



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, JANUARY 11, 2023

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

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

AGENDA

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

Members of the public may view the meeting in real time via the public meeting portal at www.deschutes.org/meetings. To view the meeting via Zoom, see below.

Citizen Input: The public may comment on any meeting topic that is not on the current agenda. To provide citizen input, submit an email to citizeninput@deschutes.org or leave a voice message at 541-385-1734. Citizen input received by noon on Tuesday will be included in the meeting record for topics that are not on the Wednesday agenda.

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

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

- To join the meeting from a computer, copy and paste this link: bit.ly/3h3oqdD.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

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

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

CONSENT AGENDA

1. Consideration of Document No. 2022-946, an amendment to the contract with Youth Villages for crisis and transition services
2. Adoption of Board Order No. 2023-006 directing the La Pine Rural Fire Protection District to comply with the Deschutes County Ambulance Service Plan and Chapter 8.30 of the Deschutes County Code
3. Approval of BOCC meeting minutes for December 21 2022

ACTION ITEMS

4. **9:05 AM** Consideration of approval to purchase two 2024 International Truck Tractors
5. **9:10 AM** Sisters Area Chamber of Commerce Presentation
6. **9:25 AM** City of Sisters ARPA Reserve Allocation Request
7. **9:40 AM** Public Hearing: Oregon Department of Transportation Noise Variance
8. **9:55 AM** Planning Commission Representation / Geographic Areas
9. **10:20 AM** Public Hearing: Planning Division Long Range Work Plan for FY 2022-2023
10. **11:20 AM** Board Order 2023-004—Decision whether to hear two appeals of a Hearings Officer's decision for a Thornburgh Resort modification request
11. **11:40 AM** Authorization to apply for a grant in the amount of \$3.25 million from FEMA's Building Resiliency in Communities program and also for a \$500,000 grant from the Oregon State Fire Marshall

LUNCH RECESS

Continued ACTION ITEMS

- [12.](#) **1:00 PM** Consideration of Administrative Policy GA-23, Removal of Unsafe Encampments Located on County-owned Property
- [13.](#) **1:30 PM** Courthouse Expansion Scope of Work
- [14.](#) **1:45 PM** Oregon Department of Energy Community Renewable Energy Grant Program
- [15.](#) **2:05 PM** Request and Discussion of Worrell Wayside Park Application for a City of Bend Upland Area of Special Interest (ASI) Designation
- [16.](#) **2:20 PM** Document No. 2022-939, amending the agreement with PacificSource for healthcare coordination services
- [17.](#) **2:30 PM** Request to repurpose an existing mediation full time position to support the School-Based Health Center (SBHC)

OTHER ITEMS

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

EXECUTIVE SESSION

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

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

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Consideration of Document No. 2022-946, an amendment to the contract with Youth Villages for crisis and transition services

RECOMMENDED MOTION:

Move approval of Board signature of Document No. 2022-946, Amendment #2 to the contract with Youth Villages

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Health Services and Youth Villages, Inc. propose to continue a contract for the provision of crisis and transition services to individuals enrolled in the Oregon Health Plan and who reside in the tri-county area (Deschutes, Crook and Jefferson).

This Amendment #2 extends the termination date of the original contract to June 30, 2023 and increases the original funding by \$166,500 from \$333,000 to \$499,500. Exhibit A-1 of the amendment outlines the service description for Mobile Response and Stabilization Services.

Mobile Response and Stabilization Services (MRSS) serve youth and their families during a crisis. Developed to help address psychiatric boarding in the emergency department, MRSS is an alternative for youth who may meet criteria for inpatient psychiatric admission but have the potential to safely return home if appropriate support is available. The MRSS program serves as a bridge during this critical period for approximately 56 calendar days or until the youth and family are effectively connected to longer-term supports. The MRSS program provides rapid access to interim mental health therapy, case management, psychiatry, care coordination, and family peer support and 24/7 crisis response to the home.

BUDGET IMPACTS:

\$166,500

ATTENDANCE:

Shannon Brister-Raugust, Program Manager

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

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

Date:

Department:

Contractor/Supplier/Consultant Name:

Contractor Contact:

Type of Document: Amendment #2 to Personal Services Contract # 2022-015

Goods and/or Services: Deschutes County Health Services and Youth Villages, Inc. are continuing a contract for the provision of Crisis and Transition Services (CATS) to individuals enrolled in the Oregon Health Plan and are residents in the tri-county (Deschutes, Crook, Jefferson) area.

This Amendment #2 extends the termination date to June 30, 2023 and increases the original funding by \$166,500 from \$333,000 to \$499,500. The amendment incorporates Exhibit A-1, outlining the service description for Mobile Response and Stabilization Services (MRSS).

Background & History: Youth Villages, Inc. is a nonprofit organization dedicated to helping children with emotional and behavioral problems and their families. Its history stretches from 1859, and includes The Christie School and ChristieCare. Providing intensive in-home, residential, transitional and diversion services to children and youth, Youth Villages, Inc. is committed to enhancing children’s services by providing the strongest research-based, cost-effective solutions for the state’s most vulnerable children and families. Deschutes County Health Services is continuing the contract with Youth Villages, Inc. for the provision of CATS/MRSS Services to pediatric mental health patients.

Mobile Response and Stabilization Services (MRSS) serves youth and their families during a crisis. Developed to help address psychiatric boarding in the emergency department, MRSS is an alternative for youth who may be meeting criteria for inpatient psychiatric admission but have the potential to safely return home if Mobile Response and Stabilization Services were in place. Emergency departments may be a family’s first point-of-contact into the mental health system and the month immediately following discharge is a high-risk period for a youth to return to an emergency department in mental health crisis. The MRSS program serves as a bridge during this critical period for approximately 56 calendar days or until the youth and family are effectively connected to longer-term supports. The MRSS program provides rapid access to interim mental health therapy, case management, psychiatry, care coordination, and family peer support and 24/7 crisis response to the home.

The MRSS program seeks to stabilize the immediate crisis and focuses on a youth’s long-term recovery and connections to other services and supports. The MRSS multidisciplinary team works with a youth and family to develop a plan of care that identifies and addresses underlying difficulties that contributed to the crisis; evaluates safety and addresses risks in the home; reinforces coping and de-escalation skills; and facilitates a warm hand-off to other supports and services in the community.

Agreement Starting Date:

Ending Date:

Annual Value or Total Payment:

Insurance Certificate Received (check box)
Insurance Expiration Date:

Check all that apply:

- RFP, Solicitation or Bid Process
- Informal quotes (<\$150K)
- Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37) 2.37.050, Paragraph M

Funding Source:

MUNIS: 42200232

Project Code: HSINTYOUTH-HS20850G; HSINTYOUTH-HS22405G; HSINTYOUTH-HS2GR24G

Included in current budget? Yes No
 If **No**, has budget amendment been submitted? Yes No

Is this a Grant Agreement providing revenue to the County? Yes No

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: Yes No

Contact information for the person responsible for grant compliance: Name:
 Phone #:

Departmental Contact and Title:
Phone #:

Director Approval:

Signature: Tom Kuhn
Tom Kuhn (Dec 30, 2022 12:54 PST)

Email: thomas.kuhn@deschutes.org

Title: Acting HS Director

Company: Deschutes County Health Services

Distribution of Document: Grace Justice Evans, Deschutes County Health Services.

Official Review:

County Signature Required (check one): BOCC Department Director (if <\$50K)

Administrator (if >\$50K but <\$150K; if >\$150K, BOCC Order No. _____)

Legal Review _____ Date _____

Document Number 2022-946



REVIEWED

LEGAL COUNSEL

**DESCHUTES COUNTY SERVICES CONTRACT AMENDMENT #2
DOCUMENT NO. 2022-946
AMENDING DESCHUTES COUNTY CONTRACT NOS. 2022-015 AND 2022-812**

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2022-015 dated January 1, 2022, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon, acting by and through its Health Services Department, Behavioral Health Division (“County”) and Youth Villages, Inc., (“Contractor”) and Amendment No. 1 to the Contract, Document No. 2022-812 dated October 11, 2022, are amended, effective upon signing of all parties, as set forth below. Except as provided herein, all other provisions of the agreement remain the same and in full force.

County’s performance hereunder is conditioned upon Contractor’s compliance with provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235, which are hereby incorporated by reference. In addition Standard Contract Provisions contained in Deschutes County Code Section 2.37.150 are hereby incorporated by reference. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The above listed contract and amendment are amended as follows (new language is indicated by **bold** font and deleted language is indicated by ~~strikeout~~ font):

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

1. **Effective Date and Termination Date.** The effective date of this Contract shall be retroactively effective January 1, 2022. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate ~~when on December 31, 2022~~ **June 30, 2023**. Contract termination shall not extinguish or prejudice County’s right to enforce this Contract with respect to any default by Provider that has not been cured. This Contract may be renewed or extended only upon written agreement of the Parties.
2. **Section 2 Provider’s Services.** Provider shall provide Diversion Services to individuals, including those enrolled in the Oregon Health Plan (OHP), who are residents in Deschutes County.

- Exhibit A – **CRISIS AND TRANSITION SERVICES (MHS 08) STATEMENT OF WORK (Effective January 1, 2022 through December 31, 2022)**
- Exhibit A-1 – **CRISIS AND TRANSITION SERVICES (MHS 08) SERVICE DESCRIPTION (Effective January 1, 2022 through December 31, 2022)**
- Exhibit A – **MOBILE RESPONSE AND STABILIZATION SERVICES (MRSS) (MHS 08) STATEMENT OF WORK (Effective January 1, 2023 through June 30, 2023)**
- Exhibit A-1 – **MOBILE RESPONSE AND STABILIZATION SERVICES (MRSS) (MHS 08) SERVICE DESCRIPTION (Effective January 1, 2023 through June 30, 2023)**
- Exhibit B – **COMPENSATION**
- Exhibit C – **INSURANCE**
- Exhibit D – **CONFIDENTIALITY AGREEMENT**
- Exhibit E – **FEDERAL AND STATE LAWS, STATUTES, RULES, REGULATIONS, EXECUTIVE ORDERS AND POLICIES**
- Exhibit F – **REQUIRED PROVIDER CONTRACT PROVISIONS**
- Exhibit G - **CATALOGUE OF FEDERAL DOMESTIC ASSISTANCE NUMBER LISTING**
- Exhibit H - **FEDERAL AWARD IDENTIFICATION**

The above-referenced exhibits are attached hereto and incorporated by this reference. Contractor’s services are funded by and through County’s contracts with the State of Oregon, Oregon Health Authority (OHA), Health Systems Division, and Federal System of Care Expansion of Services for Children with Serious Emotional Disturbances grant. Statement of Work and Compensation is further described in Exhibits A, **A-1** and Exhibit-B, attached hereto and incorporated by this reference.

Exhibit A and A-1, Crisis and Transition Services (MHS 08) Statement of Work and Service of Description is effective January 1, 2022 through December 31, 2022 and is thereafter replaced by Mobile Response and Stabilization Services (MRSS) Service of Description, effective January 1, 2023 through June 30, 2023.

- 3. The payment terms are hereby amended as described in Exhibit B, "Compensation", attached hereto and incorporated herein by this reference.

All other terms and Exhibits, except as mentioned above, remain the same and in full effect.

DESCHUTES COUNTY SERVICES AMENDMENT #2
DOCUMENT NO. 2022-946
AMENDING DESCHUTES COUNTY CONTRACT NOS. 2022-015 AND 2022-812

SIGNATURE PAGE

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

DATED this ____ day of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair, Chair

PATTI ADAIR , Vice Chair

PHIL CHANG , Commissioner

ATTEST:

Recording Secretary

Signature: Patrick Lawler
Patrick Lawler (Jan 3, 2023 18:31 CST)
Email: pat.lawler@youthvillages.org
Title: CEO
Company: Youth Villages

EXHIBIT A
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2022-015
CRISIS AND TRANSITION SERVICES (MHS 08) STATEMENT OF WORK
MOBILE RESPONSE AND STABILIZATION SERVICES (MRSS) STATEMENT OF WORK
EFFECTIVE: JANUARY 1, 2023 THROUGH JUNE 30, 2023

1. Mobile Response and Stabilization Services (MRSS) Definitions:

Background & Program Purpose. The MRSS program is a team-based crisis stabilization service that offers an alternative to inpatient psychiatric treatment and psychiatric boarding. It does this by providing in-person crisis response that connects children, youth, young adults and their families to rapid supports at home and in community. MRSS de-escalates situations, often preventing unnecessary trips to emergency departments.

MRSS addresses the unique needs of children, youth, young adults and their families in crisis. It helps them understand:

- What may lead to a crisis,
- When they are experiencing a crisis,
- When they need support, and
- How to get support at home and in the community.

The MRSS program provides assessment and intake into the program after receiving a referral from the DCBH Crisis Team. Once youth are admitted into the MRSS program, they are provided safety planning, lethal means counseling, resources, care coordination and case management, and linkage to ongoing behavioral health services. A MRSS specialist will meet with the youth and family in their home for sessions to provide further crisis stabilization and safety planning support while the youth is enrolled in the program. The MRSS program also provides crisis support twenty-four (24) hours per day, seven (7) days per week for urgent situations including in home assessment and intervention by a master’s level clinician as needed for up to 56 days post crisis.

- A. **Target Population.** The target population (eligibility criteria) includes any person 18 and under who is a current resident of Deschutes County and presenting with a behavioral health crisis – generally suicidal or aggressive thoughts or behaviors or behavioral problems affecting the safety of the child, family or others—and would otherwise be boarded or admitted to an inpatient psychiatric program. The youth and family or caregivers must have been evaluated and assessed by a Deschutes County Crisis Team member, as appropriate to return to their community with the support of MRSS interdisciplinary team support/treatment. Youth who meet the program edibility criteria may be admitted regardless of insurance coverage.
- B. **Availability:** The MRSS program will admit individuals after receiving a referral from the Deschutes County Crisis Team. Families/youth enrolled in the MRSS program will have access to crisis support twenty-four (24) hours per day, seven (7) days per week for urgent situations.
- D. **Length of Services.** Initial contact with Crisis Team will be made within one (1) hour of the MRSS specialist being called. Assessment and recommendations will commence within 24-48 hours and continue until complete. Follow-up services for youth who enroll in the MRSS program will be available for up to fifty-six (56) days after initial contact. When clinically indicated the service plan, stabilization services may be extended past the initial 56 calendar days to ensure that they have successfully transitioned to ongoing services and supports.

2. Mobile Response and Stabilization Services (MRSS) Scope of Work:

A. Availability:

- i. The MRSS program will be available twenty-four (24) hours per day, seven (7) days per week for urgent situations, to screen eligibility for youth.

- ii. The program can serve up to thirty-seven (37) youth at any time. The MRSS program will update Deschutes County MCAT regularly about current census and capacity for new referrals.

B. Admission into the MRSS program:

- i. When someone in a behavioral health crisis calls 988, presents to the Deschutes County Crisis Stabilization Center, has MCAT, non-law enforcement contact or is identified by Law Enforcement, Deschutes County Crisis Team will complete a crisis screening and assessment. If it is determined youth would be appropriate for community stabilization and de-escalation with intensive MRSS services in place Deschutes County Crisis Team will contact Youth Villages to refer to MRSS supports.

- ii. MRSS on-call supervisor will respond within (1) hour to review referrals. If accepted MRSS Specialist will begin offering the following within forty-eight (48) hours:

- Provide 24/7 connection for children, youth, young adults and their families, MRSS includes:
 - Immediate face-to-face response and
 - Up to 8 weeks of stabilization services.
- The immediate face-to-face response can last up to 72 hours. This support helps children, youth and their families:
 - Get support at home and
 - Avoid unnecessary visits to the emergency room.
- Stabilization services are available for up to 56 days after the initial crisis. Services may include:
 - Mental health therapy,
 - Skills training,
 - Peer-delivered services, and
 - Crisis de-escalation.

- iii. The MRSS team also assesses ongoing needs. If needed, the team also links children, youth, young adults and their families to appropriate community resources. MRSS works best in community support systems that cater to the strengths of children, youth, young adults and their families.

- a. If the recommendation of the MRSS specialist is in alignment with the Deschutes County Crisis Team’s recommendation for community stabilization through MRSS, and the family agrees to participate in the program, youth will admit into MRSS. Upon program acceptance, safety plans will be completed, lethal means counseling provided, and youth will discharge from the hospital.
- b. If MRSS specialist does not agree that youth is appropriate for the program (ex: acuity too high or too low) or if the family is not aligned with engaging in the program, MRSS specialist will communicate recommendations and/or barriers to Deschutes County Crisis Team staff, who will coordinate next steps.

C. Treatment provided while enrolled in the MRSS program:

- i. Youth Villages will provide services in alignment with MRSS program requirements as outlined by the Oregon Health Authority.
- ii. A MRSS Specialist will schedule a home visit within twenty four (24) to seventy-two (72) hours of the initial assessment/MRSS intake. This will be scheduled based on family’s availability. If there are barriers with the family meeting with the MRSS specialist within the initial forty-eight (48) hours after the youth discharges from the Emergency Department, the MRSS team will make contact with the family by phone to assess effectiveness of safety plans.
- iii. During the first home visit, MRSS specialist will review the safety plan, ensure the safety sweep was completed, and review the MRSS services such as Intensive In Home Behavioral Health Services or Intercept.

- iv. **Frequency of home visits will be based on family need/request as well as youth's acuity. Home visits will occur no less than one (1) time per week while family is enrolled. Sessions will focus on crisis prevention skill development, psychoeducation, and ongoing safety planning.**
- v. **MRSS Specialist, MRSS Qualified Mental Health Associate or MRSS Peer Support Specialist will provide intensive care coordination to ensure that families are connected with aftercare services as soon as possible and that involved treatment providers are aware of the family's needs.**
- vi. **The discharge timeline for each family will depend on the level of crisis support needed by the family and the ability to connect the family with an aftercare provider sufficient to meet their needs.**
- vii. **The MRSS specialist will complete documentation for the intake assessments within seventy-two (72) hours and will enter that documentation into the Youth Villages Electronic Health Record. The MRSS specialist will subsequently document each contact made with the youth, family, and involved key players into the same system within seventy-two (72) hours.**
- viii. **The MRSS program Qualified Mental Health Associate will conduct a thorough Case Management assessment, and provide coordination of care services connecting the child and family to appropriate services and support to meet their needs in the least restrictive setting.**
- ix. **The MRSS program family partner will make contact with families in care no fewer than three (3) times either by phone or throughout the course of services. Family partners will share their personal experience and lessons learned to encourage family's connection to services, including mental health providers and other needed resources. The family partner will document efforts of engaging families, facilitating connection to services and outcomes of visits in the electronic health record.**

3. Protocols:

- A. **Specific protocols (i.e. medical necessity, UM/UR) will be mutually agreed upon by the Provider and its funding partners prior to the commencement of Diversion Services. Provider and County will meet monthly, or as needed, to ensure programming is on track after implementation.**

EXHIBIT A-1
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2022-015
CRISIS AND TRANSITION SERVICES (MHS 08) SERVICE DESCRIPTION
MOBILE RESPONSE AND STABILIZATION SERVICES (MRSS) SERVICE DESCRIPTION
EFFECTIVE: JANUARY 1, 2023 THROUGH JUNE 30, 2023

- a. **Service Name: MOBILE RESPONSE AND STABILIZATION SERVICES (MRSS)**
Service ID Code: MHS 08

(1) Service Description

Mobile Response and Stabilization Services (MRSS) serves youth and their families during a crisis. Developed to help address psychiatric boarding in the emergency department, MRSS is an alternative for youth who may be meeting criteria for inpatient psychiatric admission but have the potential to safely return home if Mobile Response and Stabilization Services were in place. Emergency departments may be a family’s first point-of-contact into the mental health system and the month immediately following discharge is a high-risk period for a youth to return to an emergency department in mental health crisis. The MRSS program serves as a bridge during this critical period for approximately 56 calendar days or until the youth and family are effectively connected to longer-term supports. The MRSS program provides rapid access to interim mental health therapy, case management, psychiatry, care coordination, and family peer support and 24/7 crisis response to the home.

The MRSS program seeks to stabilize the immediate crisis and focuses on a youth’s long-term recovery and connections to other services and supports. The MRSS multidisciplinary team works with a youth and family to develop a plan of care that identifies and addresses underlying difficulties that contributed to the crisis; evaluates safety and addresses risks in the home; reinforces coping and de-escalation skills; and facilitates a warm hand-off to other supports and services in the community.

County shall require that MRSS providers:

- (a) Approach services from a family-driven and youth-guided approach that reduces or eliminates barriers for the youth and family to participate in care;
- (b) Provide linguistically and culturally appropriate materials for the youth and their family, necessary for them to understand and to participate fully in the MRSS program; and
- (c) Require equitable access to the program, particularly for youth and families who may have faced historical discrimination and inequities in health care based on race or ethnicity, physical or cognitive ability, sexual orientation, gender identity, socioeconomic status, insurance status, citizenship status, or religion.

(2) Eligibility Criteria

- (a) Serves ages birth through 18 years of age, and their families (parents, guardians, caregivers) who present to a partnering emergency department or psychiatric crisis center.
- (b) Youth is experiencing a mental health crisis or behavioral disturbance affecting the safety of the youth and family or others and is at risk for admission to an inpatient psychiatric program.
- (c) Youth who may be meeting criteria for inpatient psychiatric admission but have the potential to safely return home if MRSS was in place
- (d) MRSS enrollment is not contingent on availability or type of insurance. All youth, regardless of insurance status (uninsured, underinsured, not eligible for insurance, including commercial and public plans) are eligible.
- (e) Sites are expected to maximize funding to enhance an existing continuum of crisis and acute care, which includes billing Medicaid and/ or commercial carriers for all applicable billing codes for services provided while enrolled in services.
- (f) If a site is struggling with capacity and is unable to meet the needs of the referring hospital partner, Deschutes County Health Services will be notified as soon as possible by the provider and a plan of action and timeline for resolution will be completed.

(3) Intake Process

- (a) The Deschutes County Crisis Team will assess the youth and make a referral to the assigned MRSS clinical provider.**
- (b) Within 1 hour of the referral, the MRSS on-call supervisor will make contact with the Deschutes County Crisis Team to review the case and make a determination regarding admission.**
- (c) If admitted the MRSS team will coordinate with youth/family within 48 hour of receiving the referral.**
- (d) MRSS clinical team member will develop a Crisis and Safety Plan in collaboration with the youth and their family.**
- (e) MRSS team is responsible for providing 24/7 crisis response to the youth and family for the duration of their enrollment in the MRSS program.**
- (f) MRSS clinical team member will give a brief overview of the services offered by the MRSS Team and introduce the role of the Family Support Specialist.**
- (g) Each family will be given the MRSS Guidebook for Families, or the equivalent describing the anticipated experience in the MRSS program and providing youth and their families with relevant and individualized psychosocial information.**
- (h) MRSS clinical team will schedule an in-person MRSS Team Meeting, within 72 hours of the intake. Meeting location to be determined by the youth and their family. Meeting shall include youth and their family, MRSS clinical provider, MRSS Family Support Specialist, and/or any other natural support or multi-disciplinary team members as identified by the youth and their family.**
- (i) The MRSS clinical team will notify the assigned FSS, as soon as possible, with contact information for the family and date and time of the Team Meeting. The FSS will make initial contact with the family either in person or via phone to introduce their role**

(4) Service Requirements

- (a) Within 72 hours of the intake the MRSS clinical team member and Family Support Specialist will facilitate a MRSS Team Meeting with the youth and their family, and together review program services, assess the current needs of the family, both short term and long term, and clarify roles of team members;**
- (b) Contacts with the youth and family should be as frequent as needed to alleviate the immediate crisis and provide connection to longer term resources and supports;**
- (c) All contacts shall occur in locations preferred by the youth and their families;**
- (d) The MRSS Clinical team in partnership with the youth and their family shall coordinate a minimum of 2contacts per week with at least one being in-person. Services include**
 - i. Interim individual and/or family mental health therapy.**
 - ii. Rapid access to psychiatry and medication management.**
 - iii. Care Coordination.**
 - iv. Family/Youth/Peer Support Services;**
- (e) MRSS clinical services may be provided up to 56 calendar days, as necessary, to provide the youth and their family with sufficient stabilization and connections with community-based resources; and**
- (f) MRSS Family Peer Support Services are offered as long as clinical services are being provided to provide the youth and family with increased skills to manage crises, and to establish sufficient supports in the community that the youth and family may access as needed.**

(5) Close of Services

- (a) Factors contributing to the current crisis are identified and addressed by some combination of the following:**
 - i. Youth is no longer having suicidal or aggressive behavior, ideation, or behavioral challenges that affect safety of the youth, family, or others**
 - ii. Symptoms are managed via connection to commensurate supports, services, and skill- development opportunities;**

- iii. The youth and their family report increased safety and confidence in managing the current and future crises; and,
 - iv. The youth and their family report decreased frequency and intensity of crisis situations.
- (b) The MRSS Team will establish a transition plan with the youth and their family, which:
- i. Addresses youth mental health concerns and symptoms;
 - ii. Outlines proactive strategies to support the youth and their family to reduce the frequency and intensity of crises that lead to emergency department visits; and,
 - iii. Documents access and connections to outpatient and community resources.
- (c) MRSS clinical team will conduct an in-person, transition meeting with the youth and family to review the transition plan prior to ending MRSS services. If unable to have a transition meeting with the family, documentation of the circumstances is required.
- (d) If the family continues to receive Family Support Services after ending services with the clinical team, the MRSS Family Support Specialist will conduct an in-person transition meeting with the family prior to ending Family Support Services. If unable to have a transition meeting with the family, documentation of the circumstances is required.

(6) MRSS Team-Based Requirements

- (a) MRSS programs are team-based. County is required to provide both clinical services and family support services to MRSS enrolled youth and their families. County shall require that subcontracted providers have dedicated MRSS clinical staff and family support specialists.
- (b) Each MRSS Team provides an array of recovery-oriented agency or community-based services and supports. County may subcontract with numerous providers in order to make sure that all services are available to the youth and their families. Establishing a clear communication plan and workflow between all providers is imperative and requires the contractor, clinical staff, family support staff and referring hospital or crisis clinic to work as a cohesive team.
- (c) County is responsible for the completion of all MHS 08 service requirements as outlined in this document, whether directly provided or provided under sub-contractual arrangement. County shall provide initial copies of the sub-contract to OHA. County shall submit a written action plan and timeline for resolution to OHA, as soon as possible, when there are known services that are not being met by the County or provider. Action Plans must be agreed upon by County and OHA and may result in funding adjustments and/or recouped or withheld funds.
- (d) The MRSS team must include, at a minimum, a Mental Health Therapist (QMHP), Qualified Mental Health Associate (QMHA) and a Family Support Specialist (FSS). County must notify OHA immediately if either of these positions are vacant or unavailable to youth and their families enrolled in services.
- (e) County shall submit a Memorandum of Understanding (MOU) which includes the referring hospital or crisis clinic and subcontractors. MOU is required to be completed within 45 calendar days of execution of this Agreement. The MOU creates an ongoing partnership between the County, subcontractors, referring hospitals and crisis centers. The MOU shall include the following:
- i. Roles and responsibilities of each party;
 - ii. Comprehensive communication plan between all parties around coordinating intakes, team meetings, and care coordination efforts; and,
 - iii. Ongoing and frequent communication with the partnering hospital or crisis center.
- (f) County and subcontractors shall participate in a collaborative state-wide effort to establish shared programmatic standards, expectations for results, and key reporting requirements. County is responsible for requiring that a representative from the County and all subcontractors:
- i. Participate in scheduled All Staff MRSS Learning Collaboratives; and
 - ii. Family Support Specialists are also required to participate in all scheduled Family Support Specialist Learning Collaborative.
- (g) County shall submit an annual Budget Worksheet (provided by OHA), which is due August 15th of each calendar year.

(7) MRSS Required Training

- (a) County is responsible for requiring that all staff receive the adequate training required to effectively deliver services as outlined in this Agreement. Providers shall require that, at a minimum, staff are trained in the following areas:
 - i. OHSU Redcap Data System Training;
 - ii. Suicide Prevention and Intervention;
 - iii. Lethal Means Counseling (i.e CALM Training);
 - iv. Trauma Informed Care; and
 - v. Ongoing training and refreshers required for skill maintenance.

(8) Special Reporting Requirements

Redcap Data System Reporting Requirements

- (a) MRSS Clinical and Family Support Providers shall submit data on an ongoing basis, as specified by OHA, directly to the Oregon Health & Science University (OHSU) Redcap Data System.
- (b) MRSS Providers are expected to input all required data within 14 calendar days of closure, unless otherwise arranged with the OHSU/OHA team.
- (c) Redcap Data Collection includes timely collection and submission of the following:
 - i. Individual’s demographics and clinical history;
 - ii. Presenting information;
 - iii. Referral response time;
 - iv. Referral to and youth/family connections with family peer support;
 - v. Timeliness and frequency of initial and ongoing contacts;
 - vi. Service and intervention details;
 - vii. Diversions out of the emergency room/ crisis clinic;
 - viii. Re-presentations to the emergency department or admissions to a higher level of care;
 - ix. Transition plan details;
 - x. Barriers to recommended transition plan;
 - xi. Duration of MRSS involvement;
 - xii. The Crisis Assessment Tool at intake;
 - xiii. The KIDSCREEN-10 at intake and closure; and
 - xiv. Other items deemed beneficial to the development of the Service.
- (d) Programs are required to inform and encourage MRSS parents/guardians to participate in a two-month follow-up survey completed by phone or electronically. MRSS participants will be contacted by OHSU outcomes study staff two months after MRSS program completion. Data from follow-up interviews will be shared with County and program leadership, with the goal of improved services.
- (e) County is responsible for reviewing and approving the quarterly outcome reports generated by OHSU prior to submission to OHA by OHSU.

(9) Financial Assistance Calculation, Disbursement, and Confirmation of Performance and Reporting Requirements Procedures

EXHIBIT B
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2022-015
COMPENSATION

1. Compensation

County agrees to compensate Provider as follows:

Deschutes County Health Services shall pay a not-to-exceed maximum compensation of up to ~~\$345,000~~ **\$333,000** **\$499,500**, inclusive of the "Performance Withhold" as outlined in Paragraph 2 below. County is aligning contracts from a fiscal year to a calendar year, impacting the previous contract's performance withholds. As such Deschutes County agrees to pay Youth Villages for twelve (12) months of performance withholds from January 2021 through **June 30, 2023**.

2. Performance Withhold

The Parties agree to withhold a portion of the compensation to incentivize performance on the below performance standards. The withhold will be equal to five percent (5%) of the compensation outlined herein, and reconciled after the end of the Contract Term; such reconciliation to occur no later than thirty (30) calendar days after Contract termination date.

3. Billing

Provider shall invoice County on a monthly basis for all services rendered in accordance with the terms of this Contract. County will only pay for completed work that is accepted by the applicable County. Invoice and supporting documentation must be sent to County's contact information by mail, fax or e-mail as indicated in Paragraph 11, "Notices".

4. Performance Measures

Performance measures under the Contract will be monitored and evaluated using the following performance measures/outcomes:

- 1. Three hour response times $\geq 80\%$
- 2. Home visits within 72 hours $\geq 90\%$
- 3. Completion of safety plans $\geq 90\%$
- Re-presentations or admissions while in CATS $\leq 20\%$

5. Review of Performance Measure Data.

Upon Contract termination Provider shall provide County with an analysis of each Performance Measure listed above. This analysis shall also contain the raw data supporting any conclusions or inferences drawn by Provider. The Parties shall meet on a scheduled agreed upon by Parties to discuss the Performance Measures and Providers results. The Parties shall produce a written summary after each meeting which specifically notes the Parties' agreement or disagreement that the Provider has or has not met the Performance Measures.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Adoption of Board Order No. 2023-006 directing the La Pine Rural Fire Protection District to comply with the Deschutes County Ambulance Service Plan and Chapter 8.30 of the Deschutes County Code

RECOMMENDED MOTION:

Move approval of Order 2023-006 directing the La Pine Rural Fire Protection District to comply with the Deschutes County Ambulance Service Plan and Chapter 8.30 of the Deschutes County Code.

BACKGROUND AND POLICY IMPLICATIONS:

Following an investigation, and upon recommendation of the Ambulances Service Area (ASA) Advisory Committee, the Board ordered that La Pine Fire cure ongoing violations of Deschutes County Code Chapter 8.3 and the ASA Plan.

BUDGET IMPACTS:

None

ATTENDANCE:

Legal

REVIEWED
LEGAL COUNSEL

01/11/2023 Item #2.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Directing the La Pine Rural Fire Protection District, an Ambulance Service Franchisee of Deschutes County, to Comply with the Deschutes County Ambulance Service Plan and Chapter 8.30 of the Deschutes County Code *
* ORDER NO. 2023-006
*
*
*
*

WHEREAS, the La Pine Rural Fire Protection District (“District”) is an ambulance service franchisee of Deschutes County and is therefore subject to Chapter 8.30 of the Deschutes County Code (“DCC 8.30”) and Appendix A to DCC 8.30, the Deschutes County Ambulance Service Area Plan (“ASA Plan”); and

WHEREAS, the Board of County Commissioners (“Board”) received a complaint from St. Charles Medical Group (“St. Charles”) on November 16, 2020, and from St. Charles and La Pine Community Health Clinic (“LCHC”) on February 3, 2021, each of which alleged that the District had violated provisions of DCC 8.30 and/or provisions of the ASA Plan; and

WHEREAS, after the Board assigned the task of investigating the allegations from St. Charles and LCHC to the Deschutes County Ambulance Service Area Advisory Committee (“Committee”), and thereafter the Committee performed their investigation; and

WHEREAS, on September 28, 2022, after completing its investigation, the Committee adopted findings which substantiated two of the five allegations made by St. Charles and LCHC, to wit, that the District (1) discouraged patients from utilizing the District for emergency transports; and (2) charged fees directly to St. Charles and LCHC pursuant to District Ordinance #2019-03 and District Policy #02-03, rather than to patients themselves or their insurers, and that such fees were invalid under Oregon law; and

WHEREAS, pursuant to DCC 8.30.070¹ and Section 8.4 of the ASA Plan, the Board desires to withhold imposition of a sanction against the District and in lieu of sanction provide the District with an opportunity to cure the violations of DCC 8.30 and the ASA Plan found by the Committee; now therefore,

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

Section 1. In lieu of revocation, suspension, or other sanctions as authorized by DCC 8.30.070, 8.30.080², and Section 8.4 of the ASA Plan, the District shall cure the violations of DCC 8.30 and the ASA Plan found by the Committee within forty-five (45) days of receipt of a Notice of Violation describing the findings of the Committee and relevant portions of this Order. Staff is directed to draft and sent a Notice of Violation to the District as soon as is practicable.

¹ Citation is to original provisions of DCC 8.30.070 (Enforcement), which was renumbered to DCC 8.30.075 after revisions to DCC Chapter 8.30 in March of 2021.
² Citation is to original provisions of DCC 8.30.080 (Appeals, Abatements and Penalties), which was renumbered to DCC 8.30.085 after revisions to DCC Chapter 8.30 in March of 2021.

Section 2. The District shall cure the aforesaid violations as follows:

1. The District must cease and desist from unreasonably discouraging patients from requesting medical transport or treatment via District resources and from unreasonably refusing to provide such transports or treatment when requested.
2. The District must cease and desist from charging fees to parties other than patients or their insurers for medical transport or treatment, or from collecting such fees that have been charged to third parties by the District, unless the District first procures an agreement from such third parties to pay fees for the medical transport or treatment of a patient prior to providing such medical transport or treatment. Any such agreement between the District and a third party must otherwise comply with applicable law.

Section 3. The District shall notify the Board in writing of the actions taken to cure the aforesaid violations within the time period provided in Section 1.

Section 4. Should the District fail to cure the aforesaid violations as required by the Board within the time period provided in Section 1, the Board will impose sanctions against the District up to an including revocation of its franchise.

Section 5. Pursuant to DCC 8.30.070 and Section 8.4 of the ASA Plan, the District may submit a written request for a hearing within fourteen (14) calendar days of receipt of the Notice of Violation. The request must set forth the reasons for requesting the hearing and the issue proposed for review by the Board. Should the District timely submit a request, any action to enforce this Order shall be stayed pending a hearing and a final decision by the Board, unless a change is required due to an immediate hazard to public safety. If a timely request is received by the Board, a hearing will be scheduled and provided as otherwise required by DCC 8.30.070 and Section 8.4 of the ASA Plan.

Section 6. This Order is effective upon signing.

Dated this _____ of January, 2023.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST AND STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Consideration of approval to purchase two 2024 International Truck Tractors

RECOMMENDED MOTION:

Move to authorize staff to purchase two 2024 International HX620 truck tractors from Peterson International Inc. in the amount of \$313,741.30, per agreement #2023-084.

BACKGROUND AND POLICY IMPLICATIONS:

Within the FY23 budget document, the BOCC approved the purchase of two truck tractors. Staff has evaluated equipment availability as well as contracting options and has selected 2024 International HX620 truck tractors. Both tractors will displace our current 2006 tractors, which in turn will be converted to snow plow/sanders for seasonal use.

Pricing and purchase of the tractors is coordinated through the Oregon State Contract, which affords savings and preferred pricing as vendors are secured through competitively bid purchasing contracts. The tractors will be purchased from Peterson International Inc.

BUDGET IMPACTS:

The purchase price of \$313,741.30 is \$17,741.30 above the FY23 budget amount due to rising material and equipment costs. The purchase will be funded via the Road Department's Building/Equipment Fund (330).

