



## BOARD OF COMMISSIONERS

### BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, SEPTEMBER 13, 2023

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

#### REVISED 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 view the meeting via Zoom, see below.

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

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

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

- To join the meeting via Zoom from a computer, use this link: <http://bit.ly/3h3oqD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press \*6 to indicate you would like to speak and \*9 to unmute yourself when you are called on.



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

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

## CALL TO ORDER

## PLEDGE OF ALLEGIANCE

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

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

## CONSENT AGENDA

1. Approval of Resolution No. 2023-053 accepting grant funding for the Victims of Crime Act and Criminal Fine Account and extending 2.7 FTE positions in the FY2023-24 Deschutes County Budget
2. Approval of Board Order No. 2023-035 authorizing the sale of property at 16609 Dillon Way in La Pine, and further authorizing the Deschutes County Property Manager to execute the documents associated with the sale
3. Approval of the procurement of four replacement dump trucks for the Road Department
4. Approval of the minutes of the August 9, 2023 BOCC meeting

## ACTION ITEMS

5. **9:10 AM** Enterprise Zone Abatement Extension for BasX
6. **9:25 AM** Senate Bill 80 – Wildfire Hazard Risk Mapping Discussion
7. **9:55 AM** Public Hearing and consideration of Ordinance No. 2023-021 concerning the Local Wildfire Hazard Zone and Oregon Residential Specialty Code updates regarding wildfire hazard mitigation
8. **10:15AM** Board Decision on Land Use File No. 247-23-000125-DR, Initiation of Use
9. **10:20 AM** Second Reading of Ordinance No. 2023-015 – LBNW, LLC Plan Amendment / Zone Change

10. **10:25 AM** Authorization of Issuance of Debt for Courthouse Expansion and Potential Refinancing
11. **10:45 AM** Pence Early Work Contract Amendment for the Deschutes County Courthouse Expansion Project
12. **10:55 AM** Amendment #1 to Oregon Health Authority grant agreement #180009-1 for Public Health
13. **11:05 AM** City of Bend Homeless Partnership: Franklin Avenue Shelter Contract Amendment
14. **11:15 AM** Second reading and adoption of Ordinance No. 2023-020, amending Deschutes County Code relative to signs placed within the County road right-of-way

#### **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.*

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

#### **ADJOURN**



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 13, 2023

SUBJECT: Approval of Resolution No. 2023-053 accepting grant funding for the Victims of Crime Act and Criminal Fine Account and extending 2.7 FTE positions in the FY2023-24 Deschutes County Budget

RECOMMENDED MOTION:

Move approval of Resolution No. 2023-053 accepting grant funding for the Victims of Crime Act (VOCA) and Criminal Fine Account grant (CFA) and extending 2.7 FTE within Victim’s Services and the FY2023-24 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

VOCA/CFA is a non-competitive formula grant provided to assist in funding Victims Assistance Programs. This funding will renew existing funding already established in the Victims Assistance Program and already budgeted for in FY24. The funding lasts through 9/30/2025.

The funding will extend three limited duration Victims’ Advocates: Position #’s 1981 (1.0FTE), 2193 (1.0 FTE), and 2153 (0.7 FTE) due to term on 9/30/2023 through 9/30/2025.

Based on communications with grantors we anticipate the grant will be formally approved by 9/30/2023.

BUDGET IMPACTS:

Funding was anticipated and included in the adopted FY24 budget. Total expected revenue for the duration of the two year grant cycle (10/1/2023-9/30/2025) will be:

- VOCA \$540,260
- CFA \$224,396

ATTENDANCE:

Ashley Beatty
Dan Emerson

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

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,  
OREGON

A Resolution Extending FTE \*  
Within the 2023-24 \* RESOLUTION NO. 2023-053  
Deschutes County Budget \*

WHEREAS, Deschutes County Victims’ Assistance presented to the Board of County Commissioners on 9/13/2023, with regards to accepting grant funds for the Victims of Crime Act (VOCA) and Criminal Fine Account grant (CFA) and extending 2.7 limited duration FTE in support of Victims Services, and,

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

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

Section 1. That the following FTE be added:

| <b>Job Class</b>  | <b>Position Number</b> | <b>Type</b>      | <b>Duration if Limited Duration</b> | <b>FTE</b> |
|-------------------|------------------------|------------------|-------------------------------------|------------|
| Victims’ Advocate | 1981                   | Limited Duration | 9/30/2025                           | 1.0        |
| Victims’ Advocate | 2193                   | Limited Duration | 9/30/2025                           | 1.0        |
| Victims’ Advocate | 2153                   | Limited Duration | 9/30/2025                           | 0.7        |
| <b>Total FTE</b>  |                        |                  |                                     |            |

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

DATED this \_\_\_\_\_ day of September, 2023.

BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

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

ATTEST:

\_\_\_\_\_  
PATTI ADAIR, Vice-Chair

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

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

# A. Cover Page

## Instructions:

- Please complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.
- To deselect a radio button, double click on it.

### Organization Certification

1.

By checking the following boxes, I hereby certify the following:

- The Organization Information page is complete and accurate. If appropriate, CVSSD has been contacted to make any changes. \*
- All new personnel working on this application have been added to the Organization profile. \*
- All personnel no longer associated with this agency/program have been deactivated in the system. \*
- A current Civil Rights Training Certification is uploaded which indicates that the required training has been completed within the last 2 years. \*
- The Whistleblower Certification has been uploaded on the Certification page under Organization Details within My Organization. \*
- The program will send at least one representative in a leadership role to each applicable required training hosted by CVSSD (ie: Non-Profit Directors Training, ODAA, MDT Day, or Grant Management and Tribal Nation Meetings). \*
- The agency/program will send at least one representative in a leadership role to each applicable required training hosted by CVSSD (ie: Non-Profit Directors Training, ODAA, MDT Day, or Grant Management and Tribal Nation Meetings). \*

### 2. Applicant Information

- a. Applicant Organization's Legal Name & Mailing Address: *Deschutes Co Victim Assistance  
1164 NW Bond  
Bend, OR 97701-1913  
Phone: (541) 317-3186  
Fax: (541) 330-4698*
- b. Physical Address (If different than the mailing address):
- c. County: *Deschutes County*
- d. Additional county(ies) served:
- e. Congressional District(s) served: \*      1       2      3      4       5      6      [Click here to view map](#)
- f. Federal ID #: *93-6002292*
- g. Federal Unique Entity ID #: *030805147*
- h. Contact Person - The individual who is responsible for day to day management and program reporting: *Ashley Beatty  
Program Manager  
1164 NW Bond Ave*
- i. Contact Information: *Bend, OR 97703  
Phone: (541) 317-3186  
E-mail: ashley.beatty@dcdca.us*
- j. Fiscal Contact - The individual who prepares financial reports for the grant based on agency fiscal records: *Camilla Sparks  
Financial Officer  
1164 NW Bond St.  
Bend, OR 97701-1913  
Phone: (541) 388-6520  
Fax: (541) 330-4698  
E-mail: camilla.sparks@deschutes.org*
- k. Fiscal Contact Information:
- l. Fiscal Officer - The individual who has signature authority for financial reporting for the agency. CVSSD will assume that all financial reports submitted in E-Grants have been approved by the Fiscal Officer as a true and accurate representation of grant expenditures. *Camilla Sparks  
Financial Officer  
1164 NW Bond St.  
Bend, OR 97701-1913  
Phone: (541) 388-6520  
Fax: (541) 330-4698  
E-mail: camilla.sparks@deschutes.org*
- m. Fiscal Officer Information:
- n. Website Address:

### 3. Implementing Agency Type: \*

- a. **Government Agencies Only:** Which designation best describes your government agency (select one response)?
- Law Enforcement
  - Prosecutor - County District Attorney
  - Prosecutor - City Attorney
  - Other Government Agency (please specify):

### 4. Staff Information

- a. Total number of paid staff for all applicant victimization program and/or services (Count each staff member once. Both full and part time staff should be counted as one staff member. Do not prorate based on FTE.): *9.00*
- b. Estimated number of staff hours funded through this VOCA award (plus match) for subgrantees' victimization service programs (Count total number of hours to be worked by all staff members supporting the work of this VOCA subaward plus match.): *528.00*



## B. Staff, Volunteers, and Training Requirements

### Instructions:

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.

To complete or edit the Staff Roster, go to your profile by clicking your name in the top right corner, and then select "Staff Roster" in the left hand navigation panel. Applicants are required to complete information about each CVSSD grant funded staff person in the Staff Roster and upload corresponding job descriptions. The Staff Roster is where applicants demonstrate that the minimum training requirements have been met for each staff person. Training content is outlined [here](#).

Minimum requirements are:

- Staff and volunteers who provide direct services must complete the required training prior to having unsupervised contact with survivors.
- 40 hours of training is required for ALL staff and volunteers who provide services in-person or by phone to survivors.

By checking this box, I hereby certify that the organization's staff roster is complete, true, and accurate. \*

[Click here to view Staff Roster](#)

VOCA Federal Guidelines require that VOCA funded programs use volunteers within the organization (CVSSD may waive this requirement due to hardship). See the most recent version of the [VOCA Grant Management Handbook](#) for more information on the use of volunteers.

1. Describe how volunteers will work within the funded organization.  
*Volunteers will be used to assist in providing services to victims of crime. They will work within the office and serve under the director to ensure quality services are provided. At this time, we do not have any volunteers. Since COVID, we have been unable to recruit or retain any volunteers. We are hoping to recruit interns this year from the local college.*
2. How will the program conduct background checks for volunteers (i.e., OSP, On-Line Services)?  
*Background checks will follow the same exhaustive process that is used for employees of Deschutes County. This process will be completed by the Human Resources Department.*
3. Number of volunteers supporting the work of this VOCA award for applicant's programs and/or services (Count each volunteer once. Do not prorate based on FTE.): 0
4. Number of volunteer **hours** supporting the work of this VOCA award for applicant's programs and/or services: 0.00

## D. Advancing Equity and Meaningful Engagement

### Instructions:

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.

#### Advancing Equity

All applicants have a responsibility to ensure their services and practices best meet the diverse and complex needs of the people and the community they serve. This is achieved when agencies shift their practices to enhance equity, address oppression, and reduce disparities. CVSSD requires that applicants demonstrate their commitment to advancing equity with a written plan and/or other materials. For DAVAP's this is a victim service specific plan. A written plan may:

1. Address how data informs the agency's understanding of why and what racial, cultural, economic, social and other environmental disparities exist in the community.
2. Reflect on and express an understanding of the agency's own history and/or past performance, and whether that did good for or caused harm to the community.
3. Describe what the agency will do to build a culture of transparency so that historic patterns of "we've always done it this way" are disrupted.
4. Include methods the agency has for authentically engaging communities that are strengths-based, people-centered, culturally relevant and anti-racist, anti-homophobic, anti-transphobic and anti-ableist.
5. Include performance and accountability measures to demonstrate a service, activity or practice is increasing equity and decreasing disparities.
6. Describe how the agency is recruiting, hiring, and sustaining a diverse and inclusive workforce and volunteer force.
7. Explain how leadership, management and staff participate in carrying out the goals and objectives of the plan.

Applicants must submit a copy of a plan and/or other materials that demonstrates how the agency is advancing equity. CVSSD will evaluate what steps are being taken by the applicant to advance equity through its programs, services, and practices. If applicants do not already have written materials to demonstrate their work in this area, they must create them within 180 days per supplemental condition of the CVSSD grant award. CVSSD staff will monitor the progress of applicants towards completion of these materials.

If you do not have a plan and/or other written materials available, explain how you will develop this plan within the first 180 days of this award. You may also use this field to say more about your plan and/or other written materials.

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*The Deschutes County Victims Assistance Program in collaboration with the District Attorneys Office, Parole and Probation, and Juvenile Justice Departments have come together and hired Whitney Swander, XXXXXXXXXXXX. She is in the middle of her analysis of our current policies and procedures. Our goal is to review Deschutes County's criminal justice system as a whole along with each of our individual programs. She will then assist us in drafting our formal plan along with action items to address the gap analysis.*

*In the meantime, Victims Assistance continues to provide meaningful access to service to all victims of crime regardless of race, ability, orientation or religious beliefs. If at any point, feedback is given to Victims Assistance about a person's experience that is constructive in nature, steps will be taken to ensure improvements are implemented. For example, the VAP director received a call from a victim who shared a complaint about a judge. They had filed a civil protective order and was appearing at the initial hearing. The victim was hard of hearing and couldn't hear instructions from the judge, which lead to the judge yelling at the victim for not listening or following instructions. In the end, the victim was not granted the protective order, they believed in part to her disability and inability to hear the instructions. As a result, the VAP Director contacted the Central Oregon Disability Support Network and asked if they would be willing to come and speak with the Trial Court Administrator about things they could do to assist in making instructions clear for those with disabilities. The VAP Director also scheduled a time for the program manager to complete a walk-through of VAP to ensure it was supportive to those with disabilities.*

\*

#### Meaningful Community Engagement

All applicants have a responsibility for outreach to members of their communities and coordinating services and activities with other service providers, especially with those that represent and serve [communities of color](#), [LGBTQIA2S+](#), [people with disabilities](#), and [other populations impacted by inequity](#). Applicants must submit a copy of a plan and/or other materials that demonstrates how the organization is reaching out to and coordinating with these community partners. A written plan may:

1. Contain results from a community needs assessment that includes data and indicators about the community (demographics, history, geography, infrastructure, cultural and social structures, economy/industry, government/political structures, etc.)
2. Include lessons learned from stakeholder and participant interviews, surveys, and other feedback from survivors and community partners
3. Establish frameworks for outreach and engagement with diverse populations and those that serve them (table events, network at population specific events)
4. Describe involvement in community coordination efforts, and formal collaborations through non-binding agreements.

CVSSD will evaluate what steps are being taken by the applicant to meaningfully engage with culturally specific communities and partners and how the applicant is working together to align its programs, services, and practices. If applicants do not already have written materials to demonstrate their work in this area, they must create them within 180 days per supplemental condition of the CVSSD grant awards. CVSSD staff will monitor the progress of applicants towards completion of these materials. Applicants may find resources such as [Best Practices for Meaningful Community Engagement](#) by Groundwork USA or [Meaningful Community Engagement for Health and Equity](#) from the Centers for Disease Control and Prevention helpful.

If you do not have a plan and/or other materials for outreach, coordination, and community engagement efforts already available, explain how you will develop a plan within the first 180 days of this award. You may also use this field to say more about your plan and/or other materials.

*The Deschutes County District Attorney's Office and Victims Assistance are committed to engaged in supporting our community. We make an effort to participate in community outreach events including Juneteenth event, Father's Group Panel for communities of color, benefit for the Latino Community Association, Redmond National Night Out to name a few. Victims Assistance meets at least annually with different culturally specific service providers to maintain relationships and ensure service coordination.*

\*

## E. Meaningful Access to Effective Services

### Instructions:

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.

#### Meaningful Access to Effective Services

Effective services are survivor centered, trauma informed and culturally responsive. Survivors have the right to self-determination and to make informed decisions about the services they receive. This means offering services that are accessible and responsive to survivors' cultural, gender, and other intersecting identities. Services may include but are not limited to emergency assistance, culturally responsive services, hate or bias incident support, relationship building with culturally specific community partners, referrals to culturally appropriate services for additional services, culturally diverse material, and culturally appropriate accommodations.

Effective services are survivor centered, trauma informed and culturally responsive. Survivors have the right to self-determination and to make informed decisions about the services they receive. This means offering services that are accessible and responsive to survivors' cultural, gender, and other intersecting identities. Services may include but are not limited to emergency assistance, culturally responsive services, hate or bias incident support, relationship building with culturally specific community partners, referrals to culturally appropriate services for additional services, culturally diverse material, and culturally appropriate accommodations.

In this section, applicants will:

- Describe any culturally specific programming or services offered by the agency;
- Describe how the agency will educate victims of crime of the existence of Oregon's Hate & Bias Incident Reporting Hotline and counseling support available through the Crime Victim Compensation Program (CVCP);
- Describe existing relationships, either formal or informal, that exist between the agency and existing culturally specific community partners offering support services to communities impacted by inequity;
- Describe the culturally specific material that is available in common waiting areas and victim specific spaces, and;
- Describe the agencies process identifying and evaluating potential culturally appropriate accommodations.

#### Culturally Specific and/or Culturally Responsive Services

Describe any culturally specific programming and services your organization may offer. Also describe what 1) culturally specific training is provided for staff, 2) collaborations and partnerships with culturally specific providers and Tribal Nations, 3) culturally responsive co-advocacy practices, 4) outreach strategies to engage and listen to leaders and survivors from culturally specific communities, and 5) workplace practices that create a sense of belonging for staff, particularly those representing underserved or culturally specific populations. Check out the Women of Color Network Toolkit, a project funded by the Office on Violence Against Women. \*

1) Each staff in Victims Assistance engages in regular training in regards to culturally specific services and meets regularly with local culturally specific service agencies.

2) VAP collaborates with a variety of community based services who provide culturally specific services including the Father's Group, Latino Community Association, Central Oregon Disability Support Network, Pride, etc.

3) VAP has three staff who are bilingual on staff. Two whom speak Spanish and one who speaks both Punjabi and Hindi. Two staff who parents immigrated to the United States. Given the diverse nature of our staff, we are primed to collaborate with local service providers to provide co-advocacy services.

4) VAP values hearing from culturally specific populations. VAP brings experts to our unit meetings, attends trainings, and asked for guidance when appropriate.

5) Staff have multiple avenues to engage in the workplace and feel a sense of belonging. We have a DEI committee and Wellness Committee. Both are voluntary and meet during worktime. Their goals are inclusivity and wellness both inside and outside of the office.

#### Hate or Bias Incident Support

Describe how agency will educate victims of crime of the existence of Oregon's Hate & Bias Incident Reporting Hotline and counseling support is available through the Crime Victim Compensation Program (CVCP) for victims of hate and bias incidents regardless of if the incident was charged as a hate crime. Describe the agencies process for assisting victims of hate and bias incidents with CVCP applications who may not be associated with any open criminal case.

The DA's Office and Victims Assistance have designated resources who work hate or bias crimes. Doing this creates consistency in our response to hate crimes. It has also allowed us to create the opportunity for education and training with our Law Enforcement partners. Rosalie Beaumont has meet with some of the LE agencies to provide education and training around the law and resources, which includes the bias reporting hotline. All victims who are identified by this team are made aware of the bias hotline.

#### Relationship Building with Culturally Specific Community Partners

Describe the existing relationships, either formal or informal, that exist between your victim service program and existing culturally specific community partners offering support services to communities impacted by inequity, as well as intentional efforts that have been taken to strengthen these relationships. Also describe any culturally specific community partners with which you plan to outreach to for the purpose of relationship building and service collaboration. Your description should address relationship building with community partners supporting communities of color, LGBTQIA2S+ individuals, people with disabilities and any other identified community impacted by inequity.

The Deschutes County VAP has good relationships and partnerships with local culturally specific community partners. VAP and the DA's Office has attended fundraisers in support of these local service providers. The Program Director reaches out to local leadership to build relationships and seek guidance when appropriate. While there are no formal MOUs established between these service providers, Victims Assistance collaborates regularly.

#### Referrals to Culturally Relevant Services when Appropriate

Describe your agency's process for referring clients to culturally specific community partners that may provide additional culturally appropriate wrap-around services. Your description should address communities of color, LGBTQIA2S+, people with disabilities and any other identified community impacted by inequity. The process for making referrals should include that the referral will be made at the discretion of the client.

Referrals to culturally relevant are made at the victim's discretion. VAP ensures that services are offered, but does not make a referral or share victim status until which time the victim indicates that it is something they want. Communities of color can be referred to the Latino Community Association or Father's Group. People with Disabilities are connected with the Central Oregon Disabilities Support Network. LGBTQIA2S+ can be referred to pride alliance or OUT Central Oregon.

#### Culturally Diverse Material

Describe what culturally specific materials are available for victims in the common waiting areas and victims' specific spaces. Your description should include but is not limited to educational materials, posters, artwork, reading material, music, and entertainment. Describe what intentional inclusive messaging, such as Rainbow Flags, Safe Space decals, and Equity and Inclusion posters are made visible to victims.

*Spanish is the second most spoken language in Deschutes County. We have all of our materials available in Spanish which includes the victim packet, victim's rights brochures, information about restitution, information about uVisas and information from local community service providers. We have the DOJ provided poster with languages spoken posted next to our front window. All signage throughout the courthouse and DA's office are written in both English and Spanish.*

#### Culturally Appropriate Accommodations to Support Meaningful Engagement in the Criminal Justice Process

Describe your agency's process for identifying and evaluating potential culturally appropriate accommodations for victims as they maneuver through the criminal justice system. Accommodations may include considerations for religious holidays, appropriate spaces for prayer during trial, or separate waiting rooms for male and female victims, additional support prior to grand jury or trial for individuals from populations impacted by inequity who may view participation in the criminal justice system through a different cultural lens, preemptive education to court staff regarding a victim's pronouns, grand jury education regarding relevant cultural topics pertinent to a criminal case, Your process for determining culturally appropriate accommodations for victims should be at the direction of the victim for which you are serving.

*At the beginning of each case, Victims Assistance asks each identified victim for them to identify days that they are unavailable. This is a way to ensure that we are honoring each person's cultures, holidays and personal commitments. When we talk to victims at the beginning of the case, we complete a needs assessment, as part of that assessment, we ask what, if anything, we can assist the victim with. There have been times when victims request culturally specific services or accommodations. At this junction, we would ensure their wishes are documented for internal staff to honor.*

## F. Project Collaborations

### Instructions:

- Please complete this page and click **SAVE**, any errors will be noted at this point.
- Required fields are marked with a \*.

1.

**In the appropriate boxes below, describe your program's community partnerships and collaborative working relationships that are essential to providing services to victims of crime. If your agency/program does not support the identified victimization, please indicate in the narrative box.**

- a. Describe how services for victims of domestic violence and sexual assault are coordinated with non-profit DVSA's or other community and or Tribal Nations or government-based programs (co-advocacy, referrals, etc.).  
*Deschutes County VAP participates and co-chairs the local DV Council and High Risk DV Teams. In both of these multi-disciplinary teams, Victims Assistance and Saving Grace work together to create victim-centered policies and procedures. Together we also coordinate our advocacy response to support victims and ensure we are both providing services at appropriate times.*
- b. Describe the status of the Sexual Assault Response Team (SART) in your county. What, if any, regular interactions does your agency/program have with the SART?  
*Deschutes County's SART meets quarterly, Victims' Assistance is the Chair of the SART and actively participates and facilitates the meetings, agendas, and topics with participating agencies.*
- c. Describe how services for child victims of abuse are coordinated with community and other government-based programs (co-advocacy, referrals, etc.). What regular interactions does your agency/program have with the local MDT.  
*Services for child abuse victims are coordinated with our local Child Abuse Center, KIDS Center. We have one advocate who carries the child abuse caseload. She attends every Child Abuse MDT and has extra training specialized in child abuse and neglect.*
- d. Describe how services for general victims of crime (non DV/SA/Child Abuse victims) are coordinated with community and other government-based programs.  
*General victims of crime are served by Deschutes County VAP. When appropriate, Victims Assistance coordinated with our community service and government agencies including Thrive, DHS, HUD Housing, Mosaic Medical, Community Solutions, etcetera. Referrals are done on an individual basis when appropriate.*

## G. VOCA Services

### Instructions:

- Please complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.

Indicate the victims and services included in your VOCA funded activities, combining the domestic violence, sexual assault, and underserved categories if you receive funding in multiple categories.

### 2. Identify the victims to be served through this VOCA funded project (check all that apply):\*

- Adult Physical Assault (Includes Aggravated and Simple Assault)
  - Adult Sexual Assault
- Adults Sexually Abused/Assaulted as Children
  - Arson
- Bullying (Verbal, Cyber or Physical)
  - Burglary
- Child Physical Abuse or Neglect
  - Child Pornography
- Child Sexual Abuse/Assault
- Domestic and/or Family Violence
  - DU/DWI Incidents
  - Elder Abuse or Neglect
- Hate Crime: Racial/Religious/Gender/ Sexual Orientation/Other (Explanation Required)
  - Human Trafficking: Labor
  - Human Trafficking: Sex
- Identity Theft/Fraud/Financial Crime
- Kidnapping (non-custodial)
  - Kidnapping (custodial)
- Mass Violence (Domestic/International)
- Other Vehicular Victimization (e.g., Hit and Run)
  - Robbery
  - Stalking/Harassment
- Survivors of Homicide Victims
- Teen Dating Victimization
- Terrorism (Domestic/International)
- Violation of a Court Order
  - Other

If other, please describe:

*Property crimes*

### 3. Check the services to be provided by this VOCA funded project (check all that apply):\*

- a. Information & Referral
  - Information about the criminal justice process
  - Information about victim rights, how to obtain notifications, etc.
  - Referral to other victim service programs
  - Referral to other services, supports, and resources (includes legal, medical, faith-based organizations, address confidentiality programs, etc.)
- b. Personal Advocacy/Accompaniment
  - Victim advocacy/accompaniment to emergency medical care
  - Victim advocacy/accompaniment to medical forensic exam
  - Law enforcement interview advocacy/accompaniment
  - Individual advocacy (assistance in applying for public benefits, return of personal property or effects)
  - Performance of medical or nonmedical forensic exam or interview or medical evidence collection
  - Immigration assistance (e.g., special visas, continued presence application, and other immigration relief)
  - Intervention with employer, creditor, landlord, or academic institution
  - Child and/or dependent care assistance (includes coordination of services)
  - Transportation assistance (includes coordination of services)
  - Interpreter services (including coordination of services)
- c. Emotional Support or Safety Services
  - Crisis intervention (in-person, includes safety planning, etc.)
  - Hotline/crisis line counseling
  - On-scene crisis response (e.g., community crisis response)
  - Individual counseling (licensed)
  - Support groups (facilitated or peer)
  - Other therapy (traditional, cultural, or alternative healing; art, writing, or play therapy; etc.)
  - Emergency financial assistance (payment for items such as food and/or clothing, changing windows and/or locks, taxis, prophylactic and nonprophylactic meds, durable medical equipment, etc.)
- d. Shelter/Housing Services
  - Emergency shelter or safe house (including referrals)
  - Transitional housing (including referrals)
  - Relocation assistance (includes assistance with obtaining housing)

## e. Criminal/Civil Justice System Assistance

- Notification of criminal justice events (e.g., case status, arrest, court proceedings, case disposition, release, etc.)
- Victim impact statement assistance
- Assistance with restitution (includes assistance in requesting and when collection efforts are not successful)
- Civil legal assistance in obtaining protection or restraining order
- Civil legal assistance with family law issues (e.g., custody, visitation, or support)
- Other emergency justice related assistance
- Immigration assistance (e.g., special visas, continued presence application, and other immigration relief)
- Prosecution interview advocacy/accompaniment (includes accompaniment with prosecuting attorney and with victim/witness)
- Law enforcement interview advocacy/accompaniment
- Criminal advocacy/accompaniment
- Other legal advice and/or counsel

## f. Assistance in Filing Compensation Claims

- Assists potential recipients in seeking crime victim compensation benefits \*



# G. Administrative Risk Self-Assessment

**Instructions:**

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.

Complete each section or select "Not Applicable" depending on the type of agency you represent. For each statement, select one of three responses. Remember to respond to each statement. When complete, save the form before exiting the page. CVSSD will score the self-assessment to determine if the applicant is low, medium, or high risk. Depending on level of risk and its contributing factors, CVSSD may increase monitoring and technical assistance for the applicant/award recipient.

Applicants may access printable copies of CVSSD's financial and administrative risk assessment questions at [Grant Guidance Documents](#). Helpful tips and resources for successful grant administration are included in the citations and footnotes of the risk assessment documents.

**Questions for Non-Profit Organizations**

Not Applicable

**Questions for Government Agencies and Tribal Nations Programs**

Not Applicable

| Description  | Unknown or Not Achieved<br><i>(We don't have this practice)</i> | Partially Achieved<br><i>(We are working on this practice)</i> | Fully Achieved<br><i>(We have a sound practice)</i> |
|--|---|--|---|
| Elected or appointed officials, councils, commissions, Tribal Councils, or others with oversight responsibilities are informed and updated on CVSSD funds, awards, and grant-related matters. Our government ensures the efficient administration and operation of CVSSD grant funded programs, efficient financial management of CVSSD grant awards, and maintenance of systems that are compliant with GAAP and grant requirements, and compliance with auditing requirements specific to grants (Uniform Guidance, Generally Accepted Government Auditing Standards). |   |  | <input checked="" type="checkbox"/>                 |

**Questions Applicable to All**

| Description  | Unknown or Not Achieved<br><i>(We don't have this practice)</i> | Partially Achieved<br><i>(We are working on this practice)</i> | Fully Achieved<br><i>(We have a sound practice)</i> |
|--|---|--|---|
| <b>Conflict of interest policy</b><br>We have a policy that establishes clear procedures for identifying and addressing conflicts of interest. All employees, volunteers and board members review and abide by this policy and understand when to disclose any potential conflicts of interest. We have a conflict-of-interest statement form signed by employees, volunteers, and/or board members at the beginning of service, and again each year, acknowledging they have read and agree to abide by the policy.   |   |  | <input checked="" type="checkbox"/>                 |
| <b>Whistleblower protection policy</b><br>We have a policy that shields whistleblowers from retaliation when they report questionable or illegal activities by someone in authority over our agency, organization, or program. This includes, but is not limited to, reporting issues relating to minimum wage, overtime pay, recordkeeping, family and medical leave, discrimination, employee safety, and fraud and financial issues.  |   |  | <input checked="" type="checkbox"/>                 |
| <b>Records retention policy</b><br>We have a policy that stipulates how long our agency, organization or program keeps records, and how those records are destroyed after the retention period. Our policy makes clear that our records are available to state and federal agency representatives to examine and audit. If any litigation, claim, or audit starts before the expiration of the retention period, then these records must be retained until all litigation, claims, or audit findings involving the records have been resolved. These records include, but are not limited to, financial and grant management records, property records, and indirect cost proposals. |   |  | <input checked="" type="checkbox"/>                 |
| <b>Gift acceptance policy</b><br>We have a policy that governs the receipt of, documentation of, and accounting procedures for cash and non-cash gifts. Our policy specifically addresses "non-cash gifts such as gifts-in-kind and unusual gifts like land, vehicles, artwork, etc. Our policy speaks to donor privacy including what types of information we gather, how the information is used, if the information is shared with others and, if so, under what terms, and ways donors may opt-out.  |   |  | <input checked="" type="checkbox"/>                 |
| <b>Gift card policy</b><br>We have a policy which describes under what circumstances limited quantities of gift cards can be purchased, how gift card purchasing, and approval duties are segregated (the purchaser should not be the authorizer), that the value of individual cards do not exceed \$100, and how approval, purchase, and use of gift cards is documented, tracked, monitored, and substantiated with receipts.   |   |  | <input checked="" type="checkbox"/>                 |

|   |  |     |
|---|--|-----|
| <b>Cash receipts policy</b>                         | <p>We have a policy for how cash receipts are kept physically secure until deposited in a bank account, how often bank deposits are made, internal processes for handling cash receipts that come through the mail or at fundraising events, and clear separation of duties in handling, documenting, and reconciling cash receipts to the accounting system.</p>  | [X] |
| <b>Cash disbursements policy</b>                    | <p>We have a policy that describes our cash disbursement control procedures including authorization functions for purchasing, signing checks, adjusting accounts, and extending credit, maintaining accounts receivable records, and other cash handling functions such as receiving and depositing funds or preparing checks.</p>   | [X] |
| <b>Credit and debit card policy</b>                 | <p>We have a policy that outlines the terms and conditions for employees using credit cards, who is authorized to purchase using credit cards, the process for reporting lost credit cards, use of credit cards for online purchases, how credit card purchase receipts are handled, who reconciles credit card purchases with monthly statements, how to investigate and report unauthorized charges, and how to cancel a card or terminate an unauthorized user of a card.</p>   | [X] |
| <b>Budget policy</b>                                | <p>We have a budget policy that stipulates who has authority to spend money or commit to financial obligations. Our policy sets limits on how high obligations can go without approval. The policy address processes for dealing with budget overages.</p>   | [X] |
| <b>Employee expense reimbursement policy</b>        | <p>We have policy that outlines the type of expenses for which employees, volunteers and/or board members can be reimbursed, criteria for what is a business expense, dollar limits on reimbursable amounts, and what expenses must be pre-authorized. The policy may also outline the terms for when an employee, volunteer and/or board member is paid in advance or given an allowance for expenses incurred while performing their position's duties.</p>  | [X] |
| <b>Property and equipment capitalization policy</b> | <p>We have a policy that establishes standards for purchasing, maintaining, disposing of, and replacing property and equipment that has a life of more than one fiscal year. Our policy describes how inventory of capitalized property and equipment is kept, who has oversight of the property or equipment, how often we audit capital property and equipment to ensure it is usable and stays within the designated department, our maintenance and upkeep schedules, and the depreciation method (evaluating the reduced value of an asset over time).</p>  | [X] |
| <b>Procurement policy</b>                           | <p>We have a policy that establishes an effective agency/organization-wide purchasing process to ensure all purchases comply with tribal, federal, state and/or local contract requirements. Our policy establishes controls to safeguard our assets and to assure purchases are properly processed and recorded. Our policy ensures purchases are made competitively where practicable, and performance, quality, suitability, delivery, and service are considered at the time of procurement.</p>   | [X] |
| <b>Data backup policy</b>                           | <p>We have a policy that ensures we backup any electronically stored financial and programmatic data in the event of a computer outage. Our policy describes who has access to electronic data, how electronic data is backed up (including frequency), and how back up files and sensitive data are stored securely. It also describes alternate arrangements to address situations where the person who is normally responsible becomes unavailable.</p>   | [X] |
| <b>Succession plan</b>                              | <p>We have a succession plan to ensure agency, organizational or programmatic sustainability. Our succession plan addresses unexpected transitions such as sudden leadership departures (illness, disability, death, or termination), planned departures (retirements, sabbaticals), and strategic leadership development (develop skills and capacity to fill leadership gaps).</p>   | [X] |
| <b>Employee manual</b>                              | <p>We have an employee manual that explains the various policies, procedures and expectations of our agency, organization, or program for our employees. The manual includes, but is not limited to, a mission or purpose statement, terms of employment, anti-harassment and non-discrimination policies, legal mandates for federal and state laws that affect employees, standards of conduct, compensation and benefits, procedures for complaints, and employment separation. We require every employee to sign a short statement acknowledging they have received, reviewed, and agree to comply with the policies and procedures outlined in the handbook.</p>  | [X] |
| <b>Client grievance policy</b>                      | <p>We have a client grievance policy and procedure in place. This policy demonstrates that our organization is open to hearing concerns or complaints from our clients about our practices. The policy identifies procedural steps to report and address complaints and ensures complainants will not face retaliation for reporting a problem. The policy describes how clients are notified of the complaint process, how clients can submit a complaint and to whom, how complaints are investigated, and how problems are fixed in a timely manner. The complaint policy and procedures also inform clients of DOJ CVSSD and ODHS' complaint processes. This client grievance policy is in addition to a federally required whistleblower protection policy. The Non-Profit Association of Oregon offers additional information about grievance procedures for clients found <a href="#">here</a>. DOJ CVSSD's complaint process is found <a href="#">here</a>. ODHS' complaint process is found <a href="#">here</a>.</p> | [X] |
| <b>Suitability for interacting with minors</b>      | <p>The organization/agency has a policy for and is complying with requirements to determine suitability for interacting with minors. For more information, look <a href="#">here</a>.</p>  | [X] |



# I. Financial Risk Self-Assessment

**Instructions:**

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.

CVSSD is required to review and evaluate potential risks posed by applicants prior to awarding Federal funds (2 CFR § 200.205). CVSSD requires applicants to self-assess for a variety of factors including financial capability or stability, quality of financial systems and management, history of past performance, and results of audits and/or reports. Other self-assessment tools are available ([NAO, OVC Tribal Financial Management Center](#)), should the applicant want to examine its own financial management practices further.

For each statement, select one of three responses. Remember to respond to each statement. When complete, save the form before exiting the page. CVSSD will score the self-assessment to determine if the applicant is low, medium, or high risk. Depending on level of risk and its contributing factors, CVSSD may increase monitoring and technical assistance for the applicant/award recipient.

Applicants may access printable copies of CVSSD's financial and administrative risk assessment questions at [Grant Guidance Documents](#). Helpful tips and resources for successful grant administration are included in the citations and footnotes of the risk assessment documents.

Budget Systems and Financial Planning

|  |   |  |
|--|---|--|
| <b>Unknown or Not Achieved</b><br><i>(Entity must implement this practice)</i> | <b>Partially Achieved</b><br><i>(Entity needs to improve)</i> | <b>Fully Achieved</b><br><i>(Entity has sound practices)</i> |
|--|---|--|

- We have a comprehensive annual budget which includes all sources and uses of funds for all aspects of operations. [X]
- Our governing body and/or authorized official(s) has a detailed understanding of the annual budget and formally authorizes the annual budget and any revisions made thereafter. [X]
- All grant or contract budget proposals are reviewed by fiscal and programmatic staff before submission to funders. [X]
- Our governing body and/or authorized official(s) have a significant role in directing the use of unrestricted funds and participates in strategic financial planning. [X]
- We consistently maintain an adequate level of cash reserves and have a cash reserve use policy. [X]
- We maintain adequate cash flow to meet our expense obligations. [X]

Financial Management Systems and Internal Controls

|  |   |  |
|--|---|--|
| <b>Unknown or Not Achieved</b><br><i>(Entity must implement this practice)</i> | <b>Partially Achieved</b><br><i>(Entity needs to improve)</i> | <b>Fully Achieved</b><br><i>(Entity has sound practices)</i> |
|--|---|--|

- We have comprehensive written policies and procedures for fiscal operation (e.g., processing payroll, purchases, accounts payable, accounts receivable, grants management). [X]
- Our actual financial activities are consistent with our written policies and procedures. These written policies and procedures are reviewed and revised regularly. [X]
- We maintain separation of duties to the greatest extent possible within the limitation of our size. [X]
- Individuals who perform authorizing functions (e.g., purchasing, signing checks, adjusting accounts, extending credit) DO NOT also perform recording functions (e.g., disbursements/receipts, cash handling, receiving/depositing checks, maintaining accounts receivable records). [X]
- Individuals who reconcile bank statements to the record of cash receipts and disbursements DO NOT also prepare checks, receive funds, and prepare bank deposits, and/or record receipts. [X]
- When individuals request reimbursement of expenses, they also provide documentation to support the request (e.g., receipts, mileage logs). Individuals who request reimbursement DO NOT authorize their own reimbursements. [X]
- We have written procurement procedures and make procurements on a competitive basis. [X]
- We have written purchasing policies and procedures for cash handling, endorsing checks, issuing receipts for cash transactions, and donations. [X]
- We regularly conduct financial reviews through an independent auditor which are later reviewed by the authorized official(s) or governing body. [X]
- We complete and submit accurate reports to the State of Oregon and IRS on-time and without extensions. [X]

Payroll and Timekeeping

**Unknown or Not Achieved**  
*(Entity must implement this practice)*

**Partially Achieved**  
*(Entity needs to improve)*

**Fully Achieved**  
*(Entity has sound practices)*

Our payroll policies and procedures are clearly documented and consistently followed. [X]

Our written timesheets are prepared by all employees, signed by the employee, and approved, in writing, by the employee's direct supervisor. [X]

Our written timesheets allow for the employee to designate time worked on a specific project or grant award. [X]

We obtain and retain forms W-4 and I-9 for each employee. [X]

Our policies regarding overtime, vacation time, sick leave, holiday pay, and other leaves with or without pay are written clearly and reviewed regularly for compliance with state and federal law. [X]

Our fringe benefits plans and records are routinely reviewed, documented and in compliance with IRS and U.S. Department of Labor requirements, along with proper tax treatment for all benefits and compensation arrangements. [X]

Our governing body or authorized official(s) annually review executive compensation. [X]

Record keeping practices

**Unknown or Not Achieved**  
*(Entity must implement this practice)*

**Partially Achieved**  
*(Entity needs to improve)*

**Fully Achieved**  
*(Entity has sound practices)*

We account for federal funds separately. [X]

We designate, document and report on all restricted funds and assets. [X]

We record cost expenditures by budget cost category as approved. [X]

We record matching costs in the accounting system and account for matching costs on federal awards separately. [X]

We have a written chart of accounts that clearly establish how the programs are classified within functions and identify how the funding sources are tracked. [X]

We have clearly documented our accounting policies and recording procedures in our written fiscal policies and procedures for the organization/agency. [X]

We use appropriate computer software and hardware to perform recording functions (e.g., QuickBooks). [X]

We maintain primary source documentation such as invoices, receipts, purchase orders, etc. and can provide that documentation when CVSSD asks us to verify our expenses. [X]

We have appropriate electronic and physical security procedures to protect the integrity of our computerized accounting records and to prevent unauthorized access and disclosure of accounting passwords and numbers. [X]

We back up our accounting records daily and accounting back up data is stored off-site each month. [X]

We reconcile all general ledger balance sheet accounts to subsidiary ledgers at least quarterly. [X]

We reconcile all cash, payroll liabilities and accounts receivable control accounts at least monthly. [X]

We record all property and equipment purchased into a written inventory document. We remove or dispose of items according to policy. [X]

Risk Assessment and Insurance Coverage

**Unknown or Not Achieved**  
*(Entity must implement this practice)*

**Partially Achieved**  
*(Entity needs to improve)*

**Fully Achieved**  
*(Entity has sound practices)*

The fiscal planning process includes continuous assessment of risks and identification of insurance coverage needs and appropriate risk management procedures. [X]

Risk assessment includes general liability, professional liability, product liability, fire, theft, casualty, workers compensation/occupational safety, board and officer liability, vehicle operation, fraud and dishonest acts. [X]

## J. MOUs, Contracts and Subawards with CVSSD Funds

### Instructions:

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.
- Double-click on a radio button to uncheck it.

CVSSD expects that strong partnerships will be developed for project implementation purposes and to ensure that the project is effectively responding to the needs of the population being served.

A Memorandum of Understanding is a written agreement that sets the terms and understanding between partners for certain activities that do not involve an exchange of funds.

If grant funds will be paid to an outside entity, the [Checklist for Determining if an Entity Receiving Funds has a Contractor or Subrecipient Relationship](#) should be used as guidance to determine whether a contract or subaward is more appropriate.

- A. MEMORANDUM OF UNDERSTANDING** - The MOU is a document containing the terms of the partnership and the roles and responsibilities between two or more parties. If the project description indicates a formal collaboration, then a MOU must be completed, signed, and dated by the authorized representative.

Please upload the applicable Memorandum(s) of Understanding. A sample version of the form can be found [here](#).

- B. CONTRACTS** - A contract is needed when these grant funds will be used to obtain *ancillary* goods or services from an outside entity (contractor) for the applicant's own use or for project participants at the direction of the applicant (the contractor will not make participant eligibility determination and does not have the authority to make decisions regarding the delivery of services and the types of services provided). If this application will include contracting, please respond to the following questions. For guidance on the procurement process click [here](#).

**1. Proposed Contract #1**

- a. Name of proposed contractor:

Based on CFR 200.330, applicant has determined that the proposed agreement is a contractual relationship (click [here](#) for the Checklist for determining if an Entity Receiving Funds has a Contractor or Subrecipient Relationship). Upload the completed Checklist below:

- b. Did the applicant follow procurement procedures that meet federal standards? (For guidance on the procurement process click [here](#).)

Yes No

If no, please explain:

- d. Is this a sole source contract?

Yes No

- e. Describe the specific product or service the contract is intended to address:

- f. Describe how the applicant determined that contracting was the most efficient and effective manner to purchase the good or service:

- g. Describe the solicitation efforts that were conducted to select the contractor (if using sole source and no solicitation efforts were made, explain why not):

- h. Describe the unique qualifications, abilities or expertise of the contractor to deliver the product or service (if using sole source, also explain why it was necessary to contract non-competitively and how long it would take another contractor to reach the same level of competency):

- i. Please upload the applicable contract. Click [here](#) to view the required minimum elements of a contract.

- j. Is there an additional contract to include?

Yes No

- C. SUBAWARDS** - A subaward is needed when these grant funds will be awarded to an outside entity (subrecipient) to carry out one or more services of the grant-funded project (the subrecipient generally makes participant eligibility determination and has the authority to make decisions regarding the delivery of services and the types of services provided within the scope of the agreement). If this application will include a subaward, please respond to the following questions.

**1. Proposed Subaward #1**

Name of proposed subrecipient:

- a.
- b.           Based on CFR 200.330, applicant has determined that the proposed agreement is a subrecipient relationship (click [here](#) for the Checklist for determining if an Entity Receiving Funds has a Contractor or Subrecipient Relationship). Upload the completed Checklist below:
- c.           Describe the specific service the subaward is intended to address:
- d.           Describe how the applicant determined that a subaward was the most efficient and effective manner to carry out the service:
- e.           Describe the process the applicant used to select the subrecipient:
- f.           Describe the unique qualifications, abilities or expertise of the subrecipient to carry out the service:
- g.           Please upload the applicable subaward. Click [here](#) to view a sample Subaward Agreement.
- h.           Do you have an additional subaward to include?  
                                  Yes    No

## K. Attachments to Upload (for government entities)

### Instructions:

- Please complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.
- To deselect a radio button, double click on it.

1. **Letter of Authorization \***  
Any agency who intends to have someone other than the authorized signatory (such as a Board Chair or County Commissioner) sign grant documents must submit a Letter of Authorization. A sample form for the Letter of Authorization can be found [here](#).  
 Not Applicable
2. **Certification of Non-Supplanting\***  
Upload a signed Certification of Non-Supplanting. The required form can be found [here](#).  
*Certification of Non-Supplanting.pdf*
3. **Statement of Compliance \***  
Not Applicable  
Upload a signed Statement of Compliance or check "Not Applicable" as appropriate. Only new applicants are required to provide a Statement of Compliance. The required form can be found [here](#).  
*2023 Statement of Compliance - signed.pdf*
4. **Certificate of District/City Attorney and Program Director (Victim Assistance Programs only) \***  
Please upload a signed Certificate of District/City Attorney and Program Director. The required form can be found [here](#).  
*2023 DA Certification.pdf*
5. **Organizational Chart \***  
Upload an organizational chart that shows the internal structure of the organization.  
*Org Chart VAP Addition.pdf*



## L. Program Income Narrative

### Instructions:

- Please complete this page and click **SAVE**, any errors will be noted at this point.
- Required fields are marked with a \*.

Program Income is income that is earned by a Grantee performing program service activities for a fee (typically paid for by the recipient of the service or by a third party, such as an insurance provider). Program income may be earned as a result of activities directly related this VOCA award. Grantees interested in collecting program income from VOCA grant funds should carefully review the [CVSSD Program Income Policy](#) and consider whether they will be able to fully comply with all requirements. Note:

- Grantees may not generate program income on CVSSD administered federal grant funding without prior approval from CVSSD.
- Program income funds are subject to the same allowances and restrictions as the federal grant on which the funds are earned.
- Program income is subject to the same terms and conditions under the VOCA Grant Agreement.

1. Does your organization earn any program income (typically generated by performing program service activities for a fee that are paid for by the recipient of the service or by a third party)?

Yes

No

2. If yes, will the program service activities that result in the generation of program income be financed, in whole or in part, by grant funds included in the budget for this application (consider costs that are *essential* to the collection of program income which could include personnel and supervisory costs, space costs, communication costs, equipment and supply costs, administrative costs, etc.)?

Yes

No

3. If no, provide an explanation that substantiates that no grant funds included in the budget for this application will support essential costs that contribute to your agency's ability to deliver the program service activities that result in the collection of program income.

# M. Personnel

**Instructions:**

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.
- Once the page has been saved with no errors, you can click the "Add" button at the top of the page to add additional staff.
- Total salary and personnel expenditure amounts should be for the full two year grant period.

Only include costs for staff providing direct client services and services that can be identified specifically with the project. Personnel costs may include FTE for supervision of direct service staff and completion of project specific records, statistics and reports. Expenses related to any staff performing general administrative duties or duties that cannot be readily identified with the project must be included as 'Indirect/De Minimis Costs' or 'Administrative Costs' on the 'Services and Supplies' form. General administrative duties include, but are not limited to, salaries and expenses of executive directors, personnel administration and fiscal administration.

|           |   |                         |                            |              |
|-----------|---|-------------------------|----------------------------|--------------|
| <b>1.</b> | <b>Position Title:</b>  | <i>Victim Advocate</i>  |                            |              |
|           |   | <b>VOCA Grant Funds</b> | <b>VOCA Program Income</b> | <b>CFA</b>   |
|           |   |                         |                            | <b>Total</b> |
| <b>2.</b> | <b>Two year salary funded by this grant:</b>  | \$147,391.00            | \$0.00                     | \$0.00       |
| <b>3.</b> | <b>Total two year salary for 1 full-time equivalent (1 FTE):</b>  |                         |                            | \$147,391.00 |
|           | Please show the annual salary and the percentage of time the staff position is to be allocated to the project. Refer to the Application Instructions for a more detailed explanation and a calculation example.   |                         |                            |              |
|           | <i>Victim Advocate Year 1 salary= \$72,813</i>  |                         |                            |              |
|           | <i>Victim Advocate Year 2 salary \$74,578</i>   |                         |                            |              |
|           |   | <b>VOCA Grant Funds</b> | <b>VOCA Program Income</b> | <b>CFA</b>   |
|           |   |                         |                            | <b>Total</b> |
| <b>4.</b> | <b>Two year personnel expenses funded by this grant:</b>  | \$101,572.00            | \$                         | \$           |
| <b>5.</b> | <b>Total two year personnel expenses for 1 full-time equivalent (1 FTE):</b>  |                         |                            | \$101,572.00 |
|           | Please indicate the dollar amount and the rate used to calculate the personnel costs of the staff position to be allocated to the project and include a list of the personnel costs included in the calculation (FICA, UI, Workers' Compensation, health insurance, retirement, etc.). Refer to the Application Instructions for a more detailed explanation and a calculation example. |                         |                            |              |
|           | <i>Victim Advocate Year 1 Benefits = \$49,053</i>   |                         |                            |              |
|           | <i>Victim Advocate Year 2 Benefits= \$52,519</i>  |                         |                            |              |
|           |   | <b>VOCA Grant Funds</b> | <b>VOCA Program Income</b> | <b>CFA</b>   |
|           |   |                         |                            | <b>Total</b> |
| <b>6.</b> | <b>FTE funded by this grant:</b>  | 1.00                    | 0.00                       | 0.00         |
| <b>7.</b> | <b>What are the top five (5) major direct service activities to be performed by this proposed VOCA/CFA funded staff member?</b>   |                         |                            |              |
|           | <i>Provide information about victims' rights</i>  |                         |                            |              |
|           | <i>Assist with restitution</i>  |                         |                            |              |
|           | <i>Assist in applying for crime victims compensation</i>  |                         |                            |              |
|           | <i>Notify victim of critical stages</i>   |                         |                            |              |
|           | <i>Crisis intervention</i>  |                         |                            |              |

# M. Personnel

**Instructions:**

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- Required fields are marked with a \*.
- Once the page has been saved with no errors, you can click the "Add" button at the top of the page to add additional staff.
- Total salary and personnel expenditure amounts should be for the full two year grant period.

Only include costs for staff providing direct client services and services that can be identified specifically with the project. Personnel costs may include FTE for supervision of direct service staff and completion of project specific records, statistics and reports. Expenses related to any staff performing general administrative duties or duties that cannot be readily identified with the project must be included as 'Indirect/De Minimis Costs' or 'Administrative Costs' on the 'Services and Supplies' form. General administrative duties include, but are not limited to, salaries and expenses of executive directors, personnel administration and fiscal administration.

|           |   |                         |                            |              |
|-----------|---|-------------------------|----------------------------|--------------|
| <b>1.</b> | <b>Position Title:</b>  | <i>Victim Advocate</i>  |                            |              |
|           |   | <b>VOCA Grant Funds</b> | <b>VOCA Program Income</b> | <b>CFA</b>   |
|           |   |                         |                            | <b>Total</b> |
| <b>2.</b> | <b>Two year salary funded by this grant:</b>  | \$147,391.00            | \$                         | \$147,391.00 |
| <b>3.</b> | <b>Total two year salary for 1 full-time equivalent (1 FTE):</b>  |                         |                            | \$147,391.00 |
|           | Please show the annual salary and the percentage of time the staff position is to be allocated to the project. Refer to the Application Instructions for a more detailed explanation and a calculation example.   |                         |                            |              |
|           | <i>Victim Advocate Year 1 salary= \$72,813</i>  |                         |                            |              |
|           | <i>Victim Advocate Year 2 salary \$74,578</i>   |                         |                            |              |
|           |   | <b>VOCA Grant Funds</b> | <b>VOCA Program Income</b> | <b>CFA</b>   |
|           |   |                         |                            | <b>Total</b> |
| <b>4.</b> | <b>Two year personnel expenses funded by this grant:</b>  | \$101,572.00            | \$                         | \$101,572.00 |
| <b>5.</b> | <b>Total two year personnel expenses for 1 full-time equivalent (1 FTE):</b>  |                         |                            | \$101,572.00 |
|           | Please indicate the dollar amount and the rate used to calculate the personnel costs of the staff position to be allocated to the project and include a list of the personnel costs included in the calculation (FICA, UI, Workers' Compensation, health insurance, retirement, etc.). Refer to the Application Instructions for a more detailed explanation and a calculation example. |                         |                            |              |
|           | <i>Victim Advocate Year 1 Benefits = \$49,053</i>   |                         |                            |              |
|           | <i>Victim Advocate Year 2 Benefits= \$52,519</i>  |                         |                            |              |
|           |   | <b>VOCA Grant Funds</b> | <b>VOCA Program Income</b> | <b>CFA</b>   |
|           |   |                         |                            | <b>Total</b> |
| <b>6.</b> | <b>FTE funded by this grant:</b>  | 1.00                    | 0.00                       | 0.00         |
| <b>7.</b> | <b>What are the top five (5) major direct service activities to be performed by this proposed VOCA/CFA funded staff member?</b>   |                         |                            |              |
|           | <i>Provide information about victims' rights</i>  |                         |                            |              |
|           | <i>Assist with restitution</i>  |                         |                            |              |
|           | <i>Assist in applying for crime victims compensation</i>  |                         |                            |              |
|           | <i>Notify victim of critical stages</i>   |                         |                            |              |
|           | <i>Crisis intervention</i>  |                         |                            |              |

# M. Personnel

**Instructions:**

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.
- Once the page has been saved with no errors, you can click the "Add" button at the top of the page to add additional staff.
- Total salary and personnel expenditure amounts should be for the full two year grant period.

Only include costs for staff providing direct client services and services that can be identified specifically with the project. Personnel costs may include FTE for supervision of direct service staff and completion of project specific records, statistics and reports. Expenses related to any staff performing general administrative duties or duties that cannot be readily identified with the project must be included as 'Indirect/De Minimis Costs' or 'Administrative Costs' on the 'Services and Supplies' form. General administrative duties include, but are not limited to, salaries and expenses of executive directors, personnel administration and fiscal administration.

|           |  |                         |                            |              |              |
|-----------|--|-------------------------|----------------------------|--------------|--------------|
| <b>1.</b> | <b>Position Title:</b> <i>Victims Assistance Program Manager</i>   |                         |                            |              |              |
|           |  | <b>VOCA Grant Funds</b> | <b>VOCA Program Income</b> | <b>CFA</b>   | <b>Total</b> |
| <b>2.</b> | <b>Two year salary funded by this grant:</b>   | \$                      | \$                         | \$224,396.00 | \$224,396.00 |
| <b>3.</b> | <b>Total two year salary for 1 full-time equivalent (1 FTE):</b>   |                         |                            |              | \$236,722.00 |
|           | Please show the annual salary and the percentage of time the staff position is to be allocated to the project. Refer to the Application Instructions for a more detailed explanation and a calculation example.<br><i>Year 1 Program Director Salary = \$116,934</i><br><i>Year 2 Program Director Salary= \$119,788</i>   |                         |                            |              |              |
|           |  | <b>VOCA Grant Funds</b> | <b>VOCA Program Income</b> | <b>CFA</b>   | <b>Total</b> |
| <b>4.</b> | <b>Two year personnel expenses funded by this grant:</b>   | \$42,334.00             | \$                         | \$0.00       | \$42,334.00  |
| <b>5.</b> | <b>Total two year personnel expenses for 1 full-time equivalent (1 FTE):</b>   |                         |                            |              | \$131,157.00 |
|           | Please indicate the dollar amount and the rate used to calculate the personnel costs of the staff position to be allocated to the project and include a list of the personnel costs included in the calculation (FICA, UI, Workers' Compensation, health insurance, retirement, etc.). Refer to the Application Instructions for a more detailed explanation and a calculation example.<br><i>Program Director Year 1 benefits = \$63,586</i><br><i>Program Director Year 2 benefits= \$67,571</i> |                         |                            |              |              |
|           |  | <b>VOCA Grant Funds</b> | <b>VOCA Program Income</b> | <b>CFA</b>   | <b>Total</b> |
| <b>6.</b> | <b>FTE funded by this grant:</b>   | .12                     | 0.00                       | .61          | .73          |
| <b>7.</b> | <b>What are the top five (5) major direct service activities to be performed by this proposed VOCA/CFA funded staff member?</b>  |                         |                            |              |              |
|           | <i>Notify victims of critical stages</i>   |                         |                            |              |              |
|           | <i>Assist with restitution</i>   |                         |                            |              |              |
|           | <i>Provide information about the criminal justice system</i>   |                         |                            |              |              |
|           | <i>Provide information about victims' rights</i>   |                         |                            |              |              |
|           | <i>Criminal advocacy</i>   |                         |                            |              |              |

## N. Contracts and Subawards

**Instructions:**

- Complete the page and click **SAVE**, calculations will run and any errors will be noted at this point.
- Each contractor and subawardee's name will be autopopulated from Form J. MOUs, Contracts, and Subawards. All other information will need to be completed for each contract or subaward.

**Each contract/subaward section will only populate if there is a contractor/subawardee name entered on Form J. MOUs, Contracts, and Subawards. If you need to add a contract or subaward start by entering it on Form J.**

| TOTAL CONTRACTS/SUBAWARDS      | VOCA Grant Funds | VOCA Program Income | CFA    |
|--------------------------------|------------------|---------------------|--------|
| Total contract/subaward costs: | \$0.00           | \$0.00              | \$0.00 |

# O. Services and Supplies

**Instructions:**

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.

|  |                  |                     |     |        |
|--|------------------|---------------------|-----|--------|
| <b>1. Travel</b>                         | VOCA Grant Funds | VOCA Program Income | CFA | Total  |
| Total travel costs funded by this grant: | \$               | \$                  | \$  | \$0.00 |

Describe travel expenses of project staff (travel to attend meetings, travel for outreach, client transport, and any other travel not related to attendance at training), show the basis of the computation (# of miles, cost per mile), and explain how the travel costs are necessary and beneficial to the project.

**2. Training**

| Training Name and Link to Training Description (If Available) | Location | Approximate Date | Number of Attendees | VOCA Grant Funds | VOCA Program Income | CFA    | Total  |
|---|----------|------------------|---------------------|------------------|---------------------|--------|--------|
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
| <b>Training Totals:</b>                                       |          |                  |                     | \$0.00           | \$0.00              | \$0.00 | \$0.00 |

All travel costs will be based on the organization's or program's travel policy. Per diem rates will not exceed the federal per diem rates found at [www.gsa.gov/travel-resources](http://www.gsa.gov/travel-resources). A specific breakdown of actual costs will be provided during financial reporting.

Provide any notes regarding the trainings listed above and explain how the training is necessary and beneficial to the project.

**3. Conducting Training**

| Training Name and Link to Training Description (If Available) | Location | Approximate Date | Number of Attendees | VOCA Grant Funds | VOCA Program Income | CFA    | Total  |
|---|----------|------------------|---------------------|------------------|---------------------|--------|--------|
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
|   |          |                  |                     | \$               | \$                  | \$     | \$0.00 |
| <b>Conducting Training Totals:</b>                            |          |                  |                     | \$0.00           | \$0.00              | \$0.00 | \$0.00 |

All travel costs will be based on the organization's or program's travel policy. Per diem rates will not exceed the federal per diem rates found at [www.gsa.gov/travel-resources](http://www.gsa.gov/travel-resources). A specific breakdown of actual costs will be provided during financial reporting.

Provide any notes regarding the trainings listed above and explain how the training is necessary and beneficial to the project.

|   |                  |                     |     |        |
|---|------------------|---------------------|-----|--------|
| <b>4. Office Supplies</b>                       | VOCA Grant Funds | VOCA Program Income | CFA | Total  |
| Total office supply costs funded by this grant: | \$               | \$                  | \$  | \$0.00 |

General office supplies, postage, printing/copying, and equipment rental should all be included here. List items by type (office supplies, copy paper, expendable equipment costing less than \$5,000 and having a useful life less than one year, etc.), explain how the cost estimate was determined, and provide an explanation for how these supplies are necessary and beneficial to the project. Generally, supplies include any materials that are expendable or consumed during the course of the project.

|  |                  |                     |     |        |
|--|------------------|---------------------|-----|--------|
| <b>5. Agency Rent/Utilities</b>                  | VOCA Grant Funds | VOCA Program Income | CFA | Total  |
| Total rent/utilities costs funded by this grant: | \$               | \$                  | \$  | \$0.00 |

The applicant does not own the building for which rent costs will be charged, or the costs are for utilities or other allowable occupancy costs, not mortgage costs. Describe the type of rent cost (office space, training space, storage space, etc.), explain how the cost was determined (cost per square foot, monthly rent, room fee, etc.), the basis for the computation, and provide an explanation for how this cost is necessary and beneficial to the project.

|  | VOCA Grant Funds | VOCA Program Income | CFA | Total  |
|--|------------------|---------------------|-----|--------|
| <b>6. Emergency Services</b>                         |                  |                     |     |        |
| Total emergency services costs funded by this grant: | \$               | \$                  | \$  | \$0.00 |

Describe the specific types of emergency services to be provided, explain how the cost estimate was determined, and provide an explanation for how these costs are necessary and beneficial to the project.

|  | VOCA Grant Funds | VOCA Program Income | CFA | Total  |
|--|------------------|---------------------|-----|--------|
| <b>7. Capital Outlay</b>                         |                  |                     |     |        |
| Total capital outlay costs funded by this grant: | \$               | \$                  | \$  | \$0.00 |

List each non-expendable item to be purchased, the cost for each item, and the pro-rated portion allocated to this project, unless the item is being purchased exclusively for this project. Explain how the item to be purchased is necessary for the success of the project. Capital purchases are those that have a purchase price equal to or greater than your agency's capitalization limit and a useful life of more than one year. Expendable items should be included in Office Supplies and rented or leased items should be included in Equipment Rental. See Guidance on the Procurement Process for clarification of federal requirements.

|   | VOCA Grant Funds | VOCA Program Income | CFA | Total  |
|---|------------------|---------------------|-----|--------|
| <b>8. Indirect/De Minimis Costs</b>                   |                  |                     |     |        |
| Total indirect/de minimis costs funded by this grant: | \$               | \$                  | \$  | \$0.00 |

The applicant has an indirect cost rate agreement, proposal, or certificate and this has been uploaded under Organization Details.  
 The applicant intends to charge the indirect cost rate of: 5.000%  
 The applicant intends to charge a reduced indirect cost rate of: %  
 The applicant intends to waive its indirect cost rate for this award. (As required by Uniform Guidance, these costs will be applied consistently across federal awards, but in this case will be covered with other funds.)

The agency has an established de minimis rate.

The applicant intends to charge the 10% de minimis rate.

The applicant intends to charge a reduced de minimis rate of: %  
 The applicant intends to waive the 10% de minimis cost rate for this award. (As required by Uniform Guidance, these costs will be applied consistently across federal awards, but in this case will be covered with other funds.)

The applicant has neither an indirect nor de minimis rate therefore any administrative costs charged to the grant will be directly charged and included in the "Administrative Costs category instead.

|  | VOCA Grant Funds | VOCA Program Income | CFA | Total  |
|--|------------------|---------------------|-----|--------|
| <b>9. Administrative Costs</b>                   |                  |                     |     |        |
| Total administrative costs funded by this grant: | \$               | \$                  | \$  | \$0.00 |

Administrative costs may be charged directly. These costs must be directly related to the project and can not exceed 10% of the total budget amount. Provide a detailed explanation of the administrative costs to be funded by this grant in (e.g., staff FTE, fiscal services, IT services, HR services, general liability insurance, audit costs), the method used by the applicant to equitably allocate administrative costs, and how these costs are necessary and beneficial to the project.

| <b>10. Other Costs</b>  |                  |                     |               |               |
|---|------------------|---------------------|---------------|---------------|
| Description   | VOCA Grant Funds | VOCA Program Income | CFA           | Total         |
|   | \$               | \$                  | \$            | \$0.00        |
| Computation of cost and description of how it benefits the project: |                  |                     |               |               |
|   | \$               | \$                  | \$            | \$0.00        |
| Computation of cost and description of how it benefits the project: |                  |                     |               |               |
|   | \$               | \$                  | \$            | \$0.00        |
| Computation of cost and description of how it benefits the project: |                  |                     |               |               |
|   | \$               | \$                  | \$            | \$0.00        |
| Computation of cost and description of how it benefits the project: |                  |                     |               |               |
|   | \$               | \$                  | \$            | \$0.00        |
| Computation of cost and description of how it benefits the project: |                  |                     |               |               |
| <b>Other Costs Total:</b>   | <b>\$0.00</b>    | <b>\$0.00</b>       | <b>\$0.00</b> | <b>\$0.00</b> |

## P. VOCA Match

**Instructions:**

- Complete this page and click **SAVE**, fields will populate with information and any errors will be noted at this point.
- Required fields are marked with a \*.
- To see the total amount of match required for the grant, go to Form Q: Budget Summary.

**All required match is waived in full effective October 1, 2023-September 30, 2025.**

**Mandatory match waiver determination form (for CVSSD use):**

|                           |        |        |
|---------------------------|--------|--------|
| <b>Total Match</b>        |        |        |
| Total Cash Match:         | \$     |        |
| Total In-Kind Match:      | \$     |        |
| Total Match Provided:     | \$0.00 |        |
| Total Waiver Requested:   |        | \$     |
| Total Match plus Waivers: |        | \$0.00 |



# Q. Budget Summary

**Instructions:**

- Please click **SAVE** before looking at any amounts on this page. Totals and any errors will appear once you click SAVE.
- This page shows an overall summary of your proposed grant budget. The information is being populated from Forms N-R. Please go to those budget forms to make changes as needed.

|  | VOCA Grant Funds | VOCA Program Income | CFA          | Total        |
|--|------------------|---------------------|--------------|--------------|
| 1. <b>Total Requested:</b>                       | \$540,260.00     | \$0.00              | \$224,396.00 | \$764,656.00 |
| 2. <b>Total Administrative Funds Allowable*:</b> | \$54,026.00      | \$0.00              | \$22,439.60  | \$76,465.60  |

\* The calculation provided under "Total Administrative Funds Allowable" may need adjusting depending on the exact costs included in the proposed budget. Your Fund Coordinator may ask you to adjust administrative costs as necessary during the modification process.

**Total Project**

3. **Match Waived:** \$135,065.00  
 4. **VOCA Budget Summary**

| Personnel                            | VOCA Grant Funds    | VOCA Program Income | Total Project       |
|--------------------------------------|---------------------|---------------------|---------------------|
| Salary                               | \$294,782.00        | \$0.00              | \$294,782.00        |
| Personnel Expenses                   | \$245,478.00        | \$                  | \$245,478.00        |
| <b>Total Personnel</b>               | <b>\$540,260.00</b> | <b>\$0.00</b>       | <b>\$540,260.00</b> |
| Services & Supplies                  | VOCA Grant Funds    | VOCA Program Income | Total Project       |
| Contracts & Subawards                | \$0.00              | \$0.00              | \$0.00              |
| Travel                               | \$                  | \$                  | \$0.00              |
| Training                             | \$0.00              | \$0.00              | \$0.00              |
| Conducting Training                  | \$0.00              | \$0.00              | \$0.00              |
| Office Supplies                      | \$                  | \$                  | \$0.00              |
| Rent                                 | \$                  | \$                  | \$0.00              |
| Emergency Services                   | \$                  | \$                  | \$0.00              |
| Capital Outlay                       | \$                  | \$                  | \$0.00              |
| Indirect/De Minimis                  | \$                  | \$                  | \$0.00              |
| Administrative                       | \$                  | \$                  | \$0.00              |
|                                      | \$                  | \$                  | \$0.00              |
|                                      | \$                  | \$                  | \$0.00              |
|                                      | \$                  | \$                  | \$0.00              |
| <b>Total Services &amp; Supplies</b> | <b>\$0.00</b>       | <b>\$0.00</b>       | <b>\$0.00</b>       |
| <b>Total</b>                         | <b>\$540,260.00</b> | <b>\$0.00</b>       | <b>\$540,260.00</b> |

5. CFA Budget Summary

| Personnel                            | CFA Grant Funds     |
|--------------------------------------|---------------------|
| Salary                               | \$224,396.00        |
| Personnel Expenses                   | \$0.00              |
| <b>Total Personnel</b>               | <b>\$224,396.00</b> |
| Services & Supplies                  | CFA Grant Funds     |
| Contracts & Subawards                | \$0.00              |
| Travel                               | \$                  |
| Training                             | \$0.00              |
| Conducting Training                  | \$0.00              |
| Office Supplies                      | \$                  |
| Rent                                 | \$                  |
| Emergency Services                   | \$                  |
| Capital Outlay                       | \$                  |
| Indirect/De Minimis                  | \$                  |
| Administrative                       | \$                  |
|                                      | \$                  |
|                                      | \$                  |
|                                      | \$                  |
| <b>Total Services &amp; Supplies</b> | <b>\$0.00</b>       |
| <b>Total</b>                         | <b>\$224,396.00</b> |

# Attachments

**Instructions:**

- Please enter a brief description of the attachment.
- To attach an electronic file, press "BROWSE", choose the desired file and select "SAVE".
- For each additional attachment, first choose "ADD" and then complete the steps listed above.

| Attachment Information |  |
|------------------------|--|
| Description            |  |
| File name              |  |
| Comments               |  |



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 13, 2023

SUBJECT: Approval of Board Order No. 2023-035 authorizing the sale of property at 16609 Dillon Way in La Pine to Mark Hylland, and further authorizing the Deschutes County Property Manager to execute the documents associated with the sale

RECOMMENDED MOTION:

Move approval of Board Signature of Order No. 2023-035 authorizing the sale of property located at 16609 Dillon Way, La Pine, known as Map and Tax Lot 221014AB00161, and further authorizing the Deschutes County Property Manager to execute the documents associated with the sale.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County owns property in the Newberry Business Park located at 16609 Dillon Way, La Pine, known as Map and Tax Lot 221014AB00161. The +/- 0.21-acre Tax Lot has a Real Market Value as determined by the Deschutes County Assessor's Office of \$23,920.

The owner of La Pine Auto Supply, Mark Hylland. submitted an offer to purchase the property described above. Due to increasing demands associated with automotive, truck and agriculture equipment, Mr. Hylland intends to build out a 3,200 sf building to support inventory storage. Mr. Hylland intends to start development soon after the transaction closes with the goal to complete construction in 12 months.

Highlights of the offer include:

- 1. \$15,750 sales price, or \$76,285/acre at \$1.75 per square foot
2. \$4,000 refundable earnest money -becomes nonrefundable after buyer removes contingencies
3. 60-day (calendar) due diligence period
4. Closing to occur within 35 days (calendar) after buyer removes contingencies

In 2019, the County and City of La Pine entered into an intergovernmental agreement that provides the City full power and authority to market, promote and negotiate sales of County-owned property located in the industrial area (La Pine Industrial, Newberry Business Park and Finley Butte Industrial Park) for the purpose of economic development. The IGA includes a 50/50 split of gross proceeds from sales. The City of La Pine and

Sunriver La Pine Economic Development (SLED) support this transaction including the sales price.

**BUDGET IMPACTS:**

\$15,750 gross proceeds will be allocated between the County and the City per the terms of the Purchase and Sale Agreement.

**ATTENDANCE:**

Kristie Bollinger, Property Manager

REVIEWED

LEGAL COUNSEL

09/13/2023 Item #2.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Designating the Deschutes County  
Property Manager, Kristie Bollinger as the  
Deschutes County Representative to Complete the  
Sale of Property Located at 16609 Dillon Way, La  
Pine, Oregon 97739 and Known as Map and Tax  
Lot 221014AB00161

\*  
\*  
\*  
\*

ORDER NO. 2023-035

WHEREAS, the Board of County Commissioners of Deschutes County has authorized the sale of property located at 16609 Dillon Way, La Pine, Oregon 97739 and known as Map and Tax Lot 221014AB00161 to Mark Hylland or his assignee; and

WHEREAS, Deschutes County received an offer from Mark Hylland (Buyer) to purchase (purchase and sale agreement or PSA) the 9,000 square foot lot for \$15,750 or \$1.75 per square foot, subject to a due diligence period scheduled to expire Sixty (60) Days from the date the PSA is executed; and

WHEREAS, upon the execution of the PSA, Buyer will pay \$4,000 Earnest Money that will be applied to the purchase price at closing; and

WHEREAS, the transaction is estimated to close within on Thirty Five (35) Days after the due diligence period or from when Buyer removes contingencies, at which time documents to close the transaction need to be signed on behalf of Deschutes County as the seller; now, THEREOFRE,

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

Section 1. The Deschutes County Property Manager, Kristie Bollinger is designated as the Deschutes County representative for the purpose of executing the necessary documents to complete the sale of property located at 16609 Dillon Way, La Pine, Oregon 97739 and known and Map and Tax Lot 221014AB00161.

SIGNATURES ON FOLLOWING PAGE

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2023

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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

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

ATTEST:

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

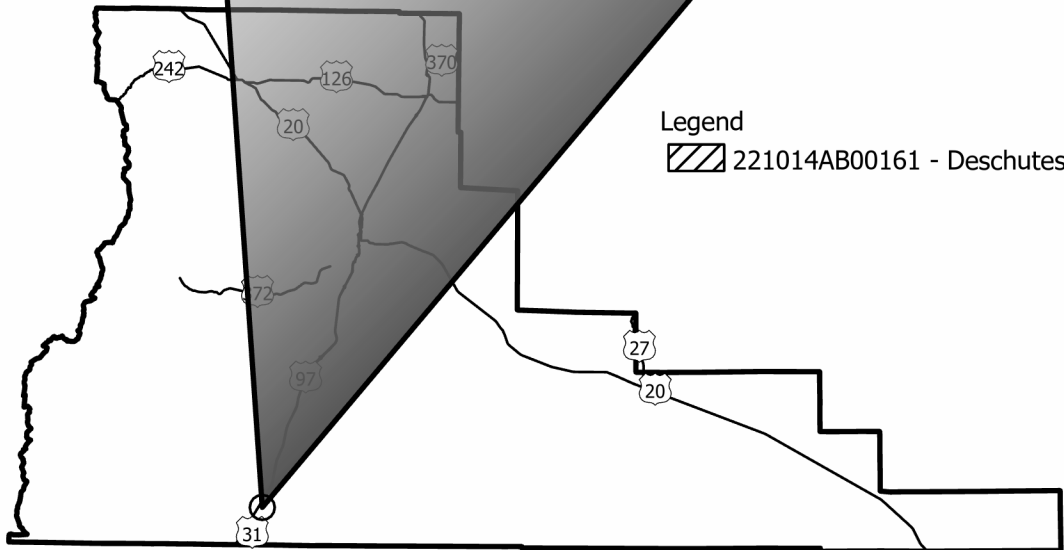
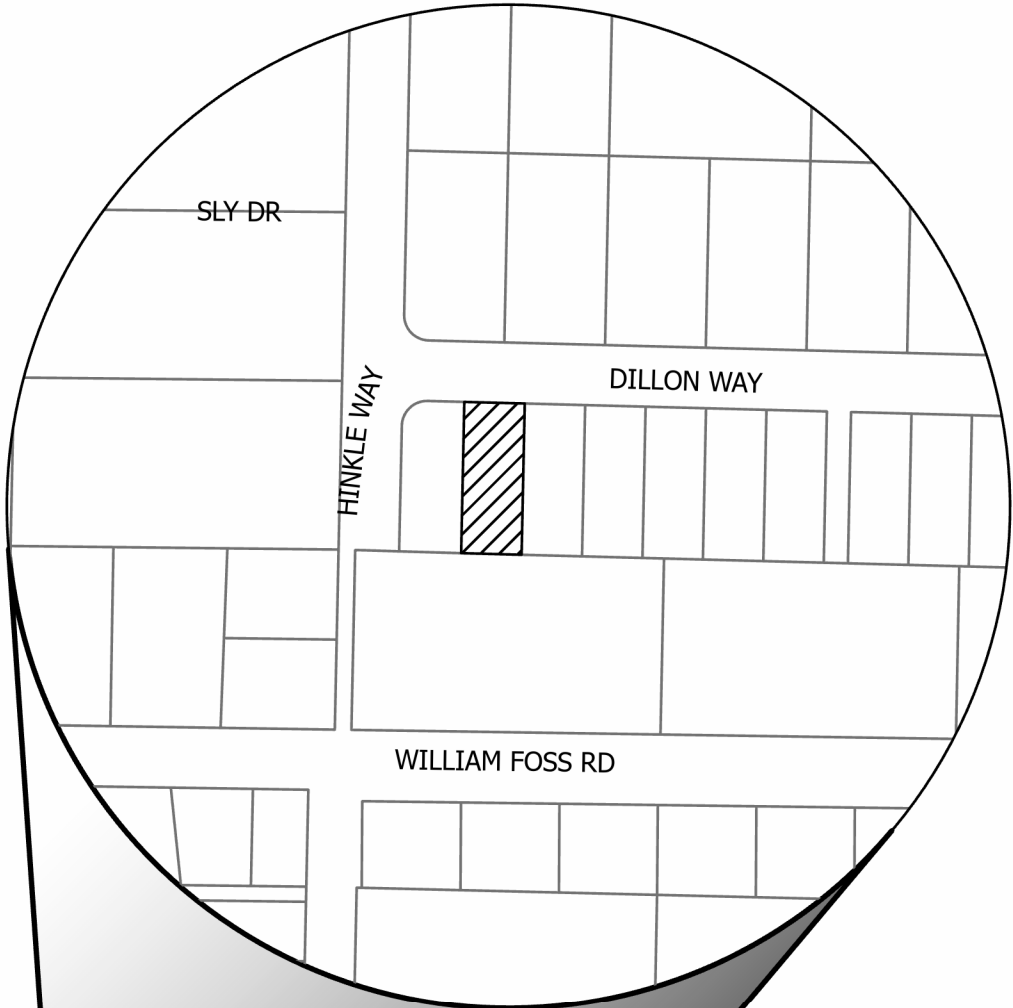
\_\_\_\_\_  
PHIL CHANG, Commissioner



# DESCHUTES COUNTY VICINITY MAP

09/13/2023 Item #2.

Maptax #221014AB00161  
Doc# 2003 - 205466 (1.29 Acres)



Legend  
[Hatched Box] 221014AB00161 - Deschutes County





BOARD OF COMMISSIONERS

AGENDA REQUEST AND STAFF REPORT

MEETING DATE: September 13, 2023

SUBJECT: Approval of the procurement of four replacement dump trucks for the Road Department

RECOMMENDED MOTION:

Move approval of Road Department Director signature of Document No. 2023-836, an agreement with Gordon Truck Centers Inc. to purchase four dump trucks.

BACKGROUND AND POLICY IMPLICATIONS:

Within the FY24 Budget, the Board approved the purchase of four 12/15 yard dump trucks each consisting of a truck chassis with dump box, plow bumper, hydraulics, and controls. The trucks will replace four 1995 Volvo trucks. The new trucks will serve as part of the Road Department's front line road maintenance fleet supporting maintenance operations including, chip seal, patching, shoulder maintenance, aggregate hauling and stock piling, equipment hauling, and winter plowing and sanding.

Procurement will occur using the Washington State DES contract #03920 – a qualified cooperative purchasing agreement.

BUDGET IMPACTS:

The purchase price of \$1,119,697.03 is \$20,302.97 below the budgeted amount and will be funded via the Road Department's Building/Equipment Fund (330).

