BOARD OF COMMISSIONERS

# BOARD OF COUNTY COMMISSIONERS MEETING

1:00 PM, MONDAY, NOVEMBER 23, 2026
DeArmond Room & Virtual - Deschutes Services Bldg - 1300 NW Wall St - Bend
(541) 388-6570 | www.deschutes.org

## AGENDA

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

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

**Citizen Input**: The Board of Commissioners provides time during its public meetings for Citizen Input. Alternatively, comments may be submitted on any topic at any time by emailing or leaving a voice message at 541-385-1734.

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

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

- To join the meeting via Zoom from a computer, use this link: https://bit.ly/4bXfL6g.
- To join by phone, call 253-215-8782 and enter webinar ID # 160 497 4576.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *9 to indicate you would like to speak and *6 to unmute yourself when you are called on.
- When it is your turn to provide testimony, you will be promoted from an attendee to a panelist. You may experience a brief pause as your meeting status changes. Once you have joined as a panelist, you will be able to turn on your camera, if you would like to.

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

**CALL TO ORDER**

**APPROVAL OF AGENDA**

**CITIZEN INPUT**

The Board of Commissioners provides time during its public meetings for Citizen Input. This is an opportunity for citizens to communicate to the Commissioners. Citizen Input is not available for matters that have closed records, are presently scheduled for a quasi-judicial public hearing, or are anticipated or likely to come before the Commissioners as a future quasi-judicial public hearing. Time is limited to 3 minutes.

The Citizen Input platform is not available for and may not be utilized to communicate obscene or defamatory material.

***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.*

**COMMISSIONER ANNOUNCEMENTS**

**ACTION ITEMS**

1. **1:10 PM** OJJDP FY 2026 Strengthening Internet Crimes Against Children (ICAC) Technological Investigative Capacity grant

2. **1:20 PM** Public Hearing: Amendments to Title 18 of Deschutes County Code relating to the definition of a duplex

3. **1:50 PM** Ordinance No. 2026-020 changing the Comprehensive Plan designation of 64 acres at 68589 Highway 20, Sisters and rezoning the property from Exclusive Farm Use to Multiple Use Agricultural (R. Derek Jaros, LLC)

4. **1:55 PM** Second reading of Ordinance No. 2026-027 approving a zone change from Flood Plain to Multiple Use Agricultural for 17 properties

5. **2:00 PM** First Reading of Ordinance No. 2026-023 rezoning 51.86 acres from Exclusive Farm Use to Multiple Use Agricultural, and changing the property's Comprehensive Plan designation (Dickey Road, LLC)

6. **2:10 PM** Second Public Hearing for the proposed Willitts, LLC Plan Amendment & Zone Change: an application to change the Comprehensive Plan designation of 20 acres at 68621 Highway 20, Sisters, OR 97759 and rezone the property from Exclusive Farm Use to Multiple Use Agricultural

7. **3:00 PM** Update and discussion on options for holding a Public Hearing on the Caldera Ranch Plan Amendment / Zone Change

8. **3:10 PM** Work Session: Upcoming Public Hearing on an application for a Comprehensive Plan designation change and to rezone approximately 135 acres on Fryrear Road between Bend and Sisters from Exclusive Farm Use to Multiple Use Agricultural (Curtis)

**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.*

9. Executive Session under ORS 192.660 (2) (h) Litigation

**ADJOURN**

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Deschutes County encourages persons with disabilities to participate in all programs and activities. This meeting/event is accessible. Accommodations including sign and other language interpreter services, assistive listening devices, materials in alternate formats such as Braille, large print, electronic formats, or language translations are available upon advance request at no cost. Please make a request at least 24 hours in advance of the meeting/event by calling Brenda Fritsvold at (541) 388-6572 or send an email to brenda.fritsvold@deschutes.org.

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El condado de Deschutes anima a las personas con discapacidad a participar en todos los programas y actividades. Esta reunión/evento es accesible. Hay disponibles servicios de intérprete de lengua de señas y de otros idiomas, dispositivos de escucha asistida, materiales en formatos alternativos como braille, letra grande, formatos electrónicos, traducciones o cualquier otra adaptación, con solicitud previa y sin ningún costo. Haga su solicitud al menos 24 horas antes de la reunión/el evento llamando a Brenda Fritsvold al (541) 388-6572 o envíe un correo electrónico a brenda.fritsvold@deschutes.org.

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BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** November 23, 2026

**SUBJECT:** OJJDP FY 2026 Strengthening Internet Crimes Against Children (ICAC) Technological Investigative Capacity grant

**RECOMMENDED MOTION:**
Move to retroactively authorize staff to apply for—and accept, if awarded—an OJJDP FY 2026 Strengthening Internet Crimes Against Children (ICAC) Technological Investigative Capacity grant in the amount of $344,021.

**BACKGROUND AND POLICY IMPLICATIONS:**
DCSO's Digital Forensics Lab (DFL) processes vast amounts of data annually from digital devices collected as evidence in criminal investigations. Although reliable, scalable, and secure long-term data storage is essential to maintaining the integrity, availability, and admissibility of digital evidence, DFL currently relies on an outdated, non-enterprise grade network-attached storage system that has reached its end of life. This infrastructure supports only about three years of case data storage, which is substantially below anticipated evidence retention needs. The existing systems have reached their expansion limits and cannot be scaled to accommodate continued growth in the volume and size of digital evidence. Current storage infrastructure also presents operational and risk management limitations. It does not provide proactive monitoring and management of failed drives, offers limited network performance for large data transfers, and requires significant staff time to monitor capacity and manage evidence storage across multiple systems.

Acquisition of a dedicated storage server would address these limitations by providing:

- Scalable capacity to accommodate continued growth in digital evidentiary data**;**
- Proactive drive monitoring and management to reduce the risk of hardware failure and loss of evidentiary data;
- Improved network performance to reduce data transfer and processing time, allowing staff to work cases more efficiently;
- Enhanced redundancy to better protect against catastrophic data loss resulting from individual drive failures;
- Centralized evidence storage and retention management to reduce administrative workload and improve consistency; and

- Vendor-supported proactive system management to identify and address potential hardware issues before they affect operations.

This investment supports the County's responsibility to preserve criminal evidence, maintain appropriate chain-of-custody practices, reduce operational risk, and ensure that the DFL can continue to meet current and future investigative demands.

The application deadline for this funding was November 5, 2026, and DCSO has already submitted the application. Due to the reassignment of staff to support the response to the Silver Rail Elementary School tragedy, DCSO was unable to obtain Board approval before submission. DCSO requests retroactive Board approval to apply for and, if awarded, accept this funding. If Board approval is not granted, DCSO will request that OJJDP withdraw the application from consideration for funding.

**BUDGET IMPACTS:**

If awarded, grant funding would support the purchase of hardware to store forensic data as well as specialized training for the forensic team. Funds would also be used to obtain the required certification for one staff member to conduct polygraph examinations. These investments would enhance the team's technical capacity, strengthen investigative capabilities, and support continued delivery of effective forensic services.

No match is required for this grant.

**ATTENDANCE:**

Jeff Price, Business Officer, Deschutes County Sheriff's Office
Gabe Burchfiel, DFL Lead, Deschutes County Sheriff's Office
Jon Spring, IT Manager, Deschutes County Sheriff's Office

BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** November 23, 2026

**SUBJECT:** Public Hearing: Amendments to Title 18 of Deschutes County Code relating to the definition of a duplex

**RECOMMENDED MOTION:**
None.

**BACKGROUND AND POLICY IMPLICATIONS:**
On November 23, 2026, the Board will hold a public hearing on proposed amendments to Title 18 of the Deschutes County Code regarding the definition of "duplex" (ref. file no. 247-26-000573-TA). The proposed amendments would revise the definition to allow a duplex to consist of two dwelling units on the same lot that may be either attached or detached, while maintaining existing zoning limitations on where duplexes are permitted. The amendments do not expand where duplexes are allowed.

Please see attached memorandum for additional information.

**BUDGET IMPACTS:**
None.

**ATTENDANCE:**
Caroline House, Senior Planner
Anthony Raguine, Principal Planner
Will Groves, Planning Manager

**MEMORANDUM**

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

**FROM:** Caroline House, Senior Planner

**DATE:** November 18, 2026

**SUBJECT:** Public Hearing for Duplex Definition Text Amendments (247-26-000573-TA)

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On November 23, 2026, the Board will hold a public hearing on proposed amendments to the Deschutes County Code ("DCC") Title 18 definition of "duplex." The proposed amendments would revise the definition to allow a duplex to consist of two dwelling units on the same lot that may be either attached or detached.

## I. BACKGROUND

In 2026, the Board of County Commissioners ("Board") directed Community Development Department staff to initiate a text amendment to the County's definition of "duplex." The Board was contacted by a community member requesting that the County's definition be updated to better align with House Bill ("HB") 2138, which authorizes both attached and detached duplexes within incorporated cities.

Under the current DCC definition, a duplex consists of two dwelling units that are attached by a common wall, floor, or ceiling. The proposed amendment would revise the definition to allow two dwelling units on the same lot regardless of whether the units are attached or detached. The proposed amendment is intended to increase site-design flexibility and reduce potential barriers to housing development in zoning districts where duplexes are already permitted. The amendments do not expand where duplexes are allowed.

Within unincorporated Deschutes County, duplexes are permitted only in the zoning districts identified in *Table 1* below. These allowances are limited to specific unincorporated communities, rural commercial exception areas, and approved destination resorts. Although duplexes are permitted in a limited number of zoning districts, the proposed amendment would provide additional flexibility for future housing development opportunities within those areas.

| Table 1 – DCC Title 18 Zoning Districts Where Duplexes Are Permitted | | |
|---|---|---|
| 18.65 Rural Service Centers | Commercial/Mixed Use District | Brothers |
| | | Hampton |
| | | Millican |
| | | Whistlestop |
| | | Wildhunt |
| | | Alfalfa |
| 18.66 Terrebonne Rural Community Zoning Districts | Terrebonne Residential (TeR) District | |
| | Terrebonne Residential 5-Acre Min. (TeR5) District | |
| | Terrebonne Commercial (TeC) District | |
| 18.67 Tumalo Rural Community Zoning Districts | Tumalo Residential (TuR) District | |
| | Tumalo Commercial (TuC) District | |
| 18.74 Rural Commercial Zone (RC) | Deschutes Junction | |
| | Deschutes River Woods Store | |
| 18.108 Urban Unincorporated Community Zone; Sunriver | Multiple Unit Residential (RM) District | |
| 18.113 Destination Resort (DR) Combining Zone | Eagle Crest Resort | |
| | Caldera Springs Resort | |
| | Juniper Preserve (formerly Pronghorn) | |
| | Thornburgh Resort | |

## II. PLANNING COMMISSION REVIEW & PUBLIC COMMENTS

On November 12, 2026, the Planning Commission reviewed the proposed text amendments to DCC Chapter 22.12 during a review work session held in lieu of a formal public hearing. While the Planning Commission did not take a formal vote or make an official recommendation, commissioners generally expressed support for the amendments.

One commissioner noted that allowing detached dwelling units could result in additional impacts on adjacent properties. However, these potential impacts are expected to be limited because most properties within the affected zoning districts are relatively small in size.

To date, one (1) public comment in support has been received and no agency comments have been submitted.

## III. NEXT STEPS

At the conclusion of the hearing, the Board can choose one of the following options:

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

If the Board closes the hearing and commences deliberations, staff has attached the ordinance for potential first and second reading, as well as adoption following deliberations.

ATTACHMENTS:

A. Draft Ordinance No. 2026-028 (Emergency Adoption – Effective in 30 Days)
B. Draft Ordinance No. 2026-028 (Standard Adoption – Effective in 90 days)
C. Draft Exhibit "A" – Text Amendments, DCC 18.04.030 Definitions
D. Draft Exhibit "B" – Findings, DCC Title 18 Duplex Definition Amendments

REVIEWED

_____

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

| | | |
|---|---|---|
| An Ordinance Amending the Deschutes County Code Title 18, Zoning Ordinance, Definition of Duplex. | * * * * | ORDINANCE NO. 2026-028 |

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-26-000573-TA) to the Deschutes County Code ("DCC"), Chapter 18.04 – Title, Purpose, and Definitions; and

WHEREAS, the Deschutes County Planning Commission, pursuant to DCC 22.12.010(A), reviewed the proposed changes on November 12, 2026; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on November 23, 2026, and concluded that the public will benefit from the proposed changes to the Deschutes County Code Titles 18; now, therefore,

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

Section 1. AMENDMENT. DCC Section 18.04.030, Definitions, is amended to read as described in Exhibit "A", attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 2. FINDINGS. The Board adopts as its findings Exhibit "B", attached and incorporated by reference herein.

Section 3. EMERGENCY. This Ordinance being necessary for the public peace, health, and safety, an emergency is declared to exist, and this Ordinance takes effect on the 30th day after the date of adoption.

/ / /

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

Date of 2nd Reading: _____ day of _____, 2026.

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2026.

REVIEWED

_____

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

| | | |
|---|---|---|
| An Ordinance Amending the Deschutes County Code Title 18, Zoning Ordinance, Definition of Duplex. | * * * * | ORDINANCE NO. 2026-028 |

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-26-000573-TA) to the Deschutes County Code ("DCC"), Chapter 18.04 – Title, Purpose, and Definitions; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on November 12, 2026; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on November 23, 2026, and concluded that the public will benefit from the proposed changes to the Deschutes County Code Titles 18; now, therefore,

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

Section 1. AMENDMENT. DCC Section 18.04.030, Definitions, is amended to read as described in Exhibit "A", attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 2. FINDINGS. The Board adopts as its findings Exhibit "B", attached and incorporated by reference herein.

Section 3. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption, or if appealed, the date the ordinance is no longer subject to appeal.

/ / /

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

Date of 2nd Reading: _____ day of _____, 2026.

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2027.

**TITLE 18 COUNTY ZONING**

**CHAPTER 18.04 TITLE, PURPOSE AND DEFINITIONS**

**18.04.030 Definitions**

As used in DCC Title 18, the following words and phrases shall mean as set forth in DCC 18.04.030, or, where such words and phrases are defined in applicable Oregon Revised Statutes (ORS) and/or Oregon Administrative Rules (OAR), as defined therein. If there is any conflict between the definitions set forth in DCC 18.04.030 and the definitions of the same words and phrases in applicable ORS and/or OAR, the definitions in ORS and/or OAR shall prevail.

...

"Dwelling unit" means a building or portion thereof providing living facilities for one or more persons living together, including provisions for sleeping, cooking, and sanitation. Cooking facilities shall be limited to one kitchen and sanitation facilities shall include at least one full bath. All areas shall have an enclosed and unobstructed way of travel within the dwelling unit to all other areas within the dwelling unit. With the exclusion of bedrooms, all areas within the dwelling unit shall be shared in common.

A. “Duplex” means two attached, or detached, dwelling units on an individual lot or parcel when neither is an accessory dwelling.
B. “Dwelling unit, accessory” shall have the meaning set forth in DCC 18.116.355(A).
C. “Dwelling unit, historic accessory” shall have the meaning set forth in DCC 18.116.350(A).
D. "Dwelling unit, live/work” for purposes of DCC 18.108.055, is a dwelling unit in which a commercial use may be operated on the ground floor of the dwelling unit.
E. "Dwelling, lot of record" means a dwelling unit approved pursuant to ORS 215.705.
F. "Dwelling, manufactured" shall have the meaning set forth in ORS 446.003. As used in DCC Title 18, “manufactured home” shall be synonymous with “manufactured dwelling” as defined herein.
G. “Dwelling, multi-unit” means a building that consists of three or more attached dwelling units on an individual lot or parcel.
H. "Dwelling, multi-family" means a “multi-unit dwelling” as defined herein.
I. “Dwelling, single-unit” means a detached dwelling unit on an individual lot or parcel.
J. "Dwelling, single-family" means a “single-unit dwelling” as defined herein.
K. "Dwelling, single-family – zero lot line” in the Neighborhood Planning Area means a detached building containing one (1) single-unit dwelling, where one or more of the building’s sides coincide with a lot line, not including manufactured dwellings and

temporary structures such as tents, teepees, travel trailers, and other similar structures.

L. "Dwelling, seasonal" means a single-unit dwelling, including a manufactured dwelling, travel trailer, or camping vehicle, designed for and used as a temporary dwelling for recreational or seasonal purposes only.

M. “Dwelling unit, zero lot line” means dwelling units which are constructed with a zero side setback.

N. “Town home”, as applied in the La Pine Neighborhood Planning Area, means a single-unit dwelling with common walls on one or both side lot lines and continuous front facades. Alleys to the rear of the building provide parking and service access.

O. “Townhouse” means a dwelling unit that is part of a row of two or more attached dwelling units, where each unit is located on an individual lot or parcel.

~~P. “Two-family dwelling” means a “duplex” as defined herein.~~

HISTORY

*Adopted by Ord. PL-15 on 11/1/1979*
*Amended by Ord. 82-013 §1 on 5/25/1982*
*Amended by Ord. 83-037 §2 on 6/1/1983*
*Amended by Ord. 83-033 §1 on 6/15/1983*
*Amended by Ord. 84-023 §1 on 8/1/1984*
*Amended by Ord. 85-002 §2 on 2/13/1985*
*Amended by Ord. 86-032 §1 on 4/2/1986*
*Amended by Ord. 86-018 §1 on 6/30/1986*
*Amended by Ord. 86-054 §1 on 6/30/1986*
*Amended by Ord. 86-056 §2 on 6/30/1986*
*Amended by Ord. 87-015 §1 on 6/10/1987*
*Amended by Ord. 88-009 §1 on 3/30/1988*
*Amended by Ord. 88-030 §3 on 8/17/1988*
*Amended by Ord. 89-004 §1 on 3/24/1989*
*Amended by Ord. 89-009 §2 on 11/29/1989*
*Amended by Ord. 90-014 §2 on 7/12/1990*
*Amended by Ord. 91-002 §11 on 2/6/1991*
*Amended by Ord. 91-005 §1 on 3/4/1991*
*Amended by Ord. 92-025 §1 on 4/15/1991*
*Amended by Ord. 91-020 §1 on 5/29/1991*
*Amended by Ord. 91-038 §§3 and 4 on 9/30/1991*
*Amended by Ord. 92-004 §§1 and 2 on 2/7/1992*
*Amended by Ord. 92-034 §1 on 4/8/1992*
*Amended by Ord. 92-065 §§1 and 2 on 11/25/1992*
*Amended by Ord. 92-066 §1 on 11/25/1992*
*Amended by Ord. 93-002 §§1, 2 and 3 on 2/3/1993*
*Amended by Ord. 93-005 §§1 and 2 on 4/21/1993*

*Amended by Ord. 93-038 §1 on 7/28/1993*
*Amended by Ord. 93-043 §§1, 1A and 1B on 8/25/1993*
*Amended by Ord. 94-001 §§1, 2, and 3 on 3/16/1994*
*Amended by Ord. 94-008 §§1, 2, 3, 4, 5, 6, 7 and 8 on 6/8/1994*
*Amended by Ord. 94-041 §§2 and 3 on 9/14/1994*
*Amended by Ord. 94-038 §3 on 10/5/1994*
*Amended by Ord. 94-053 §1 on 12/7/1994*
*Amended by Ord. 95-007 §1 on 3/1/1995*
*Amended by Ord. 95-001 §1 on 3/29/1995*
*Amended by Ord. 95-075 §1 on 11/29/1995*
*Amended by Ord. 95-077 §2 on 12/20/1995*
*Amended by Ord. 96-003 §2 on 3/27/1996*
*Amended by Ord. 96-082 §1 on 11/13/1996*
*Amended by Ord. 97-017 §1 on 3/12/1997*
*Amended by Ord. 97-003 §1 on 6/4/1997*
*Amended by Ord. 97-078 §5 on 12/31/1997*
*Amended by Ord. 2001-037 §1 on 9/26/2001*
*Amended by Ord. 2001-044 §2 on 10/10/2001*
*Amended by Ord. 2001-033 §2 on 10/10/2001*
*Amended by Ord. 2001-048 §1 on 12/10/2001*
*Amended by Ord. 2003-028 §1 on 9/24/2003*
*Amended by Ord. 2004-001 §1 on 7/14/2004*
*Amended by Ord. 2004-024 §1 on 12/20/2004*
*Amended by Ord. 2005-041 §1 on 8/24/2005*
*Amended by Ord. 2006-008 §1 on 8/29/2006*
*Amended by Ord. 2007-019 §1 on 9/28/2007*
*Amended by Ord. 2007-020 §1 on 2/6/2008*
*Amended by Ord. 2007-005 §1 on 2/28/2008*
*Amended by Ord. 2008-015 §1 on 6/30/2008*
*Amended by Ord. 2008-007 §1 on 8/18/2008*
*Amended by Ord. 2010-018 §3 on 6/28/2010*
*Amended by Ord. 2010-022 §1 on 7/19/2010*
*Amended by Ord. 2011-009 §1 on 10/17/2011*
*Amended by Ord. 2012-004 §1 on 4/16/2012*
*Amended by Ord. 2012-007 §1 on 5/2/2012*
*Amended by Ord. 2013-008 §1 on 7/5/2013*
*Amended by Ord. 2014-009 §1 on 8/6/2014*
*Amended by Ord. 2015-004 §1 on 4/22/2015*
*Amended by Ord. 2016-015 §1 on 7/1/2016*
*Amended by Ord. 2016-026 §1 on 11/9/2016*
*Amended by Ord. 2016-006 §1 on 2/27/2017*
*Amended by Ord. 2017-015 §1 on 11/1/2017*
*Repealed by Ord. 2018-005 §8 on 10/10/2018*
*Amended by Ord. 2018-006 §4 on 11/20/2018*

*Amended by Ord. 2019-010 §1 on 5/8/2019*
*Amended by Ord. 2019-016 §1 on 2/24/2020*
*Amended by Ord. 2020-001 §1 on 4/21/2020*
*Amended by Ord. 2020-010 §1 on 7/3/2020*
*Amended by Ord. 2020-007 §7 on 10/27/2020*
*Amended by Ord. 2021-013 §3 on 4/5/2022*
*Amended by Ord. 2022-014 §1 on 4/4/2023*
*Amended by Ord. 2023-001 §2 on 5/30/2023*
*Amended by Ord. 2024-008 §2 on 1/7/2025*
*Amended by Ord. 2025-002 §1 on 3/28/2025*
*Amended by Ord. 2025-009 §1 on 7/1/2025*
*Amended by Ord. 2025-016 §1 on 1/13/2026*
*Amended by Ord. 2026-028 §1 on XX/XX/XXXX*

# FINDINGS
# TITLE 18 – DUPLEX DEFINITION AMENDMENTS
# TEXT AMENDMENTS
# FILE NO. 247-26-000573-TA

## I. APPLICABLE CRITERIA:

Deschutes County Code ("DCC")
Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan ("DCCP")

Oregon Administrative Rule ("OAR")
Chapter 660-015, Statewide Planning Goals and Guidelines

## II. BACKGROUND:

In 2026, the Board of County Commissioners ("Board") directed Community Development Department staff to initiate a text amendment to the County's definition of "duplex". The Board was contacted by a community member requesting that the County's definition be amended to align with House Bill (HB) 2138, which applies to cities and allows both attached and detached duplexes. This amendment is intended to increase flexibility in site design and reduce barriers to developing housing in certain zones.

Within Deschutes County's jurisdiction under DCC Title 18, duplexes are allowed in the zones listed in *Table 1* below. These allowances apply only to specific zones located within certain Unincorporated Communities and Rural Commercial exception areas, or approved Destination Resorts.

**Table 1 – DCC Title 18 Duplex Zoning Allowances**

| | | |
|---|---|---|
| 18.65 Rural Service Centers | Commercial/Mixed Use District | Brothers |
| | | Hampton |
| | | Millican |
| | | Whistlestop |
| | | Wildhunt |
| | | Alfalfa |
| 18.66 Terrebonne Rural Community Zoning Districts | Terrebonne Residential (TeR) District | |
| | Terrebonne Residential 5-Acre Min. (TeR5) District | |
| | Terrebonne Commercial (TeC) District | |

| | |
|---|---|
| 18.67 Tumalo Rural Community Zoning Districts | Tumalo Residential (TuR) District |
| | Tumalo Commercial (TuC) District |
| 18.74 Rural Commercial Zone (RC) | Deschutes Junction |
| | Deschutes River Woods Store |
| 18.108 Urban Unincorporated Community Zone; Sunriver | Multiple Unit Residential (RM) District |
| 18.113 Destination Resort (DR) Combining Zone | Eagle Crest Resort |
| | Caldera Springs Resort |
| | Juniper Preserve (formerly Pronghorn) |
| | Thornburgh Resort |

## III. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the referenced ordinance, with additional text identified by underline and deleted text by ~~strikethrough~~.

## IV. BASIC FINDINGS:

The Board of County Commissioners directed staff to initiate the proposed text amendment. Staff initiated the proposed amendments and notified the Oregon Department of Land Conservation and Development ("DLCD") on September 30, 2026. As demonstrated in the findings below, the amendments remain consistent with Deschutes County Code, the Deschutes County Comprehensive Plan, and the Statewide Planning Goals.

## V. FINDINGS:

### DESCHUTES COUNTY CODE ("DCC")

### Chapter 22.12, Legislative Procedures.

Section 22.12.010, Hearing Required.

***No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.***

**FINDING**: The Planning Commission ("Commission") reviewed the proposed amendments on November 12, 2026, and a public hearing before the Board will be conducted afterwards. Given the limited scope of the amendments, the Planning Director has elected to not schedule a public hearing before the Commission as allowed under this criterion.

Section 22.12.020, Notice.

***A. Published Notice***

***1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***

***2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

**FINDING**: Published notice with the required information described under subsection (2) above will be published in *The Bulletin* newspaper at least 10 days prior to the public hearing.

***B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.***

**FINDING:** Posted notice was determined by the Planning Director not to be necessary.

***C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.***

**FINDING:** The proposed amendments are legislative and do not apply to any specific property. Therefore, individual notice is not required.

***D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.***

**FINDING:** Notice will be provided to the County public information official for wider media distribution. This criterion has been met.

Section 22.12.030, Initiation of Legislative Changes.

***A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.***

**FINDING:** The application was initiated by the Deschutes County Planning Division at the direction of the Board and has received a fee waiver. This criterion has been met.

Section 22.12.040, Hearings Body

***A. The following shall serve as hearings or review body for legislative changes in this order:***

***1. The Planning Commission.***

***2. The Board of County Commissioners.***

***B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

**FINDING:** As noted above and required under this section, the Commission reviewed the proposed amendments on November 12, 2026, and afterwards the Board held a public hearing to consider the proposed amendments on November 23, 2026.

Section 22.12.050, Final Decision.

***All legislative changes shall be adopted by ordinance.***

**FINDING:** The proposed legislative changes included in file no. 247-26-000573-TA will be implemented by an ordinance upon approval and adoption by the Board.

**2011 DESCHUTES COUNTY COMPREHENSIVE PLAN ("DCCP")**

**Chapter 1, Comprehensive Planning**

Section 1.2, Community Involvement Policies.

***Policy 1.2.5. Ensure effective, efficient planning procedures.***

**FINDING**: The proposed amendments amend the "duplex" definition to allow for attached or detached dwellings, as permitted by HB 2138. This amendment will align the County's definition with other jurisdictions in the Central Oregon region, ensuring an effective and efficient planning process. This policy is met.

**Appendix A – Terrebonne Community Plan**

Residential Area Policies.

***8. Plan and zone for a diversity of housing types and densities suited to the capacity of the land to accommodate water and sewer facilities.***

**FINDING**: The proposed amendments provide additional flexibility for duplex site design within existing zoning and infrastructure constraints, and the amendments support a diversity of housing types and densities suited to the capacity of available water and sewer facilities. The proposed amendments do not change the zones in which duplexes are allowed or modify applicable requirements related to water and sewer facilities. This policy is met.

**Appendix B – Tumalo Community Plan**

Residential Area Policies.

***1. Encourage density and design features that are compatible with existing development.***

**FINDING**: The proposed amendments provide additional flexibility in site design and allow duplexes to be configured in ways that respond to the character and pattern of existing development. This policy is met.

**OREGON ADMINISTRATIVE RULES ("OAR")**

**OAR 660-015, Statewide Planning Goals and Guidelines**

Goal 1: Citizen Involvement:
**FINDING:** The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments was provided to T*he Bulletin* for the Board public hearing.

Goal 2: Land Use Planning:
**FINDING:** The proposed amendments respond to community input and are supported by a reasoned review of applicable state and local land use regulations. The amendment updates the definition of "duplex" to allow the two dwelling units to be either attached or detached, providing greater flexibility in site design while preserving the existing zoning allowances for areas where duplex uses are permitted under DCC Title 18. The amendment provides clear direction for the consistent application of the County's land use regulations and supports efficient housing development consistent with the County's acknowledged land use planning framework. This goal is met.

Goal 3: Agricultural Lands:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 3. This goal does not apply.

Goal 4: Forest Lands:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 4. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 5. This goal does not apply.

Goal 6: Air, Water and Land Resources Quality:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 6. This goal does not apply.

Goal 7: Areas Subject to Natural Disasters and Hazards:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 7. This goal does not apply.

Goal 8: Recreational Needs:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 8. This goal does not apply.

Goal 9: Economic Development:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 9. This goal does not apply.

Goal 10: Housing:
**FINDING:** The proposed amendments update the definition of "duplex" to allow the two dwelling units to be either attached or detached. This expanded site design flexibility is supportive of housing development and may broaden housing options without altering where duplex uses are allowed. This goal is met.

Goal 11: Public Facilities and Services:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 11. This goal does not apply.

Goal 12: Transportation:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 12. This goal does not apply.

Goal 13: Energy Conservation:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 13. This goal does not apply.

Goal 14: Urbanization:
**FINDING:** The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 14. This goal does not apply.

Goals 15 through 19
**FINDING:** These goals are not applicable to the proposed plan and text amendments because the County does not contain these types of lands.

## VI. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments to the Deschutes County Code.

BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** November 23, 2026

**SUBJECT:** Ordinance No. 2026-020 changing the Comprehensive Plan designation of 64 acres at 68589 Highway 20, Sisters and rezoning the property from Exclusive Farm Use to Multiple Use Agricultural (R. Derek Jaros, LLC

**RECOMMENDED MOTION:**

1. Move approval of second reading of Ordinance No. 2026-020 by title only.
2. Move adoption of Ordinance No. 2026-020.

**BACKGROUND AND POLICY IMPLICATIONS:**

R. Derek Jaros, LLC requests approval of a Comprehensive Plan Amendment to change the designation of 64 acres at 68589 Highway 20, Sisters from Agricultural to Rural Residential Exception Area and a corresponding Zone Change to rezone the subject property from Exclusive Farm Use to Multiple Use Agricultural.

The Board held a public hearing on September 2, 2026 and voted 2–1 to approve the request on October 21, 2026. The Board conducted first reading of Ordinance No. 2026-020 on November 9, 2026. If approved, the ordinance will go into effect 90 days after adoption (on February 21, 2027) unless the Board's decision is appealed.

**BUDGET IMPACTS:**

None.

**ATTENDANCE:**

Caroline House, Senior Planner
Anthony Raguine, Principal Planner
Will Groves, Planning Manager
Stephanie Marshall, Senior Assistant Legal Counsel

COMMUNITY DEVELOPMENT

**MEMORANDUM**

**TO:** Board of County Commissioners (the "Board")

**FROM:** Caroline House, Senior Planner

**DATE:** November 16, 2026

**RE:** Second Reading & Adoption of Ordinance No. 2026-020 - R. Derek Jaros, LLC Comprehensive Plan Amendment and Zone Change Request

---

On October 21, 2026, the Board voted 2 to 1 to approve an applicant-initiated Comprehensive Plan Amendment and Zone Change request for a 64-acre property with an assigned address of 68589 Highway 20, Sisters, OR 97759. The Board completed first reading of Ordinance No. 2026-020 on November 9, 2026, and the Board will consider completion of second reading and adoption on November 23, 2026.

## I. PROPOSAL

R. Derek Jaros, LLC (the "Applicant") requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a corresponding Zone Change to rezone the subject property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA10"). No exceptions to any Statewide Planning Goals are requested.

## II. BACKGROUND

The first hearing for this proposal was held on May 21, 2026, before a Deschutes County Hearings Officer. The Board held a public hearing on September 2, 2026, and following the hearing the Board elected to keep the record open for additional materials to be submitted. The record closed on September 23, 2026.

As part of the Board's review process, the Applicant submitted additional supporting materials and arguments into the record for the Board's consideration to demonstrate compliance with Goal 14 and other issue areas. Central Oregon LandWatch, along with over 100 members of the public, submitted comments opposing the Applicant's proposal. These comments primarily raised issues related to the subject property being agricultural land protected under Goal 3, negative impacts to Goal 5 resources, including the Highway 20 scenic corridor and inventoried wetlands, and the proposal violating Goal 14.

The Board voted 2–1 to approve the Applicant's request on October 21, 2026, and must now proceed with adopting an ordinance.

## III. NEXT STEPS

Staff requests the Board sign the ordinance and related Conditions of Approval Agreement on November 23, 2026.

The ordinance will go into effect 90 days after adoption, on February 21, 2027, unless the Board's decision is appealed.

## IV. TIMELINE

This proposal is not subject to the statutory 150-day review timeline.

## V. RECORD

The record is presented at the following Deschutes County Community Development Department website:

www.deschutescounty.gov/JarosPAZC

Attachment:

1) Draft Ordinance 2026-020 and Exhibits
   - Exhibit A: Legal Description
   - Exhibit B: Proposed Comprehensive Plan Amendment Map
   - Exhibit C: Proposed Zone Change Map
   - Exhibit D: Comprehensive Plan Section 23.01, Introduction
   - Exhibit E: Comprehensive Plan Section 5.12, Legislative History
   - Exhibit F: Decision of the Board of County Commissioners
   - Exhibit G: Hearings Officer's Recommendation
   - Exhibit H: 2026 Economic, Social, Environmental, & Energy ("ESEE") Analysis
   - Exhibit I: Conditions of Approval Agreement

REVIEWED_____

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

| | | |
|---|---|---|
| An Ordinance Amending Deschutes County Code Title 23, the Deschutes County Comprehensive Plan, to Change the Comprehensive Plan Map Designation for Certain Property From Agriculture to Rural Residential Exception Area, and Amending Deschutes County Code Title 18, the Deschutes County Zoning Map, to Change the Zone Designation for Certain Property From Exclusive Farm Use to Multiple Use Agricultural. | * * * * * * * | ORDINANCE NO. 2026-020 |

WHEREAS, R. Derek Jaros, LLC ("Applicant"), applied for changes to both the Deschutes County Comprehensive Plan Map (247-26-000120-PA) and the Deschutes County Zoning Map (247-26-000121-ZC), to change the Comprehensive Plan designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"), and a corresponding Zone Change from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10"); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on May 21, 2026, before the Deschutes County Hearings Officer;

WHEREAS, pursuant to DCC 22.28.030(C), on September 2, 2026, the Board heard *de novo* the applications; now, therefore,

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

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

Section 2. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from EFU to MUA-10 for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "C", with both exhibits attached and incorporated by reference herein.

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

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

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board of County Commissioners as set forth in Exhibit "F" and incorporated by reference herein. The Board also incorporates in its findings in support of this decision, the Recommendation of the Hearings Officer, attached as Exhibit "G".

Section 6. AMENDMENT. The Board hereby amends the County's Goal 5 Scenic Roadway program as it relates to the subject property by adopting the site-specific Economic, Social, Environmental, and Energy ("ESEE") Analysis prepared by the Applicant attached as Exhibit "H" and incorporated herein by reference. This site-specific ESEE supersedes and replaces the 1992 ESEE analysis as applied to the subject property and constitutes the applicable Goal 5 ESEE findings for purposes of evaluating conflicting uses and determining the appropriate level of resource protection under OAR 660-023-0040.

Section 7. AGREEMENT. The Board adopts the Conditions of Approval Agreement as set forth in Exhibit "I," which Agreement shall be executed on the date this Ordinance is adopted.

Section 8. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption, or if appealed, the date the ordinance is no longer subject to appeal and is deemed acknowledged.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

Date of 2nd Reading: _____ day of _____, 2026.

Record of Adoption Vote:

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

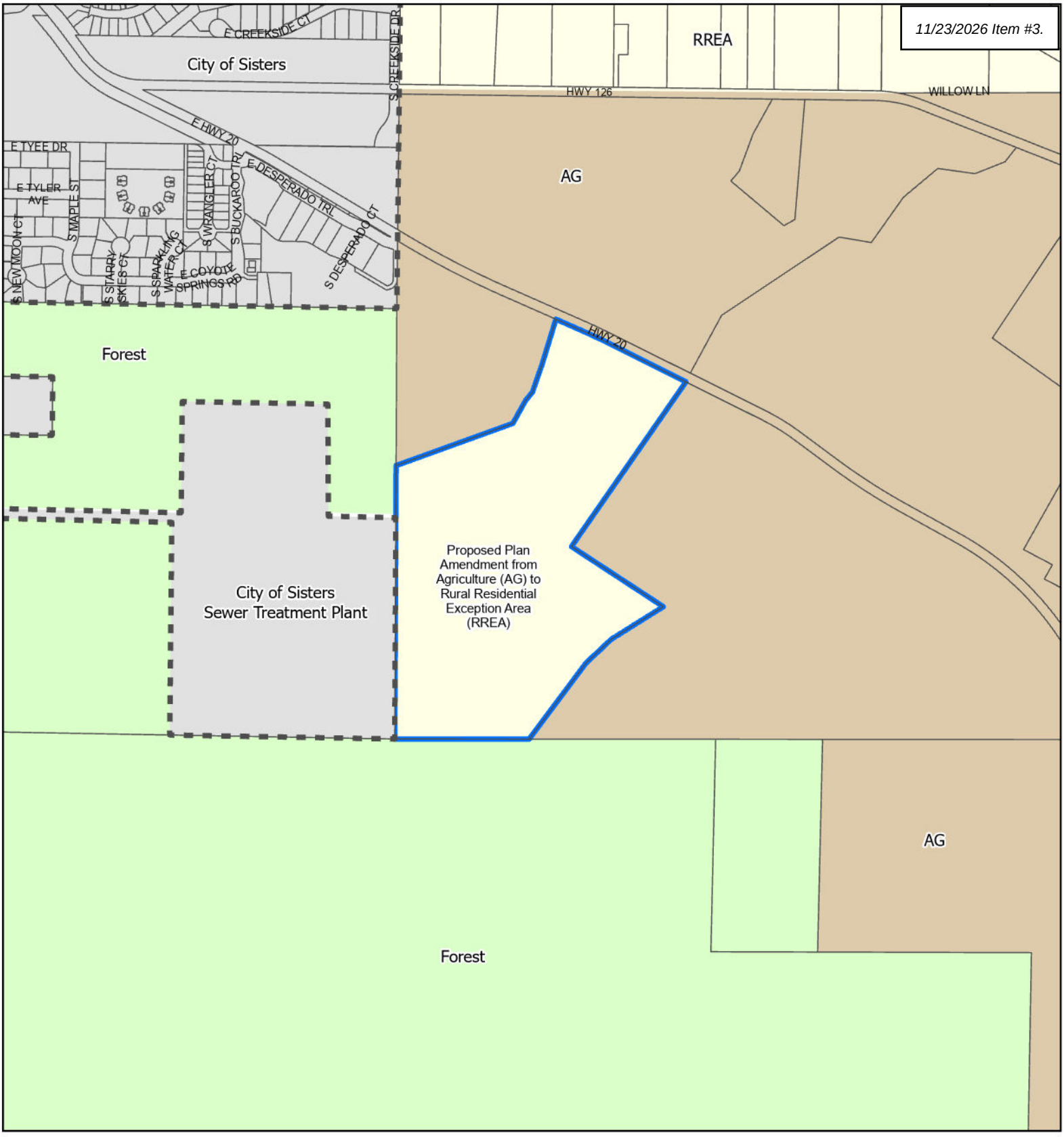
Effective date: _____ day of _____, 2026.

## Exhibit "A" To Ordinance 2026-020

## Legal Description of Subject Property

**Sisters 63 Ac**

Parcel 2 of Partition Plat No. 2002-43, recorded May 7, 2002, in Partition Cabinet 2, Page 292, Deschutes County, Oregon.




# PROPOSED COMPREHENSIVE PLAN MAP

Exhibit "B"
to Ordinance 2026-020

City of Sisters UGB

Proposed Plan Amendment Boundary

Comprehensive Plan Designation

AG - Agriculture

F - Forest

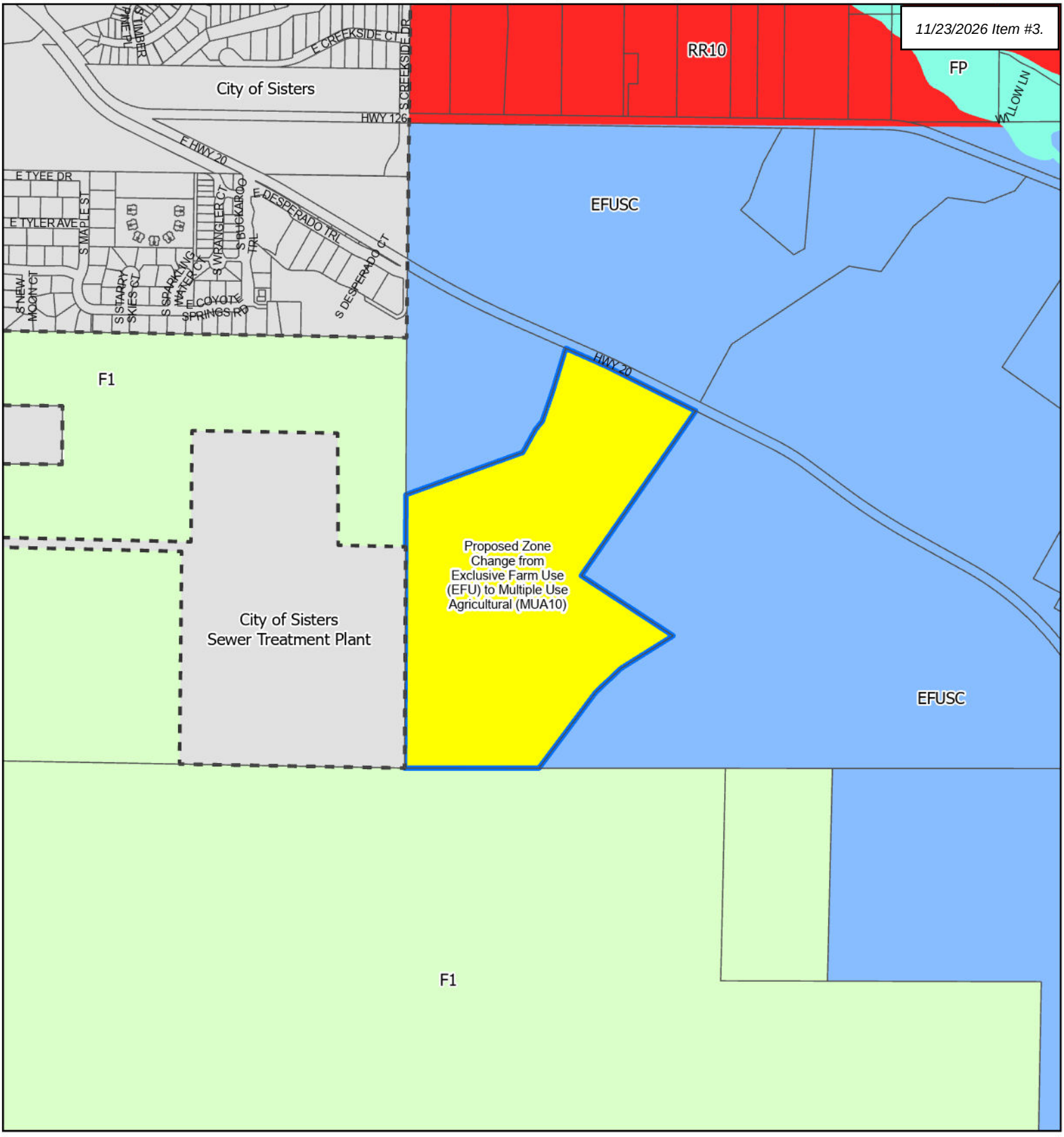
RREA - Rural Residential Exception Area

0 400 800 1,600 Feet

October 29, 2026

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

File: N:\Custom\County\CDD\Planning\Caroline\247-26-000120-PA




# PROPOSED ZONING MAP

Exhibit "C"
to Ordinance 2026-020

City of Sisters UGB
Proposed Zone Change Boundary

Zoning
EFUSC - Exclusive Farm Use
F1 - Forest Use 1
FP - Flood Plain
MUA10 - Multiple Use Agricultural
RR10 - Rural Residential

0 400 800 1,600 Feet

October 29, 2026

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

File: N:\Custom\County\CDD\Planning\Caroline\247-26-000121-ZC

## TITLE 23 COMPREHENSIVE PLAN

## CHAPTER 23.01 COMPREHENSIVE PLAN

A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.

B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.

C. [Repealed by Ordinance 2013-001, §1]

D. [Repealed by Ordinance 2023-017]

E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.

F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.

G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.

H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.

I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.

J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.

K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.

L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.

M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.

N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.

O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.

P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.

R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.

S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.

T. [Repealed by Ordinance 2016-027 §1]

U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.

X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.

Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.

Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.

AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.

AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.

AC. [repealed by Ord. 2019-010 §1, 2019]

AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.

AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.

AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.

AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.

AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.

AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.

AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.

AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.

AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.

AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.

AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.

AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.

AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.

AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.

AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.

AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.

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

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

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

AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.

BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein. (superseded by Ord. 2023-015)

BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein. (supplemented and controlled by Ord. 2024-010)

BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.

BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.

BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.

BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.

BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.

BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.

BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.

BK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-003, are incorporated by reference herein.

BL. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein (superseded by Ord. 2025-007).

BM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.

BN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-017, are incorporated by reference herein.

BO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-016, are incorporated by reference herein.

BP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-011, are incorporated by reference herein.

BQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-012, are incorporated by reference herein.

BR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-001, are incorporated by reference herein.

BS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-003, are incorporated by reference herein.

BT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-010, are incorporated by reference herein.

BU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-007, are incorporated by reference herein (superseded by Ord. 2026-015).

BV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-014, are incorporated by reference herein.

BW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-004, are incorporated by reference herein.

BX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-005, are incorporated by reference herein.

BY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-009, are incorporated by reference herein.

BZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-013, are incorporated by reference herein.

CA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-015, are incorporated by reference herein.

CB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-014, are incorporated by reference herein.

CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-024, are incorporated by reference herein.

CD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-026, are incorporated by reference herein.

CE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-020, are incorporated by reference herein.

Click here to be directed to the Comprehensive Plan (https://weblink.deschutes.org/CDD/Browse.aspx?id=1317439&dbid=0&repo=LFCDD)

# Section 5.12 Legislative History

**Background**

This section contains the legislative history of this Comprehensive Plan.

**Table 5.12.1 Comprehensive Plan Ordinance History**

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

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

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| 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 11 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 |

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| 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 |

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| 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. |

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| 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. |

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| 2020-002 | 2-26-20/5-26-20 | 23.01.01, 4.2, 5.2 | Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB. |
| 2020-003 | 02-26-20/05-26-20 | 23.01.01, 5.10 | Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility. |
| 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. |

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| 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 Vandevert 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 |

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| 2022-001 | 04-13-22/07-12-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2022-003 | 04-20-22/07-19-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2022-006 | 06-22-22/08-19-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area |
| 2022-011 | 07-27-22/10-25-22 (superseded by Ord. 2023-015) | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI) |
| 2022-013 | 12-14-22/03-14-23 (supplemented and controlled by Ord. 2024-010) | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-001 | 03-01-23/05-30-23 | 23.01.010, 5.9 | Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource |
| 2023-007 | 04-26-23/6-25-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |

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| 2023-010 | 06-21-23/9-17-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-018 | 08-30-23/11-28-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-015 | 9-13-23/12-12-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |
| 2023-025 | 11-29-23/2-27-24 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area |
| 2024-001 | 1-31-24/4-30-24 | 23.01.010 | Comprehensive Plan Map Amendment for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-016 | 5-8-24/8-6-24 | 23.01(BM) (added), 4.7 (amended), Appendix B (replaced) | Updated Tumalo Community Plan |
| 2023-017 | 3-20-24/6-20-24 | 23.01(D) (repealed), 23.01(BJ) (added), 3.7 (amended), Appendix C (replaced) | Updated Transportation System Plan |

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| 2024-003 | 2-21-24/5-21-24 | 23.01.010, 5.8 | Comprehensive Plan Map Amendment, changing designation of certain property from Surface Mining (SM) to Rural Residential Exception Area (RREA); Modifying Goal 5 Mineral and Aggregate Inventory |
| 2024-007 | 10-02-24/12-31-24 (superseded by Ord. 2025-007) | 23.01(A)(repealed) 23.01(BK) (added) | Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan |
| 2024-010 | 10-16-24/01-14-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2024-011 | 11-18-24/02-17-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Redmond Urban Growth Area (RUGA) |
| 2024-012 | 1-8-25/4-8-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2025-001 | 2-5-25/2-5-25 | 23.01.010 | Comprehensive Plan and Zoning Map Amendment updating the Greater Sage-Grouse Area Combining Zone boundary. |
| 2025-003 | 4-2-25/7-1-25 | 23.01.010 | Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |

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| 2025-010 | 6-25-25/9-23-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2025-007 | 8-27-25/11-25-25 (superseded by Ord. 2026-015) | 23.01(BU) | Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update process. |
| 2025-014 | 10-6-25/10-6-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Forest (F) to Rural Residential Exception Area (RREA) |
| 2026-004 | 1-28-26/4-28-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-005 | 3-11-26/6-9-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) and Surface Mine (SM) to Rural Residential Exception Area (RREA) |
| 2026-009 | 4-15-26/7-14-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-013 | 7-29-26/10-27-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Surface Mine (SM) to Rural Industrial (RI) |

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| 2026-015 | 9-2-26/12-1-26 | 23.01.010 | Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update Process, Reconsideration, and LUBA Remand. |
| 2026-014 | 9-23-26/12-22-26 | 23.01.010 | Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |
| 2026-024 | 11-9-26/11-9-26 | 1.3, 4.2, 23.01.010 | Amendments to Comprehensive Plan to Update the List of Applicable Zones Allowed Under a Sisters Urban Growth Area Plan Designation |
| 2026-026 | 11-9-26/11-9-26 | 23.01.010 | Comprehensive Plan Designation for Certain Properties from Rural Residential Exception Area (RREA) to Sisters Urban Growth Area (SUGA) |
| 2026-020 | XX-XX-2026/XX-XX-2027 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |

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

**FILE NUMBERS:** 247-26-000120-PA; 247-26-000121-ZC

**APPLICANT/OWNER:** R. Derek Jaros, LLC (the "Applicant")

**APPLICATION:** Comprehensive Plan Amendment to change the designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm ("EFU") to Multiple Use Agricultural ("MUA-10).

**SUBJECT PROPERTY:** Address: 68589 Hwy. 20, Sisters, OR 97759
Map and Tax Lot: 1510100000705

**STAFF PLANNER:** Caroline House, Senior Planner
Caroline.House@deschutes.org; 541-388-6667

## I. PROCEDURAL HISTORY:

The County's land use Hearings Officer conducted an initial hearing on the subject application on May 21, 2026, and found the record was not sufficient to show compliance with Statewide Planning Goal 14 or the Deschutes County Comprehensive Plan ("DCCP") Policy 3.3.1. The Hearings Officer found compliance with all other applicable approval criteria but recommended the Board of County Commissioners ("Board") deny the application unless the Applicant satisfactorily addressed those issues.

Per Deschutes County Code ("DCC") 22.28.030(C), the Board held a *de novo* hearing on September 2, 2026 ("Hearing"). At the Hearing, the Board agreed to hold open the record for post-hearing briefing.

On October 21, 2026, the Board deliberated and considered all issues in the proceedings. The findings in this document hereby adopt the Hearings Officer findings and supplement the Hearings Officer findings of compliance with approval criteria and, where the Hearings Officer found the evidence insufficient, the findings herein supersede those findings as to Goal 14 and DCCP Policy 3.3.1. The findings in this Decision control over any inconsistent findings in the Hearings Officer Recommendation.

## II. FINDINGS AND CONCLUSIONS OF LAW:

The Board approves the requested application for the subject property ("Property), adopts the Hearing Officer's findings of compliance and provides the following supplemental findings and conclusions of law.

### 1. Issue 1: OAR 660-033.0020(2)(a)(B) – Definition and Suitability

Agricultural land is defined for Eastern Oregon as land in soil classes I through VI and land that is suitable for farm use is defined in ORS 215.203(2)(a) taking into consideration: soil fertility, suitability for grazing, climate conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required and accepted farming practices. The Hearings Officer framed the question as:

> "Under this section, the question for the Board is whether the property is capable of farm use with a reasonable expectation of yielding a profit in money, either on-a standalone basis or in conjunction with other farms."

The Hearings Officer found:

> "Having weighed the competing evidence, and although a close call, I find that the Applicant has met its burden of demonstrating the Subject Property is not suitable for farm uses as set forth in OAR 660-033-0020(l)(a)(B) and, therefore, is not agricultural land on that basis."

At the hearing before the Board, the Applicant testified that he spent significant sums of money and hired a regenerative farming expert to try to farm the Property. He submitted testimony and evidence from the regenerative farmer, who is an expert in his field, that between the years 2019 and 2021, he attempted to utilize the property for seasonal grazing under intensive rotational management practices designed to maximize limited forage and he could not support a sustainable grazing operation. The experience of this gentleman and the Applicant's efforts are persuasive evidence. This evidence was then further corroborated by the soil scientist and the agricultural lands expert, both of which based their testimony on first-hand knowledge and study of the Property. We find this evidence the type of evidence a reasonable decision-maker would rely on to conclude the property does not meet the definition of agricultural land.

We acknowledge this property remains under farm tax deferral. The Applicant submitted the last correspondence with the Assessor on this issue from 2019. We note the Assessor does not make any findings as to agricultural land within the meaning of state statutes and administrative rules and does not survey every farm parcel every year for farm tax deferral purposes. Moreover, tax deferral or tax status is not an applicable approval criterion.

In the proceeding before the Board, both the Applicant and the opponents submitted additional evidence and/or argument on this issue. The Applicant submitted evidence which

includes correspondence from the nearest irrigation district that the Property is not within an irrigation district and supplemental testimony from the soil scientist and agricultural expert that the soils on the subject property are not improvable with irrigation even if irrigation was available. This is so, regardless of the method of irrigation water application, frequency, or duration. We find that OAR 660-033-0020(9) regarding formerly irrigated property by its express terms only applies to property within an irrigation district. Even still, we are persuaded by evidence including the lack of water and cost of irrigation improvements , which evidence supports our determination that the Property is not suitable for farm use.

We also agree with the Applicant's experts that the Property is not suitable for grazing and that no reasonable farmer or rancher would be interested in using the property for grazing as a part of their own operation. The lack of testimony to the contrary lends support for the Applicant's claim that the Property is not suitable for grazing. This is particularly true given LandWatch and others' testimony that grazing land is vital in supply to the area. The Applicant submitted evidence establishing that the portion of the Property that was formerly a part of the Lazy Z Ranch decades ago, which is still engaged in some farm use, is located north of the highway and has irrigated soils. The lands surrounding the Property south of the highway are primarily owned by the City of Sisters and, while growing some crops, are not engaged in farm use for the primary purpose of obtaining a profit in money. Instead, any crops are incidental to the primary use of the land for the City of Sisters wastewater treatment plant. The use of this property primarily for municipal waste treatment with incidental use for growing crops does not support the contention that the Property is suitable for farm use.

Opponents submitted arguments that nearby and adjacent properties, including former Lazy Z property to the north and City of Sisters property to the east, were engaged in farm use and demonstrate that the Property can be farmed. Opponents argue that soil amendments and fertilizers can be used and are common practice in Deschutes County. As detailed above, Applicant provided evidence of attempts at regenerative farming, however such attempts failed. We find this evidence persuasive.

Opponents submitted a list of farms they argued were similar to the Property and should be considered as evidence the Property could be farmed. The Applicant addressed the evidence submitted by the opponents regarding similar farms with a detailed chart and evidence describing each property and describing the difference in those farms from the Property. The chart distinguished those farms from the Property on the basis of soils, acreage, irrigation, agricultural facilities and the like. Opponents failed to establish that the list of farms submitted share meaningful characteristics with the Property in such a way that would lead to the conclusion the Property would be suitable for the identified farm use. And, our broader findings, including those of the Hearings Officer, regarding soil conditions, lack of irrigation, and lack of ability to have irrigated pasture lands or crops are dispositive of this issue.

Based on the additional evidence and testimony in the record before us, we disagree with the Hearings Officer that the question of whether the Property is agricultural land within the meaning of the applicable statutes and administrative rules warranting the protection of Goal 3 is a close call. We find that the testimony and evidence from the Order 1 Soil Survey and the supplemental reports from the soil scientist, the testimony and evidence from the Applicant, and the regenerative farmer he hired between 2019-2021, together with the testimony and evidence of the agricultural lands expert, all corroborate each other, all are based on first-hand knowledge and experience with the Property and all constitute substantial evidence upon which a reasonable decision-maker would rely to conclude the property is not agricultural land.

### 2. Issue 2: OAR 660-033-0020(1)(a)(C) – Necessary

Agricultural land is further defined to include:

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

Regarding the "land that is necessary" portion of the rule, the Hearings Officer found:

> "Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands."

We agree with and accept the Hearings Officer's findings that the Applicant has established the Property is not necessary for farm practices to be undertaken on adjacent or nearby lands. There was no additional evidence presented in the proceedings before us which undermined the Hearings Officer's findings or warranted additional findings.

### 3. Issue 3: OAR 660-033-0020(1)(b) – Farm Unit

Agricultural land is additionally defined to include the following:

> "(b) Land in capability classes other than I-IV/1-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;"

Regarding the "farm unit" portion of the rule, the Hearings Officer found:

> "Relying on [the Court of Appeals] *Wetherell's* interpretation of 'farm unit,' I find that the Subject Property is not part of a farm unit."

The Hearings Officer relied upon the instruction in *Wetherell v. Douglas County*, 235 Or App 246, 257 (2010) to determine the Property was not a part of a farm unit. We agree with the

Hearings Officer's reasoning and accept and adopt his findings on this issue. The fact that this property was part of the 1,400-acre Lazy Z Ranch decades ago does not mean it is still a part of a farm unit today. This rule is intended to prevent large blocks of agricultural land in active farm use from being divided and to prevent smaller, less productive acreage contained within a farm unit from being split off. Those are not the circumstances in the present case. The detailed history submitted by the Applicant establishes the Lazy Z Ranch was parcelized years ago, well before the Applicant's ownership, and that any parts of the former ranch which are still being farmed are those where there is irrigation and are located north of the highway. The lack of available irrigation water, the presence of a busy highway, and the development of the remaining land south of it with municipal sewage treatment facilities as part of the City of Sisters' long-term sewage treatment program prevents re-establishing the Property in farm use as a part of a farm unit.

**4. Issue 4: OAR 660-006-0005(7) – Forest Lands**

Central Oregon LandWatch contends that the Property is defined as "forest land," thereby necessitating a Goal 4 exception. Oregon administrative rule defines forest lands as follows:

> "(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, water and fish and wildlife resources."

The Hearing Officer did not make specific findings on Goal 4. Nevertheless, the Hearings Officer elected to:

> "Adopt the Applicants' position on the remaining Goals as recited on pages-44 to 48 of the Applicant's Burden of Proof submittal, which is supported by findings in the Staff Report, and I find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as described in the Application and the Staff Report."

The Board agrees with the Hearings Officer and supplements those findings as follows.

Opponents argued the forest productivity question could only be answered by relying on NCRS data and not by a site-specific study. The Applicant submitted a Forest Capability Assessment in accordance with OAR 660-006-0010 prepared by Gary Kitrow, who is an NCRS certified soil scientist, a forester and ecologist, and a former USDA soil scientist. Mr. Kitzrow's study confirms the property is not forest land, is not capable of producing commercial timber, and 100% of the land is classified at the lowest Forest Productivity Classes 5 and 6.

We find this evidence based on the on-site soil classifications conducted by a certified soil scientist more persuasive than the evidence submitted by opponents, including testimony from an ecologist working on nearby forestland but with no first-hand experience with the soils on the Property. The Applicant also submitted the Oregon Department of Foresty Manual and its Land Use Planning Notes, which we agree establishes that the forest productivity determination can be established through a site-specific study performed in accordance with OAR 660-006-0010.

**5. Issue 5: Statewide Planning Goal 5**

The Property is partially located in the County's Goal 5 inventoried Hwy 20 Scenic Roadway and some areas of the property include inventoried wetlands.

The Hearings Officer found:

> "Based on the Applicant's full [Economic, Social, Environmental, and Energy] ESEE analysis and the lack countervailing evidence, I find that the record is sufficient for the County Board to find that the requested Plan Amendment is consistent with Goal 5 by applying the LM combining zone to the Subject Property as the Applicant proposes."

Regarding Goal 5 requirements related to the wetlands, the Hearings Officer included the following footnote in his recommendation:

> "COLW submitted other comments asserting that the Subject Property contains Goal 5 resources in the form of wetlands. COLW's comments are not well-developed and it is not clear to me what COLW's specific argument is."

The Applicant submitted a site-specific ESEE to establish the Goal 5 scenic resources would be protected under the proposal with the retention of the Landscape Management (LM) Combining zone and the corresponding development restrictions within that overlay zone to protect the scenic corridor. We agree with the findings in the ESEE and combined with the corridor-wide ESEE conducted by the County in 1992, which is also in the record, constitutes substantial evidence to conclude the Goal 5 scenic resources will be protected with the retention of the LM Combining zone and approval of the plan amendment/zone change. We also find the Applicant submitted substantial evidence in the form of a Wetlands Delineation Report, approved by the State, establishing there are no jurisdictional wetlands on the Property. The Board finds the proposal provides adequate protections for the identified Goal 5 resources and is consistent with Goal 5 and the associated Comprehensive Plan policies implementing it. The Board adopts the Applicant's site-specific ESEE for the Property.

The Board notes the Wetlands Delineation does not amend the County's acknowledged inventory of Goal 5 wetlands and all provisions associated with the wetlands inventory will continue to apply until such time as the inventory is amended.

### 6. Issue 6: DCCP Policy 3.3.1

DCCP 3.3.1 states:

> "Except for parcels in the Westside-Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres".

The Hearings Officer found:

> "Based on the record as it currently exists, I therefore find that the Applicant has not met its burden to show that its proposal is consistent with Policy 3.1.1."

The Board notes the Land Use Board of Appeals ("LUBA") issued its decision in *Central Oregon LandWatch v. Deschutes County and BLC, LLC*, LUBA No. 2026-015 (June 26, 2026) after the record had closed as part of the Hearings Officer's review. The Hearings Officer recommendation of denial on this issue was based on the holding in the *BCL* decision.

In the proceedings before the Board, the Applicant submitted testimony and evidence that the *BCL* decision, which concluded that the plan amendment/zone change was the stage at which consistency with the Comprehensive Plan for subsequent subdivision applications had to be made, was incorrect. The Applicant points to DCC Title 17 and Title 18 requirements that subdivisions (including cluster subdivisions) must be consistent with the Comprehensive Plan as a prerequisite to subdivision approval and argues, therefore, that the appropriate stage to determine if a subdivision is consistent with the Comprehensive Plan is when (and if) the subdivision application is made and not at the plan amendment/zone change stage.

We agree there are provisions in DCC Title 17 and 18 requiring consistency with the Comprehensive Plan as a prerequisite to subdivision approval and it seems those provisions may not have been presented to LUBA in the *BCL* proceedings. However, in this case, the Applicant also proposed a Conditions of Approval Agreement ("Agreement") restricting the minimum lot size to 10-acres, minimum so long as the Property remains outside of the Urban Grown Boundary ("UGB"). The Applicant chooses to avoid the risk associated with this issue in further appeals, both of this Decision and/or the Comprehensive Plan amendments recently re-approved by this Board on remand, by restricting the minimum lot size to 10 acres, which is a widely accepted rural density.

The Board accepts the proposed Condition of Approval and agrees that the execution of this Agreement and its recording in the Official Records for Deschutes County will ensure the Property remains consistent with the current language of the DCCP requiring 10-acre minimum lot size.

### 7. Issue 7: Statewide Planning Goal 14

The Hearings Officer found:

> "Having considered the *Curry County* factors, I find that, based on the current record, the proposal could result in urbanization of the Subject Property, and the Applicant has therefore not met its burden of showing that the proposal is consistent with Goal 14. For that reason, I do not recommend that the County Board approve the Application unless the Applicant justifies an exception to that Goal or otherwise creates a different record that can address compatibility with Goal 14."

The Board notes LUBA issued its *BLC* decision after the record had closed as part of the Hearings Officer's review. Again, prior to the Board hearing, the Applicant submitted a *Curry/Schaffer* analysis for the Property to address Goal 14. The Hearings Officer, based on the holding in *BCL*, ruled the Applicant had not met its burden to establish compliance with Goal 14.

At the hearing before the Board, the Applicant submitted a proposed Conditions of Approval Agreement restricting the minimum lot size to 10 acres so long as the Property remains outside the UGB. We find Goal 14 is satisfied with a 10-acre minimum lot size restriction as this acreage is rural in nature, is over 100 times the size of an urban lot and will maintain the rural character of the area. We also find DCC 18.136 allows the County to condition land use applications, including zone changes, to accomplish compliance and serve the public interest. The condition limiting density is not a use restriction and does not create an improper subzone or overlay zone. It simply limits density allowed for the Property to a widely-accepted rural density which will be compatible with the surrounding rural area.

## III. DECISION:

Based upon the foregoing Findings and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant's request for a Deschutes Comprehensive Plan Amendment and Zone Change for the Subject Property, subject to the following conditions of approval below.

## IV. CONDITIONS OF APPROVAL:

**1.** Any future subdivision of the Subject Property shall be limited to a minimum lot size of 10 acres. This condition shall be in effect so long as the property remains outside of an urban growth boundary.

**2.** The attached Conditions of Approval Agreement, with restrictive covenants enforceable by Deschutes County, must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.

**Exhibit "G" to Ordinance No. 2026-020**

**RECOMMENDATION AND FINDINGS OF THE DESCHUTES COUNTY HEARINGS OFFICER**

| | |
|---|---|
| **FILE NUMBERS:** | 247-26-000120-PA / 247-26-000121-ZC |
| **HEARING DATE:** | May 21, 2026, 1:00 p.m. (Scheduled Time) |
| **HEARING LOCATION:** | Videoconference and<br>Barnes & Sawyer Rooms<br>Deschutes Services Center<br>1300 NW Wall Street<br>Bend, OR 97708 |
| **APPLICANT/OWNER:** | R Derek Jaros LLC |
| **SUBJECT PROPERTY:** | Map and Tax Lot:<br>151000000705<br><br>Situs Addresses:<br>68589 HWY 20, Sisters, OR 97759 |
| **REQUEST:** | The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to Multiple Use Agricultural ("MUA-10"). |
| **HEARINGS OFFICER:** | Tommy A. Brooks |

**SUMMARY OF RECOMMENDATION**: The Hearings Officer finds that the current record is not sufficient to support the requested Comprehensive Plan Amendment and Zone Change. Specifically, the Hearings Officer finds that the current record is not sufficient to show compliance with Statewide Planning Goal 14 or Comprehensive Plan Policy 3.1.1. The Hearings Officer therefore recommends the County's Board of Commissioners deny the Application unless the Applicant satisfactorily addresses those issues.

## I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code ("DCC")
Title 18, Deschutes County Zoning Ordinance:
Chapter 18.04, Title, Purpose, and Definitions
Chapter 18.16, Exclusive Farm Use Zones ("EFU")
Chapter 18.32, Multiple Use Agriculture
Chapter 18.80, Airport Safety Combining Zone ("AS")

Chapter 18.84, Landscape Management Combining Zone ("LM")
Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan
Title 23, Deschutes County Comprehensive Plan ("DCCP")
Chapter 1, Comprehensive Planning
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Appendix C – Transportation Plan
Chapter 5, Supplemental Sections

Oregon Administrative Rules ("OAR") - Chapter 660
Chapter 660, Land Conservation and Development Department
Division 6, Goal 4 Forest Lands
Division 12, Transportation Planning
Division 15, Statewide Planning Goals
Division 23, Procedures and Requirements for Complying with Goal 5
Division 33, Agricultural Lands

Oregon Revised Statutes ("ORS")
Chapter 215, County Land Use Planning: Resource Lands

## II. BACKGROUND AND PROCEDURAL FINDINGS

### A. Nature of Proceeding

This matter comes before the Hearings Officer as a request by applicant R. Derek Jaros ("Applicant") for approval of a quasi-judicial Comprehensive Plan Map Amendment ("Plan Amendment") to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"). The Applicant also requests approval of a corresponding Zoning Map Amendment ("Zone Change") to change the zoning designation of the Subject Property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to the Multiple Use Agriculture ("MUA-10") zone.

The Application requests a Plan Amendment, which is ultimately a decision for the County's Board of Commissioners ("County Board"). Several applicable criteria require a weighing of policy choices, and the record before the County Board may be different than the current record. This Recommendation therefore determines if the Applicant has met its burden of proof in a manner that would support the County Board's approval of the Application based on the current record.

## B. Notices, Hearing, Record Materials

The Applicant initially filed the Application on March 2, 2026, and provided supplemental materials throughout this proceeding.

On March 12, 2026, staff in the County's Community Development Department ("Staff") mailed a Notice of Application identifying the standards and criteria governing the review of the Application and seeking public comment on the Application. On April 2, 2026, Staff mailed a Notice of Public Hearing ("Hearing Notice") to agencies, interested persons, and all property owners within 750 feet of the Subject Property, announcing a public hearing to be held on May 21, 2026. The Hearing Notice was also published in the Bend Bulletin on Sunday, April 5, 2026. Notice of the Hearing was submitted to the Department of Land Conservation and Development on April 2, 2026.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on May 21, 2026, opening the Hearing at approximately 2:09 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at approximately 2:59 p.m. Prior to the conclusion of the Hearing, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until May 28, 2026, ("Open Record Period"); (2) any participant could submit rebuttal materials (evidence or argument) until June 4, 2026 ("Rebuttal Period"); and (3) the Applicant could submit a final legal argument, but no additional evidence, until June 11, 2026. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. Participant Central Oregon LandWatch ("COLW") requested a longer Open Record Period, but neither COLW nor any other participant objected to the post-hearing procedures and deadlines.

Various participants submitted post-Hearing materials within the time limits described above, and no objections were made to any of those submittals. However, two participants submitted comments after the close of both the Open Record Period and the Rebuttal Period. Participant Janice Farney submitted comments on June 6, 2026, and participant Scott Mather submitted comments on June 19, 2026. Participant Farney's and participant Mather's comments do not explain the purpose of the comments or otherwise provide an explanation for why the late-filed comments should be included in the record. I find that these submittals should therefore be rejected as untimely. The record therefore includes all materials submitted to the County as reflected on the County's website for this matter, with the exception of the two submittals from participants Farney and Mather just described.

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### C. Review Period

Because the Application includes the request for a Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable.[1] The 150-day review period is also not applicable by virtue of Deschutes County Code ("DCC" or "Code") 22.20.040(D). No participant to the proceeding disputes those conclusions.

## III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

### A. Staff Report

On May 14, 2026, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time ("Staff Report").

The Staff Report, although it expresses agreement with the Applicant in most places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicant has met the burden of proof necessary to justify the Plan Amendment and Zone Change.

### B. Plan Amendment

DCC 18.136.010 contemplates that an applicant may seek a quasi-judicial amendment to the County's Comprehensive Plan Map ("Plan Map"). Other than a reference to the procedural provisions of DCC Title 22, the Code does not appear to contain any substantive standards or criteria specific to an amendment to the Plan Map. Pursuant to ORS 197.175(2), however, if the County amends its Plan or Plan Map, it must do so in compliance with Statewide Planning Goals (each a "Goal" and, together, the "Goals"). Because the existing Plan and Plan Map have been acknowledged, the requested Plan Amendment must adhere to the procedures for a post-acknowledged plan amendment ("PAPA") set forth in state statutes and rules.

Division 15 of OAR Chapter 660 sets forth the Statewide Planning Goals and Guidelines with which a PAPA must demonstrate compliance. The Applicant asserts the Application is consistent with all applicable Goals and Guidelines. Except for Goal 3, Goal 5, and Goal 14, which are addressed in more detail in findings below, I adopt the Applicants' position on the remaining Goals as recited on pages 44 to 48 of the Applicant's Burden of Proof submittal, which is supported by findings in the Staff Report, and I find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as described in the Application and the Staff Report.

The remainder of the findings in this section address specific Goals that are in dispute.

#### 1. Goal 3 – Agricultural Lands

Goal 3 and its implementing rules protect agricultural lands. OAR 660-033-0020(1) provides the following definition:

[1] ORS 215.427(7).

*(a) "Agricultural Land" as defined in Goal 3 includes:*

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

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

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

*(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;*

A primary dispute in this proceeding is whether the Subject Property qualifies as "agricultural land" under this definition. If the Subject Property is agricultural land, the Application cannot be approved unless the County justifies an exception to Goal 3. If the Subject Property is not agricultural land, it is not protected by Goal 3 and, therefore, the County can conclude that the Plan Amendment is consistent with Goal 3.

The Applicant primarily relies on an Order 1 Soil Survey, prepared by a qualified soil scientist, to demonstrate that the soils on the Subject Property are predominately Class 7 and 8 soils and, therefore, that the Subject Property is not agricultural land. The Applicant also provides evidence to support its assertion that the Subject Property is not agricultural land because it is not suitable for farm use, that it is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is not adjacent to or intermingled with lands with higher values within a farm unit.

Participant COLW disagrees and argues the Subject Property is agricultural land. COLW does not address OAR 660-033-0020(1)(a)(A) directly, but does appear to argue that the County should rely on the soils classifications listed by the National Resources Conservation Service ("NRCS") for the Subject Property. In support of that argument, COLW submitted a letter from an ecologist who had previous experience working for NRCS and who asserts that the NRCS designations, which identifies the Subject Property as having Class 6 soils, are accurate. That testimony cites to other information describing the soils classifications on adjacent or nearby properties to extrapolate the conditions on the Subject Property. COLW does not assert that the County cannot rely on the Applicant's Order 1 Soil Survey to determine the on-site soil conditions, but essentially insists that there is no reason to ignore the NRCS designations if they are accurate.

The Applicant submitted additional materials responding to COLW's arguments, primarily noting that the Applicant's Order 1 Soil Survey is more detailed and site specific, and therefore more accurate than the less detailed NRCS designations.

In light of the detailed information provided by the Applicant's expert soil scientist, including the specific information that responds to the issues raised in the comments COLW submitted from an ecologist, I find that the Applicant has met its burden of demonstrating the Subject Property is not agricultural land under OAR 660-033-0020(1)(a)(A). The findings below address the remainder of OAR 660-033-0020(1), which COLW asserts demonstrate that the Subject Property remains agricultural land because it is suitable for farm use, that it is necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is adjacent to or intermingled with lands with higher values within a farm unit.

The question under OAR 660-033-0020(1)(a)(B), which LUBA refers to as the "suitability test,"[2] is whether a reasonable farmer would be motivated to put the land to agricultural use for the primary purpose of obtaining a profit in money.[3] Accordingly, the question is whether the property is capable of farm use with a reasonable expectation of yielding a profit in money, either on a standalone basis or in conjunction with other farms.

The Applicant asserts that the Subject Property is not suitable for farm use. In support of that assertion, the Applicant provides details about the historic use of the property, which range from the operation of a golf course, to being included as part of the larger Lazy Z ranch with other nearby properties, to more recently having no activity. The Applicant notes that the Subject Property has no water rights and has not been grazed with irrigation since 2009. At that time, the water rights were transferred off the Subject Property. The Applicant's materials describe efforts over the past 15 or more years to conduct grazing on the property and to regenerate soils, but asserts those efforts were not successful and that, given the poor soil conditions, the Subject Property's current condition is not suitable for farming, and that the level of investment required to make the property suitable is unreasonable.

Participant COLW addresses this issue by noting that the County previously approved a farm-related dwelling on the Subject Property, which the County justified in part by relying on the fact that the Subject Property had produced a certain amount of farm-related income during 2000 and 2001. The Applicant responds that the farm-related income used in that 2002 decision was derived from operations that occurred when the Subject Property was still part of the Lazy Z ranch, which has since been divided up, resulting in fewer farm uses occurring adjacent to the Subject Property. The Applicant also notes that on-the-ground conditions are no longer the same.

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[2] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025, June 26, 2026) ("*BCL LLC*") (slip op at 11).

[3] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025-015, June 26, 2025) ("*Destiny Court")* (slip op at 20). In that case, LUBA acknowledged that the phrase "reasonable farmer" can be used as shorthand for the suitability test, which is an objective test.

COLW also asserts that the Subject Property is suitable for farm use because it "can be used in conjunction with nearby and adjacent farms for the production of cattle, horses, chickens, eggs, honey, goats, sheep, pigs, llamas, alpacas, greenhouses, horse boarding, horse training, or a riding school." Based on that assertion, COLW states that the Applicant "has failed to demonstrate "that a farmer could not use the subject property to raise goats or chickens or any of the livestock types identified by the USDA…" and that "[t]he relevant analysis is whether, for example, a farmer could raise chickens on the subject property and sell the eggs at the farmer's market for the primary purpose of obtaining a profit in money."

As LUBA recently explained, an applicant is not required to evaluate "every possible type of activity that potentially falls within the broad definition of 'farm use,' and produce evidence regarding whether the subject property is suitable for all conceivable farm uses."[4] But, if other participants identify specific farm uses that are common, and provide some evidence or argument that the subject property is suitable for such uses," the Applicant must address those uses.[5] That being said, "a bare assertion, without more, that a property is suitable for a type of farm use that is uncommon or locally less prevalent is an insufficient basis to obligate responsive evidence from the applicant."[6]

This historical use of the Subject Property makes this a close question. While historical farm use of the site is not determinative of its current suitability, it is relevant, because it shows that, at some point in time, the Subject Property was considered suitable for farming, either on its own or in conjunction with the rest of the Lazy Z Ranch. At the same time, it is notable that the majority of the farming activities taking place on the site occurred at a time when the Subject Property was part of a larger operation that does not currently exist in the same form it did then, and that the last meaningful farm income was from more than two decades ago. It is also undisputed that farm practices have not successfully occurred on site in more than a decade, and that other conditions have changed, making farming less suitable, such as the lack of water rights and other farming infrastructure.

I also find that COLW largely makes bare assertions about the suitability of the Subject Property for other farm uses without supporting details about the commonality of those uses or the specific characteristics of the Subject Property that would make those uses feasible. Where COLW has been specific, such as asserting that livestock grazing is possible, I find that the Applicant's information is more detailed and backed by expert opinions, and is based on more site-specific data.

Having weighed the competing evidence, and although a close call, I find that the Applicant has met its burden of demonstrating the Subject Property is not suitable for farm uses as set forth in OAR 660-033-0020(1)(a)(B) and, therefore, is not agricultural land on that basis.

The question under OAR 660-033-0020(1)(a)(C) is whether the Subject Property "is <u>necessary</u> to permit farm practices to be undertaken on adjacent or nearby agricultural lands." (Emphasis

[4] *See BCL LLC* (slip op at 13).
[5] *Id.* (slip op at 14).
[6] *Id.* (slip op at 15).

added). COLW argues that the Subject Property is indeed necessary as described in the statute, but the basis for that argument is a policy-based one. For example, COLW argues that the purpose of the farm protection statutes is to preserve large blocks of farmland. COLW does not, however, further develop this argument to explain what role the Subject Property plays in that policy, much less why a farm zone designation is necessary to keep in place to serve that role.

COLW does attempt to provide specific examples of what farm practices could be impacted on adjacent or nearby agricultural lands if the Subject Property no longer carries the EFU zoning designation. For example, COLW asserts that the MUA-10 zoning would interfere with the movement of livestock through the historic ranch, and interfere with the application of irrigation water, or prevent or constrain the application of pesticides or fertilizers. It is not clear from COLW's arguments, however, how those impacts would arise. For example, the Subject Property is not currently being used to move livestock through the historic ranch, so its conversion to the MUA-10 zone would seem to have no impact on that activity. To the extent COLW is asserting that traffic resulting from the Zone Change would increase to an unacceptable level and begin impacting farm uses, the Applicant has fully analyzed transportation impacts, and that analysis has gone unchallenged. The Applicant also notes that the only property actively engaged in farm use in the area is a nearby meadery, which includes a commercial use in conjunction with agriculture, and there is nothing in the record indicated that the meadery would be impacted.

Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands for farm uses as set forth in OAR 660-033-0020(1)(a)(C) and, therefore, is not agricultural land on that basis.

As a final step in this analysis, OAR 660-033-0020(1)(b) requires an assessment of whether the Subject Property is adjacent to or intermingled with higher class soils within a farm unit. COLW asserts that the Subject Property has this characteristic because there are higher classes of soils on the Subject Property itself, and because the Subject Property is part of a farm unit given its historical connection to the Lazy Z Ranch.

The express language of the administrative rule requires a determination that the land be "adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit." The Applicant asserts that a "farm unit" is a defined term, meaning "the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in ORS 215.203," and that the Subject Property does not meet that definition. The Applicant, however, does not cite to a source for that definition, and it appears to come from ORS 215.278, which relates to accessory dwellings. While that definition may be useful, it does not appear controlling. Indeed, as COLW notes, the Court of Appeals has addressed this rule language. In doing so, the Court determined that the phrase "farm unit" is <u>not</u> defined for purposes of OAR 660-033-0020(1)(b).[7] As interpreted by the Court:

> "when farm operations have recently ceased on a parcel that historically has been used for farming operations with other lands as part of a single "farm unit," the

[7] *Wetherell v. Douglas County*, 235 Or App 246, 257 (2010).

> parcel is within the unit unless the applicant can demonstrate circumstances—the most important of which is whether there is a significant obstacle to resumed joint operation—that dictate a contrary result."[8]

Relying on *Wetherell's* interpretation of "farm unit," I find that the Subject Property is not part of a farm unit. First, even though the Subject Property was previously operated as part of the Lazy Z Ranch, farm operation have not "recently ceased." Further, as noted above relating to the suitability test, circumstances have changed during that intervening period that impose obstacles to resuming joint operations. For example, the Lazy Z Ranch itself has been materially divided up, with little to no farming activity on the portions of the former ranch adjacent to the Subject Property. Further, the water rights that were previously part of the larger parcel have been transferred to other properties. The Applicant also provided evidence of unsuccessful attempts to farm the property during that time period, which efforts were separate from the operations of adjacent or nearby farming.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating the Subject Property is not part of a farm unit and, therefore, is not agricultural land under the definition in OAR 660-033-0020(1)(b).

In summary, I find that the record is sufficient for the County Board to find that the Subject Property is not agricultural land and, therefore, the requested Plan Amendment is consistent with Goal 3.[9]

**2. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces**

Goal 5 and its implementing rules protect natural resources, scenic and historic areas, and open spaces. Pursuant to OAR 660-023-0250(3), the County does not have to apply Goal 5 as part of a PAPA "unless the PAPA affects a Goal 5 resource." One scenario in which a PAPA may affect a Goal 5 resource is when the "PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list."[10] The Subject Property is near the scenic resources along Highway 20. The Applicant acknowledges this fact, and the fact that the Plan Amendment allows new uses that could conflict with the County's identified scenic resource.

To address Goal 5, the Applicant provided a site-specific analysis of the economic, social, environmental, and energy ("ESEE") consequences of the proposed PAPA as required by OAR 660-023-0040(1). In accordance with that administrative rule, the Applicant's ESEE analysis identifies conflicting uses, determines an impact area, analyzes the ESEE consequences, and proposes a "program" to achieve Goal 5 protections. The program the Applicant proposes is the

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[8] *Id.* at 260.

[9] COLW's arguments regarding agricultural land include multiple assertions relating to whether the Subject Property was lawfully created. I find that this argument is not developed enough for me to respond to, and COLW does not explain what criterion or standard it is addressing with these arguments.

[10] OAR 660-023-0250(3)(b).

application of the Landscape Management ("LM") combining zone to the Subject Property, which is the mechanism the County uses to protect scenic resources on other properties, including properties zoned MUA-10. The Applicant asserts the LM combining zone in DCC Chapter 18.84 will achieve compatibility and that the County should apply this program to the Subject Property and allow the uses permitted by the Plan Amendment and Zone Change to be subject to LM review.

The record contains many comments generally asserting that development on the Subject Property will conflict with the County's inventoried Goal 5 scenic resource. Participant Vicki Bugbee-Reed, for example, asserts that the County would lose iconic views of the Three Sisters, and participant COLW asserts that residential development specifically is not compatible with the landscape. The Applicant does not dispute the existence of such conflicts and, instead, provides a detailed, site-specific ESEE analysis to determine what conflicts might result from the Zone Change and whether or how those conflicts may be mitigated. No participant disputes the details of the ESEE analysis or otherwise claims with any specificity that the LM combining zone will not protect the identified Goal 5 resource.[11]

Based on the Applicant's full ESEE analysis and the lack of countervailing evidence, I find that the record is sufficient for the County Board to find that the requested Plan Amendment is consistent with Goal 5 by applying the LM combining zone to the Subject Property as the Applicant proposes.

### 3. Goal 14 – Urbanization

Goal 14 seeks to "provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure the efficient use of land, and to provide for livable communities."[12] When a PAPA results in the urbanization of rural land, it generally requires an exception to Goal 14. The Applicant asserts that no Goal 14 exception is required because the Plan Amendment and Zone Change will not result in the urbanization of land, and because the County has previously determined that the MUA-10 zone is consistent with Goal 14. Participant COLW argues that the proposed Plan Amendment does result in the urbanization of the Subject Property and, therefore, it is not consistent with Goal 14 without a Goal 14 exception.

By way of background, it is true that the MUA-10 zone has previously been interpreted as being compatible with Goal 14. In LUBA's opinion in the *Marken* case, for example, LUBA considered whether the density and lot size permitted under the MUA-10 zoning complies with Goal 14.[13] In

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[11] COLW submitted other comments asserting that the Subject Property contains Goal 5 resources in the form of wetlands. COLW's comments are not well-developed and it is not clear to me what COLW's specific argument is. The Applicant submitted evidence of a wetlands determination showing no wetlands on the property, which determination was confirmed by the Department of State Lands. Without further explanation from COLW, I find that I cannot address this issue based on how it was presented.

[12] OAR 660-015-0000(14).

[13] *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-049, Feb. 15, 2024) (slip op at 10).

that case, the Board had approved a PAPA to change the Plan designation of the subject property from AG to RREA and a corresponding zone change from Exclusive Farm Use-Tumalo-Redmond Bend Subzone ("EFU-TRB") to MUA-10. Prior to addressing the petitioner's argument, LUBA acknowledged the County's findings:

> "The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by [the Land Conservation and Development Commission (LCDC)] as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. Ordinance 2016-005. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14."[14]

The Court upheld the County's interpretation that the MUA-10 zone uses are rural in nature and therefore do not conflict with Goal 14.[15] That decision relied in part on the density permitted under the MUA-10 zone – one dwelling per 10 acres – not being an urban density, a determination the petitioner in that case did not challenge.[16]

In more recent decisions, however, LUBA has been more specific about what is required to demonstrate that the application of the MUA-10 zoning designation complies with Goal 14. In the *Destiny Court* case, for example, the Petitioner requested a Plan Map amendment from AG to RREA and a zoning change from EFU-TRB to MUA-10. The hearings officer in that case took official notice of LCDC's acknowledgment that the MUA-10 zone complies with all statewide planning goals. The hearings officer also considered a site-specific analysis prepared by the intervenor's attorney.[17] LUBA held that the site-specific analysis was necessary to demonstrate Goal 14 compliance.[18]

In the most recent case addressing this issue – *BCL LLC* – LUBA again determined that the application of the MUA-10 zoning is not, as a matter of law, always consistent with Goal 14, and that the County "must demonstrate that the proposed redesignation and rezoning is consistent with Goal 14, applying the relevant *Curry County* factors."[19] The reference to the *Curry County* factors is a reference to *1000 Friends of Oregon v. LCDC,* 301 Or 447 (1986). As explained by LUBA:

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[14] *Id.* (slip op at 8).
[15] *Id.* (slip op at 11).
[16] *Id.* (slip op at 10).
[17] *Destiny Court* (slip op at 10).
[18] *Destiny Court* (slip op at 14-15).
[19] This appears to be in contrast to a recent Court of Appeals case – *Central Oregon LandWatch v. Deschutes County (Last Ranch)*, 347 Or App 287 (2026) – which concluded that a PAPA involving a Plan Map change from EFU to Rural Industrial did not require an exception to Goal 14. LUBA and the Courts have apparently created a different standard depending on which rural Plan Map designation will result from the Plan amendment.

> "Under *Curry County*, in redesignating rural land from plan designations implementing the resource goals, counties must evaluate whether development allowed under the new designation and associated zoning would allow for the urban use of rural land. That evaluation requires consideration of a number of factors described in *Curry County* and its progeny. With respect to PAPAs involving residential use of rural land, the relevant factors include the density of development allowed under the new plan designation and zone, the types and levels of services to be provided, and proximity to urban growth boundaries."[20]

Based on the most recent LUBA decisions, it is clear that the Applicant must show that the Plan Amendment and Zone Change comply with Goal 14 by applying the *Curry County* factors to the Subject Property rather than relying on the MUA-10 zone alone as demonstrating compliance with that Goal. Although the Applicant has presented an analysis of the *Curry County* factors as an alternative to its primary argument, I find based on the current record that the Applicant has not demonstrated that no Goal 14 exception is required.

The first of the *Curry County* factors looks to the allowed density under the new Plan designation. The Applicant notes that the allowed density in the MUA-10 zone is no greater than one dwelling per ten acres because ten acres is the minimum lot size in that zone. In *Curry County*, the Court concluded that one dwelling per ten acres does not constitute urban zoning. The Applicant acknowledges that a greater density may be allowed, but asserts the maximum density is one house per five acres, which the Applicant says is rural in nature and much lower than, for example, the lowest density allowed in the City of Bend.

Participant COLW argues that, despite the minimum parcel size in the MUA-10 zone provisions of the Code, the actual density that is allowed under that zone could be much greater due to various options for cluster development or planned unit development in that zone. LUBA addressed this same argument in *BCL LLC*, concluding that the County must address that feature of the MUA-10 zone and determine if such densities are urban or rural.

In light of LUBA's decision in *BCL LLC*, which indicates that the maximum density of the MUA-10 zone could be even greater than the one-dwelling-per-five-acres the Applicant states is the maximum, I find that the current record does not clearly establish that the ultimate density on the Subject Property will be limited to rural densities. This *Curry County* factor therefore provides weight to the argument that the proposal could result in urban-level development.

The second *Curry County* factor looks to the types and levels of services to be provided. The Applicant asserts that any services for the Subject Property will be provided on site, and that the extension of public water and sewer services would not be allowed. Other participants assert without specificity that additional services will be required, but they do not refute the Applicant's characterization of these services or identify specific urban-level services that will be required for the Subject Property under the requested zoning.

[20] *BCL LLC* (slip op at 25-26).

Based on the foregoing, I find that the second *Curry County* factor provides weight to the argument that the proposal will not result in urban-level development.

The third *Curry County* factor considers proximity to the urban growth boundary ("UGB"). The Subject Property is adjacent to the Sisters UGB. The Applicant asserts that this proximity is not material because the purpose of the MUA-10 zone is to create a transition area between rural and urban uses and, therefore, implementing this zone next to the UGB is appropriate.

Other participants do not address this factor with specificity. However, LUBA addressed this issue in its *BCL LLC* decision. There, LUBA determined that changing a parcel to the RREA was inconsistent with Goal 14 where the property was within one-quarter mile of the City of Bend's UGB, and where the allowed density on the property was similar to what would be allowed in that city. Applying that logic to the facts in this case, the third *Curry County* factor provides weight to the argument that the proposal will result in urbanization. Specifically, the Subject Property is even closer to the UGB than the property in *BCL LLC*, and the potential for some development with no minimum lot size makes potential lot sizes similar to what would be allowed in the UGB. While the Applicant compares allowed lot sizes to what is allowed in the City of Bend, it does not present a similar analysis to what is allowed in the City of Sisters, which is the adjacent urban area.

Having considered the *Curry County* factors, I find that, based on the current record, the proposal could result in urbanization of the Subject Property, and the Applicant has therefore not met its burden of showing that the proposal is consistent with Goal 14. For that reason, I do not recommend that the County Board approve the Application unless the Applicant justifies an exception to that Goal or otherwise creates a different record that can address compatibility with Goal 14.

### C. Zone Change

The Applicant requests a Zone Change from EFU-SC to MUA-10. The criteria for rezoning a parcel are set forth in DCC Chapter 18.136. These findings address the applicable Zone Change criteria in the context of the Applicant's request. That is, the Applicant has also requested the Plan Amendment to change the Plan Map designation applicable to the Subject Property – from the AG designation to the RREA designation. As discussed in the findings above, I have found that the Applicant has initially not met its burden of demonstrating compliance with the Plan Amendment criteria. The findings in this section, however, are based on the assumption that the Plan designation for the Subject Property is RREA, as the Applicant requested. If the County Board does not approve the Plan Amendment, these findings may need to be altered to address the request for a Zone Change based on whatever Plan Map designation the County Board approves.

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*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.*

This Code provision requires consideration of the public interest based on whether: (1) the Zone Change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan's introductory statement and goals.