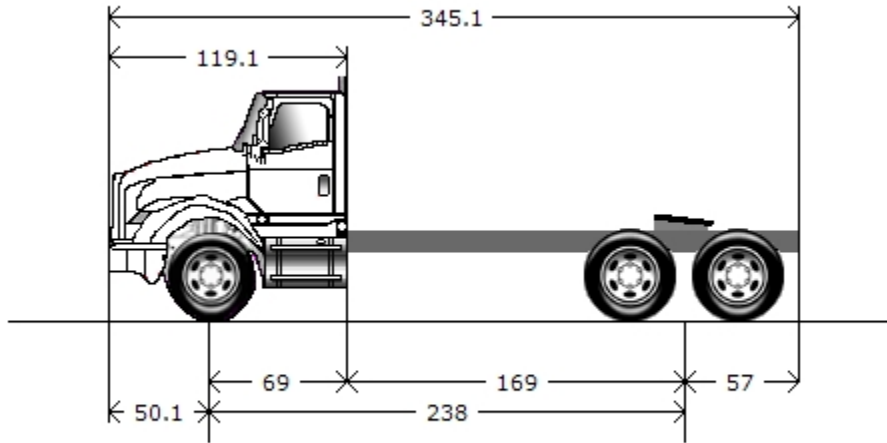
ATTENDANCE:

Randy McCulley, Road Department

Prepared For:
 DESCHUTES COUNTY PUBLIC
 RANDY MCCULLEY
 61150 27th St.
 Bend, OR 97702-9631
 (541)322 - 7107
 Reference ID: Agreement 1641

Presented By:
 PETERSON TRUCKS, INC
 Dan I Chappell
 61 NE COLUMBIA BLVD.
 PORTLAND OR 97211 - 1413
 (503)285-9300

Thank you for the opportunity to provide you with the following quotation on a new International truck. I am sure the following detailed specification will meet your operational requirements, and I look forward to serving your business needs.



Model Profile
2024 HX620 SBA (HX620)

AXLE CONFIG: 6X4
APPLICATION: Low-Boy Tractor
MISSION: Requested GCWR: 80000. Calc. GCWR: 140000. Calc. GVWR: 70240
 Calc. Start / Grade Ability: 25.41% / 2.20% @ 55 MPH
 Calc. Geared Speed: 83.8 MPH

DIMENSION: Wheelbase: 238.00, CA: 169.00, Axle to Frame: 57.00

ENGINE, DIESEL: {Cummins X15 500 V} Productivity Series, EPA 2021, 500HP @ 1900 RPM, 1850 lb-ft Torque @ 950 RPM, 2000 RPM Governed Speed, 512 Peak HP (Max)

TRANSMISSION, AUTOMATIC: {Allison 4500 RDS} 6th Generation Controls, Wide Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, On/Off Highway

CLUTCH: Omit Item (Clutch & Control)

AXLE, FRONT NON-DRIVING: {Meritor MFS-14-143A} Wide Track, I-Beam Type, 14,600-lb Capacity

AXLE, REAR, TANDEM: {Meritor RT-46-164P} Single Reduction, Standard Width, 46,000-lb Capacity, with Lube Oil Pump, Driver Controlled Locking Differential in Forward-Rear and Rear-Rear Axle, 200 Wheel Ends Gear Ratio: 4.30

CAB: Conventional, Day Cab

TIRE, FRONT: (2) 11R22.5 Load Range H XZE2 (MICHELIN), 501 rev/mile, 75 MPH, All-Position

TIRE, REAR: (8) 11R22.5 Load Range H XDN2 (MICHELIN), 497 rev/mile, 75 MPH, Drive

SUSPENSION, REAR, TANDEM: {Hendrickson RT-463} Walking Beam, 46,000-lb Capacity, 54" Axle Spacing, Multileaf Springs, with Bronze Center Bushings

PAINT: Cab schematic 100LZ
 Location 1: 9219, Winter White (Std)
 Chassis schematic N/A

<u>Code</u>	<u>Description</u>
HX62000	Base Chassis, Model HX620 SBA with 238.00 Wheelbase, 169.00 CA, and 57.00 Axle to Frame.
1AMR	CROSSMEMBER, FRAME TIE for Standard Duty
1AND	AXLE CONFIGURATION {Navistar} 6x4
	<u>Notes</u> : Pricing may change if axle configuration is changed.
1CGC	FRAME RAILS Heat Treated Alloy Steel (120,000 PSI Yield); 12.250" x 3.380" x 0.375" (304.8mm x 85.6mm x 9.5mm); 550.0" (13970mm) Maximum OAL
1LEH	LICENSE PLATE HOLDER Single Plate, Swing Type, Mounted Below Front Bumper
1LTE	BUMPER, FRONT Contoured, Aluminum, Stainless Steel Clad, Heavy Duty
1WRW	TOW HOOK, FRONT (2) Frame Mounted; 80,000-lb. Total Capacity
1WXM	WHEELBASE RANGE 238" (605cm) Through and Including 295" (750cm)
2ASM	AXLE, FRONT NON-DRIVING {Meritor MFS-14-143A} Wide Track, I-Beam Type, 14,600-lb Capacity
3ADE	SUSPENSION, FRONT, SPRING Parabolic Taper Leaf, Shackle Type, 16,000-lb Capacity, with Shock Absorbers
4092	BRAKE SYSTEM, AIR Dual System for Tractor Applications
	<u>Includes</u> : BRAKE LINES Color and Size Coded Nylon : GLAD HANDS (2) One for Service and One for Emergency; Trailer Hoses from Cab : HAND CONTROL VALVE, AIR Mounted in Instrument Panel : HAND CONTROL VALVE, AIR Mounted on Steering Column : PARKING BRAKE CONTROL Yellow and Red Knobs, Located on Instrument Panel : PARKING BRAKE VALVE Combination Valve for Tractor and Trailer : QUICK RELEASE VALVE On Rear Axle for Spring Brake Release: 1 for Forward Rear Axle : TRACTOR PROTECTION VALVE
4808	HOSE TENDER Slide Bar with Single Spring Bracket, Bar Extended 4" from Cab
4AZY	AIR BRAKE ABS {Bendix AntiLock Brake System} 6-Channel (6 Sensor/6 Modulator) Electronic Stability Program, with Automatic Traction Control
4EDM	AIR DRYER {Bendix AD-HF} with Heater, Includes Pressure Protection Circuits, Safety Valve, Integral Purge Tank, Governor Pressure Settings 110 psi Cut-In/130 psi Cut-Out, Integrated PuraGuard Coalescing Filtration
4GBM	BRAKE, PARKING Manual Push-Pull Pneumatic Parking Brake
4JBR	BRAKES, AIR CAM, PUSHER AXLE S-Cam; 15" x 4.0"; Includes MGM 20 Sq.In. Brake Chambers; Furnished with One Pusher Lift Axle
4SPA	AIR COMPRESSOR {Cummins} 18.7 CFM
4VKC	AIR DRYER LOCATION Mounted Inside Left Rail, Back of Cab
4VKK	AIR TANK LOCATION (2) Mounted Under Battery Box, Outside Right Rail, Back of Cab, Perpendicular to Rail
4WRJ	AIR COMPRESSOR DISCHARGE LINE 1/2" ID to 5/8" ID Teflon Hose, with Stainless Steel Braid; to Air Dryer
4WXR	DRAIN VALVE (2) {Berg} with Pull Chains, for Air Tanks
4XCM	BRAKES, FRONT {Meritor EX+L} Air Disc Type, Size 22.5", 14,700-lb Capacity
4XCP	BRAKES, REAR {Meritor EX+L} Air Disc Type, Size 22.5", 23,000-lb Capacity per Axle
4XDW	BRAKE CHAMBERS, FRONT AXLE 18 SqIn, for Air Disc Brakes
4XEB	BRAKE CHAMBERS, REAR AXLE 20/24 SqIn Spring Brake, Double Diaphragm, for Air Disc Brakes

Code	Description
4XEE	PARK BRAKE CHAMBERS, ADDITIONAL (2) Spring Brake Type
5710	STEERING COLUMN Tilting and Telescoping
5CAW	STEERING WHEEL 4-Spoke; 18" Dia., Black
5PTB	STEERING GEAR (2) {Sheppard M100/M80} Dual Power
6DGX	DRIVELINE SYSTEM {Dana Spicer} Service Free SPL250 Main Driveline with SPL170 Interaxle Shaft, for 6x4
7BEU	AFTERTREATMENT COVER Aluminum
7BLY	EXHAUST SYSTEM Horizontal Aftertreatment System, Frame Mounted Right Side Under Cab, for Single Vertical Tail Pipe, Cab Mounted Right Side
7SAP	ENGINE COMPRESSION BRAKE {Cummins} Interbrake For Cummins Signature/ISX/X15 Engines; Furnished with Engine
7WBA	TAIL PIPE (1) Turnback Type, Bright
7WDM	EXHAUST HEIGHT 10'
7WDN	MUFFLER/TAIL PIPE GUARD (1) Aluminum
7WZX	SWITCH, FOR EXHAUST 3 Position, Momentary, Lighted Momentary, ON/CANCEL, Center Stable, INHIBIT REGEN, Mounted in IP Inhibits Diesel Particulate Filter Regeneration When Switch is Moved to ON While Engine is Running, Resets When Ignition is Turned OFF
8000	ELECTRICAL SYSTEM 12-Volt, Standard Equipment
	<u>Includes</u>
	: HAZARD SWITCH Push On/Push Off, Located on Instrument Panel to Right of Steering Wheel
	: HEADLIGHT DIMMER SWITCH Integral with Turn Signal Lever
	: PARKING LIGHT Integral with Front Turn Signal and Rear Tail Light
	: STARTER SWITCH Electric, Key Operated
	: STOP, TURN, TAIL & B/U LIGHTS Dual, Rear, Combination with Reflector
	: WINDSHIELD WIPER SWITCH 2-Speed with Wash and Intermittent Feature (5 Pre-Set Delays), Integral with Turn Signal Lever
	: WINDSHIELD WIPERS Single Motor, Electric, Cowl Mounted
8541	HORN, ELECTRIC (2) Disc Style
8836	HORN, AIR (2) Single Bell, Organ Tone, Extra Long, Chrome
8GHU	ALTERNATOR {Delco Remy 28SI} Brush Type, 12 Volt, 200 Amp Capacity, Pad Mount, with Remote Sense
8MJV	BATTERY SYSTEM {Fleetrite} Maintenance-Free, (4) 12-Volt 3800CCA Total, Top Threaded Stud
8RBZ	SPEAKER, AUXILIARY, CB RADIO with Jack for CB; Mounted Left Side Above Driver's Door
8RMZ	SPEAKERS (2) 6.5" Dual Cone Mounted in Both Doors, (2) 5.25" Dual Cone Mounted in Both B-Pillars
8RNB	CB RADIO Accommodation Package, Header Mounted, Feeds from Accessory Side of Ignition Switch, Includes Power Source, One Antenna and Antenna Base with Wiring on Left Side Mirror
8RPB	RADIO, AUXILIARY CONTROLS Mounted in Steering Wheel, Radio Function Control Switch, Includes Volume Up/Down, Mute, Forward/Back and Bluetooth Answer/Disconnect
8RPR	ANTENNA for Increased Roof Clearance Applications
8RPS	RADIO AM/FM/WB/Clock/Bluetooth/USB Input/Auxiliary Input
8THH	AUX. TRAILER SOCKET {Phillips} 7-Way, with Battery Fed Circuit to Center Pin, with 25 Amp Fuse and Relay Controlled by Switch (with Indicator Light) Controlled by Accessory Side of Key Switch, Switch Mounted on Instrument Panel

<u>Code</u>	<u>Description</u>
8VUK	BATTERY BOX Aluminum, with Plastic Cover, 18" Wide, 2-4 Battery Capacity, Mounted Right Side Back of Cab
8WBW	JUMP START STUD Remote Mounted
8WEZ	TURN SIGNAL SWITCH Self-Canceling
8WGL	WINDSHIELD WIPER SPD CONTROL Force Wipers to Slowest Intermittent Speed When Park Brake Set and Wipers Left on for a Predetermined Time
8WGV	WORK LIGHT WIRING for (2) Customer Installed Work Lights, Mounted on Top Rear Corners of Cab, with Switch on Dash, Switch Will Also Activate Standard Work Light
8WPZ	TEST EXTERIOR LIGHTS Pre-Trip Inspection will Cycle all Exterior Lamps Except Back-up Lights
8WRB	HEADLIGHTS ON W/WIPERS Headlights Will Automatically Turn on if Windshield Wipers are turned on
8WXB	HEADLIGHT WARNING BUZZER Sounds When Head Light Switch is on and Ignition Switch is in "Off" Position
8WXG	STARTING MOTOR {Mitsubishi Electric Automotive America 105P} 12-Volt, with Soft-Start
8XAH	CIRCUIT BREAKERS Manual-Reset (Main Panel) SAE Type III with Trip Indicators, Replaces All Fuses
8XBK	SWITCH, AUXILIARY Switch 40 amp Circuit for Customer Use; Includes Wiring Connection at Power Distribution Center (PDC) and Control in Cab
8XJH	FOG LIGHTS (2) Clear Lens, LED, Rectangular, with White Light Source
8XKC	HEADLIGHTS Halogen, with Daytime Running Lights, Automatic Twilight Controlled
8XKY	USB PORT (1) Located in the Instrument Panel
8XLW	LIGHT, WORK LED, Pedestal Mounted, Back of Cab, with Switch on Instrument Panel
8XMA	BEACON MOUNTING BRACKET (2) Stainless, For Customer Furnished Beacon; Includes Wiring and Dash Mounted Switch
8XNB	BATTERY DISCONNECT SWITCH 300 Amp, Disconnects Power to Power Distribution Center (PDC), Does Not Disconnect Charging Circuits, Locks with Padlock, Cab Mounted
9585	FENDER EXTENSIONS Rubber
9AAB	LOGOS EXTERIOR Model Badges
9AAE	LOGOS EXTERIOR, ENGINE Badges
9ASE	FRONT END Tilting, Composite
9HCN	GRILLE Chrome Vertical Accent Bars, with Black Mesh
9WAC	BUG SCREEN Mounted Behind Grille
10060	PAINT SCHEMATIC, PT-1 Single Color, Design 100
10761	PAINT TYPE Base Coat/Clear Coat, 1-2 Tone
10AGB	COMMUNICATIONS MODULE Telematics Device with Over the Air Programming; Includes Five Year Data Plan and International 360
10KKV	FIFTH WHEEL, AIR SLIDE {Holland FW35J836XL00} 36" Slide, 8" Above Top of Frame, Left Hand Release
10NZL	SPECIAL RATING, GVWR Limited to 80,000-lb GVWR
10WCY	SAFETY TRIANGLES
10WPU	MUD FLAP HOLDER Spring Loaded, Bright Finish, 45-Degree End, with Red and White Reflective Tape, Less Flaps

<u>Code</u>	<u>Description</u>
10WSX	MUD FLAPS, REAR Black Poly, with International Logo, Less Holders
11001	CLUTCH Omit Item (Clutch & Control)
12703	ANTI-FREEZE Red, Extended Life Coolant; To -40 Degrees F/ -40 Degrees C, Freeze Protection
12ETN	ENGINE, DIESEL {Cummins X15 500 V} Productivity Series, EPA 2021, 500HP @ 1900 RPM, 1850 lb-ft Torque @ 950 RPM, 2000 RPM Governed Speed, 512 Peak HP (Max)
12THT	FAN DRIVE {Horton Drivemaster} Two-Speed Type, Direct Drive, with Residual Torque Device for Disengaged Fan Speed <u>Includes</u> : FAN Nylon
12VCA	AIR CLEANER Single Element, with Pre-Cleaner, Engine Mounted
12VGU	ENGINE CONTROL, REMOTE MOUNTED for X15 Engines
12VJJ	EMISSION, CALENDAR YEAR {Cummins X15} EPA, OBD and GHG Certified for Calendar Year 2023
12WBR	FAN OVERRIDE Manual; with Electric Switch on Instrument Panel, (Fan On with Switch On)
12WGA	HOSE CLAMPS, RADIATOR HOSES , Mechanical Type; with Constant-Tension Functionality
12WTA	FAN DRIVE SPECIAL EFFECTS Fan Cooling Ring with Fan Shroud Effects, Engine Mounted
12WYW	BLOCK HEATER, ENGINE {Phillips} 120V/1500W, with "Y" Cord for 120V/300W Oil Pan Heater <u>Includes</u> : BLOCK HEATER SOCKET Receptacle Type; Mounted below Drivers Door
12WYZ	RADIATOR DRAIN & FILL FITTING SPECIAL; To Vacuum Out or Fill the Cooling System from the Bottom of Radiator, for Use with Quick-Connect Radiator Drain Tool or Shop Coolant Evacuation-Fill System
12WZJ	CARB IDLE COMPLIANCE Low NOx Idle Engine, Complies with California Clean Air Regulations; Includes "Certified Clean Idle" Decal located on Driver Door
12XBC	RADIATOR Aluminum, Welded, Down Flow, Front to Back System, 1325 SqIn, with 806 SqIn Charge Air Cooler <u>Includes</u> : RADIATOR HOSES Premium, Rubber
12XCP	CARB EMISSION WARR COMPLIANCE for Cummins X15 Engines Less than or Equal to 500 HP
13BEK	TRANSMISSION, AUTOMATIC {Allison 4500 RDS} 6th Generation Controls, Wide Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, On/Off Highway
13WET	TRANSMISSION SHIFT CONTROL Column Mounted Stalk Shifter, Not for Use with Allison 1000 & 2000 Series Transmission
13WHL	OIL COOLER, AUTO TRANSMISSION Remote Mounted
13WLM	TRANSMISSION OIL Synthetic; 63 thru 76 Pints
13WUA	AUTOMATIC NEUTRAL Allison Transmission Shifts to Neutral When Parking Brake is Engaged and Remains in Neutral When Parking Brake is Disengaged
13WUS	ALLISON SPARE INPUT/OUTPUT for Rugged Duty Series (RDS) and Regional Haul Series (RHS), General Purpose Trucks, Package Number 223, Modified for Single Input Auto Neutral
13WVV	NEUTRAL AT STOP Allison Transmission Shifts to Neutral When Service Brake is Depressed and Vehicle is at Stop; Remains in Neutral Until Service Brake is Released
13WYU	SHIFT CONTROL PARAMETERS {Allison} 3000 or 4000 Series Transmissions, Performance Programming

<u>Code</u>	<u>Description</u>
13XAA	PTO CONTROL, DASH MOUNTED For Customer Provided PTO; Includes Switch, Electric/Air Solenoid, Piping and Wiring
14862	PDL WARNING BUZZER Power Divider Lock
14AJX	SHIELD, TEMPERATURE SENSOR Mounted to Rear Axle
14HRE	AXLE, REAR, TANDEM {Meritor RT-46-164P} Single Reduction, Standard Width, 46,000-lb Capacity, with Lube Oil Pump, Driver Controlled Locking Differential in Forward-Rear and Rear-Rear Axle, 200 Wheel Ends . Gear Ratio: 4.30
14RAR	AXLE, LIFT, CONTROLS for One Lift Axle; Controls Inside and Outside Cab; Includes Lift/Lower Switch Inside Cab on Dash; Pressure Gauge and Pressure Regulator Outside Cab
14UAG	AXLE SPACING, FIRST PUSHER 62" Ahead of Drive Axle
14UHK	SUSPENSION, REAR, TANDEM {Hendrickson RT-463} Walking Beam, 46,000-lb Capacity, 54" Axle Spacing, Multileaf Springs, with Bronze Center Bushings
14WBN	DIFF. SWITCH CONTROLS Two Independent Switches for Control Traction Differentials on Tandem Rear Axles, Mounted on Dash
14WNH	AXLE, PUSHER, LIFT TYPE {Watson & Chalin SL1190SSR Tru-Trk Alumilite} 13,500-lb Capacity, One Self-Steer Axle
14WZY	AXLE SHAFT MODIFICATION Axle Shaft Flanges Modified for 0.625" Diameter Drive Studs with Solid Type Cone-Locks
15LKX	FUEL/WATER SEPARATOR {Davco Fuel Pro 382} 12 VDC Electric Heater, Includes Pre-Heater, Includes Water-in-Fuel Sensor
15MAD	FUEL HEATER {Cummins} Omit Plumbing for TRV on Cummins Engines
15SWK	FUEL TANK Top Draw, Non-Polished Aluminum, 26" Dia, 120 US Gal (454L), Mounted Left Side, Under Cab
15WDY	DEF TANK 15.9 US Gal (60L) Capacity, Frame Mounted Outside Left Rail, Under Cab
16030	CAB Conventional, Day Cab
	<u>Includes</u>
	: CAB REAR SUSPENSION Air
	: CLEARANCE/MARKER LIGHTS (5) LED Roof Mounted
	: COAT HOOK, CAB Located on Rear Wall, Centered Above Rear Window
	: CONSOLE, CENTER Includes Two Cup Holders and One Additional Storage Area
	: CONSOLE, OVERHEAD Molded Plastic with Dual Storage Pockets, Retainer Nets and CB Radio Pocket; Located Above Driver and Passenger
	: COURTESY LIGHT (2) Driver and Passenger Door Mounted
	: DOME LIGHT, CAB Rectangular, Door and Instrument Panel Mounted Switch Activated, Timed Theater Dimming, Center Mounted, Integral to Console
	: FLOOR COVERING Rubber, Black
	: GLASS, ALL WINDOWS Tinted
	: GRAB HANDLE, CAB INTERIOR (1) "A" Pillar Mounted, Passenger Side
	: GRAB HANDLE, CAB INTERIOR (4) "B" Pillar and Door Mounted, Two Each Side
	: READING LIGHT, CAB Located in Overhead Console
	: STORAGE POCKET, DOOR (2) Full Length, Driver and Passenger Door
16ATC	AUTOMATIC CLIMATE CONTROL Automatically Maintains Cabin Comfort Based on Selected Temperature
16BAM	AIR CONDITIONER with Integral Heater and Defroster
	<u>Includes</u>
	: HOSE CLAMPS, HEATER HOSE Mubea Constant Tension Clamps
16GEG	GAUGE CLUSTER Premium Level; English with English Electronic Speedometer

<u>Code</u>	<u>Description</u>
	<u>Includes</u> : GAUGE CLUSTER DISPLAY: Base Level (3" Monochromatic Display), Premium Level (5" LCD Color Display); Odometer, Voltmeter, Diagnostic Messages, Gear Indicator, Trip Odometer, Total Engine Hours, Trip Hours, MPG, Distance to Empty/Refill for : GAUGE CLUSTER Speedometer, Tachometer, Engine Coolant Temp, Fuel Gauge, DEF Gauge, Oil Pressure Gauge, Primary and Secondary Air Pressure : WARNING SYSTEM Low Fuel, Low DEF, Low Oil Pressure, High Engine Coolant Temp, Low Battery Voltage (Visual and Audible), Low Air Pressure (Primary and Secondary)
16HCS	GAUGE, TEMPERATURE, AMBIENT Sensor Wiring with Display Unit Mounted in Cluster
16HGG	GAUGE, OIL TEMP, ENGINE
16HGL	GAUGE, OIL TEMP, REAR AXLE
16HGN	GAUGE, AIR APPLICATION
16HHE	GAUGE, AIR CLEANER RESTRICTION {Filter-Minder} with Black Bezel, Mounted in Instrument Panel
16HKB	GAUGE, MANIFOLD PRESSURE Data Link Driven; Mounted in Instrument Panel, Includes Controller Module
16HKT	IP CLUSTER DISPLAY On Board Diagnostics Display of Fault Codes in Gauge Cluster
16LWP	SEAT, DRIVER {ISRI} Series 400, Air Suspension, High Back, Synthetic Leather, Double Chamber Lumbar, Heat, Inboard Armrest, Suspension Cover, Fore/Aft Isolator, Cushion Extension, Seat Tilt, Memory Quickdown
16SDC	GRAB HANDLE, EXTERIOR (2) Chrome, Towel Bar Type, with Anti-Slip Rubber Inserts, for Cab Entry Mounted Left and Right Side at B-Pillar
16SNS	MIRRORS (2) Aero Pedestal, Power Adjust, Heated, Black Heads and Arms, 6.5" x 14" Flat Glass, Includes 6.5" x 6" Convex Mirrors, for 102" Load Width
	<u>Notes</u> : Mirror Dimensions are Rounded to the Nearest 0.5"
16SRT	SEAT, PASSENGER {ISRI} Series 400, Air Suspension, High Back, Synthetic Leather, Double Chamber Lumbar, Heat, Inboard Armrest, Suspension Cover, Fore/Aft Isolator, Cushion Extension, Seat Tilt, Memory Quickdown
16UZJ	STORAGE, REAR WALL Storage Pocket, Located on Back Wall Between Driver and Passenger Seats
16VLV	MONITOR, TIRE PRESSURE Omit
16VVB	CAB INTERIOR TRIM Diamond Elite, for Day Cab
	<u>Includes</u> : DOOR TRIM, INTERIOR Bright Handle : INSTRUMENT PANEL TRIM Black with Woodgrain Accent, Black Gauges with Chrome Bezels : SUN VISOR (4) Padded Vinyl, 2 Moveable (Front-to-Side) Primary Visors and 2 Flip-down Auxiliary Visors; Vanity Mirrors and Toll Ticket Straps Driver and Passenger Sides
16WHJ	HOSE CLAMPS, HEATER HOSE {Breeze} Belleville Washer Type
16WJU	WINDOW, POWER (2) and Power Door Locks, Left and Right Doors, Includes Express Down Feature
16WLM	HOURMETER, PTO for Customer Provided PTO; with Indicator Light and Hourmeter in Gauge Cluster Includes Return Wire for PTO Feedback Switch
16WLS	FRESH AIR FILTER Attached to Air Intake Cover on Cowl Tray in Front of Windshield Under Hood
16XBZ	MODESTY PANEL Painted Body Color, with Amber Lens LED Lights, for Day Cab
16XCM	CAB DOOR LOCKS Power, Driver Side Only; Non-Locking When Door Open
16XJP	INSTRUMENT PANEL Wing Panel

<u>Code</u>	<u>Description</u>
16XTM	ACCESS, CAB Aluminum, Driver & Passenger Sides, Two Steps per Door, for use with Day Cab or Sleeper Cab
16XWV	SUNSHADE, EXTERIOR Aerodynamic, Painted Roof Color, with Integral LED Clearance/Marker Lights
16XYW	CAB SOUND INSULATION Day Cab Interior Noise Reduction Package
27DWR	WHEELS, FRONT {Accuride 43644} DISC; 22.5x8.25 Rims, Standard Polish Aluminum, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs
28DUK	WHEELS, REAR {Accuride 29169} DUAL DISC; 22.5x8.25 Rims, Powder Coat Steel, 5-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with .472" Thick Increased Capacity Disc and Steel Hubs
29WLK	WHEEL BEARING, FRONT, LUBE {EmGard FE-75W-90} Synthetic Oil
34ACJ	WHEELS, LIFT AXLE PUSHER {Accuride 51408} Single Wheels, For One Lift Axle; 22.5x8.25 Rims, Powder Coat Steel, 2-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut << Pricing Includes Standard Tires >>
7482133264	(8) TIRE, REAR 11R22.5 Load Range H XDN2 (MICHELIN), 497 rev/mile, 75 MPH, Drive
7482133269	(2) TIRE, FRONT 11R22.5 Load Range H XZE2 (MICHELIN), 501 rev/mile, 75 MPH, All-Position
7652523253	(2) TIRE, PUSHER 255/70R22.5 Load Range H XZE (MICHELIN), 563 rev/mile, 75 MPH, All-Position
810000	FIFTH WHEEL LOCATION On Rear Axle Centerline
OBD001	FRAME RAILS WITH TAPERED REAR Omit Tapered Rear Frame Rail's
OBD002	SUSPENSION, REAR, AIR, TANDEM Approve RT463

Services Section:

40132	WARRANTY Standard for HX520, HX620, Effective with Vehicles Built January 1, 2021 or Later, CTS-2015B
40NSE	CARB COMPANION PLAN {Navistar} for CARB A26 and X15 Engines

Body/Allied Equipment

<u>Code</u>	<u>Description</u>
Goods Purchased	
<u>Code</u>	<u>Description</u>
	G-797H - MY2023 and MY2024 Commodity Surcharges (BASED on October 2022 Price Pages) Building on or after 11/1/22 HX

There is no weight study for this proposal.

GVWR Component Rating(s)

Ratings	Primary			Adjusted By			GAWR* (lbf)	GVWR** (lbf)
	ATA Class	Feature	Rating (lbf)	ATA Class	Feature	Rating (lbf)		
Front Component Ratings	AXLE, FRONT NON-DRIVING	0002ASM	14600					
	BRAKES, FRONT	0004XCM	14700					
	SUSPENSION, FRONT, SPRING	0003ADE	16000					
	WHEELS, FRONT	0027DWR	14780	TIRE, FRONT	0748213	13220		
Front GAWR							13220	
Pusher Component Ratings	WHEELS, LIFT AXLE PUSHER	0034ACJ	14800	TIRE, PUSHER LIFT AXLE	0765252	11020		
	AXLE, PUSHER, LIFT TYPE	0014WNH	13500					
Pusher GAWR							11020	
Rear Component Ratings	BRAKES, REAR	0004XCP	46000					
	BRAKE SYSTEM, AIR	0004092	40000	BRAKES, REAR	0004XCP	46000		
	SUSPENSION, REAR, TANDEM	0014UHK	46000					
	WHEELS, REAR	0028DUK	55560	TIRE, REAR	0748213	48040		
	AXLE, REAR, TANDEM	0014HRE	46000					
Rear GAWR							46000	
Overall Vehicle Limitations	SPECIAL RATING, GVWR	0010NZL	80000					
	TRANSMISSION, AUTOMATIC	0013BEK	999999					
GVWR Based on Axle Ratings***								70240
Calculated GVWR								70240

GCWR Component Rating(s)

Ratings	Primary			Adjusted By			GCWR**** (lbf)
	ATA Class	Feature	Rating (lbf)	ATA Class	Feature	Rating (lbf)	
GCWR Component Rating	TRANSMISSION, AUTOMATIC	0013BEK	999999				
	ENGINE, DIESEL	0012ETN	140000				
	FIFTH WHEEL, AIR SLIDE	0010KKV	140000				
	AXLE, REAR, TANDEM	0014HRE	160000				
Calculated GCWR							140000

* GAWR (Gross Axle Weight Rating) is the rating capacity of an axle system which include wheels, tires, axles, brakes, springs, and suspensions.
 ** GVWR (Gross Vehicle Weight Rating) is the maximum amount that a loaded vehicle can weight.
 *** GVWR Based on Axle Ratings = Front GAWR + Rear GAWR. Overall vehicle weight limitations are not taken into account.
 **** GCWR (Gross Combined Weight Rating) is the maximum weight of a tractor and trailer.

(0012ETN)

ATTACHMENTS: 0012WBR 0012THT 0007WZX 0007SAP 0016BAM

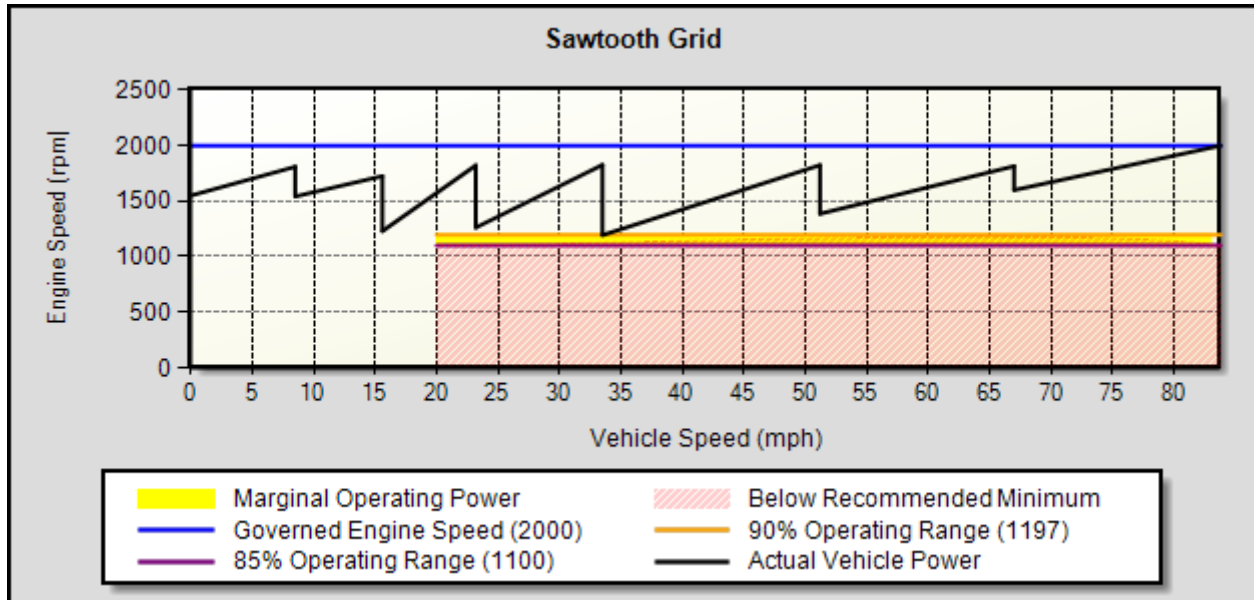
<u>Parameter</u>	<u>Value</u>	<u>UOM</u>
Max Accelerator Vehicle Speed	75	MPH
Road Speed Governor Upper Droop	0	MPH
Road Speed Governor Lower Droop	3	MPH
Driver Initiated Override (DIO)	N, DISABLE FEATURE OR FUNCTION	N/A
DIO Maximum Road Speed Delta	3	MPH
DIO Maximum Distance	30	MILES
Max Engine Speed No Veh Speed Sensr	1766	RPM
Road Speed Governor Type	1, TRADITIONAL	N/A
Fuel Economy Adjustment Factor	0, BALANCED FUEL ECONOMY	N/A
Gear Down Protection Enable	Y, ENABLE FEATURE OR FUNCTION	N/A
GDP - Heavy Load Vehicle Speed	62	MPH
GDP - Light Load Vehicle Speed	57	MPH
Driver Reward Enable	N, DISABLE FEATURE OR FUNCTION	N/A
Driver Reward Mode	2, ROAD SPEED GOVERNOR & CRUISE CONTROL	N/A
Fuel Economy - Expected Level	7.00	MPG
Fuel Economy - Good Level	7.25	MPG
Fuel Economy - Best Level	7.50	MPG
% Idle Time - Expected Level	20	%
% Idle Time - Good Level	15	%
% Idle Time - Best Level	10	%
Speed Reward - Expected Level	0	MPH
Speed Reward - Good Level	0	MPH
Speed Reward - Best Level	0	MPH
Speed Reward - Penalty Level	0	MPH
Idle Speed Adjustment Enable	N, DISABLE FEATURE OR FUNCTION	N/A
Low Idle Speed	600	RPM
Idle Shutdown Enable	Y, ENABLE FEATURE OR FUNCTION	N/A
ISD Time Before Shutdown	30.0	MIN
ISD Percent Engine Loading	50	%
ISD In PTO	N, DISABLE FEATURE OR FUNCTION	N/A
ISD Manual Override	N, DISABLE FEATURE OR FUNCTION	N/A
ISD With Parking Brake Set	N, DISABLE FEATURE OR FUNCTION	N/A
ISD Ambient Temperature Override	N, DISABLE FEATURE OR FUNCTION	N/A
ISD Cold Ambient Air Temperature	30	F
ISD Intermediate Ambient Air Temp	40	F
ISD Hot Ambient Air Temperature	81	F
ISD Manual Override Inhibit Zone En	N, DISABLE FEATURE OR FUNCTION	N/A
ISD Hot Ambient Automatic Override	Y, ENABLE FEATURE OR FUNCTION	N/A
ISD Engine Coolant Temp Threshold	53	F
Cruise Control Enable	Y, ENABLE FEATURE OR FUNCTION	N/A
CC Maximum Vehicle Speed	75	MPH
CC Save Set Speed	N, DISABLE FEATURE OR FUNCTION	N/A
CC Upper Droop	0.0	MPH
CC Lower Droop	3.0	MPH
CC Auto Resume	N, DISABLE FEATURE OR FUNCTION	N/A
CC Ovrspd Retard Activation Enable	Y, ENABLE FEATURE OR FUNCTION	N/A
CC Overspeed for Max Retarder	5.0	MPH
CC Overspeed for Min Retarder	3.0	MPH
CC Engine Brake Swtch Bypass Enable	N, DISABLE FEATURE OR FUNCTION	N/A
Retarder - Min Vehicle Speed	2	MPH
Retarder - Delay Time	1.0	SEC
Retarder - Service Brake Activation	Y, ENABLE FEATURE OR FUNCTION	N/A
Force Fan On With Retarder	N, DISABLE FEATURE OR FUNCTION	N/A
Engine Fan Min On Time For AC	30	SEC
Remote Accelerator Enable	N, DISABLE FEATURE OR FUNCTION	N/A

Remote Accelerator Mode	1, REMOTE ACCELERATOR PEDAL OR LEVER WITH TRANS VERIFICATION	N/A
PTO Enable	N, DISABLE FEATURE OR FUNCTION	N/A
PTO In Cab Mode	Y, ENABLE FEATURE OR FUNCTION	N/A
Remote PTO Enable	N, DISABLE FEATURE OR FUNCTION	N/A
Remote Station PTO Enable	N, DISABLE FEATURE OR FUNCTION	N/A
PTO Max Engine Speed	2000	RPM
PTO Min Engine Speed	600	RPM
PTO Maximum Engine Load	800	LB-FT
PTO Max Vehicle Speed	2	MPH
PTO Accelerator Override	N, DISABLE FEATURE OR FUNCTION	N/A
PTO Accel Override Max Engine Speed	2030	RPM
PTO Clutch Override	N, DISABLE FEATURE OR FUNCTION	N/A
PTO Service Brake Override	Y, ENABLE FEATURE OR FUNCTION	N/A
PTO Parking Brake Interlock Mode	3, PTO PRK BRK INT TYPE SET TO ALL	N/A
PTO Transmission Neutral Interlock	N, DISABLE FEATURE OR FUNCTION	N/A
PTO Eng Spd Limit w/VSS Limit	N, DISABLE FEATURE OR FUNCTION	N/A
PTO Ignore Vehicle Speed Sensor	N, DISABLE FEATURE OR FUNCTION	N/A
PTO Resume Switch Speed	925	RPM
PTO Set Switch Speed	850	RPM
PTO Additional Switch Speed	1000	RPM
PTO Ramp Rate	100	RPM/SEC
Remote PTO Number of Speed Settings	1	N/A
Remote PTO Speed Setting 1	600	RPM
Remote PTO Speed Setting 2	600	RPM
Remote PTO Speed Setting 3	600	RPM
Remote PTO Speed Setting 4	600	RPM
Remote PTO Speed Setting 5	600	RPM
Remote Station PTO Resume Sw Spd	750	RPM
Remote Station PTO Set Switch Speed	700	RPM
Remote Station PTO Addition Sw Spd	800	RPM
Transmission Driven PTO	N, DISABLE FEATURE OR FUNCTION	N/A
Transmission Driven PTO Type	2, TRANSMISSION DRIVEN IRREGULAR LOAD	N/A
Powertrain Protection Enable	N, DISABLE FEATURE OR FUNCTION	N/A
Max Torque Allow By Axle/Driveshaft	32744	LB-FT
Max Torque in Top Gear Range	5000	LB-FT
Max Torque in Int. Gear Range	5000	LB-FT
Max Torque in Low Gear Range	5000	LB-FT
Max Torque w/o Vehicle Speed	5000	LB-FT
Lowest Gear of Top Gear Range	2.00	N/A
Lowest Gear of Int. Gear Range	10.00	N/A
Lowest Gear of Low Gear Range	16.00	N/A
Engine Protection Shutdown	Y, ENABLE FEATURE OR FUNCTION	N/A
Engine Protection Restart Inhibit	Y, ENABLE FEATURE OR FUNCTION	N/A
Engine Prot Coolant Level Shutdown	N, DISABLE FEATURE OR FUNCTION	N/A
Sudden Veh Speed Decel Threshold	6.96	MPH
Trip Information Vehicle Ovrsped1	82	MPH
Trip Information Vehicle Ovrsped2	84	MPH
Veh Speed Sensor Anti Tamper Level	1, HIGH LEVEL	N/A
Maintenance Monitor Enable	N, DISABLE FEATURE OR FUNCTION	N/A
Maintenance Monitor Operating Mode	0, MAINTENANCE MONITOR AUTOMATIC MODE OF OPERATION	N/A
Maintenance Monitor Alert Percent	90	%
Maintenance Monitor Distance	15000	MILES
Maintenance Monitor Fuel	9090	GALLONS
Maintenance Monitor Time	800	HOURS
Maintenance Monitor Interval Factor	2.00	N/A
Master Password	000000	N/A
Adjustment Password	000000	N/A

Reset Password	000000	N/A
Predictive Gear Shifting	N, DISABLE FEATURE OR FUNCTION	N/A

These Electronic Parameters have been successfully finalized

ENGINE/TRANSMISSION MATCHING



Sawtooth Details

Gear	Trans Ratio	Upshift Power Avail		Govern Power Avail		Peak Power Comparison			Warn Msg
		Veh Spd (MPH)	Eng Spd (RPM)	Veh Spd (MPH)	Eng Spd (RPM)	Gear Step (%)	85% Range (%)	90% Range (%)	
1C	4.70	0.0	1550	8.5	1810	N/A	82	67	
2C	2.21	8.5	1542	15.6	1726	N/A	82	67	
2L	2.21	15.6	1231	23.2	1823	N/A	82	67	
3L	1.53	23.2	1262	33.5	1827	N/A	82	67	
4L	1.00	33.5	1194	51.2	1825	N/A	82	67	
5L	0.76	51.2	1387	67.0	1815	N/A	82	67	
6L	0.67	67.0	1600	83.8	2000	N/A	82	67	

@ - WHEELSLIP CAN OCCUR AT THE GRADE SHOWN. THE VEHICLE IS CAPABLE OF INCREASED GRADEABILITY IF MORE WEIGHT IS PLACED ON THE DRIVE AXLES.

