



COMMUNITY DEVELOPMENT

HEARINGS OFFICER HEARING - LAND USE: PLAN AMENDMENT/ZONE CHANGE

6:00 PM, TUESDAY, APRIL 19, 2022

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

(541) 388-6575 | www.deschutes.org

AGENDA

MEETING FORMAT

This meeting will be conducted electronically, by phone, in person, and using Zoom.

Members of the public may view the meeting in real time via the Public Meeting Portal at www.deschutes.org/meetings.

Members of the public may listen, view, and/or participate in this meeting using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link:

<https://us02web.zoom.us/j/81296814184>

NOTE: Using this option may require you to download the Zoom app to your device.

Members of the public can access the meeting via telephone, dial: 1-253-215-8782. When prompted, enter the following Webinar ID: 812-9681-4184.

Written comments can also be provided for the public comment section to haleigh.king@deschutes.org by 4:00PM on April 18, 2022. They will be entered into the record.

PUBLIC HEARING

1. FILE NUMBERS: 247-21-001043-PA, 1044-ZC

OWNER/APPLICANT: Eden Central Properties, LLC / 710 Properties, LLC

PROPOSAL: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests a corresponding Zone

Change to rezone the subject property from Exclusive Farm Use – Terrebonne subzone (EFU-TE) to Rural Residential (RR-10).

LOCATION: 10315 NW COYNER AVE, REMOND, OR 97756, 10325 NW COYNER AVE, REDMOND, OR 97756, 10311 NW COYNER AVE, REDMOND, OR 97756, 70000 BUCKHORN RD, TERREBONNE, OR 97760

Map and Tax Lots: 1412280000100 / 1412280000200 / 1412280000300 / 141228D000101 / 1412210000300 / 1412210000400 / 1412210000500 / 1412210000600 / 1412210000700

STAFF PLANNER: Haleigh King, Associate Planner / haleigh.king@deschutes.org / 541-383 6710



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



NOTICE OF PUBLIC HEARING

HEARING FORMAT

The Deschutes County Hearings Officer will conduct the public hearing described below by video and telephone. If participation by video and telephone is not possible, in-person testimony is available. Options for participating in the public hearing are detailed in the Public Hearing Participation section.

PROJECT DESCRIPTION

FILE NUMBERS: 247-21-001043-PA, 1044-ZC

OWNER: Eden Central Properties, LLC
PO Box 1345
Sisters, OR 97759

APPLICANT: 710 Properties, LLC
PO Box 1345
Sisters, OR 97759

**ATTORNEY(S)
FOR APPLICANT:** Liz Fancher
2464 NW Sacagawea Lane
Bend, Oregon 97703

J. Kenneth Kataroff
Schwabe Williamson & Wyatt
1420 5th Avenue, Suite 3400
Seattle, WA 98101

PROPOSAL: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use – Terrebonne subzone (EFU-TE) to Rural Residential (RR-10).

LOCATION: The subject properties are described as follows:

Map and Tax Lot	Situs Address
1412280000100	10315 NW COYNER AVE, REDMOND, OR 97756
1412280000200	10325 NW COYNER AVE, REDMOND, OR 97756
1412280000300	10311 NW COYNER AVE, REDMOND, OR 97756
141228D000101	NO SITUS ADDRESS
1412210000300	NO SITUS ADDRESS
1412210000400	NO SITUS ADDRESS
1412210000500	NO SITUS ADDRESS
1412210000600	70000 BUCKHORN RD, TERREBONNE, OR 97760
1412210000700	NO SITUS ADDRESS

HEARING DATE: Tuesday, April 19, 2022

HEARING START: 6:00 pm

STAFF PLANNER: Haleigh King, Associate Planner
Haleigh.king@deschutes.org, 541-383-6710

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-21-001043-pa-and-247-21-001044-zc-eden-central-properties-comprehensive-plan-amendment>

STANDARDS AND APPLICABLE CRITERIA:

- Title 18 of the Deschutes County Code, the County Zoning Ordinance:
 - Chapter 18.04, Title, Purpose, and Definitions
 - Chapter 18.16, Exclusive Farm Use Zones (EFU)
 - Chapter 18.60, Rural Residential Zone (RR-10)
 - Chapter 18.113, Destination Resorts Combining Zone (DR)
 - Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

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

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

Oregon Revised Statutes (ORS)
 Chapter 215.010, Definitions
 Chapter 215.211, Agricultural Land, Detailed Soils Assessment

PUBLIC HEARING PARTICIPATION

- If you wish to provide testimony during the public hearing, please contact the staff planner by 4 pm on Monday, April 18, 2022. Testimony can be provided as described below.
- Members of the public may listen, view, and/or participate in this hearing using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link: <https://us02web.zoom.us/j/81296814184>. Using this option may require you to download the Zoom app to your device.
- Members of the public can access the meeting via telephone, dial 1-253-215-8782. When prompted, enter the following Webinar ID: **812-9681-4184**
- Written comments can also be submitted to the record. Please see the Document Submission section below for details regarding written submittals.
- If participation during the hearing by video and telephone is not possible, the public can provide testimony in person at 6 pm in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend.

All documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost at the Deschutes County Community Development Department (CDD) at 117 NW Lafayette Avenue. Seven (7) days prior to the public hearing, a copy of the staff report will be available for inspection at no cost at CDD and on the websites listed above. Copies of all documents, evidence and the staff report can be purchased at CDD for (25) cents a page.

ALL INTERESTED PERSONS MAY APPEAR, BE HEARD, BE REPRESENTED BY COUNSEL, OR SEND WRITTEN SIGNED TESTIMONY. ANY PARTY TO THE APPLICATION IS ENTITLED TO A CONTINUANCE OF THE INITIAL EVIDENTIARY HEARING OR TO HAVE THE RECORD LEFT OPEN IN ACCORDANCE WITH SECTION 22.24.140 OF THE DESCHUTES COUNTY CODE.

Failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please contact the staff planner identified above.

DOCUMENT SUBMISSION

Any person may submit written comments on a proposed land use action. Documents may be submitted to our office in person, U.S. mail, or email.

In Person

We accept all printed documents.

U.S. Mail

Deschutes County Community Development
Planning Division, Haleigh King
P.O. Box 6005
Bend, OR 97708-6005

Email

Email submittals should be directed to haleigh.king@deschutes.org and must comply with the following guidelines:

- Submission is 20 pages or less
- Documents can be printed in black and white only
- Documents can be printed on 8.5" x 11" paper

Any email submittal which exceeds the guidelines provided above must be submitted as a paper copy.

Limitations

- Deschutes County does not take responsibility for retrieving information from a website link or a personal cloud storage service. It is the submitter's responsibility to provide the specific information they wish to enter into the record. We will print the email which includes the link(s), however, we will not retrieve any information on behalf of the submitter.
- Deschutes County makes an effort to scan all submittals as soon as possible. Recognizing staff availability and workload, there is often a delay between the submittal of a document to the record, and when it is scanned and uploaded to Accela Citizen Access (ACA) and Deschutes County Property Information (DIAL). For this reason, the official record is the file

that resides in the Community Development office. The electronic record in ACA and DIAL is not a substitute for the official record.

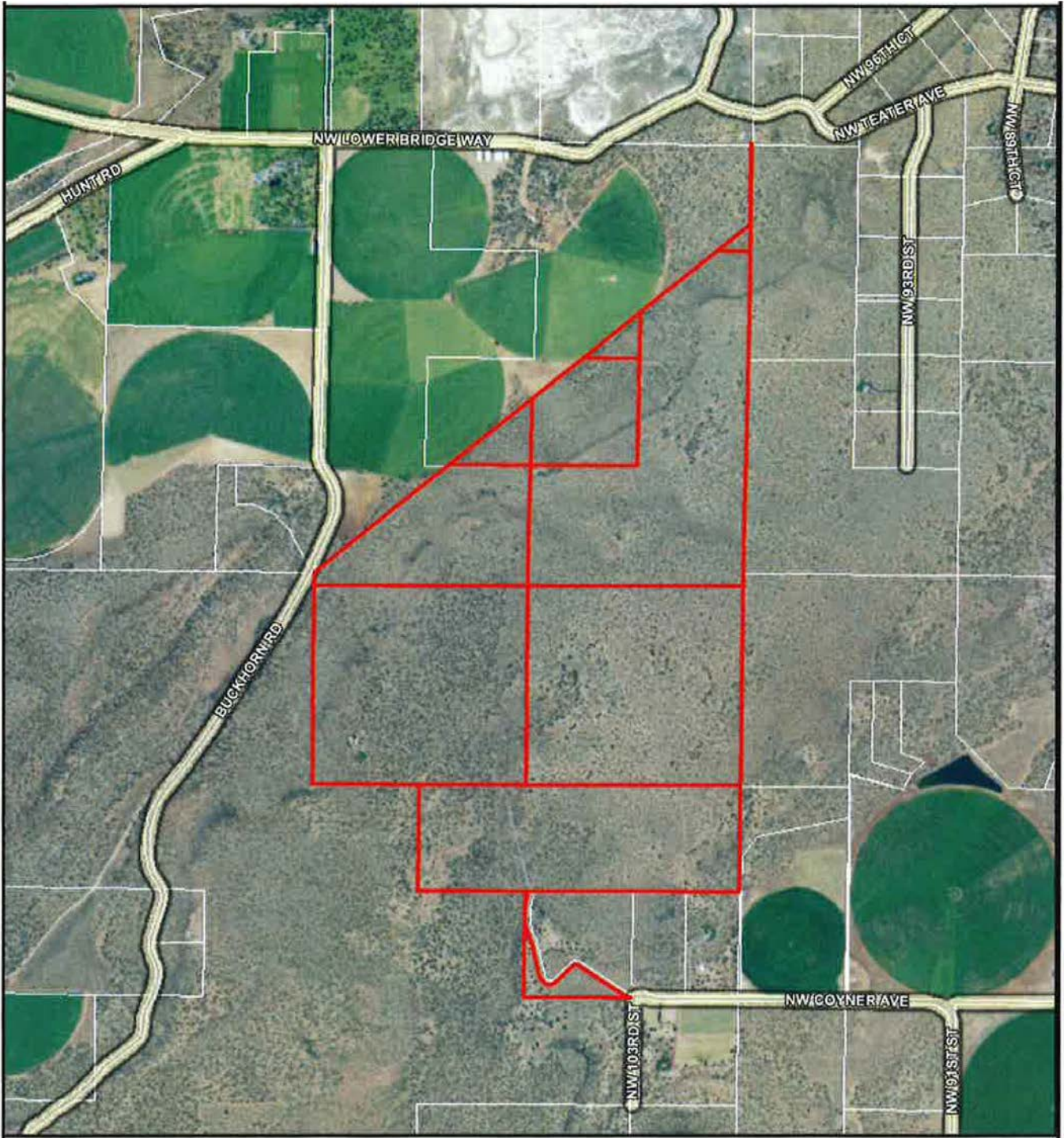
- To ensure your submission is entered into the correct land use record, please specify the land use file number(s).
- For the open record period after a public hearing, electronic submittals are valid **if received by the County's server** by the deadline established for the land use action.
- IF YOU WISH TO BE NOTIFIED OF ANY DECISION RELATED TO THIS APPLICATION, YOU MUST PROVIDE A MAILING ADDRESS.