The Applicant, Staff, and other participants address this Code criterion by discussing specific Plan goals and policies. Before addressing those specific arguments, I note that, if the Plan Amendment is approved, it seems necessary to rezone the Subject Property in some way. That is, the Agricultural designation of the Plan is implemented through the exclusive farm use resource zone designations. The RREA Plan designation, in contrast, is implemented through the RR-10 and MUA-10 zones. There seems to be no basis under the Plan to allow the Plan Amendment to change the designation of the Subject Property to RREA but to keep the EFU zoning. Viewed through that lens, it seems that the MUA-10 zone largely conforms to the Plan, and that the Applicant must show only that the Zone Change, as applied to the Subject Property, is consistent with the Plan's introductory statement and goals.

The Staff Report notes that the County generally does not consider the Plan's goals and policies to be mandatory criteria. With one exception – Plan Policy 3.1.1 – no participant to this proceeding appears to dispute Staff's position that the goals and polices are not mandatory criteria. Because the Code requires a consideration of the Plan's statements and goals, and because some participants have questioned whether the Zone Change is consistent with those Plan provisions, I address the disputed issue in this Recommendation.

The Application identifies potentially relevant Plan provisions by pointing to several goals and policies in the Plan set forth in DCCP Chapter 2 (Resource Management) and Chapter 3 (Rural Growth). The Applicant states that the Application is consistent with those policies and goals. The Staff Report generally agrees with the Applicant's assessment of those policies and goals.

Notwithstanding the foregoing, COLW and other participants assert that the Application is inconsistent with Plan Policy 3.1.1, but only participant COLW presents specific arguments to support that assertion.

Policy 3.1.1 states: "Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." COLW argues that the Zone Change is inconsistent with this policy because the resulting MUA-10 zone could allow parcels that are smaller than 10 acres.

The Applicant responds that COLW's argument should be rejected because it has not proposed any parcels to be smaller than 10 acres and, therefore, the Application is consistent with this policy.

As noted in the findings above addressing Goal 14, it is possible that the Subject Property could be divided into parcels smaller than 10 acres once the MUA-10 zone applies. The Applicant has not proposed such a parcelization, but, as LUBA held in *BCL LLC*, consistency with Plan policies must be determined at the time of the PAPA.[21] Even though the Applicant has not proposed parcels smaller than 10 acres, it also has not proposed to impose a limit on parcel sizes, thereby preserving in the Application the possibility that the full range of uses and development, including smaller parcel sizes, could be available under the new zoning. Based on the record as it currently exists, I therefore find that the Applicant has not met its burden to show that its proposal is consistent with Policy 3.1.1.

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

DCC 18.32.010 contains the following purpose of the MUA-10 zone:

> 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 Applicant states that changing the zoning designation of the Subject Property is consistent with the purpose and intent of the MUA-10 zone because the Subject Property is not agricultural land and that any development will preserve the rural character of the land, which is one of the purposes of the MUA-10 zone. The Applicant also claims that the low level of allowed development will maintain and improve the quality of the air, water, and land resources of the County and encourage future owners of the property to either return irrigation water to the area or to farmlands elsewhere.

Participant COLW asserts that the intent of the MUA-10 zone is more specifically to "preserve agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses." (Emphasis added). According to COLW, if the Applicant is correct that the Subject Property is not agricultural land protected by Goal 3, then it cannot meet the purpose of the MUA-10 zone.

As seen in the express language of DCC 18.32.010, the MUA-10 zone has multiple purposes, of which the preservation of "agricultural land" is only one. The MUA-10 zone has other purposes, such as conserving open space and providing for an orderly and efficient transition from rural to urban land use. The Code language does not appear to require that the Applicant show that the

[21] *BCL LLC* (slip op at 10).

Zone Change implements each of the stated purposes of the MUA-10 zone. Indeed, the applicable standard here is that the change in classification be "consistent with" those purposes. Because the Applicant has shown that the Zone Change is consistent with more than one of the stated purposes of the MUA-10 zone, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

*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.*

Only the Applicant and Staff directly address this Code provision. The Applicant notes that services for development in the MUA-10 are adequate based on the current services that are provided (for example fire, police, and transportation), or new services that can be provided on-site (for example, water and septic).

Based on the foregoing, and in the absence of countervailing evidence and arguments, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

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

Only the Applicant and Staff directly address this Code provision. The Applicant claims that the Applicant's proposal for MUA-10 zoning will not impact surrounding land use, because most properties in the area consist of residential uses or hobby farms, and that no farm practices will be impacted. No other participant asserts that this Code provision cannot be satisfied.

Based on the foregoing, and in the absence of more specific countervailing evidence or argument addressing this provision, I find that this Code provision is satisfied as described by the Applicant.

*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.*

The Applicant addresses this Code provision primarily through its argument that the more specific Order 1 Soil Survey shows a change in circumstances since the Subject Property was last zoned. That change is the understanding of what the actual characteristics of the soils are, and the fact that those soils are not as conducive to agriculture as originally assumed when the EFU zoning was applied. The Applicant also notes that there are broad economic changes that reinforce the idea that the Subject Property is not suitable for farming. No other participant asserts that this Code provision has not been satisfied.

I find that the Applicant's argument is a sufficient basis to satisfy this Code provision. In addition, as noted above, the Zone Change analysis relies on the assumption that the Plan designation for the Subject Property is RREA as a result of the requested Plan Amendment. When the Subject Property was last zoned, its Plan designation was AG. If the County Board approves the Plan

Amendment, I find that the change in Plan designation is, by itself, sufficient to show there has been a change in circumstances and, therefore, this Code provision will be satisfied.

## IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has not met its burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change, because the current record is insufficient to show compliance with Goal 14 and Plan Policy 3.1.1. I therefore recommend to the County Board of Commissioners that it DENY the request in the Application based on the current record.

Dated this 20th day of July 2026



Tommy A. Brooks
Deschutes County Hearings Officer

# Economic, Social, Environmental, and Energy Analysis

**Executive Summary:**

As part of the application requesting a Deschutes County Comprehensive Plan Amendment and Zone Change from Exclusive Farm Use – Sisters/Cloverdale subzone (EFU-SC) to Multiple Use Agricultural (MUA-10) for the Goal 5 site located at 68589 Highway 20, Sisters, Oregon ("Subject Property"), the Applicant submits this Economic, Social, Environmental, and Energy ("ESEE") analysis for the Board of County Commissioners' ("Board") consideration.

This ESEE analysis addresses all *new* potentially conflicting uses; in other words, those uses permitted outright or conditionally under the MUA-10 zone governed by Deschutes County Code ("DCC") 18.100 that would not have otherwise been allowed under the current EFU-SC zoning.[1] In 1992, Deschutes County prepared an ESEE analysis for scenic resources, including for scenic viewsheds and natural landscapes, and implemented the Landscape Management (LM) zone, which is intended to limit "conflicting uses" while still allowing development to occur (Ordinance 92-052).[2] This 1992 ESEE analysis, therefore, contemplated the uses allowed under the Subject Property's existing EFU-SC zoning designation. It also contemplated uses allowed with the proposed MUA-10 zone as there were many instances of MUA-10 zoned properties within the Highway 20 corridor in 1992.

In addition, because no specific site alterations within the Subject Property are proposed at this time, this ESEE analysis is limited to evaluating new uses allowed within the MUA-10 zone that could be conflicting with the identified Goal 5 resources. Any new development proposed on the Subject Property allowed under the proposed MUA-10 zoning designation will be subject to the approval regulations of the DCC, including the LM zone design standards.

The subject property is currently within the LM zone and will continue to be within the LM zone once the Applicant's proposed Comprehensive Plan map and zone change amendments are approved and the MUA-10 designation is applied to the subject property. The LM zone provides clear and objective standards that offer substantial protections of the identified scenic resources, while still providing an allowance for development on the Subject Property that is compatible with natural landscapes and view corridors associated with Highway 20.

[1] The Land Use Board of Appeals ("LUBA") recently held that when considering a post-acknowledgement plan amendment ("PAPA"), under OAR 660-023-0250(3)(b) a "local government considers, usually informed by an updated ESEE analysis, whether any *new* uses allowed by the PAPA could conflict with the resource." *Central Oregon LandWatch v. Last Ranch,* __Or LUBA__ (LUBA No 2025-034, September 22, 2025)..
[2] This ESEE is included as an attachment to this ESEE Analysis.

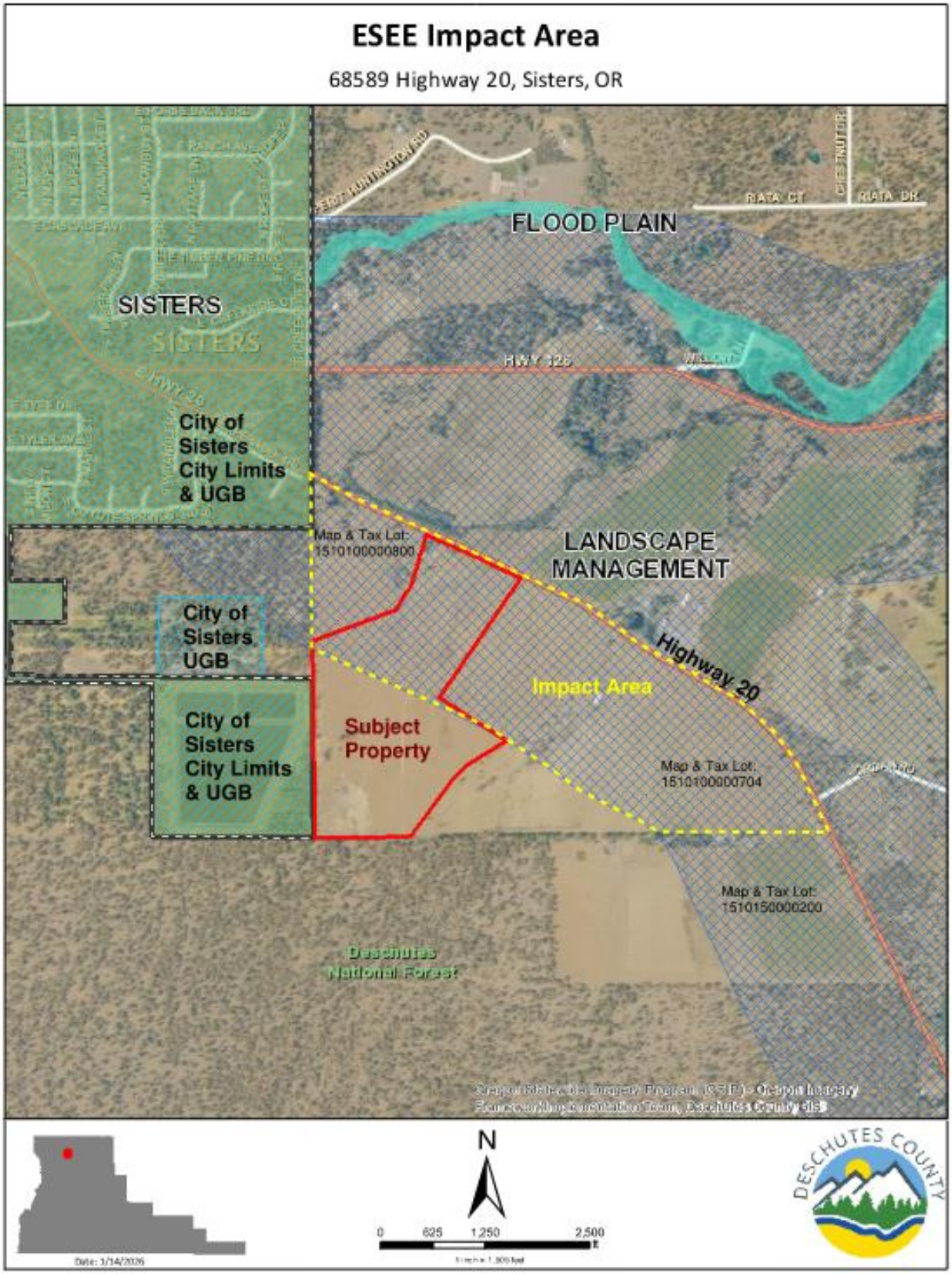
**Location and Impact Area:**
The Subject Property is located at 68589 Highway 20, Sisters, Oregon. It is located south of Highway 20 and abuts the City of Sisters along the majority of its western boundary. The Deschutes National Forest abuts the property to the south.

The Impact Area for the Subject Property is defined as those properties within the existing Landscape Management (LM) Combining Zone (i.e., within a ¼ mile of the centerline of Highway 20) that are west of Highway 20, south of the City of Sisters' Urban Growth Boundary (UGB) and City Limits areas (as shown below), and north of the southerly extent of Map and Tax Lot 1510100000704 (City of Sisters). Most properties to the northwest of the Subject Property, besides the abutting property at 68621 Highway 20, are not included in the Impact Area as they are within the City of Sisters UGB or City Limits (as noted below) and thus not a part of Deschutes County's Goal 5 Program. Properties to the south of Map and Tax Lot 1510100000704 are also not included in the Impact Area because views from the adjacent Highway 20 corridor are diminished and practically non-existent due to the presence of intervening trees and physical distance.

As shown on the Impact Area Map below, a portion of the Subject Property is within the County's LM zone, which is intended to maintain scenic and natural resources and maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams. The LM zone applies to all areas within one-fourth mile of roads identified as landscape management corridors in the County's Comprehensive Plan, all areas within the boundaries of a State scenic waterway, and all areas within 660 feet of rivers and streams also identified as landscape management corridors in the Comprehensive Plan; as shown, the Subject Property is within a landscape management corridor associated with Highway 20 (blue hatching). Per the Comprehensive Plan, this landscape management corridor is an inventoried Goal 5 resource.

Finally, the subject property does not contain any areas mapped as "wetlands" according to the U.S. Fish and Wildlife National Wetlands Inventory (NWI), and as corroborated by Karen Allen, Principal, Restoration Ecologist, Wetland Scientist at Aequinox. The State of Oregon Department of State Lands confirmed in 2020 that there are no existing wetlands on the property and the site has continued to dry out since then.[3] Thus, no Goal 5 wetland resources are extant on the subject property.

[3] A Request for Reissuance of a JD for WD #2019-0603 was submitted to DSL in December 2025. If approved, the JD would expire on May 21, 2030.


ESEE Impact Area
68589 Highway 20, Sisters, OR
FLOOD PLAIN
SISTERS
HWY 126
City of Sisters City Limits & UGB
Map & Tax Lot: 1510100000800
LANDSCAPE MANAGEMENT
City of Sisters UGB
Highway 20
Impact Area
Subject Property
City of Sisters City Limits & UGB
Map & Tax Lot: 1510100900704
Map & Tax Lot: 1510150000200
Deschutes National Forest
N
0 625 1,250 2,500
DESCHUTES COUNTY

**Description of the Conflicting Use:**
The Oregon Department of Land Conservation and Development (DLCD) administers Statewide Planning Goal 5 Administrative Rule (OAR) 660-023-000, which states that the purpose of Goal 5 is "...to conserve and protect significant Goal 5 natural resources." In this case, the Goal 5 resource is the LM road corridor. The Goal 5 ESEE analysis describes the economic, social, environmental, and energy consequences of allowing, limiting, or prohibiting a new use that could conflict with the previously documented and protected Goal 5 resources.

Goal 5 Administrative Rule OAR 660-023-0010 defines "conflicting use" as follows:

> (b) "Conflicting use" is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses.

Goal 5 Administrative Rule (OAR 660-023-0040) describes how conflicting uses are identified:

> (2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:
>
> > (a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)
> >
> > (b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses, with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

For this ESEE analysis, the conflicting uses studied are the new array of uses that are allowed in the MUA-10 zone which are not already allowed under the subject property's EFU-SC zoning designation. Uses that are allowed in the MUA-10 zone that are also allowed in the EFU-SC zone, are excluded from review within this ESEE analysis as the subject property has been zoned EFU-SC since the 1992 adoption of the LM regulations, meaning these uses were contemplated in the County's original ESEE and as such, are not new conflicting uses.

Additionally, certain uses are conditionally allowed in the EFU-SC zone on non-high value farmland only. As a part of the present application to rezone the subject property to MUA-10, an

Order 1 Soil Assessment was completed for the subject property, finding the subject property contains a preponderance of Class 7 and Class 8 soils[4]; therefore, for the purpose of this ESEE analysis, uses allowed on non-high value farmland are considered to be currently allowed uses on the subject property.

This ESEE focuses a major part of its analysis on whether the DCC provisions for the LM Combining Zone are sufficient to mitigate the potential impacts to the Goal 5 resources it was designed to protect – namely scenic views.[5] Importantly, if the Board approves the Applicant's request for a Comprehensive Plan Map Amendment and Zone Change from EFU-SC to MUA-10, the viewshed quality and scenic views themselves along the length of the Impact Area would remain mostly unchanged. From the southern section of Highway 20 across the Subject Property, the view of the foreground grasslands and background Cascade mountains would remain the same as it is now, as described below. Further north, approval of the Comprehensive Plan Map Amendment and Zone Change would not impact scenic views from Highway 20 across the northern property (Willitts, LLC) within the Impact Area.

As described within this analysis, the existing scenic qualities of the LM corridor in the vicinity of the subject property are relatively undiminished by existing development in this area. Numerous uses that are allowed currently in the EFU-SC zone are also allowed (either outright or conditionally) under the proposed MUA-10 zoning, including agricultural uses, single-family dwellings and home occupations, a manufactured home, mineral exploration, golf courses, destination resorts, a DEQ permitted disposal site, a hydroelectric facility, a religious institution, and a private/public school, each of which would bring their own environmental, social, economic and energy impacts.

New conflicting uses, as described and analyzed below, could only diminish the ESEE qualities of the subject property to a minimal degree because of the current LM standards that would apply. In fact, because the existing scenic qualities of the LM corridor in the vicinity of the subject property are relatively undiminished by existing development, future conflicting uses on the property would be required to be carefully and thoroughly analyzed under the LM's provisions for visible development under Deschutes County Code Section 18.84. Thus, this ESEE recommends that the conflicting uses identified herein be allowed without further restrictions other than those already applied to new development by the LM zone.

In summary, this EESE analysis demonstrates that the consequences of allowing MUA-10 development on the subject property are minimal because development of the subject property would remain rural in nature and likely result in a minimal detraction of the scenic qualities visible from Highway 20.

**Site Specific ESEE Analysis:**
An ESEE analysis describes the economic, social, environmental, and energy consequences of allowing, limiting, or prohibiting a possible conflicting use with an inventoried Goal 5 resource.

[4] Exhibit I of the subject Applicant's application.
[5] LUBA directed that under OAR 660-023-0250(3)(b), a local government should consider whether the existing Goal 5 program is adequate to address conflicts arising from *new* uses." *Central Oregon LandWatch v. Last Ranch,* __Or LUBA__ (LUBA No 2025-034, September 22, 2025) (emphasis added).

For the purpose of this ESEE analysis, the conflicting uses are the new array of uses introduced by the proposed MUA-10 zoning designation as identified previously in Table 1.

For the purpose of this analysis, "allow", "limit", and "prohibit" are defined as follows:

*Allow Conflicting Uses*: "Allowing" the conflicting use means that Deschutes County is not applying additional protections to Goal 5 scenic resources beyond baseline protection provided by other, non-Goal-5 local, state, and/or federal requirements. As previously mentioned, the LM zone would continue to apply to the subject property when the proposed Comprehensive Plan map and zoning map amendments are approved.

*Limit Conflicting Uses*: "Limiting" conflicting uses strikes a balance between completely developing Goal 5 resources and completely protecting them. This alternative involves developing lands in ways that minimize negative environmental and economic tradeoffs, supporting the development goals embodied in local and regional land use plans, and protecting the most important Goal 5 resources. In 1992, Deschutes County prepared an ESEE analysis for scenic resources, including for scenic viewsheds and natural landscapes, and implemented the LM zone, which is intended to limit conflicting uses while still allowing development to occur (Ordinance 92-052, see Exhibit B). Limiting the conflicting use, in this case, would mean applying the standards and regulations of the LM zone to the new array of uses allowed by the MUA-10 zone on the subject property.

*Prohibiting Conflicting Uses:* "Prohibiting" conflicting uses would prevent development actions that conflict with, or degrade, Goal 5 resources. This scenario emphasizes resource protection. Protection measures would exceed baseline protections provided by other local, state, and/or federal requirements.

**ECONOMIC CONSEQUENCES:**

| New Conflicting Use | Consequences of Allowing | Consequence of Limiting | Consequences of Prohibiting |
|---|---|---|---|
| **Common to all Conflicting Uses** | The MUA-10 zone has a broad array of uses and allowing the conflicting uses without restrictions could provide the greatest economic benefit to rural residents and the most efficient use of the subject property's developable land.<br><br>Residential uses could provide additional housing opportunities and housing choices to help meet the County's housing needs. Commercial and employment uses could provide additional employment opportunities and services for County residents living in the Sisters area. Public and semi-public uses, schools, parks and other public service uses could provide additional critical services that contribute to the County's quality of life in closer proximity to rural residents. All of these uses contribute to Deschutes County's livability and prosperity and are necessary for a thriving local and regional economy. | The economic consequences of limiting the conflicting uses, through the application of the existing LM zone development standards, could be similar to the consequences of allowing the uses without limitations. These limitations include the LM zone's requirement for a minimum 100-foot building setback for any new development and a height limit of 30 feet from average natural grade, together with significant provisions regulating uses more stringently when visible from the scenic corridor. The LM zone's design review standards (DCC 18.84.080 and 18.84.081) would not significantly limit the developability of the subject property to an extent that minimizes its development potential.<br><br>Similar to allowing the conflicting uses, all of the conflicting uses could increase vehicle trips in the area, which could increase pollution and impact the viability of agricultural operations in the vicinity of the subject property even if allowed in a limited manner. | The County's original ESEE Goal 5 analysis of conflicting uses for LM Roads notes that "[t]he economic impact of maintaining the visual quality of the area would be positive. Deschutes County would remain a desirable place to live, thereby maintaining neighborhood property values. Maintaining or enhancing visual quality makes the county a more attractive place visit, thereby attracting more visitors and inducing people to stay longer." Ordinance 92-052 (Nov. 25, 1992).<br><br>While those observations are still generally true 30 years later, changing from EFU to MUA-10 development would result in minimal to no change to the viewshed, and thus would have a minimal negative economic consequence in the Impact Area or to the county overall. |

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| | Generally, all of the conflicting uses could increase vehicle trips in the area, which could increase pollution and impact the viability of agricultural operations in the vicinity of the subject property, which is a negative economic consequence common to all conflicting uses. | | |
| **Residential Uses, including:**<br><br>**- New ADUs**<br><br>**- Historic ADUs**<br><br>**- Planned development**<br><br>**- Cluster development**<br><br>**- Manufactured home/RV park** | Allowing residential uses without limitations could provide additional housing opportunities and greater housing choice to help meet the County's housing needs. An adequate supply of housing can support the County's existing business by helping provide an adequate housing supply for existing and potential employees.<br><br>Negative consequences are similar to those mentioned above that are "common" to all conflicting uses. | The economic consequences of limiting residential uses would be similar to the consequences of allowing the uses without limitations for the reasons identified above that are "common" to limiting all conflicting uses. | In addition to the economic consequences of prohibiting these uses that are "common" to all conflicting uses, there could be negative economic consequences from prohibiting residential uses on the subject property that can support the County's economy and provided needed housing opportunities for County residents.<br><br>Positive consequences of prohibiting these uses are similar to those mentioned above that are "common" to all conflicting uses. |
| **Guest house** | Allowing guest houses without limitations could provide the County's residents with additional, and more affordable, lodging opportunities for their guests and visitors, which could have positive consequences on the County's tourism economy. Negative consequences are similar to those mentioned | The economic consequences of limiting guest houses could be similar to the consequences of allowing the use without limitations for the reasons identified above that are "common" to limiting all conflicting uses. | In addition to the economic consequences of prohibiting this use that are "common" to all conflicting uses, there could be negative economic consequences from prohibiting guest houses and minimizing opportunities for more affordable lodging opportunities for guests and visitors of the County's residents. |

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| | above that are "common" to all conflicting uses. | | |
| **Class I, II and III Roads or Streets** | Additional job opportunities from allowing Class I, II and III road projects could provide positive economic consequences for the community. | The economic consequences of limiting Class I, II and III road projects would be similar to the consequences of allowing the use without limitations for the reasons identified above that are "common" to all conflicting uses. | Prohibiting Class I, II and III road projects could mean potential economic use of the land is not lost and the land could be used for a better and higher use in support of the County's needs, which could be a positive economic consequence of prohibiting these types of road projects. |
| **Horse events** | Allowing horse events could provide the County with additional opportunities to support equestrian businesses and existing agricultural industries that support equestrian events and related businesses. | The economic consequences of limiting horse events and commercial horse stables would be similar to the consequences of allowing the use without limitations for the reasons identified above that are "common" to all conflicting uses. | There are no additional economic consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Public & Semipublic Uses** | Allowing public and semipublic uses could provide residents with increased access to government and/or nonprofit services, which supports the County's livability and quality of life. Negative consequences are similar to those mentioned above that are "common" to all conflicting uses. | The economic consequences of limiting public and semipublic uses would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common" to all conflicting uses. | There are no additional economic consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Lodging / Hospitality Uses, including:** | Creating greater opportunities for lodging and hospitality types uses within the subject | The economic consequences of limiting lodging and hospitality type uses would be | There are no additional economic consequences from prohibiting this type |

| | | | |
|---|---|---|---|
| **- Dude ranch**<br><br>**- Time share unit**<br><br>**- Bed and breakfast**<br><br>**- Guest lodge** | property by allowing theses uses could provide positive economic consequences by supporting the County's tourism industry and the multitude of businesses across the County that rely on tourism. Negative consequences are similar to those mentioned above that are "common" to all conflicting uses. | similar to the consequences of allowing the use without limitation for the reasons identified above that are "common to all conflicting uses. | of use which differ from the consequences that are "common" to all conflicting uses. |
| **Kennel or a Veterinary clinic** | Additional job opportunities arising from a kennel or veterinary clinic would provide income for local workers, result in local spending, and boost tax revenue—all positive economic consequences for the community.<br><br>Given the high concentration of nearby EFU-zoned lands that may contain animals, such a service located in the community could benefit local farms and homeowners. | The economic consequences of limiting kennel and/or vet clinic type uses would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common to all conflicting uses | There are no additional economic consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Personal use landing strips** | According to the Aircraft Owners and Pilots Association (AOPA), most small aircraft and general aviation aircraft require a runway of approximately 2,000 and 3,000 feet in length[6], which the subject property could barely accommodate even if the entire length of the property was utilized for this purpose.[7] For this reason, it is extremely unlikely a personal use landing strip would ever be located on the subject property. For this reason, the economic consequences of allowing, limiting or prohibiting the use are minimal. | | |
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[6] Establishing a Private Grass Strip Home Airport, AOPA (2024).
[7] From the property's northernmost boundary at Highway 20 to the southern extent of the property is approximately 2,770 feet.

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| **Cemetery, mausoleum or crematorium** | Allowing these uses could provide greater employment opportunities for those seeking jobs in these types of services. Similar to other uses, creating additional opportunities for cemeteries, mausoleums and/or crematoriums contributes to the County's quality of life and attractiveness as a long-term place to reside.<br><br>Negative consequences are similar to those mentioned above that are "common" to all conflicting uses. Crematoriums could also result in on-going air pollution that could negatively impact the viability of agricultural operations in the immediate vicinity of the subject property. | The economic consequences of limiting these uses would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common to all conflicting uses. | There are no additional economic consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Mineral resource processing** | Additional job opportunities from allowing this type of use could provide positive economic consequences for the County and additional job opportunities. There could be negative economic consequences on nearby farm uses if pollution from mineral resource processing negatively impacts the viability of agricultural operations. | The economic consequences of limiting mineral resource processing would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common to all conflicting uses. | There are no additional economic consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |

**SOCIAL CONSEQUENCES:**

| New Conflicting Use | Consequences of Allowing | Consequences of Limiting | Consequences of Prohibiting |
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| **Common to all Conflicting Uses** | The variety of uses allowed in the MUA-10 zone could offer positive social consequences to nearby residents in rural areas between the Bend and Sisters UGBs by offering needed services, new housing opportunities, and employment opportunities, for example. These uses can support an increased quality of life and contribute to the County's overall livability.<br><br>Generally, allowing the conflicting uses could also increase demand on public infrastructure and services, which could have negative social consequences if infrastructure and services are at capacity. There could also be visual and noise impacts as a result of these uses on nearby properties and residents. | The social consequences of limiting the conflicting uses, through the application of the existing LM zone development standards would be similar to the consequences of allowing the uses without limitations.<br><br>These limitations include the LM zone's requirement for a minimum 100-foot building setback for any new development and a height limit of 30 feet from average natural grade, together with significant provisions regulating uses more stringently when visible from the scenic corridor. The LM zone's design review standards (DCC 18.84.080 and 18.84.081) would not significantly limit the developability of the subject property to an extent that minimizes its development potential.<br><br>The general negative consequences of allowing the conflicting uses in a limited manner would be similar to the negative consequences resulting | Prohibiting the conflicting uses could preserve the natural appearance of the subject property's landscape, which could have positive social consequences. As described in Ordinance 92-052, "having good visual quality areas more accessible to the public enhances the livability of Deschutes County. As Deschutes County continues to urbanize, the need for the public to have ready access to areas of good visual quality will become more important." This is still true today, but development of the subject property would result in very minimal detraction from viewsheds from Highway 20 if the subject property is developed with a new conflicting use.<br><br>"Having readily accessible good visual quality areas maintains or enhances the tourism and recreational experience now enjoyed by visitors and residents alike." Ordinance 92-052. |

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| | | from the conflicting uses being allowed without restrictions. | The same observations are equally true today.<br><br>Prohibiting the conflicting uses reduces opportunities to provide new housing, employment, and other needed services to the community. Prohibiting the uses could also have generally positive social consequences by limiting visual and noise impacts on adjacent properties and residents. |
| **Residential Uses, including:**<br>• **New ADUs**<br>• **Historic ADUs**<br>• **Planned development**<br>• **Cluster development**<br>• **Manufactured home/RV park** | Allowing residential uses could provide new housing opportunities at a variety of price points and affordability levels, which could provide positive social value to those seeking new housing in the County's rural areas.<br><br>Negative consequences could be similar to those identified above that are "common" to all conflicting uses. | The social consequences of limiting these uses would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common" to all conflicting uses. | There are no additional social consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Guest house** | Allowing guest houses could provide the County's residents with additional and more affordable lodging opportunities for their guests and | The social consequences of limiting guest houses would be similar to the consequences of allowing the use without limitation for the reasons identified above that are | There are no additional social consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |

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| | visitors, which could result in positive social consequences by increasing the likelihood that friends and family visit County residents.<br><br>Negative consequences could be similar to those identified above that are "common" to all conflicting uses. | "common" to all conflicting uses. | |
| **Class I, II and III Roads or Streets** | Allowing new Class I, II and II roadway projects could create greater access within the vicinity of the subject property and also create new construction-related job opportunities, which could have positive social value to the community; however, increased access could result in additional roadway noise and visual impacts. | The social consequences of limiting Class I, II and II road projects would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common" to all conflicting uses. | There are no additional social consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Horse events** | Allowing horse events could provide positive social consequences by creating greater access to equestrian events and equestrian related recreational activities. This could create visual impacts, and large-scale horse events could temporarily increase traffic and | The social consequences of limiting these uses would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common" to all conflicting uses. | There are no additional social consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |

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| | noise levels, which could have negative social impacts on surrounding areas and residents. | | |
| **Public & Semipublic Uses** | Allowing public and semipublic uses could provide rural residents with more convenient and direct access to necessary government and/or nonprofit services, which supports the County's overall livability and limits time spent driving to cities such as Bend, Redmond or Sisters. Negative consequences could be similar to those identified above that are "common" to all conflicting uses. | The social consequences of limiting this use would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common" to all conflicting uses. | There are no additional social consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Lodging / Hospitality Uses, including:**<br>• **Dude ranch**<br>• **Time share unit**<br>• **Bed and breakfast**<br>• **Guest lodge** | New opportunities for lodging and hospitality uses could have positive social consequences by supporting the County's tourism industry and providing greater access to recreational opportunities in the vicinity of the subject property. These uses could also create additional tourism-related job opportunities for County residents, which supports | The social consequences of limiting this use would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common" to all conflicting uses. | There are no additional social consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |

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| | overall livability and quality life.<br><br>Negative consequences could be similar to those identified above that are "common" to all conflicting uses. | | |
| **Kennel or a Veterinary clinic** | Allowing kennels and vet clinic uses could have positive social consequences by creating additional employment opportunities and more convenient access to these uses for rural residents. These types of uses could also support existing farm uses in the vicinity without the need to drive to Bend, Sisters or Redmond.<br><br>Negative consequences could be similar to those identified above that are "common" to all conflicting uses. | The social consequences of limiting this use would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common" to all conflicting uses. | There are no additional social consequences from prohibiting this type of use which differ from the consequences that are common to all conflicting uses. |
| **Personal use landing strips** | According to the Aircraft Owners and Pilots Association (AOPA), most small aircraft and general aviation aircraft require a runway of approximately 2,000 and 3,000 feet in length,[8] which the subject property could barely accommodate even if the full length of the property was utilized.[9] For this reason, it is extremely unlikely a personal use landing strip would ever be located on the subject property. | | |
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[8] Establishing a Private Grass Strip Home Airport, AOPA (2024).
[9] From the property's northernmost boundary at Highway 20 to the southern extent of the property is approximately 2,770 feet.

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| **Cemetery, mausoleum or crematorium** | Additional opportunities for cemeteries, mausoleums and crematoriums could have positive social consequences by creating greater employment opportunities and greater and more convenient access to these services for rural residents.<br><br>Negative consequences could be similar to those that identified above that are "common" to all conflicting uses.<br>Crematoriums could also have on-going air pollution resulting from their operation, which could have negative social consequences on nearby residents and businesses. | The social consequences of limiting this use would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common" to all conflicting uses. | There are no additional social consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Mineral resource processing** | There could be positive social value of allowing this type of use by providing increased employment opportunities to rural residents.<br>There could be negative social consequences relating to visual, noise, air and traffic impacts on adjacent properties and residents. | The social consequences of limiting this use would be similar to the consequences of allowing the use without limitation for the reasons identified above that are "common" to all conflicting uses. | There are no additional social consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |

**ENVIRONMENTAL CONSEQUENCES:**

| New Conflicting Use | Consequences of Allowing the Use | Consequences of Limiting the Use | Consequences of Prohibiting the Use |
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| **Common to all Conflicting Uses** | The MUA-10 zone allows a variety of land uses that are intended to meet the daily needs and services of rural residents. Generally, allowing these uses could reduce travel times for rural residents accessing these uses and potentially reduce carbon emissions if trips to Bend, Redmond or Sisters are reduced in favor of more local trips.<br><br>Negative environmental consequences could result from the construction of any of the conflicting uses, including removal of natural vegetation that provides habitat, as well as dust and other air quality impacts directly from construction activities.<br><br>Negative environmental consequences could also result from increased demand on public infrastructure, including groundwater resources. Many of the conflicting uses could also result in some | Limiting the conflicting uses by applying the LM zone development and design standards could provide greater protections for trees and existing vegetation, and preservation of natural vegetation could have positive environmental consequences.<br><br>These limitations include the LM zone's requirement for a minimum 100-foot building setback for any new development and a height limit of 30 feet from average natural grade, together with significant provisions regulating uses more stringently when visible from the scenic corridor. The LM zone's design review standards (DCC 18.84.080 and 18.84.081) would not significantly limit the developability of the subject property to an extent that minimizes its development potential.<br><br>Positive environmental consequences of limiting the conflicting | Prohibiting the conflicting uses would preserve existing trees and natural vegetation, which could have positive environmental consequences. As described in Ordinance 92-052, "maintaining vegetative cover tends to reduce noise and air pollution caused by traffic using the roadways".<br><br>These factor remains true today. Ultimately, the sparse vegetative cover over the property serves to reduce some noise and air pollution from the highway.<br><br>Prohibiting the conflicting uses limits opportunities to locate uses and services in close proximity to rural residential areas, which could reduce travel times and carbon emissions if trips to Bend, Redmond or Sisters are reduced as a result, which could be a negative environmental consequence. |

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| | degree of air pollution post-construction. | uses are generally similar to those that could result from allowing them without limitations. | Prohibiting the conflicting uses could also have positive environmental consequences as a result of limiting new construction activities on the subject property and their resulting environmental impacts. |
| **Residential Uses, including:**<br>• **New ADUs**<br>• **Historic ADUs**<br>• **Planned development**<br>• **Cluster development**<br>• **Manufactured home / RV park** | New residential uses could provide additional housing opportunities for rural residents that are in closer proximity to their places of employment, which could have positive environmental consequences by reducing commute times and thereby reducing carbon emissions. Negative consequences could be similar to those identified above that are "common" to all conflicting uses. | The environmental consequences of limiting these uses could be similar to those identified above that are "common" to all conflicting uses. The positive consequences would be similar to those identified if the uses are allowed without limitations. | There are no additional environmental consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Guest house** | The positive and negative environmental consequences of allowing guest houses could generally be similar to those identified above that are "common" to all conflicting uses. | The positive and negative environmental consequences of limiting guest houses could be similar to those identified above that are "common" to all conflicting uses. | There are no additional environmental consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Class I, II and III Roads or Streets** | There are minimal positive environmental consequences that could result from | The environmental consequences of limiting Class I, II and III roadway projects | There are no additional environmental consequences from |

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| | Class I, II and II road projects other than a potential minimal reduction in travel time for area residents and business that may benefit from such a project. Negative consequences could be similar to those identified above that are "common" to all conflicting uses. | could be similar to those identified above that are "common" to all conflicting uses. The positive consequences could be similar to those identified if the use is allowed without limitations. | prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Horse Events** | The positive and negative environmental consequences of allowing horse events could generally be similar to those identified above that are "common" to all conflicting uses. | The positive and negative environmental consequences of limiting horse events and commercial horse stables could be similar to those identified above that are "common" to all conflicting uses. | There are no additional environmental consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Public & Semipublic Uses** | The positive and negative environmental consequences of allowing public and semipublic uses could generally be similar to those identified above that are "common" to all conflicting uses. | The positive and negative environmental consequences of limiting public and semipublic uses could be similar to those identified above that are "common" to all conflicting uses. | There are no additional environmental consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Lodging / Hospitality Uses, including:**<br>• **Dude ranch**<br>• **Time share unit** | There are likely minimal positive environmental consequences of allowing lodging and hospitality type uses given the intensive nature of these uses and that they support the tourism industry rather than local | The environmental consequences of limiting these uses could be similar to those identified above that are "common" to all conflicting uses. Similar to allowing the use, there are likely minimal, if any, positive environmental | The positive environmental consequences of prohibiting these types of uses could be similar to those identified above that are "common" to all conflicting uses. There are likely no negative |

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| • **Bed and breakfast**<br>• **Guest lodge** | residents, which can result in excess vehicle trips and carbon emissions. Negative environmental consequences of allowing these types of uses could generally be similar to those identified above that are "common" to all conflicting uses. | consequences from limiting the use. | environmental consequences of prohibiting these uses. |
| **Kennel or a Veterinary clinic** | Positive environmental consequences of approving a kennel or veterinary clinic on the Subject Property include reduced travel distances for local property owners and businesses who would use these services for their pets or livestock, which lowers associated carbon emissions.<br><br>In addition, health services for pets and livestock can reduce the spread of zoonotic diseases that could be transmissible to humans or other animals. Kennels and veterinary services can both help reduce the number of stray animals and promote community education related to animals. | The positive and negative environmental consequences of limiting kennel and vet clinic uses could be similar to those identified above that are "common" to all conflicting uses. | There are no additional environmental consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |
| **Personal use landing strips** | According to the Aircraft Owners and Pilots Association (AOPA), most small aircraft and general aviation aircraft require a runway of | | |

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| | approximately 2,000 and 3,000 feet in length[10], which the subject property could not accommodate. For this reason, it is extremely unlikely a personal use landing strip would ever be located on the subject property. For this reason, the environmental consequences of allowing, limiting or prohibiting the use are minimal. | | |
| **Cemetery, mausoleum or crematorium** | The positive and negative environmental consequences of allowing cemeteries, mausoleums, or crematoriums could generally be similar to those identified above that are "common" to all conflicting uses. There could be additional, on-going air quality impacts resulting from a crematorium use, which could have negative environmental consequences. | The positive and negative environmental consequences of limiting cemeteries, mausoleums, or crematoriums could be similar to those identified above that are "common" to all conflicting uses. As with allowing the use, there could be additional, on-going air quality impacts resulting from a crematorium use, which could have negative environmental consequences. | There are no additional environmental consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. Prohibiting crematoriums could reduce the potential for a new use with on-going air quality impacts. |
| **Mineral resource processing** | There are minimal positive environmental consequences that could result from allowing this type of use other than a potential reduction in travel time for local business and residence seeking to access processed mineral resources. Negative consequences could be similar to those identified above that are "common" to all conflicting uses. | The environmental consequences of limiting this use could be similar to those identified above that are "common" to all conflicting uses. The positive consequences could be similar to those identified if the use is allowed without limitations. | There are no additional environmental consequences from prohibiting this type of use which differ from the consequences that are "common" to all conflicting uses. |

[10] Establishing a Private Grass Strip Home Airport, AOPA (2024).

**ENERGY CONSEQUENCES:**

| New Conflicting Use | Consequences of Allowing the Use | Consequences of Limiting the Use | Consequences of Prohibiting the Use |
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| **Common to all Conflicting Uses** | The MUA-10 zone allows a broad array of uses that are intended to serve rural residents, businesses and industries. If the MUA-10 zone was applied to the subject property, there is potential to site various uses on the subject property that could reduce travel distance for residents, businesses and industrial and farm operations that could result in conserved energy. This could generally be a positive energy consequence applicable to all of the conflicting uses if allowed without limitations. Conversely, all of the conflicting uses require varying levels of energy consumption in order to be constructed and to operate, which is a general negative energy consequence that could apply to all of the conflicting uses. | Limiting the conflicting uses by applying the LM zone development and design standards would likely have a negligible impact on the conflicting uses' energy consumption given the LM zone standards are specific to site design and natural vegetation preservation.<br><br>For these reasons, the consequences of allowing the conflicting uses in a limited manner are generally similar to those that could result from allowing them without limitations. | The County's original ESEE Goal 5 analysis of conflicting uses for LM Roads notes that "[m]aintaining good visual quality available to the public near the Bend, Redmond and Sisters urban areas could tend to minimize transportation and gasoline expenditures by those residents seeking travel corridors with pleasing visual qualities." Ordinance 92-052 (Nov. 25, 1992).<br><br>In general, there are limited negative energy consequences to the Impact Area associated with all new potential conflicting uses. Ultimately, development of the subject property would have negligible energy consequences for those seeking to access open spaces and travel corridors with scenic qualities. Prohibiting the conflicting uses could limit opportunities to site necessary uses in close proximity to rural residents and |

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| | | | business, which could be a negative energy consequence from prohibiting the conflicting uses as it would minimize opportunities for reduced travel times. Conversely, all of the conflicting uses require various forms of energy consumption in order to be constructed and operate, and prohibiting the conflicting uses could be a positive energy consequence. |
| **Residential Uses, including:**<br>• **New ADUs**<br>• **Historic ADUs**<br>• **Planned development**<br>• **Cluster development**<br>• **Manufactured home / RV park** | New residential uses could provide additional housing opportunities for rural residents that are in closer proximity to their places of employment, which could have positive energy consequences by reducing travel times and energy consumption.<br><br>Negative consequences could be similar to those identified above that are "common" to all conflicting uses. | The energy consequences of limiting these uses could be similar to those identified above that are "common" to all conflicting uses. The positive consequences would be similar to those identified if the uses are allowed without limitations. | There are no additional energy consequences from prohibiting these uses which differ from the consequences that are "common" to all conflicting uses. |
| **Guest house** | The positive and negative energy consequences of allowing guest houses could generally be similar to those identified above that | The energy consequences of limiting guest houses could be similar to those identified the use is allowed without limitations. | There are no additional energy consequences from prohibiting this use which differ from the consequences that are "common" to all conflicting uses. |

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| | are "common" to all conflicting uses. | | |
| **Class I, II and III Roads or Streets** | There are limited positive energy consequences from allowing Class I, II and II road projects on the subject property apart from potential minimal reduction in travel time for area residents and business that may benefit from such a project. Negative consequences could result from energy consumption necessary to construct new roads. | The energy consequences of limiting Class I, II and III roadway projects could be similar to those identified if the use is allowed without limitations. | There could be positive energy consequences from prohibiting this use as there would be no energy consumption resulting from roadway construction. There are minimal negative consequences of prohibiting the use apart from a potential minimal reduction in travel time for area residents and business that could result from a roadway project. |
| **Horse events** | The positive and negative energy consequences of allowing horse events could generally be similar to those identified above that are "common" to all conflicting uses. Large scale horse events could have temporary large amounts of energy consumption and increased vehicle trips in the vicinity, which could reduce travel times for area residents and business and increase energy consumption generally. | The energy consequences of limiting horse events and commercial horse stables could be similar to those identified if the use is allowed without limitations. | There are no additional energy consequences from prohibiting these uses which differ from the consequences that are "common" to all conflicting uses. |
| **Public & Semipublic Uses** | The positive and negative energy | The energy consequences of | There are no additional energy |

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| | consequences of allowing public and semipublic uses could generally be similar to those identified above that are "common" to all conflicting uses. | limiting public and semipublic uses could be similar to those identified if the use is allowed without limitations. | consequences from prohibiting these uses which differ from the consequences that are "common" to all conflicting uses. |
| **Lodging / Hospitality Uses, including:**<br>• **Dude ranch**<br>• **Time share unit**<br>• **Bed and breakfast**<br>• **Guest lodge** | There are likely minimal positive energy consequences of allowing lodging and hospitality type uses given their typically large amount of energy consumption and that these uses support the tourism industry rather than local residents, which can result in increased vehicle trips and general energy consumption.<br><br>Negative energy consequences of allowing these types of uses could generally be similar to those identified above that are "common" to all conflicting uses. | The energy consequences of limiting these uses could be similar to those identified if the use is allowed without limitations. | There are no additional energy consequences from prohibiting these uses which differ from the consequences that are "common" to all conflicting uses. |
| **Kennel or a Veterinary clinic.** | Positive energy consequence of allowing a kennel or veterinary clinic on the Subject Property include reduced travel distances for local property owners and businesses who would use these services for their pets or livestock, which | The energy consequences of limiting kennel and vet clinic uses could be similar to those identified if the use is allowed without limitations. | There are no additional energy consequences from prohibiting these uses which differ from the consequences that are "common" to all conflicting uses. |

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| | conserves energy by reducing fuel consumption. | | |
| **Personal use landing strips** | According to the Aircraft Owners and Pilots Association (AOPA), most small aircraft and general aviation aircraft require a runway of approximately 2,000 and 3,000 feet in length13, which the subject property could not accommodate. For this reason, it is extremely unlikely a personal use landing strip would ever be located on the subject property. For this reason, the social consequences of allowing, limiting or prohibiting the use are minimal. | | |
| **Cemetery, mausoleum or crematorium** | The positive and negative energy consequences of allowing cemeteries, mausoleums, or crematoriums could generally be similar to those identified above that are "common" to all conflicting uses. | The energy consequences of limiting cemeteries, mausoleums or crematoriums could be similar to those identified if the use is allowed without limitations. | There are no energy consequences from prohibiting these uses which differ from the consequences that are "common" to all conflicting uses. |
| **Mineral resource processing** | The positive and negative energy consequences of allowing this use could generally be similar to those identified above that are "common" to all conflicting uses. Although, mineral resource processing could have substantial energy consumption requirements that could require substantial energy infrastructure improvements, which could be a resulting negative consequence. | The energy consequences of limiting this use could be similar to those identified if the use is allowed without limitations. | This use could have substantial energy consumption requirements and prohibiting it could be a positive energy consequence.<br><br>Negative consequences could be similar to the consequences identified that are "common" to all conflicting uses. |

**CONCLUSION**

This ESEE analysis provides an analysis of the relative trade-offs between the County's protection of the identified Goal 5 resources and a proposed Comprehensive Plan Map amendment to change the designation of the subject property from AG to RREA and a concurrent zoning map amendment to change the zoning designation from EFU-SC to MUA-10.

When identifying the Goal 5 resources within the corridor, the County adopted the 1992 ESEE and considered the aesthetic impacts of development on the scenic resources within the corridor (**Ordinance 92-052**). The County did not list specific uses but focused on protection of the scenic value of the resource and the protection of the vegetative cover within the viewshed of the resource corridors. The present ESEE builds upon those protections identified by the County to evaluate the impact to the identified resource corridor of allowing the uses in the proposed MUA-10 zone on the subject property.

The subject property abuts the Highway 20 corridor and a portion of the property is within the LM combining zone. As described within this analysis, the existing scenic qualities of the LM corridor in the vicinity of the subject property are relatively undiminished by existing development in this area.

Approximately half of all uses allowed in the MUA-10 zone, either outright or conditionally, are also allowed in the current EFU-SC zone, including agricultural uses, single-family dwellings and home occupations, a manufactured home, mineral exploration, golf courses, destination resorts, a DEQ permitted disposal site, a hydroelectric facility, a religious institution, and a private/public school. So, approximately half of the uses that are allowed in the MUA-10 zone could also be allowed on the subject property today, themselves producing environmental, social, economic, and energy impacts. For new conflicting uses, the impacts are addressed above which form the conclusion that new uses allowed by the MUA-10 zone will have minimal impact on the Goal 5 resources.

As described within this analysis, the existing scenic qualities of the LM road corridor is such that any new conflicting use would produce some consequences. The consequences of allowing the new conflicting uses, limiting them (through application of the LM zone and its existing regulations within the Deschutes County Code), and prohibiting them are described above. Given the analysis, the conclusion is that new uses allowed by the MUA-10 zone will have minimal impact on the Goal 5 resources and the ESEE recommendation is to allow the uses without further restrictions other than those already applied to new development by the LM zone.

Allowing the conflicting uses would result in considerable positive consequences as identified within this analysis. Prohibiting the conflicting uses completely is not recommended given the potential positive consequences resulting from allowing them or limiting them as compared to the marginal positive benefit of outright prohibition on the Goal 5 resources.

Dated this 27th day of February, 2026



Daniel Robinson, AICP
Land Use Planner for Applicant
Schwabe, Williamson & Wyatt

# EXHIBIT B

# DESCHUTES CO. ORDINANCE 92-052

REVIEWED
By
LEGAL COUNSEL
11/23/2026 Item #3.

92-41391

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending PL-20, The Deschutes County Year 2000 Comprehensive Plan, as Amended, to Adopt Goal 5 Analysis for Various Goal 5 Resources and Declaring an Emergency. *

0119-1705

ORDINANCE NO. 92-052

92 DEC 13 PM 3:15
MARY GOBER
COUNTY CLERK
DESCHUTES COUNTY, OREGON

WHEREAS, Statewide Planning Goal 5 and its implementing administrative rule OAR 660-16-000 et. seq. prescribe a process for inventorying, identifying conflict and analyzing the Economic, Social, Environmental, and Energy (ESEE) consequences of protecting or not protecting certain resources identified by Statewide Planning Goal 5, and determine to what extent, if at all, such resources should be protected.

WHEREAS, pursuant to the requirements of the Oregon Department of Land Conservation and Development (LCDC) the County has been required, where necessary, pursuant to former ORS 197.640 through ORS 197.647, concerning periodic review, to review and update its Comprehensive Land Use Plan and implementing ordinances, including for Goal 5 resources, to assure continuing compliance with Statewide Land Use Planning Goals and administrative rules; and

WHEREAS, public hearings have been held in furtherance of this objective in conformance with state law before the Deschutes County Planning Commission and the Board of County Commissioners for Deschutes County (Board); and

WHEREAS, the Board has considered the recommendations of the Planning Commission and the public; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON ORDAINS AS FOLLOWS:

Section 1. ADOPTION OF ESEE ANALYSIS. Ordinance No. PL-20, the Deschutes County Year 2000 Comprehensive Plan, as amended, (hereafter referred to as "the Plan") is further amended by adoption of the Goal 5 analysis set forth in Exhibit A (Areas of Special Concern), Exhibit B (Ecologically and Scientifically Significant Natural Areas), Exhibit C (Land needed and desirable for Open Space and Scenic Resources), Exhibit D (Wilderness Areas), Exhibit E (State Scenic Waterways and Federal Wild and Scenic Rivers), and Exhibit F (Energy Sources), all attached hereto and incorporated herein by reference, as part of the Resource Element of the Plan. The analysis contained herein shall replace the analysis concerning Areas of Special Concern found at Pages 102 -109 of the Resource Element of the Comprehensive Plan. The Goal 5 analysis contained herein shall be regarded as being supplemental to and not a replacement of the City of Bend/ Deschutes County River Study and its associated May 21, 1986 Staff Report, and the Geothermal Resource Element of the Plan.



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DEC 1992

0119-1706

Section 2. FINDINGS. The Board of County Commissioners adopts as its findings and conclusions in support of the amendments set forth herein the text of each adopted Goal 5 analysis.

Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 25th day of November, 1992.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

TOM THROOP, Commissioner

NANCY POPE SCHLANGEN, Commissioner

ATTEST:

Recording Secretary

DICK MAUDLIN, Chairman

0119-1707

# EXHIBIT A

## AREAS OF SPECIAL CONCERN INVENTORY

The Resource Element of the Deschutes County Year 2000 Comprehensive Plan (1979) identified 69 sites as Open Spaces and Areas of Special Concern.

Table 1, "1B" Areas of Special Concern, lists the inventory of sites identified as Areas of Special Concern with insufficient information to complete the Goal 5 ESEE analysis. Table 2 lists the inventory of "2A" Areas of Special Concern which are located on federal land.

The identification numbers (ID#) in the following tables refer to the site numbers listed on the list and map of Open Spaces and Areas of Special Concern in the Resource Element of the 1979 Comprehensive Plan (page 107 - 108). The areas listed in Tables 1 and 2 are identified with the following codes which describe their significance.

S.....Scenic
G.....Geologic
V.....Vegetative Community
A.....Archaeologic
WF.....Waterfall
USF.....Unique Scientific Facility
R&EV.....Rare and Endangered Vegetation
NM.....National Monument
OSC.....Open Space Conservation Zone

### TABLE 1
### "1B" AREAS OF SPECIAL CONCERN

| ID # | NAME | TYPE OF AREA | LOCATION |
|---|---|---|---|
| 1. | Crooked River Gorge | S, N, G | T14S R13E SEC 3, 10, 11 & 13 |
| 3. | Pringle Falls | WF, S | T21S R09E NE 1/4 SEC 23 RIVERMILE 217 |
| 22. | Spring River Area | W | T20S R10E SEC 1 |
| 23. | Redmond Caves | A, G | T15S R13E S 1/2 SEC 21<br>N 1/2 SEC 28 |
| 24. | Cline Buttes | S, V | T15S R13E N 1/2 SEC 28<br>SW 1/4 SEC 21 |
| 25. | Brown's Creek Inholding | S, V | T21S R08E N 1/2 SEC 31<br>N 1/2 SEC 32 |

0119-1708

## TABLE 1 - Continued
## "1B" AREAS OF SPECIAL CONCERN

| ID # | NAME | TYPE OF AREA | LOCATION |
|---|---|---|---|
| 26. | Wildhaven | S | T14S R10E SEC 14 |
| 27. | Glaze Meadow | S, V | T14S R09E S 1/2 SEC 15<br>N 1/2 SEC 22 |
| 29. | Big Falls | WF | T14S R12E NW 1/3 SEC 09<br>RIVER MILE 132.2 |
| 30. | Odin Falls | WF | T14S R12E SE 1/4 SEC 26<br>RIVER MILE 140 |
| 59. | Hampton Area | S, V | T22S R21E SEC 18 |
| 61. | Mouth of Pictograph Cave | S, V | T19S R13E SE 1/4 SEC 14 |
| 62. | The Rock | S, V | T21S R10E SEC 6 |
| 63. | Wickiup Junction | S, V | T21S R10E SEC 36 |
| 67. | Skylight Cave | S, G | T14S R09E NW/NW SEC 19 |
| 70. | High Desert Museum | USF, OSC | T18S R12E SW 1/4 SEC 31 |

## TABLE 2
## "2A" AREAS OF SPECIAL CONCERN

| ID # | NAME | TYPE OF AREA | LOCATION |
|---|---|---|---|
| 9. | Bachelor Butte | S, N | T18S R09E SEC 29-32 |
| 11. | Pine Mt. Observatory | S, USF | T20S R15E SEC 33 |
| 13. | Dry River | S, G | T19S R15E SEC 19 & 30<br>T19S R14E SEC 2, 11, 13 14 & 24 |
| 14. | Arnold Ice Caves | S, G | T19S R13E SEC 22 |
| 15. | Charcoal Cave | S, G | T19S R13E SEC 22 |
| 16. | Skeleton Cave | S, G, OSC | T19S R13E SESE SEC 4 |
| 17. | Wind Cave | S, G, OSC | T19S R13E NW 1/4 SEC 23<br>SW 1/4 SEC 14 |
| 31. | Tumalo Falls | WF, OSC | T18S R10E NW 1/4 SEC 08 |
| 33. | Lava River Caves | S, G | T19S R11E SE 1/4 SEC 26 |
| 34. | Pringle Falls Experimental Forest | V | T21S R09E SEC 21-23, 27 & 28 |
| 39. | Benham Falls | WF | T19S R11E SW 1/4 SEC 9 |
| 45. | Paulina Mt. | NM, OSC | T22S R12E SEC 1-3 & 10-12 |
| 49. | Lavacicle Cave | S, G, OSC | T22S R16E SENE SEC 05 |
| 50. | Lava Cast Forest | S, G, NM | T20S R12E SEC 15, 16, 21 22, 27-35 |
| 51. | Lava Butte Geologic Area | NM, OSC | T19S R11E SEC 18 |
| 52. | Pine Mountain North Slope | S, V | T20S R15E SEC 28, 29 & 33 |
| 54. | McKenzie Summit | S, G, OSC | T15S R07E SEC 17 |

**TABLE 2 - Continued**
**"2A" AREAS OF SPECIAL CONCERN**

| ID # | NAME | TYPE OF AREA | LOCATION |
|---|---|---|---|
| 55. | Newberry Crater | NM, OSC | T21S R12E SEC 34-36<br>T21S R13E SEC 28-33 |
| 65. | Bend Watershed | S, G | T17S R09E SEC 35 & 36<br>T18S R09E SEC 1, 2, 3, 10, 11 & 12 |
| 66. | Bat Cave | S, G | T19S R13E SE 1/4 SEC 14 |
| 68. | Boyd Cave | S, G | T19S R13E SENW SEC 8 |
| 69. | Frederick Butte | S, G | T22S R19E SEC 32 |

Table 3 lists the Areas of Special Concern which have been deleted from the inventory because they have been inventoried as other Goal 5 resources. The following discussion explains why the areas were deleted from the inventory of Areas of Special Concern.

**TABLE 3**
**AREAS OF SPECIAL CONCERN INVENTORIED AS OTHER GOAL 5 RESOURCES**

| ID # | NAME | INVENTORIED AS OTHER GOAL 5 RESOURCE |
|---|---|---|
| 2. | Pilot Butte | Open Space, State Park |
| 4. | Pumice Area | Wilderness Area |
| 7. | Three Sisters Mt. | Wilderness Area |
| 8. | Broken Top Mt. | Wilderness Area |
| 10. | High Mt. Lakes | Wilderness Area |
| 18. | Davis Lake Area | Wildlife, Sensitive Birds |
| 19. | Smith Rock | Open Space, State Park |
| 20. | Rock Mesa | Wilderness Area |
| 21. | Holmes Ranch | Wildlife, Sensitive Birds |
| 28. | Little Deschutes/ Deschutes Confluence | Natural Area, Scenic River |
| 35. | Pringle Falls Research Natural Area | Natural Area |
| 36. | Horse Ridge Research Natural Area | Natural Area |
| 37. | Bench Mark Butte | Wildlife, Sensitive Birds |
| 38. | Elk Lake | Wildlife, Sensitive Birds |
| 40. | Little Cultus Lake | Wildlife, Sensitive Birds |
| 41. | Bates Butte | Wildlife, Sensitive Birds |
| 42. | North Wickiup | Wildlife, Sensitive Birds |
| 43. | South Wickiup Res. | Wildlife, Sensitive Birds |
| 44. | Little Deschutes River | Open Space, Landscape Mgmt |

**TABLE 3 - Continued**
**AREAS OF SPECIAL CONCERN INVENTORIED AS OTHER GOAL 5 RESOURCES**

| ID # | NAME | INVENTORIED AS OTHER GOAL 5 RESOURCE |
|---|---|---|
| 46. | Crane Prairie Res. Osprey Mgmt Area | Wildlife, Sensitive Birds |
| 47. | Three Sisters Wilderness | Wilderness Area |
| 48. | Mt. Washington Wilderness | Wilderness Area |
| 53. | Brothers Area | Wildlife, Sensitive Birds |
| 56. | West Hampton Butte | Natural Area |
| 57. | LaPine State Rec Area | Open Space, State Park |
| 58. | Torry-Charlton Proposed Research Natural Area | Natural Area |
| 60. | Wickiup Res Area | Wildlife, Sensitive Birds |
| 61. | Mouth of Pictograph | Wildlife, Sensitive Mammal |
| 64. | Cline Falls | Open Space, State Park |

Sites Number 18, 21, 37, 38, 40, 41, 42, 43, 46, 53, and 60 are dropped from the Areas of Special Concern inventory because they were originally identified as rare and endangered bird sites. The County, with the cooperation of the Oregon Department of Fish and Wildlife, reinventoried all the known sensitive and rare and endangered bird sites and a new inventory and ESEE analysis was adopted by Ordinance 92-041. The measure to implement the ESEE decision on the sensitive and endangered bird sites, the Sensitive Bird and Mammal Habitat Combining Zone, was adopted by Ordinance 92-042.

Sites Number 4, 7, 8, 10, 20, 47 and 48 are deleted from the inventory because they are inventoried as wilderness areas or are included in a designated wilderness area. See the Wilderness section of this periodic review order for findings and Ordinance 92-052 for the Goal 5 ESEE analysis and decision for the wilderness resource.

Sites Number 28, 35, 36, 56 and 58 are deleted from the inventory because they are inventoried as Ecologically and Scientifically Significant Natural Areas. See the Ecologically and Scientifically Significant Natural Areas Goal 5 inventory and ESEE analysis.

Site Number 44, Little Deschutes River, is deleted from the inventory because it is inventoried as a Landscape Management Zone resource. See the Open Space and Scenic Resources Goal 5 inventory and ESEE analysis.

Sites Number 2, 57 and 64 are deleted from the inventory because they are State Parks and are inventoried as open spaces. See the Open Space and Scenic Resources Goal 5 inventory and ESEE analysis.

Site 5, the High Desert, is deleted from the list because there is no information on the location, quality and quantity of the area and the area is not site specific enough to identify. Site 6, Glass Butte, is deleted because it is located in Lake County. Site 32 is deleted because the resource was unverified and unidentified.

Twenty-two sites identified in the Comprehensive Plan are located on federal lands (U.S. Forest Service, National Monument or Bureau of Land Management). The county finds that it has no authority to place zoning restrictions or conditions upon federal land managed under federal land management plans. Federal land management laws prevail over local laws that would designate land for particular uses. Therefore, the county finds that it can go no further in the Goal 5 process than to identify and inventory the sites. These federally owned and managed sites shall be designated as 2A and be managed through the federal land management plans.

The remaining sites have been included in the inventory as "1B" sites which have insufficient information on the location, quality and quantity of the resource to complete the Goal 5 process; or, they have been classified as 2A sites because they are on federally owned and managed land and are therefore managed by the federal land management agencies. Ordinance 92-051 adopts a comprehensive plan policy which requires the county to complete the Goal 5 process for the inventoried "1B" Areas of Special Concern during the next periodic review.

EXHIBIT B

0119-1712

**ECOLOGICALLY AND SCIENTIFICALLY SIGNIFICANT NATURAL AREAS**

The following sites are the inventoried ecologically significant natural areas in Deschutes County by the Oregon Natural Heritage Program and there is suficient information based on site reports from the Hertitage Program to complete the Goal 5 review process.

Pringle Falls Research Natural Area
Horse Ridge Research Natural Area
West Hampton Butte
Little Deschutes River/Deschutes River Confluence
Davis Lake

**Pringle Falls Research Natural Area**

**Inventory Requirement:** The area is designated as a Research Natural Area and is managed as such by the Deschutes National Forest.

Location: T21S, R9E, Sections 3, 34 & 35.
Quality: Excellent
Quantity: 1,160 acres

For more detailed information and discussion of the resources associated with this RNA, see the chapter on the RNA in Federal Research Natural Areas in Oregon and Washington: A Guidebook for Scientists and Educators and the Deschutes National Forest Land and Resource Management Plan.

**Conflicting Use Determination and EESE Analysis:**

Any land use or development activity which would cause unnatural encroachments, or activities which directly or indirectly modify ecological processes would be a conflicting use.

For a detailed discussion of conflicting uses and the ESEE analysis see Chapter 10 of the Deschutes County/City of Bend River Study, April 1986.

**Program for Resource Protection:**

Based upon the ESEE analysis, the resource site is of such importance, relative to the conflicting uses, and the ESEE consequences of allowing conflicting uses are so great that the resource site should be protected and all conflicting uses prohibited on the site. The site is designated 3A.

The program to implement the ESEE decision is management according to the guidelines in the Deschutes National Forest Land and Resource Management Plan (page 92-93). These provisions protect the natural ecosystem in an unmodified condition for nonmanipulative research and education.

## Horse Ridge Research Natural Area

**Inventory Requirement:**

| | |
|---|---|
| Location: | Sections 15 and 22, T 19S, R 14S. |
| Quality: | Excellent |
| Quantity: | 600 acres |

For a more detailed discussion of the resource site see the report from the Oregon Natural Heritage Program for Deschutes County. The site is a designated Research Natural Area and National Natural Landmark and is a prime example of western juniper/big sagebrush/threadleaf sedge plant community.

**Conflicting Uses:**

Any land use or development activity which would cause unnatural encroachments, or activities which directly or indirectly modify ecological processes are conflicting uses.

**ESEE Analysis of Conflicting Uses:**

**Economic:** Not allowing livestock grazing on the Horse Ridge RNA would result in a decrease in the revenues to the Common School Fund, which is administered by the State Land Board. Restrictions on grazing would probably mean increased operating costs, and more ranches would have to find other suitable grazing areas.

**Social:** Social consequences depend upon the importance of the economic impacts on income generation by the fees, paid to the State Land Board, and the income produced to the local ranchers through the sale of livestock.

The impacts to the State Land Board would be insignificant because of the limited amount of revenues produced through grazing fees relative to their other sources of revenues. The impacts on local personal income range from a potential reduction, if grazing allotments are restricted, to a potential increase if these allotments are increased.

**Environmental:** The major environmental impact is related to the effects of grazing on the vegetative cover associated with this ecosystem.

If grazing is limited, the existing vegetation would be maintained and preserved. If grazing activities were allowed to continue or to increase, there would be a change in the local plant community. Increased grazing would contribute to erosion and loss of already scarce topsoil.

If the vegetative cover is reduced, it would have an adverse impact on the wildlife which depend on that vegetation for food and cover.

**Energy:** Not allowing grazing at this site would mean that local ranchers would have increased energy costs caused by having to relocate the livestock to other suitable grazing areas.

Allowing grazing would mean that individuals seeking this type of natural area would have to travel further distances to seek this type of environment, thus increasing their transportation costs.

**Program For Resource Protection:**

Based upon the ESEE Analysis, the resource site is of such importance, relative to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so great that the resource site should be protected and all conflicting uses prohibited on the site. The site is designated 3A Goal 5 resource. The BLM manages the site as a Research Natural Area and according to the Brothers/La Pine Resource Management Plan prohibits grazing, firewood harvest, off road vehicles, rock hounding and rights-of-way.

**West Hampton Butte**

Inventory Requirement:

0119-1716

Location: T 22S, R 20E, Section 31 and 32
Quality: Good
Quantity: 1280 Acres

For more information see the Site Report from the Oregon Natural Heritage Program. The site is identified as a good example of the Western juniper/big sage/bluebunch wheatgrass, Western Juniper/Idaho Fescue, and low sage/Idaho fescue plant communities.

**Conflicting Use Determination:**

Livestock grazing is the identified conflicting use which could disturb the natural representative plant communities.

**ESEE Analysis of Conflicting Uses:**

**Economic:** Not allowing livestock grazing on or near West Hampton Butte would result in a decrease in the revenues to the Common School Fund, which is administered by the State Land Board. Restrictions on grazing would probably mean increased operating costs, and more ranches would have to find other suitable grazing areas.

**Social:** Social consequences depend upon how important the economic impacts on income generation by the fees, paid to the State Land Board, and the income produced to the local ranchers through the sale of livestock.

The impacts to the State Land Board would be insignificant because of the limited amount of revenues produced through grazing fees relative to their other sources of revenues. The impacts on local personal income range from a potential reduction, if grazing allotments are restricted, to a potential increase if these allotments are increased.

**Environmental:** The major environmental impact is related to the effects of grazing on the vegetative cover associated with this ecosystem.

If grazing is limited, the existing vegetation would be maintained and preserved. If grazing activities were allowed to continue or to increase, there would be a change in the local plant community. Increased grazing would contribute to erosion and loss of already scarce topsoil.

If the vegetative cover is reduced, it would have an adverse impact on the wildlife which depend on that vegetation for food and cover.

**Energy:** Not allowing grazing at this site would mean that local ranchers would have increased energy costs caused by having to relocate the livestock to other suitable grazing areas.

Allowing grazing would mean that individuals seeking this type of natural area would have to travel further distances to seek this type of environment, thus increasing their transportation costs.

**Program For Resource Protection:**

Based on the ESEE analysis, the resource and the conflicting use are important relative to each other, and the identified consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource to a desired extent. This site is under BLM management. It is provided with special management by the Brothers/La Pine Resource Management Plan. It was not identified by the BLM as an area of Critical Environmental Concern. The area is part of a BLM grazing allotment and grazing is managed so as not to damage the resource.

## Little Deschutes River/Deschutes River Confluence

0119-1718

**Inventory Requirement:**

| | |
|---|---|
| Location: | Section 7, T 20S, R 11E |
| Quality: | Excellent |
| Quantity: | 400 Acres |

For a more detailed description and discussion of the resources associated with this confluence area, see the the Site Report from the Oregon Natural Heritage Program for Deschutes County and the Deschutes County/City of Bend River Study.

**Conflicting Use Determination:**

Resort and vacation home development, recreational uses and livestock grazing, fill and removal in wetlands are the conflicting uses.

**ESEE Analysis of Conflicting Uses:**

See Deschutes County/City of Bend River Study and River Study Staff Report. The ESEE concludes that the Comprehensive Plan and implementing ordinances protect the Goal 5 resources while allowing conflicting uses.

**Program For Resource Protection:**

Based on the ESEE analysis, the zoning of the property, and the provisions which protect the flood plain, wetlands and the river corridor, the conflicting uses are specifically limited to protect the resource. The area is designated as a 3C Goal 5 resource.

For goals and policies applicable to the confluence area see the Deschutes County/ City of Bend River Study, April 1986, pages 13-1 through 13-45. The implementing measures which protect and regulate development in the confluence area are:

| | |
|---|---|
| Title 18.28 | - EFU- 80 zoning |
| Title 18.96 | - Flood Plain zoning |
| Title 18.84 | - Landscape Management zoning |
| Title 18.116.210 | - Conservation Easements |
| Title 18.128.(W) | - Fill and Removal |

The confluence is located on a 600 acre property owned by Sun River. It is zoned Flood Plain (287 acres), EFU 80 (53 acres), and F-3, Forest Use (268 acres). Deschutes County has approved a conditional use permit to allow two 18 hole golf courses (CU-90-36), a conditional use permit for a destination resort (CU-90-37), a master plan for the golf

courses and the destination resort (MP-90-1), a tentative plat for the subdivision of the land for 94 residential lots in the destination resort (TP-91-751), and a site plan for the development (SP-91-61).

The development is designed to protect wetlands from disturbance. All proposed structural development is outside of the flood plain. Over 80 percent of the property will be retained in open space. The open space includes the golf courses, approximately 335 acres, and undeveloped open area, approximately 146 acres. The confluence area is located in in the undeveloped open space area of the development. The deer migration corridor will be protected by conditions imposed by the conditional use approval. The developer is working with the Department of Fish and Wildlife to enhance fish habitat along the Little Deschutes River.

## Davis Lake

**Inventory Requirement:**

| | |
|---|---|
| Location: | Sections 25, 26, 34-36, T22S, R7E; Section 31, T22S, R 8E. |
| Quality: | Good habitat area for birds including osprey, bald eagles and other aquatic birds. |
| Quantity: | 4000 Acres |

The habitat area contains many forest and wetland plant communities. For a more detailed description and discussion of the resources associated with Davis Lake see the site report from the Oregon Natural Heritage Program. The area is part of the Deschutes National Forest.

**Conflicting Use Determination:**

There are currently three camping areas where human pressure on the environment is increasing, and a number of activities could easily destroy the habitat productivity for birds. The conflicting uses include human activity related to recreational boating, improving or building roads, timber-cutting around the lake, pollution and noise associated with the human activities, and bank modifications.

**ESEE Analysis of Conflicting Uses:**

See the discussion of consequences on pages 10-5 of the Deschutes County/City of Bend River Study, April 1986

**Program For Resource Protection:**

Based on the ESEE analysis, the resource and the conflicting uses are important relative to each other, and the identified consequences should be balanced so as to allow the conflicting uses but in a limited way so as to protect the resource to a desired extent. The resource is designated 3C.

The Deschutes National Forest Land and Resource Management Plan identifies the area around Davis Lake as an eagle habitat area, high quality scenic area and an area of special interest. The management of this area under the Deschutes National Forest Land and Resource Management Plan will limit the conflicting uses and protect the natural resources of the area. The area has not been proposed as a Research Natural Area by the Deschutes National Forest Land and Resource Management Plan.

EXHIBIT C



**LAND NEEDED AND DESIRABLE FOR OPEN SPACE AND SCENIC RESOURCES**

The following inventory of land needed and desireable for open space and scenic resources in Deschutes County is divided into the following categories:

State Parks
Landscape management roads
Landscape management rivers and streams
Lakes

**STATE PARKS**

**Inventory:** All lands within the boundaries of the following state parks:

| PARK | LOCATION/SIZE |
|---|---|
| Smith Rock State Park | T14S, R13E, Sections 10, 11, 14 an 15. 600 acres |
| Cline Falls State Park | T15S, R12E, Section 14 9.04 acres |
| Tumalo State Park | T17S, R12E, Section 6. 320.14 acres |
| Pilot Butte State Park | T17S, R12E, Sections 33 and 34. 100.74 acres |
| LaPine State Recreation Area | T20S, R10E, Sections 33, 34; and T21S, R10E Sections 3, 4, 8, 9, 10, 11, 12; and T21S, R11E Section 7. 2,333.12 acres |

Total area in State Parks: 3,363.04 acres

The State Parks are described in detail in the Summary Plan 1986, Deschutes County State Parks Master Plan; and on pages 7-18 through 7-22 of Deschutes County/City of Bend River Study, April 1986, pages 7-18 to 7-20.

**Conflicting Use Determination and ESEE Analysis:**

For a detailed description and analysis of the existing and potential conflicting uses and their consequences see the Deschutes County/City of Bend River Study, April 1986, Chapter 7, Pages 7-1 through 7-30; and Chapter 13, pages 13-21 through 13-33. The River Study has been adopted as a Chapter in the Resource Element of the Comprehensive Plan.

**Program For Resource Protection:**

Based on the ESEE Analysis the resource and conflicting uses are deemed important relative to each other, and the identified consequences should be balanced so as to allow the conflicting uses but in a limited way so as to protect the resource to the desired extent. Under OAR 660-16 the resource is classified as a 3C and the conflicting uses are specifically limited.

The state parks are zoned Open Space Conservation (Title 18.48 Deschutes County Code). The Open Space Conservation zone specifically limits conflicting uses. The parks are managed by the State Parks division according to master plans for each park. See the Summary Plan 1986, Deschutes County State Parks Master Plan.

**Inventory:** All land within the boundaries of a state scenic waterway or a federal wild and scenic river corridor; and all land within 660 feet of the ordinary high water mark of portions the following designated rivers and streams which are not designated as state scenic waterways or federal wild and scenic rivers. The state scenic waterways and federal wild and scenic rivers are inventoried in a separate section of this chapter.

| | | | |
|---|---|---|---|
| 1. | Deschutes River | | miles |
| 2. | Little Deschutes | 43 | miles |
| 3. | Paulina Creek | 19 | miles |
| 4. | Fall River | 8 | miles |
| 5. | Spring River | 1.2 | miles |
| 6. | Tumalo Creek | 16.3 | miles |
| 7. | Squaw Creek | | miles |
| 8. | Crooked River | 10 | miles |

**Conflicting Uses:**

Uses conflicting with the open space and scenic resource along the designated landscape management rivers and streams include land management activities that result in habitat loss or development within the river or stream corridors which would excessively interfere with the scenic or natural appearance of the landscape as seen from the river or stream or alteration of existing natural landscape by removal of vegetative cover.

Discussion of conflicting uses within the open space along river and stream corridors is also found in the Deschutes County/City of Bend River Study, April 1986, (River Study) and the May 21, 1986 River Study Staff Report.

**ESEE Analysis of Conflicting Uses:**

The Deschutes County/City of Bend River Study Staff Report contains ESEE analysis of the conflicting uses with lands desirable for open space along the Deschutes River and tributary corridors which were part of the River Study. This analysis is incorporated herein by reference. The following ESEE analysis supplements the ESEE analysis for the various stream segments covered in the May 1986 Staff Report to the River Study.

**Economic:** The economic impact of preserving or increasing the amount of river and stream corridors available to the public would be positive. Deschutes County would not only be a more desirable place to live, thereby increasing

neighboring property values, but it would also be a more attractive place to visit.



Acquisition and maintenance of the lands is a major undertaking requiring substantial commitment of resources. The economic impact of leaving these lands in private or public open space is not well documented. River park lands and development with a river frontage does add significantly to the value of property. As mentioned in the discussion concerning open space along roadways, these environmental amenities and recreational opportunities pay an important role in attracting new business firms to the County.

Preserving streamside habitat, critical nesting, wintering, and migration areas, will collectively, maintain wildlife and scenic resources. Given the large percentage of residents and visitors that view these resources as a recreation activity, expenditures associated with these activities are probably significant. Allowing conflicting uses which diminish visual or recreational qualities of these rivers and streams may make these areas less desirable to recreationists and result in a loss of recreation-related expenditures. At the same time, limiting the number of trees for timber harvesting may have an impact on the timber industry.

**Social:** Having the rivers and streams remain aesthetically pleasing and available to the public enhances the livability of Deschutes County. Deschutes County residents agree that rural residential development has already seriously damaged the river and stream environment. Maintaining these open spaces is critical for providing the customary opportunities for enjoying the aesthetic, scenic and wildlife resources to the residents and visitors of Deschutes County.

There are no significant social consequences to maintaining these aesthetic, scenic or wildlife resources that would be considered adverse.

**Environmental:** Having more river and stream corridors remain in open space enhances the environment by limiting the extent and level of development that can take place. Limiting development would reduce the possibility of erosion, causing sedimentation to occur. These sediments can either be suspended in the water or travel down stream on the streambed. These sediments can disrupt primary aquatic food production and silt-over spawning gravels downstream.

Limiting the location of development activities in the river and stream corridors minimizes disturbance of wildlife and maintain the scenic value of the land.

Wildlife are critically dependent on the river and stream corridors for nesting, feeding, and migration. Leaving these corridors in open space may provide the greatest net benefit to wildlife.

**Energy:** More undeveloped land next to rivers and streams available to the public could minimize the transportation and gasoline expenditures related to those who are seeking open spaces to enjoy. Maintaining wildlife populations and their habitat means that residents and visitors alike will not have to travel to more distant locations where the wildlife has not been displaced due to development activities or habitat loss.

**Conclusions of ESEE Analysis:** Land needed and desirable as open space along the river and stream corridors should be protected, consistent with the Goals and Policies established in the Deschutes County/City of Bend River Study, April, 1986.

**Program For Resource Protection:**

Based on the ESEE analysis above and the analysis in the Deschutes County/City of Bend River Study and Staff Report, the resource and the conflicting uses are important relative to each other, and the identified ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource to a desired extent. Under OAR 660-16 the resource is classified as "3C" and the conflicting uses are specifically limited.

For supporting Goals and Policies see the Deschutes County Comprehensive Plan Year 2000, pages 123-126; and the Deschutes County/City of Bend River Study, April, 1986, pages 13-27-13-33, Appendix "A" pages 1-3, and Appendix "B" of the Bend Area General Plan, pages 1 & 2.

The Landscape Management Combining Zone (Title 18.84) as adopted by Ordinance 92-033 and 92-0344 adopted is the implementing measure to protect the visual and scenic quality of the land along the designated rivers and streams. In addition, the state scenic waterways regulations administered by the Oregon State Parks Department and the federal management plans for the designated wild and scenic rivers also limit the conflicting uses which would significantly diminish the scenic quality of the river corridors.

For implementing measures which also serve to protect the wildlife habitat, and natural quality and open space characteristics of the river corridor, see the following ordinances:

Ordinance No. 86-019 which amends Ordinance No. PL-20 by adopting the Goals, Policies, Findings and Conclusions of the Deschutes County/City of Bend River Study, April 1986;

Ordinance No. 86-018 which amends Ordinance No. PL-15 to prohibit hydroelectric facilities in designated

stretches of the Deschutes River and its tributaries, and to allow hydroelectric facilities in designated stretches of the Deschutes River and its tributaries, and to allow hydroelectric facilities as conditional uses in designated zones and stretches of the Deschutes River;

Ordinance No. 86-056 which amends Ordinance No. PL-15 to authorize fill and removal activities as a conditional use in certain zones (this was further amended by 89-008 to remove the Sunset Clause and to change the requirement of a letter from ODFW stating no impacts).

Ordinance No. 86-054 which amends Ordinance No. PL-15 to require conservation easements as a condition of approval for land use actions on property adjacent to certain rivers and streams;

Ordinance No. 86-053 which amends PL-15 requirements for rimrock setbacks;

Ordinance No. 89-030 amended the Deschutes County Comprehensive Plan for Flood Hazard zones;

Ordinance 88-031 amended PL-15 to establish a new Flood Plain zone and use restrictions.

Ordinance 89-009 established specific restrictions for boat docks, slips, piers or houses in the Flood Plain zone.

**LANDSCAPE MANAGEMENT ROADS**

**Inventory:** All land within one-quarter of a mile, as measured at right angles from the centerline, of any of the following designated Landscape Management roadways.

| | | | |
|---|---|---|---|
| 1. | U.S. Highway #97 | | |
| | North County Line to Redmond | 7.5 | miles |
| | Redmond to Bend | 12 | miles |
| | Bend to South County Line | 35 | miles |
| | TOTAL | 54.5 | miles |
| 2. | U.S. Highway #20-126 | | |
| | North County Line to Sisters | 11 | miles |
| 3. | U.S. Highway #126 | | |
| | Sisters to Redmond | 21.5 | miles |
| 4. | U.S. Highway #20 | | |
| | Sisters to Bend | 23 | miles |
| 5. | Smith Rock Road | | |
| | Highway #97 to Smith Rock | 3.5 | miles |
| 6. | | | |
| | From Cloverdale to Bend | 19 | miles |
| 7. | Skyliners Road | 15.5 | miles |
| 8. | Century Drive | | |
| | Bend to Mt. Bachelor | 25 | miles |
| 9. | South Century Drive | 27 | miles |
| 10. | Cascade Lakes Highway | 46 | miles |
| 11. | Waldo Lake Road | 10 | miles |
| 12. | Cultus Lake Road | 2 | miles |
| 13. | Little Cultus Lake Road | 6 | miles |
| 14. | Twin Lakes Road | 6 | miles |
| 15. | Keefer Road (East Crane Prairie Rd) | 16.5 | miles |
| 16. | East Deschutes Road | 14 | miles |
| 17. | Deschutes Road | 9 | miles |
| 18. | Wickiup Road | 4 | miles |
| 19. | Pringle Falls Loop | 8 | miles |
| 20. | LaPine Recreation Area Access Rd. | 10 | miles |
| 21. | Paulina-East Lake Road | 22.5 | miles |
| 22. | Lava Cast Forest Road | 20.5 | miles |
| 23. | Highway #20 East to Millican | 25 | miles |
| 24. | Pine Mountain Road | 7.5 | miles |
| 25. | Ford Road | 6.5 | miles |
| 26. | Three Creek Lakes Road | 16 | miles |
| 27. | Three Trappers Road | 20.5 | miles |
| 28. | Dillon Falls Road | 6 | miles |
| 29. | Matsen Road | 2 | miles |
| 30. | State Highway #31 | 2.5 | miles |
| 31. | Road to Benham Falls | 4.5 | miles |
| | TOTAL MILES | 465 | miles |

**Conflicting Uses:**

Development within the one-quarter mile overlay zone which would excessively interfere with the scenic or natural appearance of the landscape as seen from the road or alteration of existing landscape by removal of vegetative cover.

**ESEE Analysis of Conflicting Uses:**

**Economic:** The economic impact of maintaining the visual quality of the area would be positive. Deschutes County would remain a desirable place to live, thereby maintaining neighborhood property values. Maintaining or enhancing visual quality makes the county a more attractive place to visit, thereby attracting more visitors and inducing people to stay longer.

Based on what has attracted a majority of business firms to the County already, it would appear that the visual quality and its attendant amenities may play an important inducement to encourage economic stability and growth in the future.

Maintaining the visual quality of road-side rest areas and parks make these areas more desirable to visitors and recreationists and result in maintaining or increasing recreation-related expenditures.

Not allowing the conflicting uses would have three negative consequences. Maintaining the visual appearance, through the limitation of vegetative removal, could limit development to some degree. A second negative consequence of retaining visual quality is that it could lead to increased costs related to development. For example, a longer driveway or access road could be required, or extensive landscaping or painting may be necessary to mitigate the visual effect of the development. The third negative consequence would relate to requiring harvestable timber to remain uncut. This could have an impact on not only the timber harvester, but on County timber tax receipts.

**Social:** Having good visual quality areas more accessible to the public enhances the livability of Deschutes County. As Deschutes County continues to urbanize, the need for the public to have ready access to areas of good visual quality will become more important.

If additional efforts are not initiated to incorporate these amenities into the social fabric of local society, a major opportunity will have been lost to give residents further identity to the visual quality of their surroundings. Having readily accessible good visual quality areas maintains or enhances the tourism and recreational experience now enjoyed by visitors and residents alike.

Allowing the conflicting use of timber harvesting could add

to the County's tax receipts which could allow the County to improve some of its public services. This improvement in public services could serve to attract new residents and businesses to Deschutes County.

**Environmental:** Maintaining or enhancing vegetative cover along roadways enhances the visual quality associated with those travel corridors by limiting the extent and level of development that could take place. This serves to minimize ground and vegetative disturbance and maintain the scenic quality of the land.

Maintaining vegetative cover also serves to reduce erosion. Maintaining vegetative cover tends to reduce noise and air pollution caused by traffic using the roadways.

**Energy:** Maintaining good visual quality available to the public near the Bend, Redmond, and Sisters urban areas could tend to minimize the transportation and gasoline expenditures by those residents seeking travel corridors with pleasing visual qualities.

On lands adjacent to road-side rest areas and parks, allowing the conflicting uses could have an impact by creating a situation where people will need to drive further to enjoy a recreational or visual experience similar to the level prior to the conflicting use being allowed.

**Conclusion of ESEE Analysis:** Land needed and desirable for open space along designated highways and roads should be protected and the conflicting uses limited to some degree.

**Program for Resource Protection:**

Based on the ESEE analysis, the resource and the conflicting uses are important relative to each other, and the identified ESEE consequences should be balanced so as to allow the conflicting uses but in a limited way so as to protect the resource to a desired extent. Under OAR 660-16 the resource is classified as "3C" and the conflicting uses are specifically limited.

For supporting goals and policies see the Deschutes County Comprehensive Plan Year 2000 pages 78-92 (the Transportation Chapter) and pages 123-126 (the Open Spaces Chapter).

For implementing measures, see Deschutes County Code Title 18.84, the Landscape Management Combining Zone as adopted by Ordinances 92-033 and 92-034.

## SIGNIFICANT LAKES AND RESERVOIRS

**Inventory:** The following lakes are significant open space resources in the county. The land adjacent to the lakes is also an important open space and recreational resource. All of the inventoried lakes and reserviors except for Tumalo Reservior are under federal ownership and management.

| | | |
|---|---|---|
| 1. | Bobby Lake | T 22S, R 06E, Section 14 |
| 2. | Charlton Lake | T 21S, R 06E, Section 14 |
| 3. | Crane Prairie Reservoir | T 21, R 08E, Section 16 |
| 4. | Cultus Lake | T 20S, R 07E, Section 24 |
| 5. | Deer Lake | T 20S, R 07E |
| 6. | Devils Lake | T 18S, R 08E, NW1/2 Sec.10 |
| 7. | Davis Lake | T 22S, R 07E |
| 8. | East Lake | T 21S, R 13E, Section 31 |
| 9. | Elk Lake | T 18S/19S, R 07E, Sec.5 |
| 10. | Hosmer Lake | T 19S, R 08E, Section 4 |
| 11. | Lava Lake | T 19S, R 08E, Section 22 |
| 12. | Little Cultus Lake | T 20S, R 07E |
| 13. | Little Lava Lake | T 19S, R 08E, Section 22 |
| 14. | North Twin Lake | T 21S, R 08E, Section 28 |
| 15. | Paulina Lake | T 21S, R 12E, Section 84 |
| 16. | South Twin Lake | T 21S, R 08E, Section 28 |
| 17. | Sparks Lake | T 18S, R 08E, Section 23 |
| 18. | Three Creek Lake | T 17S, R 09E, Section 14 |
| 19. | Todd Lake | T 18S, R 09E, Section 8 |
| 20. | Upper Tumalo Reservoir | T 16S, R 11E, Section 33 |
| 21. | Winopee Lake | T 19S, R 11E, Section 33 |
| 22. | Wickiup Reservoir | T 22S, R 09E, Section 7 |

**Conflicting Use Determination:**

Conflicting uses with the open space and scenic values of the land adjacent to the inventoried lakes include development which would cause a loss of open space or a decrease in the aesthetic and scenic resources and land management activities that would result in removal or alteration of the natural vegetation which provides wildlife habitat and scenic value.

**ESEE Analysis of Conflicting Uses:**

**Economic:** The economic impacts related to the identified conflicting use can be measured using two standards, priced outputs and non-priced outputs. Price outputs are those that are, or can be, exchanged in the market place.

Timber and recreation are the most important priced outputs in Deschutes County. Non-priced outputs are those for which there is no available market transaction evidence and no reasonable basis for estimating a dollar value commensurate with the market values associated with the priced outputs. Some of the most important non-priced outputs include life-styles, suitable habitat for threatened or endangered

species, watchable wildlife, ecosystem diversity, visual quality, historical and cultural resources, water quality and air quality.

The Deschutes National Forest manages the areas around the inventoried lakes for intensive recreation; the Forest Service has decided that recreational opportunities in these areas outweigh the timber harvesting opportunities.

Opinion surveys in Deschutes County have shown that many people are attracted to the area for the outdoor lifestyle it can offer them. Central to maintaining and enhancing this lifestyle is the provision of diverse recreation opportunities. The forest currently provides adequate recreation diversity as indicated by the reasons many people choose to live and recreate in the area.

The Deschutes National Forest provides habitat for many species which may be classified as watchable wildlife. To the extent that open space provides habitat for bald eagles, spotted owls, and ospreys so that their populations may thrive, a non-priced benefit is realized.

Maintaining plant and animal ecosystem diversity over time is also considered as a component of net public benefits. The amount of old growth timber provided is especially important since this component would be the most difficult to replace once it disappears. To the extent that the Forest Service provides for the preservation of old growth stands as a component of forested plant communities, the higher the economic benefits associated with this non-priced output.

It is safe to assume that the provision of positive visual experiences has a direct relationship to the quantity and quality of recreation. For example, there are two principle highways which pass through Deschutes County. The people who drive on these highways pass through some quality scenic areas; yet, they are not counted as Recreation Visitor Days (RVDs). There are also people who live in or around the National Forest who every day enjoy the scenic qualities associated with the forested mountain environment.

The water quality and conditions along the shorelines of the lakes is good. Water quality is one of the components which contributes to the outdoor lifestyles of Deschutes County residents. However, to the extent that an emphasis on wood production causes new road construction and harvesting on sensitive steep areas and riparian zones, water quality may experience some degradation.

Air quality is another important aspect of Deschutes County. For the most part, air quality conditions are good except during certain times when temperature inversions create woodstove pollution problems, and certain times in the spring and summer when prescribed burning activities are going on.

11/23/2026 Item #3.

Air degradation resulting from fuels treatment and prescribed burning activities is directly related to the amount of scheduled timber and vegetative management activities. The more acres of these activities called for, the lower the quality of the air during certain seasons of the year.

**Social:** Rural industrial communities are closely tied to the natural resources of Deschutes County in work, subsistence, and play. The supply of available natural resources constitutes the economic link between resource providers and consumers. The woods products industry is the predominant industry in towns like Gilchrist, Redmond, and Prineville. But timber is not the only tie. People in these communities use fuelwood, fish and game for part of their subsistence. Recreation is also a central component of the lifestyle of these communities. Therefore, the provision of diverse recreation opportunities is also a major concern.

Rural recreation and residential communities adjacent to, and within, the Deschutes National Forest are dependant primarily upon forest based recreation activities and recreation residences for their livelihood. Environmental and scenic amenities and nearby recreational opportunities are major reasons for their existence. Towns such as LaPine and Sisters are included in this community type. Local service-oriented business provide convenience items and cater to tourists, skiers, and sportsmen.