STEADY STATE PERFORMANCE

Performance Results	Gear	Veh Spd (mph)	Eng Spd (rpm)	Fuel Econ (mpg)	Grade (%)	Notes
LEVEL ROAD MAXIMUM SPEED	6L	83.8	2000	4.30	0.00	
HI GEAR SPEED @ RATED RPM	----	----	----	----	----	
55.0 MPH STEADY-STATE	6L	55.0	1313	6.79	2.20	
TYPICAL OPERATING SPEED	6L	65.0	1551	5.91	1.69	- Calculated Grade Ability/Fuel Economy

VEHICLE ORDER CODING ERRORS MAY RESULT IF THE "LEVEL ROAD MAX SPEED" VALUE EXCEEDS THE "HI GEAR SPEED @ RATED RPM" AND IS USED AS THE ENGINE PROGRAMMABLE VEHICLE SPEED LIMIT.

IF THE RESULTS CONTAIN "----", VEHICLE CANNOT ATTAIN THAT SPEED.

IF THE RESULTS CONTAIN "*****", THE ENGINE USED DOES NOT HAVE A FUEL MAP. FUEL ECONOMY CANNOT BE PREDICTED.

Recommendations / General Information

IDLE FUEL RATE : 1.18 GALS/HR @ 600.0 RPM
TORQUE CONVERTER : TC-571 STALL RATIO: 1.62

Fuel Economy Route: Normal Route - City, Suburban, and Highway

Key Fuel Economy Information	City	Suburban	Highway	Notes
MILES PER GALLON	4.24	6.35	6.47	
AVERAGE MPH	18.9	39.8	54.6	
MISSION MINUTES	29.89	52.05	173.37	

IF THE RESULTS CONTAIN "*****", THE ENGINE USED DOES NOT HAVE A FUEL MAP. FUEL ECONOMY CANNOT BE PREDICTED.

GRADEABILITY PERFORMANCE

Enroute - Full Throttle Upshift Performance

Gear	Trans Ratio	Veh Spd (mph)	Eng Spd (rpm)	Whl Pwr (hp)	Grade (%)	Warn Notes	
						Msg	
1C	4.70	0.0	1550	0.00	29.75	@	STALL
		5.2	1599	325.43	29.75	@	70% EFF
		6.8	1689	366.80	25.41		80% EFF
		8.5	1810	390.39	21.32		
2C	2.21	8.5	1542	276.64	14.74		
		15.6	1726	375.63	10.62		
2L	2.21	15.6	1231	396.54	11.26		
		23.2	1823	460.89	8.60		
3L	1.53	23.2	1262	406.62	7.49		
		33.5	1827	459.98	5.55		
4L	1.00	33.5	1194	384.37	4.49		
		51.2	1825	456.91	2.96		
5L	0.76	51.2	1387	439.50	2.80		
		67.0	1815	448.92	1.50		
		71.6	1939	424.26	1.00		
6L	0.67	67.0	1600	451.12	1.52		
		73.7	1760	446.13	1.00		
		79.4	1895	430.49	0.50		
		83.8	2000	395.64	0.02		RATED RPM
		83.8	2000	393.86	0.00		LEVEL ROAD

STARTING / TOP GEAR PERFORMANCE

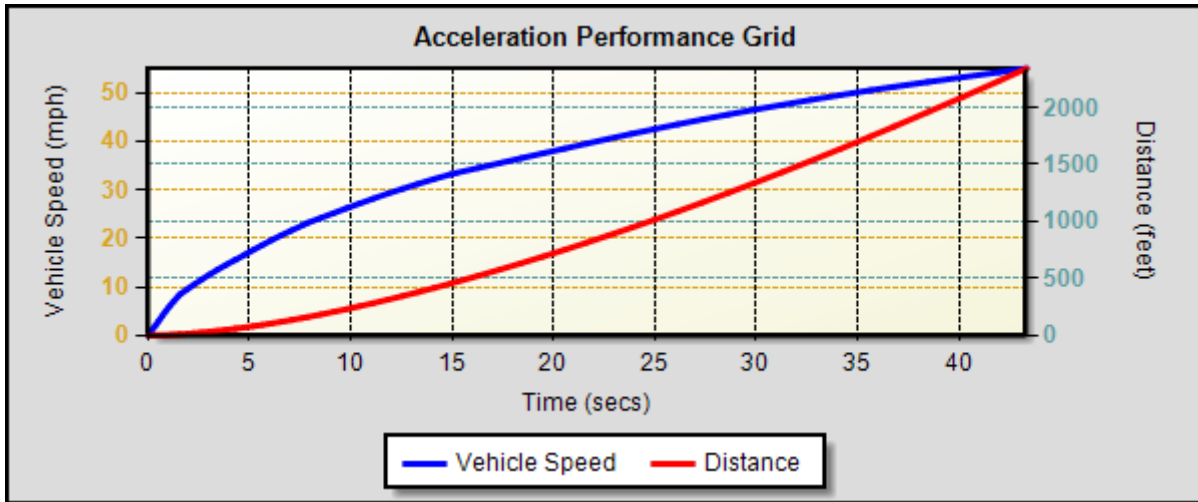
Gear	Trans Ratio	Veh Spd (mph)	Eng Spd (rpm)	Whl Pwr (hp)	Grade (%)	Warn Notes	
						Msg	
1C	4.70	0.0		0.00	29.75	@	STALL
		6.8		366.80	25.41		80% EFF - Calculated Start Ability

@ - WHEELSLIP CAN OCCUR AT THE GRADE SHOWN. THE VEHICLE IS CAPABLE OF INCREASED GRADEABILITY IF MORE WEIGHT IS PLACED ON THE DRIVE AXLES.

THE TRANSMISSION WAS SIMULATED IN PERFORMANCE OPERATING MODE.

ACCELERATION PERFORMANCE RESULTS

Acceleration Performance Grid



Acceleration Performance: TIME TO ACCELERATE ON A GRADE TO 55.0 (MPH) IS 43.35 (SECS)

Acceleration Performance Details

Gear	Time (secs)	Distance (feet)	Speed (mph)	Notes
1C	0.18	0.1	1.0	
	0.37	0.5	2.0	
	0.54	1.2	3.0	
	0.71	2.0	4.0	
	0.88	3.2	5.0	
	1.07	4.7	6.0	
	1.27	6.6	7.0	
	1.48	9.0	8.0	
2C	1.60	10.4	8.5	
	1.94	14.9	9.5	
	2.29	20.0	10.5	
	2.65	25.8	11.5	
	3.03	32.5	12.5	
	3.42	40.0	13.5	
	3.84	48.6	14.5	
	4.28	58.2	15.5	
2L	4.34	59.6	15.6	
	4.77	69.8	16.6	
	5.20	80.6	17.6	
	5.64	92.3	18.6	
	6.09	105.0	19.6	
	6.57	119.0	20.6	
	7.07	134.6	21.6	
	7.60	151.9	22.6	
3L	7.89	161.6	23.2	
	8.53	183.8	24.2	
	9.17	206.9	25.2	
	9.81	231.0	26.2	
	10.46	256.6	27.2	
	11.13	283.8	28.2	
	11.83	313.2	29.2	
	12.56	344.9	30.2	

Gear	Time (secs)	Distance (feet)	Speed (mph)	Notes
4L	13.32	379.0	31.2	
	14.11	415.8	32.2	
	14.94	455.2	33.2	
	15.24	470.2	33.5	
	16.30	522.8	34.5	
	17.36	577.2	35.5	
	18.42	633.4	36.5	
	19.49	691.3	37.5	
	20.56	751.0	38.5	
	21.63	812.7	39.5	
	22.73	876.8	40.5	
	23.84	943.7	41.5	
	24.98	1013.9	42.5	
	26.15	1087.9	43.5	
	27.37	1166.4	44.5	
	28.63	1249.6	45.5	
29.93	1337.8	46.5		
31.29	1431.2	47.5		
32.69	1530.2	48.5		
34.15	1635.0	49.5		
35.66	1746.0	50.5		
5L	36.79	1829.8	51.2	
	38.48	1958.5	52.2	
	40.21	2092.2	53.2	
	41.98	2231.5	54.2	
	43.35	2341.6	55.0	

REQUIRED TCAPE INFORMATION

TCAPE Factors For Vehicle

Selected Rear Axle Gear Ratio(s):	4.3
Parked PTO:	NO
Enroute PTO:	NO
Vehicle Vocation:	MODERATE ON/OFF HIGHWAY
ID Wheel Slip Conditions:	Yes
Road Governor/Cruise Ctrl:	No
Engine Fan Type:	VISCOUS
Road Surface Type:	TYPICAL
Fuel Economy Route:	Normal Route - City, Suburban, and Highway
Acceleration Grade (%):	0.0
Frontal Area (FT ²):	88
Speed Limit on Route (MPH):	61.0
Relative Drag Coefficient:	105
Alternator (A):	40
Steering Gear (HP):	2.60
Air Conditioner (HP):	2.20
Vehicle Width (IN):	96
Vehicle Height (IN):	132
Weight on Drive Axle (LBF):	34000
Acceleration Vehicle Spd (MPH):	55.0
Ambient Temperature (F):	70.0
Air Compressor (HP):	2.20
TIRE, FRONT	2 - RADIAL NORMAL
TIRE, REAR	8 - RADIAL NORMAL

TCAPE Factors For Trailer

Cab Trailer Space (IN):	60
Tires On Vehicle:Quantity:	8 - RADIAL NORMAL

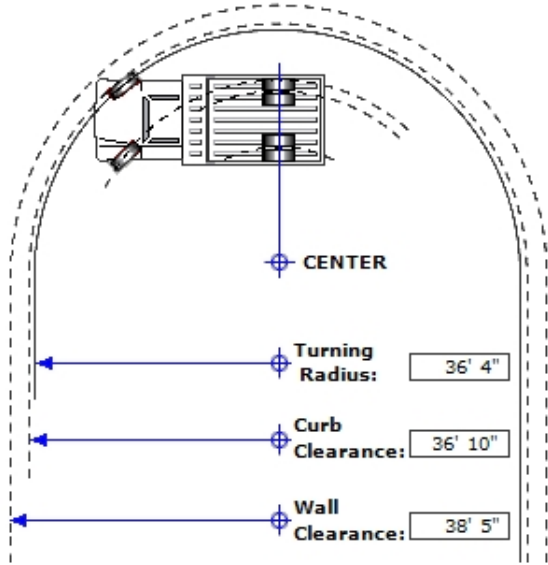
Components

0001AND	AXLE CONFIGURATION {Navistar} 6x4
0002ASM	AXLE, FRONT NON-DRIVING {Meritor MFS-14-143A} Wide Track, I-Beam Type, 14,600-lb Capacity
0004SPA	AIR COMPRESSOR {Cummins} 18.7 CFM
0005PTB	STEERING GEAR (2) {Sheppard M100/M80} Dual Power
0008GHU	ALTERNATOR {Delco Remy 28SI} Brush Type, 12 Volt, 200 Amp Capacity, Pad Mount, with Remote Sense
0012ETN	ENGINE, DIESEL {Cummins X15 500 V} Productivity Series, EPA 2021, 500HP @ 1900 RPM, 1850 lb-ft Torque @ 950 RPM, 2000 RPM Governed Speed, 512 Peak HP (Max)
0012THT	FAN DRIVE {Horton Drivemaster} Two-Speed Type, Direct Drive, with Residual Torque Device for Disengaged Fan Speed
0013BEK	TRANSMISSION, AUTOMATIC {Allison 4500 RDS} 6th Generation Controls, Wide Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, On/Off Highway
0014HRE	AXLE, REAR, TANDEM {Meritor RT-46-164P} Single Reduction, Standard Width, 46,000-lb Capacity, with Lube Oil Pump, Driver Controlled Locking Differential in Forward-Rear and Rear-Rear Axle, 200 Wheel Ends
0016030	CAB Conventional, Day Cab
0016BAM	AIR CONDITIONER with Integral Heater and Defroster
0016XWV	SUNSHADE, EXTERIOR Aerodynamic, Painted Roof Color, with Integral LED Clearance/Marker Lights
07482133264	TIRE, REAR 11R22.5 Load Range H XDN2 (MICHELIN), 497 rev/mile, 75 MPH, Drive 11R22.5 Load Range H XDN2 (MICHELIN), 497 rev/mile, 75 MPH, Drive
07482133269	TIRE, FRONT 11R22.5 Load Range H XZE2 (MICHELIN), 501 rev/mile, 75 MPH, All-Position 11R22.5 Load Range H XZE2 (MICHELIN), 501 rev/mile, 75 MPH, All-Position

TCAPE HAS BEEN DESIGNED TO GIVE ECONOMY AND PERFORMANCE PREDICTIONS WHICH HAVE BEEN SHOWN TO BE TYPICAL FOR MOST OPERATIONS. HOWEVER, DUE TO OPERATING CONDITIONS, DRIVER INFLUENCES, AND OTHER FACTORS, YOUR RESULTS MAY VARY FROM THOSE PREDICTED. ALSO, BECAUSE OF FUEL MAPPING PROCEDURES USED BY VARIOUS ENGINE MANUFACTURERS, COMPARISONS OF FUEL ECONOMY RESULTS FOR DIFFERENT BRANDS OF ENGINES MAY VARY FROM THOSE SHOWN.

NAVISTAR, INC. SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND THAT ARE INCURRED BY DEALER OR BY DEALER'S CUSTOMERS AS A RESULT OF RELIANCE ON TCAPE, WHETHER THE CLAIM IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**Turning Radius Summary
2024 HX620 SBA (HX620)**



Series: HX
Model: HX620
Description: HX620 SBA
Model Year: 2024

Calculation Factors

Wheelbase: 238
Front Axle: 0002ASM
Description: AXLE, FRONT NON-DRIVING, {Meritor MFS-14-143A} Wide Track, I-Beam Type, 14,600-lb Capacity
Front Wheel: 0027DWR
Description: WHEELS, FRONT, {Accuride 43644} DISC; 22.5x8.25 Rims, Standard Polish Aluminum, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs
Front Tire: 07482133269
Description: TIRES, 11R22.5 Load Range H XZE2 (MICHELIN), 501 rev/mile, 75 MPH, All-Position
Steering Gear: 0005PTB
Description: STEERING GEAR, (2) {Sheppard M100/M80} Dual Power

Turning Radius Statistics

General Information

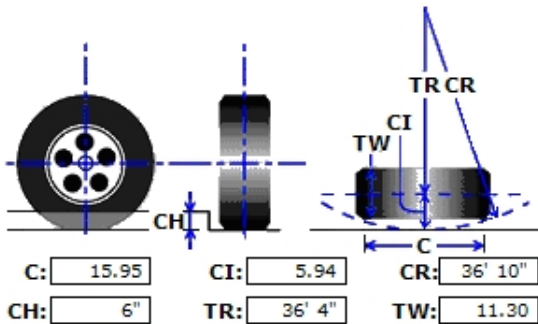
Inside Turn Angle: 40 Degrees
Radial Overhang: 24.5

Axle Information

KingPin Inclination: 6.25 Degrees
KingPin Center: 71.5

Turning Radius - Curb View

C - Curb Contact Length: 15.95
CI - Curb Clearance Increment: 5.94
CR - Curb Clearance Radius: 36'10"
CH - Curb Height: 6"
TR - Turning Radius: 36'4"
TW - Tire Width: 11.30



* All Measurements are in inches, unless otherwise specified.

This information is based on engineering information available at this time. Actual figures may vary. Navistar, Inc. cannot accept liability for consequences due to this variance.

<u>Description</u>	<u>(US DOLLAR)</u>	<u>Price</u>
Net Sales Price:		\$311,973.13
Memo Item(s):		
Total Federal Excise Tax	\$0.00	
Total Taxes:	\$1,768.17	
Warranty:	\$0.00	
Body/Allied Equipment:	\$0.00	
Note: Memo item(s) shown here are included in the above Net Sales Price.		

Please feel free to contact me regarding these specifications should your interests or needs change. I am confident you will be pleased with the quality and service of an International vehicle. Total Taxes is for Oregon State Corporate Activity Tax. All Pricing is per Oregon State Pricing Agreement Contract # 1641.

Approved by Seller:

Accepted by Purchaser:

Official Title and Date

Firm or Business Name

Authorized Signature

Authorized Signature and Date

This proposal is not binding upon the seller without Seller's Authorized Signature

Official Title and Date

The TOPS FET calculation is an estimate for reference purposes only. The seller or retailer is responsible for calculating and reporting/paying appropriate FET to the IRS.

The limited warranties applicable to the vehicles described herein are Navistar, Inc.'s standard printed warranties which are incorporated herein by reference and to which you have been provided a copy and hereby agree to their terms and conditions.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Sisters Area Chamber of Commerce Presentation

BACKGROUND AND POLICY IMPLICATIONS:

In December 2022, the Sisters Area Chamber of Commerce submitted a \$125,000 request for video lottery funds to support business operations and activities, such as monthly networking events, member marketing campaigns, and advocacy for services in the Sisters area. The funds would also support expenses for the Harvest Faire event and the Shop Local campaign.

The Board asked staff to coordinate a presentation from the Sisters Area Chamber of Commerce to learn more about the organization and its work.

BUDGET IMPACTS:

This funding request was not included in the FY23 video lottery expenditure plan that commissioners completed in April 2022.

ATTENDANCE:

- Stephanie Robinson, Administrative Analyst
Judy Trego, Sisters Area Chamber of Commerce CEO
Turi Shergold, Sisters Area Chamber of Commerce CFO



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Request from City of Sisters for ARPA Reserve Allocation

BACKGROUND AND POLICY IMPLICATIONS:

At the December 15, 2021 Board of County Commissioners meeting, the City of Sisters presented an ARPA funding request for a proposed future affordable housing project. The Board allocated \$500,000 in reserves for future consideration of the project.

At the January 11, 2023 Board of Commissioners meeting, the City of Sisters will provide project status updates and request that reserve funds be formally allocated for the project.

ATTENDANCE:

- Joe O'Neill, Interim City Manager, City of Sisters
Michael Preedin, Mayor, City of Sisters
Kerry Prosser, City Recorder/Assistant to the City Manager, City of Sisters
Scott Woodford, Community Development Director, City of Sisters
Clayton Crowhurst, Northwest Housing Alternatives
Laura Skundrick, Deschutes County Finance



PO Box 39 - Sisters, Or 97759 | ph: 541-549-6022 | www.ci.sisters.or.us

January 03, 2023

Deschutes County Board of Commissioners
PO Box 6005
Bend, OR 97708-6005

Re: Sisters Request for Reserved ARPA Funds

Dear County Commissioners,

Last winter the Board of County Commissioners reserved \$500,000 in ARPA funds for an affordable housing project in Sisters. We are at the point where we would like to have the Board officially allocate the funds to the City for a proposed project.

This month the City Council will be considering the approval of a development agreement with Northwest Housing Alternatives (NHA) for a multi-family rental housing project in Sisters. The development will be a multi-story building with one-, two-, and three-bedroom units; located on North Trinity Way in Sisters. The building design will feature a minimum of 40 affordable units with an additional manager's unit. Amenities will include a community space, outdoor play area, and easy access to shopping, work, and other amenities within the city. Units at the property will be targeted at households making 65% AMI or less with unit sizes designed for individuals, couples, families, and seniors.

About Northwest Housing Alternatives

Founded in 1982 as a family homeless shelter, Northwest Housing Alternatives (NHA) is now a leading not-for-profit developer of affordable and workforce housing throughout Oregon. Their mission is to create individual opportunity through housing. To that end, NHA develops, builds, and asset manages rental housing designed for Oregonians in diverse populations including families, workforce, seniors, veterans, and individuals experiencing disabilities.

The official allocation of the \$500,000 in ARPA funds by the County would allow the City to continue to move forward with our goal of building more affordable housing for those struggling in our community.

Sincerely,

Michael Preedin, Mayor



Meeting Date: January 11, 2023

Staff: Scott Woodford, Community Development Director

Dept: Sisters Community Development Department

Subject: Sisters Affordable Housing Project – ARPA Fund Request from Deschutes County

Action Requested: Approval by the Deschutes County Board of County Commissioners for disbursement of \$500,000 of American Rescue Plan Act funds to the City of Sisters for construction of a 40-unit affordable housing, multi-family project in Sisters.

Background:

- The city has prioritized supporting affordable housing in Sisters. A City Council goal for fiscal year 2022/23 is to identify land and development partner(s) for a future multi-family affordable housing rental project.
- Several funding sources have been identified to support the project, including \$500,000 of American Rescue Plan Act (ARPA) funds reserved by Deschutes County for a multi-family, affordable rental housing project in Sisters.
- A site and development partner have been identified. In August of 2022, the City issued a Request for Proposals (RFP) for use of the funds for affordable housing. The city received one proposal – from NW Housing Alternatives (NHA).
- NHA proposes a 40-unit apartment building including one-, two- and three-bedroom units with one manager's unit and amenities, such as a community space and outdoor play area on a portion of a vacant lot at [322 North Trinity Way in Sisters](#) currently owned by the International Church of the Foursquare Gospel (Wellhouse Church). Units will be designed for individuals, couples, families and seniors.
- Units will be targeted at households making 65% of the Area Median Income (AMI) or less. Affordable apartments at this income level allow NHA to access federal and state funding sources. With some grants/tax credits, there may be the ability to "income average," which could allow some units to be up to 80% of the AMI, but the project must be balanced with lower AMI units to average 65% AMI or below.
- Founded in 1982, NHA is now a leading not-for profit developer of affordable and workforce housing throughout Oregon. Their mission is to create individual opportunity through housing. To that end, NHA develops, builds, and asset manages rental housing designed for Oregonians in diverse populations including families, workforce, seniors, veterans, and individuals experiencing disabilities. Their statewide



housing portfolio represents a significant percentage of Oregon’s overall affordable housing infrastructure.

- Per direction from City Council, the City has begun negotiating grant agreements and deed restrictions with NHA. The grant agreement will be subject to approval of the City Council.
- If successful with the grant agreement and disbursement of ARPA funds, NHA will still have to secure larger funding for the project, through state and federal sources. This may take several funding cycles to be successful and will have to negotiate purchase of the property from the current owner.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Public Hearing: Oregon Department of Transportation Noise Variance Request

RECOMMENDED MOTION:

First, hold a public hearing; then, consider action on Document No 2023-018 to grant a noise variance to the Oregon Department of Transportation to allow nighttime construction for ODOT’s Tumalo-Cooley Road project.

BACKGROUND AND POLICY IMPLICATIONS:

The applicant requests approval of a noise permit to allow nighttime construction for the proposed ODOT Tumalo-Cooley Road project which will include:

- 1. Paving operations
2. Lane extensions
3. Roundabout construction
4.

Proposed location of work is on US Highway 20 from milepost (MP) 14.31 to 17.43, within County limits and the Unincorporated Community of Tumalo, (see attached Location Map). Construction activities are expected to begin January 2023, with a completion date of November 30, 2023. Nighttime construction will occur from 10:00 p.m. to 7:00 a.m.

A public hearing will be conducted on the proposed noise variance. 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/89946359970?pwd=TDdabjREWU4vU1lQdWhmSHNuRG5rdz09.

Alternatively, members of the public can participate in person in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend.

BUDGET IMPACTS:

None

ATTENDANCE:

Rachel Vickers, Associate Planner

REVIEWED

LEGAL COUNSEL

01/11/2023 Item #7.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

NOISE PERMIT

PURSUANT TO DESCHUTES COUNTY CODE (DCC) CHAPTER 8.08

LOCATION: US Highway 20 from milepost (MP) 14.31 to 17.43, within County limits and the Unincorporated Community of Tumalo, (see attached Location Map).

FILE NUMBER: 247-22-000903-V

OWNER: Oregon Department of Transportation (ODOT)

PHONE: (541) 388-6180

PROJECT DESCRIPTION: The applicant requests approval of a noise permit to allow nighttime construction for the proposed ODOT Tumalo-Cooley Road project which will include:

- 1. Paving operations
- 2. Lane extensions
- 3. Roundabout construction

DATES AND TIMES OF PROJECT: Construction activities are expected to begin January 12, 2023, with a completion date of November 30, 2023. Nighttime construction will occur from 10:00 p.m. to 7:00 a.m.

FINDINGS: The Board of County Commissioners (“Board”) finds that a public necessity exists for granting this permit for construction hours between 10:00 p.m. and 7:00 a.m. The Board has the authority to approve the requested variance under Deschutes County Code section 8.08.080, and bases the findings on evidence in the record and testimony at the hearing. These findings include:

- 1. A need to increase safety and reduce crash rates on US Highway 20;
- 2. Improve safety for workers by completing work during periods of lowest traffic volume; and
- 3. A desire to conduct construction from 10:00 p.m. to 7:00 a.m. to minimize traffic delays, decrease the risk of construction related accidents on US Highway 20.

CONDITIONS OF APPROVAL:

1. Construction activities may be conducted beginning January 12, 2023
2. Fifteen days prior to commencing any construction activities, the Owner shall notify all property owners who testified at the public hearing for this permit of the dates and times the construction activities will occur.
3. This permit expires November 30, 2023.
4. THE APPROVED PERMIT SHALL BE RETAINED ON-SITE UNTIL THE PROJECT IS COMPLETE.
5. BY ACCEPTANCE OF THIS PERMIT, OWNER/OPERATOR CONSENT TO ALLOW BOTH COUNTY CODE ENFORCEMENT AND LAW ENFORCEMENT PERSONNEL TO COME ON THE PREMISES FOR WHICH THE PERMIT HAD BEEN GRANTED FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT OF THE TERMS AND CONDITIONS OF THE PERMIT AND DCC 8.08, AND ANY OTHER APPLICABLE LAWS OR ORDINANCES.

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

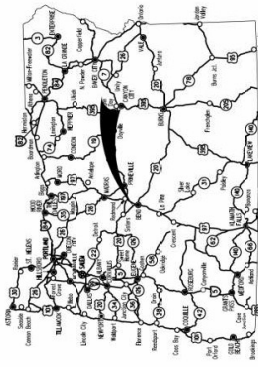
Recording Secretary

PHIL CHANG, Commissioner

Exhibit A: Location Map

STATE OF OREGON
DEPARTMENT OF TRANSPORTATION
 PLANS FOR PROPOSED PROJECT
GRADING, DRAINAGE, STRUCTURE, PAVING, SIGNING, ILLUMINATION & SIGNAL
US20: TUMALO - COOLEY RD. (BEND) SEC.
MCKENZIE - BEND HIGHWAY

INDEX OF SHEETS	
SHEET NO.	DESCRIPTION
A01	Title Sheet
A02	Index Of Sheets
A03	Std. Dwg. Nos.
A04 Thru A07	Plan Sheet Layout
A08 & A09	Survey Control Data



Overall Length Of Project - 3.12 Miles

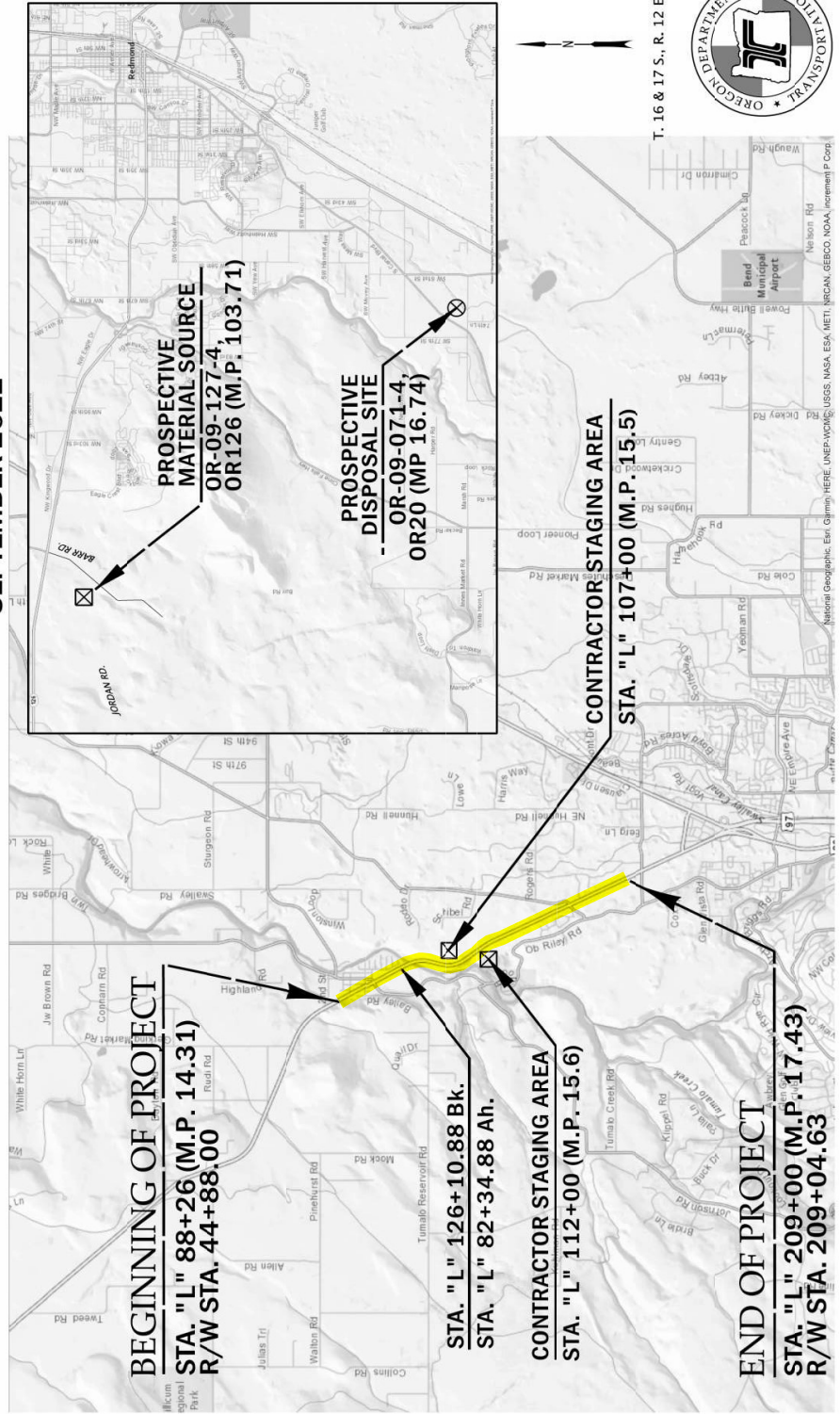
ATTENTION:
 Oregon Law Requires You To Follow Rules Adopted By The Oregon Utility Notification Center. Those Rules Are Set Forth In OAR 952-001-0001 Through OAR 952-001-0100. You May Obtain Copies Of The Rules By Calling The Oregon Utility Notification Center For (503) 232-1987.

LET'S ALL
 WORK TOGETHER
 TO MAKE THIS
 JOB SAFE

OREGON TRANSPORTATION COMMISSION
 Robert Van Brocklin
 Chair
 Julie Brown
 Sharon Smith
 Marilynn Burke
 Kristopher W. Strickler
 CHAIR
 COMMISSIONER
 COMMISSIONER
 COMMISSIONER
 DIRECTOR OF TRANSPORTATION

These plans were developed using ODOT design standards. Exceptions to these standards, if any, have been submitted and approved by the ODOT Chief Engineer or their delegated authority.

Approving Authority: CLINE Jennifer
 Signature & date
 Jerrn Cline, P.E., Interim Region 4 TCM
 Print name and title
 Michael Kimlinger, 2022.01.20
 12.35.08-0700
 Concurrency by ODOT Chief Engineer



FINAL ELECTRONIC DOCUMENT AVAILABLE UPON REQUEST

R_K2001_1_ts_01.dgn :: A01 7/12/2022 7:51:06 AM hwy411

01/11/2023 Item #7.

FEDERAL HIGHWAY ADMINISTRATION	PROJECT NUMBER
OREGON DIVISION	SO17(016)
Rotation: 0°	



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Planning Commission Representation / Geographic Areas

RECOMMENDED MOTION:

Discussion item.

BACKGROUND AND POLICY IMPLICATIONS:

Staff is seeking direction from the Board of County Commissioners as it pertains to the preferred number of appointed Planning Commissioners, and their respective geographic areas. If changes are warranted, Deschutes County Code Chapter 2.52, Deschutes County Planning Commission, can be amended so it informs subsequent recruitments.

BUDGET IMPACTS:

None

ATTENDANCE:

Peter Gutowsky, CDD Director



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners
FROM: Peter Gutowsky, AICP, Director
DATE: January 4, 2023
SUBJECT: Planning Commission Representation / Geographic Areas

I. DIRECTION

Staff is seeking direction from the Board of County Commissioners (Board) as it pertains to the preferred number of appointed Planning Commissioners, and their respective geographic areas. If changes are warranted, Deschutes County Code (DCC) Chapter 2.52, Deschutes County Planning Commission, can be amended so it informs subsequent recruitments.

II. BACKGROUND

Recent Board discussions about the Planning Commission composition have highlighted the omission of a Tumalo area representative. While geographic representation is not mandatory under DCC, this realization provides an opportunity to revisit DCC Chapter 2.52 to ensure that the number of Planning Commissioners and their respective geographic areas remain representative of Deschutes County. DCC Chapter 2.52 has been in place since 1994. DCC 2.52.040(A) recognizes seven appointed Planning Commission members. DCC 2.52.040(D) describes their membership. They currently represent: At-large (2), Bend (2), Redmond, Sisters, and South County (1 each). The geographic areas are illustrated in Figure 1. The townships and ranges noted in DCC 2.52.040(D) are elaborated further below in Table 1.

1 Board meeting. December 21, 2022. Item #11. https://mccmeetings.blob.core.usgovcloudapi.net/deschutes-pubu/MEET-Packet-91e89ee474214f93871713a9f54d009f.pdf

2 https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER_2.52_DESCHUTES_COUNTY_PLANNING_COMMISSION.

3 The commission shall be composed of seven members, appointed by the Board of County Commissioners, who reside within the County.

4 The membership of the commission shall, as much as possible, be representative of the various geographic areas of the County. This should generally consist of the following: One member from the south County area of La Pine and Sunriver (Townships 19-22); two members from the Bend area (Townships 17 and 18); one member from the Tumalo area (Townships 16, Ranges 11 or 12); one member from the Sisters area (Townships 14 or 15, Ranges 9, 10 and 11); one member from the Redmond area (Townships 14 or 15, Ranges 12 or 13); and one member at large. Failure to achieve such geographic representation shall not affect the validity of any action taken by the planning commission.