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

This Notice was mailed pursuant to Deschutes County Code Chapters 22.20 and 22.24.

Attachment: Location Map

Subject Property
File Nos: 247-21-0001043-PA, 22-1044-ZC





STAFF REPORT

FILE NUMBER: 247-21-001043-PA, 247-21-1044-ZC

HEARING: April 19, 2022, 6:00 p.m.
Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412280000100
Account: 163920
Situs Address: 10315 NW COYNER AVE, REDMOND, OR 97756

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412280000200
Account: 250543
Situs Address: 10325 NW COYNER AVE, REDMOND, OR 97756

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412280000300
Account: 124845
Situs Address: 10311 NW COYNER AVE, REDMOND, OR 97756

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 141228D000101
Account: 273062
Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000300
Account: 276793
Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000400
Account: 276794

Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000500
Account: 276791
Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000600
Account: 124846
Situs Address: 70000 BUCKHORN RD, TERREBONNE, OR 97760

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000700
Account: 276792
Situs Address: **NO SITUS ADDRESS**

APPLICANT: 710 Properties, LLC
PO Box 1345
Sisters, OR 97759

ATTORNEY(S) FOR APPLICANT: Liz Fancher
2464 NW Sacagawea Lane
Bend, Oregon 97703

J. Kenneth Katzaroff
Schwabe Williamson & Wyatt
1420 5th Avenue, Suite 3400
Seattle, WA 98101

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

STAFF CONTACT: Haleigh King, Associate Planner
Phone: 541-383-6710
Email: Haleigh.King@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-21-001043-pa-and-247-21-001044-zc-eden-central-properties-comprehensive-plan-amendment>

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 18.60, Rural Residential Zone (RR-10)
 - Chapter 18.113, Destination Resorts Combining Zone (DR)
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- Title 22, Deschutes County Development Procedures Ordinance
- Deschutes County Comprehensive Plan
 - Chapter 2, Resource Management
 - Chapter 3, Rural Growth Management
 - Appendix C, Transportation System Plan
- Oregon Administrative Rules (OAR), Chapter 660
 - Division 12, Transportation Planning
 - Division 15, Statewide Planning Goals and Guidelines
 - Division 33, Agricultural Land
- Oregon Revised Statutes (ORS)
 - Chapter 215.010, Definitions
 - Chapter 215.211, Agricultural Land, Detailed Soils Assessment

II. BASIC FINDINGS

LOT OF RECORD: Per DCC 22.04.040 Verifying Lots of Record, lot of record verification is required for certain permits:

B. *Permits Requiring Verification.*

- 1. *Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:***
 - a. *Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);***
 - b. *Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;***
 - c. *Any permit for a lot or parcel subject to wildlife habitat special assessment;***
 - d. *In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;***
 - e. *In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;***

In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, the Hearings Officer held to a prior Zone Change 247-21-001043-PA, 1044-ZC

247-21-000400-PA, 401-ZC Decision (*Belveron* ZC-08-04; page 3) that a property's lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, the applicant would be required to receive lot of record verification prior to any development on the subject property. Therefore, this criterion does not apply.

SITE DESCRIPTION: The subject property encompasses approximately 710.5 acres and includes nine tax lots described below (together hereafter referred to as the "subject property"):

Map and Tax Lot	Situs Address	Area (acres)
1412280000100	10315 NW COYNER AVE, REDMOND, OR 97756	±149.78
1412280000200	10325 NW COYNER AVE, REDMOND, OR 97756	±150.09
1412280000300	10311 NW COYNER AVE, REDMOND, OR 97756	±120.6
141228D000101	NO SITUS ADDRESS	±8.66
1412210000300	NO SITUS ADDRESS	±101.68
1412210000400	NO SITUS ADDRESS	±9.47
1412210000500	NO SITUS ADDRESS	±4.54
1412210000600	70000 BUCKHORN RD, TERREBONNE, OR 97760	±163.87
1412210000700	NO SITUS ADDRESS	±1.79

The subject property is undeveloped except for one property (10325 NW Coyner Avenue), which is developed with a nonfarm dwelling (County Land Use File #CU-05-103). Access to the properties is provided at the western terminus of NW Coyner Avenue, a County-maintained rural local roadway, and the northern terminus of NW 103rd Street, a County-maintained rural local roadway.

A majority of the property sits on a plateau running from the southwest to the northeast of the subject property boundary. Topography is varied with portions of lava rimrock present along the west and northwest edges with steep to very steep slopes below. Vegetation is typical of the high desert and includes juniper trees, sage brush, rabbit brush, and bunch grasses.

The subject property does not have water rights and is not currently being farmed or irrigated in conjunction with farm use. According to the Deschutes County Assessor's office, only one tax lot within the project area, Assessor's Map 14-12-28, Tax Lot 300, is currently receiving farm tax deferral but does not appear to be engaged in farm use.

The Natural Resources Conservation Service (NRCS) map shown on the County's GIS mapping program identifies six soil complex units on the property: 63C, Holmie-Searles complex, 106E, Redslide-Lickskillet complex, 101D, Redcliff-Lickskillet-Rock outcrop complex, 106D, Redslide-Lickskillet complex, 71A, Lafollette sandy loam, and 31B, Deschutes sandy loam. Per DCC 18.04, Soil complex 31A and 71A are considered high-value soils when irrigated.

Additionally, as discussed in detail below in the Soils section, there is no irrigation on the subject property, except for landscaping associated with the nonfarm dwelling on Tax Lot 301. A soil study conducted on the properties determined the subject property contains approximately 71 percent Land Capability Class 7 and 8 nonirrigated soils, including stony shallow soils over bedrock, more characteristic of the Lickskillet series, along with significant rock outcrops. Where surface stoniness was not apparent, the soils were typically moderately deep with sandy loam textures throughout or with some loam textures in the subsurface, more consistent with the Statz series.

PROPOSAL: The Applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from an Agricultural (AG) designation to a Rural Residential Exception Area (RREA) designation. The Applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the subject property from Exclusive Farm Use (EFU) to Rural Residential – 10 Acre Minimum (RR10). The Applicant asks that Deschutes County change the zoning and the plan designation because the subject property does not qualify as “agricultural land” under Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) definitions. The Applicant proposes that no exception to Statewide Planning Goal 3, Agricultural Land, is required because the subject property is not agricultural land.

Submitted with the application is an Order 1 and 2 Soil Survey of the subject property, titled “Site-Specific Soil Survey of Property Located at or Near 10325 Coyner Avenue, West of Redmond in Deschutes County, Oregon” dated June 22, 2021, and a supplemental addendum titled “Response – Eden Soils Report” dated January 13, 2022 (together hereafter referred to as the “soil study”) prepared by soil scientist Brian T. Rabe, CPSS, WWSS of Valley Science and Engineering. The Applicant also submitted a traffic impact analysis prepared by Christopher M. Clemow, PE, PTOE titled “710 Properties Plan Amendment and zone Change – Deschutes County, Oregon” dated November 12, 2021 and revised on January 17, 2022, hereby referred to as “traffic study.” (Applicant’s Exhibit S) 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: According to Natural Resources Conservation Service (NRCS) maps of the area, the subject property contain six different soil types including 63C, Holmie-Searles complex, 106E, Redslide-Lickskillet complex, 101D, Redcliff-Lickskillet-Rock outcrop complex, 106D, Redslide-Lickskillet complex, 71A, Lafollette sandy loam, and 31B, Deschutes sandy loam.

The Applicant submitted a soil study report (Applicant’s Exhibit F), which was prepared by a certified soils scientist and soil classifier that determined the subject property is comprised of soils that do not qualify as Agricultural Land². The purpose of this soil study was to inventory and assess the soils on the subject property and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The NRCS soil map units identified on the properties are described below.

¹ As defined in OAR 660-033-0020, 660-033-0030

² As defined in OAR 660-033-0020, 660-033-0030
247-21-001043-PA, 1044-ZC

31B, Deschutes Sandy Loam, 0 to 8 percent slopes: This soil map unit predominantly consists of Deschutes soils on lava plains. Deschutes soils are typically moderately deep, well drained, and formed in volcanic ash. This soil map unit is expected to be composed of 85 percent Deschutes soils and similar inclusions, and 15 percent contrasting inclusions. This soil type is considered high-value soil when irrigated. Deschutes Sandy Loam has a rating of 6s when unirrigated. Approximately 0.01 percent of the subject property is made up of this soil type.

