearings Officer finds that substantial evidence in the record shows the subject property is not "agricultural land" because the property is predominantly Class 7 and 8 soils. As the Hearings Officer found above, the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands.

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

FINDING: The Hearings Officer finds that evidence in the record, including examination of lands outside the boundaries of the subject property, shows the subject property is not “agricultural land.” Substantial evidence shows that the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands.

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

FINDING: The soil study prepared by Mr. Gallagher (Exhibit 5) provides more detailed soils information than contained in the NRCS Web Soil Survey. Exhibit 5 includes the Soil Assessment Completeness Review conducted by DLCD pursuant to OAR 660-033-0045(6)(a), dated February 12, 2021, confirming the report prepared by Mr. Gallagher meets the requirements for agricultural soils capability reporting.

Mr. Gallagher’s soils assessment report provides a high intensity Order-1 soil survey and soil assessment – a detailed and accurate soils assessment on the subject property based on numerous soil samples – to determine if the subject property is “agricultural land” within the meaning of OAR 660-033-0020. As explained in Mr. Gallagher’s report, the NRCS soil map of the subject property shows two general soil mapping units, 58C and 36A. The more detailed Order-1 survey conducted by Mr. Gallagher included 41 soil test pits, in addition to observations of surface rock on the parcel. The results of the previous and revised soils mapping units with land capability class are provided in **Table 1** below.

The soils report is related to the NCRS Land Capability Classification (LCC) system that classifies soils class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS. The soils report provides more detailed soils information than contained on the Web Soil Survey operated by the NRCS, which provides general soils data at a scale generally too small for detailed land use planning and decision making.

The NRCS mapping for the subject property is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the property contains approximately 33.7% 36A soil and contains 66.3% 58C soil. The soils study conducted by Mr. Gallagher finds the soil types on the subject

property vary from the NRCS identified soil types. The soil types described by Mr. Gallagher (as quoted from Exhibit 5) and the characteristics and LCC rating are shown in **Table 1** below.

GR Gosney-Rock Outcrop Complex

Capability Class: 7 and 8 mapped as complex

These soils are mapped together in a complex because both components are Capability Class 7 or greater, and it was not practical to map them separately. These soils are estimated to be about 25 percent Rock Outcrop and 75 percent Gosney. They have lower productivity than NRCS map unit 38B because they do not contain a mappable area of Deskamp soils that were mapped separately. The productivity reported in Table 2 for Gosney-Rock Outcrop are 20 percent less than the 58C map unit to account for more shallow and very shallow soils in the GR map unit in the revised map unit. Based on the observations here, the map unit is about 40 percent very shallow soils, 35 percent Gosney soils, and 25 percent rock outcrops.

Gosney loamy sand and stony loamy sand (0 to 15 percent slopes)

Description: *Gosney series consists of shallow (10 to 20 inches) to hard basalt bedrock, somewhat excessively drained soils on lava plains. These soils have rapid permeability. They formed in volcanic ash over hard basalt bedrock. Slopes are 0 to 15 percent. The mean annual precipitation is less than 12 inches, and the mean annual temperature is about 45 degrees F.*

Capability Class: 7

Soil Variability: *Depth to bedrock is from surface exposures of bedrock to 20 inches depth. There may be small inclusions of soils like Deskamp that are moderately deep (>20 inches to 40 inches). Many of the pedons are very stony. This unit includes very shallow soils <10 inches.*

Very shallow phase 0-15 percent slopes

Description: *This component of the complex is less than 10 inches to basalt.*

Capability Class: 7

Soil Variability: *Depth to bedrock is from 1 to 10 inches. These soils are very shallow and of similar parent material to Gosney. These soils have lower available water holding capacity and an estimated 40 percent lower productivity.*

Rock Outcrop (0 to 15 percent slopes)

Description: *This part of the map unit is areas where bedrock is at the surface.*

Capability Class: 8

Soil Variability: *In places, rocks are right at the surface and often times bedrock is standing several feet above the surface of the adjacent soils. In some areas (borings 39-41) there is rimrock, large boulders and other surface stone where suspected lava tubes collapsed.*

Dk Deskamp loamy sand

Description: *This map unit is mainly moderately deep, somewhat excessively drained soils with rapid permeability on lava plains. These soils formed in ash and have hard basalt at 20 to 40 inches. Slopes are 1 to 15 percent. The A and AB horizon are loamy sand. The 2B is loamy sand and gravelly loamy sand. The NRCS soils survey mapped Deskamp and Gosney in a complex described as 50% Deskamp and 35% Gosney. In this Dk unit I delineated the Deskamp component of the former complex and mapped it as a consociation based on more detailed soil sampling than the NRCS soil survey. This soil covers approximately 11 acres of the parcel and is broken up into several small delineations two of which are less than an acre. These small and isolated areas are impractical to farm. The largest delineation is 8.5 acres and has at least three areas of rock outcrop that were delineated within.*

Capability Class: *3-irrigated and 6 non-irrigated*

Soil Variability: *There are small inclusions of rock outcrop and of deep soils with sandy skeletal family. Any rock outcrop I observed in the field was delineated from the Deskamp unit, but because not all rock outcrops could be resolved at the one boring per acre average sampling intensity, given the brushy conditions.*

CN Irrigation Canals

Description: *These canals are non-soil areas that consist of water and steep banks. When canals are dry they are hard rock bottom.*

Capability Class: *Not Rated*

Based on Mr. Gallagher's qualifications as a certified Soil Scientist and Soil Classifier, the Hearings Officer finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject property. The state's agricultural land rules, OAR 660-033-0030, allow the County to rely on the soil capability analysis prepared by Mr. Gallagher, which is more detailed than the NRCS soil maps and soil surveys and the Web Soil Survey operated by the NRCS as of January 2, 2012. The Hearings Officer finds that the Order-1 soil survey is related to the NRCS land capability classification system.

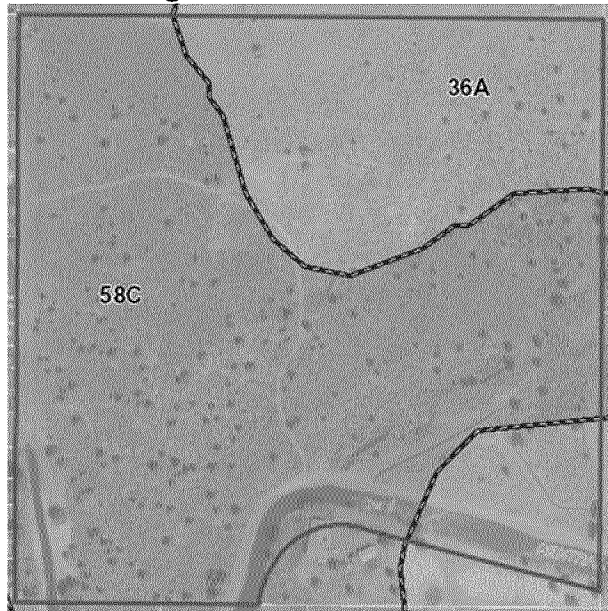
The Hearings Officer finds that the more detailed soils information in the report prepared by Mr. Gallagher assists the County to make a better determination of whether the subject property qualifies as agricultural land. As set forth above, DLCD completed a Soil Assessment Completeness Review pursuant to OAR 660-033-0045(6)(a), confirming the report prepared by Mr. Gallagher meets the requirements for agricultural soils capability reporting.

For all the foregoing reasons, the Hearings Officer finds the subject property is not "agricultural land,"

Table 1 - Summary of Order I Soil Survey

Previous Map Symbol	Revised Map Symbol	Soil Series Name	Capability Class	Previous Map*		Revised Map	
				Ac	-%-	Ac	-%-
36A	Dk	Deskamp loamy sand0 to 3 percent slopes	3 irrigated 6 non-irrigated	12.2	32.3	10.9	28.90
58C	--	Gosney-Rock outcrop-Deskamp complex, 0 to 15 percent slopes	6, 7 and 8	25.5	67.7	0	0
--	GR	Gosney-Rock Outcrop Complex	7 and 8	0	0	24	63.7
	CN	Irrigation Canal	not rated	0	0	2.8	7.4
Total				37.7	100	37.7	100

*Soils that were previously mapped as components of a complex that are mapped as consociations in revised map.

Figure 1 - NRCS Soil Data

- (c) ***This section and OAR 660-033-0045 apply to:***
- (A) ***A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and***

FINDING: The applicant is seeking approval of a non-resource plan designation on the basis that the subject property is not defined as agricultural land.

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

FINDING: The applicant submitted a soils study by Mr. Gallagher of Red Hill Soils dated December 2, 2020. The soils study was submitted following the ORS 215.211 effective date. Staff received acknowledgement via email on February 16, 2021, from Hilary Foote, Farm/Forest Specialist with the DLCDC that the soils study is complete and consistent with DLCDC's reporting requirements.

The Hearings Officer finds this criterion to be met based on the submitted soils study and confirmation of completeness and consistency from DLCDC.

- (e) ***This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.***

FINDING: The applicant has provided a DLCD certified soils study as well as NRCS soils data. The Hearings Officer finds that the applicant has complied with the soils analysis requirements of OAR 660-033-0045 in order to obtain DLCD certification. DLCD's certification establishes compliance with OAR 660-033-0045.

The Hearings Officer finds this criterion is met.

DIVISION 12, TRANSPORTATION PLANNING

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

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

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

FINDING: As referenced in the agency comments section in the Findings of Fact above, the Senior Transportation Planner for Deschutes County initially requested a revised traffic study for the applications. The applicant submitted an updated report from Transight Consulting LLC dated June 8, 2021, to address identified concerns and no further comments were received from the County's Senior Transportation Planner. The update includes adjustments to the review of potential high impact land use scenarios to include comparisons between a winery and a cluster development, deemed the "worst case scenario" outright uses allowed in EFU and MUA10 Zones, respectively.