Figure 1 – Planning Commission Membership

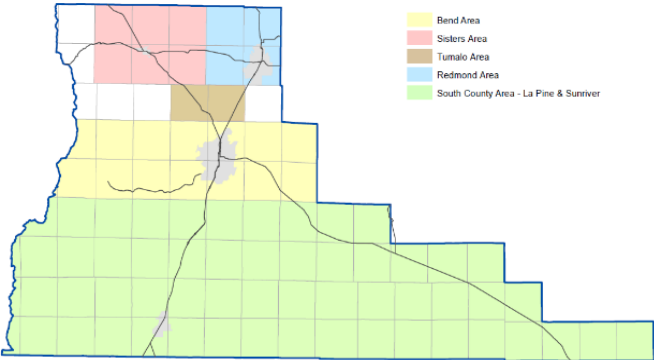


Table 1 – Planning Commission Membership

Area	Existing Single Family Homes ⁵	Comments
Bend	47,614	<ul style="list-style-type: none"> • Most of Deschutes County’s residents live in the Bend area. It represents the city of Bend and thousands of rural residences, Exclusive Farm Use (EFU), Forest Use (F1 and F2), Multiple Use Agricultural (MUA-10), Rural Residential (RR-10), Suburban Residential (SR 2.5), Urban Area Reserve (UAR-10), and Westside Transect (WTZ) zoned properties. • West of Bend, rural residential subdivisions include but are not limited to: Highlands of Broken Top, Inn at 7th Mountain, Miller Tree Farm, Skyliner, Saddleback, Tetherow Destination Resort, Westgate, and Widgi Creek. • To the north, this area captures Gopher Gulch and Hunnell Road neighborhoods and properties accessed off of OB Riley Road. • To the south, there are numerous subdivisions, including but not limited to: Deschutes River Woods, Sunset View Estates, and Woodside Ranch. • To the east, the area extends to Crook County. It encompasses the Bend Airport, Alfalfa area, and rural residential neighborhoods and EFU properties accessed from Alfalfa Market Road, Bear Creek Road, Gosney Road, Neff Road, Powell Butte Highway to Butler Market Road, and Rickard Road.
Redmond	19,359	<ul style="list-style-type: none"> • This area represents the second largest number of residents in Deschutes County. It represents the city of Redmond and rural residences, EFU, MUA-10, and RR-10 zoned properties. • West of Redmond, rural residential subdivisions include Crest Ridge Estates, Eagle Crest Destination Resort, Kachina Acres, and Odin Estates. • It extends north to the Jefferson County border and includes Terrebonne, a portion of Crooked River Ranch, Lower Bridge, rural residential development near Smith Rock, and Ranch of the Canyons. To the east, north-east, the area extends to Crook County. • To the south it encompasses EFU and MUA-10 zoned properties.

⁵ Multi-family homes were not counted. Assessor data for multi-family development is only available as a paper copy.

Area	Existing Single Family Homes ⁵	Comments
Sisters	6,054	<ul style="list-style-type: none"> This area represents the city of Sisters and rural residences, EFU, MUA-10, and RR-10 zoned properties. West of Sisters, rural subdivisions include Black Butte Ranch Resort, Crossroads, and Tollgate. It extends north to the Jefferson County border and includes Indian Ford Meadows, Sage Meadows, and Squaw Creek Estates subdivisions. To the east, the area captures Aspen Lakes and Panoramic View Estates. To the south it encompasses F1 and F2 zoned properties.
South County	13,939	<ul style="list-style-type: none"> This area represents the third largest number of residents in Deschutes County. It extends from Sunriver south to the Klamath County border, southeast to the Lake County border, west towards the Deschutes River and east along Highway 20 to the Harney County border. South County includes the city of La Pine and rural residents in Caldera Springs Destination Resort, Crosswater, and EFU, F1 and F2, and RR-10 zoned properties.
Tumalo	2,996	<ul style="list-style-type: none"> This area extends beyond greater Tumalo and captures rural residences, EFU, MUA-10, and RR-10 zoned properties. Its westward boundary encompasses rural residential properties that access Sizemore Road. To the north, residences utilize Ines Market Road, Old Bend Redmond Highway, and Tumalo Road. From the south and east, residences access Deschutes Market Road, Highway 97, Hunnell Road, McVey Avenue, Old Bend Redmond Highway, Quarry Avenue, SW Canal Boulevard, SW 61st Avenue, and Tumalo Reservoir Road.

III. PLANNING COMMISSION GEOGRAPHIC AREA CONCEPTS

Staff offers three concepts for the Board’s consideration. Two maps are attached with the memorandum depicting Concepts 1 and 2.

Concept 1 – Tumalo Area Addition

Area	Geographic Adjustments	Comments
At-Large	N/A	<ul style="list-style-type: none"> Maintains (7) Planning Commissioners Replaces (1) At Large position for Tumalo Area No code amendment is required
Bend	No	
Bend	No	
Redmond	No	
Sisters	No	
South County	No	
Tumalo	No	

Concept 2 – Tumalo & Terrebonne Area Additions

Area	Geographic Adjustments	Comments
Bend	No	<ul style="list-style-type: none"> • Maintains (7) Planning Commissioners • Replaces (1) at large position for Tumalo • Replaces (2) at-large position for Terrebonne • Requires a code amendment <p><u>Note:</u> In the event, a recruitment for a geographic area is unsuccessful, the Board, could choose to fill a Planning Commission vacancy with an at-large position.</p>
Bend	No	
Redmond	Yes	
Sisters	No	
South County	No	
Terrebonne ⁶	Yes	
Tumalo	No	

Concept 3 – Tumalo, Terrebonne, & At-Large Positions

Area	Geography Adjustments	Comments
At-Large	N/A	<ul style="list-style-type: none"> • Establishes a (9) member Planning Commission • Maintains (2) At-Large Positions • Adds a position for Tumalo • Adds a position for Terrebonne • Requires a code amendment <p><u>Note:</u> In the event, a recruitment for a geographic area is unsuccessful, the Board, could choose to fill a Planning Commission vacancy with an at-large Position.</p>
At-Large	N/A	
Bend	No	
Bend	No	
Redmond	Yes	
Sisters	No	
South County	No	
Terrebonne	Yes	
Tumalo	No	

IV. OBSERVATIONS

1. Dais - Given the physical limitations of the Deschutes Service Center, Barnes and Sawyer rooms, no more than seven Planning Commissioners can sit at the dais. Appointing additional members which is not a requirement under state law, would need to sit at adjoining tables, which could be awkward during public hearings and deliberations.⁷ Alternatively, sitting all the Planning Commissioners in front of the dais could also be problematic since many would not face the audience or the cameras.
2. Concept 1 – This concept honors the existing code with representation from up to seven Planning Commissioners. The Tumalo area position would replace an at-large vacancy that becomes available on July 1, 2023. A second at-large position is also available on July 1 if a forthcoming Bend Area vacancy is converted to an existing at-large Planning Commissioner. No code amendment is required.

The township and ranges that currently encompass the Tumalo area, Township 16, Ranges 11 and 12 seem reasonable. Township 15, Range 12 directly to the north, which is in the Redmond area, is

⁶ There are 2,197 single family residences in the Terrebonne area.

⁷ ORS 215.030. A county planning commission can consist of five, seven or nine appointed members. Clackamas, Lane, Marion, and Multnomah counties utilize a nine member Planning Commission.

predominantly federal land. It does include Eagle Crest Resort, which is associated more with Redmond because it is approximately 2 miles from city limits. Other rural lands in Township 15, Range 11 northwest of Tumalo are located in the Sisters School District. Rural lands in Township 17, Ranges 11 and 12 to the south are predominantly closer to Bend.

3. Concept 2 – This concept requires a code amendment to create a position for Terrebonne and new geographic boundaries for the Redmond and Terrebonne areas. It consists of seven Planning Commissioners, including one for Tumalo. At-large positions would no longer be preferred. The Terrebonne area boundary could encompass Township 14, Range 12, and a large portion of Township 14, Range 13. In the event, a recruitment for a Terrebonne position was unsuccessful, the Board could, at their discretion, fill a Planning Commission vacancy with an at-large position.

4. Concept 3 – This concept is similar to Concept 2 but increases the Planning Commission to nine members with two at-large positions.

Attachments:

- Planning Commission – Existing Territory Map
- Planning Commission - Concept 2 Map

Deschutes County Planning Commission Representation By Geographic Area

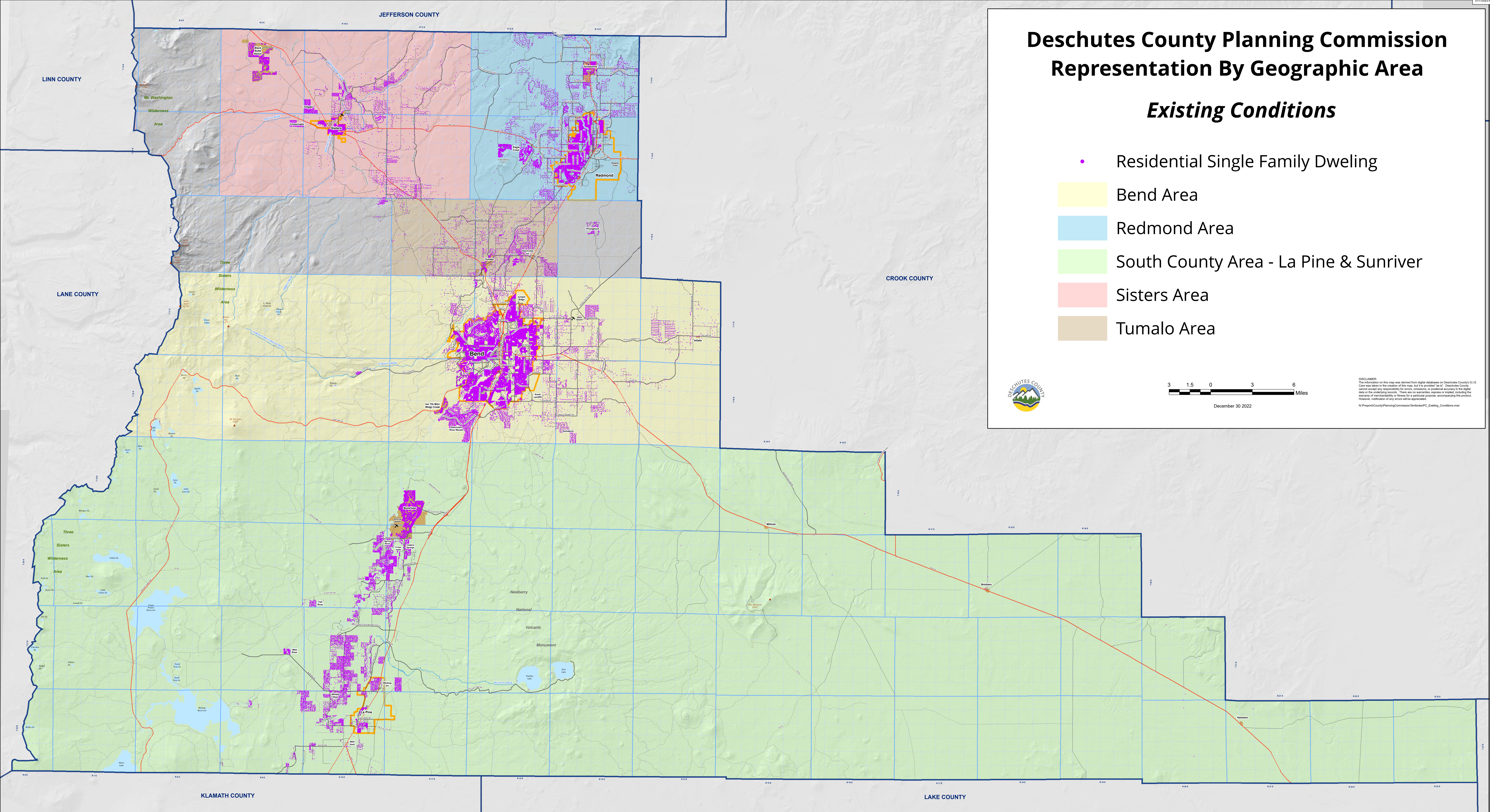
Existing Conditions

- Residential Single Family Dwelling
- Bend Area
- Redmond Area
- South County Area - La Pine & Sunriver
- Sisters Area
- Tumalo Area



December 30 2022

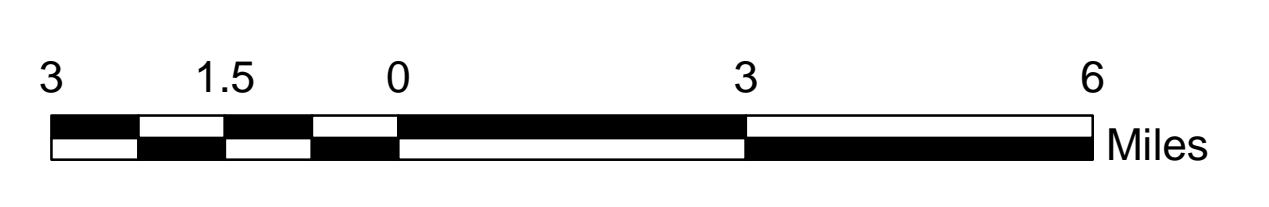
DISCLAIMER:
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Deschutes County Planning Commission Representation By Geographic Area

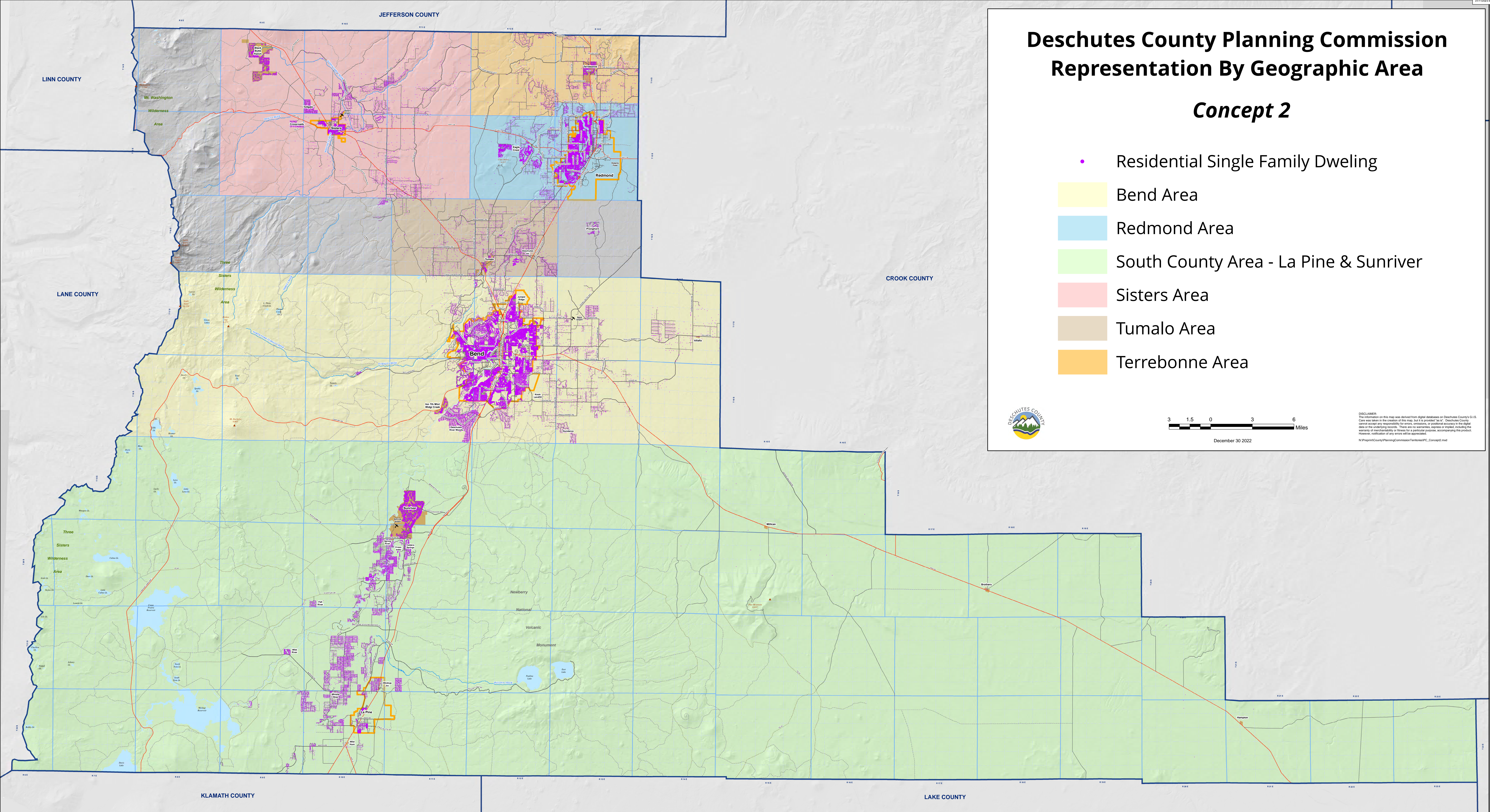
Concept 2

- Residential Single Family Dwelling
- Bend Area
- Redmond Area
- South County Area - La Pine & Sunriver
- Sisters Area
- Tumalo Area
- Terrebonne Area



December 30 2022

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BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Public Hearing on the Planning Division Long Range Work Plan for FY 2022-2023

RECOMMENDED MOTION:

Hold a public hearing on the Planning Division FY 2022-2023 Work Plan.

BACKGROUND AND POLICY IMPLICATIONS:

The adopted Community Development Department (CDD) FY 2022-23 Work Plan contains several discretionary long range planning projects varying in complexity and anticipated staff effort. This memorandum is intended to update the Board of County Commissioners (Board) on upcoming work plan projects and solicit any comments and revisions. The purpose is to ensure that long-range staff, which has emerging capacity following completion of prior projects, implements the Board's priorities within staff's available resources.

In October 2022, the Board identified priorities for Long Range projects from the Work Plan for late 2022. Tables 1-3, starting on page 2, summarize projects that are completed, ongoing, and yet to be initiated. Staff will request that the Board assign priority to Work Plan projects for early 2023 at the January 18, 2023 BOCC meeting.

BUDGET IMPACTS:

None

ATTENDANCE:

Will Groves, Planning Manager



Attachment B - Outdoor Mass Gathering – Revise County Code to Reflect Changes in State Statute

BACKGROUND & OVERVIEW

Multi-day festivals have long been held in Oregon and multi-day music festivals became especially popular in Deschutes County in the mid-2000s. Between 2013 and 2022, the County processed 12 Outdoor Mass Gathering (OMG)¹ applications including Board Hearings on the dozen applications. Many of these applications were for the Four Peaks Music Festival. Issues for the OMG permits ranged from noise to traffic to incompatibility with adjacent land uses. The applicable review and approval criteria for Outdoor Mass Gatherings (OMG) are found in Deschutes County Code (DCC) 8.16 (Events, Parades, Funeral Processions, and Outdoor Mass Gatherings) specifically DCC 8.16.010 and DCC 8.16.150 through 8.16.340. This code language must be consistent with state statute, specifically Oregon Revised Statute (ORS) 433.735 to 433.770 (Regulation of Outdoor Mass Gatherings)

Concerns about the effects of OMGs as well as a patchwork approach in statute to outdoor events eventually led the Legislature to approve HB 2790 (2019) to modify Oregon Revised Statute (ORS) 433.735 to ORS 4.33.770. Previously, OMGs were regulated only for health and safety under ORS 433.750 and were not land use decisions under ORS 197.015(10)(d). HB 2790 made local review of a permit for a single gathering of more than 3,000 people and lasting more than 120 hours into a land use decision.

OMGs that are not a land use decision, but regulated by health and safety regulations only:

- Events of less than 3,000 people lasting up to 120 hours
- Events of more than 3,000 people, but lasting less than 24 hours
- Events of more than 3,000 people lasting up to 120 hours

CURRENT PROCESS & CHANGES

Under DCC 8.16.170(A), the County requires permits for OMGs and Extended OMGs with public hearings before the Board for OMGs and the Planning Commission for Extended OMGs. Under HB

¹ Defined in ORS 433.375(2) as a gathering in an open space with actual or reasonably anticipated attendance of more than 3,000 people and lasting between 24 and 120 hours and occurs once within a three-month period. DCC 8.16.010 defines an OMG sets actual or expected attendance of between 500 and 3,000 people and last for between more than 4 and less than 24 hours. DCC 8.16.010 defines an Extended OMG as attendance expected of more than 3,000 people or more than 500 persons for an event that last more than 240 hours, including set-up and breakdown.

2790, an application for an OMG becomes a land use decision – thus following the requirements of Title 22 - and the decision can be made administratively or before a hearings officer, and is appealable to the Board and ultimately the Land Use Board of Appeals (LUBA). Changes would need to be made to DCC 8.16 to reflect changes in definitions and processes.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Low
Implementation Urgency	Low



Attachment D - Sign Code Amendments

BACKGROUND & OVERVIEW

Currently, Deschutes County Code includes limitations on signs based on their content. In *Reed v. Town of Gilbert (2015)*, the U.S. Supreme Court found a content-based sign ordinance may impede on an applicant’s First Amendment right to Freedom of Speech based on the content of a given sign. Building on *Reed*, the Court reviewed a separate sign code-based case under *City of Austin v. Reagan National Advertising of Austin (2022)*. In *Austin*, the U.S. Supreme Court found that certain sign code provisions (such as requiring advertising signs to be placed on the premises of the entity being advertised) can be considered content-neutral under the right to Freedom of Speech under the First Amendment of the U.S. Constitution.

Deschutes County currently implements its Sign Code through Deschutes County Code Title 15.08. *Reed* implies that Deschutes County should ensure that their Sign Code provisions are “content-neutral” or else be subject to “strict scrutiny” under the First Amendment. *Austin* implies that not all provisions of a given sign code are automatically “content-based” and, therefore, some sign code provisions are subject to “intermediate scrutiny” rather than “strict scrutiny” under the First Amendment. In *Austin*, the U.S. Supreme Court found that, in order to survive intermediate scrutiny, a restriction on speech or expression must be “narrowly tailored to serve a significant government interest”.

CURRENT PROCESS & CHANGES

Revisions to the Sign Code could ultimately bring Title 15.08 into compliance with Federal case law and interpretations around sign content and Freedom of Speech included in *Reed (2015)* and *Austin (2022)*. Staff foresees working closely with County Legal Counsel to review the existing Sign Code, ensuring that content-based provisions are designed to be content-neutral.

Key Amendment Concerns	
Staff Effort/Resources	Medium/High
Legal Complexity	Medium/High
Implementation Urgency	Medium



Attachment E - Accessory Structure Amendments

BACKGROUND & OVERVIEW

The County regularly receives requests for residential accessory buildings with many of the features of dwelling units (e.g. kitchen-like areas, multiple full-baths, wet bars). Despite careful communication with developers, these residential accessory buildings are often converted to illegal dwelling units or are misrepresented as ADUs to subsequent buyers of the property.

The Deschutes County Code (DCC) lacks provisions common in other Counties' code such as:

- 1) Specification of allowed plumbing and other dwelling-like features permissible in residential accessory buildings,
- 2) A requirement for a recording to the property title, alerting future buyers that the residential accessory building is not an ADU, or
- 3) A requirement that that the dwelling (primary use) must be constructed first (or at the same time) as residential accessory buildings.

CURRENT PROCESS & CHANGES

The Board has expressed interest in creating clarity within the County Code around these potentially ambiguous provisions. As one example, the City of Bend currently utilizes a code system that provides specific definitions of certain improvement types, and clear standards of when and where these improvements are allowed. City of Bend also provides accessory structure-related code language, clearly specifying that primary uses must be established prior to accessory structures. Revisions to County Code related to residential accessory buildings could offer more clarity for residential property owners looking to develop and could help with the differentiation between primary and accessory structures.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Medium
Implementation Urgency	Medium/High



Attachment A- Minor variance 10% lot area rule for farm and forest zoned properties

BACKGROUND & OVERVIEW

Lot line adjustments have been used to circumvent lot-area-based development standards both under local code and state statute. In 1991, County Code was amended (Ord. 91-038) to limit area reduction of lots that are currently smaller than the minimum lot size (to a maximum reduction of ten percent) without a more complicated variance review process.

In the past two decades, state statute (ORS 92.192) has been updated to include protections for lot-area-based standards that are more robust and nuanced than the County Code provision. Currently both the state and county protections apply. However, because the County provisions are more of a “blunt instrument”, they cause unexpected problems for operators of large farms. Specifically, because the minimum lot size for most farm-zoned properties is 80 acres, the transfer of sub-80 acre pieces between neighboring farm operations is needlessly complicated by County Code.

CURRENT PROCESS & CHANGES

Potential text amendments would remove the conflict between DCC and ORS by changing DCC 18.132.025 to exclude farm and forest zone properties from the County’s ten-percent reduction limitation.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Low
Implementation Urgency	Medium/Low



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Will Groves, Planning Manager
Peter Gutowsky, AICP, Director

DATE: January 11, 2023

SUBJECT: Planning Division Work Plan Update / Long Range Planning / FY 2022-2023

I. WORK PLAN DIRECTION

The adopted Community Development Department (CDD) FY 2022-23 Work Plan contains several discretionary long range planning projects varying in complexity and anticipated staff effort.¹ This memorandum is intended to update the Board of County Commissioners (Board) on upcoming work plan projects and solicit any comments and revisions. The purpose is to ensure that long-range staff, which has emerging capacity following completion of prior projects, implements the Board’s priorities within staff’s available resources.²

In October 2022, the Board identified priorities for Long Range projects from the Work Plan for late 2022. Tables 1-3, starting on page 2, summarize projects that are completed, ongoing, and yet to be initiated. Staff is requesting the Board assign priority to Work Plan projects for early 2023.

Staff seeks Board direction on prioritizing the following projects:

- Non-initiated Long Range Planning Projects listed in Table 3, below
- Wildlife inventory Updates (paused in 2022 for Psilocybin regulations)

* The Board has indicated it will accept public input as part of this agenda item. Given the level of interest in the work plan, the Board may decide to provide direction to CDD at a subsequent meeting in January.

II. BACKGROUND

Each spring, CDD prepares an annual work plan describing proposed projects for the coming fiscal year. A review of the draft work plan provides the Planning Commission, Historic Landmarks Commission,

¹ https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/110/2022-23_work_plan_annual_report_-_final.pdf. Pages 35-38.

² The Long Range Planning Section consists of two Senior Planners, a Senior Transportation Planner (FTE allocated across transportation, current and long range planning duties), and two Associate Planners.

County Administration, CDD’s customers and partner agencies, and the Board the opportunity to provide input, including additions, modifications and possible re-prioritization. The work plan describes the most important objectives and proposed projects in each CDD division based on:

1. Board annual goals and policies;
2. Carry-over projects from current or prior years;
3. Changes in state law;
4. Grants/funding sources; and
5. Public comments.

It also serves as the context within which new projects that arise during the course of the year are prioritized and undertaken. The Planning Division Work Plan consistently generates public interest.

III. COMPLETED PLANNING PROJECTS

Table 1 lists completed projects identified in the FY 2022-23 work plan.

Table 1 – Completed Planning Projects

Project	Summary	Status
<i>HB 4079 / Affordable Housing Pilot Project</i>	Amendments to the Deschutes County Comprehensive Plan and Zoning Map to change the designation of a property to Bend Urban Growth Area and Urbanizable Area (UA) District, respectively. Amendment allows the City of Bend to annex, rezone and approve urban development of the future Parkside Place affordable housing development.	<u>Completed</u> . Board adopted City of Bend Urban Growth Boundary (UGB) amendment in June. City Council adopted similar amendments in July 2022.
<i>Historic Preservation (CLG Grant)</i>	Every 24 months, the State Historic Preservation Office (SHPO) offers matching grants to counties that have been “certified” as historic preservation partners with both the state and federal governments. Deschutes County is a Certified Local Government (CLG). Staff will apply for the next round of grants (2023-2024) in February, which includes coordinating with the Historic Landmarks Commission and City of Sisters.	<u>Completed/Ongoing</u> . Grant applications are due February 24, 2023.
<i>Historic Policy and Procedures Manual</i>	Staff prepared a <i>Historic Landmarks Commission Policies and Procedures Manual</i> . It is a reference guide describing the Commission’s purpose, authorities, roles, decision making process, applicable laws/regulations and public meeting requirements.	<u>Completed</u> . Board reviewed and approved the manual in September.
<i>Historic Preservation Strategic Plan</i>	Staff prepared a <i>Deschutes County and City of Sisters Historic Preservation Strategic Plan 2022-2027</i> . It provides a framework for shaping the county and City of Sisters’ preservation programs over the next five years and creates a blueprint for allocating CLG grant funding	<u>Completed</u> . Board reviewed and approved the strategic plan in September.
<i>Psilocybin Time, Place, and Manner (TPM) Amendments</i>	Measure 109, the Oregon Psilocybin Services Act, was passed by the voters of Oregon, allowing manufacture, delivery, and administration of psilocybin at supervised, licensed facilities beginning on January 2, 2023. Pursuant to Measure 109, the county adopted ordinances that impose reasonable TPM regulations on the location of and operation of psilocybin businesses.	<u>Completed</u> . Board completed second reading of TPM amendment on January 4, 2023. These ordinances will be effective in April 2023

IV. ONGOING PLANNING PROJECTS

Staff is currently processing or coordinating several land use projects.

Table 2 - Ongoing Planning Projects

Project	Summary	Comments
<i>Amateur Radio Code Updates</i>	Based on Board direction and in coordination with the Deschutes County Building Division, Oregon Department of Aviation, and amateur radio operators, staff has initiated legislative updates to the amateur radio facilities.	<u>Ongoing.</u> Planning Commission will conduct a public hearing to consider legislative amendments to streamline and clarify the review process for Amateur Radio facilities on January 12.
<i>Applicant-initiated Nonresource Land Amendments</i>	Staff is processing four applicant-initiated Plan Amendment and Zone Change applications to change Exclusive Farm Use (EFU) zoning. One is set for Board hearing in January 2023. One has received Hearings Officer review and will be brought to the Board in early 2023. The other two are in incomplete status and are anticipated for hearings in 2023.	<u>Ongoing.</u> Deschutes County has a long-standing policy to timely process applicant-initiated plan amendment, zone changes, and/or text amendments. These plan amendments and zone changes require significant resources and are becoming increasingly common.
<i>City of Bend Coordination</i>	Coordinate with City of Bend on growth management issues, including technical analyses related to housing and employment needs.	<u>Ongoing.</u> Staff is coordinating with city staff regarding HB 3318, Stevens Road Tract. In 2023, the City of Bend will initiate an application to expand its urban growth boundary to include this property.
<i>City of La Pine Coordination</i>	Participate with Property Management and the City of La Pine to update and amend the County owned Newberry Neighborhood comprehensive plan designations, master plan and implementing regulation.	<u>Ongoing.</u> Staff is coordinating with the Property Manager and Strategic Initiatives Manager.
<i>City of Redmond Coordination</i>	Coordinate with City of Redmond to implement their Comprehensive Plan update.	<u>Ongoing.</u> Staff is coordinating with the City of Redmond regarding their plans to relocate and expand their wastewater treatment plant.
<i>City of Sisters</i>	Participate in the implementation of Sisters Country Vision Plan and City of Sisters Comprehensive Plan Update.	<u>Ongoing.</u> Staff participates in regular coordination meetings with the Sisters Vision Implementation Team.
<i>Comprehensive Plan Update</i>	As directed by the Board, an updated Comprehensive Plan needs to incorporate community input to craft new and updated goals and policies regarding agriculture, forestry, housing, recreation, natural resources, natural hazards, economic development, and transportation. This updated community vision is an opportunity to carefully discuss and balance community values in the face of upcoming opportunities and challenges.	<u>Ongoing.</u> Staff, in coordination with the consultant, is conducting community conversations, stakeholder meetings, and open houses throughout Deschutes County. The focus in early 2023 is to work with the Planning Commission to consolidate community feedback into updated draft goals and policies.

Project	Summary	Comments
Coordination Projects	<ul style="list-style-type: none"> ○ Destination Resort Overnight Lodging Unit Annual Reporting ○ Marijuana Annual Reporting / Inspections ○ Portland State University (PSU) Annual Population Estimate 	<u>Ongoing.</u> Staff coordinates with relevant stakeholders for these tasks and reports news, updates, and results to the Board annually.
Dark Skies	The Work Plan identifies updating the Outdoor Lighting Control Ordinance (aka Dark Skies Ordinance). As both the Planning Commission and Board have expressed support for revisiting the County's existing Outdoor Lighting ordinance, staff is preparing a report outlining opportunities and challenges.	<u>Ongoing.</u> This report will be presented to the Board in early 2023.
Growth Management Committees	Coordinate and/or participate on Deschutes County Bicycle and Pedestrian Committee (BPAC), Project Wildfire, and Deschutes County Mitigation and Enhancement Committee. BPAC is involved in the County's Transportation System (TSP) Plan Update, and Sisters Country Expansion Concept Plan.	<u>Ongoing.</u> These meetings occur monthly with the exception of the Mitigation and Enhancement Committee, which is an annual meeting.
Housekeeping Amendments - Early 2023	Initiate housekeeping amendments to ensure County Code complies with State law.	<u>Ongoing.</u> A Public Hearing will be conducted before the Planning Commission in January 2023, prior to a hearing before the Board
Road Naming	Process Road Naming requests associated with certain types of development on a semi-annual basis.	<u>Ongoing.</u>
Rural Accessory Dwelling Units (SB 391)	The Oregon Legislature adopted Senate Bill (SB) 391 into law on June 23, 2021. It authorizes a county to allow an owner of a lot or parcel within a rural residential zone to construct one ADU subject to certain restrictions and limitations.	<u>Ongoing.</u> Based on Board direction, Staff is monitoring the State 2023 Legislative session for changes to ADU or associated fire hardening requirements, prior to proceeding with local implementation.
Sage Grouse Coordination	Participate as a cooperating agency with the Bureau of Land Management (BLM) to evaluate alternative management approaches to contribute to the conservation of the Greater Sage-grouse and sagebrush habitats on federal lands.	<u>Ongoing.</u> Staff will continue to represent the County at multi-agency coordination meetings as part of the BLM's Greater Sage Grouse planning process.
Short Term Rentals	Based on Board direction, Staff is producing a summary of opportunities and challenges associated with residential short term residential rentals.	<u>Ongoing.</u> This summary will be presented to the Board in early 2023.
Transportation Growth Management (TGM) Grant	<p>CDD received a \$75,000 TGM grant to:</p> <ul style="list-style-type: none"> ○ Update the Tumalo Community Plan's bike, pedestrian, and transit elements; and ○ Implement the rural trails portion of the Sisters Country Vision Action Plan. 	<u>Ongoing.</u> The consultant has prepared draft concepts for both items and shared them with the respective stakeholder advisory committees. Staff will then begin the process to adopt the TGM Tumalo bike/ped/transit elements into the Tumalo Community Plan (TCP) and the process to add the proposed rural trails to the County TSP map of bike routes.

Project	Summary	Comments
<p>Transportation System Plan (TSP) 2020-2040</p>	<p>Road Department is funding a \$250,000 update to the TSP.</p>	<p><u>Ongoing</u>. Consultant has posted an online story map and draft list of projects with short description of project, planning level cost estimate, and prioritization. The online site was accepting public comments received until Dec. 31, 2022. Planning and Road Department will then review the comments and determine if any revisions are needed. Formal adoption of the TSP, including policies and the project list, is expected to begin in early 2023.</p>
<p>Tumalo Community Plan</p>	<p>CDD is preparing a 2020-2040 update to the Tumalo Community Plan (TCP)</p> <ul style="list-style-type: none"> o Review Community Vision o Update tables on basic information for population, developed lots, and traffic volumes o Review and revise policy language as needed based on community input 	<p><u>Ongoing</u>. Staff has held several open houses and online presentations on the TCP. Staff brought forth draft policies at the most recent open house on August 22, 2022. Based on public feedback, staff is revising several policies. Staff intends to hold more public outreach and at least one more open house in Tumalo prior to beginning Planning Commission hearings in early 2023.</p>
<p>Wildfire Mitigation (SB 762)</p>	<p>In 2021, the Oregon Legislature passed SB 762, which has significant impacts on wildfire mitigation efforts across all jurisdictions in Oregon. The initial risk map was made available on June 30, 2022. However, based on significant concern from citizens and interest groups through the state, ODF withdrew the initial risk map to provide more time for additional public outreach and refinement of risk classification methodologies. ODF anticipates new risk maps will be finalized by late fall or early winter 2023.</p>	<p><u>Ongoing</u>. Staff is monitoring SB 762 and will provide regular updates relating to forthcoming revisions and process related to the Oregon Department of Forestry's wildfire risk map.</p>
<p>Wildlife Inventory Update</p>	<p>In fall 2021, the Board directed staff to initiate a pilot project add a new mule deer winter range inventory from the Oregon Department of Fish and Wildlife (ODFW) to the county's Goal 5 protected resources. The County's existing mule deer winter range covers approximately 315,947 acres. ODFW's new inventory proposes an additional area of 188,132 acres, resulting in total of 503,979 acres. Incorporating the new inventory into DCC would require:</p> <ul style="list-style-type: none"> o Amending the Comprehensive Plan and zoning code o Drafting parcel-specific maps showing properties affected by the existing and proposed winter range o Writing extensive findings o Creating interactive website o Scheduling public open houses and hearing 	<p><u>Ongoing</u>. This project was delayed until 2023, at Board direction, to prioritize TPM regulations for psilocybin.</p> <p>Staff is seeking Board prioritization of this work plan item as part of this update.</p>

V. PROJECTS NOT YET INITIATED

Table 3 lists long range planning projects that have not been initiated. It recognizes staffing resource requirements for each project. They range from “minor” to “significant” as noted below:

- A “minor” rating (2 to 6 months)
- A “moderate” rating (4 to 8 months)
- A “significant” rating (6 to 12 months)

Table 3 – Non-initiated Long Range Planning Projects

Project	Summary	County Resources
<i>Bend Airport</i>	Update and adopt the Bend Airport Master Plan and amend the Comprehensive Plan and Development Code to incorporate implementation measures to allow new airport-related businesses. Initial coordination meetings with City of Bend were held in late 2022.	Minor to Moderate
<i>Community Plans</i>	Engage Terrebonne and Newberry Country residents to determine if community plans should be updated.	Significant
<i>Legislative Session</i>	Participate in legislative or rulemaking work groups to shape state laws to benefit Deschutes County.	Minor
<i>Zoning Amendments³</i>	<ul style="list-style-type: none"> • Minor variance 10% lot area rule for farm and forest zoned properties. (Attachment A) 	Minor
	<ul style="list-style-type: none"> • Outdoor Mass Gatherings update. (Attachment B) 	Moderate
	<ul style="list-style-type: none"> • Lot Line Adjustments and Re-platting. (Attachment C) 	Moderate
	<ul style="list-style-type: none"> • Sign code to become consistent with federal law. (Attachment D) 	Moderate
	<ul style="list-style-type: none"> • Accessory structure amendments clarifying they must be built concurrent with or after the establishment of a primary residence. Specify allowed facilities (baths, cook tops, wet bar) in residential accessory structures. (Attachment E) 	Moderate
	<ul style="list-style-type: none"> • Section 6409(a) of the Spectrum Act (Attachment F) 	Minor
	<ul style="list-style-type: none"> • In conduit hydroelectric generation code amendments (Attachment G) 	Significant
	<ul style="list-style-type: none"> • Repeal Conventional Housing Combining Zone (Attachment H) 	Minor
	<ul style="list-style-type: none"> • Define family for unrelated persons HB 2538, Non-familial Individuals (Attachment I) 	Moderate
	<ul style="list-style-type: none"> • Temporary use of recreational vehicles as dwellings (Attachment J) 	Moderate

VI. BOARD DIRECTION

Staff seeks Board direction on the priority of the following projects:

- Non-initiated Long Range Planning Projects listed in Table 3
- Wildlife inventory Updates

Given the level of interest in the work plan, the Board may decide to provide direction to CDD at a subsequent meeting in January.