63C, Holmzie-Searles complex, 0 to 15 percent slopes: This soil map unit predominantly consists of Holmzie and Searles soils on lava plains and hills. Holmzie soils are typically moderately deep, well drained, and formed in ash over residuum on hills. Searles soils are typically moderately deep, well drained, and formed in ash on lava plains and hills. The primary difference between the Holmzie and Searles soils is depth and texture. This soil map unit represents areas where the soil characteristics vary in a pattern that was not practical to delineate separately at the scale of the published survey. This soil map unit is expected to be composed of 50 percent Holmzie soils and similar inclusions, and 35 percent Searles soils and similar inclusions, and 15 percent contrasting inclusions. This soil type is not considered high-value soil. The Holmzie and Searles soils have a rating of 6e when unirrigated. Approximately 74.4 percent of the subject property is made up of this soil type.

71A, Lafollette sandy loam, 0 to 3 percent slopes: This soil map unit predominantly consists of Lafollette soils on stream terraces. Lafollette soils are typically moderately deep to very gravelly old alluvium, well drained and formed in volcanic ash over old alluvium. This soil map unit is expected to be composed of 85 percent Lafollette soils and similar inclusions, and 15 percent contrasting inclusions. This soil type is considered high-value soil when irrigated. The Lafollette sandy loam soil has a rating of 6s when unirrigated. Approximately 1.6 percent of the subject property is made up of this soil type.

101D, Redcliff-Lickskillet-Rock outcrop complex, 15 to 30 percent south slopes: This soil map unit predominantly consists of Redcliff and Lickskillet soils on hills and canyon sides. Redcliff soils are typically moderately deep, well drained, and formed in ash and colluvium. Lickskillet soils are typically shallow, well drained, and formed in colluvium. The primary difference between the Redcliff and Lickskillet soils is depth and coarse fragment content. This soil map unit represents areas where the soil depth varies in a pattern that was not practical to delineate separately at the scale of the published survey. This soil map unit is expected to be composed of 60 percent Redcliff soils and similar inclusions, 20 percent Lickskillet soils and similar inclusions, and 15 percent Rock outcrop, and 5 percent contrasting inclusions. This soil type is not considered high-value soil. The Redcliff soils have rating of 6e when unirrigated. The Lickskillet soils have rating of 7e when unirrigated. The rock outcrop has a rating of 8. Approximately 5 percent of the subject property is made up of this soil type.

106D, Redslide-Lickskillet complex, 15 to 30 percent north slopes: This soil map unit predominantly consists of Redslide and Lickskillet soils on hills and canyon sides. Redslide soils are typically moderately deep, well drained, and formed in ash and colluvium. Lickskillet soils are typically shallow, well drained, and formed in colluvium. The primary difference between the Redslide and Lickskillet soils is depth and coarse fragment content. This soil map unit represents areas where the

soil depth varies in a pattern that was not practical to delineate separately at the scale of the published survey. This soil map unit is expected to be composed of 50 percent Redcliff soils and similar inclusions, 35 percent Lickskillet soils and similar inclusions, and 15 percent contrasting inclusions. This soil type is not considered high-value soil. The Redslide soils have rating of 6e when unirrigated. The Lickskillet soils have rating of 7e when unirrigated. Approximately 2.18 percent of the subject property is made up of this soil type.

106E, Redslide-Lickskillet complex, 30 to 50 percent north slopes: This soil map unit is similar to map unit 106D with steeper slopes. Redslide soils have a soil rating of 6e when unirrigated. Lickskillet soils have a rating of 7e when unirrigated. Approximately 16.7 percent of the subject property is made up of this soil type.

Further discussion regarding soils is found in Section III below.

SURROUNDING LAND USES: The subject property is predominately surrounded by EFU-zoned lands with large-scale farm/agricultural uses apparent near the northwest boundary of the subject property. Per Deschutes County Assessor records, many abutting properties, also zoned EFU, are federally owned and appear to be undeveloped and unirrigated. These surrounding properties contain vegetation typical of the high desert, including juniper and sagebrush, similar to the subject property. There are existing properties developed with residential uses near the southeastern boundary of the subject property and larger scale farm uses to the east along NW Coyner Avenue. There is property zoned Rural Residential-10 Acre Minimum (RR-10) to the northeast of the subject property containing large-lot rural residential uses within the Lower Bridge Estates Subdivision.

The adjacent properties are outlined below in further detail:

North: The northernmost boundary of the subject property abuts land zoned RR-10 and EFU. The property zoned RR-10 is part of the Lower Bridge Estates residential subdivision platted in 1981. Abutting property to the northeast is ±80-acre property zoned EFU and appears to be unirrigated and undeveloped. An EFU-zoned property to the south of the NW Lower Bridge Way and NW Teater Avenue intersection contains a non-farm dwelling (Assessor's Map 14-12-00, Tax Lot 1506). Nearby property to the north also includes a former surface mine zoned RR-10 on the north side of NW Lower Bridge Way, west of the Deschutes River. The adjacent property to the north/northwest is a 193.52-acre EFU-zoned property owned by Volwood Farms, LLC. The property contains irrigated pivot fields and appears to be part of a larger ±368-acre farm property also owned by Volwood Farms, LLC. According to the applicant, the primary farm uses including alfalfa, orchard grass and hay.

West: Lands to the immediate west of the subject property are zoned EFU. Property to the west abutting the southern boundary of the project site includes a ±1,588-acre parcel (Assessor's Map 14-12-00, Tax Lot 3200) federally owned and managed by the Bureau of Land Management. This property appears to be unirrigated, is undeveloped, and contains vegetation similar to the subject property. Moving north along the subject property's western boundary, there are apparent large-scale farm uses occurring in the EFU Zone, within the Lower Bridge subzone. As discussed above, the Volwood Farms property is located to the west and contains larger-scale farm uses. The Lower

Bridge area also includes an alpaca ranch (70397 Buckhorn Road) approximately 1.3 miles to the west. An existing vineyard and winery at 70450 NW Lower Valley Drive is approximately 1.5 miles west of the subject property's western boundary.

East: Tax Lot 700 (Assessors Map 14-12-22B), Tax Lot 500 (Assessor's Map 14-12-22C), and Tax Lot 200 (Assessors Map 14-12-27), totaling 320 acres are federally owned and abut the eastern boundary of the subject property. These lots are vacant and are zoned EFU. Property zoned RR-10 and platted as part of the Lower Bridge Estates is located further east beyond the abutting federal land along NW 93rd Street. One privately-owned tax lot zoned EFU, Tax Lot 301 (Assessor's Map 14-12-27), abuts the eastern boundary of the subject property and is developed with a nonfarm dwelling (247-18-000796-CU). There are some larger scale farm uses occurring further east, on the north side of NW Coyner Avenue at 9805 NW Coyner Avenue (Tax Lot 300, Assessor's Map 14-12-27) and 9293 NW Coyner Avenue (Tax Lot 400, Assessor's Map 14-12-27). These farms adjoin other irrigated and non-irrigated lands on their eastern boundary developed with single-family residences.

South: The land south of the subject property is zoned EFU and includes undeveloped open space federally owned and managed by BLM. There are three nonfarm dwellings and parcels zoned EFU on the north side of NW Coyner Avenue that do not appear to be engaged in farm use, 10305 NW Coyner Avenue, 10255 NW Coyner Avenue, and 10135 NW Coyner Avenue. These nonfarm parcels range in size from 19 to 28 acres. A 37.5-acre parcel at the southeast corner of NW Coyner and NW 103rd Street (10142 NW Coyner Avenue) is developed with a non-farm dwelling (CU-90-97) and appears to have portions of the property in agricultural use.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on December 9, 2021, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the transmittal materials for 247-21-0001043-PA/1044-ZC to amend the Comprehensive Plan designation of nine abutting properties totaling approximately 710 acres from Agriculture (AG) to Rural Residential Exception Area (RREA) and change the zoning for those same properties from Exclusive Farm Use (EFU) to Rural Residential (RR-10). The properties are located at 10315, 10325, and 10311 NW Coyner Ave., 7000 Buckhorn Rd., and five properties with no assigned address. The NW Coyner properties are County Assessors Map 14-12-28, Tax Lots 100, 200, and 300; the Buckhorn Road property is 14-12-21, Tax Lot 600; and the properties with no assigned addresses are 14-12-28D, Tax Lot 101, 14-12-21, Tax Lot 300, 14-12-21, Tax Lot 400, 14-12-21, Tax Lot 500, and 14-12-21, Tax Lot 700.

The applicant's traffic study dated November 12, 2021, is problematic in two areas. First, staff does not agree with the trip distribution. While Redmond is the logical origin/destination, the applicant's traffic engineer offers no rationale why all trip would only use paved roads. The traffic study simply sends all traffic down the same route to OR 126. Staff finds this a flawed approach for several reasons. Rural residents are accustomed to using unpaved roads to reach their destinations. The traffic study does not offer any time savings of paved vs. unpaved to justify all traffic using the same route to access OR 126. Finally, the access to OR 126 requires a left turn onto the highway to continue to Redmond, a move

which can have significant delays [due] to volumes on the highway. Second, the traffic analysis continually states due to the combination of low existing volumes on the affected roadway and the low traffic generation of the proposal, the cited intersections will meet relevant Deschutes County and Oregon Department of Transportation (ODOT) mobility standards. This statement does not indicate if that is for the current year or the planning horizon. While this is likely true, the traffic study provides no actual calculations to prove this statement. Thus the traffic study does not meet the requirements of DCC 18.116.310(G)(10). The lack of supporting calculations also means the traffic study does not comply with the Transportation Planning Rule (TPR) at OAR 660-012-0060(1)(c) to demonstrate the use will have no significant effect. The applicant's traffic engineer may have this information, but I did not see it in the application materials.