In response to these criteria, the applicant's burden of proof provides the following statement:

Attached as Exhibit 9 is a transportation impact analysis memorandum prepared by traffic engineer, Joe Bessman, PE. Mr. Bessman made the following key findings with regard to the proposed zone change and concluded that a significant affect does not occur with the proposed rezone:

- *Rezoning of the 36.65-acre COID property from EFU-TRB to MUA could generate up to 49 additional weekday daily trips, including only five additional trips during the weekday p.m. peak hour.*
- *The change in trips does not meet Deschutes County, ODOT, or City of Bend thresholds of significance at any nearby locations.*
- *The site will be served with stubbed local street connections west through the Marketplace Subdivision that connect to the SE 27th Street corridor. This access configuration does not impact Deschutes County streets.*
- *The nearest classified intersection of SE 27th Street/SE Reed Market Road has a very low crash rate. There are no documented safety needs within the project vicinity.*

Based on this review a significant affect does not occur with the proposed rezone given the minor potential impacts in transitioning from EFU to MUA zoning.

Based on the traffic analysis and findings by Mr. Bessman, the application complies with the TPR.

Updated findings below, submitted by Transight Consulting on June 8, 2021, are set forth in the revised traffic study:

- *Rezoning of the 36.65-acre COID property from EFU-TRB to MUA provides similar potential impacts to the existing zoning, with the potential for a trip reduction within a “worse case” trip generation scenario.*
- *The reduction in trips does not meet Deschutes County, ODOT, or City of Bend thresholds of significance at any nearby locations.*
- *The site will be served with stubbed local street connections west through the adjacent Marketplace Subdivision that connect to the SE 27th Street corridor. This access configuration does not impact Deschutes County streets.*
- *The nearest classified intersection of SE 27th Street/SE Reed Market Road has a very low crash rate. There are no documented safety needs within the project vicinity.*

Based on this review a significant affect does not occur with rezoning from EFU to MUA zoning. With the range of outright allowable uses identified within ORS 215.213(1) and 215.283(1) as a “property right” additional trip generation scenarios could be shown resulting in a trip reduction. Regardless of the scenario, the overall impact of the rezone is negligible on the transportation system and the rezone reflects the more appropriate use of the property given its unsuitability for farming.

Public comments received by the County indicate concerns with potential traffic impacts as a result of the proposed plan amendment and zone change. These comments are non-specific in nature, do not include any findings contrary to the findings set forth in the Transight Consulting, LLC analyses, and do not include any information that is inconsistent with the Transight Consulting, LLC’s reports. Public comments express a generalized concern about traffic impacts associated with additional growth if the subject property is developed. The Hearings Officer notes that additional transportation/traffic review will be required at the time of any future development application(s).

The Hearings Officer finds that the proposed rezone will not significantly affect an existing or planned transportation facility for the following reasons: (1) it will not change the functional classification of an existing or planned transportation facility; (2) it will not change standards implementing a functional classification system; and (3) it will not result in any of the following effects – types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility, degradation of the performance of an existing or planned transportation facility such that it would not meet performance standards identified in the TSP or comprehensive plan, or degradation of the performance of an existing or planned transportation facility that is otherwise projected not to meet performance standards identified in the TSP or comprehensive plan.

The Hearings Officer finds that, based on OAR 660-012-060(1), the County is not required to put in place measures as provided in Section (2) of this rule. The applicant has demonstrated compliance with the TPR. These criteria are met.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

FINDING: The Statewide Planning Goals are addressed below, as set forth in the applicant's burden of proof:

Goal 1, Citizen Involvement. *Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the applicant to post a "proposed land use action sign" on the subject property. Notice of the public hearings held regarding this application will be placed in the Bend Bulletin. A minimum of two public hearings will be held to consider the application.*

Goal 2, Land Use Planning. *Goals, policies, and processes related to zone change applications are included in the Deschutes County Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code. The outcome of the application will be based on findings of fact and conclusions of law related to the applicable provisions of those laws as required by Goal 2.*

Goal 3, Agricultural Lands. *The applicant has shown that the subject property is not agricultural land because it is comprised predominantly of Class 7 and 8 soils that are not suitable for farm use. Therefore, the proposal is consistent with Goal 3.*

Goal 4, Forest Lands. *Goal 4 is not applicable because the subject property does not include any lands that are zoned for, or that support, forest uses.*

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. *Deschutes County DIAL property information and Interactive Map show the subject property has "wetlands" that correspond with COID's irrigation distribution system within the property including the developed canals and ditches. According to the Comprehensive Plan (Chapters 2, Resource Management and 5, Supplemental Sections), in 1992 Deschutes County Ordinance 92-045 adopted all wetlands identified on the U.S. Fish and Wildlife Service National Wetland Inventory (NWI) Maps as the Deschutes County wetland inventory. In addition, as described in the Comprehensive Plan, the NWI Map "shows an inventory of wetlands based on high-altitude aerial photos and limited field work. While the NWI can be useful for many resource management and planning purposes, its small scale, accuracy limitations, errors of omission that range up to 55 percent (existing wetlands not shown on NWI), age (1980s), and absence of property boundaries make it unsuitable for parcel-based decision making."*

The Comprehensive Plan has no specific protections for wetlands; protections are provided by ordinances that implement Goal 5 protections (for example, fill and removal zoning code regulations). In the case of Irrigation Districts performing work within wetlands, DCC

18.120.050(C) regarding Fill and Removal Exceptions allows fill and removal activities as a use permitted outright as stated below:

- C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.

Because the proposed plan amendment and zone change are not development, there is no impact to any Goal 5 resource. Any potential future development of a wetland – no matter what zone the wetland is in – will be subject to review by the County’s fill and removal regulations.

Goal 6, Air, Water and Land Resources Quality. *The approval of this application will not impact the quality of the air, water, and land resources of the County. Any future development of the property would be subject to local, state and federal regulations that protect these resources.*

Goal 7, Areas Subject to Natural Disasters and Hazards. *According to the Deschutes County DIAL property information and Interactive Map the entire Deschutes County, including the subject property, is located in a Wildfire Hazard Area. The subject property is also located in Rural Fire Protection District #2. Rezoning the property to MUA-10 does not change the Wildfire Hazard Area designation. Any future development of the property would need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.*

Goal 8, Recreational Needs. *This goal is not applicable because no development is proposed and the property is not planned to meet the recreational needs of Deschutes County. The Bend Parks and Recreation District has an undeveloped park site, Hansen Park, located to the south of the property with plans to develop the park trailhead that would serve the Central Oregon Historic Canal Trail System. The proposed rezone does not impact the recreational needs of Deschutes County as no development is proposed.*

Goal 9, Economy of the State. *This goal does not apply to this application because the subject property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely affect economic activities of the state or area.*

Goal 10, Housing. *The County’s Comprehensive Plan Goal 10 analysis anticipates that farm properties with poor soils, like the subject property, will be converted from EFU to MUA-10 or RR-10 zoning and that these lands will help meet the need for rural housing. Approval of this application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County Comprehensive Plan.*

Goal 11, Public Facilities and Services. *The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Pacific Power has confirmed that it has the capacity to serve the subject property and the proposal will not result in the extension of urban services to rural areas.*

Goal 12, Transportation. *The application complies with the Transportation System Planning Rule, OAR 660-012-0060, the rule that implements Goal 12. Compliance with that rule also demonstrates compliance with Goal 12.*

Goal 13, Energy Conservation. *The approval of this application does not impede energy conservation. The subject property is located adjacent to the city limits for the City of Bend. If the property is developed with residential dwellings in the future, providing homes in this location as opposed to more remote rural locations will conserve energy needed for residents to travel to work, shopping and other essential services provided in the City of Bend.*

Goal 14, Urbanization. *This goal is not applicable because the applicant's proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-10 Zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was recently acknowledged when the County amended its comprehensive plan. The plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.*

Goals 15 through 19. *These goals do not apply to land in Central Oregon.*

The Hearings Officer finds consistency with Goal 1 (Citizen Involvement) has been established with the public notice requirements required by the County for these applications (mailed notice, posted notice and two public hearings). Similarly, the Hearings Officer finds consistency with Goal 2 (Land Use Planning) based on the applications' consistency with goals, policies and processes related to zone change applications as set forth in the Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code.

Based on the findings above, the Hearings Officer finds consistency with Goal 3 (Agricultural Lands) has been demonstrated because the subject property is not Agricultural Land. The property is not comprised of Forest Lands; Goal 4 is inapplicable.

With respect to Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), the Hearings Officer finds that the property does not include any scenic and historic areas. Moreover, while the property is currently open and undeveloped, the County Goal 5 inventory does not include the subject property as an "open space" area protected by Goal 5. Members of the public expressed concern regarding potential impact on wildlife. However, the Hearings Officer notes that the property does not include a wildlife overlay (WA)

designation and, more importantly, no development is proposed at this time. Rezoning the subject property will not, in and of itself, impact wildlife on the subject property.

The property does include areas mapped as wetlands by the NWI, which constitute Goal 5 natural resources. Fill and removal activities conducted by an irrigation district are allowed outright under DCC 18.120.050(C). The Hearings Officer again notes that no specific development activities, including fill and removal, is proposed at this time. Because the proposed plan amendment and zone change do not constitute development, there is no impact to any Goal 5 resource. The Hearings Officer finds that future development activities will be subject to local, state and federal regulations that protect delineated wetlands. For these reasons, the Hearings Officer finds consistency with Goal 5.

The Hearings Officer finds consistency with Goal 6 (Air, Water and Land Resources Quality) because there is no demonstrable impact of approval of the application to rezone the subject property from EFU to MUA-10. Future development activities will be subject to local, state and federal regulations that protect these resources.

With respect to Goal 7 (Areas Subject to Natural Disasters and Hazards), the Hearings Officer finds consistency with this Goal based on the fact that rezoning the property to MUA-10 does not change the Wildfire Hazard Area designation that is applicable to the entirety of Deschutes County. The subject property is within the Rural Fire Protection District #2. Any application(s) for future development activities will be required to demonstrate compliance with fire protection regulations.