³ Detailed descriptions of Zoning Amendment projects are provided as attachments to this memo, as noted.

Attachments

- A. Minor Variance /10% Lot Area Rule
- B. Outdoor Mass Gathering Update
- C. Lot Line Adjustment and Replatting
- D. Sign Code
- E. Accessory Structures
- F. Spectrum Act / Section 6409(a)
- G. In Conduit Hydroelectric Generation
- H. Conventional Housing Combining Zone
- I. Family Definition for Unrelated Persons (HB 2538)
- J. Temporary Use of Recreational Vehicles



Attachment G - Conduit Hydroelectric Facility Amendments

BACKGROUND & OVERVIEW

In 1986, Deschutes County adopted Ordinance No. 86-018, allowing hydroelectric facilities as a conditional use. In 2020, Three Sisters Irrigation District (TSID) applied for a hydroelectric facility to be integrated into their existing conduit system for the purpose of generating operational revenue for the district. The Board ultimately approved the request, only applying the provisions of DCC 18.128.260(A-B) that pertained to hydroelectric facilities located along existing conduit, not located directly adjacent to natural waterways or impoundments. The Board’s approval was ultimately upheld at the Land Use Board of Appeals (LUBA) in 2022.

CURRENT PROCESS & CHANGES

During final reading of the Board’s hydroelectric facility approval, the Commissioners expressed an interest in revisiting the code provisions at DCC 18.128.260(A-B) for the purpose of differentiating the “riverine” and “conduit” facilities, as characterized throughout the review of the TSID application¹. The Board mentioned the terms “affected stretch of river” and “maintain or enhance” as language that may be changed to differentiate between these types of hydroelectric facilities. Other changes to existing code language may be necessary to fully encapsulate the review criteria that may apply to riverine and conduit facilities, respectively. These revisions would ultimately create a more streamlined review process for conduit hydroelectric facility proposals which do not directly abut waterways or otherwise directly impact rivers or other water sources.

Key Amendment Concerns	
Staff Effort/Resources	Medium/High
Legal Complexity	Medium
Implementation Urgency	Medium

¹ Deschutes County BOCC Decision (Document No. 2021-223) pg. 20. 2021.



Attachment I - Amend County Code to define family for unrelated persons, Non-familial Individuals (HB 2583)

BACKGROUND & OVERVIEW

Until the passage of House Bill 2583 in 2021, local law in Oregon dictated residential occupancy limits based on “family” or “related” persons, essentially limiting how many unrelated people could share a home, regardless of dwelling type, size, or ownership status. This restriction served to unnecessarily limit housing choices—a particular pressure point in the current housing crisis.

HB 2583 now precludes the “family” clause from single-family occupancy requirements, stating:

“A maximum occupancy limit may not be established or enforced by any local government, as defined in ORS 197.015, for any residential dwelling unit, as defined in ORS 90.100, if the restriction is based on the familial or nonfamilial relationships among any occupants.”

CURRENT PROCESS & CHANGES

Deschutes County Code (DCC) Section 18.04.030, Definitions, currently defines “family” as:

“an individual or two or more persons related by blood, marriage, legal adoption, or legal guardianship living together as one housekeeping unit using a common kitchen and providing meals or lodging to not more than three additional unrelated persons, excluding servants; or a group of not more than five unrelated persons living together as one housekeeping unit using a common kitchen.”

This allows a total of five people if the residents are unrelated, but an undetermined number if the dwelling houses a family (which could be any size) as well as three unrelated persons.

Staff is investigating how other Oregon Counties have approached House Bill 2583. Clackamas County, for example, allows a total of 15 persons, regardless of relationship.

Utilizing a flat occupancy rate (like Clackamas County) means that a small home would have the same occupancy limit as a large home, which seems relatively illogical and could result in overcrowding of smaller dwellings as well as overloading of septic systems. Relating occupancy to number of bedrooms appears reasonable in that the occupancy limits would relate to the size of the dwelling. However, this could also lead to complications with respect to what is considered a

bedroom. Often, rooms are used as bedrooms by residents even if they do not meet the definition in the building code with respect to windows, egress, and size.

This amendment would require choosing a policy direction for a preferred definition as it relates to occupancy.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Low
Implementation Urgency	Medium/Low



Attachment J – DCC 18.116.095 Recreational Vehicle as a Temporary Residence on an Individual Lot

BACKGROUND & OVERVIEW

County Code allows a vacant property to be occupied by a recreational vehicle (RV) for either 30 days in any 60-day period without a permit or 180 days with a permit. Ambiguity in the current regulations result in significant code enforcement burden and difficulty ensuring proper disposal of wastewater. Issue areas include:

- Failure to implement or maintain lawful wastewater disposal
- Fire safety concerns
- Occupancy beyond lawful duration
- Violation of Wetland or Floodplain regulations
- Establishment of Hipcamps (online nightly rentals of RV spaces)
- Construction of buildings accessory to the RV use of the property

CURRENT PROCESS & CHANGES

Under Board direction and with public outreach and input, Staff would update DCC 18.116.095 to better address these concerns.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Low
Implementation Urgency	Medium



Attachment C - Replatting and Property Line Adjustment Amendments

BACKGROUND & OVERVIEW

Property owners have two primary options for adjusting the boundaries of properties created through subdivisions or partitions:

1. Replats
2. Property line adjustments/consolidations

Simple lot line adjustments involving a single property line are adequately regulated under statute (ORS 92.192). Significant reconfiguration of partitions and subdivisions are regulated under replatting standards, which are more comprehensive and take into account how reconfiguration of properties might affect surrounding roads, emergency access, and infrastructure capacity. However, the Deschutes County Code contains ambiguous language defining when applicants should utilize replatting standards versus property line adjustments and property line consolidations.

CURRENT PROCESS & CHANGES

As noted by the by the Deschutes County Road Department, under current county code, the potential exists for an applicant to apply for a series of property line adjustments to convert adjoining undevelopable properties into developable properties without any consideration for transportation infrastructure impacts. This potential is particularly present in undeveloped portions of subdivisions platted prior to the statewide land use program. Notable examples include portions of the Hillman, Millican, Centralo, and Laidlaw townsite plats. While the Road Department does not have specific recommendations to correct these issues, they outline the following possibilities:

- Property line adjustments that would reconfigure existing adjoining undevelopable units of platted land into a certain number of developable units of land shall be processed as a replat.
- Property line adjustments that would allow for development that is not subject to site plan review with the potential to generate a certain number of weekday PM peak-hour trips shall be processed as a replat.

Code amendments to address these issues would allow a more clear understanding of the thresholds for applying replatting standards versus more simplified property line adjustment

standards. While generally uncommon, staff has encountered high profile applications wherein definitional clarity between these two application types would have avoided additional legal or consultant fees for the applicant while also addressing the impact concerns of the Road and Community Development Departments.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Medium
Implementation Urgency	Medium



Attachment F - Spectrum Act - Wireless Telecommunication Amendments

BACKGROUND & OVERVIEW

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 became law. Section 6409(a) of the act, also known as the Spectrum Act, was intended to advance wireless broadband service for public safety and commercial purposes and to provide for the creation of a broadband communications network for first responders. Along with Section 704 of the Telecommunications Act of 1996 (Public Law 104-104), the Spectrum Act can be viewed as part of the ongoing effort by the wireless industry to achieve federal preemption over local telecommunications zoning regulations. As such, Deschutes County (along with many other State and local governments) must alter existing telecommunication regulations which do not align with certain aspects of the Spectrum Act.

The Spectrum Act and corresponding Federal Communications Commission (FCC) rulings outline the following standards:

- Applies to collocations, removals, or modification of equipment on wireless towers or base stations;
- Mandates that a State or local government “may not deny, and shall approve” any application covered by section 6409(a);
- Does not apply to collocation on a structure that is not a wireless tower or base station; and
- Does not apply if action substantially changes the physical dimensions of a tower or base station.

Regarding the process for reviewing an application under Section 6409(a), the FCC also provides that:

- A State or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a);
- A state or local government must approve an application covered by Section 6409(a) within 60 days from the date of filing, subject to tolling; the running of the period may be tolled by mutual agreement or upon notice that an application is incomplete, but not by a moratorium (an incomplete notice must be provided according with the same deadlines and requirements applicable under Section 704 of the Telecommunications Act of 1996, codified as 47 U.S.C. § 332(c)(7)); and

- An application filed under Section 6409(a) is deemed granted if a State or local government fails to act on it within the requisite time period;

In the summary, Section 6409(a) restricts local land use review of modifications and collocations by establishing a “substantial change” test as the primary eligibility determinant for review exemptions afforded by the Spectrum Act and reduces the application processing “shot clock” from 90 days to 60 days.

CURRENT PROCESS & CHANGES

Deschutes County Code (DCC) Section 18.116.250 contains provisions which directly contradict the standards of the Spectrum Act described above. However, the Community Development Department (CDD) currently evaluates and approves applications for non-substantial changes to physical portions of existing wireless telecommunication facilities (such as collocations of infrastructure) pursuant to the standards of Section 6409(a).

However, code amendments would allow a more seamless understanding of the Spectrum Act approval standards for both staff and applicants by codified the Spectrum Act standards in formal Deschutes County documents and ordinances. Any proposed amendments would ultimately include an objective set of standards for what constitutes “substantial changes” to existing wireless telecommunication facilities.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Medium
Implementation Urgency	Medium/Low



Attachment H - Conventional Housing Combining Zone Amendments

BACKGROUND & OVERVIEW

The purpose of these amendments is to repeal the Conventional Housing Combining Zone (CHC Zone) from the County's zoning map and zoning code. Deschutes County adopted the CHC in 1979 as part of Ordinance PL-15, the County's Zoning Ordinance. The CHC serves as an overlay district and restricts placement of manufactured or prefabricated homes in specific areas of the County with the following stated purpose:

"To provide a variety of residential environments in rural areas by maintaining areas reserved for conventional and modular housing permanently attached to real property".¹

The CHC applies to three areas – an area to the east of Tumalo, west of Tumalo and east of Bend². In 2020, the County produced a Rural Housing Profile, which outlined several potential strategies for removing barriers to housing production in rural Deschutes County. Repeal of the CHC was listed as a strategy as it would give those properties the potential to provide affordable housing in the form of mobile or manufactured homes, which are less expensive alternatives to stick-built or modular housing.

In addition to this, on March 23, 2022, Oregon House Bill 4064 became effective. The bill amended several sections of Oregon Revised Statute to prohibit local governments from prohibiting siting of prefabricated structures in residential areas where traditional single-family homes or other common dwelling types were allowed. Although the amendments were targeted toward cities and urban growth boundaries, several code provisions also limit the County's ability to limit manufactured prefabricated homes in residential areas.

PROPOSED CHANGES

The CHC is a mapped Combining Zone and removal of the zone from the three aforementioned areas would require:

- 1) Repeal of section 18.92 Conventional Housing Combining Zone from the Deschutes County Code
- 2) Zoning Map Amendment to repeal Conventional Housing Combining Zone

¹ DCC 18.92.010

² https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/16511/housing_profile_-_conventional_housing_combining_zone_map.pdf

Key Amendment Concerns	
Staff Effort/Resources	Low/Medium
Legal Complexity	Medium
Implementation Urgency	Medium/High



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Board Order 2023-004; Decision whether to hear two appeals of a Hearings Officer's decision for a Thornburgh Resort modification request.

RECOMMENDED MOTIONS:

Move approval of Order 2023-004 an Order accepting review of Hearings Officer's Decision in File No. 247-22-000678-MC and establishing the review will be heard de novo.

OR

Move approval of Order 2023-004 accepting review of Hearings Officer's Decision in File No. 247-22-000678-MC and establishing the review will be heard on the record.

OR

Move approval of Order 2023-004 denying review of Hearings Officer's Decision in File No. 247-22-000678-MC.

BACKGROUND AND POLICY IMPLICATIONS:

The Thornburgh Destination Resort requests that the Board of County Commissioners hear two appeals of a Hearings Officer decision (ref. file no. 247-22-000678-MC). As part of this decision, the Hearings Officer denied the Resort's modification request to the Resort's Fish and Wildlife Mitigation Plan.

BUDGET IMPACTS:

None.

ATTENDANCE:

Anthony Raguine, Principal Planner
William Groves, Planning Manager
Legal Counsel



MEMORANDUM

TO: Board of County Commissioners

FROM: Caroline House, Senior Planner

DATE: January 4, 2023

RE: Appeals of a Hearings Officer's denial of a Modification of the Thornburgh Destination Resort's Fish & Wildlife Management Plan ("FWMP") (Appeal Nos. 247-22-000984-A and 247-23-000003-A).

On January 11, 2023, the Board of County Commissioners ("Board") will decide whether to hear two appeals of a Hearings Officer decision (ref. file no. 247-22-000678-MC) for the Thornburgh Destination Resort. As part of this decision, the Hearings Officer denied the Resort's modification request to the Resort's FWMP.

I. BACKGROUND

In Deschutes County, all destination resorts are required to develop and implement mitigation plans to demonstrate any negative impact on fish and wildlife resources, associated with a resort's use, will be mitigated to ensure there is "no net loss" of habitat pursuant to Deschutes County Code (DCC) 18.113.070(D).

For the Thornburgh Resort ("Resort"), the County elected to defer review of DCC 18.113.070(D) to the Final Master Plan ("FMP") review process. As part of the Resort's FMP, the Resort developed several mitigation plans, including the following required plans:

1. 2008 Wildlife Mitigation Plan ("WMP")
2. 2008 Mitigation and Monitoring Plan ("M&M Plan")
3. 2008 FWMP
4. FMP Condition 39 – Whychus Creek Mitigation

The WMP and M&M Plan are the mitigation plans for impacts to terrestrial wildlife habitat, and the 2008 FWMP and FMP Condition 39 are the mitigation plans for fish habitat. The fish habitat

mitigation plans are required because there is a connection between the Resort's groundwater pumping and groundwater entering rivers and streams, which could have impacts on fish habitat. Given this connection, the Resort's mitigation plans for fish habitat commit the Resort to acquiring additional water rights to offset the impacts associated with the Resort's groundwater pumping on fish habitat. It is important to note the approved fish habitat mitigation plans are in addition to the Resort's water mitigation requirements through the Oregon Water Resources Department ("OWRD").

Lastly, staff notes the Resort's required mitigation requirements were not settled until 2018, more than 10 years after the FMP review process was initiated, due to numerous appeals and several remand proceedings.

II. SUBJECT APPLICATION

In August 2022, the developer of the Resort applied for a Modification to replace the 2008 FWMP with a new FWMP ("2022 FWMP"). As a part of this request, the applicant proposed several water conservation measures by reducing some water intensive amenities, and reducing irrigated landscaping for Resort facilities and individual homes. As a result, the Resort proposes to reduce its total water needs from 2,129 acre-feet ("AF") to 1,460 AF.

A public hearing before a Hearings Officer was held on October 24, 2022. The Hearings Officer denied the Resort's Modification request on December 19, 2022, based on the following two key issues:

1. The Hearings Officer found input on the 2022 FWMP from the Oregon Department of Fish & Wildlife ("ODFW") is a relevant *evidentiary consideration* in determining if the "No Net Loss" standard is met. However, the Resort did not provide ODFW enough time to review the 2022 FWMP and submit a meaningful response.
2. The 2022 FWMP does not contain clear, objective and enforceable compliance language, and for this reason, there can be no assurance that the 2022 FWMP is *likely or reasonably certain to succeed* at achieving the County's "No Net Loss" requirement.

As part of this decision, the Hearings Officer made a number of interpretative decisions that will likely impact future development of the Resort and potentially other land use applications in Deschutes County.

III. APPLICANT'S APPEAL

On December 30, 2022, the Applicant filed an appeal. As part of the Notice of Appeal, the Applicant identifies three appeal issues that the Applicant believes the Hearings Officer made incorrect findings on. The appeal issues are related to:

1. Interpreting the Procedures Ordinance – DCC 18.113.080, DCC 22.36.040, and Thornburgh FMP Condition 1;
2. Review of the “Not Net Loss” Standard; and
3. Requirements for the Published Notice for the Initial Public Hearing

The Applicant requests the Board review the appeal *on the record*.

IV. GOULD APPEAL

On January 3, 2023, Annunziata Gould (“Appellant”) filed an appeal. As part of the Notice of Appeal, the Applicant identified 18 appeal issues that the Hearings Officer made incorrect findings. Gould’s Notice of Appeal is attached. The Appellant requests the Board review the appeal *de novo*.

V. STAFF RECOMMENDATION

Staff recommends the Board hear both appeals *de novo*.

VI. BOARD OPTIONS

First, the Board must decide if it wishes to hear the appeals. In determining whether to hear the appeals, the Board may only consider:

1. The record developed before the Hearings Officer;
2. The notices of appeal; and
3. Recommendation from staff

Option 1: Hear the Appeals:

If the Board decides to hear the appeals, the Board must make a decision on the scope of the review. As noted above, the Applicant and Appellant have filed different requests for the scope of the review. Per the DCC, the Board has two choices for the scope of the review:

1. On the Record
 - This means parties can only present their arguments and the Board must rely on the record developed before the Hearings Officer. No new evidence can be submitted.
2. De Novo
 - This means parties can submit new evidence and present their arguments.

Next, the Board may wish, but is not required, to limit the issues it will consider as part of the Board’s review.

Lastly, the Board may want to establish time limits for testimony at the appeal hearing.

Option 2: Not Hear the Appeals:

If the Board decides the Hearings Officer's decision represents their perspective on this application, the Board should decline to hear the appeals. This results in the Hearings Officer's decision becoming the final decision of the County. Upon the mailing of the Board's decision to decline review, the parties appealing may continue their appeals as provided under the law.

VII. 150-DAY LAND USE CLOCK

The 150th day on which the County must take final action on these applications is March 12, 2023. If the Board decides to hear the appeals there will be 60 days, from January 11, 2023, for the Board to issue a decision.

VIII. RECORD

The record for the subject application and appeals is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000678-mc-thornburgh-destination-resort-modification-cmpfmpfwmp>

Attachments:

1. DRAFT Board Order 2023-004 Accepting Review (De Novo)
2. DRAFT Board Order 2023-004 Accepting Review (On the Record)
3. DRAFT Board Order 2023-004 Declining Review
4. Notice of Appeal – Applicant (Appeal No. 247-247-22-000984-A)
5. Notice of Appeal – Gould (Appeal No. 247-23-000003-A)
6. Hearings Officer Decision – 247-22-000678-MC
7. 2022 FWMP

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File No. 247-22-000678- * ORDER NO. 2023-004
MC.

WHEREAS, on December 19, 2022 the Hearings Officer denied File No. 247-22-000678-MC;
and

WHEREAS, on December 30, 2022, Central Land & Cattle Company, LLC, Kameron DaLashmutt, and Pinnacle Utilities, LLC (“Applicant”) , appealed (Appeal No. 247-22-000984-A) the Deschutes County Hearings Officer’s Decision on File No. 247-22-000678-MC; and

WHEREAS, on January 3, 2023, Annunziata Gould (“Appellant”), appealed (Appeal No. 247-23-000003-A) the Deschutes County Hearings Officer’s Decision on File No. 247-22-000678-MC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officer’s decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now therefore,

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

Section 1. That it will hear on appeal Appeal Nos. 247-22-000984-A and 247-23-000003-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeals shall be heard *de novo*.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeals hearing.

Section 5. Pursuant to DCC 22.32.035(D), to date the only documents placed before and considered by the Board are the notice of appeals, recommendations of staff, and the record developed before the lower hearings body for File No. 247-22-000678-MC as presented at the following website:

<https://www.deschutes.org/cd/page/247-22-000678-mc-thornburgh-destination-resort-modification-cmpfmpfwmp>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File No. 247-22-000678- * ORDER NO. 2023-004
MC.

WHEREAS, on December 19, 2022 the Hearings Officer denied File No. 247-22-000678-MC;
and

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DaLashmutt, and Pinnacle Utilities, LLC (“Applicant”), appealed (Appeal No. 247-22-000984-A) the
Deschutes County Hearings Officer’s Decision on File No. 247-22-000678-MC; and

WHEREAS, on January 3, 2023, Annunziata Gould (“Appellant”) appealed (Appeal No. 247-
23-000003-A) the Deschutes County Hearings Officer’s Decision on File No. 247-22-000678-MC;
and

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the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear
appeals of Hearings Officer’s decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application
on appeal; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY
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Section 1. That it will hear on appeal Appeal Nos. 247-22-000984-A and 247-23-000003-
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ordinances.

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<https://www.deschutes.org/cd/page/247-22-000678-mc-thornburgh-destination-resort-modification-cmpfmpfwmp>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board’s official repository for the record in this matter.

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Summary Letter



21145 Scottsdale DR, Bend, Oregon 97701
360-907-4162 newtonjim@hotmail.com

November 7, 2022

TO:

Kameron Delashmutt
Central Land and Cattle Company, LLC
67525 SW Cline Falls Hwy
Redmond, Oregon 97756

FROM:

Jim Newton, P.E., R.G., C.W.R.E.

RE: 2022 THORNBURGH RESORT FISH AND WILDLIFE MITIGATION PLAN,

Dear Kameron:

This summary letter has been prepared by Jim Newton, PE, RG, CWRE, Principal of Cascade Geoengineering ("CGE") on behalf of Central Land and Cattle Company, LLC, owner, and developer of the Thornburgh Resort ("Thornburgh") to provide a simplified summary of the 2022 *"Thornburgh Resort Fish and Wildlife Mitigation Plan, Addendum #2 (2022 FWMP) Relating to Potential Impacts of Thornburgh's Reduced Ground Water Withdrawals on Fish Habitat"* dated August 16, 2022. The 2022 FWMP presented very detailed changes to the original 2008 FWMP that was approved by the Oregon Department of Fish and Wildlife (ODFW). Both the 2008 and 2022 FWMP provided mitigation to offset any potential impacts on fisheries and aquatic habitat and the specific measures to mitigate for any negative impacts.

Thornburgh estimated in 2008 the Resort’s water needs at full build out were up to 2,129 AF per year, having consumptive use of 1,356 AF, and a maximum withdrawal rate of 9.28 cubic feet per second (cfs). The Thornburgh Resort revised water needs at full build out by reducing some water intensive amenities and reducing irrigated landscaping for resort facilities and individual homes. The Resort will also implement the use of improvements in the type and method of fixtures used in Resort buildings to reduce consumption. As a result of this Thornburgh is reducing its total water needs from 2,129 AF to 1,460 AF. A summary table of the 2008 estimated water demand and the 2022 revised water demand are shown below:

**2008
Original Water Use Full Resort Build-Out**

<u>WATER USE</u>	<u>ANNUAL VOLUME</u>	<u>CONSUMPTIVE USE</u>
Golf Courses	717 AF	645 AF
Irrigation	195 AF	117 AF
Reservoir Maintenance	246 AF	206 AF
Other Q/M	971 AF	388 AF
TOTALS	9.28 CFS 2,129 AF	1,356 AF

**2022
Reduced/Revised Water Use at Full Resort Build-Out**

<u>WATER USE</u>	<u>ANNUAL VOLUME</u>	<u>CONSUMPTIVE USE</u>
Golf Courses	501 AF	451 AF
Irrigation	111 AF	66 AF
Reservoir Maintenance	51 AF	43 AF
Other Q/M	797 AF	319 AF
TOTALS	1,460 AF	882 AF

The above reductions in estimated annual water usage reflect roughly a one-third in water savings at full buildout of the Resort. Further, the water used for mitigation of the new Resort water usage relies more on groundwater, groundwater that is intended to offset groundwater pumping that could reduce discharges of seeps and springs that contribute cool water to surface flows in the Deschutes River and Whychus Creek at gaining reaches of the River and Creek, respectively. A list of the water rights to be used for mitigation of the Resort water uses are shown below by the referenced name, volume and the water right certificate, transfer or otherwise a cancellation:

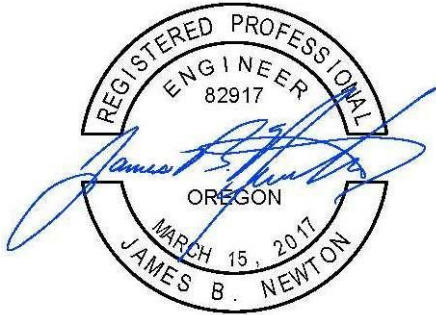
Water Rights: Certificated, Transfers, and Cancellations.

1. LeBeau (200 AF) – Surface Water POD: Certificate 95746 and transfer T-13857.
2. Big Falls Ranch (614.4 AF) – Surface Water: Certificate 96192 & 96190 and transfer T-12651 to a groundwater Point of Appropriation.
3. Big Falls Ranch (25.6 AF) – Groundwater POA: Certificate 87558.
4. Tree Farm (327.5 AF) – Groundwater POA: Certificate 94948 and Transfer T-13703.
5. Dutch Pacific (49.5 F) – Groundwater POA: Certificate 89259.
6. DRC Temporary Mitigation Credits – 6 AF of mitigation.
7. Three Sisters Irrigation District (1.51 cfs minimum 106 AF) – Surface water. Final order signed for instream transfer. This TSID water will only be used for quality mitigation, not as part of any OWRD mitigation or transfer program.

These above mitigative water rights, upon approval by the Oregon Water Resources Department, will provide mitigation for 1,217 AF of the 1,460 AF required for fully mitigation the estimated Resort water uses. The remaining approximately 243 AF of mitigation will be completed in the future, prior to the OWRD authorizing the full annual water use of 1,460 AF. If the additional 243 AF of mitigation is not necessary, or unavailable, the Resort will be limited to 1,217 AF annually.

Based on the detailed surface and groundwater modelling prepared by Four Peaks Environmental Consulting, and Resource Strategies, Inc., and the analysis of the impacts on Fish Habitat provided by Four Peaks (all submitted into the county written record as of the date of this letter), the mitigation of the Thornburgh Resort groundwater usage achieves compliance with DCC 18.113.070(D), Deschutes County's "No Net Loss/Degradation" standard as it pertains to fishery resources. Considering the reduced Thornburgh Resort water usage and superior mitigation of future Resort water uses provided by the 2022 FWMP and the ample technical support for the plan, the County should approve the Thornburgh 2022 FWMP.

**THORNBURGH RESORT
2022 FISH AND WILDLIFE MITIGATION PLAN (2022 FWMP)
RELATING TO POTENTIAL IMPACTS OF THORNBURGH'S
REDUCED GROUND WATER WITHDRAWALS ON FISH HABITAT**



Renews: 1/1/2023



Renews: 5/1/2023

Prepared for:

Central Land and Cattle Company, LLC
67525 SW Cline Falls Hwy
Redmond, Oregon 97756

Prepared by:

Cascade Geoengineering, LLC
21145 Scottsdale Drive
Bend, Oregon 97701

August 16, 2022
Reorganized and Updated November 7, 2022

Project: Thornburgh Resort

I. Introduction

This report was prepared by Jim Newton, PE, RG, CWRE, Principal of Cascade Geoengineering ("CGE") on behalf of Central Land and Cattle Company, LLC, owner, and developer of the Thornburgh Resort ("Thornburgh" or the "Resort") as an Addendum to the Thornburgh Resort and Wildlife Mitigation Plan regarding potential impacts on fisheries and aquatic habitat and the specific measures to mitigate for any negative impacts. It incorporates elements of and replaces the "Addendum Relating to Potential Impacts of Ground Water Withdrawals on Fish Habitat" dated April 21, 2008 (the "FWMP") developed by Newton Consultants, Inc. ("NCI") and supplements thereto.

II. Background

The Thornburgh Resort will have no direct impact on natural surface waters; there are no such resources on the property and the proposed source of water for the Resort is ground water pumped from wells on the Resort property, to be appropriated under a series of water rights approved by the Oregon Water Resources Department ("OWRD"). Use of ground water by the Resort is expected to indirectly impact flows in the Deschutes River because of a determination of hydraulic connection between surface and ground waters in the Deschutes Basin. This connection has been noted by the USGS and a determination confirming such was made by OWRD in connection with its evaluation and approval of one of Thornburgh's original water rights authorizing the appropriation of 2,129 acre-feet of ground water for the Resort.

As a result of the determination of hydraulic connection, Thornburgh was required to provide mitigation to offset impacts equal to the consumptive use in the "zone of impact" identified by OWRD, in this case the "General Zone" of impact. In addition to the OWRD requirements, Thornburgh voluntarily agreed it would address both flow and temperature concerns with measures set out in Section V: Mitigation and Enhancement Measures of the 2008 FWMP. Temperature concerns were addressed by using cooler water for a part of the Resort's OWRD mitigation. The cooler water was to be obtained by purchasing Big Falls Ranch ("BFR") water rights that entitled BFR to pump surface water from Deep Canyon Creek. This water, with a temperature of approximately 13 degrees C would be acquired over time as needed from Big Falls Ranch. Once acquired BFR would cease pumping the rights acquired by Thornburgh and thereby improve flows and cool the river. The remaining mitigation water would also be surface water, from COID and other sources, with an estimated temperature of 26 degrees C. The 2008 FWMP and other measures added to it during the review of the Final Master Plan (FMP) were determined to fully mitigate for any negative impacts on fish habitat and to achieve compliance with DCC 18.113.070(D), Deschutes County's "No Net Loss/Degradation" standard as it pertained to fishery resources.¹

This cooler water, roughly 62% of the total mitigation promised by the 2008 FWMP, was found sufficient to fully mitigate for 100% of the thermal impacts to the Deschutes River (and to Whychus Creek as well according to ODFW) attributable to Thornburgh's pumping. Further, the

¹ This is a Deschutes County standard only.

1.87 cfs² of impacts to seeps and springs in the 2008 FWMP was mitigated for by leaving 1.97 cfs (equal to 105% of the impacts) of the Deep Canyon water in the river upstream of areas identified as critical fish habitat. Additionally, this mitigation was determined by the Oregon Department of Fish and Wildlife ("ODFW") to result in a net benefit to fisheries. Project opponents objected to the 2008 FWMP, claiming that no mitigation was provided to address a slight reduction in groundwater recharge to Lower Whychus Creek. Although Thornburgh and ODFW disagreed mitigation was needed in this location, Thornburgh volunteered to provide additional mitigation specifically for Whychus Creek by funding a part of a Three Sisters Irrigation District project. The County's hearing officer accepted this offer. The Whychus Creek mitigation was opposed by a project opponent but following an extensive, and protracted legal battle was proven to meet the No Net Loss standard, and provide additional benefits to habitat resources in Whychus Creek by increasing the flow of the creek many miles upstream of the cool water fish habitat found in Lower Whychus Creek, which is now completed.

III. Resort Water Supply and OWRD Mitigation

A. Resort Water Needs and Supply

Thornburgh's water supply is groundwater pumped from the Deschutes Aquifer from numerous wells located within the resort boundaries. That has not changed since the Resort was first approved in 2006. The Deschutes Aquifer is vast covering about 4,500 square miles with a thickness or depth of as much as 2,000 feet at points. The aquifer holds an immense water volume with very substantial flows through it. Annual recharge of the aquifer is about 3,800 cfs or more than 2,750,000 AF per year while annual usage is roughly 750,000 AF, the bulk of which is irrigation. Water generally travels north and east until it reaches Lake Billy Chinook.

The Resort's original plan anticipated 6 groundwater wells would be used. Presently, there are 8 potential groundwater wells. However, changes to Resort infrastructure may require additional well locations to be added or moved³. Any well within the Resort property will pump from the same regional aquifer to supply Thornburgh water for a variety of purposes, common among municipal and resort style communities in Central Oregon. As was noted from a David Newton in a memo dated August 24, 2021, the number or specific location of wells within the Resort property has no bearing on the mitigation plan or the efficacy of mitigation to offset pumped groundwater from the Resort's property. This conclusion has been verified by comprehensive groundwater modeling that was completed by Four Peaks Environmental Consulting ("Four Peaks"). Four Peaks determined that changing well locations at the Thornburgh property would have no change on the impacts felt from Thornburgh's pumping. See Four Peaks: Evaluation of the Impacts of Proposed Groundwater Pumping at Thornburgh Resort Project dated October 19, 2022, (Four Peaks GSFlow)

² The 1.87 cfs of impact was the total amount of impact to all seeps and springs in any location (Deschutes, Whychus, etc.) from Thornburgh pumping 2,129 AF of groundwater.

³ The CMP began with 6 well locations that were changed in the approved FMP. The A-1 Tentative Plan approved another well location.

Thornburgh uses to be served by its wells include domestic and commercial uses, golf course, park and landscape irrigation, reservoir/pond maintenance and fire protection. Collectively, these uses are defined by the OWRD as “quasi-municipal” uses. In 2008, the Resort’s water needs at full build out were estimated at 2,129 AF per year, having consumptive use of 1,356 AF, and a maximum withdrawal rate of 9.28 cfs as shown below. As defined by OAR 690-505-0605(2), “Consumptive use” means the Department’s determination of the amount of a ground water appropriation that does not return to surface water flows in the Deschutes Basin due to transpiration, evaporation or movement to another basin.”

1. Original Water Use Full Resort Build-Out

<u>WATER USE</u>	<u>ANNUAL VOLUME</u>	<u>CONSUMPTIVE USE</u>
Golf Courses	717 AF	645 AF
Irrigation	195 AF	117 AF
Reservoir Maint	246 AF	206 AF
Other Q/M	971 AF	388 AF
TOTALS	2,129 AF	1,356 AF

Since the approval of the 2008 FWMP, issues regarding the use and conservation of water have become increasingly important to the region. As a result of this growing regional water awareness, Thornburgh has taken focused steps to reduce the Resort’s water usage by roughly **one third**. This reduction of water use will be achieved by Thornburgh foregoing its right to develop some water intensive amenities and reducing irrigated landscaping for resort facilities and individual homes. The Resort will also implement the use of improvements in the type and method of fixtures used in Resort buildings. As a result of this Thornburgh is reducing its total water needs from 2,129 AF to 1,460 AF and its consumptive use from 1,356 to 882 AF, as shown in table 2 below.

2. Reduced Water Use at Full Resort Build-Out

<u>WATER USE</u>	<u>ANNUAL VOLUME</u>	<u>CONSUMPTIVE USE</u>
Golf Courses	501 AF	451 AF
Irrigation	111 AF	66 AF
Pond Maint.	51 AF	43 AF
Other Q/M	797 AF	319 AF
TOTALS	1,460 AF	882 AF

Thornburgh owns or controls numerous applications, permits and other certificated water rights for use as part of the Resort’s water plans that may be used for consumptive water or mitigation water purposes. These include certificated water rights, transfers, and cancellations (See Section B below) and ground water applications and permits (See Section C). For further details see Attachment 1.

B. Water Rights: Certificated, Transfers, and Cancellations.

1. LeBeau (200 AF) – Surface Water POD: Certificate 95746 and transfer T-13857.
2. Big Falls Ranch (614.4 AF) – Surface Water: Certificate 96192 & 96190 and transfer T-12651 to a groundwater Point of Appropriation.
3. Big Falls Ranch (25.6 AF) – Groundwater POA: Certificate 87558.
4. Tree Farm (327.5 AF) – Groundwater POA: Certificate 94948 and Transfer T-13703.
5. Dutch Pacific (49.5 F) – Groundwater POA: Certificate 89259.
6. DRC Temporary Mitigation Credits – 6 AF of mitigation.
7. Three Sisters Irrigation District (1.51 cfs minimum 106 AF) – Surface water. Final order signed for instream transfer. This Whychus Creek TSID water will only be used for quality mitigation, not as part of any OWRD mitigation or transfer program (m).

C. Ground Water Rights: Permits and Applications.

8. GW Permit G-17036: Permit for 9.28 cfs (2,129 AF) of groundwater. Currently pending a contested case regarding extension of the permit.
9. GW Permit Application G-19139 (pending). Alternate permit for 9.28 cfs (2,129 AF) to replace G-17036 if needed.
10. Limited License Application LL-1879 (pending). Alternate permit for 4.5 cfs of groundwater for interim use during actions on #8-9 above.
11. Limited License Application LL 1917 (pending). A second alternate limited license for .453 cfs of groundwater (same amount and alternate to T-13703⁴).