The property is proposed to directly access NW Coyner Road, a public road maintained by Deschutes County and functionally classified as a local road. The County [sic] the applicant will need to either provide a copy of a driveway permit approved by Deschutes County prior to development or be required obtain one as a condition of approval prior to development occurring to comply with the access permit requirements of DCC 17.48.210(A).

The County will assess transportation system development charges (SDCs) when development occurs based on the type of proposed use. However, as a plan amendment or a zone change by itself does not generate any traffic, no SDCs are triggered at this time.

In response to Mr. Russell's comment above regarding the traffic impact analysis (TIA) dated November 12, 2021, the applicant provided an updated traffic study dated January 17, 2022.

In response to the updated traffic study, Mr. Russell provided the following comment, via email dated January 18, 2022:

I received an earlier draft of the revised TIA last week and reviewed it. They wanted my two cents before they submitted. The revised version provided the info I had requested. I've attached my e-mail from last week back to Chris Clemow, the applicant's traffic engineer.

Deschutes County Building Official, Randy Scheid

The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

Department of State Lands, Lynne McAllister

It is unlikely that there are jurisdictional wetlands or waterways on the property based upon a review of wetland maps, the county soil survey and other available information.

A state permit will not be required for the proposed project because, based on the submitted site plan, the project avoids impacts to jurisdictional wetlands, waterways or other waters.

A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

There may be some minor headwater stream drainages on the property. Although jurisdictional features are unlikely and minor, the reason a permit will not be required for this project is because it is only an administrative action that does not involve placement of fill material or other physical ground disturbance. Therefore, a land use notice is not necessary.

The following agencies did not respond to the notice: Deschutes County Forester, Deschutes County Property Management, Deschutes County Road Department, Redmond City Planning, Redmond Fire and Rescue, Redmond School District 2J, Redmond Public Works, Redmond Area Parks and Recreation District, Oregon Department of Agriculture Land Use Planning, Oregon Department of Fish and Wildlife, Oregon Department of Agriculture, Department of Land Conservation and Development, District 11 Watermaster, Bureau of Land Management

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on December 9, 2021. The 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 December 9, 2021. As of the date of this staff report, staff received two (2) public comments in support of the application and twenty-two (22) public comments in opposition of the application.

Comments received in support reference the Applicant's soil analysis, potential expansion of rural housing inventory, and protection from wildfire through better access and vegetation management as a basis for support. Comments received in opposition cite concerns with traffic and emergency access impacts, availability of groundwater, compatibility with and preservation of agricultural land, and impacts to wildlife.

The public comments are attached to the record in their entirety and incorporated herein by reference.

Applicant Response: After submission of the public comments referenced herein and included in the record, the Applicant provided the following response via email on April 8, 2022:

Inaccuracies in Opposition Comments

Ed Stabb, 12/13/2021 Letter

Mr. Stabb claims that his property at 9805 NW Coyner Avenue is contiguous to the subject property. In one part, it is close but not contiguous. The Stabb property is separated from the subject property by the "flagpole" part of a nonfarm parcel and nonfarm dwelling at 9307 NW Coyner Avenue that Mr. Stabb created (Parcel 2 of Partition Plat 2004-85). The "flagpole" part of

nonfarm Parcel 2 runs along the west side of the main irrigated farm field on the Stabb property on land formerly irrigated by the property owner (per page 18, Decision MP-04-11/CU-04-42). Furthermore, the Stabb property is surrounded by nonfarm parcels on all sides.

Mr. Stabb's description of properties in the Odin Valley along the west end of NW Coyner Avenue asserts that area is primarily agricultural. The following facts, however, show that the predominant parcel type along Coyner Avenue west of 91st Street (a length of approximately .75 miles) are not receiving farm tax deferral and are nonfarm parcels or parcels that are developed with nonfarm dwellings. Only two parcels are farm parcels that are farm tax deferred farm properties. In particular beginning at the west end of Coyner Avenue:

10305 NW Coyner Avenue (Witherill), PP 2015-15 nonfarm parcel created; 247-15-000107-CU/-000108-CU nonfarm dwelling (28.6 acres)

10255 NW Coyner Avenue (Bendix), PP 2004-101, nonfarm parcel created; CU-03-55 and CU-03-56 nonfarm dwelling (19.11 acres)

10142 NW Coyner Avenue (Buchanan), CU-95-11 nonfarm dwelling (37.51 acres)

10135 NW Coyner Avenue (Hayes), PP 2004-101, nonfarm parcel created; CU-03-55 and CU-03-56 nonfarm dwelling (19.65 acres)

9307 NW Coyner Avenue (Birkliid), PP 2004-85, nonfarm parcel created; 247-18-000796-CU nonfarm dwelling (17.50 acres)

9600 NW Coyner Avenue (MT Crossing), PP 2006-40 non-irrigated parcel created (80 acres); 247-19-000375-CU nonfarm dwelling (80 acres)

9805 NW Coyner Avenue (Stabb), PP 2004-85, irrigated parcel created (in addition to nonfarm parcel); receives farm tax deferral (62.58 acres)

9299 NW Coyner Avenue (Nelson), PP 2005-25 nonfarm parcel created (10.21 acres); nonfarm dwelling approved but not built

9295 NW Coyner Avenue (Grossman), PP 2005-25 nonfarm parcel created (11.08 acres); nonfarm dwelling approved but not built

4691 91st Street (intersection Coyner and 91st)(Omlid), PP 2006-40 non-irrigated land division/nonfarm parcel (39.20 acres); 247-17-000220-CU nonfarm dwelling approved

9293 NW Coyner Avenue (Grossman), irrigated parcel created by PP-2005-25 (irrigated land division created two nonfarm parcels and one farm parcel)(185.06 acres)

Jason and Tammy Birkliid, 12/13/2021 Letter

The Birkliids refer to their home as a "family farmhouse." The dwelling was, however, approved by Deschutes County as a nonfarm dwelling on a non-irrigated parcel of land that was determined by Deschutes County to be unsuited for the production of farm crops and livestock.

The Birkliids and others repeat the same claim as Mr. Stabb (discussed above) re the character of the west end of NW Coyner Avenue. The evidence shows, however, that the primary parcel type and development in this area is a nonfarm dwelling parcel and nonfarm dwellings.

RR-10 Subdivisions

The Johnson properties, TL 200 and 300, Map 14-12-34D (parcels created in 2022 by PP 2022-10 as a farm and a nonfarm parcel) touch, at one point across a road a large area of land zoned RR-10 that includes the Kachina Acres and Odin Crest subdivisions where lots of about 5 acres in size are common. The property owned by opponent Kelsey Pereboom/Colter Bay Investments, LLC adjoins Kachin acres along the entire southern boundary of her property. Opponents Steele and the Elliotts live in the RR-10 zoned Odin Crest subdivision.

Destination Resort Overlay Zoning of Subject Property

Under the current zoning, almost 250 acres of the subject property is zoned as eligible for development with a destination resort. The development of this area of the property as a resort would have far greater impacts on the surrounding area than would development of the property allowed by the RR-10 zone.

NOTICE REQUIREMENT: On March 18, 2022, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property, agencies, and parties of record. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, March 20, 2022. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on March 2, 2022.

REVIEW PERIOD: The subject applications were submitted on December 2, 2021. The applications were deemed incomplete by the Planning Division on December 30, 2021 and a letter detailing the information necessary was mailed on December 30, 2021. The applicant provided a response to the incomplete letter and the applications were subsequently deemed complete on January 17, 2022. According to Deschutes County Code 22.20.040(D), 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

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

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

FINDING: The Applicant, also the property owner, has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant has filed the required land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

Section 18.136.020, Rezoning Standards

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

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

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

The Plan's introductory statement explains that land use must comply with the statewide planning system and sets out the legal framework set by State law. It summarizes the Statewide Planning Goals. It also explains the process the County used to adopt the current comprehensive plan. This application is consistent with this introductory statement because the requested change has been shown to be consistent with State law and County plan provisions and zoning code that implement the Statewide Planning Goals.

The following provisions of Deschutes County's amended comprehensive plan set out goals or text that may be relevant to the County's review of this application. Other provisions of the plan do not apply.

The Applicant utilizes this analysis, as well as analyses provided in prior Hearings Officers' decisions to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed in the Comprehensive Plan section of this staff report in further detail. Staff agrees with the Applicant's analysis and finds the above provision to be met based on Comprehensive Plan conformance as demonstrated in subsequent findings.

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

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

The approval of this application is consistent with the purpose of the RR-10 zoning district which stated in DCC 18.60.010 as follows:

"The purposes of the Rural Residential Zone are to provide rural residential living environments; to provide standards for rural land use and development consistent with desired rural character and the capability of the land and natural resources; to manage the extension of public services; to provide for public review of nonresidential uses; and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and standards."

The approval of the application will allow the property to provide rural residential living environments in a rural location that is not suitable for farm use and where impacts of the new

use will be minimized by topography and adjoining public lands. The zoning district and subdivision ordinance provide standards that will control land use to be consistent with the desired rural character and capability of the land and natural resources. The zoning district provides for public reviews of nonresidential uses. The approval of this application will allow the property owner to proceed with a low level of development on land that will not support farm use."

Staff finds the Applicant has demonstrated the change in classification is consistent with the purpose and intent of the RR-10 Zone.

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

FINDING: Although there are no plans to develop the properties in their current state, the above criterion specifically asks if the proposed zone change will *presently* serve public health, safety, and welfare. The Applicant provided the following response in the submitted burden of proof statement:

Necessary public facilities and services are available to serve the subject property. A will-serve letter from Central Oregon Electric Cooperative, Exhibit G shows that electric power is available to serve the property. Well logs, Exhibits H through K, show that wells are a viable source of water for rural residential development.