The Hearings Officer finds consistency with Goal 8 (Recreational Needs) given the fact that no development is currently proposed and that rezoning, in and of itself, will not impact recreational needs of Deschutes County. Members of the public testified regarding concerns of loss of the currently vacant property as open space and for recreational uses. The Hearings Officer notes that the record includes evidence regarding an undeveloped Bend Park and Recreation District park site, Hansen Park, located to the south of the property. There are plans to develop a park trailhead that would serve the Central Oregon Historic Canal Trail System. The Hearings Officer finds that the proposed rezone does not impact these recreational amenity plans.

The Hearings Officer finds Goal 9 (Economy of the State) is inapplicable because the subject property is not designated as Goal 9 economic development land.

The Hearings Officer finds the applications are consistent with Goal 10 (Housing) because the Comprehensive Plan Goal 10 chapter anticipates that farm properties with poor soils will be converted from EFU to MUA-10 or RR-10 zoning, making such properties available to meet the need for rural housing. Although no development of the subject property is proposed at this time, rezoning the subject property from EFU to MUA-10 will enable consideration of the property for potential rural housing development in the future.

The Hearings Officer finds the applications are consistent with Goal 11 (Public Facilities and Services). The record establishes that Pacific Power has capacity to serve the subject property and the proposal will not result in the extension of urban services to rural areas.

Based on the findings above regarding the Transportation System Planning Rule, OAR 660-012-0060, the Hearings Officer finds the applications are consistent with Goal 12 (Transportation).

The Hearings Officer finds the applications are consistent with Goal 13 (Energy Conservation) because there is no evidence approval of the applications will impede energy conservation. Rather, if the property is developed with residential dwellings in the future, energy conservation will be increased – not impeded – as residents will not be required to travel as far to work, shopping and other essential services provided in the City of Bend.

The Hearings Officer finds the applications are consistent with Goal 14 (Urbanization). The subject property is not within an urban growth boundary and does not involve urbanization of rural land because the MUA-10 zone does not include urban uses as permitted outright or conditionally. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The state acknowledged compliance of the MUA-10 zone with Goal 14 when the County amended its comprehensive plan.

The Hearings Officer finds that Goals 15-19 do not apply to land in Central Oregon.

For all the foregoing reasons, the Hearings Officer finds compliance with the applicable Statewide Planning Goals has been demonstrated.

IV. DECISION & RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer finds the applicant has met the burden of proof necessary to justify the request for a Comprehensive Plan Map Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area and a corresponding request for a Zone Map Amendment (Zone Change) to reassign the zoning of the subject property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

The Deschutes County Board of Commissioners is the final local review body for the applications before the County. DCC 18.126.030. The Hearings Officer recommends approval of the applications based on this Decision of the Deschutes County Hearings Officer.



Stephanie Marshall, Deschutes County Hearings Officer

Dated this __12th__ day of October, 2021

Mailed this 13th day of October, 2021

owner	agent	inCareOf	address	cityStZip	type	cdd id
Central Oregon Irrigation District			1055 SW Lake Ct	Redmond, OR 97756	HO Decision	21-400-PA, 401-ZC
Tia M. Lewis	Schwabe, Williamson & Wyatt, P.C.		360 SW Bond Street, Suite 500	Bend, OR 97702	HO Decision	21-400-PA, 401-ZC
Joe Bessman	Transight Consulting		Via Email		HO Decision	21-400-PA, 401-ZC



COMMUNITY DEVELOPMENT

NOTICE OF HEARINGS OFFICER'S DECISION

The Deschutes County Hearings Officer has approved the land use application(s) described below:

FILE NUMBERS: 247-21-000400-PA, 401-ZC

LOCATION: The subject property has an assigned address of 61781 Ward Rd, Bend, OR 97702; and is identified on the County Assessor's Map No. 18-12-02, as Tax Lot 1000.

**OWNER/
APPLICANT:** Central Oregon Irrigation District (COID)

**ATTORNEY
FOR APPLICANT:** Tia M. Lewis
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond Street, Suite 500
Bend, OR 97702

SUBJECT: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

STAFF CONTACT: Tarik Rawlings, (541) 317-3148, tarik.rawlings@deschutes.org

RECORD: Record items can be viewed and downloaded from:
www.buildingpermits.oregon.gov

APPLICABLE CRITERIA: The Hearings Officer reviewed this application for compliance against criteria contained in Chapters 18.04, 18.16, 18.32 and 18.136 in Title 18 of the Deschutes County Code (DCC), the Deschutes County Zoning Ordinance, the procedural requirements of Title 22 of the DCC, Chapters 2, 3 and Appendix C of the Deschutes County Comprehensive Plan, Divisions 6, 12, 15, and 33 of the Oregon Administrative Rules (OAR) Chapter 660, and Chapter 215.211 of the Oregon Revised Statutes.

DECISION: The Hearings Officer finds that the application meets applicable criteria, and recommends approval of the applications.

As a procedural note, the hearing on August 31, 2021, was the first of two required de novo hearings per DCC 22.28.030(c). The second de novo hearing will be heard in front of the Board of County Commissioners at a date to be determined.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the base appeal deposit plus 20% of the original application fee(s), and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Board of County Commissioners an adequate opportunity to respond to and resolve each issue.

Copies of the decision, application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