ATTENDANCE:

Randy McCulley, Road Department



**FREIGHTLINER**  
**of HAWAII**

GORDON TRUCK CENTERS DEALER FAMILY

**VEHICLE PURCHASE AGREEMENT**

**TOLL FREE ALL STORES 800-523-8014**

|   |   |
|---|---|
| Buyer's Name <u>Deschutes Co Public Works</u>               | Order Date <u>8 / 30 / 2023</u>                     |
| Address <u>61150 SE 27th St</u>                             | Estimated Delivery Date <u>      /      /      </u> |
| City <u>Bend</u> State <u>OR</u> Zip <u>97702</u>           | Sales Rep <u>Mark Christie</u>                      |
| Business Phone <u>541-322-7125</u> Cell Phone <u>      </u> | Customer Email <u>      </u>                        |

|   |                             |
|---|-----------------------------|
| Quantity Ordered  | <u>4</u>                    |
| Base Price Per Unit   | \$ <u>278485</u>            |
| Federal Excise Tax Per Unit   | \$ <u>0</u>                 |
| Subtotal Price Per Unit   | \$ <u>278485</u>            |
| Additional Description  |                             |
| <u>2024 WS 47X chassis w/ PTW installed dump box, plow bumper, &amp; controls per PTW quote #3841</u> |                             |
| <u>Washington State DES contract #03920</u>   |                             |
| Additional Items Per Unit (Not included in base price)  |                             |
|   | \$ <u>      </u>            |
|   | \$ <u>      </u>            |
|   | \$ <u>      </u>            |
|   | \$ <u>      </u>            |
|   | \$ <u>      </u>            |
|   | \$ <u>      </u>            |
|   | \$ <u>      </u>            |
| Administration Fee  | \$ <u>800</u>               |
| Title/Transfer Fee Per Unit   | \$ <u>      </u>            |
| Trip/Fuel Permit Per Unit   | \$ <u>      </u>            |
| Subtotal:   | \$ <u>1114740</u>           |
| Sales Tax Rate: <u>.445</u> %   | \$ <u>4957.032999999999</u> |
| Less: Deposit   | \$ <u>0</u>                 |
| Less: Cash Down Payment   | \$ <u>0.00</u>              |
| Less: Net Trade-in Allowed  | \$ <u>0</u>                 |
| Unpaid Balance  | \$ <u>1119697.033</u>       |
| <i>(DUE ON DELIVERY)</i>  |                             |

|                                     |   |
|-------------------------------------|---|
| Stock Number <u>TBD</u>             | <input checked="" type="checkbox"/> New |
| VIN Number <u>TBD</u>               | <input type="checkbox"/> Used           |
| Year <u>2024</u> Color <u>white</u> |   |
| Make <u>Western Star</u>            |   |
| Model <u>47X</u>                    |   |
| Tractor/Truck/Trailer <u>      </u> |   |

**TRADE IN: CONDITION REPORT REQUIRED**

|  |                     |                  |
|--|---------------------|------------------|
| Year <u>N/A</u>  | Make <u>N/A</u>     | Model <u>N/A</u> |
| Body Type <u>      </u>                                  | Color <u>      </u> |                  |
| VIN Number <u>      </u>                                 |                     |                  |
| Loan Balance Owed To <u>      </u>                       |                     |                  |
| Address <u>      </u>                                    |                     |                  |
| City <u>      </u> State <u>      </u> Zip <u>      </u> |                     |                  |
| Trade Allowance \$ <u>      </u>                         |                     |                  |
| Balance Owing \$ <u>      </u>                           |                     |                  |
| Equity \$ <u>0</u>                                       |                     |                  |

**SALES LOCATION**

- Nampa, ID (208) 461-4751
- Mt. Vernon, WA (877) 848-0472
- Hermiston, OR (800) 657-5408
- Pacific, WA (800) 282-0699
- La Grande, OR (800) 843-1195
- Olympia, WA (855) 245-4635
- Coburg, OR (541) 225-2030
- Ridgefield, WA (360) 887-7562
- Redmond, OR (541) 548-7497
- Spokane, WA (888) 744-0390
- Medford, OR (541) 779-4622
- Union Gap, WA (800) 378-9478
- Kapolei, HI (808) 682-4315
- Redding, CA (530) 241-4412

Signature X \_\_\_\_\_  
Date        X \_\_\_\_\_

# VEHICLE PURCHASE AGREEMENT

Buyer's Name Deschutes Co Public Works  
Sales Rep Mark Christie

Order Date 8 / 30 / 2023

**EXCLUSION OF WARRANTIES:** Any warranties on the products sold hereby are made by the manufacturer. The undersigned purchaser understands and agrees that Gordon Truck Centers Inc. makes no warranties of any kind, express or implied, and disclaims all warranties including warranties of merchantability or fitness for a particular purpose, with regard to the products purchased; and that in no event shall Gordon Truck Centers Inc. be liable for incidental or consequential damages or commercial losses arising out of such purchase. This disclaimer does not affect the manufacturer's warranties, if any on this purchase. Extended warranties are available for purchase at time of sale but are not included unless otherwise stated in the Vehicle Purchase Agreement. Tax, title and license are the purchaser's responsibility.

**PRICE INCREASES:** Prices are subject to change in the event of manufacturer-imposed surcharges or price increases. Purchasers will receive written notice of any price increase and given no less than 14 calendar days to accept the price increase or cancel the order at no charge.

**VEHICLE DELIVERY TERMS:** Vehicles must be paid in full prior to customer taking possession. Customer will be notified once vehicle(s) have been received from OEM and are ready for delivery. From the day of notification customer will have fourteen (14) calendar days to fund Gordon Truck Centers Inc. (GTC) any amount still owed on the vehicle and take possession of vehicle. Vehicles not funded after fourteen calendar days will be subject to additional daily flooring charges until payment is received in full. All deposits on factory ordered vehicles are non-refundable. Valid proof of insurance required prior to vehicle pick up or delivery.

**FEDERAL EXCISE TAX:** (Applicable) Federal Excise Tax will be invoiced and collected at time of sale by Gordon Truck Centers, Inc. Purchaser may provide a signed exemption certificate specific to the vehicles being sold at time of invoicing to be exempted from Federal Excise Tax.

### GORDONTRUCK CENTERS INC. (GTC) PREFERRED METHOD OF PAYMENT:

1. In-House Finance
2. Automated Clearing House (ACH)
3. Wire Transfer
  - a. Instructions are available for customer reference
4. Cashier's Check
  - a. Must be from local banks only – out of state transactions are wire transfer/ACH only
  - b. Must be payable to Gordon Truck Centers Inc.

Purchaser agrees that the VEHICLE PURCHASE AGREEMENT (VPA) includes all terms and conditions, that this VPA cancels and supersedes any prior VPA and as of the date hereof comprises an exclusive statement of the terms of this agreement relating to the subject matter covered hereby. **THIS AGREEMENT SHALL NOT BECOME BINDING UNTIL ACCEPTED BY THE DEALER** as evidenced below. Purchaser by their execution of this agreement acknowledges they have read and accepted its terms and conditions and has received a true copy of this agreement.

### Purchaser's Acceptance

Purchaser's Name (Please Print) Deschutes Co Public Works

Name of Authorized Representative \_\_\_\_\_

Title of Authorized Representative \_\_\_\_\_

Signature of Authorized Representative X \_\_\_\_\_

Date \_\_\_\_\_ X \_\_\_\_\_

**Gordon Truck Centers Inc.**  
 Accepted This Date By:  
 X \_\_\_\_\_, Sales Manager  
 Date \_\_\_\_\_



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 13, 2023

SUBJECT: Enterprise Zone Abatement Extension for BasX

RECOMMENDED MOTION:

Move approval of Chair Signature on Document No. 2023-843, Greater Redmond Area Zone Extended Abatement Agreement.

BACKGROUND AND POLICY IMPLICATIONS:

The Enterprise Zone (EZone) program allows qualifying businesses and investments to receive a 100% abatement of property taxes associated with the assessed value of new qualifying capital improvements. Companies continue to pay taxes on the value of the land and any capital investments that are not eligible for the abatement. Depending upon the nature of the State program being used, EZone abatements can range from three (3) years to five (5) years (known as the Extended program). The duration of the abatement is connected to the number of jobs created and wage level.

BasX seeks is seeking five-years of abated taxes. The three-year abatement does not have an average wage requirement; however, the Extended abatement requires wages that are certified at 150% of Deschutes County average annual compensation (\$84,897). Compensation under the criteria includes salary, overtime, bonuses, medical and retirement benefits. Not all jobs created need to exceed the 150% average annual compensation criteria, but rather an average of the overall compensation for all net new jobs needs to exceed the 150% average annual compensation criteria. If less than half of the jobs meet the compensation criteria, then that qualifies for a one-year extension. If more than half of the jobs meet the compensation criteria, then that qualifies for a two-year extension. Extended abatements need to be approved by the sponsor(s) of the EZone.

BasX has used the Enterprise Zone program two previous times beginning in 2014. At that time they were a "move project" coming from the Portland area and projected to add 60 jobs to the region with an estimated \$3.2 million investment. The second project was completed just last year in 2022 with the large manufacturing and office space

addition. This was a projected \$6.5 million investment adding a required 15 jobs. The current project is projected to be a \$20.2 million new building, partial remodel and new equipment. The requirement is to add 35 jobs to the current total of 304 full-time positions. BasX has exceeded the previous two projects, adding more jobs than required with the final investment being greater than the projected on the applications. They continue to be a committed community partner as the fastest growing company in the region and one of the fastest growing companies in the state.

The Greater Redmond Area EZone has three co-sponsors: the City of Redmond; Deschutes County; and the City of Sisters. The cities of Redmond and Sisters have approved the BasX Enterprise Zone Extended Abatement.

Attached is the original EZone agreement with BasX from 2013, the one-year extension from 2020, and the new proposed two-year extension.

**BUDGET IMPACTS:**

Enterprise Zones impact current and future tax revenues. These adjustments will be included in future budgets.

**ATTENDANCE:**

Steve Curley, REDI Director  
Erik Kropp, Deputy County Administrator



### Agreement for Oregon Enterprise Zone Extended Abatement Greater Redmond Area Enterprise Zone

WRITTEN AGREEMENT WITH THE GREATER REDMOND AREA ENTERPRISE ZONE SPONSORS TO EXTEND PROPERTY TAX EXEMPTION TO FIVE (5) CONSECUTIVE YEARS IN TOTAL FOR CAPITAL INVESTMENT BY BasX LLC.

The City of Redmond, Deschutes County and the City of Sisters, co-sponsors of the Greater Redmond Area Enterprise Zone (hereinafter "The Zone Sponsor") and BasX LLC, (hereinafter "The Firm") do hereby enter into an agreement for extending the period of time in which The Firm shall receive an exemption on its proposed investment in qualified property in the Greater Redmond Area Enterprise Zone contingent on certain special requirements, under ORS 285C.160 (2003).

The Zone Sponsor and The Firm jointly acknowledge, that subject to timely submission and approval of an application for authorization and the satisfaction of other requirements under ORS 285C.050 to 285C.250, The Firm is eligible for three years of complete exemption on its qualified property; that nothing in this agreement shall modify or infringe on this three-year exemption or the requirements thereof, and that this agreement becomes null and void if The Firm does not qualify for these three years of the exemption.

The Zone Sponsor extends The Firm's property tax exemption two additional years on all property that initially qualifies in the Greater Redmond Area Enterprise Zone after the assessment year beginning on January 1, 2015 and, thus, sets a total period of exemption of five consecutive years during which statutory requirements for the standard three-year enterprise zone exemption must also be satisfied and maintained.

#### CONFIRMATION OF STATUTORY PROVISIONS

In order to receive the additional (2) two-years of enterprise zone exemption granted herein, The Firm agrees herewith under 285C.160(3)(a)(A) that for each year of the entire exemption period, The Firm's average annual compensation for all new employees is equal to or greater than 150 percent of the county average annual wage, in accordance with the specific definitions and guidelines in Oregon Administrative Rules (OAR 123-065-4100 - 4140) which provides that:

1. Such compensation may include non-mandatory benefits that can be monetized;
2. The county average annual wage is set at the time of authorization, except as pursuant to ORS 285C.160(4), according to the 2011 Deschutes County average annual payroll rate of \$36,134 for which 150 percent (includes total compensation package) equals \$54,201;
3. Only employees working at jobs filled for the first time after the application for authorization but by *December 31* of the first full year of the initial exemption and performed within the current boundaries of the Greater Redmond Area Enterprise Zone are counted; and

4. Only full-time, year-round and non-temporary employees engaged a majority of their time in The Firm's eligible operations consistent with ORS 285C.135 & 285C.200(3) are counted, regardless if such employees are leased, contracted for or otherwise obtained through an external agency or are employed directly by The Firm.

ACCEPTING FOR THE CO-SPONSORS OF THE GREATER REDMOND AREA ENTERPRISE ZONE:

Signature: George Endicott Date: 12/17/13  
George Endicott, Mayor,  
City of Redmond

Signature: Alan Unger Date: 12/16/13  
Alan Unger, Board Chair,  
Deschutes County

Signature: [Signature] Date: 12/19/13  
Brad Boyd, Mayor,  
City of Sisters

ACCEPTING FOR BasX LLC:

Signature: [Signature] Date: 12/20/13  
Representative Signature

[Signature] MATTHEW TOROBSKI, MEMBER  
Printed Name / Title

3500 SW 21st Pl  
Address

Redmond, OR 97756  
City, State, Zip

834-822-8517  
Phone / Fax

MTOROBSKI@BASXSOLUTIONS.COM  
Email



### Greater Redmond Area Enterprise Zone Extended Abatement

WRITTEN AGREEMENT WITH THE GREATER REDMOND AREA ENTERPRISE ZONE SPONSORS TO EXTEND PROPERTY TAX EXEMPTION BY ONE (1) YEAR TO A TOTAL OF FOUR (4) CONSECUTIVE YEARS IN TOTAL FOR CAPITAL INVESTMENT BY BasX LLC dba BasX Solutions

The sponsors of the Greater Redmond Area Enterprise Zone comprising the governing bodies of [the City of Redmond, Sisters and Deschutes County] (hereinafter the "Zone Sponsor") and BasX LLC dba BasX Solutions (hereinafter the "Firm") do hereby enter into an agreement pursuant to ORS 285C.160 for extending the period of time in which the Firm will receive a property tax exemption on its proposed investments in qualified property in the Greater Redmond Area Enterprise Zone contingent on certain special requirements.

The Zone Sponsor and the Firm jointly acknowledge: that subject to the Firm's timely submission of an application for authorization, the satisfaction of applicable requirements under ORS 285C.050 to 285C.250 (the "Statute"), and the Zone Sponsor's approval thereof, the Firm is eligible for three years of property tax exemption on its qualified property. So long as the Firm elects to continue to receive this property tax exemption and continues to qualify, then this agreement shall have no effect on this three-year exemption. Nothing in this agreement shall be construed as a waiver of the qualification requirements of the Statute. If the Firm loses its qualified status for any reason set forth in the Statute, then this agreement becomes null and void.

The Zone Sponsor extends The Firm's property tax exemption an additional one (1) year on all property that initially qualifies in the Greater Redmond Area Enterprise Zone after the initial assessment year beginning on January 1, 2021 and, thus, sets a total period of exemption of four (4) consecutive years during which statutory requirements for the standard three-year enterprise zone exemption must also be continuously satisfied.

#### CONFIRMATION OF STATUTORY PROVISIONS

In order for qualified property to be exempt from ad valorem taxes for the additional one year of enterprise zone exemption as granted herein, The Firm agrees herewith that under ORS 285C.160(3)(a)(A)(i) or (ii) and (b), in accordance with OAR 123-674-0600:

- 1. For each year of the entire exemption period, The Firm's new employees shall receive an average level of compensation equal to or greater than 150 percent of the county average annual wage, such that:
  - a. Compensation includes benefits such as employer-provided insurance that can be monetized and do not arise from a payroll tax or similar government mandate, and
  - b. Except as revised under ORS 285C.160(4), the county wage is set at the time of authorization, and accordingly, the 2018 average wage for County is \$45,661, for which 150 percent equals \$68,357.
- 2. During the additional year, the average annual wage (taxable income) received by The Firm's new employees shall also be equal to or greater than the current county average wage based on the most recent, final figure at that time.

DC-2020 135

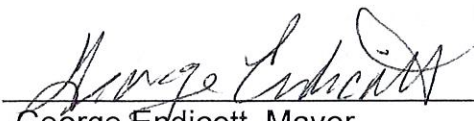


3. The Firm's 'new employees' for purposes of these requirements comprise only employees hired for and working at full-time, year-round, non-temporary jobs that are created and filled for the first time after the date of application for authorization but on or before December 31 of the first full year of the initial exemption, and that are performed within the current boundaries of the Enterprise Zone and engaged a majority of their time in The Firm's eligible operations according to ORS 285C.135 and 285C.200(7), regardless if any such employee is leased, contracted for or otherwise obtained through an external agent, provided that they are hired by and employed directly by The Firm.

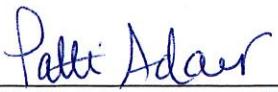
LOCAL ADDITIONAL REQUIREMENTS

The Zone Sponsor does not request any requirement of The Firm and relinquishes all rights to make the additional one (1) year of property tax exemption granted herein contingent on additional requirements that might otherwise be reasonably requested under ORS 285C.160(a)(B).

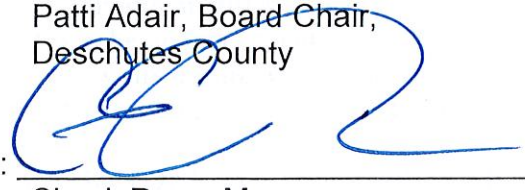
ACCEPTING FOR THE CO-SPONSORS OF THE GREATER REDMOND AREA ENTERPRISE ZONE:

Signature:   
George Erdicott, Mayor,  
City of Redmond

Date: 1/14/20

Signature:   
Patti Adair, Board Chair,  
Deschutes County

Date: 2/3/2020

Signature:   
Chuck Ryan, Mayor,  
City of Sisters

Date: 2/20/2020

ACCEPTING FOR THE FIRM:

Signature:   
Representative Signature

Date: 02/26/20

MATTHEW TOBOLSKI PRESIDENT  
Printed Name / Title

3500 SW 21ST PL  
Address

REDMOND, OR 97756  
City, State, Zip

541-647-6650  
Phone / Fax

MTOBOLSKI@BASXSOLUTIONS.COM  
Email



**Greater Redmond Area Enterprise Zone Extended Abatement**

**WRITTEN AGREEMENT WITH THE GREATER REDMOND AREA ENTERPRISE ZONE SPONSORS TO EXTEND PROPERTY TAX EXEMPTION TO FIVE CONSECUTIVE YEARS IN TOTAL FOR CAPITAL INVESTMENT BY BasX, Inc.]**

The sponsors of the Greater Redmond Area Enterprise Zone comprising the governing bodies of [the City of Redmond, Sisters and Deschutes County] (hereinafter the "Zone Sponsor") and BasX Inc. (hereinafter the "Firm") do hereby enter into an agreement pursuant to ORS 285C.160 for extending the period of time in which the Firm will receive a property tax exemption on its [proposed] investment[s] in qualified property in the Greater Redmond Area Enterprise Zone contingent on certain special requirements.

The Zone Sponsor and the Firm jointly acknowledge: That subject to the Firm's timely submission of an application for authorization, the satisfaction of applicable requirements under ORS 285C.050 to 285C.250 (the "Statute"), and the Zone Sponsor's approval thereof, the Firm is eligible for three years of property tax exemption on its qualified property. So long as the Firm elects to continue to receive this property tax exemption and continues to qualify, then this agreement shall have no effect on this three-year exemption. Nothing in this agreement shall be construed as a waiver of the qualification requirements of the Statute. If the Firm loses its qualified status for any reason set forth in the Statute, then this agreement becomes null and void.

The Zone Sponsor extends The Firm's property tax exemption an additional two years on all property that initially qualifies in the Greater Redmond Area Enterprise after the initial assessment year beginning on January 1, 2024 and, thus, sets a total period of exemption of five consecutive years during which statutory requirements for the standard three-year enterprise zone exemption must also be continuously satisfied.

**CONFIRMATION OF STATUTORY PROVISIONS**

In order to receive the additional two years of enterprise zone exemption granted herein, the Firm agrees under 285C.160(3)(a)(A) that for each year of the entire exemption period, including the first three years and the additional one or two years, all of the Firm's new employees will receive an average rate of compensation equal to or greater than 150 percent of the county average annual wage, as determined at the time the enterprise zone tax exemption is authorized in accordance with the specific definitions and guidelines in Oregon Administrative Rules (OAR), Chapter 123, Division 674 (123-674-0600), the "Compensation standard".


Only "Affected Employees" are counted. Affected Employees means persons, positions or jobs under ORS 285C.050(13) that satisfy the following criteria: (a) included as "employment of the firm" in accordance with OAR 123-674-0200; and (b) new jobs filled for the first time: (A) after the date of Application under ORS 285C.140(1), even if an individual filling the job is already employed by the eligible business firm in another position that is refilled within the zone; and (B) on or before December 31 at the end of the initial exemption year, and located within the current boundaries of the Greater Redmond Area Enterprise Zone.

Only full-time, year-round and non-temporary employees engaged a majority of their time in the Firm's eligible operations consistent with ORS 285C.135 including but not limited to persons who perform eligible activities as described in OAR 123-674-1100 or 123-674-1200(3) or (4) and OAR 123-674-0200 are counted, regardless of whether such employees are leased, contracted for or otherwise obtained through an external agency or are employed directly by the Firm.

**LOCAL ADDITIONAL REQUIREMENTS**

The Zone Sponsor does not request any requirement of The Firm and relinquishes all rights to make the additional [one/two] years of property tax exemption granted herein contingent on additional requirements that might otherwise be reasonably requested under ORS 285C.160(a)(B).]


**ACCEPTING FOR THE CO-SPONSORS OF THE GREATER REDMOND AREA ENTERPRISE ZONE:**

Signature:   
Ed Fitch, Mayor,  
City of Redmond

Date: 4/18/23

Signature: \_\_\_\_\_  
Tony DeBone, Board Chair,  
Deschutes County

Date: \_\_\_\_\_

Signature:   
Michael Preedin, Mayor,  
City of Sisters

Date: 5/10/23

**ACCEPTING FOR THE FIRM:**

**Signature:** \_\_\_\_\_  
*Representative Signature*

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

\_\_\_\_\_  
*Printed Name / Title*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*City, State, Zip*

\_\_\_\_\_  
*Phone / Fax*

\_\_\_\_\_  
*Email*



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 13, 2023

SUBJECT: Senate Bill 80 – Wildfire Hazard Risk Mapping Discussion

BACKGROUND AND POLICY IMPLICATIONS:

Staff seeks direction from the Board with respect to preparing and offering technical input for the Oregon Department of Forestry (ODF) September 21, 2023, Wildfire Hazard Map meeting. Staff last discussed these items during a work session on August 21, 2023.

In 2022, ODF and Oregon State University (OSU) developed administrative rules and a statewide wildfire risk map required under Senate Bill (SB) 762. The rules, adopted by the Board of Forestry, established the criteria by which the map was developed, updated, and maintained. The map also showed what properties in Oregon fall within the wildland-urban interface (WUI), as defined by the Board of Forestry in rule in 2021. The initial draft of the wildfire risk map was released on June 30, 2022. However, on August 4, 2022, the draft wildfire risk map was temporarily withdrawn for further refinement. SB 80, passed in the 2023 Oregon legislative session, outlines changes that ODF is required to make to the map before it goes public again. ODF and the Association of Oregon Counties (AOC) will be hosting a Wildfire Hazard Map meeting for District 2 which includes Deschutes County, immediately following the AOC Fall District Meeting at 2:00pm on Thursday, September 21 in Klamath Falls.

ODF plans on bringing maps to serve as a starting place for the September 21 meeting. Draft copies of these maps have been provided to staff to identify areas and issues for discussion. It is also expected ODF will also come ready to discuss any comments raised previously by affected counties.

BUDGET IMPACTS:

None

ATTENDANCE:

- Will Groves, Planning Manager
Peter Gutowsky, AICP, Director
Kevin Moriarty, Deschutes County Forester



MEMORANDUM

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

**FROM:** Kyle Collins, Associate Planner  
 Will Groves, Planning Manager  
 Peter Gutowsky, Community Development Director  
 Kevin Moriarty, County Forester

**DATE:** September 6, 2023

**SUBJECT:** Senate Bill 80 – Statewide Wildfire Hazard Mapping Discussion

**I. BACKGROUND**

Certain properties in rural Deschutes County will likely be subject to new wildfire mitigation measures as approved under Senate Bill (SB) 762<sup>1</sup> and ultimately amended pursuant to SB 80<sup>2</sup>. One of the primary pieces of SB 762 and SB 80 is the creation of a comprehensive Statewide Wildfire Hazard Map to guide new wildfire regulations for development. The initial hazard map was made available on June 30, 2022. However, based on significant concern from citizens and interest groups through the state, the Oregon Department of Forestry (ODF) withdrew the initial map to provide more time for additional public outreach and refinement of hazard classification methodologies.

SB 80, passed in the 2023 Oregon legislative session, outlines changes that ODF is required to make to the map before it goes public again. The bill changed the name of the map from "Wildfire Risk Map" to "Wildfire Hazard Map." It also reduced the score categories from the original five to three: low, medium, and high hazard. SB 80 also forbids insurance companies from using the map to set insurance rates for homeowners. The new roll out of the map does not have a deadline for completion, however it is anticipated for spring 2024.

Under SB 80, once the Statewide Wildfire Hazard Maps are finalized, properties included in **both** a designated Wildland Urban Interface (WUI) boundary and classified as high hazard will be subject to additional development regulations. SB 80 requires that, at minimum, local governments ensure that properties meeting both of these standards will be subject to:

<sup>1</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

<sup>2</sup> <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

- 1) Home hardening building codes as described in section R327 of the Oregon Residential Specialty Code.
- 2) Defensible space standards as determined by the Oregon State Fire Marshal.

At present, the State Fire Marshal has yet to develop final statewide defensible space requirements.

ODF officials will be conducting extensive public hearings across the state to gather input. ODF and the Association of Oregon Counties (AOC) will be hosting a Wildfire Hazard Map meeting for District 2 which includes Deschutes County, immediately following the AOC Fall District Meeting at 2:00pm on Thursday, September 21 in Klamath Falls<sup>3</sup>. SB 80 states in Section 1(12):

“... to ensure that local characteristics in each area of this state are considered in the mapping process and before the draft map is released, the department shall meet with County Commissioners and the county commissioners' staff in eight in-person meetings throughout this state.”

Legislative Intent for "county commissioners' staff" included County Planning Directors, Emergency Managers, and County Administrators. SB 80 goes on to say that after ODF meets with county commissioners and staff, they will have public hearings and opportunities for Oregonians to comment on the map. Then counties will have one additional meeting with the Department after those public meetings occur to review the latest map iteration. ODF plans on bringing maps to serve as a starting place for the September 21 meeting. Draft copies of these maps have been provided to staff and are attached to this memo to identify areas and issues for discussion. It is also expected ODF will also come ready to discuss any comments raised previously by affected counties.

## II. BOARD CONSIDERATION

There are no specific decisions for the Board to make regarding the Statewide Wildfire Hazard Map at this time. However, the Board may wish to discuss and outline specific concerns regarding the Statewide Wildfire Hazard Map to be raised during the upcoming AOC meeting on September 21. Deschutes County staff, including the County Forester Kevin Moriarty, will be participating in these proceedings remotely and in person.

### Attachments:

1. Senate Bill 80 – Draft Deschutes County Wildfire Hazard Map
2. Senate Bill 762 – Deschutes County Wildfire Risk Map

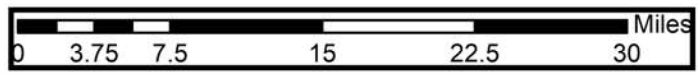
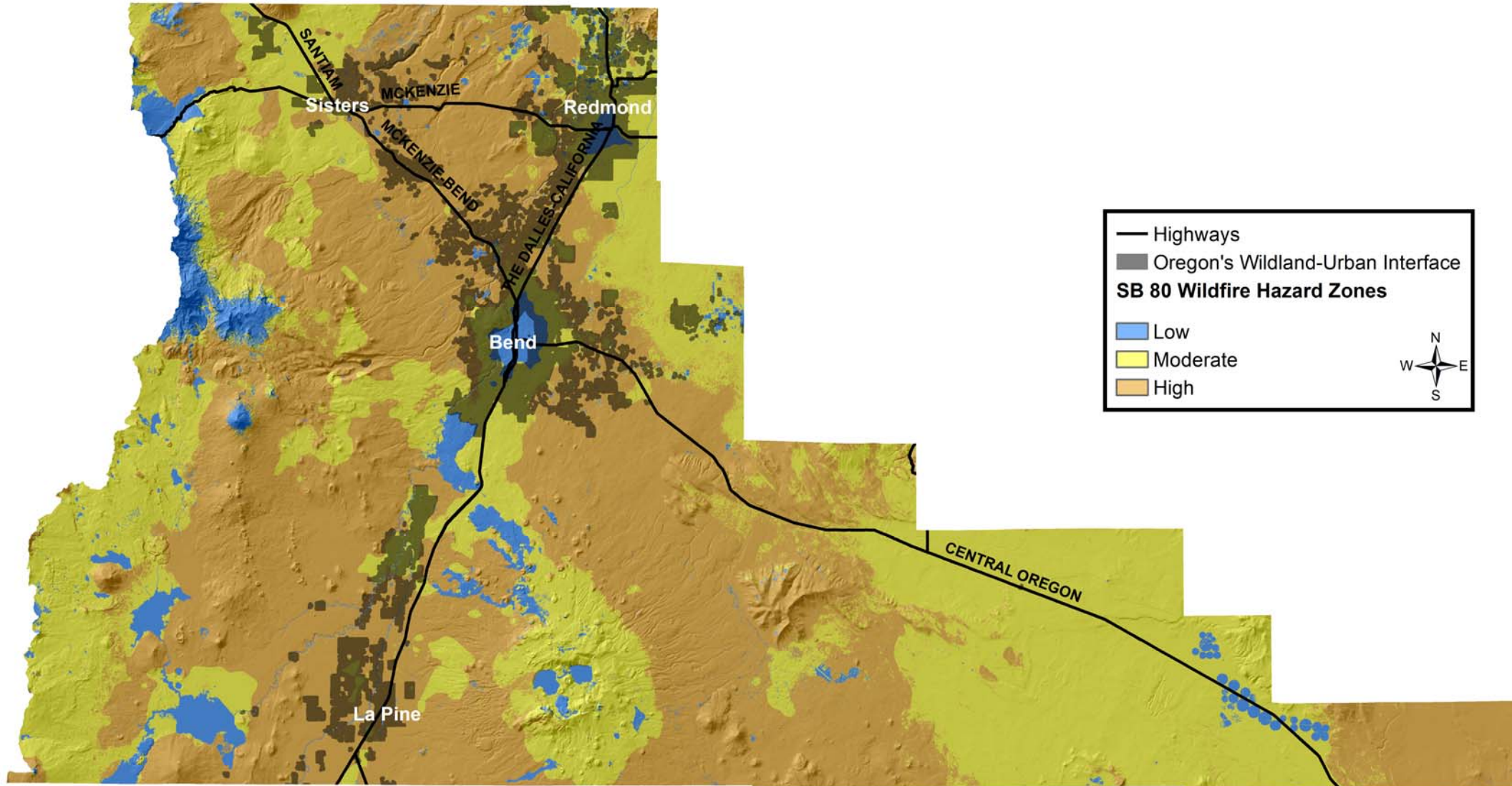
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<sup>3</sup> District 2 includes Crook, Deschutes, Harney, Jefferson, Klamath, and Lake counties.

# Draft Senate Bill 80 Wildfire Hazard Map

09/13/2023 Item #6.

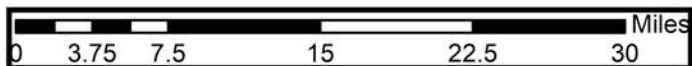
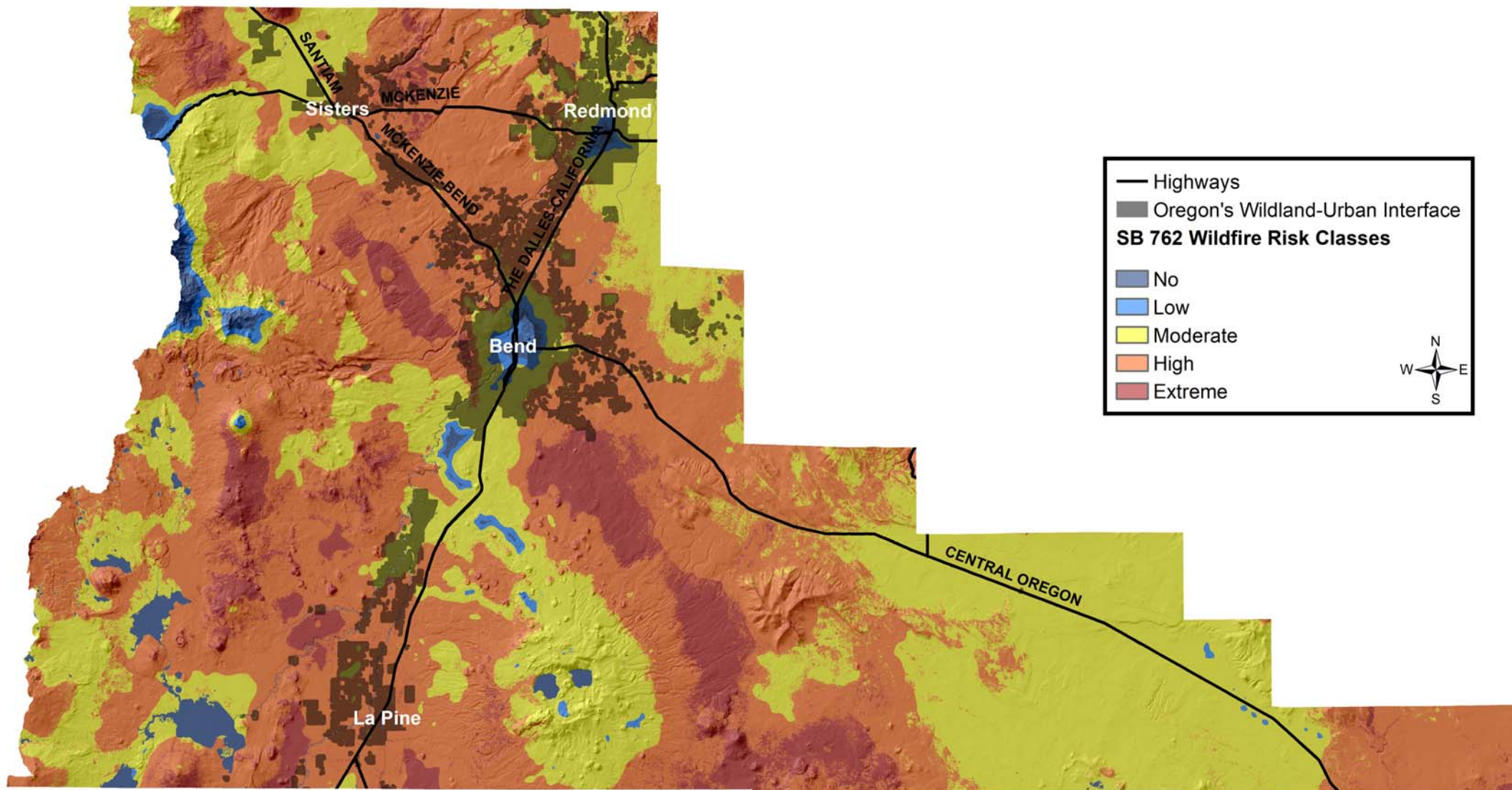
(AOC District 2 Meeting - 9/21/2023)





# Senate Bill 762 Wildfire Risk Map

(AOC District 2 Meeting - 9/21/2023)



JEFFERSON

LINN

LANE

CROOK

KLAMATH

LAKE

HARNEY

*Draft*

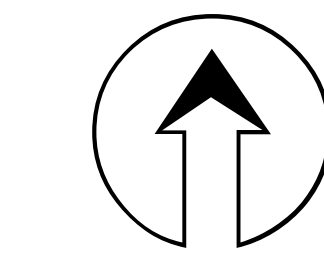
# Senate Bill 80 Wildfire Hazard

## Deschutes County, Oregon

- State Highway
- Urban Growth Boundary
- Wildland-Urban Interface

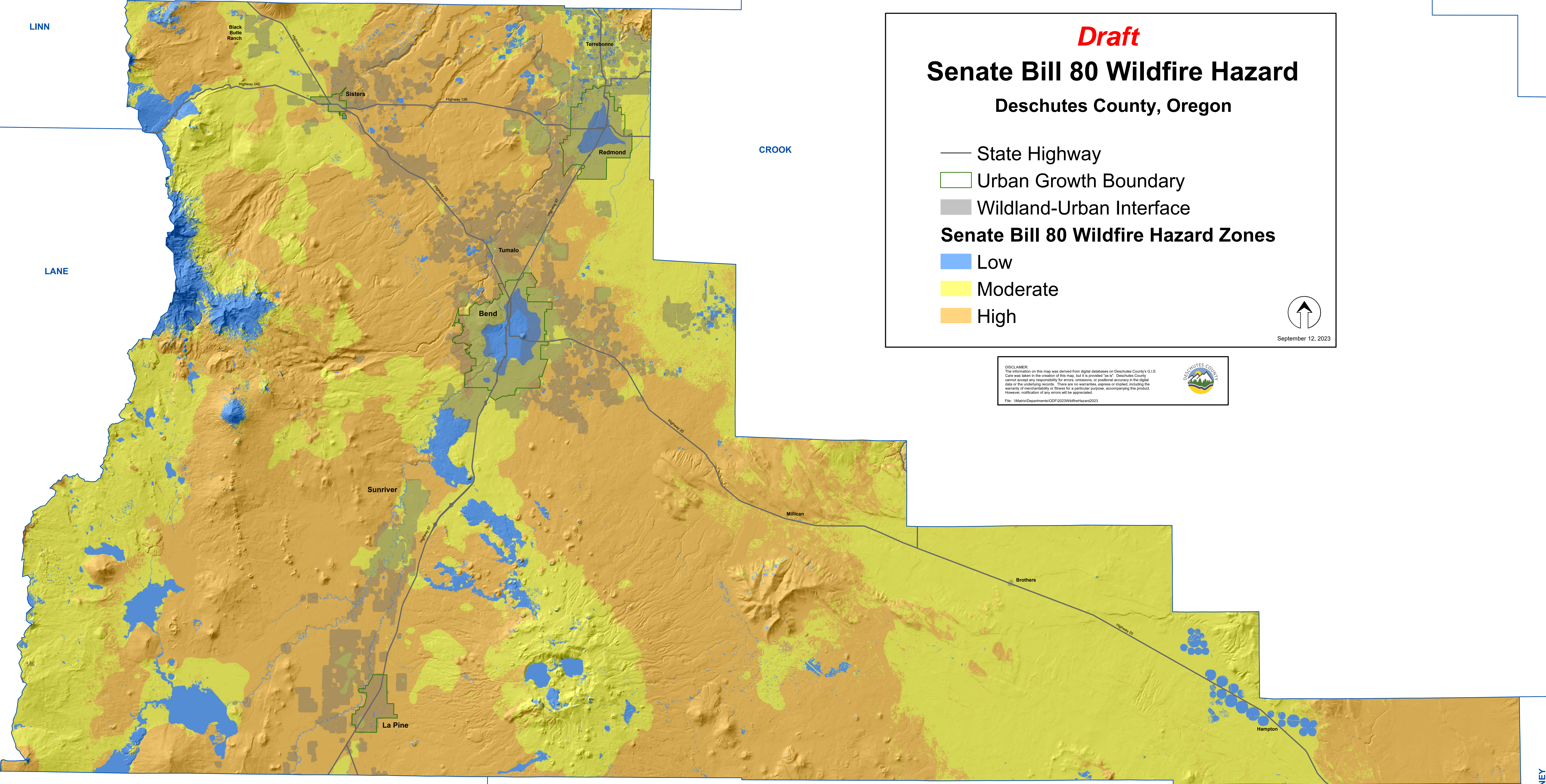
### Senate Bill 80 Wildfire Hazard Zones

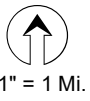
- Low
- Moderate
- High



September 12, 2023

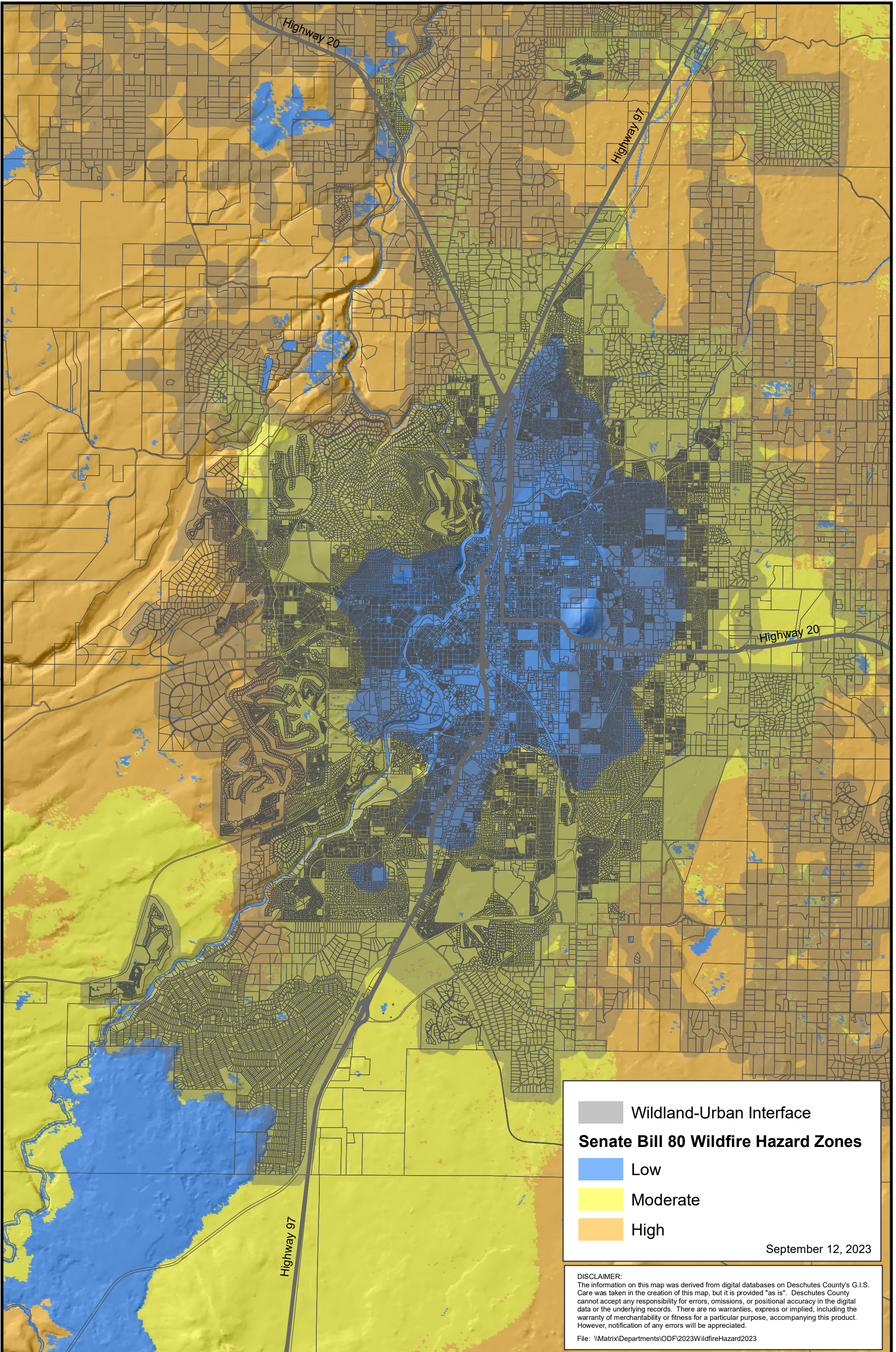
DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's GIS. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.  
File: \\Math\Departments\COP\2023\WildfireHazard2023





1" = 1 Mi.

# Bend Area - Draft Senate Bill 80 Wildfire Hazard



Wildland-Urban Interface  
**Senate Bill 80 Wildfire Hazard Zones**  
 Low  
 Moderate  
 High

September 12, 2023

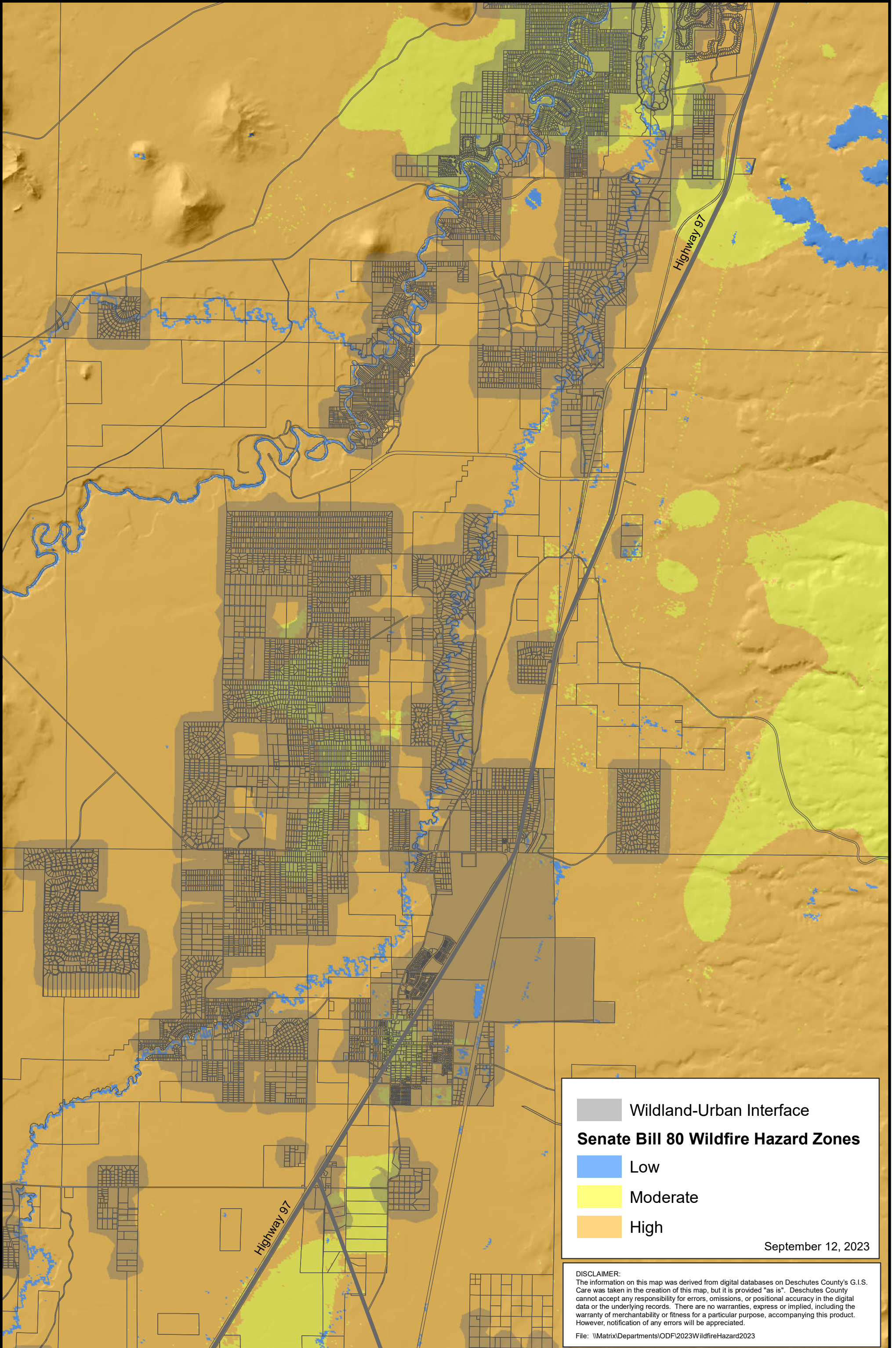
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1" = 1 Mi.

# La Pine Area - Draft Senate Bill 80 Wildfire Hazard



Wildland-Urban Interface  
**Senate Bill 80 Wildfire Hazard Zones**  
 Low  
 Moderate  
 High

September 12, 2023

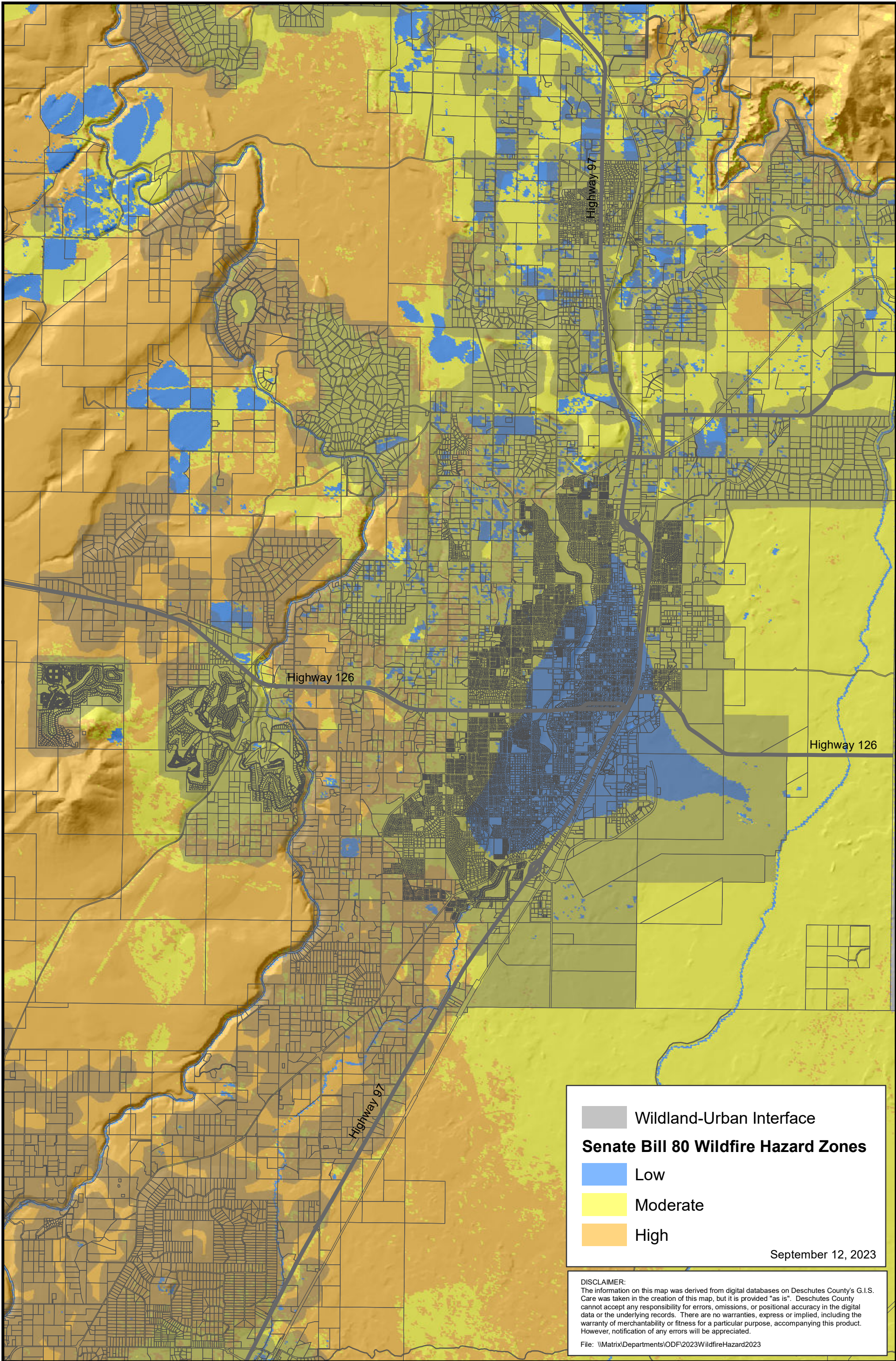
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1" = 1 Mi.

# Redmond Area - Draft Senate Bill 80 Wildfire Hazard

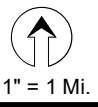


Wildland-Urban Interface  
**Senate Bill 80 Wildfire Hazard Zones**  
 Low  
 Moderate  
 High

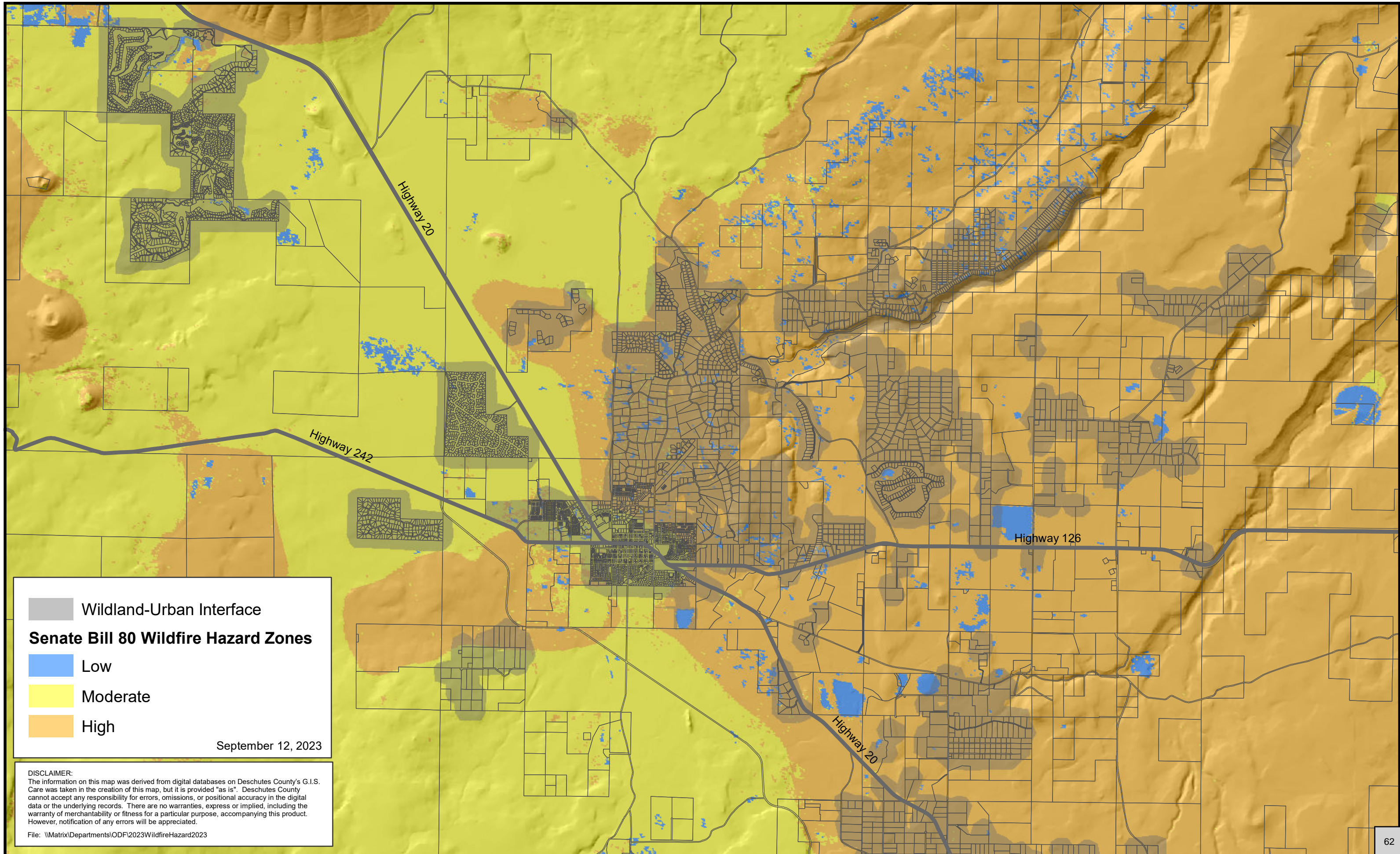
September 12, 2023

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File: \\Matrix\Departments\ODF\2023\WildfireHazard2023



# Sisters Area - Draft Senate Bill 80 Wildfire Hazard

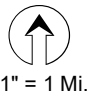


Wildland-Urban Interface  
**Senate Bill 80 Wildfire Hazard Zones**  
 Low  
 Moderate  
 High

September 12, 2023

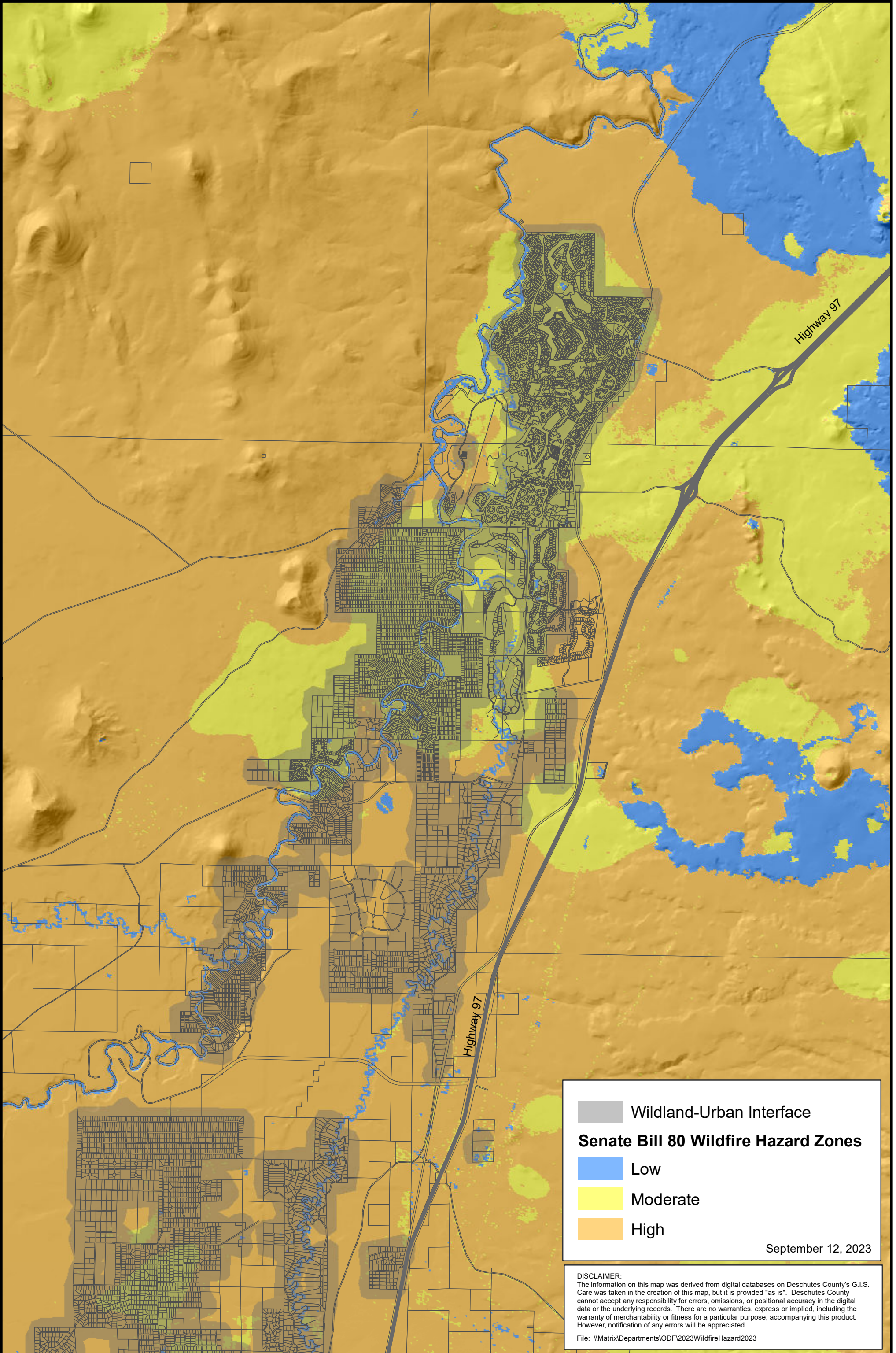
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File: \\Matrix\Departments\ODF\2023\WildfireHazard2023



1" = 1 Mi.

# Sunriver Area - Draft Senate Bill 80 Wildfire Hazard



Wildland-Urban Interface  
**Senate Bill 80 Wildfire Hazard Zones**  
 Low  
 Moderate  
 High

September 12, 2023

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File: \\Matrix\Departments\ODF\2023\WildfireHazard2023



**Draft Statewide Wildfire Hazard Map – Deschutes County Estimates**

The following tables demonstrate draft estimates of properties within Deschutes County which are likely to be affected by the Statewide Wildfire Hazard Map mandated under Senate Bill (SB) 761 and modified pursuant to SB 80. The estimates are based upon data obtained from Oregon State University (OSU) and the Oregon Department of Forestry (ODF) in anticipation of upcoming meetings with Association of Oregon County (AOC) members in late summer and fall 2023. These estimates are subject to refinement and modification as new information becomes available.

**Table 1: Total High Hazard Destinations within WUI, Including UGBs**

|                   |        |
|-------------------|--------|
| <b>Properties</b> | 26,103 |
| <b>Acres</b>      | 91,544 |

**Table 2: Total High Hazard Destinations within WUI, Outside UGBs**

|                   |        |
|-------------------|--------|
| <b>Properties</b> | 20,864 |
| <b>Acres</b>      | 84,957 |

**Table 3: 50%+ High Hazard Designation within WUI, Outside UGBs**

|                   |        |
|-------------------|--------|
| <b>Properties</b> | 16,999 |
| <b>Acres</b>      | 66,098 |

**Table 4: 50%+ High Hazard Designation within WUI, Outside UGBs**

| <b>Zoning</b>                                      | <b>Properties</b> |
|--|-------------------|
| Black Butte Ranch (BBRR)                           | 19                |
| Exclusive Farm Use (EFU)                           | 2,227             |
| Forest Use (F1/F2)                                 | 440               |
| Multiple Use Agricultural (MUA10)                  | 2768              |
| Open Space & Conservation (OS&C)                   | 5                 |
| Rural Commercial (RC)                              | 8                 |
| Rural Residential (RR10)                           | 10345             |
| Rural Service Center (RSC)                         | 11                |
| Suburban Residential (SR 2.5)                      | 61                |
| Sunriver Single Family Residential District (SURS) | 11                |
| Tumalo Residential 5 Acre Minimum District (TUR5)  | 90                |
| Tumalo Residential District (TUR)                  | 26                |
| Urban Area Reserve (UAR10)                         | 964               |
| Westside Transect (WTZ)                            | 34                |



**Table 5: Public Ownership, 50%+ High Hazard Designation within WUI, Outside UGBs**

| <b>Ownership</b>                              | <b>Properties</b> | <b>Acres</b> |
|---|-------------------|--------------|
| Local (Fire Districts, School District, etc.) | 49                | ~276         |
| County  | 159               | ~424         |
| State   | 28                | ~178         |
| Federal                                       | 17                | ~664         |



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 13, 2023

SUBJECT: Public Hearing and Consideration of Ordinance No. 2023-021 concerning the Local Wildfire Hazard Zone and Oregon Residential Specialty Code Updates Regarding Wildfire Hazard Mitigation

RECOMMENDED MOTIONS:

To maintain the current fire mitigation building standards and development review processes, staff recommends closing the record on the proposed amendments, commencing deliberations, and adopting Ordinance No. 2023-021 by emergency.

- 1. Move approval of first and second reading of Ordinance No. 2023-021 by title only.
2. Move adoption of Ordinance No. 2023-021 on an emergency basis to take effect immediately upon adoption.

BACKGROUND AND POLICY IMPLICATIONS:

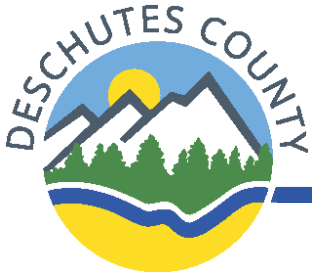
On October 1, 2023, the State Building Codes Division will be updating the R327 section of the Oregon Residential Specialty Code (ORSC). Given existing provisions in section 15.04.085 of the Deschutes County Code (DCC), the forthcoming updates to the ORSC may have unintended consequences for residential development in Deschutes County in the period before official adoption of the State Wildfire Hazard Map mandated by Senate Bills 762 and 80.

BUDGET IMPACTS:

None

ATTENDANCE:

Will Groves, Planning Manager
Peter Gutowsky, Community Development Director
Kyle Collins, Associate Planner



**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Will Groves, Planning Manager  
 Peter Gutowsky, Community Development Director  
 Krista Appleby, Assistant Building Official  
 Kyle Collins, Associate Planner

**DATE:** September 6, 2023

**SUBJECT:** Legislative Amendments - Local Wildfire Hazard Zone and Oregon Residential Specialty Code Updates Regarding Wildfire Hazard Mitigation (R327)

The Board of County Commissioners (Board) will conduct a public hearing on September 13, 2023, concerning amendments to the Deschutes County Wildfire Hazard Zone and forthcoming updates to the Oregon Residential Specialty Code (ORSC) concerning wildfire hazard mitigation standards (file no. 247-23-00649-TA).

Attached to this memorandum are:

- Staff Report and Draft Amendments<sup>1</sup>
- The 2023 Oregon Residential Specialty Code (ORSC) Section R327
- Map of the Deschutes County Wildfire Hazard Zone

**I. BACKGROUND**

In 2001, the Deschutes County Board of Commissioners (Board) adopted Ordinance 2001-024 establishing a local Wildfire Hazard Zone. The relevant wildfire mitigation standards and references of this zone were subsequently amended in 2011 pursuant to Ordinance 2011-022. The currently adopted Wildfire Hazard Zone includes all areas of Deschutes County. However, the Deschutes County Building Safety Division does not have jurisdiction in certain incorporated cities such as Bend and Redmond. Deschutes County's Wildfire Hazard Zone is separate and distinct from ongoing efforts to produce a Statewide Wildfire Hazard Map pursuant to Senate Bills (SBs) 762<sup>2</sup> and 80<sup>3</sup>. The

<sup>1</sup> Within the proposed amendments, added language is shown underlined and deleted shown as strikethrough.

<sup>2</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

<sup>3</sup> <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

standards imposed by the County's local hazard map are located under Title 15, Buildings & Construction, in Section 15.04.085<sup>4</sup> of the Deschutes County Code (DCC). Since adoption of the Wildfire Hazard Map in 2001, R327 has exclusively prohibited wooden-shake roofing for newly constructed residences and residential accessory structures.

**II. CHANGES & CONCERNS**

On October 1, 2023, a new 2023 edition of the ORSC becomes effective and Section R327 detailing wildfire hazard mitigation building standards will be modified. Based on the language of DCC 15.04.085, the forthcoming Section R327 will apply broadly across all residential development in unincorporated Deschutes County based on the existing County Wildfire Hazard Zone. The modified R327 standards still apply to all dwellings and residential accessory structures, but would now require more extensive fire mitigation items, including updated roofing requirements, overhang projection requirements, deck/porch/balcony requirements, ventilation requirements, and others. If no action is taken, citizens will encounter previously unrequired fire mitigation regulations in Deschutes County, greatly increasing impacts to staff in a very short period of time to understand, review, and enforce new regulatory standards while also attempting to educate citizens on the details of these new requirements.

The Board should be aware that based on SBs 762 and 80, once the Statewide Wildfire Hazard Map is approved by the Oregon Department of Forestry (ODF), the complete R327 standards of the ORSC will apply more broadly throughout Deschutes County based on each individual property's wildfire hazard classification and the boundaries of the designated Wildland Urban Interface (WUI). Properties ultimately identified as having a "High" hazard classification and located within a designated WUI will be subject to additional residential fire mitigation standards. However, at this time no jurisdictions are mandated to implement all standards included in R327 prior to release of the Statewide Wildfire Hazard Map.

Should the Board wish to maintain the current status quo and keep residential wildfire mitigation standards limited to a prohibition on wooden-shake roofs, DCC 15.04.085(B) will need to be updated with more specific language regarding the roofing requirements of R327. Additionally, the Board will likely have to revisit DCC 15.04.085 again once the Statewide Wildfire Hazard Map is approved by the Oregon Department of Forestry (ODF) sometime in 2024 to address a larger suite of residential wildfire mitigation requirements.

**III. PROPOSED ACTIONS**

Staff proposes amendments to Section 15.04.085, as detailed in Attachment 1, to maintain the current fire mitigation standards for residential development during the interim period when the forthcoming Section R327 updates are released, but before the Statewide Wildfire Hazard Map is finalized. No changes to the geographic boundaries of the existing Wildfire Hazard Zone are proposed. The proposed code amendments were developed in consultation with the Building Safety Division.

<sup>4</sup> [https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=15.04.085\\_Wildfire\\_Hazard\\_Zones](https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=15.04.085_Wildfire_Hazard_Zones)

#### **IV. NEXT STEPS**

At the conclusion of the public hearing, the Board may:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain; or
- Close the hearing and commence deliberations.

#### Attachments:

1. Ordinance 2023-021: Staff Report and Amendments
2. The 2023 Oregon Residential Specialty Code (ORSC) Section R327
3. Map of the Deschutes County Wildfire Hazard Zone

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

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code \*  
Title 15, Building and Construction Codes and \*  
Regulations, to Modify the Development Standards \* ORDINANCE NO. 2023-021  
for the Wildfire Hazard Zone. \*  
\*

WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-23-000649-TA) to Deschutes County Code (“DCC”), Chapter 15.04 – Building and Construction Codes and Regulations; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on September 13, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Titles 15; now, therefore,

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

Section 1. AMENDMENT. Deschutes County Code Chapter 15.04, Building and Construction Code and Regulations, is amended to read as described in Exhibit “A”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

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 becomes effective upon adoption by the Board.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2023

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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

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

ATTEST:

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

\_\_\_\_\_  
PHILIP CHANG

Date of 1<sup>st</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Date of 2<sup>nd</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Record of Adoption Vote:

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

Effective date: \_\_\_\_\_ day of \_\_\_\_\_, 2023.

## **CHAPTER 15.04 BUILDING AND CONSTRUCTION CODES AND REGULATIONS**

[15.04.010 Specialty Codes And Building Requirements Adopted; Enforcement](#)

[15.04.015 Additional Local Authority](#)

[15.04.020 \(Repealed\)](#)

[15.04.025 Fences](#)

[15.04.030 \(Repealed\)](#)

[15.04.035 \(Repealed\)](#)

[15.04.037 \(Repealed\)](#)

[15.04.040 \(Repealed\)](#)

[15.04.050 \(Repealed\)](#)

[15.04.055 \(Repealed\)](#)

[15.04.060 \(Repealed\)](#)

[15.04.070 Building Abatement Code; Adopted](#)

[15.04.080 Fire Code; Adopted](#)

[15.04.085 Wildfire Hazard Zones](#)

[15.04.090 Definitions](#)

[15.04.100 Mobile Homes; Placement Permit; Inspection](#)

[15.04.110 Expedited Construction Start](#)

[15.04.120 Mobile Homes; State Certification Required](#)

[15.04.130 Building Permit Issuance; Zoning Conformance; Planning Department Approval](#)

[15.04.140 Industrial/Commercial Structure; Occupancy Certificate Required](#)

[15.04.145 Residential Structure; Occupancy Certificate Required](#)

[15.04.150 Building Or Mobile Home Placement Permit Issuance; Zoning And Subdivision Conformance](#)

[15.04.160 Permit Fees; Adjustments](#)

[15.04.170 Numbers For Addresses; Placement](#)

[15.04.180 Administration; Enforcement](#)

[15.04.190 Conditions Deemed A Public Nuisance](#)

[15.04.200 Violation; Penalty](#)

[15.04.210 Requirement For Water Service From Water Districts](#)

[15.04.220 Supply Of Water For Domestic Use In Conformance With State And Federal Regulations](#)

### **15.04.085 Wildfire Hazard Zones**

- A. Wildfire Hazard Zones are those depicted on the Deschutes County Wildfire Hazard Areas map on file with the County Clerk.
- B. Adoption of the Wildfire Hazard Areas map implements the provisions of the ~~Wildfire Hazard Mitigation~~[R327 Roofing](#) Section of the Oregon Residential Specialty Code enforced pursuant to DCC 15.04.010(A).

#### HISTORY

*Adopted by Ord. [2001-024](#) §1 on 6/6/2001*

*Amended by Ord. [2011-022](#) §2 on 7/27/2011*

*[Amended by Ord. 2023-021 §1 on 9/13/2023](#)*



**STAFF REPORT****FILE NUMBER:** 247-23-000649-TA**APPLICANT:** Deschutes County Community Development  
117 NW Lafayette Avenue  
Bend, Oregon 97703**PROPERTY OWNER:** N/A**REQUEST:** Text Amendments to modify the standards of the Deschutes County Wildfire Hazard Zone in anticipation of 2023 updates to the Oregon Residential Specialty Code (ORSC) Regarding Wildfire Hazard Mitigation.**STAFF CONTACT:** Kyle Collins, Associate Planner**I. APPLICABLE CRITERIA:**

Deschutes County lacks specific criteria in DCC Titles 18, 19, 22, or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating a legislative text amendment, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

**I. BACKGROUND**

The purpose of these code amendments is to address critical changes made by the State Building Codes Division (State BCD) to the residential building code (Oregon Residential Specialty Code or ORSC) regarding wildfire hazard mitigation. The proposed amendments will modify the standards of the Deschutes County Wildfire Hazard Zone during the period before adoption and implementation of that State Wildfire Hazard Map as administered by Senate Bill (SB) 80<sup>1</sup>, passed in June 2023. The Deschutes County Wildfire Hazard Zone has been in place since 2001, with minor amendments in 2011. Since its initial adoption, the Deschutes County Wildfire Hazard Zone has prohibited wooden-shake roofs pursuant to standards of the ORSC in all unincorporated areas of Deschutes County. These local amendments would maintain previous requirements for residential roofing by prohibiting wooden-shake style roofing, but would remove requirements for broader

<sup>1</sup> <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

wildfire mitigation building standards until such time as the full implementation of SB 80 is complete.

**II. APPLICABLE CRITERIA:**

Deschutes County lacks specific criteria in DCC Titles 15, 22, or 23 for reviewing a legislative text amendment to local building codes.

**III. PROPOSED AMENDMENTS**

The proposed amendments are described and detailed in Ordinance 2023-021, attached hereto. Added language is underlined and deleted shown as ~~strike through~~. The amendments are necessary to clarify existing standards and procedures, incorporate changes to the Oregon Residential Specialty Code (State Building Code). The following section summarizes the proposed amendments:

**DCC CHAPTER 15.04, BUILDING AND CONSTRUCTION CODES AND REGULATIONS**

- **DCC 15.04.085, Wildfire Hazard Zones** – Removes general references to the Wildfire Hazard Mitigation Section of the ORSC as implemented by the Deschutes County Wildfire Hazard Zone. In conformance with previous standards, maintains compliance with the roofing requirements of the ORSC for all areas identified within the existing Wildfire Hazard Zone.

**III. BASIC FINDINGS**

The Planning Division determined changes were necessary to maintain existing fire mitigation standards and procedures as administered by the Deschutes County Wildfire Hazard Zone. Staff initiated the proposed changes and notes that notification of the Oregon Department of Land Conservation and Development is not required for amendments to local building codes. As demonstrated in the summary above, the amendments remain consistent with Deschutes County Code, Deschutes County Comprehensive Plan, and the Statewide Planning Goals.

**II. FINDINGS:**

**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 beset at the discretion of the Planning Director, unless otherwise required by state law.***

**FINDING:** DCC 22.04.020 defines “legislative changes” as follows:

"Legislative changes" generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of property owners.

The proposed amendments would affect DCC Title 15 – Buildings and Construction (as opposed to comprehensive plans, zoning ordinances, etc.). The proposal does not constitute a “legislative change” because it does not propose amendment to the text of the comprehensive plan, zoning ordinances, the subdivision or partition ordinance or change in zoning maps. Therefore, review by the Planning Commission is not required.

The Board of County Commissioners (Board) will hold a hearing to review the amendments on September 13, 2023. This criterion is met.

Section 22.12.020, Notice

**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:** DCC 22.04.020 defines “legislative changes” as follows:

"Legislative changes" generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of property owners.

The proposed amendments would affect DCC Title 15 – Buildings and Construction. The proposal does not constitute a “legislative change” because it does not propose amendment to the text of the comprehensive plan, zoning ordinances, the subdivision or partition ordinance or change in zoning maps. Notice of the public hearing and the proposed amendments will be posted on the Deschutes County website following standard procedure. This criterion is met.

- 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:** Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent. This criterion is inapplicable.

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

**FINDING:** Notice was provided to the County public information official for wider media distribution. This criterion is 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 of County Commissioners, and has received a fee waiver. This criterion is 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:** DCC 22.04.020 defines “legislative changes” as follows:

"Legislative changes" generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of property owners.

The proposed amendments would affect DCC Title 15 – Buildings and Construction. The proposal does not constitute a “legislative change” because it does not propose amendment to the text of the comprehensive plan, zoning ordinances, the subdivision or partition ordinance or change in zoning maps. Therefore, review by the Planning Commission is not required.

The Board will hold a hearing to review the amendments on September 13, 2023. This criterion is met.

Section 22.12.050 Final Decision

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

**FINDING:** The proposed legislative changes will be implemented by Ordinance No. 2023-021 upon approval and adoption by the Board of County Commissioners. This criterion will be met.

**III. CONCLUSION:**

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed amendments modifying the standards of the Deschutes County Wildfire Hazard Zone in anticipation of 2023 updates to the Oregon Residential Specialty Code (ORSC) Regarding Wildfire Hazard Mitigation.



## 2023 Oregon Residential Specialty Code ORSC Approved Wildfire Hazard Mitigation Provisions

### SECTION R327 WILDFIRE HAZARD MITIGATION

**R327.1 General.** The provisions of this section shall apply to dwellings and their accessory structures required by a local municipality via local ordinance to be protected against wildfire.

Nothing in the code prevents a local municipality from modifying the requirements of this section for any lot, property or dwelling, or the remodel, replacement or reconstruction of a dwelling within the jurisdiction, as provided in Section R104.10.

**R327.1.1 Local adoption.** The provisions of this section may be adopted in whole by a municipality via local ordinance without following ORS 455.040 or OAR 918-020-0370. Where a municipality chooses to adopt these provisions locally, the following shall be included in the adopting ordinance:

1. Identification of areas subject to the additional construction standards of Section R327.
2. A transition plan or other measures to address subdivisions already under development at the time of local adoption.
3. A local appeals process for customers to follow.

Where a municipality has previously adopted the provisions of Section R327 locally, the requirements of Section R327.1.1 do not apply and the existing local ordinance may continue without change.

**R327.1.2 Notification.** Where a municipality adopts Section R327 locally, or where a municipality has previously adopted Section R327 locally, the municipality shall notify the State of Oregon Building Codes Division and provide a copy of the locally adopted map identifying areas of the jurisdiction where the additional construction standards of Section R327 are required.

#### Senate Bills 762 (2021) and 80 (2023)

The local adoption provisions of §R327.1.1 and the application set forth by §R327.1.2 may be impacted by ongoing efforts to implement Senate Bills 762 (2021) and 80 (2023). These provisions will be updated accordingly to align with any actions taken by the legislature.

**R327.1.3 Application.** Where required by a municipality via local ordinance, newly constructed dwellings, their accessory structures, and new additions to existing dwellings and their accessory structures, located in areas designated by the municipality shall be protected against wildfire in accordance with this section. Where existing exterior elements that are within the scope of this section are replaced in their entirety, the replacement shall be made in accordance with the provisions of this section.

#### **Exceptions:**

1. Nonhabitable detached accessory structures with a floor area of not greater than 400 square feet, (37.2 m<sup>2</sup>) located not less than 50 feet (15 240 mm) from all other structures on the lot.
2. Partial repairs made in accordance with R105.2.2.

**R327.2 Definitions.** The following words and terms shall, for purposes of Section R327, have the meanings shown herein. See Chapter 2 for general definitions.

**HEAVY TIMBER.** For the use in this section, heavy timber shall be sawn lumber or glue laminated wood with the smallest minimum nominal dimension of 4 inches (102 mm). Heavy timber walls or floors shall be sawn or glue laminated planks splined, tongue-and-groove or set close together and well spiked.

**IGNITION-RESISTANT MATERIAL.** A type of building material that resists ignition or sustained flaming combustion sufficiently so as to reduce losses from wildland urban interface conflagrations under worst-case weather and fuel conditions with wildfire exposure of burning embers and small flames. Such materials include any product designed for exterior exposure that, when tested in accordance with ASTM E84 or UL 723 for surface burning characteristics of building materials, extended to a 30 minute duration, exhibits a flame spread index of not more than 25, shows no evidence of significant progressive combustion, and whose flame front does not progress more than 10<sup>1</sup>/<sub>2</sub> feet (3.2 m) beyond the centerline of the burner at any time during the test.

**NONCOMBUSTIBLE MATERIAL.** Any material that in the form in which it is used and under the conditions anticipated will not ignite, burn, support combustion or release flammable vapors when subjected to fire or heat in accordance with ASTM E136.

**WILDFIRE.** Any uncontrolled fire spreading through vegetative fuels that threatens to destroy life, property or resources.

**WILDFIRE EXPOSURE.** One or a combination of circumstances exposing a structure to ignition, including radiant heat, convective heat, direct flame contact and burning embers being projected by a vegetation fire to a structure and its immediate environment.

**R327.3 Roofing.** Roofing shall be asphalt shingles in accordance with Section R905.2, slate shingles in accordance with Section R905.6, metal roofing in accordance with Section R905.4, tile, clay or concrete shingles in accordance with Section R905.3 or other approved roofing which is deemed to be equivalent to a minimum Class B-rated roof assembly. Wood shingle and shake roofs are not permitted on structures in areas designated by the municipality.

Where the roof profile allows a space between the roof covering and roof decking, the spaces shall be constructed to prevent the intrusion of flames and embers, be fireblocked with approved materials, or have one layer of minimum 72-pound (32.4 kg) mineral-surfaced nonperforated cap sheet complying with ASTM D3909 installed over the combustible decking.

Where valley flashing is installed, the flashing shall be not less than 0.019-inch (0.48 mm) No. 26 gage galvanized sheet corrosion-resistant metal installed over not less than one layer of minimum 72-pound (32.4 kg) mineral-surfaced nonperforated cap sheet complying with ASTM D3909 not less than 36-inch-wide (914 mm) running the full length of the valley.

**R327.3.1 Gutters.** Where required, roof gutters shall be constructed of noncombustible materials and be provided with a means to prevent accumulation of leaves and debris in the gutter.

**R327.3.2 Ventilation.** Where provided, the minimum net area of ventilation openings for enclosed attics, enclosed soffit spaces, enclosed rafter spaces and underfloor spaces shall be in accordance with Sections R806 and R408.

All ventilation openings shall be covered with noncombustible corrosion-resistant metal wire mesh, vents designed to resist the intrusion of burning embers and flame, or other approved materials or devices.

Ventilation mesh and screening shall be a minimum of 1/16-inch (1.6 mm) and a maximum of 1/8-inch (3.2 mm) in any dimension.

**R327.3.2.1 Eaves, soffits, and cornices.** Ventilation openings shall not be installed on the underside of eaves, soffits or cornices.

**Exceptions:**

1. The building official may approve eave, soffit or cornice vents that are manufactured to resist the intrusion of flame and burning embers.
2. Ventilation openings complying with the requirements of Section R327.3.2 may be installed on the underside of eaves, soffits or cornices where the opening is located 12 feet (3658 mm) or greater above grade or the surface below.

**R327.3.3 Exterior walls.** The exterior wall covering or wall assembly shall comply with one of the following requirements:

1. Noncombustible material.
2. Ignition-resistant material.
3. Heavy timber assembly.
4. Log wall construction assembly.
5. Wall assemblies that have been tested in accordance with the test procedures for a 10-minute direct flame contact exposure test set forth in ASTM E2707, complying with the conditions of acceptance listed in Section R327.3.3.2.

**Exception:** Any of the following shall be deemed to meet the assembly performance criteria and intent of this section:

1. One layer of 5/8-inch Type X exterior gypsum sheathing applied behind the exterior wall covering or cladding on the exterior side of the framing.
2. The exterior portion of a 1-hour fire-resistance-rated exterior wall assembly designed for exterior fire exposure including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association Fire Resistance and Sound Control Design Manual.