The City of Bend is the dominant community in Deschutes County. It has a large industrial sector based on wood products, and a large service sector keyed to recreation and tourists. It is the major shopping and service center for outlying communities. The social health of the community, and the quality of the environment, are all central concerns to Bend's residents.

**Environmental:** Timber management is the primary means of manipulating the vegetative resources to achieve the desired management objectives for timber, range, recreation, wildlife and visual resources. Timber management and recreation-related development activities will change the recreational opportunities available to visitors.

Indirect effects of these timber management and development activities are increased opportunities for winter recreation.

Due to the importance of the visual quality near lake and stream shores, timber management activities are limited. In these circumstances, environmental impacts may be reduced from levels that might otherwise have occurred. Limiting land management and development activities in the open spaces near the lakes would reduce erosion and sedimentation which would have a positive impact on the wildlife and fish habitat.

If the management and development activities were not limited

in these open space and conservation areas, there are probably adverse environmental impacts that could not be avoided. For example, soil would be displaced as a result of timber sales, slash treatment, and construction of roads, trails and recreation facilities. Overall, soil productivity would be maintained except for sites dedicated to roads, landings, recreation sites, and other facilities or uses which compact the soil or occupy a site.

**Energy:** Maintaining open space around the inventoried lakes would provide visual and scenic resources that could be readily enjoyed by tourists, recreators, and residents alike. Providing these scenic resources and open spaces in proximity to major highways and roadways means people would not have to travel as far to enjoy these resources, thereby conserving energy.

Limiting timber harvesting would mean less energy consumed for logging, construction and maintenance of roads, transporting the logs to mills and processing these logs.

Allowing timber harvesting in these areas could mean that some energy would be saved because the timber companies would have less distance to travel to the sale site, fewer new roads would be needed and haul distances to the processing mills would be less.

Having the areas around these lakes remain in open space would mean that well-planned recreational facilities would be available closer to the population centers of Bend and Redmond, thereby requiring less energy to travel to further recreation destinations.

**Conclusion of ESEE Analysis:** Based on the ESEE analysis, the resource and the conflicting uses are important relative to each other, and the identified ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource to a desired extent. Under OAR 660-16 the resource is classified as "3C" and the conflicting uses are specifically limited by the land and resource management plans of the Deschutes National Forest and the Bureau of Land Management.

Conflicting uses around Tumalo Reservoir, Elk Lake, Davis Lake, Paulina Lake, East Lake and portions of Davis Lake are also specifically limited by Title 18.48, the Open Space Conservation Zone. In addition all zones require a 100 foot setback for any structure from the ordinary high watermark of any lake.

**EXHIBIT D**

0119-1784

**WILDERNESS AREAS**

**Inventory:**

All lands within the existing Mt. Washington and Three Sisters Wilderness Areas, and all lands included in the Bureau of Land Management's State of Oregon Wilderness Status Map for Deschutes County.

Location and Quantity:

The Mt. Washington (13,563 acres in Deschutes County) and Three Sisters (92,706 acres in Deschutes County) wilderness areas as shown on the Deschutes National Forest Land and Resource Management Plan Map and the following Bureau of Land Management Wilderness Study Areas (WSA) as shown on in the Brothers/LaPine Resource Management Plan:

WSA No. OR 5-21- Badlands, 32,261 acres;
WSA No. OR 5-42- Hampton Butte, 10,600 acres;
WSA No. OR 5-14- Steelhead Falls, 920 acres.
Total BLM wilderness study area - 43,781 acres.

The quality of the designated wilderness and wilderness study areas is described in Deschutes National Forest Land and Resource Management Plan and in the BLM Brothers/La Pine Resource Management Plan.

**Conflicting Use Determination:**

The conflicting uses with the designated Three Sisters and Mt. Washington wilderness areas are specifically limited by the Wilderness Act and the Wilderness Management plans in the Deschutes National Forest Land Management Plan.

Land uses or resource conflicts for the BLM Wilderness Study Areas include:

- proposed range improvement projects and use of vehicles for livestock management (water hauling);
- potential geothermal and oil and gas development;
- organized, competitive and cross-country recreational vehicle use;
- existing oil and gas leasing and future exploration;
- proposed livestock and wildlife projects; and rural residential development.

**ESEE Analysis of Conflicting Uses:**

**Economic:** The principal effects on local economies are measured by the differences in local personal income

resulting from differences in outputs depending on wilderness or non-wilderness designation.

0119-1735

Under wilderness designation, livestock grazing would be allowed to continue, although planned increases might not be allowed. Restrictions on vehicle use would increase grazing operator's transportation costs. Projects involving vegetative manipulation would not generally be allowed, but other kinds of investments, such as structural projects might be. Timber harvest, firewood cutting and the sale of other forest materials would not be allowed under wilderness designation. Revenues from most existing geothermal and oil and gas leases would no longer be received by the federal government, resulting in lower revenues to state and local governments. Although wilderness designation would result in a loss or displacement of vehicle-oriented recreation, it would also provide an identity which could be used by state or local entities to promote increased visitation and personal income in the area. Promotion of visitation of wilderness areas would have the potential of benefitting local communities were the study areas exist.

**Social:** Social effects of wilderness designation depend upon how important the economic impacts on local income generated by the use of identified BLM resources are to the local economy and upon the distribution of economic gains and losses within the local population.

The impacts on local personal income range from a potential reduction under an all wilderness designation to a potential increase under a no wilderness designation. To evaluate the significance of these potential changes, we can compare them to the total personal income of the 11-county area in central and eastern Oregon that would be affected by wilderness designations. The potential impacts would be slight, ranging from a potential reduction of 0.01 percent to a potential increase of 0.07 percent of the area's total personal income or employment. This is not to say that direct economic gains or losses to specific individuals would be insignificant; rather, that the net social impacts on the community would be minor. These potential direct economic effects are so minor, in relation to the existing economic conditions, that no significant, indirect social impacts are anticipated. BLM's wilderness management policies allows reasonable access to all non-federal inholdings, including mineral estates within designated wilderness areas, so there would be no direct impacts on inholdings or their owners. Potential impacts could eventually occur from social pressure on the non-federal owners to manage their lands consistent with management of the surrounding wilderness.

A possible outcome from such situations would be for landowners to exchange the inholdings with BLM for lands outside wilderness areas.

The general prohibition of motor vehicles from designated wilderness areas should reduce both trespass on inholdings and vandalism and harassment of livestock. Wilderness designation could increase primitive recreation, leading to increased foot trespass on private inholdings.

0119-1736

In areas not designated as wilderness (totalling 1,354,153 acres), several kinds of activities could occur which could reduce the quality of wilderness values, adversely affecting naturalness, opportunities for solitude and primitive recreation, and special wilderness features. Proposed activities, including implementation of grazing and wildlife improvement projects and harvest of timber and minor forest products, would directly affect the acres on which they take place and would indirectly affect much larger areas from which the projects and activities could be seen.

The undesignated lands would also be available for development of mineral and energy resources, increases in grazing use, and possible construction in potential utility corridors. Despite mitigating measures, such activities would further reduce wilderness quantities. Under wilderness designation, some opportunities to increase livestock use and opportunities for mineral and energy resource extraction would be foregone, with resulting decrease in opportunities for local economic benefits. Closures to vehicle use in designated areas would result in declines in vehicle-oriented recreation that, in some cases, would not be offset by increases in primitive recreation.

Short-term consumptive uses of lands not designated wilderness - particularly mineral and energy development, wood products harvest, and rangeland vegetative manipulation projects to generate forage increases - would lead to long-term degradation of the wilderness values of those lands. Conversely, protection of wilderness value through designation would limit or eliminate short-term consumptive uses and vehicle-oriented recreation.

**Environmental:** Designation of wilderness areas would assure the preservation of wilderness characteristics, including unique areas of dense juniper woodland and a maze of low lava ridges and sandy basins near major travel route and population centers.

However, outside sights and sounds and possible development of the private inholdings and split-estates would adversely affect the naturalness and solitude found in wilderness areas. Closure of roadways would allow revegetation and enhance the naturalness values.

Development of energy and mineral resources would be precluded thereby eliminating the environmental impacts associated with the extraction of these resources, and the vegetation would be preserved.

Juniper cutting to maintain livestock grazing and provide firewood would be precluded, thereby maintaining and preserving vegetation.

0119-1737

If guzzlers (a small, wildlife water project that utilizes a water collection system) are not allowed, the opportunity to improve wildlife habitat for antelope, deer and non-game species would be foregone.

Non-wilderness designation would mean that wilderness characteristics would be adversely affected by development projects and by motorized recreation use. Naturalness, solitude, and primitive recreation would also be adversely affected to a substantial degree if oil and gas development occurred. All roads and ways would remain open to vehicle traffic, and the vehicle use would reduce opportunities for solitude and primitive recreation. Through proposed brush control, vegetation diversity would be temporarily reduced.

**Energy:** Designation of wilderness areas in reasonable proximity to travel corridors and population centers would mean less energy would be consumed by residents and tourists seeking a wilderness experience. Designation of wilderness areas would reduce the amount of firewood available to people who use wood to heat their homes, which would increase the amount of energy needed. Designation would mean some energy resources such as gas and oil and geothermal resource would not be available for use, meaning other sources will have to be located and developed, thus increasing local energy costs. Designation would mean fewer acres available for livestock grazing, causing the livestock to be moved to further grazing areas, thus increasing the amount of energy used by the local ranchers.

**Program for Resource Protection:**

Based on the ESEE analysis, the conflicting uses should be limited and the resource is classified as a "3C" Goal 5 resource. Congress is the only body which can designate wilderness areas; and the management of wilderness or wilderness study areas is the jurisdiction of the federal agency managing the area. The uses are specifically limited by the Wilderness Act, the Deschutes National Forest Land and Resource Management Plan, and the BLM Brothers/La Pine Management Plan.

## STATE SCENIC WATERWAYS AND FEDERAL WILD AND SCENIC RIVERS

### State Scenic Waterways Inventory:

The following segments of the Deschutes River have been designated as State Scenic Waterways by the State Legislature or a 1988 ballot initiative.

| Deschutes River | Miles |
|---|---|
| Little Lava Lake to Crane Prairie Res. | 12 |
| Wickiup Dam to General Patch Bridge | 28 |
| Harper Bridge to COI Diversion | 21 |
| Sawyer Park to Tumalo State Park | 5 |
| Upper Deschutes Market Road to County Line | 28 |
| Little Deschutes River | 12 |
| | 106 miles |

### Federal Wild and Scenic Rivers Inventory:

The following segments of the Deschutes River have been designated as Federal Recreation and Scenic rivers by the passage of the 1988 Omnibus Oregon Wild and Scenic Rivers Act of 1988. Congress mandated the US Forest Service to prepare a management plan for the these segments of the Deschutes River. The plans are scheduled for completion in 1993.

| | Miles |
|---|---|
| Deschutes River | |
| Wickiup Dam to Fall River | 22 |
| Fall River to N. Boundary Sun River | 20 |
| N. Boundary Sun River to Bend UGB | 13 |
| Squaw Creek | 36 |

includes all tributaries within the Three Sisters Wilderness, Soap Creek and the main stem from the wilderness boundary to the stream flow gauge station.

Total: 91 miles

### Conflicting Use Determination and ESEE analysis:

The ESEE analysis of uses conflicting with the State Scenic Waterway and Federal Wild and Scenic Rivers is contained in the Deschutes County/City of Bend River Study, April 1986 and the May 21, 1986 River Study Staff Report, the relevant

portions of which are incorporated herein by reference.

0119-1739

**Program for Resource Protection:**

The following ESEE analysis supplements that contained in the River Study and its accompanying Staff Report, the relevant portions of which are incorporated herein by reference. Based on the ESEE analysis, the resource and the conflicting uses are important relative to each other, and the identified ESEE consequences should be balanced in order to allow the conflicting use but in a limited way so as to protect the resource to the desired extent.

The implementing measures for protection of the State Scenic Waterways are the provisions of the Oregon Administrative Rules Chapter 736, Division 40. The Federal Scenic Rivers will be regulated by plans to be developed by the US Forest Service and the BLM.

Deschutes County is formally participating in the development of both the State and Federal management plans for the designated rivers and streams. The County and the Forest Service have agreed to a Memorandum of Understanding (September 5, 1984) which requires cooperation on a continuing basis to assure a smooth interface between the Forest Land Management Plan and the County Comprehensive Plan. The County and the BLM have entered and agreement (June 11, 1981) which requires a process for the County and the BLM to jointly identify, communicate and coordinate actions of common concern relating to the management of lands and resources and provide a mechanism for continuing involvement in the development and revision of land use plans.

The county implementing measures to protect the Federal Wild and Scenic Rivers and State Scenic Waterways include:

Title 18.88 - Landscape Management Zone
Title 18.96 - Flood Plain Zone
Title 18.116.210 - Conservation Easements
Title 18.116.160 - Rimrock Setbacks
Title 18.116.130 - Hydroelectric Facilities
Title 18.128.040(W) - Fill and Removal
Ordinance 86-019 - Amendments to Open Space and Recreation Goals and Policies in the Deschutes County Comprehensive Plan

As part of periodic review the county adopted Ordinance 92-034 which amended the Landscape Management Zone in the Deschutes County Code to implement design review standards and regulations which either conform with or are more restrictive than those required by the State Scenic Waterway regulations. The county also adopted Ordinance 92-033 which amended PL-20, Deschutes County Year 2000 Comprehensive Plan goals and policies regarding open space.

EXHIBIT F

0119-1740

ENERGY SOURCES

## Hydroelectric Sites

**Inventory:** Hydroelectric Resources of the Upper Deschutes River Basin Deschutes County.

Available information is adequate to indicate that the resource is significant. See the Deschutes County/City of Bend River Study page 4-1 and Appendix D. The City of Bend/Deschutes County River Study inventoried 16 proposed hydroelectric project sites in Deschutes County. Twelve were located on the Deschutes River; two on Tumalo Creek; and two on Squaw Creek and one on the Crooked river in Deschutes County.

Location of proposed projects and quantity (capacity in megawatts):

| Project Name | River Mile | Capacity (megawatts) |
|---|---|---|
| Deschutes River | | |
| Crane Prairie | 239 | 0.6 |
| Wickiup Dam | 226.8 | 7.0 |
| Pringle Falls | 217 | 1.6 |
| Lava Diversion | 182.4 | 11.5 |
| Dillon Falls | 177.6 | 7.2 |
| Aspen Diversion | 175.2 | 3.2 |
| Island Diversion | 174.6 | 7.5 |
| Arnold Flume | 174.5 | 4.2 |
| COI Siphon | 170.0 | 6.5 |
| Bend Canal Diversion | 162.4 | 2.0 |
| North Canal Dam | 164.8 | 3.0 |
| Tumalo Creek | | |
| Columbia Southern | 9.5 | 9.3 |
| Squaw Creek | | |
| Squaw Creek | 25.0 | 0.6 |
| Squaw Creek | 30.5 | 3.5 |
| Crooked River | | |
| Crooked River Drop | 164.8. | 10.7 |

For a more detailed discussion of the hydroelectric resources in Deschutes County see the Deschutes County/City of Bend River Study, April 1986. Chapter 2, 3, and 4; also refer to the River Study Staff Report. The River Study and River Study Staff report are incorporated herein by reference.

**Conflicting Use Determination:**

Chapter 4 of the River Study describes the conflicting uses as fish and wildlife, scenic, and recreation resources, residential, commercial and resort uses.

**ESEE Analysis of Conflicting Uses:**

Chapter 4 of the River Study contains an ESEE analysis the potential hydroelectric projects. The River Study Staff Report also contains ESEE analysis for hydro sites on four reaches of the Deschutes River, Fall River, Little Deschutes River, Squaw Creek and the Crooked River within Deschutes County.

In 1985 the legislature enacted into law ORS 543.165, 543.170 and 543.175 which prohibits issuance of permits for construction of any hydroelectric facility or structure on: the Deschutes River between river mile 172 below Lava Island Falls and river mile 227 below but not including Wickiup Dam; Squaw Creek; and, within the city limits of the City of Bend.

The ESEE analysis findings in the River Study Staff Report regarding hydroelectric resources were adopted in 1986 by the Board of County Commissioners by enactment Ordinance 86-017 and 86-018 which have been incorporated into Title 18 and Title 19 of the Deschutes County Code. Ordinance 89-019 was adopted at the same time and amends the Deschutes County Year 2000 Comprehensive Plan Energy Goals and Policies as recommended by the River Study and Staff Report. The ordinances adopted by the Board of Commissioners conform with the statute adopted by the legislature in that they prohibit hydroelectric development on certain reaches of the Deschutes River.

**Program For Resource Protection:**

Based on the ESEE analysis in the River Study Staff Report, the ordinance also prohibit new hydroelectric facilities on the Crooked River in Deschutes County, Fall River, the Little Deschutes River, Spring River, Paulina Creek, Squaw Creek and Tumalo Creek. New facilities were prohibited on these rivers and streams because the ESEE analysis made findings that conflicting uses (fish, wildlife, riparian habitat scenic and recreation) were more important relative to the potential hydroelectric resources and therefore, development of new hydro electric resources should be strictly limited.

The implementing measures to protect the hydroelectric sites and regulate hydroelectric development are found in Ordinance 86-017 which amended PL-11 (Title 19.88.190) and Ordinance 86-018 which amended PL-15 (Title 18.116 and 18.128.104(V).

**Geothermal Resources**

The County adopted Ordinance 85-001 on February 13, 1985. This ordinance complies with Goal 5 (OAR 660-16). The ordinance amended the Comprehensive plan and adopted a Geothermal Resource Element including a resource inventory and ESEE analysis.

Since the adoption of the Geothermal Resource Element, the BPA has approved a proposal from the Eugene Water and Electric Board develop a geothermal production plant on the Newberry Volcano. This proposal is located in an area identified in the county Resource Element and is also identified as a federal Known Geothermal Resource Area (KGRA). Future environmental review and leasing for this site will be administered by the USFS and the BLM. The project will be coordinated with the County through the Co-operative agreements with these federal agencies. Except for this site no other resource sites are currently active.

Return to:
Caroline House, Senior Planner
Community Development Department
117 NW Lafayette, P.O. Box 6005
Bend, Oregon 97708-6005

*Space Reserved for Recorder's Use*

# CONDITIONS OF APPROVAL AGREEMENT AND RESTRICTIVE COVENANT

This conditions of approval agreement is made this _____ day of _____, 2026 by R Derek Jaros LLC, an Oregon limited liability company (hereinafter "Jaros") and Deschutes County, a political subdivision of the State of Oregon (hereinafter "County").

## RECITALS

WHEREAS, Jaros sought approval of a plan amendment from Agricultural (AG) to Rural Residential Exception Area (RREA) and zone change from Exclusive Farm Use – Sisters Cloverdale Subzone (EFU-SC) to Multiple Use Agricultural (MUA-10) in File Nos. 247-26-000120-PA and 247-26-000121-ZC for the property described on **Exhibit A** (the "Property"), a copy of which is attached and incorporated by reference herein; and

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

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

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

NOW THEREFORE, the parties agree as follows:

Any future subdivision shall be limited to a minimum lot size of 10 acres. This condition shall be in effect so long as the property remains outside of an urban growth boundary.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Dated this _____ of _____, 2026

R DEREK JAROS LLC

_____
By: R Derek Jaros
Its: _____

STATE OF OREGON )
) *ss*.
COUNTY OF DESCHUTES )

This instrument was acknowledged before me on _____, 2026 by R. Derek Jaros as _____ of R Derek Jaros LLC, an Oregon limited liability company.

_____
Notary Public for Oregon
Print Name _____
My commission expires _____

**EXHIBIT A**
**PROPERTY DESCRIPTION**
(TAX LOT 705, MAP 15-10-10)

Sisters 63 Ac

Parcel 2 of Partition Plat No. 2002-43, recorded May 7, 2002, in Partition Cabinet 2, Page 292, Deschutes County, Oregon.

BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** November 23, 2026

**SUBJECT:** Second reading of Ordinance No. 2026-027 approving a zone change from Flood Plain to Multiple Use Agricultural for 17 properties

**RECOMMENDED MOTIONS:**

1. Move approval of second reading of Ordinance No. 2026-027 by title only.
2. Move adoption of Ordinance No. 2026-027.

**BACKGROUND AND POLICY IMPLICATIONS:**

This Zone Change request (file no. 247-26-000483-ZC) involves 17 properties—12 of which are split-zoned Flood Plain (FP) and Multiple Use Agricultural (MUA10), and five of which are zoned FP. The properties went through a process with FEMA in 2015 to revise the special flood hazard area on the flood insurance maps; this Zone Change will remove the FP zoning designation from areas that were recognized by FEMA as being outside of the special flood hazard area.

A public hearing was held before a Hearings Officer on September 14, 2026, and on October 7, 2026, the Hearings Officer issued a decision approving this application. The Hearings Officer's decision was not appealed and on October 19, 2026, the Board voted to adopt the Hearings Officer's decision. The Board conducted first reading of the ordinance on November 4, 2026.

The full record can be viewed through the following link:
https://www.deschutescounty.gov/1641/247-26-000483-ZC-Fagen-FP-to-MUA10-Zone-

**BUDGET IMPACTS:**

None.

**ATTENDANCE:**

Audrey Stuart, Associate Planner
Anthony Raguine, Principal Planner
Will Groves, Planning Manager

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 Change the Zone Designation for Certain Properties From Flood Plain to Multiple Use Agricultural. | * * * | ORDINANCE NO. 2026-027 |

WHEREAS, Harry and Beverly Fagen applied for changes to the Deschutes County Zoning Map (247-26-000483-ZC), to change the zoning designation of five properties from Flood Plain (FP) to Multiple Use Agricultural (MUA10), to change the zoning designation of eleven properties from FP and MUA10 to MUA10, and to change the zoning designation of one property to alter the extent to which it is split-zoned FP and MUA10; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on September 14, 2026, before the Deschutes County Hearings Officer and, on October 7, 2026, the Hearings Officer recommended approval of the Zone Change;

WHEREAS, pursuant to DCC 22.28.050, on October 19, 2026, the Board of County Commissioners ("Board") voted not to initiate review of the subject Zone Change application; and

WHEREAS, pursuant to DCC 22.28.030(B), the Board shall adopt the Hearings Officer's decision unless an appeal is filed or review is initiated by the Board; 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 FP to MUA10 for certain property described in Exhibit "A" and depicted on the map as 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 Ordinance the Decision of the Hearings Officer as set forth in Exhibit "C" and incorporated by reference herein.

Section 3. 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

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 20 .

Date of 2nd Reading: _____ day of _____, 20 .

Record of Adoption Vote

| Commissioner | Yes | No | Abstained | Excused |
|---|---|---|---|---|
| Patti Adair | | | | |
| Anthony DeBone | | | | |
| Phil Chang | | | | |

Effective date: _____ day of _____, 20 .

ATTEST

_____
Recording Secretary

**Exhibit "A" to Ordinance 2026-027**

**Legal Description of Properties to be Zoned MUA10**

Tax Lot 161227A002500

LOT NUMBER NINETEEN (19), BLOCK NUMBER SEVEN (7), IN THE FIRST EDITION OF WHISPERING PINES ESTATES, ACCORDING TO THE OFFICIAL MAP ON FILE IN THE OFFICE OF THE COUNTY CLERK OF DESCHUTES COUNTY, OREGON.

Tax Lot 161227A002400

ALSO, Lot Eighteen (18) in Block Seven (7) of FIRST ADDITION TO WHISPERING PINES ESTATES, Deschutes County, Oregon.

Tax Lot 161227A002300

**Lot Seventeen (17), Block Seven (7), FIRST ADDITION TO WHISPERING PINES ESTATES, Deschutes County, Oregon.**

Tax Lot 161227A003000

**Lot One (1) in Block Seven (7) of FIRST ADDITION TO WHISPERING PINES ESTATES, Bend, Deschutes County, Oregon**

Tax Lot 161227A003101

**The Westerly 351 Feet of Lot Two (2), Block Seven (7), First Addition To Whispering Pines Estates, recorded April 12, 1968, in Cabinet A, Page 157, Deschutes County, Oregon.**

Tax Lot 161227D000400

The Westerly Seven Hundred Fifteen feet (WLY. 715') of the Northwest One-Quarter of the Southeast One-Quarter (NW1/4SE1/4) of Section 27, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon.

Except:

Commencing at the Northwest corner of said Northwest One-Quarter of the Southeast One-Quarter of Section 27, thence along the North line of said Northwest One-Quarter of the Southeast One-Quarter of Section 27 South 89°48'19" East 715.00 feet; thence leaving said North line South 00°07'168" West 384.31 feet to the Point of Beginning; thence South 00°07'16" East 286.47 feet; thence North 08°28'42" West 201.75 feet; thence along an arc of a 99.85 foot radius curve to the right an arc distance of 46.31 feet, the chord of which bears North 10°20'58" East 45.89 feet; thence North 26°34'11" East 46.71 feet to the Point of Beginning.

Containing 0.11 Acres more or less.

Tax Lots 161227A003100 and 161227A003102

The Easterly 351 feet of Lot Two (2) in Block Seven (7), FIRST ADDITION TO WHISPERING PINES ESTATES, Deschutes County, Oregon, reserving unto property owners of Lots One (1), Four (4), Thirteen (13), Fourteen (14), Twenty-two (22), West Half of Lot Two (2), and East Half of Lot Two (2), all in Block Seven (7) of WHISPERING PINES ESTATES FIRST ADDITION, their respective successors and assigns, the following described real property located in Deschutes County, Oregon, to-wit: A portion of property twenty-five (25) feet by twenty-five (25) feet square, being in the Southeast corner of the East Half of Lot Two (2) in Block Seven (7) of WHISPERING PINES ESTATES FIRST ADDITION, Deschutes County, Oregon.

Tax Lot161227A001900

Lot 13, Block 7, First Addition To Whispering Pines Estates, recorded April 12, 1968, in Cabinet A, Page 157, Deschutes County, Oregon.

Tax Lot 161227CA00100

***Lot 1 in Block 1 of RANCHO EL SERENO filed May 15, 1967 in Cabinet A, Page 145, Deschutes County, Oregon***

Tax Lot 161227A002200

**Lot 16, Block 7, FIRST ADDITION TO WHISPERING PINES ESTATES, Deschutes County, Oregon.**

Tax Lot 161227A002100

**Lot 15, Block 7, FIRST ADDITION TO WHISPERING PINES ESTATES, according to the plat filed April 12, 1968, in Cabinet A, Page 157, Deschutes County Records, in Deschutes County, Oregon.**

Tax Lot 161227B010001

A parcel of land lying in the Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4) of Section Twenty-seven (27), TOWNSHIP SIXTEEN (16) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, Deschutes County, Oregon and being a portion of that property described in that deed to the State of Oregon, by and through its State Highway Commission, recorded in Book 55 Page 171 of Deschutes County Record of Deeds; the said parcel being that portion of said property lying North of a line parallel with and 50 feet North of the South line of said Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4) and West of a line parallel with and 40 feet West of the East line of said Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4)

Tax Lot 161227D000500

**The North Half of the Northwest Quarter of the Southwest Quarter of the Southeast Quarter (N 1/2 NW 1/4 SW 1/4 SE 1/4) of Section 27, Township 16 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon EXCEPT the East 264 feet of the North 165 feet.**

Tax Lot 161227A002000

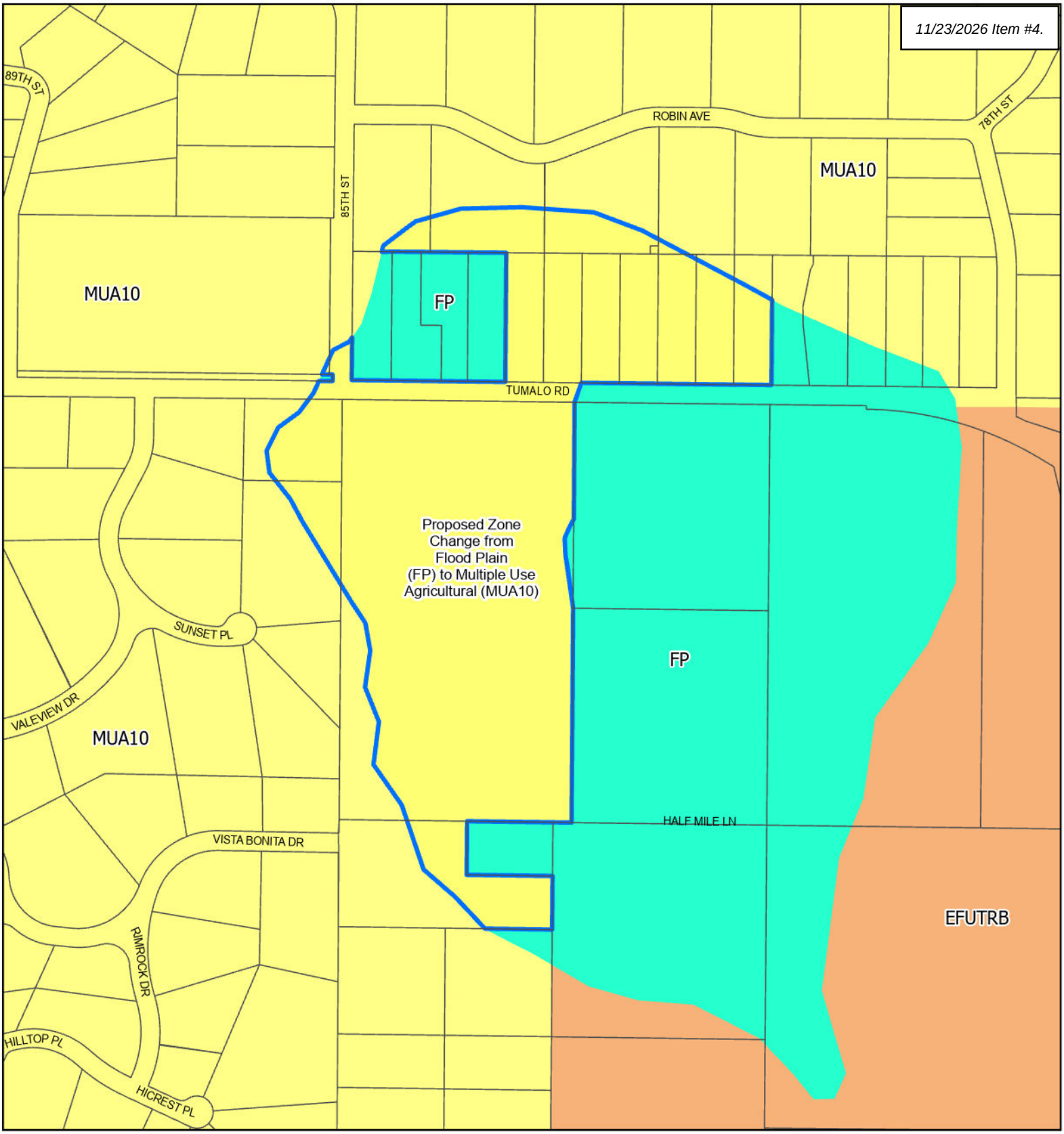
**Lot 14, Block 7, FIRST ADDITION TO WHISPERING PINES ESTATES, Deschutes County, Oregon.**

Tax Lot 161227CA00500

Lot 5, Block 1, Rancho El Sereno, recorded May 15, 1967, in Cabinet A, Page 145, Deschutes County, Oregon.

Tax Lot 161227A003200

LOT THREE (3) IN BLOCK SEVEN (7) OF FIRST ADDITION TO WHISPERING PINES ESTATES, DESCHUTES COUNTY, OREGON.




# PROPOSED ZONING MAP

Exhibit "B"
to Ordinance 2026-027

Proposed Zone Change Boundary

Zoning

- EFUTRB - Tumalo / Redmond / Bend Subzone
- FP - Flood Plain
- MUA10 - Multiple Use Agricultural

0 100 200 400 600 Feet

October 21, 2026

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

File Location: N:\Custom\County\CDD\Planning\Audrey\Stuart\[Exhibit8_Ord

**DECISION AND FINDINGS OF**
**THE DESCHUTES COUNTY HEARINGS OFFICER**

| | |
|---|---|
| **FILE NUMBER:** | 247-26-000483-ZC |
| **HEARING DATE:** | September 14, 2026, 1:00 p.m. (Scheduled Time) |
| **HEARING LOCATION:** | Videoconference and<br>Barnes & Sawyer Rooms<br>Deschutes Services Center<br>1300 NW Wall Street<br>Bend, OR 97708 |
| **APPLICANT:** | Harry and Beverly Fagen |
| **SUBJECT PROPERTIES:** | See Table 1 in Attachment 1 |
| **OWNERS:** | See Table 1 in Attachment 1 |
| **REQUEST:** | The Applicant requests: (1) to change the zoning designation of five properties from Flood Plain (FP) to Multiple Use Agricultural (MUA-10); (2) to change the zoning designation of eleven properties from a split-zone designation of FP/MUA-10 to be only MUA-10; and (3) to change the zoning designation of one property in a manner that alters the extent to which it is split-zoned FP/MUA-10. All of the properties are designated as Rural Residential Exception Area (RREA) on the County's Comprehensive Plan Map. |
| **HEARINGS OFFICER:** | Tommy A. Brooks |

**SUMMARY OF DECISION**: The Hearings Officer finds that the Applicant has met its burden of demonstrating compliance with the applicable approval criteria and, therefore, APPROVES the application with a condition proposed by the Applicant.

## I. APPLICABLE STANDARDS AND CRITERIA

As listed in the Notice of Public Hearing, the applicable standards and criteria are contained in the following:

Deschutes County Code ("DCC")
Title 18, Deschutes County Zoning Ordinance:
Chapter 18.04, Title, Purpose, and Definitions
Chapter 18.32, Multiple Use Agricultural

Chapter 18.56, Surface Mining Impact Area Combining Zone
Chapter 18.80, Airport Safety Combining Zone ("AS")
Chapter 18.96, Flood Plain Zone
Chapter 18.113, Destination Resorts Zone ("DR")
Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan
Title 23, Deschutes County Comprehensive Plan ("DCCP")
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Appendix C – Transportation Plan

Oregon Administrative Rules ("OAR") - Chapter 660
Chapter 660, Land Conservation and Development Department
Division 12, Transportation Planning
Division 15, Statewide Planning Goals

Oregon Revised Statutes ("ORS")
Chapter 197, Comprehensive Land Use Planning

## II. BACKGROUND AND PROCEDURAL FINDINGS

### A. Nature of Proceeding

This matter comes before the Hearings Officer as a request by Harry and Beverly Fagen ("Applicant") for approval of a quasi-judicial Zone Change ("Zone Change") to change the designation of five of the Subject Properties from the Flood Plain ("FP") zone to the Multiple Use Agricultural ("MUA-10") zone, and to change the designation of eleven of the Subject Properties from a split-zoning designation that is part FP and part MUA-10 so that those properties would be designated wholly MUA-10. The Applicant also seeks to reconfigure the split-zoning designation of one property (TL 400) to reduce the area to which the FP zone applies. All of the Subject Properties are designated Rural Residential Exception Area ("RREA") on the County's Comprehensive Plan Map ("Plan Map").

The Applicant initially submitted the Application as part of a larger request that sought to change the Plan Map designation for other properties near the Subject Properties. The request for the change to the Plan Map for those other properties was separated into a different case file (File Nos. 247-26-000431-PA, 432-ZC) and is no longer part of this request, and this matter involves only the Applicant's request for the Zone Change to the Subject Properties.

The Applicant asserts that the RREA Plan Map designation for the Subject Properties indicates that the Subject Properties are no longer "designated for forest or agricultural use" and, therefore, that the Hearings Officer is to make a decision on the Zone Change rather than a recommendation to the County's Board of Commissioners ("County Board") pursuant to Deschutes County Code ("DCC" or "Code") 22.28.030(A) and (C). No participant in this proceeding disputes that assertion. This Decision therefore considers whether the Applicant has met its burden of proof in a manner that justifies a final determination on the Application.

**B. Notices, Hearing, Record Materials**

The Applicant initially filed the Application on June 30, 2026, and provided supplemental materials during this proceeding. As noted above, the initial request in the Application materials was separated into multiple case files, and staff in the County's Community Development Department ("Staff") confirmed with the Applicant that the case file in this matter was created on July 31, 2026.

On July 21, 2026, after the Application was submitted, but prior to the creation of this separate case file, Staff mailed a Notice of Application identifying the standards and criteria governing the review of the request in the Application and seeking public comment on the Application. On August 20, 2026, Staff mailed a Notice of Public Hearing ("Hearing Notice") to agencies, interested persons, and all property owners within 250 feet of the Subject Properties, announcing a public hearing to be held on September 14, 2026. The Hearing Notice was also published in the Bend Bulletin on August 23, 2026. Notice of the Hearing was submitted to the Department of Land Conservation and Development on August 10, 2026.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on September 14, 2026, opening the Hearing at approximately 2:15 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at approximately 2:35 p.m. No participant requested that the record remain open, and I announced that both the Hearing and the record were closed as of that time.

On September 21, 2026, after the record was closed to all participants, the County received a written submittal from Ann Dahlen providing comments on the request in the Application. That submittal does not explain why the late-filed comments should be included in the record. I therefore find that participant Dahlen's September 21st submittal is not part of the record in this matter.

/ / /

/ / /

### C. Review Period

Staff deemed the Application to be complete on August 30, 2026, and no other participant disputes that date. Based on that date, the deadline for a final County decision under ORS 215.427 – "the 150-day clock" – is January 27, 2027.

## III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

### A. Adoption of Staff Report

On September 8, 2026, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time ("Staff Report").

The Staff Report, although it does not make a final recommendation, does make findings with respect to the applicable criteria, and the Staff Report does not identify any standard or criterion that is not met. The Staff Report asks the Hearings Officer to add to or modify the Staff's findings and to determine if the Applicant has met the burden of proof necessary to justify the Zone Change.

I find that the Staff Report is well-reasoned and fully addresses the applicable standards and criteria based on evidence that is in the record. I therefore adopt the Staff Report as my own findings and incorporate it here by this reference. The Staff Report is also attached to this Decision as Attachment 2.

The remainder of the findings in this Decision supplement the findings and conclusions in the Staff Report. In the event of a conflict between the Staff Report and the findings in this Decision, the findings in this Decision control.

### B. Issues Raised by Other Participants

Other than the Applicant and Staff, three participants submitted comments to the record. The comments from participant Dan Maricich, opposing the Application, were submitted on July 29, 2026, prior to the creation of this case file. Based on their reference to a zone change to allow industrial uses, those comments appear to address the portion of the original Application materials that is no longer part of this proceeding. To the extent those comments were intended to address the Zone Change in this matter, they do not identify any Code provision or otherwise allege that any standard or criterion is not satisfied. I therefore find that these comments are not sufficiently developed to raise an issue that must be addressed, and they do not warrant any changes to the findings presented in the Staff Report.

Participant Carol Schrader similarly submitted comments in opposition to the Application without any reference to a Code provision, and without any assertion that the applicable standards and criteria are not satisfied. Those comments generally allege negative impacts that would result from the Zone Change, like impacts to "traffic flow" and "more congestion", but do not provide a basis for those allegations or include evidence that undermines the information provided by the Applicant relating to transportation impacts. I therefore find that these comments are not

sufficiently developed to raise an issue that must be addressed, and they do not warrant any changes to the findings presented in the Staff Report.

Participant Central Oregon LandWatch ("COLW") submitted comments on July 29, 2026, prior to the creation of this separate case file, but later confirmed that those comments do not apply to the Zone Change in this matter. COLW expressly confirmed that it is neutral with respect to the Zone Change.

### C. Minimum Parcel Size

DCC Section 18.136.020(A) requires the Applicant to demonstrate that the Zone Change conforms to the Comprehensive Plan.

One issue raised in the Application materials relates to the density allowed in the MUA-10 zone. Although the Applicant presents this as an issue relevant to Statewide Planning Goal 14, it is also relevant to Plan Policy 3.1.1. That policy states: "Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." Despite that mandatory language, the Applicant acknowledges that smaller parcels may be approved in the MUA-10 zone under certain circumstances.

To address this density issue, the Applicant proposes a condition of approval that would prohibit dividing the Subject Properties in a manner that results in parcels that are smaller than 10 acres. No other participant addresses that issue or otherwise objects to this condition of approval. Nor does any participant assert that it is not appropriate to condition the Zone Change in this manner.

In light of the mandatory language of Plan Policy 3.1.1., I find that the Applicant's proposed condition is necessary to demonstrate compliance with that policy. I will therefore include such a condition as part of this Decision.

## IV. CONCLUSION AND CONDITION OF APPROVAL

Based on the foregoing findings, I find the Applicant has met its burden of proof with respect to the applicable standards and criteria for approving the requested Zone Change. As a result, the Subject Properties can be redesignated to be wholly within the MUA-10 zone, with the exception of the parcel that is designated as map and tax lot number 161227D000400, which can be split-zoned, with a portion of the parcel remaining in the FP zone and the remainder of the parcel being within the MUA-10 zone as depicted on pages 3 and 4 of Exhibit G to the Application. As a condition of the approval of this Zone Change, the Subject Properties may not be divided in the future in a manner that results in any parcel being smaller than 10 acres.

Dated this 6th day of October 2026



Tommy A. Brooks
Deschutes County Hearings Officer

**ATTACHMENT 1**

Table 1
(List of Subject Properties and Owners)

| Address | Taxlot | Owner |
|---|---|---|
| 21050 Tumalo Road | 161227A002500 | FAGEN FAMILY TRUST |
| 21054 Tumalo Road | 161227A002400 | FAGEN FAMILY TRUST |
| 21060 Tumalo Road | 161227A002300 | 60 TUMALO LLC |
| 21011 Robin Ave. | 161227A003000 | 11 ROBIN LLC |
| 21035 Robin Ave. | 161227A003101 | FAGEN FAMILY TRUST |
| 21025 Tumalo Road | 161227D000400 | FAGEN TRUST |
| 21051 Robin Ave. | 161227A003100 | FAGEN FAMILY TRUST |
| 21059 Robin Ave. | 161227A003100 | FAGEN FAMILY TRUST |
| 21096 Tumalo Road | 161227A001900 | DAHLEN, A R |
| 20989 Tumalo Road | 161227CA00100 | KRISTYN DUEBER LIVING TRUST |
| 21070 Tumalo Road | 161227A002200 | GROZA, ANDREW JOSEPH & JOHANNA JOY |
| 21080 Tumalo Road | 161227A002100 | HARTMAN REVOCABLE TRUST |
| 20954 Tumalo Road | 161227B010001 | HICKEY, PAULA |
| 64879 Half Mile Lane | 161227D000500 | COURTNEY LEE JONES FAMILY TRUST |
| 21086 Tumalo Road | 161227A002000 | KARNES, KENNETH & AMY |
| 20980 Sunset Place | 161227CA00500 | KYLE SULLIVAN & MARY DILL JOINT LIV TRUS |
| 21081 Robin Ave. | 161227A003200 | THOMPSON, JEFFREY ROY |

**STAFF REPORT**

**FILE NUMBER(S):** 247-26-000483-ZC

**SUBJECT PROPERTY/ OWNER:** The subject property consists of multiple parcels, which are described below:

| *Address* | *Taxlot* | *Owner* |
|---|---|---|
| 21050 Tumalo Road | 161227A002500 | FAGEN FAMILY TRUST |
| 21054 Tumalo Road | 161227A002400 | FAGEN FAMILY TRUST |
| 21060 Tumalo Road | 161227A002300 | 60 TUMALO LLC |
| 21011 Robin Ave | 161227A003000 | 11 ROBIN LLC |
| 21035 Robin Ave | 161227A003101 | FAGEN FAMILY TRUST |
| 21025 Tumalo Road | 161227D000400 | FAGEN TRUST |
| 21051 Robin Ave | 161227A003100 | FAGEN FAMILY TRUST |
| 21059 Robin Ave | 161227A003100 | FAGEN FAMILY TRUST |
| 21096 Tumalo Road | 161227A001900 | DAHLEN, A R |
| 20989 Tumalo Road | 161227CA00100 | KRISTYN DUEBER LIVING TRUST |
| 21070 Tumalo Road | 161227A002200 | GROZA, ANDREW JOSEPH & JOHANNA JOY |
| 21080 Tumalo Road | 161227A002100 | HARTMAN REVOCABLE TRUST |
| 20954 Tumalo Road | 161227B010001 | HICKEY, PAULA |
| 64879 Half Mile Lane | 161227D000500 | COURTNEY LEE JONES FAMILY TRUST |
| 21086 Tumalo Road | 161227A002000 | KARNES, KENNETH & AMY |
| 20980 Sunset Place | 161227CA00500 | KYLE SULLIVAN & MARY DILL JOINT LIV TRUS |
| 21081 Robin Ave | 161227A003200 | THOMPSON,JEFFREY ROY |

**APPLICANT:** Harry and Beverly Fagen

**ATTORNEY FOR APPLICANT:** Ken Katzaroff, Schwabe, Williamson & Wyatt

**REQUEST:** Zone Change of five (5) properties from Flood Plain (FP) to Multiple Use Agricultural (MUA-10) and twelve (12) split-zoned properties from FP/MUA-10 to MUA-10

**STAFF CONTACT:** Audrey Stuart, Associate Planner
Phone: 541-388-6679
Email: Audrey.Stuart@deschutes.org

**RECORD:** Record items can be viewed and downloaded from: https://www.deschutescounty.gov/1641/247-26-000483-ZC-Fagen-FP-to-MUA10-Zone-

## I. APPLICABLE CRITERIA

Deschutes County Code ("DCC")
- Title 18, Deschutes County Zoning Ordinance
  - Chapter 18.04, Title, Purpose, and Definitions
  - Chapter 18.32, Multiple Use Agricultural Zone
  - Chapter 18.56, Surface Mining Impact Area Combining Zone
  - Chapter 18.96, Flood Plain Zone
  - Chapter 18.80, Airport Safety Combining Zone
  - Chapter 18.113, Destination Resorts Zone ("DR")
  - Chapter 18.136, Amendments
- Title 22, Deschutes County Development Procedures Ordinance

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

Oregon Administrative Rules ("OAR")
- Chapter 660, Land Conservation and Development Department
  - Division 12, Transportation Planning
  - Division 15, Statewide Planning Goals

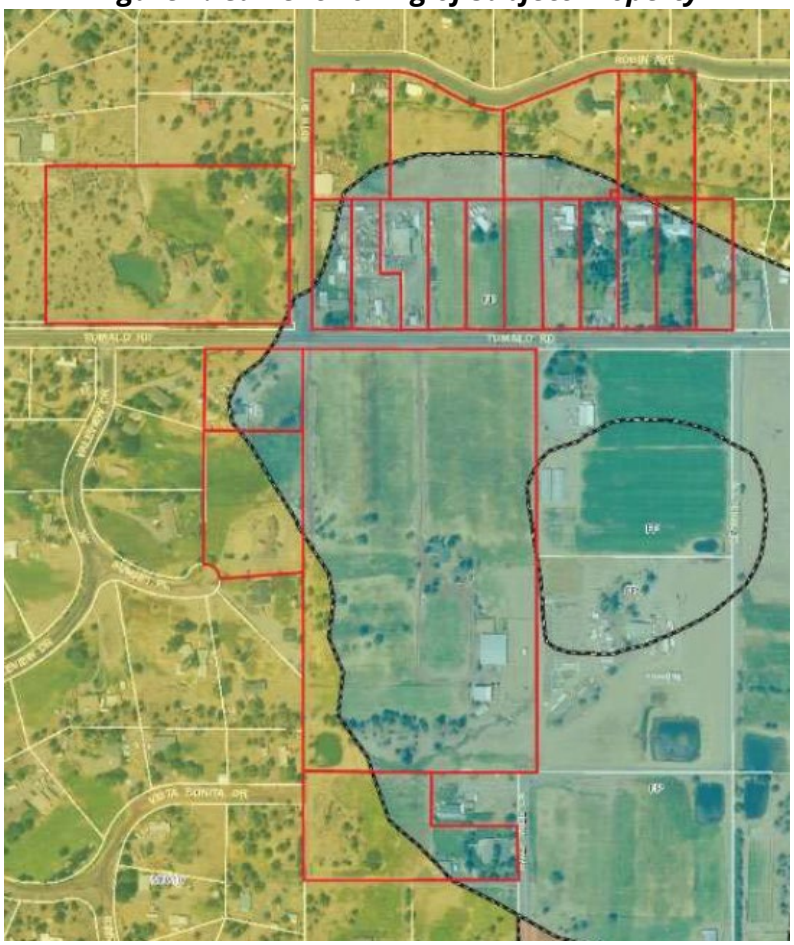
Oregon Revised Statutes ("ORS")
- Chapter 197, Comprehensive Land Use Planning

## II. BASIC FINDINGS

**LOT OF RECORD:** DCC 22.04.040(B)(1) specifies the types of land use applications that require lot of record verification, and a Zone Change is not listed. In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, the Hearings Officer held to a prior zone change decision (*Belveron* ZC-08-04; page 3) that a property's lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, the applicant would be required to receive lot of record verification prior to any development on the subject property. Therefore, this criterion does not apply.

**SITE DESCRIPTION:** The subject property consists of 17 tax lots which are located to the west of 78th Street, to the north and south of Tumalo Road. Five of the properties are zoned entirely FP and 12 of the properties are split-zoned FP and MUA10.

***Figure 1: Current Zoning of Subject Property***




**PROPOSAL:** The applicant requests approval of a Zoning Map Amendment to change the zoning of the subject properties from Flood Plain (FP) and Multiple Use Agricultural (MUA10) to MUA10. The one exception is a small portion of Tax Lot 400, which will retain its FP zoning designation. Approximately 4,000 square feet of the east portion of Tax Lot 400, illustrated in Figure 2 below, is within the special flood hazard area recognized by FEMA through a 2015 Letter of Map Revision (LOMR), which is described in more detail below. The applicant proposes to leave this portion of Tax Lot 400 zoned FP, while changing the remainder of the property's zoning designation to MUA10.

***Figure 2: Tax Lot 400 on Assessor's Map 16-12-27D***

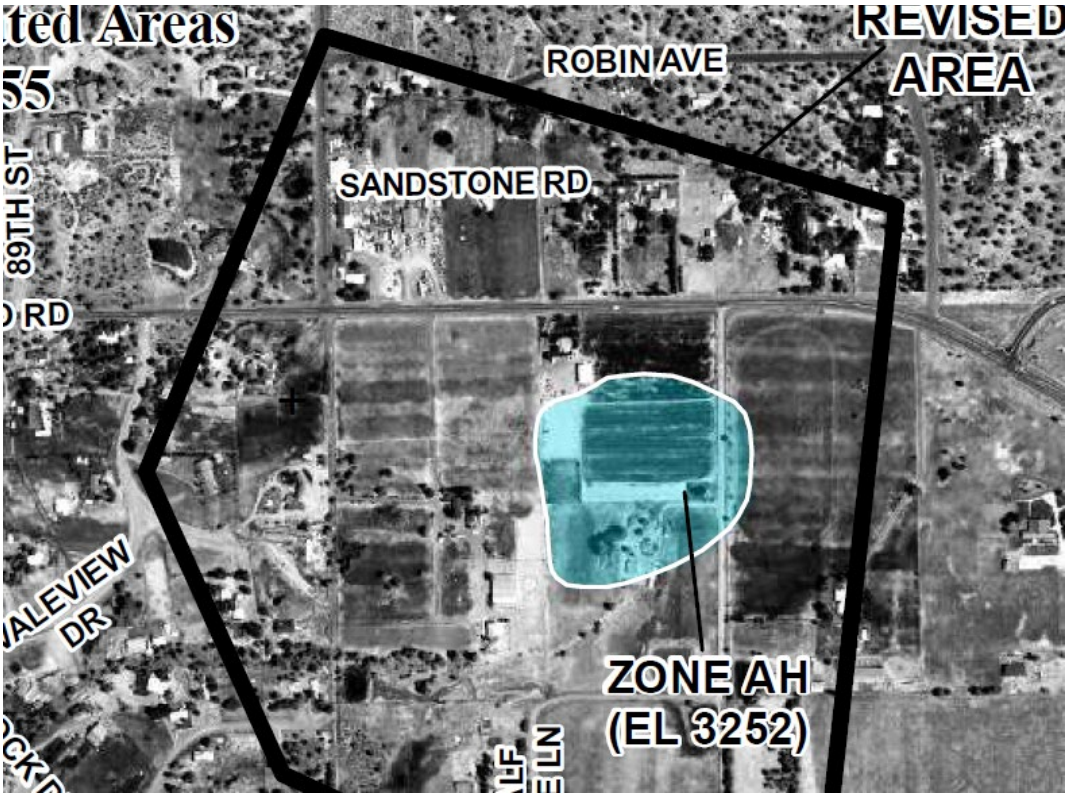



The subject properties all currently have a Comprehensive Plan designation of Rural Residential Exception Area (RREA), and the applicant has not requested a Comprehensive Plan Map Amendment. The application materials include the following explanation of the history of the FP zone on the subject property:

> **FLOODPLAIN HISTORY:** The Deschutes County Flood Plain (FP) Zone includes all areas designated as "Special Flood Hazard Areas" on the Federal Flood Insurance Rate Maps (FIRM). Special Flood Hazards Areas are lands that would be inundated by a 100-year flood event, that are at or below the base flood elevation (BFE). The flood map for the subject properties are FIRM No. 41017C0470E, Effective Date: September 28, 2007. The subject properties are currently wholly or partly located in the FP zone, however, no portion of any of the properties are subject to the one percent chance flood hazard, based on the Letter of Map Revision (LOMR) Case No. 15-10-0345P, effective July 6, 2015 (Exhibit F).

The subject properties are part of a larger area that completed a LOMR with the Federal Emergency Management Agency (FEMA), which recognized that the subject properties are *not* subject to the 100-year flood risk. In the figure below, the blue shaded area is the revised boundary of the FEMA-recognized special flood hazard area, based on the 2015 LOMR.

***Figure 2: Revised FEMA Flood Insurance Rate Map***




The applicant has submitted a traffic analysis prepared by Transight Consulting, LLC dated June 30, 2026, hereafter referred to as "traffic study." Additionally, the applicant has 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.

**PROCEDURAL HISTORY:** The application package for file nos. 247-26-000431-PA, 432-ZC originally included the subject Zone Change request for 17 subject properties. The application package was split into two separate Zone Change files on July 31, 2026. This FP to MUA10 rezone request is being reviewed through file no. 247-26-000483-ZC, while the Rural Industrial rezone is being reviewed through file nos. 247-26-000431-PA, 432-ZC. Staff notes that comments submitted prior to July 31, 2026, were added to the record for both Zone Change applications.

**SURROUNDING LAND USES:** The applicant provided the following description of the surrounding area in the Burden of Proof:

> Abutting the subject properties are properties within the MUA-10 zone and FP zone. Land recently zoned RI is located approximately one-third of a mile to the east near Highway 97, and land zoned EFU-TRB is located generally to the southeast of the subject properties. An approximately 34-acre property zoned Open Space and Conservation (OS&C) and owned by the Oregon Parks and Recreation Department is located further to the southeast. Surrounding land uses are varied, with rural residential dwellings dominating the landscape, mixed with hobby farm uses and rural industrial uses to the east.

The adjacent properties are outlined below in further detail:

*North:* Adjacent properties to the north were platted as part of the First Addition to Whispering Pines Estates subdivision and range in size from 1.96 to 2.96 acres. These properties are primarily developed with single-unit dwellings and accessory structures. Farther north, the First Addition to Whispering Pines Estates subdivision contains lots that are zoned MUA10 and Rural Residential (RR10), and are developed with private residences.

*South:* Properties to the south are zoned MUA10 and Exclusive Farm Use (EFU) and are developed with single-unit dwellings and small-scale farm uses. Approximately 0.19 miles south of the subject properties is a parcel that has received approval for a landscaping business in the EFU zone (Tax Lot 200 on Assessor's Map 16-12-34). A 34-acre open space parcel owned by Oregon Parks and Recreation Department is located to approximately 0.23 miles southeast of the subject property, along Highway 97.

*Southwest:* Properties to the southwest are located within the Ranch El Sereno subdivision and range in size from approximately 1.7 to 3 acres. These lots are predominantly developed with single-unit dwellings and accessory structures.

*East:* Properties immediately to the east of the subject properties are zoned FP, MUA10, and EFU and primarily contain single-unit dwellings and several small-scale farm uses. To the south of Tumalo Road, the neighboring parcels to the east have a Comprehensive Plan designation of Agriculture. North of Tumalo Road, the neighboring parcels to the east have a Comprehensive Plan designation of RREA and were platted as residential lots in the First Addition to Whispering Pines Estates subdivision.

Properties adjacent to Highway 97 contain commercial uses such as a well-drilling and logging business, including a verified nonconforming use in the MUA10 zone. There is a small area located at the intersection of Highway 97 and Tumalo Place which is zoned Rural Commercial and has received approval for a business that sells landscaping materials.

Farther east is an area known as Deschutes Junction, which has historically been developed with commercial and industrial uses. The area to the east of Highway 97 and to the south of Pleasant Ridge Road is heavily developed with industrial uses such as mineral aggregate sale, a fuel yard, and a mini storage facility.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on July 21, 2026, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings

I have reviewed the application materials for file no. 247-26-000431-PA, 432-ZC for a Plan Amendment to change the Comprehensive Plan designation for four (4) properties from Rural Residential Exception Area (RREA) to Rural Industrial (RI) and a corresponding Zone Change of five (5) properties from Flood Plain (FP) to Multiple Use Agricultural (MUA10), twelve (12) split-zoned properties from FP/MUA10 to MUA10, three (#) properties from FP to Rural Industrial (RI), and one (1) split-zoned property from FP/MUA10 to RI. The proposal is associated with the following properties:

| *Address* | *Taxlot* | *Owner* | *Current Base Zone* | *Proposed Base Zone* |
|---|---|---|---|---|
| 21006 Tumalo Road | 161227A002900 | FAGEN FAMILY TRUST | FP, MUA10 | RI |
| 21020 Tumalo Road | 161227A002800 | FAGEN FAMILY TRUST | FP | RI |
| 21028 Tumalo Road | 161227A002700 | FAGEN FAMILY TRUST | FP | RI |
| 21040 Tumalo Road | 161227A002600 | FAGEN FAMILY TRUST | FP | RI |
| 21050 Tumalo Road | 161227A002500 | FAGEN FAMILY TRUST | FP | MUA10 |
| 21054 Tumalo Road | 161227A002400 | FAGEN FAMILY TRUST | FP | MUA10 |
| 21060 Tumalo Road | 161227A002300 | 60 TUMALO LLC | FP | MUA10 |
| 21011 Robin Ave | 161227A003000 | 11 ROBIN LLC | FP, MUA10 | MUA10 |
| 21035 Robin Ave | 161227A003101 | FAGEN FAMILY TRUST | FP, MUA10 | MUA10 |
| 21025 Tumalo Road | 161227D000400 | FAGEN TRUST | FP, MUA10 | MUA10 |
| 21051 Robin Ave | 161227A003100 | FAGEN FAMILY TRUST | FP, MUA10 | MUA10 |
| 21059 Robin Ave | 161227A003100 | FAGEN FAMILY TRUST | FP, MUA10 | MUA10 |
| 21096 Tumalo Road | 161227A001900 | DAHLEN, A R | FP, MUA10 | MUA10 |
| 20989 Tumalo Road | 161227CA00100 | KRISTYN DUEBER LIVING TRUST | FP, MUA10 | MUA10 |
| 21070 Tumalo Road | 161227A002200 | GROZA, ANDREW JOSEPH & JOHANNA JOY | FP | MUA10 |
| 21080 Tumalo Road | 161227A002100 | HARTMAN REVOCABLE TRUST | FP, MUA10 | MUA10 |
| 20954 Tumalo Road | 161227B010001 | HICKEY, PAULA | FP, MUA10 | MUA10 |
| 64879 Half Mile Lane | 161227D000500 | COURTNEY LEE JONES FAMILY TRUST | FP, MUA10 | MUA10 |
| 21086 Tumalo Road | 161227A002000 | KARNES, KENNETH & AMY | FP, MUA10 | MUA10 |
| 20980 Sunset Place | 161227CA00500 | KYLE SULLIVAN & MARY DILL JOINT LIV TRUS | FP, MUA10 | MUA10 |
| 21081 Robin Ave | 161227A003200 | THOMPSON,JEFFREY ROY | FP, MUA10 | MUA10 |

The submitted application materials include a report prepared by Transight Consulting, LLC (dated June 30, 2026 and labeled as Exhibit H) analyzing the proposal's compliance with the Transportation Planning Rule (TPR) and Oregon Statewide Planning Goal 12 per OAR 660-012-0060. Staff generally agrees with the assumptions, methodology, and conclusions outlined in the report supporting the central conclusion that reasonable RI development potential would generate approximately 193 daily weekday vehicle trips and 37 p.m. peak hour trips when compared to the existing zoning designations of the subject properties. Staff further agrees that, even with the anticipated increase in vehicle trips, the Level of Service (LOS) associated with the primary roadways of Tumalo Road and Tumalo Place would remain within acceptable thresholds. Further, the report concludes that the proposal would not change County Road facility classifications or applicable classification standards. Collectively, the report demonstrates the proposal's compliance with Oregon Statewide Planning Goal 12 and TPR. No additional traffic analysis is required beyond this report.

As the subject application does not include a site plan or development proposal, the transportation analysis requirements of DCC 18.116.310 will need to be met during subsequent development review on the subject properties and any necessary mitigations, SDCs, or other relevant transportation improvements or considerations will need to be addressed at that time.

The subject properties primarily take access from various points along Tumalo Road and 8th Street. Tumalo Road is a public road right-of-way maintained by Deschutes County and functionally classified as a Rural Collector. 85th Street is a public road right-of-way maintained by Deschutes County and functionally classified as a Rural Local road. Any subsequent proposals or development on the subject properties will require the applicant(s) to demonstrate compliance with the access permitting requirements of DCC 17.48.210 and DCC 12.28.050.

Board Resolution 2024-038 sets a transportation system development charge (SDC) rate of $5,633 per p.m. peak hour trip. As the plan amendment/zone change by itself does not generate any traffic, no SDCs apply at this time. SDCs will be assessed based on development and/or division of the properties. When development occurs, the SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

**THE PROVIDED SDC BASE RATE IS ONLY VALID UNTIL JUNE 30, 2027 PENDING ANY AMENDMENTS TO THE COUNTY'S CURRENT SDC RESOLUTION 2024-038. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.**

Thanks for the opportunity to comment and please let me know if you have any questions.

[STAFF COMMENT: The transportation comments above respond to both the subject application and file nos. 247-26-000431-PA, 432-ZC.]

Quinn Shubert, Deschutes County Road Department

I have reviewed the submitted Transportation Planning Rule (TPR) analysis for the proposed Comprehensive Plan amendment and zone change associated with the Fagen PAZC / Floodplain MUA-10 and RI application. Staff finds that the report is generally sufficient for the limited purpose of evaluating Transportation Planning Rule / Goal 12 compliance for this land use action.

Staff generally agrees with the report's core conclusion that the proposed rezoning could increase trip generation potential compared to the existing zoning, but that the increase would not create a significant effect on an existing or planned transportation facility under OAR 660-012-0060. The report concludes that the affected study intersections and roadway segment would continue to operate acceptably under the County's adopted performance thresholds with or without the proposed rezone.

Staff also agrees, in general, with the report's framing that a rezone-level TPR analysis is intended to compare reasonable development potential under the existing and proposed zoning designations, rather than to function as a site-specific development traffic impact analysis. The report's use of a reasonable comparative trip-generation scenario is appropriate for this stage of review, provided the record remains clear that any future development proposal may require additional transportation review based on the specific use, site design, access configuration, and trip generation proposed at that time.

With respect to the applicable OAR 660-012-0060 significance standards, staff generally agrees that the proposed amendment would not change the functional classification of an existing or planned transportation facility, would not amend standards implementing a functional classification system, and would not result in travel levels or access conditions inconsistent with the functional classification of affected facilities. Staff also agrees that, based on the operational information provided, the proposal would not cause a facility to fall below adopted performance standards or further degrade a facility that is otherwise projected not to meet those standards.

Staff notes that the report's operational adequacy discussion is important because the proposed zoning does not appear to reduce trip generation potential. The report concludes that the study intersections and roadway segment continue to operate acceptably under the proposed rezone scenario, including in the Tumalo Road / Tumalo Place area. Staff generally accepts this conclusion for purposes of the TPR review, while noting that this analysis should not be interpreted as approval of a specific development plan, access location, driveway configuration, or development intensity.

Staff further notes that the record would be stronger if the report more clearly identified the land use assumptions, acreage assumptions, trip-generation methodology, and any uses or

development intensities that were excluded from the analysis. This is particularly relevant where the proposed RI zoning could allow a range of uses with different trip characteristics. However, staff does not find this issue sufficient to undermine the report's overall conclusion for purposes of this plan amendment and zone change.

Staff also notes that any access permitting, access spacing, frontage improvements, or driveway-related requirements associated with future development should remain subject to review at the time a specific development proposal is submitted. To the extent any affected facility is under another road authority's jurisdiction, the County should ensure that the applicable agency has an opportunity to review the application and provide comments through the County's standard interagency review process.

Overall, while the report could have more clearly articulated certain methodological assumptions and tied them more directly to each individual TPR significance criterion, staff generally accepts the analysis as adequately fulfilling its intended purpose for this Comprehensive Plan amendment and zone change review. Based on the report's conclusion that affected transportation facilities would continue to operate acceptably under adopted performance standards, staff generally agrees that the proposal would not significantly affect an existing or planned transportation facility under OAR 660-012-0060. No additional traffic analysis or transportation mitigation is recommended at this stage, provided that future development remains subject to applicable County and road authority transportation review requirements.

The following agencies did not respond to the notice: Bend Fire Department, Bend Municipal Airport, City of Bend Growth Management Department, Department of Land Conservation and Development, Department of State Lands, Deschutes County Assessor, Oregon Department of Transportation, and Swalley Irrigation District.

**PUBLIC COMMENTS**: The Planning Division mailed notice of the application to all property owners within 250 feet of the subject property on July 21, 2026. 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 August 14, 2026.

Three public comments were received from nearby property owners and Central Oregon LandWatch. Staff notes that one of these was received prior to July 31, 2026, and appears to address both the subject application and file nos. 247-26-000431-PA, 432-ZC.

**NOTICE REQUIREMENT:** On August 20, 2026, the Planning Division mailed a Notice of Public Hearing to all property owners within 250 feet of the subject property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on August 23, 2026. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on August 10, 2026.

**REVIEW PERIOD:** The subject application(s) were submitted on July 31, 2026, and deemed complete by the Planning Division on August 30, 2026. The 150th day on which the County must take final

action on this application is January 27, 2027.

**LAND USE HISTORY:** The applicant provided the following summary of land use permits for the subject properties, which has been edited for clarity by staff.

| **Owner** | **Map and Tax Lot** | **Land Use History** |
|---|---|---|
| Paula Hickey | 161227B010001 | SMA-00-26 (Approval of a single-family dwelling) |
| Fagen Family Trust | 161227A002500 | CU-84-52 (Approval of CUP for a mobile home) |
| Fagen Family Trust | 161227A002400 | None |
| 60 Tumalo LLC | 161227A002300 | CU-99-33 (Approval of a CUP for a dwelling); CU-02-6 (Approval of a CUP for an addition to an existing dwelling) |
| Andrew Joseph Groza & Johanna Joy | 161227A002200 | CU-90-48 (Approval of a CUP for replacement of a mobile home) |
| Hartman Revocable Trust | 161227A002100 | CU-02-59 (Approval of a CUP for a manufactured home) |
| Kenneth & Amy Karnes | 161227A002000 | 24 7-22-000525-LL |
| Amy Dahlen | 161227A001900 | None |
| Kristyn Dueber Living Trust | 161227CA00100 | 247-20-000128-AD (Approval of conversion of a detached garage to a residential accessory structure) |
| Kyle Sullivan & Mary Dill Joint Living Trust | 161227CA00500 | LL-97-12 |
| Fagen Trust | 161227D000400 | 24 7-24-00077-LR (Approval of Lot of Record Verification and Site Plan Review, to construct a dwelling addition) |
| Courtney Lee Jones Family Trust | 161227D000500 | LR-07-3; LL-07-13 |
| 11 Robin LLC | 161227A003000 | V-92-6 (Approval of a variance to permit an existing barn) |
| Fagen Family Trust | 161227A003101 | None |
| Fagen Family Trust | 161227A003100 | 24 7-23-000208-AD (Approval to construct a septic system in the FP zone); 24 7-25-000045-PADU (Approval to convert an existing historic home to an ADU) |
| Jeffrey Roy Thompson | 161227A003200 | LDP-79-9 (Location and Development Plan for manufactured home) |
| Fagen Family Trust et al | 161227A003102 | None |

## III. FINDINGS & CONCLUSIONS

**Title 18 of the Deschutes County Code, County Zoning**

**Chapter 18.96, Flood Plain Zone**

Section 18.96.020, Designated Areas

***The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" revised September 28, 2007, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department.***

***The Flood Plain Zone shall include all areas designated as "Special Flood Hazard Areas" by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the Flood Insurance Study, the Planning Director will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources in determining the location of a flood plain or floodway.***

**FINDING:** Staff includes DCC 18.96.020 for reference, as it provides background on the establishment of the Flood Plain zone boundary. The 17 tax lots are part of a larger area, located to the west of Highway 97 and along Tumalo Road, which was designated as an isolated pocket of special flood hazard area by the 2007 Flood Insurance Study.

Section 18.96.130, Interpretation Of FIRM Boundaries

***The Planning Director shall make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). Such interpretations shall be processed as a development action pursuant to Chapter 22.16.***

***Where Flood Plain zoned land has been recognized as above the base flood elevation in a FEMA Letter of Map Change, uses and structures on such land shall be exempt from 18.96.080(D); 18.96.080(E); 18.96.080(G)(1), (2), and (3); 18.96.080(H); and 18.96.085.***

**FINDING:** Staff also includes this code section for reference. Importantly, DCC 18.96.130 acknowledges the potential for property owners to refine the flood insurance maps through FEMA as new elevation data becomes available. The drafters of DCC 18.96 clearly contemplated that the special flood hazard area, as delineated on the 2007 Flood Insurance Study, would be updated as individual property owners completed a Letter of Map Change[1] process through FEMA. DCC 18.96.130 exempts these "over-mapped" portions of the FP zone from certain code provisions related to flood-proofed construction but clearly does not remove the FP base zone. County staff has historically interpreted this code section to mean that a separate Zone Change application is

[1] https://www.fema.gov/flood-maps/change-your-flood-zone/loma-lomr-f

required to remove the FP zoning, even when a property has gone through a Letter of Map Change through FEMA.

**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, with written consent from the property owners, has requested a quasi-judicial zoning map amendment and filed the application for a zone change. The applicant has filed the required Planning Division land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

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:***

**FINDING:** Staff notes that the Hearings Officer recently addressed the introductory 'public interest is best served' language in *BCL* and interpreted the standard in conjunction with the factors identified in DCC 18.136.020(A)-(D). The Board adopted and added onto the Hearings Officer's findings in *BCL* and provided the following interpretation:

> ...COLW continued to argue to the Board that DCC 18.136.020 requires that an applicant show both that the factors in (A) through (D) are met and independently demonstrate that the rezoning best serves the public interest. The Board considered the countervailing arguments carefully and finds the Hearings Officers analysis to be sound and correct. The Board adopts the Hearings Officer's interpretation of DCC 18.136.020. Board interprets 'public interest is best served' to mean compliance with subsections (A)-(D).

Staff requests the Hearings Officer apply the introductory standard consistently with the Code and prior decisions to the extent applicable.

***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:

In previous decisions, the Hearings Officer found the introductory statement and goals are not approval criteria for the proposed plan amendment and zone change[2]. 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 affects 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, which 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

[2] *Powell/Ramsey* decision (PA-14-2 / ZC-14-2) and *Landholdings* Decision (247-16-000317-ZC / 318-PA).

for activities which may have effects beyond physical changes of the land (Emphases added.)

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/and 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 policies that the *Landholdings* Hearings Officer found to apply include the following...

The applicant utilized this analysis, as well as analyses provided in prior Hearings Officers' decisions to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed in the Comprehensive Plan section of this staff report in further detail. Staff generally agrees with the applicant's analysis and finds the above provision to be met based on Comprehensive Plan conformance as demonstrated 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 proposes to change the zoning of portions of the subject properties to MUA10. DCC 18.32.010 provides the following purpose statement for the MUA10 zone:

> 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 applicant provided the following response in the submitted burden of proof:

> The areas within the subject properties that are included in this application do not currently meet the definition of flood plain (1 % flood hazard) and therefore are not consistent with the purpose and intent of its existing FP zoning. As described herein, the purpose of the Zone Change and Comprehensive Plan Map Amendment is to largely correct a mapping error, which is the result of a Letter of Map Revision (LOMR), which officially removed portions of Flood Plain from the subject properties in 2015. According to the Deschutes County Code (DCC), the FP zone includes all areas designated as "Special Flood Hazard Areas" on the Federal Flood Insurance Rate Maps (FIRM).6 However, while the subject properties are all, or partly, currently located in the FP zone, no portion within any of the properties included in this application are now subject to the one percent chance flood hazard, as was recognized in the FIRM with a Letter of Map Revision (LOMR) Case No. 15- 10-0345P, effective July 6, 2015 (Exhibit F).
>
> The purpose and intent of the MUA-10 zone preserves the rural character of the land and allows uses consistent with that character. The MUA-10 zone will preserve non-agricultural soil for future part-time or diversified agricultural use. The low-density of development allowed by the MUA-10 zone will conserve open spaces and protect natural and scenic resources. This low level of potential development will also help maintain and improve the quality of the air, water, and land resources of the County. The subject properties largely abut existing MUA-10 zoned land to the north, south, and west and will thus continue to

provide a proper transition zone from EFU rural zoning to other urban land uses in the area upon rezoning.

Staff concurs with this analysis and finds that the proposed MUA10 zoning aligns with the existing Comprehensive Plan designation for the subject property. In addition, 12 of the subject properties are currently split-zoned and contain some MUA10-zoned land.

***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:** Although there are no plans to develop the properties in their current state, the above criterion specifically asks if the proposed zone exchange will *presently* serve public health, safety, and welfare. The applicant provided the following response in the submitted burden of proof statement:

> Necessary public facilities and services are available to serve the subject properties, including electrical power from Pacific Power and water service from on-site wells. Transportation access to the properties are existing and readily available from Highway 20, Tumalo Road, Half Mile Lane, Robin Avenue, and Sunset Place.
>
> The Transportation Study, prepared by Transight Consulting LLC (Exhibit H), finds that a reasonable "worst-case" comparative trip generation scenario shows that the proposed rezoning of the floodplain lands to a combination of Multiple Use Agricultural (MUA-10) and Rural Industrial (RI) zoning could generate a higher number of weekday daily and weekday p.m. peak hour trips. However, while the analysis shows potential increases in trip generation, the additional trips do not create a significant impact, with the transportation facilities continuing to operate acceptably per the County's adopted performance thresholds.
>
> The subject properties receive police services from the Deschutes County Sheriff and are located within the Bend Rural Fire/Deschutes County Rural Fire Protection District #2 fire district. Neighboring properties contain rural residential uses, which have water service from 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.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the properties, the applicant would 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.

As noted above, 12 of the 17 subject properties are currently partially zoned MUA10. These properties are primarily developed with single-unit dwellings and accessory structures, and public

services appear to have been adequate to serve this existing development. Staff notes that rezoning the remainder of these properties to MUA10 will not significantly change the strain on public services and facilities.

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

**FINDING:** As described herein, immediately surrounding properties are zoned FP and MUA10 and primarily contain rural residential development. The larger surrounding area includes commercial and industrial uses located to the east of the subject properties, along Highway 97. The applicant provided the following response in the submitted burden of proof statement:

> The proposed MUA-10 zoning is consistent with the specific goals and policies in the Comprehensive Plan discussed above. The MUA-10 zoning allows rural uses consistent with the uses of many other properties in the area of the subject properties, including rural residential uses.
>
> …Approval of the subject application will not impose new impacts on MUA-10 or EFU-zoned land adjacent to or nearby the subject properties because many of those properties are residential properties, hobby farms, already developed with dwellings, not engaged in commercial farm use, are idle, or are otherwise not suited for farm use due to soil conditions, topography, or ability to make a profit farming. As discussed below, the subject properties are not agricultural land.

In addition to these comments, the applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. Staff finds the applicant has demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

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

**FINDING:** The applicant proposes to rezone the properties from FP and FP/MUA to MUA. The applicant provided the following response in the submitted burden of proof statement:

> **1. Mistake:** The original FP zoning across the subject properties appears to have been a mistake at the time of its original designation that has now been corrected through issuance of a Letter of Map Revision (LOMR), which officially changed/removed the area of the subject flood plain from the subject properties in 2015. This official map revision reduced the amount of land within this mapped flood plain from approximately 87 acres to less than 10 acres (See Figures 1 and 2, above). In addition, the FP zoning itself cannot be overlayed on RREA Comprehensive Plan designated properties. The Comprehensive Plan only authorizes RR-10 and MUA-10 zoning, so the FP zoning over the RREA designation constitutes a mistake to be corrected.

**2. Change in Circumstances:** There has been a change in circumstances since the subject properties were last zoned. The purpose of the Zone Change and Comprehensive Plan Map Amendment is to largely correct a mapping error, which is the result of a Letter of Map Revision (LOMR), which officially changed/removed the area of the subject flood plain from the subject properties in 2015. This official map revision reduced the amount of land within this mapped flood plain from approximately 87 acres to less than 10 acres (See Figures 1 and 2, above).

The Deschutes County Code (DCC) makes clear that the FP zone includes all areas designated as "Special Flood Hazard Areas" on the Federal Flood Insurance Rate Maps (FIRM).[3] However, no portion of land within any of the properties included in this application are now subject to the one percent chance flood hazard, as was recognized in the FIRM pursuant to LOMR, Case No. 15-10-0345P, effective July 6, 2015 (Exhibit F). Accordingly, lands within the Subject Properties that were once within the Flood Plain are now no longer. The LOMR is shown above in Figure 1.

In addition to correcting the County's zoning and Comprehensive Plan maps to reflect the LOMR, the subject application also aims to correct an existing zoning inconsistency with the Comprehensive Plan: namely that the Comprehensive Plan does not permit the RREA designation to include FP zoning. Approval of the subject application will ensure that 17 properties zoned FP or split-zoned FP/MUA-10 are brought up to conformity with the Comprehensive Plan in this regard.

Staff concurs with the applicant's statement that the 2015 LOMR provides more accurate information regarding the boundary of the special flood hazard area and represents a change in circumstances since the property was last zoned. In *Central Oregon LandWatch v. Deschutes County* (*Destiny Court*), LUBA No. 2025-015, the Land Use Board of Appeals (LUBA) provided the following guidance on whether a site-specific soil study constitutes a "change in circumstances" for the purpose of this criterion:

> However, we agree with respondents that the Order 1 soil study can be viewed as a "change in circumstances" for purposes of DCC 18.136.020(D)...
>
> The board of commissioners adopted the hearings officer's findings concluding that the new and more detailed information provided by the soils study is sufficient to constitute a "change in circumstance" for purposes of DCC 18.136.020(D). We understand those incorporated findings to embody an implicit interpretation of the phrase "change in circumstances." The board of commissioners clearly understood the phrase "change in circumstances" to encompass more than physical changes to the soil or site conditions, and

[3] Special Flood Hazards Areas are lands that would be inundated by a 100-year flood event, that are at or below the base flood elevation (BFE). The flood map for this area is FIRM No. 41017C0470E, which has an effective date of September 28, 2007.

to broadly include development of new information that fundamentally challenges the agricultural status of the property.

The subject application does not involve a soil study, but staff finds the LUBA analysis above is applicable because it clarifies that updated, property-specific studies can constitute a 'change in circumstances.' As described herein, the Flood Plain zone boundary does not automatically update if a property completes a Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) to refine the flood insurance rate map through FEMA. Therefore, a Zone Change application is required to amend the Flood Plain zone boundary to reflect the new information.

**Deschutes County Comprehensive Plan**

**Chapter 2, Resource Management**

Section 2.5, Water Resources

***Floodplains***

***Federal Emergency Management Agency Maps***
***The Federal Emergency Management Agency (FEMA) maps flood-plains adjacent to the following rivers and streams in Deschutes County. The floodplain along these rivers and streams is recognized in a Flood Plain zone by the County.***

**Table 2.5.6 - Floodplains Adjacent to Rivers and Streams**

| | |
|---|---|
| • Deschutes River | • Long Prairie |
| • Little Deschutes River | • Dry River |
| • Whychus Creek | • Spring River |
| • Crooked River | • Indian Ford Creek |
| • Paulina Creek | |

Source: Deschutes County GIS

***Floodplains are defined as the lowland and relatively flat areas adjoining inland waters including at a minimum, that area subject to a one percent (100-year recurrence) or greater chance of flooding in any one year. Generally, river flooding along the Deschutes River has not historically been a serious problem in Deschutes County. This is due to the porous nature of the local geology, irrigation diversion canals and reservoir retention. Studies completed by the U.S. Army Corp of Engineers have resulted in designating a 100 year flood-plain for the Little Deschutes River and Whychus Creek. Regular flooding events have occurred near the headwaters of Tumalo Creek and in the Tumalo community. Along Whychus Creek, the city of Sisters frequently experiences flooding, with the most significant event occurring in 1964 (see also Section 3.5).***

***In 2019, Deschutes County amended the Flood Plain Zone to define split zoned properties as they exist in the Flood Plain Zone and created procedures to guide division of these split zoned properties.***

***In 2019, Deschutes County amended its Flood Plain Zone to incorporate additional standards from the 2014 DLCD Model Flood Ordinance.***

***The purpose of the Zone is to continue promoting public health, safety, and general welfare, and minimize losses due to flood conditions in specific areas. It is designed to:***
***(1) Protect human life and health;***
***(2) Minimize expenditure of public money and costly flood control projects;***
***(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;***
***(4) Minimize prolonged business interruptions;***
***(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;***
***(6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;***
***(7) Ensure that potential buyers are notified that property is in an area of special flood hazard; and,***
***(8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.***

***The Zone also provides riparian area conservation along inventoried rivers and streams for fish and wildlife and preservation of significant scenic and natural resources. Comprehensive plan policies for Water Resources (Section 2.5), Wildlife Resources (Section 2.6), Open Space and Scenic Views and Sites Resources (Section 2.7), and the corresponding development standards in Title 18 implement protections pertaining to Goal 5.***

**FINDING:** This section of the Comprehensive Plan does not include specific goals or policies, but provides background on the purpose of the FP zone. The proposed zone change is consistent with DCCP Section 2.5 because it would remove the FP zoning designation from areas that have been identified by FEMA as outside of the 100-year flood plain ("special flood hazard area"). Refining the boundary of the County-designated FP zone to align with FEMA's flood insurance maps is consistent with this section of the Comprehensive Plan.

This section of the Comprehensive Plan clarifies that the FP zone is intended to conserve riparian areas *along inventoried rivers and streams*, and staff finds the subject property is not located along one of the inventoried waterways. Removing the FP zoning from the subject property does not remove the protections offered by Section 2.5, 2.6, or 2.7 of the Comprehensive Plan.

The 2015 Letter of Map Revision (LOMR) revised the effective FEMA flood-hazard mapping applicable to this area. The LOMR did not itself amend the County zoning map and does not, by itself, determine whether land is included in a separately acknowledged wetland or other Goal 5

resource inventory. Staff therefore addresses current FEMA flood-hazard status, County FP zoning, and any applicable Goal 5 resource inventory separately.

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 provided the following response to this policy in the Burden of Proof:

> The Applicant is not proposing a specific development proposal or proposing a significant land use at this time. Therefore, the Applicant is not required to demonstrate water impacts associated with development. Regardless, the zone change should have little or no impact on water resources. If applicable, the Applicant, or another Applicant, will be required to address this criterion during future development on the subject properties which would be reviewed under any necessary land use process. This criterion, therefore, does not apply because no pending development proposal or use of the subject properties are proposed in association with this application.

Staff includes the following findings from *Aceti IV* (247-20-000438-PA, 439-ZC) for reference. In this previous land use decision, the Hearings Officer and the Board made the following findings:

> The Hearings Officer found in *Aceti 1* that this policy is directed at the County. In said decision, the Hearings Officer cited a previous decision of Hearings Officer Green for file nos. PA-14-2 and ZC-14-2 that stated, "Nevertheless, in my decision in *NNP* I held it is not clear from this plan language what "water impacts" require review -- impacts to water supplies from use or consumption on the subject property, or Impacts to off-site water resources from development on the subject property." The Applicant has not proposed any particular land use or development, and any subsequent applications for development of the subject property would be reviewed under the County's land use regulations that include consideration of a variety of on- and off-site impacts.
>
> The Hearings Officer finds it is premature to review "water impacts" because the Applicant has not proposed any particular land use or development. Thus, there are no "significant land uses or developments" that must be reviewed or addressed in this decision. Any subsequent applications for development of the subject property will be reviewed under the County's land use regulations, which include consideration of a variety of on- and off-site impacts. Notwithstanding this statement, the Hearings Officer includes the following findings.
>
> The Applicant's requested zone change to RI would allow a variety of land uses on the subject property. The land east of the subject property (57 acres) is zoned RI and developed with a variety of rural industrial uses. Consequently, it is likely that similar development may occur

on the property if it were re-designated and rezoned to RI. In light of existing uses in the surrounding area, and the fact that Avion Water Company provides water service in the Deschutes Junction area, and a 12-inch diameter Avion water line and two fire hydrants are already installed on site, future development of the subject property with uses permitted in the RI Zone will have water service.

The subject property has 16 acres of irrigation water rights and, therefore, the proposed plan amendment and zone change will result in the loss or transfer of water rights unless it is possible to bring some irrigated water to the land for other allowed beneficial uses, such as irrigated landscaping. As stated in the Applicant's Burden of Proof, the 16 acres of irrigation water rights are undeliverable and are not mentioned in the property deed. The Applicant has not grown a crop on the subject property or effectively used his water right since the overpass was constructed in 1998.

The Hearings Officer finds that the proposal will not, in and of itself, result in any adverse water impacts. The proposal does not request approval of any significant land uses or development.

No specific development is proposed at this time and staff generally agrees with the applicant's analysis, but requests the Hearings Officer modify these findings as they see fit.

Section 2.7, Open Spaces, Scenic Views and Sites

***Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic view and sites.***

***Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.***

***Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.***

**FINDING:** The submitted burden of proof includes the following analysis:

The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. The subject properties are not within the LM combining zone.

Staff agrees with the applicant's analysis and confirms that the Landscape Management Combining Zone does not apply to the subject property. Staff notes that DCC 18.96.010 includes the following purpose statement for the FP zone:

The purposes of the Flood Plain Zone are: To implement the Comprehensive Plan Flooding Section; to protect the public from the hazards associated with flood plains; to conserve important riparian areas along rivers and streams for the maintenance of the fish and

wildlife resources; and to preserve significant scenic and natural resources while balancing the public interests with those of individual property owners in the designated areas.

As described above, the subject property is part of an isolated pocket of low-lying land that was identified as special flood hazard area on the 2007 Flood Insurance Study. The subject property is not adjacent to a stream or river and does not contain any riparian area. The subject properties are located approximately 0.15 miles from the Landscape Management Combining Zone associated with Highway 97. The subject zone change will not modify or remove any provisions of DCC 18.84, which are the local code provisions that implement these policies regarding open space and scenic area preservation. Therefore, while portions of the FP zone in Deschutes County certainly overlap with significant open spaces and scenic resources, staff finds the subject properties have not been identified as such.

**Chapter 3, Rural Growth**

Section 3.2, Rural Development

***Growth Potential***

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

- ***2009 legislation permits a new analysis of agricultural designated lands***
- ***Exceptions can be granted from the Statewide Planning Goals***
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

**FINDING:** This section of the Comprehensive Plan does not contain goals or policies, but does provide the guidance above. In file nos. 247-24-000097-PA, 98-ZC 247-25-000021-MA (*BCL*), the Hearings Officer and Board made the following findings regarding this Comprehensive Plan section:

> The Hearings Officer agrees with Applicant that this part of the Comprehensive Plan is not a relevant approval criteria. The Hearings Officer finds the language in this section is purely aspirational and provides no clear and objective standards which must be met by an applicant for a plan and zone change.

The applicant does not propose to create new residential lots and a single-unit dwelling is permitted outright in the MUA10 zone pursuant to DCC 18.32.020(B). The subject property is currently designated RREA and has therefore received an exception to Goal 3 and Goal 4. However, to the extent the Hearings Officer finds this section of the Comprehensive Plan applies to the subject proposal, staff requests they modify these findings as they see fit.

Section 3.3, Rural Housing

***Rural Residential Exception Areas***

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

***In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a nonresource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.***

**FINDING:** Staff includes this section for context, as the subject properties currently have a Comprehensive Plan designation of RREA. This demonstrates that the properties were previously reviewed under Statewide Planning Goal 2 to explain why these lands did not warrant farm or forest zoning. Staff therefore finds that the subject property was previously determined not to be farm or forest land. The applicant provided the following response to the Burden of Proof:

> Prior Hearings Officer's decisions have found that Section 3.3 is not a plan policy or directive.[4] Further, no goal exception to Statewide Planning Goal 3 is required for the subject application because the subject properties do 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 RREA plan designation is the appropriate plan designation for the 17 proposed properties to be rezoned from FP and FP/MUA-10 to MUA-10.

No change is proposed to the RREA Comprehensive Plan designation of the subject properties. Staff therefore finds the subject Zone Change will comply with this Comprehensive Plan section.

Section 3.5, Natural Hazards

***Policy 3.5.10 Regulate development in designated floodplains identified on the Deschutes County Zoning Map based on Federal Emergency Management Act regulations.***

[4] See PA-11-17/ZC-11-2, 247-16-000317-ZC/318-PA, and 247-18-000485-PA/486-ZC.

**FINDING:** FEMA regulations for development within the special flood hazard area are implemented through DCC 18.96. The proposed zone change is consistent with this policy, because it will update the designated floodplain identified on the Deschutes County Zoning Map to align with the special flood hazard area identified by FEMA. The applicant's proposal would not remove any FEMA regulations from land that is identified by FEMA as special flood hazard area.

***Policy 3.5.11 Review and revise County Code as needed to:***

***…***

***f. Make the Floodplain Zone a combining zone and explore ways to minimize and mitigate floodplain impacts***

**FINDING:** This policy is directed towards the County and the applicant's proposal would not convert the FP zone from a base zone to a combining zone. Further, staff finds the applicant is not required, under this policy, to explore ways to minimize and mitigate floodplain impacts.

Section 3.7, Transportation

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

***…***

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

***…***

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

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

Section 3.10, Area Specific Policies

***Deschutes Junction***

***Policy 3.10.5 Maximize protection of the rural character of neighborhoods in the Deschutes Junction area while recognizing the intended development of properties designated for commercial, industrial and agricultural uses.***

**FINDING:** The applicant provided the following response to this Comprehensive Plan section:

There do not appear to be any clear or codified boundaries of the Deschutes Junction area,

described in Policy 3.10.5, above. Nevertheless, even if the subject properties were in Deschutes Junction, the proposed redesignation and rezoning can be found consistent with this policy. The purpose and intent of the MUA-10 zone preserves the rural character of the land and allows uses consistent with that character. The MUA-10 zone will preserve non-agricultural soil for future part-time or diversified agricultural use. The low-density of development allowed by the MUA-10 zone will conserve open spaces and protect natural and scenic resources. This low level of potential development will also help maintain and improve the quality of the air, water, and land resources of the County.

Staff notes that Section 3.4 of the Comprehensive Plan provides the following description of the Deschutes Junction boundary:

> The Deschutes Junction site consists of the following tax lots: 161226C000107 (9.05 acres),16126C000106 (4.33 acres), 161226C000102 (1.41 acres), 161226C000114 (2.50 acres), portions 161226C000300 (12.9 acres). 161226C000301 (8.93 acres), 161226A000203 (1.5 acres) and those portions of 161226C000111 located west of the Burlington Northern-Santa Fe railroad tracks (16.45 acres). Generally, the Deschutes Junction site is bordered on the west by Highway 97, on the east by the Burlington Northern Railroad, on the north by Nichols Market Road (except for a portion of 1612226A000111), and on the south by EFU-zoned property owned by the City of Bend.

While the subject property is not located within the tax lots listed above, it is located within the general vicinity of Deschutes Junction. Staff therefore finds the proposal is subject to this policy, as it is located within "neighborhoods in the Deschutes Junction area." Staff concurs with the applicant's statement that the proposed MUA10 zoning will preserve the rural character of the subject properties.

## OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

### Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

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

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

**FINDING:** The applicant provided the following response in the Burden of Proof:

The subject properties and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands "are those lands acknowledged as forest lands as of the date of adoption of this goal amendment." The subject properties do not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that "where a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources." The proposed Comprehensive Plan map amendment does not involve any forest land. The subject properties do not contain any merchantable timber and are not located in a forested part of Deschutes County.

The subject properties are not zoned for forest lands, do not contain merchantable tree species, and there is no evidence in the record that the properties have been employed for forestry uses historically.

Staff agrees with the applicant's analysis and finds the subject properties are not forest lands, as defined in Goal 4.

**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:** The applicant provided the following statement regarding the applicability of Goal 3:

State law requires the County to determine if the subject property has resource values that merit protection under State law. In 1979, Deschutes County applied an agricultural plan designation on properties based on limited and general information about the nature of the soils found in the area. The County must also determine if the property has forest resources that merit protection under Goal 4. In this case, it is clear that the subject property is not Goal 3 agricultural land or Goal 4 forest land.

Staff concurs with the applicant and finds the subject property is not designated as agricultural land.

OAR 660-033-0020, Definitions

***For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:***
***(1)(a) "Agricultural Land" as defined in Goal 3 includes:***

***(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon[5];***

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

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

***(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;***

***(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 currently designated RREA and is therefore within an acknowledged exception area for Goals 3 or 4.