owner	agent	inCareOf	address	cityStZip	type	cdd id
Central Oregon Irrigation District			1055 SW Lake Ct	Redmond, OR 97756	HO NOD	21-400-PA, 401-2C
Tia M. Lewis	Schwabe, Williamson & Wyatt, P.C.		360 SW Bond Street, Suite 500	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Joe Bessman	Transight Consulting		Via Email		HO NOD	21-400-PA, 401-2C
Kecia Weaver			21435 Modoc Lane	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Patrick McCoy			21435 Modoc Lane	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Matt Carey			61765 Gibson Drive	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Jeff Sundberg			61710 Gibson Drive	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Kyle Weaver			61375 Kobe St	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Treva Weaver			1020 SE Teakwood Dr	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
John Schaeffer			61677 Thunder Road	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Cathy DeCoursey			61718 Rigel Way	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Jennifer Neil			61723 Rigel Way	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Brent N. Wilkins			61764 SE Camellia Street	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
Crystal Garner			21262 Capella Pl	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
William Kepper			12167 Daylily Ave	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
BEND FIRE DEPT.	LARRY MEDINA		1212 SW SIMPSON, SUITE B	Bend, OR 97702	HO NOD	21-400-PA, 401-2C
BEND GROWTH MANAGEMENT DEPT.			709 NW WALL ST., STE. 102	Bend, OR 97701	HO NOD	21-400-PA, 401-2C
BEND PLANNING DEPT.			P.O. BOX 431	Bend, OR 97709	HO NOD	21-400-PA, 401-2C
BEND PUBLIC WORKS DEPT.			575 NE 15TH ST.	Bend, OR 97701	HO NOD	21-400-PA, 401-2C
DESCHUTES CO. ASSESSOR			ELECTRONIC		HO NOD	21-400-PA, 401-2C
DESCHUTES CO. SR. TRANS. PLANNER	PETER RUSSELL		ELECTRONIC		HO NOD	21-400-PA, 401-2C
ODOT REGION 4 PLANNING			63055 N. HWY. 97, BUILDING M	BEND, OR 97703	HO NOD	21-400-PA, 401-2C
HAROLD K MARKEN REV TRUST ETAL	MARKEN,HAROLD K CO-TTEE ETAL		21485 BEAR CREEK RD	BEND, OR 97701	HO NOD	21-400-PA, 401-2C
WEST, KEVIN & JENNIFER			PO BOX 1923	BEND, OR 97709	HO NOD	21-400-PA, 401-2C
QUICK,MICHAEL HAROLD & DELORES MARIE			21374 STEVENS RD	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
OCCUPANT			61710 GIBSON DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
MORRISON, DAVID I & NANCY L			21415 MODOC LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
FERNS,TIMOTHY J & RONDA L HALVORSEN-			61730 GIBSON DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CAREY, MATTHEW A & SHARI A			61765 GIBSON DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
MCCOY, PATRICK E			21435 MODOC LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WARRENBURG FAMILY LIVING TRUST	WARRENBURG, ROBERT JR & LAURA TTEES		61740 GIBSON DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
NELSON, HARRY R			21485-A MODOC LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
HARRELL,JILL KINGHAM			61676 THUNDER RD	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LAKE,JAMES E & JANET M			61661 THUNDER RD	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BAILEY-SCHAEFFER TRUST	BAILEY,PATTI L & SCHAEFFER,JOHN M TTEES		61677 THUNDER RD	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
NASLUND, JULIE & NEVILL, MICHAEL			61645 THUNDER RD	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
PETERS, ROBERT W & LISA M			21360 STEVENS RD	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LUCAS FAMILY REV LIVING TRUST	LUCAS,GERALD & MARGARET TTEES		21390 STEVENS RD	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
PASLAY, BRIAN & NANCY			21370 STEVENS RD	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BEND METRO PARKS & RECREATION DIST			799 SW COLUMBIA ST	BEND, OR 97702-3218	HO NOD	21-400-PA, 401-2C
LARSEN, MICHAEL ETAL			10927 SW MATZEN DR	WILSONVILLE, OR 97070	HO NOD	21-400-PA, 401-2C
SOCKEYE E LLC ETAL			61165 RIVER BLUFF TRAIL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
RASMUSSEN, MONIQUE & RICHARD			61195 BONNY BRIDGE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WOLF,DAVID G			PO BOX 5907	BEND, OR 97708	HO NOD	21-400-PA, 401-2C
CARR, BRUCE			21265 SE DOVE LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LOUIS G ROGERSON & JANICE M ROGE... ETAL	ROGERSON,JANICE M TRUSTEE ETAL		21280 DOVE LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
GROVE, HILARY VERONICA			21273 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
KEPPER, WILLIAM EDSON & KAREN GRACE			21267 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
TILTON, PATRICIA J & CHRISTOPHER L			21261 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
NORMAN, JENNIFER & PAUL			21255 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
TUTTLE/GALOTTI REVOCABLE LIVING TRUST	TUTTLE, CRAIG H TTEE ETAL		61757 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SWAFFORD FAMILY TRUST	SWAFFORD, MATTHEW J & JEANETTE E TTEES		61753 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
FEUERMAN, JACOB & MATHENY, ELISSA			21257 BELLFLOWER PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ARBAUGH, KYLE			21261 BELLFLOWER PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
MCCOUSTON, ROBIN SUE & KEVIN JAMES			19882 PORCUPINE DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LEONG, KIRBY C W & LYNN Y			1044 KAMEHAME DR	HONOULULU, HI 96825	HO NOD	21-400-PA, 401-2C
VON ZANGE, SCOTT A			21297 BELLFLOWER PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BODI, AMY & DAVID			21250 WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LOPEZ, RONALD L & LAURA MARIE	C/O LAURA LOPEZ		PO BOX 1492	GRANTS PASS, OR 97528	HO NOD	21-400-PA, 401-2C
BETTENCOURT LIVING TRUST	BETTENCOURT, JOHN & SANDRA J TTEES		587 STONE CORRAL CT	ANGELS CAMP, CA 95222	HO NOD	21-400-PA, 401-2C
OLSON, TIMOTHY J			21262 WOODRUFF PL	BEND, OR 97702-3601	HO NOD	21-400-PA, 401-2C
PEPPER, CLIVE & SUSAN			21266 WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
JOHNSON, ALLEN H			21270 WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
KATHERINE JAMPOL CROWE REV LIV TRUST	CROWE, KATHERINE JAMPOL TTEE		21274 WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
EAST BEND PLAZA LLC			3188 N HIGHWAY 97 #101	BEND, OR 97703	HO NOD	21-400-PA, 401-2C
SUE, MARK & KARI			21298 SE WOODRUFF PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
VREM FAMILY TRUST	VREM, RICHARD C & SANDRA J TTEES		1310 DIAMOND DR	ARCATA, CA 95521	HO NOD	21-400-PA, 401-2C
PATTERSON, NICOLAS F & MEHTA, SMITA R			61710 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
KENNELLEY, KEVIN S & TRACY L			61706 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
PREWITT, KURTUS S			61702 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
GARDENSIDE HOME OWNERS ASSOC			PO BOX 23099	TIGARD, OR 97281-3099	HO NOD	21-400-PA, 401-2C
BURKE, BRENDA N ETAL	C/O NORTHWEST COMMUNITY MGMT CO (A)		4931 DELOS WAY	OCEANSIDE, CA 92056	HO NOD	21-400-PA, 401-2C
DISPENZA JUDITH ANN			322 BUCHANON	HOLLYWOOD, FL 33019	HO NOD	21-400-PA, 401-2C
STAVRO, CRISTINA NICOLE			61708 SE MARGOLD LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BLAIR, COURTNEY L			61712 MARGOLD LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
PHYLLIS H MEDNICK TRUST	MEDNICK, PHYLLIS H TTEE		61705 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
JDD PROPERTIES LLC			2463 NW MORNINGWOOD WAY	BEND, OR 97703-7022	HO NOD	21-400-PA, 401-2C
CHARLES P LARSON SOLE PROP 401K PLAN	LARSON, CHARLES P & LAURIE P TTEES		270 VISTA RIM DR	REDMOND, OR 97756	HO NOD	21-400-PA, 401-2C
NEIL, JENNIFER			61723 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BOATWRIGHT, STEVEN F & PAMELA F			61706 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CHERKOSS, ARNE I & LAUREL A			61712 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CATHY DECOURCEY TRUST	DECOURCEY, CATHERINE L TRUSTEE		61718 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
JOHNSON- GOODMAN REVOCABLE FAM TR	JOHNSON, GEORGE H TRUSTEE ETAL		61724 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LEAGELD, DAVID S & RUTH M			61730 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ROGERS, LANI			61742 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
GAYLA L SCHAMBURG TRUST	SCHAMBURG, GAYLA L TTEE		61748 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
GIBSON, SALLY J			61754 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
DICKINSON, SANDRA			61760 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
MOTT, BRIAN H ETAL			3311 NW MORNINGWOOD CT	BEND, OR 97703	HO NOD	21-400-PA, 401-2C
BEND PARKS & RECREATION DIST			799 SW COLUMBIA ST	BEND, OR 97702-3218	HO NOD	21-400-PA, 401-2C
OCCUPANT	C/ DESCHUTES COUNTY SHERIFF'S OFFICE		63333 HWY 20 W	BEND, OR 97703	HO NOD	21-400-PA, 401-2C
BERMUDEZ, GUILLERMO J & ALICIA F			9855 NW SKYLINE HEIGHTS DR	PORTLAND, OR 97229	HO NOD	21-400-PA, 401-2C
MCCLUNG, DONNA S			21254 LILY WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CARROLL, DAVID L & SPONGBERG, CAROL A			61707 CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SLATER, BARBARA F & SLATER, DEBRA M			61703 CAMELIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
GARDENSIDE HOME OWNERS ASSOC	C/O NORTHWEST COMM MGMT CO LLC (A)		PO BOX 23099	TIGARD, OR 97281-3099	HO NOD	21-400-PA, 401-2C
JUDITH K WHITEHEAD REVOCABLE TRUST	WHITEHEAD, JUDITH K TTEE		61703 TULIP WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
HEBREWES 135 LLC			21810 PALOMA DR	BEND, OR 97701	HO NOD	21-400-PA, 401-2C
GRAEBER, ALYSSA			14936 SE GLADSTONE ST	PORTLAND, OR 97236-2441	HO NOD	21-400-PA, 401-2C
HANSEN, KAREN			61715 TULIP WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BOBBY & USA BYRD REVOCABLE TRUST	BYRD, BOBBY R & LISA N TTEES		21253 VIOLET LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ORANGE CAT PROPERTIES LLC			61535 S HIGHWAY 97 #STE 5-604	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SCHRON, JACQUELINE S & CAMERON	C/O JAMES P OLMSTED, MEMBER (A)		21245 VIOLET LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SHOOP, DANIEL H & KIMBERLY L			21241 VIOLET LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BROUGH, THOMAS J			21237 VIOLET LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WELLS, TODD W & EMILY W			61754 DARLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C