**R327.3.3.1 Extent of exterior wall covering.** Exterior wall coverings shall extend from the top of the foundation to the roof and terminate at 2-inch (50.8 mm) nominal solid wood blocking between rafters at all roof overhangs, or in the case of enclosed eaves or soffits, shall terminate at the underside of the enclosure.

**R327.3.3.2 Conditions of acceptance.** ASTM E2707 tests shall be conducted in triplicate and the conditions of acceptance below shall be met. If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All additional tests shall meet the following conditions of acceptance:

1. Absence of flame penetration through the wall assembly at any time during the test.
2. Absence of evidence of glowing combustion on the interior surface of the assembly at the end of the 70-minute test.

**R327.3.4 Overhanging projections.** All exterior projections (exterior balconies, carports, decks, patio covers, porch ceilings, unenclosed roofs and floors, overhanging buildings and similar architectural appendages and projections) shall be protected as specified in this section.

**R327.3.4.1 Enclosed roof eaves, soffits, and cornices.** The exposed underside of rafter or truss eaves and enclosed soffits, where any portion of the framing is less than 12 feet (3658 mm) above grade or similar surface below, shall be protected by one of the following:

1. Noncombustible material.
2. Ignition-resistant material.
3. One layer of 5/8-inch Type X exterior gypsum sheathing applied behind an exterior covering on the underside of the rafter tails, truss tails or soffit.

- 4. The exterior portion of a 1-hour fire-resistance-rated exterior wall assembly applied to the underside of the rafter tails or soffit including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association Fire Resistance and Sound Control Design Manual.
- 5. Soffit assemblies with an underside surface that meets the performance criteria in Section R327.3.4.5 when tested in accordance ASTM E2957.

**Exceptions:** The following materials do not require protection required by this section:

- 1. Eaves and soffits where all portions of the framing members are 12 feet (3658 mm) or greater above grade, and 2-inch nominal eave fireblocking is provided between roof framing members from the wall top plate to the underside of the roof sheathing.
- 2. Gable end overhangs and roof assembly projections beyond an exterior wall other than at the lower end of the rafter tails.
- 3. Fascia and other architectural trim boards.

**R327.3.4.2 Exterior patio and porch ceilings.** The exposed underside of exterior patio and porch ceilings greater than 200 square feet in area and less than 12 feet (3658 mm) above grade shall be protected by one of the following:

- 1. Noncombustible material.
- 2. Ignition-resistant material.
- 3. One layer of 5/8-inch Type X exterior gypsum sheathing applied behind the exterior covering on the underside of the ceiling.
- 4. The exterior portion of a 1-hour fire-resistance-rated exterior wall assembly applied to the underside of the ceiling assembly including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association Fire Resistance Design Manual.
- 5. Porch ceiling assemblies with a horizontal underside that meet the performance criteria in Section R327.3.4.5 when tested in accordance with the test procedures set forth in ASTM E2957.

**Exception:** Architectural trim boards.

**R327.3.4.3 Floor projections.** The exposed underside of cantilevered floor projections less than 12 feet (3658 mm) above grade or the surface below shall be protected by one of the following:

- 1. Noncombustible material.
- 2. Ignition-resistant material.
- 3. One layer of 5/8-inch Type X exterior gypsum sheathing applied behind an exterior covering on the underside of the floor projection.
- 4. The exterior portion of a 1-hour fire-resistance-rated exterior wall assembly applied to the underside of the floor projection, including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association Fire Resistance Design Manual.

- 5. An assembly that meets the performance criteria in Section R327.3.4.5 when tested in accordance with ASTM E2957.

**Exception:** Architectural trim boards.

**R327.3.4.4 Underfloor protection.** The underfloor area of elevated structures shall be enclosed to grade in accordance with the requirements of this section, or the underside of the exposed underfloor shall be protected by one of the following:

- 1. Noncombustible material.
- 2. Ignition-resistant material.
- 3. One layer of 5/8-inch Type X exterior gypsum sheathing applied behind an exterior covering on the underside of the floor assembly.
- 4. The exterior portion of a 1-hour fire-resistance-rated exterior wall assembly applied to the underside of the floor, including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association Fire Resistance Design Manual.
- 5. An assembly that meets the performance criteria in Section R327.3.4.5 when tested in accordance with ASTM E2957.

**Exception:** Heavy timber structural columns and beams do not require protection.

**R327.3.4.5 Conditions of acceptance.** ASTM E2957 tests shall be conducted in triplicate, and the following conditions of acceptance shall be met. If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All additional tests shall meet the following conditions of acceptance:

- 1. Absence of flame penetration of the eaves or horizontal projection assembly at any time during the test.
- 2. Absence of structural failure of the eaves or horizontal projection subassembly at any time during the test.
- 3. Absence of sustained combustion of any kind at the conclusion of the 40-minute test.

**R327.3.5 Walking surfaces.** Deck, porch and balcony walking surfaces located greater than 30 inches and less than 12 feet (3658 mm) above grade or the surface below shall be constructed with one of the following materials:

- 1. Materials that comply with the performance requirements of Section R327.3.5.1 when tested in accordance with both ASTM E2632 and ASTM E2726.
- 2. Ignition-resistant materials that comply with the performance requirements of Section R327.2 when tested in accordance with ASTM E84 or UL 723.
- 3. Exterior fire-retardant-treated wood.
- 4. Noncombustible material.
- 5. Any material that complies with the performance requirements of Section R327.3.5.2 where tested in accordance with ASTM E2632, where the exterior wall covering of the structure is noncombustible or ignition-resistant material.



6. Any material that complies with the performance requirements of ASTM E2632, where the exterior wall covering of the structure is noncombustible or ignition-resistant material.

Exception: Wall covering material may be of any material that otherwise complies with this chapter when the decking surface material complies with the performance requirements ASTM E84 with a Class B flame spread rating.

Exception: Walking surfaces of decks, porches and balconies not greater than 200 square feet (18.58 m<sup>2</sup>) in area, where the surface is constructed of nominal 2-inch (51 mm) lumber.

**R327.3.5.1 Requirements for R327.3.5, Item 1.** The material shall be tested in accordance with ASTM E2632 and ASTM E2726, and shall comply with the conditions of acceptance in Sections R327.3.5.1.1 and R327.3.5.1.2. The material shall also comply with the performance requirements of Section R327.2 for ignition-resistant material when tested in accordance with ASTM E84 or UL 723.

**R327.3.5.1.1 Conditions of acceptance.** ASTM E2632 tests shall be conducted in triplicate and the following conditions of acceptance shall be met. If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All additional tests shall meet the following conditions of acceptance:

- 1. Peak heat release rate of less than or equal to 25 kW/ft<sup>2</sup> (269 kW/m<sup>2</sup>).
- 2. Absence of sustained flaming or glowing combustion of any kind at the conclusion of the 40-minute observation period.
- 3. Absence of falling particles that are still burning when reaching the burner or floor.

**R327.3.5.1.2 Conditions of acceptance.** ASTM E2762 tests shall be conducted in triplicate and the following conditions of acceptance shall be met. If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All of the additional tests shall meet the following conditions of acceptance:

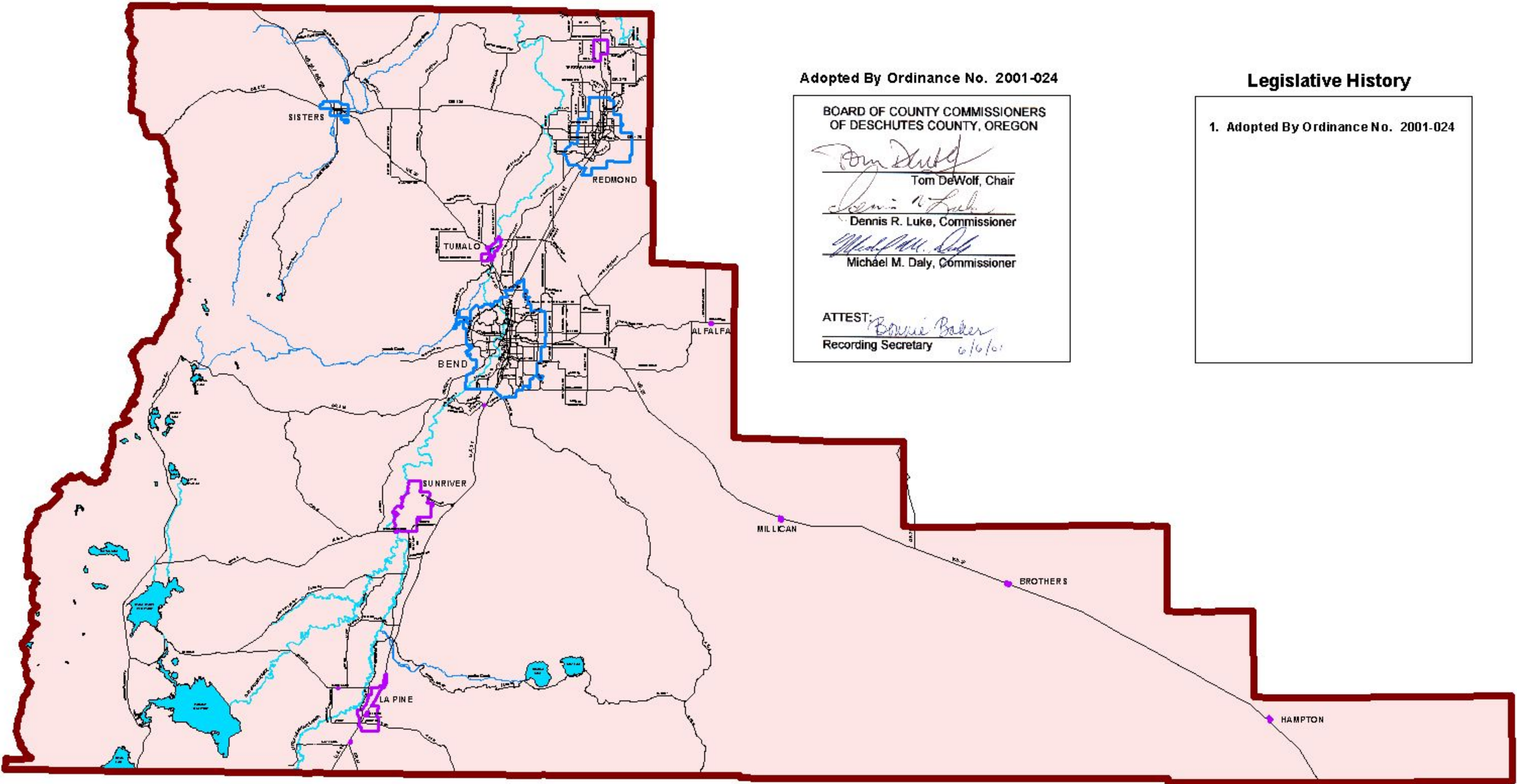
- 1. Absence of sustained flaming or glowing combustion of any kind at the conclusion of the 40-minute observation period.
- 2. Absence of falling particles that are still burning when reaching the burner or floor.

**R327.3.5.2 Requirements for R327.3.5, Item 6.** The material shall be tested in accordance with ASTM E2632 and shall comply with the following conditions of acceptance. The test shall be conducted in triplicate and the peak heat release rate shall be less than or equal to 25 kW/ft<sup>2</sup> (269 kW/m<sup>2</sup>). If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All of the additional tests shall meet the conditions of acceptance.

**R327.3.6 Glazing.** Exterior windows, windows within exterior doors, and skylights shall be tempered glass, multilayered glazed panels, glass block or have a fire-resistance rating of not less than 20 minutes.

# DESCHUTES COUNTY WILDFIRE HAZARD AREAS

## Exhibit "B"



Adopted By Ordinance No. 2001-024

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

*Tom DeWolf*  
Tom DeWolf, Chair

*Dennis R. Luke*  
Dennis R. Luke, Commissioner

*Michael M. Daly*  
Michael M. Daly, Commissioner

ATTEST: *Bonnie Baker*  
Recording Secretary 6/16/01

### Legislative History

1. Adopted By Ordinance No. 2001-024

- County Boundary
- Unincorporated Community
- Urban Growth Boundary
- Major Roads
- Stream
- Rivers & Lakes
- Wildfire Hazard Area



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



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 13, 2023

SUBJECT: Board Decision on Land Use File No. 247-23-000125-DR, Initiation of Use

RECOMMENDED MOTION:

Move approval of Board Signature of Document No. 2023-849, revising the Hearings Officer's decision approving a Declaratory Ruling and initiation of use application for a marijuana production facility at 26295 Willard Road, Bend.

BACKGROUND AND POLICY IMPLICATIONS:

In order to demonstrate that a use has been initiated, the developer in most cases must show that substantial construction toward completion of the development has taken place. Typically, expenditures made toward completion of the development must occur prior to securing land use approval. In this case, the Board finds that because the marijuana production use is no longer allowed in the Exclusive Farm Use Zone, it is appropriate to consider those expenditures made prior to land use approval. As detailed in the Board's decision, the Board finds that the developer's expenditures demonstrate substantial construction toward completion of the project and approves the initiation of use application.

BUDGET IMPACTS:

None.

ATTENDANCE:

Avery Johnson, Assistant Planner
Anthony Raguine, Principal Planner

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

For Recording Stamp Only

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

**FILE NUMBERS:** 247-23-000125-DR

**SUBJECT PROPERTY/**

**OWNER:** Mailing Name: WATSON, JOHN SHELBY JR  
Map and Taxlot: 1714260001000  
Account: 131856  
Situs Address: 26295 WILLARD RD, BEND, OR 97701

**APPLICANT:** John Watson

**APPLICANT'S  
ATTORNEY:** Michael R. Hughes, Hughes Law

**STAFF PLANNER:** Avery Johnson, Assistant Planner

**REQUEST:** Declaratory Ruling to determine whether the marijuana production facility approved under file no. 247-17-000907-AD has been initiated.

**I. SUMMARY OF DECISION**

In this decision, the County Board of Commissioners ("Board") considers the July 26, 2023, Hearings Officer's Decision in land use file no. 247-23-000125-DR ("Hearings Officer's Decision"). The Board exercised its discretion under Deschutes County Code ("DCC") 22.23.050 to initiate review of the Hearings Body's decision. The Board received one Agenda Request & Staff Report ("Staff Report") on the review of the Hearings Officer's Decision from Assistant Planner Avery Johnson and Principal Planner Anthony Raguine. The Staff Report summarized the approval criteria related to initiation of use, the rationale relied upon by the Hearings Officer

in her decision, and staff's concerns. The Board's Decision will refer to and incorporate the Hearings Officer's Decision, unless otherwise noted.

On August 23, 2023, following deliberation, the Board voted 2-1 finding the applicant initiated the marijuana production facility, and moved to revise the Hearings Officer's Decision approving the Declaratory Ruling application on the subject property.

**II. BASIC FINDINGS OF FACT:**

The Board adopts and incorporates by reference the code interpretations, findings of fact, and conclusions of law in the Hearings Officer's Decision as set forth in Section I, Applicable Standards and Criteria, and Section II, Background and Procedural Findings. The Hearings Officer's Decision is attached as Exhibit A to the Board's Decision. The following additions are made to the basic findings in the Hearings Officer Decision.

- A. Procedural History:** On July 26, 2023, the Board voted 2-0, one abstained, to initiate review of the Hearings Officer's Decision pursuant to DCC 22.23.050. On the same day, the Board signed Order No. 2023-032 to initiate review of the Hearings Officer's Decision. On July 27, 2023, a Notice of Public Hearing was mailed to all parties with the Board Order as an attachment. On August 9, 2023, the Board conducted a public hearing with testimony provided by the property owner, John Watson, and the owner's representative Michael Hughes. On August 23, 2023, the Board deliberated and voted 2-1 to revise the Hearings Officer's Decision, as detailed below, and approve the Declaratory Ruling application.

**III. FINDINGS**

Initiation of use is governed by DCC 22.36.020, as detailed below.

22.36.020. Initiation of Use.

- A. For the purposes of DCC 22.36.020, development action undertaken under a land use approval described in DCC 22.36.010, has been "initiated" if it is determined that:
  - ...
  - 2. Substantial construction toward completion of the land use approval has taken place; or
  - ...

- B. For the purposes of DCC 22.36.020, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development. (emphasis added)

As detailed in the Hearings Officer’s Decision, there are three (3) elements for determining whether substantial construction has taken place are: (1) whether the holder of land use approval has physically altered or changed the use of the land; (2) whether the alteration or change was directed toward completion of the development; and (3) whether the expenditures of time, labor, or money demonstrate a good faith effort to complete the development. The Board notes that element number 1 includes the phrase “holder of the land use approval.” The subject land use permit was approved in April of 2018. In this case, approximately 90-95% of what is needed to establish the use was completed prior to the property owner receiving land use approval. The Hearings Officer found it appropriate to consider these expenses because the property owner initiated discussions with the County on this use in early 2017; the aforementioned expenses occurred between those early 2017 discussions and the issuance of the land use approval; and that all of the expenses were clearly directed toward completion of the use.

While the Board ultimately finds the owner initiated the marijuana production use, the Board differs from the Hearings Officer in our rationale. Typically, if an approved use is not initiated within the stated duration of approval, a property owner has the ability to reapply for that same use. That is not the case here. The Board finds this situation is unusual in that marijuana production is no longer a use allowed in the underlying Exclusive Farm Use Zone. For this reason, the Board finds it appropriate to consider expenditures made prior to the land use permit becoming final. Considering the record, the Board finds that the expenditures totaling 90-95% of the costs necessary to establish the marijuana production facility constitute substantial construction toward completion of the marijuana production facility. Therefore, the Board finds that the marijuana production use has been initiated.

The Board takes this opportunity to emphasize that under normal circumstances it is not appropriate to begin development prior to securing the necessary approvals – building, on-site wastewater, planning. Initiating development prior to securing the necessary approvals could result in adverse consequences, including, but not limited to, depriving the public and public agencies of the opportunity to participate in the land use process; an increase in code enforcement cases; and property owners initiating development prior to securing the necessary approvals only for the project to be denied. As detailed above, the Board finds this Declaratory Ruling application presents a unique circumstance which warrants special consideration.

**IV. DECISION:**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant’s application for a Declaratory Ruling demonstrating the marijuana production facility approved under land use file no. 247-17-000907-AD has been initiated and is subject to the following condition of approval:

- 1. The conditions of approval associated with land use approval 247-17-000907-AD remain in effect.

Dated this 13<sup>th</sup> day of September 2023

BOARD OF COUNTY COMMISSIONERS  
FOR DESCHUTES COUNTY

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

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

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

**THIS DECISION BECOMES FINAL WHEN SIGNED. PARTIES MAY APPEAL THIS DECISION TO THE LAND USE BOARD OF APPEALS WITHIN 21 DAYS OF THE DATE ON WHICH THIS DECISION IS FINAL.**

**EXHIBIT**

- A. Hearings Officer’s Decision dated July 26, 2023

## DECISION AND FINDINGS OF THE DESCHUTES COUNTY HEARINGS OFFICER

**FILE NUMBER:** 247-23-000125-DR

**HEARING DATE:** May 30, 2023, 6:00 p.m.

**HEARING LOCATION:** Videoconference and  
Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**OWNER:** Mailing Name: John Shelby Watson Jr.

**APPLICANT:** John Watson (the “Applicant”)

**APPLICANT’S REPRESENTATIVE:** Michael R. Hughes, Hughes Law,  
Attorney for the Applicant

**SUBJECT PROPERTY:** Map and Tax Lot: 1714260001000  
Account: 131856  
Situs Address: 26295 WILLARD RD, BEND, OR 97701  
(the “Property”)

**ZONING:** Exclusive Farm Use (“EFU”)

**REQUEST:** Declaratory Ruling to determine whether the marijuana  
production facility approved under File No. 247-17-000907-  
AD has been initiated.

**HEARINGS OFFICER:** Laura Westmeyer

**SUMMARY OF DECISION:** The Hearings Officer finds that the Applicant has met its burden of proof in demonstrating that all applicable criteria have been satisfied. The Hearings Officer therefore APPROVES the Application, and finds that the marijuana production facility approved under File No. 247-17-000907-AD has been initiated pursuant to DCC 22.36.020.

### **I. APPLICABLE STANDARDS AND CRITERIA**

Deschutes County Code (“DCC” or “County Code”)

Title 22, Deschutes County Development Procedures Ordinance  
Chapter 22.08.010, Application Requirements  
Chapter 22.36.010, Expiration of Approval



Chapter 22.36.020, Initiation of Use  
Chapter 22.40, Declaratory Ruling

**II. BACKGROUND AND PROCEDURAL FINDINGS**

A. Application

The Applicant has requested a Declaratory Ruling to determine whether the marijuana production facility approved under File No. 247-17-000907-AD has been initiated.

B. Notice and Hearing Summary

The notice of public hearing was published in The Bulletin on May 7, 2023 and was mailed pursuant to DCC 22.20 and DCC 22.24 on May 3, 2023. Pursuant to the notice of public hearing, the Hearings Officer presided over an evidentiary hearing on May 30, 2023, at 6:00 p.m. The hearing was held via videoconference, with County Planning Staff (“Staff”), the Applicant, and the Applicant’s legal counsel, Michael Hughes, Hughes Law, present in the hearings room.

At the start of the hearing, the Hearings Officer provided an overview of the quasi-judicial process, and instructed participants to direct their comments to the approval criteria and standards, and to raise any issues a participant wished to preserve for appeal. The Hearings Officer declared no *ex parte* contacts or bias to report, and asked for, but received no objections to the County’s jurisdiction or to the Hearings Officer presiding over the matter.

County Staff presented the staff report. Mr. Hughes presented the Application, on behalf of the Applicant. The Applicant testified at the hearing. There was no other testimony in favor of, in opposition to, or neutral to the Application.

C. 150-day Clock

The Application was submitted on February 22, 2023, and deemed complete on April 6, 2023. At the Hearing, the Applicant agreed to toll the clock by thirteen days, to allow time for final evidence, rebuttal, and legal argument. The 150th day on which Deschutes County (the “County”) must take final action is September 16, 2023, which is a Saturday.

D. The Record

The record materials provided to the Hearings Officer include all of the following items under County File No. 247-23-000125-DR, which are accepted into the record of this Hearing:

- 1. Document [Application Materials 23-125-DR](#)
- 2. Document [2023-03-21 Incomplete Letter 23-125-DR](#)
- 3. Document [2023-04-06 M. Hughes Incomplete Response](#)
- 4. Document [2023-03-10 R. Scheid Agency Comment.pdf](#)

- 5. Document [2023-03-13 P. Russell Agency Comment.pdf](#)
- 6. Document [2023-05-23 Staff Report 23-125-DR](#) (the “Staff Report”)
- 7. Document [2023-03-10 23-125-DR NOA](#)
- 8. Document [2023-05-03 NOPH 23-125-DR](#)
- 9. Document [2023-05-10 Affidavit of Publishing 23-125-DR](#)
- 10. Document [2023-06-02 M. Hughes Testimony](#)
- 11. Document [2023-06-12 Final Argument](#)

At the hearing, the Applicant requested to leave the record open for a period of thirteen days, in order to present final evidence and argument. The record was closed at the end of the open record period, on June 12, 2023.

**III. SUBSTANTIVE FINDINGS AND CONCLUSIONS**

A. Adoption of Staff Findings

I find that all of the applicable criteria and procedures relating to this Application are identified in the County’s Staff Report contained in the record to this Hearing. The Staff Report also contains a section of Basic Findings, which includes a determination that the Property is a legal lot of record and describes the general site. No participants to the hearing object to those portions of the Staff Report, and I adopt the Basic Findings contained therein as part of my Findings in this Decision, with the revised Review Period as identified above.

The Staff Report contains an analysis and proposed findings for each of the criteria, including whether each criterion has been met or is inapplicable. I adopt, as my findings, the proposed findings contained in the Staff Report concerning DCC 22.08.010 *Application Requirements*; DCC 22.40, *Declaratory Ruling*; and DCC 22.36.020(A)(1) and (3), which find that the criteria contained therein are either met or are inapplicable to this Application.

B. Compliance with DCC 22.36.010(B), Expiration of Approval; Duration of Approvals

**Findings:** This section of the County Code provides that a land use permit is void two years after the date the decision becomes final, if the use that was approved is not initiated within that time period. There are allowances for extensions. The Applicant received land use approval to establish a marijuana production facility (including one greenhouse and one storage container) on the Property under File No. 247-17-000907-AD on April 12, 2018, and the decision became final on April 24, 2018. The Applicant twice received extensions of the approval, making April of 2022 the final date to have initiated the use. For the reasons discussed below, I find that the use approved under File No. 247-17-000907-AD was initiated prior to April 2022.

D. Compliance with DCC 22.36.020(A)(2) and DCC 22.36.020(B), Initiation of Use

*A. For the purposes of DCC 22.36.020, development action undertaken under a*

land use approval described in DCC 22.36.010, has been "initiated" if it is determined that . . . Substantial construction toward completion of the land use approval has taken place.

B. For the purposes of DCC 22.36.020, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.

**Findings:** Under this section of the County Code, the three elements for determining whether substantial construction has taken place are: (1) whether the holder of land use approval has physically altered or changed the use of the land; (2) whether the alteration or change was directed toward completion of the development; and (3) whether the expenditures of time, labor, or money demonstrate a good faith effort to complete the development.

The Property was approved for a marijuana production facility under File No. 247-17-000907-AD, which proposal was to construct one greenhouse for marijuana production and one storage container for security, storage, drying, and curing of marijuana product. At the Hearing, the Applicant testified that he bought the Property in 2015 for the sole purpose of marijuana production. He began working with the County in 2017 and said that he did not anticipate any issue with receiving land use approval because the proposed use fit within the allowable zoning uses on the Property; for this reason, he began working on the development while the land use application was in progress. The Applicant testified that the approved greenhouse and storage container had not yet been constructed on the Property, although the frame for the greenhouse had been placed. The Applicant testified that the Property had existing structures on it that he believed he could use for infrastructure; and that he upgraded the electrical system to allow for more service, which would be needed for the marijuana production, and to allow for odor and noise equipment, which were required as part of the land use approval. This testimony somewhat conflicts with the Staff Report, which states that the odor and noise control systems had not been physically installed, to-date. The Applicant testified that he installed security systems in place, including cameras and a steel door. The Applicant testified that he cleared the land on the Property to accommodate the greenhouse, and changed the water rights on the Property to accommodate the greenhouse. The Applicant testified that since 2016 through the date of the Hearing, he has employed a full-time employee for the marijuana production, and has used the Property for a medical marijuana grow. The Applicant stated that he purchased plastic for the greenhouse; that he put the frame of the greenhouse on the Property; and that 90-95% of what is needed for marijuana production is existing on the Property, all of which he installed and constructed in 2017, prior to receiving the land use approval and after discussing his land use application with the County.

The Applicant testified that, at the time of the land use approval, the market for marijuana production was less favorable and he therefore put the project on hold. He stated that all that is needed to complete the development is to erect the greenhouse.

I find that the first element of the substantial construction analysis—*whether the holder of land use approval has physically altered or changed the use of the land*—is met. This element may be broken down into two parts: requiring that: (1) a physical alteration or change in use of the land be made; and (2) that it be made by the holder of a land use approval. The parties are in agreement that there has been a physical alteration or change in use of the land, and I do so find. I base this finding on the Applicant’s evidence and testimony of the greenhouse frame and equipment being placed on the Property in 2017, and the expenditures and system upgrades stated by the Applicant as occurring in 2017.

The second part of the analysis requires that the alteration or change be made by the holder of a land use approval. While the Applicant is the holder of a land use approval, the Applicant was not the holder of a land use approval at the time of the physical alteration or change in use, because the Applicant’s work on the Property took place prior to receiving the land use approval. Read together with the remaining elements of DCC 22.36.020(B), and from the absence of any timing requirement on a plain text reading of this County Code provision, I find that the holder of land use approval need not hold the approval at the time of the alteration or change in use, so long as the work was directed toward completion of the development.

The second element of the substantial construction analysis is whether the alteration or change was directed toward completion of the development. There is no question as to whether the alteration or change in use need occur prior to the expiration of the land use approval (and any applicable extensions). Indeed, the parties are in agreement, and I also find, that the alteration or change took place prior to the expiration of the land use approval, because the changes took place in 2016-2017 and the land use approval was not granted until April 2018 and was not set to expire until April 2022. The question in this case is whether the alterations and changes that occurred prior to receiving land use approval may be considered as being directed toward completion of the development. As I understand the County’s position in the Staff Report, it believes that expenditures made prior to the approval of the land use permit should not be considered as being directed toward the development, because no action may be considered directed toward an approved development, when there is no approved development. The County also posited that alterations and changes that are uniquely directed toward other developments that are not included in the permit must not be considered. The Applicant does not read the same chronology requirement into this element of the criterion, and argued that all of the efforts by the Applicant were directed toward the completion of the marijuana production development, even though the efforts were undertaken prior to the Applicant receiving approval for the same.

I agree with the Applicant that actions taken by an applicant may be considered directed toward the completion of a development prior to receiving land use approval. To hold otherwise would be counter to the commonplace occurrence of business decisions being made in anticipation of certain events occurring. Whether or not those events actually occur is insubstantial to actions being made in their anticipation (not without risk of their nonoccurrence, which would, and commonly do, factor into the cost and liability of those business decisions). Furthermore, as the Applicant suggested, it would be impractical to require the duplication of expenditures simply for the purpose of making them after a land use approval has been provided, particularly where the expenditures

were made with the reasonable expectation that the approval would be granted. In this case, the Applicant provided credible testimony that the sole purpose for his purchase of this Property was for a marijuana production development. The Applicant also provided credible testimony that, after consultation with the County in 2017, and with his attorney, he believed the land use approval would be granted, because he was proposing a farm use in a farm zone. The Applicant applied for land use approval in late 2017, and the application was not approved until about four months later, in April of 2018, it is reasonable to conclude that within that four-month period, actions toward the development of the project might be made, in anticipation of the approval being granted. It is also reasonable to conclude that actions taken after determining the land use approval would likely be granted might be made in anticipation of the approval. In other words, any of the Applicant’s actions from the time of initial consultation or pre-application with the County, through the date of approval. It is less clear whether expenditures made prior to any consultation regarding the likelihood of approval of the proposed development could be considered directed toward the completion of the development, as any such actions taken may be seen as more speculative than based in any known likelihood of success of the proposed development. For this reason, I do not consider any of the expenditures made prior to 2017, which is the first year the Applicant stated that he first began conversations with the County regarding the application.

Regarding the expenditures made in 2017: At the Hearing, the Applicant described each of the expenditures and explained how they were made in furtherance of the marijuana production use. Based on the Applicant’s testimony, I find that the Applicant met its burden of proof of establishing that the upgrades and expenditures made to the electrical, odor, and noise systems, existing buildings, permits, greenhouse frame and equipment, and other items on the list presented on page 8 of the Staff Report were undertaken for the purpose of completing the marijuana production facility and constitute an alteration or change in use. Further, there is no rebuttal evidence or testimony in the record that suggest these actions were taken for any other development purpose, nor were used for any other development purpose.

The third and final element of the substantial construction analysis is whether the expenditures of time, labor, or money demonstrate a good faith effort to complete the development. Whether someone has made a “good faith effort” is inherently a subjective standard. I find that the Applicant did make a good faith effort to complete the development, based on the same reasons noted above. Specifically, I base my finding on the Applicant’s credible testimony that all of the work identified above which he completed on the Property was for the purpose of completing the development; his explanation of each expenditure in regard to how it was directly made for the purpose of developing the marijuana production facility; his accounting of the expenditures and testimony and assertion that the development on this Property is 90-95% complete; the Applicant’s explanation of the timing of the market , and specifically his reasons for moving quickly to further the development at the time of the initial proposal and how he put the project on hold when the market became less lucrative for the approved development. I further find no evidence in the record to rebut the Applicant’s assertion that his efforts were made in good faith, nor any evidence or assertions of taking actions in bad faith. I therefore find that this element is met.


**IV. CONCLUSION, CONDITIONS OF APPROVAL, DURATION OF APPROVAL**

Based on the foregoing Findings, the Application is APPROVED. I find that the marijuana production facility approved under File No. 247-17-000907-AD has been initiated pursuant to DCC 22.36.020, with the following conditions of approval:

1. The conditions of approval associated with File No. 247-17-000907-AD shall remain in effect.

As earlier noted, no party has asserted, and I do not find, that the proposed use has yet lawfully occurred; instead, I find that substantial construction toward completion of the land use approval has taken place under DCC 22.36.020, which in turn means that the use was initiated under DCC 22.36.010. The County requested that the duration of the approval be noted in this Decision; however, I do not find a basis in the County Code to impose a timeline for the duration of a decision made by declaratory ruling. In contrast, DCC 22.36.010(A)(2) specifically exempts declaratory rulings from the County Code regarding expirations of approval; and DCC 22.36.010(B) specifically provides for exemptions from any limitation on the duration of approval where an initiation of use has been found. Absent any County Code provision speaking to the duration of declaratory rulings; and absent any recommendation in the record from any party regarding the duration of this declaratory ruling, I therefore decline to impose any specific, additional duration restrictions to the land use approval under File No. 247-17-000907-AD.

Dated this 26th day of July, 2023



\_\_\_\_\_  
Laura Westmeyer  
Deschutes County Hearings Officer





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 13, 2023

SUBJECT: Second Reading of Ordinance 2023-015 – LBNW, LLC, Plan Amendment / Zone Change

RECOMMENDED MOTIONS:

- 1. Move approval of second reading of Ordinance No. 2023-015 by title only.
2. Move adoption of Ordinance No. 2023-015.

BACKGROUND AND POLICY IMPLICATIONS:

LBNW, LLC, requests approval to change the Comprehensive Plan designation (land use file no. 247-21-000881-PA) of the subject properties from Agriculture (AG) to Rural Industrial (RI), and approval to change of the zone (land use file no. 247-21-000882-ZC) of the subject properties from Exclusive Farm Use to Rural Industrial (RI).

The entirety of the record can be viewed from the project website at: https://www.deschutes.org/cd/page/247-23-000398-luba-remand-lbnw-llc-comprehensive-plan-amendment-and-zone-change

BUDGET IMPACTS:

None.

ATTENDANCE:

Anthony Raguine, Principal Planner



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 \*  
Industrial, and Amending Deschutes County \*  
Code Title 18, the Deschutes County Zoning \*  
Map, to Change the Zone Designation for \*  
Certain Property From Exclusive Farm Use to \*  
Rural Industrial.

ORDINANCE NO. 2023-015

WHEREAS, LBNW LLC, applied for changes to both the Deschutes County Comprehensive Plan Map (247-21-000881-PA) and the Deschutes County Zoning Map (247-21-000882-ZC), to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Industrial (RI), and a corresponding zone change from Exclusive Farm Use (EFU) to Rural Industrial (RI); and

WHEREAS, pursuant to a Land Use Board of Appeals (“Land Use Board of Appeals”) remand and after notice was given in accordance with applicable law, a public hearing was held on June 28, 2023, before the Deschutes County Board of County Commissioners (“Board”);

WHEREAS, pursuant to DCC 22.28.030(C) and the LUBA remand, the Board heard *limited de novo* the applications to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Industrial (RI) and a corresponding zone change from Exclusive Farm Use (EFU) to Rural Industrial (RI); 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 RI, 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 RI for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "C", with both exhibits attached and incorporated by reference herein.

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

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

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board on remand as set forth in Exhibit "G" and incorporated by reference herein. The Board also incorporates in its findings in support of this decision, the original Decision of the Board attached as Exhibit "F", the Decision of the Hearings Officer, attached as Exhibit "H", and the Updated Economic, Social, Environmental, and Energy analysis, attached as Exhibit "I", each incorporated by reference herein.

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

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2023

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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

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

ATTEST:

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

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

Date of 1<sup>st</sup> Reading: 30<sup>th</sup> day of August, 2023.

Date of 2<sup>nd</sup> Reading: 13<sup>th</sup> day of September, 2023.

Record of Adoption Vote:

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

Effective date: 12<sup>th</sup> day of December, 2023.

ATTEST

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

**Exhibit "A" to Ordinance 2023-015  
Legal Descriptions of Affected Properties**

**For Informational Purposes Only:** Parcel No. 1612230000305 (commonly known as 65301 N. HWY 97, Bend, OR 97701)

**(Legal Description Begins Below)**

File No. 414664AM

A parcel of land located in the NW 1/4 SE 1/4 of Section 23, Township 16 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, lying Westerly of the Central Oregon Irrigation's Pilot Butte Canal, and more particularly described as follows:

Commencing at the North One-Quarter corner of said Section 23; thence South 00°04'40" East, 3,651.07 feet along the North-South centerline of said Section 23 to the true point of beginning; thence South 89°44'29" East 444.09 feet to a point on the centerline of the Pilot Butte Canal (as constructed); thence South 04°43'33" West, 194.02 feet along said canal centerline; thence South 21°51'49" West, 123.14 feet along said canal centerline to a point on the South line of said NW 1/4 SE 1/4; thence North 89°44'29" West, 381.83 feet along said South line to the Southwest corner of said NW 1/4 SE 1/4; thence North 00°04'40" West, 307.93 feet along the West line of said NW 1/4 SE 1/4 to the true point of beginning.

EXCEPTING THEREFROM the right-of-way of the Pilot Butte Canal.

**For Informational Purposes Only:** Parcel No. 1612230000301 (commonly known as 65305 N. HWY 97, Bend, OR 97701)

**(Legal Description Begins Below)**

File No. 414726AM

Description of a parcel of land situate in a portion of the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) and the Northwest Quarter of the Southeast Quarter (NW 1/4 SE 1/4) of Section Twenty-Three (23), Township Sixteen (16) South, Range Twelve (12), East of the Willamette Meridian, Deschutes County, Oregon, Westerly of Central Oregon Irrigation District's (C.O.I.D.'s) Pilot Butte Canal (P.B.C) and now to be more particularly described as follows:

Commencing at a 3/4" pin at the North 1/4 corner of said Section 23, the initial point; thence South 00°04'40" East along the Westerly line of said NE 1/4, 1,319.37 feet to a 3/4" pipe and the true point of beginning; thence South 89°44'27" East along the Northerly line of said SW 1/4 NE 1/4, 55.72 feet; thence along the centerline of C.O.I.D.'s P.B.C. Canal as constructed as follows: South 11° 11'43" East, 286.69 feet; thence South 12°29'54" East, 422.34 feet; thence South 28°43'42" East, 285.24 feet; thence South 10°16'16" West, 175.47 feet; thence South 03°55'21" East, 458.45 feet; thence South 21°05'56" East, 91.18 feet; thence South 00°46'50" West, 307.68 feet; thence South 18°31'30" East, 204.98 feet, thus ending boundary along said center line; thence South 18°18'10" East, 70.74 feet to a 1/2" pipe on Easterly bank of said canal; thence South 04°43'33" West along said canal bank, 299.37 feet to a 1/2" pipe; thence South 21°51'49" West along said canal bank 123.14 feet to a 1/2" pipe; thence North 89°44'29" West along the Southerly line of said NW 1/4 SE 1/4, 381.83 feet to a 3/4" pipe; thence North 00°04'40" West along the Westerly line of said NW 1/4 SE 1/4, 1,319.27 feet to a 5/8" pin at the center of said section; thence North 00°04'40" West along Westerly line of said SW 1/4 NE 1/4, 1,319.87 feet to the point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to Robert C. Fair, etal, by Deed recorded June 22, 1981, in Book 343, Page 15, Deschutes County Deed Records, more particularly Described as follows:

A parcel of land located in the NW 1/4 SE 1/4 of Section 23, Township 16 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, lying Westerly of the Central Oregon Irrigation's Pilot Butte Canal, and more particularly described as follows:

Commencing at the North One-Quarter corner of said Section 23; thence South 00°04'40" East, 3,651.07 feet along the North-South centerline of said Section 23 to the true point of beginning; thence South 89°44'29" East 444.09 feet to a point on the centerline of the Pilot Butte Canal (as constructed); thence South 04°43'33" West, 194.02 feet along said canal centerline; thence South 21°51'49" West, 123.14 feet along said canal centerline to a point on the South line of said NW 1/4 SE 1/4; thence North 89°44'29" West, 381.83 feet along said South line to the Southwest corner of said NW 1/4 SE 1/4; thence North 00°04'40" West, 307.93 feet along the West line of said NW 1/4 SE 1/4 to the true point of beginning.

ALSO EXCEPTING THEREFROM the right-of-way of the Pilot Butte Canal.

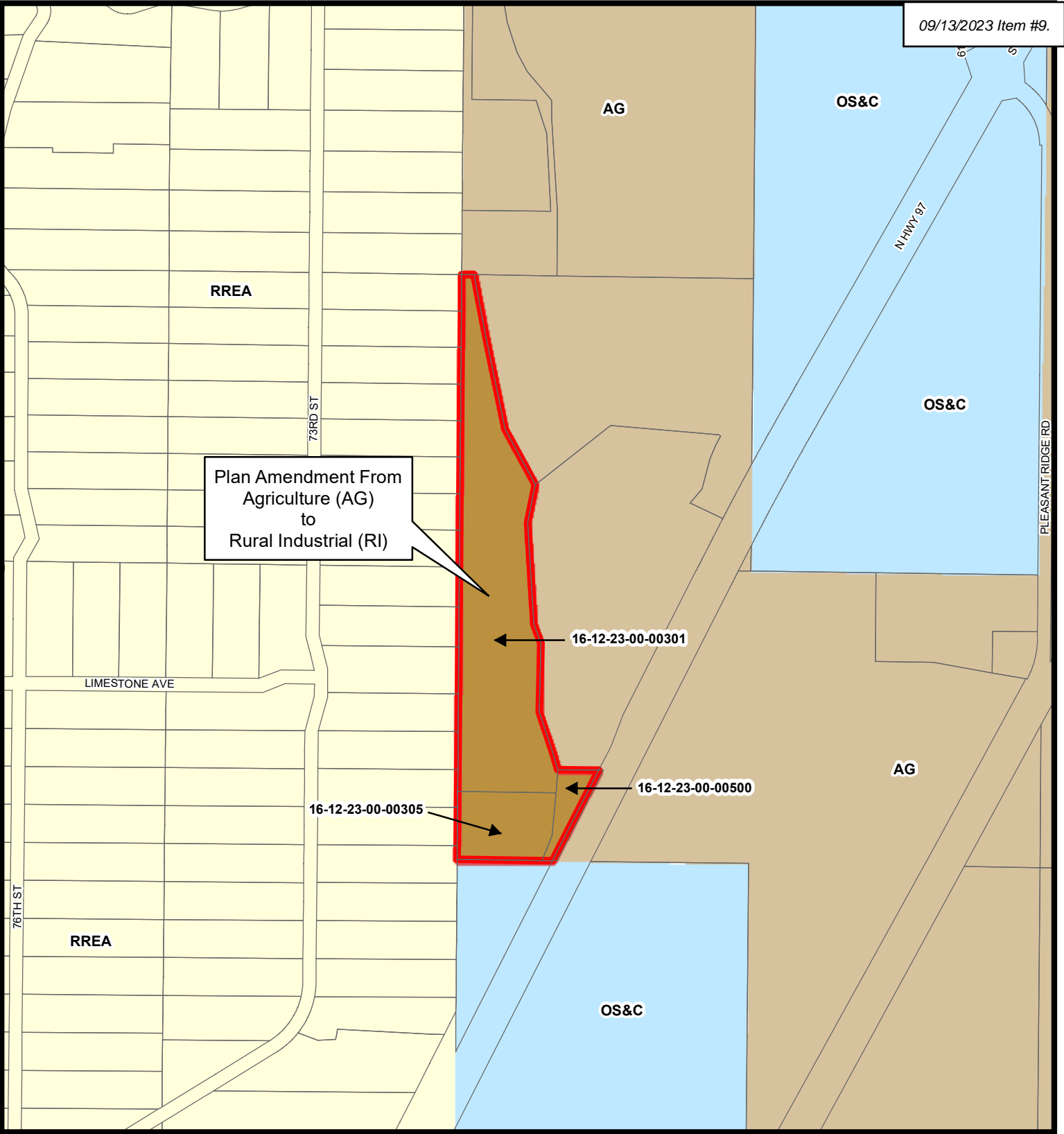
**For Informational Purposes Only:** Parcel No. 1612230000500 (commonly known as 65315 HWY 97, Bend, OR 97701)

**(Legal Description Begins Below)**

**That portion of the Northwest Quarter of the Southeast Quarter (NW1/4 SE1/4) of Section 23, Township 16 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, described as follows:**

**Commencing at the Southwest corner of the NW1/4 SE1/4 of said Section; thence East along the South line of the NW1/4 SE1/4 of said section a distance of 381 feet to the East line of the Pilot Butte Canal and the True Point of Beginning; thence continuing along said South line, a distance of 71 feet to the Westerly line of The Dalles-California Highway; thence Northeasterly along the Westerly line of said highway, a distance of 460 feet; thence West and parallel to the South line of the NW1/4 SE1/4 of said section, a distance of 205 feet to the East line of the Pilot Butte Canal; thence Southerly along the East line of said canal to the True Point of Beginning.**

**EXCEPTING THEREFROM that portion granted to the State of Oregon, by and through its Department of Transportation in stipulated final judgment recorded September 21, 1992 in Book 276, Page 2146, Deschutes County, Oregon**



# PROPOSED COMPREHENSIVE PLAN MAP

Plan Amendment From Agriculture (AG) to Rural Industrial (RI)

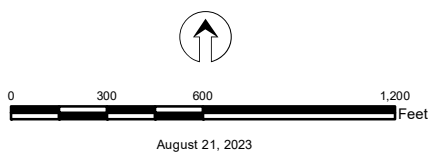
Exhibit "B"  
to Ordinance 2023-015

### Legend

Proposed Plan Amendment Boundary

### Comprehensive Plan Designation

- AG - Agriculture
- OS&C - Open Space & Conservation
- RREA - Rural Residential Exception Area
- RI - Rural Industrial



August 21, 2023

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

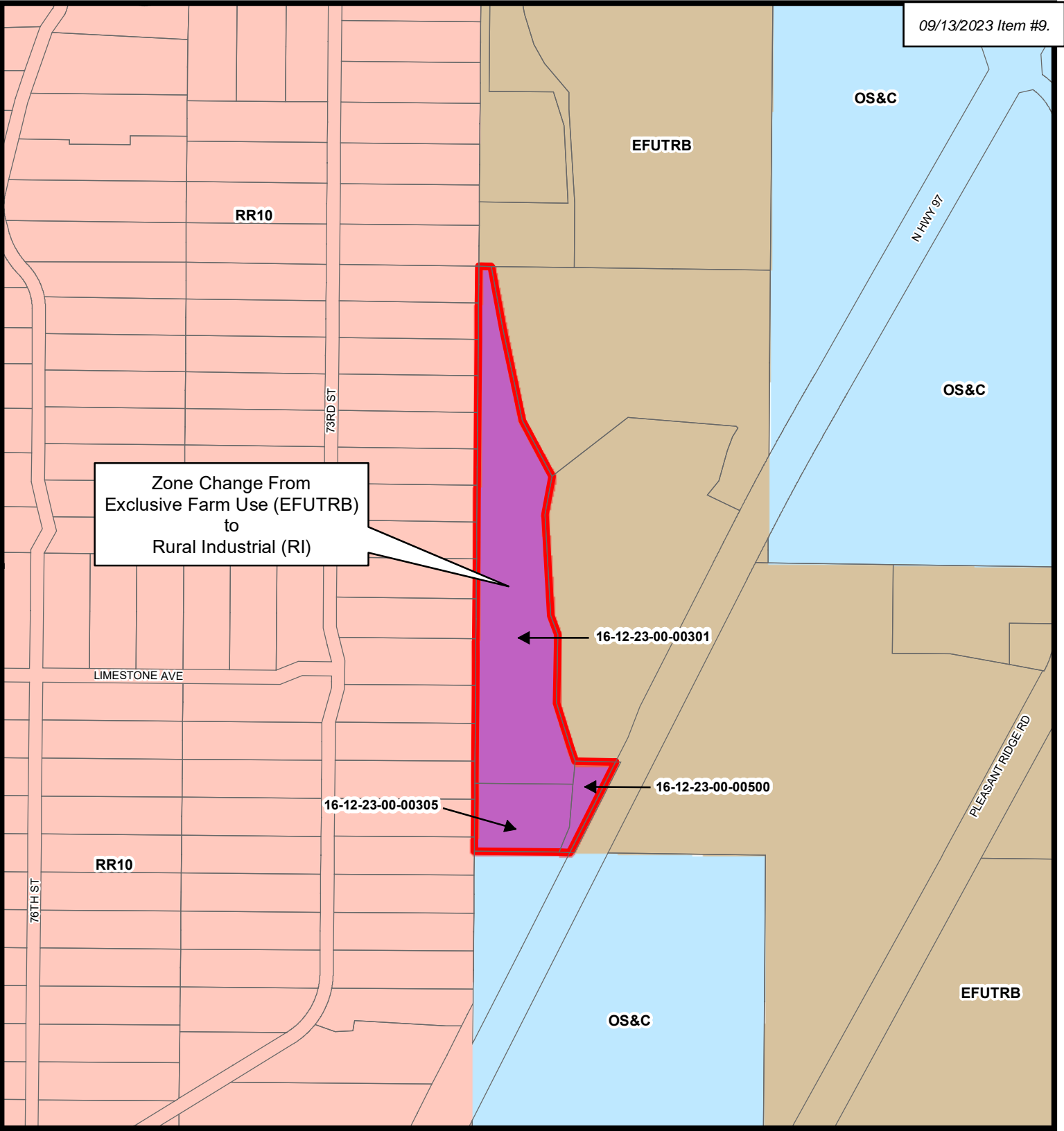
\_\_\_\_\_  
Tony DeBone, Chair

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

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

ATTEST: Recording Secretary

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023  
Effective Date: \_\_\_\_\_, 2023



Zone Change From  
Exclusive Farm Use (EFUTRB)  
to  
Rural Industrial (RI)

### PROPOSED ZONING MAP

Zone Change From Exclusive Farm Use (EFUTRB) to Rural Industrial (RI)

**Legend**

 Proposed Plan Amendment Boundary

**Zoning**





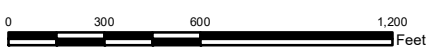
-  EFUTRB - Tumalo/Redmond/Bend Subzone
-  OS&C - Open Space & Conservation
-  RR10 - Rural Residential
-  RI - Rural Industrial

Exhibit "C"  
to Ordinance 2023-015



August 21, 2023

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
Tony DeBone, Chair

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

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

ATTEST: Recording Secretary

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023  
Effective Date: \_\_\_\_\_, 2023



**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. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- 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.
- 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.

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

HISTORY

- Amended by Ord. [2011-027](#) §10 on 11/9/2011*
- Adopted by Ord. [2011-003](#) §2 on 11/9/2011*
- Amended by Ord. [2011-017](#) §5 on 11/30/2011*
- Amended by Ord. [2012-012](#) §1, 2, 3, 4 on 8/20/2012*
- Amended by Ord. [2012-005](#) §1 on 11/19/2012*
- Amended by Ord. [2013-002](#) §1 on 1/7/2013*
- Repealed by Ord. [2013-001](#) §1 on 1/7/2013*
- Amended by Ord. [2013-005](#) §1 on 1/23/2013*
- Amended by Ord. [2012-016](#) §1 on 3/4/2013*
- Amended by Ord. [2013-009](#) §1 on 5/8/2013*
- Amended by Ord. [2013-012](#) §1 on 8/8/2013*
- Amended by Ord. [2013-007](#) §1 on 8/28/2013*
- Amended by Ord. [2014-005](#) §2 on 2/26/2014*
- Amended by Ord. [2014-006](#) §2 on 3/15/2014*
- Amended by Ord. [2014-012](#) §1 on 8/6/2014*

Amended by Ord. [2014-021](#) §1 on 11/26/2014  
Amended by Ord. [2015-029](#) §1 on 11/30/2015  
Amended by Ord. [2015-010](#) §1 on 12/21/2015  
Amended by Ord. [2015-021](#) §1 on 2/22/2016  
Amended by Ord. [2015-018](#) §1 on 3/28/2016  
Amended by Ord. [2016-001](#) §1 on 4/5/2016  
Amended by Ord. [2016-022](#) §1 on 9/28/2016  
Repealed & Reenacted by Ord. [2016-027](#) §1, 2 on 12/28/2016  
Amended by Ord. [2016-005](#) §1 on 2/27/2017  
Amended by Ord. [2016-029](#) §1 on 3/28/2017  
Amended by Ord. [2017-007](#) §1 on 11/1/2017  
Amended by Ord. [2018-002](#) §1 on 1/25/2018  
Amended by Ord. [2018-005](#) §2 on 10/10/2018  
Amended by Ord. [2018-008](#) §1 on 10/26/2018  
Amended by Ord. [2018-008](#) §1 on 10/26/2018  
Amended by Ord. [2018-008](#) §1 on 10/26/2018  
Amended by Ord. [2018-006](#) §1 on 11/20/2018  
Amended by Ord. [2018-011](#) §1 on 12/11/2018  
Amended by Ord. [2019-004](#) §1 on 3/14/2019  
Amended by Ord. [2019-003](#) §1 on 3/14/2019  
Amended by Ord. [2019-002](#) §1 on 4/2/2019  
Amended by Ord. [2019-001](#) §1 on 4/16/2019  
Amended by Ord. [2019-010](#) §1 on 5/8/2019  
Amended by Ord. [2019-011](#) §1 on 5/17/2019  
Amended by Ord. [2019-006](#) §1 on 6/11/2019  
Amended by Ord. [2019-019](#) §2 on 12/11/2019  
Amended by Ord. [2020-001](#) §26 on 4/21/2020  
Amended by Ord. [2020-003](#) §1 on 5/26/2020  
Amended by Ord. [2020-002](#) §1 on 5/26/2020  
Amended by Ord. [2020-008](#) §5 on 9/22/2020  
Amended by Ord. [2020-007](#) §1 on 10/27/2020  
Amended by Ord. [2020-006](#) §1 on 11/10/2020  
Amended by Ord. [2020-009](#) §4 on 11/17/2020  
Amended by Ord. [2020-013](#) §1 on 11/24/2020  
Amended by Ord. [2021-002](#) §3 on 4/27/2021  
Amended by Ord. [2021-005](#) §1 on 6/16/2021  
Amended by Ord. [2021-008](#) §1 on 6/30/2021  
Amended by Ord. [2022-001](#) §2 on 7/12/2022  
Amended by Ord. [2022-003](#) §2 on 7/19/2022  
Amended by Ord. [2022-006](#) §2 on 7/22/2022  
Amended by Ord. [2022-010](#) §1 on 10/25/2022  
Amended by Ord. [2023-001](#) §1 on 3/1/2023  
Amended by Ord. [2022-013](#) §2 on 3/14/2023  
Amended by Ord. [2023-007](#) §19 on 4/26/2023

*Amended by Ord. 2023-010 §1 on 6/21/2023*

*Amended by Ord. 2023-018 §1 on 8/30/2023*

*Amended by Ord. 2023-015 §3 on 9/13/2023*

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

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



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

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

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

|          |                   |                    |   |
|----------|-------------------|--------------------|---|
| 2019-019 | 12-11-19/12-11-19 | 23.01.01, 2.5      | Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.  |
| 2020-001 | 12-11-19/12-11-19 | 23.01.01, 2.5      | Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.  |
| 2020-002 | 2-26-20/5-26-20   | 23.01.01, 4.2, 5.2 | Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB. |
| 2020-003 | 02-26-20/05-26-20 | 23.01.01, 5.10     | Comprehensive Plan Amendment with exception to Statewide Planning Goal 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 Vandevent Road from US 97.  |
| 2020-013 | 08-26-20/11/24/20 | 23.01.01, 5.8         | Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites. |
| 2021-002 | 01-27-21/04-27-21 | 23.01.01              | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)   |

|          |   |               |   |
|----------|---|---------------|---|
| 2021-005 | 06-16-21/06-16-21   | 23.01.01, 4.2 | Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment          |
| 2021-008 | 06-30-21/09-28-21   | 23.01.01      | Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener’s Error in Ord. 2020-022 |
| 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<br><u>(superseded by Ord. 2023-015)</u> | 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   | 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)                   |
| 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        | 08-30-23/11-29-23       | 23.01.010        | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)                   |
| <u>2023-015</u> | <u>9-13-23/12-12-23</u> | <u>23.01.010</u> | Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)                                     |

**Exhibit "F" - Ordinance 2022-011**

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

**FILE NUMBERS:** 247-21-0000881-PA/882-ZC

**APPLICANT:** LBNW LLC  
c/o Jake Hermeling  
65315 Hwy 97  
Bend, OR 97701

**OWNERS:** Taxlots 1612230000305 ("Taxlot 305") & 1612230000500 ("Taxlot 500")  
LBNW LLC  
65314 Hwy 97  
Bend, OR 97701

Taxlot 1612230000301 ("Taxlot 301")  
Dwight E. & Marilee R. Johnson  
18550 Walton Road  
Bend, OR 97701

**APPLICANT'S ATTORNEY:** Ken Katzaroff  
D. Adam Smith  
Schwabe, Williamson & Wyatt, P.C.  
360 SW Bond Street, Suite 500  
Bend, OR 97702

**STAFF PLANNER:** Tarik Rawlings, Associate Planner  
[tarik.rawlings@deschutes.org](mailto:tarik.rawlings@deschutes.org), 541-317-3148

**REQUEST:** Applicant requests approval of a Comprehensive Plan amendment to change the designation of the properties from Agricultural (AG) to Rural Industrial (RI) and a corresponding zoning map amendment to change the zoning of the properties from Exclusive Farm Use - Tumalo/Redmond/Bend subzone (EFU-TRB) to Rural Industrial (RI)

**LOCATION:** Taxlot 305 (3.00 acres) - 65301 Hwy 97, Bend, OR 97701  
Taxlot 301 (15.06 acres) - 65305 Hwy 97, Bend, OR 97701  
Taxlot 500 (1.06 acres) - 65315 Hwy 97, Bend, OR 97701

**I. FINDINGS OF FACT:**



**A. Incorporated Findings of Fact:** The Findings of Fact from the Hearings Officer’s decision and recommendation dated July 12, 2022 and adopted as Exhibit G of this ordinance (cited herein as “Hearings Officer Decision”), is hereby incorporated as part of this decision, except to the extent said findings are inconsistent with the supplemental findings and conclusions of law herein, and except as modified below. The Board further adopts as its own all Hearings Officer interpretations of the Deschutes County Code (“DCC”) and Deschutes County Comprehensive Plan (“DCCP”), except to the extent said interpretations are inconsistent with the Board’s interpretations set forth herein, and except as modified below. The Board corrects and modifies the Hearings Officer Decision as follows:

1. Amend the enumerated “Request” on page 1 as follows (deletions ~~struck through~~; additions underlined):

“The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to ~~Rural Residential Exception Area (RREA)~~ Rural Industrial Area (RIA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to ~~Multiple Use Agricultural (MUA-10)~~ Rural Industrial (RI). The applicant requests approval of the applications without the necessity for a Statewide Planning Goal 3 and/or a Goal 14 Exception, but includes an application for a Goal 14 Exception in the alternative, if determined to be necessary for approval of the requested PAPA and Zone Change”

**B. Procedural History:** Deschutes County’s land use Hearings Officer conducted the initial public hearing regarding the LBNW LLC comprehensive plan amendment / zone change application on April 26, 2022. At the conclusion of the hearing, the Hearings Officer closed the hearing for oral testimony but left the written record open until June 7, 2022. On May 19, 2022, the Hearings Officer issued an order extending the written record period until June 14, 2022. On July 12, 2022, the Hearings Officer issued a written decision recommending approval of the applications by the Deschutes County Board of County Commissioners (“County Commissioners” or “Board”).

The Board conducted a *de novo* land use hearing on September 7, 2022, at the conclusion of which the Board closed the hearing for both oral and written testimony. The Board deliberated and a majority of the commissioners voted to approve the applications on September 28, 2022.

**C. Deschutes County Land Use Regulations:** The DCCP and Title 18 of the DCC were acknowledged by the Land Conservation and Development Commission (“LCDC”) as

being in compliance with every statewide planning goal, including Goal 14. The County amended the DCC and its DCCP in 2002 (Ordinances 2002-126 and 2002-127) in response to LCDC’s Unincorporated Communities Rule. Those 2002 ordinances ensured that areas zoned Rural Industrial (“RI”) and Rural Commercial (“RC”) “remain rural” by “allow[ing] fewer uses and smaller industrial structures \* \* \*.” *Central Oregon LandWatch v. Deschutes County*, 75 Or LUBA 253, 257, *aff’d*, 298 Or App 375, 449 P3d 534 (2019). LCDC acknowledged those 2002 ordinances as compliant with every statewide planning goal, including Goal 14.

In 2018, the County amended the DCCP (Ordinance 2018-008) to allow the RI designation and zoning to be applied to land outside of existing exception areas. On appeal, the Land Use Board of Appeals (“LUBA”) upheld that 2018 ordinance, finding – in part – that the appellant’s argument that the County’s RI zone regulations violated Goal 14 by allowing urban uses on rural lands was an impermissible collateral attack on acknowledged land use regulations. *Id.* at 260-61. LCDC acknowledged that 2018 ordinance as compliant with every statewide planning goal, including Goal 14.

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

The Board of County Commissioners approves the requested plan designations and zone change applications and provides the following supplemental findings and conclusions of law, organized in the same manner as the “Board Deliberation Matrix” presented by County staff during the September 28, 2022 deliberations.

**A. Goal 14 and the Shaffer Factors; Board Deliberation Matrix Issues 1 and 2.**

Opponents Central Oregon LandWatch (“COLW”) and 1000 Friends of Oregon (“1000 Friends”) argued that the subject applications could not be approved without an exception to Goal 14. The Hearings Officer disagreed, concluding that the applications complied with Goal 14 without an exception. The Board agrees with the Hearings Officer, and adopts the Hearings Officer’s findings on this issue as our own. The Board further adopts the following supplemental findings to clarify two persistent issues that arose in these proceedings.

The RI Zone Does Not Allow Urban Uses On Rural Lands

First, this Board already conclusively determined in the findings supporting the adoption of Ordinance No 2021-002 that the County’s RI zone does not allow urban uses on rural land. That determination was predicated on six findings which were first recommended by the Hearings Officer and then adopted by this Board as part of the aforementioned ordinance. Although remanded to allow the Board to adopt additional findings on a separate (albeit related) matter discussed below, the six aforementioned findings demonstrating that the RI

zone does not allow urban uses on rural land were reviewed by both LUBA and the Court of Appeals. *Central Oregon LandWatch v. Deschutes County*, \_\_Or LUBA\_\_ (LUBA No 2021-028) (“Aceti”), *aff’d*, 315 Or App 673, 501 P3d 1121 (2021). For its part, LUBA summarized and described those six findings by noting that “the county determined that even the most intensive industrial use that could be approved on the subject property under the RI regulations and use limitation would not constitute an urban use.” *Id.* (slip op at \*11). The Hearings Officer in this matter again repeated those six findings, concluding that they were “not constrained to the facts and circumstances at issue in the Aceti application” meaning that those “findings apply universally to any application submitted relying on the County’s DCC and DCCP RI provisions.” See Hearing Officer Decision, pg 42. For ease of reference, those six findings are repeated herein:

*"First, LUBA has rejected the argument that DCC 18.100.010 allows urban uses as constituting an impermissible collateral attack on an acknowledged land use regulation. [Central Oregon LandWatch v. Deschutes County, 79 Or LUBA 253, aff'd, 298 Or App 37s,449 P3d 534 (2019)]."*

*"Second, DCC Chapter 18.100 implements DCCP Policies 3.4.9 and 3.4.23, which together direct land use regulations for the Rural Commercial and Rural Industrial zones to 'allow uses less intense than those allowed in unincorporated communities as defined by Oregon Administrative Rule 660-022 or its successor,' to 'assure that urban uses are not permitted on rural industrial lands.' The BOCC adopted this finding in support of Ordinance 2018-126, which was appealed and sustained by LUBA and the Court of Appeals."*

*"Third, as the BOCC found in adopting Ordinance 2018-126, which was appealed and sustained by LUBA and the Court of Appeals, the application of DCC Title 18 to any development proposed on Rural Commercial or Rural Industrial designated land will ensure that the development approved is consistent with the requirements set forth in DCCP Policies 3.4.12 and 3.4.27 do not adversely affect surrounding area agricultural or forest land, or the development policies limiting building size (DCCP Policies 3.4.14 and 3.4.28), sewers (DCCP Policies 3.4.18 and 3.4.31) and water (DCCP Policies 3.4.19 and 3.4.32) intended to limit the scope and intensity of development on rural land."*

*"Fourth, DCCP Policy 3.4.28 includes a direction that, for lands designated and zoned RI, new industrial uses shall be limited to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural area, for which there is no floor area per use limitation."*

*"Fifth, DCCP Policy 3.4.31 includes a direction that, for lands designated and zoned RI, residential and industrial uses shall be served by DEQ approved on-site sewage disposal systems."*

*"Sixth, DCCP Policy 3.4.32 includes a direction that, for lands designated and zoned RI, residential and industrial uses shall be served by on-site wells or public water systems."*

Neither COLW nor 1000 Friends provided argument in these proceedings that directly responded to the six aforementioned findings or otherwise presented any argument that gives this Board pause when it comes to re-adopting those same findings. Accordingly, this Board follows suit with the Hearings Officer and again adopts the six aforementioned findings as our own, conclusively demonstrating that the RI zone does not allow urban uses on rural lands.

In the interest of consistency, we also take note that this Board reached a similar conclusion when considering the aforementioned *Aceti* application on remand. Those findings, adopted as Exhibit F to Ordinance No 2022-010 state the following:

*"\* \* \* the Board of County Commissioners now expressly finds that the policies and provisions of the DCCP and DCC are independently sufficient to both demonstrate that post-acknowledgment plan amendments that apply the Rural Industrial (RI) plan designation and zoning to rural land are consistent with Goal 14 and that uses and development permitted pursuant to those acknowledged provisions constitute rural uses, do not constitute urban uses, and maintain the land as rural land. Given that finding, any further analysis under *Shaffer* is redundant and precautionary only."*

Pursuant to ORS 40.090(7), the Board takes judicial notice of Ordinance No 2022-010, and incorporates by reference herein the findings adopted as Exhibit F in that matter.

The *Shaffer* Factors Are Inapplicable

Second, the Board finds that the *"Shaffer factors"* are not relevant to these proceedings. *See Shaffer v. Jackson County*, 17 Or LUBA 922 (1989). LUBA explained the *"Shaffer factors"* as follows: "whether a residential, commercial, industrial or other type of use is 'urban' or 'rural' requires a case by case determination, based on relevant factors identified in various opinions by [[LUBA]] and the courts" *Aceti* (slip op at \*14) (*quoting Shaffer*, 17 Or LUBA at 946). Notably, COLW and 1000 Friends disagreed in these proceedings on the necessity of utilizing the *Shaffer* factors to determine if Goal 14 was implicated. Specifically, COLW's April 26, 2022 submittal argued that the County was required to use the *Shaffer* factors to determine that "all of the allowed uses in the County's RI zone are rural." But 1000 Friends' April 26, 2022 submittal argued that the *"Shaffer factors are not appropriate \* \* \* because the eventual use of the property is uncertain, making it impossible to determine whether the Shaffer factors are satisfied."*<sup>1</sup>

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<sup>1</sup> On the narrow issue of the *Shaffer* factors' applicability, the Hearings Officer generally agreed with 1000 Friends argument. *See* Hearings Officer Recommendation, pg 39.

Both COLW and 1000 Friends' arguments in these proceedings neglect LUBA's recent *Aceti* decision. Responding to 1000 Friends' view of the *Shaffer* factors, LUBA held that "[w]hile it may be more difficult for [the *Aceti* applicant] to demonstrate that all of the uses that RI zoning authorized on the subject property are not urban uses, petitioner \* \* \* cited no authority that require[d] [the *Aceti* applicant] to propose specific industrial uses before the county can determine whether the plan designation or zone change would violate Goal 14." *Aceti* (slip op at \*12). Responding to COLW's view of the *Shaffer* factors, LUBA held that the *Aceti* applicant did not need to analyze all of the RI uses because "the county determined that even the most intensive industrial use that could be approved on [that] subject property under the RI regulations and use limitation would not constitute an urban use." *Id.* (slip op at \*11).

As understood by this Board, LUBA's two aforementioned holdings suggest that the *Shaffer* factors were not necessarily dispositive in the recent *Aceti* matter. Further bolstering that point of view is LUBA repeatedly describing in the *Aceti* matter that applying the *Shaffer* factors was a "belt-and-suspenders approach in response to petitioner's Goal 14 challenge." *Id.* (slip op at \*13). LUBA remanded the *Aceti* matter back to the County to allow this Board to further bolster that *Shaffer* analysis.

Consistent with Board findings in the *Aceti* remand decision (i.e. Ordinance No 2022-010 discussed above), this Board finds that Applicant herein was not required to apply the *Shaffer* factors in this case or otherwise conduct a *Shaffer* analysis because the County already conclusively determined in past proceedings that the RI zone does not allow urban uses on rural land. This Board further finds that any argument that suggests that RI zone does allow urban uses on rural lands is inconsistent with Board findings supporting the remanded Ordinance No 2021-002 (original *Aceti* decision), the recent Ordinance No 2022-010 (remanded *Aceti* decision), and the findings herein, and is also an inappropriate collateral attack on the acknowledged 2002 and 2018 amendments originally implementing the RI zone. Last, this Board finds that the analysis of the *Shaffer* factors in the *Aceti* remand proceedings, and any findings issued in Ordinance No 2022-010 regarding *Shaffer*, were in direct response to the facts and circumstances at issue in that matter and were thereby not intended to set precedent for future applications of the RI zone.

**B. Goal 5 Compliance; Board Deliberation Matrix Issue 3**

COLW initially argued in its May 31, 2022 submittal that the subject application violates Goal 5 because the map amendment / zone change will introduce new "conflicting uses" – i.e. those uses allowed in the RI zone – on properties governed by the County's Landscape Management Combining Zone. The Landscape Management Combining Zone was adopted as part of the County's Goal 5 program to protect scenic resources in Deschutes County. COLW's May 31 submittal included as an attachment a copy of Ordinance No 92-05 initially codifying the County's Landscape Management Combining Zone as part of DCC Chapter

18.84. COLW renewed its Goal 5 argument in a September 7, 2022 letter provided to this Board (cited herein as "COLW Sep 7 Letter").

Applicant responded to COLW's argument with a record submittal dated June 7, 2022, and in its final legal argument before the Hearings Officer, dated June 14, 2022. Therein, Applicant argued that the uses allowed by the RI zone are not new "conflicting uses" because the County's original "economic, social, environmental, and energy" ("ESEE") analysis adopted as part of Ordinance No 92-05 specifically considered all "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 the existing landscape by removal of vegetative cover." Stated simply, Applicant argued that uses allowed by the RI zone were not new conflicting uses because they were implicitly already considered by Ordinance No 92-05 as uses that could "excessively interfere with the scenic or natural appearance of the landscape as seen from the road."

The Hearings Officer agreed with Applicant's argument and added findings noting that "the proposed plan amendment and zone change does not remove the subject property from the [Landscape Management Combining Zone] and thus does not change or diminish the protection afforded to Goal 5 resources on the property, specifically the [Landscape Management] designations of lands within ¼ mile from the centerline of Highway 97."<sup>2</sup> The Landscape Management Combining Zone will still overlay portions of the subject properties despite changes to the applicable base zoning. Accordingly, the RI base zone would not alter the requirement pursuant to DCC 18.84.050(A) that "any new structure or substantial exterior alteration of a structure requiring a building permit or an agricultural structure within [the Landscape Management Combining Zone] shall obtain site plan approval in accordance with DCC 18.84 prior to construction."

The Board agrees with the arguments and analysis set forth by both Applicant and the Hearings Officer, and thereby adopts and incorporates those arguments as our findings.

**C. Transportation Impacts; Board Deliberation Matrix Issue 4.**

COLW objects that a "trip cap," first proposed by Applicant and then imposed by the Hearings Officer, will not adequately limit the traffic entering and exiting the subject property. See COLW Sep 7 Letter, pg 10. Citing both Goal 12 (as implemented by OAR 660-012-0060) and DCC 18.136.020(C) (requiring the map amendment / zone change to be in the "public interest"), the main thrust of this traffic argument stems from COLW's assertion that "[t]he record shows that a 'trip cap' will be inadequate to prevent significant effects to an existing transportation facility." See COLW Sep 7 Letter, pg 10. The Board agrees with

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<sup>2</sup> 247-21-000881-PA, 882-ZC Hearings Officer Recommendation pg. 83

COLW that this issue requires an evaluation of the substantial evidence in the record. But the Board disagrees that the record in this case supports COLW's conclusion.

The record shows that three separate traffic experts were all involved with the formulation of the trip cap and ultimately concurred with its utilization in this case. As noted by the Hearings Officer, those experts included the applicant's own traffic engineer, Ferguson & Associates, the County's own Senior Transportation Planner, and traffic engineers with the Oregon Department of Transportation. See Hearings Officer Decision, pgs 74-77. The Hearings Officer further explained that COLW's argument suggesting that neither County staff nor ODOT supported the trip cap, or that the trip cap will be "unenforceable," were predicated on earlier comments in the record and failed to account for updated comments from the aforementioned experts. *Id.* at 77. Last, the Hearings Officer summarized COLW's traffic arguments, concluding that "[n]ot only did COLW misread comments provided by ODOT and County staff, it presented no evidence or expert testimony to contradict the evidence included in the record by the Applicant regarding the [Transportation Planning Rule.]" *Id.* at 78.

Following the Hearings Officer proceedings, COLW renewed its traffic arguments relating to Goal 12 and DCC 18.136.020(C) but failed to provide any evidence or expert testimony to support its assertions, instead relying entirely on statements submitted by its "Staff Attorney and Rural Lands Program Manager." Following suit with the Hearings Officer, the Board accordingly defers to the expert testimony provided by Applicant's engineer, County staff, and ODOT and finds that the substantial evidence in the record clearly supports that imposing a trip cap will address any lingering concerns stemming from Goal 12, OAR 660-012-0060 implementing Goal 12, and/or DCC 18.136.020(C).

**D. Goal 3 Compliance and Order 1 Soil Survey Validity; Board Deliberation Matrix Issue 5.**

COLW raised numerous arguments directly or indirectly invoking Goal 3, each of which are addressed below.

Legal Challenge:

COLW's Goal 3 legal challenge can be easily dismissed. This Board has repeatedly found that an applicant can rely on a site-specific soil survey when applying for a map amendment / zone change. That practice is supported by state statutes (See, e.g. ORS 215.211 (1) and (5)), state rules (See OAR 660-033-0030(5) and 660-033-0045), and case law (See, e.g., *Central Oregon LandWatch v. Deschutes County*, 74 Or LUBA 156 (2016)). COLW's September 7 letter conceded that the aforementioned *Central Oregon LandWatch v. Deschutes County* decision stands in direct opposition to its legal position asserted before this Board, arguing that the aforementioned case "was incorrectly decided and should be

overturned." See COLW Sep 7 Letter, pg 3. The County is not in a position to "overturn" LUBA. The Board's findings and conclusions herein follow applicable law.

Substantial Evidence Challenge:

COLW's substantial evidence argument with regard to Goal 3 raised in its September 7 letter is an entirely new argument not addressed by the Hearings Officer and thereby requiring more substantive findings from this Board. However, COLW's new Goal 3 argument is similar to its Goal 12 argument discussed above in that COLW failed to provide any expert testimony to support either argument. Enabling "a county to make a better determination of whether land qualifies as agricultural land," ORS 215.211(1) specifically allowed evidence to be provided into the record for these proceedings consisting of "more detailed soils information than that contained in the Web Soil Survey operated by the United States Natural Resources Conservation Service." However, ORS 215.211(1)(a) further provides that such evidence must be prepared by a "professional soil classifier" "certified by and in good standing with the Soil Science Society of America." See, also OAR 660-033-0045(1) and (2). The record demonstrates that Applicant's soil expert, Gary A. Kitzrow, possess the qualifications required by ORS 215.211 and OAR 660-033-0045(1) and (2). The record does not include similar evidence demonstrating that COLW's staff member who provided contrary soil testimony before this Board likewise possesses the requisite qualifications as required by ORS 215.211(1)(a) and OAR 660-033-0045(1) and (2).

As COLW's staff member was not qualified to provide such testimony, the Board can likely entirely disregard COLW's September 7 letter attempting to discredit Applicant's Order 1 Soil Surveys. The Board nevertheless still examined that testimony and finds it unpersuasive. Applicant's expert's Order 1 Soil Studies show that 53.1% of the 15.06 acre Taxlot 301, 87.7% of the 3.00 acre Taxlot 305, and 87.7% of the 1.06 acre Taxlot 500 consist of generally unsuitable soils. COLW challenges the methodology utilized to calculate those percentages, arguing that the acreage under a canal crossing two of the three subject properties should be excluded because including the canal acreage "artificially increased the denominator in [the Order 1 Soils studies'] calculation of Class I-VI soils." See COLW Sep 7 Letter, pg 3. Similarly, COLW further argues that Applicant's "hired soil scientist also improperly exclude[d] land underneath certain developed portions of the subject property." *Id.* page 4. Last, COLW argues that the entirety of the acreage under the canal and some of the developed acreage should instead be counted as "agricultural land" because those uses fall within the "farm uses" definition pursuant to ORS 215.203(2)(b)(F).

The Board finds COLW's arguments unpersuasive for two primary reasons. First, COLW's arguments are internally inconsistent. If understanding the "denominator" to represent the total acreage of a property and the numerator to represent the acreage of generally unsuitable soil on that property, then deducting the acreage under the canal and the developed portions of the properties from the "denominator" as initially asserted by COLW suggests that said acreage should be ignored in its entirety and not play any role in determining the percentage of generally unsuitable soil on each property. For the



calculation to align with COLW's argument, the canal and developed acreage would need to be deducted from both the denominator and the numerator because deducting said acreage from only the denominator actually increases the resulting percentage of "generally unsuitable soil."

Second, the Board presumes that perhaps COLW intended to advocate that the canal and developed acreage should be deducted instead from the "numerator" if calculating the percent of generally unsuitable soil. That suggestion would be consistent with the rest of COLW's September 7 testimony wherein COLW argued that both the canal and developed acreage should be treated as "agricultural land" based on their current usage of that acreage. The Board finds that COLW's argument is not supported by state rules requiring Applicant's Order 1 Soil Surveys to analyze the "land," not the current uses of the subject properties. OAR 660-033-0030(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.")

Stated simply, COLW's argument that the canal and developed acreage should be ignored in its entirety and deducted from the "denominator" violates OAR 660-033-0030(2) because said acreage is clearly still "land within the lot or parcel being inventoried." Similarly, COLW's argument that the canal and developed acreage should be considered "agricultural land" focuses on the current usage of that acreage rather than the "land" itself, again violating OAR 660-033-0030(2). The current usage of the canal and developed acreage are certainly relevant to the broader determination if the subject properties are "suitable for farm use." On that point, the Board specifically agrees with and incorporates by reference the Hearings Officer's analysis of those "factors beyond the mere identification of scientific soil classifications" referenced by OAR 660-033-0030(2). See Hearings Officer Decision, pgs 26-38. Returning to the actual "scientific soil classification," COLW's reliance on those other factors to try and undermine Applicant's Order 1 Soils Surveys is not persuasive to the Board.

As the only party to offer testimony from a qualified expert, the substantial evidence in the record favors the Applicant. But the Board is nevertheless further persuaded by the fact that the Department of Land Conservation and Development ("DLCD") performed a "completeness check" on all three Order 1 Soil Surveys in this case pursuant to OAR 660-033-0045(6)(a). Each Order 1 Soil Survey contains the same DLCD certification confirming that the "soils assessment is complete and consistent with reporting requirements for agricultural soils capability." OAR 660-033-0045(4)(b) further requires "[a] soils assessment that is soundly and scientifically based and that meets reporting requirements as established by [DLCD]." If the Order 1 Soil Surveys in this case were not "soundly and scientifically based" - which is the main thrust of COLW's arguments - the Board trusts that DLCD's certification process would have called that issue to our attention. DLCD did not do

so, and it is reasonable to rely upon Applicant’s Order 1 Soil Survey and DLCDC’s acceptance of that survey.

Finally, the Board is persuaded by testimony offered by Kitzrow, Applicant’s expert, during the September 7, 2022 public hearing. Responding directly to COLW’s September 7 written and oral testimony, Kitzrow explained why the acreage labelled as “impact areas” or “infrastructure” in his Order 1 Surveys were so labelled. Specifically, Kitzrow testified that he classified that acreage as something other than Class I-VI soils because the rehabilitation of those previously developed (or still developed) areas was not practical or economical. For example, the Order 1 Soils Surveys for Taxlot 305 more fully explains that past development of the subject property in essence destroyed the minimal amounts of original, native soil. When it comes to the canal acreage on two of the three subject properties, the development of the canal decades ago impacted any potential Class I-VI soils within that acreage in the same manner. The Board notes that pursuant to the “Agricultural Land” definition in OAR 660-033-0020(1)(a)(A), Kitzrow’s charge was specifically to identify if the properties contained “predominantly Class I-VI soils.” Rather than fixating on the obviously impacted areas, Kitzrow’s focus was accordingly on determining the maximum extent of the Class I-VI soils remaining on the properties. That is precisely what Kitzrow did as evidenced by that fact that the majority of the 22 test pits spread across the 19.12 total acres were in areas of the properties that Kitzrow’s initial assessment suggested the desired soils would be contained. The Board finds Mr. Kitzrow is a competent expert and has no reason to doubt the conclusions contained in each of the Order 1 Soils Surveys.

Consistent with those Order 1 Soil Surveys, the Board finds that only 46.9% of Taxlot 301, 18.7% of Taxlot 305, and 12.3% of Taxlot 500 are comprised of Class I-VI soils. The Board further finds that the soil on these three properties are uniquely poor such that even with supplemental irrigation water, the soils on all three properties are predominantly Class VII and VIII.

Miscellaneous Arguments:

In addition to its Goal 3 legal challenge and substantial evidence argument, COLW raised several other arguments, each of which were not persuasive and thereby can be addressed summarily.

The Hearing Officer Decision, (pg 38), set forth detailed findings rejecting COLW’s argument that the County’s definition of “agricultural use” in DCC 18.04.030 is intended to be more stringent than case law and the state’s definition of agricultural land in OAR 660-033-0020(1)(a) because the County’s “agricultural use” definition includes the term “whether for profit or not.” COLW renewed this argument in its September 7 letter. The Board rejects this argument for the same reasons as set forth in the Hearings Officer Decision and notes that DCC 18.04.030 includes a definition of “agricultural land” which is entirely consistent with the state definition of the same term. The Board further notes that the term “agricultural use” is purposely and specifically used throughout the DCC, for example (but

not limited to) DCC 18.16.050(G)(1)(a)(4) with regard to buffering non-farm dwellings, DCC 18.32.020 establishing uses permitted outright in the multiple use agricultural zone, and DCC 18.52.110(J)(2) imposing limitations on drilling and blasting for surface mining activity. The Board concurs with the Hearings Officer's interpretations and findings on this issue, and specifically adopts those interpretations and findings as our own.