OAR 660-033-0030, Identifying Agricultural Land

***(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 has not requested a map amendment for land planned or zoned for exclusive farm use, forest use or mixed farm-forest use. Staff therefore finds the methodology described in OAR 660-033-0030 for determining soil capability is not applicable.

**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***

[5] 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.

***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:** This above language is applicable to the proposal because it involves an amendment to the County zoning map. The proposal would change the zoning designation of the subject properties from MUA10 and FP to MUA10. The applicant is not proposing any land use development of the property at this time.

The applicant submitted a Transportation Planning Rule ("TPR") assessment, Exhibit H, dated June 30, 2026, and prepared by Joe Bessman, PE, of Transight Consulting LLC. This TPR assessment was reviewed by the County Transportation Planner, who agreed with the report's conclusions. Staff finds that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area. The proposed zone change will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. The County Transportation Planner provided the following comments in an email dated March 5, 2025:

> The submitted application materials include a report prepared by Transight Consulting, LLC (dated June 30, 2026 and labeled as Exhibit H) analyzing the proposal's compliance with the Transportation Planning Rule (TPR) and Oregon Statewide Planning Goal 12 per OAR 660-012-0060. Staff generally agrees with the assumptions, methodology, and conclusions outlined in the report supporting the central conclusion that reasonable RI development potential would generate approximately 193 daily weekday vehicle trips and 37 p.m. peak hour trips when compared to the existing zoning designations of the subject properties. Staff

further agrees that, even with the anticipated increase in vehicle trips, the Level of Service (LOS) associated with the primary roadways of Tumalo Road and Tumalo Place would remain within acceptable thresholds. Further, the report concludes that the proposal would not change County Road facility classifications or applicable classification standards. Collectively, the report demonstrates the proposal's compliance with Oregon Statewide Planning Goal 12 and TPR. No additional traffic analysis is required beyond this report.

As the subject application does not include a site plan or development proposal, the transportation analysis requirements of DCC 18.116.310 will need to be met during subsequent development review on the subject properties and any necessary mitigations, SDCs, or other relevant transportation improvements or considerations will need to be addressed at that time.

The subject properties primarily take access from various points along Tumalo Road and 8th Street. Tumalo Road is a public road right-of-way maintained by Deschutes County and functionally classified as a Rural Collector. 85th Street is a public road right-of-way maintained by Deschutes County and functionally classified as a Rural Local road. Any subsequent proposals or development on the subject properties will require the applicant(s) to demonstrate compliance with the access permitting requirements of DCC 17.48.210 and DCC 12.28.050.

The submitted TPR memorandum addresses both the subject application and the Rural Industrial zone change that is being concurrently reviewed through file nos. 247-26-000431-PA, 432-ZC. Staff therefore notes that certain sections of the memorandum are not applicable to the subject application. Based on the County Senior Transportation Planner's comments and the traffic study from Transight Consulting LLC, staff finds compliance with the Transportation Planning Rule has been effectively demonstrated. Staff notes the public comments related to traffic impacts and asks the Hearings Officer to make specific findings related to these criteria.

## DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

**FINDING:** The Statewide Planning Goals and the applicant's findings are quoted outlined below:

**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**. Goal 3 is not applicable because the subject properties do not include any lands that are zoned for, or that support, farm uses. The subject properties are not Agricultural Land.

**Goal 4, Forest Lands**. Goal 4 is not applicable because the subject properties do not include any lands that are zoned for, or that support, forest uses. Forest land is defined by OAR 660-005-0010 as lands suitable for commercial forest use protection under Goal 4, which are identified using NCRS soil survey maps to determine average annual wood fiber production figures.

**Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces.** The subject properties are not within the Landscape Management (LM) Combining Zone. The FP Zone is not a Goal 5 zone and does not include any program to achieve the goal for any Goal 5 compliance. It does, however, include certain standards regarding stream setbacks for protection of natural resources, generally. For example, the purpose statement notes one purpose is to "conserve important riparian areas along rivers and streams for the maintenance of the fish and wildlife resources" – which would not apply in this instance because no rivers or streams or associated riparian areas exist on the subject properties.

**Goal 6, Air, Water, and Land Resources Quality.** Approval of this application will not impact the quality of the air, water, and land resources of Deschutes County. Any future development of the subject properties 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 Property Information (DIAL), the entirety of Deschutes County, including the subject properties, are located in a Wildfire Hazard Area. Rezoning and redesignating the properties to MUA-10 and RI does not change the Wildfire Hazard Area designation. Any future development of the subject properties 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 subject properties are not planned to meet the recreational needs of Deschutes County. Therefore, the proposed rezone and redesignation will not impact the recreational needs of Deschutes County.

**Goal 9, Economy of the State.** This goal does not apply to this application because the subject properties are 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. This goal is to provide adequate opportunities throughout the state for a variety of economic activities. The proposed Comprehensive Plan map amendment and Zone Change of four (4)

properties to RI is consistent with this goal because it will provide opportunities for economic development in the county in general, and in this area in particular.

**Goal 10, Housing.** The proposed application supports the need for rural housing by providing rural housing consistent with the MUA-10 residential zone. 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 properties. Pacific Power currently serves the subject properties with power and will continue to do so. Well water and septic systems are currently provided for each property and will continue to be provided, and the proposal will not result in the extension of urban services to rural areas.

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

**Goal 13, Energy Conservation.** The approval of this application does not impede energy conservation, and the proposal itself will have no effect on energy use or conservation since no specific development has been proposed in conjunction with the subject application. Providing additional economic opportunities on the subject property may decrease vehicle trips for persons working in the Deschutes Junction area, therefore conserving energy.

**Goal 14, Urbanization.** This application involves the rezoning and redesignation of lands to both RI and MUA-10. The Applicant's proposal does not involve any property within an Urban Growth Boundary and does not involve the urbanization of rural land.

**...**

MUA-10 Properties. In regards to the proposed plan amendment and zone change that would allow for future development of 17 properties with uses permitted in the MUA-10 zone, the MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The Court of Appeals recently confirmed that the uses allowed in an acknowledged rural zone are not subject to a site-specific, present-in-time evaluation (i.e., the Curry/Shaffer analysis) of a property to show compliance with Goal 14 [*Central Oregon LandWatch v. Deschutes County (Last Ranch) 347, Or App 287, 293 (2026)*].

In the event that the Curry County/Shaffer Analysis is found to be a requirement for the proposed MUA-10 properties, the Applicant provides the following alternative Goal 14 analysis.

The Court in *Curry County* acknowledged that there is no established definition of rural use and urban uses. The Court discussed factors to consider in evaluating whether development allowed is rural or urban including the density, dependence on urban services, and proximity to the urban area. None of the factors were deemed to be determinative and all must be

applied in the context of the individual situation. A review of the factors identified by the Supreme Court in *Curry County* confirms that the MUA-10 zone does not allow urban development.

*Density.* Allowing MUA-10 uses on 17 subject properties included in this application will not lead to urban density. The minimum parcel size in the MUA-10 zone is 10 acres, and while the DCC allows smaller parcels for cluster and/or planned developments, this is only permitted if such development complies with the County's conditional use criteria, Comprehensive Plan, and rules that require dedication of open space. The large open space areas created by this type of development create large areas that maintain the rural character of the parent parcel. The maximum density for properties like the subject properties are one house per 7.5 acres. This is not an urban density. Such a density would never be allowed in any urban residential zoning district other than a reserve or holding zone. For instance, in the City of Bend, a density of 1.1 dwellings per acre is the lowest density allowed for an urban residential district. This density is allowed only for areas not served by sewer. For properties served by sewer, a minimum density of 4.0 dwellings per one acre is required.

In Curry County, the Supreme Court accepted the concession of *1000 Friends* that a density of one (1) house per ten (10) acres is generally "not an urban intensity." Furthermore, *1000 Friends* argued that densities greater than one (1) dwelling per three (3) acres (e.g., one dwelling per one or two acres) are urban. The density allowed by the MUA-10 zone in a planned development is 2.5 times less dense. For a standard subdivision, the density allowed (1 house per 10 acres) is over three (3) times less dense.

*Lot Size.* The MUA-10 zoning district requires a minimum lot size of one (1) house per ten (10) acres. An exception to the minimum lot size is allowed only if 65% of the land being divided is dedicated as open space and a maximum density of 1 dwelling per 7.5 acres is achieved on the subject property. The FP zone that covers all or some of the subject properties requires a minimum lot area of 10 acres for all areas which have received an exception to the Statewide Planning Goals for resource uses and a minimum lot area of 80 acres for all areas that have not received an exception to the Statewide Planning Goals. Lot size by itself is not determinative of urban vs. rural use. OAR 660-004-0040 contemplates lot sizes as small as two acres in rural residential areas.

*Proximity to Urban Growth Boundary (UGB)*. The County's zoning map shows that the proposed MUA-10 properties are far removed from the closest UGB. In the context of the present case, the proposed MUA-10 zone is intended to maintain the rural character of the land while allowing for an orderly transition from urban to rural use.

*Services.* Sewer service is prohibited by Goal 11. An increase in the density of development is not allowed if a public water system is developed to serve the subject properties. No development is proposed herein and the subject properties will continue to rely on septic systems and well water.

> Conclusion of Factors. In totality, none of the above-factors indicate that the Applicant's rezone and redesignation request to MUA-10 or RI implicates Goal 14. Instead, approval of the proposal will enable the land to remain in a rural state.

Staff generally accepts the applicant's responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated. However, staff finds additional analysis may be required to address Goal 14 and requests the Hearings Officer make specific findings under this Statewide Planning Goal.

Arguments regarding compliance with Goal 14 have been raised in a number of Zone Change applications and the most recent interpretation from LUBA on this issue comes from *Central Oregon LandWatch v. Deschutes County* (*BCL*), LUBA No. 2026-015, which states:

> The Oregon Supreme Court has interpreted Goal 14 to prohibit urban use of rural land. *1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 742 P2d 268 (1986) (*Curry County*). Under *Curry County*, in redesignating rural land from plan designations implementing the resource goals, counties must evaluate whether development allowed under the new designation and associated zoning would allow for the urban use of rural land. That evaluation requires consideration of a number of factors described in *Curry County* and its progeny. With respect to PAPAs involving residential use of rural land, the relevant factors include the density of development allowed under the new plan designation and zone, the types and levels of services to be provided, and proximity to urban growth boundaries. 301 Or at 504-05. Under *Curry County* and its progeny, residential density at one dwelling unit per 10 or more acres is generally presumed to be rural. 301 Or at 504.
>
> …In *Destiny Court*, we rejected arguments that the acknowledged status of the RREA plan designation and the MUA-10 zone means that, as a matter of law, the designation and zone allow only rural uses, and therefore no evaluation of consistency with Goal 14 is necessary…. For the reasons stated in Destiny Court, we agree with petitioner that that legal conclusion is erroneous, and that the county must demonstrate that the proposed redesignation and rezoning is consistent with Goal 14, applying the relevant Curry County factors.

The LUBA decision quoted above (*BCL*) was further discussed by a Hearings Officer in files 247-26-000120-PA, 121-ZC (*Jaros*), who made the following findings:

> Based on the most recent LUBA decisions, it is clear that the Applicant must show that the Plan Amendment and Zone Change comply with Goal 14 by applying the *Curry County* factors to the Subject Property rather than relying on the MUA-10 zone alone as demonstrating compliance with that Goal. Although the Applicant has presented an analysis of the *Curry County* factors as an alternative to its primary argument, I find based on the current record that the Applicant has not demonstrated that no Goal 14 exception is required.
>
> The first of the *Curry County* factors looks to the allowed density under the new Plan designation. The Applicant notes that the allowed density in the MUA-10 zone is no greater than one dwelling per ten acres because ten acres is the minimum lot size in that zone. In

*Curry County*, the Court concluded that one dwelling per ten acres does not constitute urban zoning. The Applicant acknowledges that a greater density may be allowed, but asserts the maximum density is one house per five acres, which the Applicant says is rural in nature and much lower than, for example, the lowest density allowed in the City of Bend.

Participant COLW argues that, despite the minimum parcel size in the MUA-10 zone provisions of the Code, the actual density that is allowed under that zone could be much greater due to various options for cluster development or planned unit development in that zone. LUBA addressed this same argument in *BCL LLC*, concluding that the County must address that feature of the MUA-10 zone and determine if such densities are urban or rural.

In light of LUBA's decision in *BCL LLC*, which indicates that the maximum density of the MUA-10 zone could be even greater than the one-dwelling-per-five-acres the Applicant states is the maximum, I find that the current record does not clearly establish that the ultimate density on the Subject Property will be limited to rural densities. This *Curry County* factor therefore provides weight to the argument that the proposal could result in urban-level development.

The applicant has provided a site-specific *Curry County* analysis and has addressed the residential density that may be potentially feasible through a cluster or planned development. Staff requests the Hearings Officer make specific findings regarding compliance with Goal 14.

## IV. CONCLUSION & RECOMMENDATION

Staff requests the Hearings Officer determine if the applicant has met the burden of proof necessary to justify changing the Zoning of the subject properties from Flood Plain and Multiple Use Agricultural to Multiple Use Agricultural through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (the Deschutes County Zoning Ordinance), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

**DESCHUTES COUNTY PLANNING DIVISION**

Audrey Stuart

Written by: Audrey Stuart, Associate Planner

Anthony Raguine

Reviewed by: Anthony Raguine, Principal Planner

BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** November 23, 2026

**SUBJECT:** First Reading of Ordinance No. 2026-023 rezoning 51.86 acres from Exclusive Farm Use to Multiple Use Agricultural, and changing the property's Comprehensive Plan designation (Dickey Road, LLC)

**RECOMMENDED MOTION:**
Move approval of first reading of Ordinance 2026-023 by title only.

**BACKGROUND AND POLICY IMPLICATIONS:**
Applicant Dickey Road, LLC requests to change the zoning designation of a +/- 51.86-acre property from Exclusive Farm Use to Multiple Use Agricultural. The applicant also requests a concurrent change in the Comprehensive Plan designation from Agriculture to Rural Residential Exception Area.

The Board held a public hearing on August 26, 2026 and voted 2-1 on October 14, 2026 to approve the request.

The full record is available at the following link:
https://www.deschutescounty.gov/1535/247-25-000727-PA-728-ZC-Dickey-Road-LLC-

**BUDGET IMPACTS:**
None.

**ATTENDANCE:**
Dan DiMarzo, Associate Planner
Anthony Raguine, Principal Planner
Will Groves, Planning Manager

REVIEWED

_____

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

| | | |
|---|---|---|
| An Ordinance Amending Deschutes County Code Title 23, the Deschutes County Comprehensive Plan, to Change the Comprehensive Plan Map Designation for Certain Property From Agriculture to Rural Residential Exception Area, and Amending Deschutes County Code Title 18, the Deschutes County Zoning Map, to Change the Zone Designation for Certain Property From Exclusive Farm Use to Multiple Use Agricultural. | * * * | ORDINANCE NO. 2026-023 |

WHEREAS, Dickey Road LLC applied for changes to both the Deschutes County Comprehensive Plan Map (247-25-000727-PA) and the Deschutes County Zoning Map (247-25-000728-ZC), to change the comprehensive plan designation of the subject property from Agriculture (AG) to Rural Residential Exception Area (RREA), and a corresponding zone change 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 May 7, 2026, before the Deschutes County Hearings Officer and, on June 24, 2026, the Hearings Officer recommended approval of the Comprehensive Plan Map Amendment and Zone Change;

WHEREAS, pursuant to DCC 22.28.030(C), the Board heard *de novo* the applications to change the comprehensive plan designation of the subject property from Agriculture (AG) to Rural Residential Exception Area (RREA) and a corresponding zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10); now, therefore,

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

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

Section 2. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from EFU to MUA10 for certain property described in Exhibit "A" and depicted on the map as set forth as Exhibit "C", with both exhibits attached and incorporated by reference herein.

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

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

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board of County Commissioners as set forth in Exhibit "F" and incorporated by reference herein. The Board also incorporates in its findings in support of this decision, the Recommendation of the Hearings Officer, attached as Exhibit "G" and incorporated by reference herein.

Section 6. AGREEMENT. The Board adopts the Conditions of Approval Agreement as set forth in Exhibit "H," which Agreement shall be executed on the date this Ordinance is adopted.

Section 7. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption, or if appealed, the date the ordinance is no longer subject to appeal and is deemed acknowledged.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

Date of 2nd Reading: _____ day of _____, 2026.

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2026.

Deschutes County Official Records **2025-29299**
D-D
Stn=1 SH **10/24/2025 11:55 AM**
$40.00 $11.00 $10.00 $61.00 $10.00 **$132.00**

I, Steve Dennison, County Clerk for Deschutes County, Oregon, certify that the instrument identified herein was recorded in the Official Records.
Steve Dennison - County Clerk

**RECORDING REQUESTED BY:**

Western Title & Escrow

1777 SW Chandler Ave., Suite 100
Bend, OR 97702

**AFTER RECORDING RETURN TO:**
**Order No.:** WT0277873-AL

DICKEY RD LLC
21486 Hyde Lane
Bend, OR 97701

**SEND TAX STATEMENTS TO:**
DICKEY RD LLC
21486 Hyde Lane
Bend, OR 97701

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

# STATUTORY WARRANTY DEED

**Charles Eugene Culver II and Sandra Moen Culver, Co-Trustees of the Sanuck Revocable Living Trust,** Grantor, conveys and warrants to **DICKEY RD LLC, an Oregon limited liability company,** Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Deschutes, State of Oregon:

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

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS SEVEN HUNDRED TWENTY-SIX THOUSAND TWO HUNDRED TWENTY AND NO/100 DOLLARS **($726,220.00)**. (See ORS 93.030).

**Subject to:**

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

STATUTORY WARRANTY DEED
(continued)

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

STATUTORY WARRANTY DEED
(continued)

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

Dated: 10/23/2025

Sanuck Revocable Living Trust

BY: _____
Charles Eugene Culver, II
Trustee

BY: _____
Sandra Moen Culver
Trustee

State of Alaska
County of 3rd Judicial District

This instrument was acknowledged before me on October 23rd, 2025 by Charles Eugene Culver, II, as Trustee for Sanuck Revocable Living Trust and Sandra Moen Culver, as Trustee for Sanuck Revocable Living Trust.

_____
Notary Public - State of Alaska

My Commission Expires: 4/25/2028

KELSEY E. GINGERICH
My Commission Expires
NOTARY PUBLIC
Apr 25, 2028
STATE OF ALASKA

**EXHIBIT "A"**
Legal Description

Parcel A:

The "Culver Tax Lot 200" Parcel as recorded under Deed Volume 386, Page 2695 and a portion of the "Culver Tax Lot 206" Parcel as recorded under Deed Volume 3 86, Page 2695, Deschutes County deed records, located in the Southwest quarter of the Northeast quarter of Section 24, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Commencing at a 5/8" iron rod with yellow cap stamped "Dejarnett LS 2208" marking the Southwest corner of said Northeast quarter, from which the Southeast corner of said Northeast quarter bears South 89° 36'47" East a distance of 2640.80 feet; thence along the West line of said Northeast quarter North 00°05'27" West a distance of 60.00 feet to the North right of way line of an unnamed road dedicated to the public in Deed Book 227, Page 633; thence along said North right of way line South 89° 36'47" East a distance of 807.48 feet to the West line of a 110 foot wide United States of America right of way easement as described in document No. 8514440, document No. 86-14397 and document No. 86-1440, as shown on B.P.A right of way plan "Ponderosa-Pilot Butte No. 1 230 KV Transmission Line" dated 12/13/85, and the Point of Beginning: thence along said West right of way line North 00°45'30" East a distance of 1260.86 feet to the North line of the Southwest quarter of the Northeast quarter of said Section 24; thence along said North line South 89°40'11" East a distance of 492.33 feet to the East line of said Southwest quarter of the Northeast quarter; thence along said East line South 00°10'23" East a distance of 1261.38 feet to said North right of way line of unnamed road; thence along said North right of way line North 89°36'47" West a distance of 512.83 feet to the Point of Beginning.

Parcel B:

The Southeast Quarter of the Northeast quarter (SE 1/4 NE 1/4) of Section Twenty-four (24), Township Seventeen (17) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon.

EXCEPTING THEREFROM the Southerly 60 feet dedicated to the public in Dedication Deed recorded January 29, 1976 in Book 227, Page 633, Deed Records.

# EXHIBIT "B"
Exceptions

**Subject to:**

Regulations, including levies, liens, assessments, water and irrigation rights and easements for ditches and canals of the Central Oregon Irrigation District.

The rights of the public in and to that portion of the herein Described property lying within the limits of roads, streets or highways.

The existence of roads, railroads, irrigation ditches and canals, telephone, telegraph and power transmission facilities.

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Entitled: Patent
In favor of: The United States of America
Purpose: Electric power transmission line serial number 02086
Recording Date: December 29, 1970
Recording No: 173-652

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Entitled: Right of Way Easement
In favor of: Pacific Power & Light Company, a corporation, its successors and assigns
Purpose: Electric transmission and distribution lines
Recording Date: January 21, 1971
Recording No: 180-166
(Parcel A)

Assignment of Power Line Easements Together With Electric Transmission Line Facilities including the terms and provisions thereof,

Recording Date: July 16, 1985
Recording No: 99-1388
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America, Department of Energy, Bonneville Power Administration

## EXHIBIT "B"
Exceptions

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1208
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1217
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1221
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Entitled: Right of Way Easement
In favor of: Pacific Power & Light Company, a corporation, its successors and assigns
Purpose: Electric transmission and distribution lines
Recording Date: February 17, 1972
Recording No: 182-455
(Parcel A)

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1208
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

# EXHIBIT "B"
Exceptions

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1217
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1221
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Easement(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Bonneville Power Administration of the Department of Energy
Filed: May 8, 1986
Case No.: 86-6231-E

As disclosed by Warranty Deed recorded October 5, 2007, Document No. 2007-53680, Deschutes County Records.

Terms, provisions and conditions, including, but not limited to, maintenance provisions, and a covenant to share the costs of maintenance access easement reserved in Warranty Deed

Recording Date: May 13, 1999
Recording No.: 1999-23773
(Parcel A)

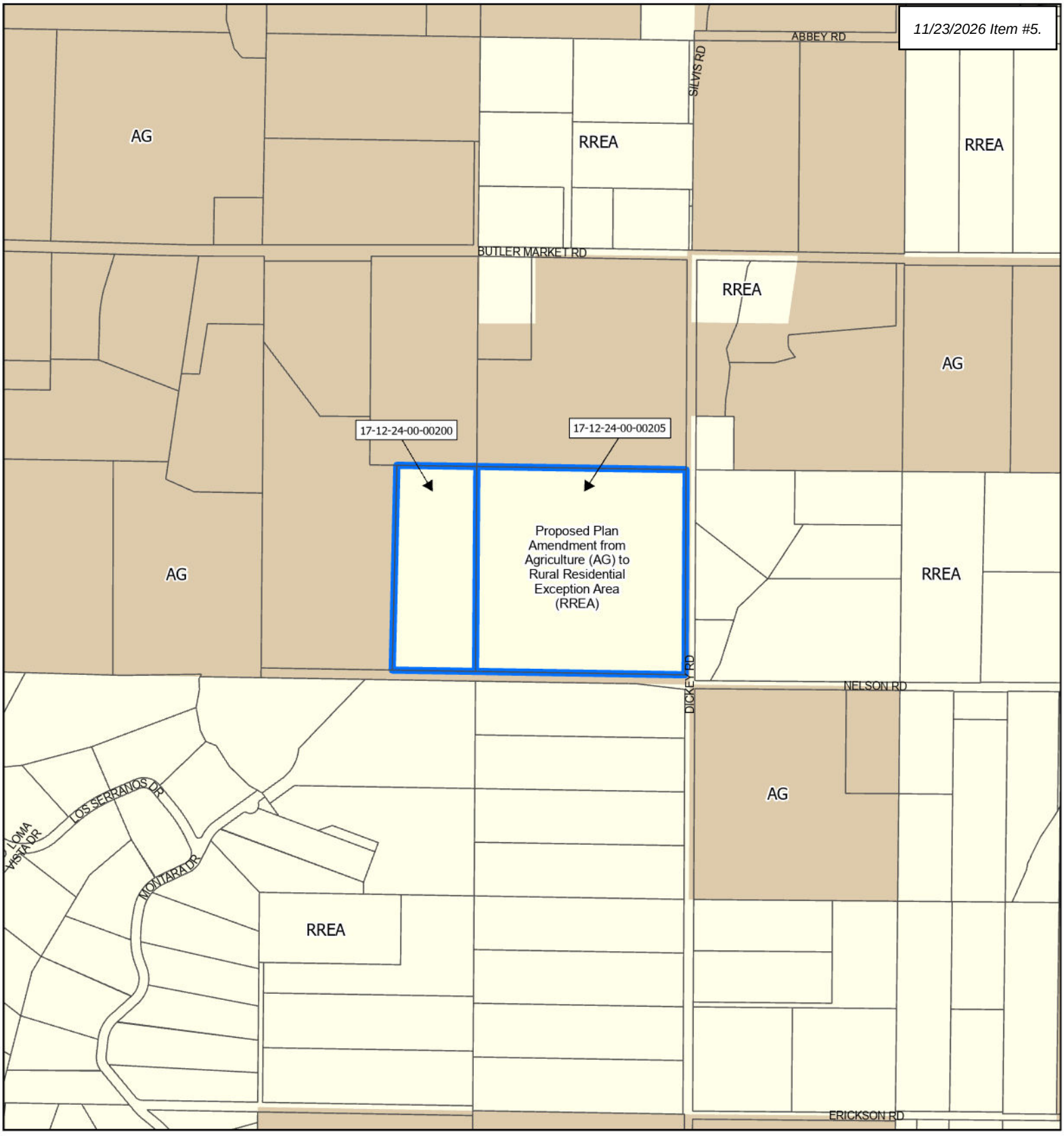
Terms, provisions and conditions, including, but not limited to, maintenance provisions, and a covenant to share the costs of maintenance access easement reserved in Warranty Deed

Recording Date: May 13, 1999
Recording No.: 1999-23774
(Parcel A)

# EXHIBIT "B"
Exceptions

Matters as disclosed by ALTA/ASCM Land Title Survey by Nin J. Bedesa dated September 12, 2006, Job Number 14465 as follows: Central Electric Cooperative, Inc. Power poles and Power lines (Notes N and P)

As disclosed by Warranty Deed recorded October 5, 2007, Document No. 2007-53680, Deschutes County Records.




# PROPOSED COMPREHENSIVE PLAN MAP

Exhibit "B"
to Ordinance 2026-023

Proposed Plan Amendment Boundary

Comprehensive Plan Designation

AG - Agriculture

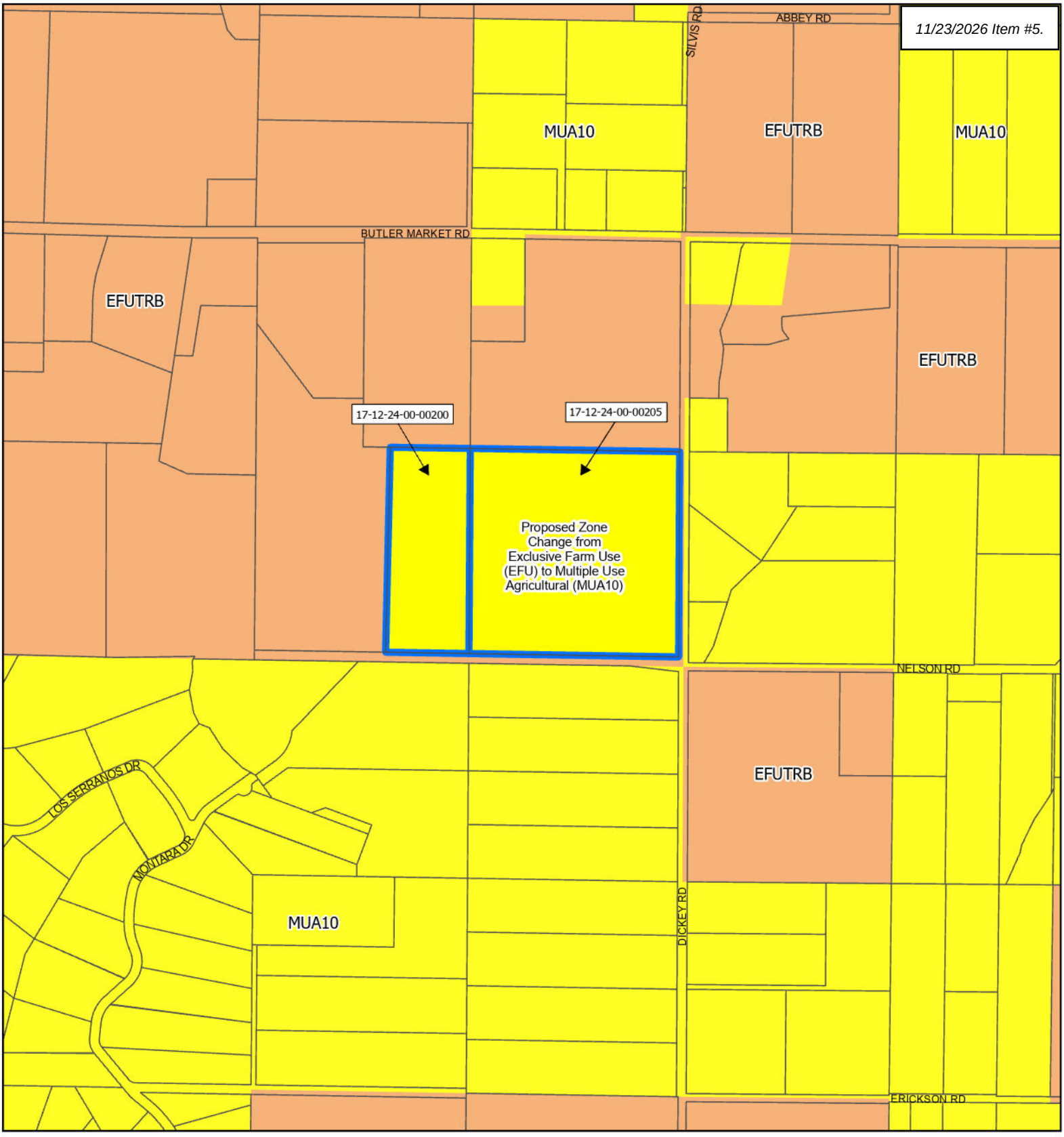
RREA - Rural Residential Exception Area

0 400 800 1,600 Feet

September 30, 2026

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

File Location: N:\Custom\County\CDD\Planning\DanielD\247-25-000727-PA




# PROPOSED ZONING MAP

Exhibit "C"
to Ordinance 2026-023

Proposed Zone Change Boundary

Zoning

EFUSC - Tumalo / Redmond / Bend Subzone

MUA10 - Multiple Use Agricultural

0 400 800 1,600 Feet

September 30, 2026

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

File Location: N:\Custom\County\CDD\Planning\DanielD\247-25-000727-PA

## TITLE 23 COMPREHENSIVE PLAN

## CHAPTER 23.01 COMPREHENSIVE PLAN

A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.

B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.

C. [Repealed by Ordinance 2013-001, §1]

D. [Repealed by Ordinance 2023-017]

E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.

F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.

G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.

H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.

I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.

J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.

K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.

L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.

M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.

N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.

O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.

P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.

R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.

S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.

T. [Repealed by Ordinance 2016-027 §1]

U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.

X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.

Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.

Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.

AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.

AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.

AC. [repealed by Ord. 2019-010 §1, 2019]

AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.

AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.

AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.

AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.

AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.

AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.

AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.

AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.

AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.

AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.

AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.

AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.

AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.

AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.

AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.

AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.

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

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

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

AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.

BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein. (superseded by Ord. 2023-015)

BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein. (supplemented and controlled by Ord. 2024-010)

BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.

BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.

BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.

BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.

BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.

BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.

BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.

BK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-003, are incorporated by reference herein.

BL. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein (superseded by Ord. 2025-007).

BM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.

BN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-017, are incorporated by reference herein.

BO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-016, are incorporated by reference herein.

BP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-011, are incorporated by reference herein.

BQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-012, are incorporated by reference herein.

BR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-001, are incorporated by reference herein.

BS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-003, are incorporated by reference herein.

BT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-010, are incorporated by reference herein.

BU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-007, are incorporated by reference herein (superseded by Ord. 2026-015).

BV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-014, are incorporated by reference herein.

BW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-004, are incorporated by reference herein.

BX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-005, are incorporated by reference herein.

BY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-009, are incorporated by reference herein.

BZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-013, are incorporated by reference herein.

CA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-015, are incorporated by reference herein.

CB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-014, are incorporated by reference herein.

CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-024, are incorporated by reference herein.

CD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-026, are incorporated by reference herein.

CE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-020, are incorporated by reference herein.

CF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-023, are incorporated by reference herein.

Click here to be directed to the Comprehensive Plan
(https://weblink.deschutes.org/CDD/Browse.aspx?id=1317439&dbid=0&repo=LFCDD)

# Section 5.12 Legislative History

**Background**

This section contains the legislative history of this Comprehensive Plan.

**Table 5.12.1 Comprehensive Plan Ordinance History**

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

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

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| 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 11 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 |

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| 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 |

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| 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. |

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| 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. |

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| 2020-002 | 2-26-20/5-26-20 | 23.01.01, 4.2, 5.2 | Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB. |
| 2020-003 | 02-26-20/05-26-20 | 23.01.01, 5.10 | Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility. |
| 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. |

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| 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 Vandevert 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 |

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|---|---|---|---|
| 2022-001 | 04-13-22/07-12-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2022-003 | 04-20-22/07-19-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2022-006 | 06-22-22/08-19-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area |
| 2022-011 | 07-27-22/10-25-22 (superseded by Ord. 2023-015) | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI) |
| 2022-013 | 12-14-22/03-14-23 (supplemented and controlled by Ord. 2024-010) | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-001 | 03-01-23/05-30-23 | 23.01.010, 5.9 | Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource |
| 2023-007 | 04-26-23/6-25-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |

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|---|---|---|---|
| 2023-010 | 06-21-23/9-17-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-018 | 08-30-23/11-28-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-015 | 9-13-23/12-12-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |
| 2023-025 | 11-29-23/2-27-24 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area |
| 2024-001 | 1-31-24/4-30-24 | 23.01.010 | Comprehensive Plan Map Amendment for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-016 | 5-8-24/8-6-24 | 23.01(BM) (added), 4.7 (amended), Appendix B (replaced) | Updated Tumalo Community Plan |
| 2023-017 | 3-20-24/6-20-24 | 23.01(D) (repealed), 23.01(BJ) (added), 3.7 (amended), Appendix C (replaced) | Updated Transportation System Plan |

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|---|---|---|---|
| 2024-003 | 2-21-24/5-21-24 | 23.01.010, 5.8 | Comprehensive Plan Map Amendment, changing designation of certain property from Surface Mining (SM) to Rural Residential Exception Area (RREA); Modifying Goal 5 Mineral and Aggregate Inventory |
| 2024-007 | 10-02-24/12-31-24 (superseded by Ord. 2025-007) | 23.01(A)(repealed) 23.01(BK) (added) | Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan |
| 2024-010 | 10-16-24/01-14-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2024-011 | 11-18-24/02-17-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Redmond Urban Growth Area (RUGA) |
| 2024-012 | 1-8-25/4-8-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2025-001 | 2-5-25/2-5-25 | 23.01.010 | Comprehensive Plan and Zoning Map Amendment updating the Greater Sage-Grouse Area Combining Zone boundary. |
| 2025-003 | 4-2-25/7-1-25 | 23.01.010 | Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |

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| 2025-010 | 6-25-25/9-23-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2025-007 | 8-27-25/11-25-25 (superseded by Ord. 2026-015) | 23.01(BU) | Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update process. |
| 2025-014 | 10-6-25/10-6-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Forest (F) to Rural Residential Exception Area (RREA) |
| 2026-004 | 1-28-26/4-28-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-005 | 3-11-26/6-9-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) and Surface Mine (SM) to Rural Residential Exception Area (RREA) |
| 2026-009 | 4-15-26/7-14-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-013 | 7-29-26/10-27-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Surface Mine (SM) to Rural Industrial (RI) |

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|---|---|---|---|
| 2026-015 | 9-2-26/12-1-26 | 23.01.010 | Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update Process, Reconsideration, and LUBA Remand. |
| 2026-014 | 9-23-26/12-22-26 | 23.01.010 | Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |
| 2026-024 | 11-9-26/11-9-26 | 1.3, 4.2, 23.01.010 | Amendments to Comprehensive Plan to Update the List of Applicable Zones Allowed Under a Sisters Urban Growth Area Plan Designation |
| 2026-026 | 11-9-26/11-9-26 | 23.01.010 | Comprehensive Plan Designation for Certain Properties from Rural Residential Exception Area (RREA) to Sisters Urban Growth Area (SUGA) |
| 2026-020 | 11-23-2026/2-21-2027 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-023 | 12-9-26 / 3-9-27 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |

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

**File Numbers:** 247-25-000727-PA and 247-25-000728-ZC

**Applicant:** Dickey Rd LLC
21486 Hyde Ln
Bend, Or 97701

**Owner:** Dickey Rd LLC
21486 Hyde Ln
Bend, Or 97701

**Attorney(s) for Applicant:** Christopher P. Koback
Buchanan Schmid Koback LLC
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**Staff Planner:** Dan DiMarzo, Associate Planner
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**Application:** The Applicant requests a Comprehensive Plan Amendment to change the designation of the subject property from Agriculture (AG) to Rural Residential Exception Area (RREA). The Applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Multiple Use Agricultural (MUA-10).

**Subject Property:** Map/Tax Lot: 1712240000205 & 1712240000200
Situs Address: 63035 Dickey Rd, Bend, OR 977014

## I. FINDINGS OF FACT

**A. Hearings Officer's Recommendation:** The Hearings Officer's recommendation dated June 24, 2026, adopted as **Exhibit G** of this ordinance,

is hereby incorporated as part of this decision, including any and all interpretations of the County's Code and Comprehensive Plan and modified as follows:

**B. Procedural History:** The County's land use Hearings Officer conducted the initial evidentiary hearing regarding Dickey Rd LLC's Comprehensive Plan Amendment and Zone Change applications on May 7, 2026. After an open record period that ended May 28, 2026, the Hearings Officer recommended that the Board approve the application on June 24, 2026. A Public Hearing before the Board was held on August 26, 2026. On October 14, 2026, the Board deliberated and voted to approve the application.

**Adoption of Hearings Officers Findings and Conclusions:** The Board expressly adopts and incorporates into this decision the findings and conclusions of the Hearings Officer. Specifically, the Hearings Officer found based upon the Applicant's Order 1 Soil Study, that the property was predominantly non-agricultural land under OAR 660-033-0020(1)(a). The Board finds that no participant produced evidence that contradicted the Applicant's Order 1 Soil Study or the Hearings Officer's findings. The Board agrees that the property does not meet the definition of agricultural land under OAR 660-033-0020(1)(a).

The Board agrees with the Hearings Officer's application of the suitability factors in OAR 660-033-0020(1)(a)(B) and adopts his finding that the property is not suitable for farm use. The Board agrees with the Hearings Officer that the property is not necessary to allow farm practices on adjacent or nearby agricultural land. Finally, the Board agrees with the Hearings Officer that rezoning the Property to MUA-10 is consistent with the purpose of the MUA-10 zone and, with the proposed condition of approval, consistent with all provisions in the Deschutes County Comprehensive Plan ("DCCP").

## II. ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW

At the Board's October 14, 2026 meeting where it deliberated the application, County staff presented an issue matrix for the Board to consider. In response to that matrix, the Board made the following additional findings:

### 1. Whether the property is agricultural land considering the factors in OAR 660-033-0020(1)(a)(B).

OAR 660-033-0020(1)(a)(B) requires a decision-maker to consider several factors to determine whether land, even if predominantly Class 7 and 8, qualifies as agricultural land. The factors include soil fertility, suitability for grazing, climate, availability of water, land use

patterns and accepted farming practices. After the Hearings Officer issued his recommendations, wherein he found that the property was not agricultural land suitable for farming, Central Oregon LandWatch ("COLW") and the Applicant submitted additional evidence and argument.

The Applicant presented photographs that depict the site and its rocky composition. It presented expert testimony from a local farmer including the following:

> *58C Gosney-Rock-outcrop soil is appropriately named. I dug fourteen (14) test holes in locations designed to provide me with a good representation of the site as a whole. I found rock in each of the 14 locations, and it was only inches below the material above it that can only loosely be called "topsoil". It is very sandy with no plant material or binders for water retention or soil binding.*
>
> *A person attempting any farming on the site would not be able to remove enough rock to allow any farm use using traditional farm equipment. To use a traditional tractor and implements to create a farm plot, one needs approximately 8-12 inches of soil that is rock free. If you do not have that, the tractor and implements will break. To remove the rock on the site, one would have to approach it like a large road or commercial project using heavy duty excavating equipment and likely more blasting. In some areas on the site blasting would be necessary before the excavating equipment could be used to further break up the rock and remove it.*
>
> *To attempt to convert Gosney Rock into agricultural land that would support any farm use that one would be motivated to pursue by the quest for some profit, one would first have to remove massive quantities of rock. The equipment to complete that work is very expensive. Most normal tractors and the attachments one would use, are not adequate for a rock removal process of the scale required. I suspect anyone trying that would experience a significant equipment failure. That is why, I would never expect a reasonable farmer motivated by a profit to undertake that work. The rock would also have to be hauled away. The trucking cost and disposal fees would also be significant.*
>
> *Then, after all that expense, to create soil with any reasonable water holding capacity, one would have to import tons of organic material and work it into the existing soil. This is also not an overnight process. One cannot create agricultural soil out of Gosney with one application of organic material in one year. It takes years for the micro biologic agents to work together to create fertile soil. One would spend hundreds of thousands of dollars before the soil was even ready to try planting a crop or creating a viable pasture. If one starts with good*

> *agricultural soil, regular application of soil amendments is feasible, and I do that on my farm. The soil will already have micro-organisms in it, and you are not starting from scratch, meaning you can apply less amendments.*
>
> *In my opinion, the soil is not suitable for any farm use, considering the various farm uses that COLW suspects could be conducted on the site. COLW suggests that raising a variety of hooved animals other than cattle, surmising that the site could be used for that activity. One example COLW included is raising alpacas. I can say with certainty that those activities could not be conducted on the site if the motivation was primarily to make some profit. We raise alpacas on land with good agricultural soil and ample irrigation. It is still significantly challenging to make any profit. I would never attempt that on the subject property. Raising and hooved grazing requires a viable pasture area. That requires agricultural soil and water. Rocky soil is not suitable. I notice that COLW suggests that raising horse in Deschutes County is done on rocky ground. That is not consistent with my experience. While some horse farms may have small areas where the ground is more rocky than other areas, it is not healthy to have horses pasturing on rocky ground. You need mostly vegetated, mostly level ground.*
> Written Testimony of Greg Jacobs.

COLW did not present any similar testimony or evidence. It generally asserted that soil can be amended, but did not offer any evidence of what that process will entail, its cost, and how long it may take to produce productive agricultural soil on the subject property. COLW did not present any evidence to refute the Applicant's farm expert's testimony that to attempt to create any farm plot, would require the use of commercial excavating equipment to remove and dispose of significant bedrock. COLW did not attempt to address the testimony and expert report explaining that the small percentage of 36B soil is intermingled with 58C Gosney Rock outcrop and is not in a single uniform segment of the Property.

COLW asserted that the Applicant over-relied on profitability and that difficulty and cost required to prepare land do not make property non-agricultural. COLW provided examples of other properties that reported on websites to engage in farming asserting that the subject property could be similarly used.

The Board finds the Applicant's evidence persuasive and rejects the general assertions presented by COLW. The Board agrees that any reasonable farmer motivated primarily by the pursuit of profit will expect to have to make some expenditures on the land, structures, and equipment. Ongoing maintenance and repair are to be expected. However, the evidence from Mr. Jacobs on the extensive alterations required and the exorbitant cost associated with them was compelling and unrefuted. A reasonable farmer will not incur such costs for property that may have only 6.4 acres of irrigation, assuming the current lease back to

Central Oregon Irrigation District ("COID") is terminated. COLW suggested that additional water rights could be acquired. However, no reasonable farmer would pay the cost of acquiring water rights to irrigate the property in its current state. Before considering expending significant amounts of money to acquire additional water rights, an owner would first have to address the extraordinary cost to remove all the rock and amend the soil. The Board agrees with the Applicant's farming expert that a reasonable farmer looking for a profit from farming simply could not justify all the significant costs necessary to attempt to convert the property into agricultural land suitable for farming.

The Board does not find the other property examples presented by COLW helpful in evaluating whether the subject property is suitable for farming. COLW did not provide any detailed information that allows for a qualitative comparison. The Applicant presented mapping evidence from the Natural Resource Conservation Service (the "NRCS") that showed that most of the examples presented by COLW were properties that consisted of significantly higher concentrations of agricultural soil than that found on the subject Property One of the examples that COLW presented as being used for farming for the primary purpose of a profit is actually being used primarily as a marijuana growing operation.

After carefully evaluating all of the evidence in the record, including the detailed testimony from a local ranch and horse facility operator, the Board finds that the subject property is not agricultural land when applying the factors in OAR 660-033-0020, and that a reasonable farmer would not attempt to engage in the activities listed in ORS 215.203 if the purpose was to make any profit.

**2. Whether the property is agricultural land because it is necessary to permit farm practices on adjacent and nearby agricultural land under OAR 660-033-0020(1)(a)(C).**

The Board agrees with the Hearings Officer's finding that the subject property is not agricultural land because it is not necessary to permit farm practices on adjacent or nearby agricultural land. The Board notes that in prior Land Use Board of Appeals ("LUBA") cases, LUBA adopted the dictionary definition of "necessary," which includes the term "indispensable." The Board finds that the subject property is not necessary or indispensable in the sense that no reasonable farmer would try to incorporate it into any ongoing farm operation given the exorbitant cost to transform the Property into land that could be profitably farmed. Most of the nearby agricultural land in current farm use is north and west of the subject property. According to NRCS mapping, those areas are comprised of more agricultural land. It is unreasonable to expect that those owners would take on the exorbitant cost associated with trying to convert the subject Property into agricultural land. Finally, the evidence shows that the distance between the agricultural properties currently in farm use and the subject Property is a barrier to any conjoined use.

Nor does the Board find that rezoning the subject property to MUA-10 will result in impacts to adjacent or nearby agricultural land that would render it impractical to engage in farm practices on those lands. The Applicant's professional traffic study did not note any anticipated impacts on nearby or adjacent land. COLW presented speculation, but no substantial evidence of any impacts that would render retaining the EFU zoning on the subject Property indispensable to other agricultural land. In fact, the record demonstrates that in close proximity to the subject Property, there are several non-agricultural uses including private schools and kennels. The record is void of any evidence that such uses have created unacceptable impacts on nearby agricultural land. The Board notes that prior decisions have approved non-farm uses on other properties located in the general vicinity. None of the prior decisions found unacceptable impacts on adjacent or nearby lands. Finally, there is no evidence in the record that rezoning property that is unsuitable for farm use will cause an unreasonable increase in the cost to acquire agricultural property that is suitable for farm use.

**3. Whether the Proposed Condition of Approval eliminates conflict between DCCP Policy 3.3.1 and DCC Title 18 provisions.**

The Board acknowledges that the County's approval of applications to rezone resource land to MUA-10 has been impacted by multiple recent LUBA decisions. In *Destiny Court*, LUBA agreed with COLW that DCCP Policy 3.3.1 establishes a minimum parcel size in the MUA-10 zone at 10 acres and does not authorize cluster or planned development that are allowed uses in the MUA-10 zone pursuant to Deschutes County Code ("DCC") Chapter 18.

On June 26, 2026, LUBA issued its decision in the BCL LLC matter where it held that even though the application did not request approval of any parcels smaller than 10 acres, because the application and decision did not include any restriction to that effect, there remained a potential conflict with Policy 3.3.1 because nothing prevented a future applicant from submitting an application to subdivide the Property into parcels smaller than 10 acres.

On September 10, 2026, the Board adopted amendments to Chapter 10 of the 2024 DCCP that authorize cluster and planned developments in the MUA-10 zone subject to various reviews and standards. The Board's amendments are on appeal to LUBA. Thus, Policy 3.3.1 remains the controlling DCCP policy and applicable law.

LUBA's concern that a future applicant may apply to create parcels or lots smaller than 10 acres, although the Applicant did not request approval to create parcels or lots smaller than 10 acres, is already addressed in the County Code. Any partition or subdivision application must be submitted under DCC Title 17. DCC 17.12.010 mandates that all

applications for a land division demonstrate that the application is consistent with the Comprehensive Plan. That demonstration will have to include a demonstration of consistency with Policy 3.3.1, unless and until the 2040 DCCP is sustained, or until new Comprehensive Plan policies are otherwise adopted.

Nevertheless, to be certain that the County addresses LUBA's concern over future applications, the Board agrees with the Applicant that a condition of approval restricting parcel size to a minimum of 10 acres until DCCP policies authorizing smaller parcels are acknowledged is appropriate and authorized by law.

COLW asserted that there is no authority for the Board to impose a condition. The Board disagrees. DCC 18.136.030 expressly authorizes the Board to impose conditions in a rezoning application. LUBA has sustained similar conditions. See, *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

COLW further asserts that the proposed condition eliminates uses allowed in the MUA-10 zone and therefore is inconsistent with the purpose of the MUA-10 zone. The Board rejects that assertion. As noted, the proposed condition does not eliminate *uses* that are allowed. It restricts *parcel size* to that which is allowed under Policy 3.3.1. Moreover, the proposed condition is in response to developing law and is an interim measure. The proposed condition confirms that, as long as Policy 3.3.1 is the controlling law, applicants may not divide the Property into parcels smaller than 10 acres. When new DCCP policies that authorize parcels smaller than 10 acres in the MUA-10 zone are adopted and acknowledged, any perceived inconsistency between the DCCP and the DCC will be resolved, and the condition of approval will no longer be effective. Any future application to divide land in the MUA-10 zone will then be required to comply with both the new DCCP policies and the relevant DCC standards.

**4. Whether approval of the application will result in urban uses that require a Goal 14 exception**

On the issue of whether designating land RREA and rezoning it to MUA-10 is consistent with Goal 14 or requires an exception, the Board continues to adhere to its conclusions in prior rezoning applications. The Board finds that its acknowledged Comprehensive Plan, which was amended in 2016 to create the RREA designation and its MUA-10 and RR-10 zones, confirms that all uses allowed within those zones are rural and not urban uses. The Comprehensive Plan states that "[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses allowed for each area." DCCP Section 1.3. Rural Residential Exception Areas, according to the DCCP, "provide opportunities for rural residential living outside urban growth boundaries

and unincorporated communities …" DCCP Section 1.3. DCCP Table 1.3.3 provides that Title 18's RR-10 and MUA-10 zones are the associated zoning codes for the RREA plan designation.

The determination that the RREA plan designation and RR-10 and MUA-10 zoning districts should apply to exception lands was made when the County amended the DCCP in 2016. (Ordinance 2016-005) The ordinance was acknowledged by DLCD as complying with the Statewide Planning Goals. Thus, the lot sizes and uses allowed by the RREA plan designation and the RR-10 and MUA-10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the DCCP provisions.

The purpose statement for the MUA-10 zone states that it is to preserve the rural character of various areas of the County while permitting development consistent with that character and the capacity of the natural resources of the area. When DCC Chapter 18.32 is read in context with that purpose statement, the only plausible interpretation is that all uses allowed in the MUA-10 zone are rural uses. The Board expressly interprets DCC Chapter 18.32 to mean that. Thus, the application does not provide any basis for the County to revisit whether the RREA designation, or the RR-10/MUA-10 zones violate Goal 14 by allowing urban development and requires no individual analysis of specific uses or of whether the MUA-10 uses violate Goal 14 is required.

In the alternative, the Board finds that the proposed condition ensures compliance with Goal 14 as interpreted by the Oregon Supreme Court in the *Curry County* case. The only future use/development that COLW argues may be "urban," is the creation of parcels smaller than 10-acres, specifically, cluster and planned developments. LUBA opined that the creation of lots or parcels of that size would potentially be inconsistent with Goal 14 because it could have the effect of introducing urban density in close proximity to the UGB. The proposed condition will ensure that approval of the current application will not result in the creation of any parcel smaller than 10 acres. In *Curry County*, the court found that parcels 10 acres or larger are presumed to result in rural densities. Thus, the condition will ensure consistency with Goal 14. The restriction in the condition of approval will remain in effect until amendments to the DCCP authorizing cluster and planned developments in the MUA-10 zone are upheld and acknowledged by DLCD. As written, those provisions will ensure that future applicants for cluster or planned unit developments must demonstrate compliance with Goal 14.

Finally, the Board finds that the City of Bend zoning immediately adjacent to the UGB on the City's east side is residential standard density (RS). The lot standards in that zone allow for parcels as small as .16 acres. The smallest parcel permitted to be created from the subject Property, with the applicant's proposed condition, is 10 acres. Thus, approval of the application will not create or allow any development similar to that allowed in the City and will not negatively impact the effectiveness of the UGB.

As noted, the Board also considered and evaluated the factors presented by the Applicant referred to often as the *Curry County* factors to assess whether rezoning the property MUA-10 will result in urban uses on rural land.

***Density***

Allowing MUA-10 uses on the subject property will not lead to urban density. The minimum parcel size in the MUA-10 zone is 10 acres. The Applicant did not request approval of smaller parcels. Under *Curry County*, that is a presumed rural density.

***Extension of Urban Services***

The Board rejects the notion that rezoning the subject parcel to MUA-10 will lead to the extension of urban facilities to the area. The City of Bend has no obligation to extend public services outside its jurisdiction and, in some cases, is prohibited from providing extraterritorial service to rural lands. Future development of the subject property will be served primarily by private water and sewer as long as it remains within Deschutes County's jurisdiction. Electricity extends to the property as evidenced by the approved plat from 1990. For fire and public safety, the area is served by the Bend Rural Fire District and Deschutes County Sheriff's office, both of which serve rural areas. That coverage will remain unchanged under any county zoning classification.

The applicant has not requested to have domestic water extended to the property. There are Avion water facilities in the area that currently do not serve the property. The applicant was advised that Avion may provide domestic water to the property in the future, but that restrictions on the amount of such water can be expected. The applicant notes that with 10-acre parcels authorized by this decision, domestic water could be supplemented with wells.

The Board finds the application will not result in the extension of urban facilities to the property. Avion Water is a private utility that has its own service area, some of which is in rural areas of the county. The fact that a private provider has rural areas within its service district does not translate into extending urban facilities to rural areas. It simply reflects the fact that Avion serves both urban and rural areas and customers. Furthermore, the Board does not see how the fact that Avion already has facilities in the area translates into this application leading to the extension of any facilities. The facilities are already in the area. The Board finds that the prior existence of a private water provider line will not result in the future extension of other public services.

***Proximity to Urban Growth Boundaries***

The subject property is approximately .65 miles east of the Bend city limits. The smallest parcel that could be created in compliance with the condition of approval of this decision is 10 acres. The closest City zoning includes RS, with a maximum parcel size of about .16 acres and Residential Medium ("RM") which requires even smaller parcel sizes. The Board finds that it is reasonable to conclude that the largest parcel that will be created within the city in proximity (less than 1 mile) to the subject property will be approximately .16 acres. Contrasting that with the smallest allowable parcel under this decision of 10 acres, the Board finds a dramatic difference in development density one can reasonably expect on the subject property and on properties within the Bend UGB near the subject property. The application authorizes parcels that are 60 times larger than what one can reasonably expect as the largest parcel within the UGB close to the subject property. Thus, even though the subject property is less than a mile from the UGB, approval of the application will not negatively impact the effectiveness of the UGB.

**5. Whether the proposal complies with the rezoning standards in DCC 18.136.020.**

The Hearings Officer found that the proposed zone change is consistent with the purpose of the MUA-10 zone when considered as a whole. The Board agrees with the Hearings Officer and adopts his findings. Further, the Board finds that the proposal is based on the fact that the property consists predominantly of soil that does not meet the definition of agricultural land. That does not mean that it cannot be used for some small-scale agricultural uses associated with rural residential living. In fact, one of the purpose statements in DCC 18.32 is to preserve land for smaller, diverse agricultural uses.

**6. Whether introducing a condition of approval constitutes a modification of the proposal**.

The Board recognizes that the legal landscape surrounding rezoning applications requesting a change from EFU to MUA-10 has evolved due to several recent LUBA decisions. As the Board understands LUBA's recent decisions, even when an applicant requests that property be rezoned to MUA-10 but does not also request approval of a land division creating parcels less than 10 acres in size, unless there is some limitation in the decision preventing the future creation of smaller parcels, there is not a mechanism to ensure that a future applicant will not make that request which would be inconsistent with DCCP Policy 3.3.1. The Applicant proposes a condition that will limit the creation of any new lots or parcels from the subject property to a minimum of 10 acres, unless and until the DCCP is amended to authorize creation of smaller parcels. COLW assert that the proposed condition modifies the application. The Board agrees with Staff that the proposed condition is not a modification of the application.

DCC 22.04.020 includes the following definition:

> "Modification of application" means the applicant's submittal of new information after an application has been deemed complete and prior to the close of the record on a pending application that would modify a development proposal by changing one or more of the following previously described components: proposed uses, operating characteristics, intensity, scale, site lay out (including but not limited to changes in setbacks, access points, building design, size or orientation, parking, traffic or pedestrian circulation plans), or landscaping in a manner that requires the application of new criteria to the proposal or that would require the findings of fact to be changed. It does not mean an applicant's submission of new evidence that merely clarifies or supports the pending application.

The application did not propose creation of any lots or parcels – let alone the creation of lots or parcels smaller than 10 acres. Therefore, the condition does not effect a change in the proposal. The application did not propose any physical development. The condition will not result in any change to the scale, intensity or characteristics of any proposed use. The Board interprets the definition of a modification of approval in DCC 22.04.020 to not include a condition such as that proposed, which simply limits the size of any future creation of lots or parcels to that which is provided for under applicable law.

Finally, the Board notes that in the recent LUBA decision in *Central Oregon LandWatch v. Deschutes County,* LUBA No. 2026-032, LUBA held that the submission of a proposed condition as part of a final argument after the record closes was not the introduction of new evidence under DCC 22.04.020. In the Board's view, it follows then that the proposed condition is not a modification of the proposal or the application.

**7. Whether the introduction of the applicant's proposed condition of approval requires resubmission of notice to DLCD**.

COLW asserts that the proposed condition is a "deletion" of an otherwise allowable use and thus, an amendment of the proposal for which notice to DLCD is required. The Board rejects that assertion. COLW consistently asserts that the applicable law limits parcel size in the MUA-10 zone to 10 acres and does not authorize the creation of smaller parcels. COLW did not provide any authority that an applicant cannot voluntarily agree to a condition that ensures compliance with applicable law.

The Applicant did not propose that cluster and planned development sections in the DCC be deleted. Under the plain text under ORS 197.610(1), notice to the DLCD is not required.

Indeed, the Board finds that the proposed condition preserves the Applicant's ability to later seek approval to create lots or parcels smaller than 10 acres, but only after the DCCP is reconciled with the DCC provisions. The proposed condition does not translate into a deletion of any land use regulation.

COLW also asserted that notice to DLCD is required under OAR 660-018-0045. The Board rejects that assertion as well. OAR 660-018-0045 requires new notice when an alteration to a proposed change to an acknowledged comprehensive plan is altered to the extent that the materials submitted no longer reasonably describe the proposed change.

The proposed change in question is to redesignate the property to RREA and rezone it to MUA-10 with no request to create lots or parcels smaller than 10 acres. The proposed condition is not an alteration to the proposal, much less an alteration that changes the proposal. The condition simply clarifies and confirms that the application is not seeking authorization for the creation of lots or parcels of a size that are not authorized under Policy 3.3.1.

## III. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby approves Applicant's applications for a DCCP amendment to redesignate the subject property from agricultural to RREA and a corresponding zone map amendment to change the zoning of the property from EFU to MUA-10 with the following Conditions of Approval.

## IV. CONDITIONS OF APPROVAL

1. This decision and any ordinance adopted pursuant to it do not authorize a future application for the creation of any parcels in the MUA-10 zone that are less than 10 acres under DCC 18.116.400, DCC 18.128.200, DCC 18.128.210, or any other DCC provision unless and until (1) the County formally adopts amendments to the DCCP rural lands policies that authorize such developments and parcel sizes with provision to ensure that constancy with Goal 14 is evaluated, and (2) those amendments are acknowledged by the DLCD. Unless and until such acknowledgement, the applicant and all future applicants for the subject property are restricted to the creation of parcels not less than 10 acres regardless of the proximity of the property to the UGB and any DCC code provision to the contrary.

2. The attached Conditions of Approval Agreement, with restrictive covenants enforceable by Deschutes County, must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgement on appeal has been entered.

Dated this ___ day of _____2026.

**HEARINGS OFFICER RECOMMENDATION**

**FILE NUMBERS:** 247-25-000727-PA, 247-25-000728-ZC

**HEARING:** May 7, 2026, 1:00 p.m.
Videoconference and Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

**SUBJECT PROPERTY/ OWNER:**

Mailing Name: DICKEY RD LLC
Map and Taxlot: 1712240000205
Account: 109028
Situs Address: 63035 DICKEY RD, BEND, OR 97701

Mailing Name: DICKEY RD LLC
Map and Taxlot: 1712240000200
Account: 150973
Situs Address: **NO SITUS ADDRESS**

Together (both tax lots) are referred to as the Subject Property

**APPLICANT/OWNER:** Dickey Road, LLC (Applicant)

**ATTORNEY:** Christopher Koback

**PROPOSAL:** The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agriculture (AG) to Rural Residential Exception Area (RREA). The Applicant also requests a corresponding Zone Change to rezone the Subject Property from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

**STAFF REVIEWER:** Dan DiMarzo, Associate Planner
Phone: 541-330-4620
Email: Dan.DiMarzo@deschutes.org

## I. APPLICABLE STANDARDS AND CRITERIA:

Title 18, 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 (MUA10)
Chapter 18.80, Airport Safety Combining Zone (AS)
Chapter 18.136, Amendments
Title 22, Deschutes County Development Procedures Ordinance
Deschutes County Comprehensive Plan
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Appendix C, Transportation System Plan
Oregon Administrative Rules (OAR), Chapter 660
Division 12, Transportation Planning
Division 15, Statewide Planning Goals and Guidelines
Division 33, Agricultural Land
Oregon Revised Statutes (ORS)
Chapter 215.010, Definitions
Chapter 215.211, Agricultural Land, Detailed Soils Assessment

## II. BASIC FINDINGS:

**LOT OF RECORD:** The Applicant's burden of proof provides the following response:

> *The Applicant understands that for a comprehensive plan amendment and zone change, a lot of record determination is not required. Tax Lot 205 was confirmed as a lot of record in File LR 88-127.*

Staff noted (Staff Report, page 2) per DCC 22.04.040(B)(1), Verifying Lots of Record, specifies the types of land use applications that require lot of record verification:

> *B. Permits Requiring Verification.*
> *1. Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:*
> *a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);*
> *b. Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;*
> *c. Any permit for a lot or parcel subject to wildlife habitat special assessment;*
> *d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;*
> *e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;*

In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, the Hearings Officer held to a prior zone change

decision (*Belveron* ZC-08-04; page 3) that a property's lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, the applicant would be required to receive lot of record verification prior to any development on the Subject Property. Therefore, the Hearings Officer finds that this criterion does not apply.

**PROPOSAL:** The Applicant requested approval of a Comprehensive Plan Map Amendment to change the designation of the Subject Property from Agriculture (AG) to a Rural Residential Exception Area (RREA). The Applicant also requested approval of a corresponding Zoning Map Amendment (Zone Change) to change the zoning of the Subject Property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10). The Applicant requested 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 proposed that no exception to Statewide Planning Goal 3, Agricultural Land, is required because the Subject Property is not "agricultural land." (See Preliminary Findings)

The application materials include an Order 1 Soil Study Report (hereafter referred to as the "soil study") prepared by Gary Kitzrow (Kitzrow), a certified professional soil scientist. The application materials also include a traffic analysis prepared by Ferguson & Associates (hereafter referred to as the "Traffic Study"). Additionally, the applicant has submitted a signed application form, a burden of proof statement, and its associated supplemental materials; all of which are included in the record for the subject applications.

**SITE DESCRIPTION:** The Subject Property consists of Tax Lot 200 (± 14.55 acres) and Tax Lot 205 (± 37.31 acres). The Subject Property supports an existing foundation for a never-completed dwelling, but is otherwise undeveloped. Dickey Road fronts the property along its eastern lot line. Vegetation onsite consists of sagebrush, juniper trees, and other flora commonly found in the high desert. The Subject Property is zoned EFU; however, there is no indication in the record of any current or historic farm or agricultural uses onsite. The Subject Property is not receiving special assessment for farm use and has 6.4 acres of COID irrigation rights; however, the record indicates these have not been applied to the property and are leased back to COID.

The Applicant's Burden of Proof (page 4) provides the following description of the property:

> *"The subject tract is designated agricultural land and zoned EFU. However, there is no history of any agricultural or other use. A Phase I environmental study completed in 2006 recites the history of the tract since as early as 1941 and there was no use of the property noted. It is vacant, fallow land. In 1988, the then owner obtained approval for a non-farm dwelling in File CU-88-176. That owner later obtained an extension of time on that permit in File MC-90-27. At some point around that time, it appears that a building permit was obtained and a foundation, or partial foundation, was constructed but no dwelling was ever constructed. The old foundation remains on the property. It appears that in or around 2009, the owner of TL 205 and 200, increased the size of TL 200 using a lot line adjustment with TL 206 which is [west] of TL 200."*

**SURROUNDING LAND USES:** Surrounding land uses generally consist of rural residential uses and agricultural, or small-scale farm uses. The Subject Property is ± 0.65 miles east of the City of Bend's

Urban Growth Boundary (UGB), within which commercial and residential uses exist at a much higher density. Abutting properties to the north and west are EFU-zoned lots or parcels ranging in size from ± 19.54 acres to ± 33.7 acres. Properties to south and east (opposite Dickey Road) are MUA10-zoned lots or parcels of varying sizes and configurations. Surrounding properties are predominantly developed with single-unit dwellings and residential accessory structures. The abutting property to the north of Tax Lot 200 is owned by Central Electric Cooperative and supports existing electrical transmission lines and infrastructure. An undeveloped right-of-way abuts the Subject Property's southern lot line. Farm and agricultural uses in the surrounding area generally consist of small-scale or hobby-farm practices. The Bend Municipal Airport runway is ± 1 mile east of the Subject Property.

**SOILS:** According to Natural Resources Conservation Service (NRCS) maps of the area, the Subject Property contains the following soil units:

*NRCS Soil Map*

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. Section 18.04.030 of the DCC considers this soil type high-value farmland[1] soil when irrigated.

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. 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.

[1] Deschutes County code, 18.04, defines "High Value Farmland" as:
"High-value farmland" means land in a tract composed predominantly of the following soils when they are irrigated: Agency loam (2A and 2B), Agency sandy loam (lA), Agency-Madras complex (3B), Buckbert sandy loam (23A), Clinefalls sandy loam (26A), Clovkamp loamy sand (27A and 28A), Deschutes sandy loam (31A, 31B and 32A), Deschutes-Houstake complex (33B), Deskamp loamy sand (36A and 36B), Deskamp sandy loam (37B), Era sandy loam (44B and 45A), Houstake sandy loam (65A, 66A and 67A), Iris silt loam (68A), Lafollette sandy loam (71A and 1B), Madras loam (87A and 87B), Madras sandy loam (86A and 86B), Plainview sandy loam (98A and 98B), Redmond sandy loam (l04A), Tetherow sandy loam (l50A and 150B) and Tumalo sandy loam (l52A and 152B). In addition to the above described land, high-value farmland includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For purposes of this definition, "specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa.

*Site-Specific Soil Survey*

A soils assessment conducted by a certified soils professional approved by the Department of Land Conservation and Development (DLCD) 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 application materials include a soil study prepared by Kitzrow, a certified professional soil scientist. A letter from LCDC, dated January 6, 2025, stated:

> *"In accordance with OAR 660-033-0045(6)(a), the Department of Land Conservation and Development (DLCD) finds that this soils assessment is complete and consistent with reporting requirements. The county may make its own determination as to the accuracy and acceptability of the soils assessment.*
>
> *DLCD has reviewed the soils assessment for completeness only. DLCD has not assessed whether the parcel qualifies as agricultural land as defined in OAR 660-033-0020(1)(a)."*

The submitted soil study prepared by Kitzrow provides the following summary and conclusions:

> *"An extremely strong preponderance of these lots are made up of the shallow, generally unsuited Class 7 Gosney (irrigated and non-irrigated), rock outcroppings, along with minor areas of Class 8 Rubbleland and HAHT areas (mostly dry ditches). These lithic, entic Gosney soil mapping units are shallow, have extremely restrictive rooting capabilities and very low water holding capacities. Conversely, Deskamp soils are somewhat deeper, have a defined topsoil, and a little less sand (and more ash) than the competing Gosney soil units.*
>
> *The study area and legal lot of record is comprised 69.6% (36.12 Acs.) of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCD definitions."*

**AGENCY COMMENTS:** The Planning Division mailed notice on December 15, 2025, to several public and private agencies and received the following comments:

<u>Deschutes County, Senior Transportation Planner – Tarik Rawlings (December 16, 2025):</u>

> I have reviewed the transmittal materials for 247-25-000727-PA, 728-ZC for properties totaling approximately 51.86 acres to change the Comprehensive Plan designation from Agriculture (AG) to Rural Residential Exception Area (RREA) and the zoning from Exclusive Farm Use (EFUTRB) to Multiple Use Agricultural (MUA10). The properties are currently within the Exclusive Farm Use (EFUTRB) Zone and the Airport Safety (AS) Combining Zone associated with the following properties:

Mailing Name: DICKEY RD LLC
Map and Taxlot: 1712240000205
Account: 109028
Situs Address: 63035 DICKEY RD, BEND, OR 97701

Mailing Name: DICKEY RD LLC
Map and Taxlot: 1712240000200
Account: 150973
Situs Address: **NO SITUS ADDRESS**

I have reviewed the traffic analysis provided by Ferguson & Associates, Inc., dated September 16, 2025, included as Exhibit 12 of the submitted application materials. The analysis included within the submitted Ferguson & Associates, Inc. report requires revisions in order to fully comply with the relevant provisions of OAR 660-012-0060, known as the Transportation Planning Rule (TPR). These requested revisions are outlined below in further detail.

In terms of worst-case scenario analysis for the existing EFU Zone, staff generally agrees with the use categories outlined in Table 1 of the submitted report (i.e. Winery, Farm Stand, Church/Cemetery, and Dog Training Classes – page 5). Staff has, however, identified several areas within the EFU analysis that require revisions and/or clarification.

It is unclear whether the term "Farm Stand" included in Table 1 is synonymous with the term "farm product plant" used on page 5. At any rate, the report's comparison of the "farm"-related use to ITE 140 (Manufacturing) misquotes the daily weekday and p.m. peak hour generation rates (they should be revised to 4.27 daily weekday trips and 0.63 p.m. peak hour trips, respectively, according to the ITE Manual 12$^{th}$ edition rates).

For analysis related to Church use (ITE 560), the report utilizes number of Seats as the independent variable and bases this framework on the occupancy limitations outlined in OAR 660-033-0130(2)(a). Staff notes that the language of OAR 660-033-0130 allows for exceptions to the occupancy limitations under certain conditions and, given this potential uncertainty in projecting maximum occupancy, staff believes that the ITE 560 independent variable of 1,000 sq. ft. GFA is a more accurate variable and the submitted analysis should be revised to reflect square-footage and to base such square-footage on real-world examples and references of existing church uses. Additionally, following the report's reference to the "Destiny Court" and "Marken" PA/ZC analytical framework (relying on acreage as the independent variable), staff further notes that 1,000 sq. ft. GFA is the preferred independent variable for the Church use.

For analysis related to Dog Training Classes (analogous to ITE 565 Day Care Center for trip generation purposes), the trip totals included in Table 4 of the report are likely too low when considering the total size of the subject property and the maximum size of dog training classes outlined in DCC 18.16.025(K)(1-2). The dog training trip generation assumptions are based on the Marken PA/ZC methodology (pages 4-5 of the submitted report) which, at an

acreage of 59 acres, has a similar size and similar anticipated trip generation potential to the subject property. Additionally, while Table 4 assumes that the maximum number of dogs would be ten (10), DCC 18.16.025(K)(1-2) allows for a maximum of six (6) classes per day (each with 10 dogs) as a worst-case scenario. The analysis for Dog Training Classes should be revised to account for the maximum number of classes allowed each day.

The reasoning for the acreage/property size assumptions for a Cemetery (ITE 566) use on the subject property (outlined in Table 3 of the submitted report) is unclear (40.9 acres total). The report should be revised to include additional reasoning for why this acreage/property size was utilized for a Cemetery use, using operating characteristics derived from real world examples and referenced as such in the revised report.

Regarding the reasonable worst-case scenario analysis provided for the requested MUA10 Zoning designation, staff generally agrees with the applicant's inclusion of one ADU per anticipated dwelling unit. Table 6 should reflect a daily weekday vehicle trip generation of 46 total trips, as 45.45 vehicle trips translates to 46 total vehicle trips per analytical best practices. The total daily weekday vehicle trip total of 46 would result in a revised grand total of 87 daily weekday vehicle trips. Additionally, the p.m. peak hours outlined in Table 6 for ADUs should be revised to three (3) total p.m. peak hour vehicle trips (2.5 p.m. peak hour vehicle trips translates to 3 p.m. peak hour trips per analytical best practices).

As the subject application does not include a site plan or development proposal, the transportation analysis requirements of DCC 18.116.310 will need to be met during subsequent development review on the subject properties.

Tax Lot 205 (63035 Dickey Road) has frontage on Dickey Road, to the east. Dickey Road is a public road right-of-way maintained by Deschutes County and functionally classified as a Rural Collector. The property records for Tax Lot 205 include a Driveway Access Permit (permit no. 247-SW2452) issued by Deschutes County, demonstrating compliance with the access permitting requirements of DCC 17.48.210 and DCC 12.28.050. Staff notes that, due to Dickey Road's classification as a Rural Collector, the provisions of DCC 12.28.090 may apply to any subsequent development proposal. Tax Lot 200 (located directly to the west of Tax Lot 205 and separated from Dickey Road) is bordered by an unnamed and undeveloped right-of-way corridor stemming west from the intersection of Dickey Road and Nelson Road. The legal status of this corridor is unclear based on County records and any proposed interface with this corridor would require that the applicant coordinate directly with the Deschutes County Road Department and County Surveyor.

Board Resolution 2024-038 sets a transportation system development charge (SDC) rate of $5,856 per p.m. peak hour trip. As the plan amendment/zone change by itself does not generate any traffic, no SDCs apply at this time. SDCs will be assessed based on development and/or division of the property. When development occurs, the SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

**Staff Comment** (Staff Report, page 8)**:** On March 11, 2026, the applicant submitted additional information in response to the concerns identified within the comments provided above. Below is the response from the Senior Transportation Planner.

Deschutes County, Senior Transportation Planner – Tarik Rawlings (March 12, 2026):

> The revised findings in Ferguson & Associates TPR addendum letter (dated March 2, 2026) addresses my concerns with the original analysis and I have no further comments related to TPR compliance. With the addendum in record, I agree with the assumptions, methodologies, and conclusions that collectively demonstrate the proposal's compliance with Goal 12 and TPR.

Central Oregon Irrigation District, G.I.S Analyst – Daniel S. Downing (December 26, 2025)

> Please be advised that Central Oregon Irrigation District (COID) has reviewed the application received on December 15th, 2025, for the above referenced project located at 63035 DICKEY RD, BEND, OR 97701/ tax lot(s): 1712240000205. The applicant is requesting: The applicant requests a Comprehensive Plan Amendment to change the designation of the subject property from Agriculture (AG) to Rural Residential Exception Area (RREA). The applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).
>
> There are 6.4 acres of mapped COID irrigation water rights appurtenant to the tax lot(s) listed above. Please note that COID's A-24-25 and A-24-26 canals traverse through to the tax lot(s) listed. Both canals have a 20' right of way.
>
> Listed below are COIDs initial comments to the provided application and site plan. All development affecting irrigation facilities shall be in accordance with COID's Development Handbook and/or as otherwise approved by the District.
>
> Pursuant to ORS 92.090(6) Central Oregon Irrigation District (COID) certifies that the Tentative Plan lies within the boundary of COID and is subject to the fees and policies of COID.
>
> Pursuant to ORS 92.103 (2) Central Oregon Irrigation District (COID) is providing comments (statements) containing information or recommended conditions for approval of the tentative plan for the proposed plat.
>
> - Tax Map 1712240000205 has 6.4 acres of COID irrigation water mapped to a specific place of use. Construction of a structure, driveway, or other impermeable surface on top of a mapped water right is not permitted without first meeting with COID.
> - The applicant must provide all application materials to COID including all relevant linework. COID must review and approve all linework prior to approval of the application.

- All water rights that may be impacted by development, ROW dedication, or other action as a result of the application or development must receive an approval letter from COID's water rights team. COID may require the removal of impacted water rights in any development or application.

- Irrigation infrastructure and rights-of-way are required to be identified on all maps and plans.
- COID holds an easement adjacent and within the subject property and has the right to install, pipe, maintain and operate its irrigation system above and below ground. COID has the right to operate and maintain all other related facilities within the canal irrigation easement. This includes the right of access to such facilities and the right to require the removal of any obstructions that may be placed within the canal easement at the lot owner's expense. At no time may permanent structures be placed within the canal easement or COID's property, nor may any other obstruction be placed within the easement which interferes with the use of the canal easement without prior written approval from COID.
- Crossings or encroachments within COID's easements are only permitted with approval from COID in the form of a recorded crossing/encroachment license.
- Any irrigation conveyance, District or private, which passes through the subject property shall not be encroached upon without written permission from this office.
- No structures of any kind, including fence, are permitted within COID property/easement/right of way without written permission from this office.
- All work within COID easements must be completed before the irrigation season begins on April 1st. This includes any work that may interfere with the delivery of water (excavation, piping, water control and measurement devices, backfill). Any claims that arise out of delayed water delivery to COID's patrons resulting from the development/project/site work will be applicant & developer's sole responsibility.
- Policies, standards and requirements set forth in the COID Developer Handbook must be complied with.
- Comply with Requirements of COID Developer Handbook including restriction on drilling / blasting and excavation within and adjacent to the existing canal embankment. No blasting is permitted within 100-feet of any open ditch or canal.

Our comments are based on the information provided, which we understand to be preliminary nature at this time. Our comments are subject to change and additional requirements may be made as site planning progresses and additional information becomes available. Please provide updated documents to COID for review as they become available.

The following agencies either had no comment or did not respond to the notice: Avion Water Company, Bend Fire Dept., Bend Growth management Dept., Bend Municipal Airport, Bend Planning Dept., Confederated Tribes of Warm Springs, Department of Land Conservation &

Development, Deschutes County Assessor, Deschutes County Onsite Wastewater, ODOT Region 4 Planning, Oregon Dept. of Ag. Land Use Planning, Oregon Dept. of Agriculture, OR Dept of Agriculture, Watermaster - District 11.

**PUBLIC COMMENTS:** On December 15, 2025, the Planning Division mailed a Notice of Application to all property owners within 750 feet of the Subject Property. Staff received one comment, copied below:

Central Oregon LandWatch, Associate Staff Attorney – Robin Hayakawa (December 19, 2025)

> Central Oregon LandWatch is concerned that the application materials in file no. 247-25-000727-PA, 728-ZC do not meet the applicable criteria for a plan amendment and zone change from agricultural use to rural residential.
>
> Please notify us of any decisions or hearings on the application. Our address is 2843 NW Lolo Drive Ste 200, Bend, OR 97703.

Central Oregon LandWatch (COLW) (Rory Isbell) testified at the public hearing and submitted into the record May 7, 2026, and May 14, 2026, written submissions.

**NOTICE REQUIREMENT:** The Applicant complied with the posted notice requirements of Section 22.23.030(B) of Deschutes County Code (DCC) Title 22. The Applicant submitted a Land Use Action Sign Affidavit, dated December 22, 2025, indicating the Applicant posted notice of the land use action on the Subject Property on that same date. On March 20, 2026, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the Subject Property. A Notice of Public Hearing was published in the Bend Bulletin on Tuesday, March 24, 2026. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on March 23, 2026.

**REVIEW PERIOD:** According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change application is not subject to the 150-day review period.

**LAND USE HISTORY**[2]**:** Previous land use actions associated with the Subject Property are:

- LR-88-127: Lot of Record Verification for Tax Lot 205.
- CU-88-176: Conditional use approval to establish a nonfarm dwelling.
- E-90-20: Extension approval for the nonfarm dwelling approved under CU-88-176.
- MC-90-27: Modification of conditions to allow an additional extension for file no. CU-88-176.
- CU-92-135: Conditional use approval to establish a nonfarm dwelling.
- E-93-79: Extension approval for the nonfarm dwelling approved under CU-92-135.
- AD-94-33: Land use approval to permit a dwelling in excess of 30 feet in height.
- LL-09-27: Lot line adjustment between Tax Lots 200 and 206.

[2] As described above, neither the nonfarm dwelling approved under CU-88-176 nor CU-92-135 was constructed.

## III. FINDINGS & CONCLUSIONS

### A. Preliminary Findings

#### 1. Introduction:

The land uses requests made in this case are similar to a growing number of cases seen by this Hearings Officer and the Deschutes County Commission (the "Board"). The two requests in this case involve a Comprehensive Plan map change and a corresponding zone change. Specifically, in this case the Applicant requested a comprehensive plan change from Agricultural (AG) to Rural Residential Exception Area (RREA) and a zone change from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

Applicants desiring to remove the farm use comprehensive plan and zoning use designations and replace them with non-farm use comprehensive plan and zoning designations have a couple of choices. An Applicant has the choice to seek an exception to Goal 3. In the alternative an Applicant can seek to demonstrate that the land in question is not agricultural land thereby requesting directly a comprehensive plan and zone change (often referred to as a post acknowledgment plan amendment – "PAPA"). An Applicant choosing the quasi-judicial PAPA process attempts to demonstrate the property subject to the application is not "agricultural land."

The PAPA application in this case, and many others recently coming before this Hearings Officer and the Board, have been opposed by the public interest law firm Central Oregon LandWatch ("COLW"). COLW has challenged this Hearings Officer's, other hearings officer's and Board's interpretation of a number of relevant approval criteria. The Oregon Land Use Board of Appeals ("LUBA") and Oregon Courts have addressed many of COLW's interpretative issues and have, on occasions, agreed with COLW's arguments.

In this case the only participants active in this case are the Applicant, COLW and Deschutes County Planning Staff (Staff). At the public hearing in this case Applicant and COLW acknowledged that recent LUBA and Court opinions are continuing an evolutionary process of developing more certain rules to be applied in cases such as the one here. It appears to the Hearings Officer that both the Applicant and COLW are continuing to push the interpretative boundaries of the law impacting PAPA applications. Since COLW is the sole opponent to the application in this case and given that COLW is a respected advocate for its legal views, the Hearings Officer has decided to address, in the Preliminary Findings, each of COLW's issues. The Hearings Officer has quoted COLW's May 7, 2026, record submission in its entirety (excepting for its Introduction section) and followed the COLW quoted material with findings addressing its issues.

The Hearings Officer's goal with this recommendation, in particular the Preliminary Findings, is to address in a comprehensive manner the "tests," "rules," and "format" of state and local laws/rules so that the Board, future applicants, opponents and reviewing bodies (LUBA and the Courts) have an opportunity to clarify (if possible) what an Applicant is obligated to do, what the Staff is required

to review, and what opponents (such as COLW) may legitimately attack in a PAPA application. The Hearings Officer invites the Board to consider this recommendation carefully. The Hearings Officer also invites the Applicant, COLW, future PAPA participants and reviewing bodies to review, agree or disagree with the Hearings Officer but to do so by providing more clarity to the process.

**2. COLW Issue: Conflict Between DCCP and DCC 18.116**

COLW (May 7, 2026 pages 2-3) included the following comments:

> *"The requested PAPA cannot be approved because it does not comply with the 2010 Deschutes County Comprehensive Plan ("DCCP"). ORS 197.175.(2)(d); ORS 197.835 (7)(a); DCC 18.136.020 (A). The DCCP, at Policy 3.3.1, mandates that 'Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." Relatedly, DCCP 3.3 states: 'Deschutes County requires a 10-acre minimum lot size for new rural residential lots in order to protect the rural quality of life and its resources.*
>
> *Here, the applicant requested the subject property to be rezone from EFU-TRB to MUA-10. The MUA zone allows new residential parcels substantially smaller than 10 acres. The DCC allows a "five-acre minimum lot size or equivalent density" in the MUA zone where, like here, a property is within one mile of a UGB. DCC 18.116.400(A)(3) ("In the MUA-10 zone, cluster and planned developments shall be allowed an equivalent density of one unit per seven and one-half acres and planned and cluster developments within one mile of an acknowledged urban growth boundary shall be allowed a five acre minimum lot area or equivalent density.") In all other cases in the MUA 10 zone, "cluster and planned developments shall be allowed an equivalent density of one unit per seven and one-half acres." Id. Other provisions of DCC clarify that the cluster developments can be granted with a "minimum lot area of two acres and a maximum lot area of three acres." DCC 18.128.200(B)(2). Planned developments have no minimum lot area requirement at all, and instead "may" rely on an overall density factor. DCC 18.128.210(D)(3).*
>
> *In the Destiny Court case, LUBA remanded a decision rezoning a 60-acre property from EFU to MUA because the County failed to explain the apparent conflict between DCCP Policy 3.3.1 and DCCP 3.3 and the MUA zone's allowance of smaller new lot sizes outside the Westside Transect Zone. Central Oregon LandWatch v. Deschutes County (Destiny Court), __ Or LUBA __, slip op at 6-10 (LUBA No. 2025-015, June 26, 2025).*
>
> *The MUA zone facially conflicts with the DCCP. Where there is a conflict between a plan and a zone, the plan controls. Baker v. City of Milwaukie, 271 Or 500, 514, 533 P2d 772 (1975). The current application cannot be approved because it proposes new zoning on the subject property that allows new residential parcels smaller than 10 acres, conflicting with DCCP Policy 3.3.1 and DCCP 3.3. ORS 197.175(2)(d); ORS 197.835(7)(a); DCC 18.136.020(A).*

The Hearings Officer concurs with the COLW description of Applicant's zoning proposal (See May 7, 2026 letter, Introduction, pages 1 & 2); the Applicant's proposal includes a request to change the Subject Property zoning from EFU-TRB to MUA10. The Hearings Officer also concurs with COLW's recitation of the language of the Deschutes County Comprehensive Plan (DCCP) in 3.3 and 3.3.1.

Applicant and COLW, at the May 7, 2026 public hearing, concurred that the current and relevant language of DCC 18.32.040(A) (Dimensional Standards) states that "The minimum lot area shall be 10 acres."

COLW, in the quoted material above, raises opinions expressed by LUBA in Central Oregon Landwatch v. Deschutes County (*Destiny Court*) LUBA 2025-015 (2025) the LUBA "Destiny Court" opinion. This Hearings Officer presided over the initial hearing in the *Destiny Court* case and issued a recommendation to the Board. The Board generally adopted the Hearings Officer's recommendation. The Hearings Officer recommendation (and Board decision) in the *Destiny Court* case applied the then current version of DCC 18.32.040(A); the approval criterion in effect at that time. The DCC 18.32.040(A) language relevant to the LUBA *Destiny Court* opinion stated the following:

> *'the minimum lot area shall be 10 acres,* ***except planned and cluster developments shall be allowed a density of one unit per seven and one-half acres and planned and cluster developments within one mile of an acknowledged urban growth boundary shall be allowed a five-acre minimum lot area or equivalent density****." (bolding added by the Hearings Officer)*

LUBA, in its *Destiny Court* opinion was asked by COLW to consider whether the language of DCC 18.32.040(A), on its face, conflicted with the language of DCCP 3.3 and 3.3.1. This issue was not raised at the Hearings Officer level of the *Destiny Court* case but apparently was raised before the Board. LUBA, in the opinion of the Hearings Officer, appropriately decided that the language of DCCP 3.3 and 3.3.1, based upon the precedent established by *Baker v. City of Milwaukie* 271 Or 500 (1975), prevailed over the language of the language contained in DCC 18.32.040(A). Further, the Hearings Officer believes that LUBA correctly concluded that the relevant language of DCC 18.32.040(A) clearly allowed density less than 10 acres in the MUA10 zone. LUBA concluded that DCC 3.3 and 3.3.1 conflicted with the relevant language of DCC 18.32.040(A).

The Hearings Officer finds that the County changed the language of DCC 18.32.040(A) that was relevant to the *Destiny Court* opinion by eliminating reference to the exceptions that allowed less than a 10 acres density (eliminated allowing planned and cluster development lower densities and eliminated allowing lower density on property located with one mile of the urban growth boundary). The DCC 18.32.040(A) language relevant to this case limits density to one lot per 10 acres; this density limitation appears to be consistent (not in conflict) with DCCP 3.3 and 3.3.1. Based upon the current language of DCC 18.32.040(A) the concerns expressed by LUBA in the *Destiny Court* opinion related to the DCCP and DCC conflict seem to have been addressed.

COLW, in the above-quoted comments, asserts that the language of DCC 18.116.400(A)(3) is relevant[3]. COLW correctly states that the DCC 18.116.400(A)(1), (2) and (3) allow densities in the MUA10 zone that exceed those allowed by DCCP 3.3 and 3.3.1 and DCC 18.32.040(A).

[3] **18.116.400 Land Divisions**

A. General/Discretionary Standard: Partitions and subdivisions are subject to the applicable provisions of Title 17 and Title 18 except as modified by the following:
   1. Cluster developments are allowed as conditional uses in MUA-10, RR-10, TER zones and subject to DCC 18.128.
   2. Planned developments are allowed as conditional uses in SURM, MUA-10, RR-10 zones and subject to DCC 18.128.

The Hearings Officer reviewed LUBA and Oregon Court cases cited by the Applicant and COLW related to the potential DCCP and MUA10 conflict. The Hearings Officer believes that LUBA has not directly addressed a potential conflict between the DCCP and DCC 18.116.400(A)(1), (2), and (3). The Hearings Officer, in findings below, will address COLW's claim that the application in this case cannot be approved because DCC 18.116.400(A)(1), (2) and (3) conflict with DCCP 3.3 and 3.3.1. The Board may, upon its review of this recommendation, agree or disagree with the Hearings Officer's conclusions related to the potential conflict or it may wish to expand upon the Hearings Officer's findings.

The Hearings Officer presents the following alternative findings related to COLW's claim that the application cannot be approved because DCC 18.116.400(A)(1), (2), and (3) conflict with DCCP 3.3 and 3.3.1.

The Hearings Officer first alternative finding focuses on the actual application submitted in this case. Applicant proposed to rezone the Subject Property to the Multiple Use Agriculture zone (MUA). As noted above the relevant version of the DCC 18.32.040(A) states

*"In the MUA Zone, the following dimensional standards shall apply*
*(A) The minimum lot area shall be 10 acres."*

The Hearings Officer notes prior versions of DCC 18.32.040(A) included opportunities to increase the density (more lots/acre) when an applicant requested approval for planned/cluster developments or where the Subject Property was within a designated distance from the Bend UGB). The allowances (exceptions) were contained within the text of DCC 18.32.040(A). The relevant version of DCC 18.32.040(A) does not contain any opportunity to increase the density greater than one lot per 10 acres. The Applicant in this case is requesting the Subject Property to be rezoned to MUA10 and that request limits (under DCC 18.32.040(A)) the size of lots to be at least 10 acres. The Hearings Officer is not aware of any LUBA or court opinion holding that a 10-acre minimum lot size is inconsistent with the DCCP.

DCC 18.116.400(A) is found in the Supplementary section of the DCC and includes the title "Land Divisions." DCC 18.116.400(A) includes the following language:

*General/Discretionary Standard: Partitions and subdivisions are subject to the applicable provisions of Title 17 and Title 18 except as modified by the following:"*

3. In the MUA-10 zone, cluster and planned developments shall be allowed an equivalent density of one unit per seven and one-half acres and planned and cluster developments within one mile of an acknowledged urban growth boundary shall be allowed a five acre minimum lot area or equivalent density.
4. In the RR-10 zone, cluster and planned developments shall be allowed an equivalent density of one unit per 7.5 acres. Planned and cluster developments within one mile of an acknowledged urban growth boundary shall be allowed a five-acre minimum lot area or equivalent density.
5. In an SURM zone, there shall be no minimum lot area for planned developments provided that the overall density shall not exceed eight dwelling units per acre.

B. Clear and Objective Standard pursuant to DCC 22.08.040: Partitions and subdivisions are subject to the applicable provisions of Title 17 and Title 18.

The Hearings Officer finds that the review of Applicant's application is limited to the specific requests contained in its application. Applicant did request the Subject Property be rezoned MUA10. The Applicant did not request, in its application, to partition or subdivide the Subject Property. The Applicant did not request approval of any use or lot size set forth in DCC 18.116.400(A).

The Hearings Officer finds the introductory language of DCC 18.116.400(A) is clear; DCC 18.116.400 is a "general and discretionary standard." The Hearings Officer finds that it is within the discretion of an applicant whether or not to avail itself of the provisions of DCC 18.116.400(A)(1), (2) or (3). When an applicant chooses (exercises its discretion) not to make a request involving DCC 18.116.400(A)(1), (2) or (3) that applicant is limited, by the DCC, to the MUA10 density of one lot per 10 acres.