ANTONSEN, CHET & SKAAR, THOMAS C		612 NE SAVANNAH DR #3	BEND, OR 97701	HO NOD	21-400-PA, 401-2C
TODD, VICKI & KEVIN		61694 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
TODD, VICTORIA & KEVIN		61694 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SEBRING, MILDRED I		20709 TANGO CREEK AVE	BEND, OR 97701	HO NOD	21-400-PA, 401-2C
PARKS, JOHN B & MARLENE A		21285 STARLIGHT DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BEVERLY E GORDON REV TRUST	GORDON, BEVERLY E TTEE	21281 STARLIGHT DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
PROSSER FAMILY REVOCABLE LIVING TRUST	PROSSER, STEVE JAMES TTEE ETAL	21277 STARLIGHT DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
COWAN, PAUL VERNON		21273 STARLIGHT DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WEBB, DARRELL D & LINDA J		471 SW SCHAEFFER RD	WEST LINN, OR 97068	HO NOD	21-400-PA, 401-2C
ROBERT & JOAN FAIRBANKS TRUST	FAIRBANKS, JOAN L TTEE	21268 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
GRACIA, CHRISTOPHER E & JILL M		21272 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
MOORE, BRIAN A		21276 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
MARGARET ANN MOORE IRREVOCABLE TRUST	MOORE, BRIAN TTEE	21276 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
VANBUREN, C LANCE & LORENA KAY		21284 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ENGLUND ESTATES LLC		8300 SW PETERS RD	PORTLAND, OR 97224	HO NOD	21-400-PA, 401-2C
MARSH TRUST	MARSH, WALLACE A JR & ELSIE A TTEES	21261 STARLIGHT DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WEYBRIGHT FAMILY TRUST	WEYBRIGHT, DANIEL R & BARBARA TTEES	21257 STARLIGHT DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
PENDERGAST, TYLER M & AMY M		21253 STARLIGHT DR	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BOURDAGE, JOSHUA K & MARISA K		21252 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
TELLER, STEVEN D & CYNTHIA C		21256 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
HAWKINS, LYBE L		21260 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
FERNANDEZ, XIMENA C		1059 NE PARKVIEW CT	BEND, OR 97701-6940	HO NOD	21-400-PA, 401-2C
BOATMAN, SARAH & SCOTT		5170 APELLIA ST	KAPAA, HI 96746	HO NOD	21-400-PA, 401-2C
STOCKLAND, ADAM T & SARAH J		21279 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SCHAAB, PHOEBE A		21275 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
THOMAS, DAVID J & COLLEEN A		21271 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
HERZOG, MICHAEL E		21267 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
DRYHOLLER LLC		2021 NE 8TH ST	BEND, OR 97701	HO NOD	21-400-PA, 401-2C
GUTIERREZ, TREDE & DYLAN		21259 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BILYEU, JEFFERY DEAN & KAREN		21255 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SMITH, KYLE S ET AL		21251 HURITA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CATAPANO, ERIC A		21250 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
TRAN, QUANG P		21254 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
HANSEN, DALE A & PAMELA R		21258 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
GARNER, JASON & CRYSTAL		21262 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
HALE, KRISTAN N & ALEXIS GRACE		21266 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SIEVEYSON, PENNY JO		21270 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WHITE, SARA M		11225 SW CYNTHIA CT	BEAVERTON, OR 97008	HO NOD	21-400-PA, 401-2C
ZINNER, JOSHUA P & HILLARY L		21278 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BAERT, CHRISTOPHER & JESSICA L		21282 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BIEL, JESSICA & HOOVER, JEVIN TYLER		61664 RIGEL WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CARMACK, CYNTHIA A		61660 KACI LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
RIDER, GREGORY E & SUZANNE M		21281 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WELLEN, ROBERT & KATHERINE		202 STERLINGTOWN LN	UNION, ME 04862	HO NOD	21-400-PA, 401-2C
CANO, FRANCISCO & MELISSA		21273 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BJORK, CHARLES & PAMELA		21269 CAPELLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CERRUTI, BLAKE C & HEATHER E		61655 GEMINI WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
S&H ANDERSON 1-03 LLC		3214 NE 42ND ST #STE C	VANCOUVER, WA 98663	HO NOD	21-400-PA, 401-2C
TEH, RONNIE W & CAPECE, SONIA		61656 KACI LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LEAHY, BRIAN & KIM K		2949 NW BORDEAUX LN	BEND, OR 97703	HO NOD	21-400-PA, 401-2C
DOUGHMAN, ROBERT J & KATHRYN M		61648 KACI LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
DOWNEY, SCOTT & DIXIE		PO BOX 782	WILSONVILLE, OR 97070	HO NOD	21-400-PA, 401-2C
PUPO, LUCAS K ET AL		61637 KACI LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
JKC HOMES LLC		PO BOX 25822	EUGENE, OR 97402	HO NOD	21-400-PA, 401-2C
VANBLARIKOM, JEROME BRADLEY ET AL		21285 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
COLE, PATRICIA RENEE QUINLAN		21279 DAYLILY AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CAFFEE, ALEXANDER H ET AL		1358 47TH AVE	SAN FRANCISCO, CA 94122	HO NOD	21-400-PA, 401-2C
ROSENGARTH FAMILY REVOCABLE TRUST	ROSENGARTH, SHARRON G TTEE	21279 DOVE LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CROSSE, STEVEN E & DIMITRIA		21283 DOVE LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ROSENGARTH FAMILY TRUST	ROSENGARTH, TONY J & NANCY A TTEES	21259 CHILLIWACK WAY	BEND, OR 97701	HO NOD	21-400-PA, 401-2C
ANTONSEN, CHET & SKAAR, THOMAS C		62765 POWELL BUTTE HWY	BEND, OR 97701	HO NOD	21-400-PA, 401-2C
SLOCUM, WILLIAM T JR & MECHELLE M		21281 BELLFLOWER PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SPATES, DEMETRIUS C		21273 BELLFLOWER PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WIGGINS, BRITTNEY D		21285 BELLFLOWER PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LEAH SULLIVAN LIVING TRUST ET AL	SULLIVAN, LEAH TTEE	8412 SWEETWATER CIR	HUNTINGTON BEACH, CA 92646	HO NOD	21-400-PA, 401-2C
WEAVER, SANDRA		21278 WOODRUFF PL	BANDON, OR 97411	HO NOD	21-400-PA, 401-2C
RADKEY, ROBERT & HEDDY		PO BOX 1869	BANDON, OR 97411	HO NOD	21-400-PA, 401-2C
BETTY LOU BIBER TRUST	BIEBER, BETTY LOU TTEE	61727 SE YARROW LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CHARLES & JEANNE CLAWSON FAMILY TRUST	CLAWSON, CHARLES R & JEANNE A TTEES	61719 YARROW LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BRANDENHORST, JOHN D III		61724 MARIGOLD LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ST CLAIR, JULIE		61716 MARIGOLD LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BARLONG, IRIS M		61703 YARROW LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
PATTON, SYDNEY JOAN		61715 YARROW LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
COCCO FAMILY REVOCABLE TRUST	COCCO, CHESTER R & VIRGINIA S TTEES	60350 WINDSONG LN	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WILLIAMS, TROY & VANHORN, CAITLYN		61776 DARLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
GAROUTTE, MICHAEL S & FRAZIER, LINDA		61772 DARLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WAYBRIGHT, TREVOR A & JOY A		61768 DARLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
KOCH, DANIEL & LETA		61764 DARLA PL	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ROSENGARTH DEVELOPMENT LLC		21259 CHILLIWACK WAY	BEND, OR 97702-7717	HO NOD	21-400-PA, 401-2C
FLINT, MARIE KAY		61760 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ALEXA DELLINGER TRUST	DELLINGER, ALEXA B TTEE	21286 DARNEL AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ZHU, XIAOGANG & LI, MINGWEI		62977 MARSH ORCHID DR	BEND, OR 97701	HO NOD	21-400-PA, 401-2C
FREDRICKSON, KATIE		21278 DARNEL AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
GREENWALD, JAY A & MARY F		21272 DARNEL AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
SIGNATURE HOMEBUILDERS LLC		PO BOX 1886	BEND, OR 97709	HO NOD	21-400-PA, 401-2C
GERALD S ALVES & EILEEN B ALVES REV TR	ALVES, GERALD S & EILEEN B TTEES	21262 DARNEL AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ZORNADO, BRANDON & SHELLEY		21258 DARNEL AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
BENNETT, BRIAN ETAL		1381 NW TRENTON AVE	BEND, OR 97703	HO NOD	21-400-PA, 401-2C
ROBERT E SAUTER REVOCABLE LIVING TRUST	SAUTER, ROBERT E TTEE	PO BOX 8644	BEND, OR 97708	HO NOD	21-400-PA, 401-2C
GEORGETON, LEE C & KRISTIN J		61793 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
MILLS, ROBERT B & GRIFFIN, EMDEN R		61789 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
ROSS FAMILY TRUST	ROSS, PAUL E & EMILY KATHLEEN TTEES	61781 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
RILEY, ANTON & GINA		108 MOFFETT BLVD #C113	MOUNTAIN VIEW, CA 94043	HO NOD	21-400-PA, 401-2C
SHAHVAR, RACHEL NATALIE		61773 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CHOPRA, PANKAJ & ANITA		61769 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
HAUCK, RANDY J & MICHELLE L		5101 BOULDER WAY	YAKIMA, WA 98901	HO NOD	21-400-PA, 401-2C
LEASE, ARIANNA & BRIAN ET AL		61761 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
WILKINS, BRENT N		61764 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LEE, ROBERT ALLAN		61768 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
TED & SUE MIGDAL 2003 REVOCABLE TRUST	MIGDAL, THEODORE N & SUSAN A TTEES	1053 LA GRANDE AVE	NAPA, CA 94558	HO NOD	21-400-PA, 401-2C
KRUKEMEYER, MARY		61776 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
MCCULLOUGH, KATHRINE ANNE		61780 SE CAMELLIA ST	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
LI GARDNER LLC		61333 KING JEHU WAY	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
PHARAOH, NATHANAEL SR & LEAH		21261 DARNEL AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C
CRIMMINS, JOANNA MARIE		1005 LEE AVE	SAN LEANDRO, CA 94577	HO NOD	21-400-PA, 401-2C
HAWK, DEBRA JO		8402 SLEEPY HOLLOW RD NE	WOODBURN, OR 97071-9571	HO NOD	21-400-PA, 401-2C
CROGHAN, RYLEY G & HALLEY T		21273 DARNEL AVE	BEND, OR 97702	HO NOD	21-400-PA, 401-2C

WINDELL, CALEB & JOHNS, MICHELLE
FRUMENTO, AMANDA C
VINOVICH, SEURINA A & MICHAEL
HESTERBERG, MARISSA D & MARK A
BLYTHE, JESSE J & CASSIE J
JOHANSEN, DAVID L & PATRICIA J
CYP CAR NIPPERT LIVING TRUST
FLANNERY, JULIE LINCOLN
BRADSHAW TRUST
SWEET, JUSTIN LEE & KELSEE ANN
UPTAIN, KYLE STEVEN & KIMBERLY ANN
BROOKFIELD, MARGARET
WOOD, JUSTIN & AMBER
SPRINGER FAMILY TRUST
SPRINGER FAMILY TRUST

NIPPERT, JAMES E TTEE ET AL
BRADSHAW, SCOTT HASTINGS TTEE ET AL

SPRINGER, RICHARD L & GEORGIA A TTEES
SPRINGER, RICHARD L & GEORGIA A TTEES

C/O GEORGIA A SPRINGER TTE

21277 DARNEL AVE
21281 DARNEL AVE
21285 DARNEL AVE
21289 DARNEL AVE
21314 SE DAYLILY AVE
4069 CRESSIDA PL
21302 SE DAYLILY AVE
21296 SE DAYLILY AVE
2500 SUNNY GROVE AVE
21284 SE DAYLILY AVE
21278 SE DAYLILY AVE
1414 NW BALTIMORE AVE
21266 SE DAYLILY AVE
3450 SHALLOW SPRINGS TERR
3450 SHALLOW SPRINGS TERR

BEND, OR 97702
BEND, OR 97702
BEND, OR 97702
BEND, OR 97702
BEND, OR 97702
WOODBRIDGE, VA 22192
BEND, OR 97702
BEND, OR 97702
MCKINLEYVILLE, CA 95519
BEND, OR 97702
BEND, OR 97702
BEND, OR 97703
BEND, OR 97702
CHICO, CA 95928
CHICO, CA 95928

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BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, March 30, 2022

SUBJECT: Reading of a Proclamation Declaring April 2022 as Child Abuse Prevention Month

ATTENDANCE:

Whitney Hale, Deputy County Administrator

For Recording Stamp Only

BEFORE THE BOARD OF COMMISSIONERS OF DESCHUTES COUNTY, OREGON

PROCLAMATION

Declaring April 2022 Child Abuse Prevention Month

WHEREAS, there were over 2,140 reports of child abuse and neglect in Central Oregon last year; and

Whereas, we all have a responsibility, as individuals, neighbors, community members and citizens of Central Oregon to help create healthy, safe, nurturing experiences for children; and

Whereas, safe and healthy childhoods help produce confident and successful adults; and

Whereas, child abuse and neglect often occur when people find themselves in stressful situations, without community resources, and don't know how to cope; and

Whereas, the majority of child abuse and neglect cases stem from situations and conditions that are preventable with the support of an engaged community; and

Whereas, child abuse and neglect can be reduced by making sure that families have the support and access to services they need to raise their children in a healthy environment; and

Whereas, child abuse and neglect not only directly harm children, but the trauma can also increase the likelihood of criminal behavior, substance abuse, health problems such as heart disease and obesity, and poor academic outcomes; and

Whereas, effective prevention programs succeed because of partnerships among agencies, schools, faith communities, philanthropic and civic organizations, law enforcement agencies, and the business community;

Let it be resolved, that the Deschutes County Board of Commissioners does hereby proclaim April 2022 to be Child Abuse Prevention Month in Deschutes County and we urge all citizens to work together to make sure every family has the support they need and deserve to raise their children in a healthy environment.