COLW also argues that the subject properties are currently in farm use because the canal on two of the three properties is a "water impoundment." See COLW Sep 7 Letter, pgs 8-9. COLW's water impoundment argument was presented for the first time to the Board. However, COLW's new water impoundment theory does not change the Hearings Officer's findings regarding OAR 660-033-0020(1)(a) (See Hearings Officer Decision, pgs 26-38), because Central Oregon Irrigation District's Pilot Butte Canal running through Applicant's properties is not an agricultural activity with the primary purpose of obtaining a profit in money for Applicant. As previously noted, the Board agrees with and adopts the Hearings Officer's findings regarding OAR 660-033-0020(1)(a) as the Board's own findings, except to the extent inconsistency with the findings set forth herein.

Although only indirectly related to Goal 3, the Board notes COLW's new argument in its September 7 letter regarding DCCP Policy 2.5.24 and water use on the subject properties. The Board agrees with and incorporates the Hearing Officer's findings on that issue (See Hearings Officer Decision, pgs 58-59), noting that the proposed map amendment / zone change application does not yet propose a specific development at this time and that this policy will be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat).

Also only indirectly related to Goal 3, the Board notes that COLW renewed in its September 7 letter a persistent argument suggesting that Order 1 Soil Surveys do not constitute a "change in circumstances" as required for a map amendment / zone change application pursuant to DCC 18.136.020(D). The Board again agrees with the Hearings Officer's findings and interpretation on this issue, which specifically note that the Order 1 Soil Surveys were just one of several enumerated "changes in circumstances." See Hearings Officer Decisions, pgs 50-54. The Board includes this supplemental finding to address COLW's assertion that only "changes" to properties subject to a map amendment / zone change application qualify for consideration under DCC 18.136.020(D). COLW noted that such changes that would qualify include, for example, "soil and agricultural suitability of the subject property." COLW Sep 7 Letter, pg 12. The Board first notes that the record does support that the soil and agricultural suitability of Applicant's properties have likely changed, as discussed by the Order 1 Soil Surveys. More importantly, the Board disagrees with COLW's narrow interpretation. Rather than just a change to the subject property, DCC 18.136.020(D) more broadly allows a "change in circumstances." Interpreting that provision, the Board finds that one such relevant "circumstances" is the accuracy of information available to the County, a property owner, and the public with regard to quality of a property's soils. Accordingly, the Board finds that the availability of more accurate

Order 1 Soils Surveys constitutes a “change in circumstances” pursuant to DCC 18.136.020(D).

**E. DCC 22.20.015 Code Enforcement and Land Use; Board Deliberation Matrix Issue 6.**

Although not raised by COLW’s September 7 letter submitted to this Board, County staff asked during the Board’s September 28, 2022 deliberations that the Board address COLW’s previous argument regarding DCC 22.20.015. The Board affirms that the Hearings Officer’s findings on this issue (See Hearing Officer Decision, pg 43) are consistent with the Board’s past interpretations of DCC 22.20.015.

**IV. DECISION:**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** Applicant’s applications for a DCCP amendment to re-designate the subject properties from Agriculture (AG) to Rural Industrial Area (RI) and a corresponding zone map amendment to change the zoning of the properties from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial (RI) subject to the following conditions of approval:

- 1. The maximum development on the three subject parcels shall be limited to produce no more than 32 trips in the PM peak hour and/or 279 daily trips as determined by the Institute of Engineers Trip Generation Manual, 11th Edition. The County may allow development intensity beyond these maximum number of vehicle trips only if the applicant submits to the County a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule and the Deschutes County Code.

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

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

**FILE NUMBERS:** 247-21-000881-PA, 882-ZC (247-23-000398-A)

**APPLICANT/  
OWNER:** LBNW LLC  
65315 Hwy 97  
Bend, OR 97701

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

**STAFF PLANNER:** Tarik Rawlings, Senior Transportation Planner  
Anthony Raguine, Principal Planner

**REQUEST:** The Applicant requests proceedings on remand from *Central Oregon Landwatch v. Deschutes County*, \_\_ Or LUBA \_\_ (LUBA No 2023-008, April 24, 2023) following the Board of County Commissioner's approval of original application file numbers 247-21-0000881-PA/882-ZC, and original Ordinance No 2022-011.

**PROPOSAL:** Comprehensive Plan Amendment to change the designation of the properties from Agriculture (AG) to Rural Industrial (RI) and a corresponding zoning map amendment to change the zoning from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial Zone (RI).

**LOCATION:** Taxlot 305 (3.00 acres) – 65301 Hwy 97, Bend, OR 97701  
Taxlot 301 (15.06 acres) – 65305 Hwy 97, Bend, OR 97701  
Taxlot 500 (1.06 acres) – 65315 Hwy 97, Bend, OR 97701

**I. FINDINGS OF FACT:**

**A. Procedural History:** The Deschutes County Board of County Commissioners ("Board") adopted Ordinance No 2022-011, approving the requested Comprehensive Plan Amendment and Zone Change of Taxlots 305, 301, and 500 (the "Properties") to Rural Industrial, with the second and final ordinance reading occurring on December 14, 2022. Central Oregon Landwatch ("COLW") appealed Ordinance No 2022-011 to the Land Use Board of Appeals ("LUBA"). LUBA remanded the decision on April 24, 2023, denying all of COLW's arguments except for one. *See Central*

*Oregon Landwatch v. Deschutes County*, \_\_ Or LUBA \_\_ (LUBA No 2023-008, April 24, 2023) (the “LUBA Decision”). The Applicant (LBNW LLC) requested in writing on May 17, 2023, that the Board proceed with remand proceedings pursuant to Oregon Revised Statutes (“ORS”) 215.435 and Deschutes County Code (“DCC”) Chapter 22.34.

The Board limited the remand proceedings to the issue remanded by LUBA and permitted new evidence and testimony to address only the remanded issue. Following public notice, the Board conducted a remand public hearing on June 28, 2023. Prior to the hearing, the Applicant submitted written argument and evidence, including an initial draft economic, social, environmental, and energy analysis (“Initial ESEE Analysis”) as required by the LUBA Decision. During the hearing, both the Applicant and COLW provided oral testimony. At the conclusion of all oral testimony on June 28, 2023, the Board closed the hearing but left the record open until July 5, 2023, for additional written evidence, a rebuttal period ending July 12, 2023, and Applicant’s final argument required to be submitted prior to July 19, 2023.

Both parties submitted materials for the July 5, 2023, written evidence period. Among other arguments, COLW’s July 5 submittal criticized that the Initial ESEE Analysis did not comply with applicable state rules. Although disagreeing with the necessity of revising the Initial ESEE Analysis, the Applicant nevertheless requested a one-week extension to facilitate the preparation of an updated analysis (the “Updated ESEE Analysis”). (The Board notes that even when disagreeing with COLW’s arguments, the Applicant throughout these proceedings consistently consented to address all issues raised by COLW resulting in the Updated ESEE Analysis, additional proposed findings, etc.) The Board granted the Applicant’s request for more time and issued an order (Order No. 2023-031) extending the rebuttal period until July 19, 2023, and correspondingly extending Applicant’s final argument deadline to July 26, 2023. COLW did not submit rebuttal testimony and instead elected to end its participation in these proceedings following the July 5 open record deadline. The Applicant, however, submitted additional argument and evidence in addition to the Updated ESEE Analysis at the conclusion of the rebuttal period. The Applicant then submitted its final legal argument on July 26, 2023.

The Board deliberated on August 16, 2023, and voted 2-1 to again approve the Applicant’s land use application. Consistent with the Board’s August 16<sup>th</sup> motion, County staff prepared the required Ordinance packet, which was approved by the Board with first reading occurring on August 30, 2023, and second reading occurring on September 13, 2023.

- B. LUBA Decision and Guidance:** The LUBA Decision provides the basis for the remand. The relevant passage from that decision appears on pages 36-37, reproduced in part as follows:

"We agree with [COLW] that the [Board] misconstrued the applicable law. \* \* \*  
\* The questions presented here are whether the new RI zoning allows uses on the subject propert[ies] that were not allowed under the previous EFU zoning and whether those uses could conflict with protected Goal 5 resources. That the county may have conducted an ESEE analysis in 1992 for other RI-zoned properties in other locations, even nearby locations, and concluded that the [Landscape Management Combining Zone] provided the impacted scenic resources sufficient protection does not change the requirements to apply Goal 5 to the PAPA for the subject property. \* \* \*

"\* \* \* the challenged decision allows new uses that could conflict with inventoried Goal 5 resources, and, for that reason, the county is required to comply with OAR 660-023-0250(3)."

As understood by this Board, the purpose of LUBA's remand was to provide this Board the opportunity – as required by applicable state rules - to consider both the consequences, if any, stemming from the subject land use application as it relates to the Goal 5 protected scenic views and perform an ESEE analysis to weigh those consequences before again deciding to approve or deny that application.

**C. Incorporated findings.** To the extent not in conflict with these findings or the LUBA Decision, the Board again adopts and incorporates herein the original findings supporting the County's previous Ordinance 2022-011. Those incorporated findings specifically include the Board's original findings, "Exhibit 'F' - Ordinance 2022-011," included herein as Exhibit "F," and the Hearings Officer's original decision and recommendation, "Exhibit 'G' to Ord. 2022-011," included herein as Exhibit "H."

**II. CONCLUSIONS OF LAW:**

**OAR 660-023-0250, Applicability**

**(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:**

\* \* \*

**(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list;**

**FINDING:** The Board notes that the initial issue in almost every remand proceeding is the scope of the remand. This case is no different, requiring the Board to first

resolve several different arguments debated by the parties relating to the scope of the remand.

The Board begins its analysis by acknowledging that the LUBA Decision specifically cited Oregon Administrative Rule (“OAR”) 660-023-0250(3) and further determined that the at-issue post-acknowledgment plan amendment (“PAPA”) application will allow new uses which could conflict with Deschutes County’s Goal 5 scenic view resources. The LUBA Decision therefore requires the Board to “apply Goal 5,” meaning that the Board must follow the *Procedures and Requirements for Complying with Goal 5* as set forth in OAR Chapter 660, Division 23, as part of again deciding to approve or deny the subject PAPA (“the Application”).

COLW’s July 5 record submittal argued that both County staff and the Applicant “inaccurately described LUBA’s remand order as ‘narrow.’” COLW further asserted “OAR 660-023-0250(3) requires a broad inquiry into the impacts on inventoried Goal 5 resources of a decision to allow, limit, or prohibit various conflicting uses.” To the extent COLW’s “broad inquiry” argument was meant to suggest that the County needs to do something beyond an ESEE Analysis or that the ESEE Analysis should consider issues beyond the enumerated economic, social, environmental, and energy consequences, the Board disagrees. Rather than an ill-defined “broad inquiry,” the Board unanimously finds that applicable rules specifically set forth in OAR Chapter 660, Division 23, shall guide these remand proceedings.

Next, the Board must resolve a related debate between the parties concerning which provisions within OAR Chapter 660, Division 23, are applicable to these remand proceedings. The Applicant’s initial June 23 record submittal proposed findings responding only to OAR 660-023-0040 governing the *ESEE Decision Process*. In response, COLW’s July 5 record submittal cited OAR 660-023-0230(2) and argued that “[f]or scenic view resources, ‘the requirements of OAR 660- 023-0030 through 660-023-0050 shall apply.’” COLW further asserted that “LUBA’s remand order requires the County to apply all three of these administrative rules to the subject PAPA.”

The Board notes that COLW quoted only a portion of OAR 660-023-0230(2), which appears in full as follows (emphasis added):

“Local governments are not required to amend acknowledged comprehensive plans in order to identify scenic views and sites. *If local governments decide to amend acknowledged plans in order to provide or amend inventories of scenic resources, the requirements of OAR 660-023-0030 through 660-023-0050 shall apply.*”



Given the underlined qualifier in the above-quoted rule, the Board questions COLW’s insistence that any PAPA involving a local government’s scenic view resources must address all three cited provisions: OAR 660-023-0030, OAR 660-023-0040, and OAR 660-023-0050. Instead, the Board suggests that complying with all three aforementioned rules is required only when a PAPA specifically seeks to “amend inventories of scenic resources.” When it comes to OAR 660-023-0030 governing the Goal 5 *Inventory Process*, for example, the rule clearly does not apply in those circumstances when a local government does not undertake updating or otherwise redoing a previously completed Goal 5 inventory.

Despite disagreeing with COLW’s argument, the Applicant’s July 26 final legal argument nevertheless addressed COLW’s concern and recommended that the Board adopt findings responding to all three state rule provisions. If nothing else, the Applicant’s suggested findings respond to all three provisions to further explain how and why those provisions (or subparts therein) do not apply to the Board’s decision on remand. The Board agrees with the Applicant’s recommendation, and includes findings below addressing OAR 660-023-0030, OAR 660-023-0040, and OAR 660-023-0050.

**OAR 660-023-0030, Inventory Process**

**(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:**

- (a) Collect information about Goal 5 resource sites;**
- (b) Determine the adequacy of the information;**
- (c) Determine the significance of resource sites; and**
- (d) Adopt a list of significant resource sites.**

**FINDING:** As stated within OAR 660-023-0030 (1), this rule’s purpose is “to compile or update a list of significant Goal 5 resources in a jurisdiction.” Importantly here, the inventory process has already been completed. Accordingly, the Board finds that Section 5.5 of the Deschutes County Comprehensive Plan (“DCCP”) entitled *Goal 5 Inventory: Open Spaces, Scenic Views and Sites* identifies an area extending ¼-mile on either side of the centerline of certain roadways, including Highway 97 between the Bend and Redmond Urban Growth Boundaries (“UGBs”), as a Goal 5 scenic view resource.

As shown on Exhibit B attached to the Applicant’s Initial ESEE Analysis, the entirety of Tax Lots 1612230000500 and 1612230000305 fall within that ¼ mile corridor and thereby are currently subject to the County’s Landscape Management Combining Zone (“LM Zone”). The majority of Tax Lot 161223000301 also falls within that ¼ mile corridor and thereby is currently also subject to the County’s LM Zone. Notably, the Applicant does not seek to remove the subject Properties from the County’s LM Zone, nor does the Applicant seek to otherwise amend or modify DCCP Section 5.5 or the LM Zone’s governing provisions contained in DCC Chapter 18.84. The subject PAPA only seeks to change the base zone from EFU to RI on the Properties. In such a case, the Board finds that OAR 660-023-0030 specifically provides as follows: “when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process.”

The Board further finds that nothing in the LUBA Decision suggests or requires the County to amend or modify its long-standing Goal 5 scenic view inventories during these remand proceedings. The Board reiterates the Applicant’s comments in its July 26, 2023, record submittal explaining that the LUBA Decision “relied on the County’s existing Goal 5 program to conclude that uses allowed under the RI Zone could be conflicting uses.” If LUBA’s remand were to be interpreted as an invitation to the County to re-do its scenic view inventory, then the County could conceivably conclude that there are no longer any scenic view resources on the subject Properties that warrant protection under Goal 5. And, if there are no such scenic view resources, then clearly the new uses that would be allowed under the County’s RI zone would never “conflict with inventoried Goal 5 resources” because there would be no such identified Goal 5 resources in the first place. Accordingly, the Board’s only option if electing to update its scenic view inventory for the subject Properties would be to again conclude that there are significant resources deserving Goal 5 protection as any other decision would be in direct conflict with the LUBA Decision. The Board does not believe that LUBA intended the County to waste resources going through such a perfunctory inventory process.

Rather than inviting the County to begin anew by conducting an inventory pursuant to OAR 660-023-0050, the Board finds that the LUBA Decision relies on the County’s

existing Goal 5 scenic view inventory codified in the DCCP, thereby directing the County to do the same in these remand proceedings. Specifically, the LUBA Decision states that the subject PAPA “allows new uses that could conflict with inventoried Goal 5 resources” (emphasis added). The LUBA Decision does not direct the County to conduct a new inventory of Goal 5 scenic view resources and then decide if the uses allowed under the RI zone could conflict with those newly identified resources. Stated simply, the Board understands the LUBA Decision as requiring the County to complete the ESEE Decision Process set forth in OAR 660-023-0040 (and then potentially address OAR 660-023-0050) while relying on the County’s existing Goal 5 scenic view inventory.<sup>1</sup>

Accordingly, the majority of the Board finds that the inventory process required by OAR 660-023-0030 has already been completed; the results of which are set forth in DCCP Section 5.5. That inventory includes the entirety of two of the subject Properties and the majority of the third. The Board’s subsequent findings issued in this decision rely on that existing inventory such that OAR 660-023-0030(2) specifically is not applicable.

**(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:**

- (a) Notify state and federal resource management agencies and request current resource information; and**
- (b) Consider other information submitted in the local process.**

**FINDING:** As discussed in the preceding finding, the Board finds that OAR 660-023-0030(2) does not apply.

**(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the**

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<sup>1</sup> The Board notes that the County’s program to achieve the Goal related to its Goal 5 scenic view inventory is the adopted LM Zone.

commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

(a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.

(b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.

(c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

**FINDING:** As discussed above, the Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5. The previous Boards of County Commissioners that initially adopted the County's Goal 5 program and then subsequently re-adopted that same program several times throughout the past decades (most recently as part of the County's current 2020 DCCP update), deemed the information for the inventoried properties adequate. As the current Board is not seeking to amend that inventory, the Board does not question those previous determinations and thereby finds that information about the Goal 5 scenic view resources contained in the DCCP and elsewhere in the record for these proceedings is adequate.

**(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:**

**(a) The quality, quantity, and location information;**

- (b) Supplemental or superseding significance criteria set out in OAR 660-023- 0090 through 660-023-0230; and**
- (c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.**

**FINDING:** The Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5. Accordingly, the Board does not seek to amend or alter previous County Commissioners’ determinations that the Goal 5 scenic view resources on the subject Properties are significant.

As discussed above, if the County were to interpret the LUBA Decision as an invitation to redo the inventory process as part of these proceedings, the resulting decision under this subpart conceivably could be that there are no longer any significant Goal 5 scenic view resources on the subject Properties. The Board does discuss in later findings responding to OAR 660-023-0040 that that Goal 5 scenic view resources on the subject Properties are diminished when compared to other similarly situated properties within the LM Zone. However, the Board’s finding recognizing those diminished scenic view resources in the vicinity of the subject Properties should not be interpreted to mean that the Board finds that there are no longer any Goal 5 scenic view resources, nor does it mean that the Board is challenging the veracity of the County’s past Goal 5 scenic view decisions.

**(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(2)(c) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.**

**FINDING:** The Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5, which specifically contains the list of significant resource sites.

**(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.**

**FINDING:** The Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5. Accordingly, this decision does not determine that any particular resource site is not significant. As discussed in response to OAR 660-023-0030(4) above, the Board specifically disavows any suggestion that the findings below discussing the diminished quality of the Goal 5 scenic view resources on the subject Properties suggest that there are no significant Goal 5 scenic view resources on the subject Properties.

- (7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:**
  - (a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and**
  - (b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.**

**FINDING:** The Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5. Accordingly, the Board does not seek to adopt interim protection measures. This subsection (7) is inapplicable.

**OAR 660-023-0040, ESEE Decision Process**

- (1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:**
  - (a) Identify conflicting uses;**
  - (b) Determine the impact area;**
  - (c) Analyze the ESEE consequences; and**
  - (d) Develop a program to achieve Goal 5.**

**FINDING:** Consistent with the above findings, the Board finds that the LUBA Decision already “identified conflicting uses” in this case, i.e., the first step as set forth in OAR 660-023-0040(1)(a) and further identified in OAR 660-023-0040(2). The Board unanimously finds that those “identified conflicting uses” are those uses allowed outright or conditionally under the RI zone on the subject Properties that would not have otherwise been allowed under the current EFU zoning. Accordingly, these findings focus on the second, third, and fourth steps in the ESEE Decision Process as further detailed by OAR 660-023-0040(3) through (5).

**(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. \* \* \***

**FINDING:** As noted above, the LUBA Decision already identified the conflicting uses in this case. The Board accepts and agrees with the identification of the conflicting uses as identified in the LUBA Decision, as those uses allowed outright or conditionally under the RI zone on the Subject properties that would not have otherwise been allowed under the current EFU zoning.

**(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.**

**FINDING:** As noted above, the subject PAPA concerns three Properties identified as Tax Lots 1612230000301, 1612230000305, and 1612230000500. The entirety of Tax Lots 1612230000500 and 1612230000305 fall within the existing LM Zone (i.e., the ¼-mile corridor extending from the centerline of Highway 97), and the majority of Tax Lot 161223000301 also falls within the LM Zone.

Initially, the Applicant argued that the impact area in this case should be constrained to the three subject Properties. The Board presumes that the Applicant initially suggested such a limited impact area because of the second sentence in OAR 660-023-0040(3) stating that that the impact area should “include only the area in which allowed uses could adversely affect the identified resources.” This case concerns only the new uses allowed on the three subject Properties under the RI zone, thereby suggesting that the impact area is only those three subject Properties.

COLW’s July 5 record submittal argued that the Applicant’s identified impact area was too small of a geographical area, with COLW further noting that that the Applicant’s proposed ESEE analysis described “uses outside of this [identified] impact area.” More specifically,

COLW argued that the Applicant's ESEE Analysis repeatedly discussed "development further on the hillside west of the subject Properties [which] already significantly diminishes the scenic resources viewed from Highway 97 adjacent to the subject properties." Last, COLW argued that "minimizing the impacts of the conflicting uses on the subject property's Goal 5 scenic view resources based on conditions outside of the identified impact area is also contrary to OAR 660-023-0040(3), which requires that '[t]he impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.'"

As understood by the Board, this "impact area" disagreement between the Applicant and COLW stems from the Applicant focusing on the second sentence set forth in OAR 660-023-0040(3) and COLW focusing on the third sentence. The Board further notes that it is hard to reconcile what appears to be contradictory direction provided by those two sentences. Nevertheless, the Board does not need to resolve that issue presently because the Applicant's July 19 rebuttal submittal and July 26 final legal argument both proposed an expanded impact area to address COLW's concerns. Consistent with the Applicant's aforementioned submittals, the Board unanimously finds that the appropriate impact area in this case includes "those properties to the west of Highway 97 and within the existing LM Zone (i.e., within ¼-mile of the centerline of Highway 97) between the 61<sup>st</sup> Street intersection to the north and the Tumalo Road off ramp to the south."

The Board favors this expanded impact area for three reasons. First, the expanded impact area corresponds directly to evidence in the record submitted in support of the Expanded ESEE Analysis. For example, the Applicant's Exhibits 3 and 4 are a video and pictures documenting the scenic views looking west from an automobile traveling both north and south on Highway 97 between the 61<sup>st</sup> Street intersection and the Tumalo Road off ramp.

Second, the expanded impact area is supported by case law, specifically *LandWatch Lane County v. Lane County*, \_\_Or LUBA\_\_ (LUBA No 2019-048, August 9, 2019). *LandWatch Lane County* similarly considered a quasi-judicial PAPA for a single property, and LUBA therein suggested that the impact area should include at least adjacent land with the same or similar Goal 5 protections.

Third, the expanded impact area addresses COLW's critique that the Initial ESEE Analysis documents impacts caused by "development further on the hillside west of the subject Properties \* \* \*." Examining Applicant's Exhibits 2, 3, 4, and 5, it is clear that most of those developments built on the hillside and in plain view of Highway 97 are within the expanded impacted area – i.e., within the LM Zone west of Highway 97 between the 61<sup>st</sup> Street intersection and Tumalo Road.

Last, the Applicant's July 26 final legal argument raises two final issues related to the impact area that deserve further comment from this Board. First, the Applicant argued that the ESEE process is intended to be iterative, and it was thereby appropriate to expand the



impact area mid-way through the remand proceedings. To support that argument, the Applicant quoted language in OAR 660-023-004(1) suggesting that “[l]ocal governments are not required to follow [the ESEE Decision Process] steps sequentially, and some steps anticipate a return to a previous step.” The majority of the Board (agrees with the Applicant’s argument and finds that it was appropriate for the Applicant to “return to the previous [impact area] step” after submitting the Initial ESEE Analysis because the Applicant was responding to COLW’s comments concerning that Initial ESEE Analysis. The Board further notes that the expanded impact area was submitted concurrently with the Updated ESEE Analysis.

More directly related to COLW’s criticisms of the Initial ESEE Analysis, the Applicant also acknowledged in its July 26 final legal argument that the Updated ESEE Analysis includes “ESEE consequences to properties outside of the formal impact area.” The Applicant argued that including ESEE consequences outside of the impact area was appropriate because of the differing definitions of the terms “ESEE Consequence” and “Impact Area” contained in OAR 660-023-0010(2) and (3), respectively. As understood by the Board, the Applicant distinguished the two aforementioned terms specifically because the ESEE Consequence definition does not reference the Impact Area definition, nor does the ESEE Consequence definition include any language suggesting a geographical limit.

The Board agrees with the Applicant’s argument, and unanimously finds that it is appropriate for the Updated ESEE Analysis to document ESEE Consequences that extend beyond the impact area to the extent necessary to “enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected.” See OAR 660-023-0040(1). To the extent the Board’s understanding of OAR 660-023-0010(2) and (3) is incorrect, the Board further finds that those ESEE Consequences described in the Updated ESEE Analysis extending beyond the impact area were not dispositive to the Board’s subsequent OAR 660-023-0040(4) and (5) findings. Accordingly, the Board notes that it would have reached similar conclusions and issued similar findings responding to OAR 660-023-0040(4) and (5) even if all ESEE Consequences addressing properties outside of the impact area were struck from the Update ESEE Analysis.

**(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site**

**containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.**

**FINDING:** The Applicant's Initial ESEE Analysis for the Board's consideration was prepared by Skidmore Consulting, LLC: Land Use Planning & Development Services. (See Applicant Exhibit 1). COLW's July 5 record submittal criticized that the Initial ESEE Analysis went too far in grouping "similar conflicting uses," thereby violating OAR 660-023-0040(4). In response, the Applicant submitted the Updated ESEE Analysis, again prepared by Skidmore Consulting, LLC: Land Use Planning & Development Services. That Updated ESEE Analysis analyzes all of the different uses allowed by the RI Zone in a more comprehensive manner. (See Applicant's Exhibit 6). Accordingly, the Board need not address COLW's arguments regarding the Initial ESEE Analysis. Instead, the majority of the Board finds that the Updated ESEE Analysis does not inappropriately group "similar conflicting uses" contrary to OAR 660-023-0040(4) because the numerous conflicting uses are all analyzed in the Updated ESEE Analysis.

The Board further notes that although separately analyzed in the Updated ESEE Analysis, many of the described consequences for each of the conflicting uses are still similar. But those similarly described consequences do not suggest that the Updated ESEE Analysis is incorrect or otherwise faulty. Instead, those similarly described consequences reflect the specific Goal 5 resource at issue. On that point, the Board notes that the County's original ESEE analysis contained in Ordinance 92-052 summarily described the Goal 5 resource at issue as the "scenic or natural appearance of the landscape as seen from the road or alteration of existing landscape by removal of vegetative cover." Viewed through that lens, the similarly described consequences are understandable for even differing conflicting uses because many of those differing uses allowed under the RI zone may require, for example, the removal of the same vegetative cover or otherwise will similarly detract from the natural appearance of the landscape as seen from an automobile traveling on Highway 97.

As understood by the Board, every ESEE analysis is intended to be context specific, and the Board is "afforded fairly broad discretion in considering potential impacts from allowing or prohibiting a particular use \* \*\*." See *Central Oregon LandWatch v. Deschutes County*, \_\_ Or LUBA \_\_ (LUBA No 202-019, March 22, 2021) (internal citations omitted). Pursuant to OAR 660-023-0040(1), the Board again notes that an "ESEE analysis need not be lengthy or complex but should enable the reviewers to gain a clear understanding of the conflicts and the consequences to be expected." In this case, the majority of the Board () finds that the Updated ESEE Analysis provides a "clear understanding of the conflicts and consequences to be expected" if the RI uses are allowed on the subject Properties.

The majority of the Board further finds that the Updated ESEE Analysis is supported by substantial evidence in the record, as it was prepared by a land use consultant with specific expertise and knowledge of Central Oregon. (See Attachment D to the Applicant's Exhibit 1.) Additionally, both the Applicant and the Applicant's consultant added select evidence to the record further confirming that consultant's expert opinions and observations. (See Attachment A to the Applicant's Exhibit 1, Attachment B to the Applicant's Exhibit 1, Exhibits 3, 4, and 5.) In fact, the Board notes that the record contains absolutely no evidence that contradicts those opinions and observations contained in the Updated ESEE Analysis. The only evidence in the record not submitted by County staff or the Applicant is COLW's singular July 5 record submittal which asserts only legal challenges and includes as attachments only Ordinance 92-052 and select portions of Ordinance PL-20.

Accordingly, the majority of the Board specifically adopts and incorporates as its own the Updated ESEE Analysis. That updated ESEE Analysis is further included as part of these findings, attached as Exhibit I. Last, the Board notes that these findings, including the Updated ESEE Analysis, will be included by reference in DCC Chapter 23.01 and Section 5.12 of the DCCP.

**(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:**

- (a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.**
- (b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.**
- (c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to**

**some extent should not be provided, as per subsection (b) of this section.**

**FINDING:** In addition to being “afforded fairly broad discretion” in conducting the ESEE Analysis pursuant to OAR 660-023-0040(4), state law further provides the Board the same “broad discretion” when it comes to determining “whether, how, and to what extent a Goal 5 resource will be protected” pursuant to OAR 660-023-0040(5). *See Central Oregon LandWatch v. Deschutes County*, \_\_Or LUBA \_\_ (LUBA No 202-019, March 22, 2021) (internal citations omitted).

The Board notes that the Applicant’s recommendation pursuant to OAR 660-023-0040(5) to allow, limit, or prohibit the conflicting uses has evolved throughout the course of these proceedings. Initially, the Applicant’s June 23 record submittal advocated for what was described as the “middle ground” option pursuant to OAR 660-023-0040(5)(b) whereby the conflicting uses would be allowed in a “limited way,” with those limitations being imposed by the County’s existing LM Zone. The Applicant further noted that it never sought as part of these proceedings to remove the subject Properties from the LM Zone and the Applicant did not otherwise propose amending DCC Chapter 18.84 implementing that LM Zone.

COLW’s July 5 record submittal alternatively asserted that the Board should prohibit the conflicting use entirely pursuant to OAR 660-023-0040(5)(a). COLW further argued that “bootstrapping the existing LM Zone as a program to achieve Goal 5 to protect scenic view resources from the conflicting uses of the [RI] zone is not sufficient to comply with LUBA’s remand order, because the LM [Z]one was not designed with those industrial conflicting uses in mind.”

The Applicant responded to COLW’s July 5 argument in two ways. First, the Applicant’s July 19 rebuttal submittal included numerous documents (Exhibits 8 through 14) challenging COLW’s foundational assumption that the LM Zone was not designed to mitigate RI uses. The Applicant’s aforementioned exhibits demonstrate that from the LM Zone’s initial creation in the early 1990s, it has always overlaid other RI zoned properties adjacent to Highway 97. Second, and more importantly, the Applicant’s July 26 final legal argument pivoted away from recommending that the conflicting uses be allowed in a limited way pursuant to OAR 660-023-0040(5)(b). In response to COLW’s arguments regarding the LM Zone, the Applicant instead recommended that the Board allow the conflicting uses fully pursuant to OAR 660-023-0040(5)(c).

As explained further below, the majority of the Board agrees with the Applicant and finds that the conflicting uses in this case should be allowed fully pursuant to OAR 660-023-0040(5)(c). During deliberations, Commissioner Chang explained that he preferred the “middle ground” option allowing the conflicting use in a limited way pursuant to OAR 660-023-0040(5)(b). Accordingly, no commissioner agreed with COLW’s argument to prohibit the conflicting uses entirely pursuant to OAR 660-023-0040(5)(a).

The Board finds that the Updated ESEE Analysis (included as Exhibit I herein) comprehensively documents numerous positive consequences of allowing uses allowed under the RI zone on the subject Properties. Those positive consequences include, for example, economic opportunities for the subject Properties' owners, employment opportunities for future employees, and additional services for rural landowners between the cities of Bend and Redmond. Although the provision governing the RI zone (i.e., DCC Chapter 18.100) limited the size, scope, and intensity of any industrial use that could be permitted on the subject Properties, the Updated ESEE Analysis further documents that all industrial developments are in short supply in Deschutes County. The Board specifically notes that both industrial developments in the Cities of Bend and Redmond currently have a 0.80% and 2.45% vacancy rate, respectively. Industrial land as a whole in Deschutes County is limited.<sup>2</sup> The Updated ESEE Analysis further documents positive environmental consequences stemming from reduced travel distances lowering carbon emissions for the numerous rural property owners and existing businesses already located along the Highway 97 corridor between the Cities of Bend and Redmond.

The Board also finds that the Updated ESEE Analysis appropriately documents negative consequences that will stem from allowing RI uses on the subject Properties. The County's Goal 5 scenic view program primarily benefits what are best described as "social" and "environmental" values, and the Updated ESEE Analysis thereby primarily documents negative consequences under those categories.

However, the Board finds that the Updated ESEE Analysis demonstrates that the negative social and environmental consequences of allowing RI uses on the subject Properties are minimized by the numerous existing developments on surrounding properties. Many of those existing developments are in direct view of Highway 97, thereby diminishing the existing scenic view resources. These numerous existing developments, the majority of which are on properties that are also within the LM Zone, are documented further by the Applicant's Exhibits 2, 3, 4, and 5 submitted in conjunction with the Updated ESEE Analysis. Those exhibits demonstrate that a hill rises directly to the west of the subject Properties blocking the more expansive views enjoyed by other properties also adjacent to Highway 97. And, numerous structures were permitted to be developed on that hillside, even further diminishing the scenic view resources near the three subject Properties. Rather than new RI development in an otherwise unobstructed view shed, the Updated ESEE Analysis appropriately documents the minimal negative consequences of allowing RI development on the Properties already surrounded by existing and visible development. To be clear, the Board does not mean to suggest that the scenic view resources in the vicinity of the subject Properties are now entirely absent. Instead, the majority of the Board finds that these existing developments in plain view of Highway 97 already diminished the

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<sup>2</sup> The RI Zone only permits rural industrial development and not urban development.

scenic view resources near the subject Properties such that the positive consequences of allowing RI uses outweigh the minimal negative consequences.

Consistent with the aforementioned analysis and as specifically required by OAR 660-023-0040(5)(c), the Board makes two additional findings. First, the majority of the Board finds that the Updated ESEE Analysis demonstrates that allowing RI uses on the subject Properties is “of sufficient importance” because the Goal 5 scenic view resources are already diminished in the vicinity of the subject Properties. Stated simply, the majority of the Board finds that the negative social and environmental consequences caused by visible development in the view shed has already occurred such that the positive social and environmental consequences of now allowing RI uses clearly outweigh any increased negatives.

Second, the majority of the Board finds that the Updated ESEE Analysis demonstrates why measures to protect the Goal 5 scenic view resources should not be provided. Specifically, the majority of the Board finds that the County’s existing Goal 5 program has not been as successful in protecting an unobscured view shed in this particular location because of the natural topography to the west of the subject Properties which makes any structure built thereon particularly notable from Highway 97. Accordingly, the majority of the Board finds that further burdening subsequent development on the subject Properties cannot cure the already obscured view shed, rendering such further burdens unwarranted.

**OAR 660-023-0050, Programs to Achieve Goal 5**

**(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).**

**FINDING:** As previously stated, the Board notes that these findings, including the Updated ESEE Analysis, will be included by reference in DCC Chapter 23.01 and Section 5.12 of the DCCP. The majority of the Board finds that no other amendments to the DCC or DCCP are required to implement the Board’s decision pursuant to OAR 660-023-0040(5).

An argument could be made that following the Board’s decision to allow the conflicting use fully, the County may now proceed with removing the subject Properties from the LM Zone. However, the Board finds that the County need not undertake any amendment to the DCC or the DCCP at this time because the Applicant’s July 26 final legal argument specifically

included a statement consenting to the three subject Properties remaining in the LM Zone until such time that the County elects to further alter or amend that zone in a manner effecting the subject Properties. The application before us does not propose to rezone the Properties to remove the LM zoning designation. The Applicant explained that its initial land use application did not seek the removal of the subject Properties from the LM Zone, and the County’s public notices and notices to DLCD, for example, did not contemplate such an amendment. As understood by the Board, the Applicant is therefore voluntarily agreeing that the subject Properties should remain in the LM Zone, and that any subsequent development on the subject Properties needs to comply with DCC Chapter 18.84. If the County ever undertakes a broader amendment to the LM Zone, it will need to go through the Goal 5 process anew which could result in a later Board of County Commissioners’ reaching a different decision. As understood by the Board, the Applicant is voluntarily agreeing that the subject Properties remain in the LM Zone, and that any subsequent development on the subject Properties must comply with DCC Chapter 18.84. Like the Applicant, the Board is not aware of any statute, rule, or case law that precludes a property owner from voluntarily consenting to comply with what otherwise could be argued are inapplicable land use regulations.

**(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b) \* \* \* >**

**FINDING:** The Board elected to allow the conflicting use fully pursuant to OAR 660-023-0040(5)(c). This provision is therefore inapplicable.

**(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process \* \* \*.**

**FINDING:** The Board elected to allow the conflicting use fully pursuant to OAR 660-023-0040(5)(c). This provision is therefore inapplicable.

**IV. DECISION:**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** on remand the Applicant’s applications for a Comprehensive Plan Map amendment to re-designate the subject Properties from Agriculture (AG) to Rural Industrial (RI) and a corresponding zoning map amendment to change the zoning from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial Zone (RI) subject to the following conditions of approval:

- 1. The maximum development on the Properties shall be limited to produce no more than 32 trips in the PM peak hour and/or 279 daily trips as determined by the Institute of Engineers Trip Generation Manual, 11th Edition. The County may allow

development intensity beyond these maximum number of vehicle trips only if the Applicant submits to the County a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule and the Deschutes County Code.

Dated this 30<sup>th</sup> day of August 2023



Exhibit "G" to Ord. 2022-011

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

**FILE NUMBERS:** 247-21-0000881-PA/882-ZC

**OWNER:** Mailing Name: LBNW LLC  
Map and Taxlot: 1612230000305  
Account: 164853  
Situs Address: 65301 N HWY 97, BEND,  
OR 97701

Mailing Name: LBNW LLC  
Map and Taxlot: 1612230000500  
Account: 132821  
Situs Address: 65315 HWY 97, BEND, OR 97701

Mailing Name: JOHNSON, DWIGHT E  
& MARILEE R  
Map and Taxlot: 1612230000301  
Account: 132822  
Situs Address: 65305 HWY 97, BEND,  
OR 97701

**APPLICANT:** LBNW, LLC  
c/o Jake Hermeling  
65315 Hwy 97  
Bend, OR 97701

**APPLICANT'S  
ATTORNEY:** Ken Kataroff  
Schwabe, Williamson & Wyatt P.C.  
360 SW Bond Street, Suite 500  
Bend, OR 97702

**REQUEST:** The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The applicant requests approval of the applications without the necessity for a Statewide Planning Goal 3 and/or a Goal 14 Exception, but includes an application for a Goal 14 Exception in the alternative, if determined to be necessary for approval of the requested PAPA and Zone Change

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

**PUBLIC HEARING DATE:** April 26, 2022  
**RECORD CLOSED:** June 14, 2022  
**HEARINGS BODY:** Stephanie Marshall, Deschutes County Hearings Officer  
**DECISION DATE:** July 12, 2022

**I. APPLICABLE CRITERIA**

Title 18 of the Deschutes County Code, the County Zoning Ordinance:  
 Chapter 18.04, Title, Purpose, and Definitions  
 Chapter 18.16, Exclusive Farm Use Zones (EFU)  
 Chapter 18.80, Airport Safety Combining Zone (AS)  
 Chapter 18.100, Rural Industrial Zone (RI)  
 Chapter 18.120, Exceptions  
 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 4, Interpretation of Goal 2 Exception  
 Process Division 6, Forest Lands  
 Division 12, Transportation Planning  
 Division 14, Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands  
 Division 15, Statewide Planning Goals and Guidelines  
 Division 33, Agricultural Land  
 Oregon Revised Statutes (ORS)  
 Chapter 197.732, Goal Exceptions  
 Chapter 197.734, Exceptions to Certain Statewide Planning Goal Criteria  
 Chapter 215.010, Definitions  
 Chapter 215.211, Agricultural Land, Detailed Soils Assessment

**II. BASIC FINDINGS**

**LOT OF RECORD:** Tax Lot 500 is 1.06 acres in size, Tax Lot 305 is 3.00 acres in size, and Tax Lot 301 is 15.06 acres in size. These three lots have not previously been verified as legal lots of record. Per DCC 22.04.040 Verifying Lots of Record, lot of record verification is required for certain permits:

- B. *Permits requiring verification***
  - 1. *Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot parcel pursuant to subsection (C) shall be required to the issuance of the following permits:***

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

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

**SITE DESCRIPTION:** The subject properties are located approximately 4.8 miles south of the City of Redmond and approximately 4.25 miles north of the City of Bend. The three subject Tax Lots (301, 305, and 500) constitute a total of approximately 19.12 contiguous acres and are located on the west side of Highway 97, immediately adjacent to the highway.

Tax Lot 301 (15.06 acres) is landlocked between Tax Lots 305 (3.00 acres) and 500 (1.06 acres) to the south. Highway 97 corridor, a Central Oregon Irrigation District (COID) canal, and two (2) Exclusive Farm Use (EFU) properties currently receiving farm tax deferral are located to the east. A rural residential subdivision is located to the west.

Tax Lots 305 and 500 are developed with structures associated with a historic “diesel implement and repair shop” use on those properties, which has taken place for the majority of the last 40 years. Tax Lot 301 is developed with a residential manufactured dwelling that is currently unoccupied; this Tax Lot is not currently in use. The properties are relatively level with mild undulating topography and a slight upward slope along the western boundary adjoining the residential subdivision to the west. Vegetation consists of juniper, sage brush, and grasses. The subject properties are not currently receiving farm tax deferral nor are they currently engaged in farm use.

Access to the site is provided from Highway 97, which connects to a private driveway that traverses the COID irrigation canal that runs through the properties.

Tax Lots 305 and 301 contain 0.20 acres and 2.70 acres of water rights, respectively. The Natural Resources Conservation Service (NRCS) map shown on the County’s GIS

mapping program identifies three soil complex units on the property: 31A, Deschutes sandy loam, 0 to 3 percent slopes; 38B, Deskamp-Gosney complex, 0 to 8 percent slopes; and 58C, Gosney-Rock outcrop-Deskamp complex, 0 to 15 percent slopes.

As discussed in detail below in the Soils section, an Agricultural Soils Capability Assessment (Order 1 soil survey) was conducted on each of the three properties and determined that the subject properties do not constitute agricultural land as defined in Statewide Planning Goal 3 and are generally comprised of unsuited Class 7 and 8 soils as detailed in Deschutes County Code (DCC) and DLCD definitions.

**PROPOSAL:** The Applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from Agricultural (AG) designation to a Rural Industrial (RI) designation. The Applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the subject property from Exclusive Farm Use (EFU) to Rural Industrial (RI). The Applicant asks that Deschutes County change the zoning and the plan designation because the RI zoning district is the more appropriate zone for the subject property as the subject property is not agriculturally viable and is better suited for uses consistent with the RI Zone and historical uses utilized on the subject properties may be allowed under the RI Zone. The Applicant’s submitted burden of proof states that the Applicant intends to utilize the subject properties to develop a mini-storage facility on Tax Lot 301 (a conditional use within the RI Zone) and maintain the existing equipment repair/storage/rental facilities located on Tax Lots 305 and 500 (an outright use within the RI Zone).

The Applicant requests approval of the applications without the necessity for a Statewide Planning Goal 3 and/or a Goal 14 Exception, but includes an application for a Goal 14 Exception in the alternative, if determined to be necessary for approval of the requested PAPA.

Submitted with the application are three (3) Order 1 Soil Surveys for each of the three (3) subject properties, titled “Johnson – Order 1 Soil Survey Report” (Tax Lot 301), “LBNW LLC – Order 1 Soil Survey Report” (Tax Lot 305), and “LBNW LLC – Order 1 Soil Survey Report” (Tax Lot 500) (hereafter referred to collectively as the “soil study”) prepared by soil scientist Gary Kitzrow, CPSC/CPSS #1741 of Growing Soils Environmental Associates. The Applicant also submitted a traffic analysis prepared by Scott Ferguson of Ferguson & Associate, Inc titled “Site Traffic Report and TPR Assessment for Proposed Zone Change-Deschutes County, OR” hereby referred to as “traffic study.” Additionally, the Applicant submitted an application form, a burden of proof statement, and other supplemental materials, all of which are included in the record for the subject applications.

**SOILS:** Tax Lots 305 and 301 contain 0.20 acres and 2.70 acres of water rights, respectively. The Natural Resources Conservation Service (NRCS) map shown on the County’s GIS mapping program identifies three soil complex units on the property: 31A, Deschutes sandy loam, 0 to 3 percent slopes; 38B, Deskamp-Gosney complex, 0 to 8 percent slopes; and 58C, Gosney-Rock outcrop/Deskamp complex, 0 to 15 percent slopes.

The Order 1 soil study was prepared by a certified soils scientist and soil classifier that determined the subject property is predominantly comprised of soils that do not qualify as File Nos. 247-21-000881-PA, 882-ZC

Agricultural Land.<sup>1</sup> The purpose of this soil study was to inventory and assess the soils on the subject property and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The NRCS soil map units identified on the property are described below.

31A, Deschutes Sandy Loam, 0 to 3 percent slopes: This soil is composed of 85% Deschutes soil and similar inclusions and 15% contrasting inclusions. The Deschutes soil is well drained with a moderately rapid permeability and an available water capacity of about four (4) inches. The major use of this soil is irrigated cropland and livestock grazing. The soil capability rating for the Deschutes sandy loam soil is 6S when not irrigated and 3S when irrigated. This soil is considered a high value soil when irrigated. Approximately 16.5 percent (Tax Lot 301), 22 percent (Tax Lot 305), and 97.2 percent (Tax Lot 500) of the subject properties are composed of 31A soil, respectively.

38B, Deskamp-Gosney complex, 0 to 8 percent slopes: This soil is composed of 50 percent Deskamp soil and similar inclusions, 35 percent Gosney soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils are somewhat excessively drained with rapid permeability, and an available water capacity of about 3 inches. The Gosney soils are somewhat excessively drained with rapid permeability, and an available water capacity of about 1 inch. The contrasting inclusions contain Clovkamp soils in swales, soils that are very shallow to bedrock, and are on ridges with occasional rock outcrops. The major use of this soil is for livestock grazing. The Deskamp soils have ratings of 6e when unirrigated, and 3e when irrigated. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. This soil type is not considered high-value soil. Approximately 61.4 percent (Tax Lot 301), 47.7 percent (Tax Lot 305), and 2.8 percent (Tax Lot 500) of the subject properties are made up of this soil type, respectively.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. The major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 22.1 percent (Tax Lot 301), and 30.3 percent (Tax Lot 305) of two (2) of the subject properties are made up of this soil type.

The Order 1 soil study includes findings for each of the three tax lots of which the subject property is comprised, set forth below:

- **Tax Lot 301:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). Conversely, Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney

<sup>1</sup> As defined in OAR 660-033-0020, 660-033-0030.

soil units and less rock. This study area and legal lot of record is comprised of 8.00 acres or 53.1% of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCDC definitions.

- **Tax Lot 305:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). These lithic, entic Gosney soil mapping units are shallow, have extremely restrictive rooting capabilities and low water holding capacities. Conversely, Deskamp and Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. Noteworthy is the fact that along the western boundary and southern boundary of this lot are large inclusions of rubble and rock outcrops. This is found regardless of the associated three soils delineated in this analysis. This study area and legal lot of record is comprised of 2.45 acres or 81.7% of the landbase as generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCDC definitions.
- **Tax Lot 500:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). Conversely, Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. This study area and legal lot of record is comprised of 0.93 Acres or 87.7% of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCDC definitions.

The Hearings Officer notes that, although the Order 1 soil study refers to “legal lot of record,” Lot of Record determination for the subject properties has not been made, nor is such a determination relevant to the subject applications, as discussed above. This Decision and Recommendation shall not constitute verification of or findings on a Lot of Record determination for the subject properties. Further discussion regarding soils is set forth in Section III below.

**SURROUNDING LAND USES:** The subject properties are surrounded by residential subdivisions to the west, open space state park property to the south, the Highway 97 corridor and two (2) EFU-zoned properties currently receiving farm tax deferral and containing irrigation rights to the east, and one EFU-Zoned property not receiving farm tax deferral or containing irrigation rights to the north. The adjacent properties are outlined below in further detail:

*North:* North of the subject properties is an area of EFU-zoned property. The adjacent property to the north, Tax Lot 202 (Assessor’s Map 16-12-23) is a 5.63-acre vacant EFU-zoned property without irrigation rights, not currently receiving farm tax deferral, and appears to be currently engaged in residential use.

*East:* East of the subject properties are two parcels zoned EFU. Tax Lot 300 (Assessor’s Map 16-12-23) is a 21.56-acre parcel developed with a single-family manufactured dwelling, an accessory structure, is partially irrigated, and currently receiving farm tax deferral. Tax Lot 306 (Assessor’s Map 16-12-23) is a 20.54-acre parcel developed with a

single-family dwelling, an accessory structure previously utilized as a medical hardship dwelling, is partially irrigated, and currently receiving farm tax deferral. Additionally, to the east and southeast, is the Highway 97 transportation corridor.

*West:* West of the subject properties are residential subdivisions zoned Rural Residential (RR10). These include the Whispering Pines Estates Fourth Addition subdivision and the First Addition to Whispering Pines Estates subdivision. Rosengarth Estates and Gardenside PUD in the RS Zone. Northwest is a 2.63-acre parcel zoned RR10 located within the Third Addition to Whispering Pines Estates subdivision.

*South:* South of the subject properties is a 35.89-acre vacant parcel zoned Open Space & Conservation (OS&C), owned and operated by the Oregon Parks & Recreation Department (OPRD). This property is recognized as Tax Lot 700 (Assessor's Map 16-12-23).

Additionally, along the eastern boundary of Tax Lots 301 and 305, and along the western boundary of Tax Lot 500 is an irrigation canal operated by COID.

**LAND USE HISTORY:**

- **NCU-73-33:** Non-conforming use approval for a “farm equipment business” on Tax Lot 305. In file NUV-91-1 the Hearings Officer provided the following description of this approval:

**On February 27, 1973, Terry Mills applied for, and the Deschutes County Planning Commission approved, an application to expand a nonconforming use (File No. NCU-73-33). The application and attached map indicated the proposed expansion was only for property lying west of the Pilot Butte Canal on what is now Tax Lots 305 and 301. However, the Planning Commission approved Mr. Mills' plan to expand his truck and equipment repair and sales business by adding to the existing structure on the east side of the canal (Tax Lot 500) and/or adding a new building west of the canal (Tax Lot 305), constructing a bridge spanning the canal, and keeping uses on the remainder of the parcels limited to "equipment storage and display and agricultural use." The decision allowed Mr. Mills until January 1, 1985, to complete the approved expansion.**

- **Z-78-23:** Zone Change approval from A-1 (Exclusive Agricultural) to A-S (Rural Service Center) • **SP-79-21:** Site plan review for a “diesel implement and repair business” on Tax Lot 500.
- **PL-15:** Deschutes County revised Zoning Ordinance changing the zoning of the subject properties to “EFU-20”.
- **NUV-96-1:** Nonconforming use verification review for a commercial use in the EFU Zone on Tax Lot 500, 301 and 305, specifically a “truck, machinery and equipment repair, storage and sales business”. This request was denied by the Hearings Officer, who concluded:

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on October 6, 2021, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell

*I have reviewed the transmittal materials for 247-21-000881-PA/882-ZC for three properties totaling approximately 19 acres to change the Comprehensive Plan designation from Agriculture to Rural Industrial and the zoning from Exclusive Farm Use (EFU) to Rural Industrial (RI). The properties lie in the Exclusive Farm Use (EFU), Airport Safety (AS), and Landscape Management (LM) zones at 65301, 65305, and 65315 Hwy 97, aka County Assessor’s Map 16-12-23, Tax Lot 305, 16-12-23, Tax Lot 301, and 16-1223, Tax Lot 500, respectively.*

*The submitted traffic analysis by Ferguson & Associates dated Aug. 11, 2021, is deficient in several areas and does not comply with Deschutes County Code (DCC) 18.116.310 or the Transportation Planning Rule (TPR) and is thus unacceptable. Examples of the traffic analysis’ deficiencies include the following major areas. DCC 18116.310(E)(4) requires a 20-year timeframe for analysis; the study has no such analysis. The traffic analysis lack any operational analysis, thus making it impossible to determine the before/after volume-capacity ratio of the access, which means it is impossible to determine if the plan amendment/zone change has any significant effect. Without determining if there is a significant effect or not, the traffic analysis does not comply with the TPR at Oregon Administrative Rule (OAR) 660-00120060. The traffic analysis assumes a right-in, right-out access point; yet there is no physical obstruction (pork chop barrier or raised median) restricting moves to RIRO. The property is slightly closer to Bend than Redmond, yet the trip distribution is almost exclusively skewed toward trips being to/from Redmond. Staff finds that a dubious assumption given Redmond’s population of roughly 25,000 vs. Bend’s roughly 91,000. Staff disagrees with the baseline trip assumptions under the current zoning. In several recent plan amendment/zone changes involving EFU, the current highest trip generator was a single-family home. The traffic analysis should use one of the specific outright permitted uses found in DCC 18.16.020. The current study significantly understates the p.m. peak hour trips of the EFU zoning. The traffic analysis does not include a reasonable worst case scenario of the outright permitted uses under the Rural Industrial zone. If the Applicant believes the traffic analysis is a reasonable-worst case scenario, then the Applicant needs to provide further justification or rationale. The study simply states “...the assumed uses generated more traffic than the site could handle with existing access configurations, no further examination of potential uses was examined.” There is no supporting evidence for this claim; nor is there any explanation why the existing access could not be modified to accommodate more traffic. Finally, the traffic study references a potential mini-storage, but there is not a simultaneous site plan submittal for any specific use.*

*The property accesses US 97, a public highway under the jurisdiction of the Oregon Department of Transportation (ODOT). Therefore the access permit requirements of DCC 17.48.210(A) do not apply.*

*Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$4,757 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 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.

**THE PROVIDED SDC RATE IS ONLY VALID UNTIL JUNE 30, 2022. 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.**

**REVISED TRAFFIC STUDY AND RESPONSE FROM SENIOR TRANSPORTATION PLANNER:** Upon receipt of the County Senior Transportation Planner's initial comment, above, the Applicant submitted a revised traffic study, dated March 18, 2022, sent to staff via email on April 6, 2022. In response, the following comment was offered by the County's Senior Transportation Planner:

*I have reviewed the March 18, 2022, revised traffic study for 247-21-000881-PA/882-ZC for three properties totaling approximately 19 acres to change the Comprehensive Plan designation from Agriculture to Rural Industrial and the zoning from Exclusive Farm Use (EFU) to Rural Industrial (RI). The properties lie in the Exclusive Farm Use (EFU), Airport Safety (AS), and Landscape Management (LM) zones at 65301, 65305, and 65315 Hwy 97, aka County Assessor's Map 16-12-23, Tax Lot 305, 16-12-23, Tax Lot 301, and 16-12-23, Tax Lot 500, respectively. For reasons state below, staff finds the revised traffic study insufficient.*

*The revised TIA again does not make an apples-to-apples comparison of the potential trip generation from the site based on existing zoning vs. requested zoning. In staff's Oct. 22, 2021, comment staff specifically required traffic analysis that compares reasonable worst-scenario using outright permitted uses in the existing Exclusive Farm Use (EFU) zone to the requested Rural Industrial (RI) use. Those uses are listed under Deschutes County Code (DCC) 18.100.010. Instead, the traffic analysis falters on two points. First, the traffic study uses Warehouse, which is a conditional use in the RI zone at DCC 18.100.020(M). Second, there are several higher traffic generators listed under conditional uses at DCC 18.100.020.*

*As an aside, on the one hand the Applicant argues this is not productive agricultural land and on the other the traffic engineer argues there are agricultural uses that would generate more trips than a single-family zone. (The County historically uses a single-family as the highest trip generator in EFU). Staff looks to the hearing officer to reconcile this paradox of not being agriculturally viable land, yet potentially producing more trips based on agricultural activities.*

*Again, the TIA uses Mini-Warehouse as a use for the Rural Industrial (RI) use, yet there is not a simultaneous site plan application for that land use. While the TIA refers to "intention" that is not the same as an actual land use application. The current land use application is only for a plan amendment/zone change. The TIA needs to analyze a reasonable worst-case use based on the current edition of the Institute of Traffic Engineers Trip Generation Handbook, which is the 11<sup>th</sup>.*

*As a matter of practice, Deschutes County when reviewing the potential traffic impacts of plan amendment/zone changes, has required Applicants to use a reasonable worst-case scenario of outright permitted uses in the current zone vs. outright permitted uses in the requested zone. If the traffic engineer insists on analyzing counter to accepted County practice, then the traffic analysis should be apples-to-apples and use reasonable worst-case scenario for both the conditional uses of DCC 18.100.020 and DCC 18.100.020. Instead, the revised traffic study uses outright permitted in the base case and a conditional use in the requested zone for an apples-to-oranges comparison. (Staff is opposed to using conditional uses and only presents this argument to demonstrate another area where the revised traffic analysis is deficient).*

*The traffic study argues transit will decrease the 20-year volumes on US 97, but does not provide any factual evidence, Cascade East Transit (CET) plans for increased service between Bend and Redmond, the number of buses (both capacity and headway, i.e. time between buses) to significantly affect the forecast volumes on US 97. The traffic study also speculates on the effect of rising fuel costs on the 20-year forecast traffic volumes. Equally valid speculation could ruminate on the rising fuel-efficiency of gas-powered vehicles and the State’s goal to increase the number of electric vehicles in Oregon as offsetting factors and that future traffic volumes will continue to climb.*

*The traffic study’s views on ODOT methodology for measuring intersection performance is irrelevant. Those are the agency’s adopted measures and are cited in DCC 18.116.310(H).*

**SENIOR TRANSPORTATION PLANNER COMMENTS TO APPLICANT’S SECOND RESPONSE:** Upon receipt of the County Senior Transportation Planner’s second comment, above, the Applicant submitted additional comments, dated April 8, 2022 and sent to staff via email on April 8, 2022. In response, the following comment was offered by the County’s Senior Transportation Planner (dated April 11, 2022):

*I have reviewed the Applicant’s traffic engineer’s April 8, 2022, memo which was written in response to my April 7 assessment of the revised traffic study dated March 18, 2022. Below are my responses.*

- *The Applicant is correct, I mistakenly said the revised TIA uses Warehouse (Land Use 150) and Mini-Warehouse (LU 151), rather than land use actually used, which was Manufacturing (LU 140). I apologize for the error.*
- *The Applicant’s TIA uses the wrong version of ITE Trip Generation Manual. The TIA use the 10<sup>th</sup> Edition (see page 7 of March 18 TIA. Deschutes County Code (DCC) 18.116.310(F)(2) and 18.116.310(G)(2). The 11<sup>th</sup> Edition is the most recent version of the ITE Trip Generation Manual.*
- *Staff notes that trip caps are notoriously difficult to monitor and enforce. The only regulatory ability the County has is to enforce the type of use allowed on the site and the size of the buildings. The County does not control nor monitor the number of employees used at a business, the number of labor shifts, the*

*start/stop times of those shifts, the number of deliveries to a site, etc. Staff would appreciate the Applicant's ideas on how to create a functioning trip cap and what would be the penalty for violation. Staff has used building size as the best proxy for a trip cap, but there may be other measures.*

**SENIOR TRANSPORTATION PLANNER COMMENTS TO ODOT MAY 23, 2022**

**SUBMITTAL:** On May 24, 2022, Peter Russell emailed Planning staff to respond to ODOT May 23, 2022 submittal and the Applicant's May 24, 2022 agreement to ODOT's proposed language regarding a trip cap:

*Tarik,  
I have reviewed both the ODOT May 23 submittal regarding the proposed trip cap for 247-21-000881-PA/882-ZC and the applicant's May 24 agreement to the agency's language limiting the trip cap to 32 p.m. peak hour trips and 279 daily trips. I also concur with this limitation. The ODOT language calling for a text amendment is best addressed during the current update of the Deschutes County Transportation System Plan (TSP) as a potential change in policy language. Another option is ODOT can apply to a text amendment to the development code regarding trip caps and land use development.*

*If you have any questions, please let me know. Thanks.*

Central Oregon Irrigation District, Kelley O'Rourke

Re: 247-21-000881-PA, 882-ZC  
1612230000305/65301 N HWY 97, BEND, OR 97701  
1612230000500/65315 HWY 97, BEND, OR 97701  
1612230000301/ 65305 HWY 97, BEND, OR 97701

*Please be advised that Central Oregon Irrigation District (COID) has reviewed the provided preliminary application for the above referenced project. The Applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Industrial (RI). The Applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Rural Industrial (RI). The subject properties are located at 65301 N HWY 97, 65315 HWY 97 and 65305 HWY 97 in Bend, Oregon (Map and Tax lots: 1612230000305, 1612230000500, 1612230000301).*

*Listed below are COIDs initial comments to the provided preliminary plans. All development affecting irrigation facilities shall be in accordance with COID's Development Handbook and/or as otherwise approved by the District.*

*Water Rights*

- *1612230000305: Has 0.20 acres of appurtenant COID irrigation water rights •  
1612230000500: There are no COID water rights*
- *1612230000301: Has 2.70 acres of appurtenant COID irrigation water rights*

- *All water rights must be removed from these properties prior to approval of the zone change. COID requests property owners contact COID to request removal of the water rights.*

*Canal and Laterals*

- *COID’s main canal is located within tax lots 1612230000305 and 1612230000301 and has a ROW of 75-feet with a road easement of the west side of 20-feet. The easement appears to extend onto tax lot 1612230000500. COID will need the marginal limit plus 20-feet in areas where the canal and road exceed the easement. Any irrigation conveyance, District or private, which passes through the subject property shall not be encroached upon or crossed without written permission from COID. No structures of any kind, including fence, are permitted within COID property/easement/right of way. Comply with Requirements of COID Developer Handbook including restriction on drilling / blasting and excavation within and adjacent to the existing canal embankment.*
- *COID’s POD is located at the southern property line on tax lot 305 for \*A-17. There are private delivery ditches that run through each property to access the water rights. \*A-18 has a POD at the northern property line of tax lot 301, the easement is 20’ each side of center. Please note: a portion of \*A-18 is piped. Please contact COID to discuss these facilities.*
- *All crossing shall be in accordance with COID’s Development Handbook and must be approved by COID. A crossing license shall be required for the existing bridge. Please provided COID with the existing recorded crossing license for the bridge that spans across the Pilot Butter Canal. If the recorded document does not exist, contact COID for information on the process, timing, fees to obtain a crossing license.*
- *Policies, standards and requirements set forth in the COID Developer Handbook must be complied with.*
- *Please note that COID facilities are located within the vicinity of the subject property; contact COID if any work and/or crossings will be done near the COID facilities.*

*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.*

ODOT Region 4, Don Morehouse, Senior Transportation Planner

On April 20, 2022, Don Morehouse emailed Mr. Rawlings regarding the application as follows:

*Hi Tarik,*

*Although we are holding off on the review of the traffic impact study and land use application associated with 21-881-PA/882-ZC because it is incomplete, it does appear that this proposal will constitute a change of use requiring that the applicant submit a new*

road approach permit application through our District 10 office. Quinn Shubert is the point of contact:

Quinn Shubert  
Permits Specialist  
ODOT District 10  
63055 North Hwy 97  
Bend, OR 97703  
C: 541-410-0706

On May 23, 2022, Mr. Morehouse emailed Planning Staff as follows:

Hi Tarik,

I'd like to replace the comment I sent back on April 20, 22 with the following two comments pertaining to this Plan Amendment/Zone Change (21-881-PA/882-ZC) application:

- The Deschutes County Development Code should be amended to address the concept of a Trip Cap. Ideally, this suggested code provision would require the applicant to submit a Development Code Amendment application with a traffic impact analysis to show whether or not the Transportation Planning Rule is satisfied with the increase of a Trip Cap.
- ODOT agrees with a Trip Cap of **32 PM peak hour** trips and **279 daily trips**.

Please let me know if you have any further questions. Thanks

Proposed Condition of Approval

On May 24, 2022, legal counsel advised County Planning Staff, ODOT and the Senior Transportation Planner of a proposed condition of approval regarding trip caps as follows:

*Don, Peter and Tarik:*

*To be consistent with ODOT's comments, we are revising our proposed COA to read as follows:*

*"The maximum development on the three subject parcels shall be limited to produce no more than 32 trips in the PM peak hour and/or 279 daily trips as determined by the Institute of Engineers Trip Generation Manual, 11<sup>th</sup> Edition. The County may allow development intensity beyond these maximum number of vehicle trips only if the applicant submits to the County a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule and the Deschutes County Code."*

*If this works for everyone, we will submit a letter into the record as soon as possible.*

Thereafter, on May 24, 2022, legal counsel requested County Planning Staff to include the entire email chain into the record for the applications, stating:

*A separate correspondence is likely superfluous as this email chain already includes the proposed condition of approval and written concurrence thereof from*

*both ODOT and County staff. If you disagree and prefer a separate correspondence, please let me know. The applicant, of course, still contemplates providing a comprehensive open record submittal by the new May 31, 2022 deadline.*

The following agencies did not respond to the notice: Deschutes County Assessor, Bend Fire Department, City of Bend Planning Department, City of Bend Public Works Department, City of Bend Growth Management Department, Redmond Airport, Oregon Department of Aviation, and Deschutes County Road Department.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the conditional use application to all property owners within 750 feet of the subject property on October 6, 2021. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on October 6, 2021.

Supportive public comments were received from 44 individuals, one of which appears to be associated with the existing business uses on Tax Lots 305 and 500. The names of the supporting commenters are listed below.

Oppositional public comments were received from one neighboring property owner, from Central Oregon LandWatch, and from 1000 Friends of Oregon. The oppositional comments are detailed below. The supportive public comments do not specify approval criteria and are summarized herein as generally supportive of the subject applications for reasons including economic opportunities, improvement of the subject properties since the current owners took over, the character of the Applicant, and the need for industrial uses due to regional growth.

Supporting commenters:

- |                        |                       |                       |
|------------------------|-----------------------|-----------------------|
| 1. Dirk van der Velde  | 22. Michael Van Skaik | 43. Joseph Seevers    |
| 2. Shoshana Buckendorf | 23. Derek Ridgley     | 44. Rebecca Hermeling |
| 3. Micah Frazier       | 24. Whitney Nordham   |                       |
| 4. Anthony Jimenez     | 25. Sam DeLay         |                       |
| 5. Brandon Olson       | 26. Jeremy Stafford   |                       |
| 6. Cody King           | 27. Tom Price         |                       |
| 7. Craig Shurtleff     | 28. Ali Luengo        |                       |
| 8. Donnie Eggers       | 29. Kenna Aubrey      |                       |
| 9. Dee Shields         | 30. Laurie Luoma      |                       |
| 10. Julie Porfirio     | 31. Sarah Chmiel      |                       |
| 11. Jill Shaffer       | 32. Jillian Gish      |                       |
| 12. Nick Alker         | 33. Haley Offerman    |                       |
| 13. Nick Greenlee      | 34. Joshua Wurth      |                       |
| 14. Stephen Wagner     | 35. Erik Retzman      |                       |
| 15. Truett Nealy       | 36. Grace Stafford    |                       |

- 16. Bob Trapnell
- 17. Gerardo Arreola
- 18. Joseph Seevers
- 19. Mike Musco
- 20. Mark Rylant
- 21. Paula Johnson
- 37. Marilee Johnson
- 38. Adam Fuller-Ellifit
- 39. Theresa Vachon
- 40. Mike Vachon
- 41. Marty Petersen
- 42. Mark Rylant

An oppositional comment was received from Jay Musson, a resident and owner of property located at 65468 73<sup>rd</sup> Street, Bend, OR 97703 on October 9, 2021:

*"I own the property at address 65468 73rd which backs up to the subject property in this file number. Our property is part of a development called Whispering Pines #4. We have a community well as well as covenants such as no large farm animals (cows and pigs etc). Just like developments in the cities of Bend and Redmond. The only difference is our lots are all about 2.5 acres. All of the properties along 73rd backing up to this subject property are single family houses. The last thing we need in is an industry moving in behind us with large buildings, equipment and possible pollution. In fact the east side of this subject property (the jagged side) is the Central Oregon Irrigation Canal. I'm sure they don't want pollution entering their canal. I therefore strongly object to this proposed zone change. Keep industry in town, not in a pristine residential and agriculture area."*

Mr. Musson offered a second public comment on April 15, 2022:

*"I own property 65468 73rd ST that backs up to the subject property. I want to announce my opposition to this proposed zone change. This is farm country, not asphalt and tin can storage building country. This kind of development belongs in a city. Also rain runoff from the asphalt into the COCC irrigation canal which borders this property cannot be good. If the owner of this property wants to make money on this piece of property grow some hemp."*

Another oppositional comment was received from Kristy Sabo, the Wild Lands and Water Program Manager with Central Oregon LandWatch ("COLW") on October 19, 2021:

*"I'm writing today to express concern from Central Oregon LandWatch about whether application file nos. 247-21-000881-PA and 247-21-000882-ZC meet the necessary criteria for a zone change and a plan amendment with goal exceptions. These two applications across three tax lots request that land zoned EFU-TRB, exclusive farm use, be rezoned to Rural Industrial. While we are still reviewing the applications and all of the issues, we are initially concerned that the applications include no adequate showing that rezoning and a plan change is appropriate. The proposed use cannot be approved without exceptions to Statewide Planning Goals 3, 11, 12 and 14. Because no exceptions have been justified, the application must be denied. The proposed designation is expressly prohibited by the County's acknowledged comprehensive plan. We are concerned that the proposal would unnecessarily take agricultural land out of production. The comprehensive plan provides multiple opportunities for the proposed use that do not require rezoning. The proposed use will have a negative impact on surrounding rural land uses."*

*Please add LandWatch to your list of interested parties and let us know of any decisions or hearings.”*

On April 26, 2022, COLW, through Rory Isbell, Staff Attorney and Rural Lands Program Manager, submitted a formal letter in opposition to the applications, primarily alleging that the proposed plan amendment and zone change do not comply with Goals 3 and 14 and alleging that the subject property is rural agricultural land, outside of an urban growth boundary, where new urban industrial uses are prohibited. The letter states, in relevant part:

**Goal 3**

*The subject property is agricultural land as defined by Goal 3, OAR 660-033-0020(1)(a) and DCC 18.040.030 [definitions omitted].*

*The subject property was correctly designated as agricultural land and is correctly zoned for exclusive farm use (the lack of mistakes in the designation and zoning of agricultural lands in Deschutes County is discussed further below). The subject property is predominantly land capability Class III irrigated and Class IV unirrigated and thus is agricultural land as a matter of law. Statewide Planning Goal 3, OAR 660-015-0000(3); OAR 660-033-0020(1)(a); DCC 18.04.030. The property’s 38B and 31A soils are both Class III when irrigated, and because this property is within the boundaries of COID and has water rights, the property is irrigated and contains predominantly NRCS Class III soils.*

*LandWatch requests the Hearings Officer to take official notice of a true and correct copy of the U.S. Department of Agriculture, NRCS Soil Survey of the Upper Deschutes River Area, Oregon, including parts of Deschutes, Jefferson, and Klamath Counties, 284 pp. The Upper Deschutes River Area, Oregon Soil Survey is attached as Exhibit 1.*

*LandWatch also requests the Hearings Officer to take official notice of the soils map with legend and the land capability classifications, both irrigated and unirrigated, of the subject property attached as Exhibit 2. These exhibits are true and correct copies of the portions of the official USDA NRCS Upper Deschutes River Area Soil Survey depicting the subject property.<sup>2</sup>*

*These materials are produced and maintained as public records and are published as official publications of the U.S. Department of Agriculture. They contain information the accuracy of which cannot reasonably be questioned, and so are appropriate subjects for judicial notice. These materials from the U.S. Department of Agriculture, NRCS Upper Deschutes River Area Soil Survey are designed to assist the Hearings Officer in determining the law regarding the definition of agricultural land in DCC 18.04.030, OAR 660-033-0020(1)(a), OAR 660-015- 0000(3), and Statewide Planning Goal 3.*

*The official NRCS Upper Deschutes River Area Soil Survey relates to the content of law and policy on the definition of "agricultural land" in Oregon and does not concern only the parties in the case at bar. The Hearings Officer is requested to*

<sup>2</sup><https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. Accessed April 26, 2022.



take official notice of the NRCS Upper Deschutes River Area Soil Survey and the attached excerpts thereof as legislative facts. *State v. O'Key*, 321 Or. 285, 309 n.35, 899 P.2d 663 (1995) ("When a court, in determining what the law - statutory, decisional, or constitutional - is or should be, takes judicial notice of certain facts, it is taking judicial notice of legislative facts").

The application's inclusion of additional soils information - an Order 1 soil survey - obtained by a person pursuant to ORS 215.211 and OAR 660-033-0030(5), in no way nullifies the official NRCS soil capability classifications for the subject property. The additional soils information "does not otherwise affect the process by which a county determines whether land qualifies as agricultural land." ORS 215.211. The NRCS National Soil Survey Handbook states that ..Order 1 soil surveys and site-specific data collected are supplements to the official soil survey, but they do not replace or change the official soil survey." Exhibit 3.

The applicant's additional soil information could be used to identify "land in other soil classes that is suitable for farm use," OAR 660-033-0020(1)(a)(B), but cannot nullify or otherwise make void the official NRCS soil capability classifications for the subject property which are used to define agricultural land, OAR 660-033-0020(1)(a)(A). The subject property is suitable for a variety of farm uses, including grazing. It is a common practice in Central Oregon to rotate livestock between pastures, and nothing prevents this 19-acre property that has water rights from serving as seasonal rangeland. The Oregon Department of Land Conservation and Development, Oregon Department of Agriculture, and Oregon Department of Fish and Wildlife recently submitted a comment letter on a similar application in Deschutes County where an applicant sought to rezone and redesignate Goal 3- protected agricultural land. The state agencies describe the many ways in which land of NRCS Class VI-VIII soils in Deschutes County can be put to farm use, and how Goal 3's protections of agricultural land are not limited to lands classified by the NRCS as Class I-VI. Exhibit 4.

In any event, the subject property both has been and is currently engaged in farm use, proving its suitability for farm use. The applicant's own aerial photos of the property clearly indicate irrigated crops being grown on tax lots 301 and 305. Application Exhibit 1 at 1-2. These tax lots contain certificated water rights from Central Oregon Irrigation District for agricultural irrigation use. Application Exhibit 4 at 1-2. Even though these water rights have been temporarily leased to instream use, they can be returned to agricultural irrigation use on the subject property at any time, further facilitating the agricultural suitability of the subject property.

Even if not currently producing farm crops, the application describes the subject property as "used for farm and other equipment service and storage facilities and related outbuildings." Application at 4. Farm use of land includes the on-site maintenance of equipment and facilities used for other farm activities, ORS 215.203(2), and thus the property is also currently engaged in farm use.

**Goal 14**

The application proposes allowing urban uses on rural land outside of an urban growth boundary, which violates Goal 14. LUBA has articulated a test, using the

*Shaffer* factors, to determine whether a specific use is urban or rural. The applicant here has not met its burden to show the application meets the relevant *Shaffer* factors. *Shaffer v. Jackson County*, 17 Or LUBA 922 (1989); *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014). Instead, the applicant seeks a zone change to Rural Industrial which would allow a wide variety of industrial uses at any point in the future, but fails to analyze whether those industrial uses would be urban or rural under the *Shaffer* factors.

The County's RI zone, including its allowed uses, was acknowledged when the comprehensive plan limited the zone to exception areas that were committed to urban uses. Thus the RI Zone and its allowed uses are not per se rural. Without a showing that all of the allowed uses in the County's R[ zone are rural using the *Shaffer* factors, and application fails to comply with Goal 14.

The application also seeks an "irrevocably committed" exception to Goal 14. However, a local government may only adopt an exception to a goal when the land is irrevocably committed to uses not allowed by the applicable goal because those uses are impracticable. OAR 660-004- 0028(1). As described above, the subject property is agricultural land by definition, and it has been and currently is employed for rural farm uses. Agricultural uses allowed by Goal 3 are not impracticable, and thus the applicant's burden for a goal exception to Goal 14 is not met- OAR 660-004-0028(3)(a). The surrounding area also includes several properties in agricultural use, making the relationship between the property and "exception area" and "adjacent lands" no [sic] irrevocably committed. OAR 660 - 004 -0028(2)(b) -(c).

Relatedly, the subject property is not irrevocably committed to urban uses, making the exceptions process outlined at OAR 660-014-0030 unavailable.

**DCC 18.120.010 Nonconforming uses**

The DCC, at DCC 18.120.010, states that "[n]o nonconforming use or structure may be resumed after a one-year period of interruption or abandonment unless the resumed use conforms with the provisions of DCC Title 18 in effect at the time of the proposed resumption." This application repeatedly asserts that its nonconforming uses have been operated continuously since the 1970s to justify several of the relevant approval criteria. However, the application includes no evidence of continuous operation without any one-year gaps. LandWatch concurs with the staff report that such evidence is also required to support the application's request for an "irrevocably committed" goal exception, and that a non-conforming use verification is required to establish that the present and historic uses of the property were lawfully established and continued without alteration, abandonment, or interruption.

**DCC 18.136.020 Rezoning Standards**

This application may seek to serve the landowner's private interest by increasing the development potential of the subject property. It will not, however, serve the public interest, which would be harmed by the removal of the County's agricultural land base; increased noise, traffic, and pollution in a rural area; and

*marked public safety risks imposed by allowing industrial uses and their concomitant traffic and pollution along an open water way and state highway. Such harms to the public interest mean noncompliance with the County's rezoning standards at DCC 18.136.020: [quotation of code omitted]*

*As for DCC 18.136.020(D), there has been no change in circumstances since the property was last zoned. The applicant states that the current uses on the property have been in operation for the majority of the past 40 years. Application at 14, 37. The soils and agricultural suitability of the subject property have also not changed since it was planned and zoned for agricultural use by the County. There has further been no mistake in the current EFU zoning of the subject property. The County embarked on legislative efforts in both 2014 and 2019 to establish that errors exist in its EFU zoning designations, but concluded both times that no such errors exist. In 2015, the County consulted with Jon Andersen, who was a Senior Planner, and later became the Community Development Department Director, when the County developed its first comprehensive plan. Mr. Andersen confirmed that none of the County's agricultural land designations were made in error. Exhibit 5 (January 15, 2015 Deschutes County Community Development Department notes from phone conversation with John Andersen). DLCDC also commented to the County at the time that it was "unable to determine the nature and scope of the mapping error" of agricultural land designations. Exhibit 6 (January 8, 2015 DLCDC letter).*

**Conclusion**

*This application requests to convert 19 acres of agricultural land to allow urban, industrial uses, and fails to comply with Goals 3 and 14 as well as provisions of the Deschutes County Code. The property is rural, agricultural land and has not been proven to be irrevocably committed to urban uses. LandWatch respectfully requests this application be denied' We also request the record be left open for 14 days to accommodate additional written comment on this very complex land use application.*

1000 Friends of Oregon, through Dan Lawler, Rural Lands Senior Attorney, also submitted public comment in opposition to the applications on April 26, 2022:

*Dear Hearings Officer,*

*Thank you for the opportunity to provide testimony on the comprehensive plan and zoning map amendment application identified as App 247-21-000881-PZ, 882-Z (the "Rezone"). The following testimony is submitted by 1000 Friends of Oregon. 1000 Friends of Oregon is a nonprofit membership organization that works with Oregonians to support livable urban and rural communities, protect family farms, forests and natural areas; and provide transportation and housing choices. We have members in all parts of Oregon, including Deschutes County.*

*1000 Friends of Oregon requests that the Hearings Officer include this letter in the record for the April 26, 2022 hearing and that the county send any notices related to the Rezone to [dan@friends.org](mailto:dan@friends.org) and [andrew@friends.org](mailto:andrew@friends.org). 1000 Friends of Oregon also requests a 14-day open records period following this hearing to*

provide the public with more time to review the lengthy application materials and staff report.

1000 Friends recommends that the Hearings Officer deny the Rezone because the application fails to demonstrate compliance with approval criteria for amendments to comprehensive plan and zoning designations. More specifically, the staff report and application do not demonstrate that the subject property is not agricultural land under Goal 3 or that the proposal complies with Goal 14. The following paragraphs provide more detail on 1000 Friends' concerns.

**The Subject Property is Agricultural Land Under Goal 3**

1000 Friends recommends that the Hearings Officer deny the Rezone because the subject property qualifies as agricultural land under Goal 3 and, thus, an exception to Goal 3 is required to change the property's comprehensive plan and zoning designations. First, the application and staff report fail to adequately consider potential use of the 31A soils on the subject property.

When irrigated, 31A soils are categorized within Class III, which is productive and valuable for farm use. While the applicant claims that irrigation is not available to the subject property, the property is within Central Oregon Irrigation District boundaries and neither the application nor the staff report explain why the property owner can't work with the District to obtain water. Further, while the applicant may plan to continue to lease the property's water rights, neither the application nor the staff report explain why the property owner is unable to use the water rights for agriculture. The application and staff report also fail to explain why the property owner is unable to utilize a water distribution system to irrigate the property using the Pilot Butte Canal. Therefore, the Hearings Officer should deny the Rezone because the application and staff report fail to adequately consider use of irrigated 31A soils and do not demonstrate that the property is not agricultural land.

The application and staff report also fail to adequately consider whether the subject property can be used for grazing. While the applicant argues that the property is not suitable for grazing due to poor soils, both 38B and 58C soils can support viable grazing operations. The applicant's calculations regarding profitability of cattle grazing on the property fail to analyze its potential use with rotational grazing, which is a common practice in Central Oregon. Rotational grazing slows consumption of forage on pastureland by allowing animals to graze on a number of properties throughout the year. If the subject property was used for rotational grazing, rather than as the only location for grazing, it could likely support a greater number of cattle and make a potential grazing operation more profitable. However, the applicant's analysis fails to consider this possibility. Thus, the Hearings Officer should deny the Rezone because the application and staff report fail to demonstrate that the property is unsuitable for grazing and that the land is not protected under Goal 3.