Applicant, in its May 5, 2026, record submission (page 5), stated that "this application does not seek approval of parcels less than what is allowed under Policy 3.3.1…" The Hearings Officer finds he has no authority, in this case, to issue a recommendation related to the applicability or satisfaction of the Applicant's specific proposal to DCC 18.116.400(A). DCC 18.116.400(A) is not a relevant approval criterion in this case.

The Hearings Officer's second alternative finding related to COLW's assertion that this application cannot be approved because DCCP 3.3 and 3.3.1 conflicts with DCC 18.116.400(A) relates to the manner which COLW presented its argument. The Hearings Officer finds that COLW's argument is essentially a facial attack on the DCCP and DCC. The Hearings Officer finds that if COLW is making a facial attack on the DCCP and DCC then this case is not the proper forum to do so. As noted above, the Applicant has not made an application that requires the Hearings Officer, in a quasi-judicial setting, to consider DCC 18.116.400(A).

The third alternative argument considers the Applicant's comments quoted below:

> *As we explained in detail in our May 5, 2026 letter after these applications were submitted, in April 2026, LUBA decided Central Oregon LandWatch v. Deschutes County LUBA No. 2024-080 ("Pohaku Farms"). Based on LandWatch's argument on which it prevailed in that case, the DCCP, specifically Policy 3.3.1, is the controlling law. LandWatch argued that when the DCCP conflicts with a zoning standard, the DCCP controls and the contrary regulation is invalid. Baker v. City of Milwaukie, 271 Or 500, 514 (1975). You asked staff about the current version of DCC Chapter 18 and whether cluster and Planned Developments are in the code. Staff correctly advised that they are. However, under LandWatch's argument, those provisions are not currently valid and cannot be used to gain approval for parcel less that 10-acres. Indeed, it is incongruous for LandWatch to rest on its successful argument that the provisions are not valid in light of Policy 3.3.1[2] and then argue that there is an inconsistency between them.*

The Hearings Officer concurs with Applicant and LUBA that the long-standing precedent is that where there is an inconsistency between a Comprehensive Plan provision and a relevant zoning provision the Comprehensive Plan provision prevails. The Hearings Officer, assuming that the Hearings Officer even has the authority to address COLW's DCC 18.116.400(A) issue, finds that the

relevant DCCP sections/policies are 3.3 and 3.3.1. The Hearings Officer finds, finds that had the Applicant requested approval under DCC 18.116.400(A), that LUBA and the Courts would conclude that DCC 18.116.400(A) does in fact conflict with DCCP 3.3 and 3.3.1.

COLW (May 7, 2026, page 3) also argued that DCC 18.128.200 Cluster Development (Single-Unit Dwelling Uses Only) and DCC 18.128.210 (Planned Unit Developments) conflicted with the DCC 18.128 as it relates to requests for conditional use approval. Applicant did not request approval under either DCC 18.128.200 or 210. The Hearings Officer points out that if DCC 18.128.200(D)(2) were to apply it states that "the minimum lot area for a cluster development shall be determined by the zone which it is proposed." The Hearings Officer also points out that if DCC 18.128.210(D)(2) were to apply it states that "the minimum lot area shall not exceed that established by the underlying zone." The relevant zone, in this case, is the MUA10 zone which requires a minimum lot size of 10 acres. The Hearings Office finds neither DCC 18.128.200 or DCC 18.128.210 conflicts with DCCP 3.3 and 3.3.1.

### 3. COLW Issue: Application of the MUA zone to non-resource lands without taking an exception to Goal 14

COLW (May 7, 2026, pages 3 & 4) included the following comments:

> *"The MUA zone is not only in conflict with the DCCP, but it is also in conflict with state law when applied to nonresource lands. The MUA zone is a zone designed to implement goal exceptions taken by the County many decades ago. The MUA zone authorizes rural residential development in a rural residential exception area, which is governed by OAR 660-004-0040. LUBA recently held that Deschutes County may not apply its MUA zone to nonresource lands without violating Goal 14 because the County's "rural residential zones and land use regulations governing cluster and planned unit development [ ] could potentially allow cluster and planned unit development on non-resource lands at densities and intensities that exceed that contemplated by OAR 660-004-0040 for exception areas." Central Oregon LandWatch v. Deschutes County (DCCP 2040), __ Or LUBA __, slip op at 30 (LUBA No. 2024-080, April 18, 2026). LUBA further held that the County failed to cite to any "history of legislative efforts to demonstrate that allowing higher-density residential uses on non-resource lands is consistent with Goal 14." Id., slip op at 27.*
>
> *Although the holding of DCCP 2040 concerned a proposed comprehensive plan policy that is not in effect, its conclusion still applies to this application under the County's current comprehensive plan, because both versions of the plan purport to authorize application of the MUA zone to nonresource lands. The MUA zone may not be applied to nonresource lands without taking an exception to Goal 14 because it allows a density and intensity of development that exceeds what is even allowed in exception areas under OAR 660-004-0040. DCCP 2040, slip op at 21-32."*

It appears to the Hearings Officer that the last sentence quoted above best summarizes this COLW's issue. Restated the Hearings Officer believes COLW is suggesting that the MUA zone may not be applied to nonresource lands without taking an exception to Goal 14. LUBA, in *Central Oregon Landwatch v. Deschutes County*, LUBA No. 2024-080 (2026) ("*Pohaku*"), included the following:

*"We have examined some of the legislative history leading to LCDC's adoption of OAR 660-004-0040. Two conclusions are readily discernible from that history. The first confirms our facial reading of the rule that LCDC deliberately chose to exclude non-resource lands from this rule. The second is that LCDC understood that the designation, zoning and development of non-resource lands would continue to be subject to demonstration of consistency with Goal 14, pursuant to the Curry/Shaffer test.*

*Accordingly, we agree with petitioner that in designating and rezoning non-resource land, a county cannot rely upon OAR 660-004-0040 to either make or avoid a demonstration of compliance with Goal 14. The rule simply does not apply to non-resource lands, and therefore the required Goal 14 analysis must be conducted as if the rule does not exist. In the absence of the rule, the county's only option is to demonstrate consistency with Goal 14 using the full multi-factor evaluation described in Curry County and Shaffer."*

The Hearings Officer finds, on the COLW issue as narrowly described above, OAR 660-0040-0040 does not apply to non-resource lands.

**4. COLW Issue: Purpose Statement**

COLW described this issue as follows (May 7, 2026, pages 4 & 5):

*"DCC 18.136.020(B) provides that "the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification." In other words, the characteristics of the subject property should be consistent with the purpose statement and intent of the MUA-10 zone and RREA-designation.*

*Amongst the several purposes of the MUA zone is to "preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses;". DCCP 18.32.010. Assuming, without agreeing, that the applicant is correct that Statewide Planning Goal 3 need not apply to the subject property because it is improperly classified as "Agricultural Land," then rezoning the subject property is not consistent with the purpose and intent of the proposed zone classification. The purpose of the MUA zone is, at least in part, to preserve and maintain agricultural land. DCC 18.32.010. This is logical because the MUA zone was created to regulate the use of land for which an "irrevocably committed" or "previously built" exception to Goal 3 was taken in the County's first comprehensive plan. Exhibit F at p.13, 1979 Deschutes County Comprehensive Plan Exceptions Statement, ("On the committed lands the County will establish a Multiple Use Agricultural (MUA) Zone which will encourage the use of these lands as agricultural…") In other words, the MUA zone applies to lands that meet Goal 3's definition of agricultural lands but that the County took to an exception to allow uses not allowed by Goal 3. See also Central Oregon LandWatch v. Jefferson County (MAC II), 347 Or App 454, 457-461, 586 P3d 957 (2026) (adopting an exception to Goal 3 implicitly acknowledges that land is agricultural land suitable for farm use).*

*Given that the applicant's theory is that the subject property is not agricultural land, it follows that re-zoning the property to MUA would not be consistent with the purpose and intent of the MUA zone.*

*Accordingly, DCC 18.13.6020(B) is not satisfied. The applicant's choice of proposed zone classification for the subject property must be changed."*

Applicant (Final Argument, May 28, 2026, page 3) provided the following response to COLW's "purpose" argument:

*"LandWatch asserts that the MUA-10 zone applies only to agricultural lands and thus, approving a rezone based on a theory that the property is predominantly comprised of non-agricultural soil is not proper. LandWatch relies on Ordinance No. PL-20 requesting a Goal exception for certain lands.*

*LandWatch's argument has fatal flaws. First, the ordinance is clear that the county requested the exception to establish the MUA zone to encourage the use of agricultural land as a hobby farm or non-commercial level. Another purpose for the exception was to have a supply of land for rural living opportunities. Applying the MUA-10 zone here is consistent with the prior exception. The rezoning request is based on the fact that the property is comprised predominantly of non-agricultural soils. The rezoning to MUA-10 will provide opportunities for owners to develop rural dwellings and, if desired, engage in non-commercial hobby farming using small areas of the property that may have better soil.*

*Owners do not have to worry about making a profit because their primary motivation is rural living, not engaging in farm use for a profit.*

*Second, the exception Ordinance upon which LandWatch supports its position does not state that MUA-10 zone was intended to apply only to agricultural land. LandWatch's document (Exhibit F) states at page 14:*

> *The MUA areas also serve to provide a buffer between residential and agricultural lands, while permitting some people to enjoy a rural lifestyle.*

*Clearly, applying the MUA-10 zone to the subject property is directly consistent with the historic and current purpose for the MUA-10 zone. It is a zone that can allow limited hobby farming, residential living and serves as a buffer between agricultural land and residential land. It allows use and development consistent with a rural character of an area and with 10-acre parcel being the minimum, can preserve ample open space and resources."*

COLW seems to be suggesting that Applicant selected the wrong zone in its application. COLW's argument appears to be that the word "agricultural," as used in DCC 18.32.010, must be interpreted literally. The Hearings Officer acknowledges that the term "agricultural" does exist in the title of the zone (Multiple Use Agriculture – 10 acres). COLW argued that since Applicant proposed that the Subject Property is not "agricultural land" then it would be impossible for Applicant to demonstrate that the purpose statement is met in this case.

The Hearings Officer finds COLW's argument (Applicant cannot meet the MUA-10 purpose statement because Applicant's position that the Subject Property is not "agricultural" land) may have merit but the Hearings Officer finds that COLW did not sufficiently develop that argument to the

level that the Hearings Officer or Applicant could adequately and authoritatively respond. The Hearings Officer finds that numerous prior applications similar to the one in this case have been considered and approved by the County; and not, on the basis of this current COLW argument. COLW may wish to expand upon this argument in the hearing before the Board.

The Hearings Officer, for the purposes of the findings in this section, assumes that the MUA10 zone may be applied in cases where an applicant asserts that the land subject to the application is not "agricultural" land.

The Hearings Officer finds that the Purpose section of the MUA-10 zone (DCC 18.32.010 as quoted above) is an aspirational series of goals. The Hearings Officer finds that it is not a checklist that requires 100% of all of the aspirational goals to be met. For example, one of the aspirational goals is to *"conserve forest lands for forest uses."* That aspirational goal simply is inapplicable to some properties (such as in this case); there is no forest land to conserve on the Subject Property. Another aspirational goal is to *"to conserve open spaces and protect natural and scenic resources."* Many properties do not contain natural and scenic resources. There are no designated natural or scenic resources on the Subject Property to conserve.

The Hearings Officer begins review of the DCC 18.32.010 purpose statement, as related to this application, below.

DCC 18.32.010 (the MUA-10 Purpose Statement) 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 first listed aspirational purpose statement has a goal to "preserve the rural character…" Assuming for the purposes of this section of findings that the MUA10 zone, with a minimum lot size of 10 acres and/or a Goal 14 (Curry/Shaffer) analysis concludes that Applicant's proposed MUA10 zone change request results in "rural" uses then the first aspirational statement (preserve rural character…) will be met. Alternatively, if Applicant's proposed MUA10 zone request is determined to result in "urban" uses then the first aspirational statement would not be met.

The second aspirational MUA purpose statement seeks to "preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses." The Hearings Officer finds this statement capable of more than one interpretation. There is no legislative history evidence in the record to suggest what the drafters of DCC 18.32.010 intended with respect to the use of the phrase "agricultural lands." Without additional evidence in the record (such as

legislative history) the Hearings Officer is forced to resort to general legislative interpretive tenets. The Hearings Officer first must look to the definition section of Title 18 to see if the phrase "agricultural lands" is defined. It is. DCC 18.04.030 defines "agricultural lands" as follows:

> *"Agricultural Land" means lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominately Class I-VI soils, and other lands in different soil classes which are suitable for farm use, taking into consideration soil fertility, suitability for grazing and cropping, 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. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands shall be included as agricultural lands in any event.*

The above definition generally parallels State law related to the definition of "agricultural land." The Hearings Officer notes that assessing whether the Subject Property is in fact "agricultural land" is at issue in this case. If Applicant successfully demonstrates that the Subject Property is NOT "agricultural land" then this aspirational goal is not relevant. If the Subject Property is NOT "agricultural land" it is impossible to preserve and maintain. As noted in findings above, not all of the DCC 18.32.010 aspirational goals need to be proven because some of those goals are simply irrelevant.

The next purpose factor is "*conserve open space."* Again, this phrase is capable of more than one interpretation. One choice of interpretation of "conserve open space" is to limit that phrase to designated or County identified open spaces. The Subject Property is not specifically designated by the County as a scenic space or an open space. Under that interpretation the "conserve open space" factor is not relevant in this case. A second possible interpretation is that conserving open space means that any physical improvement added to land interferes with the conservation of open space. The Subject Property is vacant (no above-ground physical improvements such as houses, barns, garages, etc.). The question, if the second interpretation is adopted, is will additional above-ground improvements be made if the MUA10 zone is applied compared to the EFU zone. As it stands the possibility of a farm dwelling and supporting structures and accessory structures could be constructed. If the MUA10 zone is approved it may be possible to have four or five dwellings and supporting outbuildings. Both the current zoning (with a residence plus outbuildings and accessory structures) and the MUA10 (residences and outbuildings) can impact the amount of open space that would exist if both zones were fully developed.

The Hearings Officer finds COLW did not offer any argument or evidence into the record expanding upon its claim that there would be less open space if the MUA10 were approved. For the purposes of this recommendation the Hearings Officer adopts the interpretation that open space refers only to designated open space and designated scenic areas. The Hearings Officer finds this purpose factor is not relevant in this case.

The next purpose factor to be considered is "maintain and improve the quality of air, water and land resources." The Hearings Officer recognizes that residences and associated outbuildings could be constructed if the MUA10 zone is approved. Those uses will impact the quality of air, water and land resources. Equally true is that if the Subject Property were developed as an active farm it is

likely that a residence and outbuildings would be constructed that consume air and water and impacts the land. If, for example as suggested by COLW, the soils were amended and irrigation employed and cattle grazed such uses would consume air and water and impact the land. The Hearings Officer finds there is no persuasive argument or evidence in the record to suggest that the EFU use of the land (farm) or rural residential uses (residences) would have a measurable impact on the quality of air, water and land resources.

The final purpose factor to be considered is the provision "for an orderly and efficient transition from rural to urban land." The Hearings Officer finds a goal of the MUA10 zone is in fact to provide for the orderly and efficient transition from rural to urban land use. The Hearings Officer finds the proposed zone change in this case meets the MUA10 purpose of providing an orderly and efficient transition from rural to urban land use.

The Hearings Officer finds, on balance, that the proposed MUA10 zone meets the relevant purposes set forth in this criterion.

**5. COLW Issue: Necessary to permit farm practices on adjacent/nearby agricultural lands**

COLW described this issue as follows (May 7, 2026, pages 5 – 9):

*"The application misapplies and misinterprets OAR 660-033-0020(1)(a)(C) in positing that the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands today or in the future.*

*As a threshold matter, adjacent land is engaging in farm practices.[1] Aerial imagery, Street view imagery, and a review of online resources from Deschutes County DIAL demonstrates that the following adjacent properties appear to be engaging in farm practices:*

*COLW footnote [1]: 'Farm practices' as noted in OAR 660-033-0020(1)()(C) are identified in ORS and OAR. Accordingly, considerations of primary purpose and profit are irrelevant.*

*● Map TL 171224D000100 is developed with a pole barn, a horse barn, a small corral, a commercial greenhouse and what appears to be a small riding arena.*
*● Map TL 1713190000601 is developed with multiple farm buildings and a small corral or livestock enclosure.*
*● Map TL 1713190000500 is developed with multiple farm buildings and has a sign at the end of the driveway with the words "Cray Cray Farm". A Facebook page for Cray Cray Farm shows a location of Bend, OR, and contains videos of sheep being shorn and photos of pigs being raised. Exhibit A. Another photo shows a "price list," that contains eggs, whole chicken and assorted pork products. Other photos show soap, beef tallow, turkeys, goats and small amounts of cattle. Exhibit B.*
*● Map TL 1712240000101, as noted in the Staff's 2/12/2026 Issues Letter, has a recent history of growing an irrigated hay crop. As recently as 2025, the subject property was leased for farm use. In 2019, the property was put to use growing row crops. A 2017 Deschutes County Application for an Agricultural Building Exemption states that the property had been in farm/forest use for "20 plus*

*years". Exhibit C. The property is developed with multiple Loafing Sheds, a Hay Cover and a 5000 sq/ft farm building that was constructed in 2019.*
*● Map TL 1712240000206 has a recent history as a portion of a large* ***agricultural trac****t. In 2014, the property was determined by Deschutes County to be Agricultural Land based on the factors found in OAR 660-033-0020(1)(a)(B). See PA131/ZC131, Exhibit D. Specifically, the Deschutes County Board of Commissioners found that "accepted farming practices have and can occur on the property." Exhibit D at p. 6. The Board also found that "the applicant relies almost exclusively on whether the property can produce a profit in money by farming as the basis for the plan amendment/zone change. The Board finds that profitability is one factor in reviewing an application of this type, but not the only or most important factor… The Board finds that… this property is agricultural land, and is not eligible for rezoning." Exhibit D at p. 7-8. The western portion of the subject property was once part of TL 206, until a 2009 lot line adjustment (LL-09-27). Nonadjacent nearby land is also engaged in farm practices:*
*● Map Taxlot 1713190000301 is developed with six farm buildings, including a Feeder Barn. Aerial imagery shows irrigated pasture with wheel lines and a pond for irrigation water.*
*● Map Taxlot 171213D001300 contains irrigated pasture, a small corral, a fenced area for growing crops, a small greenhouse, and three farm buildings. The property also appears to be associated with "Sunnyside Up Farm", and is developed with a farm stand that sells eggs among other products.*
*● Map Taxlot 171318C000400 contains large swaths of irrigated pasture, extensive and large horse corrals, a horse barn, and other farm infrastructure. The property appears to be associated with Wilderness Horse Adventures, a horseback riding company.*
*● Map Taxlot 171213D000 contains irrigated pasture, an irrigation pond, a horse corral, fenced livestock enclosures, and is developed with two farm buildings. The property is associated with Kalebaugh Farms. A Facebook page for Kalebaugh farms states that they are a "small family farm" and that they sell raw milk and "enjoy horses." Exhibit E.*
*● Other nearby properties are apparently engaged in farm practices, including TLs 171213A000100, 171213C000100, 171213C000300, 171213C000200, 171213D000500, 171213D000400, 171213D000800, 171213D000900, 1712240000302, 1712240000401, 1712240000400, 1712240000406, 1712240000300, 1712240000304, 1712240000410, 1712240000409, 171224D001800, 1713190001700.*

*In Central Oregon LandWatch v. Deschutes County (710 Properties), __ Or LUBA __ (LUBA No. 2023-006/009, July 28, 2023, aff'd 330 Or App 321 (2024), LUBA found that the County had misinterpreted the Goal 3 necessary standard, explaining:*

> *"OAR 660-033-0020(1)(a)(C) asks not only whether the land itself is necessary to permit farm practices on adjacent or nearby lands but, also, whether the land's resource designation and zoning, and the presumed lack of impacts or conflicts with farming on adjacent or nearby lands, are necessary to permit farm practices on adjacent or nearby lands." slip op at 59.*

*The Oregon Court of Appeals affirmed LUBA's ruling, finding:*

> *"[C]onsideration of whether 'agricultural land' under OAR 660-0330020(1)(a)(C) must include consideration of whether the land's resource designation and zoning is "necessary to permit*

*farm practices to be undertaken on adjacent or nearby agricultural lands." 710 Properties, 330 Or App at 333.*

*Neither the Staff Report nor the Applicant's submissions analyze whether the EFU- zoning and Agricultural designation of the subject property are necessary to permit the above-described and identified farm practices to be undertaken today or in the future. The Application asks the Hearings Officer to apply the wrong standard, noting that:*

*"Farm activity is defined by statute to be activities engaged primarily for the purpose of producing a profit. The evidence shows that engaging in farming on the adjacent parcel is not profitable. The current owner acquired the property in a foreclosure setting. If the property could have been used for profitable farm activity, it would not have been in foreclosure. Obviously, the owners prior to 2017 were unable to use the property productively.*

*Moreover, the current owner confirmed that he was not able to lease the land for farming after the last lease. That fact further demonstrates that the use of the land for farming, define as activities engaged in primarily for making a profit, is not feasible. The question that begs is why would anyone who owns an already unproductive plot of agriculturally designated property want to use an adjacent property that has even more limitations on productive farm use in any farm operation or activity? The answer is obvious. Assuming that one may attempt to engage in farming on the 33 acres to the north, no rational person engaged in farm activity would even think to incorporate the subject property into any farm operation. If prior owners and lessees could not make productive use of the 33 acres alone, they certainly would not add another 50 plus acres of dry land with even worse soil." 3/11/2026 Response to Issues Letter p. 2.*

*Whether land is "necessary to permit farm practices to be undertaken on adjacent and nearby agricultural lands" does not implicate profitability in any respect. Instead, OAR 660-033-0020(1)(a)(C) has to do with, among other things, a presumed lack of impacts or conflicts with farm practices on adjacent or nearby lands due to the Agricultural designation and EFU zoning of a property. Without an analysis that identifies the specific farming practices taking place nearby, or those that could take place nearby today or in the future, and whether conflicts could arise based on a changing of the zoning and designation of the subject property, OAR 660-033-0020(1)(a)(C) is not satisfied.*

*There are agricultural lands undertaking farm practices within a ¼ of a mile of the subject property. Because the MUA zone could allow a density of 5 acres per unit on the subject property, at least ten dwellings could be developed on the subject property, and a substantial increase in the residential density of the area would occur. DCC 18.116.400(A)(3). An increase of density creates a potential for human activity to interfere with existing and current and future farm practices, including more traffic, more domestic animals (dogs), trespassing, litter, damage to COID infrastructure, and neighbor complaints. In addition, each dwelling may be entitled to an exempt non-agricultural well, which could result in decreased groundwater availability, harming any existing agricultural wells in the area. Farming areas require large blocks of agricultural lands designated as agriculture and zoned EFU in order to accomplish the agricultural land use policy of the state. ORS 215.243.*

*The subject property and the lack of impacts associated with its EFU zoning, is necessary to permit farm practices on nearby and adjacent agricultural lands. A recommendation of denial by the Hearings Officer on this basis is appropriate."*

COLW asserts that Applicant failed to demonstrate satisfaction of OAR 660-033-0020(1)(a)(C). OAR 660-033-0020(1)(a)(C) states:

*"Land that is necessary to permit farm practices to be undertaking on adjacent or nearby agricultural land.*"

OAR 660-033-0020(1)(a)(C) has been the subject of prior Deschutes County land use decisions. The Hearings Officer finds the Oregon Court of Appeals opinion in *Central Oregon Landwatch v. 1000 Friends of Oregon (2024 710 Opinion)*, 330 Or App 321 (2024) is particularly relevant to this case. The *2024 710 Opinion* (@ 333) contains the following holdings that should be applied in this case:

*"...consideration of whether land is 'agricultural land' under OAR 660-033-0020(1)(a)(C) must include consideration of whether the land's resource designation and zoning is 'necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands."*

*And;*

*"We note that we also agree with LUBA that 'necessary to permit farm practices on adjacent or nearby agricultural lands' is a 'high standard.' Webster's Third New Int'l Dictionary 1510 (unabridged ed 2002) ('necessary' means 'whatever is essential for some purpose' and things that must be had'). That is, we do not understand land to be agricultural land under OAR 660-033-0020(1)(a)(C) merely because its designation as such would merely be 'useful" or 'desirable' for nearby farm practices. Rather, for 'land' to be agricultural land under OAR 660-033-0020(1)(a)(C), that land, considering its resource designation and zoning, must truly be necessary to adjacent and nearby farm practices."*

The Hearings Officer concurs with the two above-quoted Oregon Court of Appeals statements. The Hearings Officer finds that to determine if the Subject Property is "necessary" to permit farm practices to be undertaken on adjacent or nearby agricultural lands the Hearings Officer must consider (1) is the Subject Property (itself) physically "necessary" and (2) is retaining the EFU designation "necessary?" The Hearings Officer agrees with the description of the "necessary" standard set forth by the Court of Appeals in the quoted section above.

The Hearings Officer finds that there is one remaining OAR 660-033-0020(1)(a)(C) issue that was not directly addressed by the Applicant, COLW, LUBA or the Oregon Court of Appeals. OAR 660-033-0020(1)(a)(C) appears to limit the application of the "necessary" test only to "adjacent or nearby agricultural land." The Hearings Officer has (above findings related to the COLW Purpose argument) addressed the interpretation of the phrase "agricultural land" used in the context of an approval criterion (Purpose statement). The Hearings Officer acknowledges that neither the Applicant or COLW provided any authoritative argument or legal support as to how "agricultural land" should be interpreted in OAR 660-033-0020(1)(a)(C). For the purposes of the findings related to OAR 660-033-

0020(1)(a)(C) the Hearings Officer finds the phrase "agricultural land" has the meaning set forth in DCC 18.04.030. The Hearings Officer invites the Board, upon its review of this recommendation, to consider any new legal interpretative arguments offered by Board hearing participants related to the phrase "agricultural land" as used in OAR 660-033-0020(1)(a)(C).

Based upon the Hearings Officer findings above (related to *2024 710 Opinion* and the Hearings Officer's interpretation of "agricultural land") the Hearings Officer finds that OAR 660-033-0020(1)(a)(C) requires the Hearings Officer to consider whether or not the "necessary" test is met only when considering "nearby agricultural land." The Hearings Officer finds "agricultural land" does not include land zoned MUA10 and RR10. Therefore, the Hearings Officer limits consideration of adjacent and nearby properties, for the purpose of engaging in the OAR 660-033-0020(1)(a)(C) "necessary" test, to adjacent and nearby EFU zoned properties.

COLW listed, in the COLW quoted comments above, various County tax lots which COLW believes should be considered in the OAR 660-033-0020(1)(a)(C) analysis. COLW's specific language states:

> *"Aerial imagery, streetview imagery, and a review of online resources from Deschutes County DIAL demonstrates that the following adjacent properties appear to be engaging in farm practices."*

The Hearings Officer finds the COLW list of adjacent and/or nearby properties that are "engaged in farm practices" is illustrative but not necessarily relevant to an analysis of OAR 660-033-0020(1)(a)(C). For the most part COLW does not identify or label the properties (tax lots) listed that are adjacent or nearby, as being "agricultural land" or "EFU land." As noted above, the Hearings Officer interpreted "agricultural land" to be that land meeting the definition of "agricultural land" either through DCC 18.04.030 or OAR 660-033-0020(1).

The Hearings Officer attempted to use Applicant's application materials such as the Vicinity Map (showing tax lot id numbers for some properties) and the zoning map to precisely locate the properties listed by COLW. The Hearings Officer ultimately concluded that it would be improper to conduct an independent investigation on his own to determine which COLW listed properties were in fact EFU zoned. For the purpose of the following "necessary" findings the Hearings Officer assumes that all of the COLW listed properties are "agricultural lands." The Hearings Officer is aware that some adjacent and/or nearby properties are zoned MUA10 but is not certain, based upon information contained in COLW's submitted list, which of those are MUA10 zoned.

COLW argued (May 5, 2026, page 8) that the OAR 660-033-0020(1)(a)(C) "necessary" test

> *"has to do with, among other things, a presumed lack of impacts or conflicts with farm practices on adjacent or nearby lands due to the Agricultural designation and EFU zoning or a property. Without an analysis that identifies the specific farming practices taking place nearby, or those that could take place nearby today or in the future, and whether conflicts could arise based on a changing of the zoning and designation of the subject property, OAR 660-033-0020(1)(a)(C) is not satisfied."*

Generally, the Hearings Officer agrees with COLW's statement quoted immediately above. The Hearings Officer agrees with COLW that Applicant has the burden to consider the impacts or

conflicts caused by removing the EFU zone designation upon adjacent and nearby "agricultural lands." It is only by identifying the specific farming practices taking place on adjacent/nearby agricultural lands can a determination be made that the EFU resource designation of the Subject Property is, or is not, "necessary" to permit farm practices to be undertaken on the adjacent/nearby agricultural properties.

COLW focused on the increase in "density" of development on the Subject Property as the prime creator of impacts. COLW's conclusion is that

> *"an increase in density creates a potential for human activity to interfere with existing and current and future farm practices, including more traffic, more domestic animals (dogs), trespassing, litter, damage to COID infrastructure, and neighbor complaints. In addition, each dwelling may be entitled to an exempt non-agricultural well, which could result in decreased groundwater availability harming any existing agricultural wells in the area."*

Relying upon the *2024 710 Opinion* the Hearings Officer finds that the "necessary" standard is a high one. As stated in *2024 710 Opinion* (@ 333)

> "*we do not understand land to be agricultural land under OAR 660-033-0020(1)(a)(C) merely because its designation as such would merely be 'useful' or 'desirable' for nearby farm practices. Rather, for 'land' to be agricultural land under OAR 660-033-0020(1)(a)(C), that land, considering its resource designation and zoning, must truly be necessary to adjacent farm practices*."

COLW "necessary" argument employs phrases such as "creates a potential," "may be entitled," and "could result." The Hearings Officer finds that COLW's "necessary" argument is based upon speculation and not factual evidence. The Hearings Officer finds COLW did not provide substantial evidence in the record to demonstrate that retaining the current EFU zoning on the Subject Property was "necessary" to permit farm practices to be undertaken on adjacent or nearby agricultural land.

The above findings focused on COLW's argument and evidence. The Hearings Officer now turns to whether the Applicant carried its burden to demonstrate satisfaction of OAR 660-033-0020(1)(a)(C).

Applicant (Burden of Proof, pages 5 – 8) provided a description of adjacent and nearby properties. Applicant addressed OAR 660-033-0020(1)(a)(C) (Burden of Proof, pages 30 & 31) by stating:

> *"The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. There are no farming operations of any magnitude in the area. One 33-acre parcel north of the subject site (Tax Lot 1712240000101) was reported to have had some farming on it in the past but has been a fallow field for many years. The old irrigation equipment sits idle, broken and rusty evidencing the fact that it has not been used in many years. That fact supports everything in Mr. Kitzrows report and the applicant's additional information. It is not feasible to engage in any farm activity primarily for the purpose of a profit in this area with generally poor soil, limited water and other economic factors.*

*As noted, there appears to be limited farming/agricultural activities on some parcels west of the site near Butler Market Road. That land is comprised exclusively or primarily of Deskamp soils, which is agricultural soil. Those parcels are also significantly removed from the subject site and accessing them would require travel on busy county road. Not only is the subject site unnecessary to permit farming on those parcels, no reasonable farmer would try to incorporate the subject site into an[y] farm operation on those parcels. They would not expend the money to amend soil (something that appear impossible given the extremely harsh rocky environment) and acquire expensive water rights for soil that is unsuitable for any farm activity."*

Applicant also provided comments related to OAR 660-033-0020(1)(a)(C) through written testimony from Cody Tuma (May 20, 2026), Greg Jacobs (May 14, 2026), Ferguson (TPR, September 16, 2025), and Applicant's legal counsel (May 7, 2026 and May 28,2026). The Tuma testimony responded to COLW's reference to farm use/practices at the Fibonacci Farms.[4] Tuma stated that the land at the Fibonacci Farms property "is sitting fallow at this time…"

Applicant's legal counsel (May 28, 2026, page 5) referenced properties northwest of the Subject Property and noted that those properties were comprised of "good quality" soils (36 Deskamp) and compared those properties to the "poor quality" of soil on the Subject Property. Applicant's legal counsel opined that the Subject Property was not necessary to allow continuation of farm use on those properties. Applicant also referenced an EFU property located to the north of the Subject Property. Applicant indicated it had communicated to the owner of the EFU property immediately north and was told that he (owner) had attempted to rent the property to farmers but had been unsuccessful.

Applicant's legal counsel (May 26, 2026, page 6) also addressed the potential conflicts and impacts the removal of the EFU zone designation would have upon adjacent and nearby agricultural lands. Applicant's legal counsel included the following comments:

*"There is evidence to demonstrate that keeping the property zoned EFU is not absolutely necessary to allow farm practices on nearby properties. The material in the file illustrates a mix of MUA-10 and EFU parcels in the area. Thus, there are many MUA-10 developments and uses already around the EFU parcels. Some of the exhibits we submitted illustrate a sampling of uses approved. Many of the existing uses have conditional use permits and in approving this, the county had to consider negative impacts on nearby uses. Thus far, there is no documentation of any kind, that the use of*

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[4] *COLW, May 14, 2026: "…Fibonacci Farms at 63900 Eagle Rd grows multiple varieties of tomatoes, eggplants, sprouts, parsley, basil, onions, tomatillos, leaks, along with flowers, and its sells those vegetables and flows for the primary purpose of obtaining a profit in money through shares of community supported agriculture (CSA) that are available for purchase. All of these farm products are commercially grown on about one acre of 36A Deskamp soils."*

*Tuma, May 20, 2026: "I currently reside on Hyde Lane which is in the same neighborhood as 62910 Eagle Road and I am familiar with the properties in our neighborhood. LandWatch's representation of active farming on 62910 is not consistent with my observations. The property is mostly improved with a single-family dwelling and associated improvements. There is one small area where it appears that Fibonacci Farms attempted to operate. The sign for Fibonacci Farms remains on the property as depicted in the photographs that I included. On may 20, 2026, I personally took an aerial photograph of that property and the area that formerly had gardens. Those photographs reflect the area is sitting fallow at this time, and it appears any historic gardening efforts failed."*

*MUA-10 properties in the area create impacts so extreme that one can conclude that retaining EFU zoning on the subject property is "absolutely required" to allow farm practices on nearby EFU land.*

*It is not immaterial that at least two of the properties that LandWatch identifies as being used for either farm use or farm practices, appear to be used for non-farm activities. The Cray Cray Farm, TL 1713190000500, advertises as a campground. The equestrian property on TL 171318C000400, that LandWatch asserts is in farm use, was reported to the county for doing the same activity. At a minimum, the non-farm use of those properties establishes that non-farm uses alone, such as those allowed on MUA-10 properties, do not impact farm practices to the point that retaining EFU zoning is absolutely required to allow farm practices to continue.*

Ferguson (TPR, September, 2025, page 11) included the following conclusions related to traffic:

*"2. Trip Generation Analysis*
*Trip generation scenarios were modeled for both the existing EFU zoning and the proposed MUA-10 zoning:*
*Existing EFU Zoning: Maximum scenario would generate 30 PM peak hour trips and 336 daily trips*
*Proposed MUA-10 Zoning: Maximum scenario generate 9 PM peak hour trips and 86 daily trips, assuming five single-family homes, accessory dwelling units (ADUs), and small-scale horse operation.*
*Net Change: Incremental decrease of 21 PM"*

The Hearings Officer finds that traffic impacts arising from a zone change from EFU to MUA-10 could be relevant to the OAR 660-033-0020(1)(a)(C) analysis. COLW suggested that increased traffic may result from the proposed zone change and the increase could conflict or impact adjacent and nearby agricultural uses. The Hearings Officer finds the Ferguson TPR to have been prepared by a traffic expert and the report itself represents substantial evidence related to the traffic impacts created by the proposed zone change. The Hearings Officer finds Ferguson concluded that if the proposed zone change from EFU to MUA-10 is approved traffic numbers will actually decrease. The Hearings Officer finds a decrease in traffic will not negatively impact adjacent and nearby agricultural uses.

In conclusion the Hearings Officer finds there is no simple objective checklist or standard dictating when OAR 660-033-0020(1)(a)(C) is met (or not met). The Hearings Officer considered the physical property at the Subject Property and concluded the Subject Property was not necessary to permit farm practices, as limited as they are in this case, to continue on adjacent or nearby agricultural lands. The Hearings Officer also considered potential impacts and conflicts that a change in zone from EFU to MUA10 would cause upon adjacent and nearby agricultural lands.

The Hearings Officer concluded that there is a limited area of adjacent and nearby "agricultural lands" and that changing the zone from EFU to MUA10 will not cause any negative impacts or conflicts on adjacent or nearby agricultural lands. The Hearings Officer finds that COLW raised the issue of traffic impacts and that the Applicant addressed traffic showing that the impacts and

conflicts would likely be less if the Subject Property were zoned MUA10. The Hearings Officer finds COLW's reference to possible conflicts and/or impacts created by rezoning the Subject Property to MUA10 related to "more domestic animals, trespassing, litter, damage to COID infrastructure and neighbor complaints" to be speculative and not fully explained and/or supported by substantial evidence.

The Hearings Officer also incorporates the findings for COLW Issue: Profitability (Section III.A.6), as set forth immediately below, as additional findings for this section. The relevance of the Profitability findings is that the Subject Property physically is made up of extremely problematic soils (i.e., surface rocks, underlying bedrock, excessive drainage, "islands" (separated) "good soil" (Deskamp)). The problematic soils and the excessive costs associated with "creating" "good soil" on the Subject Property makes the likelihood of the Subject Property being "necessary" to permit farm practices to be undertaken on adjacent or nearby agricultural lands very low.

**6. COLW Issue: Profitability**

COLW (May 7, 2026, pages 9 – 14) included the following comments related to its Profitability issue:

> *"**V. OAR 660-033-0020(1)(a)(B); The Application over-relies on profitability in determining that the subject property is not suitable for farm use. Based on the listed factors, the subject property is suitable for farm use.***
>
> *Profitability is a "relatively minor consideration" to consider when determining whether a property is suitable for farm use. Just last year, LUBA confirmed that elevating considerations of profitability as a threshold issue is error:*
>
> > *"[W]hile the potential or possibility of obtaining a profit of money is a consideration under the ORS 215.203(2)(a) definition of 'farm use,' it is a relatively minor consideration and one with a significant potential to distract the decision-maker from the factors listed in OAR 660-033-0020(1)(a)(B). Wetherall v. Douglas County, 58 Or LUBA 638, 657 (2009). Elevating 'profitability' to a threshold or initially controlling consideration is not consistent with its role in the OAR 660-033-0020(l)(a)(B) analysis." Central Oregon LandWatch v. Deschutes County (Destiny Court), LUBA No. 2025-015, slip op at 23.*
>
> *Nevertheless, the Applicant and their consultant place such inordinate weight on concerns of profitability that it has become a threshold or initially controlling consideration. Indeed, the Applicant's burden of proof immediately launches into a profit-based analysis of the suitability factors. Application Materials at PDF p. 28. In the Applicant's view, the question of whether a property is suitable for farm use can be reduced to an accounting exercise. This is incorrect and inconsistent with applicable case law, which instructs decisionmakers to resist the "significant potential to distract" of a profit analysis, and instead focus on the listed factors. Destiny Court, slip op at 23. Even accepting the Applicant's incorrect view of the importance of profitability within the analysis, Applicant's Exhibit 10 provides that if the 6.4 acres of Deskamp Class III soils were irrigated and cultivated, they would result in a net profit of $513 dollars.2 Application Materials at PDF p.*

*111. Agricultural operations with small profit margins are still considered farm uses. As a result, Exhibit 10 is substantial evidence that the subject property is suitable for farm use.*

***a. Soil Fertility:***

*Soil fertility can be a limit to productive agriculture, especially when a property has been neglected or unmaintained as farmland in the first place. However, applying lime and manure, as well as other fertilizers to recover soil capacity and boost production are common practice in Central Oregon and elsewhere. Fertilization and soil amendments are common practices for virtually any type of farm use, and the need to improve soils should not be considered a limitation on the suitability of the subject property for farm use. Any reasonable farmer, assuming without agreeing that that is an appropriate standard, would expect to need to fertilize land in order to make it productive. Conversely, it would be entirely unreasonable for a farmer to purchase a parcel of unmaintained and undeveloped EFU-zoned land and expect to put it to commercial use without any upfront labor and amendment to the soil.*

*[2] We further note that Exhibit 10 indicates the appraised value of the subject property is $81,600. The applicant apparently purchased the subject property for $726,220 in October of 2025.*

*Furthermore, other categories of farm uses are not strictly dependent on soil fertility. Boarding, training, leasing, and raising horses requires space and topography conducive to facility development, but soils are not an absolute requirement.[3] Many horse breeding and raising facilities in Central Oregon operate on dry, often rocky ground. In this case, the subject property is largely flat and contains sufficient irrigation water and agricultural soils to develop a significant pasture.*

*A growing community of mixed-vegetable farmers have also embraced a Community-Supported Agriculture business model, where direct-to-consumer sales enable farm use on smaller parcels of land, and high-quality soil can be created through regenerative farming techniques. As noted previously, several properties in the area, including those with comparable soils, have been developed with farm stands that are considered outright allowed farm uses in the EFU zone.*

*In considering soil fertility, the subject property is suitable for these and other farm uses.*

***b. Suitability for Grazing:***

*The subject property is suitable for livestock grazing. It is large enough to be commercially significant on its own or in conjunction with other properties. Initial investment costs, including the expense of installing, maintaining, and upgrading fencing and irrigation infrastructure are normal and traditional aspects of farming. The cost of required inputs does not make the property non-agricultural land. A reasonable business owner expects to make upfront investments when undertaking any commercial venture. Grant funding opportunities for on-farm irrigation infrastructure are available through state and federal conservation grants. Overall, ongoing management of land for farm use will determine whether it is ultimately profitable or not.*

*The Applicant's burden of proof assumes that livestock will be grazed year-round on the subject property, and concludes that the only 2.3 cow-calf pairs can be supported under that assumption.*

*Application Materials at PDF p. 25-26. More realistic would be some sort of conjoined grazing operation with nearby or adjacent lands already developed with infrastructure to support livestock production, where the subject property is only relied upon for five months (May 15 through October 15) out of the year. These are both customary practices of livestock operations in Central and Eastern Oregon. Central Oregon LandWatch v. Deschutes County (Eden Central/710 Properties), __ Or LUBA __ LUBA No. 2023-006/009, July 28, 2023, aff'd 330 Or App 321 (2024); Wetherell v. Douglas County, 54 Or LUBA 678 (2007); Wetherell v. Douglas County, 62 Or LUBA 80 (2010).*

*[3] Map TL 171318C000400 (63220 SILVIS RD, BEND, OR 97701) is operating a horse-leasing business on similar soils, with half as much land*

*In that instance, supporting substantially more than 2.3 cow-calf pairs on the subject property is feasible. Indeed, in most cow-calf operations, calves will be born between January and March and will have weaned at around 205 days. A farmer could decide to sell the weaned calves rather than holding them through the winter. Seven month old calves from most traditional beef breeds should weigh around 500 pounds. With beef at close to $4.00 per pound, some amount of profit appears possible based on business models not considered by the Applicant's Soils Consultant.*

*Setting profit aside, there is nothing about the subject property that makes it unsuitable for some degree of grazing activity. Other species, including llamas, alpacas, goats, and sheep could be considered. The adjacent property ("Cray Cray Farm") is raising pigs, sheep, and cattle. The subject property is suitable for grazing.*

***c. Climatic Conditions:***

*Climatic conditions in Deschutes County are relatively consistent, with some minor variations between regions to the north and the south, such as comparing the La Pine area with the Lower Bridge Valley. While the Central Oregon climate makes farm use challenging, there is nothing about the subject property's climate that would suggest that it is unsuitable for farm use. Indeed, near and adjacent properties engaged in farm use, including the property directly north adjacent, are substantial evidence that the climate of the subject property is suitable for farm use.*

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

*Access to water is probably the most important consideration when determining whether a property is suitable for farm use. The subject property is legally considered "irrigated" pursuant to OAR 660-033-0020(9). The subject property has rights to 6.4 acres of COID irrigation water, potentially enough to maintain a small irrigated pasture or mixed-vegetable operation. In addition, water rights do become available in the form of in-district permanent or temporary transfers. Applicant's Exhibit 10 estimates the cost of water rights at $1,500 per acre, suggesting that additional water can be acquired for a reasonable price. Water is available to the subject property now and in the future.*

***e. Existing Land Use Patterns**:*

*The land use patterns surrounding the subject property are largely agricultural, with farming taking place to the west and north. EFU-zoning surrounds the property to the North and the West. Dozens*

*of properties in the area are in farm tax deferral. Nearby MUA properties are generally the product of exceptions to Goal 3 (Agriculture), meaning that the properties are properly considered Agricultural Land, but that the protections of EFU-zoning need not apply. Other activities in the area include numerous farm practices, two churches, and rural residential uses in the Los Serranos, Cleve's Acres, Vista Del Sol, and East Villa subdivisions. All surrounding properties are within the Central Oregon Irrigation District.*

*Contrary to the Applicant's Burden of Proof, the relevant inquiry here is not whether the "existing land use pattern is consistent with the proposed changes." Application Materials at PDF p. 32. Instead, the administrative rule asks whether existing land use patterns would diminish the subject property's suitability for farm use. Nothing in the record suggests that either the EFU-zoned properties or the non-agricultural uses in the area would interfere with or limit the subject property's suitability for farm use.*

***f. Technological and Energy Inputs Required:***

*The subject property has been neglected or untended for some time. Recovering properties that are underdeveloped takes time, money, and effort, but is not uncommon. Again, installation and maintenance of fencing, irrigation infrastructure, and farm buildings are inputs that any reasonable farmer or business owner would expect to make on a farm property that has been neglected. These required inputs do not make the property non-agricultural land.*

***g. Accepted Farming Practices:***

*Common and accepted farming practices include but are not limited to, efforts involving hay and livestock production, some cereal grain production and boarding and training equines. Accepted farm practices also include upfront investment in infrastructure, irrigation equipment, machinery, and farm buildings.*

*LandWatch generally agrees that portions of the subject property, especially on the western edge, contain rock outcroppings that could make some farm practices challenging in that area. The Eastern portions of the subject property, however, do not contain such limitations. Indeed, evidence in the record is that if the flat and cleared portion of the property were irrigated and planted with a hay crop, the subject property is capable of producing a small profit. See Applicant's Exhibit 10. Other agricultural operations involving the raising of livestock, seasonal stocking, sales of steers, and boarding and training equines also appear possible. On the whole, under accepted farming practices, the subject property is suitable for farm use."*

**a. Legal considerations when addressing OAR 660-033-0020(1)(a)(B)**

The Hearings Officer notes that COLW identified this section of its argument as addressing "profitability" in the context of OAR 660-033-0020(1)(a)(B). However, the Hearings Officer finds that the above-quoted COLW comments range well beyond the how "profitability" should be interpreted and applied.

The Hearings Officer intends to use this section of findings to address the legislative scheme created by OAR 660-033-0020(a)(a)(B). The Hearings Officer intends to then incorporate the legislative scheme and relevant case law into a template that hopefully addresses OAR 660-033-0020(1)(a)(B) and the terms "profits" and "profitability" in a comprehensive manner.

It must be kept in mind that OAR 660-033-0020(1)(a)(B) is but one of three "tests" required to be considered under OAR 660-033-0020(1)(a). The first test, OAR 660-033-0020(1)(a)(A), focuses on specific soil classes. The (1)(a)(A) test is addressed in separate findings. OAR 660-033-0020(1)(a)(B) (the test that is subject to the findings related the present COLW argument) deals with "other soils classes" (not those listed in OAR 660-033-0020(1)(a)(A)). OAR 660-033-0020(1)(a)(C), an independent test, asks whether or not the subject property is "necessary" to permit farm practices to be undertaken on adjacent or nearby agricultural lands. The "necessary" test is addressed in findings above.

The *2024 710 Opinion* (@ 332) provided useful insight into the context of OAR 660-033-0020(1)(a)(B) within Oregon's agricultural land preservation policies. Simply put the Court, in the *2024 710 Opinion,* stated that Oregon's statutory and regulatory framework policies have the primary goal of maintaining and preserving Oregon's limited supply of agricultural land. The Court of Appeals, in the *2024 710 Opinion*, referenced ORS 215.243 which declares that "the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources…" LCDC adopted administrative rules to implement Oregon's legislative agricultural land preservation policy and Goal 3. One such rule adopted by LCDC was OAR 660-033-0020(1)(a)(B).

The Hearings Officer repeats a portion of the text of OAR 660-033-0020(1)(a)(B):

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

The test described in the quoted definition above has been frequently referred to as the "suitable for farm use" test. OAR 660-033-0020(1)(a)(B) requires a decision maker to incorporate the farm use definition in ORS 215.203(2)(a) while considering each of the listed factors (i.e., soil fertility, suitability for grazing, etc.). Restated this Hearings Officer believes that OAR 660-033-0020(1)(a)(B) requires each listed factor (i.e., soil fertility, suitability for grazing, etc.) to be considered for all ***relevant*** farm uses listed in ORS 215.203(2)(a) as well as other uses which are appropriately identified by the Applicant, opposition or other case participant(s).

The Hearings Officer finds that neither LUBA nor Oregon Courts have clearly enunciated a test or method of analysis (template) for evaluating, balancing or weighing individually or in the aggregate the OAR 660-033-0020(1)(a)(B) factors (i.e., soil fertility, suitability for grazing, etc.). The approach (template) suggested below is certainly subject to debate, clarification and ultimate resolution by LUBA and/or the Courts.

The Hearings Officer interprets OAR 660-033-0020(1)(a)(B) as establishing a multi-factor analysis that **requires consideration of each of the factors** (i.e., soil fertility, suitability for grazing, etc.) **in the context of the ORS 215.203(a)(2) definition of farm use** and its listed potential farm uses. The Hearings Officer finds that while each OAR 660-033-0020(1)(a)(B) factor must be considered in the context of the evidence in the record, no one factor is determinative. The language of OAR 660-033-0020(1)(a)(B) states that a decision maker **must consider all of the factors *but*** the rule **does not dictate that one factor is the most important or that one or some combination of factors, dictates the ultimate answer**. The Hearings Officer finds that the decision maker, in this case the Board, must consider the substantial evidence in the record and relevancy of such evidence as related to each factor. Ultimately a decision maker must exercise its discretion, based on the record, to determine if the Subject Property is "suitable for farm use."

The Hearings Officer also finds that there is no legal template or even guidelines for determining, for example, when or if the OAR 660-033-0020(1)(a)(B) factors are satisfied or met. For example, how is the "soil fertility" factor met or satisfied? Does the "soil fertility factor" require a simple review of the soil classifications on a property or does it require more? If the soil classifications on a property show a majority of the soils are non productive (certain NCRS soil classifications) is the test met? What if the "high quality" or "good soils" are located in islands/pockets separated by rock formations making access to the "high quality" or "good soil" challenging or impracticable? Or, what if, as alleged in this case by COLW, "soil fertility" is not relevant or has little relevance (COLW equestrian use example). The Hearings Officer's findings below will address these and other issues related to analyzing each OAR 660-033-0020(1)(a)(B) factor.

The statutory language of ORS 215.203(2)(a) begins with the following:

> *As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by… (followed by a listing of farm related uses)"*

The above quoted language has been the subject of numerous appeals to LUBA and the Court of Appeals. The most frequent issue raised in these cases, often times by COLW, is how should the word "profit" or "profitability" be applied to the OAR 660-033-0020(1)(a)(B) determination of whether a property is "agricultural land."

The Hearings Officer finds that "profit" or "profitability" can be considered for any/all relevant potential farm uses in the context of each factor enumerated in OAR 660-033-0020(1)(a)(B) [soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required and accepted farming practices]. The Hearings Officer, by adopting this methodology, respects LUBA's and the Court of Appeals' holdings that "profit" or "profitability" cannot be the sole criterion of whether a property is agricultural land but "profit" or "profitability" may be one of the considerations. *Central Oregon Landwatch v. Jefferson County* 347 Or App 454 @ 459 (2026) and *Redside Restoration Project One, LLC v. Deschutes County* [the 2025 *710 Opinion*) 344 Or App 383 @ 415 (2025).

The Hearings Officer notes that the *2025 710 Opinion* (pages 414 - 416) included the following statements:

> *"…OAR 660-033-0020(1)(a)(B) defines 'agricultural land' to include 'land that is suitable for farm use as defined in ORS 215.203(2)(a) taking into consideration' a number of factors. ORS 215.203(2)(a) defines farm use to mean 'the current employment of land for the primary purposes of obtaining a profit in money***.' Those provisions permit a county to consider profitability when deciding whether land is suitable for farm use." Citing Wetherell v. Douglas County, 342 Or 666 (2007)*

The last OAR 660-033-0020(1)(a)(B) overview issue to be addressed by the Hearings Officer relates to whether "profit" or "profitability" should be assessed via a "subjective" or "objective" standard. The Oregon Court of Appeals, in the *2025 710 Opinion* provided the following direction (citing *Central Oregon Landwatch v. Deschutes County*, LUBA Case Nos 2023-006/009 (July 28, 2023 – referred to by the *2025 710 Opinion* as "*Landwatch I*") related to the appropriate "profitability" standard to be applied in an OAR 660-033-0020(1)(a)(B) case:

> *"Whether land may be employed 'for the primary purpose of obtaining a profit in money,' for purposes of ORS 215.203(2)(a), is an objective test that focuses on the activities that would be occurring on the land.*
>
> *Accordingly, we have explained that the question under OAR 660-033-0020(1)(a)(B) is 'whether a reasonable farmer would be motivated to put the land to agricultural use, for the primary purpose of obtaining a profit in money. ***. Similarly, we have said that question is whether the property is capable of farm use with a reasonable expectation of yielding a profit in money.***The Board of Commissioners did not err in considering whether a 'reasonable farmer' would have an expectation [intent] of obtaining a profit in money from growing crops on the subject property." (2025 710 Opinion, page 415)*

The Hearings Officer finds that "profit" or "profitability," in the context of the ORS 215.203(2)(a) definition of farm use, is to be assessed as an objective standard. The Hearings Officer agrees with LUBA that the overarching ORS 215.213(2)(a) test, per the *2025 710 Opinion* (@ 416) quoted above, **considers whether a 'reasonable farmer' would have an expectation [intent] of obtaining a profit in money**.

**b. Evidentiary analysis**

**Step 1. Potential Farm Uses**

The Hearings Officer finds that the initial OAR 660-033-0020(1)(a)(B) "suitable for farm use" step is to determine what specific farm uses should be considered in the context of the Subject Property. The reason to start with the possible, probable or common farm uses is that OAR 660-033-0020(1)(a)(B) states that land in other soil classes (not those listed in OAR 660-033-0020(1)(a)(A)) may be "agricultural land" ("suitable for farm use") if they meet the definition of "farm use" found in ORS 215.203(2)(a). ORS 215.203(2)(a) provides a listing of potential "farm uses." Once those uses are identified they then need to be considered in the context of the OAR 660-033-0020(1)(a)(B) factors

[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]. As noted in the findings above the Hearings Officer found that in addition to the consideration of the ORS 215.203(2)(a) listed potential uses there may be additional uses that may need to be considered; uses identified by a case participant that reflect potential farm uses common or possible in the vicinity of the Subject Property.

COLW, during its hearing testimony and record submissions (May 7, 2026 & May 14, 2026), identified a number of potential farm uses for the Subject Property that are either common or do occur in Deschutes County. The Hearings Officer summarizes COLW suggested list of possible farm uses for the Subject Property as follows:

* Equestrian boarding and riding center
* Horse breeding
* Irrigated pasture
* Raising sheep
* Raising turkeys
* Raising cattle for beef
* Raising dairy cows
* Raising llamas
* Raising alpacas
* Growing hay
* Growing crops in greenhouses
* Growing vegetables commonly grown in Central Oregon described by the OSU extension service (COLW attached OSU circular)

LUBA, in *Destiny Court* (LUBA 2025-015 (2025)) addressed the ORS 215.203(2)(a) list of possible farm uses and also addressed other potential farm uses identified by COLW in that case. LUBA provided comments giving direction to the County as well as future applicants on what potential farm uses should be considered under OAR 660-033-0020(1)(a)(B) and ORS 215.203(2)(a).

Selected sections of the *Destiny Court* LUBA opinion follow:

> "*We generally agree with the hearings officer that an applicant is not required to go through a rote initial exercise of evaluating every possible type of activity that potentially falls with the broad definition of 'farm use,' and produce evidence regarding whether the subject property is suitable for all conceivable farm uses.*
>
> *However, an applicant has the burden of demonstrating that the subject property is not suitable for 'farm use,' which as defined includes a wide range of activities. In our view, an applicant has the initial burden of identifying, from that wide range of activities, potentially feasible farm uses that are commonly employed on EFU-zoned lands in the area or county, and providing some evidence or explanation, based on the factors listed in OAR 660-033-0020(1)(a)(B), as to whether the land is suitable for such initially identified uses. Such an initial analysis could address potential farm uses together in broad categories as appropriate.*

*More detailed analysis may be needed if, as happened here, other parties identify specific farm uses that are common in the area or county on EFU-zoned land, and provide some evidence or argument that the property is suitable for such uses, considering the listed factors. If so, an applicant, such as intervenor in this appeal, is obliged to evaluate those uses as well, and demonstrate that the subject property is not suitable for such uses. Based on such evidence, the hearings officer will then be in a position to determine whether an applicant has demonstrated that the subject property is not suitable for farm use, under the listed factors."*

The Hearings Officer finds that COLW's listing of potential farm uses reflects actual farm uses in Deschutes County. The Hearings Officer, for the purpose of the OAR 660-033-0020(1)(a)(B) analysis, utilizes the LUBA suggestion (*Destiny Court*) to "aggregate" the COLW identified farm uses together in "broad categories."

For the purposes of reviewing OAR 660-033-0020(1)(a)(B) factors the Hearings Officer considered the following categories of farm uses:

* Equestrian boarding, breeding and riding center
* Irrigated pasture & growing hay
* Raising, breeding, and sales of other hooved[5] animals (sheep, alpacas, llamas, cattle for beef, pigs and dairy cows)
* Raising, breeding and sales of turkeys
* Growing and sales of crops grown in greenhouses
* Growing and sales of mixed vegetables

COLW presented scant, if any, evidence describing the specific possible farm uses beyond its presenting the "list." The Hearings Officer acknowledges that COLW provided some commentary related to the raising, feeding and marketing beef cattle (May 7, 2026, page 12). Further, the Hearings Officer acknowledges that COLW provided some comments related to various small farm activities located in the area of the Subject Property (May 14, 2026) including descriptions of the "Fibonacci Farm" and the "Cray Cray Farm" (May 7, 2025).

Applicant provided comments related to the "suitable for farm use" issue in its Burden of Proof (pages 24 – 30) and Exhibit 5 [soil report], a record submission from Greg Jacobs (May 14, 2026), a record submission from Cody Tuma (May 20, 2026) and record submissions from Applicant's legal counsel (May 5, 2026, May 7, 2026 and May 28, 2026).

**Step 2: Application of OAR 660-033-0020(1)(a)(B) factors to COLW's listed farm uses.**

The Hearings Officer next applies the enumerated factors listed in OAR 660-033-0020(1)(a)(B), as relevant, against each of the possible farm uses identified in ORS 215.203(2)(a).

[5] The Hearings Officer notes that the terms "hooved" and "hoofed" have been used in record submissions. The Hearings Officer finds both reference animals with hooves or hoofs (ungulates). These terms are used interchangeably. The Hearings Officer chose to use the "hooves" version.

**OAR 660-033-0020(1)(a)(B) Soil Fertility Factor**

**Overview**

COLW (May 7, 2026, pages 10 & 11) focused on three points in its discussion of soil fertility. First, COLW stated that the Subject Property did have some good quality soil and that the good quality soil could be amended (i.e., addition of fertilizer and other materials) to create productive soils. COLW stated that it is reasonable to assume, when dealing with an "unmaintained and undeveloped EFU-zone" property, that a reasonable farmer would expect to expend funds for "upfront soil improvements to allow the property to be put to commercial use." Second, COLW suggested that many "farm uses" are not "strictly dependent on soil fertility." COLW identified "equestrian boarding, training, leasing and raising" uses do not require "productive soils." Third, COLW stated that there is a "growing community of mixed vegetable farmers" in the area who have chosen enhance soils on smaller parcels to grow vegetables and then sell those vegetables directly to the public.

Applicant (Burden of Proof) indicated that the dominant soil type on the Subject Property (Gosney) has a serious rock problem which renders that class of soil unproductive. Applicant, relying upon its expert soil study, noted that the "good soil," the Deskamp labeled soil, actually occurs "in islands" and not in one contiguous plot/location. Applicant's soil report stated that there are no large, pure areas of these soils (Deskamp) on the Subject Property. The soil study also noted that the Deskamp soil locations have very shallow profiles which transition abruptly to hard lava bedrock.

Greg Jacobs, a witness for the Applicant, represented that he is an active farmer in Deschutes County with extensive farming experience. The Hearings Officer finds Jacobs qualifies as an experienced expert farming witness and his testimony/written submission may be treated as expert testimony. The Hearings Officer also considers the written submissions by Kitzrow, a licensed soil scientist, to be expert testimony.

Applicant responded to COLW's soil fertility comments by stating that application of soil amendments (i.e., fertilizer) would not likely be efficient or effective in creating productive soil on the Subject Property. Kitzrow, the soil scientist commissioned by the Applicant, addressed soil fertility (Burden of Proof attachment). Kitzrow stated, in part, that even the Deskamp 36 soil, the "good soil,"

> *"...occur[s] as islands on this ownership. No large, pure areas of these soils are confirmed on this subject property. These soils yield a much higher ground cover percentage and currently show some grasses (bluebunch wheatgrass) and other forgeable herbs and forbs. The very shallow soil profiles in addition to the abrupt transition to hard lava bedrock yield a very harsh growing environment."*

Kitzrow also stated that

> *"Bedrock geology is the <u>dominant factor</u> in soil development here since ash intrusion is minimal or non-existent in the region. Where ash is present and confirmed, soils correlate to Deskamp and not Gosney."*

The Hearings Officer reiterates that the Deskamp soil referenced by Kitzrow is what is considered the "good soil" and the Gosney classified soil is a "non-productive soil."

Finally, Kitzrow stated that

> *"All soils on this parcel are somewhat excessively or excessively drained. This indicates no water is held in soil profiles for any sustainable periods and no perching of water tables occurs. Similarly, the dry profiles reflect the very low to extremely low water hold capacities (WHC) for all soils present. Virtually all profiles we examined and classified show a cumulative WHC of less than 2". This is an extremely critical finding."*

Jacobs, Applicant's farm expert, also provided comments related to soil fertility (Jacobs, May 14, 2026, open record submission). Jacobs stated that he conducted a personal inspection of the Subject Property and

> *"took the necessary tools to dig my own test pits so I could compare my observations with the soil assessment that I reviewed."*

Jacobs generally confirmed the accuracy of the Kitzrow soil assessment conclusions. Jacobs stated that there is "one small, isolated area of approximately 5 acres or less that is mapped as 36A Deskamp soil."

Jacobs stated that

> *"I dug fourteen (14) test holes in locations designed to provide me with a good representation of the site as a whole. I found rock in each of the 14 locations, and it was only inches below the material above it that* [c]*an only loosely be called 'topsoil.' Most significant in my opinion, is that the rock on the property is large slab type bedrock. It is monolithic in nature and could not be 'picked' like stones in a field. This is important because, as I explain more below, one could not remove the rock using conventional farm equipment. I cannot think of any practical way to build a workable agricultural plan for any farming use or activity."*

The Hearings Officer reiterates that the Kitzrow report and Jacobs comments represent professional expert evidence related to soils, soil fertility and farming. The Hearings Officer finds that *generally* that the soil fertility characteristics of the Subject Property indicate the Subject Property is not "suitable for farm use." The Hearings Officer next addresses the *specific* farm uses raised by COLW in the context of soil fertility.

**Potential Farm Use: Equestrian boarding, breeding and riding center**

COLW argues that horse boarding, breeding and riding farm uses are not dependent upon the soil fertility. COLW referenced a nearby operating "horse-leasing business on similar soils" (COLW, May 7, 2026, page 11, footnote 3). COLW did not indicate whether the nearby horse business soils were similar to the Subject Property's "good soil" (Deskamp), similar to the "not productive soil (Gosney)

or that the nearby horse property had overall soil characteristics similar to the entire Subject Property. COLW (May 7, 2026) stated that

> *"many horse breeding and raising facilities in Central Oregon operate on dry, often rocky ground. In this case, the subject property is largely flat and contains sufficient irrigation water and agricultural soils to develop a significant pasture."*

Jacobs (May 14, 2026, page 3), on behalf of Applicant, responded to COLW's equestrian comments as follows:

> *"I notice that LandWatch suggests that raising horse in Deschutes County is done on rocky ground. That is not consistent with my experience. While some horse farms may have small areas where the ground is more rocky than other areas, it is not healthy to have horses pasturing on rocky ground. You need mostly vegetated, mostly level ground."*

The Hearings Officer finds COLW adequately raised the "soil fertility" issue in the context of equestrian uses but provided no evidence beyond the equestrian use example of a nearby property with "similar soils." Applicant's response, while offered by a farming expert witness, did not meaningfully expand on his statement that "it is not healthy to have horses pasturing on rocky ground." The Hearings Officer is left with an opinion from a lawyer (on behalf of COLW) and an opinion from a farming expert (Jacobs). The Hearings Officer chooses to rely upon the statement from Applicant's farming expert. The Hearings Officer finds that the Applicant's farming expert's opinion, based upon his farming experience, is substantial evidence that "soil fertility" at the Subject Property is not supportive of finding that the Subject Property is "suitable for farming" for equestrian uses.

The Hearings Officer incorporates the findings for "Irrigated Pasture & Growing Hay" and "Raising, breeding, sales of hooved animals (sheep, alpacas, llamas, pigs, cattle for beef and dairy cows) as additional findings for these "soil fertility" factor findings. Applicant's farming expert opined that having "some" pasture area is typical when a property is used for equestrian purposes. The findings for those incorporated sections suggest that growing any pasture area on the Subject Property is both physically and economically problematic; the surface rocks and rock outcroppings and limited "good soil" create serious physical challenges and the monetary cost of amending soil, fencing, purchase and maintenance of irrigation equipment is very high. The Hearings Officer finds having some pasture area for equestrian farm use, while perhaps not absolutely necessary, is a property characteristic that is supportive of raising and breeding horses. The Hearings Officer finds that a reasonable farmer (equestrian related) would conclude the locating of an equestrian use on the Subject Property is not practicable.

**Potential Farm Use: Irrigated Pasture & Growing Hay:**

COLW suggested (May 14, 2026, page 1) that there are nearby properties that engage in "irrigated pasture" and "growing hay." (see also COLW May 7, 2026, page 7 – re Tax lots 171213D01300, 171213C000400, 1712240000101, and 171213D000). COLW did not reference soil characteristics

for any of its "irrigated pasture" or "growing hay" examples nor did COLW attempt to correlate "soil fertility" to any of the irrigated pasture or hay growing property examples.

The Hearings Officer takes note that the Subject Property does have water rights (currently leased to COID) and therefore finds irrigation for pasture land or hay growing purposes is available. Jacobs, the Applicant's farm expert, stated that the material above bedrock was "*very sandy with no plant material or binders for water retention or soil binding*." Jacobs also stated the following:

> *"Water is an issue. Even if the owner re-acquired the leased water rights to 6 acres, that water would be wasted on the rocky site. Referring to my comments above, a farm operator of any scale would have to spend significant sums of money on removing the large bedrock and then amending the soil, so that it has some water retention capacity…"*

The Hearings Officer also takes note of Kitzrow's water related comments in the "soil fertility" findings above. Kitzrow opined that even the best soils on the Subject Property were

> *"somewhat excessively or excessively drained. This indicates no water is held in soil profiles for any sustainable periods…"*

Finally, Jacobs (farm expert) commented that costs associated with clearing rocks and the addition of "tons" of organic material is both time extensive ("takes years") and expensive.

The Hearings Officer finds that COLW did reference some nearby "pasture" uses but COLW did not provide evidence of the soil characteristics of those properties or any other information that the Hearings Officer could consider substantial evidence that the Subject Property in this case is "suitable for farm use" for "irrigated pasture" use. Applicant provided evidence from a soil expert and a farming expert indicating that the soils on the Subject Property are such that creating "irrigated pastureland" is physically and economically impracticable. Based upon the *2025 710 Opinion* a "local government may consider costs and expenses" when deciding if a property is "suitable for farm" use under OAR 660-033-0020(1)(a)(B)[6].

The Hearings Officer finds, based on the evidence in the record and also the incorporated findings for "suitability for grazing" that the Subject Property is not suitable for farming for "irrigated pasture" or "hay" use.

**Potential Farm Use: Raising, breeding, sales of other hooved animals (sheep, alpacas, llamas, pigs, cattle for beef and dairy cows)**

COLW suggested (May 14, 2026, page 1) that there are nearby properties that engage in raising hooved animals other than horses (see also COLW May 7, 2026). The only reference to "dairy cows," by COLW, is a statement that Kalebaugh Farms website page indicates that it sells raw milk. COLW does not make reference to any other "dairy cow" operation(s) in the area or that may exist in

[6] *Redside Restoration v. Deschutes County*, 344 Or App 383 @ 413 (2025): A local government may consider the 'costs and expenses'---'profitability' – of engaging in the farm or agricultural activities listed in ORS 215.203(2) when deciding whether land is suitable for farm use." Citing *Wetherell* at 680.

Deschutes County. The Hearings Officer finds that the simple mention of "raw milk," without more evidence, causes the Hearings Officer to not require Applicant to rebut COLW's "dairy cows" assertion. Further the Hearings Officer finds that COLW did not reference soil characteristics for any of its "hooved animal" examples, including "dairy cows," and did not attempt to correlate "soil fertility" to any of its hooved animal property examples.

Jacobs, Applicant's farm expert, stated the following:

> *LandWatch suggests that raising a variety of hooved animals other than cattle, surmising that the site could be used for that activity. One example LandWatch included is raising alpacas. I can say with certainty that those activities could not be conducted on the site if the motivation was primarily to make some profit. We raise alpacas on land with good agricultural soil and ample irrigation …Raising an[y] hooved grazing requires a viable pasture area. That requires agricultural soil and water. Rocky soil is not suitable."*

The Hearings Officer incorporates the findings related to water retention in the findings for "soil fertility," "Irrigated Pasture and Growing Hay," and "Suitability for Grazing" as set forth above, as additional findings for this section. In summary, the Applicant's experts agreed that the Subject soil fertility characteristics are significant barriers to creating "irrigated pasture" and "hay" use. The Hearings Officer, based upon the Applicant's farming and soil experts finds that raising hooved animals requires some area for grazing (pasture). The creation of a pasture on the Subject Property is both physically and financially impracticable because of soil fertility characteristics. The Hearings Officer finds that OAR 660-033-0020(1)(a)(B) factor of "soil fertility" at the Subject Property, for the purpose of raising hooved animals, does not support a finding that the Subject Property is "suitable for farm use."

**Potential Farm Use: Raising, breeding and sales of turkeys**

COLW (May 14, 2026, page 1) suggested that raising, breeding and sales of turkeys is a farm use that should be considered and analyzed under OAR 660-033-0020(1)(a)(B) in this case. COLW provided no evidence that raising turkeys is a common farm use in Deschutes County. The Hearings Officer finds COLW did not provide sufficient argument or evidence that "turkey" raising on the soil types existing on the Subject Property is in any way a viable farm use. Without more detail being provided by COLW it is unreasonable to expect the Applicant to evaluate whether raising turkeys on the Subject Property, in the context of "soil fertility," meets the OAR 660-033-0020(1)(a)(B) definition of farm use.

**Potential Farm Use: Growing crops in greenhouses**

The OAR 660-033-0020(1)(a)(B) factor being considered here is "soil fertility." The Hearings Officer finds that COLW's suggestion that crops can be grown in greenhouses and that those crops can be marketed is reasonable. However, COLW did not provide any correlation between this potential farm use and the OAR 660-033-0020(1)(a)(B) "soil fertility" factor. The Hearings Officer finds, based upon the record, that the "soil fertility" of the Subject Property is not relevant to the consideration of growing crops in greenhouses. Without more detail being provided by COLW it is unreasonable

to expect the Applicant to evaluate whether growing crops in greenhouses on the Subject Property, in the context of "soil fertility," meets the OAR 660-033-0020(1)(a)(B) definition of farm use.

**Potential Farm Use: Growing and sales of mixed vegetables**

COLW (May 14, 2026) suggested that it is becoming common in for property owners in Deschutes County to raise mixed vegetables on small plots.[7] COLW referenced a record submission from the Oregon State University Extension service showing various vegetables grown in Central Oregon. COLW did not clearly relate "soil fertility" to the growing of mixed vegetables on the Subject Property. The Hearings Officer incorporates as additional findings for this section the findings for "Suitability for Grazing" and "Irrigated Pasture & Growing Hay."

As determined in the findings related to water retention in the findings for Irrigated Pasture and Growing Hay and the findings for Suitability for Grazing" the soils at the Subject Property are characterized as being covered with surface rocks, having shallow bedrock, having excessively drained soils and the "good soil" is located in isolated islands. The soil fertility at the Subject Property presents serious challenging to raising any crops or animals. Based on the earlier findings on costs associated with creating "good soil" on the Subject Property, even in areas with Deskamp soils, render the probability of employing the Subject Property, even a portion of the Subject Property, for the primary purpose of obtaining profit in money remote/low.

The Hearings Officer notes that the Subject Property is approximately 52 acres in size and as stated by COLW was recently purchased for approximately $726,000. The Subject Property contains no physical structures (house, barn, etc.), no irrigation equipment and has (as set forth in the soil fertility findings) problematic soils. The Hearings Officer finds that imposing upon any applicant the obligation to guess how large (i.e., number of acres or square feet) to evaluate in an effort to address COLW's assertion that raising "mixed vegetables" is a suitable farm use is not reasonable. The Hearings Officer finds that it would be unreasonable for an applicant to "evaluate" growing mixed vegetables on a 1-acre plot, or a 5-acre plot or a some other speculative sized plot. COLW did not even provide a range of sizes for "mixed use vegetables."

COLW, in its examples of adjacent/nearby farm practices (May 7, 2026, pages 4 -9) did not provide the Applicant or Hearings Officer enough information to allow a reasonable response to its claim that the Subject Property's was "suitable for farm" use for mixed vegetables based on soil fertility. The Hearings Officer acknowledges (*Destiny Court,* pages 18-22) that LUBA and the courts require an applicant to evaluate various proposed/possible farm uses and rebut claims those uses may be "suitable for farm use." However, with respect to the soil fertility factor and COLW's assertion that mixed vegetable farming must be considered for the Subject Property the Hearings Officer finds that COLW is required to provide enough evidence to allow an applicant and the Hearings Officer to respond without resorting to unlimited speculation as to the parameters of the COLW proffered use.

[7] COLW May 7, 2026, page 1: *"A growing community of mixed-vegetable farmers have also embraced a Community supported Agriculture business model, where direct-to-consumer sales enable farm use o smaller parcels of land, and high-quality soil can be created through regenerative farming techniques. As noted previously, several properties I the area, including those with comparable soils, have been developed with farm stands that are considered outright allowed farm uses in the EFU zone."*

The Hearings Officer finds that if COLW is suggesting mixed vegetables on a large portion of the Subject Property then the Hearings Officer finds soil fertility results in the conclusion that the Subject Property is not "suitable for farm use." If COLW is suggesting some smaller area (acreage or square footage) to be used for the growing of mixed vegetables the Hearings Officer finds COLW did not provide enough information to require the Applicant to respond.

The Hearings Officer, based upon the Applicant's farming and soil experts, finds that when considering "soil fertility" (related to the raising mixed vegetables) the creation of a growing area on the Subject Property is both physically and financially challenging. The Hearings Officer finds COLW's mixed vegetable farm use may have merit on small plots[8] (but there is no evidence in the record supporting that position). The Hearings Officer finds that as the size of the hypothetical plots becomes larger the soil characteristics of the Subject Property lean towards a finding that that the soil fertility factor suggests the Subject Property not being suitable for farming. The Hearings Officer finds that speculating as to how small of size parcel that could possibly generate a profit is not necessary and inappropriate in this case.

The Hearings Officer finds that OAR 660-033-0020(1)(a)(B) factor of "soil fertility" at the Subject Property, for the purpose of raising mixed vegetables, does not support a finding that the Subject Property is "suitable for farm use."

**OAR 660-033-0020(1)(a)(B) Suitability for grazing factor**

The Hearings Officer included above COLW's comments related to this OAR 660-033-0020(1)(a)(B) "suitable for grazing" factor. COLW suggested that the Subject Property was "suitable for grazing" because the size of the Subject Property is large enough to be used (solely and in conjunction with other properties) to support a cattle grazing farm use. COLW argued that the "up-front" and "maintenance" costs that may be incurred at the Subject Property are traditional when considering a site that has not been used (or not used for some time) for agricultural purposes. COLW suggested that the Subject Property ***physically*** should not dictate "profitability" but rather ***management skill and effectiveness*** will determine if grazing use on the Subject Property is successful. COLW also disputes the Applicant's experts underlying assumptions regarding the economics of grazing and number of cows/calves that will graze on the Subject Property. Finally, COLW suggests that an adjacent/nearby property ("Cray Cray Farm") is an example of the practicability of grazing for hooved animals (sheep and pigs).

The Hearings Officer concurs with COLW that if considering the total size of the Subject Property alone the Subject Property is large enough to support a grazing farm use. Further, the Hearings Officer concurs with COLW that it is relevant to consider using the Subject Property in conjunction with other properties for grazing purposes.

[8] See footnote 4. COLW did reference Fibonacci Farms as an example of a one-acre plot being used for growing mixed vegetables. Tuma, on behalf of Applicant, responded that the apparent Fibonacci Farms vegetable growing area now "appears fallow" and opined the Fibonacci attempt at growing vegetables "failed." The Hearings Officer did not rely on the Fibonacci example to demonstrate support or rejection for COLW's mixed vegetable argument.

Applicant, in its Burden of Proof, referenced the Kitzrow soil report comments related to water retention characteristics on the Subject Property. Applicant included the following Kitzrow comment (Burden of Proof, page 28):

> *"Even with irrigation, the excessively drained status of these soils (with many pedons showing excessively drained status) the soils do not retain water in the soil profile for sustainable periods. The water percolates down out of the root zone (shizosphere) and hence is lost to uptake by plant roots…Plant establishment is difficult and maturation unlikely even for grazable monocots."*

Applicant (Burden of Proof, pages 25 & 26) described the cattle grazing potential on the Subject Property. Applicant stated that

> *"given the high cost of irrigating and maintaining the property as pasture or cropland (high labor costs, labor-intensive, high cost of irrigation equipment and electricity, high cost of fertilizer, etc.), dry land grazing is the only accepted farm use of poor soils in Deschutes County."*

Applicant (Burden of Proof) went on to say

> *"When assessing the potential income from dry land grazing, Deschutes County uses a formula and assumptions developed by the OSU Extension Service."*

Applicant applied the County and OSU Extension Service formula. COLW disputes the accuracy or legitimacy of the County/OSU formula. COLW provided no authority that supports its formula (May 7, 2026, page 12). The Hearings Officer finds Applicant's formula and resulting conclusions relating to cattle grazing are based upon a recognized agricultural authority (OSU Extension Service). The Hearings Officer finds COLW's formula and conclusions related to the calculation of potential number of cows/cattle and possible income are speculative and are not supported by any plausible or authoritative evidence.

COLW, in its quoted comments indicated that the size of the entire Subject Property would allow it to be successfully used for commercial livestock grazing. The Hearings Officer notes, and not disputed by COLW, that the Subject Property is approximately 52 acres (51.86 acres) and that 7.7 acres are made up of 36A Deskamp soils and 44.16 acres are Gosney-Rock Outcrop soils.

Jacobs, Applicant's farm expert (May 14, 2026), provided an extensive discussion of the 44.16 acres of Gosney soils. Jacobs described the Gosney soils as having extensive rock present and virtually no "topsoil" with extremely low water retention capacity. Jacobs described the rock on the Gosney soil to be large slab type bedrock which would be physically difficult and expensive to remove. The take-away from Jacobs' Gosney soils comments is that the 44.16 acres is not land to be considered for grazing livestock. That leaves approximately 7.7 acres of theoretically "good soil" (Deskamp). The number of acres available for grazing livestock is, therefore, not the entire Subject Property but rather an area of approximately 7.7 acres.

Depending upon which map is relied upon the 7.7 acres of "good soil" (Deskamp) may be located in a tongue like projection extending roughly east/west from Dickey Road (Custom Soil Resource

Report – Soil Map, Burden of Proof Exhibit 5, page 13) or is located in numerous "islands" (Sanuck Revocable Trust Property map detailed soil survey, Burden of Proof Exhibit 5, page 18). Kitzrow, Applicant's soil expert, described "islands" of Deskamp (Burden of Proof, Exhibit 5, page 9).

Jacobs described, based on his personal observations, "one small, isolated area of approximately 5 acres or less that is actually 36A Deskamp." COLW offered no evidence to dispute the nature and characteristics of the Gosney soil and did not dispute that there is a maximum 7.7 acres of "good soil" (Deskamp) with the largest parcel of Deskamp (per Jacobs) being approximately 5 acres. The Hearings Officer finds COLW's contention that the entire Subject Property should be considered for grazing purposes, based upon the Applicant's evidence in the record, does not represent the actual soil conditions at the Subject Property. The Hearings Officer finds the largest parcel of "good soil" is approximately 5 acres and is in an isolated location.

Jacobs, Applicant's farm expert, addressed the COLW assertion that the Subject Property can be used for grazing ***along with (in conjunction)*** with one or more other grazing properties. Jacobs stated (May 14, 2026, page 3):

> *"I also investigated the area and do not see any efficient, effective means to use other nearby land. The limited farming in the area is on the smaller sites that would not likely accommodate outside animals. Adding grazing to those properties would over burden them. There is also the cost associated with transporting animals. In this area any movement of animals will require ground transportation."*

COLW suggested (see quoted section above) that use of the Subject Property for grazing, along with other sites, could be for a period of five months (May 15, through October 15) out of the year. COLW provided no authority demonstrating the ability of the Subject Property to support grazing for up to five months. COLW did not indicate if approximately 5 acres (Jacobs) or 7.7 acres (Kitzrow) could grow enough feed to support that length of cattle grazing. COLW's attorney's suggestion that the Subject Property could be used for a "period of five months" is not based on any authoritative or substantial evidence in the record and is considered mere speculation by COLW.

Finally, the Hearings Officer took into consideration costs associated with grazing on the Subject Property. Based upon the record it does not appear that the Subject Property is fenced (to cattle grazing standards); more importantly, there is no evidence in the record to suggest the "good soil" islands of Deskamp soil are fenced. The Hearings Officer finds the cost of fencing is relevant to the determination of whether the Subject Property is "suitable for farm" use under the OAR 660-033-0020(1)(a)(B) "suitable for grazing" factor. Further, the cost to prepare the land (removal of rocks and addition of soil amendments) is relevant to the determination of whether the Subject Property is "suitable for farm use" under the OAR 660-033-0020(1)(a)(B) "suitability for grazing" factor. Jacobs, Applicant's farm expert, indicated the costs associated with any attempt to create usable farm land at the Subject Property would be exceedingly high.

The Hearings Officer concludes, based upon the findings above, that the Subject Property is generally not "suitable for farm use" under OAR 660-033-0020(1)(a)(B) "suitable for grazing" factor. The Hearings Officer findings above apply to all hooved animals. The Hearings Officer does not, for

this factor ("suitable for grazing") need to address each of the identified possible farm uses [equestrian boarding, breeding and riding center; raising, breeding and sales of turkeys; growing and sales of crops grown in greenhouses; and growing and sales of mixed vegetables] as those uses are not relevant to the "suitable for grazing" factor.

**OAR 660-033-0020(1)(a)(B) Climatic Conditions factor**

The Hearings Officer finds that climatic conditions in the general area surrounding Bend, Oregon (not including the high mountain areas) are relatively consistent. The Hearings Officer acknowledges that there are agricultural uses nearby and in the area. The Hearings Officer finds nothing unique about climatic conditions existing at the Subject Property. The Hearings Officer finds, from the perspective of climatic conditions perspective, the Subject Property is "suitable for farm use."

**OAR 660-033-0020(1)(a)(B) Existing and Future Availability of Water for Farm Irrigation Purposes factor**

Applicant and COLW agree that there are existing irrigation water rights appurtenant to the Subject Property. The existence of such water rights, albeit for only a portion of the Subject Property, suggests that the Subject Property is "suitable for farm use."

**OAR 660-033-0020(1)(a)(B) Existing Land Use Patterns factor**

COLW raised a number of issues (see quoted material above) related to this OAR 660-033-0020(1)(a)(B) factor. COLW framed the issue to be addressed in this factor as asking the question "whether existing land use patterns would diminish the Subject Property's suitability for farm use?" COLW answered that question by stating "nothing in the record suggests that either the EFU-zoned properties or the non-agricultural uses in the area would interfere with or limits the Subject Property's suitability for farm use." Neither the Applicant or Staff offered any argument contrary to COLW's framing of the OAR 660-033-0020(1)(a)(B) "existing land use patterns" factor. For the purposes of this recommendation the Hearings Officer adopts COLW's framing of the approach to the "existing land use patterns" factor.

COLW correctly identified properties to the north and west of the Subject Property as being zoned EFU. Applicant (Burden of Proof, page 29) acknowledged that the property adjacent to the Subject Property to the west may sustain agricultural uses and that property is made up of predominantly Deskamp 36 A and 36 B soils. Applicant, during hearing testimony, suggested that the property to the north also contains more "good soil" and that the owner had attempted to lease that property for agricultural purposes but was not successful. For the purposes of this recommendation the Hearings Officer finds the adjacent properties to the north and west are zoned for agricultural use and either are or possibly could be used for agricultural purposes.

Properties to the east and south have land use patterns more consistent with the MUA zone. These properties can potentially be used for agricultural purposes. However, the MUA zoned properties

are better characterized as rural residential uses which are primarily used for rural type living which can include less intensive or "hobby farm" agricultural uses.

COLW suggested that properties in the area that are under farm deferral and the existence of a farm deferral on a property is a relevant consideration for this factor. The Hearings Officer does not consider "farm deferral" to be a "land use pattern" factor. The Hearings Officer finds that COLW did not include in its record sufficient legal argument to allow the Hearings Officer (or other participants) the ability to authoritatively respond to the farm deferral issue.

COLW argued that "nearby MUA properties are generally Goal 3 exceptions and therefore should be considered agricultural lands." The Hearings Officer finds that COLW did not include in its record submissions (or testimony) support of its "Goal 3 exception area equals agricultural land" legal argument sufficient enough to allow the Hearings Officer (or other participants) the ability to authoritatively respond to that issue.

COLW noted that "other activities in the area include farm practices" as well other rural uses. The Hearings Office finds that on its face the existence of "farm practices" being conducted in the vicinity are suggestive of land use patterns supporting the conclusion that the Subject Property can, with minimal negative impacts, be considered "suitable for farm use."

The Hearings Officer, based on evidence and arguments in the record, finds that existing land use patterns are consistent with a conclusion that the Subject Property is "suitable for farm use." The Hearings Officer finds, based on the record of this case, that it is not appropriate or necessary to consider each of the possible farm uses individually/separately (equestrian boarding, breeding and riding center; irrigated pasture & growing hay; raising, breeding, and sales of other hooved animals [sheep, alpacas, llamas, cattle for beef, pigs and dairy cows]; raising, breeding and sales of turkeys; growing and sales of crops grown in greenhouses; and growing and sales of mixed vegetables) under this OAR 660-033-0020(1)(a)(B) (existing land use patterns) factor.

**OAR 660-033-0020(1)(a)(B) Technological and Energy Inputs Required factor**

COLW's focus related to the OAR 660-033-0020(1)(a)(B) technological and energy inputs factor is upon the current state of the Subject Property and the reasonable expectations of a farmer approaching a property in its current state or condition. COLW argued that the Subject Property has been "neglected or untended for some time." COLW argued that a reasonable farmer (or business owner), facing a property that has been "neglected or untended" would fully expect to have to expend money for items like fencing, irrigation infrastructure and farm buildings. COLW argued these expenditures are reasonable and necessary for the potential farmer (business owner) to put the Subject Property in a condition that would allow it to make a profit from farm uses. The Hearings Officer, in theory, agrees with COLW's arguments. However, as described below, agreeing in theory does not always equate to agreeing when considering the evidence in the record.

Applicant (Burden of Proof, page 29) included the following statement:

*"Given its poor soils, this parcel would require technology and energy inputs over and above accepted farming practices. Excessive fertilization and soil amendments, very frequent irrigation, and marginal climatic conditions restrict cropping alternatives. Pumping irrigational water requires energy input. The application of lime and fertilizer typically requires the use of farm machinery that consumes energy. The irrigation of the property requires the installation and operation of irrigation systems. All of these factors are why Class 7 and 8 soils are not considered suitable for use as cropland."*

Jacobs (May 14, 2026), Applicant's farming expert, expanded upon Applicant's Burden of Proof statement quoted above. The Hearings Officer incorporates the Jacob's record submittal (May 14, 2026) in its entirety as being substantial evidence related to the activities and associated costs of accomplishing the tasks likely to be necessary to put the Subject Property in a condition that would allow a reasonable farmer to employ the Subject Property for the primary purpose of obtaining a profit.

The Hearings Officer finds that the tasks suggested by COLW and discussed by Jacobs are necessitated or created by the underlying soil conditions at the Subject Property and not because the Subject Property is "neglected or untended." As the analysis below indicates the Subject Property has been "neglected or untended" for a reason; the underlying soil conditions.

The Hearings Officer finds there is no persuasive substantial evidence to dispute that the soil conditions at the Subject Property include, but are not limited to, shallow bedrock, excessive surface rock, thin topsoil and excessively drained soils with the "good soils" being located on "islands." The Hearings Officer finds that the soil conditions at the Subject Property would require significant activities/tasks to be undertaken and that the associated costs of such activities/tasks, based upon Jacobs testimony and written submission, far exceed normal/typical costs facing a reasonable and typical farm land purchaser.

Applicant (Burden of Proof, pages 25 & 26) described the cattle grazing potential on the Subject Property. Applicant stated that "*given the high cost of irrigating and maintaining the property as pasture or cropland (high labor costs, labor-intensive, high cost of irrigation equipment and electricity, high cost of fertilizer, etc.), dry land grazing is the accepted farm use of poor soils in Deschutes County.*" The Hearings Officer finds that the Applicant's representation (Burden of Proof, pages 25 & 26) that most cattle grazing operations are conducted as "dry land grazing" is reasonable. Irrigation requires labor costs, initial cost or irrigation equipment, maintenance of irrigation equipment and electrical costs render "irrigated grazing" impracticable.

The Hearings Officer finds that COLW's characterization of the Subject Property as "neglected and untended" is correct. Based upon the evidence in the record related to soil conditions it is not surprising that the Subject Property has not been used as farm land and that the property has been "neglected and untended." The Hearings Officer finds that the OAR 660-033-0020(1)(a)(B) technological and energy inputs factor, based upon the expert evidence in the record, clearly indicates the Subject Property is not "suitable for farm use."

**OAR 660-033-0020(1)(a)(B) Accepted Farming Practices factor**

The Hearings Officer limits the discussion of this OAR 660-033-0020(1)(a)(B) factor to the issues raised by COLW (quoted above, but repeated below):

> *"Common and accepted farming practices include but are not limited to, efforts involving hay and livestock production, some cereal grain production and boarding and training equines. Accepted farm practices also include upfront investment in infrastructure, irrigation equipment, machinery, and farm buildings.*
>
> *LandWatch generally agrees that portions of the subject property, especially on the western edge, contain rock outcroppings that could make some farm practices challenging in that area. The Eastern portions of the subject property, however, do not contain such limitations. Indeed, evidence in the record is that if the flat and cleared portion of the property were irrigated and planted with a hay crop, the subject property is capable of producing a small profit. See Applicant's Exhibit 10. Other agricultural operations involving the raising of livestock, seasonal stocking, sales of steers, and boarding and training equines also appear possible. On the whole, under accepted farming practices, the subject property is suitable for farm use."*

The Hearings Officer, for the purposes of this recommendation, agrees with COLW that common and accepted farming practices in Deschutes County may include hay/livestock production, cereal grain production and boarding and training equines. The Hearings Officer also agrees with COLW that accepted farm practices may include upfront investment in infrastructure, irrigation equipment, machinery, and farm buildings. The Hearings Officer agrees with COLW that much of the Subject Property contains rock outcroppings that cause the exercise/engagement of accepted farm practices "challenging." The Hearings Officer finds that COLW's statement that the eastern portions of the Subject Property are flat and cleared may not be entirely accurate based upon the Kitzrow soil study and Jacobs record submission. The Hearings Officer finds that there are significant areas in the "eastern portion" with "poor quality" Gosney soils. Based upon the Kitzrow soil study and Jacobs record submission the Gosney soil is characterized by shallow bedrock, surface rocks, thin (if any) topsoil, and excessive water drainage.

The Hearings Officer finds COLW's assertions that if the Subject Property was irrigated and planted with a hay crop the Subject Property could generate a "small profit" to be speculative and based on no substantial evidence in the record. The Hearings Officer also finds COLW's assertion that other agricultural operations (i.e., raising livestock, seasonal stocking, sales of steers, and boarding and training equines) "also appear possible" is speculative and based on no substantial evidence in the record. The Hearings Officer has addressed these potential uses in relevant findings above.

The Hearings Officer adopts as additional findings for this section (Accepted Farming Practices) the findings set forth above for Soil Fertility, Suitability for Grazing, Water for Farm Irrigation Purposes and Technological and Energy Inputs Required.