Dated this ____ day of _____ 2022 by the Deschutes County Board of Commissioners.

Patti Adair, Chair

Anthony DeBone, Vice Chair

Phil Chang, Commissioner

ATTEST:

Recording Secretary



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, March 30, 2022

SUBJECT: Consideration of Board Signature of Order No. 2022-019, recognizing Juneteenth as a paid Deschutes County holiday consistent with Section 10.070 of the Deschutes County HR Personnel Rules.

ATTENDANCE:

David Doyle, County Legal Counsel
Kathleen Hinman, Human Resources Director
Nick Lelack, County Administrator



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of March 30, 2022

DATE: March 18, 2022

FROM: Dave Doyle Legal 388-6625

TITLE OF AGENDA ITEM:

Consideration of Board signature on Order No. 2022-019, recognizing Juneteenth as a Paid County Holiday Consistent with Section 10.070 of the Deschutes County HR - Personnel Rules.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

Following discussions with County HR and Administration, the Board directed that beginning in 2022, Juneteenth be recognized as a paid county holiday. Order No. 2022-019, and subsequent amendment to the Deschutes County HR - Personnel Rules will fully implement same.

FISCAL IMPLICATIONS:

No direct fiscal impact; some productivity work volume impacts.

RECOMMENDATION & ACTION REQUESTED:

Move Board signature on Order No. 2022-019, recognizing Juneteenth as a Paid County Holiday Consistent with Section 10.070 of the Deschutes County HR - Personnel Rules.

ATTENDANCE: Legal, HR, Admin

DISTRIBUTION OF DOCUMENTS:

HR

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

An Order Recognizing Juneteenth as a Paid County Holiday Consistent with Section 10.070 of the Deschutes County HR- Personnel Rules *
* ORDER NO. 2022-019
*

WHEREAS, Section 10.070 of the Deschutes County HR – Personnel Rules identifies the days recognized as paid holidays for full-time and part-time (on a pro-rated basis) County employees; and

WHEREAS, Deschutes County recognizes the significance of Juneteenth and supports recognition of Juneteenth as a holiday; and

WHEREAS, County staff is directed to process amendments to the Deschutes County HR – Personnel Rules to add Juneteenth to the identified list of recognized holidays; now therefore,

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

Section 1. That beginning in 2022, the Juneteenth holiday will be added to the list of County recognized paid holidays.

Section 2. County staff is directed to process amendments to the Deschutes County HR – Personnel Rules to add Juneteenth to the identified list of recognized holidays contained in Section 10.070.

/ / /

/ / / /

Section 3. This Order is effective upon signing.

Dated this ____ day of _____, 2022.

THE BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice-Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST AND STAFF REPORT

MEETING DATE: March 30, 2022

SUBJECT: Approval of Grant Agreement #2022-262 to construct advance wastewater collection system improvements in Terrebonne.

RECOMMENDED MOTION:

Move Chair approval of agreement #2022-262 to accept Coronavirus State Fiscal Recovery Funds to construct advance wastewater collection system improvements in Terrebonne.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County has supported the community of Terrebonne in establishing a sewer system by funding a feasibility study, pledging funds for wastewater treatment capacity in the nearby Redmond Wetlands Complex, and providing funding for design, legal consultation, and grant writing on behalf of a future Sanitary District.

Additionally Deschutes County is also working with the Oregon Department of Transportation to deliver an interchange project at US 97/Lower Bridge Way which will also include reconstruction of 11th Street, Smith Rock Way, and various side streets.

To reduce the potential for significant street cuts and additional construction impacts to the community (ie, tearing up brand new streets), installation of sewer system piping will need to occur with the ODOT project. Previously unfunded, this work has graciously been accommodated via Representative Bonham's legislative allocation of Coronavirus State Fiscal Recovery Funds. Representative Bonham allocated \$1,000,000 to Deschutes County for inclusion in ODOT project. Whereas this funding cannot be used for transportation improvements, wastewater system improvements are eligible.

The attached Grant Agreement will enable Deschutes County to fund collection system improvements within the ODOT project and potentially utilize any remaining funds to construct additional piping outside the footprint of the ODOT project under a separate effort. The mechanics of County payment to the ODOT project will be established in a separate intergovernmental agreement.

This contribution will fund approximately 7,000 feet of 12,200 feet of Phase I collection system within the unincorporated community limits. An additional 14,500 feet of off-site collection system will need to be constructed to connect to the proposed Redmond Wetlands Complex.

In addition to 7,000 feet of dry-line sewer, approximately 40 service laterals will be constructed with this initial portion of work.

BUDGET IMPACTS:

In addition to achieving efficiencies in collection system installation in association with street reconstruction, the improvements will reduce the cost of Phase I installation for the future Terrebonne Sanitary District. It is anticipated leadership within the Terrebonne Sewer Advisory Group will be submitting a petition for district formation in the coming months.

ATTENDANCE:

Chris Doty, Road Department

**CORONAVIRUS STATE FISCAL RECOVERY FUND
GRANT AGREEMENT**

Contract Number: 8202

This grant agreement (“Contract”), dated as of the date the Contract is fully executed, is between the State of Oregon, acting through its Oregon Department of Administrative Services (“DAS”), and Deschutes County (“Recipient”). This Contract becomes effective only when fully signed and approved as required by applicable law (“Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Contract shall expire **October 1, 2024**.

This Contract includes Exhibit A - Contact Information, Use of Funds/Project Description and Reporting Requirements, Exhibit B - Insurance Requirements and Exhibit C - Federal Award Identification.

Pursuant to Oregon Laws 2021, chapter 669, section 74, DAS is authorized to distribute grant funds from funds received by the State of Oregon under the federal American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802) for the purpose of Terrebonne Wastewater Improvements as more particularly described in Exhibit A.

SECTION 1 - KEY GRANT TERMS

The following capitalized terms have the meanings assigned below.

Grant Amount: \$1,000,000.00.

Completion Deadline: June 30, 2024.

SECTION 2 - FINANCIAL ASSISTANCE

DAS shall provide Recipient, and Recipient shall accept from DAS, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.

DAS’s obligations are subject to the receipt of the following items, in form and substance satisfactory to DAS and its Counsel:

- (1) This Contract duly signed by an authorized officer of Recipient; and
- (2) Such other certificates, documents, opinions and information as DAS may reasonably require.

SECTION 3 - DISBURSEMENT

- A. Full Disbursement. Upon execution of this Contract and satisfaction of all conditions precedent, DAS shall disburse the full Grant to Recipient.
- B. Financing Availability. DAS’s obligation to make, and Recipient’s right to request disbursement under this Contract terminate on the Completion Deadline.
- C. Conditions to Disbursements. DAS has no obligation to disburse Grant funds unless:
 - (1) DAS has sufficient funds currently available for this Contract; and
 - (2) DAS has received appropriations, limitations, allotments or other expenditure authority sufficient to allow DAS, in the exercise of its reasonable administrative discretion, to make payment, and notwithstanding anything in the Contract, occurrence of such contingency does not constitute a default.

SECTION 4 - USE OF GRANT

As more particularly described in Exhibit A, Recipient will use the Grant for Terrebonne Wastewater Improvements (the “Project”). Recipient may only use Grant funds to cover Project costs incurred during the period beginning March 3, 2021, and ending on the Completion Deadline (“Eligible Costs”). Recipient must disburse the entire Grant Amount on Eligible Costs no later than the Completion Deadline.

SECTION 5 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to DAS as follows:

A. Organization and Authority.

- (1) Recipient is a public body validly organized and existing under the laws of the State of Oregon.
- (2) Recipient has all necessary right, power and authority under its organizational documents and applicable Oregon law to execute and deliver this Contract and incur and perform its obligations under this Contract.
- (3) This Contract has been authorized by an ordinance, order or resolution of Recipient’s governing body if required by its organizational documents or applicable law.
- (4) This Contract has been duly executed by Recipient, and when executed by DAS, is legal, valid and binding, and enforceable in accordance with their terms.

B. Compliance with Coronavirus State Fiscal Recovery Fund. Recipient will comply with the terms, conditions and requirements of the federal Coronavirus State Fiscal Recovery Fund (codified at 42 U.S.C. 802) from which the Grant is funded, including all implementing regulations (31 CFR 35.1 *et seq.*) and other guidance promulgated by the U.S. Department of the Treasury (collectively, the “CSFRF”).

C. Full Disclosure. Recipient has disclosed in writing to DAS all facts that materially adversely affect the Grant, or the ability of Recipient to perform all obligations required by this Contract. Recipient has made no false statements of fact, nor omitted information necessary to prevent any statements from being misleading. The information contained in this Contract, including Exhibit A, is true and accurate in all respects.

D. Pending Litigation. Recipient has disclosed in writing to DAS all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Grant or the ability of Recipient to perform all obligations required by this Contract.

SECTION 6 - COVENANTS OF RECIPIENT

Recipient covenants as follows:

A. Notice of Adverse Change. Recipient shall promptly notify DAS of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient related to the ability of Recipient to perform all obligations required by this Contract.