The existing road network is adequate to serve the use. This has been confirmed by the transportation system impact review conducted by Christopher M. Clemow, PE, PTOE of Clemow Associates LLC, Exhibit S of this application. The property receives police services from the Deschutes County Sheriff. The property is in the Redmond Fire and Rescue rural fire protection district.

The closest neighboring properties which contain residential uses are located on the north side of NW Coyner Avenue, on the south end of the subject property boundary, and nearby RR-10 residential lots along NW 93rd Street. These properties have water service primarily from wells, on-site sewage disposal systems and electrical service, cellular telephone services, etc.

The applicant provided a will-serve letter from Central Electric Cooperative indicating they are willing and able to serve the specified project location. The applicant also included well logs from nearby properties with their application submittal demonstrating water availability in the general area.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the properties, the Applicant would be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permit, building permit, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

However, Staff notes public comments raised concerns regarding the general availability of groundwater in the area. Staff asks the Hearings Officer to make specific findings on this issue.

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

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

The RR-10 zoning is consistent with the specific goals and policies in the comprehensive plan as shown by the discussion of plan policies above. The existing EFU zoning and comprehensive plan already support development of the subject property with a number of nonfarm dwellings because the property is generally unsuitable for farm or forest uses. The property is comprised of nine lots of record that could qualify for development with up to approximately 24 dwellings including an existing nonfarm dwelling and two approved nonfarm dwellings. The RR-10 zoning will allow more dwellings to be built on the subject property but the impacts imposed will be the same as the minimal impacts imposed by a nonfarm dwelling.

The only adjoining land in farm use is Volwood Farms. It is located to the west of the subject property. Most of this farm property is located far below the subject property. This geographical separation will make it unlikely that the rezone will impose new or different impacts on Volwood Farms than imposed on it by existing farm and nonfarm dwellings. There are other farms in the surrounding area but all, like the Volwood Farms property, are functionally separated from the subject property by the steep hillside and rocky ridges of the subject property. Farm uses in the greater area, also, are occurring on properties that have been developed with residences. These properties are, however, separated from the subject property by a sufficient distance that RR-10 development will not adversely impact area farm uses or lands.

In addition to these comments, the Applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. Staff finds the Applicant demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

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

FINDING: The Applicant proposes to rezone the properties from EFU to RR-10 and re-designate the properties from Agriculture to Rural Residential Exception Area. The Applicant provided the following response in the submitted burden of proof statement:

There has been a change in circumstances since the subject property was last zoned and a mistake in designating the subject property EFU/Agriculture when soils did not merit a designation and protection as "Agricultural Land." This zone was applied to the property in 1979 and 1980 when

Deschutes County adopted zones, a zoning ordinance and comprehensive plan that complied with the Statewide Goals.

In 1979 and 1980, undeveloped rural lands that contained poor soils but undeveloped were zoned EFU without regard to the specific soil characteristics of the property. Land owners were required to apply for a zone change to move their unproductive EFU properties out of the EFU zone. The County's zoning code allowed these owners a one-year window to complete the task. This approach recognized that some rural properties were mistakenly classified EFU because their soils and other conditions did not merit inclusion of the property in the EFU zone.

Some Deschutes County property owners of lands received approval to rezone properties but many eligible parcels were not rezoned during this short window of time. The soils on the subject property are similarly poor and also merit RR-10 Zoning to correct the "broad brush" mapping done in 1979 and 1980. Also, since 1979 and 1980, there is a change of circumstances related to this issue. The County's Comprehensive Plan has been amended to reinstate the right of individual property owners to seek this type of zone change and plan amendment.

Additionally, the population of Deschutes County has, according to the US Census, increased by 336% between 1980 when the County's last zoned this property and 2021 from 62,142 persons to 209,266 persons. The supply of rural residential dwelling lots has been diminishing in the same time period.

*Since the property was zoned, it has become evident that farm uses are not viable on the property or on other area properties. The economics of farming have worsened over the decades making it difficult for most Deschutes County property owners to make money farming good ground and impossible to earn a profit from attempting to farm Class 7 and 8 farm soils. In 2017, according to Table 4 of the 2017 US Census of Agriculture, **Exhibit T**, only 16.03% of farm operators achieved a net profit from farming (238 of 1484 farm operations). In 2012, the percentage was 16.45% (211 of 1283 farm operations). In 2007, according to the 2012 US Census of Agriculture, that figure was 17% (239 of 1405 farm operations). **Exhibit U**. The vast majority of farms in Deschutes County have soils that are superior to those found on the subject property. As farming on those soils is typically not profitable, it is reasonable to conclude that no reasonable farmer would purchase the subject property for the purpose of attempting to earn a profit in money from agricultural use of the land.*

Considering the Applicant's above response, staff requests the Hearings Officer make specific findings on this issue.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.2 Agricultural Lands

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

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

*The applicant's soils study, **Exhibit F**, and the findings in this burden of proof demonstrate that the subject property is not agricultural land. This goal, therefore, does not apply. The vast majority of the subject property is comprised of Class 7 and 8 nonagricultural soils and the property has no known history of agricultural use. As noted in the Eastside Bend decision, **Exhibit L**, "these [Class 7 and 8] soils [according to soils scientist and soils classifier Roger Borine] have severe limitations for farm use as well as poor soil fertility, shallow and very shallow soils, surface stoniness, low available water capacity, and limited availability of livestock forage." According to Agricultural Handbook No. 210 published by the Soil Conservation Service of the USDA, soils in Class 7 "have very severe limitations that make them unsuited to cultivation and that restrict their use largely to grazing, woodland, or wildlife." Class VIII soils "have limitations that preclude their use for commercial plant production and restrict their use to recreation, wildlife, or water supply or to esthetic purposes."*

Staff notes the applicant's soil study demonstrates the subject property is predominantly comprised of Class 7 and 8 soils and the property has no known history of agricultural use. However, based on the Applicant's response, staff requests the Hearings Officer make specific findings on this topic.

Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.

FINDING: The Applicant is not asking to amend the subzone that applies to the subject property; rather, the Applicant is seeking a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to RR10.

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

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

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

This plan policy has been updated specifically to allow non-resource land plan and zone change map amendments on land zoned EFU. The applicant is seeking a comprehensive plan amendment from Agriculture to RREA and a zone change from EFU-TE to RR-10 for non-resource land. This is essentially the same change approved by Deschutes County in PA-11-1/ZC-11-2 on land owned by

the State of Oregon (DSL). In findings attached as **Exhibit N**, Deschutes County determined that State law as interpreted in *Wetherell v. Douglas County*, 52 Or LUBA 677 (2006) allows this type of amendment. LUBA said, in *Wetherell* at pp. 678-679:

“As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798, 802 (1990).”

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

“Under Goal 3, land must be preserved as agricultural land if it is suitable for “farm use” as defined in ORS 215.203(2)(a), which means, in part, “the current employment of land for the primary purpose of obtaining a profit in money” through specific farming-related endeavors.” Wetherell, 343 Or at 677.

The *Wetherell* court held that when deciding whether land is agricultural land “a local government may not be precluded from considering the costs or expenses of engaging in those activities.” *Wetherell*, 342 Or at 680. In this case, the applicant has shown that the subject property is primarily composed of Class VII and VIII nonagricultural soils making farm-related endeavors, including livestock grazing, unprofitable. The property is not currently employed in any type of farm use and exhibits no evidence of such use. It is known that the property has not been employed in farm use for the past 20 years. Accordingly, this application complies with Policy 2.2.3.

Staff agrees that the facts presented by the Applicant in the burden of proof for the subject application are similar to those in the *Wetherell* decisions and in the aforementioned Deschutes County plan amendment and zone change applications. Therefore, the Applicant has the potential to prove the properties are not agricultural land and do not require an exception to Goal 3 under state law.

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

FINDING: This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. Staff concurs with the

County's previous determinations in plan amendment and zone change applications and finds the proposal is consistent with this policy.

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

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: This plan policy requires the County to identify and retain agricultural lands that are accurately designated. The Applicant proposes that the subject property was not accurately designated as agricultural land as demonstrated by the soil study and the findings in the Applicant's burden of proof. Further discussion on the soil analysis provided by the Applicant is detailed under the OAR Division 33 criteria below.

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

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

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

Section 2.7, Open Spaces, Scenic Views and Sites

Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic view and sites.

Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.

Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.

FINDING: These policies are fulfilled by the County's Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. Staff notes that no LM combining zone applies to the subject property at this time. Furthermore, no new development is proposed under the present application. These provisions of the plan, therefore, are not impacted by the proposed zone change and plan amendment.

Chapter 3, Rural Growth

Section 3.2, Rural Development

Growth Potential

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

- ***2009 legislation permits a new analysis of agricultural designated lands***
- ***Exceptions can be granted from the Statewide Planning Goals***
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

FINDING: This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance above. In response to this section, the Applicant provided the following response in the burden of proof:

This part of the comprehensive plan is not a relevant approval criterion for a plan amendment and zone change application. Instead, it is the County's assessment of the amount of population growth might occur on rural residential lands in the future based on its understanding of the types of changes allowed by law. Comprehensive Plan Policy 2.2.3 specifically authorizes rezoning and comprehensive plan map amendments for any property zoned EFU and is the code section that defines the scope of allowed zone changes.

This section makes it clear, however, that EFU-zoned land with poor soils adjacent to rural residential development is expected to be rezoned for rural residential development during the planning period. The subject property has extremely poor soils that do not qualify as agricultural land that must be protected by Goal 3. The subject property also adjoins EFU lands developed with rural residential uses (nonfarm dwellings) – Tax Lots 100, 200, 300, Map 14-12-28D and Tax Lot 301, Map 14-12-27. It is also located in close proximity to a large area of RR-10 land to the north and northeast that includes the large Lower Bridge Estates subdivision.