The Hearings Officer finds that accepted farming practices must take into account the soil characteristics of a property. The Hearings Officer finds that soil characteristics, in this particular

case, are the most influential determinant of what "accepted farming practices" may be on the Subject Property.

The Hearings Officer keeps in mind that what is considered in this section are ***accepted*** farming practices. The Hearings Officer interprets the modifying term "**accepted"** to mean farming practices that would be accepted by a reasonable farmer, using an objective test, for a specific parcel of land. Adding irrigation equipment may be an **accepted** farming practice for some properties but, keeping in mind that the Subject Property has soils that are rocky and excessively drained, the Hearings Officer finds that irrigating the Subject Property may not be employing an **accepted** farming practice. The Hearings Officer notes that adding irrigation to adjacent/nearby land that is made up of "good soil" or at least some "good soil" with appropriate size, configuration and access, would likely be considered an **accepted** farming practice. The Hearings Officer finds that the term **accepted** must be considered in the overall context of a property. Interpreting **accepted** without taking into consideration the physical characteristics of a property may lead to absurd results.

If adding irrigation equipment is not an accepted farming practice for the Subject Property then the likelihood of successfully engaging in the farm practices of hay, cereal grain and livestock production is very low.

Jacobs (Applicant's farming expert) opined that commercial equestrian/equine use of the Subject Property was severely limited by the rocky soil and lack of ability to grow pasture. The Hearings Officer found Jacobs testimony credible and considered it substantial evidence that raising, boarding, training and marketing horses does not represent an accepted farming practice on the Subject Property. While susceptible to debate the Hearings Officer finds engaging in equestrian uses on the Subject Property, with the prevalent surface rocks, shallow bedrock and excessive drainage is not an accepted farm practice.

The Hearings Officer finds that costs of necessary to create soil that is fertile and will hold water may be considered in the application of the ORS 215.203(2)(a) farm use test. Based upon Applicant's farm expert Jacobs the costs associated with creating usable agricultural land at the Subject Property are very high; so high that a reasonable farmer would not likely consider expenditures for ground preparation and irrigation to be "accepted farm practices." Applying what may be an accepted farming practice on other properties (i.e., adjacent or nearby properties with "good quality" soil) may not be appropriate at the Subject Property considering the characteristics of the Subject Property's soil. The Hearings Officer finds that soils on the Subject Property necessitate a finding that the application of the OAR 660-033-0020(1)(a)(B) accepted farm practices factor indicates that the Subject Property is not "suitable for farm use."

**OAR 660-033-0020(1)(a)(B) Conclusion**

The Hearings Officer, in earlier findings, concluded that OAR 660-033-0020(1)(a)(B) requires a decision maker to determine (when land is **not** in the OAR 660-033-0020(1)(a)(1) land classifications) if a property is "suitable for farm use" as defined in ORS 215.203(2)(a) by taking into consideration a number of factors. The Hearings Officer also, in earlier findings, concluded that ORS 215.203(2)(a) requires an Applicant to consider a list of possible farm uses and evaluate those uses which may

reasonably be considered "suitable for farm use" of the Subject Property. Based upon the *Destiny Court* LUBA opinion the Hearings Officer believes that an Applicant is also required to evaluate possible uses raised by a hearing participant that may be considered "suitable for farm use." The Hearings Officer concluded that each of the identified uses are then considered in the context of any relevant OAR 660-033-0020(1)(a)(B) factor. Finally, in the findings above, the Hearings Officer concluded that while all of the OAR 660-033-0020(1)(a)(B) factors must be considered they all need not be found to indicate the Subject Property is, or is not, "suitable for farm uses." As noted in the findings above, it is the decision maker's overall assessment of the OAR 660-033-0020(1)(a)(B) factors that dictates the final conclusion as to whether a property is "suitable for farm uses."

The Hearings Officer found that the "climatic conditions," "existing and future availability of water for farm irrigation purposes" and "existing land use patterns" suggest that the Subject Property is "suitable for farm use" for most, if not all, of the relevant proposed uses. The Hearings Officer found that the "soil fertility," "suitability for grazing," "technological and energy inputs required," and "accepted farming practices" factors indicate that the Subject Property is not "suitable for farm use." As noted in the previous paragraph the Hearings Officer finds that finding one, two or even more factors suggesting that a property is "suitable for farm use" does not require a conclusion that the property is "suitable for farm use." Likewise, a finding that one, two or even more factors suggest a property is not "suitable for farm use" does not require a conclusion that the property is not "suitable for farm use."

The Hearings Officer finds his role is to consider the OAR 660-033-0020(1)(a)(B) factors in the context of the Subject Property. The Hearings Officer found, in this case, some of the OAR 660-033-0020(1)(a)(B) factors indicated the Subject Property was "suitable for farm use" and other factors indicated the Subject Property was not "suitable for farm use."

In this case the Hearings Officer found that the soil characteristics of the Subject Property was the dominant factor. The Hearings Officer found the existence of extensive rock, the existence of "islands of 'good soil,'" and the existence of excessively drained soils to be determinative. The Hearings Officer finds the soil limitations at the Subject Property trigger/necessitate physical actions (including but not limited to soil amendments, fencing, irrigation equipment and maintenance) that are extremely challenging and costly. The Hearings Officer finds, based on the record, that undertaking the necessary physical actions at the Subject Property is relevant to each of the uses suggested by COLW. Soil amendments and irrigation are necessary for creating pastures or commercial hay/crops. Pastures, based on experts employed by Applicant, are necessary (at some size or extent) for the raising of all hooved animals. Some pasture, based upon Applicant's expert, is even necessary for equestrian uses.

The Hearings Officer acknowledges that had the template used in this case to determine if a property satisfied the OAR 660-033-0020(1)(a)(B) test been applied in some prior recommendations made by this Hearings Officer, this Hearings Officer may have reached a conclusion that the respective property was "suitable for farm use." However, based upon Applicant's submitted evidence in this case it is clear to this Hearings Officer that the soil conditions on the Subject Property (i.e., location of "good soil," excessive rock, excessive drainage, and other soil factors) mandate a conclusion that all of the COLW proposed uses would be either improbable or so

expensive that no reasonable farmer, with the intent of obtaining a profit, would entertain farming on the Subject Property.

**Title 18 of the Deschutes County Code**

**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 is the Subject Property owner and has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant has filed the required land use application forms for the proposal. The application is reviewed, in this recommendation, utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

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:** In response to subsection (A), the Applicant's Burden of Proof (page 10) provided the following comments:

> *"The Comprehensive Plan's introductory statement explains that land use must comply with the Statewide Planning System and set out the legal framework set by State law. It summarizes the Statewide Planning Goals. It also explains the process the County used to adopt the current Comprehensive Plan. This application is consistent with this introductory statement because the requested change has been shown to be consistent with State law and County plan provisions and zoning code that implement the Statewide Planning Goals.*
>
> *The following provisions of Deschutes County's Amended Comprehensive Plan set out goals or text that may be relevant to the County's review of this application. Other provisions of the plan do not apply."*

The Applicant utilized the analysis above, as well as analyses provided in prior Hearings Officer decisions to determine and respond to only those Comprehensive Plan Goals and Policies that are applicable, as described within the 'Deschutes County Comprehensive Plan' section of the Staff

Report. Staff (Staff Report, pages 11 & 12) generally concurred with the Applicant's analysis and, as described herein, found that this proposal to be in compliance with this criterion based on Comprehensive Plan conformance. Staff (Staff Report, page 12) asked the Hearings Officer to make specific findings regarding whether the Subject Property qualifies as agricultural land, which may impact the findings for compliance with certain Comprehensive Plan Policies. The Hearings Officer incorporates the Preliminary Findings as additional findings for this section. The Hearings Officer concluded, in the Preliminary Findings, that the Subject Property was not agricultural land.

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

**FINDING:** The Hearings Officer incorporates the Preliminary Findings for the COLW Issue: Purpose Statement (Section III.A.4.) as additional findings for this criterion. The Hearings Officer also incorporates the Staff findings (Staff Report, pages 12 & 13) as additional findings for this criterion.

*"In response to subsection (B), the applicant's Burden of proof provides the following:*

*The approval of this application is consistent with the purpose of the MUA10 zoning district which state[s] 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.'"*

Based upon the incorporated findings the Hearings Officer finds this criterion is met.

***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:** Although there are no plans to develop the Subject Property in its current state, the above criterion specifically requires that the proposed zone change will presently serve the public health, safety, and welfare.

In response to this criterion, the Applicant's Burden of Proof (pages 26 and 37) provides the following:

*"The Board of County Commissioners recently adopted the interpretation of this provision made by Hearings Officer Gregory Frank in Files Nos. 247-[24]-000097-PA; 247-24-000098-ZC and 247-25-000021-MA (BCL, LLC). The Board's adopted interpretation is that the term "best" as used in this code section can reasonably be interpreted to mean that the public interest is best served if the proposal to rezone [the] property meets the factors in DCC 18.136.020 A, B, C and D. The applicant explained above how the current proposal meets the factors in DCC 18.136.020 A and B above. As to subsection C, there are not many public services and facilities necessary to serve the property if it is rezoned MUA10. Access from a public road system is necessary and exists. The existing road network is available to serve the use. This is confirmed by a transportation system impact review conducted by Scott Ferguson. Electrical service is already provided. Public sewer is not necessary to support land designated RREA. In fact, all or most such lands in the county rely on private septic systems.*

*As to water, for any domestic use, Avion Water District confirmed that there is water in the area. However, it can only be provided to the property with restrictions on the amount of water used. With the larger, 10-acre parcels in the MUA10 zone, domestic water can be supplemented if needed using private wells.*

*The property received police services from the Deschutes County Sheriff. The southern half of the property is in a rural fire protection district, and the nearest fire station is less than one mile away. All of the property is located in the Bend Rural Fire District. Access to the subject property by fire trucks in provided by Dickey Road a county maintained public road."*

Staff noted (Staff Report, page 13 & 14) that, in addition to any land use approval for a future land division proposal, the property owner will be required to comply with the applicable requirements of Deschutes County Code prior to development of the properties; including land use, building, and sewage disposal permits. Through these development review processes, assurance of adequate public services and facilities will be verified. Staff concurred with the Applicant's analysis and finds compliance with this criterion has been demonstrated. The Hearings Officer concurs with Applicant's statement quoted above and Staff's conclusion that this criterion is met.

The Hearings Officer notes, with respect to Staff's land division comment that any land division request, if under DCC 18.116.400, as currently drafted, may be rejected based upon the potential DCC 18.116.400 inconsistency with the DCCP section 3.3.

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

**FINDING:** In response to this criterion, the Applicant's Burden of Proof provides the following comments:

*"The MUA10 zoning is consistent with the specific goals and policies in the Comprehensive Plan discussed above. The MUA10 zoning is the same as the zoning as many other properties in the area of the subject property and is consistent with that zoning.*

*The land immediately around the subject site has no farming operations on it and there is no recent history of any. There appears to be some smaller scale agricultural uses east and west of the subject site. There are two point[s] in looking at farming on the nearby land. First, the farming is not large commercial operations. That reflects that generally the land i[n] the vicinity does not support farming activities with a profit objective. Second, the properties that appear to currently be in some farm use are in areas where the soil is exclusively or predominantly Deskamp (36A and 36B). That land is classified as agricultural land opposed to the land in the area that is Gosney Rock outcrop where there is no farm activity. Rezoning a parcel that is almost 70 percent Gosney Rock will have no impact on activities engaged in on the properties that are all or mostly Deskamp.*

*An additional factor is that the properties that have some farming on them are significantly removed from the subject property, separated by major county roads and will not be impacted by rezoning the subject site to MUA10. The mapping included in this burden of proof demonstrates that there are many MUA10 parcels in the area intermixed with EFU parcels showing compatibility of having both zones in the same general area.*

*The property south of the subject site is primar[ily] composed of approved subdivision on MUA10 land. Rezoning the subject site to allow the same uses is compatible."*

In addition to these comments, the Applicant provided specific findings for those applicable Comprehensive Plan Goals and Policies, addressed below. Staff agreed with the Applicant's analysis and conclusion set forth above demonstrating that the impacts on surrounding land uses will be consistent with the specific goals and policies contained within the Comprehensive Plan. The Hearings Officer concurs with Applicant's comments and Staff's opinion related to this policy.

***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:** Applicant provided in its Burden of Proof the following comments:

*"There has been a change in circumstances since the subject property was last zoned and a mistake in designating the subject property EFU/Agriculture when soils did not merit a designation and protection as "Agricultural Land." The NRCS maps and recent site-specific soil study also establish that there was a mistake in originally designating the property as agricultural land.*

*In 1979 and 1980, undeveloped and undeveloped rural lands that contained poor soils, but were zoned EFU without regard to the specific soil characteristics of the property. Landowners were required to apply for a zone change to move their unproductive EFU properties out of the EFU zone. The County's zoning code allowed these owners a one-year window to complete the task. This approach recognized that some rural properties were mistakenly classified as EFU because their soils and other conditions did not merit inclusion of the property in the EFU zone.*

*Multiple property owners in Deschutes County received approval to rezone their properties from EFU to MUA10 because their properties contained poor soils and were improperly included in the EFU zone. The soils on the subject property are similarly poor and also merits MUA10 zoning. The*

*NRCS maps and how the County Board has determined they should be used confirm that the subject property is not agricultural land. Since 1979 and 1980, there has been a change of circumstance related to this issue. The County's Comprehensive Plan has been amended to specifically allow individual property owners to have improperly classified land reclassified.*

*Since the property was zoned, it has become evident that farm uses are not viable on the property or on other area properties. The economics of farming have worsened over the decades, making it difficult for most Deschutes County property owners to make money farming good ground and impossible to earn a profit from attempting to farm Class 7 and 8 farm soils. In 2022, according to Table 4 of the 2022 US Census of Agriculture,* ***Exhibit 6****, only 18.6% of farm operators achieved a net profit from farming (293 of 1572 farm operations). In 2017, according to Table 4 of the 2017 US Census of Agriculture,* ***Exhibit 7****, only 16.03% of farm operators achieved a net profit from farming (238 of 1484 farm operations). In 2012, the percentage was 16.45% (211 of 1283 farm operations). In 2007, according to the 2012 US Census of Agriculture, that figure was 17% (239 of 1405 farm operations).* ***Exhibit 8****. The number of farms with net losses increase from 1,246 in 2017 to 1,279 in 2022. The vast majority of farms in Deschutes County have soil that is superior to those found on the subject property. As farming on those soils is typically not profitable, it is reasonable to conclude that no reasonable farmer would purchase the subject property for the purpose of attempting to earn a profit in money from agricultural use of the land. In BCL, LLC, the Board adopted the Hearings Officer's finding that similar circumstance establish a change in circumstances under this section.*

*Based upon similar circumstance and a similar analysis, the Hearings Officer found that there was a mistake in the application of the agricultural designation and EFU zoning. The NRCS maps, and recent study confirm that in 1979/1980, when the County first did its "broad brush" designation, many properties that should not have been classified as agricultural land received that designation.*

LUBA, in *Central Oregon Landwatch v. Deschutes County (Destiny Court*) LUBA No. 2025-015 (2025) provided the following:

*"…we agree with respondents that the Order 1 soil study can be viewed as a 'change in circumstances' for purposes of DCC 18.136.020(D). Petitioner argues that only a physical change to the soils or conditions on the subject property, such as a flood or earthquake, could possibly constitute a 'change in circumstances.' But petitioner cites nothing in the text or context of DCC 18.136.020(D) suggesting that a 'change of circumstances' is limited to physical changes.*

*The board of commissioners adopted the hearings officer's findings concluding that the new and more detailed information provided by the soils study is sufficient to constitute a 'change in circumstances.' The board of commissioners clearly understood the phrase 'change in circumstances.' The board of commissioners clearly understood the phrase 'change in circumstances to encompass more than physical changes to the soil or site conditions, and to broadly include development of new information that fundamentally challenges the agricultural status of the property. That implicit understanding is adequate for our review and therefore subject to the deferential standard of review we apply to a governing body's interpretations of its*

*land use regulations, under ORS 197.829(1) [LUBA footnote omitted] We cannot say that the county's understanding of DCC 18.136.020(D) is inconsistent with the text, context, purpose or underlying policy of that provision."*

The Hearings Officer finds that Applicant's soil study is a more detailed and accurate soil assessment than the NRCS maps/study. The Hearings Officer finds Applicant's current soil assessment to represent a "change in circumstances." The Hearings Officer finds this criterion is met.

**The Deschutes County Comprehensive Plan**

**Chapter 2, Resource Management**

Section 2.2, Agricultural Lands Policies

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

**FINDING:** The Hearings Officer incorporates, as additional findings for this section, the Preliminary Findings for COLW Issue: Profitability (III.A.6). The Hearings Officer finds that the Subject Property is not "agricultural land" as defined in OAR 660-033-0020(1)(a). The Hearings Officer finds this policy is satisfied.

***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.

***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 properties from Agricultural to Rural Residential Exception Area. The Applicant is not seeking an exception to Goal 3 – Agricultural Lands, but rather seeks to demonstrate that the Subject Property does not meet the state definition of "Agricultural Land" as defined in Statewide Planning Goal 3 (OAR 660-033-0020). The Hearings Officer adopts as additional findings for this section the Preliminary Findings for COLW Issue: Profitability (Section III.A.6).

The Hearings Officer also takes note of the following Staff statement (Staff Report, pages 18 & 19):

*"Staff agrees that the facts presented by the applicant in the burden of proof for the subject application are similar to those in the Wetherell decisions and in previous Deschutes County plan*

*amendment and zone change applications. Therefore, the applicant has the potential to prove the properties are not agricultural land and do not require an exception to Goal 3 under state law."*

The Hearings Officer agrees with Staff's above-quoted analysis and conclusion. The Hearings Officer finds this policy is satisfied.

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

**FINDING:** Staff provided the following statement (Staff Report, page 19):

*"The applicant's burden of proof provides the following response:*

*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 Board of Commissioners so held in File 247-16-000317-ZC/318-PA, Porter Kelly Burns Landholdings, LLC. The County has, however, made it clear in land use decisions that EFU land may be converted to a Rural Residential Exceptions Area designation when shown that the land does not meet the definition of "Agricultural Land" provided by Statewide Land Use Planning Goal 3.*

*In the Division of State Lands findings, Deschutes County found that this policy does not impose a moratorium on requests for applications of the type filed by property owners. The County Board has acted consistently with that policy in Porter Kelly Burns where the Board noted that it had approved the conversion of EFU land to an RREA plan designation and MUA10 zoning in the Pagel decision, and that nothing in this plan policy prohibits that action.*

*The County's interpretation of Policy 2.2.3 above also spells out when and how EFU parcels can be converted to other designations. The facts presented by this case merit conversion of the subject property into a new plan designation under the County's interpretation of Policy 2.2.3.*

*This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. In the findings for previous Plan Amendment and Zone Change applications, the County has found that this policy does not impose a moratorium on requests for applications of this type, and that nothing in this plan policy prohibits the conversion of EFU parcels to other designations (see also PA-11-7, 247-16-000318-PA, PA-10-5, PA-07-1, and more). Staff concurs with the County's previous determinations and finds the proposal is consistent with this policy.*

The Hearings Officer concurs with the Staff's analysis and conclusion.

***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 makes it clear that it is County policy to identify and retain agricultural lands that are accurately designated. The Applicant asserts that the Subject Property was not accurately designated by the NRCS as demonstrated by the soil study and the Applicant's burden of proof. The Hearings Officer incorporates as additional findings for this policy the Preliminary Findings for COLW Issue: Profitability (Section III.A.6).

Section 2.5, Water Resources Policies

***Goal 6, Coordinate land use and water policies.***

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

**FINDING:** Staff provided the following comments (Staff Report, page 20):

*"The applicant's burden of proof provides the following response:*

*The Applicant is not proposing development or proposing a significant land use at this time. The change of the zoning should have little or no impact on water resources.*

*Irrigation is essential for any farm activity engaged in for the purpose of profit in Deschutes County. The average rain fall is only 11.36 inches and much of that is not during the prime growing season. The property has only 6.4 acres of irrigation rights, and it has not been applied to the property for many years. The program that incentivized owners to lease water right back to COID began in about 2001. The owners of the subject property first lease[d] their rights back in 2004. They did so again in 2008 and have consistently done so every year since 2012. The rights are subject to the current lease through 2027. The leasing program reflects the reality that it is a waste of valuable water to place it on land that is rocky, shallow and does not hold water sufficient to grow crops. The beneficial use of irrigation rights is to lease them back rather than waste water on bad soil. The remaining 45 acres have no irrigation rights. In any event, irrigating poor farm ground consumes a large amount of the area's precious water resources without the resulting economic benefits of profitable agricultural production. Other uses permitted in the MUA10 zone consume less water than would be needed for farm field irrigation on the subject property.*

*In its findings in Division of State Land, Deschutes County found that impacts of any proposed future development of the state property on water resources would be reviewed by Deschutes County in future development applications. That finding was sufficient to demonstrate compliance with this plan policy. Together with the findings above and then later reviewed by Deschutes County, this policy is satisfied.*

*Staff notes that any proposed water use associated with future development of the subject properties will be reviewed under the necessary land use process for the site (e.g. conditional use permit, tentative plat). Staff agrees with the decision referenced within the applicant's burden of proof and finds that it is also relevant to the subject application."*

The Hearings Officer concurs with the above-quoted Staff analysis and conclusion.

Section 2.7, Open Spaces, Scenic Views and Sites

***Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic views and sites.***

***Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.***

***Policy 2.7.5 Encourage new development to be sensitive to scenic view and sites.***

**FINDING:** Staff provided the following comments (Staff Report, page 21):

*"These policies are fulfilled by the County's Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zone to certain adjacent properties. Staff notes that no LM Combining Zone applies to the subject properties, nor are they located within the Open Space and Conservation (OS&C) Zone. Furthermore, no new development is proposed under the present application. These provisions of the plan, therefore, are not impacted by the proposed zone change and plan amendment."*

The Hearings Officer concurs with the above-quoted Staff analysis and conclusion.

**Chapter 3, Rural Growth**

Section 3.2, Rural Development

***Growth Potential***

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

- ***2009 legislation permits a new analysis of agricultural designated lands***
- ***Exceptions can be granted from the Statewide Planning Goals***
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

**FINDING:** Staff provided the following comments (Staff Report, pages 21 & 22):

*"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:*

*This part of the Comprehensive Plan is not a relevant approval criterion for a plan amendment and zone change application. Instead, it is the County's assessment of the amount of population growth that might occur on rural residential lands in the future based on its understanding of the types of changes allowed by law. Comprehensive Plan Policy 2.2.3 specifically authorizes rezoning and comprehensive plan map amendments for any property zoned EFU and is the code section that defines the scope of allowed zone changes. Furthermore, even though there is an inventory of rural residential parcels in the county, there is no reason to hold the subject site in any reserve status because it is not immediately adjacent to the existing UGB and this, not likely to be included in the UGB in the planning future.*

*This section makes it clear that EFU zoned land with poor soil adjacent to rural residential development is expected to be rezoned for rural residential development during the planning period. The subject property has extremely poor soils and does not qualify as agricultural land that must be protected by Goal 3. Much of the land around it is already rural residential exception land. Because the soil severely limits, if not eliminates the use for any large-scale farming, allowing the creation of smaller 10-acre parcels for residential and small agricultural uses is the best use of the property. Small scale agricultural operations use along with rural residential uses allows owners to engage in agricultural activities on a scale that can be managed with[out] the need to amend soil and obtain adequate food and water for animals.*

*Staff notes that the MUA10 Zone is a rural residential zone. As described in the Basic Findings section above, there are nearby properties to the east and south that are zoned MUA10. Staff concurs with the applicant's response and finds the proposal in compliance with this policy."*

The Hearings Officer concurs with the above-quoted Staff analysis and conclusion.

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:** Staff provided the following comments (Staff Report, pages 22 & 23):

*"The Hearings Officer's decision for file numbers PA-11-17/ZC-11-2 provides the following findings in response to this portion of Section 3.3 of the Comprehensive Plan:*

*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 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.*

*There is one additional related matter which warrants discussion in connection with this issue. It appears that part of Staff's hesitation and caution on the issue of whether an exception might be required is rooted in the title of the Comprehensive Plan designation that would ultimately apply to the subject property – which is "Rural Residential Exception Area." There appears to be seven countywide Comprehensive Plan designations as identified in the plan itself. These include "Agriculture, Airport Development, Destination Resort Combining Zone, Forest, Open Space and Conservation, Rural Residential Exception Area, and Surface Mining." Of the seven designations, only Rural Residential Exception Area provides for associated zoning that will allow rural residential development. As demonstrated by reference to the Pagel decision discussed above, there appears to be instances in which rural residential zoning has been applied without the underlying land necessarily being identified as an exception area. This makes the title of the "Rural Residential Exception Area" designation confusing, and in some cases inaccurate, because no exception is associated with the underlying land in question. However, it is understandable that since this designation is the only one that will allow rural residential development, that it has become a catchall designation for land types that are authorized for rural residential zoning. That is the case with the current proposal, and again, for the same reasons set forth in Hearings Officer Green's decision in Pagel, I cannot find a reason why the County would be prohibited from this practice.*

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

The Hearings Officer concurs with the above-quoted Staff analysis and conclusion.

Section 3.7, Transportation

***The Transportation System was adopted in Ordinance 2012-005 and is hereby incorporated into this Plan as Appendix C …***

**Appendix C – Transportation System Plan**

***ARTERIAL AND COLLECTOR ROAD PLAN***

***Goal 4***

***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.***

***Policies***

***…***

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

**FINDING:** This policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The County will comply with this direction by determining compliance with the Transportation Planning Rule (TPR), also known as 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

***(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 an approximately 7-mile radius. The Subject 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 are rated for forest uses according to NRCS data. The Subject Property does not appear to qualify as forest land.

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

OAR 660-015-0000(3)

***To preserve and maintain agricultural lands.***

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

**FINDING:** Goal 3 continues on to define "Agricultural Land," which is repeated in OAR 660-033-0020(1). The Hearings Officer incorporates, as additional finding for this criterion, the Preliminary Findings for COLW Issue: Profitability (Section III.A.6).

OAR 660-033-0020, Definitions

***For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:***
***(1)(a) "Agricultural Land" as defined in Goal 3 includes:***

***(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon[9];***

**FINDING:** The Applicant's basis for not requesting an exception to Goal 3 is based on the premise that the Subject Property is not defined as "Agricultural Land." In support, the Applicant offered statements contained in its Burden of Proof, Applicant testimony and written submission, testimony and written documents submitted by Kitzrow (soil expert) and Jacobs (farming expert) and Applicant's legal counsel. COLW, in support of its legal arguments, offered oral testimony and written submissions into the record. Staff included the following comments (Staff Report, page 23):

*"Staff finds, based on the submitted soil study and the above OAR definition, that the subject properties are comprised predominantly (69.6%) of Class VII and VIII soils and, therefore, does not constitute*

[9] 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.

*"Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit."*

The Hearings Officer incorporates as findings for this section the Preliminary Findings for COLW Issue: Profitability (Section III.A.6). The Hearings Officer finds, based upon the arguments and evidence described in the Preliminary Findings, in particular the findings for COLW Issue: Profitability (Section III.A.6) that the Subject Property is not "agricultural land" as defined/described in OAR 660-033-0020(1) and ORS 215.203.

***(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 Hearings Officer incorporates as findings for this section the Preliminary Findings for COLW Issue: Profitability (Section III.A.6). The Hearings Officer finds, based upon the Preliminary Findings for COLW Issue: Profitability (Section III.A.6) and upon Applicant's legal arguments and evidence submitted into the record, that the Subject Property is made up of soils in "other soils classes" and that the Subject Property soils are not "agricultural land" as defined in OAR 660-033-0020(1)(a)(B) and ORS 215.213(2)(a).

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

**FINDING:** The Hearings Officer incorporates as additional findings for this section the Preliminary Findings for COLW Issue: Necessary to permit farm practices on adjacent/nearby agricultural lands (Section III.A.5). Based upon the Preliminary Findings for COLW Issue: Necessary to permit farm practices on adjacent/nearby agricultural lands (Section III.A.5) and Applicant's statement/argument set forth in its Burden of Proof (pages 30 & 31) the Hearings Officer finds the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

***(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:** In response to this criterion, the Applicant's Burden of Proof provides the following:

*"The subject property is not and has not been a part of a farm unit. It has not been farmed. As a result, this rule does not apply to the County's review of this application.*

*Even if the subject property is considered to be a "farm unit," despite the fact it has never been farmed, Goal 3 applies a predominant soil test to determine if a property is "agricultural land." The predominant soils classification of the subject property is Class VII and VIII which provides no*

*basis to inventory the property as agricultural land, unless the land is shown to be, in fact, productive farmland.*

*As confirmed by the accepted soils maps, the predominant soil types found on the property are Class VII and VIII non-agricultural land. Some Class VI soils are intermingled with the non-agricultural soil, not vice versa. As a result, this rule does not require the Class VII and VIII soils to be classified agricultural land."*

The Hearings Officer incorporates as additional findings for this section the Preliminary Findings for COLW Issue: Necessary to permit farm practices on adjacent/nearby agricultural lands and COLW Issue 6, Profitability. The Hearings Officer concurs with Applicant's statements that the Subject Property is not part of a farm unit and that the findings and conclusions within the submitted soil study relate to the above factors under subsection (b).

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

**FINDING:** The Subject Property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goal 3 or 4.

OAR 660-033-030, 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 Hearings Officer incorporates as additional findings for this section the Preliminary Findings for COLW Issue: Purpose Statement (Section III.A.4), COLW Issue: Necessary to permit farm practices on adjacent/nearby agricultural lands (Section III.A.5) and COLW Issue: Profitability (Section III.A.6). The Hearings Officer considered farm practices undertaking on adjacent and nearby lands. In addition, the Hearings Officer considered whether the Applicant addressed each of the factors set forth in OAR 660-033-0020(1). The Hearings Officer found, in the incorporated findings that there is substantial evidence in the record that the soil conditions of the Subject Property are so extreme to result in a conclusion that the Subject Property cannot be used for farm

purposes in a manner meeting the requirements of OAR 660-033-0020(1)(a)(B) and the definition of "farm use" as set forth in ORS 215.203(2)(a).

The Hearings Officer considered, in the incorporated findings, the possibility of using the Subject Property in conjunction with adjacent and/or nearby properties. The Hearings Officer concluded, based primarily on the soil conditions (isolated parcels of Deskamp, presence of rock, limited depth of topsoil, and excessive draining) that adjacent and nearby agricultural uses would not consider using the Subject Property in conjunction with their own property(s). The Hearings Officer, in the incorporated findings, did not limit his analysis to the Subject Property alone but rather did consider the use of the Subject Property with other properties (i.e., suitability for grazing).

The Hearings Officer, in the suitability for grazing example, considered COLW's suggestion that the Subject Property be used for rotational grazing of cattle along with one or more other properties. As noted in the incorporated findings establishing "any" grazing land (pasture land) on the Subject Property involved removal/clearing of rocks, fencing, installing irrigation equipment and maintenance irrigation equipment and soil amendments. The Hearings Officer found that the soil was so poor that removal of rocks and amending soils was financially impracticable. Further, the Hearings Officer found that even if the soil was amended irrigation would be inefficient at best because of the excessive water drainage (Jacobs and Kitzrow statements).

The Hearings Officer finds that the Subject Property is not agricultural land as described and defined in OAR 660-033-0020(1) and ORS 215.030.

> ***(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 incorporates as additional findings for this section the Preliminary Findings for COLW Issue: Purpose Statement (Section III.A.4), COLW Issue: Necessary to permit farm practices on adjacent/nearby agricultural lands (Section III.A.5) and COLW Issue: Profitability (Section III.A.6). Applicant, in its Burden of Proof, addressed this criterion as follows:

> *"The evidence, as discussed above does not rely on ownership. Regardless of ownership, there [are no] farming operations in the area that would benefit from the subject property nor would it be feasible to use it in conjunction with any nearby property for farming. 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 has assigned no significance to the ownership of adjoining properties."*

The Hearings Officer, in this case, assigned no significance to the ownership of the Subject Property or adjoining properties. The Hearings Officer finds, based upon the incorporated findings, that the Subject Property is not "suitable for farm use" and is not agricultural land.

***(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:** Staff included the following comments related to this criterion:

*The submitted soil survey report provides more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land. The soil study provides detailed and accurate information about a single property based on numerous soil samples taken from the subject property. The soil study is related to the NCRS Land Capability Classification (LLC) 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 soil survey report concludes that the subject property contains 69.6 percent Class 7 and 8 soils, based on site observations and examination of 25 test holes. The soil study is accompanied in the record by correspondence from the Department of Land Conservation and Development (DLCD). The DLCD correspondence confirms that the soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Based on qualifications of the professionals conducting the site work and report preparation, staff finds the submitted soil study to be definitive and accurate in its analysis of site-specific soil information for the subject property.*

The Hearings Officer concurs with the above-quoted Staff comments.

***(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 soil survey study prepared by Gary Kitzrow of Growing Soils Environmental Associates (conducted September 10-12, 2025). The study was submitted following the ORS 215.211 effective date. The Applicant submitted to the record an acknowledgement from Hilary Foote, Farm and Forest Specialist with the DLCD, dated January 6, 2025, that the soil study is complete and consistent with DLCD's reporting requirements. The Hearings Officer finds this criterion to be met based on the submitted soil study and confirmation of completeness and consistency from DLCD.

***(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 obtained additional information regarding soils and how these soils relate to the agricultural designation of the Subject Property. The Applicant has also submitted DLCD's certification of its soil study and has complied with the soils analysis requirements of OAR 660-033-0045 in order to obtain that certification. DLCD's certification establishes compliance with OAR 660-033-0045.

**DIVISION 12, TRANSPORTATION PLANNING**

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

***(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:***

***(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);***

***(b) Change standards implementing a functional classification system; or***

***(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.***

***(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;***

***(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or***

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

**FINDING:** The Hearings Officer finds that the language of this criterion is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the Subject Property from AG to RREA and change the zone from EFU to MUA10. The Applicant is not proposing any land use development of the properties at this time.

As referenced in the agency comments section in the Basic Findings section above, the Senior Transportation Planner for Deschutes County requested additional information to clarify the conclusions provided in the Transportation Planning Rule (TPR) analysis prepared by Scott Ferguson, PE of Ferguson & Associates, LLC, dated September 16, 2025. The Applicant submitted an updated report, dated March 2, 2026, prepared by Scott Ferguson in response to the additional information that was requested.

In response to the revisions noted above, the County Senior Transportation Planner stated:

> *"The revised findings in Ferguson & Associates TPR addendum letter (dated March 2, 2026) addresses my concerns with the original analysis and I have no further comments related to TPR compliance. With the addendum in the record, I agree with the assumptions, methodologies, and conclusions that collectively demonstrate the proposal's compliance with Goal 12 and TPR."*

The Hearings Officer finds that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area.

**DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES**

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

**FINDING:** The Statewide Planning Goals are outlined below, as provided by 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 Hearings Officer incorporates as additional findings for this section the Preliminary Findings for COLW Issue: Purpose Statement (Section III.A.4) Statement, COLW Issue: Necessary to permit farm practices on adjacent/nearby agricultural lands (Section III.A.5) and COLW Issue: Profitability (Section III.A.6). The Applicant has shown that the Subject Property is not agricultural land, so Goal 3 does not apply.

**Goal 4, Forest Lands**. The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands "are those lands acknowledged as forest lands as of the date of adoption of this goal amendment." The Subject Property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that "[w]here **a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources." This plan amendment does not involve any forest land. The Subject Property does not contain any merchantable timber and is not located in a forested part of Deschutes County.

**Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources**. The Subject Property is not within any scenic corridor. There are no Inventoried Goal 5 resources on it. It has no rivers or streams. It has no significant rock outcroppings.

**Goal 6, Air, Water and Land Resources Quality**. The approval of this application will not cause a measurable impact on Goal 6 resources. Approval will make it more likely that the irrigation water rights associated with the property will be preserved though the current water right leasing program.

**Goal 7, Areas Subject to Natural Disasters and Hazards**. This goal is not applicable because the Subject Property is not located in an area that is recognized by the Comprehensive Plan as a known natural disaster or hazard area.

**Goal 8, Recreational Needs**. This goal is not applicable because the property is not planned to meet the recreational needs of Deschutes County residents and does not directly impact areas that meet Goal 8 needs.

**Goal 9, Economy of the State**. This goal does not apply to this application because the Subject Property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely impact economic activities of the state or 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 MUA10 or RR10

zoning, and that these lands will help meet the need for rural housing. Approval of this application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County Comprehensive Plan.

**Goal 11, Public Facilities and Services**. The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Utility service providers have confirmed that they have the capacity to serve the maximum level of residential development allowed by the MUA10 zoning district.

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

**Goal 13, Energy Conservation**. The approval of this application does not impede energy conservation. The Subject Property is located in a part of the community that contains a large amount of rural residential development. Providing homes in this location, as opposed to more remote rural locations, will conserve energy needed for residents to travel to work, shopping, and other essential services.

**Goal 14, Urbanization**. The Hearings Officer incorporates as additional findings for this Goal the Preliminary Findings for COLW Issue: Conflict between DCCP and DCC 18.116 (Section III.A.2) and COLW Issue: Application of MUA to non-resource lands without taking exception to Goal 14 (Section III.A.3).

Historically, the county has found in similar applications that 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.

Specifically, the county Board has found that its acknowledged Comprehensive Plan that was amended in 2016 to create the RREA designation and its MUA10 and RR10 zones confirms that uses allowed within those zones are all rural uses and not urban uses. The Comprehensive Plan states that "[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses allowed for each area." DCCP Section 1.3. Rural Residential Exception Areas, according to the DCCP, "provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities …" DCCP Section 1.3. DCCP Table 1.3.3 provides that Title 18's RR10 and MUA10 zones are the associated zoning codes for the RREA plan designation.

The determination that the RREA plan designation and RR10 and MUA10 zoning districts should apply to exception lands was made when the County amended the DCCP in 2016. (Ordinance 2016-005). The ordinance was acknowledged by DLCD as complying with the Statewide Goals. Thus, the lot sizes and uses allowed by the RREA plan designation and the RR10 and MUA10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the DCCP provisions. It also conforms to OAR 660-004-0040(8). That provision allows counties to create new

exception areas without a Goal 14 exception if the parcel size is limited to 10-acres or greater. The applicant is not requesting that the county allow parcel sizes less than 10-acres.

Further, the purpose statement for the MUA10 zone expressly states that it is to preserve the rural character of various areas of the County while permitting development consistent with that character and the capacity of the natural resources of the area. When Chapter 18.32 is read in context with that purpose statement, the only plausible interpretation is that all uses allowed in the MUA10 zone are rural uses. Thus, the application does not provide any basis for the County to revisit whether the RREA designation, or the RR10/MUA10 zones violate Goal 14 by allowing urban development and requires no individual analysis of specific uses or of whether the MUA10 uses violate Goal 14 is required.

The Hearings Officer, as alternative findings, includes the following Staff comments (Staff Report, pages 42 – 44):

> ***"Alternative Curry County Analysis***
>
> *To address Goal 14 and LUBA's recent discussion of it in Central Oregon LandWatch v. Deschutes County (Destiny Court), the applicant provides the following alternative Goal 14 analysis.*
>
> *Overview*
>
> *The court in Curry County acknowledged that there is no established definition of rural use and urban uses. The court discussed a few factors to consider in evaluating whether development allowed is rural or urban including the density, dependence on urban services and proximity to the urban area. None of the factors were deemed to be determinative and all must be applied in the context of the individual situation presented. The court's discussion in that case residential uses. It noted that 1000 Friends agreed that parcel sizes of 10 acres are clearly rural and postulated that parcels whereas parcels at .5 acres would certainly create an urban density. Later, the court emphasized that the urban services most relevant are water and sewer. In other words, if development on rural land has or depends on public water and sewer it is more indicative of urban development. In contrast the court noted from other sources that indicate that rural services are generally considered to include protective services (police and fire), electrical power, communication facilities and schools.*
>
> *Density*
>
> *Allowing MUA10 uses on the subject property will not lead to urban density. The minimum parcel size in the MUA10 zone is 10 acres. Consistent with OAR 660-004-0040(8)(i) the county is allowed to approve an exception area as long as the parcel size remains 10 acres or greater.*
>
> *The current zoning code allows smaller parcels for cluster developments and planned developments. However, parcels less than 2 acres in a cluster type development would still not violate Goal 14. In Central Oregon LandWatch v. Deschutes County (Destiny Court), LUBA No. 2025-015, LUBA remanded a plan amendment and rezone approval for the Board to address a*

*perceived inconsistency between the DCCP that limits parcels size in the MUA10 zone to 10 acres and the zoning code that allows smaller parcels under the cluster and planned development provisions. The Board addressed the issues on remand and that matter is still working itself through the appellate process. However, anticipating that cluster and planned development remain in the code and allow parcels less than 10 acres with corresponding open space, such development does not result in urban density.*

*In Curry County, 1000 Friends asserted that densities greater than one dwelling per three acres are urban. That argument did not account for provisions requiring large undeveloped open space either. Under either the County's cluster development or planned development standards, the overall density will remain consistent with what is allowed on rural land as rural uses. For a site that is 51 gross acres, accounting for road and other facilities, there are less than 51 developable acres on the subject site. Under a cluster or planned development 65% or about 33 acres must remain open, undeveloped land. By way of contrast, the lowest density allowed in the City of Bend is 1.1 units per acre in the RL zone. There is a significant difference between one dwelling per acre and 5 dwellings on 51 acres. TO help illustrate how a cluster development on 51 acres is rural rather than urban, it helps to contrast a cluster development that leaves 65 % open space with a true urban development. To satisfy minimum urban densities, no city is going to allow, much less require, that 65% of otherwise unrestricted and unconstrained property be left open and undeveloped. Such a requirement would not be consistent with creating urban density. Even under the cluster development and planned development provisions, while smaller parcels may be approved, the overall density remains consistent with the rural character of the area.*

*Extension of Urban Services*

*Rezoning the subject parcel to MUA10 will lead to the extension of urban facilities to the area. The court in Curry County emphasized that the services that most strongly indicate urban levels of development are public water and sewer. The Board agrees and notes that the County has permitted significant residential development on other rural exception lands as rural development. That development is served by electricity and communications services but has no public water or sewer. It relies on private wells and septic systems both of which are commonplace for rural residential living. Bend has no obligation to extend public services and in some cases is prohibited from providing extraterritorial service to rural lands. Thus, any future development on the property under an MUA10 zoning will be served by private water and sewer. For fire and public safety, the area is served by the Bend Rural Fire District and Deschutes County Sheriff's office, both of which serve rural areas. Further, that coverage will remain unchanged under any county zoning.*

*Proximity to Urban Growth Boundaries*

*The court in Curry County discussed this factor in the context of the County's creation of large exception area and not as it would or should apply to a specific property for which a specific new zone is requested. While the court in Curry County addressed arguments that rezoning resource land near urban areas could attract people from the urban areas to rural areas, that discussion did not involve the Deschutes County MUA10 zone and uses allowed. The context presented here is materially different than that discussed in Curry County and Shaffer v. Jackson County. The discussion is Shaffer is informative. That case involved a request to allow a concrete or asphalt*

*batch plant on resource land well outside the city. The discussion was focused on whether allowing that use outside the urban area would attract urban customers to go well outside the city to use the facility. In that context, one could anticipate some valid concerns that a large commercial use could draw urban users to the rural area.*

*The most common development that will result from applying the MUA10 zone to the subject property will be residential dwellings, with agricultural outbuilding to support hobby farming and small-scale agricultural uses. That type of development is not going to draw urban users in large numbers to the rural area.*

*The MUA10 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 MUA10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas."*

The Hearings Officer finds Staff's above-quoted alternative Goal 14 (Curry County) analysis is accurate and a correct interpretation of the law. The Hearings Officer incorporates the above-quoted Staff alternative analysis as the Hearings Officer's alternative findings for Goal 14.

**Goals 15. Willamette River Greenway.** This goal does not apply because the Subject Property is not located in the Willamette Greenway.

**Goals 16 through 19**. These goals do not apply to land in Central Oregon.

Staff accepts the applicant's responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated. Staff finds the proposal appears to comply with the applicable Statewide Planning Goals for the purposes of this review.

## IV. CONCLUSION & RECOMMENDATION:

The Hearings Officer found that Applicant's requests met relevant criteria through the submission of reasoned/supported arguments and substantial evidence. The Hearings Officer addressed COLW's issues (the sole opponent in this case) and provided responses to each (see Preliminary Findings).

The Hearings Officer recommends, based upon the findings set forth above, approval of Applicant's proposed Comprehensive Plan Amendment of the Subject Property from Agriculture (AG) to Rural Residential Exception Area (RREA) and Applicant's proposed Zone Change of the Subject Property from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

**DESCHUTES COUNTY HEARINGS OFFICER**

Gregory J Frank

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

*Space Reserved for Recorder's Use*

# CONDITIONS OF APPROVAL AGREEMENT AND RESTRICTIVE COVENANT

This conditions of approval agreement is made this _____ day of _____, 2026 by Dickey Road, LLC, an Oregon limited liability company and Deschutes County, a political subdivision of the State of Oregon (hereinafter "County").

## RECITALS

WHEREAS, Dickey Road, LLC sought approval of a plan amendment from Agricultural (AG) to Rural Residential Exception Area (RREA) and zone change from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Multiple Use Agricultural (MUA-10) in File Nos. 247-25-000727-PA and 247-25-000728-ZC for the property described on **Exhibit A** (the "Property"), a copy of which is attached and incorporated by reference herein; and

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

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

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

NOW THEREFORE, the parties agree as follows:

Any future subdivision shall be limited to a minimum lot size of 10 acres. This condition shall be in effect unless and until (1) the County formally adopts amendments to the DCCP rural lands policies that authorize such developments and parcel sizes with provision to ensure that constancy with Goal 14 is evaluated, and (2) those amendments are acknowledged by the DLCD. Unless and until such acknowledgement, the applicant and all future applicants for the subject property are restricted to the creation of parcels not less than 10 acres regardless of the proximity of the property to the UGB and any DCC code provision to the contrary.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Dated this _____ of _____, 2026

Dickey Road, LLC

_____

By: _____
Its: _____

STATE OF OREGON )
) *ss.*
COUNTY OF DESCHUTES )

This instrument was acknowledged before me on _____, 2026
by_____ as _____ of Dickey Road, LLC, an Oregon limited liability company.

_____
Notary Public for Oregon
Print Name _____
My commission expires _____

# EXHIBIT A
# LEGAL DESCRIPTION

## EXHIBIT "A"
Legal Description

Parcel A:

The "Culver Tax Lot 200" Parcel as recorded under Deed Volume 386, Page 2695 and a portion of the "Culver Tax Lot 206" Parcel as recorded under Deed Volume 3 86, Page 2695, Deschutes County deed records, located in the Southwest quarter of the Northeast quarter of Section 24, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Commencing at a 5/8" iron rod with yellow cap stamped "Dejarnett LS 2208" marking the Southwest corner of said Northeast quarter, from which the Southeast corner of said Northeast quarter bears South 89° 36'47" East a distance of 2640.80 feet; thence along the West line of said Northeast quarter North 00°05'27" West a distance of 60.00 feet to the North right of way line of an unnamed road dedicated to the public in Deed Book 227, Page 633; thence along said North right of way line South 89° 36'47" East a distance of 807.48 feet to the West line of a 110 foot wide United States of America right of way easement as described in document No. 8514440, document No. 86-14397 and document No. 86-1440, as shown on B.P.A right of way plan "Ponderosa-Pilot Butte No. 1 230 KV Transmission Line" dated 12/13/85, and the Point of Beginning: thence along said West right of way line North 00°45'30" East a distance of 1260.86 feet to the North line of the Southwest quarter of the Northeast quarter of said Section 24; thence along said North line South 89°40'11" East a distance of 492.33 feet to the East line of said Southwest quarter of the Northeast quarter; thence along said East line South 00°10'23" East a distance of 1261.38 feet to said North right of way line of unnamed road; thence along said North right of way line North 89°36'47" West a distance of 512.83 feet to the Point of Beginning.

Parcel B:

The Southeast Quarter of the Northeast quarter (SE 1/4 NE 1/4) of Section Twenty-four (24), Township Seventeen (17) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon.

EXCEPTING THEREFROM the Southerly 60 feet dedicated to the public in Dedication Deed recorded January 29, 1976 in Book 227, Page 633, Deed Records.

## EXHIBIT "B"
Exceptions

**Subject to:**

Regulations, including levies, liens, assessments, water and irrigation rights and easements for ditches and canals of the Central Oregon Irrigation District.

The rights of the public in and to that portion of the herein Described property lying within the limits of roads, streets or highways.

The existence of roads, railroads, irrigation ditches and canals, telephone, telegraph and power transmission facilities.

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Entitled: Patent
In favor of: The United States of America
Purpose: Electric power transmission line serial number 02086
Recording Date: December 29, 1970
Recording No: 173-652

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Entitled: Right of Way Easement
In favor of: Pacific Power & Light Company, a corporation, its successors and assigns
Purpose: Electric transmission and distribution lines
Recording Date: January 21, 1971
Recording No: 180-166
(Parcel A)

Assignment of Power Line Easements Together With Electric Transmission Line Facilities including the terms and provisions thereof,

Recording Date: July 16, 1985
Recording No: 99-1388
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America, Department of Energy, Bonneville Power Administration

**EXHIBIT "B"**
Exceptions

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1208
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1217
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1221
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Entitled: Right of Way Easement
In favor of: Pacific Power & Light Company, a corporation, its successors and assigns
Purpose: Electric transmission and distribution lines
Recording Date: February 17, 1972
Recording No: 182-455
(Parcel A)

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1208
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

**EXHIBIT "B"**
Exceptions

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1217
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Quit Claim Deed including the terms and provisions thereof,

Recording Date: July 28, 1986
Recording No: 128-1221
Between: Pacificorp, a Maine corporation, doing business as Pacific Power & Light Company
And: United States of America

Easement(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Bonneville Power Administration of the Department of Energy
Filed: May 8, 1986
Case No.: 86-6231-E

As disclosed by Warranty Deed recorded October 5, 2007, Document No. 2007-53680, Deschutes County Records.

Terms, provisions and conditions, including, but not limited to, maintenance provisions, and a covenant to share the costs of maintenance access easement reserved in Warranty Deed

Recording Date: May 13, 1999
Recording No.: 1999-23773
(Parcel A)

Terms, provisions and conditions, including, but not limited to, maintenance provisions, and a covenant to share the costs of maintenance access easement reserved in Warranty Deed

Recording Date: May 13, 1999
Recording No.: 1999-23774
(Parcel A)

**EXHIBIT "B"**
Exceptions

Matters as disclosed by ALTA/ASCM Land Title Survey by Nin J. Bedesa dated September 12, 2006, Job Number 14465 as follows: Central Electric Cooperative, Inc. Power poles and Power lines (Notes N and P)

As disclosed by Warranty Deed recorded October 5, 2007, Document No. 2007-53680, Deschutes County Records.

BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** November 23, 2026

**SUBJECT:** Second Public Hearing for the proposed Willitts, LLC Plan Amendment & Zone Change: an application to change the Comprehensive Plan designation of 20 acres at 68621 Highway 20, Sisters, OR 97759 and rezone the property from Exclusive Farm Use to Multiple Use Agricultural

**RECOMMENDED MOTION:**

At the conclusion of the public hearing, the BOCC may choose one of the following options:

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

If the Board proceeds with *deliberations*, staff recommends one of the following motions:

1. Move approval of the Willitts, LLC PA/ZC application; or
2. Move to deny the Willitts, LLC PA/ZC application.

If the Board votes to approve the application and proceeds with *first reading,* staff recommends the following motion:

1. Move approval of first reading of Ordinance No. 2026-021 by title only

**BACKGROUND AND POLICY IMPLICATIONS:**

Applicant Willitts, LLC requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural to Rural Residential Exception Area and a corresponding Zone Change to rezone the subject property from Exclusive Farm Use to Multiple Use Agricultural.

Following a public hearing on September 2, 2026, the Board began deliberations on October 21, 2026. During those deliberations, the Board directed staff to provide additional information regarding a potential condition of approval that would restrict development of the subject property until it is included within the City of Sisters Urban Growth Boundary and annexed into the City of Sisters. On November 9, 2026, as part of continued deliberations,

staff presented the potential conditions to the Board. Following discussion of the potential conditions, the Board directed staff to schedule an additional evidentiary hearing and provide additional notice to the Department of Land Conservation and Development.

The Board will conduct a second public hearing on November 23, 2026 to consider new evidence and arguments on potential conditions of approval for the applicant's request. Staff notes that the applicant has submitted a draft decision for the Board's review. Staff has reviewed the draft decision and incorporated recommended revisions into draft ordinances. Please see the attached memorandum for the full background and draft ordinances.

**BUDGET IMPACTS:**
None.

**ATTENDANCE:**
Caroline House, Senior Planner
Anthony Raguine, Principal Planner
Will Groves, Planning Manager
Stephanie Marshall, Senior Assistant Legal Counsel

COMMUNITY DEVELOPMENT

**MEMORANDUM**

**TO:** Board of County Commissioners (the "Board")

**FROM:** Caroline House, Senior Planner

**DATE:** November 18, 2026

**RE:** Public Hearings on the Willitts, LLC Comprehensive Plan Amendment and Zone Change Request

---

The Board will conduct a second public hearing on November 23, 2026, to consider new evidence and arguments on potential conditions of approval for the Applicant's request.

## I. PROPOSAL

Willitts, LLC (the "Applicant") requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a corresponding Zone Change to rezone the subject property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA10"). No exceptions to any Statewide Planning Goals are requested.

## II. BACKGROUND

The Board held a public hearing on September 2, 2026, and following the hearing the Board elected to keep the record open for additional materials to be submitted. The record closed on September 23, 2026. As part of the Board's review process, the Applicant submitted additional supporting materials and arguments into the record for the Board's consideration to demonstrate compliance with Statewide Planning Goal 14 and other issue areas. Central Oregon LandWatch, along with more than 100 members of the public, submitted comments opposing the Applicant's proposal. These comments primarily raised issues related to the subject property being agricultural land protected under Goal 3, negative impacts on the Goal 5 Highway 20 scenic corridor, and the proposal violating Goal 14.

On October 21, 2026, the Board initiated deliberations and voted on the issue areas identified in the Board's deliberation matrix. For each issue area, a majority of the Board voted in favor of the Applicant's arguments. At the conclusion of deliberations, the Board directed staff to review the recording of the September 2, 2026, public hearing and draft a potential condition of approval based on the discussion between the Applicant and Chair Chang. The proposed condition would limit

development of the subject property until it is included within an Urban Growth Boundary ("UGB"). On November 9, 2026, as part of continued deliberations, the Board directed staff to schedule an additional evidentiary hearing and provide additional notice to the Department of Land Conservation and Development ("DLCD").

On November 23, 2026, the Applicant and other participants may present additional evidence and argument for the Board's consideration. Staff notes that the Applicant has also submitted a draft decision for the Board's review. Staff has reviewed the draft decision and incorporated recommended revisions into the draft ordinances attached to this memorandum.

## III. POTENTIAL CONDITIONS OF APPROVAL

Applicant's Proposed Condition of Approval:

The Applicant requested that the following condition of approval be imposed to ensure compliance with Deschutes County Comprehensive Plan ("DCCP") Policy 3.3.1 and Goal 14:

> This decision and any ordinance adopted pursuant to it do not authorize a future application for the creation of any parcels in the MUA-10 zone that are less than 10 acres under DCC 18.116.400, DCC 18.128.200, DCC 18.128.210, or any other DCC provision unless and until (1) the County formally adopts amendments to the MUA-10 DCCP rural lands policies that authorize such developments and parcel sizes with provision to ensure that consistency with Goal 14 is evaluated, and (2) those amendments are acknowledged by the DLCD. Unless and until such acknowledgement, the applicant and all future applicants for the subject property are restricted to the creation of parcels not less than 10 acres regardless of the proximity of the property to the UGB and any DCC code provision to the contrary.

Alternative Conditions of Approval:

Based on staff's review of the September 2, 2026, public hearing, the following alternative condition of approval is presented for the Board's consideration:

> Limitation on Development. Until and unless the subject property is included within the City of Sisters urban growth boundary and annexed into the City of Sisters through separate applicable processes, no new development or rural residential use otherwise authorized by the RREA designation or MUA-10 zoning may be approved or established on the subject property. This condition does not prohibit the continued lawful use, maintenance, or repair of existing development. Nothing in this condition authorizes, requires, assumes, or commits the City of Sisters, Deschutes County, or any other governmental entity to approve inclusion within the City of Sisters urban growth boundary, annexation, urban services, City plan or zoning designations, or future development of the subject property.

If the Board elects to adopt the Limitation on Development condition, staff recommends that the following condition of approval be adopted in lieu of the Applicant's proposed condition to ensure compliance with DCCP Policy 3.3.1 and Goal 14:

Any future subdivision of the Subject Property shall be limited to a minimum lot size of 10 acres. This condition shall be in effect so long as the property remains outside of an urban growth boundary.

Staff notes that the Board may modify any of the conditions described above as part of its final decision.

## IV. NEXT STEPS

At the conclusion of the public hearing, the Board may choose one of the following options:

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

If the Board closes the hearing and commences deliberations, staff has prepared two draft ordinance packages for the Board's consideration. Version 1 includes a draft Board decision incorporating the Applicant's proposed conditions of approval, while Version 2 includes a draft Board decision incorporating the staff conditions of approval.

## V. TIMELINE

This proposal is not subject to the statutory 150-day review timeline.

## VI. RECORD

The record is presented at the following Deschutes County Community Development Department website:

www.deschutescounty.gov/WillittsPAZC

Attachments:

1) Version 1 - Draft Ordinance 2026-021 and Exhibits
   - Exhibit A: Legal Description
   - Exhibit B: Proposed Comprehensive Plan Amendment Map
   - Exhibit C: Proposed Zone Change Map
   - Exhibit D: Comprehensive Plan Section 23.01, Introduction
   - Exhibit E: Comprehensive Plan Section 5.12, Legislative History
   - Exhibit F: Decision of the Board of County Commissioners V1
   - Exhibit G: Hearings Officer's Recommendation
   - Exhibit H: 2026 Economic, Social, Environmental, & Energy ("ESEE") Analysis
   - Exhibit I: Conditions of Approval Agreement V1

2) Version 2 - Draft Ordinance 2026-021 and Exhibits
    Exhibit A: Legal Description
    Exhibit B: Proposed Comprehensive Plan Amendment Map
    Exhibit C: Proposed Zone Change Map
    Exhibit D: Comprehensive Plan Section 23.01, Introduction
    Exhibit E: Comprehensive Plan Section 5.12, Legislative History
    Exhibit F: Decision of the Board of County Commissioners V2
    Exhibit G: Hearings Officer's Recommendation
    Exhibit H: 2026 Economic, Social, Environmental, & Energy ("ESEE") Analysis
    Exhibit I: Conditions of Approval Agreement V2

REVIEWED_____

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

| | | |
|---|---|---|
| An Ordinance Amending Deschutes County Code Title 23, the Deschutes County Comprehensive Plan, to Change the Comprehensive Plan Map Designation for Certain Property From Agriculture to Rural Residential Exception Area, and Amending Deschutes County Code Title 18, the Deschutes County Zoning Map, to Change the Zone Designation for Certain Property From Exclusive Farm Use to Multiple Use Agricultural. | * * * * * * * | ORDINANCE NO. 2026-021 |

WHEREAS, Willitts, LLC ("Applicant"), applied for changes to both the Deschutes County Comprehensive Plan Map (247-25-000537-PA) and the Deschutes County Zoning Map (247-25-000538-ZC), to change the Comprehensive Plan designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"), and a corresponding Zone Change from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10"); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on May 21, 2026, before the Deschutes County Hearings Officer;

WHEREAS, pursuant to DCC 22.28.030(C), on September 2, 2026, and November 23, 2026, the Board heard *de novo* the applications; now, therefore,

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

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

Section 2. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from EFU to MUA-10 for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "C", with both exhibits attached and incorporated by reference herein.

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

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

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board of County Commissioners as set forth in Exhibit "F" and incorporated by reference herein. The Board also incorporates in its findings in support of this decision, the Recommendation of the Hearings Officer, attached as Exhibit "G".

Section 6. AMENDMENT. The Board hereby amends the County's Goal 5 Scenic Roadway program as it relates to the subject property by adopting the site-specific Economic, Social, Environmental, and Energy ("ESEE") Analysis prepared by the Applicant attached as Exhibit "H" and incorporated herein by reference. This site-specific ESEE supersedes and replaces the 1992 ESEE analysis as applied to the subject property and constitutes the applicable Goal 5 ESEE findings for purposes of evaluating conflicting uses and determining the appropriate level of resource protection under OAR 660-023-0040.

Section 7. AGREEMENT. The Board adopts the Conditions of Approval Agreement as set forth in Exhibit "I," which Agreement shall be executed on the date this Ordinance is adopted.

Section 8. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption, or if appealed, the date the ordinance is no longer subject to appeal and is deemed acknowledged.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

Date of 2nd Reading: _____ day of _____, 2026.

Record of Adoption Vote:

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

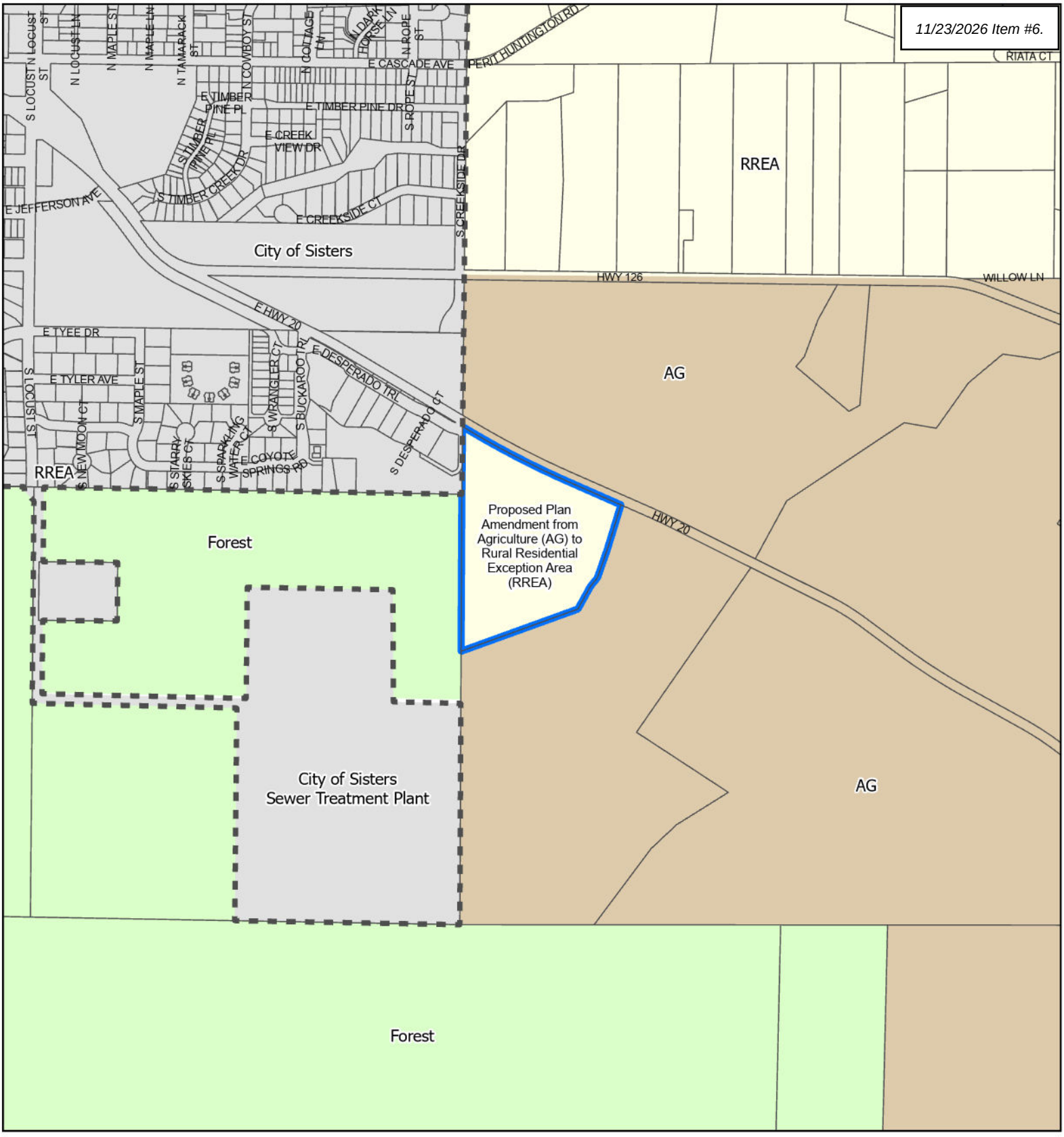
Effective date: _____ day of _____, 2027.

## Exhibit "A" To Ordinance 2026-021

## Legal Description of Subject Property

A parcel of land situated in the West Half (W1/2) of Section 10, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a brass capped iron pipe at the West Quarter corner of said Section 10; thence North 00° 07' 05" West on the West line of said Section 10, 416.44 feet to a point on the South right of way line of the Sisters-Bend Highway; thence South 59° 52' 40" East on said right of way line, 36.67 feet to a 5/8 inch iron rod; thence on said right of way on the arc of a 5650.00 foot radius curve to the left, (chord bears South 63° 26' 25" East, 702.19 feet), 702.64 feet to a 5/8 inch iron rod; thence South 67° 00' 11" East on said right of way line, 348.45 feet to a 5/8 inch iron rod; thence South 16° 17' 02" West leaving said right of way line, 289.57 feet to a 5/8 inch iron rod; thence South 18° 27' 59" West, 181.60 feet to a 5/8 inch iron rod; thence South 38° 24' 55" West, 66.93 feet to a 5/8 inch iron rod; thence South 28° 18' 58" West, 160.76 feet to a 5/8 inch iron rod; thence South 69° 22' 54" West, 763.94 feet to a 5/8 inch iron rod on the West line of said Section 10; thence North 00° 29' 01" West on said West line, 965.28 feet to the point of beginning.




# PROPOSED COMPREHENSIVE PLAN MAP

Exhibit "B"
to Ordinance 2026-021

City of Sisters UGB
Proposed Plan Amendment Boundary

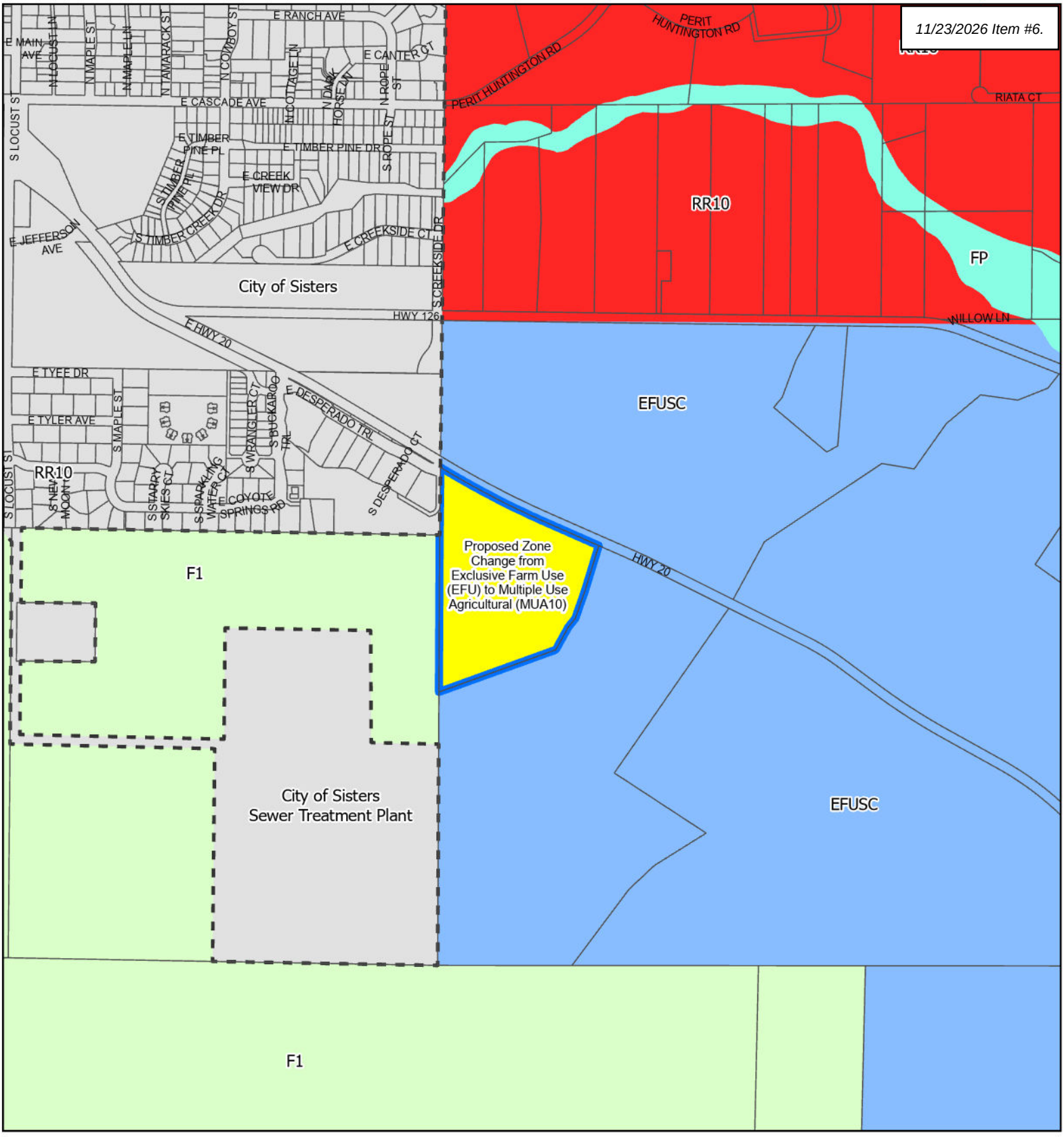
Comprehensive Plan Designation
AG - Agriculture
F - Forest
RREA - Rural Residential Exception Area

0 400 800 1,600 Feet

October 29, 2026

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

File: N:\Custom\County\CDD\Planning\Caroline\247-25-000537-PA




# PROPOSED ZONING MAP

Exhibit "C"
to Ordinance 2026-021

City of Sisters UGB
Proposed Zone Change Boundary

Zoning
EFUSC - Exclusive Farm Use
F1 - Forest Use 1
FP - Flood Plain
MUA10 - Multiple Use Agricultural
RR10 - Rural Residential

0 400 800 1,600 Feet

October 29, 2026

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

File: N:\Custom\County\CDD\Planning\Caroline\247-25-000538-ZC

## TITLE 23 COMPREHENSIVE PLAN

## CHAPTER 23.01 COMPREHENSIVE PLAN

A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.

B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.

C. [Repealed by Ordinance 2013-001, §1]

D. [Repealed by Ordinance 2023-017]

E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.

F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.

G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.

H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.

I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.

J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.

K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.

L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.

M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.

N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.

O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.

P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.

R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.

S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.

T. [Repealed by Ordinance 2016-027 §1]

U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.

X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.

Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.

Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.

AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.

AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.

AC. [repealed by Ord. 2019-010 §1, 2019]

AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.

AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.

AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.

AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.

AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.

AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.

AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.

AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.

AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.

AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.

AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.

AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.

AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.

AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.

AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.

AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.

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

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

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

AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.

BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein. (superseded by Ord. 2023-015)

BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein. (supplemented and controlled by Ord. 2024-010)

BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.

BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.

BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.

BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.

BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.

BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.

BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.

BK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-003, are incorporated by reference herein.

BL. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein (superseded by Ord. 2025-007).

BM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.

BN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-017, are incorporated by reference herein.

BO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-016, are incorporated by reference herein.

BP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-011, are incorporated by reference herein.

BQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-012, are incorporated by reference herein.

BR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-001, are incorporated by reference herein.

BS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-003, are incorporated by reference herein.

BT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-010, are incorporated by reference herein.

BU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-007, are incorporated by reference herein (superseded by Ord. 2026-015).

BV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-014, are incorporated by reference herein.

BW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-004, are incorporated by reference herein.

BX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-005, are incorporated by reference herein.

BY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-009, are incorporated by reference herein.

BZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-013, are incorporated by reference herein.

CA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-015, are incorporated by reference herein.

CB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-014, are incorporated by reference herein.

CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-024, are incorporated by reference herein.

CD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-026, are incorporated by reference herein.

CE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-020, are incorporated by reference herein.

CF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-023, are incorporated by reference herein.

CG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-021, are incorporated by reference herein.

Click here to be directed to the Comprehensive Plan (https://weblink.deschutes.org/CDD/Browse.aspx?id=1317439&dbid=0&repo=LFCDD)

# Section 5.12 Legislative History

**Background**

This section contains the legislative history of this Comprehensive Plan.

**Table 5.12.1 Comprehensive Plan Ordinance History**

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

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

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| 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 11 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 |

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| 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. |

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| 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. |

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|---|---|---|---|
| 2020-002 | 2-26-20/5-26-20 | 23.01.01, 4.2, 5.2 | Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB. |
| 2020-003 | 02-26-20/05-26-20 | 23.01.01, 5.10 | Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility. |
| 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. |

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|---|---|---|---|
| 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 Vandevert 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 |

| | | | |
|---|---|---|---|
| 2022-001 | 04-13-22/07-12-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2022-003 | 04-20-22/07-19-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2022-006 | 06-22-22/08-19-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area |
| 2022-011 | 07-27-22/10-25-22 (superseded by Ord. 2023-015) | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI) |
| 2022-013 | 12-14-22/03-14-23 (supplemented and controlled by Ord. 2024-010) | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-001 | 03-01-23/05-30-23 | 23.01.010, 5.9 | Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource |
| 2023-007 | 04-26-23/6-25-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |

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| 2023-010 | 06-21-23/9-17-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-018 | 08-30-23/11-28-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-015 | 9-13-23/12-12-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |
| 2023-025 | 11-29-23/2-27-24 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area |
| 2024-001 | 1-31-24/4-30-24 | 23.01.010 | Comprehensive Plan Map Amendment for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-016 | 5-8-24/8-6-24 | 23.01(BM) (added), 4.7 (amended), Appendix B (replaced) | Updated Tumalo Community Plan |
| 2023-017 | 3-20-24/6-20-24 | 23.01(D) (repealed), 23.01(BJ) (added), 3.7 (amended), Appendix C (replaced) | Updated Transportation System Plan |

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| 2024-003 | 2-21-24/5-21-24 | 23.01.010, 5.8 | Comprehensive Plan Map Amendment, changing designation of certain property from Surface Mining (SM) to Rural Residential Exception Area (RREA); Modifying Goal 5 Mineral and Aggregate Inventory |
| 2024-007 | 10-02-24/12-31-24 (superseded by Ord. 2025-007) | 23.01(A)(repealed) 23.01(BK) (added) | Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan |
| 2024-010 | 10-16-24/01-14-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2024-011 | 11-18-24/02-17-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Redmond Urban Growth Area (RUGA) |
| 2024-012 | 1-8-25/4-8-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2025-001 | 2-5-25/2-5-25 | 23.01.010 | Comprehensive Plan and Zoning Map Amendment updating the Greater Sage-Grouse Area Combining Zone boundary. |
| 2025-003 | 4-2-25/7-1-25 | 23.01.010 | Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |

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| 2025-010 | 6-25-25/9-23-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2025-007 | 8-27-25/11-25-25 (superseded by Ord. 2026-015) | 23.01(BU) | Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update process. |
| 2025-014 | 10-6-25/10-6-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Forest (F) to Rural Residential Exception Area (RREA) |
| 2026-004 | 1-28-26/4-28-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-005 | 3-11-26/6-9-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) and Surface Mine (SM) to Rural Residential Exception Area (RREA) |
| 2026-009 | 4-15-26/7-14-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-013 | 7-29-26/10-27-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Surface Mine (SM) to Rural Industrial (RI) |

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| 2026-015 | 9-2-26/12-1-26 | 23.01.010 | Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update Process, Reconsideration, and LUBA Remand. |
| 2026-014 | 9-23-26/12-22-26 | 23.01.010 | Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |
| 2026-024 | 11-9-26/11-9-26 | 1.3, 4.2, 23.01.010 | Amendments to Comprehensive Plan to Update the List of Applicable Zones Allowed Under a Sisters Urban Growth Area Plan Designation |
| 2026-026 | 11-9-26/11-9-26 | 23.01.010 | Comprehensive Plan Designation for Certain Properties from Rural Residential Exception Area (RREA) to Sisters Urban Growth Area (SUGA) |
| 2026-020 | 11-23-2026/2-21-2027 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-023 | TBD / TBD | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-021 | TBD / TBD | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |

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

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| **FILE NUMBERS:** | 247-25-000537-PA / 247-25-000538-ZC |
| **APPLICANT/OWNER:** | Willitts, LLC (the "Applicant") |
| **APPLICATION:** | The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10"). |
| **SUBJECT PROPERTY:** | Situs Address: 68621 HWY 20, Sisters, OR 97759<br>Map/Tax Lot: 151010000080 (the "Property") |
| **STAFF PLANNER:** | Caroline House, Senior Planner<br>Caroline.House@deschutes.org, 541-388-6667 |

## I. PROCEDURAL HISTORY:

The County's land use Hearings Officer conducted the initial evidentiary hearing regarding the subject applications on May 21, 2026. In a Recommendation and Findings mailed on July 21, 2026, the Hearings Officer recommended that the Board of County Commissioners ("Board") deny the application based on a recent Land Use Board of Appeals ("LUBA") decision that held that without conditions or other measures to restrict parcel sizes a decision to approve rezoning to MUA-10 presented a possibility of a future approval of parcels smaller than 10-acres in violation of Deschutes County Comprehensive Plan ("DCCP") Policy 3.3.1 and also that could be inconsistent with Goal 14. The Board conducted a *de novo* land use hearing on September 2, 2026. The Board closed the public hearing on September 2, 2026, and ordered an open record period that ended September 23, 2026. On October 14, 2026, the Board began deliberations.

During deliberations, Commissioners discussed two potential conditions of approval, one originally presented by the Applicant and one articulated by a Commissioner to which the Applicant stated it would agree. The Board decided to return for further deliberation after reviewing the recording of the public hearing and allowing staff to draft a potential condition of approval consistent with the discussion that occurred at that hearing. The Board returned for deliberations on November 9, 2026, and decided that the potential condition required a new notice to DLCD, and the County was required to conduct a final evidentiary hearing. On November 11, 2026, the County sent a notice of a public hearing. On November 23, 2026,

the Board voted to approve the subject applications as conditioned below. The findings in this Decision are intended to supplement those findings by the Hearings Officer and the findings in this Decision control over any inconsistent findings in the Hearings Officer Recommendation.

## II. FINDINGS AND CONCLUSIONS OF LAW:

The Board expressly adopts and incorporates into this decision the findings and conclusions of the Hearings Officer, subject only to modifications contained in this decision. Specifically, the Hearings Officer found based upon the Applicant's Order 1 Soil Study, that the Property was predominantly non-agricultural land. OAR 660-033-0020(1)(a) The Board finds that no participant produced evidence that contradicted the Applicant's Order 1 study or the Hearings Officer's finding. The Board agrees that the Property does not meet the definition of agricultural land under OAR 6660-033-0020(1)(a)(A).

The Board agrees with the Hearings Officer's application of the suitability factors in OAR 660-033-0020(1)(a)(B) and adopts his finding that the Property is not suitable for farm use. The Board agrees with the Hearings Officer that the Property is not necessary to allow farm practices on adjacent or nearby agricultural land. Finally, the Board agrees with the Hearings Officer that rezoning the Property to MUA-10 is consistent with the purpose of the MUA-10 zone.

As noted, the Hearings Officer, could not recommend approval of the application because a recent LUBA decision concluded the existence of DCC provisions that conflict with DCCP 3.3.1, could, without restrictions or conditions, lead to future applications for the creation of cluster and planned developments with parcels 2-acres or smaller. The Board will address this aspect of the Hearings Officer's recommendation in detail below but concludes that, as conditioned, the issues on which LUBA remanded the applications will be addressed and the subject applications can be approved.

Based on the Board's deliberations conducted on October 14, 2026, and November 23, 2026, the Board adopts the following additional findings:

### 1. Whether the Property is agricultural land considering the factors in OAR 660-033-0020(1)(a)(B)

OAR 660-033-0020(1)(a)(B) requires a decisionmaker to consider several factors to determine whether land, even if predominantly Class 7 and 8 soil, qualifies as agricultural land. The factors include soil fertility, suitability for grazing, climate, availability of water, land use patterns and accepted farming practices. After the Hearings Officer issued his recommendations wherein, he found that the Property was not agricultural land suitable for farming, Central Oregon LandWatch ("COLW") and the Applicant submitted additional evidence and argument. The Hearings Officer relied on the Order 1 soil study that

demonstrated that almost 70% of the Property consists of Class 7 and 8 soil that is not agricultural soil with or without irrigation. The Hearings Officer relied upon the fact that the Property has no irrigations rights at present. The Hearings Officer accepted the testimony of the Applicant's experts, both of whom are farming experts. One expert, a renowned regenerative farming consultant who in 2019 attempted to grow crops using advanced farming practices and was unsuccessful. The other expert is a local farmer who physically evaluated the Property and concluded that it was not suitable for farm use considering the required factors. That expert found that the Property consists of rocky soil under the surface with the structure that simulates a French drain, which removes water from land rapidly. That conclusion affects water holding capacity which is significant for farming.

The Applicant's local expert evaluated the steps it would take to attempt to convert the property into suitable agricultural land and the cost associated with those measures. The Applicant's expert concluded that the cost made it infeasible to conduct any farm use primarily for the purpose of making a profit. The Applicant's expert could not locate any past or present irrigation rights. The Property has a ground water right for a well, but the Applicant's expert questioned the ability to use such water for irrigation for farming, confirmed that to install a commercial size pump would be prohibitive, and determined that the amount of water required to irrigate the Property could negatively impact ground water in the area.

The Board rejects COLW's assertions regarding irrigation of the Property. As noted, the evidence in the record is that there are no irrigation rights associated with the Property, past or present. COLW did not rebut that evidence with any evidence of its own. COLW instead relied solely on historic photographs that it claims depict farming activity on the Property. That evidence does not establish that the subject Property was irrigated or had irrigation rights.

In the proceedings before the Board, COLW submitted material that came from websites and other sources as examples of other properties upon which farm use was conducted asserting that the examples demonstrated that the same farm uses could be conducted on the Property. The Board finds that COLW's examples do not overcome the direct evidence and testimony presented by the Applicant.

COLW failed to offer any qualitative comparison of the properties it identified with the Property. COLW asserted that because the properties it identified are in the same general ecoregion, have the same climate and are in the same plant hardiness zone, they demonstrate that the Property is equally able to support the same farming activities.

The Board rejects that conclusory argument. The ecoregion and plant hairiness zones identified are large and include most of Central Oregon. Indeed, some of the properties COLW identified are miles away from the Property in other counties such as Crook. The Board finds that soil fertility and quality vary dramatically on properties within Deschutes

County and Central Oregon in general. It is not accurate to conclude that every EFU zoned property in Central Oregon has the same suitability for farm use as other properties in the area simply because it is in the same broad ecoregion or plant hardiness zone.

COLW did not provide any details on the soil fertility or overall quality in any of its examples. It did not provide any detailed information on the current or future availability of water for irrigation on those properties. COLW did not examine whether those properties already had structures, fencing and other infrastructure required for farm uses. In contrast, the Applicant provides detailed information on several of COLW's examples that illustrate that the properties are comprised of better agricultural soil than that confirmed for the Property in the Order 1 soil study.

The Board finds that there is substantial evidence in the record, much of which was unrefuted, demonstrating that the Property is not suitable for farming applying the factors in OAR 660-033-0020(1)(a)(B).

**2. Whether the Property is agricultural land because it is necessary to permit farm practices on adjacent and nearby agricultural land under OAR 660-033-0020(1)(a)(C).**

The Board agrees with the Hearings Officer's finding that the Property is not agricultural land because it is necessary to permit farm practices on adjacent or nearby agricultural land. The Board notes that in prior LUBA cases, LUBA adopted the dictionary definition of necessary which includes the term "indispensable". The Board finds that the Property is not necessary or indispensable in the sense that no reasonable farmer would try to incorporate it into any ongoing farm operation given the exorbitant cost to transform the land into land that could be farmed agricultural land. Most of the nearby agricultural land in current farm use is north and east of the Property. According to NRCS mapping those areas are comprised of more agricultural land. It is unreasonable to expect that those owners would take on the exorbitant cost associated with trying to convert the Property into agricultural land. Finally, those properties are on the other side of a busy highway creating significant barriers to any efficient conjoined use.

The properties east of the Property and south of Highway 20 that are zoned EFU are primarily not in farm use. The property immediately east was approved for a DCCP amendment and zone change to MUA-10. Beyond this property there are parcels used as part of the Sisters' wastewater treatment facilities. One of the city-owned parcels is used seasonally for grazing horses associated with Black Butte Ranch. However, the record informs that the city will be incorporating that parcel into its treatment facilities. The record has substantial evidence that the city's approval for its facilities, including the use of effluent for irrigation comes with significant restrictions that are contrary to farm use. Thus, like the other city parcels, it will not be available for farm use in the future.

Nor does the Board find that rezoning the subject Property to MUA-10 will result in impacts to adjacent or nearby agricultural land that would render it impractical to engage in farm practices on those lands. COLW did not present any specific evidence of impacts form rezoning the Property that would render it impossible to engage in farm practices on nearby agricultural lands.

The Applicant's professional traffic study did not note any anticipated impacts on nearby or adjacent land. COLW officered speculation, but no substantial evidence of any impacts that would render retaining the EFU zoning on the Property indispensable to other agricultural land. In fact, the record demonstrates that in 2022, the county approved a commercial activity in conjunction with farm use on agricultural land northeast of the Property. In that decision, the County evaluated potential impacts from the commercial activities on adjacent and nearby properties finding potential impact to be acceptable. The Board finds that impacts from potential uses allowed on the Property in the MUA-10 zone will be similar in nature and extent to those generated by the commercial activity in conjunction with farm use.

The Board finds that substantial evidence in the record supports the Hearing Officer's conclusion that the Property is not necessary to permit farm practice on adjacent or nearby agricultural properties.

**3. Does the proposed plan amendment and zone change comply with Goal 5.**

As the Hearings Officer concluded, the Applicant submitted a site-specific ESEE identifying potentially conflicting uses in the MUA-10 zone if it applied to the Property and the conflicting uses could be allowed subject to the Landscape Management ("LM") Combining Zone which ensures compatibility of new uses with Goal 5. The Hearings Officer noted that no participant produced evidence to rebut the ESEE analysis.

Before the Board, COLW submitted photographs purportedly representing the Property from Highway 20. COLW asserted that the LM zone was not adequate to protect the scenic resource and that the Applicant had to make some further showing under Goal 5. The Applicant submitted additional photographs that were more focused on the Property. The Applicant also demonstrated that on other MUA-10 properties within the same scenic corridor, the LM overlay has been applied to permit potentially conflicting uses in a manner that is compatible with the Goal 5 scenic resource. In fact, one of those decisions approved a dwelling on the Property.

The Board finds the Applicant's evidence and argument superior to that of COLW. The Board finds that the Applicant's site-specific ESEE is consistent with the requirements. The Board finds that the LM zone is the appropriate measure to protect the Goal 5 resource. The Board expressly adopts the Applicant's Goal 5 ESEE for the Property.

**4. Has the Applicant demonstrated compliance with DCCP Policy 3.3.1.**

The Board acknowledges that the County's consideration of applications to rezone resource land to MUA-10 has been impacted by multiple recent LUBA decisions. In *Destiny Court*, LUBA agreed with COLW that DCCP Policy 3.3.1 establishes a minimum parcel size in the MUA-10 zone at 10 acres and does not authorize cluster or planned development that are allowed uses in the MUA-10 zone pursuant to Deschutes County Code ("DCC") Chapter 18.

On June 26, 2026, LUBA issued its decision in the *BCL LLC* matter where it held that even though the application did not request approval of any parcels smaller than 10 acres, because the application and decision did not include any restriction to that effect, there remained a potential conflict because nothing prevented a future applicant from applying to subdivide the property into parcels smaller than 10 acres.

On September 10, 2026, the Board adopted amendments to Chapter 10 of the 2040 DCCP that authorize cluster and planned developments in the MUA-10 zone, subject to various standards. The Board's amendments are on appeal to LUBA. Thus, currently, DCCP Policy 3.3.1 is the controlling policy and applicable law.

The Board finds, despite LUBA's concern described above, any partition or subdivision application must be submitted under DCC Title 17. DCC 17.12.010 mandates that all applicants for a division of land demonstrate that the application is consistent with the County's Comprehensive Plan. That includes demonstrating consistency with DCCP Policy 3.3.1.

Nevertheless, to be certain that the Board addresses LUBA's concern, the Board agrees with the Applicant that a condition of approval is appropriate to ensure that approval of the application does not result in an inconsistency between the DCCP and the DCC.

The Applicant proposed a condition that would restrict the current and future applicants/owners from obtaining approval to create any parcels on the Property that are less than 10-aces unless and until the County has acknowledged DCCP policies that authorize such as provided for in the DCC.

COLW asserted that there is no authority for the Board to impose such a condition. The Board disagrees. DCC 18.136.030 expressly authorizes the Board to impose conditions in a rezoning application. Further, LUBA authority is consistent. See, *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

COLW further asserts that the Applicant's proposed condition eliminates uses allowed in the MUA-10 zone and therefore is inconsistent with the purpose of the MUA-10 zone. The Board

rejects that assertion. As noted, the proposed condition does not eliminate any uses that are allowed. It restricts the size of future parcels created from the subject property to that which is allowed under DCCP Policy 3.3.1. Moreover, the proposed condition is in response to developing law and is an interim measure to respond to a LUBA decision. The proposed condition confirms that as long as DCCP Policy 3.3.1 is the controlling law, applicants may not obtain approval to create any parcels smaller than 10 acres. When new DCCP policies that authorize parcels smaller than 10 acres in the MUA-10 zone are acknowledged, any perceived inconsistency between the DCCP and the DCC will be resolved, and the condition of approval will no longer be effective. Any future application to divide land in the MUA-10 zone will have to comply with both the new DCCP policies and the relevant DCC standards in effect at that time.

While the acknowledged condition does restrict development otherwise allowed in the MUA-10 zone, the Board does not believe that the law prohibits any owner from voluntarily agreeing to restrict use of its Property. DCC 18.136.030 restricts the Board from imposing certain conditions. The Board interprets that provision to be for the protection of owners against involuntary conditions. It does not prohibit an owner from agreeing to conditions consistent with the owner's desired use of the Property.

**5. Will the approval of the application result in urban uses that require a Goal 14 exception.**

On the issue of whether designating land RREA and rezoning it to MUA-10 is consistent with Goal 14 or requires an exception, the Board continues to adhere to the conclusion it has reached in prior rezoning applications. The Board finds that its acknowledged Comprehensive Plan, amended in 2016 to create the RREA designation, and its MUA-10 and RR-10 zones confirm that uses allowed within those zones are all rural uses and not urban uses. The Comprehensive Plan states that "[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses allowed for each area." DCCP Section 1.3. Rural Residential Exception Areas, according to the DCCP, "provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities …" DCCP Section 1.3. DCCP Table 1.3.3 provides that Title 18's RR-10 and MUA-10 zones are the associated zoning codes for the RREA plan designation.

The determination that the RREA plan designation and RR-10 and MUA-10 zoning districts should apply to exception lands was made when the County amended the DCCP in 2016. (Ordinance 2016-005). The ordinance was acknowledged by DLCD as complying with the Statewide Goals. Thus, the lot sizes and uses allowed by the RREA plan designation and the RR-10 and MUA-10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the DCCP provisions.

Further, the purpose statement for the MUA-10 zone expressly states that it is to preserve the rural character of various areas of the County while permitting development consistent with that character and the capacity of the natural resources of the area. When DCC Chapter 18.32 is read in context with that purpose statement, the only plausible interpretation is that all uses allowed in the MUA-10 zone are rural uses. The Board expressly interprets DCC Chapter 18.32 to mean that. Thus, the application does not provide any basis for the County to revisit whether the RREA designation, or the RR-10/MUA-10 zones violate Goal 14 by allowing urban development and requires no individual analysis of specific uses or of whether the MUA-10 uses violate Goal 14 is required.

As an alternative basis to find that the proposal is consistent with Goal 14 and does not require an exception to that Goal, the Board finds that the proposed condition of approval will ensure compliance with Goal 14 as interpreted by the Oregon Supreme Court in the *Curry County* case. The only future use/development that COLW argues is the creation of parcels smaller than 10-acrtes, specifically, cluster and planned developments. Those are the only uses that LUBA questioned as being potentially inconsistent with Goal 14 because they could have the effect of introducing urban density in close proximity to the Urban Growth Boundary ("UGB").

The proposed condition will establish as a matter of fact and law that the current application will not result in any parcel less than 10 acres. In *Curry County*, the court announced that parcels 10 acres or larger are presumed to result in rural densities. Thus, the condition will ensure consistency with Goal 14. The condition will remain until the amendments to the DCCP authorizing cluster and planned developments in the MUA-10 zone are authorized. As written, those provisions also mandate that future applicants for such proposal demonstrate compliance with Goal 14.

The Board finds that the City of Sisters' zoning immediately adjacent to the Property allows a minimum density of 3 units per acre and a maximum density of 8 units per acre. Under the Applicant's proposed condition, the smallest parcel that could be created from the Property will be 10-acres. Regardless of the close proximity to the UGB, the dramatic difference in lot/parcel size will differentiate the urban and rural properties reinforcing the effectiveness of the UGB.