**The Application Does Not Satisfy Goal 14**

*As an initial matter, the Shaffer factors are not appropriate for determining whether the Rezone makes the property urban or rural in the context of Goal 14. As Page 14 of the Staff Report acknowledges, Shaffer v. Jackson County, 16 Or LUBA 871 (1988), involved a map amendment for an asphalt batch plant – a specific use – subject to that application. Because the specific use of the property was known in those proceedings, the county could evaluate the map amendment to determine the number of workers, dependence on site-specific resources, suitability of the use to a rural area, and reliance on public facilities and services. In this case, however, the applicant is not applying for development of a specific use on the property. While the applicant states that it intends to build a mini-storage facility and to continue equipment repairs on-site, nothing requires the applicant to follow through on that plan. Instead, the applicant could use the property for any land uses permitted in the Rural Industrial zone after the property’s comprehensive plan and zoning designations change. Thus, 1000 Friends urges the Hearings Officer not to use the Shaffer framework for analysis of Goal 14 because the eventual use of the property is uncertain, making it impossible to determine whether the Shaffer factors are satisfied.*

*Next, the applicant’s argument that the application does not require an exception to Goal 14 is not supported by substantial evidence. The applicant states that the Rezone “should not require a Goal exception because the County’s RI zoning complies with Goal 14 by ensuring areas with this zoning remain rural by limiting the uses allowed.” Staff Report Page 57. This statement is a mere assertion that lacks evidentiary support. To show with substantial evidence that the Rezone does not facilitate urban use of the property, the applicant and county must evaluate whether the uses permitted outright and conditionally in the Rural Industrial zone are urban or rural in nature. The use-by-use analysis is especially important here because the Rural Industrial zone was adopted when the comprehensive plan limited the zone to exception areas, meaning that the uses in that zone did not have to be rural in nature to be allowed in such areas. However, the subject property is not in an exception area and thus, analysis of the uses in the Rural Industrial zone is necessary to determine whether the Rezone facilitates urban or rural use of the property.*

*The applicant’s alternative argument that the area is irrevocably committed to uses not allowed under the applicable goal is not supported by substantial evidence and does not demonstrate compliance with OAR 660-004-0028(2)(a). As discussed earlier in this letter, the applicant has not demonstrated that the property is not protected agricultural land and thus, the characteristics of the land (suitability for grazing, presence of Class III soils when irrigated, and possibility of irrigation) indicate that the property could be used for agriculture. Further, the applicant fails to explain why the presence of a couple small structures that cover a small percentage of the property make agriculture impossible or impracticable. Nothing prevents the property owner from removing the structures and using the soil underneath to supporting grazing operations. The applicant’s statement that the existing improvements on and past use of the property irrevocably commit the property to non-farm use are mere assertions that lack the support of substantial evidence.*

*In addition, the applicant’s description of the characteristics of adjacent lands under OAR 660-004-0028(2)(b) conflicts with staff’s findings regarding such lands. On Page 66 of the Staff Report, the applicant states that neither Tax lot 300 or 306 are used for active farming, while staff notes that both of these properties appear to be in farm use and receive farm tax assessments. The applicant cites nothing to support its assertion that farming does not occur on these properties, while the county cites aerial photography and farm tax assessments for its position. Thus, substantial evidence in the record suggests that the characteristics of some adjacent lands are rural and agricultural in nature and that the subject property is not irrevocably committed to non-rural uses. The Hearings Officer should deny the Rezone because the applicant does not support its findings for OAR 660-004-0028(2)(b) with substantial evidence and, in fact, evidence in the record undermines the applicant’s position.*

*As an additional point, the assertion that the property is irrevocably committed to use as “an equipment service/repair and rental/sales facility” undermines the applicant’s argument that uses on the property will be rural after the Rezone. The argument regarding irrevocably committed exceptions relies on the notion that the property has not been and will not be used for rural purposes. Further the commercial nature of service, repair, rental, and sales facilities indicates that the use is more urban than rural. The applicant’s arguments on these points conflict and thus, the Hearings Officer should reject the applicant’s Goal 14 arguments for lack of substantial evidence.*

**NOTICE REQUIREMENT:** On April 1, 2022, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property and agencies. A Notice of Public Hearing was published in the Bend Bulletin on Friday, April 1, 2022. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on March 15, 2022.

**REVIEW PERIOD:** The subject application(s) were submitted on September 30, 2021, and deemed incomplete by the Planning Division on October 28, 2021. Upon the Applicant’s confirmation that no further information or materials would be provided in response to the County’s incomplete letter, the subject applications were deemed complete on March 7, 2022. According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

**III. FINDINGS & CONCLUSIONS**

In order to approve the comprehensive plan amendment and zone change request, the proposal must comply with the criteria found in statutes, statewide planning goals and guidelines and their implementing administrative rules, County comprehensive plan, and land use procedures ordinance. Each of these approval criteria is addressed in the findings below.

The Hearings Officer sets forth the following Preliminary Findings and Conclusions on the key issues in these applications below. These Preliminary Findings and Conclusions are incorporated by reference, as if fully set forth therein, in the analysis of individual criteria.

**A. PRELIMINARY FINDINGS AND CONCLUSIONS**

**1. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING USE OF ORDER 1 SOILS SURVEY**

In 1979, Deschutes County adopted its first comprehensive plan and zoning ordinance that implemented the Statewide Land Use Planning Goals. The County’s comprehensive plan map was developed without the benefit of detailed soils mapping information. The map was prepared and EFU zoning was applied to the subject property prior to the USDA/NRCS’s publication of the “Soil Survey of Upper Deschutes River Area, Oregon.” That soil survey provides general soils information, but not an assessment of soils on each parcel in the study area.

The NRCS soil survey maps are Order II soil surveys, which extrapolate data from the Upper Deschutes River Survey to determine LCC soil classifications at a landscape level. The Applicant’s soil scientist conducted a more detailed Order I survey, which analyzed actual on-the-ground soil compositions on the subject property. The Hearings Officer finds that Order I soils surveys may contradict NRCS soil classifications performed at a higher, landscape level.

The argument advanced by COLW that an Order I survey cannot contradict NRCS soil survey classifications for a particular property has been rejected by the Oregon Legislature in ORS 215.211(1) and DLCD in OAR 660-033-0030. It has also been rejected by Deschutes County Hearings Officers and the Board of County Commissioners.

ORS 215.211(1) and (5) and the implementing regulations in OAR 660-033-0030, specifically and intentionally permit a more detailed soil analysis (an Order I Soil Survey) to be used when determining whether a specific property should qualify as agricultural land. The Applicant opted to provide more detailed Order I Soil Surveys prepared by Kitzrow, who is a Certified Professional Soil Classifier. Exs. 7-9 to Burden of Proof.

In recent years, Deschutes County has recognized the value in rezoning non-productive agricultural lands and has issued decisions approving plan amendments and zone changes where the applicant has demonstrated the property is not agricultural land. Deschutes County has approved the reclassification and rezoning of EFU parcels based on data and conclusions set forth in Order I soils surveys and other evidence that demonstrated a particular property was not “agricultural land,” due to the lack of viability of farm use to make a profit in money and considering accepted farming practices for soils other than Class I-VI. *See, e.g., Kelly Porter Burns Landholdings LLC Decision/File Nos. 247-16-000317-ZC/318-PA; Division of State Lands Decision/File Nos. PA-11-7 and ZC-11-2; Paget Decision/File Nos. PA-07-1, ZC-07-1; The Daniels Group/File Nos. PA-08-1, ZC-08-1; Swisher Decision/File Nos. 247-21-000616-PA/617-ZC.* The Board of County Commissioners recently affirmed the Hearings Officer’s decision in the *Swisher* files and adopted Ordinance No. 2022-003.

On the DLCD website, it explains:

*NRCS does not have the ability to map each parcel of land, so it looks at larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils information on a specific property. Owners who believe soil on their property has been incorrectly mapped*

*may retain a “professional soil classifier ... certified and in good standing with the Soil Science Society of America (ORS 215.211) through a process administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for a property.*

The Hearings Officer agrees with the Applicant’s final legal argument, submitted on June 14, 2022, which states, in relevant part at page 2:

*This statutory and regulatory scheme makes sense, as it would have been impracticable for a county to have conducted an individualized soils analysis on a farm-by-farm basis when it adopted its original zoning ordinances. Precluding the availability of a property owner to achieve a new zoning designation based upon a superior, more detailed and site-specific soils analysis would, to put it mildly, be absurd and cannot be what the legislature intended.<sup>3</sup>*

Kitzrow explained and discussed the original intended uses of both Order I and Order III soil studies in his May 22, 2022 testimony:

*“Order I Soil Surveys are site-specific and have a high confidence interval and specificity. In other words, while Order III USDA soil surveys (published at 1:24,000) are a foundation for soil series/map unit concepts in the general area under review our current maps for this Order I Soil Survey are inventoried at a scale of 1:831 and 1:738 for this site-specific report In fact, in the original USDA map cited in our original report and henceforth sanctioned by the DLCD, it says right in the notation for the actual enclosed soil map, “Soil Map may not be valid at this scale” which it is not in this particular case. \* \* \* Soil series concepts for the subject area in the USDA report are certainly valid and based upon solid Soil Survey principles, however, the actual soil map units, distribution and quantification of each unit is not always valid at this very detailed site-specific finite land base. This is a major distinct between Order I and Order III Soil Surveys. Order I Soil Surveys are represented by a scale reflective of the very small land base under consideration. Order III Soil Surveys are general in nature since their intended use is for agriculture, ranching and forest management and not for land use decisions and rezoning considerations. **Given these facts above, our current Order I Soil Survey is, in fact, a REPLACEMENT and NOT a supplement for the subject properties regarding soil map and Capability Class/Soil Efficacy considerations.**”*

Exhibit A (emphasis in original).

The Soil Survey of the Deschutes Area, Oregon<sup>4</sup> describes Class VII soils as “not suitable for cultivation and of severely limited use for pasture or as woodland.” It describes Class VIII soils as “not suitable for growing vegetation for commercial uses.” The Soil Survey of Upper Deschutes River Area, Oregon describes the broad, general level of soil surveying completed by NRCS on page 16, “At the less detailed level, map units are mainly associations and complexes. The average size of the delineations for most management purposes was 160 acres. Most of the land mapped at this level is used as woodland and rangeland. At the more detailed level, map units are mainly consociations and

<sup>3</sup> The stated public purpose of the EFU zone is to preserve “Agricultural Lands” (ORS 215.243) but “Agricultural Lands” are not present on the subject property.

<sup>4</sup> [https://www.nrcs.usda.gov/Internet/FSE\\_MANUSCRIPTS/oregon/OR620/0/or620\\_text.pdf](https://www.nrcs.usda.gov/Internet/FSE_MANUSCRIPTS/oregon/OR620/0/or620_text.pdf)



complexes.... Most of the land mapped at the more detailed level is used as irrigated and nonirrigated cropland.”

As quoted in the Hearings Officer’s Decision and Recommendation to the Deschutes County Board of Commissioners in the Swisher decision, File Nos. 247-21-000616-PA/617-ZC:

*The real issue is “map accuracy” which is based upon set standards for maps. National Map Accuracy Standard (NMAS) provides insurance that maps conform to established accuracy specifications, thereby providing consistency and confidence in their use in geospatial applications. An example of such a standard: “maps on publication scales larger than 1:20,000, not more than 10 percent of the points tested shall be in error by more than 1/30 inch, measured on the publication scale; for maps on publication scales of 1:20,000 or smaller, 1/50 inch.” The error stated is specific for a percentage of points, and to suggest that accuracy in maps is the unattainable freedom from error as the COL letter does, is not a relevant or a serious argument.*

*When one map shows point data like an Order-1 soil survey the accuracy can be measured, and when another map does not (like the NRCS soil map) there is a shortage of information, so the accuracy of the NRCS map cannot be determined for point data. The accuracy of the NRCS estimate of the percentage of components in the 38B soil complex can be shown to be very inaccurate in this case, and it clearly underestimates the Class 7 and Class 8.*

The Hearings Officer finds that NRCS soil survey maps are not definitive or “binding” with respect to a determination of whether the subject property is, or is not, agricultural land. This is consistent with the ruling of the Land Use Board of Appeals (LUBA) in *Central Oregon Landwatch v. Deschutes County (Aceti)*, \_\_\_ Or LUBA \_\_\_ (LUBA NO. 2016-012, August 10, 2016 (Aceti I)). There, LUBA confirmed that OAR 660-033-0030(5)(a) and (5)(b) allow the County to rely on more detailed data on soil capability than provided by NRCS soil maps to define agricultural land, provided the soils survey has been certified by DLCD, which has occurred here. It found that the County’s reliance on the applicant’s more-detailed soils analysis prepared by a soil scientist supported a finding that the property was “nonagricultural land” even though the NRCS soil study mapped it as high-value farmland.

The *Aceti* ruling is summarized as follows:

*LUBA found that it was appropriate for Deschutes County to rely on a site-specific soils survey prepared by soils scientist Roger Borine to find that a majority of the property is comprised of Class VII and VIII soils rather than on information provided by the NRCS Soil Survey. LUBA noted that the NRCS’s maps are intended for use at a higher landscape level rather than on a property-by-property basis.*

First, LUBA affirmed the County’s determination that the subject property, which had been irrigated and used to grow hay in 1996 and earlier years, was not agricultural land based on the Order 1 soils survey which showed that the poor soils on the property are Class VII and VIII soils when irrigated, as well as when not irrigated.

Second, LUBA determined the applicant had established that the subject property was not

“agricultural lands,” as “other than Class I-VI Lands taking into consideration farming practices.” LUBA ruled:

*“It is not an accepted farm practice in Central Oregon to irrigate and cultivate poor quality Class VII and VIII soils – particularly where, as here those soils are adjacent to rural industrial uses, urban density residential neighborhoods that complain about dust and chemicals and to high traffic counts on the surrounding roads and highways. Irrigating rock is not productive.”*

The Hearings Officer also rejects the argument that NRCS land classifications based on its soil maps cannot be varied, unless a landowner requests an Order 1 soils study to qualify **additional** land as agricultural land. This is directly contrary to LUBA’s holding in *Central Oregon Landwatch v. Deschutes County and Aceti*, LUBA No. 2016-012:

*“The Borine Study is evidence a reasonable person would rely on and the county was entitled to rely on it. As intervenor notes, the NRCS maps are intended for use at a higher landscape level and include the express statement ‘Warning: Soil Ratings may not be valid at this scale.’ Conversely, the Borine Study extensively studied the site with multiple on-site observations and the study’s conclusions are uncontradicted, other than by petitioner’s conclusions based on historical farm use of the property. This study supports the county’s conclusion that the site is not predominantly Class VI soils.”*

ORS 215.211(1) specifically allows for the submittal by a certified soil scientist of an assessment of the capability of the land based on more detailed soils information than that contained in the Web Soil Survey operated by the NRCS to “assist a county to make a better determination of whether land qualifies as agricultural land.” The Applicant followed this procedure by selecting a professional soil classifier who is certified by and in good standing with the Soil Science Society of America to prepare the Order 1 soils report. DLCDC reviewed the soils report pursuant to ORS 215.211(2) and determined it could be utilized in this land use proceeding. The Hearings Officer finds that the law is settled when it comes to an applicant’s ability to rely on an Order I Soil Survey such as the surveys prepared by Kitzrow in this matter.

The Hearings Officer agrees that soils classifications are not the only determining factor with respect to whether a parcel is “agricultural land.” The Hearings Officer’s findings on all relevant factors to be considered in determining whether the subject property is “agricultural land,” are set forth in detail below.

For all the foregoing reasons, the Hearings Officer finds that the County is not bound by the landscape level NRCS Order II study on which classification of soils on the subject property is based. The Hearings Officer finds it is appropriate for the County to consider the Applicant’s Order I soils survey, certified for the County’s consideration by DLCDC.

**2. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING WHETHER THE SUBJECT PROPERTY IS “AGRICULTURAL LAND”**

For purposes of this Decision and Recommendation, the Hearings Officer considers the definition of “Agricultural Land,” in OAR 660-033-020(1)(a), as defined in Goal 3, which includes:

(A) lands classified by the NRCS as predominantly Class I-VI soils in Eastern Oregon;

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

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

**a. OAR 660-033-0020(1)(a)(A) Findings and Conclusions**

The first prong defines “agricultural land” to include soils classified predominantly as Class I-VI in Eastern Oregon.<sup>5</sup> The subject property meets this definition, but it is not controlling. As the Hearings Officer found above, the County may rely on the DLCD-certified Order I soil survey submitted by the Applicant. That study shows that the soils on the subject property are not predominantly Class I-VI soils. The Kitzrow Soil Surveys show that Lot 301 is comprised of 53.1% of Class VII and VIII soils, and that both Lot 500 and Lot 305 are comprised of 87.7% of Class VII and VIII soils. The County is entitled under applicable law to rely on the Order I soils survey in these applications in making a determination that the soils on the Subject Property are not predominantly Class I-VI soils. Kitzrow also explained in his Soil Surveys that the addition of irrigation waters will not improve the growing of farm crops on most of the site. No evidence was presented to rebut this evidence.

The Hearings Officer finds that the more detailed, onsite soil study submitted by the Applicant provides property-specific information not available from the NRCS mapping. There is no evidence in the record to rebut the Applicant’s soils study. Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(a)(A).

**b. OAR 660-033-0020(1)(a)(C) Findings and Conclusions**

No party has argued that the subject property is necessary to permit farm practices on nearby lands under this subsection, and no evidence has been submitted that any “farm use” on surrounding properties has depended upon use of the subject property to undertake farm practices. There is no showing that the subject property is necessary for farming practices on any surrounding agricultural lands. There is no evidence that the subject property contributes to any such practices, nor that other lands depend on use of the subject property to undertake any farm practices.

The Hearings Officer finds there is no evidence in the record that the subject property is “land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands. Questions concerning the “impact on adjacent or nearby agricultural lands,” do not answer the inquiry of whether the subject property is “necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.” OAR 660-033-0020(1)(a)(C).

<sup>5</sup> Eastern Oregon is defined at OAR 660-033-0020(5) to include Deschutes County. File Nos. 247-21-000881-PA, 882-ZC

For these reasons, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(a)(C).

**c. OAR 660-033-0020(1)(b) Findings and Conclusions**

The Hearings Officer finds there is no evidence in the record that the subject property is adjacent to or intermingled with lands in capability classes I-VI within a farm unit. Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(b). Specific findings on each applicable criterion are set forth in Section III(B) of this Decision and Recommendation.

**d. OAR 660-033-0020(1)(a)(B) Findings and Conclusions**

The Hearings Officer reviews evidence in the record to determine whether the subject property constitutes “agricultural land” under OAR 660-033-0020(1)(a)(B) as “Land in other soil classes that is **suitable for farm use** as defined in ORS 215.203(2)(a), **taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices.**” (emphasis added). Competing evidence was presented by the Applicant, COLW and 1000 Friends of Oregon.

This provision acknowledges that, even if a property is comprised of poor soils (aka “Land in other soil classes” that are not classified I-VI in Eastern Oregon), it may nonetheless be “suitable for farm use” under one or more of the seven considerations set forth in OAR 660-033-0020(1)(a)(B). In other words, if any of the seven considerations are such that they **compensate for the poor soils on a property** and render such property “**suitable for farm use,**” - employment for the primary purpose of obtaining a profit in money - that property is determined to constitute agricultural land.

OAR 660-033-0020(1)(a)(B) begins with the statutory definition of “farm use” in ORS 215.203(2)(a) which informs the determination of whether a property is “suitable for farm use.” The Hearings Officer finds that the critical question, in analyzing the seven considerations, is whether any of those considerations essentially improve the conditions on the subject property – poor soils notwithstanding - to a point that it can be employed for the “**primary purpose of obtaining a profit in money** by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairying products or any other agricultural or horticultural use or animal husbandry or any combination thereof.” ORS 215.203(2)(a) (emphasis added). Aerial photograph evidence of past irrigation of the subject property is not dispositive without evidence that the property was irrigated and engaged in “farm use,” for the primary purpose of obtaining a profit in money.” There is no such evidence; rather, the aerial photographs evidence shows site condition

“Farm use” is not whether a person can engage in any type of agricultural or horticultural use or animal husbandry on a particular parcel of property. It is informed by whether such use can be made for the primary purpose of obtaining a profit in money. Therefore, the Hearings Officer rejects the argument that the subject property is “capable of any number of activities included in the definition of farm use,” because “farm use” as defined by the Oregon Legislature “**means the current employment of land for the primary purpose**

**of obtaining a profit in money.**” ORS 215.203(2)(a); see also Goal 3. This is a critical omission by commentators in opposition to the applications in their submissions. Speculation about whether the property could employ greenhouses, goat grazing, plant nurseries and the like is not enough. There are many properties in Central Oregon that are not engaged in “farm use,” but on which agricultural activities take place. However, the idea that a person who owns EFU-zoned property with poor soils is essentially limited to use their property for hobby farm type activities is not supported by the law.

The Hearings Officer finds that the definition of “farm use” in ORS 215.203(2)(a) refers to “**land**,” - not “lands,” - and does not include any reference to “combination” or requirement to “combine” with other agricultural operations for grazing rotation, or the like. Therefore, if the subject property, in and of itself cannot be engaged in farm use for the primary purpose of obtaining a profit in money, it does not constitute agricultural land. There is no requirement in ORS 215.203(2)(a) or OAR Chapter 660-033 that a certain property must “combine” its operations with other properties in order to be employed for the primary purpose of obtaining a profit in money and thus, engaged in farm use.

What the statutory definition of “farm use” means is that, merely because a parcel of property is zoned EFU and **some** type of agricultural activity could take place on it, or whether the property owner could join forces with another agricultural operations, does not mean that a property owner is forced to engage in agricultural activity if the property owner cannot use its own property for farming to obtain a profit in money. This is so, whether the barrier to obtaining a profit in money is due to soil fertility, suitability for grazing, climactic conditions, existing and future irrigation rights, existing land use patterns, technology and energy inputs required and accepted farming practices, any or all of these factors. In short, “farm use” under the statutory definition means more than just having a cow or horses, growing a patch of grapes, or having a passion for rural living. An owner must be able to obtain a profit in money for any use to be considered “farm use.”

The Hearings Officer finds that the list of considerations in OAR 660-033-0020(1)(a)(B) in determining whether land in other soil classes are “suitable for farm use,” are considered in relation to one another. No one consideration is determinative of whether a property with poor soils is nonetheless “suitable for farm use.”

COLW argues that the subject property may be used for some agricultural purpose and lists dozens of potential “agricultural commodities produced in Deschutes County,” pursuant to the 2012 USDA Census. Without any information as to whether the agricultural practices on properties in the vicinity of the subject property constitutes “farm use,” in that they make a profit in money from such uses, COLW relies on Humfleet’s Nubian Dairy Goats and Whistle Stop Farm and Flowers as examples. The Hearings Officer finds that it is not enough to introduce evidence of agricultural use of other properties without evidence of the profitability of such use. Speculation is not evidence, so an inference that uses on other properties “must be profitable” is not enough. Such an inference does not transfer to the subject property, either. Nor does it refute the substantial evidence in the record that establishes it is impractical to engage in allegedly potential agricultural uses of the subject property because one cannot make a profit in money from those uses. Therefore, the record shows the property is not suitable for farm use.

The question is not whether an owner could engage in agricultural uses on a property; it is whether it is impractical to attempt to make a “farm use” of the property, as the term is

defined in state law. The Hearings Officer finds that it is not an applicant’s burden to prove that no agricultural use could ever be made of a property. An applicant must prove that the land is not suitable for farm use because one cannot employ the subject property with the primary purpose of making a **profit** from any potential “agricultural use” of such property.

**Soil Fertility**

Unrebutted evidence in the record establishes that the predominant soil type on all three tax lots that comprise the subject property are Capability Class VII and VIII. Kitzrow explained the Soil Surveys in **Exhibit A**, noting that the Class VII and VIII “Order I delineations on Lot 301 will not benefit substantially from the addition of irrigation waters hence the poor Capability Class rating.” With regard to Lot 301, Kitzrow stated that the property “does not have any farming opportunities” because “[o]nly two very small areas are ‘undisturbed’ on this lot dating back to before 1985. \* \* \* The remainder of this property has been highly altered, degraded and permanently debilitated. \* \* \* A preponderance (87.7%) of the 1.06 acs is comprised of Capability Class 7 and 8 soils. Irrigation will not improve the growing of farm crops on most of the site.” With regard to Lot 305, Kitzrow concluded that the property “will not produce crops on a large majority of this lot” because of “the proportion and degree of ancient site alteration and degradation dating back to before 1985. \* \* \* A preponderance (87.7%) of the 3.0 acs is comprised of Class 7 and 8 soils. Irrigation will not improve the growing of farm crops.”

While COLW argued that soil fertility is not always necessary for commercial agricultural operations because farm equipment could be and/or has been stored on the property, the Hearings Officer finds that the subject property’s resource capability is the proper determination. The Applicant is not required to engage in joint management or use with other lands that do constitute productive farm land. Moreover, storage and maintenance of equipment is not, in and of itself, a farm use unless such equipment is for the production of crops or a farm use on the subject property. Therefore, the Hearings Officer rejects the arguments of COLW that certain uses of the subject property could be made that are not dependent on soil type because none of the suggested uses constitute “farm use,” without any associated cultivation of crops or livestock.

**Suitability for Grazing**

The Applicant’s burden of proof sets forth the following:

*The primary agricultural use conducted on properties with poor soils is grazing cattle. 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.*

*However, the extremely poor soils found on the Subject Property prevent it from providing sufficient feed for livestock for dryland grazing. That, the dry climate, the proximity to Highway 97, and area development prevent grazing from being a viable or potentially profitable use of the Subject Property. The soils are so poor that they would not support the production of crops for a profit.*

*When assessing the potential income from dryland grazing, Deschutes County uses a formula and assumptions developed by the OSU Extension Service. This formula is used by the County to decide whether EFU-zoned land is generally unsuitable for farm use.*

- *One AUM is the equivalent to the forage required for a 1000 lb. cow and calf to graze for 30 days (900 pounds of forage)*
- *On good quality forage, an animal unit will gain 2 pounds per day*
- *Two animal units will eat as much in one month as one animal unit will eat in two months.*
- *Forage production on dry land is not continuous. Once the forage is eaten, it generally will not grow back until the following spring.*
- *An average market price for beef is \$1.20 per pound.*

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

$$\frac{30 \text{ days} \times 2\#/\text{day}/\text{acre}}{(1 \text{ acre per AUM})} = 60.0 \text{ lbs. Beef/acre}$$

$$60.0 \text{ lbs. Beef/acre} \times 19.12 \text{ acres} \times \$1.20/\text{lb.} = \$1,382.40 \text{ per year gross income}$$

*Thus, the total gross beef production potential for the Subject Property would be approximately \$1,382.40 annually. This figure represents gross income and does not take into account real property taxes, fencing costs, land preparation, purchase costs of livestock, veterinary costs, or any other costs of production, which would exceed income. In addition, as the Subject Property abuts a busy state highway, the cost for liability insurance due to the risk of livestock escape and the potential for a vehicle/livestock accident, would likely be expensive*

While COLW argued that neighboring Humfleet’s Nubian Dairy Goats (the “Humfleet Property”) is evidence that the Applicant could undertake a similar agricultural use on the subject property, there is no evidence that the Humfleet Property is a for-profit goat farm, or that the primary purpose of the Humfleet Property is “obtaining a profit in money” from such operation, under the “farm use” definition in ORS 215.203(2)(a).

COLW also assumed, without evidence, that the Humfleet Property has “lower quality [soils] compared to the subject properties.” This assumption is based only on NRCS soil data and ignores the Order I Soil Surveys of the subject property in the record. There is no Order I soil survey of the Humfleet Property from which to make a valid comparison of the quality of soils.

COLW ignored the location and characteristics of the subject properties in its comparison, as well. Unrebutted evidence in the record shows that Tax Lot 500 is adjacent to Highway 97, which is the busiest stretch of highway in Central Oregon, is covered in gravel and has an old building in the middle of the parcel. There is no evidence that growing crops or raising livestock on this parcel is, or could be, viable – only speculation. Tax Lot 305 is developed with a large building and gravel covers most of the remaining land. Tax Lot 301

is only 400 feet at its widest point, and includes an irrigation ditch and easement, which takes up a substantial portion of the narrow lot.

The current owner of Tax Lot 301, Dwight Johnson, explained that the subject properties do not have comparable attributes to the Humfleet Property, including barns suitable for livestock, a working irrigation system (including an irrigation pond and irrigation hand lines) and mature grass pastures. The Humfleet Property is not compromised by an irrigation district easement that renders a significant portion of the property useless, unlike the subject property, which has an easement that borders its east side. Finally, the Humfleet Property borders BLM land, which is undeveloped and does not present conflicting neighboring uses, unlike the neighboring residential properties to the subject property.

Johnson not only owns Tax Lot 301, but also Bend Soap Company, a successful goat operation in Central Oregon. He submitted a letter to the record (Exhibit QQ) that lists numerous reasons including the poor soils, small parcel sizes, parcel configuration, high costs of fencing and irrigation improvements and proximity to neighboring residential developments as evidence of why the subject property is not suitable for grazing. The letter concludes by stating, "For the reasons provided above, the subject property is not suitable for any agricultural uses and is specifically not suitable for raising goats." Because the subject properties do not have the attributes of the Humfleet Property, he determined that it will be far too expensive to construct similar improvements just to raise a few goats.

The lack of suitability of the subject property for dryland grazing as a viable or profitable use of the subject property is established by substantial evidence in the record. The Hearings Officer finds the Applicant has established that this factor has been established by the Applicant for purposes of determining the subject property is not "agricultural land" under OAR 660-033-020(1)(a)(B).

**Climatic Conditions**

There is little debate that climatic conditions contribute to the inability to engage in "farm use" for the purpose of making a profit in money. Evidence in the record (Exhibit G, J and K) show that climatic conditions on the subject property are challenging, and are likely to get worse. The climate is extremely arid and receives very little rain or snow throughout the year. The evidence shows that these conditions will continue to worsen as the "22-year megadrought" conditions continue to impact the region. The poor soil conditions on the subject property render the climatic conditions particularly impactful.

Whether or not other properties are engaged in *agricultural use* does not show that climatic conditions do not preclude "farm use" on the subject property. This is so, combined with the poor soils on the property and proximity to Highway 97. The relevant issue is whether or not agricultural activities can be engaged in on the subject property for the purpose of making a profit in money, considering climatic conditions. Substantial evidence shows that they cannot.

The Hearings Officer finds the Applicant has established that climatic conditions on the subject property are a factor in determining it is not "agricultural land" under OAR 660-033-020(1)(a)(B).



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

Regarding existing and future availability for water for farm irrigation purposes, commentators do not take into consideration whether any agricultural activities could be utilized for the primary purpose of making a profit in money on the property, such that the suggested agricultural activities constitute “farm use” under the statutory definition. There is no evidence that the subject property could be used for any of the listed activities in ORS 215.203(2)(a) for the primary purpose of obtaining a profit in money, whether or not the property is irrigated.

The Applicant’s burden of proof sets forth the following:

*As explained above, two of the three Tax Lots comprising the Subject Property have existing COID water rights, but they are leased to the Deschutes River and no changes to that are planned for the future. The Pilot Butte Canal running along the eastern portion of two of the Tax Lots comprising the Subject Property is not sufficient to provide irrigation to the Subject Property. A Federal right of way exists on the canal that goes to 50 feet at the toe of the canal. At its widest, the Subject Property is 400 feet wide; even taking the 50 feet from the toe of the canal, at its widest, it is 300 feet. This is insufficient for farming purposes, which is supported by the fact that no historic farming use has been made. Finally, while a water distribution system exists on the Subject Property, it has been effectively extinguished by common ownership of Tax Lots 301 and 305.*

The Applicant argues that the property’s exiting irrigation rights, currently leased back and not in use on the property, should not be considered in evaluating the property’s potential for agricultural uses. In its May 31, 2022 open record letter at page 4, the Applicant states:

*As understood by the Applicant, staff’s primary concern regarding Goal 3 stems from irrigation water previously utilized on the Properties. Specifically, the Staff Report clarifies that “Staff recognizes that the property may not be found to be suitable for farm use regardless of the irrigation status, however, staff requests the Hearings Officer make specific findings on question (sic) if the leased water rights are unavailable to the property for the purposes of this analysis.” (Page 38). Staff’s concerns are understandable in light of a 2014 land use decision issued by the then Board of County Commissioners concerning property owned by NNP IV-NCR, :L:C (File No PA-13-1,. ZC-13-1; “Newland”). The Board in Newland opined that “having irrigation water rights is the most important factor in farm use throughout the country. Farm use in Central Oregon is primarily dependent upon having water to irrigate land for crops, hay, fields, pasture, and any other water dependent farm use.”*

*This case is easily distinguishable from the Newland matter. As clarified by the preceding hearings officer’s detailed analysis, the Newland property included soil units which where [sic] Class VII when nonirrigated but Class III when irrigated. Like the Newland property, the Applicant’s irrigation water has consistently been leased back for Deschutes River in-stream flows since 2016 as part of COID’s Instream Lease Program. See **Exhibit B**. But differing from the Newland property, the irrigation water in this case is irrelevant to the soil classification. **Exhibit A** clarifies that the predominate soil units on all three Properties are Class VII and VII*

*“even with supplemental irrigation water” and that “Irrigation does not improve most of each property and therefore the lack of usable land is the governing factor when considering the value and utility of each parcel.”*

*With regard to Lot 301, Kitzrow concluded that the lot’s “Class [VII] and [VIII] Order I delineations **will not** benefit substantially from the addition of irrigation waters hence the poor Capability Class rating.” With regard to Lot 500, Kitzrow concluded that “Irrigation will not improve the growing farm crops on most of the site.” And with regard to Lot 305, Kitzrow concluded that “Irrigation will not improve the growing of farm crops. This site is permanently degraded and will not produce crops on a large majority of this lot of record.”*

*Regarding the Applicant’s irrigation water specifically and Central Oregon’s limited water resources generally, the Applicant additionally submits **Exhibits C to K** to the record.*

The irrigation water on the subject property has been leased back each year since 2016 to improve Deschutes River in-stream flows. Exhibit B. This consideration alone is not dispositive and further must be considered in light of unrebutted testimony of Kitzrow that concludes the predominate soil type on the property is Class VII/Class VIII, even with irrigation water, Exhibit A; Exhibits 7-9 to the Burden of Proof. The Hearings Officer finds it is irrelevant whether if the leased water rights are available to the property for the purposes of this analysis. The leased irrigation rights do not compensate for the poor soils in a manner such that the subject property could be engaged in “farm use,” for the primary purpose of obtaining a profit in money. The Hearings Officer finds there is no evidence that a reasonable farmer would expect to apply irrigation water to the poor soils on the subject property (considering its size and location, as well) and still obtain a profit in money from agricultural uses on the property, with or without existing irrigation rights.

Without any evidence to the contrary to refute the evidence submitted by the Applicant, the Hearings Officer finds that the Applicant has established that existing and future availability of water for farm irrigation purposes is a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B).

**Existing Land Use Patterns**

The Applicant stated in its burden of proof that, “surrounding land use patterns also do not support an agricultural use of the Subject Property. Much of the surrounding lands are zoned residential and consist of a residential subdivision. Other surrounding land is zoned open space / parks, and is not used for agricultural purposes. The land nearby zoned EFU-TRB is not currently used for farming or other agricultural uses.”

The Hearings Officer disagrees with the Applicant with respect to the last sentence quoted from the burden of proof above. Some nearby properties are engaged in agricultural uses, as evidenced by irrigation rights and farm tax deferral. However, there is no evidence as to whether the agricultural use of such properties constitutes “farm use,” for the primary purpose of obtaining a profit in money. The property immediately to the north, while zoned EFU, is vacant, without irrigation rights and is not currently receiving farm tax deferral. To the south of the subject property is a parcel zoned Open Space and Conservation (OS&C), owned and operated by the Oregon Parks & Recreation Department. Only properties to

the east of the subject property that are zoned EFU, are partially irrigated and receiving farm tax deferral, while also having been developed with manufactured homes.

Nonetheless, the Hearings Officer finds that existing land use patterns are a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B). This is particularly so with the Highway 97 transportation corridor immediately adjacent to the subject property to the east and southeast, and rural residential uses to the west.. The record shows that, as traffic on Highway 97 has increased and a flood of new residents have located to Central Oregon over the past 30-40 years, farm land adjacent to the busy thoroughfare has been impacted by these changes. Drought conditions persist in the region, as well. Surrounding areas have been re-dedicated to rural residential use, as opposed to farming, and large farm tracts over 80 acres in size around the subject property do not exist.

The area is characterized by the heavily trafficked Highway 97 and a mix of rural residential uses, vacant EFU property that lacks irrigation rights, a tract that is not currently in use but is zoned OS&C, and resident-occupied, partially irrigated EFU parcels. There are various non-farm uses in the area, including a number of non-farm dwellings. The Hearings Officer finds that this determination does not ask whether the proposal is “consistent with existing land use pattern,” but instead asks whether, considering the existing land use pattern, the property is agricultural land. I find that it does not.

The Hearings Officer finds the Applicant has established that existing land use patterns is a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B).

**Technological and Energy Inputs Required**

The Applicant’s burden of proof states, “[g]iven the Subject Property has been not been [sic] farmed in recent (or distant) history, and the land has been used for equipment service and repair for at least 4 decades, farming the Subject Property at this time would require immense investment in technological and energy inputs, including irrigation systems, fertilization, and building proper infrastructure.” Technological and energy inputs required for agricultural use of the subject property also factor into the fact the property is not suitable for “farm use,” because it cannot be so employed for “**primary purpose of obtaining a profit in money.**”

Suggested uses by commentators do not address the profitability component of the definition of “farm use,” and do not rebut substantial evidence in the record that shows the required investments that preclude the establishment of a legitimate “farm use” on the property.

Exhibit QQ sets forth the difficulty associated with grazing goats on the property – particularly for obtaining a profit in money – and concludes that the same difficulties would frustrate any other farm operation. The record also includes a letter from Paul Schutt, the owner of a 40-acre farm in Tumalo. Exhibit O. His testimony speaks specifically to hemp production and concludes that “even the most experienced farmer would be well advised not to plant hemp for the foreseeable future,” because a “glut in the market is causing hemp farmers to suffer huge losses.” The Applicant observes that this testimony is notable because hemp was a crop in Central Oregon that, for several years, could justify expending substantial capital on specialized equipment and structures necessary to

establish a legitimate farm use. Other substantial evidence in the record on this consideration is found in Exhibits Q through HH.

The Hearings Officer notes that certain uses, such as storing farm equipment are not, in and of themselves “farm use,” as confirmed by LUBA in *Oregon Natural Desert Association v. Harney County*, 42 Or LUBA 149 (2002).

The Hearings Officer finds that agricultural uses of the subject property cannot be undertaken for the primary purpose of obtaining a profit in money due to the costs associated with technological and energy inputs required for any such use. No one presented any evidence to rebut the Applicant’s evidence that such costs preclude the owner from making a profit in money from farming the subject property. Therefore, the Hearings Officer finds that the Applicant has established that technological and energy inputs and associated costs thereof is a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B).

**Accepted Farm Practices**

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

The definition of “accepted farm practice,” like that of “farm use,” turns on whether or not it is occurring for the primary purpose of obtaining a profit. The *Wetherell* court relied on the taxation code in ORS 308A.056 to define “accepted farm practice” as “a mode of operation that is common to farms of a similar nature, necessary for the operation of these similar farms to obtain a profit in money and customarily utilized in conjunction with farm use.” *Wetherell, supra*, 52 Or LUBA at 681. LUBA determined in the *Aceti I* case that it is not an accepted farming practice in Central Oregon to irrigate and cultivate Class VII and VIII soils.

The Applicant is not required to show that no agricultural use could ever be made on the property; only that no reasonable farmer would attempt to engage in “farm use,” which is for the primary purpose of obtaining a profit. The Hearings Officer finds that substantial evidence in the record submitted by the Applicant, and not rebutted, establishes that operations required to turn a profit from agricultural uses on the subject property are unrealistic and not consistent with accepted farm practices. Financial investments that would be required to attempt to operate the subject property in a similar manner to the Humfleet Property or the Whistle Stop Farm & Flowers (see Exs. JJ, KK, LL and MM)<sup>6</sup> are infeasible due to the poor soils and other considerations, including location adjacent to Highway 97, graveled surfaces and other site constraints.

Oregon courts have consistently addressed profitability as an element of the definition of “agricultural land.” In *Wetherell v. Douglas County*, 342 Or 666 (2007), the Oregon

<sup>6</sup> The Applicant notes that Whistle Stop Farm & Flowers is engaging in unpermitted commercial activities which, in and of itself, is not an accepted farm practice.

Supreme Court held that profitability is a “profit in money” rather than gross income. In *Wetherell*, the Court invalidated a rule that precluded a local government from analyzing profitability in money as part of this consideration. *Id.* at 683. The Court stated:

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

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

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

*Id.* at 681-683.

The Hearings Officer finds that the Applicant has met its burden of showing the subject property cannot be used for agricultural purposes for the primary purpose of obtaining a profit in money and such is not “agricultural land” under all of the considerations of OAR 660-033-020(1)(a)(B)..

The Hearings Officer finds that substantial evidence in the record supports a determination that the subject property is not suited to commercial farming because no reasonable farmer would believe he or she could make a profit in money therefrom, considering all of the factors listed in OAR 660-033-020(1)(a)(B). No one presented any evidence to rebut the Applicant’s evidence that “accepted farming practices” would or could change the poor soils on the property to render it suitable for “farm use.” There are various barriers to the Applicant, or any other person, that preclude using the subject property to engage in agricultural activities for a profit.

In conclusion, the Hearings Officer finds that substantial evidence in the record supports a determination that each of the listed considerations in OAR 660-033-020(1)(a)(B)

preclude “farm use” on the subject property because no reasonable farmer would expect to make a profit in money by engaging in agricultural activities on the land.

**3. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING DCC 18.04.030 DEFINITION OF “AGRICULTURAL LAND”**

COLW argues that the definition of “agricultural land,” in DCC 18.04.030 excludes the definition of “farm use” in ORS 215.203(2)(a) and up-ends the Oregon Supreme Court’s decision in *Wetherell* because the County Code definition includes the phrase, “whether for profit, or not.” COLW cites *Brentmar v. Jackson County*, 321 Or 481, 497, 900 P.2d 1030 (1995) for the proposition that, even in EFU zones, Deschutes County can enact “more stringent local criteria” than state statutes.

COLW is wrong. The definition of “**agricultural land**” in DCC 18.04.030 is wholly consistent with ORS 215.203(2)(a) and case law in this state and does not exclude the “profit in money” component which defines “farm use” and guides analysis of whether or not property is in fact “agricultural land”:

*"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.*

COLW instead relies on the definition of “**agricultural use**,” which is not relevant. Many properties can be engaged in “agricultural use,” even if such properties do not constitute “**agricultural land**.” (hobby farms, for example). Merely because a property can be put to some, more broadly defined “agricultural use,” does not make it “agricultural land,” for the reasons set forth in detail in this Decision and Recommendation.

*"Agricultural use" means any use of land, whether for profit or not, related to raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof not specifically covered elsewhere in the applicable zone. Agricultural use includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. Agricultural use also includes the propagation, cultivation, maintenance and harvesting of aquatic species. Agricultural use does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees.*

The Hearings Officer finds that application of the County Code definition of “agricultural land” does not change the analysis in this Decision and Recommendation.

**4. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING RURAL INDUSTRIAL USES AND GOAL 14**

The Hearings Officer finds that the arguments of COLW and 1000 Friends concerning Goal 14 are improper attempts to re-litigate a matter that has been before the Deschutes County Hearings Officer, the Board of County Commissioners, LUBA and the Court of Appeals. *Central Oregon LandWatch v. Deschutes County*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2021-028 (“*Aceti*”), *aff’d* 315 Or App 673, 501 P3d 1121 (2021)). Moreover, COLW and 1000 Friends disagree on whether the factors set forth in *Shaffer v. Jackson County*, 17 Or LUBA 922 (1989) are applicable. *See also Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014). For the reasons set forth in detail below, the Hearings Officer finds that the *Shaffer* factors are not applicable because the eventual use of the subject property is uncertain, making it impossible to determine whether the *Shaffer* factors are satisfied.

As the Hearings Officer finds below, a use-by-use analysis of the uses permitted outright and conditionally in the RI zone to determine whether such uses are urban or rural in nature has been made by the Deschutes County Board of County Commissioners. Those findings are binding on the County in consideration of the subject applications.

**a. Analysis of LUBA and Court of Appeals Decisions in Aceti**

The recent *Aceti* LUBA opinion states, in relevant part:

*In 2018, the county amended the DCCP to allow RI designations and zoning of land outside the three existing exception areas. Petitioner appealed those amendments [in Central Oregon LandWatch v. Deschutes County, 79 Or LUBA 253, *aff’d* 298 Or App 375, 449 P3d 534 (2019)], arguing, among other things, that the county’s decision failed to comply with Goal 14 because the amendments would allow urban uses of rural lands. Petitioner further argued that the DCC RI zone regulations – which were not amended concurrently in 2018 with the DCCP amendments – allow urban uses of rural land. We rejected those arguments, concluding that the 2018 DCCP amendments are consistent with Goal 14 because (1) any future application for the RI plan designation would have to demonstrate that it is consistent with Goal 14 and (2) petitioner’s argument that the RI zone regulations allow urban uses was an impermissible, collateral attack on acknowledged land use regulations.*

*Aceti* (slip op at \*3) (internal citations omitted). DLCD has acknowledged the County’s RI code provisions. LUBA’s *Aceti* decision questions whether an analysis of the *Shaffer* factors [*Shaffer v. Jackson County*, 16 Or LUBA 871 (1988)] was necessary because the applicable DCC RI provisions have been repeatedly acknowledged by DLCD as consistent with Goal 14. Among other things, it stated:

*\*\* \* \* the county amended the DCC RI zone regulations in 2002 and DLCD acknowledged those regulations are consistent with Goal 14. In 2002, the RI plan designation was limited to certain geographic areas and specific properties. However, the 2002 Ordinances did not limit uses allowed in the RI zone to preexisting industrial uses. Instead, the 2002 Ordinances provided that the purpose of the RI plan designation 'is to recognize existing industrial uses in rural*

areas of the county and to allow the appropriate development of additional industrial uses that are consistent with the rural character, facilities and services.'

\*\*\* in 2018, the county amended the DCCP to make the RI plan designation available for properties other than those already zoned RI. We have no reason to believe that DLCD's acknowledgment of the 2002 Ordinances as consistent with Goal 14 was premised on the fact that the RI plan designation was at that time limited to specific geographic areas. However, we note that certain factors that indicate the urban nature of a use--such as proximity to a UGB or extension of public facilities--might be different on a new parcel as compared to those properties originally zoned RI prior to the 2018 DCCP amendments.

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"In adopting the 2018 DCCP amendments, the county took a belt-and-suspenders approach by requiring an applicant for a new RI plan designation to demonstrate compliance with Goal 14, even though the county had already concluded (and DLCD acknowledged) that the RI zone itself complies with Goal 14 by limiting uses to those that are rural in character. In [Central Oregon LandWatch v. Deschutes County, 79 Or LUBA 253, aff'd 298 Or App 375, 449 P3d 534 (2019)], we affirmed that belt-and suspenders approach in response to petitioner's Goal 14 challenge.

"In this case, the county agreed with intervenor that 'the policies of the DCCP, implemented by DCC Chapter 18.100, which is an acknowledged land use regulation, do not allow urban uses on RI designated and zoned land.' Petitioner does not assign error to that finding on appeal. That might have been the end of the Goal 14 inquiry. Nevertheless, perhaps because the county took a belt-and-suspenders approach to support the 2018 DCCP amendments by requiring an applicant to demonstrate compliance with Goal 14, the county further concluded that '[s]pecific findings with 'reasonable clarity' must be made to support a determination that the [DCC] and [DCCP] limit industrial uses to those that are rural in nature.' In what appears to us to be yet another belt-and-suspenders approach, the county applied the Shaffer test to explain why applying RI zoning to the subject property will not result in urban uses.

"Intervenor appears to have accepted and invited that second-step inquiry and neither assigns error to it on appeal nor argues that the county's Shaffer analysis is dicta or unnecessary, alternative findings in light of the county's collateral attack conclusion regarding the acknowledged DCC chapter 18.100. Accordingly, we assume for purposes of this decision, as the county did and the parties do, that the fact that the RI zone regulations have been acknowledged by DLCD to comply with Goal 14 is not independently sufficient to demonstrate the challenged post-acknowledgment plan amendment applying the RI plan designation and zone to the subject property also complies with Goal 14."

(slip op at \*12-13). Applicant asserts that the final paragraph above, read in conjunction with the preceding paragraphs, conclusively demonstrates that LUBA's formal Aceti holding is constrained to what was likely a superfluous "belt and suspenders" Shaffer analysis at issue in those proceedings. On appeal of this LUBA decision to the Oregon Court of Appeals, the Court ruled:



*“Aceti first argues that LUBA should not have applied the Shaffer test at all because the state agency overseeing land use planning, the Land Conservation and Development Commission, must have already determined that all the uses permitted in the County's RI zones are rural, not urban, when it acknowledged the County Plan. However, that argument was not raised before LUBA, and Aceti does not contend that LUBA committed plain error. Aceti also argues that LUBA misapplied the Shaffer test. However, Aceti has provided no basis under our standard of review that would permit us to displace LUBA's application of its own precedent.”*

*Central Oregon LandWatch v. Deschutes County*, 315 Or App 673, 680, 501 P3d 1121 (2021).

Based on the foregoing analysis and citations, the Applicant argues at page 14 of its June 14, 2022 final argument that LUBA and the Court of Appeals were persuaded by the notion that DLCD's acknowledgement of the County's DCC and DCCP provisions governing the RI zone should have set the Goal 14 issue to rest, but for the *Aceti* applicant undertaking a “belt and suspenders” *Shaffer* analysis.

The Applicant posits that what is dispositive for the subject application are the BOCC's findings regarding the RI zone. The Applicant's primary argument on this issue is that the DCC and DCCP provisions governing the RI zone ensure that no urban uses are allowed on rural lands. Based on that assertion, the subject application specifically does not include the same superfluous “belt and suspenders” *Shaffer* analysis. Therefore, LUBA's formal *Aceti* ruling which is constrained to that “belt and suspenders” analysis is inapplicable to the present application.

***b. BOCC's Formal Aceti Findings***

The record includes a copy of the Hearings Officer's October 8, 2020 decision in the *Aceti* matter. The BOCC, in turn, adopted that decision as its own, with the Hearings Officer's decision incorporated as the BOCC's findings attached and incorporated into Ordinance No 2021 -002 adopted on January 27, 2021. Pages 48 and 49 of the Hearings Officer's decision includes six findings conclusively demonstrating that the law is settled when it comes to the County's RI zone not allowing urban uses on rural lands.

*“First, LUBA has rejected the argument that DCC 18.100.010 allows urban uses as constituting an impermissible collateral attack on an acknowledged land use regulation. [Central Oregon LandWatch v. Deschutes County, 79 Or LUBA 253, aff'd.298 Or App 37s,449 P3d 534 (2019)].*

*“Second, DCC Chapter 18.100 implements DCCP Policies 3.4.9 and 3.4.23, which together direct land use regulations for the Rural Commercial and Rural Industrial zones to 'allow uses less intense than those allowed in unincorporated communities as defined by Oregon Administrative Rule 660-022 or its successor,' to 'assure that urban uses are not permitted on rural industrial lands.' The BOCC adopted this finding in support of Ordinance 2018-126, which was appealed and sustained by LUBA and the Court of Appeals.*

*"Third, as the BOCC found in adopting Ordinance 2018-126, which was appealed and sustained by LUBA and the Court of Appeals, the application of DCC Title 18 to any development proposed on Rural Commercial or Rural Industrial designated land will ensure that the development approved is consistent with the requirements set forth in DCCP Policies 3.4.12 and 3.4.27 do not adversely affect surrounding area agricultural or forest land, or the development policies limiting building size (DCCP Policies 3.4.14 and 3.4.28), sewers (DCCP Policies 3.4.18 and 3.4.31) and water (DCCP Policies 3.4.19 and 3.4.32) intended to limit the scope and intensity of development on rural land.*

*"Fourth, DCCP Policy 3.4.28 includes a direction that, for lands designated and zoned RI, new industrial uses shall be limited to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural area, for which there is no floor area per use limitation.*

*"Fifth, DCCP Policy 3.4.31 includes a direction that, for lands designated and zoned RI, residential and industrial uses shall be served by DEQ approved on-site sewage disposal systems.*

*"Sixth, DCCP Policy 3.4.32 includes a direction that, for lands designated and zoned RI, residential and industrial uses shall be served by on-site wells or public water systems."*

The Hearings Officer finds that the above findings are not constrained to the facts and circumstances at issue in the Aceti application. These findings apply universally to any application submitted relying on the County's DCC and DCCP RI provisions. LUBA succinctly described the above six findings as follows:

*"\* \* \* the county determined that even the most intensive industrial use that could be approved on the subject property under the RI regulations and use limitations would not constitute an urban use. The county found that the DCCP RI policies and implementing RI zone regulations in DCC 18.100.010 to 18.100.090 limit the scope and intensity of industrial development in the RI zone so that no urban industrial use can be allowed on the subject property. For example, as explained above, new industrial uses are limited to a maximum floor area of 7,500 square feet within a building and industrial uses must be served by on-site sewage disposal. DCCP Policy 3.4.28; DCCP Policy 3.4.31; DCC 18.100.040(H)(1); DCC 18.100.030(K)."*

Aceti (slip op at \*11 ) (internal citations to the record omitted).

The Hearings Officer finds that the law is settled on the question of whether the RI zone permits urban uses on rural lands. It does not. A belt-and-suspenders Shaffer analysis is not required. The Hearings Officer adopts the findings of the BOCC set forth in Ordinance No. 2021-002 (January 27, 2021) by this reference as the Hearings Officer's findings concerning the "urban" or "rural" nature of uses in the RI zone.

*As determined in Aceti, "even the most intensive industrial use that could be approved on the property under the RI regulations and use limitations would not constitute an urban use. ... [T]he [Deschutes County Comprehensive Plan] RI*

*policies and implementing RI zone regulations in DCC 18.100.010 to 18.100.090 limit the scope and intensity of industrial development in the RI one so that no urban industrial use can be allowed on the subject property.”*

The Hearings Officer finds that the findings in the *Aceti* application, adopted by the BOCC, are binding interpretations of DCC and DCCP provisions governing the County’s RI zone. The Hearings Officer declines to revisit these findings here, particularly given the well-established rule that local governments "may err in changing previously adopted interpretations" if doing so is a product of a design to act arbitrarily or inconsistently from case to case." *Foland v. Jackson County*, \_\_\_ Or LUBA \_\_\_, \_\_\_ (LUBA No 201 3-082, Jan 30, 2014) (slip op at \*4) (citing *Alexanderson v. Clackamas County*, 126 Or App 549, 552, 869 P2d 873 (1994)).

The Hearings Officer enters the same findings set forth above with respect to this application and finds that the application complies with Goal 14; no Goal 14 exception is required.<sup>7</sup> The County’s RI zone does not permit urban uses; this question has been asked and answered.

The Hearings Officer notes that the Applicant included a “Goal 14 exception” application in the alternative if the Board of County Commissioners determines that a Goal 14 exception is required. The Applicant’s Goal 14 exception application is addressed in detail in the findings below.

**5. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING DCC 22.20.015**

COLW argued in its May 31, 2022 open record submittal that the Hearings Officer should determine pursuant to DCC 22.20.015 “if the subject property is in violation of applicable land use regulations” due to “a current farm use or farm equipment maintenance and storage occurring on the subject property.” Presumably, COLW is arguing that the County cannot approve the subject applications due to an alleged code violation, per DCC 22.20.015(A). COLW did not provide any additional information or argument as to the relevance of the use of the subject property for such a use, which is allowed outright pursuant to DCC 18.16.020(A).

The Hearings Officer finds that DCC 22.20.015 is irrelevant because no violation has been established under DCC 22.20.015(C), and the record does not support a finding that the subject property is not in compliance with applicable land use regulations and/or conditions of approval of prior land use decisions or building permits.

The Hearings Officer finds that DCC 22.20.015 does not preclude the County’s consideration of the applications or its approval thereof.

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<sup>7</sup> The Applicant included an alternative request for a Goal 14 exception to address the possibility that the Board of County Commissioners will deviate from the aforementioned proclamation when addressing the *Aceti* matter on remand. But until and unless that occurs, the Applicant and the County are entitled to rely on the Board of County Commissioner’s precedent.

**B. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING APPLICABLE CRITERIA**

**Title 18 of the Deschutes County Code, County Zoning**

**Chapter 18.120. Exceptions**

Section 18.120.010. Nonconforming Uses.

***Except as otherwise provided in DCC Title 18, the lawful use of a building, structure or land existing on the effective date of DCC Title 18, any amendment thereto or any ordinance codified therein may be continued although such use or structure does not conform with the standards for new development specified in DCC Title 18. A nonconforming use or structure may be altered, restored or replaced subject to DCC 18.120.010. No nonconforming use or structure may be resumed after a one-year period of interruption or abandonment unless the resumed use conforms with the provisions of DCC Title 18 in effect at the time of the proposed resumption.***

**FINDING:** In the burden of proof submitted, there are several descriptions of the activities and uses that have taken place on the subject property related to the previously-verified nonconforming uses under files NCU-73-33 and SP-79-21. In the Staff Report, staff questioned whether nonconforming use verification should be made for purposes of the applications. The Applicant, at the hearing, conceded that the nonconforming uses on the subject property were potentially abandoned as a matter of law. The Applicant further agreed that the subject applications are not a replacement for a nonconforming use verification contemplated by DCC 18.120.010(C).

The Hearings Officer finds that, whether or not current uses of the property are lawful non-conforming uses, is not relevant to the determination of compliance with the applicable criteria for the proposal before the County. No applicable DCC provision, statute or rule requires a non-conforming use verification for purposes of review of the subject applications.

The Hearings Officer finds that the Applicant need not prove that the current uses of the property are lawful non-conforming uses to meet its burden of proof.

**Chapter 18.136, Amendments**

Section 18.136.010, Amendments

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

**FINDING:** The Applicant, also the property owner, requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The

Applicant filed the required Planning Division’s land use application forms for the proposal. The application is reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

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:** The Applicant submits that “the proposed rezone best serves the interest of the community by allowing Applicant to put the Subject Property to its most viable use.” The Hearings Officer finds that the four factors listed in DCC 18.136.020 are considered in order to determine whether the public interest is best served by rezoning the property. The Hearings Officer finds that a demonstration of these four factors by the Applicant constitutes proof that the public interest will be best served by rezoning the property.

***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 burden of proof statement:

*Per prior Hearings Officers decisions for Plan amendments and zone changes on EFU-zoned property, this paragraph establishes two requirements: (1) that the zone change conforms to the Plan and (2) that the change is consistent with the plan’s introduction statement and goals. Rezoning the Subject Property from EFU-TRB to RI will conform with the Comprehensive Plan and is consistent with the plan’s introductory statement, as set out below.*

- 1) *Conformance with the Comprehensive Plan.* Applicant is currently requesting a Plan amendment to re-designate the Subject Property from Agriculture to Rural Industrial. The rezone from EFU-TRB to RI will be consistent with the proposed Plan amendment requesting that that the property be designated Rural Industrial.
- 2) *Consistency with the Plan’s Introductory Statement and Goals.* In previous decisions, the Hearings Officer found the introductory statements and goals are not approval criteria for proposed plan amendments and zone changes<sup>8</sup>. 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-*

<sup>8</sup> Powell/Ramsey (file no. PA-14-2 / ZC-14-2) and Landholdings (file no. 247-16-000317-ZC, 318-PA)

judicial/and use permit applications. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004). There, LUBA held:

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

LUBA went on to hold in *Save Our Skyline* that it is appropriate to 'consider first whether the comprehensive plan itself expressly assigns particular role to some or all of the plan's goals and policies.' Section 23.08.020 of the county's comprehensive plan provides as follows:

The purpose of the Comprehensive Plan for Deschutes County is not to provide a site-specific identification of the appropriate land uses which may take place on a particular piece of land but rather it is to consider the significant factors which affect or are affected by development in the County and provide a general guide to the various decision which must be made to promote the greatest efficiency and equity possible, which [sic] managing the continuing growth and change of the area. Part of that process is identification of an appropriate land use plan, which is then interpreted to make decision about specific sites (most often in zoning and subdivision administration) but the plan must also consider the sociological, economic and environmental consequences of various actions and provide guidelines and policies for activities which may have effects beyond physical changes of the land (Emphases added.)

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

In *Bothman v. City of Eugene*, 51 Or LUBA 426 (2006), LUBA found it appropriate also to review the language of specific plan policies to

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

*“\*\*\* even where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require \*\*\* consistency with applicable plan provision.’ (Emphasis added.)*

*The county's comprehensive plan includes a large number of goals and policies. The Applicant's burden of proof addresses goals for rural development, economy, transportation, public facilities, recreation, energy, natural hazards, destination resorts, open spaces, fish and wildlife, and forest lands. The Hearings Officer finds these goals are aspirational in nature and therefore are not intended to create decision standards for the proposed zone change."*

*Hearings Officer Karen Green adhered to these findings in the Powell/Ramsey decision (file nos. PA-14-2/ZC-14-2), and found the above-referenced introductory statements and goals are not approval criteria for the proposed plan amendment and zone change.*

*This Hearings Officer also adheres to the above findings herein. Nevertheless, depending upon their language, some plan provisions may require "consideration" even if they are not applicable approval criteria. Save Our Skyline v. City of Bend, 48 Or LUBA 192, 209 (2004). I find that the following amended comprehensive plan goals and policies require such consideration, and that other provisions of the plan do not apply...."*

The Hearings Officer relies on the analysis set forth in prior Hearings Officers' decisions. This Decision and Recommendation reviews only the Comprehensive Plan Goals and policies that apply, addressed in detail in the Comprehensive Plan section below.

Based on the Applicant's demonstration of Comprehensive Plan conformance detailed in subsequent findings, the Hearings Officer finds that the zone change conforms to the Plan; and (2) that the change is consistent with the Plan's introductory statement and goals. Rezoning the Subject Property from EFU-TRB to RI will conform with the Comprehensive Plan and is consistent with the plan's introductory statement, as set out below.

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

**FINDING:** Section 3.4 of the Comprehensive Plan includes the following language for the rural industrial designation:

***Rural Industrial***

***The county may apply the Rural Industrial plan designation to specific property within existing Rural Industrial exception areas, or to any other specific property that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, this Comprehensive Plan and the Deschutes County Development Code, and that is located outside unincorporated communities and urban growth boundaries. The Rural Industrial plan designation and zoning brings these areas and specific properties into compliance with state rules by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.***

The subject property is not within any existing Rural Industrial exception areas and is located outside unincorporated communities and urban growth boundaries. The County may apply the RI plan designation to any other specific property (outside of an RI exception area, and outside unincorporated communities and urban growth boundaries) that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, the Deschutes County Comprehensive Plan (“DCCP”) and the Deschutes County Development Code. The Hearings Officer finds that the fact the subject property is outside of an RI exception area does not preclude consideration of the application.

There is no longer a “purpose” statement in DCC Chapter 18.100 regarding the intent of the RI zone.<sup>9</sup> Chapter 18.100 merely sets forth uses permitted outright, conditional uses, use limitations, dimensional standards, off-street parking and loading requirements, site design, “additional requirements” and solar setback requirements and includes a separate section concerning a limited use combining zone, Deschutes Junction. Without a “purpose and intent” statement for the RI zone, the Hearings Officer cannot make findings as to whether the application is consistent with the proposed zone classification’s purpose and intent.

As stated in Section 3.4 of the Comprehensive Plan, RI plan designation and zoning brings specific properties into compliance with state rules “by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.” The Hearings Officer finds the applications are consistent with the general statement in the DCCP regarding RI plan

<sup>9</sup> Former DCC 18.100.010 stated that the purpose of the RI zone is “to encourage employment opportunities in rural areas and to promote the appropriate economic development of rural service centers which are rapidly becoming urbanized and soon to be full-service incorporated cities, while protecting the existing rural character of the area as well as preserving or enhancing the air, water and land resources of the area.” As amended in 2021, there is no longer a purpose statement in this chapter concerning the RI zone.



designation and zoning, given that the RI zone does not allow urban uses. The Hearings Officer finds that the proposed change in designation and zone classification to RI will ensure that the property remains rural and that the uses allowed are less intensive than those allowed in unincorporated communities.

**C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:**

- 1. The availability and efficiency of providing necessary public services and facilities.**

**FINDING:** There are no plans to develop the property in its current state. The above criterion asks if the proposed zone change will *presently* serve public health, safety, and welfare. The Applicant provided the following response in the burden of proof statement:

*Necessary public facilities and services are available to serve the Subject Property. The Subject Property is served by Deschutes County Services, the Deschutes Public Library District, the Central Oregon Irrigation District, and Bend Garbage & Recycling. The Subject Property is already equipped with adequate water and sewage systems, as explained above [sic], to support industrial uses.*

*Deschutes Rural Fire Protection District #2 provides fire and ambulance services to the Subject Property, and the Deschutes County Sheriff provides policing services.*

*It is efficient to provide necessary services to the property because the property is already served by these providers and the Subject Property is close to the City limits of both Bend and Redmond. It is also adjacent to a rural residential subdivision. This criterion is met.*

Neighboring properties contain residential and open space & conservation uses, which have water service from a quasi-municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. The Applicant presented evidence that the property itself is already served by public service providers.

In the Staff Report, staff questioned whether the Applicant met its burden of proof on this criterion given potential transportation safety issues concerning a privately constructed/maintained bridge over the canal which serves as access to the majority of the subject property. The Hearings Officer notes that the fire department did not comment on the applications nor otherwise express any concerns regarding adequacy of access to the property for emergency services.

Deschutes County has not requested or required that the bridge be dedicated to public use as a condition of approval of the applications, and the County has generally imposed a moratorium on adding any roads or bridges to the County’s transportation system. At the hearing, the Applicant acknowledged that replacement of the existing bridge may be initiated by it directly, or that the County could require such replacement as a condition of approval for the future development of the property and will require further coordination with COID, as noted in COID’s comments on these applications.

The Hearings Officer finds that the bridge is not a “public facility” to be evaluated under this criterion. Findings on compliance with TSP requirements are set forth in detail below, incorporated herein by this reference.

Many DCC 18.100.010 uses are outright uses, the future development of which will be subject to review of public services and facilities availability. Prior to development of the properties, the Applicant will be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permitting, building permitting, and sewage disposal permitting processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

The Hearings Officer finds this criterion is met.

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

**FINDING:** The Applicant’s burden of proof statement addresses potential impacts on surrounding land uses as related to each individual policy and goal item within the County’s Comprehensive Plan, addressed in detail in subsequent findings.

Impacts to surrounding land uses resulting from the requested rezone and re-designation must be determined to be consistent with the specific goals and policies in the DCCP. Specific comprehensive goals and policies pertaining to these surrounding land uses are discussed in the section of this decision addressing the DCCP, in the findings below.

The Hearings Officer’s review includes consideration of the range of uses allowed outright and conditionally in the RI zone which inform a decision on whether expected or anticipated impacts of such potential uses on surrounding land use will be consistent with the specific goals and policies in the DCCP. Although no specific development is proposed at this time, the Hearings Officer notes that potential impacts to surrounding land use from industrial uses generally include traffic, visual impacts, odor, dust, fumes, glare, flashing lights, noise, and similar disturbances. Again, such impacts are considered in light of existing impacts of development and roads in the surrounding area.

Based on the Applicant’s demonstration of Comprehensive Plan conformance set forth in detail in subsequent findings and incorporated herein by this reference, the Hearings Officer finds the application complies with the above criterion.

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

**FINDING:** The Applicant is proposing to rezone the property from EFU to RI and re-designate the property from Agriculture to Rural Industrial. The Applicant provided the following response in the burden of proof statement:

*Both mistake and change in circumstances are applicable to the Subject Property. As to mistake, in 1978, the County Board of Commissioners, upon reviewing a*

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*request by the then owner of the Subject Property to rezone the Subject Property from A-1 (exclusive agricultural) to C-2, decided to rezone only Tax Lot 500, but changed the zoning to "AS," which "allows just about any kind of commercial" activity. See **Exhibit 11**. That decision mistakenly did not rezone Tax Lot 301, despite the Applicant at the time explaining to the Board of Commissioners that "without this zone change his land is virtually worthless" due to it being landlocked and due to the uses. As to change in circumstances, the Subject Property has been irrevocably committed to non-agricultural uses through decades of using the property for equipment service and rentals/sales. The land, which may have previously been considered suitable for farming, no longer is. Rather it is made up predominantly of Class 7 or 8 soils, which are unsuitable for agricultural use. See **Exhibits 7-9**. For these reasons, this Application meets the requirements of Criterion D.*

**Mistake**

For the reasons set forth below, the Hearings Officer finds that a "mistake" was not made. The 1978 File No. Z-78-23 proceeding materials are included in the record and establish that the County made a considered, deliberate decision to rezone only Tax Lot 500 and to deny the application to rezone Tax Lot 301. The then-applicant did not appeal the County Board of Commissioner's decision to deny the application to rezone Tax Lot 301. The Hearings Officer finds that the unchallenged decision cannot now be considered to be the product of "mistake" under Oregon law. The Applicant cannot now collaterally attack this prior decision and claim it to be the product of "mistake."

In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

*As the Hearings Officer found in Aceti 1, I find that the original EFU zoning of the subject property was not a mistake at the time of its original designation. The property's EFU designation and zoning were appropriate in light of the soil data available to the county in the late 1970s when the comprehensive plan and map were adopted.*

The Hearings Officer makes a similar finding with respect to the subject applications. The EFU zoning of the subject properties was not a mistake at the time of its original designation. The properties' EFU designation and zoning were appropriate in light of the soil data available to the County in the late 1970s when the comprehensive plan and map were adopted. For the foregoing reasons, the Hearings Officer finds that "mistake" does not support the Applicant's requested zone change for the subject properties.

**Change in Circumstances**

In *Aceti* (247-20-000438-PA, 439-ZC), as well as in File Nos. 247-21-00616-PA/617-ZC and *Eden Properties*, File Nos. 247-21-001043-PA/1044-ZC, the Hearings Officer found that new soil data could be considered evidence of a change in circumstances between the time of the original zoning (when the County did not conduct an individualized soils analysis on a farm-by-farm basis), or – as here – the time of the last zoning of the subject property, which was December 7, 1992 when the property was assigned to the EFU-TRB subzone under Ord. 92-065 - and the time when an Order I Soil Survey was conducted by the property owner or applicant to support an application for rezone. The County has an

established practice when it comes to interpreting and applying DCC 18.136.020(D) such that the additional information provided by a site specific Order I Soil Study may constitute a “change in circumstances.” The Hearings Officer rejects COLW’s argument that Order I Soils Surveys are irrelevant for purposes of this criterion.

While original/most recent EFU zoning of a property may not be a “mistake,” given that the County relied on available soils data for such zoning and designation decision-making, new, more in-depth information not available to the County regarding soils is – in and of itself – a change of circumstances pursuant to which the County may consider a requested rezone. What has changed is the information available to the County. The County cannot now ignore the Order I Soil Surveys introduced into the record and supporting testimony which show that the subject property is predominantly characterized by soil capability classes VII and VIII.

In its May 31, 2022 open record submittal, the Applicant stated at pages 2-3:

*As understood by the Applicant, this issue stems directly from the April 26, 2022 comment letter submitted by Central Oregon LandWatch (“COLW”). There are several “changes in circumstances” that have occurred since the Properties were most recently rezoned on December 7, 1992, that justify the subject application. Those changes range from shifting development patterns in the area to substantial changes in the region’s water resources. The most obvious change, however, is that the parties and the County have more accurate soil data at their disposal [sic] because the Applicant commissioned Class I Soil Surveys for the Properties. On that particular issue, it appears that COLW is perhaps trying to re-litigate a settled issue.*

*The County last considered a Class I Soil Survey as a “change in circumstance” in a recent land use proceeding before the same Hearings Officer concerning property owned by Anthony Aceti (File Numbers 247-20-000438-PA / 429-ZC, “Aceti”). That decision succinctly concluded that “new soil data could be considered a change in circumstances,” (Pg 22). The Board of County Commissioners, in turn, agreed with that conclusion, and adopted the Aceti Hearings Officer’s decision as its own by including said decision as Exhibit F to Ordinance No. 2021-002. Under the circumstances, it would be inappropriate for the Hearings Officer to now either interpret or apply DCC 18.136.020(D) in a manner inconsistent with Ordinance No. 2021-002.*

*In addition to the Order 1 Soil Surveys already prepared by Gary A. Kitzrow and already included in the record as Exhibits 7, 8 and 9 attached to the Applicant’s Burden of Proof, attached hereto is an additional correspondence provided by Kitzrow. See **Exhibit A**. Kitzrow’s supplemental testimony includes the following explanation:*

*“Order I Soil Surveys are site-specific and have a high confidence interval and specificity. In other words, while Order III USDA soil surveys (published at 1:24,000) are a foundation for soil series/map unit concepts in the general area under review our current maps for this Order I Soil Survey are inventoried at a scale of 1:831 and 1:738 for this site-specific report In fact, in the original USDA map cited in our original report and*

*henceforth sanctioned by the DLCD, it says right in the notation for the actual enclosed soil map, “Soil Map may not be valid at this scale” which it is not in this particular case. \* \* \* Soil series concepts for the subject area in the USDA report are certainly valid and based upon solid Soil Survey principles, however, the actual soil map units, distribution and quantification of each unit is not always valid at this very detailed site-specific finite land base. This is a major distinct between Order I and Order III Soil Surveys. Order I Soil Surveys are represented by a scale reflective of the very small land base under consideration. Order III Soil Surveys are general in nature since their intended use is for agriculture, ranching and forest management and not for land use decisions and rezoning considerations. **Given these facts above, our current Order I Soil Survey is, in fact, a REPLACEMENT and NOT a supplement for the subject properties regarding soil map and Capability Class/Soil Efficacy considerations.”***

*Id. (emphasis in original).*

As set forth in the Preliminary Findings and Conclusions above, the Hearings Officer does not find it “suspect” that an Order I Soil Survey contradicts NRCS soil classifications performed at a higher, landscape level. Rather, the use of Order I soil surveys to provide more detailed information is specifically contemplated and allowed by ORS 215.211(1) and OAR 660-033-0030. COLW did not introduce any competing evidence of a different Order I soil survey that reached conclusions that diverge from those of the Applicant’s soil scientist.

Contrary to COLW’s arguments, an applicant does not need to establish that the soils themselves have changed on the subject property. DCC 18.136.020(D) does not require “a change in the physical characteristics since the property was last zoned.” The Hearings Officer declines to add new language to the provisions of the Code under the guise of “interpreting” it. Nonetheless, the Hearings Officer finds that the Applicant’s certified soil scientist noted significant portions of “disturbed” soils, cut and fill operations, topsoil removal and compaction, which could evidence a change in the physical characteristics of the soils on the property.

The Applicant also addressed the fact that the region has been experiencing a years-long drought, affecting the amount of available water resources. The Applicant noted at the public hearing that it does not make sense to use limited water resources to irrigate poor soils. It has been leasing back irrigation waters associated with the subject property each year since 2016. COLW’s evidence acknowledges the region’s changing water resources (Exs. E, F, G and I). The record further evidences that continued depletion of regional water resources is not only a “change in circumstances” but is impacting, and will continue to impact public interests (Exs. C through K). The Applicant suggests that “eliminating irrigation inefficiencies,” as called for by COLW, should also include allowing property owners to rezone their property if it is shown not to be agricultural land. The Hearings Officer agrees and finds that diminishing water resources in the region independently evidences a “change in circumstances” under this criterion.

Finally, the Applicant’s burden of proof statement at page 8 noted several of the reasons a requested rezone of the subject property was denied in 1978 including the County’s desire to preserve “openness,” and prevent commercialization along Highway 97. The File Nos. 247-21-000881-PA, 882-ZC  
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Applicant discussed the fact, not disputed by any commentator, that the Highway 97 corridor between Bend and Redmond has been significantly developed since 1978, along with a large influx of population to the area since that time.

The Hearings Officer finds that the Order I Soil Survey prepared for the subject property, the current drought in the area and strain on available water resources, and the increasing commercialization along Highway 97 and population influx into the area all evidence a “change in circumstances” since the County’s last zoning of the property in 1992. Therefore, this criterion is met.

**Deschutes County Comprehensive Plan**

**Chapter 2, Resource Management**

Section 2.2 Agricultural Lands

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

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*In the Landholdings decision (and Powell/Ramsey decision) the Hearings Officer found that this goal is an aspirational goal and not an approval criterion. The Subject Property does not constitute agricultural land that must be preserved. The Soil Assessments show that each tax lot comprising the Subject Property is predominantly comprised of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCD definitions.*

In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

*“The Hearings Officer found in Aceti 1 this is an aspirational goal and not an approval criterion. LUBA determined that the subject property does not constitute Agricultural Lands under OAR 660033-0020(1); this finding is binding under the law of the case doctrine as discussed above.*

*Substantial evidence in the record supports a finding that the subject property does not constitute agricultural land that must be preserved as set forth in the Applicant’s site-specific soil study and as previously found by the Hearings Officer, the BOCC and LUBA. There is no evidence in the record that the proposal will adversely impact surrounding agricultural lands or the agricultural industry, particularly considering the surrounding road network, impacts of nearby heavy traffic and transportation, impacts due to the expansion of US 97 and surrounding commercial and industrial uses already in existence.”*

As set forth in the Preliminary Findings and Conclusions, incorporated herein by this reference, the Hearings Officer finds substantial evidence in the record supports a finding that the subject property is not “agricultural land,” and is not land that could be used in conjunction with adjacent property for agricultural uses.

There is no evidence that the requested plan amendment and rezone will contribute to loss of agricultural land in the surrounding vicinity. I find that the agricultural industry will not be negatively impacted by re-designation and rezoning of the subject property. Therefore, the Hearings Officer finds the applications are consistent with Section 2.2, Goal 1, “preserve and maintain agricultural lands and the agricultural industry.”

***Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.***

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

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

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

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

*In the Landholdings decision (and Powell/Ramsey decision), the Hearings Officer found that this policy is directed at the County rather than an individual Applicant. Applicant is requesting that the subject property be rezoned from EFU-TRB to RI and that the Plan designation be changed from Agriculture to Rural Industrial because the Subject Property is not Agricultural Land subject to Goal 3. The proposed rezone and Plan amendment is allowed by, and in compliance with, State Statute, Oregon Administrative Rules, and the Plan. The requested change is similar to that approved by Deschutes County in the Landholdings case and in PA-11-1/ZC-11-2, which related to land owned by the State of Oregon (DSL). In the DSL decision, Deschutes County determined that State law as interpreted in Wetherell v. Douglas County, 52 Or LUBA 677 (2006), allows this type of amendment. In Wetherell, LUBA explained:*

*As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the property.*

*Wetherell*, 52 OR LUBA at 678-679 (citing *Caine v. Tillamook County*, 25 Or LUBA 209, 218 (1993); *DLCD v. Josephine County*, 18 Or LUBA 798, 802 (1990)). On appeal to both the Oregon Court of Appeals and the Oregon Supreme Court, neither court disturbed LUBA’s ruling on this point, and the Oregon Supreme Court even changed the test for determining whether land is agricultural land to make it less stringent. *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007). Specifically, the Supreme Court held:

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

*Wetherell*, 342 Or at 677. The *Wetherell* court further held that when deciding whether land is agricultural land “a local government may not be precluded from considering the costs or expenses of engaging in those activities.” *Id.* at 680.

*The Subject Property is primarily composed of Class 7 and 8 nonagricultural soils, and as such, farm-related endeavors would not be profitable. This Application complies with Policy 2.2.3.*

In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

*“The Hearings Officer found in Aceti 1 that this policy is directed at the County rather than an individual Applicant. In any case, the Applicant has requested a quasi-judicial plan amendment and zone change to remove the EFU designation and zoning from the subject property. LUBA has determined that the subject property is not “Agricultural Land” subject to Goal 3. The Hearings Officer finds the Applicant’s proposal is authorized by policies in the DCCP and is permitted under state law.”*

The facts presented by the Applicant for the subject application are similar to those in the *Wetherell* decision and in the aforementioned Deschutes County plan amendment and zone change applications. For the reasons set forth above in the Preliminary Findings and Conclusions, incorporated herein by this reference, the Hearings Officer finds the subject property is not agricultural land and does not require an exception to Statewide Planning Goal 3 under state law. The applications are consistent with this Policy.

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

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*In the Landholdings decision (and Powell/Ramsey decision), the Hearings Officer found this policy is directed at the County rather than at an individual Applicant. Applicant’s proposal complies with the DCC and any lack of clarity by the County in regard to the conversion of EFU designations does not prevent Applicant from*



requesting a zone change. Further, the County's interpretation of Policy 2.2.3, discussed above, spells out when and how EFU parcels can be converted to other designations.

In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

*"The Hearings Officer found in Aceti 1 that this policy is directed at the County rather than at an individual Applicant. In said decision, the Hearings Officer cited a previous decision for file nos. PA-14-2 and ZC-14-2 that stated, 'In any event, in my decision in NNP (PA-13-1, ZC-13-1) I held any failure on the county's part to adopt comprehensive plan policies and code provisions describing the circumstances under which EFU-zoned land may be converted to a non-resource designation and zoning does not preclude the county from considering quasi-judicial plan amendment and zone change applications to remove EFU zoning.'*

*Hearings Officer Green determined in file nos. 247-14-000456-ZC, 457-PA that 'any failure on the county's part to adopt comprehensive plan policies and code provisions describing the circumstances under which EFU-zoned land may be converted to a non-resource designation and zoning does not preclude the county from considering quasi-judicial plan amendment and zone change applications to remove EFU zoning.' Consistent with this ruling, I find that, until such time as the County establishes policy criteria and code on how EFU parcels can be converted to other designations, the current legal framework can be used and must be addressed."*

This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. The Hearings Officer finds that, without County-established policy criteria and code provisions that provide guidance on how EFU parcels can be converted to other designations, the current legal framework will be used and addressed. The Hearings Officer adheres to the County's previous determinations in plan amendment and zone change applications and finds the proposal is consistent with this policy.