For any of the permits or applications in “C” above, OWRD requires mitigation under ORS 390.835 and related administrative rules in OAR 690-505-0500 *et seq.* This does not apply to the transfer of certificated water rights that have been fully developed. The functional effects of a transfer and a new fully mitigated pumping are essentially the same. Both result in the termination of the right to pump water in one location and both authorize pumping in the new location. The OWRD mitigation rules were adopted in response to a comprehensive study of ground water resources in the Deschutes Basin conducted by the United States Geological Survey (“USGS”) and OWRD. (*Ground Water Hydrology of the Upper Deschutes Basin, Oregon,* USGS Water Resources Investigation Report 00-4162, 2001). The study demonstrates hydraulic connection between the regional groundwater aquifer and surface water within the Deschutes Ground Water Study Area as shown on Figure 1. As a result, the rules require mitigation to offset the impact of ground water pumping on surface water flows.

In reviewing applications for new ground water rights, OWRD determines the total quantity of water to be diverted from groundwater and the amount of “consumptive use” associated with the proposed new use. The amount of mitigation required – or “mitigation obligation” – is equal to the annual amount of consumptive use. In addition to specifying the quantity of mitigation water required to offset consumptive use, OWRD identifies the “zone of impact” or location

⁴ Now that the Tree Farm transfer has been approved this LL may not be required.

within the surface water system in which the impact of a proposed ground water use is expected to occur. Mitigation for any new groundwater permit used by Thornburgh is required in the "General Zone of Impact" which allows mitigation water to be obtained from any source in the Deschutes Basin above the Madras gage, located below Lake Billy Chinook. The broad geographic scope of the General Zone reflects findings in the USGS Study that most ground water within the basin flows toward the confluence area of the Crooked and Deschutes Rivers and discharges into the river and tributaries in an area just above Lake Billy Chinook.

Initially, OWRD determined the consumptive use, and mitigation obligation of permit G-17036 to be 851.6 AF (40%, of 2,129 AF). WaterWatch of Oregon protested that determination and Thornburgh voluntarily agreed to increase the consumptive use of individual elements of the permit which raised the overall mitigation requirement to 1,356 AF which in essence provides an additional 505 AF (over 50% extra) of mitigation. The application for the replacement permit G-19139 uses the same consumptive use rates applied by OWRD under the settlement. Under OWRD rules, mitigation for new groundwater permits must be provided in advance for the full amount of water to be pumped under the new permit for each phase of development.

D. Thornburgh 2022 Mitigation Plan (includes OWRD Mitigation ("M") and No Net Loss Quality Mitigation ("m")).

To achieve compliance with DCC 18.113.070(D), Thornburgh commits to reduce its water usage to a maximum of 1,460 AF, having a consumptive usage of no more than 882 AF. Further, Thornburgh commits to purchase the certificated water rights #1-5 in Section B above (all are both OWRD (M) and Quality (m) mitigation) and discontinue pumping water in the location appurtenant to the right. Thornburgh committed to and has acquired the TSID-Whychus Creek quality mitigation (m) water listed in #7 above. Thornburgh has transferred or will be seeking approvals to transfer the water rights in #1-4 to the Thornburgh wells. The transfers will change the place of appropriation, the place of use, and in the case of irrigation rights, the character of use from irrigation to quasi-municipal uses. Transferring a certificated water right does not require OWRD mitigation, as it eliminates the use of this transferred water right in its former location and allows it to be used, instead, on the Resort's property. Thornburgh's transfers, if approved, will total 1,167.5 AF. The first of which the Tree Farm, temporary transfer T-13703, was approved transferring 327.5 AF of quasi-municipal water from a well in west Bend to the Thornburgh wells. Transfer for the LeBeau and Big Falls Ranch water have been applied for and are pending. If any transfer is not approved, the water right could be cancelled in lieu of mitigation (both the groundwater and surface water rights) or transferred instream (just the surface water rights) for mitigation credits. Water Right #5 above, Certificate 89259, Dutch Pacific, for 49.5 AF groundwater is presently being cancelled in lieu of mitigation. When all the transfers and cancellations are complete, Thornburgh will be able to pump 1,217 AF⁵. To pump over 1,217 AF Thornburgh will transfer additional water rights to transfer to its property or provide additional mitigation (243 AF +/-).

Until Thornburgh's transfer applications are fully adjudicated it is unclear how much water will be pumped from G-17036, G19039, or any alternate "NEW" groundwater or limited license

⁵ 1,223 AF including the 6 AF listed in #6 above that can be used as M mitigation.

permit.⁶ What is clear, however, is that the Resort has agreed to reduce its water use from 2,129 AF to a maximum pumping of 1,460 AF and maximum consumptive use of 882⁷ AF. For any portion of its water Thornburgh pumps under a new groundwater permit it will be required to provide mitigation for that new use prior to pumping. OWRD will require that these water rights are also in the general zone of impact.

The mitigation benefits provided under this plan occur at different times depending on whether the permit is appropriated from a groundwater source, i.e., Dutch, and Tree Farm permits or surface water permits that are diverted from the stream, i.e., the LeBeau permit. For permits appropriated from the ground, the mitigation event occurs when Thornburgh acquires the water right and files an assignment of water right with OWRD and does not pump water under the authority of the permit in advance of OWRD approval of a transfer or other mitigation measure. While the approval of a transfer (or an alternate described herein) is needed to allow groundwater pumping on the Resort property, it is not needed to achieve compliance with the 2022 FWMP for a permit appropriated from groundwater, or to meet the County's no net loss standard. In that case, the ownership, assignment, and a commitment to nonuse of the water rights under that permit until it is transferred or used for mitigation may be relied on to demonstrate compliance with the FWMP during a third stage development permit review.

Doing the measures outlined in this Section D will meet or exceed the No Net Loss standard as provided for in DCC 18.113.070(D) as for the reasons discussed in detail in the Sections below.

F. Groundwater Withdrawals and Quality Mitigation

In other resort approvals, OWRD mitigation was accepted as providing the entire mitigation needed to meet this standard for fish habitat. In the case of Thornburgh Resort, this standard has been redefined to require "water quality" mitigation. This was required even though all groundwater pumping in the Deschutes Basin affects groundwater discharges which impact stream flows. OWRD mitigation, by design, increases streamflow by either increasing groundwater discharge into the stream (cold groundwater mitigation directly via seeps and springs) or by leaving water in the stream (surface water mitigation), which typically has the benefit of reducing river and creek temperatures associated with the increase in water flow.

Further, in the Deschutes Basin, surface water generally originates as groundwater released by seeps and springs due to the hydrological connection. Snowpack melts in the mountains and seeps into the highly permeable and porous ground. Water then flows down-gradient in the aquifer to be discharged into streams as springs or seeps. In this basin a minimal amount of surface water is the result of run-off. Surface water that begins as ground water is often diverted or pumped from our streams to feed the basin's substantial irrigation system. Irrigation water that is not consumed, seeps back into the porous soil and down into the aquifer

⁶ Any new water right or authorization won't impact the mitigation measures required as the source would remain the same regional aquifer.

⁷ Applying OWRD standard practice of 40% to QM permits would result in consumptive use of 584 AF. This plan provides mitigation far more than that amount.

as return flows back to groundwater. Once returned to the aquifer, groundwater flows to the north and northeast until it is discharged back into streams and ultimately the Deschutes River as surface water.

Regardless of the type (surface or groundwater) or place of mitigation, streamflow in the basin has been shown to increase when surface water irrigation or groundwater use is discontinued. Increasing streamflow was the main purpose of the OWRD mitigation program and also a primary purpose of many of the basin's environmental actions and restoration programs. NCI noted this in the 2015-2017 remand of the FMP relating to TSID mitigation for Whychus Creek. Flow volumes in the upper Deschutes River are an important component of the current Habitat Conservation Plan for the Oregon Spotted Frog. Flow volume guarantees set to protect the frog have created substantial impacts on the operation of the basin's irrigation districts and a tremendous burden on some of farmers within the basin, including North Unit Irrigation District.

Opponents of Thornburgh have typically focused on groundwater as it relates to its ability to affect streamflow, particularly the thermal conditions or "quality" of the remaining flow resulting from groundwater pumping. More specifically, the areas below Lower Bridge on the Deschutes River and lower Whychus Creek where the discharge of significant amounts of cold groundwater, can dramatically lower stream temperatures result in improved water quality.

Quality Mitigation - 2008 FWMP:

In the 2008 FWMP, the reduction in groundwater discharge resulting from pumping was mitigated by providing surface water in the Deschutes River and its Deep Canyon Creek and Whychus Creek tributaries. In both cases, surface water mitigation was justified because it was cool. Water left in Deep Canyon Creek, is spring fed with a temperature of roughly 13 degrees C as it flows into the Deschutes River⁸. Adding the average mitigation flow of 1.97 cfs from the cool Deep Canyon Creek water rights more than replaced the average reduction of 1.87 cfs in seep and spring discharge claimed by the 2008 Yinger report commissioned by a project opponent. At the same time, Tetra Tech's Mass Balance Analysis estimated the temperature impact of these claimed reductions in streamflow, with mitigation as a minor temperature **increase** of 0.1 degrees C in the Deschutes River at Steelhead Falls and below the mouth of Whychus Creek, along with increased flows in the river from north Bend downriver. For the area around Lower Bridge Tetra Tech noted a zero-degree change which was rounded down from a minor impact. Even though there was up to a 0.1 degree C **increase** in temperature in two areas of critical fish habitat the mitigation plan was found to meet the no net loss standard because it replaced the loss of seeps and springs (1.97 vs. 1.87 cfs) and the temperature change was found to be of no impact to fish habitat in the Deschutes River.

Mitigation was required for Whychus Creek, despite the extremely minor impacts projected there by Mr. Yinger, because the 2008 hearings officer was concerned the Resort's "peak" summertime use of water might have greater impacts than modeled. The water in Whychus

⁸ This was the temperature Tetra Tech, a key consultant for Thornburgh Resort, utilized to calculate thermal impacts during the 2008 FMP proceedings.

Creek at the TSID diversion has an average temp of about 13 degrees C⁹. The applicant's expert hydrogeologist David Newton, PE, CWRE, established that by scientific analysis that leaving more of that cool water in the creek from that point downstream increased the thermal mass of the creek causing it to heat less as it flows downstream. The NCI memo from October 2017 shows the maximum thermal impacts to lower Whychus Creek **without** mitigation, during the peak summertime temperatures and the creek at its lowest flow, to be 0.0042 degrees C. This is far less than what can be measured using technology available today. With the TSID surface water mitigation, the temperature was **lowered** in Whychus Creek (lowered by approximately 0.001, again in an amount too small to be measured)¹⁰. The TSID water also provided thermal benefits to the middle and upper parts of the creek as noted in the NCI memo, although those benefits were not considered to meet the standard due to the limited scope of the review on remand which focused on temperatures in Lower Whychus Creek only. The TSID mitigation in Whychus Creek was shown to meet the no net loss/degradation standard.

In the Crooked River, Yinger's 2008 study (Yinger 2008) noted roughly 13% of the impacts of flow reduction would be felt in the Crooked River, but neither Yinger nor ODFW voiced concerns about thermal impacts there. This may be because of the large groundwater discharges in the area and the fact that the temperatures of the groundwater discharging into the Crooked River at Opal Springs and Osborne are warmer (between 11.6 and 13.7 degrees C¹¹) than the discharges noted into the Deschutes or Whychus (around 11 degrees C). **See Exhibit 6, OWRD Spring Temp.** Of note is the 2008 FWMP had no Crooked River mitigation. All 2008 mitigation was Deschutes River and Whychus Creek surface water mitigation. To better understand the impacts to the groundwater in the Crooked River from Thornburgh pumping, Four Peaks modeled the changes in discharge resulting from both the 2008 and 2022 FWMP while Newton provided mass balance analysis of both mitigation plans¹².

Quality Mitigation- 2022 FWMP:

A key improvement of the 2022 FWMP over the 2008 version is the increase in the percent of cold-water mitigation that is used to provide quality mitigation. As noted above the 2008 plan had 100% surface water comprised of the Deep Canyon water (roughly 62%) and other sources (roughly 38%) such as COID, etc. The Deep Canyon water was 13 degrees C entering the Deschutes River while the other surface water was 26 degrees C. This resulted in average temperature of the mitigation water of 18 degrees C where the mitigation enters the waterways. In comparison the 2022 plan used 85% cold groundwater at 11 degrees C and 15% surface water at 20.4 degrees C for an average of 12.5 degrees C where the mitigation enters the rivers and streams.

⁹ 13 degrees C was the temperature used by Newton in the 2015-2017 remand cases on Whychus Creek to show compliance with the no net loss standard. Current data shows mean temperature of 9.3 degrees C. The lower the temperature the greater the benefits provided.

¹⁰ Since the amounts cannot be measured, they cannot be verified and are simply theoretical. As such, whether positive or negative they are considered as no change.

¹¹ As recorded by OWRD staff and noted in Exhibit 6.

¹² Lucius Caldwell PhD., Four Peaks Fish Biologist analyzed the impacts.

While transferring water right certificates require no OWRD mitigation, changes in groundwater discharge could occur when moving from one location to the other that could affect compliance with DCC 18.113.070(D). In the CGE Memo dated August 12, 2022, the results of Yinger 2008 and the USGS report of 2004 provided the base from which we estimated the impacts from Thornburgh's pumping and the benefits resulting from stopping pumping at the transfer wells. The results were incorporated into the original version of this 2022 FWMP. We subsequently retained Resource Strategies, Inc. (RSI) to provide more specific information on thermal impacts based on flow data estimated in the CGE Memo 1. RSI used the QUAL2Kw, developed by the Department of Environmental Quality to assess impacts of the pumping and all mitigation on the Deschutes River from Wickiup Reservoir to Lake Billy Chinook, and in Whychus Creek from Sisters to the Mouth. RSI reported those results in the memo Flow and Temperature Modeling of the Deschutes River, dated October 2022 (RSI-1).

As mitigation (both M & m) in the 2022 FWMP is largely groundwater sources, Thornburgh retained Four Peaks Environmental Consulting to evaluate the impact of both the Thornburgh pumping and the cessation of pumping from the transfer well locations using the 2017 USGS GSFlow Model. The 2017 USGS GSFlow modeling program was developed by the USGS in conjunction with OWRD. It provides the most sophisticated and reliable means of determining the impacts of changes in groundwater discharge on stream flows in the Deschutes Basin. Additional details of the USGS model are included in the Four Peaks GSFlow Memo. ODFW subsequently requested additional information on specific impacts and benefits of the groundwater pumping and transfers. This information was provided to ODFW by Four Peaks. This data showed the transfers alone (w/o the surface water mitigation) resulted in net increases to flow in the Deschutes River from Crane Prairie to Lake Billy Chinook, a very minor decrease in flows on the Little Deschutes (excluding the 200 AF of LeBeau water) and Crooked Rivers, and an increase in flows in Whychus Creek from Sisters to its confluence with the Deschutes River, including increases in flows to the springs between Alders Springs and the mouth. The Whychus Creek increased discharge was due to the cancellation of the Dutch Pacific water right alone, excluding the benefits of the TSID water which has already been determined to achieve compliance with the no net loss/degradation standard. This information was provided to ODFW.

With new groundwater flow data from Four Peaks, RSI completed additional modeling to determine overall stream flows including flows from surface water mitigation and the resultant changes to temperature. The results of RSI's additional modeling were reported in Part II-Impacts of GSFlow-Based Changes in Stream Discharge, Dated October 22, 2022 (RSI-2). RSI-2 shows the addition of the LeBeau water south of LaPine, on average results in, increased flows to the river from there to Lake Billy Chinook, while the TSID water also provides additional cool water mitigation from Sisters, Oregon to the mouth. With all the "mitigation" included in the 2022 FWMP, the RSI-2 thermal and flow modeling shows an increase of flow and a decrease of temperature in all stretches of the Deschutes measured, including at Benham Falls, below Bend, near Lower Bridge, and near Culver. See RSI-2, Table 2, pg. 9. The benefits shown are accomplished with mitigation of 1,217 AF versus pumping of 1,460 AF.

Further, of the 937 AF of water already owned by Thornburgh and available for use, 200 AF is surface water not being pumped from the river south of LaPine¹³, while 737 AF is groundwater that remains in the aquifer to flow to the streams, including the Deschutes River, Whychus Creek, and the Crooked River to increase flows and provide thermal benefits, long before the resort creates any impacts on the stream. This “advance” or “excess mitigation” achieved by not pumping the 937 AF of water rights accumulates benefits for decades¹⁴ until the impacts from pumping are fully felt in the stream. As is discussed in more detail below this excess mitigation (benefits) accumulate to a substantial amount providing benefits to the streams and fisheries resources for years in advance of full pumping occurring at the Thornburgh Resort. This “excess mitigation” benefit is not relied on by the scientific modeling efforts that demonstrated compliance with the no net loss/degradation standard. All modeling assessed the impacts only after the full effects of the Thornburgh’s maximum pumping have been achieved.

Because of the efficacy of the present plan, the 1,217 AF already mitigates for 119% (w/out the TSID or 198% with it) of the impacts to springs and seeps¹⁵. Also, any remaining mitigation or transfer water will come from within the General Zone of Impact and will not create an adverse impact on the fisheries habitat or the benefits shown herein.

G. Fish Habitat Potentially Affected by Ground Water Use

During the consultation process in 2008, ODFW identified two specific concerns with respect to potential impacts of ground water pumping on fish habitat: First, the potential for flow reduction due to hydraulic connection that could impact flows necessary for fish and wildlife resources in the Deschutes River system; and second, the potential for an increase in water temperature as a result of flow reductions from ground water pumping. In preparation for this 2022 FWMP Thornburgh discussed the changes with ODFW to understand what areas would currently be of concern. While the area from Lower Bridge to Lake Billy Chinook on the Deschutes is still important, other areas were also of concern. This included flow limitations on the Deschutes River from Bend to Lower Bridge, on Whychus Creek from Camp Polk Road upstream to Sisters, and in Indian Ford Creek, that empties into Whychus Creek. It also included 6 areas shown to have spring discharge, or cold water refugia, two each on Whychus Creek, the Deschutes and Crooked Rivers. This plan takes all those areas into account.

In the 2008 process, ODFW identified six species of fish that could potentially be impacted: Redband Trout, Bull Trout, Brown Trout, Mountain Whitefish, Summer Steelhead and Spring Chinook. While relevant to consider, more important is the habitat itself. In *Gould v. Deschutes County*, 233 Or App 623, 227 P3d 758 (2010) the Oregon Court of Appeals found that the no net loss standard refers to habitat, stating:

¹³ Thornburgh may allow farmers affected by the Habitat Conservation Plan and/or drought conditions to use some portion of water it doesn’t currently need to authorize pumping on a temporary basis. When providing water for farm drought relief, that portion of Thornburgh’s water will not be instream. Only the LeBeau water will be used for this program.

¹⁴ Earlier CGE Memo dated August 12, 2022, noted this could take up to 95 years but assumed 50 years conservatively.

¹⁵ This is regardless of how the water is used, whether transfer, cancellations, or transfer instream.

“Thus, the context of DCC 18.113.070(D) strongly suggests that “fish and wildlife resources” refers not to species of fish and wildlife, but to the habitat that supports fish and wildlife. In light of that context, we conclude that DCC 18.113.070(D) allows a focus on fish and wildlife habitat to establish that “[a]ny negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.” That standard may be satisfied by a plan that will completely mitigate any negative impact on the habitat that supports fish and wildlife, without showing that each individual species will be maintained or replaced on a one-to-one basis.”

In its consultation with Thornburgh regarding these issues, ODFW recognized that the OWRD groundwater mitigation program was specifically designed to identify and mitigate for the impacts of flow reduction because of new groundwater pumping in the basin. Although the OWRD rules and USGS study on which the rules are based do not directly address temperature issues, ODFW also recognized that with the flow replacement required under OWRD rules the potential impact to temperature because of the Thornburgh project – or any similar individual project – is expected to be negligible. However, ODFW expressed a concern about the potential for cumulative impacts from on-going groundwater development in the basin, over time. Although cumulative impacts may be a concern, Thornburgh does not need to mitigate for the impacts of others in order to achieve compliance with the no net loss standard. That standard is based solely on impacts created by Thornburgh’s groundwater pumping which were acknowledged to be negligible in 2008.

ODFW reviewed the 2008 FWMP and determined that it would, without placing TSID mitigation water in Whychus Creek, offer a net benefit for fish habitat. Nonetheless, TSID mitigation water was required by the County’s hearings officer. On appeal of the FMP and 2008 FWMP opponents claimed without success, that the TSID mitigation water was “hot water” that would harm fish habitat in lower Whychus Creek, and that temperature impacts (of 0.1 degree C) to the Deschutes River violated the no net loss standard. As a result of the challenges, NCI undertook extensive mass balance analysis in 2015-2017 of the impacts *without* mitigation that showed maximum thermal impacts of 0.004 degrees C in Whychus Creek under the peak summertime temperatures and the lowest summertime flows. NCI also provided an analysis of the TSID mitigation that showed keeping water instream in upper Whychus Creek offsets the thermal impact of groundwater pumping by the resort and slightly reduces the temperature of water in lower Whychus Creek, more than 15 miles downstream¹⁶. The NCI studies resulted in affirmance of the FWMP because it demonstrated compliance with the no net loss standard.

The principle illustrated by the results of the 2015-2017 studies – that increasing the flow of rivers and streams upstream by not diverting for irrigation use both increases volume and lowers temperatures downstream – is also a principle adopted in this 2022 FWMP¹⁷. From the

¹⁶ The TSID mitigation reduced temperatures slightly throughout Whychus Creek starting from the TSID diversion where the water was left in stream.

¹⁷ In addition to the TSID water this plan also will leave 200 AF of water in the Little Deschutes River south of LaPine.

point that surface water withdrawals cease and aren't being pumped from surface water, stream flows are increased reducing thermal impact, and decreasing how much or how fast stream temperatures rise, in turn lowering stream temperatures downstream.

Thornburgh also retained Four Peaks to evaluate the impacts of the 2022 FWMP on the fisheries resources. Lucius Caldwell, Ph.D., prepared 4 different reports that analyzed the impact to fisheries habitat as follows:

- a. Evaluation of the Fish habitat Impacts of Proposed Groundwater Pumping at Thornburgh Resort Project (Four Peaks Fish 1), that was based on the flow and thermal impacts of the results of RSI-1,
- b. Updated Evaluation of the Fish Habitat Impacts of Proposed Groundwater Pumping at Thornburgh Resort Project, to include Modeled Changes in Surface Water Resulting from Changes in Groundwater Discharge, dated October 24, 2022 (Four Peaks Fish 2). This report analyzed the impacts following completion of the RSI-2 report that was based on the Four Peaks GSFlow report.
- c. Evaluation of Flow and Temperature Mass Balance Calculations of the Little Deschutes River dated October 24, 2022 (Four Peaks Fish Little Deschutes). This analyzed impacts to the Little Deschutes River based on GSFlow data prepared by Four Peaks and the thermal mass balance analysis completed by Cascade Geoengineering, and:
- d. Evaluation of Flow and Temperature Mass Balance Calculations of the Crooked River dated October 24, 2022 (Four Peaks Fish Crooked River). This analyzed impacts to the Crooked River below Osborne Canyon and at Opal Springs based on GSFlow data prepared by Four Peaks and the thermal mass balance analysis completed by Cascade Geoengineering.

In total, Four Peaks concluding the following:

- Little Deschutes River-below LaPine: May include a slight flow increase (0.2-0.8 cfs) that improves habitat quantity slightly and a slight decrease in habitat quality,
- Deschutes River-Benham Falls: A slight increase in habitat quantity and improvement in habitat quality,
- Deschutes River-below Bend: Zero to a very slight increase in habitat quantity and zero to a very slight improvement in habitat quality,
- Deschutes River-near Lower Bridge: A very slight increase in habitat quantity and habitat quality will be unaffected to a slight improvement due to reduction in temperature,
- Deschutes River-near Culver: A very slight increase in habitat quantity and improvement in habitat quality,
- Whychus Creek: A slight increase in habitat quantity and improvement in habitat quality,
- Crooked River-Osborne Canyon: Flows will be reduced an average of 0.07%, while temperature will be reduced an average of 0.001%, amounts not likely to cause a reduction in habitat quality or quantity, and:
- Crooked River-Opal Springs: Flows will be reduced an average of 0.02%, while temperature will be reduced an average of 0.003%, amounts not likely to cause a

reduction in habitat quality or quantity. In all cases the values listed above are too small to measure. See Four Peaks Fish reports.

In recent discussions ODFW voiced concerns about specific impacts to discharges at 6 spring and seep locations ODFW felt would provide cold water refugia, 2 each on the Deschutes River, 2 on Crooked River, and 2 on Whychus Creek, the latter they were interested in receiving further temperature analysis on. Four Peaks and RSI provided further materials that, as expected, showed increased flows in each of the spring site at Whychus Creek and the Deschutes River along with very slight reductions in the Crooked River. For example, the average reduction to groundwater in any one cell measured by the GSFlow model was -0.008 cfs at Osborne Canyon and -0.011 cfs at Opal Springs, amounts that are immeasurable and not scientifically meaningful¹⁸. In sum, the expert reports show a slight benefit in net habitat quantity and quantity.

H. Thornburgh Mitigation: DCC 18.113.070(D) - The No Net Loss Standard.

The proposed mitigation measures are designed to ensure no net loss of habitat quantity or quality and net benefits to the resource and are comprised of three categories including:

- A) elements that reduce demand on water resources and thus reduce impacts on the fisheries habitat (Item 1 below):
 - 1. limit groundwater pumping to a maximum of 1,460 AF annually, which is more than a 30% reduction in originally approved water usage.
- B) elements that ensure compliance with the no net loss standard of DCC 18.113.070 (D) (Items 2-5 below):
 - 2. Use 1,217 AF of water rights described herein to authorize pumping of groundwater from wells on the Thornburgh property by transfer, cancellation or other permanent mitigation (e.g., mitigation credits).
 - 3. Comply with requirements for Water Right Permits, Certificates, or Transfers of water rights described herein, or others hereinafter acquired. Provide mitigation when needed in advance of pumping as required by OWRD mitigation rules.
 - 4. For additional supply or mitigation over the water rights specifically identified in this plan, use mitigation credits, BFR surface water, BFR ground water, or any other water source in the Deschutes General Zone of Impact that will discharge water into (or leave it in) the Deschutes or Crooked Rivers or their tributaries, to supply or mitigate for any unmet needs the resort will have. The amount of water needed is the 1,460 AF of total pumping less the amount of water transferred, cancelled, or converted to mitigation credits, and:
 - 5. Provide 106 AF of mitigation in Whychus Creek from the TSID diversion downstream by funding the completed TSID piping project called for by the 2008 FWMP that completely mitigates all impacts to Whychus Creek.
- C) Elements that provide advance or excess mitigation not needed to meet DCC 18.113.070(D) (Items 6-7 below).

¹⁸ Tetra Tech in their 2017 report, page 8, cited the EPA 2003 report which noted that temperature changes less than 0.25 degrees C were of no consequence to fish.

6. Let unused water rights remain in the groundwater or stream to increase flows and reduce temperatures of the streams in advance of creating impacts except as provided to others for drought relief at Thornburgh's sole discretion.
7. Thin up to 5,000 acres of Juniper forests onsite and on BLM Lands.

Section A:

1. Limit Pumping to a Maximum of 1,460 AF Annually:

Ensure all pumping for the resort does not exceed a maximum combined volume of 1,460 AF. This is more than a 30% reduction in the amount of water Thornburgh is currently approved to use. This will dramatically reduce the level of potential impacts, creating less demand and strain on the region's water resources. To ensure compliance, Thornburgh will submit as part of the annual Mitigation Report summaries of the resort's annual water reports that are required to be provided to OWRD. These summaries will detail the resort's annual water use for any permit supplying water to the Thornburgh Resort.

Section A Anticipated Results: A reduction of more than 31% of the pumping volume and nearly 35% reduction in the consumptive use of the Thornburgh Resort. This reduction reduces every impact that Thornburgh's water usage could possibly create and is the driving principle behind this amended 2022 FWMP.

Section B:

2. Use OWRD Water Rights Certificates and Permits for Pumping or Mitigation:

Thornburgh will use the OWRD water rights certificates, permits, and approvals described in Section B above and on Attachment 1 to allow it to pump groundwater to serve Resort uses. As the water rights listed Thornburgh currently owns 937 AF with another 280 AF under contract for a total of 1,217 AF¹⁹ as follows:

- a. GW Certificate 94948, Transfer T-13703. Tree Farm, 327.5 AF.
- b. SW Certificate 96192 & 96190. Big Falls Ranch (BFR), 614.4 AF, 360 AF owned, 254.4 AF under contract. This is Deep Canyon Creek surface water with a groundwater POA.
- c. SW Certificate 95746, Transfer application T-13857. LeBeau, 200 AF.
- d. GW Certificate 87558. BFR, 25.6 AF of groundwater is under contract.
- e. GW Certificate 89259. This is a groundwater right for 49.5 AF Thornburgh owns.

All these water rights are Certificated and do not require further OWRD mitigation. Thornburgh will either transfer these certificated rights to be used directly to pump groundwater from Thornburgh wells or it will use them indirectly as mitigation for groundwater pumping at Thornburgh either under permit G-17036, permit application

¹⁹ Thornburgh has another 6 AF in temporary credits leased from the DRC which may be terminated at some point in the future.

G-19039, or an alternate replacement permit for a lower volume of pumping. A list of possible permits and applications is provided above in Section C and on Attachment 1.

3. Comply w/OWRD Mitigation Rules: Provide Mitigation Before Pumping:

Any mitigation required for any groundwater permit, whether permanent or as a Limited License that appropriates water from wells at the Thornburgh property, will be provided prior to pumping water under that permit, as required by OWRD rules. Mitigation, when or if needed, will be provided by either cancellation of water rights in lieu of mitigation, or transferring the existing surface water rights to instream rights. By providing mitigation water from the conversion or transfer of existing water rights, Thornburgh will be restoring natural stream or groundwater flows to the system at or above an area of impact from Thornburgh wells, much of which will occur during the time period when stream flows are typically the lowest and temperatures are warmest.

4. For Remaining Water Use BFR, COID, or Other Water Benefitting Deschutes or Crooked Rivers:

The water rights described in **1.** above will provide up to 1,217 AF of the resort's total water needs of 1,460 AF leaving at least 243 AF of additional water needed.²⁰ For any additional water needed over and above the 1,217 AF, Thornburgh will use some combination of: i) BFR surface water (Deep Canyon or Makenzie Canyon); ii) BFR ground water; iii) COID mitigation water or credits; or iv) other ground or surface water or credits that both discharge water into either the Crooked River or Deschutes River or its tributaries and meet the requirements of the OWRD mitigation program. Analysis by Cascade Geoengineering, LLC shows: i) using additional BFR water with groundwater points of appropriation will comply with the no net loss standard and have no impact to fish habitat; and ii) the transfer of other groundwater rights that discharge cool groundwater into area streams and rivers will provide thermal benefits to the rivers and streams; and iii) other surface water placed instream above areas of concern will provide thermal mass that will serve to cause cooling during the critical summertime period when stream temperatures are highest and flows the lowest. Regardless of where the remaining 243+/- AF (1,460-1,217)²¹ of water rights or mitigation comes from this plan has already mitigated for the full impacts to seeps and springs.²²

5. Provide 106 AF of Additional Whychus Creek Mitigation (TSID):

²⁰ If there was some reduction in the amount Thornburgh is allowed to transfer under the LeBeau water right, like the 7% reduction expected in the NUID transfer, the amount of additional water required could be increased somewhat.

²¹ The numbers contained in this, and the following section account only for the 1,217 AF of water described above, and do not include additional water or mitigation flows of at least 243 AF, which will further increase stream flows, irrespective of the source or location of that mitigation.

²² If all 243 AF of additional water was from a surface water source the resulting % of total mitigation comprised of groundwater would be 69.7%, still greater than the 0% of groundwater and 61.7% of cool Deep Canyon water in the 2008 FWMP.

Thornburgh has already provided 106 AF of Three Sisters Irrigation District water for additional mitigation in Whychus Creek as was required by Condition #39 of the FMP approval. Thornburgh has made the required payment arrangements, TSID has completed the project, and OWRD has executed the final order transferring the water instream.

Section B Anticipated Results: Collectively, the measures in this Section B demonstrate Thornburgh Resort's continual compliance with Deschutes County's no net loss/degradation standard in DCC 18.113.070(D), specifically as it pertains to impacts to fisheries and aquatic habitat in the following ways:

- a. Provide a net increase in the discharge of cold ground water via seeps and springs stream flow in the Deschutes River from Crane Prairie reservoir downstream to Culver, including at two spring locations of concern to ODFW above and below the mouth of Whychus Creek,
- b. Provide a net increase in the discharge of cold ground water via seeps and springs in Whychus Creek from Sisters to the mouth, including at important "ODFW" spring locations at Alder Springs and the mouth,
- c. Add cold groundwater discharge versus the 2008 FWMP to the Crooked River, including in important "ODFW" spring areas near Osborne Canyon and Opal Springs,
- d. Increase net flows in the Little Deschutes River from south of LaPine into the Deschutes River,
- e. Increase net flows of the Deschutes River from the confluence with the Little Deschutes onto Lake Billy Chinook,
- f. Reduce net stream temperatures throughout the Deschutes River as noted in "e" above,
- g. Increase net flows of Whychus Creek from Sisters to the mouth,
- h. Reduce net stream temperatures of Whychus Creek as noted in "g" above,
- i. Reduce the thermal impacts in the Crooked River as compared to the 2008 FWMP to levels immeasurable, including in spring areas noted by ODFW,
- j. Increase habitat quantity in the Little Deschutes River,
- k. Increase habitat quantity and improve habitat quality in virtually all areas of Whychus Creek and the Deschutes River, and:
- l. Reduce the impacts in the Crooked River over the 2008 FWMP to levels so small as to be immeasurable, and not likely to cause a change in the quality or quantity of fish habitat.

Further details are found in CGE Memos 1 and 2, Four Peaks GSFlow, RSI Memo's 1 and 2, and Four Peaks Fish Memo's 1 and 2, and Four Peaks - Little Deschutes and Crooked River Fish Memo's. These elements a through l above are based on steady state conditions, the point in the future when 100% of the impacts from Thornburgh pumping have been realized in the form of streamflow reductions. As noted here and in previous memos this event may not occur for decades into the future after Thornburgh's pumping begins. Measure C-6 below discusses the excess or advance mitigation being provided to the fisheries resource. net benefits to the fisheries resources.

Section C:

6. Leave Water Rights Instream or In the Aquifer Until Needed for Resort Uses:

Thornburgh intends to pump water only as needed. When not needed, it will allow mitigation water flow underground and in the area's streams and rivers, providing advance benefits for impacts to occur at some point in the future. Advance or excess mitigation accumulates from providing mitigation prior to pumping but also during the transient period before impacts are fully realized in the stream.

Anticipated Results: The net results described in Section B above assume steady state conditions, the point in time when full pumping is occurring and the reductions in groundwater discharge into the streams are fully realized. As noted above and in the CGE memo, steady state conditions will not occur for as long as 95 years or more²³. Until then, Thornburgh will provide substantial amounts of excess mitigation, likely resulting in un-required benefits during this timeframe. Assuming it will only take 50 years for steady state conditions to occur, Cascade has calculated that Thornburgh will discharge 71,771 AF of water into the system while creating impacts/withdrawals on the system of 47,117 AF, and excess benefit/discharges of 24,654 AF additional water over impacts in that transient than required. In sum the benefits provided by this are over 52% greater than the impacts created in the first 50 years of this 2022 FWMP, and equal nearly 17 years of full pumping of 1,460 AF.

Increasing stream flow 52% more than the impacts will translate into further temperature reductions in each of the streams affected. This situation will be most pronounced (nearly 100% excess) in the early years and gradually narrow as the difference between benefits and impacts narrows until steady state conditions are attained.

During periods of severe water shortage, Thornburgh may work with OWRD as to request usage of excess mitigation water that may be used to benefit farmers in significantly impacted irrigation districts, including the North Unit Irrigation District that supports up to 58,000 acres of farmed land in Jefferson County. As discussed above, Thornburgh has applied to temporarily transfer 200 AF of water to the North Unit Irrigation District. Under this exception, until the water rights are pumped by Thornburgh or used as mitigation, Thornburgh would like to be allowed to offer free use of its LeBeau irrigation water to farmers severely impacted by drought. Thornburgh does not intend this as a business, rather it is envisioned as an act of goodwill and a benefit to actual farm uses in the area. Further, any water excesses provided by Thornburgh is purely excess mitigation water that is not needed to mitigate for Thornburgh pumping. As such it will not have a negative impact on fisheries habitat although it could have a very positive impact on farmers. This temporary usage by others may be accomplished by temporary transfers on an annual basis when excess mitigation may be available.

²³ The 2004 USGS model estimated impacts of 100% were reached in year 80 after full pumping is begun. It will take at least 15 years, and perhaps 20-25 years until Thornburgh is fully occupied and pumping at those levels.

7. Thin Juniper Forests Onsite and On BLM Lands.

Thornburgh, as part of its development and wildlife mitigation plans, will thin up to 5,000 acres of Juniper forests, returning the land to the condition of the historic old growth forest that was prevalent in the 1930's. This measure is required and detailed as part of the approved Wildlife Mitigation Plan that addresses impacts to terrestrial wildlife habitat. While discussed here it is not separately required by the 2022 FWMP nor is it needed to achieve compliance with the no net loss/degradation standard for aquatic wildlife, including fish. Juniper is a native species that, has increase substantially throughout Oregon because of increased human settlement within Oregon. Juniper is now often seen as invasive by means of a likely 10-fold increase in prevalence that has been shown to reduce water capture, retention, and recharge to the area surrounding these increased stands of Juniper. Studies show a strong correlation between Juniper removal and increased spring discharges with estimates that may be upwards of 1 acre-foot of increased discharge resulting from the removal 4-5 acres of Juniper forests. Deschutes and Crook Counties are both looking at Juniper removal as a method to benefit water.