## III. DECISION

Based upon the foregoing Findings and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant's request for a Deschutes Comprehensive Plan Amendment and Zone Change for the Subject Property, subject to the following conditions of approval below.

## IV. CONDITIONS OF APPROVAL

**1.** This decision and any ordinance adopted pursuant to it do not authorize a future application for the creation of any parcels in the MUA-10 zone that are less than 10 acres under DCC 18.116.400, DCC 18,128.200, DCC 18.128.210, or any other DCC provision unless and until (1) the County formally adopts amendments to the MUA-10 DCCP rural lands policies that authorize such developments and parcel sizes with provision to ensure that constancy with Goal 14 is evaluated, and (2) those amendments are acknowledged by the DLCD. Unless and until such acknowledgement, the applicant and all future applicants for the subject property are restricted to the creation of parcels not less than 10 acres regardless of the proximity of the property to the UGB and any DCC code provision to the contrary.

**2.** The attached Conditions of Approval Agreement, with restrictive covenants enforceable by Deschutes County, must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.

**Exhibit "G" to Ordinance No. 2026-021**

**RECOMMENDATION AND FINDINGS OF THE DESCHUTES COUNTY HEARINGS OFFICER**

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| **FILE NUMBERS:** | 247-25-000537-PA / 247-25-000538-ZC |
| **HEARING DATE:** | May 21, 2026, 1:00 p.m. |
| **HEARING LOCATION:** | Videoconference and<br>Barnes & Sawyer Rooms<br>Deschutes Services Center<br>1300 NW Wall Street<br>Bend, OR 97708 |
| **APPLICANT/OWNER:** | Willitts LLC |
| **SUBJECT PROPERTY:** | Map and Tax Lot:<br>1510100000800<br><br>Situs Addresses:<br>68621 HWY 20, Sisters, OR 97759 |
| **REQUEST:** | The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to Multiple Use Agricultural ("MUA-10"). |
| **HEARINGS OFFICER:** | Tommy A. Brooks |

**SUMMARY OF RECOMMENDATION**: The Hearings Officer finds that the current record is not sufficient to support the requested Comprehensive Plan Amendment and Zone Change. Specifically, the Hearings Officer finds that the current record is not sufficent to show compliance with Statewide Planning Goal 14 or Comprehensive Plan Policy 3.1.1. The Hearings Officer therefore recommends the County's Board of Commissioners deny the Application unless the Applicant satisfactorily addresses those issues.

## I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code ("DCC")
Title 18, Deschutes County Zoning Ordinance:
Chapter 18.04, Title, Purpose, and Definitions
Chapter 18.16, Exclusive Farm Use Zones ("EFU")
Chapter 18.32, Multiple Use Agriculture
Chapter 18.80, Airport Safety Combining Zone ("AS")

Chapter 18.84, Landscape Management Combining Zone ("LM")
Chapter 18.136, Amendments
Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan
Title 23, Deschutes County Comprehensive Plan ("DCCP")
Chapter 1, Comprehensive Planning
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Appendix C – Transportation Plan
Chapter 5, Supplemental Sections

Oregon Administrative Rules ("OAR") - Chapter 660
Chapter 660, Land Conservation and Development Department
Division 6, Goal 4 Forest Lands
Division 12, Transportation Planning
Division 15, Statewide Planning Goals
Division 23, Procedures and Requirements for Complying with Goal 5
Division 33, Agricultural Lands

Oregon Revised Statutes ("ORS")
Chapter 215, County Land Use Planning: Resource Lands

## II. BACKGROUND AND PROCEDURAL FINDINGS

### A. Nature of Proceeding

This matter comes before the Hearings Officer as a request for approval of a quasi-judicial Comprehensive Plan Map Amendment ("Plan Amendment") to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"). The Applicant also requests approval of a corresponding Zoning Map Amendment ("Zone Change") to change the zoning of the Subject Property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to the Multiple Use Agriculture ("MUA-10") zone.

The Application requests a Plan Amendment, which is ultimately a decision for the County's Board of Commissioners ("County Board"). Several applicable criteria require a weighing of policy choices, and the record before the County Board may be different than the current record. This Recommendation therefore determines if the Applicant has met its burden of proof in a manner that would support the County Board's approval of the Application based on the current record.

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## B. Notices, Hearing, Record Materials

The Applicant initially filed the Application on August 27, 2025, and provided supplemental materials throughout this proceeding.

On October 24, 2025, staff in the County's Community Development Department ("Staff") mailed a Notice of Application identifying the standards and criteria governing the review of the Application and seeking public comment on the Application. On April 2, 2026, Staff mailed a Notice of Public Hearing ("Hearing Notice") to agencies, interested persons, and all property owners within 750 feet of the Subject Property, announcing a public hearing to be held on May 21, 2026. The Hearing Notice was also published in the Bend Bulletin on Sunday, April 5, 2026. Notice of the Hearing was submitted to the Department of Land Conservation and Development on April 2, 2026.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on May 21, 2026, opening the Hearing at approximately 1:05 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at approximately 2:05 p.m. Prior to the conclusion of the Hearing, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until May 28, 2026, ("Open Record Period"); (2) any participant could submit rebuttal materials (evidence or argument) until June 4, 2026 ("Rebuttal Period"); and (3) the Applicant could submit a final legal argument, but no additional evidence, until June 11, 2026. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. No participant objected to the post-hearing procedures.

Various participants submitted post-Hearing materials within the time limits described above, and no objections were made to any of those submittals. However, two participants submitted comments after the close of both the Open Record Period and the Rebuttal Period. Participant Janice Farney submitted comments on June 6, 2026, and participant Scott Mather submitted comments on June 19, 2026. Participant Farney's and participant Mather's comments do not explain the purpose of the comments or otherwise provide an explanation for why the late-filed comments should be included in the record. I find that these submittals should therefore be rejected as untimely. The record therefore includes all materials submitted to the County as reflected on the County's website for this matter, with the exception of the two submittals from participants Farney and Mather just described.

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### C. Review Period

Because the Application includes the request for a Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable.[1] The 150-day review period is also not applicable by virtue of Deschutes County Code ("DCC" or "Code") 22.20.040(D). No participant to the proceeding disputes those conclusions.

## III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

### A. Staff Report

On May 14, 2026, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time ("Staff Report").

The Staff Report, although it expresses agreement with the Applicant in most places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicant has met the burden of proof necessary to justify the Plan Amendment and Zone Change.

### B. Plan Amendment

DCC 18.136.010 contemplates that an applicant may seek a quasi-judicial amendment to the County's Comprehensive Plan Map ("Plan Map"). Other than a reference to the procedural provisions of DCC Title 22, the Code does not appear to contain any substantive standards or criteria specific to an amendment to the Plan Map. Pursuant to ORS 197.175(2), however, if the County amends its Plan or Plan Map, it must do so in compliance with Statewide Planning Goals (each a "Goal" and, together, the "Goals"). Because the existing Plan and Plan Map have been acknowledged, the requested Plan Amendment must adhere to the procedures for a post-acknowledged plan amendment ("PAPA") set forth in state statutes and rules.

Division 15 of OAR Chapter 660 sets forth the Statewide Planning Goals and Guidelines with which a PAPA must demonstrate compliance. The Applicant asserts the Application is consistent with all applicable Goals and Guidelines. Except for Goal 3, Goal 5, and Goal 14, which are addressed in more detail in findings below, I adopt the Applicants' position on the remaining Goals as recited on pages 29 to 34 of the Application, which is supported by findings in the Staff Report, and I find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as described in the Application and the Staff Report.

The remainder of the findings in this section address specific Goals that are in dispute.

#### 1. Goal 3 – Agricultural Lands

Goal 3 and its implementing rules protect agricultural lands. OAR 660-033-0020(1) provides the following definition:

[1] ORS 215.427(7).

*(a) "Agricultural Land" as defined in Goal 3 includes:*

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

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

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

*(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;*

A primary dispute in this proceeding is whether the Subject Property qualifies as "agricultural land" under this definition. If the Subject Property is agricultural land, the Application cannot be approved unless the County justifies an exception to Goal 3. If the Subject Property is not agricultural land, it is not protected by Goal 3 and, therefore, the County can conclude that the Plan Amendment is consistent with Goal 3.

The Applicant primarily relies on an Order 1 Soil Survey, prepared by a qualified soil scientist, to demonstrate that the soils on the Subject Property are predominately Class 7 and 8 soils and, therefore, that the Subject Property is not agricultural land. But the Applicant also provides evidence to support its assertion that the Subject Property is not suitable for farm use, that it is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is not adjacent to or intermingled with lands with higher values within a farm unit.

Participant Central Oregon LandWatch ("COLW") disagrees and argues the Subject Property is agricultural land. COLW does not counter the specific information provided in the Order 1 Soil Survey or otherwise assert that the County cannot rely on that survey to determine the on-site soil conditions. Rather, COLW asserts that the Subject Property remains agricultural land because it is suitable for farm use, that it is necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is adjacent to or intermingled with lands with higher values within a farm unit.

In light of the detailed information provided by the Applicant's expert soil scientist, which information is uncontroverted, I find that the Applicant has met its burden of demonstrating the Subject Property is not agricultural land under OAR 660-033-0020(1)(a)(A). The findings below address the remainder of OAR 660-033-0020(1).

The question under OAR 660-033-0020(1)(a)(B), which LUBA refers to as the "suitability test,"[2] is whether a reasonable farmer would be motivated to put the land to agricultural use for the primary purpose of obtaining a profit in money.[3] Accordingly, the question is whether the property is capable of farm use with a reasonable expectation of yielding a profit in money, either on a standalone basis or in conjunction with other farms.

The Applicant asserts that the Subject Property is not suitable for farm use. In support of that assertion, the Applicant initially points to the information provided in the Order 1 Soil Survey, which includes evidence that the soils on the Subject Property have low fertility, limited forage potential for grazing, and poor water retention capabilities. The Applicant also submitted a Statement of Agricultural Feasibility prepared by an expert consultant who has direct experience attempting to conduct grazing activities on the Subject Property.

Participant COLW addresses this issue through its specific assertion that the Applicant has failed to demonstrate "that a farmer could not use the subject property to raise goats or chickens or any of the livestock types identified by the USDA…" and that "[t]he relevant analysis is whether, for example, a farmer could raise chickens on the subject property and sell the eggs at the farmer's market for the primary purpose of obtaining a profit in money." COLW also relies on historical aerial photos it asserts show that the Subject Property has produced crops in the past. COLW also asserts that, because the Subject Property was previously irrigated and remains within the boundaries of an irrigation district, it should still be considered irrigated.

As LUBA recently explained, an applicant is not required to evaluate "every possible type of activity that potentially falls within the broad definition of 'farm use,' and produce evidence regarding whether the subject property is suitable for all conceivable farm uses."[4] But, if other participants identify specific farm uses that are common, and provide some evidence or argument that the subject property is suitable for such uses," the Applicant must address those uses.[5] That being said, "a bare assertion, without more, that a property is suitable for a type of farm use that is uncommon or locally less prevalent is an insufficient basis to obligate responsive evidence from the applicant."[6]

For the most part, COLW makes bare assertions about the suitability of the Subject Property without supporting details about the commonality of those uses or the specific characteristics of the Subject Property that would make those uses feasible. Where COLW has been specific, such as asserting that livestock grazing is possible, or that irrigation could enhance the productivity of the soils, I find that the Applicant's information is more detailed and backed by expert opinions. For example, the Order 1 Soil Survey expressly addresses how additional irrigation water applied

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[2] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025, June 26, 2026) ("*BCL LLC*") (slip op at 11).
[3] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025-015, June 26, 2025) ("*Destiny Court")* (slip op at 20). In that case, LUBA acknowledged that the phrase "reasonable farmer" can be used as shorthand for the suitability test, which is an objective test.
[4] *See BCL LLC* (slip op at 13).
[5] *Id.* (slip op at 14).
[6] *Id.* (slip op at 15).

to the Subject Property, even assuming it is available, does not raise the status of the soils from unfavorable to normal. Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not suitable for farm uses as set forth in OAR 660-033-0020(1)(a)(B) and, therefore, is not agricultural land on that basis.

The question under OAR 660-033-0020(1)(a)(C) is whether the Subject Property "is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands." (Emphasis added). COLW argues that the Subject Property is indeed necessary as described in the statute, but the basis for that argument is a policy-based one. For example, COLW argues that the purpose of the farm protection statutes is to preserve large blocks of farmland. COLW does not, however, further develop this argument to explain what role the Subject Property plays in that policy, much less why a farm zone designation is necessary to keep in place to serve that role. Even so, COLW does not provide specific examples of what farm practices would no longer be undertaken on adjacent or nearby agricultural lands if the Subject Property no longer carries the EFU zoning designation.

Even though COLW has not shown that the Subject Property is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands, the burden is on the Applicant to show that the property is not necessary for that purpose. To meet that burden, the Applicant provided evidence describing the limited number of nearby farming operations, many of which are separated from the Subject Property by a state highway and which operate on a stand-alone basis.

Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands for farm uses as set forth in OAR 660-033-0020(1)(a)(C) and, therefore, is not agricultural land on that basis.

As a final step in this analysis, OAR 660-033-0020(1)(b) requires an assessment of whether the Subject Property is adjacent to or intermingled with higher class soils within a farm unit. COLW asserts that the Subject Property has this characteristic because there are higher classes of soils on the Subject Property itself, and because the Subject Property is adjacent to other agricultural lands. I find that this argument fails as a matter of law.

The express language of the statutes requires a determination that the land "is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit." (Emphasis added). First, COLW does not fully explain why the Subject Property is currently part of a "farm unit" as required by the statutory language. COLW seems to argue that the Subject Property once was part of a farm unit, but does not explain if the designation remains. To the contrary, the Applicant provided additional detail to show that the Subject Property is not currently part of a farm unit. Further, the test under this part of the statute is whether the Subject Property itself is intermingled with other properties of higher soil class, not whether the Subject Property contains lower class soils intermingled with higher class soils.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating the Subject Property is not agricultural land under the definition in OAR 660-033-0020(1)(b).

In summary, I find that the record is sufficient for the County Board to find that the Subject Property is not agricultural land and, therefore, the requested Plan Amendment is consistent with Goal 3.[7]

### 2. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

Goal 5 and its implementing rules protect natural resources, scenic and historic areas, and open spaces. Pursuant to OAR 660-023-0250(3), the County does not have to apply Goal 5 as part of a PAPA "unless the PAPA affects a Goal 5 resource." One scenario in which a PAPA may affect a Goal 5 resource is when the "PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list."[8] The Subject Property is near the scenic resources along Highway 20. The Applicant acknowledges this fact, and the fact that the Plan Amendment allows new uses that could conflict with the County's identified scenic resource.

To address Goal 5, the Applicant provided an analysis of the economic, social, environmental, and energy ("ESEE") consequences of the proposed PAPA as required by OAR 660-023-0040(1). In accordance with that administrative rule, the Applicant's ESEE analysis identifies conflicting uses, determines an impact area, analyzes the ESEE consequences, and proposes a "program" to achieve Goal 5 protections. The program the Applicant proposes is the application of the Landscape Management ("LM") combining zone to the Subject Property, which is the mechanism the County uses to protect scenic resources on other properties, including properties zoned MUA-10. The Applicant asserts the LM combining zone in DCC Chapter 18.84 is designed to achieve compatibility and that the County should apply this program and allow the uses permitted by the Plan Amendment and Zone Change to be subject to LM review.

The record contains many comments generally asserting that development on the Subject Property will conflict with the County's inventoried Goal 5 scenic resource. Participant Michele McKay provided slightly more detail, arguing that development on the Subject Property will block views of the Three Sisters, and participant COLW asserts that residential development specifically is not compatible with the landscape. As noted above, the Applicant does not dispute the existence of such conflicts and, instead, provides a full ESEE analysis to determine what conflicts might exist and how those conflicts may be mitigated. No participant disputes the details of the ESEE analysis or otherwise claims with any specificity that the LM combining zone will not protect the identified Goal 5 resource. Indeed, participant McKay acknowledges that the County's current program, which the Applicant seeks to replicate on the Subject Property, protects scenic views.

Based on the Applicant's full ESEE analysis and the lack of countervailing evidence, I find that the record is sufficient for the County Board to find that the requested Plan Amendment is consistent with Goal 5 by applying the LM combining zone to the Subject Property.

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[7] COLW's arguments regarding agricultural land include multiple assertions relating to whether the Subject Property was lawfully created. I find that this argument is not developed enough for me to respond to, and COLW does not explain what criterion or standard it is addressing with these arguments.

[8] OAR 660-023-0250(3)(b).

### 3. Goal 14 – Urbanization

Goal 14 seeks to "provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure the efficient use of land, and to provide for livable communities."[9] When a PAPA results in the urbanization of rural land, it generally requires an exception to Goal 14. The Applicant asserts that no Goal 14 exception is required because the Plan Amendment and Zone Change will not result in the urbanization of land, and because the County has previously determined that the MUA-10 zone is consistent with Goal 14. Participant COLW argues that the proposed Plan Amendment does result in the urbanization of the Subject Property and, therefore, it is not consistent with Goal 14 without a Goal 14 exception.

By way of background, it is true that the MUA-10 zone has previously been interpreted as being compatible with Goal 14. In LUBA's opinion in the *Marken* case, for example, LUBA considered whether the density and lot size permitted under the MUA-10 zoning complies with Goal 14.[10] In that case, the Board had approved a PAPA to change the Plan designation of the subject property from AG to RREA and a corresponding zone change from Exclusive Farm Use-Tumalo-Redmond Bend Subzone ("EFU-TRB") to MUA-10. Prior to addressing the petitioner's argument, LUBA acknowledged the County's findings:

> "The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by [the Land Conservation and Development Commission (LCDC)] as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. Ordinance 2016-005. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14."[11]

The Court upheld the County's interpretation that the MUA-10 zone uses are rural in nature and therefore do not conflict with Goal 14.[12] That decision relied in part on the density permitted under the MUA-10 zone – one dwelling per 10 acres – not being an urban density, a determination the petitioner in that case did not challenge.[13]

In more recent decisions, however, LUBA has been more specific about what is required to demonstrate that the application of the MUA-10 zoning designation complies with Goal 14. In the *Destiny Court* case, for example, the Petitioner requested a Plan Map amendment from AG to RREA and a zoning change from EFU-TRB to MUA-10. The hearings officer in that case took

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[9] OAR 660-015-0000(14).
[10] *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-049, Feb. 15, 2024) (slip op at 10).
[11] *Id.* (slip op at 8).
[12] *Id.* (slip op at 11).
[13] *Id.* (slip op at 10).

official notice of LCDC's acknowledgment that the MUA-10 zone complies with all statewide planning goals. The hearings officer also considered a site-specific analysis prepared by the intervenor's attorney.[14] LUBA held that the site-specific analysis was necessary to demonstrate Goal 14 compliance.[15]

In the most recent case addressing this issue – *BCL LLC* – LUBA again determined that the application of the MUA-10 zoning is not, as a matter of law, always consistent with Goal 14, and that the County "must demonstrate that the proposed redesignation and rezoning is consistent with Goal 14, applying the relevant *Curry County* factors." The reference to the *Curry County* factors is *1000 Friends of Oregon v. LCDC,* 301 Or 447 (1986). As explained by LUBA:

> "Under *Curry County*, in redesignating rural land from plan designations implementing the resource goals, counties must evaluate whether development allowed under the new designation and associated zoning would allow for the urban use of rural land. That evaluation requires consideration of a number of factors described in *Curry County* and its progeny. With respect to PAPAs involving residential use of rural land, the relevant factors include the density of development allowed under the new plan designation and zone, the types and levels of services to be provided, and proximity to urban growth boundaries."[16]

Based on the most recent LUBA decisions, it is clear that the Applicant must show that the Plan Amendment and Zone Change comply with Goal 14 by applying the *Curry County* factors to the Subject Property rather than relying on the MUA-10 zone alone as demonstrating compliance with that Goal. As discussed in more detail below, I find that the Applicant has not met that burden based on the current record.

The first of the *Curry County* factors looks to the allowed density under the new Plan designation. The Applicant notes that, pursuant to Policy 3.3.1 of the Plan and Section 18.32.040 of the Code, the allowed density in the MUA-10 zone is no greater than one dwelling per ten acres because ten acres is the minimum lot size in that zone. In *Curry County*, the Court concluded that one dwelling per ten acres does not constitute urban zoning.

Participant COLW argues that, despite the minimum parcel size in the MUA-10 zone provisions of the Code, the actual density that is allowed under that zone could be much greater due to various options for cluster development or planned unit development in that zone. LUBA addressed this same argument in *BCL LLC*, concluding that the County must address that feature of the MUA-10 zone and determine if such densities are urban or rural.

The Applicant addresses whether the densities allowed for cluster developments or planned unit developments are urban in nature, but primarily relies on its assertion that the MUA-10 zone is a rural zone as a matter of law. Further, the Applicant insists that the default parcel size in the MUA-10 zone is sufficient to demonstrate a rural density of one dwelling per ten acres and that the

[14] *Destiny Court* (slip op at 10).
[15] *Destiny Court* (slip op at 14-15).
[16] *BCL LLC* (slip op at 25-26).

Application does not propose or request smaller parcels, and insists that the likely density of the Subject Property will consist of only two dwellings, given constraints for providing water and septic services on the property.

It is perhaps possible that the County Board could condition its approval to limit smaller parcels or to prohibit cluster development and planned unit developments on the Subject Property. The Applicant, however, has not proposed such a condition and, on this record, I find no basis to conclude that the ultimate disposition of the Subject Property will be limited to ten-acre parcels or to a maximum of only two dwellings. This *Curry County* factor therefore provides weight to the argument that the proposal could result in urban-level development.

The second *Curry County* factor looks to the types and levels of services to be provided. The Applicant asserts that any services for the Subject Property will be rural in nature. For example, water will come from a private source on the Property rather than a public system, sanitary waste will be treated through an on-site septic system, and fire and public safety will continue to be provided by the Camp Sherman Fire District and Deschutes County Sheriff, respectively. Other participants do not refute the Applicant's characterization of these services or identify specific urban-level services that will be required for the Subject Property under the requested zoning.

Based on the foregoing, I find that the second *Curry County* factor provides weight to the argument that the proposal will not result in urban-level development.

The third *Curry County* factor considers proximity to the urban growth boundary ("UGB"). The Subject Property is adjacent to the Sisters UGB. The Applicant asserts that this proximity is not material because the purpose of the MUA-10 zone is to create a transition area between rural and urban uses and, therefore, implementing this zone next to the UGB is appropriate.

Other participants do not address this factor with specificity. However, LUBA addressed this issue in its *BCL LLC* decision. There, LUBA determined that changing a parcel to the RREA is inconsistent with Goal 14 where the property was within one-quarter mile of the City of Bend's UGB, and where the allowed density on the property was similar to what would be allowed in that city. Applying that logic to the facts in this case, the third *Curry County* factor provides weight to the argument that the proposal will result in urbanization. Specifically, the Subject Property is even closer to the UGB than the property in *BCL LLC*, and the potential for some development with no minimum lot size makes potential lot sizes similar to what would be allowed in the UGB.

Having considered the *Curry County* factors, I find that, based on the current record, the proposal could result in urbanization of the Subject Property, and the Applicant has therefore not met its burden of showing that the proposal is consistent with Goal 14. For that reason, I do not recommend that the County Board approve the Application unless the Applicant justifies an exception to that Goal or otherwise creates a different record that can address compatibility with Goal 14.

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## C. Zone Change

The Applicant requests a Zone Change from EFU-SC to MUA-10. The criteria for rezoning a parcel are set forth in DCC Chapter 18.136. These findings address the applicable Zone Change criteria in the context of the Applicant's request. That is, the Applicant has also requested the Plan Amendment to change the Plan Map designation applicable to the Subject Property – from the AG designation to the RREA designation. As discussed in the findings above, I have found that the Applicant has initially not met its burden of demonstrating compliance with the Plan Amendment criteria. The findings in this section, however, are based on the assumption that the Plan designation for the Subject Property is RREA, as the Applicant requested. If the County Board does not approve the Plan Amendment, these findings may need to be altered to address the request for a Zone Change based on whatever Plan Map designation the County Board approves.

*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.*

This Code provision requires consideration of the public interest based on whether: (1) the Zone Change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan's introductory statement and goals.

The Applicant, Staff, and other participants address this Code criterion by discussing specific Plan goals and policies. Before addressing those specific arguments, I note that, if the Plan Amendment is approved, it seems necessary to rezone the Subject Property in some way. That is, the Agricultural designation of the Plan is implemented through the exclusive farm use resource zone designations. The RREA Plan designation, in contrast, is implemented through the RR-10 and MUA-10 zones. There seems to be no basis under the Plan to allow the Plan Amendment to change the designation of the Subject Property to RREA but to keep the EFU zoning. Viewed through that lens, it seems that either the RR-10 or the MUA-10 zones largely conform to the Plan in this context, and that the Applicant must show only that the Zone Change, as applied to the Subject Property, is consistent with the Plan's introductory statement and goals.

The Staff Report notes that the County generally does not consider the Plan's goals and policies to be mandatory criteria. With one exception – Plan Policy 3.1.1 – no participant to this proceeding appears to dispute Staff's position that the goals and polices are not mandatory criteria. Nevertheless, because the Code itself requires a consideration of the Plan's statements and goals, and because some participants have questioned whether the Zone Change is consistent with those Plan provisions, I address those issues in this Recommendation.

The Application identifies potentially relevant Plan provisions by pointing to several goals and policies in the Plan set forth in DCCP Chapter 2 and Chapter 3, Rural Growth Management. The Applicant states that the Application is consistent with those policies and goals. The Staff Report generally agrees with the Applicant's assessment of those policies and goals.

Notwithstanding the foregoing, COLW and other participants, such as participants McKay, Hancock, Dooley, and Swaim, assert that the Application is inconsistent with Plan Policy 3.1.1, but only participant COLW presents specific arguments to support that assertion.

Policy 3.1.1 states: "Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." COLW argues that the Zone Change is inconsistent with this policy because the resulting MUA-10 zone could allow parcels that are smaller than 10 acres, through cluster development or planned unit development.

The Applicant responds that COLW's argument is tantamount to a facial challenge to the County's MUA-10 zone (which is being addressed by the County Board in a legislative forum) and that such an argument would result in a moratorium on applying the MUA-10 zone to any property. The Applicant also responds by noting that it has not proposed any parcels to be smaller than 10 acres and, therefore, the Application is consistent with this policy.

I do not understand COLW's argument to be a facial challenge to the MUA-10 zone. Rather, the issue raised is whether the application of the MUA-10 zone specifically to the Subject Property as part of the current Application is consistent with Policy 3.1.1. It may be true that COLW could raise this same issue in other applications, or in a legislative forum, but the current record does not attempt to address every application of the MUA-10 zone that would encompass a facial challenge. Even if it can be characterized that way, I find it is possible to address this issue in an isolated fashion that applies only to the current record.

As noted in the findings above addressing Goal 14, it is possible that the Subject Property could be divided into parcels smaller than 10 acres once the MUA-10 zone applies. The Applicant has not proposed such a parcelization, and instead urges that any limits on future parcel sizes can be addressed at the time of development or parcelization. As LUBA held in *BCL LLC*, however, consistency with Plan policies must be determined at the time of the PAPA rather than a subsequent land use application.[17] Even though the Applicant has not proposed parcels smaller than 10 acres, it also has not proposed to impose such a limit, thereby preserving in the Application the possibility that the full range of uses and development, including smaller parcel sizes, will be available under the new zoning. Based on the record as it currently exists, I therefore find that the Applicant has not met its burden to show that its proposal is consistent with Policy 3.1.1.

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

DCC 18.32.010 contains the following purpose of the MUA-10 zone:

> 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

[17] *BCL LLC* (slip op at 10).

> 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 Applicant states that changing the zoning designation of the Subject Property is consistent with the purpose and intent of the MUA-10 zone because the Subject Property is not suited to full-time commercial farming and that the lower level of development will conserve open spaces and protect natural and scenic resources. The Applicant also claims that the low level of allowed development will maintain and improve the quality of the air, water, and land resources of the County and encourage future owners of the property to either return irrigation water to the area or to farmlands elsewhere.

Participant COLW asserts that the intent of the MUA-10 zone is more specifically to "preserve agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses." (Emphasis added). According to COLW, if the Applicant is correct that the Subject Property is not agricultural land protected by Goal 3, then it cannot meet the purpose of the MUA-10 zone. COLW also asserts that the MUA-10 zone "was created to regulate the use of land for which an 'irrevocably committed' or 'previously built' exception to Goal 3 was taken in the County's first comprehensive plan" and that the MUA-10 zone can therefore apply only where the County takes a new Goal 3 exception.

COLW's arguments have no basis in the text of the Code or the Plan. As noted in the express language of DCC 18.32.010, the MUA-10 zone has multiple purposes, of which the preservation of "agricultural land" is only one. The MUA-10 zone has other purposes, such as conserving open space and providing for an orderly and efficient transition from rural to urban land use. Similarly, the express language of the Plan addressing the RREA purpose states "As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR." It is clear from that language that the County intends to apply the MUA-10 zone either where it can justify a Goal 3 exception or where there is a demonstration that the property does not meet the definition of agricultural land.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

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*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.*

Only the Applicant and Staff directly address this Code provision. The Applicant notes that services for development in the MUA-10 are adequate and the Subject Property will not rely on public services and facilities under the new zoning designation. For example, there is existing access to the public road system, which the Applicant relies on the transportation system impact review to confirm. Developments in rural areas also must generally provide their own water and septic systems. In addition, the property receives police services and fire services from the Deschutes County Sheriff and the Sisters/Camp Sherman Fire District respectively.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

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

Only the Applicant and Staff directly address this Code provision. The Applicant claims that the Applicant's proposal for MUA-10 zoning will not impact surrounding land use, as it is consistent with the zoning of many other properties in the area. Participant COLW asserts that the land use pattern in the area has not changed, but COLW does not explain how that assertion leads to a conclusion that any impacts on surrounding lands will not be consistent with the goals and policies of the Plan.

Based on the foregoing, and in the absence of more specific countervailing evidence or argument addressing this provision, I find that this Code provision is satisfied as described by the Applicant.

*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.*

The Applicant addresses this Code provision primarily through its argument that the more specific Order 1 Soil Survey shows a change in circumstances since the Subject Property was last zoned. That change is the understanding of what the actual characteristics of the soils are, and the fact that those soils are not as conducive to agriculture as originally assumed when the EFU zoning was applied.

I find that the Applicant's argument is a sufficient basis to satisfy this Code provision. In addition, as noted above, the Zone Change analysis relies on the assumption that the Plan designation for the Subject Property is RREA. When the Subject Property was last zoned, its Plan designation was AG. If the County Board approves the Plan Amendment, I find that the change in Plan designation is, by itself, sufficient to show there has been a change in circumstances and, therefore, this Code provision will be satisfied.

## IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has not met its burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change, because the current record is insufficient to show compliance with Goal 14 and Plan Policy 3.1.1. I therefore recommend to the County Board of Commissioners that it DENY the request in the Application based on the current record.

Dated this 20th day of July 2026



Tommy A. Brooks
Deschutes County Hearings Officer

# Exhibit "H" to Ordinance No. 2026-021

## ESEE ANALYSIS

**Summary**

The subject property is located within the Landscape Management Combining Zone ("LM") that is designed to protect scenic views. The LM zone extend .25 miles on either side of Highway 20. The scenic views from the highway will not be appreciably impacted by any new uses allowed under the MUA-10 Zone. First, the subject property is immediately adjacent to the city and parcels that are fully developed with commercial structures right along Highway 20. There are two existing structures, the "Old House" and an associated barn within about 50 feet of the highway. In addition, allowing lower-intensity development permitted in the MUA-10 zone along with the LM standards will effectively protect any scenic views. No development permitted in that zone will be so intense or tall that it will affect the view of the distant hills and mountains.

**Economic Consequences**

| Conflicting Use - Common to all MUA-10 Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| | Uses allowed in the MUA-10 zone will have positive economic consequences in that the uses promote the County's rural housing goals and policies creating more opportunities for rural housing. Agricultural and forest propagation uses, to the extent they can be supported on the property, add to the rural economic base. Road projects enhance the accessibility to the property supporting other MUA-10 uses. Private parks provide recreational opportunities for those who reside in the rural area. Home occupations provide owners with the ability to generate income on their properties and can provide needed services to the rural community. | The County's original 1992 ESEE analysis notes that "the economic impact of maintaining the visual quality of the area would be positive. Deschutes County would remain a desirable place to live, thereby maintaining neighborhood property values. Maintaining or enhancing visual quality makes the County a more attractive place to visit, thereby attracting more visitors and inducing people to stay longer."<br><br>Allowing reasonable development of rural uses subject to applicable standards will not significantly alter the above statements. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Single Dwellings | New single dwellings attract people to the County and | There are no negative economic consequences from |

| | | |
|---|---|---|
| | generally add to the economic base in the rural community. | this use related to the scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Agricultural uses and Propagation or Harvesting Forest Products | In light of the soil report confirming that the property is not agricultural land and the fact that it has no trees, these uses are unlikely. However, these uses are generally allowed in the EFU zone and any economic consequences under MUA-10 zoning will be the same and will be positive. | There are no negative economic consequences from these uses related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Road Projects | Road projects tend to enhance the transportation system that supports rural businesses thus providing an economic benefit. | There are no negative economic consequences for this use related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Home Occupations | This use adds to the rural economy allowing residents to work from home. | Because a home occupation is within an approved dwelling, it will not produce any additional negative economic consequences related to a scenic corridor. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Private Parks | Private parks have limited economic consequences related to a scenic resource but generally are consistent with the purpose of having pleasant views that may attract visitors to the County. | There are no negative economic consequences for this use related to a scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|

| | | |
|---|---|---|
| Non-Commercial Stables<br>Horse Events | IN light of the soil quality, proximity to the urban area and relatively small size, it is unlikely that any owner could justify the cost to develop such facilities. However, if they could, these rural-based uses add to the rural economy. Private stables allow horse owners to keep animals in a safe environment close to public area for riding supporting that recreational activity. It allows owners of the facility to generate some income.<br><br>Horse events support the rural community where many residents live because they enjoy having horses and other animals. They can also enhance the community involvement bringing residents together for outdoor social events. | While it is possible that some stables and event facilities could be visible from the highway, one would not expect them to be located within .25 miles of a highway, and they would not have any appreciable economic consequence related to the scenic corridor. |

| **Conflicting Use - MUA-10 Conditional Uses** | **Positive Consequences** | **Negative Consequences** |
|---|---|---|
| Commercial activities in conjunction with Farm Use | Because the soil quality precludes farm use on the property, these uses are also unlikely. However, these conflicting uses add to the rural economy and offer additional services to the rural community. | Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. However, they would not likely detract people from moving to the County or visiting. Thus, there is not expected to be any economic consequence related to the scenic resource. |

| **Conflicting Use – MUA-10 Conditional Uses** | **Positive Consequences** | **Negative Consequences** |
|---|---|---|
| Dude Ranch Guest House | Dude ranches and guest housing provide an economic benefit to the rural area and offer a platform to showcase | These uses would not likely be located near the highway and would have no negative economic consequences. |

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| | some of the characteristics of the rural area. | |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Kennel/Vet Clinic | These uses also benefit the rural economy. They offer valuable services to the rural residents. | These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Destination Resort<br>Golf Course | The property is far too small for these uses. Assuming that one could be located on the subject property, these uses would provide significant economic opportunities and job growth. It does not appear that the uses could be placed on the property though. | It is not likely that these uses could be placed on the property. These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Forest Product Production Facility | This is another use that is not likely on the subject property because there are no trees on the property and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add to the rural economy and may add jobs. | It is not likely that these uses could be placed on the property. These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Hydroelectric Facility | There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide energy to the rural community and possible jobs. | Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Rural Housing, including PUDs and Cluster Development | In the near term, allowing MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can produce positive social consequences in that they offer citizens with opportunities to live in a rural setting and others to conduct socially beneficial rural businesses. | These uses would not detract from people moving to the County but rather would enhance it. Thus, there would be no negative economic consequence. |

**Social Consequences**

| Conflicting Use – Common to all MUA-10 Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| | In general, allowing uses permitted in the MUA-10 zone will provide positive social consequences because they allow people to reside in a rural area on large parcels and other uses bolster the rural economy which provides positive social impacts to the population at large. | The 1992 County inventory confirmed that having good visual quality areas more accessible to the public enhances livability. This is still true. However, the view from Highway 20 in the subject area already has significant development close to the highway. The best way to address the goal expressed in 1992 is for the County to apply its development standards in general and the LM standards specifically to all new development. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Single Dwellings | New single dwellings attract people to the County and generally add social benefits. | There are no negative social consequences from this use related to the scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Agricultural uses and Propagation or Harvesting Forest Products | The poor soil quality and lack of trees render these uses unlikely. However, these uses are generally allowed in the EFU zone and any social consequences under MUA-10 zoning will be the same and will be positive. | There are no negative social consequences from these uses related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Road Projects | Road projects tend to enhance the transportation system for rural residents which is a positive social consequence. | There are no negative social consequences for this use related to a scenic corridor. |
| **Conflicting Use - Permitted Uses** | **Positive Consequences** | **Negative Consequences** |

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|---|---|---|
| Home Occupations | This use allows rural residents to earn income while being at home to also care for children and animals. It produces all positive social consequences. | Because a home occupation is within an approved dwelling, it will not produce any additional negative social consequences related to a scenic corridor. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Private Parks | Private parks have a positive social consequence related to a scenic resource because they offer more visual beauty and promote livability. | There are no negative social consequences for this use related to a scenic corridor because parks enhance livability. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Non-Commercial Stables<br>Horse Events | For the reasons stated above, these uses do not appear to be likely. However, private stables allow horse owners to keep animals in a safe environment close to public area for riding supporting that recreational activity. It allows owners of the facility to generate some income. These are positive social consequences.<br><br>Horse events support the rural community where many residents live because they enjoy having horses and other animals. They can also enhance the community involvement bringing residents together for outdoor social events. | While it is possible that some stables and event facilities could be visible from Highway 20, one would not expect them to be located within .25 miles of a highway, and they would not have any appreciable negative social consequence related to the scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Commercial activities in conjunction with Farm Use | For the reasons stated above, this use is not likely. However, these conflicting uses add to the rural economy and offer additional services to the rural | Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. However, they would not likely detract people from |

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| | community which is a positive social consequence. | moving to the County or affect liability. Thus, there is not expected to be any negative social consequence related to the scenic resource. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Dude Ranch Guest House | Dude ranches and guest housing provide a place for residents and visitors to gather and enjoy recreational activities and food. They offer a positive social consequence. | These uses would not be located near the highway and would have no negative social consequences related to scenic areas. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Kennel/Vet Clinic | These uses also benefit the rural community by providing needed services which is a positive social consequence. | These uses would need to be developed under the standards in place to protect scenic views. While they could impact peoples' perception of a view, they are likely to be developed in or close to rural service centers where existing development exists. Thay can also be compatible with the resource through compliance with the LM standards. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Destination Resort<br>Golf Course | There is not sufficient acreage for these uses. Assuming that one could be located on the subject property, these uses would provide significant social benefit by providing a location for people to enjoy central Oregon. | It is not likely that these uses could be placed on the property. These uses would not detract people from seeing the scenic resources and in fact, such developments typically try to enhance the views for those who visit. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Forest Product Production Facility | This is another use that is not likely on the subject property | It is not likely that these uses could be placed on the |

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| | because there are no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add to the rural economy and may add jobs which are socially beneficial. | property. These uses could produce a negative social consequence if developed in certain areas. As a conditional use, conditions would have to be imposed. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Hydroelectric Facility | There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide renewable energy to the rural community which is socially beneficial. | Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Rural Housing, including PUDs and Cluster Development | In the near term, allowing these MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can produce positive social consequences in that they offer citizens with opportunities to live in a rural setting and others to conduct socially beneficial rural businesses. | These uses would not detract from people moving to the County but rather would enhance it. These developments require dedicated open space which can be located to preserve any scenic views. Thus, there would be no negative social consequence. |

**Environmental Consequences**

| Conflicting Use – Common to all MUA-10 Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| The conflicting uses are the same uses listed under the economic consequence section. As noted, in light of the size and other limitations, some uses simply cannot be developed such as golf | Development of uses allowed in the MUA-10 zone will allow rural housing and rural businesses to be located immediately adjacent to the city in close proximity to services and attractions desired by the residents and | Almost all development comes with some perceived negative consequences to the environmental features on land. In some cases, trees are lost. In others, rock outcroppings may need to be removed or altered. In this |

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| courses, airports, and destination resorts. | customers. Thus, it will reduce the amount of travel and thereby reduce the carbon footprint overall. | case, negative consequences to mapped environmental resources will be minimum and can be mitigated or under the Development Code. Some uses allowed in the MUA-10 zone are consistent with uses that are allowed under the current F-2 zone such as forest-related uses. Under LUBA's decision in LUBA Case 2023-008, the County's prior ESEE analysis remains applicable because the MUA-10 zone is not introducing a new use that was not allowed when that analysis was completed. However, other allowed uses will be new uses. The uses predominantly placed on MUA-10 land are large-acre residential uses and other low-intensity rural uses such as horse-related facilities. Those uses do not have large building footprints relative to the overall size of the parcels allowed. The minimum parcel size for the subject property under the MUA-10 zoning is 7.5 acres. That leaves ample area to preserve trees, vegetation, outcroppings, and other resources. Negative consequences to the scenic resource can be effectively managed. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Single Dwellings | New single dwellings are likely to have neutral environmental consequences when located on larger MUA-10 parcels. | New single dwellings are likely to have neutral environmental consequences when located on larger MUA-10 parcels. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Agricultural uses and Propagation or Harvesting Forest Products | These uses are generally allowed in the EFU zone and any environmental consequences under MUA-10 zoning will be the same and will be positive. | There are no negative environmental consequences from these uses related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Road Projects | Road projects tend to enhance the transportation system, making travel more efficient and potentially reducing emissions. | A new road within a scenic corridor may require some removal of vegetation. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Home Occupations | This use would allow people to work from home reducing vehicle trips and emissions. | Because a home occupation is within an approved dwelling, it will not produce any additional negative environmental consequences related to a scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Private Parks | Private parks will have limited environmental consequences related to a scenic resource but generally are consistent with the purpose of having pleasant views that may attract visitors to the County. | There are no negative environmental consequences for this use related to a scenic corridor as trees and vegetation do not have to be removed. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Non-Commercial Stables Horse Events | Private stables on MUA-10 land close to the city limits, allow horse owners who reside in urban areas to board horses closer to town, reducing vehicle miles and emissions. | While it is possible that some stables and event facilities could be visible from the highway and would require some removal of trees and vegetation. These consequences can be mitigated for applying the LM standards. |

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| | The same is true for horse events on MUA-10 land closer to where people live. | |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Commercial activities in conjunction with Farm Use | These conflicting uses are unlikely on property with poor soil but when feasible, add options for rural residents to travel less for goods and services reducing the carbon footprint. | Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. Some could require the removal of vegetation which can be perceived as a negative consequence to a scenic corridor. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Dude Ranch Guest House | Dude ranches and guest housing have neutral environmental consequences in the MUA-10 zone. They are relatively low intensity development that does not require significant disturbance and require open space for the activities normally associated with them. | Even though they tend to be lower intensity developments, these uses could come with some limited vegetation removal and that could be perceived as a negative consequence in a scenic area. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Kennel/Vet Clinic | These conflicting uses add options for rural residents to travel less for goods and services reducing the carbon footprint. | These uses would likely require removal of vegetation if it were on the site, but they also are most likely to be located in or near rural service centers and unincorporated communities with other development. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Destination Resort<br>Golf Course | Assuming that one could be located on the subject property, these uses would provide positive environmental consequences because they preserve open | It is not likely that these uses could be placed on the property. These uses would not detract from scenic beauty in the area because they are developed to provide pleasant |

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| | space and with modern equipment reduce the use of water. | viewing of the scenic features in the County. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Forest Product Production Facility | This is another use that is not likely on the subject property because there are no trees on the site and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could provide jobs for rural residents closer to where they live, reducing the amount of vehicle miles. | It is not likely that these uses could be placed on the property. These uses could require the removal of vegetation which is a negative environmental consequence. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Hydroelectric Facility | There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide renewable energy which is generally a positive environmental consequence. | Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Rural Housing, including PUDs and Cluster Development | In the near term, allowing MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can reduce vehicle miles and benefit the carbon footprint. | These uses require significant dedicated open space which is generally a positive environmental consequence. |

**Energy Consequences**

| Conflicting Use – Common to all MUA-10 Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| The conflicting uses to consider are the same uses listed above under economic consequences. Overall, the | The positive energy consequences from MUA-10 uses are not appreciable. Some uses, such as a single | In general, it will take and consume energy to develop any uses allowed in the MUA-10 zone. That is a short-term |

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|---|---|---|
| positive and negative energy consequences on a scenic resource are attenuated. | dwelling, are neutral as to consequences. However, allowing residential development for rural residents who may have employment nearby can reduce vehicle miles, gas consumption, and pollution. | negative consequence that is not related to a scenic view corridor. Additional electricity and propane will be needed for ongoing uses. That is a potential long-term consequence. Some of those consequences can be mitigated through the application of energy saving construction measures, many of which are not required by building codes. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Single Dwellings | New single dwellings are likely to have neutral energy consequences other than new construction which is typically required to be more energy efficient. Dwellings on larger parcel may also allow for more alternative energy sources. | There is no negative energy consequences from this use related to the scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Agricultural uses and Propagation or Harvesting Forest Products | For the reasons provided above, these uses are unlikely. However, they are generally allowed in the EFU zone and any energy consequences under MUA-10 zoning will be the same and will be positive. | There is no negative energy consequences from these uses related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Road Projects | Road projects tend to enhance the transportation system, making travel more efficient and thus conserving energy. | There is no negative energy consequences for this use related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Home Occupations | This use allows residents to work from home saving some energy resources. | Because a home occupation is within an approved dwelling, it will not produce any |

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| | | additional negative energy consequences related to a scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Private Parks | Private parks have limited energy consequences related to a scenic resource because they are passive uses. | There is no negative energy consequences for this use related to a scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Non-Commercial Stables Horse Events | There do not appear to be any specific energy consequences related to a scenic resource from these uses. | There do not appear to be any specific energy consequences related to a scenic resource from these uses. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Commercial activities in conjunction with Farm Use | Again, these uses are unlikely on a small parcel with poor soil. These conflicting uses add to the rural economy and offer additional services to the rural community reducing petroleum energy consumption. | Commercial activities can add to the demand for some energy sources, but it does not require the removal of vegetation, creating a negative consequence related to a scenic resource. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Dude Ranch Guest House | There do not appear to be any specific energy consequences related to a scenic resource from these uses. | There do not appear to be any specific energy consequences related to a scenic resource from these uses. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Kennel/Vet Clinic | These uses can provide service closer to the expected users conserving petroleum energy sources. | There do not appear to be any specific energy consequences related to a scenic resource from these uses. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|

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|---|---|---|
| Destination Resort<br>Golf Course | These are not feasible on the subject property. Assuming that one could be located on the subject property, these uses allow people to stay in one place for many activities reducing consumption of petroleum energy. | These uses can consume other energy sources such as electricity. However, it does not appear that that consequence relates to a scenic resource. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Forest Product Production Facility | This is another use that is not likely on the subject property because there are no trees on the site and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add jobs in the rural area and reduce petroleum energy use. | This use is likely to demand a lot of energy. However, with current DEQ requirements for emissions, it does not appear that that consequence relates to a scenic resource. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Hydroelectric Facility | There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide energy for the rural community. | Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Rural Housing, including PUDs and Cluster Development | These uses could provide housing closer to rural employment requiring residents to travel less for work and use less energy. Because they will be on larger parcels, they also offer more opportunities for alternative energy sources. | Dwellings in such development will consume some forms of energy such as electricity and propane. Energy saving construction can offset this negative energy consequence. |

Return to:
Caroline House, Senior Planner
Community Development Department
117 NW Lafayette, P.O. Box 6005
Bend, Oregon 97708-6005

*Space Reserved for Recorder's Use*

# CONDITIONS OF APPROVAL AGREEMENT AND RESTRICTIVE COVENANT

This conditions of approval agreement is made this _____ day of _____, 2026 by Willitts LLC, an Oregon limited liability company (hereinafter "Willitts") and Deschutes County, a political subdivision of the State of Oregon (hereinafter "County").

## RECITALS

WHEREAS, Willitts sought approval of a plan amendment from Agricultural (AG) to Rural Residential Exception Area (RREA) and zone change from Exclusive Farm Use – Sisters Cloverdale Subzone (EFU-SC) to Multiple Use Agricultural (MUA-10) in File Nos. 247-25-000537-PA and 247-25-000538-ZC for the property described on **Exhibit A** (the "Property"), a copy of which is attached and incorporated by reference herein; and

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

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

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

NOW THEREFORE, the parties agree as follows:

The approval of the land use applications and ordinance adopted pursuant to it do not authorize a future application for the creation of any parcels in the MUA-10 zone that are less than 10 acres under DCC 18.116.400, DCC 18.128.200, DCC 18.128.210, or any other DCC provision unless and until (1) the County formally adopts amendments to the MUA-10 DCCP rural lands policies that authorize such developments and parcel sizes with provision to ensure that consistency with Goal 14 is evaluated, and (2) those amendments are acknowledged by the DLCD. Unless and until such acknowledgement, the applicant and all future applicants for the subject property are restricted to the creation of parcels not less than 10 acres regardless of the proximity of the property to the UGB and any DCC code provision to the contrary.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Dated this _____ of _____, 2026

WILLITTS LLC

_____
By: William G. Willitts
Its: _____

STATE OF OREGON )
) *ss*.
COUNTY OF DESCHUTES )

This instrument was acknowledged before me on _____, 2026 by William G. Willitts as _____ of Willitts LLC, an Oregon limited liability company.

_____
Notary Public for Oregon
Print Name _____
My commission expires _____

# EXHIBIT A
# PROPERTY DESCRIPTION
(TAX LOT 800, MAP 15-10-10)

A parcel of land situated in the West Half (W1/2) of Section 10, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a brass capped iron pipe at the West Quarter corner of said Section 10; thence North 00° 07' 05" West on the West line of said Section 10, 416.44 feet to a point on the South right of way line of the Sisters-Bend Highway; thence South 59° 52' 40" East on said right of way line, 36.67 feet to a 5/8 inch iron rod; thence on said right of way on the arc of a 5650.00 foot radius curve to the left, (chord bears South 63° 26' 25" East, 702.19 feet), 702.64 feet to a 5/8 inch iron rod; thence South 67° 00' 11" East on said right of way line, 348.45 feet to a 5/8 inch iron rod; thence South 16° 17' 02" West leaving said right of way line, 289.57 feet to a 5/8 inch iron rod; thence South 18° 27' 59" West, 181.60 feet to a 5/8 inch iron rod; thence South 38° 24' 55" West, 66.93 feet to a 5/8 inch iron rod; thence South 28° 18' 58" West, 160.76 feet to a 5/8 inch iron rod; thence South 69° 22' 54" West, 763.94 feet to a 5/8 inch iron rod on the West line of said Section 10; thence North 00° 29' 01" West on said West line, 965.28 feet to the point of beginning.

REVIEWED_____

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

| | | |
|---|---|---|
| An Ordinance Amending Deschutes County Code Title 23, the Deschutes County Comprehensive Plan, to Change the Comprehensive Plan Map Designation for Certain Property From Agriculture to Rural Residential Exception Area, and Amending Deschutes County Code Title 18, the Deschutes County Zoning Map, to Change the Zone Designation for Certain Property From Exclusive Farm Use to Multiple Use Agricultural. | * * * * * * * | ORDINANCE NO. 2026-021 |

WHEREAS, Willitts, LLC ("Applicant"), applied for changes to both the Deschutes County Comprehensive Plan Map (247-25-000537-PA) and the Deschutes County Zoning Map (247-25-000538-ZC), to change the Comprehensive Plan designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"), and a corresponding Zone Change from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10"); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on May 21, 2026, before the Deschutes County Hearings Officer;

WHEREAS, pursuant to DCC 22.28.030(C), on September 2, 2026, and November 23, 2026, the Board heard *de novo* the applications; now, therefore,

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

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

Section 2. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from EFU to MUA-10 for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "C", with both exhibits attached and incorporated by reference herein.

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

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

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board of County Commissioners as set forth in Exhibit "F" and incorporated by reference herein. The Board also incorporates in its findings in support of this decision, the Recommendation of the Hearings Officer, attached as Exhibit "G".

Section 6. AMENDMENT. The Board hereby amends the County's Goal 5 Scenic Roadway program as it relates to the subject property by adopting the site-specific Economic, Social, Environmental, and Energy ("ESEE") Analysis prepared by the Applicant attached as Exhibit "H" and incorporated herein by reference. This site-specific ESEE supersedes and replaces the 1992 ESEE analysis as applied to the subject property and constitutes the applicable Goal 5 ESEE findings for purposes of evaluating conflicting uses and determining the appropriate level of resource protection under OAR 660-023-0040.

Section 7. AGREEMENT. The Board adopts the Conditions of Approval Agreement as set forth in Exhibit "I," which Agreement shall be executed on the date this Ordinance is adopted.

Section 8. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption, or if appealed, the date the ordinance is no longer subject to appeal and is deemed acknowledged.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

Date of 2nd Reading: _____ day of _____, 2026.

Record of Adoption Vote:

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

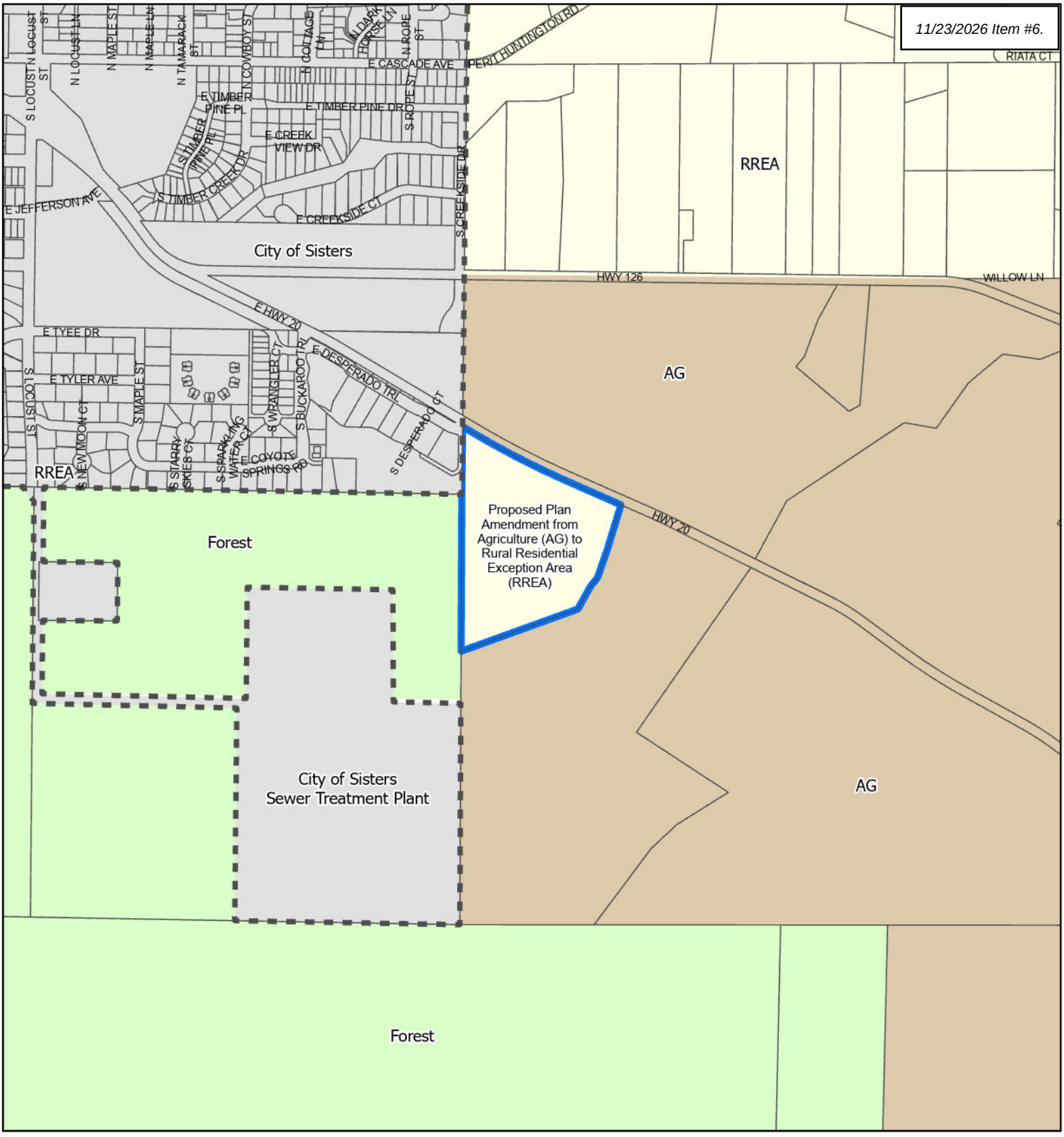
Effective date: _____ day of _____, 2027.

## Exhibit "A" To Ordinance 2026-021

## Legal Description of Subject Property

A parcel of land situated in the West Half (W1/2) of Section 10, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a brass capped iron pipe at the West Quarter corner of said Section 10; thence North 00° 07' 05" West on the West line of said Section 10, 416.44 feet to a point on the South right of way line of the Sisters-Bend Highway; thence South 59° 52' 40" East on said right of way line, 36.67 feet to a 5/8 inch iron rod; thence on said right of way on the arc of a 5650.00 foot radius curve to the left, (chord bears South 63° 26' 25" East, 702.19 feet), 702.64 feet to a 5/8 inch iron rod; thence South 67° 00' 11" East on said right of way line, 348.45 feet to a 5/8 inch iron rod; thence South 16° 17' 02" West leaving said right of way line, 289.57 feet to a 5/8 inch iron rod; thence South 18° 27' 59" West, 181.60 feet to a 5/8 inch iron rod; thence South 38° 24' 55" West, 66.93 feet to a 5/8 inch iron rod; thence South 28° 18' 58" West, 160.76 feet to a 5/8 inch iron rod; thence South 69° 22' 54" West, 763.94 feet to a 5/8 inch iron rod on the West line of said Section 10; thence North 00° 29' 01" West on said West line, 965.28 feet to the point of beginning.




# PROPOSED COMPREHENSIVE PLAN MAP

Exhibit "B"
to Ordinance 2026-021

City of Sisters UGB
Proposed Plan Amendment Boundary

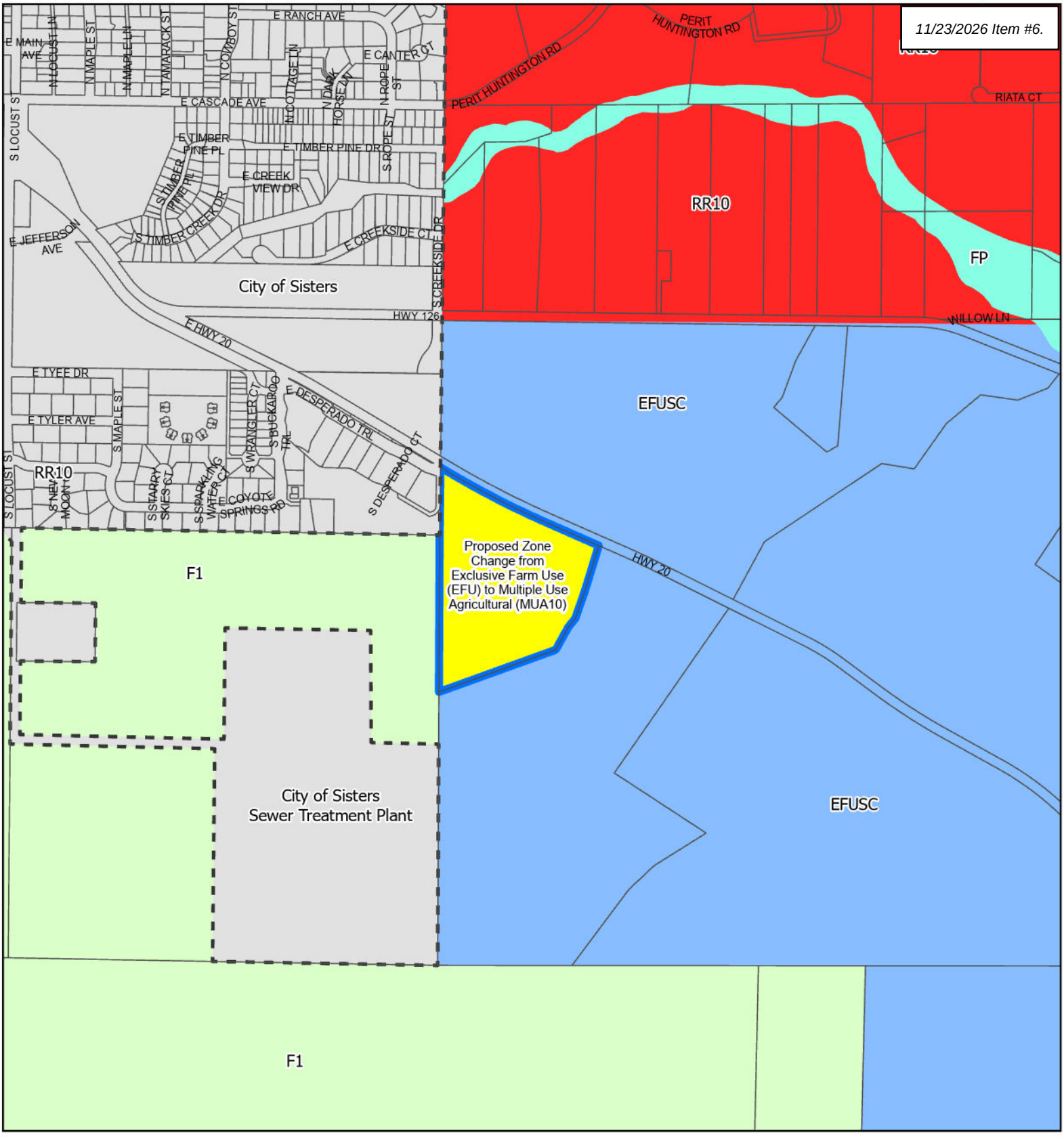
Comprehensive Plan Designation
AG - Agriculture
F - Forest
RREA - Rural Residential Exception Area

0 400 800 1,600 Feet

October 29, 2026

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

File: N:\Custom\County\CDD\Planning\Caroline\247-25-000537-PA




# PROPOSED ZONING MAP

Exhibit "C"
to Ordinance 2026-021

City of Sisters UGB
Proposed Zone Change Boundary

Zoning
- EFUSC - Exclusive Farm Use
- F1 - Forest Use 1
- FP - Flood Plain
- MUA10 - Multiple Use Agricultural
- RR10 - Rural Residential

0 400 800 1,600 Feet

October 29, 2026

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

File: N:\Custom\County\CDD\Planning\Caroline\247-25-000538-ZC

## TITLE 23 COMPREHENSIVE PLAN

## CHAPTER 23.01 COMPREHENSIVE PLAN

A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.

B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.

C. [Repealed by Ordinance 2013-001, §1]

D. [Repealed by Ordinance 2023-017]

E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.

F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.

G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.

H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.

I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.

J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.

K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.

L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.

M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.

N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.

O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.

P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.

R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.

S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.

T. [Repealed by Ordinance 2016-027 §1]

U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.

X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.

Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.

Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.

AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.

AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.

AC. [repealed by Ord. 2019-010 §1, 2019]

AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.

AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.

AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.

AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.

AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.

AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.

AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.

AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.

AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.

AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.

AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.

AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.

AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.

AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.

AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.

AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.

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

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

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

AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.

BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein. (superseded by Ord. 2023-015)

BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein. (supplemented and controlled by Ord. 2024-010)

BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.

BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.

BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.

BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.

BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.

BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.

BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.

BK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-003, are incorporated by reference herein.

BL. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein (superseded by Ord. 2025-007).

BM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.

BN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-017, are incorporated by reference herein.

BO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-016, are incorporated by reference herein.

BP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-011, are incorporated by reference herein.

BQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-012, are incorporated by reference herein.

BR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-001, are incorporated by reference herein.

BS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-003, are incorporated by reference herein.

BT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-010, are incorporated by reference herein.

BU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-007, are incorporated by reference herein (superseded by Ord. 2026-015).

BV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-014, are incorporated by reference herein.

BW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-004, are incorporated by reference herein.

BX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-005, are incorporated by reference herein.

BY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-009, are incorporated by reference herein.

BZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-013, are incorporated by reference herein.

CA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-015, are incorporated by reference herein.

CB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-014, are incorporated by reference herein.

CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-024, are incorporated by reference herein.

CD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-026, are incorporated by reference herein.

CE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-020, are incorporated by reference herein.

CF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-023, are incorporated by reference herein.

CG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-021, are incorporated by reference herein.

Click here to be directed to the Comprehensive Plan (https://weblink.deschutes.org/CDD/Browse.aspx?id=1317439&dbid=0&repo=LFCDD)

# Section 5.12 Legislative History

**Background**

This section contains the legislative history of this Comprehensive Plan.

**Table 5.12.1 Comprehensive Plan Ordinance History**

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

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

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| 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 11 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 |

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| 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. |

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|---|---|---|---|
| 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 11 (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 Vandevert 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 |

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| 2022-001 | 04-13-22/07-12-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2022-003 | 04-20-22/07-19-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2022-006 | 06-22-22/08-19-22 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area |
| 2022-011 | 07-27-22/10-25-22 (superseded by Ord. 2023-015) | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI) |
| 2022-013 | 12-14-22/03-14-23 (supplemented and controlled by Ord. 2024-010) | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-001 | 03-01-23/05-30-23 | 23.01.010, 5.9 | Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource |
| 2023-007 | 04-26-23/6-25-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |

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| 2023-010 | 06-21-23/9-17-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-018 | 08-30-23/11-28-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-015 | 9-13-23/12-12-23 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |
| 2023-025 | 11-29-23/2-27-24 | 23.01.010 | Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area |
| 2024-001 | 1-31-24/4-30-24 | 23.01.010 | Comprehensive Plan Map Amendment for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2023-016 | 5-8-24/8-6-24 | 23.01(BM) (added), 4.7 (amended), Appendix B (replaced) | Updated Tumalo Community Plan |
| 2023-017 | 3-20-24/6-20-24 | 23.01(D) (repealed), 23.01(BJ) (added), 3.7 (amended), Appendix C (replaced) | Updated Transportation System Plan |

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| 2024-003 | 2-21-24/5-21-24 | 23.01.010, 5.8 | Comprehensive Plan Map Amendment, changing designation of certain property from Surface Mining (SM) to Rural Residential Exception Area (RREA); Modifying Goal 5 Mineral and Aggregate Inventory |
| 2024-007 | 10-02-24/12-31-24 (superseded by Ord. 2025-007) | 23.01(A)(repealed) 23.01(BK) (added) | Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan |
| 2024-010 | 10-16-24/01-14-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2024-011 | 11-18-24/02-17-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Redmond Urban Growth Area (RUGA) |
| 2024-012 | 1-8-25/4-8-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2025-001 | 2-5-25/2-5-25 | 23.01.010 | Comprehensive Plan and Zoning Map Amendment updating the Greater Sage-Grouse Area Combining Zone boundary. |
| 2025-003 | 4-2-25/7-1-25 | 23.01.010 | Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |

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| 2025-010 | 6-25-25/9-23-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2025-007 | 8-27-25/11-25-25 (superseded by Ord. 2026-015) | 23.01(BU) | Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update process. |
| 2025-014 | 10-6-25/10-6-25 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Forest (F) to Rural Residential Exception Area (RREA) |
| 2026-004 | 1-28-26/4-28-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-005 | 3-11-26/6-9-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) and Surface Mine (SM) to Rural Residential Exception Area (RREA) |
| 2026-009 | 4-15-26/7-14-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-013 | 7-29-26/10-27-26 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Surface Mine (SM) to Rural Industrial (RI) |

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| 2026-015 | 9-2-26/12-1-26 | 23.01.010 | Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update Process, Reconsideration, and LUBA Remand. |
| 2026-014 | 9-23-26/12-22-26 | 23.01.010 | Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI) |
| 2026-024 | 11-9-26/11-9-26 | 1.3, 4.2, 23.01.010 | Amendments to Comprehensive Plan to Update the List of Applicable Zones Allowed Under a Sisters Urban Growth Area Plan Designation |
| 2026-026 | 11-9-26/11-9-26 | 23.01.010 | Comprehensive Plan Designation for Certain Properties from Rural Residential Exception Area (RREA) to Sisters Urban Growth Area (SUGA) |
| 2026-020 | 11-23-2026/2-21-2027 | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-023 | TBD / TBD | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |
| 2026-021 | TBD / TBD | 23.01.010 | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA) |

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

**FILE NUMBERS:** 247-25-000537-PA / 247-25-000538-ZC

**APPLICANT/OWNER:** Willitts, LLC (the "Applicant")

**APPLICATION:** The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10").

**SUBJECT PROPERTY:** Situs Address: 68621 HWY 20, Sisters, OR 97759
Map/Tax Lot: 151010000080 (the "Property")

**STAFF PLANNER:** Caroline House, Senior Planner
Caroline.House@deschutes.org, 541-388-6667

## I. PROCEDURAL HISTORY:

The County's land use Hearings Officer conducted the initial evidentiary hearing regarding the subject applications on May 21, 2026. In a Recommendation and Findings mailed on July 21, 2026, the Hearings Officer recommended that the Board of County Commissioners ("Board") deny the application based on a recent Land Use Board of Appeals ("LUBA") decision that held that, without conditions or other measures to restrict parcel sizes, a decision to approve rezoning to MUA-10 presented a possibility of a future approval of parcels smaller than 10-acres in violation of Deschutes County Comprehensive Plan ("DCCP") Policy 3.3.1 and also that could be inconsistent with Goal 14. The Board conducted a *de novo* land use hearing on September 2, 2026. The Board closed the public hearing on September 2, 2026, and ordered an open record period that ended September 23, 2026. On October 14, 2026, the Board began deliberations.

During deliberations, Commissioners discussed two potential conditions of approval, one originally presented by the Applicant and one articulated by a Commissioner to which the Applicant stated it would agree. The Board decided to return for further deliberation after reviewing the recording of the public hearing and allowing staff to draft a potential condition of approval consistent with the discussion that occurred at that hearing. The Board returned for deliberations on November 9, 2026, and decided that the potential condition required a new notice to DLCD, and the County was required to conduct a final evidentiary hearing. On November 11, 2026, the County sent a notice of a public hearing. On November 23, 2026,

the Board voted to approve the subject applications as conditioned below. The findings in this Decision are intended to supplement those findings by the Hearings Officer and the findings in this Decision control over any inconsistent findings in the Hearings Officer Recommendation.

## II. FINDINGS AND CONCLUSIONS OF LAW:

The Board expressly adopts and incorporates into this decision the findings and conclusions of the Hearings Officer, subject only to modifications contained in this decision. Specifically, the Hearings Officer found based upon the Applicant's Order 1 Soil Study, that the Property was predominantly non-agricultural land. OAR 660-033-0020(1)(a) The Board finds that no participant produced evidence that contradicted the Applicant's Order 1 study or the Hearings Officer's finding. The Board agrees that the Property does not meet the definition of agricultural land under OAR 6660-033-0020(1)(a)(A).

The Board agrees with the Hearings Officer's application of the suitability factors in OAR 660-033-0020(1)(a)(B) and adopts his finding that the Property is not suitable for farm use. The Board agrees with the Hearings Officer that the Property is not necessary to allow farm practices on adjacent or nearby agricultural land. Finally, the Board agrees with the Hearings Officer that rezoning the Property to MUA-10 is consistent with the purpose of the MUA-10 zone.

As noted, the Hearings Officer, was not able to recommend approval of the application because a recent LUBA decision concluded the existence of DCC provisions that conflict with DCCP 3.3.1, could, without restrictions or conditions, lead to future applications for the creation of cluster and planned developments with parcels 2-acres or smaller. The Board will address this aspect of the Hearings Officer's decision in detail below but concludes that, as conditioned, the issues on which LUBA remanded the applications will be addressed and the applications can be approved.

Based on the Board's deliberations conducted on October 14, 2026, and November 23, 2026, the Board adopts the following additional findings:

### 1. Whether the Property is agricultural land considering the factors in OAR 660-033-0020(1)(a)(B).

OAR 660-033-0020(1)(a)(B) requires a decisionmaker to consider several factors to determine whether land, even if predominantly Class 7 and 8 soil, qualifies as agricultural land. The factors include soil fertility, suitability for grazing, climate, availability of water, land use patterns and accepted farming practices. After the Hearings Officer issued his recommendations wherein, he found that the Property was not agricultural land suitable for farming, Central Oregon LandWatch ("COLW") and the Applicant submitted additional evidence and argument. The Hearings Officer relied on the Order 1 soil study that

demonstrated that almost 70% of the Property consists of Class 7 and 8 soil that is not agricultural soil with or without irrigation. The Hearings Officer relied upon the fact that the Property has no irrigations rights at present. The Hearings Officer accepted the testimony of the Applicant's experts, both of whom are farming experts. One expert, a renowned regenerative farming consultant who in 2019 attempted to grow crops using advanced farming practices and was unsuccessful. The other expert is a local farmer who physically evaluated the Property and concluded that it was not suitable for farm use considering the required factors. That expert found that the Property consists of rocky soil under the surface with the structure that simulates a French drain, which removes water from land rapidly. That conclusion affects water holding capacity which is significant for farming.

The Applicant's local expert evaluated the steps it would take to attempt to convert the property into suitable agricultural land and the cost associated with those measures. The Applicant's expert concluded that the cost made it infeasible to conduct any farm use primarily for the purpose of making a profit. The Applicant's expert was not able to locate any past or present irrigation rights. The Property has a ground water right for a well, but the Applicant's expert questioned the ability to use the water for irrigation for farming, confirmed that to install a commercial size pump would be prohibitive, and the amount of water required to irrigate the Property could negatively impact ground water in the area.

The Board rejects COLW's references to the Property being irrigated. As noted, the evidence in the record is that there are no irrigation rights associated with the Property past or present. COLW did not rebut that evidence with any evidence of its own. COLW instead relied solely on historic photographs that it claims depict farming activity on the Property. That evidence does not establish that the subject Property was irrigated or had irrigation rights.

In the proceedings before the Board, COLW submitted material that came from websites and other sources as examples of other properties upon which farm use was conducted asserting that the examples demonstrated that the same farm uses could be conducted on the Property. The Board finds that COLW's examples do not overcome the direct evidence and testimony presented by the Applicant.

COLW failed to offer any qualitative comparison of the properties it identified with the Property. COLW asserted that because the properties it identified are in the same general ecoregion, have the same climate and are in the same plant hardiness zone, they demonstrate that the Property is equally able to support the same farming activities.

The Board rejects that conclusory argument. The ecoregion and plant hairiness zones identified are large and include most of Central Oregon. Indeed, some of the properties COLW identified are miles away from the Property in other counties such as Crook. The Board finds that soil fertility and quality vary dramatically on properties within Deschutes County and Central Oregon in general. It is not accurate to conclude that every EFU zoned

property in Central Oregon has the same suitability for farm use as other properties in the area simply because it is in the same broad ecoregion or plant hardiness zone.

COLW did not provide any details on the soil fertility or overall quality in any of its examples. It did not provide any detailed information on the current or future availability of water for irrigation on those properties. COLW did not examine whether those properties already had structures, fencing and other infrastructure required for farm uses. In contrast, the Applicant provides detailed information on several of COLW's examples that illustrate that the properties are comprised of better agricultural soil than that confirmed for the Property in the Order 1 soil study.

The Board finds that there is substantial evidence in the record, much of which was unrefuted, demonstrating that the Property is not suitable for farming applying the factors in OAR 660-033-0020(1)(a)(B).

**2. Whether the Property is agricultural land because it is necessary to permit farm practices on adjacent and nearby agricultural land under OAR 660-033-0020(1)(a)(C).**

The Board agrees with the Hearings Officer's finding that the Property is not agricultural land because it is necessary to permit farm practices on adjacent or nearby agricultural land. The Board notes that in prior LUBA cases, LUBA adopted the dictionary definition of necessary which includes the term "indispensable". The Board finds that the Property is not necessary or indispensable in the sense that no reasonable farmer would try to incorporate it into any ongoing farm operation given the exorbitant cost to transform the land into land that could be farmed agricultural land. Most of the nearby agricultural land in current farm use is north and east of the Property. According to NRCS mapping those areas are comprised of more agricultural land. It is unreasonable to expect that those owners would take on the exorbitant cost associated with trying to convert the Property into agricultural land. Finally, those properties are on the other side of a busy highway creating significant barriers to any efficient conjoined use.

The properties east of the Property and south of Highway 20 that are zoned EFU are primarily not in farm use. The property immediately east was approved for a DCCP amendment and zone change to MUA-10. Beyond this property there are parcels used as part of the Sisters' wastewater treatment facilities. One of the city-owned parcels is used seasonally for grazing horses associated with Black Butte Ranch. However, the record informs that the city will be incorporating that parcel into its treatment facilities. The record has substantial evidence that the city's approval for its facilities, including the use of effluent for irrigation comes with significant restrictions that are contrary to farm use. Thus, like the other city parcels, it will not be available for farm use in the future.

Nor does the Board find that rezoning the subject Property to MUA-10 will result in impacts to adjacent or nearby agricultural land that would render it impractical to engage in farm practices on those lands. COLW did not present any specific evidence of impacts form rezoning the Property that would render it impossible to engage in farm practices on nearby agricultural lands.

The Applicant's professional traffic study did not note any anticipated impacts on nearby or adjacent land. COLW officered speculation, but no substantial evidence of any impacts that would render retaining the EFU zoning on the Property indispensable to other agricultural land. In fact, the record demonstrates that in 2022, the county approved a commercial activity in conjunction with farm use on agricultural land northeast of the Property. In that decision, the County evaluated potential impacts from the commercial activities on adjacent and nearby properties finding potential impact to be acceptable. The Board finds that impacts from potential uses allowed on the Property in the MUA-10 zone will be similar in nature and extent to those generated by the commercial activity in conjunction with farm use.

The Board finds that there is substantial evidence in the record to support the Hearing Officer's conclusion that the Property is not necessary to permit farm practice on adjacent or nearby agricultural properties.

**3. Does the proposed plan amendment and zone change comply with Goal 5.**

As the Hearings Officer concluded, the Applicant submitted a site-specific ESEE identifying potentially conflicting uses in the MUA-10 zone if it applied to the Property and the conflicting uses could be allowed subject to the Landscape Management ("LM")Combining Zone which ensures compatibility of new uses with Goal 5. The Hearings Officer noted that no participant produced rebuttal evidence.

Before the Board, COLW submitted photographs purportedly representing the Property from Highway 20. COLW asserted that the LM zone was not adequate to protect the scenic resource and that the Applicant had to make some further showing under Goal 5. The Applicant submitted additional photographs that were more focused on the Property. The Applicant also demonstrated that on other MUA-10 properties within the same scenic corridor, the LM overlay has been applied to permit potentially conflicting uses in a manner that is compatible with the Goal 5 scenic resource. In fact, one of those decisions approved a dwelling on the Property.

The Board finds the Applicant's evidence and argument superior to that of COLW. The Board finds that the Applicant's site-specific ESEE is consistent with the requirements. The Board finds that the LM zone is the appropriate measure to protect the Goal 5 resource. The Board expressly adopts the Applicant's Goal 5 ESEE for the Property.

**4. Has the Applicant demonstrated compliance with DCCP Policy 3.3.1.**

The Board acknowledges that the County's consideration of applications to rezone resource land to MUA-10 has been impacted by multiple recent LUBA decisions. In *Destiny Court*, LUBA agreed with COLW that DCCP Policy 3.3.1 establishes a minimum parcel size in the MUA-10 zone at 10 acres and does not authorize cluster or planned development that are allowed uses in the MUA-10 zone pursuant to Deschutes County Code ("DCC") Chapter 18.

On June 26, 2026, LUBA issued its decision in the *BCL LLC* matter where it held that even though the application did not request approval of any parcels smaller than 10 acres, because the application and decision did not include any restriction to that effect, there remained a potential conflict because nothing prevented a future applicant from submitting an application seeking approval of parcels smaller than 10 acres.

On September 10, 2026, the Board adopted amendments to Chapter 10 of the 2040 DCCP that authorize cluster and planned developments in the MUA-10 zone subject to various reviews and standards. The Board's amendments are on appeal to LUBA. Thus, currently, DCCP Policy 3.3.1 is the controlling policy and applicable law.

The Board finds, despite LUBA's concern described above, any partition or subdivision application must be submitted under DCC Title 17. DCC 17.12.010 mandates that all applicants for a division of land demonstrate that the application is consistent with the County's Comprehensive Plan. That includes demonstrating consistency with DCCP Policy 3.3.1.

Nevertheless, to be certain that the Board addresses LUBA's concern over future land division applications, the Board agrees with the Applicant that conditions of approval are appropriate to ensure that approval of this application does not result in an inconsistency between the DCCP and the DCC.

At the Board's hearing on September 2, 2026, one Commissioner asked the Applicant whether it would agree to a condition restricting further development on the Property until it is included in the Sisters' Urban Growth Boundary ("UGB"). The Applicant replied that it would agree to such a condition because its long-range plan is to seek inclusion of the Property into the UGB for a future expansion of the adjacent Five Pines Resort, which is a significant economic asset to Sisters and the County. In response to that discussion, on November 9, 2026, County staff presented a potential condition that restricts development on the Property unless and until it is added to the Sister's UGB. The Board finds this decision as conditioned will adequately address LUBA's concern regarding consistency between the DCCP policies and the DCC provisions allowing for the creation of parcels less than 10-acres.

COLW asserted that there is no authority for the Board to impose a condition. The Board disagrees. DCC 18.136.030 expressly authorizes the Board to impose conditions in a rezoning application. Further, LUBA authority is consistent. See, *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

COLW further asserts that the proposed conditions eliminate uses allowed in the MUA-10 zone and therefore is inconsistent with the purpose of the MUA-10 zone. The Board rejects that assertion. As noted, the proposed condition does not eliminate uses that are allowed. It restricts parcel size to that which is allowed under Policy 3.3.1 and future development unless and until it is added to the Sisters' UGB. Moreover, the proposed conditions are in response to developing law and is an interim measure to respond to a LUBA decision.

While the acknowledged condition does restrict development otherwise allowed in the MUA-10 zone, the Board does not believe that the law prohibits any owner from voluntarily agreeing to restrict use of its property. The restriction in DCC 18.136.030 restricts the Board from imposing certain conditions. The Board interprets that provision to be for the protection of owners against involuntary conditions. It does not prohibit an owner from agreeing to conditions consistent with the owner's desired use of the property.

**5. Will the approval of the application result in urban uses that require a Goal 14 exception**

On the issue of whether designating land RREA and rezoning it to MUA-10 is consistent with Goal 14 or requires an exception, the Board continues to adhere to the conclusion it has reached in prior rezoning applications. The Board continues to find that its acknowledged Comprehensive Plan that was amended in 2016 to create the RREA designation and its MUA-10 and RR-10 zones confirms that uses allowed within those zones are all rural uses and not urban uses. The Comprehensive Plan states that "[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses allowed for each area." DCCP Section 1.3. Rural Residential Exception Areas, according to the DCCP, "provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities …" DCCP Section 1.3. DCCP Table 1.3.3 provides that Title 18's RR-10 and MUA-10 zones are the associated zoning codes for the RREA plan designation.

The determination that the RREA plan designation and RR-10 and MUA-10 zoning districts should apply to exception lands was made when the County amended the DCCP in 2016. (Ordinance 2016-005). The ordinance was acknowledged by DLCD as complying with the Statewide Goals. Thus, the lot sizes and uses allowed by the RREA plan designation and the RR-10 and MUA-10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the DCCP provisions.

Further, the purpose statement for the MUA-10 zone expressly states that it is to preserve the rural character of various areas of the County while permitting development consistent with that character and the capacity of the natural resources of the area. When Chapter 18.32 is read in context with that purpose statement, the only plausible interpretation is that all uses allowed in the MUA-10 zone are rural uses. The Board expressly interprets DCC Chapter 18.32 to mean that. Thus, the application does not provide any basis for the County to revisit whether the RREA designation, or the RR-10/MUA-10 zones violate Goal 14 by allowing urban development and requires no individual analysis of specific uses or of whether the MUA-10 uses violate Goal 14 is required.

As an alternative basis to find that the proposal is consistent with Goal 14 and does not require an exception to that Goal, the Board finds that conditions of approval ensure compliance with Goal 14 as interpreted by the Oregon Supreme Court in the *Curry County* case. The only future use/development that COLW argues is the creation of parcels smaller than 10-acrtes, specifically, cluster and planned developments. Those are the only uses that LUBA questioned as being potentially inconsistent with Goal 14 because they could have the effect of introducing urban density in close proximity to the UGB.

The Board's conditions of approval will establish as a matter of fact and law that the current application will not result in any parcel less than 10 acres. In *Curry County*, the court announced that parcels 10 acres or larger are presumed to result in rural densities. Thus, the conditions will ensure consistency with Goal 14.

The Board finds that the City of Sisters' zoning immediately adjacent to the Property allows a minimum density of 3 units per acre and a maximum density of 8 units per acre. As conditioned, the smallest parcel on the subject Property will be 10-acres. Regardless of the close proximity to the UGB, the dramatic difference in lot/parcel size will differentiate the urban and rural properties reinforcing the effectiveness of the UGB. Finally, the Board's condition limiting development will ensure there is no additional development on the Property while it is zoned MUA-10 that could potentially be inconsistent with Goal 14. Any additional development will be as part of a future expansion of the Five Pines Resort if the Property is annexed into the City of Sisters and Goal 14 would not apply at that time.

## III. DECISION:

Based upon the foregoing Findings and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant's request for a Deschutes Comprehensive Plan Amendment and Zone Change for the Subject Property, subject to the following conditions of approval below.

## IV. CONDITIONS OF APPROVAL:

**1.** Limitation on Development. Until and unless the subject property is included within the City of Sisters urban growth boundary and annexed into the City of Sisters through separate applicable processes, no new development or rural residential use otherwise authorized by the RREA designation or MUA-10 zoning may be approved or established on the subject property. This condition does not prohibit the continued lawful use, maintenance, or repair of existing development. Nothing in this condition authorizes, requires, assumes, or commits the City of Sisters, Deschutes County, or any other governmental entity to approve inclusion within the City of Sisters urban growth boundary, annexation, urban services, City plan or zoning designations, or future development of the subject property.

**2.** Any future subdivision of the Subject Property shall be limited to a minimum lot size of 10 acres. This condition shall be in effect so long as the property remains outside of an urban growth boundary.

**3.** The attached Conditions of Approval Agreement, with restrictive covenants enforceable by Deschutes County, must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.

**Exhibit "G" to Ordinance No. 2026-021**

**RECOMMENDATION AND FINDINGS OF THE DESCHUTES COUNTY HEARINGS OFFICER**

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| **FILE NUMBERS:** | 247-25-000537-PA / 247-25-000538-ZC |
| **HEARING DATE:** | May 21, 2026, 1:00 p.m. |
| **HEARING LOCATION:** | Videoconference and<br>Barnes & Sawyer Rooms<br>Deschutes Services Center<br>1300 NW Wall Street<br>Bend, OR 97708 |
| **APPLICANT/OWNER:** | Willitts LLC |
| **SUBJECT PROPERTY:** | Map and Tax Lot:<br>1510100000800<br><br>Situs Addresses:<br>68621 HWY 20, Sisters, OR 97759 |
| **REQUEST:** | The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to Multiple Use Agricultural ("MUA-10"). |
| **HEARINGS OFFICER:** | Tommy A. Brooks |

**SUMMARY OF RECOMMENDATION**: The Hearings Officer finds that the current record is not sufficient to support the requested Comprehensive Plan Amendment and Zone Change. Specifically, the Hearings Officer finds that the current record is not sufficent to show compliance with Statewide Planning Goal 14 or Comprehensive Plan Policy 3.1.1. The Hearings Officer therefore recommends the County's Board of Commissioners deny the Application unless the Applicant satisfactorily addresses those issues.

## I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code ("DCC")
Title 18, Deschutes County Zoning Ordinance:
Chapter 18.04, Title, Purpose, and Definitions
Chapter 18.16, Exclusive Farm Use Zones ("EFU")
Chapter 18.32, Multiple Use Agriculture
Chapter 18.80, Airport Safety Combining Zone ("AS")

Chapter 18.84, Landscape Management Combining Zone ("LM")
Chapter 18.136, Amendments
Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan
Title 23, Deschutes County Comprehensive Plan ("DCCP")
Chapter 1, Comprehensive Planning
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Appendix C – Transportation Plan
Chapter 5, Supplemental Sections

Oregon Administrative Rules ("OAR") - Chapter 660
Chapter 660, Land Conservation and Development Department
Division 6, Goal 4 Forest Lands
Division 12, Transportation Planning
Division 15, Statewide Planning Goals
Division 23, Procedures and Requirements for Complying with Goal 5
Division 33, Agricultural Lands

Oregon Revised Statutes ("ORS")
Chapter 215, County Land Use Planning: Resource Lands

## II. BACKGROUND AND PROCEDURAL FINDINGS

### A. Nature of Proceeding

This matter comes before the Hearings Officer as a request for approval of a quasi-judicial Comprehensive Plan Map Amendment ("Plan Amendment") to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"). The Applicant also requests approval of a corresponding Zoning Map Amendment ("Zone Change") to change the zoning of the Subject Property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to the Multiple Use Agriculture ("MUA-10") zone.

The Application requests a Plan Amendment, which is ultimately a decision for the County's Board of Commissioners ("County Board"). Several applicable criteria require a weighing of policy choices, and the record before the County Board may be different than the current record. This Recommendation therefore determines if the Applicant has met its burden of proof in a manner that would support the County Board's approval of the Application based on the current record.

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## B. Notices, Hearing, Record Materials

The Applicant initially filed the Application on August 27, 2025, and provided supplemental materials throughout this proceeding.

On October 24, 2025, staff in the County's Community Development Department ("Staff") mailed a Notice of Application identifying the standards and criteria governing the review of the Application and seeking public comment on the Application. On April 2, 2026, Staff mailed a Notice of Public Hearing ("Hearing Notice") to agencies, interested persons, and all property owners within 750 feet of the Subject Property, announcing a public hearing to be held on May 21, 2026. The Hearing Notice was also published in the Bend Bulletin on Sunday, April 5, 2026. Notice of the Hearing was submitted to the Department of Land Conservation and Development on April 2, 2026.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on May 21, 2026, opening the Hearing at approximately 1:05 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at approximately 2:05 p.m. Prior to the conclusion of the Hearing, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until May 28, 2026, ("Open Record Period"); (2) any participant could submit rebuttal materials (evidence or argument) until June 4, 2026 ("Rebuttal Period"); and (3) the Applicant could submit a final legal argument, but no additional evidence, until June 11, 2026. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. No participant objected to the post-hearing procedures.

Various participants submitted post-Hearing materials within the time limits described above, and no objections were made to any of those submittals. However, two participants submitted comments after the close of both the Open Record Period and the Rebuttal Period. Participant Janice Farney submitted comments on June 6, 2026, and participant Scott Mather submitted comments on June 19, 2026. Participant Farney's and participant Mather's comments do not explain the purpose of the comments or otherwise provide an explanation for why the late-filed comments should be included in the record. I find that these submittals should therefore be rejected as untimely. The record therefore includes all materials submitted to the County as reflected on the County's website for this matter, with the exception of the two submittals from participants Farney and Mather just described.

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### C. Review Period

Because the Application includes the request for a Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable.[1] The 150-day review period is also not applicable by virtue of Deschutes County Code ("DCC" or "Code") 22.20.040(D). No participant to the proceeding disputes those conclusions.

## III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

### A. Staff Report

On May 14, 2026, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time ("Staff Report").

The Staff Report, although it expresses agreement with the Applicant in most places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicant has met the burden of proof necessary to justify the Plan Amendment and Zone Change.

### B. Plan Amendment

DCC 18.136.010 contemplates that an applicant may seek a quasi-judicial amendment to the County's Comprehensive Plan Map ("Plan Map"). Other than a reference to the procedural provisions of DCC Title 22, the Code does not appear to contain any substantive standards or criteria specific to an amendment to the Plan Map. Pursuant to ORS 197.175(2), however, if the County amends its Plan or Plan Map, it must do so in compliance with Statewide Planning Goals (each a "Goal" and, together, the "Goals"). Because the existing Plan and Plan Map have been acknowledged, the requested Plan Amendment must adhere to the procedures for a post-acknowledged plan amendment ("PAPA") set forth in state statutes and rules.

Division 15 of OAR Chapter 660 sets forth the Statewide Planning Goals and Guidelines with which a PAPA must demonstrate compliance. The Applicant asserts the Application is consistent with all applicable Goals and Guidelines. Except for Goal 3, Goal 5, and Goal 14, which are addressed in more detail in findings below, I adopt the Applicants' position on the remaining Goals as recited on pages 29 to 34 of the Application, which is supported by findings in the Staff Report, and I find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as described in the Application and the Staff Report.

The remainder of the findings in this section address specific Goals that are in dispute.

#### 1. Goal 3 – Agricultural Lands

Goal 3 and its implementing rules protect agricultural lands. OAR 660-033-0020(1) provides the following definition:

[1] ORS 215.427(7).

*(a) "Agricultural Land" as defined in Goal 3 includes:*

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

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

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

*(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;*

A primary dispute in this proceeding is whether the Subject Property qualifies as "agricultural land" under this definition. If the Subject Property is agricultural land, the Application cannot be approved unless the County justifies an exception to Goal 3. If the Subject Property is not agricultural land, it is not protected by Goal 3 and, therefore, the County can conclude that the Plan Amendment is consistent with Goal 3.