B. Compliance with Laws.

- (1) Recipient will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings.
- (2) Recipient is responsible for all federal or state tax laws applicable to its implementation of the Project and its use of the Grant or compensation or payments paid with the Grant.

C. Federal Audit Requirements. The Grant is federal financial assistance, and the associated Assistance Listings number is 21.027. Recipient is a subrecipient.

- (1) If Recipient receives federal funds in excess of \$750,000 in Recipient's fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to DAS a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to DAS the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.
- (2) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.
- (3) Recipient shall save, protect and hold harmless DAS from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.
- (4) Recipient is authorized to use the Grant to pay itself for those administrative costs that are eligible costs under the CSFRF to implement the Project. DAS's approval of Recipient's administrative costs does not preclude the State of Oregon from later recovering costs from Recipient if the U.S. Department of the Treasury disallows certain costs after an audit.

D. System for Award Management. Recipient must comply with applicable requirements regarding the federal System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM.

E. Employee Whistleblower Protection. Recipient must comply, and ensure the compliance by subcontractors or subrecipients, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Recipient must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

F. Compliance with 2 CFR Part 200. Recipient must comply with all applicable provision of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the Cost Principles and Single Audit Act requirements.

G. Federal Funds. DAS's payments to Recipient under this Grant will be paid by funds received by DAS from the United States Federal Government. Recipient, by signing this Grant certifies neither it nor its employees, contractors, subcontractors or subrecipients who will administer this Contract are currently employed by an agency or department of the federal government.

- H. Insurance. Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers, insuring against liability, in the coverages and amounts described in Exhibit B.
- I. Return of Undisbursed Grant Funds. Recipient must return to DAS any Grant funds not disbursed by the Completion Deadline.
- J. Financial Records. Recipient will cooperate with DAS to provide all necessary financial information and records to comply with CSFRF reporting requirements, as well as provide DAS the reporting required in Exhibit A. Recipient will keep proper books of account and records on all activities associated with the Grant, including, but not limited to, invoices, cancelled checks, payroll records, instruments, agreements and other supporting financial records documenting the use of the Grant. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and will retain these books of account and records until five years after the Completion Deadline or the date that all disputes, if any, arising under this Contract have been resolved, whichever is later.
- K. Inspection. Recipient shall permit DAS, and any party designated by DAS, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives, at any reasonable time, to inspect and make copies of any accounts, books and records related to the administration of this Contract. Recipient shall supply any Contract-related information as DAS may reasonably require.
- L. Notice of Event of Default. Recipient shall give DAS prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- M. Contribution and Recipient Subcontracts.

(1) Contribution.

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

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

instance is capped to the same extent it would have been capped under Oregon law if DAS had sole liability in the proceeding.

(iii) With respect to a Third-Party Claim for which Recipient is jointly liable with DAS (or would be if joined in the Third-Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by DAS in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of DAS on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of DAS on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(2) Recipient Subcontracts. Recipient may enter into agreements with contractors or subcontractors (collectively, "Subcontracts") for performance of the Project.

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

(ii) Recipient shall require its first-tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance of the types and in the amounts specified in Exhibit B and meeting the requirements under ADDITIONAL INSURED, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under its Subcontracts, and ii) maintain the insurance in full force throughout the duration of the Subcontracts. 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 DAS. Recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the Subcontracts permitting it to 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 Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Recipient permit a contractor to work under a Subcontract when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which Recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

N. Representations and Covenants Regarding Prevailing Wage.

- (1) The prevailing wage rate requirements that may apply to the Project are set forth in ORS 279C.800 through 279C.870, the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) and Oregon Laws 2021, chapter 678, section 17 (collectively, state “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (federal “Davis-Bacon Act”). If applicable, Recipient shall:
- a) comply with PWR, require its contractors and subcontractors to pay the applicable PWR or Davis-Bacon Act rates, as applicable, and to comply with all other Oregon Bureau of Labor and Industries (“BOLI”) requirements pursuant to the PWR, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board;
 - b) pay to BOLI, within the required timeframe and in the appropriate amount, the project fee required by OAR 839-025-0200 to 839-025-0230, including any additional fee that may be owed upon completion of the Project; and
 - c) unless exempt under Section 17(2) of Oregon Laws 2021, chapter 678, if Recipient is a “public body” and the Project is a “qualified project,” as those terms are defined in Section 17(3) of Oregon Laws 2021, chapter 678, Recipient shall require each contractor in a contract with an estimated cost of \$200,000 or greater to:
 - i. Enter into a project labor agreement that, at a minimum, provides for payment of wages at or above the prevailing rate of wage;
 - ii. Employ apprentices to perform 15 percent of the work hours that workers in apprenticeable occupations perform under the contract, in a manner consistent with the apprentices’ respective apprenticeship training programs;
 - iii. Establish and execute a plan for outreach, recruitment and retention of women, minority individuals and veterans to perform work under the contract, with the aspirational target of having at least 15 percent of total work hours performed by individuals in one or more of those groups; and
 - iv. Require any subcontractor engaged by the contractor to abide by the requirements set forth in subparagraphs (i), (ii) and (iii) above, if the work to be performed under the subcontract has an estimated cost of \$200,000 or greater.
- (2) Recipient represents and warrants that it is not on the BOLI current List of Contractors Ineligible to Receive Public Works Contracts and that it will not contract with any contractor on this list.
- (3) Pursuant to ORS 279C.817, Recipient may request that the Commissioner of BOLI make a determination about whether the Project is a public works on which payment of the prevailing rate of wage is required under ORS 279C.840.

SECTION 7 - DEFAULT

- A. Recipient Default. Any of the following constitutes an “Event of Default” of Recipient:
 - (1) Misleading Statement. Any materially false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant.
 - (2) Failure to Perform. Recipient fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Contract, other than those referred to in subsection A of this section, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by DAS. DAS may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.
- B. DAS Default. DAS will be in default under this Contract if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Contract.

SECTION 8 - REMEDIES

- A. DAS Remedies. Upon the occurrence of an Event of Default, DAS may pursue any remedies available under this Contract, at law or in equity. Such remedies include, but are not limited to, termination of DAS’s obligations to make the Grant or further disbursements, return of all or a portion of the Grant Amount, payment of interest earned on the Grant Amount, and declaration of ineligibility for the receipt of future awards from DAS. If, as a result of an Event of Default, DAS demands return of all or a portion of the Grant Amount or payment of interest earned on the Grant Amount, Recipient shall pay the amount upon DAS’s demand. DAS may also recover all or a portion of any amount due from Recipient by deducting that amount from any payment due to Recipient from the State of Oregon under any other contract or agreement, present or future, unless prohibited by state or federal law. DAS reserves the right to turn over any unpaid debt under this Section 8 to the Oregon Department of Revenue or a collection agency and may publicly report any delinquency or default. These remedies are cumulative and not exclusive of any other remedies provided by law.
- B. Recipient Remedies. In the event of default by DAS, Recipient’s sole remedy will be for disbursement of Grant funds for Eligible Costs of the Project, not to exceed the total Grant Amount, less any claims DAS has against Recipient.

SECTION 9 - TERMINATION

- In addition to terminating this Contract upon an Event of Default as provided in Section 8, DAS may terminate this Contract with notice to Recipient under any of the following circumstances:
- A. If DAS anticipates a shortfall in applicable revenues or DAS fails to receive sufficient funding, appropriations or other expenditure authorizations to allow DAS, in its reasonable discretion, to continue making payments under this Contract.
 - B. There is a change in federal or state laws, rules, regulations or guidelines so that the uses of the Grant are no longer eligible for funding.

This Contract may be terminated at any time by mutual written consent of the parties.

SECTION 10 - MISCELLANEOUS

- A. No Implied Waiver. No failure or delay on the part of DAS to exercise any right, power, or privilege under this Contract will operate as a waiver thereof, nor will 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. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- C. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or DAS at the addresses listed in Exhibit A, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

- D. Amendments. This Contract may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.
- E. Severability. If any provision of this Contract will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.
- F. Successors and Assigns. This Contract will be binding upon and inure to the benefit of DAS, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights, obligations or any interest without the prior written consent of DAS.
- G. Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

- H. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- I. No Third-Party Beneficiaries. DAS and Recipient are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- J. Survival. The following provisions, including this one, survive expiration or termination of this Contract: Sections 6 (excepting 6.H, Insurance), 7, 8, 10.B, 10.C, 10.L and 10.M.
- K. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- L. Attorney Fees. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to DAS by its attorneys.
- M. Public Records. DAS's obligations under this Contract are subject to the Oregon Public Records Laws.

Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Department of Administrative Services

DESCHUTES COUNTY

By: _____
DAS Authorized Representative

George Naughton
DAS Chief Financial Officer

Date: _____

By: _____
Authorized Representative Signature

Authorized Representative Name and Title

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

s/ Samuel B. Zeigler 1/5/2022
Samuel B. Zeigler, Senior Assistant Attorney General

EXHIBIT A
CONTACT INFORMATION, USE OF FUNDS/ PROJECT DESCRIPTION AND REPORTING REQUIREMENTS

Contact Information:

DAS

State of Oregon, acting by and through its
 Department of Administrative Services
 155 Cottage St. NE
 Salem, OR 97301-3966

Contract Administrator: Stephanie Tyrer

Telephone: 971-374-3308

Email: statefiscal.recoveryfund@das.oregon.gov

Recipient

Deschutes County

1300 NW Wall Street
 Bend, OR 97703

Contact: Chris Doty

Telephone: 541.322.7105

Email: chris.doty@deschutes.org

Use of Funds/ Project Description:

The Recipient shall complete wastewater collection improvements within the planned ODOT project to construct interchange and associated improvements within the community of Terrebonne. The wastewater collection improvements consist of approximately 5,500 feet of 6" pressure main, 1,500 feet of 3" pressure main, and 40 service laterals. Extension of the collection system outside the ODOT project footprint will be allowed subject to the availability of remaining funds.