Anticipated Results: Experts, such as Tim DeBoodt, Crook County Natural Resource Policy Coordinator, report that the reduction of between 4-5 acres of Juniper trees can save, or return 1 AF of water, ideally in the form of increased ground seepage that may result in increases in spring flow. While it is hard to quantify the exact water savings that will occur, with studies showing the possibility to save up to 1 AF for every 4-5 acres of Juniper reduction, thinning thousands of acres could provide a significant benefit to nearby stream flows.

VII. CONCLUSION

DCC 18.113.070.D requires that any negative impact on fish and wildlife resources be completely mitigated so that there is no net loss or net degradation of the resource. This Addendum to the Thornburgh Wildlife Mitigation Plan, referred to as the 2022 FWMP, amends the 2008 FWMP (as it was updated) and addresses potential impacts to fishery resources because of ground water pumping and identifies specific mitigation measures. The potential for loss of habitat due to reduced surface water flows was quantified in connection with the OWRD review of Thornburgh's application for a water right permit. Under OWRD rules, Thornburgh is required to fully mitigate for consumptive use associated with Resort development. Consumptive use represents the amount of water not otherwise returned to the Deschutes River system after initial appropriation or diversion. The OWRD mitigation program is based on estimates of impact and modeling, the program is specifically intended to replace stream flows lost due to groundwater use.

The 2008 FWMP was developed in consultation with ODFW to address two specific areas of concern regarding the potential for negative impacts: the potential for a loss of habitat due to reduced surface water flows in the impacted areas, and the potential for loss of habitat due to increased temperature from reduced stream flow or loss of inflow from springs. As part of the development of this plan, discussions with ODFW took place to understand the current priorities

to ODFW to protect species and related habitat. While the area of the Deschutes River from Lower Bridge to Lake Billy Chinook remained important to ODFW, other issues presented concerns to the agency. ODFW expressed concern with limited flows of the Deschutes River between Bend and the Lower Bridge area, and of Whychus Creek between Sisters and Camp Polk Road and in Indian Ford Creek. Also important to ODFW was the distance in the stream the mitigation change will improve, as longer stream reaches are better.

As described above this 2022 FWMP has numerous sources providing benefits and mitigation, several that provide benefits over a significant distance, including areas of concern to ODFW. For example: 1) the LeBeau water increases flow in the Deschutes River for 137.7 miles; 2) The Tree Farm water is cold groundwater discharges that increase flows in the Deschutes River from Bend downstream through the stretch of concern to ODFW and onto the lake; 3) The Dutch Pacific water is benefitting Indian Ford Creek and Whychus Creek around Sisters to the mouth; 4) TSID water adds cool surface water above Sisters to the mouth of Whychus Creek at the Deschutes River. All of these sources increase flows that add to the thermal mass which in turn reduces temperatures in their respective stream and river reaches, ultimately providing benefits down to Lake Billy Chinook.

The potential for an increase in stream temperature resulting in a negative impact to fish and wildlife resources was also evaluated. Regarding Whychus Creek, the TSID water was shown to fully mitigate any potential peak temperature impact and lower the stream temperatures in not only Lower Whychus Creek, but throughout Whychus Creek to the mouth, which includes the area of concern to ODFW. Increasing the groundwater discharges from the Dutch Pacific water will further increase the reduction in temperature and the thermal benefits being provided to Whychus Creek.

Regarding the Deschutes River, the 2008 FWMP increased flows between Bend and Lake Billy Chinook by adding warmer surface water in Bend and cooler surface water from Lower Bridge to Lake Billy Chinook. These additions resulted in temperature change of 0 degrees C above Lower Bridge down towards Steelhead Falls, and an increase in the temperature of 0.1 degrees C at Steelhead Falls to below Whychus Creek. Even with those slight increases in temperature providing cool water mitigation equal to 105% of the impacts to seeps and springs fully mitigated for any reduction in groundwater. Increasing the percentage of benefits to seeps and springs coming from cool water sources (includes groundwater, Deep Canyon Water, TSID water) to 195% presently from 155% in the 2008 FWMP naturally provides far greater benefits than previously approved.

In developing recommendations for this plan, it was clear any potential change in stream temperature attributable to Thornburgh's proposed ground water use under steady state conditions, whether positive or negative, would be at levels not measurable with available equipment and technology. Although the changes being discussed will, in almost all cases, result in an increase in stream flows and a reduction in stream temperatures, they are not significant enough to result in any quantifiable negative impact to fish habitat at any time. However, the massive influx of excess flows provided during the transient period will further increase stream flows and further lower temperatures in all the affected reaches for decades

into the future as the actual impacts to stream flows gradually increase from Thornburgh's groundwater pumping until steady state conditions are attained.

By committing to fully utilize the water sources as described herein, and to comply with the conditions of this 2022 FWMP, any potential negative impacts to fish habitat resources because of the Thornburgh Resort development will be completely mitigated such that there is no net loss or degradation of habitat quantity or quality. In fact, it will likely provide a slight net benefit when steady state conditions are achieved many decades from now. During the transient period, Thornburgh will provide significant additional benefits to the quantity and quality of fish and aquatic habitat. As such this 2022 FWMP will exceed the no net loss/degradation standard set by DCC 18.113.070(D).

**ATTACHMENT 1
THORNBURGH WATER RIGHTS INVENTORY**

Certificated Water Rights, Transfers & Cancellations.

1. Surface Water Certificate 95746 (4/30/1902) and Transfer application T-13857 (LeBeau) –This certificate authorizes the use of 4 acre-feet per acre of irrigated land of surface water from the Little Deschutes River, a tributary of the Deschutes River, to irrigate 50 acres of land, for a total authorized use of 200 AF of water. Transfer application T-13857 has requested the POD of this right currently at River Mile 56 on the Little Deschutes arm of the Deschutes River be moved to a POA on wells located at the Thornburgh Resort, located generally west of RM 143, roughly 105²⁴ river miles from the point on the Deschutes River closest to the Thornburgh Resort. Further, the transfer seeks to change in the character of use from irrigation to Quasi-Municipal. These proposed changes to the certificated water right do not require OWRD mitigation. This water is currently in the river and is being allowed to flow from its point of diversion all the way to Lake Billy Chinook, about 137.7 river miles. See Map 2. The added flow will provide thermal benefits that cool the Little Deschutes arm of the Deschutes River and the Deschutes River throughout those reaches.

2. Surface Water Certificates 96192 and 96190 (4/13/1967) and Transfer T-12651 to Groundwater POA – Big Falls Ranch (“BFR”) (Deep Canyon Creek Groundwater POA). These certificates authorize the use of 4 acre-feet of surface water per acre of irrigated lands from Deep Canyon Creek onto of 153.6 acres of land, for a total volume of 614.4 AF of water. This is certificated water that requires no OWRD mitigation. The POAs of this water are wells located at Big Falls Ranch. 90 acres of this irrigated land has been assigned to Pinnacle Utilities, LLC as of the date of this 2022 FWMP and is currently left in the ground. An application to transfer all 153.6 acres of water to wells at the Thornburgh Resort along with a change to the character of use from irrigation to Quasi-Municipal is pending.

Transferring this water will leave it in the ground at Big Falls Ranch that because of the hydraulic connection to the streams will increase flows of 11 degree C groundwater into the Deschutes River, Whychus Creek, and the Crooked River. See Four Peaks GSFlow Report. This cool groundwater will provide thermal benefits cooling the rivers and creeks and providing greater benefits than provided by the 2008 FWMP. In the alternative, if not approved for transfer, this water right could be cancelled in lieu of mitigation for any groundwater permit or Limited License application to serve the Resort. Cancelling a groundwater certificate leaves the water in the aquifer so it can return to streams and rivers. Lastly, the POA could be returned to a POD in Deep

²⁴ The Little Deschutes arm, merges into the Deschutes River at RM 192.5 on the Deschutes River. LeBeau POD is at RM 56 on the Little Deschutes arm, which is roughly at the equivalent of Deschutes RM 246.5. The Thornburgh POA is west of Deschutes RM 143. Round Butte Dam is roughly 137.7 miles from the LeBeau POD.

Canyon Creek from where it could be transferred to an instream right with mitigation credits issued for groundwater or limited license applications²⁵.

3. Ground Water Certificate 87558 (BFR) – This certificate authorizes the use of 4 acre-feet per acre of irrigated land from groundwater wells located at Big Falls Ranch. The certificate allows the ranch to use a total of 25.6 AF of water to irrigate 6.4 acres. This certificated water requires no OWRD mitigation. Thornburgh intends to transfer all 6.4 acres of irrigated lands to wells at the Thornburgh Resort and to change the type of use from irrigation to Quasi-Municipal. Leaving this 11 degree C groundwater in the ground at Big Falls Ranch will increase flows in the same manner as the BFR water in #2 above. See Map 2. As noted above it cannot be converted to an instream right the same way surface water rights can but it could be cancelled in lieu of mitigation if needed.

4. Ground Water Certificate 94948 (1/30/1995), Transfer T-13703 (Tree Farm) – This certificate authorizes the appropriation of 0.453 cfs Year-Round for Quasi-Municipal uses for a total of 327.5 AF of water use. This certificated water right does not require mitigation. Transfer T-13703 was approved by OWRD which changed the POA of this water right from wells located in the Tree Farm subdivision west of Mt. Washington Drive in Bend to wells on the Thornburgh property. It also changed the Point of Use (POU) from the Tree Farm subdivision to Thornburgh wells. The transfer will result in cessation of pumping at the present POA which increases the flow of cold 11 degrees C groundwater into the Deschutes River by .453 cfs. At present it can be used per the transfer order, or in the alternative it could be cancelled in lieu of mitigation for groundwater permit or Limited License applications. An application for a permanent transfer will soon be filed as well.

5. Ground Water Certificate 89259 (3/18/1998) – Dutch Pacific – 16.5 acres or 49.5 acre-feet of irrigation water (ground) that was pumped from a well in Sisters. This is a certificated water right that doesn't require mitigation. The place of impact from pumping at this location is in Whychus Creek and Indian Ford Creek that flows into Whychus Creek near Sisters. See Four Peaks GSFlow. For approximately 3 years Thornburgh has allowed all 16.5 acres of this water to remain instream and is presently cancelling it in-lieu of mitigation. This effectively moves the point of appropriation and place of use which will provide added flow of cold 11 degrees C groundwater into Indian Ford Creek and Whychus Creek from above Sisters down Indian Ford and Whychus Creek to the mouth and on into the Deschutes River towards Lake Billy Chinook. This 16.5 acres of irrigation (49.5 AF) of cool water will provide thermal benefits to the

²⁵ While our analysis does not rely on the flows provided by Deep Canyon Creek to achieve compliance with the no net loss/degradation test, changing the mitigation source from 13-degree surface water flows in the creek to 11 degrees C groundwater flows into area waterways is clearly beneficial. Also not accounted for is the fact that pumping from Deep Canyon Creek has completely ceased, allowing Deep Canyon Creek to flow to the Deschutes River.

stream that will cool the creek and mitigate for all the impacts to Whychus Creek from Thornburgh pumping. Leaving this water in the stream will add flow and cool Whychus Creek from above Sisters all the way to the Lake.

6. Three Sisters Irrigation District Mitigation Water: 106 acre-feet (1.51 cfs) of Whychus Creek irrigation water (surface). This is surface water diverted at the TSID diversion near the town of Sisters. See Map 2, pp., 5. It is being left in the creek at that point and will provide flow and thermal benefits of the cool 13 degrees C surface water to Whychus Creek all the way to the Deschutes River and then downward into Lake Billy Chinook. The TSID mitigation is 1.51 cfs of flow that is left in the creek for a portion of the irrigation season. In low flow years that may only be 90 days. In heavy flow years that may be 150 days or so. Depending on the flow in Whychus Creek, the actual volume of mitigation water from the rights being purchased by Thornburgh could be as high as 200-250 AF, instead of the 106 AF required to mitigate as determined by Yinger 2008. As noted above, the 106 AF need was determined by Yinger who modeled stream impacts using 2,355 AF of water at 100% consumptive use whereas Thornburgh's current plan reduces pumping to 1,460 AF and consumptive use to 882 AF. The TSID water was shown to mitigate for the full impact of 106 AF of stream reduction at Whychus Creek. The TSID mitigation secured by Thornburgh, is presently in the creek.

7. Temporary Mitigation Credits (DRC) – 6 acre-feet of temporary credits from the Deschutes Resource Conservancy have been in place since 2013. For nearly 10 years these credits have increased flow to the Deschutes River in advance of pumping any groundwater under the OWRD permit. Excess mitigation has been accumulating since then. Thornburgh intends to cancel the use of these temporary credits at some point in the future. They are not considered in the efficacy of this 2022 FWMP rather are excess or advance mitigation.

Groundwater Permits, GW, and LL Applications:

8. Ground Water Permit G-17036 – This permit authorizes up to 9.2 cfs and 2,129 AF for Quasi-Municipal uses including irrigation of golf courses, homes and commercial areas, and maintenance of reservoirs. Period of use is Year-Round except for the seasonal limits placed on irrigation use by the permit. The rate and volume are further limited by the corresponding mitigation provided. The maximum volume for irrigation of 320 acres of golf courses shall not exceed 717 AF annually. The amount of golf course irrigation specifically under this right is limited to a diversion of 2.24 AF for each acre irrigated during the irrigation season of each year. The amount of water allowed to be used for reservoirs under this permit is 246 AF. The fully developed Mitigation Obligation for this right is 1,356 AF annually, to be provided within the General Zone of Impact. Mitigation is to be provided prior to each stage of development under the permit.

In 2013, Thornburgh posted 3.6 acre-feet of mitigation credits (6 AF of water) as the initial mitigation and the permit was issued. Due to unforeseen delays, Thornburgh was required to apply for an extension of the permit, which was granted in 2018 with OWRD

issuing a Proposed Final Order and Final Order granting approval. When a suit was filed against OWRD at the Oregon Court of Appeals OWRD withdrew its final order and sent the approval (as noted in the Proposed Final Order (PFO)) to a contested case hearing. On July 26, 2022, OWRD issued a superseding proposed final order proposing denial of the extension, but the permit remains non-cancelled (valid) as of the date of this 2022 FWMP. Thornburgh filed a protest to this PFO seeking a contested case hearing which is pending.

Permit G-17036 is the first permit Thornburgh acquired. Due to litigation opposing the permit and the lengthy delays involved at OWRD, Thornburgh developed alternatives to pump groundwater from the Resort's wells with little reliance on this or other OWRD groundwater and limited license permits, or applications as described below.

9. Ground Water Permit Application G-19139 (pending) – This permit application was for the use of 9.28 cfs of year-round Quasi-Municipal water having the same limitations and mitigation requirements as permit G-17036. It was filed at the suggestion of OWRD staff as a potential replacement to permit G-17036 pending the contested case. The POA of this application is 8 wells located on the Thornburgh property. The application is pending. If not approved, Thornburgh will file a petition for judicial review.

10. Limited License Application LL-1879 -- This limited license application was for the use of 4.5 cfs of year-round water. The application was filed to provide preliminary use of some of the water permitted by G-17036 pending the resolution of the contested case on the extension. OWRD denied the application, and Pinnacle has filed a petition for judicial review in Deschutes County Circuit Court. If the limited license is approved, this will require mitigation for the life of the limited license, which can be done more informally than is required for permanent permits or certificates.

11. Limited License Application LL-1917 (pending) – This limited license application was for the use of 0.453 cfs of year-round water. The amount requested is the same amount of water as will be transferred under the authority of T-13703. It was filed as an alternative to the use of the water in T-13703, as a challenge to the transfer is reviewed by the court system. The application is pending. If approved, this will require mitigation for the life of the limited license, which can be done more informally than required for permanent permits or certificates.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Denying Review of Hearings *
Officer’s Decision in File No. File No. 247-22- * ORDER NO. 2023-004
000678-MC

WHEREAS, on December 19, 2022 the Hearings Officer denied File No. 247-22-000678-MC; and

WHEREAS, on December 30, 2022, Central Land & Cattle Company, LLC, Kameron DaLashmutt, and Pinnacle Utilities, LLC (“Applicant”) , appealed (Appeal No. 247-22-000984-A) the Deschutes County Hearings Officer’s Decision on File No. 247-22-000678-MC; and

WHEREAS, on January 3, 2023, Annunziata Gould (“Appellant”), appealed (Appeal No. 247-23-000003-A) the Deschutes County Hearings Officer’s Decision on File No. 247-22-000678-MC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officers’ decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now, therefore,

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

Section 1. That it will not hear on appeal Appeal Nos. 247-22-000984-A and 247-23-000003-A pursuant to Title 22 of the DCC and/or other applicable provisions of the County land use ordinances.

Section 2. Pursuant to DCC 22.32.015, the County shall refund any portion of the appeal fees not yet spent processing the subject application. If the matter is further appealed to the Land Use Board of Appeals and the County is required to prepare a transcript of the hearing before the Hearings Officer, the refund shall be further reduced by an amount equal to the cost incurred by the County to prepare such a transcript.

Section 3. Pursuant to DCC 22.32.035(D), to date the only documents placed before and considered by the Board are the notice of appeals, recommendations of staff, and the record developed before the lower hearings body for File No. 247-22-000678-MC as presented at the following website:

<https://www.deschutes.org/cd/page/247-22-000678-mc-thornburgh-destination-resort-modification-cmpfmpfwmp>

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner



APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: \$3,344

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Central Land & Cattle Company, LLC, Kameron DeLashmutt, and Pinnacle Utilities, LLC

Appellant's Name (print): _____ Phone: (541) 350-8479
 Mailing Address: 2477 NW Canyon Drive City/State/Zip: Redmond, OR 97756
 Email Address: Kameron1959@gmail.com

Land Use Application Being Appealed: File No. 247-22-000678-MC

Property Description: Township 15 Range 12 Section 00 Tax Lot See below

Appellant's Signature: *[Handwritten Signature]* Date: 12/30/2022

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of



December 30, 2022

Kenneth Katzaroff

Admitted in Washington and Oregon

T: 206-405-1985

C: 206-755-2011

KKatzaroff@SCHWABE.com

Board of County Commissioners
PO Box 6005
Attn: BOCC
Bend, OR 97708-6005

Board of County Commissioners
c/o Caroline House, Senior Planner
PO Box 6005
Attn: Community Development Department
Bend, OR 97708-6005

RE: Notice of Appeal - File No. 247-22-000678-MC
Our File No.: 135849-262760

Chair Adair, Commissioners DeBone and Chang:

Our office represents Central Land & Cattle Company, LLC, Kameron DeLashmutt, and Pinnacle Utilities, LLC (collectively "Applicant") in File No. 247-22-000-678-MC (the "Application"). This Notice of Appeal letter is being filed with a completed Planning Division notice of appeal form and filing fee in the amount of \$3,344¹ to perfect an appeal of the hearings officer's decision denying approval of the Application. The Application seeks to modify a discrete aspect of the Thornburgh Destination Resort's ("Thornburgh" or the "Resort") final master plan ("FMP"), the 2008 Fish and Wildlife Mitigation Plan ("2008 FWMP"), to accomplish two things:

1. Reduce authorized water use by roughly one third by reducing certain water intensive amenities and agreeing not to build an optional golf course, and
2. Modify the 2008 FWMP to an updated and revised 2022 Fish and Wildlife Mitigation Plan ("2022 FWMP") that provides better and more systemic benefits to Central Oregon rivers and creeks while also meeting the County's DCC 18.113.070.D "no net loss or degradation" standard ("NNL Standard").

For the reasons described below, the Applicant requests that this Board accept this appeal of the hearings officer decision. Applicant also requests that the Board conduct the hearing on the record, as opposed to a *de novo* review process.

¹ The filing fee amount was calculated and provided by email from Senior Planner Caroline House on December 27, 2022.

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The hearing below was more than four hours in length. Therefore, Applicant also requests that the Board waive the transcript requirement consistent with DCC 22.32.024.D.

I. REASONS TO CONSIDER APPEAL ON THE RECORD

Applicant requests that the Board review this appeal on the record and not *de novo*. This request is made for several reasons.

First, this Board has heard a number of Thornburgh matters in recent years. Most recently, the Board heard an appeal in 2020 regarding a site plan approval for Thornburgh's required golf course, which the Board approved. That case was affirmed by LUBA and the Court of Appeals and the Supreme Court denied review.

Second, this Board conducted an on the record review of a Thornburgh appeal in 2019 that was comprehensive and efficient. Since that time, the County has issued six additional land use decisions related to Thornburgh that addressed water and mitigation issues. Each of those six land use decisions was affirmed by LUBA and the Court of Appeals. As of the date of this appeal letter, three decisions were also challenged on Petitions for Review to the Supreme Court, which denied review.² The land use process to this point has been extensive. Opponents, primarily Ms. Gould, continue to raise issues that are rejected by LUBA, the Court of Appeals, and the Supreme Court. The opposition is ideological, not legally meritorious. An on the record appeal is warranted given these previous obstructionist appeals.

Third, the record established in this case—so far—is voluminous. For instance, perennial opponent Nunzie Gould and her lawyer Jennifer Bragar made a single record submittal during the post-hearing comment period that was over three thousand pages in length. That submittal included expert testimony and addressed all aspects of the Application. Thornburgh's response was also robust. The Hearings Officer found:

“The Hearings Officer finds that the Applicant's technical evidence was prepared by credentialed experts who provided an *extreme* level of analysis and detail. The Hearings Officer finds opponents [*sic*] expert evidence is not nearly as comprehensive as Applicant's. The Hearings Officer finds opponents [*sic*] expert evidence is less focused on the specific water sources proposed by Applicant and their impacts on fish habitat. The Hearings Officer finds opponents [*sic*] technical

² These decisions include the golf course site plan, overnight lodging unit site plan, modification of overnight lodging unit ratios and bonding requirements, phase A-1 tentative plan, welcome center site plan, and phase A-2 tentative plan. Each of these decisions has been affirmed through the Court of Appeals. The golf course site plan, overnight lodging unit site plan, and modification of overnight lodging unit ratios decisions were denied review by the Supreme Court.

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evidence is less credible and persuasive than the technical evidence proved by Applicant.” Emphasis added. Hearings Officer decision, p. 36.

Besides Thornburgh, Applicant’s counsel has litigated multiple cases against Ms. Bragar. In each of those separate cases, Ms. Bragar attempts to “bury the opposing side” with paper. This tactic also results in burying the decision maker in paper, creating a lack of clarity regarding relevant issues, and creating additional administrative burden.³ Given that the record has already been so robustly established, there is no need to submit additional evidence and this Board should hear the appeal on the record as opposed to subjecting itself to wading through an additional 3,000+ page of new submittals.

Fourth, as is outlined in issues for appeal below, the “meat” of the appeal relates primarily to interpretive issues of the County’s procedural code. Although the Hearings Officer ultimately ruled in Thornburgh’s favor, these interpretive issues could create other problems down the line for the County’s other existing destination resorts. As they represent interpretative issues of the County’s procedures ordinance, no new evidence is necessary and legal briefing is sufficient.

Lastly, the amount of attention garnered by each Thornburgh application and process is significant. The Hearings Officer noted that several hundred persons weighed in at or before the hearing, and more than 100 filed additional comments during the open record period. The hearing below was also more than four hours in length. The public has had its say. If it wishes to participate again, it may do so in writing as described in DCC 22.32.030.A.

II. REASONS TO ACCEPT THE APPEAL

Thornburgh is grateful to the Hearings Officer for his consideration of the thousands of pages of documents already in this record. However, the Hearings Officer made a few key errors that led to the denial of the Application. Thornburgh requests that the Board correct those errors.

A. Interpreting the Procedures Ordinance – DCC 18.113.080, DCC 22.36.040, and Thornburgh FMP Condition 1

The Hearings Officer was tasked with the difficult task of interpreting DCC 18.113.080, DCC 22.36.040, and Thornburgh’s FMP Condition 1.⁴ While we agree with the outcome of the Hearings Officer’s interpretation, we believe that the interpretation may be inconsistent and is

³ It’s worth noting that this can create a significant burden for the County staff in preparing the LUBA record. Historically, Ms. Bragar has routinely objected to the record at LUBA as a delay tactic focusing on form over substance without making an honest effort to resolve record issues without filing an objection. In at least one Deschutes County case this has led to LUBA completely dismissing Ms. Bragar’s record objections.

⁴ DCC 18.113.100 is also relevant when determining the procedure to be followed when proposing a modification of a destination resort FWMP and should be considered by this Board.

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likely to lead to additional problems in the future – for other destination resorts and not just for Thornburgh.

The Hearings Officer’s finding that “[s]ite plan or preliminary plan approval documents may well be dependent upon the CMP and/or FMP” is inconsistent with DCC 18.113.040(C). DCC 18.113.040(C) requires conformance with the FMP. The Hearings Officer’s finding is also inconsistent with the Board’s holding in DC Document No. 2014-431 (BOCC Loyal Land/Gould decision) that “[t]he FMP *** incorporates all the requirements of the CMP and becomes the guiding approval document for the project pursuant to DCC 18.113.040.B.” These inconsistencies should be addressed and resolved by the Board to eliminate confusion over whether the code or the hearings officer’s decision dictate the scope of review for Resort site plan, subdivision, and FMP modification applications.

Additionally, on page 20, the Hearings Officer found that while DCC 18.113.080 provided a way to modify a conceptual master plan (“CMP”) approval, it does not contain a process to modify a FMP. This finding is inconsistent with numerous County decisions that have viewed DCC 18.113.080 as a relevant approval criterion for modifications of Resort FMPs.⁵ This finding may also create confusion. DCC 22.36.040 provides a modification process for *all land use approvals* unless a more specific provision in the zoning ordinance provides a different process. It has been routinely applied by the County in its review of FMP modification applications. We ask the Board to clearly state that DCC 22.36.040 allows the approval of modifications to FMPs.

Further, although we agree with the Hearings Officer that the applicable law allows Thornburgh to modify the FWMP, we disagree with the required process. At page 20, the Hearings Officer determines that “any decision to change the FMP by changing the FWMP necessarily implicates the CMP.” We disagree. The CMP is only implicated when an element or elements of the CMP are changed that alter the “type, scale, location, phasing or other characteristic of the proposed [Resort] development such that the findings of fact on which the original approval [CMP decision] was based would be materially affected.” In this instance, the CMP *deferred* findings related to creation of a FWMP until the FMP stage. As a result, no findings in the CMP decision are affected by a revised FWMP. The CMP findings require a public hearing prior to approval of the FWMP – a requirement has been met for both the 2008 and 2022 FWMP. The FWMP, also, mitigates for Resort development – it is not a “characteristic” of the Resort development so it cannot be considered a “substantial modification” of the CMP. “Characteristics” are typically defined as “a feature or quality” [of Resort development] and not the mitigation for impacts of such features.

⁵ This includes at least one decision that was issued while this case was pending before the Hearings Officer. Therefore, the County has issued conflicting decisions regarding the same procedural code just within the last few months. This creates a ripe constitutional issue under *Village of Willowbrook v. Olech*, 528 US 562 (2000) (Equal Protection Clause protects individuals from disparate treatment by local government).

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Thornburgh also agrees with the Hearings Officer's outcome related to DCC 22.36.040 and FMP Condition 1. However, in an attempt to harmonize DCC 18.113.080, DCC 22.36.040, and FMP Condition 1, the findings made by the Hearings Officer are confusing and hard to follow. We believe the findings can be simplified while still leading to the same outcome and providing better defensive posture for interpretation before LUBA.

Lastly, staff highlighted (as did the Applicant) that the County's destination resort procedure and modification ordinance has been applied unevenly and inconsistently. As such, it is reasonable to request the Board to reconcile and fully and finally interpret these provisions.

B. The NNL Standard

Despite finding that the Application "*potentially*" met the NNL Standard, the Hearings Officer denied Thornburgh's request to reduce water use and provide better mitigation – mitigation that will increase stream flow while reducing stream temperatures. This appears to be because, primarily, the Hearings Officer did not understand two key facts. First, Thornburgh owns the majority of the "mitigation" water needed. Second, Thornburgh is already providing the majority of the benefits proposed by owning and not pumping mitigation/transfer water, far in advance of Resort water use that may impact area rivers and creeks. This appears to have caused confusion over the clear and objective reporting and compliance measures proposed by Thornburgh. The Hearings Officer, at page 40, also raised concerns that existing FMP Condition 38 will be difficult to enforce. This concern may be resolved by simple revisions to clarify the 2022 FWMP enforcement mechanisms or by adding a condition of approval to the FMP to specifically address the issue of compliance with the 2022 FWMP. We believe this can be done in a closed record review by the Board.

The Hearings Officer also correctly found that an agreement with ODFW regarding the proposed mitigation measures was not necessary but failed to make a decision on the merits of ODFW's concerns based on the comprehensive response provided to all ODFW concerns by Thornburgh's experts. This is puzzling given that the Hearings Officer found that Thornburgh "provided a thoughtful response to ODFW comments." Hearings Officer Decision, p. 42. Ultimately, the Hearings Officer faults the applicant for not agreeing to toll the 150-day clock by more than three weeks to provide additional time for ODFW to respond to Thornburgh's expert evidence and finds ODFW "did not have an opportunity to respond to Applicant's *** comments." In fact, all but two of the issues ODFW raised in its November 7 letter were previously raised in its September 28 and October 21 letters and responded to by Applicant in its October 13 response to ODFW and the 15 technical documents providing ODFW extensive detailed analysis. Furthermore, ODFW had an equal opportunity to file its own comments regarding the same issues during the rebuttal period if it had continuing concerns but did not do so. As ODFW stated in its November 7, 2022 letter, Thornburgh began consulting with ODFW in July of 2022, which was before the Application was even submitted. Additional information was provided to ODFW up and until the open record period below was closed. ODFW stated that the proposal had "merit" but failed to provide any additional comments or questions to Thornburgh, presumably because – as the Hearings Officer noted – Thornburgh provided a "thoughtful response." The

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Hearings Officer should have made a decision based upon the substantial evidence before him – evidence that he noted provided an “extreme” level of detail.

As noted by the Hearings Officer ODFW approval of the FWMP is not necessary. The NNL Standard is a County standard only. The issues raised by ODFW should have been resolved based on the evidence in the record. Thornburgh provided more than 15 technical reports that the Hearings Officer found to provide an “extreme” level of detail and a “comprehensive response” to ODFW issues. The Hearings Officer determined it was a “close call” – one that is not close when Thornburgh’s expert evidence is properly considered. Thornburgh, therefore, requests that the Board hear this appeal on the record and determine that Thornburgh has met the NNL Standard.

C. Published Notice

At page 10, the Hearings Officer found that notice of the land use hearing was not timely published based on misinterpretation of DCC 22.24.030 and DCC 22.08.070 to require a 21-day notice period rather than the 20-day notice period set by DCC 22.24.030. This interpretation should be corrected to provide clear direction to County staff that 20 days is the correct notice period for published notice of land use hearings.

III. CONCLUSION

For all of the foregoing reasons, we request that the Board accept Thornburgh’s appeal and hold and on the record hearing. This would require legal briefing of issues in the record only, thereby substantially simplifying the Board’ review process and administrative burden.

Very truly yours,

SCHWABE, WILLIAMSON & WYATT, P.C.



Kenneth Katzaroff

Enclosures

PDX\135849\262760\JKKA\35533075.1



RECEIVED

01/11/2023 Item #10.

JAN 03 2023

Deschutes County CDD
COMMUNITY DEVELOPMENT

247-23-00003-A

APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: \$3,344.00

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Annunziata Gould Phone: (541) 420-3325

Mailing Address: 19845 J W Brown Road City/State/Zip: Bend, OR 97703

Email Address: Nunzie@pacifier.com jbragar@tomasilegal.com

Land Use Application Being Appealed: 247-22-000678-MC

Property Description: Township 15 Range 12 Section 00 Tax Lot See List on Following Page

Appellant's Signature: Annunziata O Gould Date: Jan 3, 2023

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of

the day five (5) days prior to the date set for the *de novo* hearing or, for on-the-record appeals, the date set for receipt of written records.

NOTICE OF APPEAL

Property Description Assessor's Tax Map: 15 12 00, Tax Lots:

Tax Lot: 5000

Tax Lot: 5001

Tax Lot: 5002

Tax Lot: 7700

Tax Lot: 7701

Tax Lot: 7800

Tax Lot: 7801 (a portion)

Tax Lot: 7900

Tax Lot 8000 (a portion)

Please see attached letter for appeal grounds.

Lined area for providing appeal grounds.

JAN 03 2023

Deschutes County CDD



Jennifer M. Bragar
Attorney
Admitted in Oregon, Washington,
and California
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Portland, Oregon 97204
Tel 503-894-9900
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January 3, 2023

BY HAND DELIVERY

Deschutes County Board of County Commissioners
c/o Caroline House
Deschutes County Community Development Department
117 NW Lafayette Avenue
Bend, OR 97708-6005

Re: Appeal of Hearings Officer's Decision on File Number:
247-22-000678-MC

Dear Chair Adair and Commissioners:

This office represents Annunziata Gould ("Appellant") who lives at 19845 J W Brown Road, Bend, Oregon 97703. This letter is submitted in support of Ms. Gould's appeal application for the above-referenced file and the Hearings Officer Decision dated December 19, 2022 ("Decision"), with mailed notice sent by the County on December 20, 2022. The application submitted by Central Land & Cattle Company, LLC, Kameron DeLashmutt, and Pinnacle Utilities, LLC (collectively, the "Applicant") referenced as County File No. 247-22-00678-MC, and involves the property located at Assessor's Tax Map 15-12-00, Tax Lots 5000, 5001, 5002, 7700, 7701, 7800, a portion of 7801, 7900, and a portion of 8000 ("subject property"). Please include this appeal in the record for the above referenced file.

While the Appellant agrees with the outcome reached by the Hearings Officer that the Applicant cannot meet the no net loss/degradation of fish and wildlife resources under DCC 18.113.070(D), there are additional grounds for denial. The County should clarify that much more work needs to be done in order for the Applicant to obtain approval, if such approval is even possible considering the status of the resort approvals and steps necessary to consider this application to modify the Thornburgh Destination Resort Conceptual Master Plan ("CMP"), Final Master Plan ("FMP"), and the Fish and Wildlife Mitigation Plan ("FWMP") (collectively, the "application").

Appellant requests de novo review by the Board under DCC 22.32.027 because the Hearings Officer's findings about the applicable criteria are inconsistent, inadequate, are not supported by substantial evidence, fail to adequately support a choice among conflicting evidence or where conflicting evidence was weighed, such weight was unreasonable in light of the

TOMASI BRAGAR DUBAY

January 3, 2023

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competing evidence, and/or involve an incorrect interpretation of the law. The de novo review will allow Appellant an opportunity to confront the mitigation plan, rather than suffer through a piecemeal incomplete submittal. Had the Applicant submitted its full and complete 2022 FWMP with all supporting technical documents in August 2022, the Appellant's course of actions would have been different. But, that failure by the Applicant should not be rewarded with a limited hearing before the Board of County Commissioners. The appeal should be granted to prepare an Order denying the application on these additional grounds:

- A new CMP application is required because the original CMP has not been initiated. The Hearings Officer's findings on this issue are conclusory and unsupported, and misconstrue *Central Land and Cattle Co. v. Deschutes County*, 74 Or LUBA 236 (2016). Appellant correctly analyzed LUBA's holding, and provided her accurate discussion of these matters in the Appellant's November 7, 2022 Open Record Letter. As argued to the Hearings Officer below, all of Appellant's other appeal grounds are in the alternative (i.e. assuming *arguendo*, the CMP has been initiated).
- The Hearings Officer erred in allowing the Applicant to narrowly define and take a piecemeal approach to review of the application by ignoring substantial evidence that the FWMP symbolized, implied, and its approval would otherwise involve significant changes to the approved CMP and FMP.
- A new CMP and a new FMP are required because the application materially affects findings of fact on which the original approvals were based, as summarized in pages 18-28 of the Appellant's November 7, 2022 Open Record Letter,¹ explaining the applicability of DCC 18.113.080, DCC 22.36.040, LUBA's holding in the OLU Modification case, and Condition 1 of the CMP and FMP. Condition 1 in the CMP can only contextually be referencing a new CMP application as it is a standalone condition of the CMP and no other generic application. Similarly, Condition 1 of the FMP can only contextually be referencing a new FMP application as it is a standalone condition of the FMP. Both the CMP in its Condition 37, and the FMP in Condition 38 independently address the FWMP approval process, which is not implicated in Condition 1. Relatedly, staff was correct that all CMP approval criteria must be considered, and the Hearings Officer was incorrect in concluding otherwise.
- The Hearings Officer erred in ruling that no participant identified original findings that would be materially affected. Appellant identified the following such findings:
 - The Applicant possesses no water right to meet DCC 18.113.070(K) and the FWMP cannot be modified without water being available for the resort's consumption.
 - The economic analysis and findings for compliance with DCC 18.113.070(C) would be materially affected. The Hearings Officer also erred in failing to make

¹ Appellant is represented by this office, Jeffrey Kleinman, and Karl Anuta. References to Appellant's letters herein are to this office's submittals unless otherwise indicated.

TOMASI BRAGAR DUBAY

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findings regarding Appellant's arguments about the shortfalls of the economic analysis that would result from the application.