The Applicant primarily relies on an Order 1 Soil Survey, prepared by a qualified soil scientist, to demonstrate that the soils on the Subject Property are predominately Class 7 and 8 soils and, therefore, that the Subject Property is not agricultural land. But the Applicant also provides evidence to support its assertion that the Subject Property is not suitable for farm use, that it is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is not adjacent to or intermingled with lands with higher values within a farm unit.

Participant Central Oregon LandWatch ("COLW") disagrees and argues the Subject Property is agricultural land. COLW does not counter the specific information provided in the Order 1 Soil Survey or otherwise assert that the County cannot rely on that survey to determine the on-site soil conditions. Rather, COLW asserts that the Subject Property remains agricultural land because it is suitable for farm use, that it is necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is adjacent to or intermingled with lands with higher values within a farm unit.

In light of the detailed information provided by the Applicant's expert soil scientist, which information is uncontroverted, I find that the Applicant has met its burden of demonstrating the Subject Property is not agricultural land under OAR 660-033-0020(1)(a)(A). The findings below address the remainder of OAR 660-033-0020(1).

The question under OAR 660-033-0020(1)(a)(B), which LUBA refers to as the "suitability test,"[2] is whether a reasonable farmer would be motivated to put the land to agricultural use for the primary purpose of obtaining a profit in money.[3] Accordingly, the question is whether the property is capable of farm use with a reasonable expectation of yielding a profit in money, either on a standalone basis or in conjunction with other farms.

The Applicant asserts that the Subject Property is not suitable for farm use. In support of that assertion, the Applicant initially points to the information provided in the Order 1 Soil Survey, which includes evidence that the soils on the Subject Property have low fertility, limited forage potential for grazing, and poor water retention capabilities. The Applicant also submitted a Statement of Agricultural Feasibility prepared by an expert consultant who has direct experience attempting to conduct grazing activities on the Subject Property.

Participant COLW addresses this issue through its specific assertion that the Applicant has failed to demonstrate "that a farmer could not use the subject property to raise goats or chickens or any of the livestock types identified by the USDA…" and that "[t]he relevant analysis is whether, for example, a farmer could raise chickens on the subject property and sell the eggs at the farmer's market for the primary purpose of obtaining a profit in money." COLW also relies on historical aerial photos it asserts show that the Subject Property has produced crops in the past. COLW also asserts that, because the Subject Property was previously irrigated and remains within the boundaries of an irrigation district, it should still be considered irrigated.

As LUBA recently explained, an applicant is not required to evaluate "every possible type of activity that potentially falls within the broad definition of 'farm use,' and produce evidence regarding whether the subject property is suitable for all conceivable farm uses."[4] But, if other participants identify specific farm uses that are common, and provide some evidence or argument that the subject property is suitable for such uses," the Applicant must address those uses.[5] That being said, "a bare assertion, without more, that a property is suitable for a type of farm use that is uncommon or locally less prevalent is an insufficient basis to obligate responsive evidence from the applicant."[6]

For the most part, COLW makes bare assertions about the suitability of the Subject Property without supporting details about the commonality of those uses or the specific characteristics of the Subject Property that would make those uses feasible. Where COLW has been specific, such as asserting that livestock grazing is possible, or that irrigation could enhance the productivity of the soils, I find that the Applicant's information is more detailed and backed by expert opinions. For example, the Order 1 Soil Survey expressly addresses how additional irrigation water applied

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[2] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025, June 26, 2026) ("*BCL LLC*") (slip op at 11).
[3] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025-015, June 26, 2025) ("*Destiny Court")* (slip op at 20). In that case, LUBA acknowledged that the phrase "reasonable farmer" can be used as shorthand for the suitability test, which is an objective test.
[4] *See BCL LLC* (slip op at 13).
[5] *Id.* (slip op at 14).
[6] *Id.* (slip op at 15).

to the Subject Property, even assuming it is available, does not raise the status of the soils from unfavorable to normal. Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not suitable for farm uses as set forth in OAR 660-033-0020(1)(a)(B) and, therefore, is not agricultural land on that basis.

The question under OAR 660-033-0020(1)(a)(C) is whether the Subject Property "is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands." (Emphasis added). COLW argues that the Subject Property is indeed necessary as described in the statute, but the basis for that argument is a policy-based one. For example, COLW argues that the purpose of the farm protection statutes is to preserve large blocks of farmland. COLW does not, however, further develop this argument to explain what role the Subject Property plays in that policy, much less why a farm zone designation is necessary to keep in place to serve that role. Even so, COLW does not provide specific examples of what farm practices would no longer be undertaken on adjacent or nearby agricultural lands if the Subject Property no longer carries the EFU zoning designation.

Even though COLW has not shown that the Subject Property is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands, the burden is on the Applicant to show that the property is not necessary for that purpose. To meet that burden, the Applicant provided evidence describing the limited number of nearby farming operations, many of which are separated from the Subject Property by a state highway and which operate on a stand-alone basis.

Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands for farm uses as set forth in OAR 660-033-0020(1)(a)(C) and, therefore, is not agricultural land on that basis.

As a final step in this analysis, OAR 660-033-0020(1)(b) requires an assessment of whether the Subject Property is adjacent to or intermingled with higher class soils within a farm unit. COLW asserts that the Subject Property has this characteristic because there are higher classes of soils on the Subject Property itself, and because the Subject Property is adjacent to other agricultural lands. I find that this argument fails as a matter of law.

The express language of the statutes requires a determination that the land "is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit." (Emphasis added). First, COLW does not fully explain why the Subject Property is currently part of a "farm unit" as required by the statutory language. COLW seems to argue that the Subject Property once was part of a farm unit, but does not explain if the designation remains. To the contrary, the Applicant provided additional detail to show that the Subject Property is not currently part of a farm unit. Further, the test under this part of the statute is whether the Subject Property itself is intermingled with other properties of higher soil class, not whether the Subject Property contains lower class soils intermingled with higher class soils.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating the Subject Property is not agricultural land under the definition in OAR 660-033-0020(1)(b).

In summary, I find that the record is sufficient for the County Board to find that the Subject Property is not agricultural land and, therefore, the requested Plan Amendment is consistent with Goal 3.[7]

### 2. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

Goal 5 and its implementing rules protect natural resources, scenic and historic areas, and open spaces. Pursuant to OAR 660-023-0250(3), the County does not have to apply Goal 5 as part of a PAPA "unless the PAPA affects a Goal 5 resource." One scenario in which a PAPA may affect a Goal 5 resource is when the "PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list."[8] The Subject Property is near the scenic resources along Highway 20. The Applicant acknowledges this fact, and the fact that the Plan Amendment allows new uses that could conflict with the County's identified scenic resource.

To address Goal 5, the Applicant provided an analysis of the economic, social, environmental, and energy ("ESEE") consequences of the proposed PAPA as required by OAR 660-023-0040(1). In accordance with that administrative rule, the Applicant's ESEE analysis identifies conflicting uses, determines an impact area, analyzes the ESEE consequences, and proposes a "program" to achieve Goal 5 protections. The program the Applicant proposes is the application of the Landscape Management ("LM") combining zone to the Subject Property, which is the mechanism the County uses to protect scenic resources on other properties, including properties zoned MUA-10. The Applicant asserts the LM combining zone in DCC Chapter 18.84 is designed to achieve compatibility and that the County should apply this program and allow the uses permitted by the Plan Amendment and Zone Change to be subject to LM review.

The record contains many comments generally asserting that development on the Subject Property will conflict with the County's inventoried Goal 5 scenic resource. Participant Michele McKay provided slightly more detail, arguing that development on the Subject Property will block views of the Three Sisters, and participant COLW asserts that residential development specifically is not compatible with the landscape. As noted above, the Applicant does not dispute the existence of such conflicts and, instead, provides a full ESEE analysis to determine what conflicts might exist and how those conflicts may be mitigated. No participant disputes the details of the ESEE analysis or otherwise claims with any specificity that the LM combining zone will not protect the identified Goal 5 resource. Indeed, participant McKay acknowledges that the County's current program, which the Applicant seeks to replicate on the Subject Property, protects scenic views.

Based on the Applicant's full ESEE analysis and the lack of countervailing evidence, I find that the record is sufficient for the County Board to find that the requested Plan Amendment is consistent with Goal 5 by applying the LM combining zone to the Subject Property.

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[7] COLW's arguments regarding agricultural land include multiple assertions relating to whether the Subject Property was lawfully created. I find that this argument is not developed enough for me to respond to, and COLW does not explain what criterion or standard it is addressing with these arguments.

[8] OAR 660-023-0250(3)(b).

### 3. Goal 14 – Urbanization

Goal 14 seeks to "provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure the efficient use of land, and to provide for livable communities."[9] When a PAPA results in the urbanization of rural land, it generally requires an exception to Goal 14. The Applicant asserts that no Goal 14 exception is required because the Plan Amendment and Zone Change will not result in the urbanization of land, and because the County has previously determined that the MUA-10 zone is consistent with Goal 14. Participant COLW argues that the proposed Plan Amendment does result in the urbanization of the Subject Property and, therefore, it is not consistent with Goal 14 without a Goal 14 exception.

By way of background, it is true that the MUA-10 zone has previously been interpreted as being compatible with Goal 14. In LUBA's opinion in the *Marken* case, for example, LUBA considered whether the density and lot size permitted under the MUA-10 zoning complies with Goal 14.[10] In that case, the Board had approved a PAPA to change the Plan designation of the subject property from AG to RREA and a corresponding zone change from Exclusive Farm Use-Tumalo-Redmond Bend Subzone ("EFU-TRB") to MUA-10. Prior to addressing the petitioner's argument, LUBA acknowledged the County's findings:

> "The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by [the Land Conservation and Development Commission (LCDC)] as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. Ordinance 2016-005. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14."[11]

The Court upheld the County's interpretation that the MUA-10 zone uses are rural in nature and therefore do not conflict with Goal 14.[12] That decision relied in part on the density permitted under the MUA-10 zone – one dwelling per 10 acres – not being an urban density, a determination the petitioner in that case did not challenge.[13]

In more recent decisions, however, LUBA has been more specific about what is required to demonstrate that the application of the MUA-10 zoning designation complies with Goal 14. In the *Destiny Court* case, for example, the Petitioner requested a Plan Map amendment from AG to RREA and a zoning change from EFU-TRB to MUA-10. The hearings officer in that case took

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[9] OAR 660-015-0000(14).
[10] *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-049, Feb. 15, 2024) (slip op at 10).
[11] *Id.* (slip op at 8).
[12] *Id.* (slip op at 11).
[13] *Id.* (slip op at 10).

official notice of LCDC's acknowledgment that the MUA-10 zone complies with all statewide planning goals. The hearings officer also considered a site-specific analysis prepared by the intervenor's attorney.[14] LUBA held that the site-specific analysis was necessary to demonstrate Goal 14 compliance.[15]

In the most recent case addressing this issue – *BCL LLC* – LUBA again determined that the application of the MUA-10 zoning is not, as a matter of law, always consistent with Goal 14, and that the County "must demonstrate that the proposed redesignation and rezoning is consistent with Goal 14, applying the relevant *Curry County* factors." The reference to the *Curry County* factors is *1000 Friends of Oregon v. LCDC,* 301 Or 447 (1986). As explained by LUBA:

> "Under *Curry County*, in redesignating rural land from plan designations implementing the resource goals, counties must evaluate whether development allowed under the new designation and associated zoning would allow for the urban use of rural land. That evaluation requires consideration of a number of factors described in *Curry County* and its progeny. With respect to PAPAs involving residential use of rural land, the relevant factors include the density of development allowed under the new plan designation and zone, the types and levels of services to be provided, and proximity to urban growth boundaries."[16]

Based on the most recent LUBA decisions, it is clear that the Applicant must show that the Plan Amendment and Zone Change comply with Goal 14 by applying the *Curry County* factors to the Subject Property rather than relying on the MUA-10 zone alone as demonstrating compliance with that Goal. As discussed in more detail below, I find that the Applicant has not met that burden based on the current record.

The first of the *Curry County* factors looks to the allowed density under the new Plan designation. The Applicant notes that, pursuant to Policy 3.3.1 of the Plan and Section 18.32.040 of the Code, the allowed density in the MUA-10 zone is no greater than one dwelling per ten acres because ten acres is the minimum lot size in that zone. In *Curry County*, the Court concluded that one dwelling per ten acres does not constitute urban zoning.

Participant COLW argues that, despite the minimum parcel size in the MUA-10 zone provisions of the Code, the actual density that is allowed under that zone could be much greater due to various options for cluster development or planned unit development in that zone. LUBA addressed this same argument in *BCL LLC*, concluding that the County must address that feature of the MUA-10 zone and determine if such densities are urban or rural.

The Applicant addresses whether the densities allowed for cluster developments or planned unit developments are urban in nature, but primarily relies on its assertion that the MUA-10 zone is a rural zone as a matter of law. Further, the Applicant insists that the default parcel size in the MUA-10 zone is sufficient to demonstrate a rural density of one dwelling per ten acres and that the

[14] *Destiny Court* (slip op at 10).
[15] *Destiny Court* (slip op at 14-15).
[16] *BCL LLC* (slip op at 25-26).

Application does not propose or request smaller parcels, and insists that the likely density of the Subject Property will consist of only two dwellings, given constraints for providing water and septic services on the property.

It is perhaps possible that the County Board could condition its approval to limit smaller parcels or to prohibit cluster development and planned unit developments on the Subject Property. The Applicant, however, has not proposed such a condition and, on this record, I find no basis to conclude that the ultimate disposition of the Subject Property will be limited to ten-acre parcels or to a maximum of only two dwellings. This *Curry County* factor therefore provides weight to the argument that the proposal could result in urban-level development.

The second *Curry County* factor looks to the types and levels of services to be provided. The Applicant asserts that any services for the Subject Property will be rural in nature. For example, water will come from a private source on the Property rather than a public system, sanitary waste will be treated through an on-site septic system, and fire and public safety will continue to be provided by the Camp Sherman Fire District and Deschutes County Sheriff, respectively. Other participants do not refute the Applicant's characterization of these services or identify specific urban-level services that will be required for the Subject Property under the requested zoning.

Based on the foregoing, I find that the second *Curry County* factor provides weight to the argument that the proposal will not result in urban-level development.

The third *Curry County* factor considers proximity to the urban growth boundary ("UGB"). The Subject Property is adjacent to the Sisters UGB. The Applicant asserts that this proximity is not material because the purpose of the MUA-10 zone is to create a transition area between rural and urban uses and, therefore, implementing this zone next to the UGB is appropriate.

Other participants do not address this factor with specificity. However, LUBA addressed this issue in its *BCL LLC* decision. There, LUBA determined that changing a parcel to the RREA is inconsistent with Goal 14 where the property was within one-quarter mile of the City of Bend's UGB, and where the allowed density on the property was similar to what would be allowed in that city. Applying that logic to the facts in this case, the third *Curry County* factor provides weight to the argument that the proposal will result in urbanization. Specifically, the Subject Property is even closer to the UGB than the property in *BCL LLC*, and the potential for some development with no minimum lot size makes potential lot sizes similar to what would be allowed in the UGB.

Having considered the *Curry County* factors, I find that, based on the current record, the proposal could result in urbanization of the Subject Property, and the Applicant has therefore not met its burden of showing that the proposal is consistent with Goal 14. For that reason, I do not recommend that the County Board approve the Application unless the Applicant justifies an exception to that Goal or otherwise creates a different record that can address compatibility with Goal 14.

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## C. Zone Change

The Applicant requests a Zone Change from EFU-SC to MUA-10. The criteria for rezoning a parcel are set forth in DCC Chapter 18.136. These findings address the applicable Zone Change criteria in the context of the Applicant's request. That is, the Applicant has also requested the Plan Amendment to change the Plan Map designation applicable to the Subject Property – from the AG designation to the RREA designation. As discussed in the findings above, I have found that the Applicant has initially not met its burden of demonstrating compliance with the Plan Amendment criteria. The findings in this section, however, are based on the assumption that the Plan designation for the Subject Property is RREA, as the Applicant requested. If the County Board does not approve the Plan Amendment, these findings may need to be altered to address the request for a Zone Change based on whatever Plan Map designation the County Board approves.

*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.*

This Code provision requires consideration of the public interest based on whether: (1) the Zone Change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan's introductory statement and goals.

The Applicant, Staff, and other participants address this Code criterion by discussing specific Plan goals and policies. Before addressing those specific arguments, I note that, if the Plan Amendment is approved, it seems necessary to rezone the Subject Property in some way. That is, the Agricultural designation of the Plan is implemented through the exclusive farm use resource zone designations. The RREA Plan designation, in contrast, is implemented through the RR-10 and MUA-10 zones. There seems to be no basis under the Plan to allow the Plan Amendment to change the designation of the Subject Property to RREA but to keep the EFU zoning. Viewed through that lens, it seems that either the RR-10 or the MUA-10 zones largely conform to the Plan in this context, and that the Applicant must show only that the Zone Change, as applied to the Subject Property, is consistent with the Plan's introductory statement and goals.

The Staff Report notes that the County generally does not consider the Plan's goals and policies to be mandatory criteria. With one exception – Plan Policy 3.1.1 – no participant to this proceeding appears to dispute Staff's position that the goals and polices are not mandatory criteria. Nevertheless, because the Code itself requires a consideration of the Plan's statements and goals, and because some participants have questioned whether the Zone Change is consistent with those Plan provisions, I address those issues in this Recommendation.

The Application identifies potentially relevant Plan provisions by pointing to several goals and policies in the Plan set forth in DCCP Chapter 2 and Chapter 3, Rural Growth Management. The Applicant states that the Application is consistent with those policies and goals. The Staff Report generally agrees with the Applicant's assessment of those policies and goals.

Notwithstanding the foregoing, COLW and other participants, such as participants McKay, Hancock, Dooley, and Swaim, assert that the Application is inconsistent with Plan Policy 3.1.1, but only participant COLW presents specific arguments to support that assertion.

Policy 3.1.1 states: "Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." COLW argues that the Zone Change is inconsistent with this policy because the resulting MUA-10 zone could allow parcels that are smaller than 10 acres, through cluster development or planned unit development.

The Applicant responds that COLW's argument is tantamount to a facial challenge to the County's MUA-10 zone (which is being addressed by the County Board in a legislative forum) and that such an argument would result in a moratorium on applying the MUA-10 zone to any property. The Applicant also responds by noting that it has not proposed any parcels to be smaller than 10 acres and, therefore, the Application is consistent with this policy.

I do not understand COLW's argument to be a facial challenge to the MUA-10 zone. Rather, the issue raised is whether the application of the MUA-10 zone specifically to the Subject Property as part of the current Application is consistent with Policy 3.1.1. It may be true that COLW could raise this same issue in other applications, or in a legislative forum, but the current record does not attempt to address every application of the MUA-10 zone that would encompass a facial challenge. Even if it can be characterized that way, I find it is possible to address this issue in an isolated fashion that applies only to the current record.

As noted in the findings above addressing Goal 14, it is possible that the Subject Property could be divided into parcels smaller than 10 acres once the MUA-10 zone applies. The Applicant has not proposed such a parcelization, and instead urges that any limits on future parcel sizes can be addressed at the time of development or parcelization. As LUBA held in *BCL LLC*, however, consistency with Plan policies must be determined at the time of the PAPA rather than a subsequent land use application.[17] Even though the Applicant has not proposed parcels smaller than 10 acres, it also has not proposed to impose such a limit, thereby preserving in the Application the possibility that the full range of uses and development, including smaller parcel sizes, will be available under the new zoning. Based on the record as it currently exists, I therefore find that the Applicant has not met its burden to show that its proposal is consistent with Policy 3.1.1.

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

DCC 18.32.010 contains the following purpose of the MUA-10 zone:

> 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

[17] *BCL LLC* (slip op at 10).

> 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 Applicant states that changing the zoning designation of the Subject Property is consistent with the purpose and intent of the MUA-10 zone because the Subject Property is not suited to full-time commercial farming and that the lower level of development will conserve open spaces and protect natural and scenic resources. The Applicant also claims that the low level of allowed development will maintain and improve the quality of the air, water, and land resources of the County and encourage future owners of the property to either return irrigation water to the area or to farmlands elsewhere.

Participant COLW asserts that the intent of the MUA-10 zone is more specifically to "preserve agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses." (Emphasis added). According to COLW, if the Applicant is correct that the Subject Property is not agricultural land protected by Goal 3, then it cannot meet the purpose of the MUA-10 zone. COLW also asserts that the MUA-10 zone "was created to regulate the use of land for which an 'irrevocably committed' or 'previously built' exception to Goal 3 was taken in the County's first comprehensive plan" and that the MUA-10 zone can therefore apply only where the County takes a new Goal 3 exception.

COLW's arguments have no basis in the text of the Code or the Plan. As noted in the express language of DCC 18.32.010, the MUA-10 zone has multiple purposes, of which the preservation of "agricultural land" is only one. The MUA-10 zone has other purposes, such as conserving open space and providing for an orderly and efficient transition from rural to urban land use. Similarly, the express language of the Plan addressing the RREA purpose states "As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR." It is clear from that language that the County intends to apply the MUA-10 zone either where it can justify a Goal 3 exception or where there is a demonstration that the property does not meet the definition of agricultural land.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

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*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.*

Only the Applicant and Staff directly address this Code provision. The Applicant notes that services for development in the MUA-10 are adequate and the Subject Property will not rely on public services and facilities under the new zoning designation. For example, there is existing access to the public road system, which the Applicant relies on the transportation system impact review to confirm. Developments in rural areas also must generally provide their own water and septic systems. In addition, the property receives police services and fire services from the Deschutes County Sheriff and the Sisters/Camp Sherman Fire District respectively.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

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

Only the Applicant and Staff directly address this Code provision. The Applicant claims that the Applicant's proposal for MUA-10 zoning will not impact surrounding land use, as it is consistent with the zoning of many other properties in the area. Participant COLW asserts that the land use pattern in the area has not changed, but COLW does not explain how that assertion leads to a conclusion that any impacts on surrounding lands will not be consistent with the goals and policies of the Plan.

Based on the foregoing, and in the absence of more specific countervailing evidence or argument addressing this provision, I find that this Code provision is satisfied as described by the Applicant.

*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.*

The Applicant addresses this Code provision primarily through its argument that the more specific Order 1 Soil Survey shows a change in circumstances since the Subject Property was last zoned. That change is the understanding of what the actual characteristics of the soils are, and the fact that those soils are not as conducive to agriculture as originally assumed when the EFU zoning was applied.

I find that the Applicant's argument is a sufficient basis to satisfy this Code provision. In addition, as noted above, the Zone Change analysis relies on the assumption that the Plan designation for the Subject Property is RREA. When the Subject Property was last zoned, its Plan designation was AG. If the County Board approves the Plan Amendment, I find that the change in Plan designation is, by itself, sufficient to show there has been a change in circumstances and, therefore, this Code provision will be satisfied.

## IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has not met its burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change, because the current record is insufficient to show compliance with Goal 14 and Plan Policy 3.1.1. I therefore recommend to the County Board of Commissioners that it DENY the request in the Application based on the current record.

Dated this 20th day of July 2026



Tommy A. Brooks
Deschutes County Hearings Officer

# Exhibit "H" to Ordinance No. 2026-021

## ESEE ANALYSIS

**Summary**

The subject property is located within the Landscape Management Combining Zone ("LM") that is designed to protect scenic views. The LM zone extend .25 miles on either side of Highway 20. The scenic views from the highway will not be appreciably impacted by any new uses allowed under the MUA-10 Zone. First, the subject property is immediately adjacent to the city and parcels that are fully developed with commercial structures right along Highway 20. There are two existing structures, the "Old House" and an associated barn within about 50 feet of the highway. In addition, allowing lower-intensity development permitted in the MUA-10 zone along with the LM standards will effectively protect any scenic views. No development permitted in that zone will be so intense or tall that it will affect the view of the distant hills and mountains.

**Economic Consequences**

| Conflicting Use - Common to all MUA-10 Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| | Uses allowed in the MUA-10 zone will have positive economic consequences in that the uses promote the County's rural housing goals and policies creating more opportunities for rural housing. Agricultural and forest propagation uses, to the extent they can be supported on the property, add to the rural economic base. Road projects enhance the accessibility to the property supporting other MUA-10 uses. Private parks provide recreational opportunities for those who reside in the rural area. Home occupations provide owners with the ability to generate income on their properties and can provide needed services to the rural community. | The County's original 1992 ESEE analysis notes that "the economic impact of maintaining the visual quality of the area would be positive. Deschutes County would remain a desirable place to live, thereby maintaining neighborhood property values. Maintaining or enhancing visual quality makes the County a more attractive place to visit, thereby attracting more visitors and inducing people to stay longer."<br><br>Allowing reasonable development of rural uses subject to applicable standards will not significantly alter the above statements. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Single Dwellings | New single dwellings attract people to the County and | There are no negative economic consequences from |

| | | |
|---|---|---|
| | generally add to the economic base in the rural community. | this use related to the scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Agricultural uses and Propagation or Harvesting Forest Products | In light of the soil report confirming that the property is not agricultural land and the fact that it has no trees, these uses are unlikely. However, these uses are generally allowed in the EFU zone and any economic consequences under MUA-10 zoning will be the same and will be positive. | There are no negative economic consequences from these uses related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Road Projects | Road projects tend to enhance the transportation system that supports rural businesses thus providing an economic benefit. | There are no negative economic consequences for this use related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Home Occupations | This use adds to the rural economy allowing residents to work from home. | Because a home occupation is within an approved dwelling, it will not produce any additional negative economic consequences related to a scenic corridor. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Private Parks | Private parks have limited economic consequences related to a scenic resource but generally are consistent with the purpose of having pleasant views that may attract visitors to the County. | There are no negative economic consequences for this use related to a scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|

| | | |
|---|---|---|
| Non-Commercial Stables<br>Horse Events | IN light of the soil quality, proximity to the urban area and relatively small size, it is unlikely that any owner could justify the cost to develop such facilities. However, if they could, these rural-based uses add to the rural economy. Private stables allow horse owners to keep animals in a safe environment close to public area for riding supporting that recreational activity. It allows owners of the facility to generate some income.<br><br>Horse events support the rural community where many residents live because they enjoy having horses and other animals. They can also enhance the community involvement bringing residents together for outdoor social events. | While it is possible that some stables and event facilities could be visible from the highway, one would not expect them to be located within .25 miles of a highway, and they would not have any appreciable economic consequence related to the scenic corridor. |

| **Conflicting Use - MUA-10 Conditional Uses** | **Positive Consequences** | **Negative Consequences** |
|---|---|---|
| Commercial activities in conjunction with Farm Use | Because the soil quality precludes farm use on the property, these uses are also unlikely. However, these conflicting uses add to the rural economy and offer additional services to the rural community. | Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. However, they would not likely detract people from moving to the County or visiting. Thus, there is not expected to be any economic consequence related to the scenic resource. |

| **Conflicting Use – MUA-10 Conditional Uses** | **Positive Consequences** | **Negative Consequences** |
|---|---|---|
| Dude Ranch Guest House | Dude ranches and guest housing provide an economic benefit to the rural area and offer a platform to showcase | These uses would not likely be located near the highway and would have no negative economic consequences. |

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| | some of the characteristics of the rural area. | |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Kennel/Vet Clinic | These uses also benefit the rural economy. They offer valuable services to the rural residents. | These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Destination Resort<br>Golf Course | The property is far too small for these uses. Assuming that one could be located on the subject property, these uses would provide significant economic opportunities and job growth. It does not appear that the uses could be placed on the property though. | It is not likely that these uses could be placed on the property. These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Forest Product Production Facility | This is another use that is not likely on the subject property because there are no trees on the property and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add to the rural economy and may add jobs. | It is not likely that these uses could be placed on the property. These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Hydroelectric Facility | There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide energy to the rural community and possible jobs. | Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Rural Housing, including PUDs and Cluster Development | In the near term, allowing MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can produce positive social consequences in that they offer citizens with opportunities to live in a rural setting and others to conduct socially beneficial rural businesses. | These uses would not detract from people moving to the County but rather would enhance it. Thus, there would be no negative economic consequence. |

**Social Consequences**

| Conflicting Use – Common to all MUA-10 Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| | In general, allowing uses permitted in the MUA-10 zone will provide positive social consequences because they allow people to reside in a rural area on large parcels and other uses bolster the rural economy which provides positive social impacts to the population at large. | The 1992 County inventory confirmed that having good visual quality areas more accessible to the public enhances livability. This is still true. However, the view from Highway 20 in the subject area already has significant development close to the highway. The best way to address the goal expressed in 1992 is for the County to apply its development standards in general and the LM standards specifically to all new development. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Single Dwellings | New single dwellings attract people to the County and generally add social benefits. | There are no negative social consequences from this use related to the scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Agricultural uses and Propagation or Harvesting Forest Products | The poor soil quality and lack of trees render these uses unlikely. However, these uses are generally allowed in the EFU zone and any social consequences under MUA-10 zoning will be the same and will be positive. | There are no negative social consequences from these uses related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Road Projects | Road projects tend to enhance the transportation system for rural residents which is a positive social consequence. | There are no negative social consequences for this use related to a scenic corridor. |
| **Conflicting Use - Permitted Uses** | **Positive Consequences** | **Negative Consequences** |

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|---|---|---|
| Home Occupations | This use allows rural residents to earn income while being at home to also care for children and animals. It produces all positive social consequences. | Because a home occupation is within an approved dwelling, it will not produce any additional negative social consequences related to a scenic corridor. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Private Parks | Private parks have a positive social consequence related to a scenic resource because they offer more visual beauty and promote livability. | There are no negative social consequences for this use related to a scenic corridor because parks enhance livability. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Non-Commercial Stables<br>Horse Events | For the reasons stated above, these uses do not appear to be likely. However, private stables allow horse owners to keep animals in a safe environment close to public area for riding supporting that recreational activity. It allows owners of the facility to generate some income. These are positive social consequences.<br><br>Horse events support the rural community where many residents live because they enjoy having horses and other animals. They can also enhance the community involvement bringing residents together for outdoor social events. | While it is possible that some stables and event facilities could be visible from Highway 20, one would not expect them to be located within .25 miles of a highway, and they would not have any appreciable negative social consequence related to the scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Commercial activities in conjunction with Farm Use | For the reasons stated above, this use is not likely. However, these conflicting uses add to the rural economy and offer additional services to the rural | Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. However, they would not likely detract people from |

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| | community which is a positive social consequence. | moving to the County or affect liability. Thus, there is not expected to be any negative social consequence related to the scenic resource. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Dude Ranch Guest House | Dude ranches and guest housing provide a place for residents and visitors to gather and enjoy recreational activities and food. They offer a positive social consequence. | These uses would not be located near the highway and would have no negative social consequences related to scenic areas. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Kennel/Vet Clinic | These uses also benefit the rural community by providing needed services which is a positive social consequence. | These uses would need to be developed under the standards in place to protect scenic views. While they could impact peoples' perception of a view, they are likely to be developed in or close to rural service centers where existing development exists. Thay can also be compatible with the resource through compliance with the LM standards. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Destination Resort<br>Golf Course | There is not sufficient acreage for these uses. Assuming that one could be located on the subject property, these uses would provide significant social benefit by providing a location for people to enjoy central Oregon. | It is not likely that these uses could be placed on the property. These uses would not detract people from seeing the scenic resources and in fact, such developments typically try to enhance the views for those who visit. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Forest Product Production Facility | This is another use that is not likely on the subject property | It is not likely that these uses could be placed on the |

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| | because there are no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add to the rural economy and may add jobs which are socially beneficial. | property. These uses could produce a negative social consequence if developed in certain areas. As a conditional use, conditions would have to be imposed. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Hydroelectric Facility | There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide renewable energy to the rural community which is socially beneficial. | Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Rural Housing, including PUDs and Cluster Development | In the near term, allowing these MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can produce positive social consequences in that they offer citizens with opportunities to live in a rural setting and others to conduct socially beneficial rural businesses. | These uses would not detract from people moving to the County but rather would enhance it. These developments require dedicated open space which can be located to preserve any scenic views. Thus, there would be no negative social consequence. |

**Environmental Consequences**

| Conflicting Use – Common to all MUA-10 Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| The conflicting uses are the same uses listed under the economic consequence section. As noted, in light of the size and other limitations, some uses simply cannot be developed such as golf | Development of uses allowed in the MUA-10 zone will allow rural housing and rural businesses to be located immediately adjacent to the city in close proximity to services and attractions desired by the residents and | Almost all development comes with some perceived negative consequences to the environmental features on land. In some cases, trees are lost. In others, rock outcroppings may need to be removed or altered. In this |

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| courses, airports, and destination resorts. | customers. Thus, it will reduce the amount of travel and thereby reduce the carbon footprint overall. | case, negative consequences to mapped environmental resources will be minimum and can be mitigated or under the Development Code. Some uses allowed in the MUA-10 zone are consistent with uses that are allowed under the current F-2 zone such as forest-related uses. Under LUBA's decision in LUBA Case 2023-008, the County's prior ESEE analysis remains applicable because the MUA-10 zone is not introducing a new use that was not allowed when that analysis was completed. However, other allowed uses will be new uses. The uses predominantly placed on MUA-10 land are large-acre residential uses and other low-intensity rural uses such as horse-related facilities. Those uses do not have large building footprints relative to the overall size of the parcels allowed. The minimum parcel size for the subject property under the MUA-10 zoning is 7.5 acres. That leaves ample area to preserve trees, vegetation, outcroppings, and other resources. Negative consequences to the scenic resource can be effectively managed. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Single Dwellings | New single dwellings are likely to have neutral environmental consequences when located on larger MUA-10 parcels. | New single dwellings are likely to have neutral environmental consequences when located on larger MUA-10 parcels. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Agricultural uses and Propagation or Harvesting Forest Products | These uses are generally allowed in the EFU zone and any environmental consequences under MUA-10 zoning will be the same and will be positive. | There are no negative environmental consequences from these uses related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Road Projects | Road projects tend to enhance the transportation system, making travel more efficient and potentially reducing emissions. | A new road within a scenic corridor may require some removal of vegetation. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Home Occupations | This use would allow people to work from home reducing vehicle trips and emissions. | Because a home occupation is within an approved dwelling, it will not produce any additional negative environmental consequences related to a scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Private Parks | Private parks will have limited environmental consequences related to a scenic resource but generally are consistent with the purpose of having pleasant views that may attract visitors to the County. | There are no negative environmental consequences for this use related to a scenic corridor as trees and vegetation do not have to be removed. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Non-Commercial Stables Horse Events | Private stables on MUA-10 land close to the city limits, allow horse owners who reside in urban areas to board horses closer to town, reducing vehicle miles and emissions. | While it is possible that some stables and event facilities could be visible from the highway and would require some removal of trees and vegetation. These consequences can be mitigated for applying the LM standards. |

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| | The same is true for horse events on MUA-10 land closer to where people live. | |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Commercial activities in conjunction with Farm Use | These conflicting uses are unlikely on property with poor soil but when feasible, add options for rural residents to travel less for goods and services reducing the carbon footprint. | Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. Some could require the removal of vegetation which can be perceived as a negative consequence to a scenic corridor. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Dude Ranch Guest House | Dude ranches and guest housing have neutral environmental consequences in the MUA-10 zone. They are relatively low intensity development that does not require significant disturbance and require open space for the activities normally associated with them. | Even though they tend to be lower intensity developments, these uses could come with some limited vegetation removal and that could be perceived as a negative consequence in a scenic area. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Kennel/Vet Clinic | These conflicting uses add options for rural residents to travel less for goods and services reducing the carbon footprint. | These uses would likely require removal of vegetation if it were on the site, but they also are most likely to be located in or near rural service centers and unincorporated communities with other development. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Destination Resort<br>Golf Course | Assuming that one could be located on the subject property, these uses would provide positive environmental consequences because they preserve open | It is not likely that these uses could be placed on the property. These uses would not detract from scenic beauty in the area because they are developed to provide pleasant |

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| | space and with modern equipment reduce the use of water. | viewing of the scenic features in the County. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Forest Product Production Facility | This is another use that is not likely on the subject property because there are no trees on the site and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could provide jobs for rural residents closer to where they live, reducing the amount of vehicle miles. | It is not likely that these uses could be placed on the property. These uses could require the removal of vegetation which is a negative environmental consequence. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Hydroelectric Facility | There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide renewable energy which is generally a positive environmental consequence. | Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Rural Housing, including PUDs and Cluster Development | In the near term, allowing MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can reduce vehicle miles and benefit the carbon footprint. | These uses require significant dedicated open space which is generally a positive environmental consequence. |

**Energy Consequences**

| Conflicting Use – Common to all MUA-10 Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| The conflicting uses to consider are the same uses listed above under economic consequences. Overall, the | The positive energy consequences from MUA-10 uses are not appreciable. Some uses, such as a single | In general, it will take and consume energy to develop any uses allowed in the MUA-10 zone. That is a short-term |

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|---|---|---|
| positive and negative energy consequences on a scenic resource are attenuated. | dwelling, are neutral as to consequences. However, allowing residential development for rural residents who may have employment nearby can reduce vehicle miles, gas consumption, and pollution. | negative consequence that is not related to a scenic view corridor. Additional electricity and propane will be needed for ongoing uses. That is a potential long-term consequence. Some of those consequences can be mitigated through the application of energy saving construction measures, many of which are not required by building codes. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Single Dwellings | New single dwellings are likely to have neutral energy consequences other than new construction which is typically required to be more energy efficient. Dwellings on larger parcel may also allow for more alternative energy sources. | There is no negative energy consequences from this use related to the scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Agricultural uses and Propagation or Harvesting Forest Products | For the reasons provided above, these uses are unlikely. However, they are generally allowed in the EFU zone and any energy consequences under MUA-10 zoning will be the same and will be positive. | There is no negative energy consequences from these uses related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Road Projects | Road projects tend to enhance the transportation system, making travel more efficient and thus conserving energy. | There is no negative energy consequences for this use related to a scenic corridor. |

| Conflicting Use - Permitted Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Home Occupations | This use allows residents to work from home saving some energy resources. | Because a home occupation is within an approved dwelling, it will not produce any |

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| | | additional negative energy consequences related to a scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Private Parks | Private parks have limited energy consequences related to a scenic resource because they are passive uses. | There is no negative energy consequences for this use related to a scenic corridor. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Non-Commercial Stables Horse Events | There do not appear to be any specific energy consequences related to a scenic resource from these uses. | There do not appear to be any specific energy consequences related to a scenic resource from these uses. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Commercial activities in conjunction with Farm Use | Again, these uses are unlikely on a small parcel with poor soil. These conflicting uses add to the rural economy and offer additional services to the rural community reducing petroleum energy consumption. | Commercial activities can add to the demand for some energy sources, but it does not require the removal of vegetation, creating a negative consequence related to a scenic resource. |

| Conflicting Use – MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Dude Ranch Guest House | There do not appear to be any specific energy consequences related to a scenic resource from these uses. | There do not appear to be any specific energy consequences related to a scenic resource from these uses. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Kennel/Vet Clinic | These uses can provide service closer to the expected users conserving petroleum energy sources. | There do not appear to be any specific energy consequences related to a scenic resource from these uses. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|

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|---|---|---|
| Destination Resort<br>Golf Course | These are not feasible on the subject property. Assuming that one could be located on the subject property, these uses allow people to stay in one place for many activities reducing consumption of petroleum energy. | These uses can consume other energy sources such as electricity. However, it does not appear that that consequence relates to a scenic resource. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Forest Product Production Facility | This is another use that is not likely on the subject property because there are no trees on the site and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add jobs in the rural area and reduce petroleum energy use. | This use is likely to demand a lot of energy. However, with current DEQ requirements for emissions, it does not appear that that consequence relates to a scenic resource. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Hydroelectric Facility | There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide energy for the rural community. | Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application. |

| Conflicting Use - MUA-10 Conditional Uses | Positive Consequences | Negative Consequences |
|---|---|---|
| Rural Housing, including PUDs and Cluster Development | These uses could provide housing closer to rural employment requiring residents to travel less for work and use less energy. Because they will be on larger parcels, they also offer more opportunities for alternative energy sources. | Dwellings in such development will consume some forms of energy such as electricity and propane. Energy saving construction can offset this negative energy consequence. |

Return to:
Caroline House, Senior Planner
Community Development Department
117 NW Lafayette, P.O. Box 6005
Bend, Oregon 97708-6005

*Space Reserved for Recorder's Use*

# CONDITIONS OF APPROVAL AGREEMENT AND RESTRICTIVE COVENANT

This conditions of approval agreement is made this _____ day of _____, 2026 by Willitts LLC, an Oregon limited liability company (hereinafter "Willitts") and Deschutes County, a political subdivision of the State of Oregon (hereinafter "County").

## RECITALS

WHEREAS, Willitts sought approval of a plan amendment from Agricultural (AG) to Rural Residential Exception Area (RREA) and zone change from Exclusive Farm Use – Sisters Cloverdale Subzone (EFU-SC) to Multiple Use Agricultural (MUA-10) in File Nos. 247-25-000537-PA and 247-25-000538-ZC for the property described on **Exhibit A** (the "Property"), a copy of which is attached and incorporated by reference herein; and

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

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

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

NOW THEREFORE, the parties agree as follows:

1. Limitation on Development. Until and unless the subject property is included within the City of Sisters urban growth boundary and annexed into the City of Sisters through separate applicable processes, no new development or rural residential use otherwise authorized by the RREA designation or MUA-10 zoning may be approved or established on the subject property. This condition does not prohibit the continued lawful use, maintenance, or repair of existing development. Nothing in this condition authorizes, requires, assumes, or commits the City of Sisters, Deschutes County, or any other governmental entity to approve inclusion within the City of Sisters urban growth boundary, annexation, urban services, City plan or zoning designations, or

future development of the subject property.

2. Any future subdivision shall be limited to a minimum lot size of 10 acres. This condition shall be in effect so long as the property remains outside of an urban growth boundary.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Dated this _____ of _____, 2026

WILLITTS LLC

_____
By: William G. Willitts
Its: _____

STATE OF OREGON )
) *ss*.
COUNTY OF DESCHUTES )

This instrument was acknowledged before me on _____, 2026 by William G. Willitts as _____ of Willitts LLC, an Oregon limited liability company.

_____
Notary Public for Oregon
Print Name _____
My commission expires _____

# EXHIBIT A
# PROPERTY DESCRIPTION
(TAX LOT 800, MAP 15-10-10)

A parcel of land situated in the West Half (W1/2) of Section 10, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a brass capped iron pipe at the West Quarter corner of said Section 10; thence North 00° 07' 05" West on the West line of said Section 10, 416.44 feet to a point on the South right of way line of the Sisters-Bend Highway; thence South 59° 52' 40" East on said right of way line, 36.67 feet to a 5/8 inch iron rod; thence on said right of way on the arc of a 5650.00 foot radius curve to the left, (chord bears South 63° 26' 25" East, 702.19 feet), 702.64 feet to a 5/8 inch iron rod; thence South 67° 00' 11" East on said right of way line, 348.45 feet to a 5/8 inch iron rod; thence South 16° 17' 02" West leaving said right of way line, 289.57 feet to a 5/8 inch iron rod; thence South 18° 27' 59" West, 181.60 feet to a 5/8 inch iron rod; thence South 38° 24' 55" West, 66.93 feet to a 5/8 inch iron rod; thence South 28° 18' 58" West, 160.76 feet to a 5/8 inch iron rod; thence South 69° 22' 54" West, 763.94 feet to a 5/8 inch iron rod on the West line of said Section 10; thence North 00° 29' 01" West on said West line, 965.28 feet to the point of beginning.

BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** November 23, 2026

**SUBJECT:** Update and discussion on options for holding a Public Hearing on the Caldera Ranch Plan Amendment / Zone Change

**RECOMMENDED MOTION:**
Options for the Board of County Commissioners ""Board") will depend on timing of receipt of the Hearings Officer recommendation.

**BACKGROUND AND POLICY IMPLICATIONS:**
A public hearing for Caldera Ranch PA/ZC (File No. 247-25-000428-PA, 429-ZC) was held before a Hearings Officer on October 29, 2026, immediately after which the record was closed. At the time of submittal of this agenda request, staff has not yet received a recommendation from the Hearings Officer but expects one shortly.

Staff will provide an update on options for holding a public hearing before the Board, considering notice requirements and open record periods among other factors, and will request Board direction on this matter.

**BUDGET IMPACTS:**
None.

**ATTENDANCE:**
Tanya Saltzman, Senior Planner
Will Groves, Planning Manager

BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** November 23, 2026

**SUBJECT:** Work Session: Upcoming Public Hearing on an application for a Comprehensive Plan designation change and to rezone approximately 135 acres on Fryrear Road between Bend and Sisters from Exclusive Farm Use to Multiple Use Agricultural (Curtis)

**RECOMMENDED MOTION:**
N/A—information only.

**BACKGROUND AND POLICY IMPLICATIONS:**
Applicant Cameron Curtis requests to change the zoning of approximately 135 acres located on Fryrear Road between Bend and Sisters from Exclusive Farm Use to Multiple Use Agricultural and to change the Comprehensive Plan designation from Agriculture to Rural Residential Exception Area.
A public hearing is scheduled before the Board on November 30, 2026.

The record for files 247-26-000298-PA, 299-ZC is available at the following link:
www.deschutescounty.gov/CurtisPAZC

**BUDGET IMPACTS:**
None.

**ATTENDANCE:**
Audrey Stuart, Associate Planner
Anthony Raguine, Principal Planner
Will Groves, Planning Manager

COMMUNITY DEVELOPMENT

**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Audrey Stuart, Associate Planner

**DATE:** November 18, 2026

**SUBJECT:** November 23rd Work Session for the Curtis Plan Amendment and Zone Change

The Board of County Commissioners ("Board") will hold a work session to prepare for an upcoming public hearing for a Comprehensive Plan Amendment and Zone Change application (file nos. 247-26-000298-PA, 299-ZC). The applicant requests to change the zoning of approximately 135 acres from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10), and to change the Comprehensive Plan designation from Agriculture (AG) to Rural Residential Exception Area (RREA).

## I. BACKGROUND

The subject property is located between Bend and Sisters, and is identified as 66920 Fryrear Road, 67100 Fryrear Road, and an intervening strip of vacant land (Tax Lot 100). The property is located approximately seven miles to the southeast of the City of Sisters and is bordered by land that is zoned EFU and MUA10. The application was submitted on May 8, 2026, and a public hearing before a Hearings Officer was held on September 24, 2026.

The applicant has not requested an exception to Statewide Planning Goal 3, on the basis that the property does not meet the definition of agricultural land. The applicant argues that the subject property does not meet the definition of "agricultural land" due to its poor soil quality, and that farm uses are not economically viable on the subject property. For these reasons, the applicant states a mistake was made when the property was originally zoned and MUA10 zoning is more appropriate.

A 3.5-acre portion of the property at 66920 Fryrear Road is zoned FP and the applicant proposes to leave that portion of the subject property within the FP zone. However, the applicant proposes to change the underlying Comprehensive Plan designation of the entire subject property to RREA. The figure below shows the boundary of the FP zone within the subject property.




The applicant has provided a supplementary soil study that identifies non-high value (Class VII and VIII) soils on 61.7% of the subject property. As discussed below, the Department of Land Conservation and Development (DLCD) did not complete their review of this soil study until after the record had closed following the Hearings Officer hearing. This completeness review letter from DLCD was not part of the record that the Hearings Officer considered but the Board may consider it in their decision making, since it will be part of the public record for the Board hearing. Additionally, the applicant has provided a traffic study prepared by a traffic engineer, as well as a burden of proof that addresses relevant approval criteria.

## II. PUBLIC COMMENTS

All property owners within 750 feet of the subject property received a mailed Notice of Application and Notice of Public Hearing. 21 written comments were received prior to the Hearings Officer hearing and 13 members of the public testified in opposition to the application at the hearing.

The group Friends of Fryrear Road (FOFR) submitted 19 emails during the open record period following the hearing. 14 other comments in opposition were received during the open record period. The FOFR submittals compiled petitions and letters from a number of different neighbors in opposition to the application. Therefore, the number of letters in the record is significantly higher than the number of scanned documents that appear within the public record. Approximately 250 members of the public have been added to the mailing list for this application because they have either directly submitted comments to staff, or provided letters or petition signatures that were forwarded to staff by FOFR.

## III. HEARINGS OFFICER RECOMMENDATION

The Deschutes County Hearings Officer held a public hearing on September 24, 2026. On November 18, 2026, the Hearings Officer issued a recommendation of denial for the subject applications.

The basis for the Hearings Officer's recommendation of denial are:

- Statewide Planning Goal 3, Agricultural Lands: The applicant relies on a site-specific soil study to demonstrate that the property does not meet the definition of 'agricultural land' under OAR 660-033-0020(1). Opponents argued that the property does meet the definition of agricultural land and the Zone Change must be denied or take an exception to Statewide Planning Goal 3. DLCD did not finish its completeness review of the applicant's soil study until after the record had closed and the Hearings Officer therefore found it could not be relied upon when issuing his recommendation.

- Statewide Planning Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces: OAR 660-023-0250(3) requires the County to apply Statewide Planning Goal 5 if the subject zone change will affect a Goal 5 resource. Opponents argue that golden eagle habitat is present in the surrounding area and that golden eagles are a Goal 5 protected species in the County's Comprehensive Plan. The Hearings Officer found that additional analysis was needed to evaluate the new uses that would be permitted under the MUA10 zoning and their impact on golden eagle habitat.

- DCC 18.136.020(A): Requires the proposed zone change to conform with the County's Comprehensive Plan. The Hearings Officer found that Policies 2.2.1, 2.2.9, 2.2.11, and 2.2.13, related to preserving agricultural land, had not been met based on the earlier findings that the applicant hadn't demonstrated that the property is not agricultural land. The Hearings Officer also found the zone change was inconsistent with Policy 2.6.2, related to preserving wildlife habitat, based on the lack of evidence regarding impacts to wildlife habitat.

- DCC 18.136.020(D): Requires the applicant to show that there has been a change in circumstances or a mistake was made when the property was last zoned. The applicant argues that the site-specific soil study provides new, more accurate information and represents a change in circumstances. However, the Hearings Officer found that the soil study cannot be used to justify a 'change in circumstances' because it had not been certified by DLCD.

## IV. BOARD CONSIDERATION

As the property includes lands designated for agricultural use, Deschutes County Code 22.28.030(C) requires the application to be heard de novo before the Board, regardless of the determination of the Hearings Officer. Per DCC Section 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change is not subject to the 150-day review period typically associated with land use decisions.

The record is available for inspection at the following link:
www.deschutescounty.gov/CurtisPAZC

## V. NEXT STEPS

A public hearing with the Board is scheduled for November 30, 2026.

**ATTACHMENT(S):**
1. Location Map
2. Hearings Officer's Recommendation

# Land Use File #247-26-000298-PA, 299-ZC

66920 Fryrear Rd and 67100 Fryrear Rd






Date: 5/7/2026

N

0 625 1,250 2,500 ft

1 inch = 1,505 feet

DESCHUTES COUNTY

# RECOMMENDATION AND FINDINGS OF THE DESCHUTES COUNTY HEARINGS OFFICER

| | |
|---|---|
| **FILE NUMBERS:** | 247-26-000298-PA / 247-26-000299-ZC |
| **HEARING DATE:** | September 24, 2026, 1:00 p.m. |
| **HEARING LOCATION:** | Videoconference and<br>Barnes & Sawyer Rooms<br>Deschutes Services Building – First Floor<br>1300 NW Wall Street<br>Bend, OR 97703 |
| **APPLICANT:** | Cameron Curtis |
| **SUBJECT PROPERTY:** | Map and Tax Lots / Situs Addresses:<br>151133D000200 – 66920 Fryrear Road, Bend, OR 97703<br>151133D000100 – No situs address<br>151133A000900 – 67100 Fryrear Road, Bend, OR 97703 |
| **OWNERS:** | Cameron D. and Emily S. Curtis (151133D000200)<br>Edgar W. Gillet et al (151133D000100)<br>Kris Olsen (151133A000900) |
| **REQUEST:** | The Applicant requests to change the Comprehensive Plan Map designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"), with a partial corresponding zone change from Exclusive Farm Use – Sisters/Cloverdale ("EFU-SC") to Multiple Use Agricultural ("MUA-10"), but retaining the existing Flood Plain ("FP") zoning designation on approximately 3.5 acres of Tax Lot 200. |
| **HEARINGS OFFICER:** | Tommy A. Brooks |

**SUMMARY OF RECOMMENDATION**: The Hearings Officer finds that the current record is not sufficient to support the requested Comprehensive Plan Amendment and Zone Change. Specifically, the Hearings Officer finds that the current record is not sufficient to show compliance with Statewide Planning Goal 3, Statewide Planning Goal 5, DCC 18.136.020(A), and DCC 18.136.020(D). The Hearings Officer therefore recommends the County's Board of Commissioners deny the Application unless the Applicant satisfactorily addresses those criteria and standards.

## I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code ("DCC")
- Title 18, Deschutes County Zoning Ordinance:
  - Chapter 18.04, Title, Purpose, and Definitions
  - Chapter 18.16, Exclusive Farm Use Zones ("EFU")
  - Chapter 18.32, Multiple Use Agricultural
  - Chapter 18.96, Flood Plain Zone ("FP")
  - Chapter 18.136, Amendments
- Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan
- Title 23, Deschutes County Comprehensive Plan ("DCCP")
  - Chapter 2, Resource Management
  - Chapter 3, Rural Growth Management
    - Appendix C – Transportation Plan

Oregon Administrative Rules ("OAR") - Chapter 660
- Chapter 660, Land Conservation and Development Department
  - Division 6, Goal 4 Forest Lands
  - Division 12, Transportation Planning
  - Division 15, Statewide Planning Goals
  - Division 33, Agricultural Lands

Oregon Revised Statutes ("ORS")
- Chapter 215, County Land Use Planning: Resource Lands

## II. BACKGROUND AND PROCEDURAL FINDINGS

### A. Nature of Proceeding

This matter comes before the Hearings Officer as a request by Cameron Curtis (the "Applicant"), on behalf of the Owners, for approval of a quasi-judicial Comprehensive Plan Map Amendment ("Plan Amendment") to change the Comprehensive Plan ("Plan") Map designation of approximately 135.45 acres comprising Tax Lots 151133D000200, 151133D000100, and 151133A000900 (collectively, the "Subject Property") from Agricultural ("AG") to Rural Residential Exception Area ("RREA"). The Applicant also requests approval of a corresponding Zoning Map amendment ("Zone Change") to change the majority of the Subject Property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to Multiple Use Agricultural ("MUA-10"). A 3.5-acre portion of Tax Lot 200, however, is zoned Flood Plain ("FP") and does not carry an exclusive farm use ("EFU") designation. The Applicant proposed to keep the FP zone

intact on that portion of the Subject Property, but intends to rezone that portion later after obtaining confirmation that Tax Lot 200 is not within a flood hazard area.

The Application requests the Plan Amendment, which is ultimately a decision for the County's Board of Commissioners ("County Board"). Several applicable criteria require a weighing of policy choices, and the record before the County Board may be different than the current record. This Recommendation therefore determines if the Applicant has met its burden of proof in a manner that would support the County Board's approval of the Application based on the current record.

### B. Review Period

Because the Application includes the request for a Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable. The Staff Report also identifies Deschutes County Code ("DCC" or "Code") 22.20.040(D) as providing that the requested quasi-judicial Plan Amendment and Zone Change are not subject to the 150-day review period.[1]

### C. Notices, Hearing, Record Period, and Record Materials

The Applicant initially filed the Application on May 8, 2026. On June 26, 2026, staff in the County's Community Development Department ("Staff") sent the Applicant an Issues Letter identifying additional information Staff believed was needed to address applicable approval criteria. The Applicant provided a response dated July 24, 2026, and provided additional supplemental materials after that time as part of this proceeding.

On June 2, 2026, Staff mailed a Notice of Application to property owners within 750 feet of the Subject Property. The Applicant submitted a Land Use Action Sign Affidavit indicating that notice of the land use action was posted on May 15, 2026. On August 24, 2026, Staff mailed a Notice of Public Hearing ("Hearing Notice") to property owners within 750 feet of the Subject Property and public agencies, announcing a public hearing for September 24, 2026, at 1:00 p.m. The Hearing Notice was published in the Bend Bulletin on August 26, 2026. Notice of the first evidentiary hearing was also submitted to the Department of Land Conservation and Development ("DLCD") on August 20, 2026 ("DLCD Notice"). Staff did not issue its report, dated September 23, 2026 ("Staff Report"), until the day before the scheduled Hearing.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on September 24, 2026, beginning at 1:00 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer and most participants appearing in person. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

[1] ORS 215.427(7).

The Hearing concluded at approximately 2:22 p.m. Prior to the conclusion of the Hearing, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until October 8, 2026, ("Open Record Period"); (2) any participant could submit rebuttal materials (evidence or argument), responding to information submitted during the Open Record Period, until October 15, 2026 ("Rebuttal Period"); and (3) the Applicant could submit a final legal argument, but no additional evidence, until October 22, 2026. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date.

### 1. Requests to Postpone Hearing and for Extended Record Period

At the beginning of the Hearing, and in separate written comments, participants Friends of Fryrear Road and the Brown Family Trust (collectively, "FOFR"), Central Oregon LandWatch ("COLW"), and others, requested that the Hearing be postponed for 60 days. In the alternative, FOFR and COLW requested that the written record remain open for a lengthy period, up to 60 days, after the Hearing. The basis for these requests was two-fold. First, the Applicant's supplemental submittal responding to Staff's Issues Letter was apparently not included on the County's website where record materials can be accessed until just before the Hearing, even though it had been submitted two months prior. Second, the Staff Report, which is typically made available seven days prior to a hearing, was not published until the day before the Hearing. The objecting participants asserted that they, and others, should be afforded sixty days to review the Applicant's materials, which is the amount of time they would have had if those materials had been publicized immediately upon receipt by the County, and that they were not put on notice that the Application was actually complete for purposes of review by the public.

DCC 22.24.140 sets forth a process and the standards for participants to seek a continuation of a hearing or an extension of the record. Pursuant to DCC 22.24.140(A)(2), participants are generally entitled to one of those options where additional documents or evidence are submitted by any participant (which is any evidence submitted after the Hearing Notice). DCC 22.24.140(B) provides that, except for a continuance request made by the applicant, the Hearings Officer has the discretion to choose between a continuance and a record extension.

Before taking substantive comments from participants at the Hearing, I announced that I was not going to continue the Hearing, but that I would keep the record open after the Hearing. The following explanation memorializes that decision, and explains the basis of the discretion I used to arrive at that conclusion.

First, while it is unusual for materials to not be made available on the County's website that hosts the record shortly after they are submitted, it is not unusual for new materials, including voluminous and technical documents, to be added to the record just before or during a hearing. Thus, while I sympathize with the objecting participants that it would have been nice to have more time before the Hearing to review and address those materials, there is no requirement that all of an applicant's materials be submitted prior to a hearing and, to the contrary, the Code expressly contemplates that any party may submit additional documents or evidence during the proceeding.

Second, I do not agree with the objecting participants that the absence of some materials from the Applicant somehow makes the Application incomplete for purposes of review by the public and that they therefore had insufficient "notice" of a complete application. Pursuant to DCC 22.08.020, an application is complete when Staff have determined that all applicable issues have been adequately addressed. Here, the fact that Staff had made that determination was evident by the fact that Staff issued the Hearing Notice, which informed the public that the Applicant's request was being reviewed through this quasi-judicial process. As noted in DCC 22.08.020(C), acceptance of application materials as complete is not equivalent to a determination that the application substantively demonstrates compliance with applicable criteria – that is a determination to be made at the end of the review process after the record is fully developed.

Third, while it is also unusual for a staff report to be completed only one day prior to a hearing, that is not an independent basis for mandating a continuance of the hearing. Rather, as set forth in DCC 22.24.010, that circumstance is to be treated like other circumstances involving additional documents or evidence, and that Code provision refers back to DCC 22.24.140, which allows a request for a continuance, but nevertheless makes the grant of that request discretionary.

Fourth, a large number of participants showed up in person at the scheduled Hearing date, many of whom stated they had reviewed the initial Application materials. While it is conceivable that those participants may have had additional (or different) comments based on their review of the Applicant's supplemental materials and the Staff Report, nothing prevented those participants from providing evidence relating to the approval criteria, which were included in the Hearing Notice.

Fifth, to the extent the delayed publication of the Applicant's supplemental materials and the Staff Report were in error, I find that error will not be prejudicial to a substantial right to participate in this proceeding. Not only have participants submitted comprehensive and detailed comments on the Application, the nature of this proceeding is such that another *de novo* hearing will occur before the County Board. Thus, even if a participant was limited in any way as a result of the late-published materials, that error will be cured through their ability to fully participate in the *de novo* hearing.

Finally, although I did not grant the continuance of the Hearing, I did leave the post-Hearing record open for new evidence and testimony for 14 days after the Hearing, seven days longer than the Code contemplates, to provide additional time for participants to review and comment on the Applicant's new evidence.

**2. DLCD Notice**

In its pre-Hearing comments, participant FOFR asserts that the County's DLCD Notice is inadequate. FOFR specifically asserts that the notice did not contain information regarding when or how the Staff Report would be made available, in contravention to ORS 197.610(3)(f). In support of that assertion, FOFR includes a printout from DLCD's website regarding the notice.

On the one hand, the information provided by FOFR is unhelpful, because it indicates only that DLCD received the notice and, by itself, does not indicate what information was actually included

in the County's notice to DLCD. On the other hand, the record does not appear to contain the actual notice and, instead, includes only a confirmation generated by DLCD to the County once it submitted the notice. The absence of the content of the notice is likely because it was submitted online.

FOFR appears to raise this issue in support of its request for a continued or extended hearing, and FOFR does not assert that an inadequate notice is a basis for denial of the Application or that it warrants any other remedy.

The requirements of ORS 197.610 are procedural in nature. Compliance with those procedures may affect things like standing on appeal,[2] but they do not serve as approval criteria for a post-acknowledgement plan amendment ("PAPA"). As noted above, all participants have now had an opportunity to review the Staff Report, including through an extension of the post-Hearing record.

Based on the foregoing, I find there is no need to further alter these proceedings to address potential inadequacies in the DLCD Notice.

### 3. Request to Exclude Applicant's Post-Hearing Evidence

As part of its Rebuttal Period submittal, FOFR requests that the Hearings Officer reject some of the Applicant's materials submitted during the Open Record Period. Specifically, FOFR asks to exclude Applicant's Exhibits PH1 and PH3. The basis for this request is FOFR's assertion that these materials were provided without any supporting explanation, and that they do not rebut previously submitted evidence or testimony, as required by DCC 22.24.140(D).

The Code does not require that all evidence submitted to the record be accompanied by an explanation of how that evidence is to be used. That would, of course, be helpful, and the participant submitting evidence runs the risk that the Hearings Officer will discount the value of that evidence if it is not clear how the evidence is to be used. That risk, however, does not mean the evidence must be excluded from the record.

With respect to Applicant's Exhibit PH1, the information in the exhibit relates to groundwater wells, an issue raised by multiple participants in their pre-Hearing comments. With respect to Applicant's Exhibit PH3, that exhibit contains a prior County ordinance adopting the RREA Plan Map designation. Comments in the record raised issues relating to the purpose of the RREA. Although the participants may dispute the relevance and weight of the information in those exhibits, I find that they are responsive to issues raised by other participants and, therefore, may be used to rebut previously submitted evidence or testimony. I therefore decline to exclude those exhibits from the record.

/ / /

/ / /

[2] *See, e.g.,* ORS 197.620(2).

## III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

### A. Staff Report

The Staff Report, although it expresses agreement with the Applicant in most places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicant has met the burden of proof necessary to justify the Plan Amendment and Zone Change. Because some of the information provided in the Staff Report is unchallenged, the Findings below refer to and adopt portions of the Staff Report.

### B. Plan Amendment

DCC 18.136.010 contemplates that an applicant may seek a quasi-judicial amendment to the County's Comprehensive Plan Map. Other than a reference to the procedural provisions of DCC Title 22, the Code does not appear to contain any substantive standards or criteria specific to an amendment to the Plan Map. Pursuant to ORS 197.175(2), however, if the County amends its Plan or Plan Map, it must do so in compliance with Statewide Planning Goals (each a "Goal" and, together, the "Goals"). Because the existing Plan and Plan Map have been acknowledged, the requested Plan Amendment must adhere to the procedures for a PAPA set forth in state statutes and rules.

Division 15 of OAR Chapter 660 sets forth the Statewide Planning Goals and Guidelines with which a PAPA must demonstrate compliance. The Applicant asserts the Application is consistent with all applicable Goals and Guidelines. Except for Goal 1, Goal 3, Goal 5, Goal 12, and Goal 14, which are addressed in more detail in findings below, I adopt the Applicant's position on the remaining Goals as recited on pages 53 to 57 of the Burden of Proof submitted with the Application, which is supported by findings in the Staff Report, and I find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as described in the Application and the Staff Report.

The remainder of the findings in this section address specific Goals that are in dispute.

#### 1. Goal 1 – Citizen Involvement

Goal 1 directs the County to facilitate community engagement in all phases of the planning process. Participants in this proceeding challenge compliance with Goal 1 based on an assertion that the late submittal of the Applicant's supplemental materials and the Staff Report inhibited full public engagement.

In response to the late-submitted materials, I extended the written record in this proceeding. Not only were participants provided additional time to review and comment on the Applicant's materials and the Staff Report, the record includes voluminous and detailed information provided after the Hearing during the record extension periods. Further, as noted above, the County Board will conduct a *de novo* hearing in this matter.

Based on the foregoing, I find that the process the County has used, and will continue to use, to

consider the Application is consistent with Goal 1.

**2. Goal 3 – Agricultural Lands**

Goal 3 and its implementing rules protect agricultural lands. OAR 660-033-0020(1) provides the following definition:

> *(a) "Agricultural Land" as defined in Goal 3 includes:*
>
> *(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;*
>
> *(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and*
>
> *(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.*
>
> *(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;*

A primary dispute in this proceeding is whether the Subject Property qualifies as "agricultural land" under this definition. If the Subject Property is agricultural land, the Application cannot be approved unless the County justifies an exception to Goal 3. If the Subject Property is not agricultural land, it is not protected by Goal 3 and, therefore, the County can conclude that the Plan Amendment is consistent with Goal 3.

The Applicant primarily relies on an Order 1 Soil Survey, prepared by a qualified soil scientist, to demonstrate that the soils on the Subject Property are predominantly (61.7%) Class 7 and 8 soils and, therefore, that the Subject Property is not agricultural land. The Applicant also provides evidence to support its assertion that the Subject Property is not suitable for farm use, that it is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is not adjacent to or intermingled with lands with higher values within a farm unit.

Participants COLW and FOFR disagree, arguing that the Subject Property is agricultural land. COLW specifically asserts that under ORS 215.211, OAR 660-033-0030(5), and 660-033-0045, an applicant may rely on more detailed soils information instead of NRCS data to show land is not agricultural land under OAR 660-033-0020(1)(a)(A), but only if the more detailed information is reviewed and certified by DLCD. In the absence of such data, the Applicant can rely only on the NRCS classifications, which in this case show the Subject Property contains predominantly Class 6 soils. FOFR builds on this argument and states that, if the Subject Property is agricultural land

under OAR 660-033-0020(1)(a)(A), the other definitions in that rule are irrelevant, because a property needs to satisfy only one of those definitions to warrant Goal 3 protections.

As of the close of the record in this matter, the Applicant's soil survey had not yet been certified by DLCD. It appears from the record materials posted on the County's website that, on October 30, 2026, after the Applicant submitted its final legal argument, the County received a communication from DLCD noting that DLCD had reviewed the soil assessment and determined it to be complete. However, no participant has requested that DLCD's communication be included in the record. I will therefore not consider that late-submitted information for purposes of this Recommendation, although I recognize that the County Board may consider it, in which case, the County Board will need to consider and weigh the detailed counterarguments presented by FOFR and others who challenge the contents of the Order 1 Soil Survey the Applicant relies on.

For purposes of this Recommendation, and based on the record before me, I agree with COLW that the Applicant's Order 1 Soil Survey is not sufficient to overcome the NRCS classification of the Subject Property in the absence of DLCD's certification. Because it is undisputed that the NRCS classification shows the Subject Property as having predominantly Class 6 soils, I find that the Subject Property qualifies as "agricultural land." Because of that finding, there is no need for this Recommendation to address the detailed counterarguments presented by FOFR and others who challenge the contents of the Applicant's Order 1 Soil Survey. Nor is there a need to address OAR 660-033-0020(1)(a)(B) and (C) because, as FOFR notes, the Subject Property needs to satisfy only one of the definitions of "agricultural land" in that administrative rule.

Based on the foregoing, I recommend that the County Board deny the Application unless the record before the County Board demonstrates that the Subject Property is not agricultural land under OAR 660-033-0020(1), or unless the record supports taking an exception to Goal 3.

### 3. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

Goal 5 and its implementing rules protect natural resources, scenic and historic areas, and open spaces. Pursuant to OAR 660-023-0250(3), the County does not have to apply Goal 5 as part of a PAPA "unless the PAPA affects a Goal 5 resource." One scenario in which a PAPA may affect a Goal 5 resource is when the "PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list."[3]

The Applicant addressed Goal 5 largely through the lens of scenic resources. According to the Applicant, the County protects scenic resources by imposing the Landscape Management ("LM") combining zone. Because the Subject Property is not within the LM combining zone, the Applicant asserts that the Plan Amendment and Zone Change are consistent with Goal 5.

Notwithstanding the foregoing, FOFR asserts that Goal 5 is also implicated because of the presence of eagles and other sensitive birds in the vicinity of the Subject Property. FOFR specifically asserts that golden eagles are Goal 5 protected species under the County's Plan.

[3] OAR 660-023-0250(3)(b).

The Applicant does not dispute that golden eagles are protected under the County's Plan as part of Goal 5. Instead, the Applicant asserts that the Plan Amendment and Zone Change will not alter existing or proposed wildlife protections, and that they will "not directly impact any habitat as there is not development proposed." The Applicant further asserts that impacts from agricultural activities allowed in the EFU zone are "likely as impactful", or even more impactful, than the uses allowed in the MUA-10 zone.

Based on the record before me, I find that the Applicant has not adequately met its burden of demonstrating compliance with Goal 5. To satisfy Goal 5 in the context of a PAPA, the Applicant must identify any new uses that will be allowed, and must assess whether those new uses could conflict with a particular Goal 5 resource. The Applicant must then explain how those conflicts can be addressed through a Goal 5 program. Rather than undertake that full analysis, the Applicant relies wholly on the County's existing Goal 5 program. That program may ultimately be adequate, but such a determination cannot be made without undertaking the initial steps of identifying specific new uses and potential conflicts with existing Goal 5 resources. I also find that the Applicant cannot rely on the fact that no specific development is being proposed. The Goal 5 analysis requires the Applicant to consider all new uses that may be developed in the future.

Based on the foregoing, I recommend that the County Board deny the Application unless the record before the County Board demonstrates a more complete Goal 5 analysis that identifies new uses allowed under the proposed Plan Amendment and Zone Change, along with information demonstrating whether any conflicts with existing Goal 5 resources will result from those new uses.

### 4. Goal 12 – Transportation

Goal 12 and OAR 660-012-0060 (the "Transportation Planning Rule" or "TPR" that implements Goal 12) are applicable to the Plan Amendment and the Zone Change. The Applicant asserts that its request complies with OAR 660-012-0060 and, therefore, is consistent with Goal 12. In support of that assertion, the Applicant submitted a transportation impact analysis memorandum dated April 2, 2026, prepared by traffic engineer Julia Kuhn, PE, addressing the requirements of the TPR. The County's Transportation Planner agreed with the report's methodologies and conclusions.

FOFR submitted comments and expert-supported materials challenging some of the methods and conclusions in the Applicant's analysis. Among the criticisms offered, FOFR asserts that the Applicant's analysis understates levels of development, and resulting traffic impacts, that can result from the MUA-10 zone, does not use the correct planning horizon, and ignores transportation safety concerns. Multiple other participants expressed general concerns over increased traffic and potential traffic safety concerns.

The Applicant's traffic engineer provided supplemental comments addressing the issues raised by FOFR and others. That response incorporated the fact that, after the initial transportation impact analysis was performed, the Applicant proposed a condition of approval limiting land divisions of the Subject Property such that the minimum size of any new parcel would be 10 acres. The supplemental information also addressed the trip threshold for conducting additional analyses, the

appropriate planning horizon, what constitutes a significant effect on a transportation system, and safety concerns.

Having reviewed the Applicant's materials, the comments of the County's Transportation Planner, and the criticisms of the Applicant's materials, I find that the Applicant's materials demonstrate compliance with Goal 12 and the TPR. This finding, however, is based in part on the Applicant's proposed condition limiting the size of new parcels, which is addressed in more detail below.

Based on the foregoing, I find that the requested Plan Amendment and Zone Change are consistent with Goal 12.

### 5. Goal 14 – Urbanization

Goal 14 seeks to "provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure the efficient use of land, and to provide for livable communities."[4] When a PAPA results in the urbanization of rural land, it generally requires an exception to Goal 14. The Applicant asserts that no Goal 14 exception is required because the Plan Amendment and Zone Change will not result in the urbanization of land, and because the County has previously acknowledged that the MUA-10 zone limits the intensity and density of developments to rural levels. Other participants disagree, arguing that the proposed Plan Amendment does result in the urbanization of the Subject Property and, therefore, it is not consistent with Goal 14 without a Goal 14 exception.

The MUA-10 zone has previously been interpreted as being compatible with Goal 14. In LUBA's opinion in the "*Marken*" case, for example, LUBA considered whether the density and lot size permitted under the MUA-10 zoning comply with Goal 14.[5] In that case, the County Board had approved a PAPA to change the Plan designation of the subject property from AG to RREA and a corresponding zone change from Exclusive Farm Use-Tumalo-Redmond Bend Subzone ("EFU-TRB") to MUA-10. Prior to addressing the petitioner's argument, LUBA acknowledged the County's findings:

> "The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by [the Land Conservation and Development Commission (LCDC)] as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. Ordinance 2016-005. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14."[6]

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[4] OAR 660-015-0000(14).
[5] *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-049, Feb. 15, 2024) (slip op at 10).
[6] *Id.* (slip op at 8).

LUBA upheld the County's interpretation that the MUA-10 zone uses are rural in nature and therefore do not conflict with Goal 14.[7] That decision relied in part on the density permitted under the MUA-10 zone – one dwelling per 10 acres – not being an urban density, a determination the petitioner in that case did not challenge.[8]

In more recent decisions, however, LUBA has been more specific about what is required to demonstrate that the application of the MUA-10 zoning designation complies with Goal 14. In the *Destiny Court* case, for example, the Petitioner requested a Plan Map amendment from AG to RREA and a zoning change from EFU-TRB to MUA-10. The hearings officer in that case took official notice of LCDC's acknowledgment that the MUA-10 zone complies with all statewide planning goals. The hearings officer also considered a site-specific analysis prepared by the intervenor's attorney.[9] LUBA held that the site-specific analysis was necessary to demonstrate Goal 14 compliance.[10]

In the most recent case addressing this issue – *BCL LLC* – LUBA again determined that the application of the MUA-10 zoning is not, as a matter of law, always consistent with Goal 14, and that the County "must demonstrate that the proposed redesignation and rezoning is consistent with Goal 14, applying the relevant *Curry County* factors." The reference to the *Curry County* factors is *1000 Friends of Oregon v. LCDC,* 301 Or 447 (1986). As explained by LUBA:

> "Under *Curry County*, in redesignating rural land from plan designations implementing the resource goals, counties must evaluate whether development allowed under the new designation and associated zoning would allow for the urban use of rural land. That evaluation requires consideration of a number of factors described in *Curry County* and its progeny. With respect to PAPAs involving residential use of rural land, the relevant factors include the density of development allowed under the new plan designation and zone, the types and levels of services to be provided, and proximity to urban growth boundaries."[11]

Based on the most recent LUBA decisions, it is clear that the Applicant must show that the Plan Amendment and Zone Change comply with Goal 14 by applying the *Curry County* factors to the Subject Property rather than relying on the MUA-10 zone alone as demonstrating compliance with that Goal. As discussed in more detail below, I find that the Applicant has met that burden based on the current record.

The first of the *Curry County* factors looks to the allowed density under the new Plan designation. The Applicant notes that the allowed density in the MUA-10 zone is generally based on one dwelling per 10 acres. In *Curry County*, the Court concluded that one dwelling per ten acres does not constitute urban zoning.

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[7] *Id.* (slip op at 11).
[8] *Id.* (slip op at 10).
[9] *Destiny Court* (slip op at 10).
[10] *Destiny Court* (slip op at 14-15).
[11] *BCL LLC* (slip op at 25-26).

However, the Applicant acknowledges that the actual density that is allowed in the MUA-10 zone could be greater due to various options for cluster development or planned unit development in that zone. LUBA addressed this in *BCL LLC*, concluding that the County must address that feature of the MUA-10 zone and determine if such densities are urban or rural.

The Applicant initially asserts that the ability to create smaller parcels or more dense development will not result in urbanization of the Subject Property, and compares the density and lot size allowed in the MUA-10 zone to the density and lot sizes allowed in the EFU zone. But the Applicant also proposes a condition that will limit future divisions of the Subject Property to parcels that are no less than 10 acres. However, the Applicant suggests that the limit on new parcel sizes will apply only while the Subject Property remains outside of an urban growth boundary ("UGB").

Other participants argue that the Plan Amendment and Zone Change cannot be conditioned in this manner. FOFR additionally asserts that it would be difficult to enforce such a condition.

As discussed in more detail below relating to DCC 18.136, the Code does not place any limits on the County's ability to restrict a Plan Amendment or Zone Change as suggested by the Applicant. To comply with Goal 14 without taking an exception to that Goal, the Applicant must show that the resulting proposal will not result in urbanization through the creation of urban-level density. A limitation on the County's approval that prohibits such density is sufficient to show that only rural-level density will result. That being said, the Applicant does not explain why that limit should automatically be removed if the Subject Property is brought inside of a UGB in the future, which will also change the Plan Map and Zoning Map designation of the Subject Property. The decision to bring property within a UGB will necessarily involve a different analysis and policy choice to increase the density of the Subject Property. This Recommendation is therefore based on the minimum parcel size remaining unless and until a new Plan Amendment is approved.

Based on the foregoing, I find that the first *Curry County* factor provides weight to the argument that the proposal will not result in urban-level development.

The second *Curry County* factor looks to the types and levels of services to be provided. The Applicant asserts that sewer service is prohibited for the Subject Property and that only wells can provide water to the Subject Property. Other participants do not refute the Applicant's characterization of these services or identify specific urban-level services that will be required for the Subject Property under the requested zoning.

Based on the foregoing, I find that the second *Curry County* factor provides weight to the argument that the proposal will not result in urban-level development.

The third *Curry County* factor considers proximity to the urban growth boundary ("UGB"). The closest UGB to the Subject Property is the Sisters UGB, which is nearly 8 miles away. LUBA addressed this issue in its *BCL LLC* decision. There, LUBA determined that changing a parcel to the RREA is inconsistent with Goal 14 where the property was within one-quarter mile of the City of Bend's UGB, and where the allowed density on the property was similar to what would be

allowed in that city. Applying that logic to the facts in this case, the third *Curry County* factor provides weight to the argument that the proposal will not result in urbanization.

Having considered the *Curry County* factors, I find that, based on the current record, the proposal will not result in urbanization of the Subject Property, and the Applicant has therefore met its burden of showing that the proposal is consistent with Goal 14.

### C. Zone Change

The Applicant requests a Zone Change from EFU-SC to MUA-10. The criteria for rezoning a parcel are set forth in DCC Chapter 18.136. These findings address the applicable Zone Change criteria in the context of the Applicant's request. That is, the Applicant has also requested the Plan Amendment to change the Plan Map designation applicable to the Subject Property – from the AG designation to the RREA designation. As discussed in the findings above, I have found that the Applicant has initially not met its burden of demonstrating compliance with the Plan Amendment criteria. The findings in this section, however, are based on the assumption that the Plan designation for the Subject Property is RREA, as the Applicant requested. If the County Board does not approve the Plan Amendment, there would unlikely be no basis for the County Board to approve the Zone Change as requested.

*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.*

This Code provision requires consideration of the public interest based on whether: (1) the Zone Change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan's introductory statement and goals.

The Applicant, Staff, and other participants address this Code criterion by discussing specific Plan goals and policies. Before addressing those specific arguments, I note that, if the Plan Amendment is approved, it seems necessary to rezone the Subject Property in some way. That is, the Agricultural designation of the Plan is implemented through the exclusive farm use resource zone designations. The RREA Plan designation, in contrast, is implemented through the RR-10 and MUA-10 zones. There would be no basis under the Plan to allow the Plan Amendment to change the designation of the Subject Property to RREA but to keep the EFU zoning. Viewed through that lens, it seems that either the RR-10 or the MUA-10 zones largely conform to the Plan in this context, and that the Applicant must show only that the Zone Change, as applied to the Subject Property, is consistent with the Plan's introductory statement and goals.

The Applicant and the Staff Report note that the County generally does not consider the Plan's goals and policies to be mandatory criteria. With one exception – Plan Policy 3.3.1 – other participants in this proceeding assert that the Application is inconsistent with various Plan provisions, but they do not assert that those Plan provisions are mandatory criteria, or otherwise

dispute Staff's position that the goals and policies are generally not mandatory criteria. Nevertheless, because the Code itself requires a consideration of the Plan's statements and goals, and because some participants have questioned whether the Zone Change is consistent with those Plan provisions, I address those issues in this Recommendation.

The Application identifies potentially relevant Plan provisions by pointing to several goals and policies in the Plan set forth in DCCP Chapter 2, Resource Management, and Chapter 3, Rural Growth Management. The Applicant states that the Application is consistent with those policies and goals. The Staff Report generally agrees with the Applicant's assessment of those policies and goals.

FOFR asserts that the Application is inconsistent with Plan Policy 3.3.1. Policy 3.3.1 states: "Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." FOFR argues that the Zone Change is inconsistent with this policy because the resulting MUA-10 zone could allow parcels that are smaller than 10 acres, through cluster development or planned unit development.

As briefly discussed in earlier findings, the Applicant ultimately responds to FOFR's argument by proposing a limit on the approval of the Zone Change that would serve as a condition on future divisions of the Subject Property – specifically that any new parcels be no smaller than 10 acres so long as the Subject Property is not within a UGB.

It does not appear to be disputed in this matter that the Subject Property could be divided into parcels smaller than 10 acres once the MUA-10 zone applies. Without more, such an outcome would be inconsistent with Plan Policy 3.3.1, which uses mandatory language that prohibits smaller parcels in the MUA-10 zone. As LUBA held in *BCL LLC*, consistency with Plan policies must be determined at the time of the PAPA rather than a subsequent land use application,[12] so the only way for this Application to comply with the minimum parcel size is to impose a limit on smaller parcel sizes if the Application is approved.

FOFR asserts that limiting the approval in this way is not possible. In part, FOFR argues that such an approach is an admission that the new zone is not consistent with the Plan, otherwise such a modification would not be needed. FOFR also argues that such a limit serves to alter existing Code language that would otherwise allow smaller parcels. Finally, FOFR argues that enforcement of such a limitation would be difficult and unlikely to occur.

Having considered the arguments of FOFR and the Applicant, I do not find language in the Code that prohibits a limitation like the one the Applicant proposes. The new zoning designation can be made consistent with Plan Policy 3.3.1 by prohibiting land divisions resulting in parcels smaller than 10 acres. This limit is not a re-write of the MUA-10 Code provisions, as those will still apply to other parcels already zoned MUA-10. Rather, it serves as a waiver by the Applicant to seek to apply those provisions as a means of ensuring consistency with the Plan. Finally, I do not agree that such a limit is unlikely to be enforced. Unlike other enforcement matters, where a property owner may develop property without County oversight or awareness, the only way to divide

[12] *BCL LLC* (slip op at 10).

property is through a partition or subdivision process decided by the County. The County will therefore be immediately aware if the Owner attempts to create smaller parcels.

Based on the foregoing, I find that the Application can satisfy Plan Policy 3.3.1 as long as the County Board imposes a limit on the future division of the Subject Property in a manner that prohibits the creation of parcels smaller than 10 acres. However, I do not agree with the Applicant that the limit should apply only during the time period that the Subject Property remains outside of a UGB. Unless and until a new Plan amendment or zone change is approved, the Subject Property will carry the RREA and MUA-10 designations and, therefore, Plan Policy 3.3.1 will be applicable. If the Applicant or Owner wishes to change those designations based on the Subject Property being included in a UGB, it will be free to seek such a change at that time.

FOFR asserts that the Application is inconsistent with Plan Policies 2.2.1, 2.2.9, 2.2.11, and 2.2.13, each of which relates in some way to retaining agricultural land within the EFU zone and encouraging farming on those lands. In separate findings above, I determined that the Subject Property, based on the evidence currently in the record, is agricultural land. As such, I agree with FOFR that changing the zoning of the Subject Property would be inconsistent with these Plan Policies that are applicable to agricultural land. If the County Board later concludes that the Subject Property is not agricultural land, it will need to address consistency with these policies.

FOFR asserts that the Application is inconsistent with Plan Policies 2.5.23, 2.5.24, and 2.5.25, each of which relates to water use. These policies state that the County will "encourage", "ensure", and "evaluate" water impacts. Those policies do not contain "mandatory" language specific to how the County is to undertake those activities, or what standards the County is to apply when doing so. As such, I find that these are the types of policies that are implemented through the Code, and that compliance with the Code determines if the Application is consistent with these policies. Even so, the Applicant provided additional information describing the impacts of domestic water use if the MUA-10 zone is applied. Based on the information the Applicant has provided, I find that the Applicant has met its burden of demonstrating the Application is consistent with Plan Policies 2.5.23, 2.5.24, and 2.5.25, provided that all other applicable Code provisions are satisfied, which are addressed throughout this Recommendation.

FOFR asserts that the Application is inconsistent with Plan Policy 2.6.2, which is to "[p]romote stewardship of wildlife habitats and corridors, particularly those with significant biological, ecological, aesthetic and recreational value." As with other policies FOFR points to, this policy does not contain "mandatory" language specific to how the County is to achieve this policy. However, as explained in earlier findings addressing Goal 5, the County has protected some wildlife habitat through its Goal 5 program, and those findings conclude that the Applicant has not adequately addressed potential conflict with the County's listed Goal 5 resources. As such, I agree with FOFR that changing the zoning of the Subject Property would be inconsistent with Plan Policy 2.6.2 based on the current record.

Finally, FOFR asserts that the Application is inconsistent with Plan Policies 3.6.9 and 3.6.14. Plan Policy 3.6.9 states that "[n]ew development shall address impacts on existing facilities and plans through the land use entitlement process." Because the requested Plan Amendment and Zone Change do not propose development, I find that this Plan Policy is not applicable to Applicant's

proposal. Plan Policy 3.6.14 similarly speaks to the "location and design of rural development", which would be applicable where development is proposed, but which is not applicable to the Applicant's request as presented.

Based on the foregoing, I find that the Application as presented does not satisfy DCC 18.136.020(A).

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

DCC 18.32.010 contains the following purpose of the MUA-10 zone:

> 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 Applicant states that changing the zoning designation of the Subject Property is consistent with the purpose and intent of the MUA-10 zone because the Subject Property is not agricultural land but that its soils can be preserved for future part-time or diversified agricultural use. The Applicant also claims that the low level of allowed development will conserve open spaces and protect natural and scenic resources, consistent with how properties in the vicinity are used.

COLW asserts that the Zone Change does not satisfy DCC 18.136.020(B) because the Applicant proposes to retain the FP zoning on a portion of the Subject Property. COLW notes that the FP zone is not one of the zones that implements the RREA Plan Map designation. Although COLW's logic makes sense, I find that this Code provision focuses on a "change in classification." The existing zoning designation, or any zoning designation that is not proposed to change, is not relevant under the express terms of this Code provision.

FOFR asserts that the Zone Change does not satisfy DCC 18.136.020(B) because the Applicant has proposed to limit the full application of the MUA-10 zone to the Subject Property through a condition of approval that would prohibit creating parcels smaller than 10 acres. Specifically, FOFR argues that an applicant who must remove or restrict allowed uses to get approval concedes that the zone does not fit its property. In earlier findings, I concluded that it is possible for the Applicant to voluntarily waive applicability of some components of the MUA-10 zone in order to demonstrate consistency with the Plan. For similar reasons, I find that the proposed condition of approval does not serve as a "concession" that the proposed Zone Change is inconsistent with the intent of the MUA-10 zone.

As set forth above, the MUA-10 zone has multiple purposes, and there is no requirement that the proposed zone change must achieve all of those purposes. Rather, the express language of DCC 18.136.020(B) requires consideration of whether the Zone Change "is consistent with" those purposes. Although the Applicant relies in part on the Subject Property not qualifying as agricultural land as a basis for showing consistency with the purpose of the MUA-10 zone, that is not the only basis of the Applicant's arguments. Further, I find that the Applicant's proposed condition prohibiting smaller parcels actually creates better consistency, because it applies the MUA-10 zone in a manner that is also consistent with the Plan.

Based on the foregoing, I find that the Applicant has met its burden of showing that the change in zone classification it seeks is consistent with the purposes of the MUA-10 zone, as described by the Applicant. DCC 18.136.020(B) is therefore satisfied.

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

This Code provision requires a determination that the requested MUA-10 zoning will presently serve the public health, safety, and welfare based on the availability and efficiency of providing necessary public services and facilities, and considering the impacts on surrounding land uses to ensure that such impacts are consistent with the specific goals and policies of the Plan.

The Applicant asserts that this standard is met because necessary public services are available to serve the Subject Property. Specifically, the Applicant argues that the Subject Property can be served with electricity from a local provider, and that water and wastewater can be served through on-site wells and septic systems, respectively. The Applicant adds that other services, like police, fire, and transportation, are also currently available. With respect to off-site impacts, the Applicant argues that the MUA-10 zoning allows rural uses consistent with how nearby properties are currently being used.

FOFR responds that development under the MUA-10 zoning will deplete groundwater, thereby impacting neighboring wells, and that the transportation system is inadequate. Other participants raised general concerns about impacts to water, traffic, and fire, but do not assert that those concerns prevent the County from finding compliance with this Code provision.

The findings in this Recommendation addressing Goal 12 and the TPR conclude that the transportation system is adequate. With respect to groundwater, the Applicant responds to FOFR by providing evidence in the form of well logs, which the Applicant asserts show wells in the area as being sufficient, and arguing that domestic use of the Subject Property will require less water than if the Applicant attempted to irrigate to support agricultural activities in the current EFU zone. The Applicant provided additional evidence in the form of a report showing sufficient groundwater

in the Deschutes Basin, even in the face of rapid growth in areas like the City of Bend. Finally, the Applicant notes that the Oregon Water Resources Department, which regulates groundwater, has not felt the need to take action in this area, which it is authorized to do if groundwater resources decline to unacceptable levels.

Having reviewed the evidence and argument of the participants, and based on the technical information provided by the Applicant, I find that the Applicant has met its burden of showing that changing the zoning of the Subject Property is consistent with the standards set forth in DCC 18.136.020(C). That Code provision is therefore satisfied.

*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.*

The Applicant addresses this Code provision first by asserting that a mistake was made when the property was first zoned EFU. The Applicant also asserts there has been a change in circumstances since the property was last zoned - the "change" being the understanding of what the actual characteristics of the soils are, and the fact that those soils are not as conducive to agriculture as originally assumed when the EFU zoning was applied.

I do not agree with the Applicant that the original zoning of the Subject Property constitutes a "mistake," but it is possible for the Applicant to show a "change in circumstances". The original zoning was based on the process the County used at that time to identify agricultural land, which was based on NRCS classifications. The Applicant has not argued that the County applied the wrong NRCS classifications based on the information the County had at that time. Rather, the Applicant seeks to present more granular information to show the actual soil characteristics currently on the Subject Property. With that more granular information, it is possible to then conclude that there has been a change in circumstances. However, as discussed in earlier findings, the Applicant's ability to rely on its Order 1 Soil Survey is in doubt, as the record does not include certification by DLCD approving the Applicant's methodology for the soil survey. Thus, while it may be possible for the Applicant to demonstrate a change in circumstances, it cannot do so on the current record.

Based on the foregoing, and since the Applicant relies on the Order 1 Soil Survey to satisfy this Code provision, I find that the Applicant has not met its burden of demonstrating compliance with DCC 18.136.020(D).

**D. <u>Code Enforcement Issues</u>**

COLW asserts that the County cannot approve the Plan Amendment and Zone Change in light of DCC 22.20.015(A). Pursuant to that Code provision, if any property is in violation of applicable land use regulations, approvals, or permits, the County cannot make land use decisions relating to that property. COLW provided evidence of a pending Code enforcement matter for the Subject Property.

The Applicant notes that the County Board interprets DCC 22.20.015(A) as applicable only if there has been an "adjudicated violation", or if the subject matter is the best forum to adjudicate the

violation. COLW's argument is only that there is a pending Code enforcement matter, not that there has been an adjudicated violation that still exists. Further, I find it is not necessary to resolve such a violation as part of this Recommendation, and that a Plan amendment or zone change application is not an appropriate venue to adjudicate the alleged violation, which will necessarily require the development of a record that is unrelated to the approval criteria applicable in this proceeding. Even if the Plan Amendment and Zone Change are approved, the County retains the right to enforce its Code based on the alleged violations that have already occurred. I therefore find that DCC 22.20.015(A) does not prevent further consideration of the Application.

## IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has not met its burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change, because the current record is insufficient to show compliance with Goal 3, Goal 5, DCC 18.136.020(A), and DCC 18.136.020(D). I therefore recommend to the County Board of Commissioners that it DENY the request in the Application based on the current record, and that it approve the Application only if the Applicant sufficiently addresses the deficient standards.

Dated this 18th day of November 2026



Tommy A. Brooks
Deschutes County Hearings Officer