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

**Policy 2.2.13 Identify and retain accurately designated agricultural lands.**

**FINDING:** In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

*The Hearings Officer found in Aceti 1 that this policy is directed at the County rather than an individual Applicant. Nonetheless, as determined by LUBA and binding on the parties, I find that the subject property does not constitute "Agricultural Land."*

The Hearings Officer finds this plan policy requires the County to identify and retain agricultural lands that are accurately designated. Substantial evidence in the record supports a finding that the subject property is not agricultural land as detailed above in the Preliminary Findings and Conclusions, incorporated herein by this reference. Further

discussion on the soil analysis provided by the Applicant is detailed under the OAR Division 33 criteria below. The Hearings Officer finds the applications are consistent with this policy. The Applicant’s compliance with Deschutes County Code provisions applicable to the subject applications is addressed in separate findings herein.

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:** In Aceti (247-20-000438-PA, 439-ZC), the Hearings Officer found:

*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 ZC14-2 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.*

The Applicant is not proposing a specific development at this time. The Applicant will be required to address this criterion during development of the subject property, which will be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat). The Hearings Officer finds this policy does not apply to the subject applications.

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.***

**FINDING:** These policies are fulfilled by the County’s Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. The subject properties adjoin a property to the south (Tax Lot 700, Assessor’s Map 16-1223) which is currently zoned Open Space & Conservation (OS&C) and owned by Oregon Parks & Recreation Department. The subject properties are also located within the Landscape Management (LM) Combining Zone associated with the scenic corridor of Highway 97. The subject properties themselves are zoned EFU and are not included within the OS&C zoning district and the regulations applicable to the LM Combining Zone are applicable only when a specific development proposal is applied for within the Combining Zone.

The Hearings Officer finds that the subject properties do not constitute significant open spaces subject to the Goals and Policies of Deschutes County Comprehensive Plan Chapter 2, Section 2.7 and have not been inventoried in Chapter 5, Section 5.5 of the DCCP as land that is an “area of special concern,” nor “land needed and desirable for open space and scenic resources. The Hearings Officer further finds that review of compliance with the LM Combining Zone is not required within the scope of the subject Plan Amendment/Zone Change applications.

For these reasons, the Hearings Officer finds that these provisions of the DCCP are inapplicable to consideration of the proposed zone change and plan amendment.

**Chapter 3, Rural Growth**

Section 3.4, Rural Economy

***Rural Commercial and Rural Industrial***

***In Deschutes County some properties are zoned Rural Commercial and Rural Industrial. The initial applications for the zoning designations recognize uses that predated State land use laws. However, it may be in the best interest of the County to provide opportunities for the establishment of new Rural Industrial and Rural Commercial properties when they are appropriate and regulations are met. Requests to re-designate property as Rural Commercial***

*or Rural Industrial will be reviewed on a property-specific basis in accordance with state and local regulations.*

...

**Rural Industrial**

*The county may apply the Rural Industrial plan designation to specific property within existing Rural Industrial exception areas, or to any other specific property that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, this Comprehensive Plan and the Deschutes County Development Code, and that is located outside unincorporated communities and urban growth boundaries. The Rural Industrial plan designation and zoning brings these areas and specific properties into compliance with state rules by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.*

*The county originally applied the Rural Industrial designation to the following acknowledged exception areas.*

- **Redmond Military**
- **Deschutes Junction**
- **Bend Auto Recyclers**

**Existing Rural Industrial Designated Exception Areas**

*The Redmond Military site consists of tax lot 1513000000116 and is 35.42 acres, bounded by the Redmond Urban Growth Boundary to the west and agricultural lands (EFU) surrounding the remainder of the property.*

*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.*

*Bend Auto Recyclers consists of tax lot 1712030000111 and is 13.41 acres, bounded by Highway 97 to the west, and Rural Residential (MUA-10) lands to east, north and south.*

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*This Application proposes a zoning change to RI. The Subject Property is located near, but is not part of, the Deschutes Junction site, and as such rezoning to RI would be consistent with nearby land uses. Applicant’s current plan for the Subject Property, should this Application be approved, is to develop a mini-storage facility, which is an allowed conditional use in the RI zone. See DCC 18.100.020.M. However, those plans are not final. Applicant ultimately wishes to develop the*

*Subject Property consistent with the uses allowed (outright or conditionally) in the RI zone. The Application thus complies with this Policy.*

The Hearings Officer reviews specific goals and policies in DCCP Section 3.4, Rural Economy, in specific findings below.

Section 3.4, Rural Economy

***Goal 1, Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.***

**FINDING:** The Applicant’s burden of proof does not provide a response to the above Goal, however, the Hearings Officer notes that Goals are long-term outcomes the County hopes to achieve by implementing the DCCP, whereas Policies set preferred direction and describe what must be done to achieve stated Goals. The Hearings Officer addresses with specific DCCP policies, consistency with which establishes consistency with this Goal.

***Policy 3.4.1 Promote rural economic initiatives, including home-based businesses, that maintain the integrity of the rural character and natural environment.***

***a. Review land use regulations to identify legal and appropriate rural economic development opportunities.***

**FINDING:** The Hearings Officer finds that Policy 3.4.1 in general, and subsection (a) specifically, provides direction to the County, rather than an applicant to “promote rural economic initiatives... that maintain the integrity of the rural character and natural environment” by, among other things, “review[ing] land use regulations to identify legal and appropriate rural economic development opportunities.” The Hearings Officer finds this Policy 3.4.1 is not applicable to the Applicant.

***Policy 3.4.23 To assure that urban uses are not permitted on rural industrial lands, land use regulations in the Rural Industrial zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 66022 or any successor.***

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The uses allowed by the RI zone are suitable allowable uses for the Subject Property, and are compatible with the current state of the Subject Property, which, as discussed throughout this Application, is not suitable for farming or agriculture due to its soils and past land uses on the Subject Property. The Application thus complies with this Policy.*

The Hearings Officer finds this policy is directed at the County with respect to its adoption of land use regulations and uses authorized in the RI zone, and not to an individual applicant. The RI code is acknowledged, valid, and does not permit urban uses, as the Hearings Officer determined in the Preliminary Findings and Conclusions set forth in detail above, incorporated herein by this reference.

In LUBA 2021-028, a remand of *Aceti* (247-20-000438-PA, 439-ZC), the following findings related to the above Policy were included:

*Ordinance 2002-126 adopted what is now DCCP Policy 3.4.23, which applies to lands designated and zoned RI and provides: 'To assure that urban uses are not permitted on rural industrial lands, land use regulations in the [RI] zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successor.' Ordinance 2002127 amended DCC chapter 18.100, the RI zone regulations. On January 23, 2003, DLCD issued Order No. 001456, acknowledging the 2002 Ordinances as consistent with Goal 14.*

Regardless of the inapplicability of this policy to the subject applications, the Hearings Officer notes that the Applicant is requesting a zone change, and has not submitted an application for any particular use at this time. Subsequently, the County will consider application(s) to approve permitted RI uses on the property, which future land use decision(s) must be consistent with RI land use regulations which ensure that any use allowed is less intensive than those allowed for unincorporated communities in OAR 660-22 or any successors.

To the extent this Policy is applicable to the Applicant, the Hearings Officer finds the applications are consistent therewith.

***Policy 3.4.27 Land use regulations shall ensure that new uses authorized within the Rural Industrial sites do not adversely affect agricultural and forest uses in the surrounding area.***

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*If this request for Plan Map amendment and rezone is approved, the land use regulations relating to RI sites ensure that any use allowed by the RI zone will not adversely affect any agricultural uses in the area surrounding the Subject Property. Indeed, none of the immediately adjacent properties are in agricultural use at this time. The Application thus complies with this Policy.*

There are no identified forest uses in the vicinity and, juniper, the predominant tree species in the vicinity is not merchantable. Adjacent Tax Lots 300 and 306 appears to be in farm use, based on aerial photography, and are receiving farm tax assessment.

The Hearings Officer finds this policy is directed at the County with respect to its adoption of land use regulations for uses allowed in the RI zone. The policy is not applicable to an individual applicant. The Applicant's proposal does not change the land use regulations in the RI Zone. Substantial evidence in the record supports a finding that the zone change and plan amendment will not have an adverse effect on agricultural and forest uses in the surrounding area.

To the extent this policy is applicable to the Applicant, the Hearings Officer finds the applications are consistent therewith.

**Policy 3.4.28 New industrial uses shall be limited in size to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural areas, for which there is no floor area per use limitation.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*Applicant does not at this time propose any new use or development on the Subject Property, but wishes to develop the Subject Property in the future consistent with the allowable uses in the RI zone. If this Application is approved, approval of any new industrial use can be conditioned to require the size limitations set forth in this Policy.*

The Hearings Officer found in *Aceti 1* that this policy applies to quasi-judicial applications and is inapplicable to an applicant for a proposed rezone and plan amendment. This policy is codified in DCC Chapter 18.100 and is implemented through those provisions. The Applicant is not applying for any specific building permit, site plan or conditional use approval at this time, and the proposal does not change the land use regulations in the RI Zone.

This policy is implemented through the County’s adoption and enforcement of DCC Chapter 18.100, which will apply at the time the Applicant submits any specific building permit, site plan or conditional use approval application. The proposal does not change the land use regulations in the RI Zone. Therefore, the policy is not applicable to the Applicant’s proposal. To the extent this policy is applicable to the Applicant, the Hearings Officer finds the applications are consistent therewith.

**Policy 3.4.31 Residential and industrial uses shall be served by DEQ approved onsite sewage disposal systems.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is served by an approved on-site sewage disposal system as shown on **Exhibit 12**. The Application thus complies with this Policy.*

The Hearings Officer finds that no specific use is proposed by the Applicant at this time. This policy is codified in DCC Chapter 18.100 and is implemented through those provisions. The Applicant is not applying for any specific building permit, site plan or conditional use approval at this time. At the time a future use is proposed, the County shall, consistent with this policy and DCC Chapter 18.100, ensure that such use is served by DEQ approved onsite sewage disposal systems.

The record shows that a 1982 finalized septic permit (permit no. 247-S5813) exists for Tax Lot 301 and a separate 1982 finalized septic permit (permit no. 247-FS222) exists for Tax Lot 500. Property records show Tax Lot 305 was previously a portion of Tax Lot 301 (based on a Warranty Deed dated August 19, 1981) and served by the same 1982 septic permit under permit no. 247-S5813.

The Hearings Officer finds the subject applications are consistent with this policy, to the extent applicable to the Applicant at this time.

***Policy 3.4.32 Residential and industrial uses shall be served by on-site wells or public water systems.***

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is served by an on-site well as shown on **Exhibit 5**. The Application thus complies with this Policy.*

The Hearings Officer finds that no specific use is proposed by the Applicant at this time. This policy is codified in DCC Chapter 18.100 and is implemented through those provisions. The Applicant is not applying for any specific building permit, site plan or conditional use approval at this time. At the time a future use is proposed, the County shall, consistent with this policy and DCC Chapter 18.100, ensure such use is served by on-site well(s) or public water systems.

The record includes a well agreement (Exhibit 5) for the subject property. While it is unclear whether potential future industrial uses of the property may rely on water from the well, future review of any land use and/or building permit will require proof that any proposed use or development will be served by on-site wells or public water systems.

The Hearings Officer finds the subject applications are consistent with this policy, to the extent applicable to the Applicant at this time.

***Policy 3.4.36 Properties for which a property owner has demonstrated that Goals 3 and 4 do not apply may be considered for Rural industrial designation as allowed by State Statute, Oregon Administrative Rules, and this Comprehensive Plan. Rural Industrial zoning shall be applied to a new property that is approved for the Rural Industrial plan designation.***

**FINDING:** As set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds that Goal 3 does not apply to the subject property because it is not “agricultural land.” The record shows that Goal 4 does not apply to the subject property, as well. There are no identified forest uses in the vicinity and, juniper, the predominant tree species in the vicinity is not merchantable.

The Hearings Officer finds that the Applicant has demonstrated that Goals 3 and 4 do not apply to the subject property. Therefore, the subject property can be considered for the proposed Rural Industrial designation and Rural Industrial zoning as proposed. Compliance with applicable ORS, OAR, and Comprehensive Plan provisions are addressed herein.

The Hearings Officer finds the applications are consistent with this Policy.



Section 3.5. Natural Hazards

**Goal 1 Protect people, property, infrastructure, the economy and the environment from natural hazards.**

**FINDING:** The Hearings Officer finds this Goal is directed at the County rather than at an individual applicant. Nonetheless, I find there are 'no mapped flood or volcano hazards on the subject property or in the surrounding area. Additional hazards include wildfire, earthquake, and winter storm risks, which are identified in the County's DCCP. There is no evidence the proposal would result in any increased risk to persons, property, infrastructure, the economy and the environment from unusual natural hazards. The Hearings Officer finds the applications are consistent with this Goal.

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 4.1 Deschutes County shall:**

- a. **Consider the road network to be the most important and valuable component of the transportation system; and**
- b. **Consider the preservation and maintenance and repair of the County road network to be vital to the continued and future utility of the County’s transportation system.**

...

**Policy 4.3 Deschutes County shall make transportation decisions with consideration of land use impacts, including but not limited to, adjacent land use patterns, both existing and planned, and their designated uses and densities.**

**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:** The Applicant provided the following response in the burden of proof statement:

*The Hearings Officer in the Landholdings decision found that Policy 4.4 applies to the County and not to individual Applicants. Policies 4.1 and 4.3 similarly should apply to the County and not to individual Applicants. Regardless, the Subject Property borders Highway 97 on the east and has legal access onto the highway. As explained more fully in the Transportation Planning Rule section below, while the proposed Plan Map amendment and rezone would likely impact transportation facilities, Applicant would agree to a use limitation and traffic cap for the Subject Property.*

The Hearings Officer finds these policies apply to the County, which advise it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. These policies also advise the County to consider the existing road network and potential land use impacts when reviewing for compliance with plan amendments and zone changes. The County complies with this direction by determining compliance with the Transportation Planning Rule (TPR), also known as OAR 660-012, as set forth below in subsequent findings.

The Hearings Officer finds the subject applications are consistent with these policies, to the extent applicable to the Applicant.

**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 a 6.5-mile radius. The property does not contain merchantable tree species and there is no evidence in the record that the property has been employed for forestry uses historically. None of the soil units comprising the parcel are rated for forest uses according to NRCS data.

The Hearings Officer finds the subject property does not qualify as forest land. These regulations do not apply to the applications.

**DIVISION 33 – AGRICULTURAL LAND**

OAR 660-033-0010, Purpose

**The purpose of this division is to preserve and maintain agricultural lands as defined by Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799.**

**FINDING:** The Applicant provided the following response in its burden of proof:

*The Subject Property does not constitute agricultural land for the reasons set forth below. Therefore, a Goal 3 exception is not required, nor will the proposed rezone detract from the statutory purpose of preserving and maintaining agricultural lands.*

Division 33 includes a definition of "Agricultural Land," which is repeated in OAR 660-033-0020(1). The Hearings Officer's Preliminary Findings and Conclusions set forth above, and incorporated herein by this reference, which determine that the subject property does not constitute "agricultural land."

OAR 660-033-0020, Definitions

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

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

- (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon<sup>10</sup>;**

**FINDING:** The Applicant does not request an exception to Goal 3 on the premise that the subject property is not defined as "Agricultural Land." In support, the Applicant offered the following response in the burden of proof statement:

*The Subject Property is not property classified as Agricultural Land and does not merit protection under Goal 3. As shown by the Soils Assessments submitted herewith and described above, the soils on the Subject Property are predominantly unsuitable soils of Class 7 and 8 as defined by Deschutes County and DLCD. See Exhibits 7-9. State Law, ORS 660-033-0030, allows the County to rely on those Soils Assessments for more accurate soils information.*

As set forth in detail in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds, based on the submitted soil study and the above OAR definition, that the subject property is comprised predominantly of Class VII and VIII soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A).

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

**FINDING:** The Applicant does not request an exception to Goal 3 on the premise that the subject property is not defined as "Agricultural Land." In support, the Applicant offered the following response, in relevant part, in the burden of proof statement:

<sup>10</sup> OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

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

*The Subject Property has not been in farm use in decades. The land has not been irrigated for years, and the COID water rights are leased back to the Deschutes River.*

The Hearings Officer reviewed each of the seven considerations listed in OAR 660-033-0020(1)(a)(B) in the Preliminary Findings and Conclusions above, incorporated herein by this reference. Not only are there poor soils on the subject property, but none of the considerations in this provision would "improve" the situation such that the property with "land in other soil classes," which do not qualify as agricultural land under OAR 660-033-0020(1)(a)(A) could nonetheless be suitable for "farm use." None of the seven considerations show that the property could be employed for the primary purpose of making a profit in money. The poor soils found on the subject property, combined with these additional considerations, render the property not suitable for farm use that can be expected to be profitable.

The Hearings Officer incorporates herein by this reference the Preliminary Findings and Conclusions above and finds that the subject property does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(B).

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

**FINDING:** The Applicant offered the following response in the burden of proof statement:

*A large portion of neighboring lands are residential, and the neighboring lands that are zoned EFU-TRB are not engaged in farm practices that are supported or aided by the Subject Property. Regardless, the Subject Property, given its poor soils and proximity to Highway 97, could not be considered "necessary" to permit farm practices to be undertaken on adjacent or nearby agricultural lands.*

The Hearings Officer incorporates herein by this reference the Preliminary Findings and Conclusions above and finds that the subject property does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(C).

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

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is not and has not been a part of a farm unit that includes other lands not currently owned by the Applicant.*

*The farm unit rule is written to preserve large farming operations in a block. It does this by preventing property owners from dividing farmland into smaller properties that, alone, do not meet the definition of "agricultural land." The Subject Property is not formerly part of a larger area of land that is or was used for farming operations and was then divided to isolate poor soils so that land could be removed from EFU zoning.*

*The Subject Property is not in farm use and has not been in farm use of any kind for decades. It contains soils that make the land generally unsuitable for farm use as the term is defined by State law. It is not a part of a farm unit with other land. The Subject Property is predominantly Class 7 and 8 soils and would not be considered a farm unit itself nor part of a larger farm unit based on the poor soils and the fact that none of the adjacent property is farmed.*

The Hearings Officer incorporates by this reference the Preliminary Findings and Conclusions set forth above and finds that the subject property does not constitute "Agricultural Lands," as defined in OAR 660-033-0020(1)(b).

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

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

OAR 660-033-0030, Identifying Agricultural Land

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

**FINDING:** The Applicant provided responses to the factors in OAR 660-033-0020(1) above. The soil studies produced by Mr. Kitzrow focused solely on the land within the subject parcels and the Applicant provided responses indicating the subject parcels are not necessary to permit farm practices undertaken on adjacent and nearby lands.

The Applicant established that the subject property is not necessary to permit farm practices undertaken on adjacent and nearby lands. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the subject property is not "Agricultural Lands," as defined in OAR 660-033-0030(1).

**(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 Applicant argues that the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, regardless of ownership of the subject property and ownership of nearby or adjacent land. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the subject property is not "Agricultural lands," and thus that no exception to Goal 3 is required.

**(5)(a) More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.**

**(b) If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*Attached as Exhibits 7-9 are a [sic] more detailed Agricultural Soils Capability Assessments conducted by Gary Kitzrow, a professional soil classifier, certified professional soil scientist, and one of only five professionals certified by the state to make such assessment. The soils capability assessment he conducted on the Subject Property is related to the NRCS land capability classification system. It provides and documents more detailed data on soil classification and soil ratings than is contained in the NRCS soil maps and soil survey at the published level of detail. The Order 1 survey performed on the Subject Property included 22 descriptions for the approximately 19-acre site (6 for Tax Lot 305; 12 for Tax Lot*

301; and 4 for Tax Lot 500). The soil samples taken were assessed for structure, consistency, pores, drainage class, root distribution, effective/absolute rooting depths and related morphology testing. Mr. Kitzrow concluded that the Subject Property is made up of predominantly Class 7 and 8 soils that are generally unsuitable for farming.

The soil studies prepared by Mr. Kitzrow provide 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 studies provide detailed information about the individual subject properties based on numerous soil samples taken from the subject properties. The soil studies are related to the NRCS Land Capability Classification (LCC) system that classifies soils Class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

According to the NRCS Web Soil Survey tool, the subject properties contain the following portions of 31A, 38B, and 58C soils:

**31A Soils:** Approximately 16.5 percent (Tax Lot 301), 22 percent (Tax Lot 305), and 97.2 percent (Tax Lot 500) of the subject properties are composed of 31A soil, respectively.

**38B Soils:** Approximately 61.4 percent (Tax Lot 301), 47.7 percent (Tax Lot 305), and 2.8 percent (Tax Lot 500) of the subject properties are made up of this soil type, respectively.

**58C Soils:** Approximately 22.1 percent (Tax Lot 301), and 30.3 percent (Tax Lot 305) of two (2) of the subject properties are made up of this soil type.

The soil studies conducted by Mr. Kitzrow of Growing Soils Environmental Associates find the soil types on the subject property vary from the NRCS identified soil types. The soil types described in the Growing Soils Environmental Associates soil studies are described below (quoted from Exhibits 7-9 of the application materials).

- **Tax Lot 301:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). Conversely, Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. This study area and legal lot of record is comprised of 8.00 acres or 53.1% of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCDC definitions.
- **Tax Lot 305:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). These lithic, entic Gosney soil mapping units are shallow, have extremely restrictive rooting capabilities and low water holding capacities. Conversely, Deskamp and Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. Noteworthy is the fact that along the western boundary and southern boundary of this lot are large inclusions of rubble and rock outcrops. This is found regardless of the associated three soils delineated in this analysis. This study area and legal lot of record is comprised of 2.45 acres or 81.7% of the landbase as

generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCD definitions.

- **Tax Lot 500:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). Conversely, Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. This study area and legal lot of record is comprised of 0.93 Acres or 87.7% of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCD definitions.

As set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the submitted soil studies prepared by Mr. Kitzrow of Growing Soils Environmental Associates provide more detailed soils information than contained in the NRCS Web Soil Survey, which provides general soils data for large units of land. The Hearings Officer finds the soil studies provide detailed and accurate information about individual parcels based on numerous soil samples taken from the subject property. The soil study is related to the NRCS Land Capability Classification (LCC) system that classifies soils class I through VIII. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

Correspondence from the Department of Land Conservation and Development (DLCD) confirms that Mr. Kitzrow's prepared soil studies are complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Mr. Kitzrow's qualifications as a certified Soil Scientist and Soil Classifier are detailed in the submitted application materials. Based on Mr. Kitzrow's qualifications as a certified Soil Scientist and Soil Classifier, and as set forth in detail in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the submitted soil study is definitive and accurate in terms of site-specific soil information for the subject property. These criteria are met.

- (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 properties are not defined as agricultural land. Therefore, the Hearings Officer finds that this section and OAR 660-033-0045 applies to these applications.

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



**FINDING:** The Applicant submitted soil studies by Mr. Kitzrow of Growing Soils Environmental Associates dated January 12, 2021. The soils studies were submitted following the ORS 215.211 effective date. The application materials include acknowledgements from Hilary Foote, Farm/Forest Specialist with the DLCD (dated April 16, 2021) that the soil studies are complete and consistent with DLCD’s reporting requirements. The Hearings Officer finds this criterion is met based on the submitted soil studies 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 provided DLCD certified soil studies as well as NRCS soil data. The Hearings Officer finds this criterion is met.

**DIVISION 12, TRANSPORTATION PLANNING**

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

**(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:**

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**
- (b) Change standards implementing a functional classification system; or**
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.**
  - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**
  - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the**

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

**FINDING:** As referenced in the agency comments section in the Basic Findings above, the Senior Transportation Planner for Deschutes County requested revised details in addition to the initial traffic study materials provided. The Applicant submitted an updated report from Ferguson & Associates, Inc. on April 6, 2022, dated March 18, 2022, to address identified concerns and the County's Senior Transportation Planner issued a second comment in response.

The Applicant's burden of proof provided the following statement:

*The Transportation Planning Rule is applicable because Applicant is requesting a change to an acknowledged comprehensive plan and land use regulation (the zoning map). Attached as **Exhibit 14** is a Site Traffic Report and TPR Assessment prepared by traffic engineer Scott Ferguson, P.E. of Ferguson & Associates. Mr. Ferguson made the following findings with respect to the proposed Plan map amendment and zone change and concluded that a significant impact to the transportation facility would occur:*

- *The only available access to the Subject Property is via Highway 97 through a shared easement driveway. Highway 97 is a four-lane facility in the vicinity of the driveway, with 20-foot shoulders on both sides. Left turns are legally prohibited, as there are two sets of double striped painted lanes marking a striped median. As such, access is limited to right-in, right-out movements from the driveway. There are no proposed changes to access.*
- *Visibility exiting the site is good and there are no apparent sight-distance issues.*
- *Rezoning the Subject Property from EFU-TRB to RI would allow outright e.g.:*
  - *Primary processing, packaging, treatment, bulk storage and distribution of the following products:*
    - *Agricultural products, including foodstuffs, animal and fish products, and animal feeds,*
    - *Ornamental horticultural products and nurseries,*
    - *Softwood and hardwood products excluding pulp and paper manufacturing;*
  - *Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck;*
  - *Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no outside storage is permitted unless enclosed by sight-obscuring fencing;*

- Wholesale distribution outlet including warehousing, but excluding open outside storage;
- Kennel or a veterinary clinic.
- The RI zone requires that new industrial uses be limited in size to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural areas, for which there is no floor area per use limitation.
- For purposes of the traffic analysis, it was assumed that a large (100,000 square foot) manufacturing building such as a food processing plant or some type of lumber-related manufacturing plant could be built on the Subject Property. Such a distribution center would occupy about 12 percent of available land. In addition, there could be a mix of other uses, not exceeding 7,500 square feet per use, which could include, e.g., a small building supply outlet, a veterinary clinic, a small distribution center, and a plant nursery. For purposes of the analysis, one of each of those uses was assumed.
- While it may be possible to pack more onto the site, the assumed uses would generate more traffic than the site could handle with existing access configurations.
- Net change in trip generation would be an increase of 166 p.m. peak hour trips and 1,299 daily trips.
- The addition of several hundred vehicles per hour at the driveway on to Highway 97 would result in performance characteristics that would not meet the goals of the Oregon Highway Plan.
- This level of traffic would not be appropriate with the existing limited access and the proposed zone change would significantly impact the transportation if no further action were taken. But there are further actions which can be taken to meet the requirements of the TSP under these conditions.

*Mr. Ferguson proposed, and Applicant will agree to, establishing a trip cap on the three lots comprising the Subject Property to limit the amount of development that would be allowed to reflect the maximum trip generation that would be allowed before a Traffic Impact Analysis would be required under ODOT or County guidelines. Specifically, Mr. Ferguson stated in his Report, based on DCC 18.116.310.C, that "the ODOT guideline for conducting a TIA is 400 daily trips. Since Deschutes County requirements establish a lower (more conservative) threshold, these values were used: less than 20 p.m. peak hour trips (which is more than 19 trips) and more than 200 daily trips. As shown below in Table 7, establishing a trip cap at a threshold where the incremental change would not exceed the Deschutes County threshold." Table 7 is shown below:*

**TABLE 7 – TRIP CAP CALCULATIONS**

| Trip Generation Scenarios                           | TRIP GENERATION |       |
|---|-----------------|-------|
|   | PM              | DAILY |
| A Existing EFU Zone                                 | 13              | 79    |
| B Proposed RI Zone                                  | 180             | 1,378 |
| C Net Change in Trip Generation                     | 166             | 1,299 |
| D ODOT Trigger for TIA                              | na              | 400   |
| E Deschutes Count Trigger for TIA                   | 19              | 200   |
| F Limit on Net Change (Deschutes Criteria governs)  | 19              | 200   |
| G Total Trip Generation to Obtain Net Limit (A + F) | 32              | 279   |

*Mr. Ferguson concluded, "Accordingly, if a trip cap were set at 32 p.m. peak hour trips and 279 daily trips, the incremental increase in traffic would be 19 p.m. peak hour trips and 200 daily trips and a Site Traffic Report (STR) would be required by Deschutes County Code as per section 18.110(CX3Xb) for the purposes of evaluating the TPR."*

*Applicant's current plan for the Subject Property, if this Application is approved, is to develop a mini-storage facility on Tax Lot 301. Mr. Ferguson further concluded that "[s]ince mini-storage units are relatively low generators, the trip cap would be met with any reasonably sized mini-storage facility." With the establishment of this proposed trip cap, the proposed Plan map amendment and zone change could meet the requirements of the TPR. Trip generation under this cap would be limited to no more than 32 p.m. peak hour trips and no more than 279 daily trips. Mr. Ferguson concluded that with the planned development of mini-storage units, the level of trip generation would be relatively low and would fall below this threshold<sup>11</sup>.*

*This TPR assessment was prepared for 3 parcels located on Highway 97 between Bend and Redmond, Oregon. These parcels are generally located in Figure 1. Table 1 provides addresses, Tax Lot numbers, and existing building types and sizes.*

*The proposed change is from EFU (exclusive farm use) to RI (Rural Industrial).*

*It was found that the proposed zone change would significantly affect the transportation system without a trip cap.*

<sup>11</sup>Further, imposing a trip cap and use limitations is consistent with the purpose of the RI zone and Plan designation. See Plan, Policy 3.4.23 ("To assure that urban uses are not permitted on rural industrial lands, land use regulations in the Rural Industrial zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successor."); see also id., Policy 3.4.24 - Policy 3.4.36 (placing use limitations on certain parcels given RI zoning to "ensure that the uses in the Rural Industrial Zone on [those tax lots] . . . are limited in nature and scope"); see also DCC 18.100.030 (setting forth use limitations for the RI zone).

*The proposed trip cap is 32 new p.m. peak hour trips, above existing trip generation. A trip cap of 32 new p.m. peak hour trips would readily allow for the construction of mini-storage units, which is intended as the next step. That development would need to be addressed in a separate site-application. This is a very reasonable level for a trip cap considering that it was shown herein that a trip cap as high as 123 p.m. peak hour trips might be allowed using the ODOT mobility standards as the measure of impact.*

*It is trusted that the above updated analysis adequately addresses the Counties comments and otherwise meets the requirements for the proposed zone change including a sufficient assessment of the Transportation Planning Rule (TPR). Please feel free to call at your convenience if you would like to discuss any elements of this letter-report.*

County Senior Transportation Planner, Peter Russell responded to the revised traffic study and expressed additional concerns. The Applicant then responded with additional traffic comments on April 8, 2022, to which the County Senior Transportation Planner responded. The Applicant responded with additional traffic comments on April 13, 2022.

Thereafter, the Applicant worked with the County Senior Transportation Planner, County planning staff and the Oregon Department of Transportation (“ODOT”) to develop a “trip cap” condition of approval on which the parties all agreed. The record indicates that both the County and ODOT concur with the proposed condition of approval which states:

*The maximum development on the three subject parcels shall be limited to produce no more than 32 trips in the PM peak hour and/or 279 daily trips as determined by the Institute of Engineers Trip Generation Manual, 11<sup>th</sup> Edition. The County may allow development intensity beyond these maximum number of vehicle trips only if the applicant submits to the County a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule and the Deschutes County Code.*

The record also shows that the Applicant discussed with County staff the fact that LUBA has upheld trip caps as an effective tool utilized by other Oregon local governments. The form of the trip cap proposed by the Applicant in the email chain was specifically modeled on a similar trip cap COA utilized by the City of Eugene and upheld by LUBA. *Willamette Oaks v. City of Eugene*, \_\_\_ Or LUBA \_\_\_ (LUBA NO 2010-062; March 8, 2011) (slip op at \*4-5; n.5). Peter Russell responded the same date that the proposed COA “works on my end.”

COLW claims that the proposal will “drastically increase transportation trips” and argues that ODOT found a trip cap is not contemplated in the DCC for TPR compliance and that the County found it does not have the ability to monitor and enforce a trip cap. Therefore COLW argues that the application has not satisfied Goal 12 and the TPR. The Hearings Officer finds that COLW’s argument is based on prior communications from ODOT and the County Senior Transportation Planner and is refuted by the more recent record additions, which include, among other things, an email chain between ODOT, County staff and the Applicant. ODOT did not find that the DCC does not allow a trip cap. Rather, ODOT concurred with the proposed condition of approval stating, “looks good to me.” As interpreted by the County’s Senior Transportation Planner, Peter Russell, ODOT’s

comment regarding the possibility of a DCC text amendment to better address the idea of a trip cap was meant to apply prospectively to future applicants; a retroactive text amendment would violate the “goal post rule” at ORS 215.427(3)(a).

Not only did COLW misread comments provided by ODOT and County staff, it presented no evidence or expert testimony to contradict the evidence included in the record by the Applicant regarding the TPR.

The Hearings Officer finds that the Applicant has studied all facilities identified by the County as potentially impacted by the proposed zone change through the traffic study and revised traffic study, and in its comments from Ferguson & Associates Inc. to the County Senior Transportation Planner. The Hearings Officer finds that the record supports a determination that, **as conditioned with the proposed condition of approval set forth above**, the proposed zone change, will have no significant adverse effect on the identified function, capacity, and performance standards of the transportation facilities in the impact area, such that it is in compliance with OAR 660-012-0060.

***(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.***

- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.***
- (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.***
- (c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.***
- (d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.***

- (e) **Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if:**
  - (A) **The provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards;**
  - (B) **The providers of facilities being improved at other locations provide written statements of approval; and**
  - (C) **The local jurisdictions where facilities are being improved provide written statements of approval.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*As discussed above, Mr. Ferguson concluded that the proposed Plan map amendment and zone change could have a significant effect on the transportation facility. As such, Mr. Ferguson proposes, and Applicant would agree to, the imposition of a transportation cap and use limitation on the Subject Property.*

The Hearings Officer finds that, with imposition of a condition of approval requiring assessment of transportation system development charges (SDCs) and other non-infrastructure mitigations as development occurs on the site on future proposed development, and with imposition of the agreed-upon condition of approval imposing a transportation cap and use limitation on the Subject Property, significant adverse effects on the identified function, capacity and performance standards of the transportation facilities in the impact area of allowed land uses will be mitigated. These criteria are met.

**DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES**

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

**FINDING:** The Applicant’s burden of proof addresses each Goal as follows:

**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 follow the code requirements. A minimum of two public hearings will be held to consider the Application.*

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

**Goal 3, Agricultural Lands.** *The Applicant has shown that the subject property is not agricultural land because it is comprised predominantly of Class 7 and 8 soils that are not suitable for farm use. Therefore, the proposal is consistent with Goal 3, and no exception is needed.*

**Goal 4, Forest Lands.** *This goal is inapplicable because the Subject Property does not contain land zoned forest land, nor does it support forest uses.*

**Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces.** *The majority of the subject property is located in the Landscape Management Combining Zone (LM zone). The LM zone is a Goal 5 resource acknowledged by DLCD that is set out to protect scenic views as seen, in this case, from Highway 97 through a Landscape Management Combining Zone that extends 1/4 mile on either side of the centerline of the designated roadway. The County typically requires LM site plan review when a building permit is required for a new or substantial alteration to an existing structure. The proposal is consistent with Goal 5 because the LM zoning requirements apply when development is proposed; the proposed rezone and Plan amendment is not development and therefore will not impact any Goal 5 resource.*

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

**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 Plan as a known natural disaster or hazard area.*

**Goal 8, Recreational Needs.** *This goal is not applicable because there is not development proposed and the property is not planned to meet the recreational needs of Deschutes County.*

**Goal 9, Economy of the State.** *This goal does not apply to this Application because the Subject Property is not designated as Goal 9 economic development land. In addition, the approval of this Application will not adversely affect economic activities of the state or area. Further, the proposed RI zoning will have more positive impact than EFU zoning on land that cannot viably be farmed.*

**Goal 10, Housing.** *Applicant’s proposed zone change and plan amendment has no impact on housing, as the Subject Property is currently zoned EFU and is not currently in residential use.*

**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 Property. Needed services – including fire, police, water, utilities, schools, and county services – are already available in the area.*



**Goal 12, Transportation.** As explained in detail above, the Application complies with the Transportation System Planning Rule, OAR 660-012-0060, the Rule that implements Goal 12. Compliance with that Rule also demonstrates compliance with Goal 12.

**Goal 13, Energy Conservation.** The approval of this Application does not impede energy conservation. The Subject Property is located approximately halfway between the Cities of Bend and Redmond. Allowing the Subject Property to be zoned RI, especially with the proposed use limitations in place, will not negatively impact conservation of energy, and may in fact encourage it because it could provide a conveniently located service (mini-storage) for individuals and businesses located along Highway 97.

**Goal 14, Urbanization.** This Application involves the potential urbanization of rural land. While the RI zone is an acknowledged rural industrial zoning district that limits the intensity of the uses allowed in the zone, Applicant is requesting a change from EFU to RI on land that is relatively undeveloped. The compliance of the proposed zoning with Goal 14 is acknowledged by the Plan, which recognizes that the "county may apply the Rural Industrial plan designation to specific property within existing Rural Industrial exception areas, or to any other specific property that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, this Comprehensive Plan and the Deschutes County Development Code, and that is located outside unincorporated communities and urban growth boundaries. The Rural Industrial plan designation and zoning brings these areas and specific properties into compliance with state rules by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022." Further, LUBA has held that Goal 14, ORS 197.713, ORS 197.714, and OAR 660-0140040(4) do not prohibit or limit rural industrial use of rural land." *Central Oregon Landwatch v. Deschutes County*, LUBA No. 2021-028, slip op. at p.21 (OR LUBA 2021). Regardless, Applicant has provided analysis for a Goal 14 exception below showing that it meets the requirements for an "irrevocably committed" exception.

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

The Hearings Officer's findings on each Statewide Planning Goal follow.

Goal 1: Citizen Involvement

**To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.**

**FINDING:** The Planning Division provided notice of the proposed plan amendment and zone change to the public through individual mailed notices to nearby property owners, publication of notice in the Bend "Bulletin" newspaper, and posting of the subject property with a notice of proposed land use action sign. A public hearing was held before the Hearings Officer on the proposal on April 26, 2022, and a public hearing on the proposal will be held by the Deschutes County Board of Commissioners, per DCC 22.28.030(C). The Hearings Officer finds the proposal is consistent with Goal 1.

Goal 2: Land Use Planning

***To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.***

**FINDING:** Goals, policies and processes related to plan amendment and zone change applications are included in the County's comprehensive plan and land use regulations in Titles 18 and 22 of the Deschutes County Code and have been applied to the review of these applications. The Hearings Officer finds the proposal is consistent with Goal 2.

Goal 3: Agricultural Lands

***To preserve and maintain agricultural lands.***

**FINDING:** For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the subject property does not constitute "agricultural land" under any of the standards for determining "agricultural land" set forth in OAR 660-033-0020(1). The Hearings Officer further finds that substantial evidence supports a finding the proposal will not adversely impact agricultural land. Therefore, I find the Applicant's proposal is consistent with Goal 3; no exception to Goal 3 is required.

Goal 4: Forest Lands

***To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.***

**FINDING:** The Hearings Officer finds the subject property does not include any lands that are zoned for, or that support, forest uses. Therefore, the Hearings Officer finds the proposal does not implicate Goal 4. Goal 4 is inapplicable.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

***To protect natural resources and conserve scenic and historic areas and open spaces.***

**FINDING:** The record indicates there are no identified Goal 5 resources on the subject property (cultural, historic, wildlife or plant). There are no scenic or historic areas and no open spaces on the property. There is no wetland, river, stream, creek or pond on the property, and no riparian zone. The subject properties do not constitute significant open spaces subject to the Goals and Policies of Deschutes County Comprehensive Plan Chapter 2, Section 2.7 and have not been inventoried in Chapter 5, Section 5.5 of the DCCP as land that is an "area of special concern," nor "land needed and desirable for open space and scenic resources. The Hearings Officer further finds that review of

compliance with the LM Combining Zone is not required within the scope of the subject Plan Amendment/Zone Change applications.

COLW argues that the County must apply Goal 5 in consideration of the proposed PAPA because it would affect a Goal 5 resource. However, OAR 660-023-0250(3) states that, “[l]ocal governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if”:

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*
- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

The Hearings Officer finds that amending the plan designation and zoning of the subject property from EFU to RI does not allow uses that could be conflicting uses with any “significant Goal 5 resource site.” This is so given consideration of OAR 660-023-0040(1)(d), which directs the County to “develop a program to achieve Goal 5.” The County has done so by adoption of the LM overlay zone. The proposed plan amendment and zone change does not remove the subject property from the LM overlay zone and thus does not change or diminish the protection afforded to Goal 5 resources on the property, specifically the LM designation of lands within ¼ mile from the centerline of Highway 97.

Therefore, the Hearings Officer finds the proposal is consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality

***To maintain and improve the quality of the air, water and land resources of the state.***

**FINDING:** The Hearings Officer finds the Applicant's proposal to rezone the property from EFU-TRB to RI, in and of itself, will not impact the quality of the air, water, and land resources of the County. Any future RI Zone development of the property will be subject to local, state, and federal regulations protecting these resources.

COLW observes that the RI zone allows lumber manufacturing, wood processing, all uses that could result in ‘waste and process discharges.’ It argues that, without specifying which industrial uses may be developed on the property, the county could not find compliance with Goal 6.

The Hearings Officer finds that DCC 18.100.030(J) prohibits the county from approving any use in the RI zone “requiring contaminant discharge permits ...prior to review by the applicable state or federal permit-reviewing authority, nor shall such uses be permitted

adjacent to or across a street from a residential use or lot.” This provision also generally prohibits the county from approving any use in the RI zone, “which has been declared a nuisance by state statute, County ordinance or a court of competent jurisdiction.”

DCC 18.100.030(J) supports a reasonable expectation that uses allowed on the subject property under RI zoning will either comply with state and federal environmental quality standards or be denied county approval. Such a determination does not require a specific development proposal. The Hearings Officer finds that such a determination does not impermissibly defer a finding of Goal 6 compliance.

The Hearings Officer finds the proposal is consistent with Goal 6.

Goal 7: Areas Subject to Natural Hazards

***To protect people and property from natural hazards.***

**FINDING:** There are no mapped flood or volcano hazards on the subject property. Additional hazards include wildfire, earthquake, and winter storm risks, which are identified in the County’s Comprehensive Plan. The subject property is not subject to unusual natural hazards nor is there any evidence in the record that the proposal would exacerbate the risk to people, property, infrastructure, the economy, and/or the environment from these hazards on-site or on surrounding lands. Therefore, the Hearings Officer finds the proposal does not implicate Goal 7.

Goal 8: Recreational Needs

***To satisfy the recreational needs of the citizens of the state and visitors and, here appropriate, to provide for the siting of necessary recreational facilities including destination resorts.***

**FINDING:** The proposed plan amendment and zone change do not affect recreational needs, and no specific development of the property is proposed. Therefore, the Hearings Officer finds the proposal does not implicate Goal 8.

Goal 9: Economic Development

***To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.***

**FINDING:** This goal is to provide adequate opportunities throughout the state for a variety of economic activities. The Subject Property is not designated as Goal 9 economic development land. The Hearings Officer finds the proposed RI zoning will have a more positive economic impact than EFU zoning on land that cannot viably be farmed, given that the currently undeveloped property will be put to a more productive use. The Hearings Officer finds the proposal is consistent with Goal 9.

Goal 10: Housing

***To provide for the housing needs of citizens of the state.***

**FINDING:** The proposed plan amendment and zone change will not affect existing or needed housing. Therefore, the Hearings Officer finds the proposal does not implicate Goal 10.

Goal 11: Public Facilities and Services

***To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.***

**FINDING:** This goal requires planning for public services, including public services in rural areas, and generally has been held to prohibit extension of urban services such as sewer and water to rural lands outside urban growth boundaries. The Applicant's proposal will not result in the extension of urban services to rural areas. As discussed in the findings above, public facilities and services necessary for development of the subject property in accordance with the RI Zone are available and will be adequate.

With respect to water, COLW argues that the Applicant has not addressed groundwater supply and water rights for the subject property and alleges that industrial use of the subject property will threaten groundwater supplies in the area. COLW argues that the Application cannot comply with Goals 6 and 11 because there is no water service to the subject property.

The Hearings Officer finds that COLW's argument is based on an unsubstantiated premise that contaminated industrial waste may only be processed in a public wastewater facility. COLW does not cite anything in the record or applicable law that compels a conclusion that potential industrial wastewater discharges may only be treated in a public wastewater facility. Accordingly, the Hearings Officer finds this argument regarding wastewater provides no basis for denial of the applications.

The Hearings Officer finds that substantial evidence in the record the subject property has access to water and that that finding is supported by substantial evidence in the record. The Hearings Officer finds the proposal is consistent with Goal 11.

Goal 12: Transportation

***To provide and encourage a safe, convenient and economic transportation system.***

**FINDING:** As discussed in the findings above concerning compliance with the TPR, incorporated by reference herein, the Applicant asserts that this proposal will not significantly affect a transportation facility, as conditioned pursuant to the proposed condition of approval approved by the County Transportation Planner and ODOT. As set forth in the findings above, the proposal complies with the TPR. Accordingly, the Hearings Officer finds the proposal is consistent with Goal 12.

Goal 13: Energy Conservation

***To conserve energy.***

**FINDING:** The Applicant's proposed plan amendment and zone change, in and of themselves, will have no effect on energy use or conservation since no specific development has been proposed in conjunction with the subject applications. The Hearings Officer finds that the location of the subject property and rezoning it to RI with proposed use limitations in place may encourage conservation of energy by providing for a conveniently located service (mini-storage) for individuals and businesses located or traveling along Highway 97. The Hearings Officer finds the proposal is consistent with Goal 13.

Goal 14: Urbanization

***To provide for orderly and efficient transition from rural to urban use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.***

**FINDING:** Goal 14 is “[t]o provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside [UGBs], to ensure efficient use of land, and to provide for livable communities.” Goal 14 requires cities and counties to cooperatively establish as part of their comprehensive plan UGBs “to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land.” Goal 14 generally prohibits urban uses of rural land.<sup>12</sup>

The Hearings Officer’s detailed Preliminary Findings and Conclusions concerning Goal 14 above are incorporated herein by this reference. The Hearings Officer reiterates her findings and conclusions that uses in the RI zone are not “urban uses of rural land,” by definition, as restricted by DCC 18.100. Due to the appropriate county rural industrial development standards, (18.100.040. Dimensional Standards) any rural industrial development must meet no more than a 70% lot coverage, a 30-foot maximum height limit, generous setbacks and distances between structures, consist of 7,500 square foot buildings or smaller, and meet the Landscape Management Zone setbacks. All of those regulations will result in appropriate and compatible low density and not an “urban level” density.

No Goal 14 exception is required. The Applicant’s alternative Goal 14 Exception request is analyzed in the findings below.

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<sup>12</sup> LCDC has adopted general definitions that apply to the Statewide Planning Goals, including the following: "RURAL LAND. Land outside [UGBs] that is: "(a) Non-urban agricultural, forest or open space, "(b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or "( c) In an unincorporated community. "\* \* \* \* \* "URBAN LAND. Land inside an urban growth boundary. "URBANIZABLE LAND. Urban land that, due to the present unavailability of urban facilities and services, or for other reasons, either: "(a) Retains the zone designations assigned prior to inclusion in the boundary, or (b) Is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned." (Boldface omitted.)

Goals 15 through 19

**FINDING:** The Hearings Officer finds that these goals, which address river, ocean, and estuarine resources, are not applicable because the subject property is not located in or adjacent to any such areas or resources.

The Hearings Officer finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated for all listed Goals.

**DIVISION 4, INTERPRETATION OF GOAL 2 EXCEPTION PROCESS**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*As explained above, the requested zone change and Plan map amendment from EFU / Agricultural to RI should not require a Goal exception because the County's RI zoning complies with Goal 14 by ensuring areas with this zoning remain rural by limiting the uses allowed. Further, Goal 14, ORS 197.713, ORS 197.714, and OAR 660-014-0040(4) do not prohibit or limit rural industrial use of rural land." Central Oregon Landwatch v. Deschutes County, LUBA No. 2021-028, slip op. at p.21 (OR LUBA 2021). To the extent the County disagrees that a Goal exception is not required, the Subject Property is irrevocably committed to urban uses, and Applicant provides a Goal exception analysis below.*

The Deschutes County Board of County Commissioners entered the following findings associated with File No. 247-16-000593-A, on remand from LUBA of File Nos. 247-14-000456-ZC, 457-PA:

*Given the above findings that the Applicant did not intend to request and the County Board did not intend to authorize urban uses on the subject property, LUBA's remand warrants that we examine why an exception to Goal 14 was filed in this proceeding at all.*

*It is plainly evident from the evidence in the record and the above findings that staff's request that the Applicant submit an application requesting an exception to Goal 14, the Hearings Officer's consideration and approval of that exception, and the County Board's consideration of the exception application flowed directly from the precedent set by the Hearings Official's decision in ZC-14-2. The County had concluded that the decision was binding precedent and had consistently applied the approach used in that decision to assign R-I zoning to properties in subsequent applications. That decision, as interpreted and applied by the County, concluded that an exception to Goal 14 urbanization was required whenever a property owner sought rural industrial zoning on rural property, and that the Goal 14 exception process was to ensure that the subject site was not developed with "urban" uses. The Hearings Officer's decision in ZC-14-2 was not appealed and, therefore, its reasoning was never reviewed by LUBA.*

*As the excerpts from LUBA's opinion in this matter quoted above make clear, the Hearings Officer's analysis and conclusions in ZC-14-2 regarding the use of the*

*Goal 14 exceptions process to limit Rural Industrial uses to those that are not “urban” is both rationally inconsistent and legally incorrect. As LUBA’s decision also explains that to get a committed exception to Goal 14, one must demonstrate that it is impossible to locate any rural use on the subject property. It is thus illogical to approve a Goal 14 exception only to then limit it to Rural Industrial uses, which are “rural” by definition and acknowledgment. To do so is also inconsistent with the state’s land use legal framework.*

*The County Board hereby concludes that the County should no longer follow the precedent set forth in ZC-14-2 that requires approving an exception to Goal 14 before approving the change in plan designation and zoning of a rural property to the Rural Industrial plan designation and R-I zoning if only rural uses are to be permitted on the property. As LUBA explained in its decision, the requirement for an Applicant to apply for an exception to Goal 14 is to be limited to proposals that request urban uses on rural land, or as otherwise required by the DCC, state statute or state land use regulations.*

*Based upon the above conclusion, because the Applicant did not request urban uses to be allowed on the subject property and because the County Board did not intend to allow urban uses on rural land, the County Board concludes that the Applicant should not have been required to submit an application for an exception to Goal 14 for the purposes set forth by the decision in ZC-14-2 as followed by the Hearings Official in this proceeding.*

The Hearings Officer finds that, here too, the Applicant is not requesting that urban uses be allowed on the subject property. It does not make sense for the Applicant to request a re-designation and rezone of the property to Rural Industrial and also request a “committed” exception to Goal 14 which requires a showing that it is impossible to locate any rural use on the subject property.

The Applicant’s Goal 14 exception request should be denied as inconsistent with underlying applications, unnecessary, and contrary to the state’s land use legal framework, as determined by the Deschutes County Board of Commissioner in the decisions quoted above.

**OAR 660-004-0010, Application of the Goal 2 Exception Process to Certain Goals**

- (1) The exceptions process is not applicable to Statewide Goal 1 “Citizen Involvement” and Goal 2 “land Use Planning.” The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to: (a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-004-0022 regarding a use authorized by a statewide**



**planning goal that cannot comply with the approval standards for that type of use;**

**FINDING:** For the reasons set forth in the Preliminary Findings and Conclusions on Agricultural Land, incorporated herein by this reference, the Hearings Officer finds that an exception to Goal 3 "Agricultural Lands" is not required for the subject applications.

**(c) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060(9);**

**FINDING:** No public facilities or services are proposed to be extended to support uses outside of urban growth boundaries pursuant to the subject application. The Hearings Officer finds that an exception to Goal 11 "Public Facilities and Services" is not required for the subject applications. As set forth above, the application is consistent with Goal 11.

- (d) Goal 14 "Urbanization" as provided for in the applicable paragraph (I)(c)(A), (B), (C) or (D) of this rule:**
  - (A) An exception is not required for the establishment of an urban growth boundary around or including portions of an incorporated city;**
  - (B) When a local government changes an established urban growth boundary applying Goal 14 as it existed prior to the amendments adopted April 28, 2005, it shall follow the procedures and requirements set forth in Goal 2 "Land Use Planning," Part II, Exceptions. An established urban growth boundary is one that has been acknowledged under ORS 197.251, 197.625 or 197.626. Findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:**
    - (i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);**
    - (ii) Areas that do not require a new exception cannot reasonably accommodate the use;**
    - (iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and**

- (iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.**
- (C) When a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals;**

**FINDING:** The Applicant is not requesting a change to any urban growth boundaries. The Hearings Officer finds that the above criteria (A-C) do not apply to the subject applications.

- (D) For an exception to Goal 14 to allow urban development on rural lands, a local government must follow the applicable requirements of OAR 660-014-0030 or 660-014-0040, in conjunction with applicable requirements of this division;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*Applicant provides analysis of a Goal 14 exception to allow urban development on rural lands below. Part D of this Rule (as well as the requirements of OAR 660-014-0030 and – 0040) applies to the County, and not to Applicant.*

The Hearings Officer finds that the Applicant’s request in its Goal 14 exception “to allow urban development on rural lands” is inconsistent with its request to re-designate and rezone the property to Rural Industrial. Urban development is not permitted on properties zoned RI. Further analysis is provided in subsequent findings.

- (2) The exceptions process is generally not applicable to those statewide goals that provide general planning guidance or that include their own procedures for resolving conflicts between competing uses. However, exceptions to these goals, although not required, are possible and exceptions taken to these goals will be reviewed when submitted by a local jurisdiction. These statewide goals are:**  
 ...  
**(g) Goal 12 "Transportation" except as provided for by OAR 660-012-0070, "Exceptions for Transportation Improvements on Rural Land";**

**FINDING:** The Hearings Officer finds that a Goal 12 “Transportation” exception is not required for the subject applications.

**OAR 660-004-0018, Planning and Zoning for Exception Areas**

- (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements**

**and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*Applicant is proposing a zone change and Plan map amendment for land currently zoned EFUTRB and designated "agricultural." As explained in detail above, the Soils Assessments show that the Subject Property consists of predominantly Class 7 and 8 soils, and as such cannot be considered "agricultural" such that an exception to Goal 3 is required. However, the proposed RI zoning may require a Goal 14 exception. The Subject Property has been in use as a large equipment service and repair / rental and sales facility for the majority of the past 40 years, at least. As such, the Subject Property is irrevocably committed to those uses and an exception is required on that basis to allow Applicant to continue those uses on the Subject Property.*

The Hearings Officer finds that OAR 660-004-0018 (Planning and Zoning for Exception Areas) is only applicable if an exception to Goal 14 is required. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated by this reference, the Hearings Officer finds that a Goal 14 exception is not required.

To prepare a full record with findings and conclusions on all proposal components of the subject applications, the Hearings Officer makes findings on each criterion below.

- (1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:**
  - (a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).**
  - (b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.**
  - (c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.**
- (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations**

**shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d): ...**

- (b) That meet the following requirements:**
  - (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*"Rural Land" is defined by the goals as "[I]and outside urban growth boundaries that is: a) Nonurban agricultural, forest or open space; b) Suitable for sparse settlement, small farms or acreage homesites with minimal public services, and not suitable, necessary or intended for urban use, or c) In an unincorporated community." Applying the RI Plan designation and zoning to the Subject Property will maintain the land as "rural" because rural uses, density, and public facilities allowed by the RI zoning are limited to those that, according to the Plan, "ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities." Applicant addressed consistency with other applicable goal requirements above, and incorporates that discussion here.*

The Hearings Officer finds that this provision has not been considered in its full context. The Applicant has requested an “irrevocably committed” exception to Goal 14. This regulation requires that the zone designation “**shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density and public facilities and services to those that satisfy...**” (b)(A), (b)(B), and (b)(C).

The Applicant did not propose, and staff did not analyze any “single numeric minimum lot size” to limit uses, density and public facilities in the exception area. Without such analysis, the Hearings Officer cannot find that the Applicant has met its burden of proof on the criterion set forth in OAR 660-004-018(2)(b)(A).

- (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The rural uses, density, and public facilities allowed by the RI zone will not commit adjacent or nearby resource land to uses not allowed by the applicable goal. The nearby and adjacent resource lands (which are zoned EFU) are either in residential use or used as open space / park land; they are not in any agricultural use. Allowing a Goal 14 exception to rezone the Subject Property from EFU to RI, therefore, will not impact the nearby and adjacent EFU-zoned resource lands to uses not allowed by Goal 3.*

As discussed above, the Hearings Officer finds that the Applicant did not propose, and staff did not analyze any “single numeric minimum lot size” to limit uses, density and public facilities in the exception area. Without such analysis, the Hearings Officer cannot find that File Nos. 247-21-000881-PA, 882-ZC  
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the Applicant has met its burden of proof on the criterion set forth in OAR 660-004-018(2)(b)(B).

**(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The rural uses, density, and public facilities and services allowed by the RI zone and Plan designation are compatible with adjacent or nearby resource uses (i.e. residential, open space / parks).*

As discussed above, the Hearings Officer finds that the Applicant did not propose, and staff did not analyze any "single numeric minimum lot size" to limit uses, density and public facilities in the exception area. Without such analysis, the Hearings Officer cannot find that the Applicant has met its burden of proof on the criterion set forth in OAR 660-004-018(2)(b)(C).

**OAR 660-004-0028, Exception Requirements for Land Irrevocably Committed to Other Uses**

- (1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:**
  - (a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).**
  - (b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.**
  - (c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*ORS 197.732(2)(b) is addressed below. Goal 2, Part II(b) allows an exception to a Goal where "[t]he land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable." The Subject Property, which is the relevant "exception area," is currently zoned EFU-TRB but cannot be used for agricultural purposes, including farming and grazing, because of the poor soil conditions, as discussed above. Further, the Subject Property has been in use as an equipment service / repair and rental/ sales facility for the majority of the past 40 years or more, and has had improvements (buildings, parking areas, etc.) for that long, as well. It is adjacent to a residential large-lot*

*subdivision to the west, and bordered by Highway 97 on the east. The EFU-zoned lands adjacent to it are in residential use and not in agricultural use. Applicant is entitled to an "irrevocably committed" exception to Goal 14 because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable. Compliance with the requirements for the exception is addressed below.*

As set forth above in the Preliminary Findings and Conclusions, the Hearings Officer finds that no Goal 14 exception is required. To prepare a full record with findings and conclusions on all proposal components of the subject applications, the Hearings Officer finds that the proposal would not be entitled to a Goal 14 exception based on "irrevocable commitment," for the reasons discussed in more detail below.

- (2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:**
  - (a) The characteristics of the exception area;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The "exception area" is the area for which the exception is being requested - i.e., the Subject Property. As discussed above, the Subject Property is composed of mostly Class 7 and 8 soils, which are not suitable for farming or other agricultural use. For most of the past 40 or more years, two of the three tax lots making up the Subject Property have been used for repair, service, and rental / sales of large equipment. This use for such an extended period of time contributed to the degradation of the soils on the Subject Property. The third tax lot, Tax Lot 301, is landlocked and only accessible via a bridge easement from Highway 97 located on Tax Lots 305 and 500. .... The Subject Property is connected to urban services including fire, police, utilities, schools, library, garbage and recycling, and county services.*

The determination of "irrevocably committed" pursuant to a requested Goal 14 exception is separate and distinct from analysis concerning "agricultural lands" and Goal 3. The Hearings Officer finds that the record shows only one-third of the total acreage of the subject property has been allocated to non-conforming use. Whether or not that non-conforming use has continued in an unaltered, uninterrupted, unabandoned manner is not relevant to the determination of the characteristics of the exception area. The Hearings Officer has previously found in this Decision and Recommendation that a non-conforming use verification is not required.

Despite the more intensive prior uses of the subject property and graveled, disturbed areas on site, the Hearings Officer finds that the record does not support a finding that non-urban uses are *impracticable* on the subject property. For example, the Applicant has indicated that, if the proposed plan amendment and rezone is approved to RI, the Applicant is considering applying for a use conditionally permitted in the zone, a mini-storage facility. See DCC 18.100.020(M).

The Hearings Officer finds the Applicant has not met its burden of proof on this criterion.

**(b) The characteristics of the adjacent lands;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is surrounded by multiple zones and uses. Directly west, and comprising the western boundary of the Subject property, is a large Rural Residential 10 zone ("RR-10"). All neighboring properties to the west are part of the Whispering Pines Estates subdivision and are put to residential uses. The Subject Property shares a southern border with Tax Lot 700, which is owned by the Oregon Parks and Recreation Department land and zoned Open Space and Conservation ("OS&C"). The Subject Property is bordered on the east by Highway 97 and two other parcels, Tax Lots 300 and 306. Tax Lots 300 and 306 are also zoned EFU-TRB, however, neither is actively used for agricultural operations, and both are used for residential purposes. The Subject Property is bordered on the north by Tax Lot 202 which is also zoned EFU-TRB and is not engaged in an agricultural operation, but rather, is used for residential purposes.*

As noted above, the determination of "irrevocably committed" pursuant to a requested Goal 14 exception is separate and distinct from analysis concerning "agricultural lands" and Goal 3. The Hearings Officer finds that the record does not support a finding of "irrevocably committed" to urban uses based on the surrounding zoning and use of properties adjacent to the subject property. Adjacent Tax Lots 300 and 306 are in some type of farm use as they have irrigation rights and are receiving farm tax assessment. Aerial photography further supports this determination.

The Hearings Officer finds the Applicant has not met its burden of proof on this criterion.

**(c) The relationship between the exception area and the lands adjacent to it; and**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is adjacent to a residential subdivision consisting of multiple large residential lots, several tax lots zoned EFU used for residential purposes and not currently in agricultural use, Highway 97, and a state park. The Subject Property - which has been used for decades as an equipment repair / service facility - and the properties adjacent to it are compatible with one another and have been for decades. Applicant's proposed zone change and Plan map amendment would not change that relationship because the Subject Property has been used in ways consistent with the allowed uses in the RI zone for decades.*

The Hearings Officer finds that this provision is intended to determine to what extent the relationship between the exception area and the lands adjacent to it renders non-urban uses impracticable. The mere existence of residential uses near a property proposed for an irrevocably committed exception does not demonstrate that such property is necessarily committed to nonresource use. *Prentice v. LCDC*, 71 Or App 394,403-04, 692 P2d 642 (1984).

The Hearings Officer finds that the Applicant has not met its burden of proof on this criterion.

**(d) The other relevant factors set forth in OAR 660-004-0028(6).**

**FINDING:** The relevant factors of OAR 660-004-0028(6) are discussed in subsequent findings.

**(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." ...**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*Applicant is not requesting an exception to Goal 3 because the land is not suitable for agricultural use, as explained above. Applicant requests an exception to Goal 14. The Subject Property is irrevocably committed to non-resource use due to its extensive historic use as a large equipment service / repair and rental / sales facility, which depleted the soils. The soils on the Subject Property are predominantly Class 7 and 8 and as a result cannot reasonably be farmed. The Subject Property's current EFU-TRB zoning allows outright or conditionally a variety of uses. The farm and forest uses allowed in the EFU zone - as well as uses related to farm and forest uses - would be impracticable on the Subject Property due to constraints caused by the historic use of the Subject Property, its proximity to Highway 97, its proximity to a residential subdivision and other residentially-used properties, the landlocked nature of Tax Lot 301, the less than 20-acre size of the Subject Property, the poor quality of the soils, and the difficulty of irrigating. Other resource related uses allowed in the EFU zone such as mining, wetland creation, and wildlife habitat conservation would be impracticable considering the Subject Property's size, location, configuration, and dry rocky soil.*

*While residential uses may not be impossible, the only site that could currently be developed with a residence is landlocked and inaccessible from Highway 97. Tax Lots 305 and 500 are presently developed with facilities historically used for service / repair and rental / sales of large equipment. Developing a dwelling on those lots is impracticable based on the current use of the land. Further, the proximity to Highway 97 creates noise issues that would make dwelling development impracticable. With respect to irrigation-related uses, the Subject Property, while adjacent to the Pilot Butte Canal, cannot be sufficiently irrigated because (a) the water rights are being leased to the Deschutes River and (b) even if they were not, the Canal is insufficient to irrigate the entire Subject Property. Finally, the utility and similar uses allowed in the EFU zone, such as utility facilities,*



*transmission towers, personal use airports, solar power generating facilities, etc.) are impracticable on the Subject Property due to its small size (approx. 19 acres) and the fact that it is already partially developed.*

The Hearings Officer finds that the above subsection does not set forth a criterion, but rather explains how to interpret and implement the various requirements set forth in OAR 660-004-0028(6).

***For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:***

- (a) Farm use as defined in ORS 215.203;***
- (b) Propagation or harvesting of a forest product as specified in OAR 660-0330120; and***
- (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).***

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*Applicant is not requesting an exception to Goal 3 because the land is not suitable for agricultural use, as explained above. Applicant requests an exception to Goal 14.*

The Hearings Officer finds this provision is inapplicable.

- (4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.***

**FINDING:** The Hearings Officer’s findings of fact that address all applicable factors of section (6) of this rule are set forth below.

- (5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.***

**FINDING:** The Applicant’s proposed exception area consists of three (3) Tax Lots (301, 305, and 500), all of which are the subject of this application. The Hearings Officer’s findings of fact regarding the exception area are addressed to all three tax lots collectively.

- (6) Findings of fact for a committed exception shall address the following factors:***
  - (a) Existing adjacent uses;***

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*See above discussion of “characteristics of adjacent lands,” which discusses the existing adjacent uses.*

The Hearings Officer finds that the Applicant has not met its burden of proof for an “irrevocably committed” exception based on existing adjacent uses, as set forth in the findings above.

**(b) Existing public facilities and services (water and sewer lines, etc.);**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*There are no public water or sewer facilities on the Subject Property; it is served by an on-site, DEQ-approved sewage disposal system and has an on-site well that provides potable water to the Subject Property. Further, Applicant’s proposal to develop the Subject Property with RI zone allowed uses will not require public water or sewer facilities. The Subject Property will continue to be serviced by the Deschutes Rural Fire District #2 and the Deschutes County Sheriff.*

There are no existing public water and sewer lines on the subject property. The Hearings Officer finds that the Applicant has not met its burden of proof for an “irrevocably committed” exception based on existing public facilities and services (water and sewer lines, etc.).

**(c) Parcel size and ownership patterns of the exception area and adjacent lands:**

**(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area.**

...

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property consists of three tax lots that total approximately 19.12 acres; Tax Lot 301 is 15.06 acres, Tax Lot 305 is 3.00 acres, and Tax Lot 500 is 1.06 acres. Tax Lot 301 was formerly part of Tax Lot 300 (discussed below). It was created in 1977 and at that time consisted of 18.06 acres. In 1981, it was divided to create the 3.0 acre Tax Lot 305. Tax Lot 500 was created in 1972 and was originally 7.27 acres. In 1991, 0.21 acres were removed to create Tax Lot 501 (right of way for the highway).*

Land use records for the Subject Property do not appear to exist prior to 1978. In April 1978, the owner of the Subject Property - which at that time existed as only Tax Lots 301 and 500 - applied for a rezone from A-1 to C-2 to support the existing tractor sales and service operation. At that time, the Subject Property had been designated by the Deschutes County Comprehensive Plan and the Redmond Comprehensive plan as being for urban development. Exhibit 11 at p. 16. The Subject Property at that time was within the sewer and water service boundaries, and electrical service, telephone service, and other public facilities were being supplied to the area. The County chose to rezone a portion of the Subject Property (Tax Lot 500) to A-S rather than C-2 and to leave Tax Lot 301 zoned A-1.

The adjacent properties to the north and east (Map/Tax Lots 1612230000202, -300 & -306) are all zoned EFU and are under separate ownership. Tax Lot 202 is 5.63 acres and is owned by Robert E. Fate and Stacey L. Andrews. It appears to have been created by partition plat in or around 2017. Tax Lot 300 is 21.56 acres and is owned by James L. Werth. It was formerly part of TL 1612 (from which Tax Lot 301, part of the Subject Property, was also created). TL 1612 was divided numerous times over the years, culminating in the creation of Tax Lot 300 in around 1988. Tax Lot 306 is owned by William Edward Kirzy and is 20.54 acres. It appears to have been created in 1987 as Minor Land Partition No. MP-87-20.

The adjacent property to the south (Map/Tax Lot 1612230000700) is open space and park land owned by the State of Oregon Parks & Recreation Department. Tax Lot 700 is 35.89 acres. It appears to have been created from TL 1612 in or around 1961.

The adjacent properties to the west consist of lots making up the Whispering Pines subdivision (Map/Tax Lots 161223C000100, 200, 300, 400, 500, 600, 700, &.800 - platted in 1968; Map/Tax Lots 161223B00106 - platted in 1969; Map/Tax Lots 161223B00200, 201, 202, 203, 204, 205, 206, & 207 - platted in 1977). These are all zoned RR-10, are under 3 acres in size, and are under separate ownership. The majority of the soils on these properties are classified as 58C, which is not considered "high-value" farmland and as such would likely not be put to any agricultural use.

The Hearings Officer finds that the Applicant has addressed consideration of parcel size and ownership patterns pursuant to this rule, and analysis of how the existing development pattern came about.

...  
**Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed.**  
...

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is also completely constrained for additional development and use due to the Pilot Butte Canal on the east (and bisecting the property). This canal sits within a federal right of way and, therefore, precludes development or use. Given this fact, and the subdivision to the west, the Subject Property contains severe constraints that preclude operating the property as a single farming operation or for significant agricultural use.*

The Hearings Officer finds that the Applicant has established that the Pilot Butte Canal and associated easement make the exception area unsuitable for resource use. There is not a showing that this factor makes resource use of nearby lands unsuitable. The Hearings Officer observes that, whether the property is suitable for resource use does not constitute a finding that the subject property is not suitable for rural use.

...  
***Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.***

**FINDING:** The Applicant does not rely on any parcels created or uses approved pursuant to the applicable goals to justify its request for an irrevocably committed exception.

**(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The parcel sizes for the Subject Property and the properties adjacent to it range from 1.06 acres to 35.89 acres. The majority of the parcels surrounding the Subject Property are part of the Whispering Pines residential subdivision - they are each under 3 acres. The only contiguous ownerships are Tax Lots 305 and 500, which are owned by Applicant and part of the Subject Property. Tax Lot 301, also part of*

*the Subject Property, is owned by a principal of Applicant. The Subject Property does not stand alone amidst larger farm or forest operations and are not buffered from such operations-there are no such operations in the vicinity of the Subject Property.*

The Hearings Officer finds that the three parcels that constitute the subject property total approximately 19 acres in size. The mere fact that smaller parcels exist in the surrounding area and are in separate ownerships does not establish "irrevocable commitment." The parcels are not clustered in a large group or clustered around a road designed to serve those parcels. There are two adjacent, smaller EFU-zoned properties that are receiving tax deferral and appear to be in agricultural use as evidenced by aerial photographs. No finding is made on whether such properties are engaged in "farm use," however, as that is not relevant to this determination. The Hearings Officer finds that the Applicant has not met its burden of proof on this criterion. This criterion is not met.

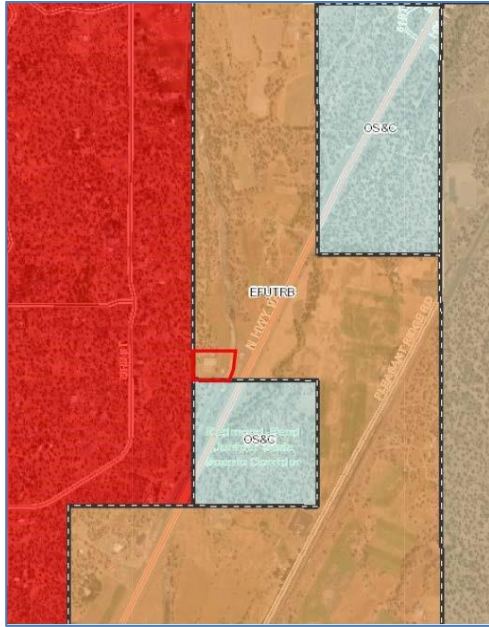
**(d) Neighborhood and regional characteristics;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

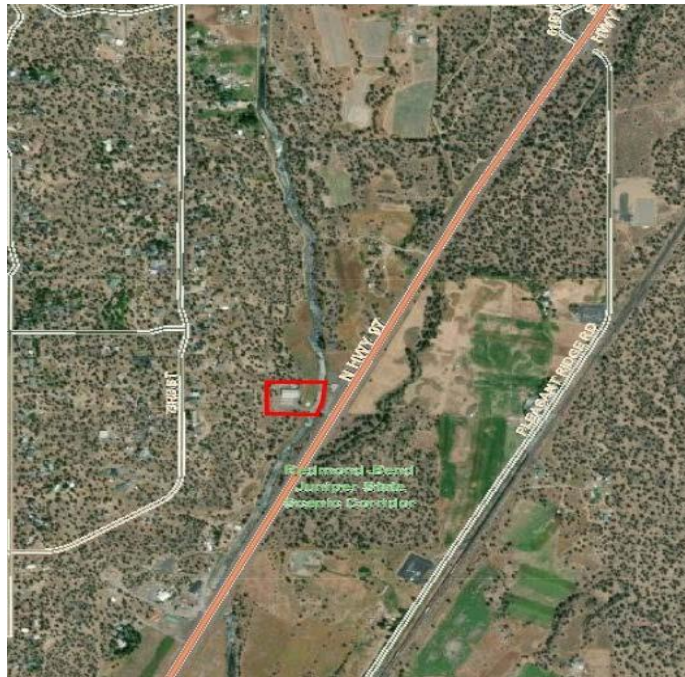
*The area, or "neighborhood," in which the Subject Property lies can be characterized generally as developed residential properties. While some are zoned EFU, they are not being used for agricultural purposes. The general area around the Subject Property appears to consist of native vegetation - grasses and juniper trees - and is largely infertile soil (58C). Deschutes Junction is nearby and is also zoned RI, and consists of a mixture of commercial and industrial uses, with some hobby farms and rural residences. Approval of the proposed exception would be consistent with the actual character and land use pattern in the neighborhood.*

Using an approximately ¼-mile radius around the subject property, the vicinity is comprised of a mix of RR-10, EFU, and OS&C zoning.

**Zoning within approximately ¼ mile of the subject property (Tax Lot 305 highlighted for reference)**



**Aerial Photography (2020) within approximately ¼ mile of the subject property (Tax Lot 305 highlighted for reference)**



The Hearings Officer finds that the Applicant addressed neighborhood characteristics, but did not address regional characteristics. The Hearings Officer finds the Applicant did not meet its burden of proof on this criterion. This criterion is not met.

- (e) **Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is separated from resource area (zoned EFU) by the Pilot Butte Canal and Highway 97. It is also currently developed with commercial / industrial buildings that have been historically used as equipment service / repair and rental facilities. Tax Lot 301 is landlocked and only accessible via a bridge easement located on or near Tax Lots 500 and 305. These features impede practicable resource use of the exception area.*

The Hearings Officer finds that, while some man-made features separate the exception area from some adjacent resource land, there are other resource lands immediately adjacent to the subject property. Nonetheless, as determined in the findings above, the Hearings Officer finds that both the Pilot Butte Canal and Highway 97 effectively impede practicable resource use (farm use) of all or part of the subject property. Again, the Hearings Officer observes that this finding does not constitute a determination that the subject property is unsuitable for any rural use. This criterion is met.

- (f) **Physical development according to OAR 660-004-0025; and**

**FINDING:** OAR 660-004-0025 states:

**660-004-0025 Exception Requirements for Land Physically Developed to Other Uses**

- (1) **A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660004-0000(1).**
- (2) **Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.**

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

*The Subject Property is developed with a bridge over the Pilot Butte Canal, two commercial buildings and their accessory buildings, and a double-wide mobile home. The two commercial buildings, used for equipment service / repair and rental / sales, total 2,864 square feet combined. The Subject Property has been developed with an approximately 7,500 square foot warehouse since the early 1990s. While this development does not preclude resource uses per se, the historic use of the two commercial buildings and their accessory structures and Applicant's plan to continue that historic use, along with the fact that the only access to the landlocked Tax Lot 301 is via these developed lots, weighs in favor of a determination that the Subject Property is irrevocably committed to urban uses.*

The Hearings Officer found above that the Applicant need not obtain a non-conforming use verification to establish "physical development." However, the Hearings Officer finds that the Applicant has not met its burden of proving that the subject property has been physically developed with uses not allowed by Goal 14 to the extent that it is no longer available for uses allowed by Goal 14. These criteria are not met.

**(g) Other relevant factors.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*Highway 97 runs along the east side of the Subject Property. This detracts from the suitability of the Subject Property for resource or other uses permitted in the EFU zone. The Pilot Butte Canal also bisects a portion of the Subject Property or forms a border to similar effect.*

As determined in the findings above, the Hearings Officer finds that both the Pilot Butte Canal and Highway 97 effectively impede practicable resource use of all or part of the subject property. Again, the Hearings Officer observes that this finding does not constitute a determination that the subject property is unsuitable for any rural use. This criterion is met.

**(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.**

**FINDING:** The Applicant provided a current area map and aerial photograph showing the subject property and adjoining lands, included as **Exhibit 1** of the application materials. This criterion is met.



**DIVISION 14, APPLICATION OF THE STATEWIDE PLANNING GOALS TO NEWLY INCORPORATED CITIES, ANNEXATION, AND URBAN DEVELOPMENT ON RURAL LANDS**

***OAR 660-014-0030, Rural Lands Irrevocably Committed to Urban Levels of Development***

- (1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.***

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The proposed exception area - the Subject Property - is irrevocably committed to urban levels of development. Specifically, it is irrevocably committed to industrial and quasi-commercial uses at urban levels, as has been shown above. The Subject Property is unsuitable for rural uses including farming because of its size, configuration, poor quality soils, lack of sufficient irrigation, and the highway abutting it. Because the Subject Property has been irrevocably committed, Applicant need not address the four factors in Goal 2 and OAR 660-004- 0020(2).*

For the reasons set forth above, the Hearings Officer finds: (1) the subject property is rural land; (2) the Applicant is not required to obtain a Goal 14 exception for purposes of the subject applications; therefore, Goal 2 exceptions standards are not applicable; (3) in the alternative, if the Board of County Commissioners disagrees with the Hearings Officer's findings on (1) and (2) herein, and determines that the Applicant is required to obtain a Goal 14 exception, the record does not support a finding that the subject property is irrevocably committed to urban levels of development.

- (2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.***

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is irrevocably committed to an urban level of development as set forth in detail above. Applicant has submitted with this Application maps and aerial photos showing the Subject Property (**Exhibit 1**) and deeds to the Subject Property containing a legal description (**Exhibits 15-17**).*

The Hearings Officer finds that the Applicant has not met its burden of proving that the subject property has been built upon at urban densities and/or is irrevocably committed to urban levels of development. The Applicant has not established “the exact nature and extent of the areas found to be irrevocably committed to urban levels of development” as justification for the exception.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

**(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:**

**(a) Size and extent of commercial and industrial uses;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is approximately 19.12 acres in size. It is currently developed with a doublewide mobile home on Tax Lot 301, and facilities used for large equipment service / repair and rentals / sales. The Subject Property has been used for equipment service, etc. for the majority of at least the past 40 years. The land use history also includes documentation that the property has been used, consistently, for industrial uses and not for any farm or agricultural use. This includes heavy equipment rental, repair, and storage, as well as various machine shop use and as a diesel repair shop. The current buildings (decades old), were designed for such uses and maintained in reasonably good working order to continue such use.*

The Hearings Officer found above that the Applicant need not obtain a non-conforming use verification to establish “irrevocable commitment.” However, the Applicant’s proof on this criterion relies on industrial uses that appear to have been discontinued and, thus, are no longer non-conforming uses. Of the subject property’s approximately 19 acres, aerial photography indicates that approximately 4.5 acres have been allocated to industrial use on the property. This constitutes less than 1/3 of the subject property.

The Hearings Officer finds that the Applicant has not met its burden of proving that the size and extent of “commercial or industrial” uses on the subject property demonstrates it is irrevocably committed to urban levels of development.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

**(b) Location, number and density of residential dwellings;**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is surrounded by residential dwellings. There are 17 lots to the west of the Subject Property that each contain a residential dwelling, all of which are part of the Whispering Pines subdivision. These properties are less than 3 acres each and the area is zoned RR-10. In addition, Tax Lot 306 contains two residential dwellings, one of which is a manufactured home; and Tax Lot 300 appears to contain at least one residential dwelling.*

The Hearings Officer finds that the subject property is not developed with residential dwellings and that surrounding residential development is not relevant to the determination under this criterion of “irrevocably committed.” Under this consideration, the Applicant has not established that the subject property is irrevocably committed to urban levels of development.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

**(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Subject Property is not serviced by public water or sewer facilities.*

Under this consideration, the Applicant has not established that the subject property is irrevocably committed to urban levels of development because there are no urban levels of facilities and services on the property.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

**(d) Parcel sizes and ownership patterns.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*Parcel sizes and ownership patterns for the Subject Property and those adjacent to it are discussed in detail above. That discussion is incorporated here.*

Under this consideration, the Applicant has not established that the subject property is irrevocably committed to urban levels of development due to parcel sizes and ownership patterns of the subject property.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

- (4) **A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*As discussed in detail above, the Subject Property is irrevocably committed to urban development because (1) it does not constitute agricultural land and is not suitable for farm or forest use; (2) it is a relatively small parcel (19.12 acres); (3) it has been in use as a large equipment service / repair and rental / sales facility for the majority of at least the last 40 years; (4) there are no commercial agricultural activities taking place on the adjacent EFU land - rather, that land is being used largely for residential purposes; and (5) it is adjacent to a busy highway. The public facilities and services - e.g., water and sewer - are not servicing the Subject Property but there is sufficient private infrastructure in place to support the level of urban use that has been taking place on the Subject Property for decades, and that Applicant wishes to have occur on the Subject Property should this Application be approved.*

For all the reasons set forth in the findings above, the Hearings Officer finds that the Applicant has not established that the subject property is irrevocably committed to urban levels of development.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

- (5) **More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The Application supports the proposed exception and demonstrates that the site is irrevocably committed to urban development.*

Under this consideration, the Applicant has not established that the subject property is irrevocably committed to urban levels of development. Nonetheless, as set forth in the

findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer's findings, the Applicant's alternative request for a Goal 14 exception need not be approved.