Staff notes that the RR10 Zone is a rural residential zone and as discussed in the Findings of Fact above, and there are several nearby properties to the north and northeast that are zoned RR10 as well as nearby EFU zoned property developed with residential uses. Staff notes this policy references the soil quality, which staff has discussed above. Staff is uncertain if this policy is met by the available information in the record and requests the Hearings Officer make specific findings on this topic.

Section 3.3, Rural Housing

Rural Residential Exception Areas

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

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

FINDING: The Applicant provided the following response to this provision in the burden of proof:

The quoted language is a part of the background text of the County's comprehensive plan. It is not a plan policy or directive and it is not an approval standard for this application. It does, however, recognize the fact that a Rural Residential Exception Area designation is an appropriate plan designation to apply to nonresource lands.

As LUBA and the Oregon Supreme Court recognized in the Wetherell decision, there are two ways a county can justify a decision to allow non-resource use of land previously designated and zoned for farm or forest uses. The first is to take an exception to Goal 3 and Goal 4 and the other is to adopt findings that demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. Here, the applicant is pursuing the latter approach. The quoted plan text addressed the former. If the quoted plan text were read to require an exception to Goal 3 or 4 where the underlying property does not qualify as either Goal 3 or Goal 4 resource land, such a reading would be in conflict with the rule set forth in Wetherell and Policy 2.2.3 of the Comprehensive Plan.

The Deschutes County Board of Commissioners has interpreted its RREA plan designation to be the proper "catchall" designation for non-resource land in its approval of the Daniels Group plan amendment and zone change by adopting the following finding by Hearings Officer Ken Helm:

"I find that Deschutes County has interpreted the RREA plan designation as the property "catchall" designation for non-resource land."

As a result, the RREA plan designation is the appropriate plan designation for the subject

property.

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

Section 3.7, Transportation

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

...

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

...

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

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

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

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

FINDING: The Applicant provided the following in response to Goal 4:

The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands “are those lands acknowledged as forest lands as of the

*date of adoption of this goal amendment." The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that "where**a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources." This plan amendment does not involved any forest land. The subject property does not contain any merchantable timber and is not located in a forested part of Deschutes County.*

The subject property is not zoned for forest lands, nor are any of the properties within a seven-mile radius. The properties do not contain merchantable tree species and there is no evidence in the record that the properties have been employed for forestry uses historically. The properties do not appear to qualify as forest land, however Staff asks the Hearing Officer to make specific findings to this issue.

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

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

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

FINDING: Goal 3 continues on to define "Agricultural Land," which is repeated in OAR 660-033-0020(1). Staff makes findings on this topic below and incorporates those findings herein by reference.

OAR 660-033-0020, Definitions

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

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

- (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon³;***

³ OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

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

*Statewide Goal 3, above, ORS 215.211 and OAR 660-033-0030(5) allow the County to rely on the more detailed and accurate information provided by the **Exhibit F** soil study to determine whether land is agricultural land. ORS 215.211 give a property owner the right to rely on more detailed information than is provided by the NRCS Web Soil Survey of the NRCS to "assist the county to make a better determination of whether land qualifies as agricultural land." The more detailed soils survey obtained by the applicant shows that approximately 71% of the subject property is composed of Class VII and VIII soils. As a result, it is clear that the tract is not predominantly composed of Class I-VI soils.*

Staff has reviewed the soil study provided by Mr. Rabe of Valley Science and Engineering (dated June 22, 2021) as well as the soil report addendum (dated January 13, 2022) and agrees with the Applicant's representation of the data for the subject property. Staff finds, based on the submitted soil study and the above OAR definition, that the subject property is comprised predominantly of Class 7 and 8 soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

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

FINDING: The Applicant's basis for not requesting an exception to Goal 3 is based on the proposal that the subject property are not defined as "Agricultural Land." The Applicant provides the following analysis of this determination in the burden of proof.

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

The primary agricultural use conducted on properties that lack irrigation water rights and have poor soils is grazing cattle. The extremely poor soils found on the property, however, make it a poor candidate for dryland grazing. The dry climate makes it difficult to produce adequate forage on the property to support a viable or potentially profitable grazing operation or other agricultural use of the property. This issue is addressed in greater detail in the Exhibit F soils study.

Photographs of various parts of the subject property provide a visual depiction of the land in question and its characteristics:

[Please see the burden of proof for photos submitted by the applicant]

Given the high cost of irrigating and maintaining the property as pasture or cropland (high labor costs, labor-intensive, high cost of irrigation equipment and electricity, high cost of fertilizer, etc.), dry land grazing is the accepted farm use of poor soils in Deschutes County. This use can be conducted until the native vegetation is removed by grazing (see the discussion of the suitability of the property for grazing, below). The soils study includes an analysis of the level of cattle grazing that would be able to be conducted on the property, without overgrazing it. It finds that the entire 710 acres would support from 8 to 15 cow-calf pairs for a year based on proper management of the land for year-round grazing.

When assessing the potential income from dry land grazing, Deschutes County uses a formula and assumptions developed by the OSU Extension Service. This formula is used by the County to decide whether EFU-zoned land is generally unsuitable for farm use. It assumes that one acre will produce 900 pounds of forage per year.

- One AUM is the equivalent to the forage required for a 1000 lb. cow and calf to graze for 30 days (900 pounds of forage).
- On good quality forage, an animal unit will gain 2 pounds per day.
- Two animal units will eat as much in one month as one animal unit will eat in two months.
- Forage production on dry land is not continuous. Once the forage is consumed, it typically will not grow back until the following spring.
- An average market price for beef is \$1.15 per pound.

Based upon these assumptions, the value of beef production on the entire subject property can be calculated using the following formula:

$30 \text{ days} \times 2\#/\text{day}/\text{acre} = 60.0 \text{ lbs. Beef}/\text{acre}$
(1 acre per AUM)

$60.0 \text{ lbs. Beef}/\text{acre} \times 710 \text{ acres} \times \$1.15/\text{lb.} = \$48,990 \text{ per year of gross income}$

Thus, using the OSU/County formula, the total gross beef production potential for the subject property if it was comprised of more productive soils than found on the subject property would be approximately \$48,990 annually. This figure represents gross income and does not take into account real property taxes, fencing costs, land preparation, purchase costs of livestock, veterinary costs, or any other costs of production which would exceed income. Property taxes, alone, were \$15,706.62 for the eight tax lots that comprise the subject property in 2020. The payment of a modest wage of \$15.00 per hour to the rancher and/or employee for only one FTE would cost the ranch operation \$31,200 in wages and approximately an additional \$7,800 to \$12,480 (1.25 to 1.4 of salary) for employment taxes paid by the employer and standard employee benefits.

An expired internet job listing (at least two years old) for a farmer to farm the Volwood Farms property located to the west of the subject property offered wages of \$15 to \$25 an hour and medical insurance. **Exhibit V.** A wage of \$25 per hour provides an annual salary of \$52,000 and costs the farm approximately \$15,000 to \$20,800 in taxes and benefits.

A review of the seven considerations listed in the administrative rule, below, provided in the soils survey report, Exhibit F, and in the findings provided below explain why the poor-quality soils found on the subject property are not suitable for farm use:

Soil Fertility: Class 7 and 8 soils are not fertile soils. They are not suited for the production of farm crops. This fact has been recognized in numerous County land use cases, including the zone change and plan amendment applications being filed with this land use application. Farm use on these soils is limited to rangeland grazing at a level that does not qualify as “farm use.” No person would expect to make a profit by grazing livestock on the subject property.

Suitability for Grazing: The climate is cold and dry. The growing season is very short. The subject property is located between Redmond and Sisters. According to the OSU Extension Service the growing season for Redmond is only 80 to 90 days long. **Exhibit W.** The growing season for Sisters is shorter. The average annual precipitation for Redmond is only 8.8 inches. This means that the amount of forage available for dry land grazing is low and will be slow to regrow. This also means that a farmer has a short period of amount of time to irrigate pastures, if irrigation water rights can be secured. This makes it difficult for a farmer to raise sufficient income to offset the high costs of establishing, maintaining and operating an irrigation system and groundwater well. That cost also would include the cost of purchasing and retiring water rights from another area farm property to mitigate for the impacts of pumping groundwater – something that is cost-prohibitive for almost any farm operation. This is clearly the case for irrigating non-agricultural Class VII and VIII soils.

Existing and Future Availability of Water for Farm Irrigation Purposes: The subject property is not located in an irrigation district. It is too remote from any irrigation district in terms of distance and elevation (above) to be able to obtain irrigation water from a district for farming as shown by **Exhibit X.** In order to obtain water rights, the applicant would need to acquire a water right from Oregon Water Resources Department (OWRD). If such a right were able to be secured, the property owner would need to purchase and retire water rights from irrigated farm land in Central Oregon that is surely more productive than the subject property (71% Class VII and VIII soils). Such a transaction would run counter to the purpose of Goal 3 to maintain productive Agricultural Land in farm use. The cost of purchasing water rights, obtaining a groundwater permit and establishing an irrigation system are significant and would not be reasonably expected to result in farm income that would offset the cost incurred for the subject property.

Existing Land Use Patterns: The applicant’s analysis of existing land use patterns provided earlier in this burden of proof shows that the subject property is located primarily on a plateau above farm lands. The lands on the plateau are either undeveloped open space owned by the USA or RR-10 zoned subdivision lots developed with single-family homes. The addition of RR-10 zoned lots

and homes rather than nonfarm dwellings is consistent with land use of other privately-owned property on the plateau. Below the plateau are public lands and a small number of farms and farm and nonfarm dwellings on or adjacent to existing farm operations. The addition of homes here would not impose significant new impacts on farm operations in the area.