Reporting Requirements:

Report Name	Frequency	Due Dates
Project Performance Plan	One-Time	45 days after the Effective Date
Quarterly Report	Quarterly	April 15 th , July 15 th , October 15 th , January 15 th
Annual Report	Annually	July 15 th

Project Performance Plan

Recipient shall submit to DAS, using a template and instructions provided by DAS, the following information in the Project Performance Plan:

1. Problem Statement
2. Goal
3. Rationales
4. Assumptions
5. Resources
6. Activities
7. Outputs
8. Short-Term Outcomes

9. Intermediate Outcomes
10. Long-Term Outcomes

Quarterly Reports

Recipient shall submit Quarterly Reports to DAS which shall include such information as is necessary for DAS to comply with the reporting requirements established by 42 U.S.C. 802, guidance issued by the U.S. Treasury, and 2 CFR Part 200 (known as the “Super Circular”). The reports shall be submitted using a template provided by DAS that includes the following information:

1. Expenditure Report
 - a) Quarterly Obligation Amount
 - b) Quarterly Expenditure Amount
 - c) Projects
 - d) Primary Location of Project Performance
 - e) Detailed Expenditures (categories to be provided by DAS)
2. Project Status Update
 - a) Status of project: not started, completed less than 50 percent, completed 50 percent or more, completed.
 - b) Progress since last update including project outputs and achieved outcomes.
 - c) Identify barriers/risks to outcomes and describe actions taken to mitigate delays/risks to the overall project goal.
 - d) Optional: Share with DAS community outreach/engagement or other positive local news stories.

Annual Reports

Recipient shall submit to DAS a report annually on the following, as applicable, using a template provided by DAS:

1. How the Project is Promoting Equitable Outcomes, if applicable
2. How the Project is Engaging with the Community, if applicable

Administrative Costs

Recipient shall also deliver to DAS no later than July 15, 2024, an accounting of all of its direct administrative costs paid by this Grant accompanied by a certification statement that all such costs comply with the CSFRF. Grant funds may not be used to pay for any costs incurred after the Completion Deadline. For any unexpended Grant funds that were allocated for administrative costs as provided in the not-to-exceed amount above, DAS will direct Recipient on how to return or expend any such funds.

EXHIBIT B – INSURANCE REQUIREMENTS

Recipient shall obtain at Recipient’s expense the insurance specified in this Exhibit B before performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Recipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DAS. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ Compensation. Recipient shall pay for all deductibles, self-insured retention and self-insurance, if any. Recipient shall require and ensure that each of its subcontractors complies with these requirements and maintains insurance policies with responsible insurers, insuring against liability, in the coverages and amounts identified below.

WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY

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

As applicable, Recipient shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen’s and Harbor Workers’ Compensation Act.

COMMERCIAL GENERAL LIABILITY:

Required **Not required**

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

AUTOMOBILE LIABILITY INSURANCE:

Required **Not required**

Automobile Liability Insurance covering Recipient’s business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

A. Automobile Liability Broadened Pollution Liability Coverage Endorsement

If Recipient is transporting any type of **hazardous materials** to implement the Project, then endorsements CA 99 48 or equivalent and MSC-90 (if Recipient is a regulated motor carrier) are required on the Automobile Liability insurance coverage.

PROFESSIONAL LIABILITY:

Required Not required

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

POLLUTION LIABILITY:

Required Not required

Pollution Liability Insurance covering Recipient’s or appropriate subcontractor’s liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Recipient, all arising out of the Project (including transportation risk) performed under this Contract is required. Combined single limit per occurrence shall not be less than \$1,000,000. Annual aggregate limit shall not be less than \$2,000,000.

An endorsement to the Commercial General Liability or Automobile Liability policy, covering Recipient’s or subcontractor’ liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related clean-up cost incurred by Recipient that arise from the Project (including transportation risk) performed by Recipient under this Contract is also acceptable.

EXCESS/UMBRELLA INSURANCE:

Umbrella insurance coverage in the sum of \$2,000,000 shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Automobile Liability, and Employers' Liability coverage. The amounts of insurance for the insurance required under this Contract, including this Excess/Umbrella insurance requirement, may be met by the Contractor obtaining coverage for the limits specified under each type of required insurance or by any combination of underlying, excess and umbrella limits so long as the total amount of insurance is not less than the limits specified for each type of required insurance added to the limit for this excess/umbrella insurance requirement.

ADDITIONAL INSURED:

All liability insurance, except for Workers’ Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Recipient's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

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

CONTINUOUS CLAIMS MADE COVERAGE:

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Recipient shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Grant Agreement, for a minimum of 24 months following the later of:

- (i) Recipient 's completion and DAS's acceptance of all Services required under the Contract, or
- (i) DAS or Recipient termination of this Contract, or
- (ii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

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

NOTICE OF CHANGE OR CANCELLATION:

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

INSURANCE REQUIREMENT REVIEW:

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

STATE ACCEPTANCE:

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

**EXHIBIT C
FEDERAL AWARD IDENTIFICATION
(REQUIRED BY 2 CFR 200.332(A)(1))**

(i) Subrecipient* Name: <i>(must match name associated with UEI)</i>	Deschutes County
(ii) Subrecipient's Unique Entity Identifier (UEI):	030805147 (DUNS)
(iii) Federal Award Identification Number (FAIN):	SLFRP4454
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	July 23, 2021
(v) Grant period of performance start and end dates:	Start: March 3, 2021 End: June 30, 2024
(vi) Grant budget period start and end dates:	Start: March 3, 2021 End: June 30, 2024
(vii) Amount of federal funds obligated by this Grant:	\$1,000,000.00
(viii) Total amount of federal funds obligated to Subrecipient by pass-through entity, including this Grant:	\$
(ix) Total amount of the federal award committed to Subrecipient by pass-through entity**: <i>(amount of federal funds from this FAIN committed to Recipient)</i>	\$1,000,000.00
(x) Federal award project description:	Coronavirus State Fiscal Recovery Fund
(xi) a. Federal awarding agency:	U.S. Department of the Treasury
b. Name of pass-through entity:	Oregon Department of Administrative Services
c. Contact information for awarding official of pass-through entity:	Stephanie Tyrer, COVID Fiscal Relief Mgr. statefiscal.recoveryfund@das.oregon.gov
(xii) Assistance listings number, title and amount:	Number: 21.027 Title: Coronavirus State and Local Fiscal Recovery Funds Amount: \$2,648,024,988.20
(xiii) Is award research and development?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiv) a. Indirect cost rate for the federal award:	
b. Is the 10% de minimis rate being used per 2 CFR § 200.414?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

* For the purposes of this Exhibit C, “Subrecipient” refers to Recipient and “pass-through entity” refers to DAS.

** The total amount of federal funds obligated to the Subrecipient by the pass-through entity is the total amount of federal funds obligated to the Subrecipient by the pass-through entity during the current state fiscal year.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 30, 2022

SUBJECT: Request approval to apply for OHA Aid and Assist grant funds

RECOMMENDED MOTION:

Move approval to apply for OHA Aid and Assist grant funds.

BACKGROUND AND POLICY IMPLICATIONS:

The number of Individuals being admitted to the Oregon State Hospital (OSH) after being found Unfit to Proceed in the criminal justice system is increasing at an unsustainable rate. Senate Bill 295 (SB 295) calls for Community Mental Health Programs (CMHPs) to utilize community restoration options for defendants not needing a hospital level of care.

Goals and Objectives

- (a) Increase usage of community-based restoration services for Individuals who have been found Unfit to Proceed in their criminal proceedings.
- (b) Decrease number of admissions to OSH under ORS 161.370.
- (c) Decrease lengths of stay for Individuals admitted to OSH under ORS 161.370.
- (d) Increase number of and availability of community beds that are below a hospital level-of-care and reserved for Individuals determined to be eligible for community restoration.
- (e) Expand forensic evaluation services.
- (f) Increase collaboration and engagement of stakeholders involved in the treatment and care coordination of Individuals found Unfit to Proceed

By creating specific and sustainable programming to address the specific needs of this Aid and Assist population, we are able to streamline access to culturally appropriate services for this marginalized group. Strategies and preferred practices for community restoration services are outlined by Oregon Health Authority (OHA) and those will be followed.

We are requesting to apply for \$567,200 for the term of July 1, 2022 to June 30, 2023. This funding will help to cover current costs of services that were expanded to address this population, including: treatment and administrative staff, housing supports, and barrier removal for the Aid and Assist Population in Deschutes County. Please see attached budget.

Quarterly reporting and monthly update meetings with OHA are required.

BUDGET IMPACTS: \$567,200 Revenue for the period July 1, 2022 to June 30, 2023.

ATTENDANCE:

Kara Cronin, Behavioral Health Program Manager (Presenter)

Janice Garceau, Deputy Director, Health Services

A&A proposed grant expenses FY23

Employee Name	Position	FTE	FY23 salary + benefit cost	
KRATZ, JESSE	BEHAVL HLTH SPEC II	1.00	\$	124,680
SCOTT, ERICA	PEER SUPPORT SPECLST	0.25	\$	21,503
SMITH, TRACIE	ADMIN SUPPORT SPEC	0.20	\$	17,148
HATCHER, SHARON	ACCOUNTING TECH	0.10	\$	10,533
LAI, RUTHIE	BEHAVL HLTH SPEC I	1.00	\$	109,850
MCEWEN, JESSICA	BEHAVL HLTH SPEC I	0.25	\$	24,282
VACANT -PUBLIC HTH NURSE II	PUBLIC HTH NURSE II	0.70	\$	75,456
NAMKUNG, EVAN	SUPERVISOR BH	0.25	\$	34,185
			\$	417,636
	Contracted Services - Bethlehem Inn		\$	88,000
	M&S - Client Stabilization expenses		\$	10,000
	Total Direct Expenses		\$	515,636
	Admin Indirect 10%		\$	51,564
	Total Expenses		\$	567,200