**OREGON REVISED STATUTES (ORS)**

**Chapter 197, Comprehensive Land Use Planning**

**ORS 197.732, Goal Exceptions**

- (2) A local government may adopt an exception to a goal if:**
  - (a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;**
  - (b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or (c) The following standards are met:**
    - (A) Reasons justify why the state policy embodied in the applicable goals should not apply;**
    - (B) Areas that do not require a new exception cannot reasonably accommodate the use;**
    - (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and**
    - (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.**

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*Applicant has explained in detail above the reasons for which it meets the requirements of ORS 197.732(2)(b), i.e., that the Subject Property is irrevocably committed to urban use. That explanation is incorporated here.*

The Hearings Officer finds that the Applicant has not established that the subject property is either physically developed to the point that rural uses are no longer available and/or is irrevocably committed to urban levels of development. Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer's findings, the Applicant's alternative request for a Goal 14 exception need not be approved.

**IV. CONCLUSION & RECOMMENDATION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer finds that the Applicant has met the burden of proof necessary to justify changing the Plan Designation of the subject property from Agriculture to Rural Industrial and Zoning of the subject property from Exclusive Farm Use to Rural Industrial 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. The Hearings Officer finds that no Statewide Planning Goal exceptions are required. The Applicant’s alternative request for a Goal 14 Exception is not supported by substantial evidence and should be denied.

The Deschutes County Board of Commissioners is the final local review body for the applications before the County. DCC 18.136.030. The Hearings Officer recommends approval of the requested plan amendment and zone change with the proposed condition of approval set forth herein.

Dated this 12<sup>th</sup> day of July, 2022.



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Stephanie Marshall, Hearings Officer

**Skidmore Consulting, LLC  
Land Use Planning & Development Services**

**07/18/23 Expanded ESEE Analyses**

**Introduction**

This expanded Economic Social Environmental Energy (ESEE) analysis was prepared by the applicant for the Board of County Commissioners’ consideration to supplement the Board’s findings supporting Ordinance No 2022-011(File Nos. 247-21-000881-PA / 000882-ZC) or a subsequent Ordinance that the Board may adopt as part of these remand proceedings. The applicant had submitted a more condensed version to the record on June 23, 2023. This ESEE addresses all permissible and conditional uses listed in DCC 18.100.

As mentioned in that submittal, although the subject property is located within the Landscape Management Road combining zone, the resource that the LM combining zone looks to protect – scenic views – is diminished at this point along Highway 97. The scenic impacts from a conflicting use whether it be a feed lot, a substation, a cell tower, or a building to house a welding business are all generally the same. None of the allowed or conditional uses would enhance or detract from the view at this point along Highway 97 due to the fact that there is a hill that obscures views to the west and there is a rural residential subdivision developed on the hill. The view from Highway 97 consists of roof tops, siding of the houses, the hill, and the existing structures on the subject property. Additional structures for various types of uses on the subject property will only minimally affect the view. If there were unobstructed views of, for example, the Three Sisters or other Cascade peaks, or perhaps a view of the Deschutes River, those impacts could be significant. This is not the case for the subject property and the viewshed provided by the adjoining property to the west.

As the Board considers whether or how to allow new conflicting uses, the context of the site and the value it contains as a Goal 5 resource is important. Here, the relevant context includes: diminished viewshed quality, existing development on adjoining property, and development on the subject property.

| <b>Conflicting Use</b>                | <b>Positive Economic Consequences of Allowing</b>  | <b>Negative Economic Consequences of Allowing</b>   |
|---------------------------------------|--|---|
| <b>Common to all Conflicting Uses</b> | Continuing to allow each of the conflicting uses would provide direct economic benefits to the owners of the subject properties as well as the various industries that would market and develop the new uses.<br><br>For commercial uses, ongoing employment | The County’s original ESEE analysis contained in Ordinance 92-052 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 |

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| Conflicting Use   | Positive Economic Consequences of Allowing  | Negative Economic Consequences of Allowing   |
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|   | <p>opportunities and income streams are anticipated.</p> <p>The subject property would offer needed services to the rural land owners between Bend and Redmond.</p> <p>Conversations with commercial brokers reveal high demand and low vacancies for Industrial land in Central Oregon. The Quarterly Compass Commercial industry report identifies that there is 0.80% vacancy rate in the Bend industrial market and a 2.45% vacancy rate in the Redmond industrial market. Additional supply of such industrial land will provide business opportunities.</p> | <p>or enhancing visual quality makes the county a more attractive place visit, thereby attracting more visitors and inducing people to stay longer.”</p> <p>Although those observations are still generally true 30 years later, it is undeniable that at this location along Highway 97 the scenic viewshed is of marginal value. Accordingly, there would be minimal detracting to the viewshed from RI development on site. The identified conflicting uses permissible in the RI zone on this particular site will have a minimal negative economic consequence on the property or the county overall.</p> |
| <b>Farming or forest use.</b>   | <p>Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>   | <p>Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>  |
| <b>Primary processing, packaging, treatment, bulk storage and distribution of the following products:</b> | <p>Additional job opportunities associated with processing, packaging and distribution of various agricultural, timber-related and aggregate-related products on site would be a positive economic consequence for</p>  | <p>Processing, packaging and distribution of various agricultural, timber-related and aggregate-related products on site would have no negative economic consequences which differ from the “Common”</p>   |



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| Conflicting Use   | Positive Economic Consequences of Allowing   | Negative Economic Consequences of Allowing  |
|---|--|---|
| <p><b>1. Agricultural products, including foodstuffs, animal and fish products, and animal feeds.</b></p> <p><b>2. Ornamental horticultural products and nurseries.</b></p> <p><b>3. Softwood and hardwood products excluding pulp and paper manufacturing.</b></p> <p><b>4. Sand, gravel, clay and other mineral products.</b></p> | <p>the community. Such uses could provide needed construction materials (hardwood products &amp; sand/gravel) in closer proximity to projects located in the vicinity versus driving to Redmond or Bend for such products.</p>   | <p>economic consequences noted above.</p> <p>Additionally, processing facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p> |
| <p><b>Residence for caretaker or night watchman on property.</b></p>  | <p>A residence for a caretaker would provide economic benefit to the caretaker and construction of such a residence would be positive economic activity for the housing construction industry in central Oregon. It could also have a positive economic consequence by deterring theft of materials on site impacting the specific business.</p> | <p>There are no negative economic consequences from a residence for a caretaker on the property which differ from the "Common" economic consequences noted above.</p>   |
| <p><b>Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck.</b></p>   | <p>Additional job opportunities arising from a Freight Depot on site would be a positive economic consequence for the community.</p>   | <p>Construction of likely necessary access improvements to Highway 97 for a use with such substantial traffic impacts could interrupt traffic and cause delays which can disrupt economic activity.</p>   |
| <p><b>Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no outside storage is</b></p>   | <p>Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.</p>   | <p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>   |

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| Conflicting Use   | Positive Economic Consequences of Allowing   | Negative Economic Consequences of Allowing   |
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| permitted unless enclosed by sight-obscuring fencing.   |  |  |
| <b>Ice or cold storage plant.</b>   | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. For example, The benefits offered to the local brewery and cidery industries could be substantial.   | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.                             |
| <b>Wholesale distribution outlet including warehousing but excluding open outside storage.</b>  | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.  | Construction of likely necessary access improvements to Highway 97 for a use with such substantial traffic impacts could interrupt traffic and cause delays which can disrupt economic activity. |
| <b>Welding, sheet metal or machine shop provided such is wholly enclosed within a building or all outside storage is enclosed by sight-obscuring fencing.</b> | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. For example, such a service at this location could be a benefit to local homeowners and businesses who need such service without the need to drive to Redmond or Bend for such services. | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above..                            |

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| Conflicting Use   | Positive Economic Consequences of Allowing  | Negative Economic Consequences of Allowing  |
|---|---|---|
| <b>Kennel or a Veterinary clinic.</b>   | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Such a service at this location could be a benefit to local homeowners and businesses who need such service without the need to drive to Redmond or Bend for such services. | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above..<br><br>Additionally, commercial dog boarding kennels on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use. |
| <b>Lumber manufacturing and wood processing except pulp and paper manufacturing.</b>  | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.   | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.  |
| <b>Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.</b> | Additional job opportunities from a class I or II road project on site would be a positive economic consequence for the community.  | Loss of potential economic use of the land resulting from the Class I or II road project could be a negative economic consequence for the community and land owner.   |
| <b>Class III road or street project.</b>  | Additional job opportunities from allowing a class III road project on site would be a positive economic consequence for the community.   | Loss of potential economic use of the land resulting from the Class I or II road project could be a negative economic consequence for the community and land owner.   |

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| Conflicting Use  | Positive Economic Consequences of Allowing   | Negative Economic Consequences of Allowing   |
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| <p><b>Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.</b></p> | <p>There is an existing Central Oregon Irrigation District canal that splits the property. Continued operation, maintenance and potential piping are positive economic consequences as irrigation water drives agricultural economic activity. Further, piping such canal facilities would likely improve the view shed, further enhancing the economic value of Deschutes County's view shed as seen from the subject property.</p> | <p>There are no negative economic consequences from this type of use locating on the subject property because of the existing Central Oregon Irrigation District facilities adjacent to and on the property.</p> |
| <p><b>Concrete or ready-mix plant.</b></p>   | <p>Such a use on the subject property could benefit nearby residents and agricultural uses by providing needed services in close proximity. It also provides potential employment opportunities. Ready mix plants in Bend and Redmond are all at least 10 miles from this location. Projects in the rural residential areas in this vicinity would benefit from the shorter trip.</p>  | <p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>                                      |
| <p><b>Petroleum products storage and distribution.</b></p>   | <p>Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.</p>   | <p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>                                      |

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| Conflicting Use  | Positive Economic Consequences of Allowing  | Negative Economic Consequences of Allowing  |
|--|---|---|
| <p><b>Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.</b></p> | <p>Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Further, availability of such materials to local land and business owners could be of benefit removing time and cost to travel to Bend or Redmond for such resource.</p>   | <p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>   |
| <p><b>Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.</b></p>   | <p>Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Further, such a use at this location close to agricultural uses in central Oregon may provide additional options for livestock and similar operations.</p>   | <p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>   |
| <p><b>Railroad trackage and related facilities.</b></p>  | <p>The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the economic consequences of allowing such uses are minimal in this case.</p> | <p>The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the economic consequences of allowing such uses are minimal in this case.</p> |

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| Conflicting Use  | Positive Economic Consequences of Allowing   | Negative Economic Consequences of Allowing   |
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| <b>Pulp and paper manufacturing.</b>   | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.  | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.   |
| <b>Any use permitted by DCC 18.100.010, which is expected to exceed the following standards:</b> <ol style="list-style-type: none"> <li><b>1. Lot coverage in excess of 70 percent.</b></li> <li><b>2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the property line of the subject use.</b></li> </ol> | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.  | Although outside of the identified impact area, uses that generate odor, fumes, glare, flashing lights or noise perceptible beyond 500 feet could impact property values of the rural residential homes on the subdivision directly west. This would have negative economic consequences for those landowners. |
| <b>Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of odor, noise, dust, smoke, gas, traffic or other factors.</b>               | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Further, the materials used for such manufacturing could drive additional local business opportunities for those looking to source such materials. | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.   |
| <b>Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.</b>  | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. The benefits offered to the local brewery and cidery industries could be substantial.  | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.   |

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| Conflicting Use  | Positive Economic Consequences of Allowing  | Negative Economic Consequences of Allowing   |
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| <b>Public Land Disposal Site Transfer Station, including recycling and other related activities.</b>                         | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.   | Although outside of the identified impact area, a transfer station at this location could have a negative impact on the value of the homes in the rural residential subdivision directly west of the subject property. |
| <b>Mini-storage facility.</b>  | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Providing for the storage needs of business and property owners in proximity would be an economic benefit as well to reduce cost of driving to Bend or Redmond. | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.   |
| <b>Automotive wrecking yard totally enclosed by a sight-obscuring fence.</b>   | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.   | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.   |
| <b>Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).</b> | Due to the limited staffing required on site to operate such facilities, economic benefits likely focus on job opportunities associated with construction of such facilities and increased bandwidth in the vicinity.   | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.   |
| <b>Utility facility.</b>   | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.   | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.   |

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| Conflicting Use   | Positive Economic Consequences of Allowing  | Negative Economic Consequences of Allowing  |
|---|---|---|
|   |   | <p>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>   |
| <p><b>Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.</b></p> | <p>Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. The central location of this facility would be an economic benefit to farms and similar uses in the area saving travel time.</p> | <p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>   |
| <p><b>Electrical substations.</b></p>   | <p>Due to the limited staffing required on site to operate such facilities, economic benefits likely focus on job opportunities associated with construction of such facilities</p>   | <p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p> <p>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p> |



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| <b>Conflicting Use</b>   | <b>Positive Economic Consequences of Allowing</b>   | <b>Negative Economic Consequences of Allowing</b>  |
|--|---|--|
| <b>Marijuana retailing, subject to the provisions of DCC 18.116.330.</b> | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above. |
| <b>Psilocybin testing laboratories.</b>                                  | Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. | There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above. |

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| Conflicting Use   | Positive Social Consequences of Allowing   | Negative Social Consequences of Allowing   |
|---|--|--|
| <p><b>Common to all Conflicting Uses</b></p>  | <p>The variety of uses permissible in the RI zone would offer positive social consequences to nearby residents in the rural areas between Redmond and Bend by offering needed services and employment opportunities. A welding sheet metal or machine shop, for example, located on site could offer any agricultural operations in the area access to those needed services without having to drive to Redmond or Bend.</p> | <p>The social value of the LM zone to preserve the natural appearance of landscape could be marginally impacted. As noted in Ordinance 92-052, “[h]aving 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.” The same observations are equally true today, although mitigated in this case by the diminished viewshed from Highway 97 adjacent to the subject properties.</p>                    |
| <p><b>Farming or forest use.</b></p>  | <p>Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>  | <p>Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>  |
| <p><b>Primary processing, packaging, treatment, bulk storage and distribution of the following products:</b></p> <ol style="list-style-type: none"> <li><b>1. Agricultural products, including foodstuffs, animal and fish products, and animal feeds.</b></li> <li><b>2. Ornamental horticultural products and nurseries.</b></li> <li><b>3. Softwood and hardwood products</b></li> </ol> | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>   | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p> <p>Additionally, processing facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was</p> |

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| Conflicting Use  | Positive Social Consequences of Allowing  | Negative Social Consequences of Allowing   |
|--|---|--|
| <p><b>excluding pulp and paper manufacturing.</b></p> <p><b>4. Sand, gravel, clay and other mineral products.</b></p>  |   | <p>contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>  |
| <p><b>Residence for caretaker or night watchman on property.</b></p>   | <p>A residence for a caretaker could create a positive social consequence by deterring theft of materials on site and surrounding properties.</p> | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p>  |
| <p><b>Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck.</b></p>  | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>                        | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site. Additionally, construction of necessary access improvements to Highway 97 for a use with substantial traffic impacts could interrupt traffic and minimally affect scenic views on Highway 97, potentially being a negative social consequence of allowing such uses on site.</p> |
| <p><b>Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no</b></p> | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>                        | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p>  |

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| Conflicting Use   | Positive Social Consequences of Allowing  | Negative Social Consequences of Allowing  |
|---|---|---|
| <b>outside storage is permitted unless enclosed by sight-obscuring fencing.</b>   |   |   |
| <b>Ice or cold storage plant.</b>   | The positive social value of allowing such uses on site is access to additional potential employment opportunities. | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.  |
| <b>Wholesale distribution outlet including warehousing but excluding open outside storage.</b>  | The positive social value of allowing such uses on site is access to additional potential employment opportunities. | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site. Additionally, construction of necessary access improvements to Highway 97 for a use with substantial traffic impacts could interrupt traffic and minimally affect scenic views on Highway 97, potentially being a negative social consequence of allowing such uses on site. |
| <b>Welding, sheet metal or machine shop provided such is wholly enclosed within a building or all outside storage is enclosed by sight-obscuring fencing.</b> | The positive social value of allowing such uses on site is access to additional potential employment opportunities. | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.  |

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| Conflicting Use  | Positive Social Consequences of Allowing   | Negative Social Consequences of Allowing  |
|--|--|---|
| <p><b>Kennel or a Veterinary clinic.</b></p>   | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities. Such a service at this location could be benefit to local homeowners and businesses who need such service for livestock, pets, etc. without the need to drive to Redmond or Bend for such services.</p> | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p> <p>Additionally, commercial dog boarding kennels on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p> |
| <p><b>Lumber manufacturing and wood processing except pulp and paper manufacturing.</b></p>  | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities. There may be additional positive social consequences of a new business tied to Central Oregon’s timber industry roots.</p>  | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p>   |
| <p><b>Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.</b></p> | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities. There may also be new “short cuts” that benefit residents of the area – a positive social consequence for those residents.</p>  | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site. Further, any minimal negative social consequence is likely to diminish further when the construction of such road or street project is completed.</p>   |

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| Conflicting Use   | Positive Social Consequences of Allowing  | Negative Social Consequences of Allowing  |
|---|---|---|
| <b>Class III road or street project.</b>  | The positive social value of allowing such uses on site is access to additional potential employment opportunities. Further, if such a project improved traffic flow on Highway 97, there could be positive social consequences from allowing such a use.               | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site. Further, any minimal negative social consequence is likely to diminish further when the construction of such road or street project is completed.  |
| <b>Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.</b> | There is an existing Central Oregon Irrigation District canal that splits the property. Continued operation, maintenance and potential piping are positive social consequences as irrigation water drives agricultural economic activity and a rural country lifestyle. | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, there is an existing canal on the subject property. There are therefore minimal negative social consequences of allowing such uses on site.  |
| <b>Concrete or ready-mix plant.</b>   | The positive social value of allowing such uses on site is access to additional potential employment opportunities.   | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, while a concrete plant is potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the height of any building within the RI zone is limited to 45 feet pursuant to DCC 18.100.040. Therefore the impact will not be as significant compared to a similar use developed within a UGB. |

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| Conflicting Use  | Positive Social Consequences of Allowing   | Negative Social Consequences of Allowing   |
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| <p><b>Petroleum products storage and distribution.</b></p>   | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>   | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, while petroleum storage and distribution is potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the height of any building within the RI zone is limited to 45 feet pursuant to DCC 18.100.040. Therefore the impact will not be as significant compared to a similar use developed within a UGB.</p> |
| <p><b>Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.</b></p> | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>   | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, while mineral operations are potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the height of any building within the RI zone is limited to 45 feet pursuant to DCC 18.100.040. Therefore the impact will not be as significant compared to a similar use developed within a UGB.</p>                |
| <p><b>Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.</b></p>   | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities. Additional facilities for livestock operations would be of value to the local ranching community.</p> | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.</p>  |

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| Conflicting Use   | Positive Social Consequences of Allowing  | Negative Social Consequences of Allowing   |
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|   |   | <p>Additionally, while slaughterhouses and rendering plants are potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the maximum size of any building within the RI zone is limited to 7,500 square feet of floor space pursuant to DCC 18.100.040. Therefore the impact will not be as significant compared to a similar use developed within a UGB height of any structure to 45 feet under DCC 18.100.040. Therefore, the impact will not be significant.</p>                       |
| <p><b>Railroad trackage and related facilities.</b></p> | <p>The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the social consequences of allowing such uses are minimal in this case.</p> | <p>The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the social consequences of allowing such uses are minimal in this case.</p>  |
| <p><b>Pulp and paper manufacturing.</b></p>             | <p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>  | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, while pulp and paper manufacturing plants are potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the height of any building within the RI zone is limited to 45 feet pursuant to DCC 18.100.040. Therefore</p> |



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| Conflicting Use   | Positive Social Consequences of Allowing  | Negative Social Consequences of Allowing   |
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|   |   | the impact will not be as significant compared to a similar use developed within a UGB.  |
| <p><b>Any use permitted by DCC 18.100.010, which is expected to exceed the following standards:</b></p> <ol style="list-style-type: none"> <li><b>1. Lot coverage in excess of 70 percent.</b></li> <li><b>2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the property line of the subject use.</b></li> </ol> | The positive social value of allowing such uses on site is access to additional potential employment opportunities. | Although outside of the identified impact area, uses that generate odor, fumes, glare, flashing lights or noise perceptible beyond 500 feet could impact property values and lifestyles of the neighbors in the rural residential subdivision directly west of the subject property. Limited enjoyment of outdoor areas on their private property could result. This would have negative social consequences for those landowners. |
| <p><b>Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of</b></p>  | The positive social value of allowing such uses on site is access to additional potential employment opportunities. | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.   |

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| Conflicting Use   | Positive Social Consequences of Allowing  | Negative Social Consequences of Allowing  |
|---|---|---|
| odor, noise, dust, smoke, gas, traffic or other factors.  |   |   |
| <b>Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.</b> | The positive social value of allowing such uses on site is access to additional potential employment opportunities. | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.  |
| <b>Public Land Disposal Site Transfer Station, including recycling and other related activities.</b>                    | The positive social value of allowing such uses on site is access to additional potential employment opportunities. | Although outside of the identified impact area, a transfer station at this location could have a negative impact on the value of the homes in the rural residential subdivision directly west of the subject property and associated dust, odors and other externalities could impact outdoor lifestyles of those property owners. Both are negative social consequences of allowing this particular use. |
| <b>Mini-storage facility.</b>   | The positive social value of allowing such uses on site is access to additional potential employment opportunities. | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.  |
| <b>Automotive wrecking yard totally enclosed by a sight-obscuring fence.</b>  | The positive social value of allowing such uses on site is access to additional potential employment opportunities. | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.  |
| <b>Wireless telecommunications facilities, except those facilities meeting the</b>                                      | Such a facility could improve wireless access for our increasingly wireless-device dependent society.               | Tier 3 wireless telecommunications facilities as they are defined in DCC 18.116.250(C) could be taller than 75 feet with required aviation lighting. The site and light impacts of such a facility  |

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| Conflicting Use  | Positive Social Consequences of Allowing  | Negative Social Consequences of Allowing   |
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| <b>requirements of DCC 18.116.250(A) or (B).</b>   |   | of this magnitude would be difficult if not impossible to mitigate. Light pollution could be a concern and impact the many rural residential properties in direct and close proximity. Additionally, the proposed RI zone limits the height of any structure to 45 feet under DCC 18.100.040. Therefore, the impact will not be significant.   |
| <b>Utility facility.</b>   | The positive social value of allowing such uses on site is access to additional potential employment opportunities.   | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.<br><br>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use. |
| <b>Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.</b> | The positive social value of allowing such uses on site is access to additional potential employment opportunities. Businesses that have a connection to some of central Oregon’s traditional industries such as logging and farming could have overall positive social consequences. | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.   |

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| Conflicting Use  | Positive Social Consequences of Allowing   | Negative Social Consequences of Allowing  |
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| <b>Electrical substations.</b>   | Due to the limited staffing required on site to operate such facilities, social benefits likely focus on access to job opportunities associated with construction of such facilities | <p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.</p> <p>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p> |
| <b>Marijuana retailing, subject to the provisions of DCC 18.116.330.</b> | The positive social value of allowing such uses on site is access to additional potential employment opportunities.  | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.  |
| <b>Psilocybin testing laboratories.</b>                                  | The positive social value of allowing such uses on site is access to additional potential employment opportunities.  | While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.  |

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| Conflicting Use  | Positive Environmental Consequences of Allowing   | Negative Environmental Consequences of Allowing  |
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| <b>Farming or forest use.</b>  | Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.  | Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.   |
| <p><b>Primary processing, packaging, treatment, bulk storage and distribution of the following products:</b></p> <p><b>1. Agricultural products, including foodstuffs, animal and fish products, and animal feeds.</b></p> <p><b>2. Ornamental horticultural products and nurseries.</b></p> <p><b>3. Softwood and hardwood products excluding pulp and paper manufacturing.</b></p> <p><b>4. Sand, gravel, clay and other mineral products.</b></p> | The positive environmental consequences of such a use would be the reduced travel distance and associated reduced carbon emissions for suppliers of agricultural products, ornamental horticultural products, softwood and hardwood products or aggregate products in the vicinity without having to travel to Bend or Redmond or elsewhere for processing, packaging, treatment, storage or distribution of their product. | <p>Development of the site with facilities for such uses could remove existing trees and brushes that provide habitat for small vertebrates. Increased dust from aggregate activities could impact air quality for those in close proximity.</p> <p>Additionally, processing facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p> |
| <b>Residence for caretaker or night watchman on property.</b>  | The positive environmental consequence of a caretaker residence on site is the reduced travel distance and associated reduced carbon emissions that result from the commute to and from the site from a community in central Oregon. Additionally, a caretaker or night watchman  | Development of the site with facilities for such uses could remove existing trees and brushes that provide habitat for small vertebrates.  |

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| Conflicting Use  | Positive Environmental Consequences of Allowing   | Negative Environmental Consequences of Allowing   |
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|  | may be able to alert potential wildfires on the subject property.   |   |
| <b>Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck.</b>   | Due to the nature of the materials managed at freight depots, such a use could offer agricultural uses in the area a closer distribution point for commodities such as hay, reducing carbon emissions for transport of such products.                         | Development of the site with facilities for such uses could remove existing trees and brushes that provide habitat for small vertebrate.  |
| <b>Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no outside storage is permitted unless enclosed by sight-obscuring fencing.</b> | The positive environmental consequences of such a use would be the reduced travel distance and associated reduced carbon emissions for such businesses serving the local homes and businesses.  | Development of the site with facilities for such uses could remove existing trees and brushes that provide habitat for small vertebrates. |
| <b>Ice or cold storage plant.</b>  | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for those businesses that requires this type of storage in southern Deschutes County versus having to access cold storage in Redmond. | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.                |
| <b>Wholesale distribution outlet including warehousing but excluding open outside storage.</b>   | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who could access such service without  | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.                |

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| Conflicting Use   | Positive Environmental Consequences of Allowing  | Negative Environmental Consequences of Allowing  |
|---|--|--|
|   | having to travel to Redmond or Bend.   |  |
| <b>Welding, sheet metal or machine shop provided such is wholly enclosed within a building or all outside storage is enclosed by sight-obscuring fencing.</b> | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who could access such service without having to travel to Redmond or Bend.  | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.   |
| <b>Kennel or a Veterinary clinic.</b>   | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who could access such services without having to travel to Redmond or Bend. | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.<br><br>Additionally, commercial dog boarding kennels on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use. |
| <b>Lumber manufacturing and wood processing except pulp and paper manufacturing.</b>  | Such a use could offer a shorter trip for hauling lumber from areas in central Oregon versus to mills in Redmond or La Pine thereby potentially reducing carbon emissions.   | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.   |

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| Conflicting Use   | Positive Environmental Consequences of Allowing  | Negative Environmental Consequences of Allowing   |
|---|--|---|
| <b>Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.</b> | There are minimal positive environmental consequences from such a project on the subject property other than a potential minimal reduction in travel time for area residents and businesses that may benefit from such a project.  | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.  |
| <b>Class III road or street project.</b>  | There are minimal positive environmental consequences from such a project on the subject property versus a minimal reduction in travel time for area residents and businesses that may benefit from such a project.  | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.  |
| <b>Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.</b>                                 | There is an existing Central Oregon Irrigation District canal that splits the property. Continued operation, maintenance and potential piping of the canal provide minimal environmental benefit save for continued delivery of water to agricultural uses and habitat offered by such uses.   | There are no negative environmental consequences of allowing such uses on site.   |
| <b>Concrete or ready-mix plant.</b>   | Such a use on the subject property could benefit nearby residents and agricultural uses by providing needed services in close proximity. Ready mix plants in Bend and Redmond are all at least 10 miles from this location. Projects in the rural residential areas in this vicinity would benefit from the shorter trip. This would reduce the carbon footprint of such projects if travel distance is cut substantially. | The dust from such uses can introduce particles into the air, reducing air quality for the many nearby rural residential properties (especially for those with compromised respiratory systems). Particulate matter (PM) emissions from batch plants if inhaled, can affect the heart and lungs and cause serious health effects, including increased risk of heart attacks, aggravation of asthma, and decreases in lung function. See EPA Particulate Matter Pollution link on list of attachments. |



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| Conflicting Use   | Positive Environmental Consequences of Allowing   | Negative Environmental Consequences of Allowing   |
|---|---|---|
| <b>Petroleum products storage and distribution.</b>   | Such uses typically do not contain a retail component so would not offer a closer fueling option for local businesses and property owners. There are limited positive environmental consequences of such a use at the site.   | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.  |
| <b>Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.</b> | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who could access such goods without having to travel to Redmond or Bend.   | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. Dust from such uses could adversely impact nearby residents and business owners with respiratory issues.   |
| <b>Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.</b>   | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local livestock operations that could benefit from such a facility at this location.  | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. Dust from such uses could adversely impact nearby residents and business owners with respiratory issues.   |
| <b>Railroad trackage and related facilities.</b>  | The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the environmental consequences of allowing such uses are minimal in this case. | The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the environmental consequences of allowing such uses are minimal in this case. |

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| Conflicting Use   | Positive Environmental Consequences of Allowing   | Negative Environmental Consequences of Allowing  |
|---|---|--|
| <b>Pulp and paper manufacturing.</b>  | Such uses typically do not contain a retail component local businesses and property owners could access. There are limited positive environmental consequences of such a use at the site.   | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. Dust from such uses could adversely impact nearby residents and business owners with respiratory issues.  |
| <p><b>Any use permitted by DCC 18.100.010, which is expected to exceed the following standards:</b></p> <ol style="list-style-type: none"> <li><b>1. Lot coverage in excess of 70 percent.</b></li> <li><b>2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the property line of the subject use.</b></li> </ol> | Expansion of the lot coverage for permitted uses generally wouldn't provide positive environmental consequences of such uses on the subject property. Additional emissions would not a be a positive environmental consequence.                   | Although outside of the identified impact area, uses that generate odor, fumes, glare, flashing lights or noise perceptible beyond 500 feet could have negative environmental consequences impacting air quality for nearby businesses and property owners. Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates with the increased lot coverage allowance. |
| <b>Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of odor, noise, dust,</b>  | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services or provide raw materials for manufacturing purposes. | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.   |

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| Conflicting Use  | Positive Environmental Consequences of Allowing   | Negative Environmental Consequences of Allowing  |
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| smoke, gas, traffic or other factors.  |   |  |
| <b>Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.</b>      | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services. | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. |
| <b>Public Land Disposal Site Transfer Station, including recycling and other related activities.</b>                         | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services. | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. |
| <b>Mini-storage facility.</b>  | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services. | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. |
| <b>Automotive wrecking yard totally enclosed by a sight-obscuring fence.</b>   | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services. | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. |
| <b>Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).</b> | There are no known environmental benefits from such a use at the site.  | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. |

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| Conflicting Use  | Positive Environmental Consequences of Allowing   | Negative Environmental Consequences of Allowing  |
|--|---|--|
| <b>Utility facility.</b>   | Positive environmental consequences of such a use on site are limited.  | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.<br><br>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use. |
| <b>Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.</b> | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services. | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.   |
| <b>Electrical substations.</b>   | The positive environmental consequences of such a use on site are limited.  | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.<br><br>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use. |

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| <b>Conflicting Use</b>   | <b>Positive Environmental Consequences of Allowing</b>  | <b>Negative Environmental Consequences of Allowing</b>   |
|--|---|--|
| <b>Marijuana retailing, subject to the provisions of DCC 18.116.330.</b> | The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services versus having to travel to Bend. | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. |
| <b>Psilocybin testing laboratories.</b>                                  | There are limited positive environmental consequences of allowing such a use on site.   | Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. |

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| Conflicting Use   | Positive Energy Consequences of Allowing  | Negative Energy Consequences of Allowing   |
|---|---|--|
| <b>Farming or forest use.</b>   | Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.  | Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.   |
| <p><b>Primary processing, packaging, treatment, bulk storage and distribution of the following products:</b></p> <ol style="list-style-type: none"> <li><b>1. Agricultural products, including foodstuffs, animal and fish products, and animal feeds.</b></li> <li><b>2. Ornamental horticultural products and nurseries.</b></li> <li><b>3. Softwood and hardwood products excluding pulp and paper manufacturing.</b></li> <li><b>4. Sand, gravel, clay and other mineral products.</b></li> </ol> | The positive energy consequences of such a use would be the reduced travel distance and conserved energy for suppliers of agricultural products, ornamental horticultural products, softwood and hardwood products or aggregate products in the vicinity without having to travel to Bend or Redmond or elsewhere for processing, packaging, treatment, storage or distribution of their product. | <p>The energy usage for these uses would vary. There could be substantial energy needs for processing raw materials into consumer goods.</p> <p>Additionally, processing facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p> |
| <b>Residence for caretaker or night watchman on property.</b>   | Such a use would reduce energy usage associated with travel to and from the site for security needs.  | There are limited negative energy consequences associated with such a use on site.   |

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| Conflicting Use  | Positive Energy Consequences of Allowing   | Negative Energy Consequences of Allowing  |
|--|--|---|
| <b>Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck.</b>   | Due to the nature of the materials managed at freight depots, such a use could offer agricultural uses in the area a closer distribution point for commodities such as hay, reducing the amount of energy needed to transport items to market. | There are limited negative energy consequences associated with such a use on site.      |
| <b>Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no outside storage is permitted unless enclosed by sight-obscuring fencing.</b> | The positive energy consequences of such a use would be the reduced consumption of energy for such businesses serving the local homes and businesses versus contractors having to drive from Redmond or Bend.                                  | There are limited negative energy consequences associated with such a use on site.      |
| <b>Ice or cold storage plant.</b>  | The positive energy consequences of such a use would be the reduced energy consumption for those businesses that requires this type of storage in southern Deschutes County versus having to access cold storage in Redmond.                   | The energy usage associated with a cold storage plant is anticipated to be substantial. |
| <b>Wholesale distribution outlet including warehousing but excluding open outside storage.</b>   | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who could access such service without having to travel to Redmond or Bend.                                     | There are limited negative energy consequences associated with such a use on site.      |
| <b>Welding, sheet metal or machine shop provided such is wholly enclosed within a building or all outside storage is</b>   | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners  | There are limited negative energy consequences associated with such a use on site.      |

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| Conflicting Use   | Positive Energy Consequences of Allowing  | Negative Energy Consequences of Allowing   |
|---|---|--|
| <b>enclosed by sight-obscuring fencing.</b>   | who could access such service without having to travel to Redmond or Bend.  |  |
| <b>Kennel or a Veterinary clinic.</b>   | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who could access such services without having to travel to Redmond or Bend. | There are limited negative energy consequences associated with such a use on site.<br><br>Additionally, commercial dog boarding kennels on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use. |
| <b>Lumber manufacturing and wood processing except pulp and paper manufacturing.</b>  | Such a use could offer a shorter trip for hauling lumber from areas in central Oregon versus to mills in Redmond or La Pine thereby potentially reducing energy consumption.                                | There are limited negative energy consequences associated with such a use on site.   |
| <b>Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.</b> | There are limited positive energy consequences from such a use on site.   | There are limited negative energy consequences associated with such a use on site.   |
| <b>Class III road or street project.</b>  | There are limited positive energy consequences from such a use on site other than a potential minimal reduction in travel time for area residents and businesses that may benefit from such a project.      | There are limited negative energy consequences associated with such a use on site.   |



**Skidmore Consulting, LLC**  
**Land Use Planning & Development Services**

| Conflicting Use  | Positive Energy Consequences of Allowing  | Negative Energy Consequences of Allowing  |
|--|---|---|
| <p><b>Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.</b></p> | <p>There is an existing Central Oregon Irrigation District canal that splits the property. Continued operation, maintenance and potential piping of the canal provide positive energy consequences by assuring continued delivery of water to agricultural uses primarily through gravity delivery.</p>   | <p>There are no negative energy consequences of allowing such uses on site.</p>       |
| <p><b>Concrete or ready-mix plant.</b></p>   | <p>Such a use on the subject property could benefit nearby residents and agricultural uses by providing needed services in close proximity. Ready mix plants in Bend and Redmond are all at least 10 miles from this location. Projects in the rural residential areas in this vicinity would benefit from the shorter trip and reduced energy consumption.</p> | <p>There are no negative energy consequences of allowing such uses on site.</p>       |
| <p><b>Petroleum products storage and distribution.</b></p>   | <p>Such uses typically do not contain a retail component so would not offer a closer fueling option for local businesses and property owners. There are limited positive energy consequences of such a use at the site.</p>   | <p>There are no negative energy consequences of allowing such uses on site.</p>       |
| <p><b>Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.</b></p>   | <p>The positive energy consequences of such a use would be the reduced travel distance and reduced energy consumption for local businesses and property owners who could access such goods without having to travel to Redmond or Bend.</p>   | <p>There are no known negative energy consequences of allowing such uses on site.</p> |

**Skidmore Consulting, LLC**  
**Land Use Planning & Development Services**

| Conflicting Use   | Positive Energy Consequences of Allowing   | Negative Energy Consequences of Allowing   |
|---|--|--|
| <b>Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.</b>   | The positive energy consequences of such a use would be the reduced energy consumption for local livestock operations that could benefit from such a facility at this location.  | There are no known negative energy consequences of allowing such uses on site.   |
| <b>Railroad trackage and related facilities.</b>  | The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the energy consequences of allowing such uses are minimal in this case. | The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the energy consequences of allowing such uses are minimal in this case. |
| <b>Pulp and paper manufacturing.</b>  | Such uses typically do not contain a retail component local businesses and property owners could access. There are limited positive energy consequences of such a use at the site.   | Pulp and paper manufacturing could require substantial energy consumption.   |
| <b>Any use permitted by DCC 18.100.010, which is expected to exceed the following standards:</b><br><br><ol style="list-style-type: none"> <li>1. Lot coverage in excess of 70 percent.</li> <li>2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the</li> </ol> | There are no identified positive energy consequences from such a use on site.  | There are no known negative energy consequences from such a use on site.   |

**Skidmore Consulting, LLC**  
**Land Use Planning & Development Services**

| Conflicting Use  | Positive Energy Consequences of Allowing   | Negative Energy Consequences of Allowing                                 |
|--|--|--|
| property line of the subject use.  |  |  |
| <b>Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of odor, noise, dust, smoke, gas, traffic or other factors.</b> | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services or provide raw materials for manufacturing purposes. | There are no known negative energy consequences from such a use on site. |
| <b>Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.</b>  | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services.   | There are no known negative energy consequences from such a use on site. |
| <b>Public Land Disposal Site Transfer Station, including recycling and other related activities.</b>   | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services.   | There are no known negative energy consequences from such a use on site. |
| <b>Mini-storage facility.</b>  | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services.   | There are no known negative energy consequences from such a use on site. |

**Skidmore Consulting, LLC  
Land Use Planning & Development Services**

| Conflicting Use  | Positive Energy Consequences of Allowing   | Negative Energy Consequences of Allowing   |
|--|--|--|
| <b>Automotive wrecking yard totally enclosed by a sight-obscuring fence.</b>   | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services. | There are no known negative energy consequences from such a use on site.   |
| <b>Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).</b>   | There are no known energy benefits from such a use at the site.  | There are no known negative energy consequences from such a use on site.   |
| <b>Utility facility.</b>   | There could be positive energy consequences of such a use on site if developed for photovoltaic energy production or an energy substation.                   | There are no known negative energy consequences from such a use on site.<br><br>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use. |
| <b>Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.</b> | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services. | There are no known negative energy consequences from such a use on site.   |

**Skidmore Consulting, LLC**  
**Land Use Planning & Development Services**

| Conflicting Use  | Positive Energy Consequences of Allowing   | Negative Energy Consequences of Allowing   |
|--|--|--|
| <b>Electrical substations.</b>   | There would be positive energy consequences of such a use at this site as it would provide additional energy capacity for the community.   | There are no known negative energy consequences from such a use on site.<br><br>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use. |
| <b>Marijuana retailing, subject to the provisions of DCC 18.116.330.</b> | The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services versus having to travel to Bend. | There are no known negative energy consequences from such a use on site.   |
| <b>Psilocybin testing laboratories.</b>                                  | There are no known positive energy consequences from such a use on site.   | There are no known negative energy consequences from such a use on site.   |

**Skidmore Consulting, LLC**  
**Land Use Planning & Development Services**

**Allowing Conflicting Uses, Prohibiting Conflicting Uses, or Limiting Conflicting Uses:**

The ESEE consequences of the permitted and conditional uses in DCC 18.100 have been analyzed and are provided for consideration by the Board of County Commissioners in deciding this land use application. This exhaustive list provides sufficient detail to consider the economic, social, environmental and energy factors to balance in making this decision regarding the proposal and the Landscape Management Roads Goal 5 resource.



# BOARD OF COMMISSIONERS

## AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** September 13, 2023

**SUBJECT:** Authorization of Issuance of Debt for Courthouse Expansion and Potential Refinancing

**RECOMMENDED MOTION:**

Move approval of Resolution 2023-051 Authorizing Financing of a Project in a Principal Amount not to Exceed \$20,500,000 and Refunding the County's Full Faith and Credit Bonds

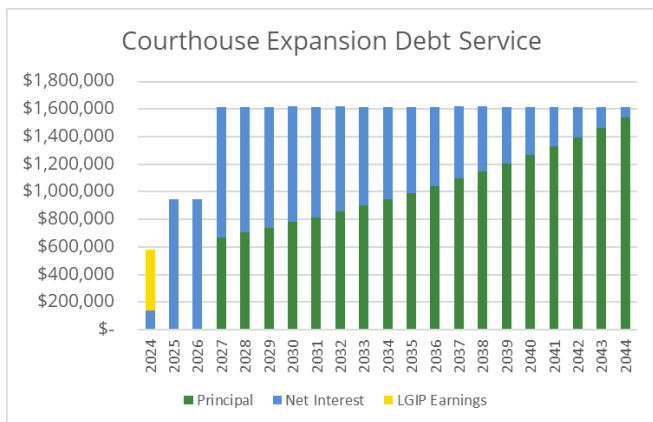
**BACKGROUND AND POLICY IMPLICATIONS:**

**Courthouse Expansion Project**

The Board of County Commissioners approved the Courthouse Expansion Project, with an estimated cost of \$40.5 million. The Oregon Legislative Assembly allocated \$15 million to the project through Senate Bill 5506 (2023) out of the State's General Fund. In May 2023, the Budget Committee approved \$5 million toward the project, comprised of \$4.6 million from ARPA Local Assistance and Tribal Consistency Funds (LATCF) and \$400,000 from discretionary ARPA interest earnings. The Board adopted the budget allocations in June 2023. There remains \$20.5 million needed from debt financing to fund the project.

Finance met with PFM Financial Advisors to discuss options of issuing bonds in October 2023 or April 2024. After evaluating the potential costs and benefits of issuing debt in either timeframe, we ended up with an October/November timeframe. Issuing bonds earlier would add additional costs but would mitigate interest rate risk associated with a later sale. Given the inverted yield curve (relatively high short-term investment rates), issuing bonds early may reduce net interest expense by increased interest earnings for the six-month period.

Preliminary analysis estimates a true interest cost at 3.96%, par amount of bonds issues at \$18.6 million, and total debt service of \$30.6 million. Annual debt service payments are estimated at \$1.6 million.



**Refunding 2013 Bond**

On July 24, 2013, the County issued \$8.4 million in Full Faith & Credit Obligations, with a final maturity of June 1, 2038, to finance the expansion of the Deschutes County Adult Jail, including building a medium/maximum security inmate housing unit, the conversion of a dorm unit into a medical and mental health segregation unit, and building an outdoor recreating unit, among other projects.

The County’s outstanding 2013B Bonds became callable on June 1, 2023. As part of the County’s 2022 Full Faith & Credit financing for the Negus Transfer Station, the Board of County Commissioners authorized the refinancing of these outstanding maturities. However, due to market conditions at the time the 2022 obligations were sold, the County elected not to include the refunding as part of that transaction. Approximately \$6 million remains outstanding.

Current analysis indicates potential savings refunding the 2013 obligations of over approximately \$30,000 annually for the remaining 15 years of the bond. This produces a cash flow savings of \$457,520 and a net present value savings of \$228,201, as follows:

**SAVINGS**

**Deschutes County, Oregon  
Full Faith & Credit and Refunding Obligations, Series 2023  
Assumes AA+ Muni BVAL as of 8/9/2023 + 25 bps  
(Preliminary - Subject to Change)**

| <i>Date</i> | <i>Prior<br/>Debt Service</i> | <i>Refunding<br/>Debt Service</i> | <i>Present Value<br/>Savings @ 3.6203112%</i> | <i>Present Value<br/>to 11/30/2023</i> |
|-------------|-------------------------------|-----------------------------------|---|--|
| 06/30/2024  | 545,381.26                    | 537,761.11                        | 7,620.15                                      | 9,696.02                               |
| 06/30/2025  | 543,581.26                    | 509,000.00                        | 34,581.26                                     | 32,633.83                              |
| 06/30/2026  | 546,381.26                    | 516,250.00                        | 30,131.26                                     | 27,420.44                              |
| 06/30/2027  | 543,581.26                    | 512,500.00                        | 31,081.26                                     | 27,299.44                              |
| 06/30/2028  | 545,381.26                    | 513,250.00                        | 32,131.26                                     | 27,238.77                              |
| 06/30/2029  | 546,581.26                    | 513,250.00                        | 33,331.26                                     | 27,272.70                              |
| 06/30/2030  | 547,181.26                    | 517,500.00                        | 29,681.26                                     | 23,430.74                              |
| 06/30/2031  | 547,181.26                    | 515,750.00                        | 31,431.26                                     | 23,954.06                              |
| 06/30/2032  | 546,581.26                    | 513,250.00                        | 33,331.26                                     | 24,522.94                              |
| 06/30/2033  | 544,875.00                    | 515,000.00                        | 29,875.00                                     | 21,210.89                              |
| 06/30/2034  | 542,550.00                    | 510,750.00                        | 31,800.00                                     | 21,795.91                              |
| 06/30/2035  | 542,975.00                    | 510,750.00                        | 32,225.00                                     | 21,311.58                              |
| 06/30/2036  | 547,500.00                    | 514,750.00                        | 32,750.00                                     | 20,898.75                              |
| 06/30/2037  | 545,900.00                    | 512,500.00                        | 33,400.00                                     | 20,566.25                              |
| 06/30/2038  | 543,400.00                    | 509,250.00                        | 34,150.00                                     | 20,291.20                              |
|             | <b>8,179,031.34</b>           | <b>7,721,511.11</b>               | <b>457,520.23</b>                             | <b>349,543.53</b>                      |

Source: PFM Financial Advisors LLC



**Savings Summary**

|                               |              |
|-------------------------------|--------------|
| PV of savings from cash flow  | 349,543.53   |
| Less: Prior funds on hand     | (125,190.63) |
| Plus: Refunding funds on hand | 3,847.76     |
|                               | <hr/>        |
| Net PV Savings                | 228,200.66   |

Source: PFM Financial Advisors LLC

**BUDGET IMPACTS:**

The issuance costs of approximately \$150,000 will be covered by bond proceeds. For the Courthouse Expansion Project, future annual debt service payments of approximately \$1.6 million will be paid by the General Fund, including transfers from the Transient Room Tax Fund. These debt service costs have been factored into the long-term General Fund financial forecast. For the refunding bond, future debt services payments will continue to be paid by the Sheriff’s Office and General Fund, with savings of approximately \$30,000 annually.

**ATTENDANCE:**

Robert Tintle, Chief Financial Officer  
Lee Randall, Facilities Director

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



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

A Resolution Authorizing Financing of a \*  
Project in a Principal Amount not to \* RESOLUTION NO. 2023-051  
Exceed \$20,500,000 and Refunding the \*  
County’s Full Faith and Credit Bonds \*

WHEREAS, Deschutes County, Oregon (the “County”) is authorized by Oregon Revised Statutes (“ORS”) Section 271.390 to enter into financing agreements to finance or refinance real or personal property which the Board of County Commissioners (the “Board”) determines is needed, and to authorize certificates of participation in the right to receive the payments due from the County under those financing agreements, so long as the estimated weighted average life of a financing agreement does not exceed the estimated dollar weighted average life of the real or personal property to be financed or refinanced by such agreement; and

WHEREAS, the County is authorized by ORS 287A.105 to incur bonded indebtedness within the meaning of Section 10, Article XI of the Oregon Constitution in an amount not to exceed one percent of the real market value of the taxable property in the County, in the form of a financing agreement, and to commit the County’s full faith and credit and taxing power pursuant to ORS 287A.315 to pay the amounts due under the financing agreement; and

WHEREAS, it is desirable to obtain financing to provide improvements to and expansion of the county courthouse (the “Project”) in an aggregate principal amount of not more than \$20,500,000 pursuant to ORS Sections 271.390 and ORS 287A.105, and other applicable provisions of ORS Chapter 287A; and

WHEREAS, the Project constitutes real or personal property, and the Board hereby determines the Project is needed; and

WHEREAS, the County issued its Full Faith and Credit Bonds, Series 2013 in the original principal amount of \$8,405,000 (the “Refundable Bonds”) to finance a jail expansion project, including a new medium/maximum security inmate housing unit, improvements and renovations to the existing jail facility and related site work (the “Refunded Project”); and

WHEREAS, the County may be able to reduce its debt service costs by refunding all or a portion of the outstanding Refundable Bonds, and it is desirable to refinance all or a portion of the outstanding Refundable Bonds pursuant to ORS Sections 271.390, 287A.105, and 287A.365 and other applicable provisions of ORS Chapter 287A; and

WHEREAS, the Refunded Project constitutes real or personal property, and the Board hereby determines that the Refunded Project was needed at the time it was financed and continues to be needed; now therefore

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

**Section 1. Financing Agreement Authorized.**

The County is hereby authorized to finance the Project under the authority of ORS Sections 271.390 and 287A.105, and other applicable provisions of ORS Chapter 287A, by entering into one or more financing agreements, loan agreements, credit facilities, or other financing documents (the “New Money Financing Agreements”) in an aggregate principal amount of not more than \$20,500,000. The County may also pay costs of issuing the New Money Financing Agreements and any associated Obligations (as defined below) with proceeds.

**Section 2. Refinancing of the Refundable Bonds Authorized.**

The County is also authorized to refinance all or a portion of the outstanding Refundable Bonds under the authority of ORS Sections 271.390, 287A.105, and 287A.365, and other applicable provisions of ORS Chapter 287A, by entering into one or more financing agreement, loan agreements, credit facilities or other financing documents (the “Refunding Financing Agreements” and together with the New Money Financing Agreements, the “Financing Agreements”) to refinance all or a portion of the outstanding Refundable Bonds. The Refunding Financing Agreements may be issued in an amount sufficient to pay and redeem the Refundable Bonds to be refunded, plus an amount sufficient to pay estimated costs related to accomplishing the refunding and the issuing of the Refunding Financing Agreement and any associated Obligations (as defined below);

**Section 3. Delegation.**

The Chief Financial Officer, the County Administrator, or the designee of either of those officials (each of whom is referred to herein as a “County Official”) are hereby authorized on behalf of the County and without further action by the Board, to:

3.1. Negotiate, execute and deliver the Financing Agreements which obligate the County to repay the financed amounts, with interest. Subject to the limitations of this Resolution, the Financing Agreements may be in such form and contain such terms as the County Official may approve, including covenants for the benefit of the lenders or credit enhancement providers.

3.2. Negotiate, execute and deliver one or more escrow agreements or similar documents (the “Escrow Agreements”) which provide for the issuance of one or more series of “certificates of participation” or “full faith and credit obligations” (the “Obligations”) which represent ownership interests in the financing payments due from the County under the Financing Agreements. Subject to the limitations of this Resolution, the Escrow Agreements and each series of Obligations may be in such form and contain such terms as the County Official may approve, including covenants for the benefit of the lenders or credit enhancement providers.

3.3. Determine whether the interest payable on each Financing Agreement will be includable in gross income or excludable from gross income under the Internal Revenue Code of 1986, as amended (the “Code”) and covenant for the benefit of the owners of tax-exempt obligations to comply with all provisions of the Code which are required for the interest component of financing payments payable under the related Financing Agreements to be excluded from gross income for federal income tax purposes.

3.4. Designate the Financing Agreements and Obligations as “qualified tax-exempt obligations” under Section 265(b) of the Code, if applicable.

3.5. Issue any Financing Agreement as a “taxable bond” bearing interest that is includable in gross income under the Code.

3.6. Deem final and authorize the distribution of a preliminary official statement for each series of Obligations, authorize the preparation and distribution of a final official statement or other disclosure document for each series of Obligations, and enter into agreements to provide continuing disclosure for owners of each series of Obligations.

3.7. Apply for and purchase ratings, municipal bond insurance, or other forms of credit enhancements for the Financing Agreements and Obligations, and enter into related agreements, as necessary.

3.8. Enter into additional covenants for the benefit of the purchasers of the Financing Agreements and Obligations which the County Official determines are desirable to sell the Financing Agreements and Obligations on favorable terms.

3.9. Engage the services of verification agents, escrow agents, paying agents, and any other professionals whose services are desirable for the financings and enter into agreement with these service providers.

3.10. Select the maturities of any Refundable Bonds to be refunded.

3.11. Enter into one or more escrow deposit agreements for the refunding, take actions to call, defease, and redeem all or any portion of the outstanding Refundable Bonds, file any required advance refunding plans with the State of Oregon.

3.12. Subject to this Resolution, determine the final principal amount of each Financing Agreement, the interest rate or rates which each Financing Agreement and each series of Obligations shall bear, and the County’s prepayment rights and other terms of each Financing Agreement and each series of Obligations.

3.13. Solicit competitive bids for the purchase of each series of the Obligations and award their sale to the bidder offering the most favorable terms to the County, select one or more underwriters, negotiate the terms of the sale of each series of Obligations, and sell that series to those underwriters; or select one or more commercial banks, negotiate the terms of the sale of each Financing Agreement and sell each Financing Agreement to those commercial banks.

3.14. Execute and deliver any other certificates or documents and take any other actions which the County Official determines are desirable to issue, sell, and deliver the Financing

Agreements and the Obligations and to accomplish the refunding of the Refundable Bonds in accordance with this Resolution.

**Section 4. Security.**

The Financing Agreements shall constitute “limited tax bonded indebtedness” as defined in ORS 287A.105 and the obligation of the County to make financing payments under the Financing Agreements is unconditional. Pursuant to ORS 287A.315, the County Official may pledge the County’s full faith and credit and taxing power within the limitations of Section 11 and 11b of Article XI of the Oregon Constitution, and any and all of the County’s legally available funds, including the proceeds of the Financing Agreements, to make the payments due under the Financing Agreements.

**Section 5. Appointment of Bond Counsel and Municipal Advisor.**

The law firm of Hawkins Delafield & Wood LLP is appointed as bond counsel to the County, and PFM Financial Advisors LLC is appointed as municipal advisor to the County, with respect to the Obligations.

**Section 6. Effective Date.**

This Resolution shall take effect immediately upon its adoption.

DATED this 13th day of September, 2023.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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

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

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

ATTEST:

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

Record of Adoption Vote

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



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** September 13, 2023

**SUBJECT:** Pence Early Work Contract Amendment for the Deschutes County Courthouse Expansion Project

**RECOMMENDED MOTION:**

Move approval of Document No. 2023-839 Pence Contractors Early Work Amendment.

**BACKGROUND AND POLICY IMPLICATIONS:**

Pence Contractors was contracted by Deschutes County in May of 2022 to perform Construction Manager/General Contractor services for the Deschutes County Courthouse Expansion project. Pence's original contract was for pre-construction services which include but are not limited to: cost estimates, constructability reviews, project schedule development and analysis, site investigations, logistics planning, and development of the Guaranteed Maximum Price (GMP).

This Early Work Amendment is to authorize construction services prior to establishing the GMP. The scope of early work includes but is not limited to: early procurement of electrical and mechanical equipment, courtroom mock-up, site logistics, site utilities, demolition, earthwork, and providing a temporary construction entrance and egress. A competitive bidding process will be conducted by Pence for early procurement items and work performed by subcontractors.

The cost of this Early Work Amendment is included in the budgeted construction costs and does not increase the project budget. The early work price is a portion of the total GMP, and once the GMP is established, a subsequent amendment will adjust the total cost accordingly. Near the conclusion of the design process as specified in the contract, the County and Pence Contractors will negotiate a GMP based on the completed design and the results of a competitive subcontractor bidding process. That additional cost will be added to the contract by means of a GMP addendum. This portion of the project is budgeted in Fund 463 for FY2024.

**BUDGET IMPACTS:**

The CM/GC contract with Pence will be increased by \$4,513,562.00 for a total contract amount of \$4,575,602. The cost of this Early Work Amendment is included in the budgeted construction costs and does not increase the project budget.

**ATTENDANCE:** Lee Randall, Facilities Director  
Eric Nielsen, Capital Improvement Manager

REVIEWED  

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LEGAL COUNSEL

For Recording Stamp Only

**DOCUMENT NO. 2023-839  
AMENDING DESCHUTES COUNTY CONTRACT NO. 2022-452**

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2022-452 dated July 15, 2022, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon (“County”) and Pence Contractors LLC (“Contractor”), is amended, effective upon signing of all parties, as set forth below. Except as provided herein, all other provisions of the contract remain the same and in full force.

County’s performance hereunder is conditioned upon Contractor’s compliance with provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235, which are hereby incorporated by reference. In addition Standard Contract Provisions contained in Deschutes County Code Section 2.37.150 are hereby incorporated by reference. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The above listed contract is amended as follows:

**EXHIBIT 1  
DESCHUTES COUNTY SERVICES CONTRACT  
Contract No. 2022-452  
STATEMENT OF WORK, COMPENSATION  
PAYMENT TERMS and SCHEDULE**

**Consideration**

The County and the Construction Manager/General Contractor (CM/GC) hereby agree that the CM/GC may perform the Early Work generally described below prior to establishing the Guaranteed Maximum Price (GMP). The County and CM/GC hereby agree that the Early Work Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work. The Early Work Price is a portion of the total GMP, and once the GMP is established, a subsequent amendment will adjust the total cost accordingly.

Provided below is a narrative and itemized statement of the Early Work Price organized by trade categories with allowances, contingencies, the Construction Manager’s Fee, and other items: SEE ATTACHMENT “A” and “B”.

**Maximum Compensation**

The maximum Contract Sum under the original contract was \$62,040  
The Early Work Price under this amendment is guaranteed by the Construction Manager not to exceed **Four Million Five Hundred Thirteen Thousand Five Hundred Sixty-Two Dollars and Zero Cents (\$4,513,562.00)**, subject to additions and deductions by Change Order as provided in the Contract Documents. Any cost savings from this Early Work Price will be adjusted in the final GMP total.

The total Contract Sum under the original Contract as amended is \$4,575,602



**Effective Date and Termination Date.**

The effective date of this Contract shall be September 1, 2023 or the date, on which each party has signed this Contract, whichever is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance, or on February 15, 2025, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured.

CONTRACTOR: Pence Contractors LLC

**Ted Jacobsen** Digitally signed by Ted Jacobsen  
DN: C=US, E=tedj@pence.net,  
O=Pence Contractors, OU=Operations,  
CN=Ted Jacobsen  
Date: 2023.09.05 17:09:01-07'00 AJW  
Authorized Signature **TB**

Dated this 5th of September, 2023

COUNTY:

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

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
ANTHONY DeBONE, CHAIR, COMMISSIONER

\_\_\_\_\_  
PATTI ADAIR, VICE-CHAIR

\_\_\_\_\_  
PHIL CHANG



LAKE OSWEGO 5400 Meadows Road, Suite 410, Lake Oswego, OR 97035  
 BEND 1051 NW Bond Street, Suite 310, Bend, OR 97701  
 pence.net, CCB: OR 239463

**ATTACHMENT A**  
**Document Number 2023-839**

August 31st, 2023

Wayne Powderly  
 Cumming Group  
 4640 S. Macadam Ave., Suite 100  
 Portland, OR 97239

RE: Deschutes County Courthouse – Early Work Amendment Budget  
 Amendment No. 3122-018-001

Dear Wayne,

Based on the Design Development Set, project Risk and Opportunity log, and the clarifications in this narrative, Pence is presenting our Proposed Early Work Amendment Scope package.

| <b>Description</b>                           | <b>area</b>   | <b>unit</b> | <b>unit cost</b> | <b>total</b>        |
|--|---------------|-------------|------------------|---------------------|
| Courthouse Expansion - Early Work Scope      | 50,686        | gsf         | \$ 70.20         | \$ 3,558,256        |
| Temporary Construction and Logistics Package | 34,749        | gsf         | \$ 27.49         | \$ 955,306          |
| <b>Total Construction</b>                    | <b>50,686</b> | <b>gsf</b>  | <b>\$ 89.05</b>  | <b>\$ 4,513,562</b> |

**This proposed Early Work package is intended to allow for early procurement and logistical support of the overall Courthouse expansion project. All the values proposed in this early work amendment are included in the current project Design Development direct cost budget of approx. \$34.5M. This early work scope will be reconciled as part of the future GMP project Amendment.**

**01 – General**

1. The Early Work Proposal is based on the following documents.
  - a. Deschutes County Courthouse Expansion Project 100% Design Development by LRS Architects dated 06/09/23.
  - b. Deschutes County Courthouse Expansion Project - Project Manual 100% Design Development by LRS Architects dated 06/09/23.
  - c. Deschutes County Courthouse Expansion Project – DD Plumbing and Lighting Cut Sheets LRS Architects dated 06/09/23.
  - d. Deschutes County Courthouse Expansion Project – Project Deliverable Communication Log 100% DD by PAE dated 06/09/23.
  - e. Pence Narrative and Clarifications (this document)
  - f. Pence Risk and Opportunity Log dated 7/24/23.
2. The estimate is based on a preliminary construction schedule of approximately eighteen (18) months from GMP Execution, Notice to Proceed, and Building Permit for the demolition of existing facilities and completion of the new addition.



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3. The estimate includes the following contingencies. The owner should carry additional contingency for design changes, un-anticipated conditions, or other similar changes defined in the Owner Contract as Change Orders.
  - a. Design/Estimating Contingency allowance of 4% of cost of work.
  - b. Construction Contingency of 5% of cost of work
4. Liability Insurance is included at 0.90% of contract amount.
5. P&P bonds is included at 0.90% of contract amount.
6. Builders Risk is excluded.
7. Escalation allowance at 3% of the contract amount and assumes project bid in October 2023.
8. Sub Default Mitigation is included at 1.25% of subcontractor cost.
9. Student Success Act at 0.42% of the contract amount.
10. Proposal includes early work package to set up temporary access into the existing courthouse, installation of temporary sound mitigation at existing courthouse, and set up of temporary logistics plan (before markups). Should Early Work Package be preliminarily accepted into an Early Work Amendment, this scope and cost will be re-assessed for changes and finalized with the final GMP package.
  - a. Includes an allowance of \$306,953 for temporary vestibule entrance – currently assumed to be assembled utilizing modular construction.
  - b. Includes an allowance of \$96,525 for temporary egress stairs in the courtyard and temporary walls in the existing courthouse as drawn in the plan set.
  - c. Includes an allowance of \$126,875 for temporary acoustics/sound dampening wall at existing courthouse.
  - d. Includes an allowance of \$5,000 to lift existing decommissioned generator/gear onto a truck for Deschutes County.
  - e. Includes \$120,750 for a temporary site logistics plan and pedestrian re-route for the duration of the courthouse addition phase of the project.
  - f. Includes \$30,000 to re-route existing 3” domestic water service to allow for construction of new addition prior to start of addition work.
  - g. Includes \$25,500 to re-route existing 4” sanitary sewer to allow for construction of new addition prior to start of addition work.
11. Includes and Allowance of \$120,000 for the Demolition, removal, and disposal of the AJ Tucker building, and an Allowance of \$30,000 for the salvage and packaging of the front stone façade (Greenwood facing) for turnover to the County for future use.
12. Includes \$39,466 for the standalone mockup of a typical courtroom (which was completed in May 2023 at the Deschutes County Fairgrounds).
13. Includes scaffolding access at existing roof and over new security lobby to allow for installation of new building envelope.
14. Assumes street and sidewalk closures to accommodate demolition and logistical access for work. Costs associated with street closure have not been included.
15. Excludes all off hours or nighttime work at this time for all scope of work. Pence will continue to assess project design against building operations and updated as needed.



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## **02 – Existing Conditions**

1. Assumes existing interior walls shown to be demolished to be metal stud framing with drywall.
2. Assumes fire sprinkler, mechanical, plumbing, and electrical subcontractors are able to safe off their utilities to allow selective demolition contractor to remove all items to be demolished together.
3. Assumes demolition contractor has only two mobilizations: one for demolition related to addition scope of work and one for the remodel scope of work.
4. Assume heat pump #1 is to be salvaged.
5. Assumes existing roof top unit on roof of library is to be removed and not salvaged.
6. Assumes all areas to be demolished to be removed of fixturing, furnishings and equipment (FF&E) prior to demolition. Removal of FF&E by Owner.
7. Excludes hazardous materials, asbestos, or lead paint abatement. This is by Owner.

## **Division 21 – Fire Sprinklers**

1. Assume allowance of \$15,000 for Early engagement and design assist for fire sprinkler trade partner.
2. Assumes allowance of \$15,000 for safe-off and temporary measures for existing system.
3. Excludes fire protection design and associated permit fees.
4. Excludes BIM coordination.

## **Division 22 - Plumbing**

1. Assume allowance of \$15,000 for Early engagement and design assist for plumbing trade partner.
2. Assumes allowance of \$15,000 for safe-off and temporary measures for existing system.
3. Excludes plumbing design and associated fees.
4. Excludes BIM coordination.

## **Division 23 HVAC/Mechanical**

1. Includes demolition of existing roof top unit and terminal unit over existing building to be demolished. Includes removal of refrigerant prior to removal.
2. Includes removal and salvaging heat pump #1 (HP-1) for turnover to County Personnel.
3. Assume allowance of \$15,000 for Early engagement and design assist for HVAC trade partner.
4. Assumes allowance of \$44,963 for safe-off and temporary measures for existing system as noted above.
5. Excludes HVAC design and associated permit fees.
6. Excludes BIM coordination.
7. Assumes allowance of \$962,000 for Early procurement of AHU-1.

## **Division 26, 27, 28 – Electrical/Low Voltage/Fire Alarm/Security**

1. Assume allowance of \$25,000 for Early engagement and design assist for electrical trade partner.
2. Assumes allowance of \$20,000 for safe-off and temporary measures for existing system.
3. Assumes allowance of \$400,000 for Early procurement of the building switchgear.
4. Assumes allowance of \$370,000 for Early procurement of the building emergency generator.
5. Includes an allowance of \$15,200 to provide power for temporary pedestrian crossing.
6. Excludes electrical design and associated fees.
7. Excludes BIM coordination.



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### 31 – Earthwork

1. Includes demolition of all hardscape, utilities, and building structures as required to accommodate expansion construction.
2. Includes Jersey barriers and temporary traffic control measures to accommodate expansion construction.
3. Includes clearing and grubbing of site.
4. Excludes undermining shoring at the existing building.
5. Excludes shoring monitoring as it is assumed to not be required.
6. Excludes storing and reinstallation of exterior artwork.
7. Excludes storing and reinstallation of bike parking steel structure for reuse.
8. Excludes over-excavation and de-watering.
9. Exclude sidewalk closure permit and city parking fees.

### 33 – Utilities

1. Includes allowance to reroute 3" domestic water service and 4" sanitary service to accommodate existing facility demolition and building excavation.
2. Assumes a four (4) inch building foundation drain around new building.
3. Excludes moving overhead power & franchise utility lines along NW Greenwood Ave., NW Bond St., and NW Harriman St. to be underground. Excludes all other overhead power work.

### Standard Exclusions

1. System development fees, permit and plan review fees, utility engineering fees, utility aid-to-construction fees, city of Bend utility connection and improvement fees, or any Franchise utility and development fees are not included as these are provided by the owner.
2. Special Inspection Costs, Geotechnical Observation Costs, any other Inspection Costs, and any job specific bonds
3. Utility company fees and charges associated with moving phone, cable & power underground.
4. Site security – to be provided by owner. Estimate includes perimeter site fencing.
5. Utility charges during construction or after permanent connection are excluded.
6. Excavation, removal, transportation, and/or disposal of any located historical or perceived sensitive materials that may cause schedule delays.
7. Testing, demolition, removal, transportation and/or disposal of hazardous materials or contaminated soils is excluded.
8. Traffic control lights, poles, signaling or anything associated with existing infrastructure.
9. Existing fire hydrant on corner of NW Bond St and NW Greenwood Ave assumed to stay and remain active.
10. Hazardous materials, asbestos, or lead paint abatement is excluded.
11. Over Excavation of Soils or replacement of same.
12. Adjacent property access costs and any costs associated with renting adjacent property for use during construction/staging.
13. LEED Provisions or cost of any kind.
14. Deferred Submittals & associated costs.

# ATTACHMENT B

## Document Number 2023-839

| 01 Courthouse Expansion             |  | Spreadsheet Level  | Quantity             | Unit Cost               | Total            |
|-------------------------------------|--|--|----------------------|-------------------------|------------------|
| <b>01.0000 GENERAL REQUIREMENTS</b> |  |  |                      |                         |                  |
|                                     | 01.1000 General Conditions                 | 01.1000 General Conditions   | 2.00 mnth            | 110,076.17 /mnth        | 220,152          |
|                                     | 01.5200 general requirements               | 01.5200 general requirements   | 2.00 mnth            | 91,684.44 /mnth         | 183,369          |
|                                     |  | <b>01.0000 GENERAL REQUIREMENTS</b>                                    | <b>2.00 mnth</b>     | <b>207,448.67 /mnth</b> | <b>403,521</b>   |
| <b>02.0000 EXISTING CONDITIONS</b>  |  |  |                      |                         |                  |
|                                     | 02.4119 Selective Demolition               |  |                      |                         |                  |
|                                     |  | <b>abatement - excluded, by owner</b>                                  | <b>sqft</b>          | <b>/sqft</b>            |                  |
|                                     |  | demo "library" structure - 18" concrete walls                          | 2,021.00 sqft        | 48.46 /sqft             | 97,938           |
|                                     |  | demo storefront  | 1,215.00 sqft        | 12.97 /sqft             | 15,761           |
|                                     |  | demo existing lobby structure  | 2,033.00 sqft        | 38.92 /sqft             | 79,116           |
|                                     |  | demo single storefront opening   | 1.00 each            | 908.04 /each            | 908              |
|                                     |  | demo double storefront opening   | 2.00 each            | 1,816.07 /each          | 3,632            |
|                                     |  | existing brick veneer demo - at expansion joint                        | 628.00 sqft          | 30.00 /sqft             | 18,840           |
|                                     |  | demo concrete wall - 8"  | 298.00 sqft          | 35.50 /sqft             | 10,579           |
|                                     |  | demo concrete wall - 10"   | 126.00 sqft          | 37.48 /sqft             | 4,722            |
|                                     |  | demo concrete wall - 14"   | 208.00 sqft          | 40.00 /sqft             | 8,320            |
|                                     |  | demo 6" wall - assume metal stud/drywall                               | 130.00 sqft          | 9.96 /sqft              | 1,295            |
|                                     |  | demo single hm frame/wood door   | 2.00 each            | 908.00 /each            | 1,816            |
|                                     |  | demo single man door/frame - assume hm frame, hm door                  | 1.00 each            | 908.04 /each            | 908              |
|                                     |  | demo metal stairs/guardrail  | 31.00 lnft           | 648.60 /lnft            | 20,106           |
|                                     |  | demo 6" gate at roof   | 1.00 each            | 848.00 /each            | 848              |
|                                     |  | temporary protection of existing                                       | 10,000.00 sqft       | 0.75 /sqft              | 7,500            |
|                                     |  | dust mitigation  | 10,000.00 sqft       | 0.75 /sqft              | 7,500            |
|                                     |  | demo stair sog, basement sog   | 434.00 sqft          | 24.23 /sqft             | 10,516           |
|                                     |  | ALLOWANCE - Demo and dispose of AJ Tucker Building                     | 1.00 Allow           | 120,000.00 /each        | 120,000          |
|                                     |  | ALLOWANCE - Salvage Stone Material from front Façade (along Greenwood) | 1.00 Allow           | 30,000.00 /sqft         | 30,000           |
|                                     |  | <b>02.0000 EXISTING CONDITIONS - SELECTIVE DEMOLITION</b>              | <b>50,686.00 gfa</b> | <b>5.73 /gfa</b>        | <b>440,305</b>   |
| <b>21.0000 FIRE SUPPRESSION</b>     |  |  |                      |                         |                  |
|                                     | 21.1300 Fire Suppression Sprinkler Systems |  |                      |                         |                  |
|                                     |  | Fire Sprinkler Trade Partner - Early Design Assist                     | 1.00 Allow           | 15,000.00 /gfa          | 15,000           |
|                                     |  | fire sprinkler package - safeoff                                       | 50,686.00 gfa        | /gfa                    | 15,000           |
|                                     |  | <b>21.0000 FIRE SUPPRESSION</b>  | <b>50,686.00 gfa</b> | <b>/gfa</b>             | <b>30,000</b>    |
| <b>22.0000 PLUMBING</b>             |  |  |                      |                         |                  |
|                                     | 22.1000 Plumbing                           |  |                      |                         |                  |
|                                     |  | Plumbing Trade Partner - Early Design Assist                           | 1.00 Allow           | 15,000.00 /gfa          | 15,000           |
|                                     |  | Plumbing - safe off  | 50,686.00 sqft       |                         | 20,000           |
|                                     |  | <b>22.0000 PLUMBING</b>  | <b>50,686.00 gfa</b> | <b>/gfa</b>             | <b>35,000</b>    |
| <b>23.0000 HVAC</b>                 |  |  |                      |                         |                  |
|                                     | 23.3000 HVAC Systems                       |  |                      |                         |                  |
|                                     |  | HVAC Trade Partner - Early Design Assist                               | 1.00 Allow           | 15,000.00 /gfa          | 15,000           |
|                                     |  | demo existing rtu & and relocated HP-1                                 | 1.00 Allow           | 44,963.00 /sqft         | 44,963           |
|                                     |  | AHU - Early procurement ALLOWANCE                                      | 1.00 Allow           | 962,000.00 /sqft        | 962,000          |
|                                     |  | <b>23.0000 HVAC</b>  | <b>50,686.00 gfa</b> | <b>60.10 /gfa</b>       | <b>1,021,963</b> |
| <b>26.0000 ELECTRICAL</b>           |  |  |                      |                         |                  |
|                                     | 26.1000 Electrical Systems                 |  |                      |                         |                  |
|                                     |  | Electrical Trade Partner - Early Design Assist                         | 1.00 Allow           | 25,000.00 /gfa          | 25,000           |
|                                     |  | Early Procurement Allowance for Building Switthgear                    | 1.00 Allow           | 400,000.00 /gfa         | 400,000          |
|                                     |  | Early Procurement Allowance for Emergency Generator                    | 1.00 Allow           | 370,000.00 /gfa         | 370,000          |
|                                     |  | electrical - safe off  | 37,957.00 gfa        | /gfa                    | 20,000           |
|                                     |  | <b>26.0000 ELECTRICAL</b>  | <b>50,686.00 gfa</b> | <b>/gfa</b>             | <b>815,000</b>   |
| <b>31.0000 EARTHWORK</b>            |  |  |                      |                         |                  |
|                                     | 31.1000 Site Clearing                      |  |                      |                         |                  |
|                                     |  | mobilization/erosion control   | 29,683.00 sqft       | 4.17 /sqft              | 123,870          |
|                                     |  | ac paving demo   | 4,767.00 sqft        | 1.10 /sqft              | 5,286            |
|                                     |  | ac paving demo - row   | 7,426.00 sqft        | 1.14 /sqft              | 8,436            |
|                                     |  | sawcutting   | 283.00 lnft          | 3.92 /lnft              | 1,109            |
|                                     |  | sawcutting - row   | 1,213.00 lnft        | 3.92 /lnft              | 4,752            |
|                                     |  | sidewalk demo  | 1,857.00 sqft        | 1.14 /sqft              | 2,110            |
|                                     |  | sidewalk demo - row  | 1,758.00 sqft        | 1.14 /sqft              | 1,997            |
|                                     |  | curb demo  | 84.00 lnft           | 2.35 /lnft              | 197              |
|                                     |  | curb demo - row  | 558.00 lnft          | 2.35 /lnft              | 1,312            |
|                                     |  | demo site wall & footing - 3' tall                                     | 137.00 sqft          | 4.70 /sqft              | 644              |
|                                     |  | demo site wall & footing - 6' tall                                     | 1,098.00 sqft        | 9.40 /sqft              | 10,323           |
|                                     |  | demo site wall & footing - 12' tall                                    | 256.00 sqft          | 18.80 /sqft             | 4,814            |
|                                     |  | demo tree  | 5.00 each            | 274.22 /each            | 1,371            |
|                                     |  | demo tree - row  | 3.00 each            | 274.22 /each            | 823              |
|                                     |  | protect tree   | 1.00 each            | 391.74 /each            | 392              |
|                                     |  | demo pavers & aggregate - row  | 3,228.00 sqft        | 1.57 /sqft              | 5,058            |
|                                     |  | demo sign & footing  | 4.00 each            | 78.35 /each             | 313              |
|                                     |  | demo sign & footing - row  | 9.00 each            | 78.35 /each             | 705              |
|                                     |  | demo street light & footing - row (3 bond, 1 harriman)                 | 4.00 each            | 391.74 /each            | 1,567            |
|                                     |  | demo storm line - row, assume 6"                                       | 21.00 lnft           | 19.59 /lnft             | 411              |
|                                     |  | demo sanitary sewer - row, assume 6"                                   | 47.00 lnft           | 19.59 /lnft             | 921              |
|                                     |  | demo gas line - row  | 34.00 lnft           | 19.59 /lnft             | 666              |
|                                     |  | demo water meter - row   | 2.00 each            | 195.87 /each            | 392              |
|                                     |  | demo planter box - row   | 9.00 sqft            | 19.59 /sqft             | 176              |
|                                     |  | demo catch basins  | 3.00 each            | 626.78 /each            | 1,880            |
|                                     |  | salvage existing artwork for reuse                                     | 1.00 each            | 7,834.80 /each          | 7,835            |
|                                     |  | demo bike parking structure  | 274.00 sqft          | 39.17 /sqft             | 10,734           |
|                                     |  | site handrail demo   | 75.00 lnft           | 5.48 /lnft              | 411              |
|                                     |  | concrete ramp demo   | 391.00 sqft          | 1.14 /sqft              | 444              |
|                                     |  | demo raised planter  | 194.00 sqft          | 3.92 /sqft              | 760              |
|                                     |  | demo monument sign & footing   | 70.00 sqft           | 4.70 /sqft              | 329              |
|                                     |  | demo existing storm line - assume 6"                                   | 129.00 lnft          | 19.59 /lnft             | 2,527            |
|                                     |  | demo underground power   | 111.00 lnft          | 19.59 /lnft             | 2,174            |

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|   |  |                      |                        |                  |
|---|--|----------------------|------------------------|------------------|
|   | demo street light & footing - onsite   | 1.00 each            | 391.74 /each           | 392              |
|   | demo existing hvac - cu/s  | 4.00 each            | 391.74 /each           | 1,567            |
|   | demo drywell assembly  | 2.00 each            | 1,958.70 /each         | 3,917            |
|   | demo bollards  | 5.00 each            | 274.22 /each           | 1,371            |
|   | demo sanitary sewer  | 220.00 lnft          | 19.59 /lnft            | 4,309            |
|   | demo storm manhole   | 1.00 each            | 1,958.70 /each         | 1,959            |
|   | demo catch basin - row   | 1.00 each            | 626.79 /each           | 627              |
|   | demo irrigation control box/valves   | 2.00 each            | 274.22 /each           | 548              |
|   | clear/grub site  | 29,683.00 sqft       | 0.87 /sqft             | 25,840           |
|   | remove/relocate bus stop - allowance   | 1.00 lsum            | 10,000.00 /lsum        | 10,000           |
|   | <b>31.1000 Site Clearing</b>   | <b>29,683.00 gfa</b> | <b>4.43 /gfa</b>       | <b>255,249</b>   |
|   | <b>01 Courthouse Expansion</b>   | <b>50,686.00 gfa</b> | <b>593.62 /gfa</b>     | <b>3,001,038</b> |
| <b>03 Early Work Package</b>  |  |                      |                        |                  |
| <b>01.0000 GENERAL REQUIREMENTS</b>                                     |  |                      |                        |                  |
|   | <i>01.5300 Temporary Construction</i>  |                      |                        |                  |
|   | stair tower - roof access - early work   | 3.00 mnth            | 2,776.00 /mnth         | 8,328            |
|   | scaffolding - to install temp sound material   | 1.00 mnth            | 45,831.00 /mnth        | 45,831           |
|   | <b>01.0000 GENERAL REQUIREMENTS</b>  | <b>3.00 mnth</b>     | <b>17,986.33 /mnth</b> | <b>53,959</b>    |
| <b>06.0000 WOOD, PLASTICS AND COMPOSITES</b>                            |  |                      |                        |                  |
|   | <i>06.1100 Framing - Rough Carpentry</i>   |                      |                        |                  |
|   | standalone mockup completed at Fairgrounds - includes setup and demo                 | 1.00 lsum            | 39,466.00 /lsum        | 39,466           |
|   | <b>06.0000 WOOD, PLASTICS AND COMPOSITES</b>   | <b>1,000.00 gfa</b>  | <b>40.00 /gfa</b>      | <b>39,466</b>    |
| <b>07.0000 THERMAL AND MOISTURE PROTECTIONS</b>                         |  |                      |                        |                  |
|   | <i>07.2100 Thermal Insulation</i>  |                      |                        |                  |
|   | temp acoustics/sound damper wall allowance (metal stud, insulation, densglas, paint) | 2,030.00 sqft        | 62.50 /sqft            | 126,875          |
|   | <b>07.0000 THERMAL AND MOISTURE PROTECTIONS</b>                                      | <b>2,030.00 gfa</b>  | <b>62.50 /gfa</b>      | <b>126,875</b>   |
| <b>26.0000 ELECTRICAL</b>   |  |                      |                        |                  |
|   | <i>26.0000 Electrical</i>  |                      |                        |                  |
|   | temporary pedestrian crossing power  | 1.00 each            | 15,200.00 /each        | 15,200           |
|   | existing generator - lift onto truck allowance                                       | 1.00 each            | 5,000.00 /each         | 5,000            |
|   | <b>26.0000 ELECTRICAL</b>  | <b>34,749.00 gfa</b> | <b>0.58 /gfa</b>       | <b>20,200</b>    |
| <b>31.0000 EARTHWORK</b>  |  |                      |                        |                  |
|   | <i>31.2000 Earth Moving</i>  |                      |                        |                  |
|   | jersey barriers  | 595.00 lnft          | 82.00 /lnft            | 48,790           |
|   | temp fencing at jersey barriers  | 595.00 lnft          | 8.00 /lnft             | 4,760            |
|   | temp signage & traffic control plan  | 1.00 lsum            | 23,000.00 /lsum        | 23,000           |
|   | temporary pedestrian signal  | 1.00 lsum            | 20,000.00 /lsum        | 20,000           |
|   | temporary pedestrian striping 4" wide  | 1,000.00 lnft        | 3.00 /lnft             | 3,000            |
|   | temporary asphalt ramps  | 1.00 lsum            | 3,000.00 /lsum         | 3,000            |
|   | removal of temp items  | 1.00 lsum            | 3,000.00 /lsum         | 3,000            |
|   | <b>31.0000 EARTHWORK</b>   | <b>34,749.00 gfa</b> | <b>3.04 /gfa</b>       | <b>105,550</b>   |
| <b>33.0000 UTILITIES</b>  |  |                      |                        |                  |
|   | <i>33.1000 Water Utilities</i>   |                      |                        |                  |
|   | 3" domestic water re-route - allowance   | 150.00 lnft          | 200.00 /lnft           | 30,000           |
|   | <i>33.3000 Sanitary Sewer</i>  |                      |                        |                  |
|   | 4" sanitary sewer piping - 3034 - re-route allowance                                 | 150.00 lnft          | 170.00 /lnft           | 25,500           |
|   | <b>33.0000 UTILITIES</b>   |                      | <b>/gfa</b>            | <b>55,500</b>    |
| <b>41.1000 Temporary Entry, Temporary Walls, &amp; Courtyard Stairs</b> |  |                      |                        |                  |
|   | <i>41.1000 Temporary Entry Allowance</i>   |                      |                        |                  |
|   | demo existing sidewalk   | 542.00 sqft          | 1.50 /sqft             | 813              |
|   | clear/grub existing footprint  | 1,294.00 sqft        | 3.00 /sqft             | 3,882            |
|   | earthwork prep - temp entry  | 1,294.00 sqft        | 2.00 /sqft             | 2,588            |
|   | green wall lattice   | 304.00 sqft          | 50.00 /sqft            | 15,200           |
|   | temp entry sog 5"  | 827.00 sqft          | 18.00 /sqft            | 14,886           |
|   | temp concrete sidewalk ramp  | 197.00 sqft          | 13.20 /sqft            | 2,600            |
|   | temp concrete sidewalk   | 255.00 sqft          | 12.16 /sqft            | 3,101            |
|   | temp pavers - assume sand set  | 339.00 sqft          | 24.00 /sqft            | 8,136            |
|   | metal decking  | 894.00 sqft          | 10.00 /sqft            | 8,940            |
|   | cfs joists   | 894.00 sqft          | 12.88 /sqft            | 11,515           |
|   | hss steel structure at walkway - assume 8 pound/ft                                   | 390.00 sqft          | 40.00 /sqft            | 15,600           |
|   | 6" metal stud walls - exterior wall  | 570.00 sqft          | 3.85 /sqft             | 2,195            |
|   | 6" metal stud walls - interior   | 670.00 sqft          | 3.85 /sqft             | 2,580            |
|   | metal canopies   | 174.00 sqft          | 83.23 /sqft            | 14,482           |
|   | casework - allowance   | 1.00 lsum            | 15,000.00 /lsum        | 15,000           |
|   | lexan thermoclear ultra stiff translucent panels                                     | 390.00 sqft          | 25.00 /sqft            | 9,750            |
|   | wrb  | 570.00 sqft          | 6.70 /sqft             | 3,819            |
|   | fiber cement board - cerraclad   | 570.00 sqft          | 40.00 /sqft            | 22,800           |
|   | tpo roofing  | 894.00 sqft          | 21.63 /sqft            | 19,337           |
|   | sheet metal cap flashing   | 894.00 sqft          | 6.34 /sqft             | 5,668            |
|   | gutter/downspouts  | 90.00 lnft           | 15.00 /lnft            | 1,350            |
|   | single hm man door & install   | 3.00 sqft            | 4,125.00 /sqft         | 12,375           |
|   | storefront   | 1,294.00 sqft        | 87.84 /sqft            | 113,665          |
|   | storefront single door   | 1.00 each            | 8,176.00 /each         | 8,176            |
|   | storefront double door   | 1.00 each            | 16,352.00 /each        | 16,352           |
|   | storefront hardware supply   | 2.00 each            | 3,000.00 /each         | 6,000            |
|   | metal stud walls - gyp interior  | 1,910.00 sqft        | 5.02 /sqft             | 9,588            |
|   | acoustical ceiling tiles - 2x2   | 894.00 sqft          | 14.41 /sqft            | 12,883           |
|   | paint - wall area  | 1,910.00 sqft        | 1.49 /sqft             | 2,846            |
|   | signage allowance  | 1,294.00 sqft        | 0.39 /sqft             | 500              |
|   | temp spot heaters/cooling  | 4.00 each            | 10,000.00 /each        | 40,000           |
|   | roof drain heat trace  | 3.00 each            | 2,500.00 /each         | 7,500            |
|   | powerlighting  | 1,284.00 sqft        | 25.00 /sqft            | 32,100           |
|   | scanner power  | 2.00 each            | 2,500.00 /each         | 5,000            |
|   | low voltage allowance - comm/data  | 894.00 sqft          | 8.10 /sqft             | 7,241            |
|   | duress system re-route   | 894.00 sqft          | 8.39 /sqft             | 7,500            |
|   | connect to mdf   | 894.00 sqft          | 16.78 /sqft            | 15,000           |
|   | restore existing after completion allowance  | 1.00 lsum            | 50,000.00 /lsum        | 50,000           |
|   | 6" metal stud walls - exterior thermal & semi-rigid insulation                       | 570.00 sqft          | 10.50 /sqft            | 5,985            |

09/13/2023 Item #11.