Technological and Energy Inputs Required: *Given its poor soils, this parcel would require technology and energy inputs over and above accepted farming practices. Excessive fertilization and soil amendments; very frequent irrigation, and marginal climatic conditions would restrict cropping alternatives. Pumping irrigation water requires energy inputs. The application of lime and fertilizer typically requires the use of farm machinery that consumes energy. The irrigation of the property requires the installation and operation of irrigation systems. All of these factors are why Class 7 and 8 soils are not considered suitable for use as cropland.*

Accepted Farming Practices: *As determined by the County in the Aceti case, farming lands comprised of soils that are predominately Class VII and VIII is not an accepted farm practice in Central Oregon. Dryland grazing, the farm use that can be conducted on the poorest soils in the County, typically occur on Class VI non-irrigated soils. Crops are typically grown on soils in soil class III and IV when irrigated that Class VI without irrigation.*

Staff agrees with the Applicant that many of the factors surrounding the subject property – such as nearby residential and non-agricultural related land uses, high-cost of dryland grazing, soil fertility, and lack of availability of water rights result in an extremely low possibility of farming on the subject property. Staff requests the Hearings Officer make specific findings on this issue.

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

FINDING: The Applicant offers the following response as included in the submitted burden of proof statement:

The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. The following facts are shown by the applicant's discussion of surrounding development in Section E of this application, above and by the additional information provided below.

West: *Properties to the west of the subject property are separated from the subject property by topography. The dramatic change in topography makes it infeasible to use the subject property for farm use in conjunction with these properties. Additionally, the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands to the west. Farm practices have been occurring on these properties for decades without any need to use the subject property to conduct farm practices on these properties.*

EFU Properties to the West (South to North)

Tax Map, Lot and Size	Farm Use	Potential Farm Practices	Need Subject Property?
14-12-00, 300 1588.55 acres	Open space; public land	Dry land grazing	No, property accessible from Buckhorn Road
14-12-21, 200 & 100 372.71 acres Volwood Farms	Irrigated fields currently growing orchard grass, hay and alfalfa	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, Tax Lot 200 and 100 are below the level of a majority of subject property. They are comprised of good farm soils while the subject property is not. Separation due to elevation has prevented conflicts between existing nonfarm dwelling on subject property and this farming operation.
14-12-20, 200 146.37 acres	Irrigated field suitable for growing orchard grass, hay, and alfalfa	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, TL 200 is located west of Buckhorn Road and separated from subject property by Volwood Farms property. Property also separated from subject property by topography.

North: All of the land north of the subject property that might rely on the subject property for farm practices, other than the Volwood Farms property inventoried above and an open space tract of land owned by the USA, is zoned RR-10 and is not in farm use. Cattle grazing would be able to occur on the USA property at a very limited scale due to sparse vegetation without need for the subject property to conduct the activity.

East:

EFU Properties to East (North to South)

Tax Map, Lot and Size	Farm Use	Potential Farm Practices	Need Subject Property?
14-12-22B, 700 80 acres	Open space public land	Livestock grazing	No, grazing can occur without reliance on subject property.
14-12-22C, 500 120 acres	Open space public land	Livestock grazing	No, grazing can occur without reliance on subject property.
14-12-27, 200 120 acres	Open space public land	Livestock grazing	No, grazing can occur without reliance on subject property.
14-12-27, 301 17.50 ac	None. Nonfarm parcel and dwelling	None	No, no farm use and property not suitable for farm use.
14-12-00, 300 62.58 acres	Irrigated cropland suitable for growing orchard grass, hay, and alfalfa	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, separated from subject property by Tax Lot 301 and elevation. Property created by partition that found that nonfarm dwelling would not interfere with farm use on Tax Lot 300 and other area farms.
14-12-14B, 200 80 acres	Approved for nonfarm dwelling	None	No

South: Most of the land to the south of the subject property is open space land owned by the USA and nonfarm dwelling parcels comprised of land determined by Deschutes County to be generally unsuitable for the production of farm crops, livestock and merchantable tree species.

EFU Properties to South

Tax Map, Lot and Size	Farm Use	Potential Farm Practices	Need Subject Property?
14-12-280, 100 28.60 acres	None, nonfarm dwelling	None	No
14-12-280, 200 19.11 acres	None, nonfarm dwelling	None	No
14-12-280, 300 19.65 acres	None, nonfarm dwelling	None	No
14-12-20, 3200 1588.55 acres	Open space public land	Livestock grazing	No, grazing can occur without reliance on subject property. Accessible from Buckhorn Road and Coyner Avenue.
14-12-00, 1923 37.51 acres	Nonfarm dwelling. Small irrigated pasture for horses and small pivot suitable for growing hay, grass or alfalfa.	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, separated from subject property by other nonfarm properties.

The applicant provided a detailed analysis of land uses and agricultural operations surrounding the subject property as included above and found on pages 35-37 of the burden of proof. The applicant found that barriers for the subject property to engage with in farm use with these properties include: poor quality soils, lack of irrigation, proximity and significant topography changes. Considering the Applicant's response above, staff requests the Hearings Officer make specific findings on this issue.

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

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

The subject property is not a part of a farm unit. The property is a tract of land that is generally unsuitable for the production of farm crops and livestock and merchantable trees

species that is eligible to be developed with nonfarm dwellings. As a result, this rule does not apply to the County's review of this application.

The apparent purpose of this rule is to prevent the rezoning of portions of a farm property that function together as a farm. That is not the case here. In this case, the property in its entirety is not agricultural land and is not a farm unit because it is not engaged in farm use and has not been engaged in that use for 20 years or more. The applicant is not seeking to remove unproductive lands from an otherwise productive farm property.

Even if the subject property is considered to be a "farm unit" despite the fact it has never been farmed, Goal 3 applies a predominant soil test to determine if a property is "agricultural land." The predominant soils classification of the subject property is Class VII and VIII which provides no basis to inventory the property as agricultural land unless the land is shown to be, in fact, productive farmland.

All parts of the subject property were studied by the applicant's soils analysis, **Exhibit F**. The analysis shows that the predominant soil type found on the property is Class VII and VIII, nonagricultural land. Some Class VI soils are intermingled with the nonagricultural soil not vice versa. As a result, this rule does not require the Class VII and VIII soils to be classified agricultural land.

Considering the Applicant's response, above, Staff requests the Hearings Officer make specific findings on this issue.

(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.

OAR 660-033-0030, Identifying Agricultural Land

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

or nearby lands". A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).

FINDING: The Applicant addressed the factors in OAR 660-033-0020(1) above. The properties are not "agricultural land," as referenced in OAR 660-033-0030(1) above, and contain barriers for farm use including poor quality soils and lack of irrigation. The soil study produced by Mr. Rabe focuses solely on the land within the subject property and the Applicant has provided responses indicating the subject property is not necessary to permit farm practices undertaken on adjacent and nearby lands. Staff requests the Hearings Officer make specific findings on this issue, in part based on the Applicant's responses to OAR 660-033-0020(1), above.

- (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.***

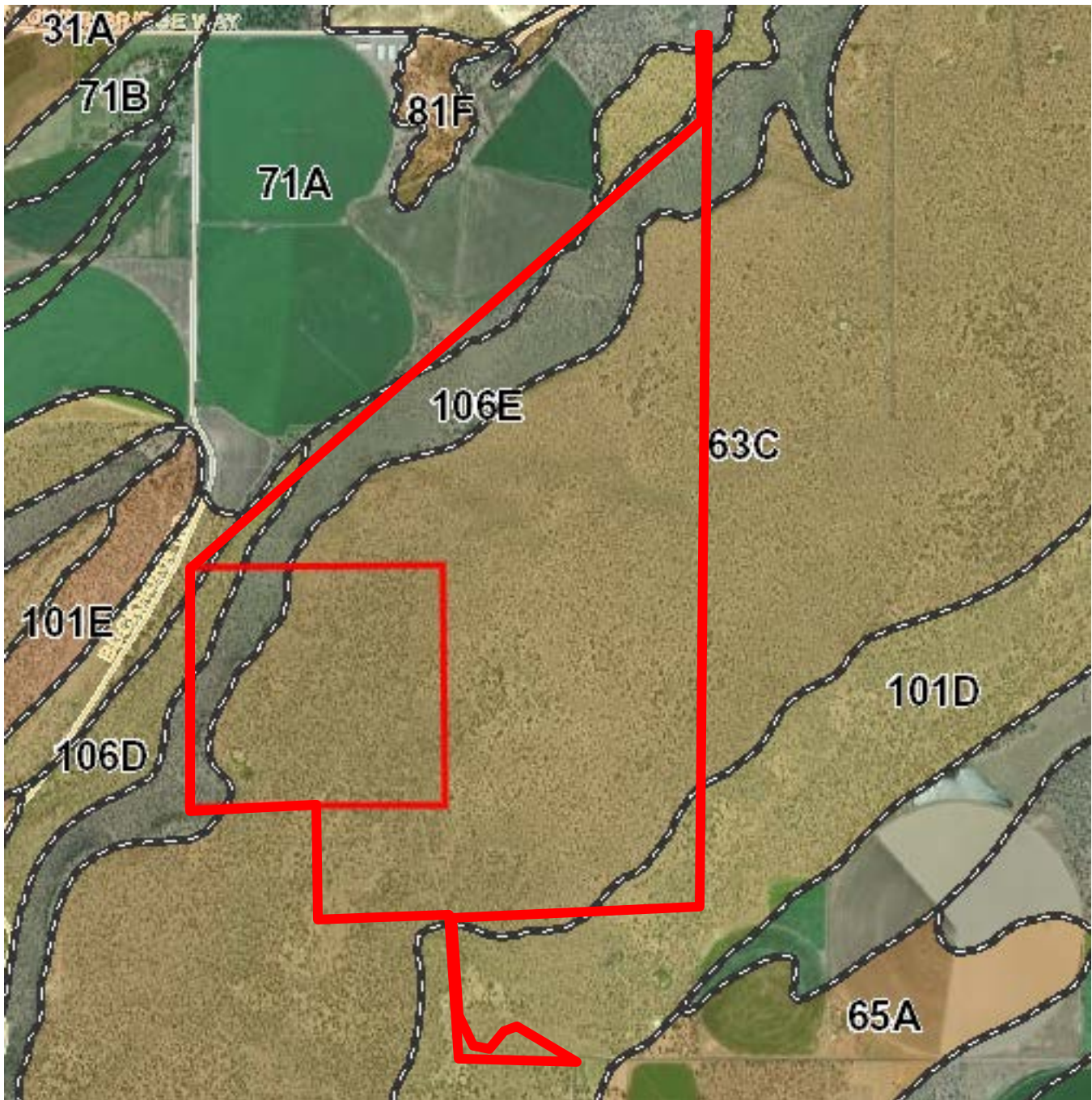
FINDING: The Applicant-submitted evidence showing that the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands. The ownership of the subject property is not used to determine whether the parcel is "agricultural land."

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

FINDING: The soil study prepared by Mr. Rabe provides more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land. The soil study provides detailed and accurate information about individual parcels based on numerous soil samples taken from the subject property. The soil study is related to the NRCS Land Capability Classification (LCC) system that classifies soils class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

The NRCS mapping for the subject property is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the subject property predominantly contains 63C soil (75 percent) and 106E soil (17 percent) with the remaining property containing smaller amounts of 31B, 71A, 101D, and 106D soils.

Figure 1 - NRCS Soil Map (Subject Property, appx.)



The soil study conducted by Mr. Rabe of Valley Science and Engineering finds the soil types on the subject property vary from the NRCS identified soil types. The soil types described in the soil study are described below and the characteristics and LCC rating are shown in **Table 1** below.

Table 1 - Summary of Order 1 and 2 Soil Survey (Subject Property)

Site-Specific Symbol	Unit Name	Acreage	%	Land Capability Class ¹	
				non-irrigated	irrigated
36B	Deskamp loamy sand, 0 to 8% slopes	5.05	0.7%	6s	3s
81C	Lickskillet stony sandy loam, 0 to 15% slopes	375.03	52.5%	7e	--
81D	Lickskillet stony sandy loam, 15 to 30% slopes	54.03	7.6%	7e	--
81E	Lickskillet stony sandy loam, 30 to 50% slopes	64.73	9.1%	7e	--
106D(R)	Redslide sandy loam, 15 to 30% slopes	22.88	3.2%	6e	--
127C	Statz sandy loam, 0 to 15% slopes	178.72	25.0%	6s	4s
109	Rock outcrop	14.16	2.0%	8s	--
Total		714.60	100%		
Subtotal Class I - VI		206.65	29%		
Subtotal Class VII - VIII		507.95	71%		

NOTES:

Abbreviations: "--" = no data, e = erosion, NRCS = Natural Resources Conservation Service, s = shallow.

¹ Land Capability Class as published in the Soil Survey of Upper Deschutes River Area, Oregon (Soil Survey Staff, Natural Resources Conservation Service, 2002).

Mr. Rabe’s soil study concludes that the subject property contains 71 percent Class 7 and 8 soils. The submitted soil study prepared by Mr. Rabe is accompanied in the submitted application materials by correspondence from the Department of Land Conservation and Development (DLCD) (Applicant’s Exhibit F). The DLCD correspondence confirms that Mr. Rabe’s prepared soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Based on Mr. Rabe’s qualifications as a certified Soil Scientist and Soil Classifier, staff finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject property. Staff requests the Hearings Officer make specific findings on this issue.

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

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

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

FINDING: The Applicant submitted a soil study by Mr. Rabe of Valley Science and Engineering dated June 22, 2021, and an addendum dated January 13, 2022. The soils study was submitted following the ORS 215.211 effective date. The applicant’s Exhibit F includes acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCD, dated September 13, 2021, that the soil study is complete and consistent with DLCD’s reporting requirements. Staff finds this criterion to be met based on the submitted soil study and confirmation of completeness and consistency from DLCD.

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

FINDING: The Applicant has provided a DLCD certified soil study as well as NRCS soil data. Staff finds the Applicant has demonstrated compliance with this provision.

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: This above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the subject property from AG to RREA and change the zone from EFU to RR10. The Applicant is not proposing any land use development of the properties at this time.

As referenced in the agency comments section in the Findings of Fact, above, the Senior Transportation Planner for Deschutes County requested additional information to clarify the conclusions provided in the traffic study. The applicant submitted an updated report from Christopher M. Clemow, PE, PTOE of Clemow Associates, LLC dated January 17, 2022, to address trip distribution, traffic volumes, and Transportation Planning Rule (TPR) criteria. The updates were reviewed by the Senior Transportation Planner who indicated his comments were satisfied with the amended report. Mr. Clemow includes the following conclusions in the traffic impact analysis dated January 17, 2022:

The following conclusions are made based on the materials presented in this analysis:

- 1. The proposed Deschutes County Comprehensive Plan Amendment and Zone Change from Exclusive Farm Use – Terrebonne Subzone (EFUTE) to Rural Residential – 10 Acre Minimum (RR-10) will not significantly affect the transportation system.*
- 2. All roadways along the primary travel route to/from the development are constructed to an adequate County standard, including paved 12-foot travel lanes.*
- 3. All study intersections will operate well with agency mobility standards/targets in the plan year and no intersection mitigation is necessary.*
- 4. The proposed site access is in the same location as the existing access and forms the west intersection leg. There is no horizontal or vertical roadway curvature limiting sight distance, nor is there any obstructing vegetation. As such, there is adequate sight distance at the proposed access location.*
- 5. There are no recorded crashes at any of the study intersections or the roadway segments during the study period. As such, the roadway and intersections are considered relatively safe, and no further evaluation of safety deficiencies is necessary.*
- 6. Additional transportation analysis is not necessary to address Deschutes County Code Transportation Planning Rule criteria outlined in Oregon Administrative Rule 660 012-0060.*

Based on the County Senior Transportation Planner's comments and the traffic study from Clemow Associates, LLC, staff finds compliance with the Transportation Planning Rule has been effectively demonstrated. Based on the TIA, staff believes that the proposed plan amendment and zone

change will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area. Staff further notes that, despite the transportation information provided by the Applicant and via agency comment, public comments received by the County indicate concerns with potential traffic impacts as a result of the proposed plan amendment and zone change. Staff asks the Hearings Officer to make specific findings related to these criteria.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

FINDING: The Statewide Planning Goals are outlined below in the Applicant's burden of proof:

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

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

Goal 3, Agricultural Lands. *The applicant has shown that the subject property is not agricultural land so Goal 3 does not apply.*

Goal 4, Forest Lands. *The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands "are those lands acknowledged as forest lands as of the date of adoption of this goal amendment." The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that "[w]here **a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources." This plan amendment does not involve any forest land. The subject property does not contain any merchantable timber and is not located in a forested part of Deschutes County.*

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. *The subject property does not contain any inventoried Goal 5 resources.*

Goal 6, Air, Water and Land Resources Quality. *The approval of this application will not cause a measurable impact on Goal 6 resources. Approval will make it more likely that the irrigation and pond water rights associated with the property will ultimately be returned to the Deschutes River or used to irrigate productive farm ground found elsewhere in Deschutes County.*

Goal 7, Areas Subject to Natural Disasters and Hazards. This goal is not applicable because the subject property is not located in an area that is recognized by the comprehensive plan as a known natural disaster or hazard area.

Goal 8, Recreational Needs. This goal is not applicable because the property is not planned to meet the recreational needs of Deschutes County residents and does not directly impact areas that meet Goal 8 needs.

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

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

Goal 11, Public Facilities and Services. The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Utility service providers have confirmed that they have the capacity to serve the maximum level of residential development allowed by the RR-10 zoning district.

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

Goal 13, Energy Conservation. The approval of this application does not impede energy conservation. The subject property is located in a part of the community that contains a large amount of rural residential development. Providing homes in this location as opposed to more remote rural locations will conserve energy needed for residents to travel to work, shopping and other essential services.

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

Goals 15, Willamette Greenway. This goal does not apply because the subject property is not located in the Willamette Greenway.

Goals 16 through 19. These goals do not apply to land in Central Oregon.

Staff generally accepts the Applicant’s responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated. However, staff would point out one exception to the response provided for Goal 7, Areas Subject to Natural Hazards and Disasters: According to the Deschutes County DIAL property information and Interactive Map the entirety of Deschutes County, including the subject property, is located in a Wildfire Hazard Area. Additionally, the subject property is also located in Redmond Fire and Rescue jurisdiction. Staff notes that rezoning the properties to RR10 does not change the Wildfire Hazard Area designation. Any future development of the properties would need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.

Staff makes note of public comments concerning potential traffic impacts, impacts to groundwater supply, impacts to agricultural uses, urbanization, and impacts to wildlife habitat highlighted by neighboring property owners and residents. While these comments detail concerns related to specific potential use patterns, staff finds the overall proposal appears to comply with the applicable Statewide Planning Goals for the purposes of this review.

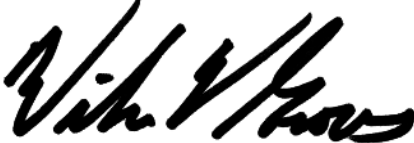
IV. CONCLUSION & RECOMMENDATION

Staff requests the Hearings Officer determine if the Applicant has met the burden of proof necessary to justify changing the Plan Designation from Agriculture to Rural Residential Exception Area and Zoning of the subject property from Exclusive Farm Use to Rural Residential – 10 Acre Minimum through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (the Deschutes County Zoning Ordinance), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Haleigh King, Associate Planner



Reviewed by: Will Groves, Planning Manager