# ATTACHMENT B

## Document Number 2023-839

|   |   |   |                |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
|---|---|---|----------------|----------------|----------|-----------------------------------|---------------|--------------|---------|---------------------|-----------|--------------|-----|--------------------------------|------------|--------------|-------|------------------------------------|------------|--------------|-------|-----------------------------|-------------|------------|-----|--|-----------|-----------------|--------|----------------------|-----------|----------------|-------|---|-------------|-------------|-------|---|-----------|-----------------|--------|---|-------------|-------------|-------|---|-------------|--------------|--------|---|---------------------|--|----------------|------------------------------|----------------------|-------------------|----------------|--|
| <p>41.2000 Temporary Courtyard Egress Stairs &amp; Walls Allowance</p>  | <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">VE Reduction to Temp Entry to Utilize Modular Units</td> <td style="width: 10%;">1.00 allow</td> <td style="width: 10%;">-230,000.00 EA</td> <td style="width: 10%;">-230,000</td> </tr> <tr> <td>41.1000 Temporary Entry Allowance</td> <td>1,294.00 sqft</td> <td>414.95 /sqft</td> <td>306,953</td> </tr> <tr> <td>demo site furniture</td> <td>1.00 lsum</td> <td>200.00 /lsum</td> <td>200</td> </tr> <tr> <td>demo 16" cmu wall for new door</td> <td>17.00 lnft</td> <td>100.00 /lnft</td> <td>1,700</td> </tr> <tr> <td>demo 18" wall section for new door</td> <td>17.00 lnft</td> <td>125.00 /lnft</td> <td>2,125</td> </tr> <tr> <td>earthwork prep - new stairs</td> <td>216.00 sqft</td> <td>2.00 /sqft</td> <td>432</td> </tr> <tr> <td>steel stairs with metal landings and handrails</td> <td>2.00 flgt</td> <td>25,000.00 /flgt</td> <td>50,000</td> </tr> <tr> <td>single man door - hm</td> <td>1.00 each</td> <td>4,000.00 /each</td> <td>4,000</td> </tr> <tr> <td>temp barrier walls - 6" metal stud, drywall one side, paint</td> <td>330.00 sqft</td> <td>18.00 /sqft</td> <td>5,940</td> </tr> <tr> <td>remove stair, infill door opening &amp; walls</td> <td>1.00 lsum</td> <td>25,000.00 /lsum</td> <td>25,000</td> </tr> <tr> <td>temp sog for stairs with thickened edge</td> <td>216.00 sqft</td> <td>33.00 /sqft</td> <td>7,128</td> </tr> <tr> <td>41.2000 Temporary Courtyard Egress Stairs &amp; Walls Allowance</td> <td>546.00 sqft</td> <td>176.79 /sqft</td> <td>96,525</td> </tr> <tr> <td><b>41.1000 Temporary Entry, Temporary Walls, &amp; Courtyard Stairs</b></td> <td><b>1,294.00 gfa</b></td> <td></td> <td><b>403,478</b></td> </tr> <tr> <td><b>03 Early Work Package</b></td> <td><b>34,749.00 gfa</b></td> <td><b>23.17 /gfa</b></td> <td><b>805,828</b></td> </tr> </table> | VE Reduction to Temp Entry to Utilize Modular Units | 1.00 allow     | -230,000.00 EA | -230,000 | 41.1000 Temporary Entry Allowance | 1,294.00 sqft | 414.95 /sqft | 306,953 | demo site furniture | 1.00 lsum | 200.00 /lsum | 200 | demo 16" cmu wall for new door | 17.00 lnft | 100.00 /lnft | 1,700 | demo 18" wall section for new door | 17.00 lnft | 125.00 /lnft | 2,125 | earthwork prep - new stairs | 216.00 sqft | 2.00 /sqft | 432 | steel stairs with metal landings and handrails | 2.00 flgt | 25,000.00 /flgt | 50,000 | single man door - hm | 1.00 each | 4,000.00 /each | 4,000 | temp barrier walls - 6" metal stud, drywall one side, paint | 330.00 sqft | 18.00 /sqft | 5,940 | remove stair, infill door opening & walls | 1.00 lsum | 25,000.00 /lsum | 25,000 | temp sog for stairs with thickened edge | 216.00 sqft | 33.00 /sqft | 7,128 | 41.2000 Temporary Courtyard Egress Stairs & Walls Allowance | 546.00 sqft | 176.79 /sqft | 96,525 | <b>41.1000 Temporary Entry, Temporary Walls, &amp; Courtyard Stairs</b> | <b>1,294.00 gfa</b> |  | <b>403,478</b> | <b>03 Early Work Package</b> | <b>34,749.00 gfa</b> | <b>23.17 /gfa</b> | <b>805,828</b> | <p>Early Release Cost of Work Subtotal</p> <p style="text-align: right;">3,806,066</p> |
| VE Reduction to Temp Entry to Utilize Modular Units                     | 1.00 allow  | -230,000.00 EA                                      | -230,000       |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| 41.1000 Temporary Entry Allowance                                       | 1,294.00 sqft   | 414.95 /sqft  | 306,953        |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| demo site furniture   | 1.00 lsum   | 200.00 /lsum  | 200            |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| demo 16" cmu wall for new door  | 17.00 lnft  | 100.00 /lnft  | 1,700          |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| demo 18" wall section for new door                                      | 17.00 lnft  | 125.00 /lnft  | 2,125          |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| earthwork prep - new stairs   | 216.00 sqft   | 2.00 /sqft  | 432            |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| steel stairs with metal landings and handrails                          | 2.00 flgt   | 25,000.00 /flgt                                     | 50,000         |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| single man door - hm  | 1.00 each   | 4,000.00 /each                                      | 4,000          |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| temp barrier walls - 6" metal stud, drywall one side, paint             | 330.00 sqft   | 18.00 /sqft   | 5,940          |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| remove stair, infill door opening & walls                               | 1.00 lsum   | 25,000.00 /lsum                                     | 25,000         |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| temp sog for stairs with thickened edge                                 | 216.00 sqft   | 33.00 /sqft   | 7,128          |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| 41.2000 Temporary Courtyard Egress Stairs & Walls Allowance             | 546.00 sqft   | 176.79 /sqft  | 96,525         |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| <b>41.1000 Temporary Entry, Temporary Walls, &amp; Courtyard Stairs</b> | <b>1,294.00 gfa</b>   |   | <b>403,478</b> |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |
| <b>03 Early Work Package</b>  | <b>34,749.00 gfa</b>  | <b>23.17 /gfa</b>                                   | <b>805,828</b> |                |          |                                   |               |              |         |                     |           |              |     |                                |            |              |       |                                    |            |              |       |                             |             |            |     |  |           |                 |        |                      |           |                |       |   |             |             |       |   |           |                 |        |   |             |             |       |   |             |              |        |   |                     |  |                |                              |                      |                   |                |  |

| Estimate Totals               |           |                  |         |
|-------------------------------|-----------|------------------|---------|
| Description                   | Amount    | Totals           | Rate    |
|                               | 3,806,066 | 3,806,066        |         |
| Estimating Contingency        | 152,243   |                  | 4.000 % |
| Escalation - Bid Oct 2023     | 114,182   |                  | 3.000 % |
| Subcontract Default Insurance | 50,906    |                  | 1.250 % |
| Construction Contingency      | 208,170   |                  | 5.000 % |
| P&P Bonds                     | 38,966    |                  | 0.900 % |
| Liability Insurance           | 39,317    |                  | 0.900 % |
|                               | 4,407,850 | 4,407,850        |         |
| Student Success Act           | 18,513    |                  | 0.420 % |
| Fee                           | 87,199    |                  | 1.970 % |
|                               | 4,513,562 | 4,513,562        |         |
| Pre Construction              | Exd.      |                  |         |
| <b>Total</b>                  |           | <b>4,513,562</b> |         |

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## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** September 13, 2023

**SUBJECT:** Amendment #1 to Oregon Health Authority grant agreement #180009-1 for Public Health

**RECOMMENDED MOTION:**

Move approval of Chair signature of Document No. 2023-819, an amendment to an intergovernmental agreement with Oregon Health Authority for funding of four program elements through June 30, 2024.

**BACKGROUND AND POLICY IMPLICATIONS:**

Oregon Health Authority (OHA) intergovernmental agreement (IGA) #180009 approved by the Board of County Commissioners on June 28, 2023, outlined program descriptions and reporting requirements for Deschutes County, the Local Public Health Authority, for fiscal year (FY) 2024 and 2025, and provided funding for most Program Elements (PEs) for FY 2024.

This amendment #1 includes program element descriptions for the Ryan White and Suicide Preventions Programs and provides anticipated funding totaling \$669,814.57 for the following program elements:

- \$275,018 for Ryan White Programs HIV/AIDS Services, PE 08-01 Case Management, 08-02 Support Services, 08-03 Oral Health
- \$357,368.57 for PE 13 Tobacco Prevention and Education Program
- \$120,767 for PE 60 Suicide Prevention
- -\$83,229 for PE 73 HIV Early Intervention and Outreach (funding has been adjusted to match the FY 24 budget).

**BUDGET IMPACTS:**

\$669,814.57 revenue for the period July 1, 2023 – June 30, 2024

**ATTENDANCE:**

Heather Kaisner, Public Health Director  
Cheryl Smallman, Health Services Business Officer

Agreement #180009



**FIRST AMENDMENT TO OREGON HEALTH AUTHORITY  
2023-2025 INTERGOVERNMENTAL AGREEMENT FOR THE  
FINANCING OF PUBLIC HEALTH SERVICES**

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

This First Amendment to Oregon Health Authority 2023-2025 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2023, (as amended the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Deschutes County, (“LPHA”), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Deschutes County. OHA and LPHA are each a “Party” and together the “Parties” to the Agreement.

**RECITALS**

WHEREAS, OHA and LPHA wish to modify or add the set of Program Element Descriptions set forth in Exhibit B of the Agreement

WHEREAS, OHA and LPHA wish to modify and replace the Fiscal Year 2024 (FY24) Financial Assistance Award set forth in Exhibit C of the Agreement.

WHEREAS, OHA and LPHA wish to modify or add the Exhibit J information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200;

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**AGREEMENT**

1. This Amendment is effective on July 1, 2023, regardless of the date this amendment has been fully executed with signatures by every Party and when required, approved by the Department of Justice. However, payments may not be disbursed until the Amendment is fully executed.
2. The Agreement is hereby amended as follows:
  - a. Exhibit A “Definitions”, Section 18 “Program Element” is amended to add Program Element titles and funding source identifiers as follows:

| <u>PE NUMBER AND TITLE</u><br>• SUB-ELEMENT(S)             | <u>FUND TYPE</u> | <u>FEDERAL AGENCY/<br/>GRANT TITLE</u> | <u>CFDA#</u> | <u>HIPAA RELATED (Y/N)</u> | <u>SUB-RECIPIENT (Y/N)</u> |
|--|------------------|--|--------------|----------------------------|----------------------------|
| <b>PE08 - Ryan White Program, Part B HIV/AIDS Services</b> |                  |  |              |                            |                            |
| <b>PE 08-01</b> Case Management                            | OF               | N/A                                    | N/A          | N                          | N                          |
| <b>PE 08-02</b> Support Services                           | OF               | N/A                                    | N/A          | N                          | N                          |
| <b>PE 08-03</b> Oral Health                                | OF               | N/A                                    | N/A          | N                          | N                          |

| <b>PE NUMBER AND TITLE</b><br>• SUB-ELEMENT(S) | <b>FUND TYPE</b> | <b>FEDERAL AGENCY/<br/>GRANT TITLE</b> | <b>CFDA#</b> | <b>HIPAA RELATED<br/>(Y/N)</b> | <b>SUB-RECIPIENT<br/>(Y/N)</b> |
|--|------------------|--|--------------|--------------------------------|--------------------------------|
|--|------------------|--|--------------|--------------------------------|--------------------------------|

**PE60 - Suicide Prevention, Intervention and Postvention**

|   |    |  |        |   |   |
|---|----|--|--------|---|---|
| <b>PE 60</b> Suicide Prevention, Intervention & Postvention | FF | SAMHSA/Substance Abuse and Mental Health Services Projects of Regional and National Significance | 93.243 | N | Y |
|---|----|--|--------|---|---|

- b. Exhibit B Program Elements #08 “Ryan White Program, Part B HIV/AIDS Services” and #60 “Suicide Prevention, Intervention and Postvention”, are hereby added by Attachment A attached hereto and incorporated herein by this reference.
  - c. Exhibit C, Section 1 of the Agreement, entitled “Financial Assistance Award” for FY24 is hereby superseded and replaced in its entirety by Attachment B, entitled “Financial Assistance Award (FY24)”, attached hereto and incorporated herein by this reference. Attachment B must be read in conjunction with Section 3 of Exhibit C.
  - d. Exhibit J of the Agreement entitled “Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200” is amended to add to the federal award information datasheet as set forth in Attachment C, attached hereto and incorporated herein by this reference.
3. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
  4. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
  5. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
  6. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

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

7. Signatures.

STATE OF OREGON, ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY

Approved by: \_\_\_\_\_

Name: /for/ Nadia A. Davidson

Title: Director of Finance

Date: \_\_\_\_\_

DESCHUTES COUNTY LOCAL PUBLIC HEALTH AUTHORITY

Approved by: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

*Agreement form group-approved by Steven Marlowe, Senior Assistant Attorney General, Tax and Finance Section, General Counsel Division, Oregon Department of Justice by email on August 11, 2023, copy of email approval in Agreement file.*

REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION

Reviewed by: \_\_\_\_\_

Name: Rolonda Widenmeyer (or designee)

Title: Program Support Manager

Date: \_\_\_\_\_

**Attachment A**  
**Program Element Description(s)**

**Program Element #08: Ryan White Program, Part B HIV/AIDS Services**

**OHA Program Responsible for Program Element:**

**Public Health Division/Center for Public Health Practice/HIV, STD and TB Section**

1. **Description.** Funds provided under this Agreement for this Program Element may only be used in accordance with, and subject to, the requirements and limitations set forth below, to deliver the Ryan White Program, Part B HIV/AIDS Services.

**General Description.** Funds must be used to deliver to eligible individuals with HIV and their families one or more of the services described in the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87) Part B, referred to hereafter as “Ryan White Program, Part B HIV/AIDS Services.” Expenditure of these funds must be directly related to an individual’s HIV positive status and necessary to help the individual remain engaged in HIV medical care and treatment. All Ryan White Program, Part B HIV/AIDS Services that are supported in whole or in part with funds provided under this Agreement must be delivered in accordance with OAR Chapter 333, Division 022 “Human Immunodeficiency Virus”, the “HIV Community Services Program, HIV Case Management Standards of Service” and “HIV Community Services Program Support Services Guide” located at: [www.healthoregon.org/hiv](http://www.healthoregon.org/hiv).

HIV is an important public health priority in Oregon. Ensuring the achievement of viral suppression among people living with HIV (PLWH) is critical for not only improving lifelong health outcomes, but to also prevent further transmission of the virus. The provision of Case Management and Support Services is an evidence-based approach for supporting engagement with medical care and adherence to medical treatments. Through this support, Oregon aims to increase the percentage of PLWH who have achieved viral suppression to 100%.

This Program Element, and all changes to this Program Element are effective the first day of the month noted in Issue Date section of Exhibit C Financial Assistance Award unless otherwise noted in Comments and Footnotes of Exhibit C of the Financial Assistance Award.

2. **Definitions Specific to Ryan White Program, Part B HIV/AIDS Services**

- a. **Case Management or Case Management Services.** Case Management is a range of client-centered services that link clients with health care, psychosocial support and other services. These services ensure timely and coordinated access to medically appropriate levels of health and Support Services and continuity of care through ongoing assessment of the client’s and other key family members’ needs and personal support systems. Case Management includes, but is not limited to face-to-face coordination, phone contact, and other appropriate forms of communication.

Medical Case Management must be provided by a registered nurse licensed in Oregon. The coordination and follow-up of medical treatments is a component of medical Case Management. Medical Case Management includes the provision of medical treatment adherence counseling to ensure readiness for, and adherence to, HIV/AIDS medication regimens and treatments.

Additionally, medical Case Management includes liver health, nutritional and oral health assessment and education.

- b. **Health Resources and Services Administration HIV/AIDS Bureau (HRSA/HAB):** The agency of the U.S. Department of Health and Human Services that is responsible for administering the Ryan White Program. Information about HRSA/HAB is available at [www.hab.hrsa.gov](http://www.hab.hrsa.gov)

- c. **HIV/VH/STI Integrated Planning Group (IPG):** Oregon’s End HIV/STI Oregon Statewide Planning Group (OSPG) (formerly known as the OHA HIV/Viral Hepatitis/Sexually Transmitted Infection Integrated Planning Group (IPG)T) is an advisory group to the HIV/STD/TB Section of OHA. Information regarding this planning group can be found at [www.healthoregon.org/hiv](http://www.healthoregon.org/hiv)
  - d. **HIV Care and Treatment Program:** The State program, funded predominately under the Ryan White Program, Part B, to provide care and treatment services to people with HIV to improve health outcomes and reduce HIV transmissions among hard-to-reach populations.
  - e. **OHA’s HIV Community Services Program Support Services Guide (Support Services Guide):** The Support Services Guide, incorporated herein by this reference, that defines the range of Support Services that may be purchased with funds awarded under this Agreement for Ryan White Program, Part B HIV/AIDS Services, and includes the service definitions, eligibility and guidance for the delivery of Support Services. The Support Services Guide is available at <http://public.health.oregon.gov/DiseasesConditions/HIVSTDViralHepatitis/HIVCareTreatment/Pages/ServicesandDefinitions.aspx>
  - f. **Ryan White Program, Part B HIV Case Management Standards of Service (the Standards):** The Standards, incorporated herein by this reference that outlines or defines the set of Standards and provides directions for HIV/AIDS Case Management in the State of Oregon. These Standards are also intended to provide a framework for evaluating HIV/AIDS Case Management Services and to define a professional case manager’s accountability to the public and to the individuals receiving Ryan White Program, Part B HIV/AIDS Services. These Standards are available at <https://www.oregon.gov/oha/PH/DISEASESCONDITIONS/HIVSTDVIRALHEPATITIS/HIVCARETREATMENT/Pages/cmstdrds.aspx>
  - g. **Support Services:** Support Services include the provision of financial assistance for services necessary to facilitate a person living with HIV/AIDS to access and remain engaged in HIV medical care and treatment. Support Services must be provided in accordance with the Support Services Guide.
  - h. **Title XXVI of the Public Health Service (PHS) Act as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Ryan White Program):** Public Law 111-87, enacted in 1990 and reauthorized in 1996, 2000, 2006 and extended in 2009, which is the federal legislation enacted to address the health care and support service needs of individuals living with the HIV disease and their families in the United States and its territories.
3. **Alignment with Modernization Foundational Programs and Foundational Capabilities.** The activities and services that the LPHA has agreed to deliver under this Program Element align with Foundational Programs and Foundational Capabilities and the public health accountability metrics (if applicable), as follows (see [Oregon’s Public Health Modernization Manual](http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf), ([http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public\\_health\\_modernization\\_manual.pdf](http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf)):

a. **Foundational Programs and Capabilities** (As specified in Public Health Modernization Manual)

| Program Components  | Foundational Program |                                 |                      |                                   | Foundational Capabilities                                    |  |   |                                   |                             |                   |                |                                     |
|---|----------------------|---------------------------------|----------------------|-----------------------------------|--|--|---|-----------------------------------|-----------------------------|-------------------|----------------|-------------------------------------|
|   | CD Control           | Prevention and health promotion | Environmental health | Population Health Direct services | Access to clinical preventive services                       | Leadership and organizational competencies | Health equity and cultural responsiveness | Community Partnership Development | Assessment and Epidemiology | Policy & Planning | Communications | Emergency Preparedness and Response |
| Asterisk (*) = Primary foundational program that aligns with each component<br>X = Other applicable foundational programs |                      |                                 |                      |                                   | X = Foundational capabilities that align with each component |  |   |                                   |                             |                   |                |                                     |
| Provision of HIV Case Management services to ensure adherence to HIV treatments.  | *                    |                                 |                      |                                   |  |  | X   | X                                 |                             |                   |                |                                     |

b. **The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Accountability Metric:**

Not applicable.

c. **The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Modernization Process Measure:**

Not applicable.

4. **Procedural and Operational Requirements.** By accepting and using the Financial Assistance awarded under this Agreement and for this Program Element, LPHA agrees to conduct activities in accordance with the following requirements:

All Ryan White Program, Part B HIV/AIDS Services supported in whole or in part with funds provided under this Agreement must be delivered in accordance with the following procedural and operational requirements:

a. **Eligibility.** HIV verification, identity, residency, health insurance status and income must be documented within 30 working days from the date of intake. Thereafter, income, health insurance status and residency must be verified annually. Ryan White Program, Part B HIV/AIDS Services may only be delivered to people living with HIV in the LPHA’s defined service area who are active participants in Case Management Services that comply with the requirements of the Standards, and to their affected families of origin or choice. There is no income limit for Case Management services and only clients at or below 300% of the federal poverty level, and meeting criteria in (b) below, are eligible for financial assistance through

Support Services. Verification of HIV status may be undertaken only after LPHA obtains the required consent of that individual to the release of HIV-specific information. This documentation may not be released to a third party without further consent of that individual.

**b. Certain Limitations on Use of Financial Assistance.**

- (1) Financial assistance provided under this Agreement for Ryan White Program, Part B HIV/AIDS Services may not be used to cover the costs for any item or service covered by other state, federal, or private benefits or service programs. The financial assistance provided under this Agreement for Ryan White Program, Part B HIV/AIDS Services must be used as dollars of last resort. LPHA must document in the records of the individual receiving the Ryan White Program, Part B HIV/AIDS Services that the funds are being used in a manner that complies with this subsection.
- (2) Financial assistance provided under this Agreement for Ryan White Program, Part B HIV/AIDS Services may only be used for services necessary to facilitate a person living with HIV/AIDS to access and remain engaged in HIV medical care and treatment and for Support Services that directly benefits the health of, or is related to the HIV positive status of an individual.
- (3) No charges to clients shall be imposed for services rendered under this Program Element.
- (4) Under no circumstances may the financial assistance be used to provide direct cash payments to an individual receiving Ryan White Program, Part B HIV/AIDS Services.
- (5) Financial assistance provided under this Agreement for Ryan White Program, Part B HIV/AIDS Services may only be used in accordance with the Support Services Guide LPHA, may use up to 10% of the aggregate financial assistance provided under this Agreement for Ryan White Program, Part B HIV/AIDS Services to cover LPHA's costs of administering its Ryan White Program, Part B HIV/AIDS Services. Alternately, LPHA may submit its Indirect Cost Plan, and use the approved indirect cost rate specified in the plan in lieu of the 10% aggregate. LPHA may permit any of its Subcontractors of Ryan White Program, Part B HIV/AIDS Services, as first-tier contractor, to use up to 10% of the funds paid to that Subcontractor by LPHA for Ryan White Program, Part B HIV/AIDS Services for Subcontractor administrative costs. For purposes of this limitation, the costs of administration include usual and recognized overhead activities, including rent, utilities and facility costs; costs of management oversight of specific programs funded under this subsection, including program coordination, clerical, financial and management staff not directly related to client services; program evaluation; liability insurance; audits; computer hardware/software not directly related to client services; and completion of Ryan White Program data reports and other required reports, to the extent such costs are allowable under applicable OMB cost principles.

**c. General Requirements Applicable to all Ryan White Program, Part B HIV/AIDS Services.**

Financial assistance provided under this Agreement for Ryan White Program, Part B HIV/AIDS Services must be budgeted by LPHA in a manner that would reasonably be expected to assure funding availability throughout the Agreement period; and with a priority to "Core Medical Services" as defined within the Support Services Guide. Financial assistance to specific clients must be prioritized based on a client's level of need and in accordance with the Support Services Guide and the Standards.

- (1) All Ryan White Program, Part B HIV/AIDS Services supported in whole or in part with funds provided under this Agreement must be delivered consistent with the service priorities set forth in the Support Services Guide. LPHA must use the funds awarded under this Agreement for Ryan White Program, Part B HIV/AIDS Services in accordance



with the Care Services Budget approved by and on file at the OHA HIV Care and Treatment program, supplied to the LPHA by the program and incorporated herein by this reference (the “Care Services Budget”). Modifications of the Care Services Budget may only be made with OHA approval, as reflected in an amendment to this Agreement, duly executed by all parties.

- (2) In the event of any conflict or inconsistency between LPHA’s Care Services Budget and the provisions of this Program Element (excluding any attachments), the provisions of this Program Element (excluding any attachments) shall control.
- (3) All Ryan White Program, Part B HIV/AIDS Services must be available and delivered in a culturally and linguistically-appropriate manner and must meet the National Standards on Culturally and Linguistically Appropriate Services (CLAS); specifically the mandates which are the current federal requirements for all recipients of federal funds (Standards 4, 5, 6, and 7 at <https://thinkculturalhealth.hhs.gov/clas/standards>) must be met.
- (4) LPHA must comply with the Americans with Disabilities Act (ADA) requirements and ensure that the facility is accessible by public transportation or provide for transportation assistance to the facility when needed, which may be paid utilizing funds under this Agreement per guidance in Section 4.c.(1) of this Program Element.
- (5) LPHA providing Ryan White Program, Part B HIV/AIDS Services may not solicit or receive payments in kind or cash for purchasing, leasing, ordering, or recommending the purchase, lease or ordering of any goods, facility services or items. Applicable policies must be available upon request.
- (6) LPHA must comply with statute (41 USC 4712), which states that an employee of a contractor, subcontractor, grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for “whistleblowing.” In addition, whistleblowing protections cannot be waived by policy, form, or condition of employment. Whistleblowing is defined as making a disclosure that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant; a gross waste of federal funds; an abuse of authority related to a federal contract or grant; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a federal contract or grant.

**d. Case Management & Support Services.**

- (1) LPHA must provide Case Management and Support Services in accordance with OAR Division 333, Chapter 022 to all eligible individuals within LPHA’s service area who seek such services and must be delivered consistently throughout the period for which financial assistance is awarded under this Agreement for Ryan White Program, Part B HIV/AIDS Services.
- (2) LPHA must deliver all Case Management and Support Services in accordance with the Standards.
- (3) LPHA must establish a grievance policy for recipients of Ryan White Program, Part B HIV/AIDS Services supported in whole or in part with funds provided under this Agreement and shall make this policy known to and available to individuals receiving the services.
- (4) All Subcontractors of Ryan White Program, Part B HIV/AIDS Services must obtain, and maintain in the file of the individual receiving the services, appropriately signed and dated releases of information and consents to care for each such individual prior to commencement of services.

- e. **Confidentiality.** In addition to the requirements set forth in Exhibit F, Section 12 “Records Maintenance; Access and Confidentiality” of this Agreement, all Subcontractors of Ryan White Program, Part B HIV/AIDS Services must comply with the following confidentiality requirements:
- (1) No information regarding an individual’s HIV-positive status may be kept or retained on file by a Subcontractor of Ryan White Program, Part B HIV/AIDS Services without documentation of an established “client with service provider” relationship between the Subcontractor and the individual. This relationship is established when a Subcontractor of Ryan White Program, Part B HIV/AIDS Services, at a minimum, engages in an interview or dialog with the individual that results in a specific record being developed relative to prospective services available to that individual.
  - (2) All materials related to the delivery of Ryan White Program, Part B HIV/AIDS Services that contain names or other identifying information of individuals receiving services must be kept in a locked and secure area/cabinet, which allows access only to authorized personnel, and all computers and data programs that contain such information must have restricted access. Staff computers must be in a secure area not accessible by the public, and computer systems must be password protected. Subcontractors of Ryan White Program, Part B HIV/AIDS Services must comply with all county, state and federal confidentiality requirements applicable to the delivery of Ryan White Program, Part B HIV/AIDS Services.
  - (3) Breaches of confidentiality are serious and require immediate action. Therefore, the supervisory or administrative staff of a Ryan White Program, Part B HIV/AIDS Services funded Subcontractor must immediately investigate, evaluate and, if necessary, correct any alleged breaches by its staff of the confidentiality requirements of this Program Element; further, Subcontractor must document the steps it takes to resolve any breaches of confidentiality. All confirmed breaches of the confidentiality requirements of this Program Element must result in appropriate sanctions in accordance with Subcontractor policy and procedure and applicable law. Each Subcontractor of Ryan White Program, Part B HIV/AIDS Services must report to OHA in sufficient detail any confirmed breaches by its staff of the confidentiality requirements of this Program Element within 14 days of Subcontractor’s evaluation of such breaches as described above.
  - (4) Subcontractors of Ryan White Program, Part B HIV/AIDS Services must establish and comply with a written policy and procedure regarding breach of the confidentiality requirements of this Program Element. Such policy must describe the consequences to the employee or volunteer for a verified breach of the confidentiality requirements of this Program Element.
  - (5) Subcontractors of Ryan White Program, Part B HIV/AIDS Services must conduct an annual review, and maintain documentation of that annual review, of county, state, and federal requirements regarding the confidentiality of information related to individuals receiving Ryan White Program, Part B HIV/AIDS Services. Subcontractors of Ryan White Program, Part B HIV/AIDS Services must require employees and any non-paid staff (i.e. volunteers) who, in the course of performing their job, have access to such information to have an annual review of the confidentiality requirements and to acknowledge in writing an understanding of such requirements governing this information.

- (6) Subcontractors of Ryan White Program, Part B HIV/AIDS Services must provide an on-site private room or HIPAA-compliant telehealth connection for individuals providing Case Management Services to counsel or interview individuals receiving Ryan White Program, Part B HIV/AIDS Services.

**f. LPHA Staffing Requirements and Staff Qualifications.**

- (1) LPHA must employ a Registered Nurse trained in the use of the Standards for the delivery of Ryan White Program, Part B HIV/AIDS Services. Any additional staff must also be trained in the use of the Standards.
- (2) LPHA must provide staffing for Case Management Services as identified in the Care Services Budget and in accordance with the Standards.
- (3) All LPHA and Subcontractor staff who provide Ryan White Program, Part B HIV/AIDS Services must attend training sessions and be appropriately trained on the delivery of such services, as reasonably designated by OHA. OHA will inform LPHA of the schedule and locations for the training sessions.
- (4) LPHA must provide an Information Technology (IT) contact to execute and ensure compliance with the RW CAREWare Client Tier Installation Instructions, which are available from OHA upon request.

**g. LPHA Fiscal Controls and General Administration.**

- (1) LPHA must have appropriate fiscal controls in place for the use and disbursement of financial assistance provided under this Agreement for Ryan White Program, Part B HIV/AIDS Services. LPHA must document in its files the types of agreement monitoring activities that LPHA will perform with respect to Subcontracts for the delivery of Ryan White Program, Part B HIV/AIDS Services and the projected schedule of such monitoring activities during the term of this Agreement. Required monitoring activities include but are not limited to determining whether the basic elements of the Program, the Standards are being met and taking appropriate action if they are not. LPHA must submit to OHA copies of all Subcontracts for the delivery of Ryan White Program, Part B HIV/AIDS Services during the term of this Agreement. LPHA may not pay the Subcontractor with funds received under this Agreement for this Program Element until OHA has received a copy of the Subcontract. OHA's obligation to disburse financial assistance provided under this Agreement for this Program Element to cover payments on a Subcontract is conditioned on OHA's receipt of a copy of that Subcontract. LPHA must notify OHA in writing of LPHA's process for selecting Subcontractors to provide Ryan White Program, Part B HIV/AIDS Services supported in whole or in part with the financial assistance provided under this Agreement for this Program Element (e.g., competitive request for proposals or sole source award) prior to commencing the selection process.
- (2) LPHA must notify OHA within 10 business days and in writing, of proposed changes, during the term of this Agreement, in the Care Services Budget or in the availability of Ryan White Program, Part B HIV/AIDS Services funded through this Agreement, to include service hours, staffing, professional qualifications of staff, and fiscal management. A revised Care Services Budget must be re-submitted to OHA for approval of changes when applicable.

## 5. General Revenue and Expense Reporting.

LPHA must complete an “Oregon Health Authority Public Health Division Expenditure and Revenue Report” located in Exhibit C of this Agreement. These reports must be submitted to OHA each quarter on the following schedule:

| Fiscal Quarter                  | Due Date   |
|---------------------------------|------------|
| First: July 1 – September 30    | October 30 |
| Second: October 1 – December 31 | January 30 |
| Third: January 1 – March 31     | April 30   |
| Fourth: April 1 – June 30       | August 20  |

## 6. Reporting Requirements.

In addition to the reporting requirements set forth in Exhibit E, Section 6 “Reporting Requirements” of this Agreement, LPHA and any Subcontractors must submit the following reports and information to OHA:

- a. Semi-annual Progress Reports must be submitted no later than January 31 and July 31 for the six-month periods ending December 31 and June 30 in each fiscal year. Semi-annual Progress Reports include a narrative report. Administrative Fiscal Forms are submitted quarterly. Reporting forms and instructions are found here, at [www.healthoregon.org/hiv](http://www.healthoregon.org/hiv).
- b. LPHA must conduct a local chart review utilizing the approved process and program review tool found here at [www.healthoregon.org/hiv](http://www.healthoregon.org/hiv). The results of this review will be submitted to the Program not later than October 31<sup>st</sup> of each fiscal year.
- c. LPHA must conduct an annual audit. LPHA’s receiving federal funds exceeding \$500,000 must comply with the applicable audit requirements and responsibilities set forth in the Exhibit G, Section 7 “Audits”. Verification of the completed audit will be obtained through the Secretary of State Audit Division.
- d. With respect to each individual receiving Ryan White Program, Part B HIV/AIDS Services with funds provided under this Agreement, demographic, service and clinical data must be collected and reported to the OHA by utilizing the HRSA developed software package, RW CAREWare. Data obtained by LPHA must be entered as described in the Oregon RW CAREWare User Guide found at [www.healthoregon.org/hiv](http://www.healthoregon.org/hiv). Users are required to enter all demographic, service and clinical data fields within 30 days of the date of service. Use of RW CAREWare software and reporting system requires high-speed internet connectivity and must be compliant with the minimum requirements outlined in instructions at <https://hab.hrsa.gov/program-grants-management/careware> and are available upon request. CAREWare 6 has a new user interface that runs on an internet browser.

## 7. Performance Measures.

If LPHA uses funds provided under this Agreement to support HIV Case Management, the LPHA must operate its program in a manner designed to achieve the following Ryan White Performance Measure goals found here <http://www.healthoregon.org/hiv> :

- a. 90% of clients must have a HIV viral load less than 200 copies/mL at last HIV viral load test.
- b. 90% of clients have a medical visit in the last 12 months.
- c. 90% of medical Case Management clients have an RN care plan developed and/or updated 2 more times a year.
- d. 95% of clients have stable housing.

**Program Element #60: Suicide Prevention, Intervention and Postvention****OHA Program Responsible for Program Element:**

Public Health Division/Center for Prevention and Health Promotion, Injury and Violence Prevention/Suicide Prevention, Intervention and Postvention

1. **Description.** Funds provided under this Agreement for this Program Element may only be used in accordance with, and subject to, the requirements and limitations set forth below, to deliver Suicide Prevention, Intervention and Postvention Program activities in LPHA's service area that must include the following components: (a) facilitation of community partnerships; (b) targeted outreach, training and services; (c) coordination with Community Mental Health Program (CMHP) on implementation of system-wide crisis response plans; (d) collaboration on providing Suicide Safe Care and Continuity of Care among service area healthcare systems; (e) providing Gatekeeper Training and clinical training; and (f) collection and analysis of suicide related data for program planning and management.

The Suicide Prevention, Intervention and Postvention Program is grounded in evidence-based best practices. The coordinated movement involves state and local programs working together to achieve sustainable policy, systems and environmental change in local communities that mobilize statewide. Suicide is one of the leading causes of death in Oregon. Suicide is the second leading cause of death among Oregonians aged 10 to 34 years, and the 8<sup>th</sup> leading cause of death among all Oregonians in 2017. Especially among Youth, Contagion related to suicide death or attempt can occur and needs to be protected against. Funds provided under this Agreement are to be used to reduce suicide deaths, promote evidence-based practice in Youth suicide Prevention, Intervention and Postvention, and implement training to persons working with Youth or staff in Youth serving organizations. Funds allocated to LPHA are to complement the statewide movement toward population-level outcomes including elimination of Youth suicide disparities.

All changes to this Program Element are effective the first day of the month noted in Issue Date of Exhibit C of the Financial Assistance Award unless otherwise noted in Exhibit C of the Financial Assistance Award.

2. **Definitions Specific to Suicide Prevention, Intervention and Postvention.**

- a. **Contagion:** A phenomenon whereby susceptible persons are influenced toward suicidal behavior through knowledge of another person's suicidal acts.
- b. **Continuity of Care:** Care that is maintained when one care provider links to another care provider, the transition in care is smooth and uninterrupted for the patient, and the essential clinical information is provided.
- c. **Gatekeeper Training:** Training for individuals in a community who have face-to-face contact with larger number of community members as part of their usual routine. These individuals are trained to identify persons at risk of suicide and refer them to treatment or supporting services as appropriate.
- d. **Intervention:** A strategy or approach that is intended to prevent an outcome or to alter the course of an existing condition (such as educating providers about suicide Prevention or reducing access to lethal means among individuals with suicide risk).
- e. **Postvention:** Response to and care for individuals affected in the aftermath of a suicide attempt or suicide death.
- f. **Prevention:** A strategy or approach that reduces the likelihood of risk of onset or delays the onset of adverse health problems or reduces the harm results from conditions or behaviors.

- g. **Suicide Safe Care:** Is defined through the National Action Alliance for Suicide Prevention’s *Recommended Standard Care for People with Suicide Risk* and includes (a) identification and assessment, (b) safety planning, (c) mean reduction; and (d) caring contacts.
- h. **Youth:** persons aged 10 to 24.

3. **Alignment with Modernization Foundational Programs and Foundational Capabilities.** The activities and services that the LPHA has agreed to deliver under this Program Element align with Foundational Programs and Foundational Capabilities and the public health accountability metrics (if applicable), as follows (see [Oregon’s Public Health Modernization Manual](http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf), ([http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public\\_health\\_modernization\\_manual.pdf](http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf)):

- a. **Foundational Programs and Capabilities** (As specified in Public Health Modernization Manual)

| Program Components  | Foundational Program |                                 |                      |  | Foundational Capabilities   |   |                                   |                             |                   |                |                                     |
|---|----------------------|---------------------------------|----------------------|--|---|---|-----------------------------------|-----------------------------|-------------------|----------------|-------------------------------------|
|   | CD Control           | Prevention and health promotion | Environmental health | Access to clinical preventive services | Leadership and organizational competencies                          | Health equity and cultural responsiveness | Community Partnership Development | Assessment and Epidemiology | Policy & Planning | Communications | Emergency Preparedness and Response |
| <i>Asterisk (*) = Primary foundational program that aligns with each component</i><br><i>X = Other applicable foundational programs</i> |                      |                                 |                      |  | <i>X = Foundational capabilities that align with each component</i> |   |                                   |                             |                   |                |                                     |
| <b>Facilitation of community partnerships.</b>  | *                    |                                 |                      |  | X   | X   | X                                 |                             |                   | X              |                                     |
| <b>Targeted outreach, training and services.</b>  | *                    |                                 |                      |  |   |   | X                                 |                             |                   |                |                                     |
| <b>Coordinate with CMHP on implementation of system-wide crisis response plans.</b>   | *                    |                                 |                      | X                                      |   |   | X                                 |                             | X                 |                | X                                   |
| <b>Collaboration on providing Suicide Safe Care and Continuity of Care among service area healthcare systems.</b>                       | *                    |                                 |                      | X                                      | X   | X   |                                   |                             | X                 |                |                                     |
| <b>Provide Gatekeeper and clinical training.</b>  | *                    |                                 |                      |  |   | X   | X                                 |                             |                   |                |                                     |
| <b>Collection and analysis of suicide related data for program planning and management.</b>   | *                    |                                 |                      |  |   | X   |                                   | X                           | X                 |                |                                     |

**b. The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Accountability Metric, Health Outcome Measure:**

Not applicable.

**c. The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Accountability Metric, Local Public Health Process Measure:**

Not applicable.

**4. Procedural and Operational Requirements.** By accepting and using the financial assistance awarded under this Agreement and for this Program Element, LPHA agrees to conduct activities in accordance with the following requirements:

**LPHA must:**

- a. Submit local program plan and local program budget to OHA for approval.
- b. Engage in activities as described in its local program plan, which has been approved by OHA.
- c. Use funds for this Program Element in accordance with its local program budget, which has been approved by OHA. Modification to the local program budget may only be made with OHA approval.
- d. Participate in site visits and meetings as requested or required by OHA.
- e. Provide a Suicide Prevention, Intervention and Postvention Program that includes the following minimum components:
  - (1) Establishes or works with an existing community coalition on suicide Prevention.
  - (2) Increases and targets outreach, training and services as appropriate for Youth and organizations that work with Youth identified at high risk for suicide.
  - (3) Collaborates with service area Community Mental Health Programs (CMHP) to implement a systems-wide crisis response plan among healthcare organizations and other providers as appropriate. Access and update the response plans through funding period.
  - (4) Supports Continuity of Care through systems-based approaches and collaboration with service area healthcare systems.
  - (5) Provides Gatekeeper Trainings in evidence-based suicide Prevention strategies including Question, Persuade, and Refer (QPR), Applied Suicide Intervention Skills Training (ASIST), safeTALK and other OHA approved Gatekeeper Trainings.
  - (6) Implements one or more of the following activities in the local program plan approved by OHA:
    - (a) Establishes suicide Prevention training for staff (Gatekeeper Trainings) and students (with OHA approved curriculum) in at least 30% of jurisdiction’s middle and high schools. Substance Abuse and Mental Health Administration (SAMHSA) requires active, informed consent for student curriculum.
    - (b) Works with at least 2 Youth-serving systems in jurisdiction to develop and implement evidence-based suicide risk assessment strategies. Tools must be approved by OHA.
    - (c) Implements the [Zero Suicide Initiative](#) within the LPHA and/or CMHP or work with a service area healthcare system to implement Zero Suicide Initiative.

- (d) Hosts trainings in evidence-based suicide risk assessment, management and treatment strategies for clinicians. Trainings to be approved by OHA.

5. **General Revenue and Expense Reporting.** LPHA must complete an “Oregon Health Authority Public Health Division Expenditure and Revenue Report” located in Exhibit C of this Agreement. These reports must be submitted to OHA each quarter on the following schedule:

| Fiscal Quarter                  | Due Date   |
|---------------------------------|------------|
| First: July 1 – September 30    | October 30 |
| Second: October 1 – December 31 | January 30 |
| Third: January 1 – March 31     | April 30   |
| Fourth: April 1 – June 29       | August 20  |

6. **Reporting Requirements.**

- a. LPHA must submit local program plan reports on a semi-annual schedule to be determined by OHA. The reports must include, at a minimum, LPHA’s progress during the reporting period toward completing activities described in its local program plan.
- b. LPHA must submit quarterly reports that detail quantifiable outcomes of activities and data accumulated, per OHA approved program plan.
- c. LPHA must submit training reports, including number of participants broken out by number in a mental health or related profession, within 7 days of training.
- d. LPHA must submit annual written report on grant activities per template provided by OHA per OHA approved program plan.

7. **Performance Measures.**

If LPHA completes fewer than 75% of the planned activities in its local program plan for two consecutive reporting periods in one state fiscal year, LPHA will not be eligible to receive funding under this Program Element during the next state fiscal year.



### Attachment B Financial Assistance Award (FY24)

|  |   |  |
|--|---|--|
| <b>State of Oregon<br/>Oregon Health Authority<br/>Public Health Division</b>  |   |  |
| <b>1) Grantee</b><br>Name: Deschutes County<br>Street: 2577 NE Courtney Dr.<br>City: Bend<br>State: OR Zip: 97701-7638 | <b>2) Issue Date</b><br>Saturday, July 1, 2023                    | <b>This Action</b><br>Amendment<br>FY 2024 |
|  | <b>3) Award Period</b><br>From July 1, 2023 through June 30, 2024 |  |

| <b>4) OHA Public Health Funds Approved</b> |  |                           |                        |                          |
|--|--|---------------------------|------------------------|--------------------------|
| Number                                     | Program  | Previous Award<br>Balance | Increase /<br>Decrease | Current Award<br>Balance |
| PE01-01                                    | State Support for Public Health                          | \$58,471.25               | \$0.00                 | \$58,471.25              |
| PE01-12                                    | ACDP Infection Prevention Training                       | \$1,517.82                | \$0.00                 | \$1,517.82               |
| PE07                                       | HIV Prevention Services                                  | \$28,467.00               | \$0.00                 | \$28,467.00              |
| PE08-01                                    | Ryan White B HIV/AIDS: Case Management                   | \$0.00                    | \$177,394.00           | \$177,394.00             |
| PE08-02                                    | Ryan White B HIV/AIDS: Support Services                  | \$0.00                    | \$61,253.00            | \$61,253.00              |
| PE08-03                                    | Ryan White B HIV/AIDS: Oral Health                       | \$0.00                    | \$36,371.00            | \$36,371.00              |
| PE12-01                                    | Public Health Emergency Preparedness and Response (PHEP) | \$27,978.25               | \$0.00                 | \$27,978.25              |
| PE13                                       | Tobacco Prevention and Education Program (TPEP)          | \$107,456.00              | \$357,368.57           | \$464,824.57             |
| PE36                                       | Alcohol & Drug Prevention Education Program (ADPEP)      | \$161,713.00              | \$0.00                 | \$161,713.00             |
| PE40-01                                    | WIC NSA: July - September                                | \$186,520.00              | \$0.00                 | \$186,520.00             |
| PE40-02                                    | WIC NSA: October - June                                  | \$559,559.00              | \$0.00                 | \$559,559.00             |
| PE40-05                                    | Farmer's Market  | \$7,574.00                | \$0.00                 | \$7,574.00               |
| PE42-03                                    | MCAH Perinatal General Funds & Title XIX                 | \$6,557.00                | \$0.00                 | \$6,557.00               |
| PE42-04                                    | MCAH Babies First! General Funds                         | \$20,962.00               | \$0.00                 | \$20,962.00              |
| PE42-06                                    | MCAH General Funds & Title XIX                           | \$12,302.00               | \$0.00                 | \$12,302.00              |
| PE42-11                                    | MCAH Title V   | \$69,713.00               | \$0.00                 | \$69,713.00              |
| PE42-12                                    | MCAH Oregon Mothers Care Title V                         | \$57,515.00               | \$0.00                 | \$57,515.00              |
| PE42-13                                    | Family Connects Oregon                                   | \$50,000.00               | \$0.00                 | \$50,000.00              |
| PE43-01                                    | Public Health Practice (PHP) - Immunization Services     | \$47,791.00               | \$0.00                 | \$47,791.00              |
| PE44-01                                    | SBHC Base  | \$360,000.00              | \$0.00                 | \$360,000.00             |
| PE44-02                                    | SBHC - Mental Health Expansion                           | \$431,081.00              | \$0.00                 | \$431,081.00             |
| PE46-05                                    | RH Community Participation & Assurance of Access         | \$32,197.66               | \$0.00                 | \$32,197.66              |
| PE50                                       | Safe Drinking Water (SDW) Program (Vendors)              | \$122,310.00              | \$0.00                 | \$122,310.00             |
| PE51-01                                    | LPHA Leadership, Governance and Program Implementation   | \$135,721.21              | \$0.00                 | \$135,721.21             |
| PE51-02                                    | Regional Partnership Implementation                      | \$86,474.38               | \$0.00                 | \$86,474.38              |
| PE51-05                                    | CDC PH Infrastructure Funding                            | \$622,298.28              | \$0.00                 | \$622,298.28             |
| PE60                                       | Suicide Prevention, Intervention and Postvention         | \$0.00                    | \$120,767.00           | \$120,767.00             |
| PE73                                       | HIV Early Intervention and Outreach Services             | \$452,593.00              | (\$83,339.00)          | \$369,254.00             |
|  |  | <b>\$3,646,771.85</b>     | <b>\$669,814.57</b>    | <b>\$4,316,586.42</b>    |

**5) Foot Notes:**

|         |   |
|---------|---|
| PE40-01 | 7/2023: Unspent SFY2024 Q1 award will be rescinded by the state, cannot be carried over to SFY2024 Q2-4 period.                     |
| PE40-02 | 7/2023: Q2-4 Unspent grant award will be rescinded by the state at end of SFY2024   |
| PE42-11 | 7/2023: Indirect charges cap at 10%.  |
| PE42-12 | 7/2023: Indirect Charges cap at 10%.  |
| PE43-01 | 7/2023: Awarded funds can be spent on allowable costs for the period of 7/1/2023 - 9/30/23. Any unspent funds will be de-obligated. |
| PE51-01 | 7/2023: Bridge funding for 7/1/23-9/30/23.  |
| PE51-02 | 7/2023: Bridge funding for 7/1/23-9/30/23.  |

**6) Comments:**

|         |   |
|---------|---|
| PE01-01 | 7/2023: SFY24 funding available 7/1/23-9/30/23 only.  |
| PE12-01 | 7/2023: SFY24 Award funding for first 3 months only   |
| PE13    | 7/15/23: SFY24 Award adding funding for 10/1/23-6/30/24<br>7/2023: SFY24 Bridge Funding 7/1/23-9/30/23  |
| PE36    | 7/2023: Redistribution for Jul-Sep 2023 SAPT_22; and TBD SAPT_23 Oct-Jun 2024<br>7/2023: SFY24 Award  |
| PE40-01 | 7/2023: SFY2024 Q1 WIC NSA grant award. 37,304\$ must spent on Nutrition Ed; \$6,019 on BF Promotion. Underspend Q1 award cannot be carried over to Q2-4 period.                  |
| PE40-02 | 7/2023: SFY2024 Q2-4 grant award. \$111,912 must be spent on Nutrition Ed, \$18,056 on BF Promotion.  |
| PE40-05 | 7/2023: SFY2024 WIC Farmers Market Mini grant award. Final Q2 Rev & Exp Report is required for final accounting. Underspent funds will be rescinded by the state in February 2024 |
| PE51-05 | 7/2023: SFY24 Award Available 7/1/23-6/30/24. Funds are available 7/1/23-11/30/27. Unspent Funds in SFY24 will be carried over to the next fiscal year.                           |
| PE60    | 7/2023: Award for 7/1/23-6/29/24  |

**7) Capital outlay Requested in this action:**

Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.

| Program | Item Description | Cost | PROG APPROV |  |
|---------|------------------|------|-------------|--|
|         |                  |      |             |  |
|         |                  |      |             |  |

**Attachment C**

**Information required by CFR Subtitle B with guidance at 2 CFR Part 200**

**PE60 Suicide Prevention, Intervention and Postvention**

|                                      |   |
|--------------------------------------|---|
| Federal Award Identification Number: | H79SM082094   |
| Federal Award Date:                  | 06/13/23  |
| Budget Performance Period:           | 06/30/2023-06/29/2024   |
| Awarding Agency:                     | SAMHSA  |
| CFDA Number:                         | 93.243  |
| CFDA Name:                           | Substance Abuse and Mental Health Services_Projects of Regional and National Significance |
| Total Federal Award:                 | 736000  |
| Project Description:                 | Oregon GLS Youth Suicide Intervention and Prevention Initiative                           |
| Awarding Official:                   | Jennifer Cappella   |
| Indirect Cost Rate:                  | 18.06%  |
| Research and Development (T/F):      | FALSE   |
| HIPPA                                | No  |
| PCA:                                 | 52619   |
| Index:                               | 50339   |

| Agency    | UEI           | Amount       | Grand Total: |
|-----------|---------------|--------------|--------------|
| Deschutes | SVJR7CF7JN519 | \$120,767.00 | \$120,767.00 |

# DOCUMENT RETURN STATEMENT

Please complete the following statement and return with the completed signature page and the Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable.

If you have any questions or find errors in the above referenced Document, please contact the contract specialist.

**Document number:** \_\_\_\_\_, hereinafter referred to as "Document."

I, \_\_\_\_\_  
Name Title

received a copy of the above referenced Document, between the State of Oregon, acting by and through the Department of Human Services, the Oregon Health Authority, and

\_\_\_\_\_ by email.

**Contractor's name**

On \_\_\_\_\_,  
Date

I signed the electronically transmitted Document without change. I am returning the completed signature page, Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable, with this Document Return Statement.

\_\_\_\_\_  
Authorizing signature Date

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



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** September 13, 2023

**SUBJECT:** City of Bend Homeless Partnership: Franklin Avenue Shelter Contract  
Amendment

**RECOMMENDED MOTION:**

Move approval of County Administrator signature of Document No. 2023-845, an amendment to the contract with the City of Bend to use ARPA funds for the Franklin Avenue homeless shelter.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Deschutes County Board of Commissioners awarded the City of Bend \$1.5 million in American Rescue Plan Act (ARPA) funds in support of the homeless solutions partnership. Of those funds, \$750,000 were allocated for operations of the Franklin Avenue Shelter in partnership with Shepherd's House. The City at that time had proposed "60+ new beds of non-congregate shelter", which was the language that was used in the grant agreement.

The City of Bend now proposes allowing larger rooms to be utilized for non-related or non-familial groups, which would be considered congregate shelter. The request is to revise the contract language to remove the reference to "non-congregate" shelter and just list it as "shelter". This would allow for various rooming options for residents, and based on recent operations and discussions with Shepherd's House, the City suggests this would allow for the best utilization of the space.

**BUDGET IMPACTS:**

There are no fiscal impacts. ARPA funds were allocated for this grant in 2022 and this request only relates to the contract language.

**ATTENDANCE:**

Laura Skundrick, Management Analyst

REVIEWED  

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LEGAL COUNSEL

For Recording Stamp Only

**DOCUMENT NO. 2023-845  
AMENDING DESCHUTES COUNTY CONTRACT NO. 2023-396**

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2023-396 dated May 8, 2023, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon ("County") and City of Bend ("Grantee"), is amended, effective upon signing of all parties, as set forth below. Except as provided herein, all other provisions of the contract remain the same and in full force.

County's performance hereunder is conditioned upon Contractor's compliance with provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235, which are hereby incorporated by reference. In addition Standard Contract Provisions contained in Deschutes County Code Section 2.37.150 are hereby incorporated by reference. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The above listed contract is amended as follows:

Remaining \$750,000 is to be used for operations of the Franklin Avenue Shelter (formerly Rainbow Motel).

The City of Bend owns the former 50-room Rainbow Motel on Franklin Avenue in downtown Bend. In partnership with Shepherd's House, the City proposes creating 60+ new beds of ~~non-congregate~~ shelter at this location. The cost will be approximately \$1.2M dollars annually for 12 months of operations. The 50 units are varied in size and layout and are able to accommodate families. The property was purchased as part of a redevelopment plan that is pending and the facility is vacant. The City anticipates the former motel will be available for up to four years, pending additional funding. Two extremely vulnerable populations will have room set asides in the ~~non-congregate~~ shelter: Families with children, and medical respite.

GRANTEE: CITY OF BEND

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

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

COUNTY:

\_\_\_\_\_

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

Nick Lelack, County Administrator



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** September 13, 2023

**SUBJECT:** Second reading (by title only) and adoption of Ordinance No. 2023-020, providing amendments to DCC 10.05 relative to signs placed within County road right-of-way

**RECOMMENDED ACTION:**

- Move second reading (by title only) of Ordinance No. 2023-020
- Move adoption of Ordinance No. 2023-020

**BACKGROUND AND POLICY IMPLICATIONS:**

The BOCC held a public hearing on August 30, 2023. Thereafter the BOCC deliberated and moved first reading of Ordinance No. 2023-020.

**BUDGET IMPACTS:**

Anticipate savings of staff time and vehicle use.

**ATTENDANCE:**

Legal



ROAD DEPARTMENT

MEMORANDUM

To: Board of County Commissioners
From: Cody Smith, PE, County Engineer/Assistant Road Department Director
Date: August 24, 2023
Subject: Proposed Amendments to DCC 10.05 – Right of Way Signs

Oregon Revised Statutes (ORS) provide the following regarding the placement of signs other than traffic control devices within county road rights of way:

ORS 368.942 Posting notices, signs or pictures on structures within county road right of way prohibited. Except as provided in ORS 368.950, no person may paste, paint, brand or in any manner whatever place or attach to any building, fence, gate, bridge, tree, rock, board, structure or anything whatever within the limits of the right of way of any county road any written, printed or painted advertisement, bill, notice, sign, picture, card or poster, except within the limits of any incorporated city through which the county road runs.

ORS 368.945 Authority of county road official to remove unlawfully posted matter. A county road official may lawfully remove or destroy, without resort to legal proceedings, any advertisement, bill, notice, sign, picture, card or poster placed in violation of ORS 368.942.

ORS 368.950 Applicability of ORS 368.942 and 368.945. ORS 368.942 and 368.945 do not apply to:

- (1) The posting or maintaining of any notice required by law to be posted or maintained; or
(2) The placing and maintaining, within the limits of the right of way of any county road, of:
(a) Signs approved by the county governing body and giving information about scenic, historical, resort or recreational areas;
(b) Signs approved by the county governing body and giving information about community or civic enterprises of a noncommercial nature, or the proximity of tourist facilities, directions or distances for the information of the traveling public;
(c) Facility location signs of a public utility or telecommunications utility, when such signs are approved by the county governing body;
(d) Benches utilized as outdoor advertising signs, if approved by the county governing body;
or



*(e) Outdoor advertising signs on bus shelters erected or maintained for use by and convenience of customers of a mass transit district, a transportation district or any other public transportation agency, when such signs are approved by the county governing body.*

**368.955 Posting notices, signs or pictures within view of county road on property of another without consent prohibited.** *No person may paste, paint, brand or in any manner whatever place or attach to any building, fence, gate, bridge, tree, rock, board, structure or anything whatever on the property of another within view of a county road, without the written consent of the owner or person entitled to possession of such property, any written, printed or painted advertisement, bill, notice, sign, picture, card or poster.*

Deschutes County Code (DCC) 10.05 provides requirements and procedure for the permitting and placement of temporary activity signs and tourist and motorist-oriented directional signs within public road rights of way under Deschutes County's jurisdiction. Inexplicably, DCC 10.05.040 allows for the permitting of political signs as temporary activity signs within a public road right of way.

Road Department staff find that the permissibility of political signs within public road rights of way under Deschutes County Code and the burden for the Department to administer this program are extremely problematic for several reasons:

- **Road User Safety Concerns** - The improper placement of temporary activity signs along a road can compromise the safety of road users by interfering with traffic control devices, restricting sight lines, or causing distraction. Political campaign signs comprise virtually all of the temporary activity sign permits issued by the Road Department and have created numerous road safety concerns in recent years.
- **Lack of Statutory Authority** – Road Department staff do not believe that ORS 368.950 gives a county governing body the authority to permit the posting of political signs in public rights of way under their jurisdiction. Temporary activity signs authorized under the statute include signs “ .. giving information about community or civic enterprises of a noncommercial nature.”
- **Residual Property Rights** – Road rights of way under Deschutes County jurisdiction generally consist of easements for public ingress and egress over land, leaving certain residual property rights with owners of underlying or abutting property (see ORS 93.310(4), ORS 271.140, and ORS 368.366. Temporary activity signs within these rights of way can be problematic when the underlying or abutting property owner does not consent to the placement of a sign that is not an official traffic control device or that is not otherwise necessary to meet the needs of road users (i.e., political signs). Further, ORS 368.955 prohibits the placement of such signs within view of a county road without the consent of the property owner. Road Department staff assert that this would include consent by an abutting property owner whose fee ownership generally extends to the centerline of a public road right of way.
- **State and Countywide Inconsistency** - Deschutes County appears to be the only public road agency in Oregon that permits political signs in their rights of way. The County's current permitting of political signs within public rights of way is inconsistent with rules and messaging from all other public road agencies in Deschutes County and Oregon who actively prohibit political signs on their rights of way.

- **Administration and Enforcement** – The administration, monitoring and, regulation of political campaign signs in the public rights of way takes up significant capacity of Road Department staff in the weeks prior to elections. Issues include;
  - Mediating matters related to visually-conflicting political signs among opposing campaigns;
  - Opposing campaigns checking the status of each other’s permits;
  - Property owners upset about signs located along their frontage;
  - Other road agencies requesting intervention for signs placed at the intersections of their roads and county roads.

With these reasons in mind, Road Department staff are proposing a text amendment to DCC 10.05 to remove the permissibility of political signs within the public right of way.

Additionally, the proposed text amendment for DCC 10.05 includes modernization of other portions of the code chapter to clarify procedures for permitting of temporary activity signs and tourist/motorist – oriented directional signs.

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

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 10.05, Right of Way Signs, of the Deschutes County Code. \*  
\*  
\* ORDINANCE NO. 2023-020

WHEREAS, the Deschutes County Code (DCC) contains rules and regulations duly enacted through ordinance by Deschutes County and the Deschutes County Board of Commissioners; and

WHEREAS, from time-to-time the need arises to make amendments, including new enactments to the DCC; and

WHEREAS, staff from the Road Department have identified a need to amend DCC 10.05 to further identify the types of signs that may be authorized for placement within county road right-of-ways; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed public hearing August 30, 2023, and determined that DCC 10.05 should be amended; now therefore,

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

Section 1. AMENDMENT. DCC 10.05 is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketthrough~~.

Section 2. ADOPTION. This Ordinance takes effect 90 days after its adoption.

///

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2023

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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

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

ATTEST:

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

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

Date of 1st Reading: 30th day of August, 2023.

Date of 2nd Reading: 13<sup>th</sup> day of September, 2023.

| <u>Commissioner</u> | Record of Adoption Vote |           |                  |                |
|---------------------|-------------------------|-----------|------------------|----------------|
|                     | <u>Yes</u>              | <u>No</u> | <u>Abstained</u> | <u>Excused</u> |
| Patti Adair         |                         |           |                  |                |
| Phil Chang          |                         |           |                  |                |
| Anthony DeBone      |                         |           |                  |                |

Effective date: 13<sup>th</sup> day of December, 2023.

# **EXHIBIT A**

**(To Ordinance No. 2023-020)**

## **CHAPTER 10.05 RIGHT OF WAY SIGNS**

### **10.05.010 Introduction**

DCC Chapter 10.05 is enacted to establish standards and procedures for signs to be installed and maintained within public rights of way which fall under the jurisdiction of the Board of County Commissioners, and which are necessary to meet the needs of the motorist in locating public recreational facilities and services open to the general public. DCC Chapter 10.05 shall be known as the Deschutes County Road Right of Way Sign Ordinance.

#### HISTORY

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

*Amended by Ord. 2020-005 §1 on 1/1/2021*

### **10.05.020 Definitions**

The following definitions apply as set forth in DCC 10.05.020.

"Administrator" means the Road Department Director or the designee for Deschutes County, Oregon.

"Applicant" means a person or entity applying for a permit to place signs, logos or sign panels or supplemental sign panels within the right of way.

"Business sign (Logo)" means a separately attached sign mounted on the sign panel to show the brand, symbol, trademark or name, or combination thereof, of services available.

"Directional information" means the name of the business, service or activity, qualified historical feature or qualified cultural feature and other necessary information to direct the motoring public to the business, service or activity, placed on a tourist-oriented directional sign.

"Directional sign" means a sign identifying and containing directional information to one or more public services, to natural phenomena or historic, cultural, scientific, educational or religious sites or facilities, or to recreational facilities open to the general public, including marinas, boat ramps, camping facilities and day recreation facilities.

"Erect or construct" means to construct, build, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish.

"Maintain" includes painting or routine repairs necessary to maintain the sign in a neat, clean, attractive and safe condition, and the term includes allowing to exist.

"MUTCD" means the Manual on Uniform Traffic Control Devices.

"Qualified motorist business" means a business furnishing gas, food, lodging or camping which has met the requirements of these regulations for the placement of a logo on a sign panel or supplemental sign panel.

"Reconstruction" means replacing a sign totally or partially to increase its size or performing any work, except maintenance work, that alters or changes a sign.

"Responsible operator or owner" means the owner in fee simple or a person or entity who operates a motorist business and who has authority to enter into an agreement relative to matters covered by DCC 10.05.

**"Right of way" means the area between the boundary lines of a street, road or other public easement under the jurisdiction of the Board of County Commissioners.**

"Sign panel" includes "motorist informational signs," "specific informational panel" and "logo signs."

"Tourist-oriented directional sign" means a sign panel with the name of a qualified tourist-oriented business, service or activity, or qualified historical feature or qualified cultural feature together with directional information erected in advance of or at an intersection.

"Traffic Control Device" means all signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, bikeway, or private road open to public travel by authority of a public agency.

"Trailblazer" means a small sign panel with the type of motorist service offered and the name, direction and distance to the qualified motorist business.

"Type I signs"- means Qualified Motorist Business. signs consisting of tour route signs; tourist information signs; public facility and service signs; commercial businesses offering food, gas, lodging or camping services; historic location signs; federal, state and local recreational and facility signs; and nonprofit institutions, including churches and civic organizations.

"Type II signs" means Qualified Tourist-oriented Business signs identifying any legal, cultural, historical, recreational, educational or entertaining activity or a unique or unusual commercial or nonprofit activity the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

**HISTORY**

*Adopted by Ord. 90-011 §1 on 1/2/1991*  
*Amended by Ord. 95-034 §1 on 5/17/1995*  
*Amended by Ord. 2023-020 §1 on 9/13/2023*

**10.05.030 General Requirements**

Except for those signs which are approved by the Administrator pursuant to DCC 10.05.060 and except for signs that are exempted under DCC 10.05.040, a person may not erect or maintain a sign or sign panel on County right of way.

**HISTORY**

*Adopted by Ord. 2023-020 §1 on 9/13/2023*

**10.05.040 Exemptions.**

The following signs are exempted from the requirements of DCC 10.05.030:

- A. Those traffic control devices that are required for traffic control and safety included in the MUTCD as determined by the Administrator.
- B. Directional signs for temporary activities that are granted a permit by the Administrator lasting less than 14 days which otherwise are in compliance with the terms of this ordinance, including parades, fun runs, bicycle or pedestrian contests, or special public functions.
- C. Type I and Type II signs that are granted a permit by the Administrator.

**HISTORY**

*Adopted by Ord. 90-011 §1 on 1/2/1991*  
*Amended by Ord. 95-034 §1 on 5/17/1995*  
*Amended by Ord. 2023-020 §1 on 9/13/2023*

**10.05.030-050 Prohibited Uses**

A sign or sign panel exempted under DCC 10.05.040 may not be erected or maintained if it:

- A. Interferes with, imitates or resembles any official traffic control sign, signal or device, or attempts or appears to attempt to direct the movement of traffic.
- B. Prevents the driver of a motor vehicle from having a clear and unobstructed view of official traffic control signs and approaching or merging traffic.
- C. Contains, includes or is illuminated by any flashing, intermittent, revolving, rotating or moving lights, or moves or has any animated or moving parts. This subsection does not apply to traffic control devices.
- D. Has any lighting, unless such lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a road, or is of such low intensity as not to cause glare or to impair the vision of the driver or otherwise to interfere with the operation thereof.
- E. Is located upon a tree or painted or drawn upon a rock or other natural feature.
- F. Advertises or calls attention to an activity or attraction no longer carried on.
- G. Advertises activities that are illegal under any state, federal or local law applicable at the location of the sign or of the activities.
  
- H. Is not maintained in a neat, clean and attractive condition and in good repair as determined by the Road Department Director or his designee.
- I. Is not able to withstand a wind pressure of 20 pounds per square foot of exposed surface.
- ~~J.~~ Is on a vehicle or trailer. This subsection does not apply to a vehicle or trailer used for transportation by the owner or person in control of the property.
- ~~K.~~ Does not meet the requirements of DCC 10.05 or the MUTCD.

**HISTORY**

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

*Amended and Renumbered by Ord. 2023-020 §1 on 9/13/2023*

**10.05.040 Exemptions**

~~The following signs are exempted under DCC 10.05:~~

- ~~1. Those traffic signs that are required for traffic control and safety included in the MUTCD.~~
- ~~2. Those portions of sign that intrude into the public right of way that were granted a permit under the Deschutes County Sign Ordinance.~~
- ~~3. Temporary activity signs that are granted a permit lasting less than 90 days which otherwise are in compliance with the terms of this ordinance, including parades, fun runs, bicycle or pedestrian contests, political signs or special public functions.~~

**HISTORY**

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

**10.05.050 Sign Types**

~~The following types of signs are allowed under the terms of DCC Title 10:~~

- ~~A. Type I—Qualified Motorist Business. Tour route signs; tourist information signs; public facility and service signs; commercial businesses offering food, gas, lodging or camping services; historic~~



~~location signs; federal, state and local recreational and facility signs; and nonprofit institutions, including churches and civic organizations.~~

- ~~B. Type II — Qualified Tourist-oriented Business. Any legal, cultural, historical, recreational, educational or entertaining activity or a unique or unusual commercial or nonprofit activity the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.~~

#### HISTORY

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

#### **10.05.060 Application Process – Type I and Type II Signs**

- A. Application for a Type I or Type II sign shall be made in writing addressed to the ~~Road Department Director for Deschutes County, Oregon~~Administrator. It may be in letter form or on a form prepared for such purpose by the department. Information contained shall include the following: the name, address and telephone number of the owner or operator of the business or service for which the sign is intended; the reason for the sign; a description of the location(s) for the sign; a description of the information requested on the sign; and be accompanied by the appropriate application fee. Each business applicant shall also submit a copy of the business' land use permit. The Administrator shall notify the appropriate Planning Director of the application and request review and comment on the application.
- B. Within 30 working days from the date of receipt of the request for a sign, the Administrator shall respond in writing to the applicant as to the adequacy of the information received. Requests for signs that do not comply with the provisions of DCC 10.05 shall be denied by the Administrator. If the application is denied, the Administrator shall cite the appropriate section of the ordinance or MUTCD pertinent to the application.
- C. Each application shall be accompanied with the appropriate fee for processing. If the application is approved, the applicant shall make arrangements to have the department install the sign and pay the required costs for materials, labor and travel. Payment of such costs and execution of a maintenance agreement, along with not less than two year's maintenance fees, shall be made in advance.
- D. If the application is denied, the applicant may appeal the decision as provided in DCC 22.

#### HISTORY

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

*Amended by Ord. 2023-020 §1 on 9/13/2023*

#### **10.05.070 Composition– Type I and Type II Signs**

All signs installed under the terms of DCC Title 10 shall be in compliance with the MUTCD;

- A. Sign panels shall have a blue background with a white reflectorized border for all signs, except historical, cultural and recreational which shall have a brown background.
- B. Logos shall have a blue background with a white legend and border. The principal legend should be at least equal in height to the directional legend on the sign panel. Where business identification symbols or trademarks are used alone for a logo, the border may be omitted, the symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and any integral legend shall be in proportionate size. Messages, symbols and trademarks which resemble any official traffic control device are prohibited. The vertical and horizontal spacing between logos on sign panels shall not exceed eight inches and 12 inches respectively.

- C. All directional arrows and all letters and numbers used in the name of the type of service and directional legend shall be white and reflectorized.
- D. Each logo shall be contained within a 24-inch wide and 18-inch high rectangular background area, including border.
- E. All letters used in the name of the type of service on the sign panel shall be four-inch capital letters.
- F. Tourist-oriented directional signs shall have a blue reflectorized background with a white reflectorized border and message. The intersection sign shall not exceed 18 inches in height and 72 inches in length, and shall have not more than two lines of legend, including a separate direction arrow and the distance to the facility to the nearest one-quarter mile. The content of the legend shall be limited to the identification of the business and shall not include promotional advertising as determined by the Administrator.

F.G. A six-inch letter height shall be used. Advance tourist-oriented directional signs shall be the same as intersection tourist-oriented directional signs, except that in lieu of the directional arrow and mileage, the sign shall include the directional word information "ahead" or "next left" etc. as may be required.

G.H. All directional arrows, letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized.

H.I. Tourist-oriented directional signs are to be located at intersections.

I.J. Notwithstanding the fact that a tourist-oriented business meets all of the eligibility requirements of this ordinance and applicable provisions of the Deschutes County Code, an application may be denied if it is determined, after investigation by the Administrator, that adequate direction to the business cannot be given by a reasonable number of allowable tourist information directional signs.

**HISTORY**

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

*Amended by Ord. 2023-020 §1 on 9/13/2023*

**10.05.080 Fees; Installation And Maintenance – Type I and Type II Signs**

- A. All Type I and Type II signs, except city, county, state and federal directional and information signs, shall be required to reimburse the County for the actual costs of processing the application and the material and labor required to construct, purchase, locate, install and maintain a sign for an applicant. A fee schedule shall be adopted each budget year which sets forth the department's fees which shall apply until replaced by a new fee schedule.
- B. All Type I and Type II signs shall be installed, maintained and removed by the County in accordance with the MUTCD and DCC 10.05.

**HISTORY**

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

*Amended by Ord. 2023-020 §1 on 9/13/2023*

**10.05.090 Criteria For Specific Information Panels– Type I and Type II Signs**

- A. Each qualified motorist business identified on a sign panel shall have given written assurance to the Administrator of its conformity with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex or national origin, and shall not be in breach of the assurance.

- B. The types of service permitted shall be limited to: "Gas," which shall include fuel, oil, tire repair, air and water, restroom facilities, drinking water and telephone, with continuous operations for a minimum of 12 hours a day, six days a week. "Food" shall include, continuous operations for a minimum of 12 hours a day, six days a week, restroom facilities and telephone, with the primary business of providing meals. "Lodging" shall include, adequate sleeping accommodations, modern sanitary facilities and drinking water. "Camping" shall include, adequate parking accommodations, modern sanitary facilities and drinking water.
- C. Panels shall be in the direction of traffic. Successive sign panels shall be those for "camping," "lodging," "food," and "gas," in that order.
- D. Riders with the words "diesel" or "LP gas" or a rider containing both may be placed on a sign panel underneath any gas logo if the qualified motorist service business has diesel or LP gas available during its hours of operation. Such rider shall be 35 inches long and seven inches high with six-inch letters. The color shall be blue with white letters. The combination rider shall be 52 inches long and seven inches high with five-inch high letters.
- E. Each qualified tourist-oriented business identified on a tourist-oriented directional sign shall have given written assurance to the Administrator of its conformity with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex or national origin, and shall not be in breach of that assurance.
- F. Except for undeveloped cultural and historic features, a qualified tourist-oriented business shall have restroom facilities and drinking water available; continuous operation at least six hours per day, six days a week during its normal business season; a license where required; and adequate parking accommodations.

#### HISTORY

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

*Amended by Ord. 2023-020 §1 on 9/13/2023*

#### **10.05.100 Spacing Of Signs And Panels– Type I and Type II Signs**

Spacing of sign panels and the placement of directional signs shall be in accordance with the MUTCD and in the judgment of the Administrator. In any case, the number of signs, including directional signs, shall be the minimum necessary to enable a motorist to locate the tourist-oriented business or to locate the public service.

#### HISTORY

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

*Amended by Ord. 2023-020 §1 on 9/1/2023*

#### **10.05.10510 Application Process – Temporary Directional Signs**

- A. Application for a temporary directional sign shall be made in writing addressed to the Administrator. It may be in letter form or on a form prepared for such purpose by the Department. Information contained shall include the following: the name, address and telephone number of the coordinator of the activity for which the sign is intended; the reason for the sign; a description of the location(s) for the sign; a description of the information requested on the sign; and be accompanied by the appropriate application fee. Each applicant shall also submit a copy of the land use permit or special event permit, if applicable. The Administrator shall notify the appropriate Planning Director of the application and request review and comment on the application if applicable.
- B. Within 30 working days from the date of receipt of the request for a sign, the Administrator shall respond in writing to the applicant as to the adequacy of the information received. Requests for signs that do not comply with the provisions of DCC 10.05 shall be denied by the Administrator. If the

application is denied, the Administrator shall cite the appropriate section of the ordinance or MUTCD pertinent to the application.

C. Each application shall be accompanied with the appropriate fee for processing.

D. If the application is denied, the applicant may appeal the decision as provided in DCC 22.

HISTORY

Adopted by Ord. 2023-020 §1 on 9/13/2023

**10.05.110 Violation; Penalty**

- A. Any person, firm or corporation erecting, constructing, reconstructing or maintaining ~~a-business sign, directional sign, tourist-oriented directional sign, trailblazer or temporary activity~~ sign in violation of the provisions of DCC 10.05 constitutes a Class A violation and shall be punishable upon conviction by a fine of not more than \$500.00.
- B. Each day of a violation described in DCC 10.05.110(A) constitutes a separate offense and is punishable as a continuing violation under DCC 1.16.

HISTORY

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*

*Amended by Ord. 2003-021 §22 on 4/9/2003*

*Amended by Ord. 2023-020 §1 on 9/13/2023*

**10.05.120 Nuisance Declared; Removal**

- A. Any sign maintained in violation of DCC 10.05 constitutes a nuisance.
- B. Nothing in DCC 10.05 shall be construed to limit the authority of the County Road Official pursuant to ORS 368.945.

HISTORY

*Adopted by Ord. 90-011 §1 on 1/2/1991*

*Amended by Ord. 95-034 §1 on 5/17/1995*