- The Water System Mater Plan and Sewer System Master Plan approved in the CMP and FMP would need to change before water usage impacts could be assessed for a modification of the FWMP. The Hearings Officer erred in failing to make findings analyzing Appellant's substantial evidence, instead relying on whether the Applicant literally proposed changes to its sewage disposal obligations, which the Applicant did not, as part of its piecemeal strategy. Once again Applicant commits its own error in undertaking this backward approach.
- The OWRD process for an approved water right to make water available for resort consumption (or any mitigation) has not been completed and no replacement of the CMP-identified water source has been submitted or approved.
- The Hearings Officer erred in interpreting away the phrase "substantial change" by "harmonizing" the code provisions with the conditions of approval in a way to limit the changes he would consider under the test. The Hearings Officer ignored substantial evidence in the record by narrowly construing the Applicant's ask as simply lowering the amount of annual water use at the resort, and changing the source of FWMP mitigation water. But, it is impossible to change the source of FWMP mitigation water without first knowing where the resort will permanently source its water consumption supply through a completed OWRD review process. That critical question can only be examined through a new CMP that satisfies DCC 18.113.070(K). Characterizing Applicant's 2022 FWMP as a "change in the source of FWMP mitigation water" is an oversimplification of what is really a veiled selection of a new water source. The Applicant seeks to achieve a *fait accompli* to have County approval for a new water consumption supply source through this piecemeal approach. By ignoring this ruse, the Hearings Officer would allow a false mitigation plan to be used later to justify any change in water consumption source without water being available now, and without a full examination of the habitat impacts of use of such new water source.
- In addition, even if the decision were characterized as only amending the FMP, which would be error, the changes proposed here require amendments to the CMP that have not been submitted. See discussion of DCC 18.113.100 in the Appellant's November 7, 2022 Open Record Letter.
- For similar reasons stated in the previous bullet points and all Appellant's other arguments that describe this application as a new proposal, the Hearings Officer erred in concluding that the application is not a substantially new proposal requiring a new application and as such, is prohibited from being processed as a modification under DCC 22.36.040(B). In addition, as set forth herein, the significant additional impacts on surrounding properties also disqualify this application from being processed as a modification under DCC 22.36.040(B). As a result, under DCC 22.36.040(C), the application should be treated as a new proposal and the Hearings Officer erred in reaching a contrary conclusion.

TOMASI BRAGAR DUBAY

January 3, 2023

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- All of the Hearings Officer's analysis to limit or not consider DCC 22.36.040(C) review based only on the Applicant's characterization of the application "ask" is flawed for all the reasons discussed previously and in Appellant's submittals regarding the failure to analyze the implications of the approval requested without a permanent authorized water supply including, but not limited to understanding where and how wastewater will be handled, and impacts to surrounding property. The Hearings Officer has improperly shifted the burden to Appellant and the public, but even so, Appellant successfully shifted the burden back to show that there is substantial evidence that a new application should be required, and that the new separate applications needed are for a CMP, an FMP, and then an FWMP.
- The Hearings Officer erred in not requiring the proposed FWMP to comply with FMP Condition of Approval 38 that expressly requires removal of certain wells that are now proposed to be used for the resort water system; and in not fully analyzing the impact of additional wells required for use of the proposed but not available water from the water rights summarized in the 2022 FWMP. Further, there is no substantial evidence of the location and use of the wells in connection with the 2022 FWMP, and there is no current Water System Master Plan. Relatedly, the Applicant's proposal would put it out of compliance with CMP Condition of Approval 11.
 - The Applicant's inability to obtain a permanent water supply that includes identification, analysis, and examination of well impacts means that the no net loss standard cannot be fully analyzed, nor can the impact of those wells on surrounding property owners' wells.
- The Applicant's proposed actions in the 2022 FWMP directly conflict with the current FWMP, agreed to by the Oregon Department of Fish and Wildlife ("ODFW"), by making one of the mitigation sources unavailable. The 2022 FWMP is a farce because the Applicant proposes to use the Deep Canyon Creek water directly by way of transfer to the resort for consumption and still pretend that they will mitigate for their groundwater permit consistent with the no net loss/degradation standard. The current FWMP required this very same Deep Canyon Creek water as the source of mitigation for resort's groundwater extraction under its CMP and FMP that rely solely on the groundwater in G-17036. Applicant continues to rely upon Water Rights Permit G-17036 but does not demonstrably provide mitigation water for this approved water source in the CMP and FMP. The Applicant cannot consume the same water at the resort and use it for mitigation for the resort's consumption at the same time. This is yet another reason that a new CMP application, followed by a new FMP application, and a new FWMP application are required.
- The Hearings Officer erred in not requiring the Applicant to reach agreement with the ODFW before submittal of the 2022 FWMP or even during the review process. Notably, the Applicant completely refused to allow extra time that ODFW requested for its continued review of Applicant's materials. Condition 38 expressly requires the Applicant to reach agreement with ODFW regarding mitigation of impacts of its water consumption on anadromous fish habitat and other wildlife. Under Condition 38, Applicant had the

TOMASI BRAGAR DUBAY

January 3, 2023

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burden to unequivocally establish agreement with ODFW—and the only logical way to do so would be by giving ODFW the full amount of time to review all technical material in advance of the submittal. But, Applicant's approach is to inch forward with piecemeal approvals based on half-baked technical reports submitted during the County's public review process to prevent any party, including ODFW, from fully participating because of Applicant's self-imposed timeline. As a result, the Applicant did not comply with Condition 38 to reach agreement with ODFW.

- The Hearings Officer erred in not requiring the Applicant to obtain BLM's agreement with the 2022 FWMP, a direct conflict with FMP Condition of Approval 38.
- The Hearings Officer erred in too narrowly defining surrounding property under DCC 22.36.040. As Mr. Anuta and multiple people testified on this record, many nearby but nonadjacent property owners have had to deepen wells on their property for drinking and farm uses. In any event, it is impossible to assess impacts to surrounding property because the Applicant failed to submit all its materials in the record or to undertake the necessary assessments to analyze such impacts on any surrounding properties without regard to the scale (missing materials are summarized throughout Appellant's submittals in the record by her counsel and E-PUR).
- Appellant's expert testimony from Mr. John Lambie, PE, Mr. Anuta, and others so undermines the Applicant's expert that no reasonable person could rely on the Applicant's expert testimony to reach the conclusions that the Hearings Officer reached regarding:
 - The record evidence shows it is incontrovertible that there is no water available as required by DCC 18.113.070(K). As extensively discussed by myself, Mr. Anuta, and Mr. Lambie, and as Oregon Water Resources Department ("OWRD") has unequivocally stated, the ground water right identified in the CMP and in the current FWMP is not a viable source of water because it has expired and OWRD has proposed to deny an extension of time to perfect the right.² Absent an extension, even the Applicant admits it cannot pump water under the right.
 - The Hearings Officer erred in concluding the Applicant's commitment to make annual reports to limit pumping of water under the 2022 FWMP is supported, when the Applicant unequivocally made the entire FWMP optional in its application submittal. An optional plan does nothing to ensure the no net loss/degradation standard will be met, let alone that the 2022 FWMP could be deemed reasonably certain of success.
 - The Applicant repeatedly claims that its only source of water is the Deschutes Formation Aquifer, but this is incorrect. Applicant's own materials show that the their water right transfer application under T-14074 would transfer Deep Canyon Creek surface water, rather than groundwater. In addition, the Applicant's proposed

² See OWRD's May 4, 2022 letter included in Appellant's November 7, 2022 Open Record Letter, Attachment 16, pp. 16, and other denials described by Mr. Anuta in Attachment 16.

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LeBeau transfer T-13857 would utilize a surface water source, the Little Deschutes River. Moreover, neither of these transfer applications has been (or is likely to be) approved. In reality, none of this water is available to the resort.

- The Applicant claims that the resort could pump winter water from the Dutch Pacific water right (Cert. 89259). However, a transfer of that water right to the resort was already summarily denied.³ Even if a new transfer application were to be filed, and thereafter approved (which is highly unlikely given the prior denial), winter pumping would not be allowed. This water is also unavailable to the resort.
- The Applicant must be required to revise the CMP's Sewer System Master Plan as its piecemeal planning is no longer consistent with the CMP. Specifically, the CMP's Sewer System Master Plan's Tables 1, 2 and 7 for the southern basin where Phase A is located must be brought up to date and this can only occur through a decision by Deschutes County. The County is the only jurisdiction that has authority to comprehensively plan for overall sewage capacity under DCC 18.113.070(L). The Applicant's projected sewage flows in Tables 1 and 2 must be revised to account for the Applicant's increased density of development by equivalent dwelling unit ("EDU"). Table 7 does not account for the Applicant's lost area for sewage dispersal due to elimination of a golf course, and the Applicant does not demonstrate a revised dispersal area with capacity to discharge the projected sewage flow for either Phase A or full development. Based upon the areas for sewage dispersal identified in this record, the Applicant has not committed sufficient area for sewage dispersal consistent with Table 7 and thus the Sewer System Master Plan must be revised. Further, the mode of dispersal needs to be revised. Based on the evidence in this record, the resort does not have enough room in Phase A for a larger sewer treatment area. Current statements by the Applicant indicate that it intends to only use water for drip irrigation and not treatment in lakes, and this must be reflected in the Sewer System Master Plan. Further, the Sewer System Master Plan does not reflect dispersal by irrigation to match the seasonality of such irrigation, and the prohibition to irrigate in winter months. The Sewer System Master Plan must address capacity to handle wastewater in winter months. Nothing submitted so far seeks to amend this portion of the CMP to ensure compliance with DCC 18.113.070(L). The Applicant has not provided any technical evidence of inaccuracies in Mr. Lambie's analysis of the inconsistency of the 2022 FWMP with the CMP's Sewer System Master Plan. Notably, minimally treated effluent cannot be applied as general above-ground irrigation water despite the assertion of the Applicant in its rebuttal and final written argument. Moreover, the burden cannot be shifted to Appellant and the public to disprove the operability of the sewer system and impacts to surrounding properties until the Applicant submits a complete application with a revised Sewer System Master Plan.

³ See Attachment D to Attachment 38 to Appellant's November 7, 2022 Open Record Letter, and Attachment 38's discussion of this water right.

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- The Water System Master Plan has to be updated from the 2008 FMP since a reduction in water use is what the Hearings Officer expects to occur. The Applicant's math does not make any sense when it argues that the resort's water use for three golf courses would change from 717 AF to 501 AF for only two golf courses; the Applicant has increased the projected consumption of water per golf course in the application.
- The water supply requires resiliency, which means that the resort (like any municipality) has a water supply with water available for a minimum of 10 years. This is documented through a Water Management Conservation Plan ("WMCP"). The Applicant's 2022 WMCP admits that the groundwater right (G-17036) that it actually holds is expired and an extension would need to be granted by OWRD for that permit to be used.⁴ The 2022 WMCP also admits that the Applicant has only "applied for" other water rights.⁵ Moreover, Appellant filed a Petition for Reconsideration of the resort 2022 WMCP (the "2022 WMCP under reconsideration"). Notwithstanding this status, the amendment to the FWMP is also inconsistent with the 2022 WMCP under reconsideration. At best the Applicant has pending applications for temporary water transfers that could (perhaps) allow for a *temporary* 5-year water supply with no automatic or available extensions without a new application. This is inadequate to meet the water availability criteria for the CMP, let alone, stand as a basis for the amendment of the FWMP. The Applicant must have a permanent water supply solution. The Hearings Officer erred in failing to make findings as to the Appellant's arguments regarding the water supply resiliency requirements or the FWMP's inconsistency with the 2022 WMCP (or any other WMCP) in the record.
- Appellant's and the Applicant's experts both agree that almost all of the water rights identified in the 2022 FWMP are going to impact flows in the Crooked River. OWRD has indicated repeatedly in its ground water reviews that such impacts are unacceptable and no new water rights are available in the Crooked River basin. The resort has not established that water is available to serve the resort under DCC 18.113.070(K).
- The Applicant concedes that it does not have enough acquired water certificates for the proposed consumption in the FWMP, but even the partial amount it has obtained cannot be considered a feasible supply because OWRD recommends denial of so many of the Applicant's proposed transfers of water rights.
- The Hearings Officer erred in failing to make findings regarding Appellant's arguments under DCC 22.20.015.

⁴ See Appellant's November 7, 2022 Open Record Letter, Attachment 16, pp. 9, and 29-61, particularly p. 40 (i.e. Anuta 11-4-22 Exhibit #3, 2022 WMCP p. 16, § 5.02 attached thereto).

⁵ See Appellant's November 7, 2022 Open Record Letter, Attachment 16, p. 9 and 29-61, particularly 45 (i.e. Anuta 11-4-22 Exhibit #3, 2022 WMCP p. 21, § 5.04 attached thereto).

- The Hearings Officer erred in finding that the Applicant is not filing the application in lieu of an appeal. These matters were well briefed and explained in Appellant's November 7, 2022 Open Record Letter, pp. 9-13. While the Oregon Supreme Court has denied review in two of these cases in the site plan for 80 OLU's (322 Or.App. 11, *rev den* S069882) and the modification of the OLU ratio case (322 Or.App. 383, *rev den* S069813), several other cases remain pending Supreme Court Review.
- The Appellant was substantially prejudiced by the Applicant's submittal process and decision to have the application deemed complete without providing all technical support for its proposal until the open record period. The Hearings Officer did not resolve the prejudice by extending the statutory open record period by 14 days, as the County staff did not have the opportunity to review, or to provide a professional opinion about the information submitted to the Hearings Officer (who deemed himself a layperson, and stated he was confused by the Applicant's submittals).
 - One element of the County's Goal 1 Citizen Involvement Plan is stated as follows:

"Technical Information – Assure technical information is available in an understandable form.

 - Clearly written staff reports assure all information is available and comprehensible."

As evident from the Hearings Officer's decision, the application was not provided in a complete manner to assure that technical information was available in an understandable form or allowed staff to prepare a written staff report that assured all information was available and comprehensible. Further, as evidenced in the Appellant's submittals in this record, the County did not comply with Goal 1 of its Comprehensive Plan, including implementation of Policy 1.2.3, because of staff's delay in posting the application materials by 17 days (and what would have been longer if Appellant's counsel had not inquired with County staff).

- The proposed use, operating characteristic, intensity, scale, site layout and other matters criticized by Appellant could not be fully explored, set forth, or summarized since the Applicant did not submit the technical reports associated with the application until the hearing date on October 24, 2022, and beyond. Moreover, Applicant submitted integral correspondence with ODFW during the rebuttal period. thereby improperly foreclosing a public response.
- The Appellant and public continue to be substantially prejudiced by the County's inaccurate Notice of Hearings Officer's Decision and its description of the Applicant's request. The Notice of Hearings Officer's Decision states:

"Amend the Final Master Plan (FMP) for the Thornburgh Destination Resort by amending the Fish and Wildlife Management Plan (FWMP), and imposing

limitations on the scope of development and water use allowed by the Thornburgh Destination Resort."

However, the application materials are clear that the Applicant sought to "Amend Thornburgh Resort CMP/FMP/FWMP." The County's limited notice of decision as only amendment of the FMP and FWMP is a mischaracterization of the application.

Should the Board decide to hear the appeal on the record, then the foregoing appeal grounds should be included in the scope of the review.

Appellant requests a waiver of the transcript requirement, under DCC 22.32.024(D), for efficiency purposes because the entire hearing was recorded. If, however, the parties wish to direct the Board to portions of the hearing, or to transcribe select portions of the hearing related to this application, such direction and/or partial transcripts can be provided as attachments to written argument submitted to this Board. Appellant reserves the right to file further written argument under DCC 22.32.027. Please provide a response as soon as possible regarding the requested waiver of the transcript requirement because, if it is necessary, the Appellant needs enough time to prepare it prior to the Board's hearing.

Finally, Appellant requests a courtesy e-mail to her counsel (jbragar@tomasilegal.com) setting forth the date that the Board of County Commissioners intends to hold a work session on this appeal request.

Enclosed, please find the appeal fee of \$3,334.00 and appeal form. If no appeal is granted to any party, Appellant requests a refund of the appeal fee. Thank you.

Sincerely,



Jennifer M. Bragar

Enclosures

cc: (by e-mail)
client
Carol Macbeth

HEARINGS OFFICER DECISION

FILE NUMBER: 247-22-000678-MC

SUBJECT PROPERTY: The entirety of the Thornburgh Destination Resort located at:

Address	Deschutes Co. Assessor Map & Tax Lot Number
11800 Eagle Crest Blvd, Redmond, OR 97756	15-12-00, TL 5000
11810 Eagle Crest Blvd, Redmond, OR 97756	15-12-00, TL 5001
11820 Eagle Crest Blvd, Redmond, OR 97756	15-12-00, TL 5002
67205 Cline Falls Rd, Redmond, OR 97756	15-12-00, TL 7700
67705 Cline Falls Rd, Redmond, OR 97756	15-12-00, TL 7701
67555 Cline Falls Rd, Redmond, OR 97756	15-12-00, TL 7800
67525 Cline Falls Rd, Redmond, OR 97756	15-12-00, TL 7801*
67545 Cline Falls Rd, Redmond, OR 97756	15-12-00, TL 7900
67400 Barr Rd, Redmond, OR 97756	15-12-00, TL 8000**

* A portion of this tax lot is not included in the FMP.

** Portions of this tax lot are not included in the FMP.

OWNERS/APPLICANTS: Central Land & Cattle Company, LLC, Kameron DeLashmutt Pinnacle Utilities, LLC

APPLICANT’S ATTORNEYS: J. Kenneth Katzaroff – Schwabe Williamson & Wyatt, PC
Liz Fancher

REQUEST: See Applicant’s Summary of Modification Request below.

STAFF CONTACT: Caroline House, Senior Planner
Phone: 541-388-6667
Email: Caroline.House@deschutes.or

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000678-mc-thornburgh-destination-resort-modification-cmpfmpfwmp>

I. APPLICABLE CRITERIA

Staff, in the Staff Report, set forth the following as applicable and relevant approval criteria. Applicant, Staff and persons in opposition disagreed as to which criteria should be considered relevant for the review of Applicant’s 2022 FWMP modification proposal in this case. The Hearings Officer addressed the relevant approval criteria in various decision findings below.

Relevant Approval Criteria (per Staff Report):

Deschutes County Code (DCC)

- Title 18, Deschutes County Zoning Ordinance:
 - Chapter 18.113, Destination Resorts Zone
- Title 22, Deschutes County Development Procedures Ordinance:
 - Chapter 22.04, Introduction & Definitions
 - Chapter 22.08, General Provisions
 - Chapter 22.20, Review of Land Use Action Procedures
 - Chapter 22.28, Land Use Action Decisions
 - Chapter 22.36, Limitation on Approvals

II. BASIC FINDINGS

LOT OF RECORD:

The subject property has been verified as a legal lot(s) of record in previous land use decisions.

LOCATION:

The Thornburgh Destination Resort (“Resort”) is comprised of a large tract of land +/-1,970 acres in size and includes several tax lots as shown in *Table 1* and *Figure 1* below.

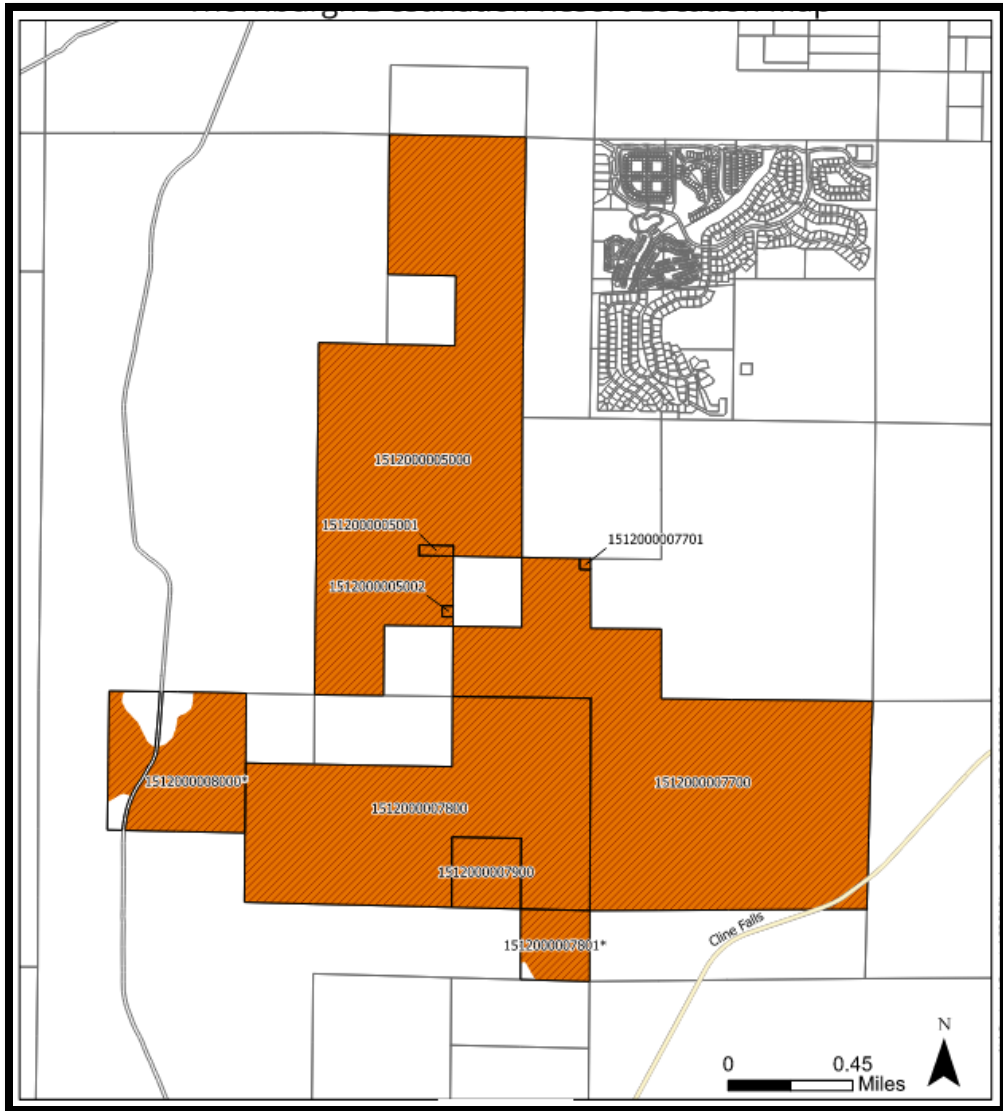
Table 1 - Thornburgh Destination Resort Location

Map Number & Tax Lot	Address
15-12-5000	11800 Eagle Crest Blvd.
15-12-5001	11810 Eagle Crest Blvd.
15-12-5002	11820 Eagle Crest Blvd.
15-12-7700	67205 Cline Falls Rd.
15-12-7701	67705 Cline Falls Rd.
15-12-7800	67555 Cline Falls Rd.
15-12-7801 ¹	67525 Cline Falls Rd.
15-12-7900	67545 Cline Falls Rd.
15-12-8000 ²	67400 Barr Rd.

¹ A portion of this tax lot is not included in the Final Master Plan (FMP) approval.

² Portions of this tax lot are not included in the Final Master Plan (FMP) approval

Figure 1 – Thornburgh Destination Resort Location Map



SITE DESCRIPTION:

The property described and displayed above (the “Subject Property”) is approximately 3 miles west-southwest of the City of Redmond. The Subject Property includes variable topography, native vegetation, rock outcroppings and ridge tops. At this time, the Subject Property is largely undeveloped land. However, the Applicant has started construction of access roads, other infrastructure improvements (i.e., community water system, community sewer system, etc.), and a golf course pursuant to prior land use approvals. In addition, the Applicant has applied for building permits for utility facilities³ and overnight lodging units (“OLUs”). The southeastern corner of the subject property is bisected by Cline Falls Road and Barr Road bisects the southwest corner of the Resort tract.

³ Staff (Staff Report, page 3) noted that these building permits are ready for issuance, but have not been issued at the time the Staff Report was written. The Hearings Officer is uncertain as to the status of the permits.

SURROUNDING USES:

The surrounding lands, not including other tax lots within the Subject Property, are primarily comprised of tracts owned by the Federal Government, State of Oregon, or Deschutes County. Most of this public land is part of the Cline Buttes Recreation Area and is zoned Exclusive Farm Use – Sisters/Cloverdale Subzone (EFU-SC) or Open Space & Conservation (OS&C). Further northeast is the Eagle Crest Destination Resort, and a property with an approved Surface Mining site (Site No. 252) and Wireless Telecommunication Facility. To the east-northeast of the Subject Property are Rural Residential (RR10) zoned lots that are generally five (5) to ten (10) acres in size. Most of these properties are developed with a single-family dwelling and related accessory structures.

RESORT LAND USE HISTORY:

Staff, in the Staff Report, provided the following summary of the land use history associated with the Thornburgh Resort. The summary below is included only to provide the reader of this decision Staff's overview of the general scope of some of the applications, decisions and appeals associated with the Thornburgh Resort.

Conceptual Master Plan (File No. CU-05-20): On February 16, 2005, Thornburgh Resort Company, LLC ("TRC") applied for the Resort Conceptual Master Plan (CMP) approval for the Thornburgh Destination Resort. The application was denied by the Hearings Officer on November 9, 2005. The Board of County Commissioners ("BOCC") issued Order Nos. 2005-143 and 2006-016 to call-up the Hearings Officer decision for review. On May 11, 2006, the BOCC approved the CMP. Annunziata Gould ("Gould") and Steve Munson ("Munson") appealed the BOCC decision to the Land Use Board of Appeals (LUBA / LUBA Nos. 2006-100 & 2006-101). LUBA remanded the BOCC decision on May 14, 2007 (Gould v. Deschutes County, 54 Or LUBA 2005 (2007)). The LUBA decision was appealed to the Court of Appeals. On November 7, 2007, the Court of Appeals reversed and remanded LUBA's decision (Gould v. Deschutes County, 216 Or App 150, 171 P3d 1017 (2007)). The result was the BOCC decision in CU-05-20 approving the CMP was remanded to the County for further proceedings.

On April 15, 2008, the BOCC issued its decision on remand, again approving the CMP (Order No. 2008-151). Gould and Munson appealed the BOCC remand decision to LUBA on May 6, 2008 (LUBA No. 2008-068). On September 11, 2008, LUBA affirmed the BOCC decision (Gould v. Deschutes County, 57 Or LUBA 403 (2008)). That decision was appealed to the Court of Appeals (A140139). On April 22, 2009, the Court affirmed LUBA's decision (Gould v. Deschutes County, 227 Or App 601, 206 P3d 1106 (2009)). On October 9, 2009, the Oregon Supreme Court denied review (Gould v. Deschutes County, 347 Or 258, 218 P3d 540 (2009)). On December 9, 2009, the Court of Appeals issued its appellate judgement and the CMP received final approval as of December 9, 2009.

CMP Initiation of Use (File No. DR-11-8): On November 1, 2011, TRC applied for a Declaratory Ruling to demonstrate the CMP had been timely initiated. The Hearings Officer found the CMP was timely initiated. The BOCC declined to hear the appeal and Gould filed a LUBA appeal. On appeal, LUBA remanded that decision (LUBA No. 2012-042). LUBA's decision was affirmed by the Court of Appeals, without opinion (Gould v. Deschutes County, 256 Or App 520, 301 P3d 978 (2013)). On remand, the Hearings Officer found the CMP was not timely initiated. TRC appealed the Hearings Officer's decision to the BOCC. The BOCC issued a decision finding the CMP was initiated before the two-year deadline expired. Gould appealed the BOCC decision to LUBA. On appeal, LUBA remanded this

decision back to the BOCC decision on January 30, 2015 (LUBA No 2015-080). However, LUBA's decision was appealed and the Court of Appeals reversed and remanded stating that the express language of the County Code requires Defendant to substantially exercise the permit conditions as a whole, and any failure to initiate development by fully complying with the conditions should not be the fault of the applicant, a determination of which must be based on more than just the complexity of the process. The Court also held that the County could not interpret the County Code contrary to a prior LUBA order in this same litigation, as the lower tribunal was bound to follow the appellate Court's Ruling (*Gould v Deschutes County*, 272 Or App 666 (2015)). Later, as part of the submitted application materials for the Golf Course Site Plan review, the applicant included the following clarification on the status of the remand:

"Loyal Land has not initiated a review on remand. This application is moot, however, because the Resort's Final Master Plan (FMP) incorporates and satisfies all conditions of the CMP and has received final approval."

Final Master Plan (File Nos. M-07-2/MA-08-6): Thornburgh Resort Company filed for approval of the Resort Final Master Plan (FMP) in 2007, which was later amended in 2008. The application was approved by the County, appealed by Gould, and subsequently remanded by LUBA to address issues regarding the Thornburgh Wildlife Mitigation Plan (*Gould v. Deschutes County*, 59 Or LUBA 435 (2009)). The LUBA decision was appealed to the Court of Appeals. The Court affirmed LUBA's decision (*Gould v. Deschutes County*, 233 Or App 623, 227 P3d 759 (2010)). In 2015, on remand, the County denied approval of the FMP. Central Land and Cattle Company, LLC ("Central") successfully appealed the denial and LUBA remanded the County decision (*Central Land and Cattle Company v. Deschutes County*, 74 Or LUBA 326 (2016)). The Court of Appeals affirmed LUBA's decision without opinion (A163359). On the second remand, the FMP was approved by the County. The County decision was appealed by Gould. The County's approval was affirmed by LUBA (LUBA No. 2018-008, August 21, 2018) and the FMP is now final.

Tentative Plan & Site Plan - Phase A-1 Residential/OLU Lots & Utility Facilities (File Nos. 247-18-000386-TP/247-18-000454-SP/247-18-000592-MA): In May 2018, Central filed for approval of its Phase A-1 Tentative Plan and Site Plan review for utility facilities authorized by the CMP and FMP. The Hearings Officer approved the request with conditions. The BOCC declined review of an appeal (Order No. 2018-073). Gould filed an appeal to LUBA (LUBA No. 2018-140). LUBA remanded the County's decision on the following issue:

"On remand, the county must consider whether, without TP Condition 17, the tentative plan for Phase A-1 satisfies the no net loss/degradation standard and whether a change in the source of mitigation water constitutes a substantial change to the FMP approval, requiring a new application, modification of the application, or other further review consistent with FMP and DCC destination resort regulations."

The LUBA remand decision was appealed to the Court of Appeals (A171603), but the appeal was dismissed based on the filing deadline. The Court of Appeals denied reconsideration of said order of dismissal. The Oregon Supreme Court accepted review of Court of Appeals order denying reconsideration of the order-dismissing petition for review (S067074). The Supreme Court agreed with Gould and instructed the Court of Appeals to hear that matter. The Court of Appeals subsequently affirmed LUBA's decision in LUBA No. 2018-140 (A171603). In August 2021, Central initiated a second a remand application (file no. 247-21-000731-A). The Hearings Officer issued a

remand decision approving 247-21-000731-A (the Tentative Plan for Phase A-1 of the Thornburgh Destination Resort), thus clarifying and affirming the County's past approval of 247-18-000386-TP, 18-000454-SP, and 18-000542-MA. The BOCC declined review of an appeal (Order No. 2021-059). The County's decision was appealed to LUBA by Gould and LUBA affirmed the County's decision (LUBA No. 2021-112). A petition for judicial review has been filed to the Oregon Court of Appeals.

Site Plan – Phase A Golf Course (File No. 247-19-000881-SP): In December 2019, Central filed for Site Plan approval for a golf course authorized by the CMP and FMP. In April 2020, the Deschutes County Planning Division administratively approved the application. The BOCC called up an appeal filed by Gould and Central Oregon LandWatch (Order No. 2020-016). The BOCC affirmed the administrative approval on August 31, 2020. The County decision was appealed to LUBA and LUBA affirmed (LUBA No. 2020-095). The LUBA decision was appealed by Gould to the Court of Appeals (A176353). The Court of Appeals affirmed and the Oregon Supreme Court declined review (S069050). Therefore, the Site Plan approval for the golf course is final.

Site Plan – Phase A 80 OLU's (File No. 247-21-000508-SP): In May 2021, Central filed for site plan approval for 80 overnight lodging units authorized under the CMP and FMP. In September 2021, the Deschutes County Planning Division administratively approved the site plan. An appeal was filed by Gould, and the Hearings Officer denied the issues on appeal (file no. 247-21-000849-A) and approved the site plan. The BOCC declined review of an appeal (Order No. 2022-002). The County's decision was appealed to LUBA by Gould and LUBA affirmed the County's decision (LUBA No. 2022-013). The Court of Appeals affirmed LUBA's decision. It is unknown at this time if a petition for review has/will be filed to the Oregon Supreme Court.

Site Plan - Phase A-1 Resort Facilities (File No. 247-21-000537-SP): In May 2021, Central filed for Site Plan approval for a Welcome Center, Gatehouse, Golf Clubhouse and Community Hall authorized under the CMP and FMP. In November 2021, the Deschutes County Planning Division administratively approved the Site Plan. An appeal was filed by Gould, and the Hearings Officer denied the issues on appeal (file no. 247-21-001009-A) and approved the site plan. The BOCC declined review of an appeal (Order No. 2022-012). The County's decision was appealed to LUBA by Gould and LUBA affirmed the County's decision (LUBA No. 2022-026). A petition for judicial review has been filed to the Oregon Court of Appeals.

Modification of FMP – OLU Ratio (File No. 247-21-000553-MC): In June 2021, Central filed a Modification to amend the ratio of OLU's per single-family dwelling unit (from 2:1 to 2.5:1) and related bonding requirements. In October 2021, the Deschutes County Planning Division administratively approved the modification. An appeal was filed by Gould, and the Hearings Officer denied the issues on appeal (file no. 247-21-000920-A) and approved the Modification. The BOCC declined review of an appeal (Order No. 2022-003). The County's decision was appealed to LUBA by Gould and LUBA affirmed the County's decision (LUBA No. 2022-011). A petition for judicial review has been filed to the Oregon Court of Appeals.

Tentative Plan - Phase A-2 Residential Lots (File No. 247-21-000637-TP): In June 2021, Central filed for Tentative Plan approval for 108 single-family dwelling lots authorized under the CMP and FMP. The total development area included in the request encompasses 135 acres and the single-family dwelling lots on the tentative plan drawings identify the lots as lot numbers 193-300. In October 2021, the Deschutes County Planning Division administratively approved the application. An appeal was filed by Christine Larson, and the Hearings Officer denied the issues on appeal (file no. 247-21-

00948-A) and approved the Tentative Plan. The BOCC declined review of an appeal (Order No. 2022-011). Gould has filed an appeal to LUBA (pending LUBA No. 2022-025).

Site Plan – Phase A 70 OLU's (File No. 247-21-001111-SP): In December 2021, Central filed for Site Plan approval for 70 overnight lodging units. This application is pending review.

PUBLIC AGENCY COMMENTS:

The Staff Report contained a summary of public agency comments submitted into the record as of the date the Staff Report was issued. The Hearings Officer directs interested persons to review the Staff Report and public record if he/she/they are interested in the details of public agency comments. The Hearings Officer notes that additional public agency comments were received after the issuance of the Staff Report. Public agency comments that are considered relevant to this decision will be addressed in the findings below.

PUBLIC COMMENTS, TESTIMONY AND RECORD SUBMISSIONS:

This application, as is typical of all Thornburgh land use applications, generated significant interest from neighbors, nearby residents/farmers and public interest groups and the public in general. The Hearings Officer reviewed each record submission. The Hearings Officer, where related to a relevant approval criterion, will identify specific participants and their comments.

REVIEW PERIOD:

The application subject to this decision was submitted on August 17, 2022. On September 16, 2022, the County mailed an incomplete letter to the applicant requesting additional information necessary to complete the review. The applicant provided responses to the incomplete letter on September 22, 2022, and notified the County that no additional information would be submitted. For this reason, the application was deemed complete and a public hearing before a Hearings Officer was scheduled for October 24, 2022. The County mailed a Notice of a Public Hearing to all parties on September 30, 2022, and published a Public Notice in the Bend Bulletin on October 4, 2022. The Hearings Officer, at the October 24, 2022, public hearing kept the record open for the submission of new evidence until November 7, 2022; the record open for the submission of rebuttal evidence until November 14, 2022; and provided for the Applicant to submit a final argument until November 21, 2022. The Hearings Officer finds that Applicant supported/concurred with the Hearings Officer's open-record period. The Hearings Officer finds the Applicant consented to an additional 14 days which shall not be counted towards the 150-day clock. Additionally, the 7-day Applicant final argument period does not count towards the 150-day clock pursuant to ORS 197.797 (6)(e). Therefore, the Hearings Officer finds the 150th day in which the County must take final action on the subject application is March 12, 2023.

APPLICANT'S SUMMARY OF MODIFICATION REQUESTS:

Applicant (Katzaroff, November 7, 2022, Exhibit 1) provided the following "summary letter" of Applicant's proposal in this case. Attached to the "summary letter" was a "*reorganized and updated November 7, 2022 Thornburgh Resort 2022 Fish and Wildlife Mitigation Plan (2022 FWMP) Relating to the Potential Impacts of Thornburgh's Reduced Ground Water Withdrawals on Fish Habitat.*"

The “summary letter,” in full, is set forth below:

“This summary letter has been prepared by Jim Newton, PE, RG, CWRE, Principal of Cascade Geoengineering (‘CGE’) on behalf of Central Land and Cattle Company, LLC, owner, and developer of the Thornburgh Resort (‘Thornburgh’) to provide a simplified summary of the 2022 ‘Thornburgh Resort Fish and Wildlife Mitigation Plan, Addendum #2 (2022 FWMP) Relating to Potential Impacts of Thornburgh’s Reduced Ground Water Withdrawals on Fish Habitat’ dated August 16, 2022. The 2022 FWMP presented very detailed changes to the original 2008 FWMP that was approved by the Oregon Department of Fish and Wildlife (ODFW). Both the 2008 and 2022 FWMP provided mitigation to offset any potential impacts on fisheries and aquatic habitat and the specific measures to mitigate for any negative impacts.

Thornburgh estimated in 2008 the Resort’s water needs at full build out were up to 2,129 AF per year, having consumptive use of 1,356 AF, and a maximum withdrawal rate of 9.28 cubic feet per second (cfs). The Thornburgh Resort revised water needs at full build out by reducing some water intensive amenities and reducing irrigated landscaping for resort facilities and individual homes. The Resort will also implement the use of improvements in the type and method of fixtures used in Resort buildings to reduce consumption. As a result of this Thornburgh is reducing its total water needs from 2,129 AF to 1,460 AF. A summary table of the 2008 estimated water demand and the 2022 revised water demand are shown below:

2008

Original Water Use Full Resort Build-Out

<u>WATER USE</u>	<u>ANNUAL VOLUME</u>	<u>CONSUMPTIVE USE</u>
Golf Courses	717 AF	645 AF
Irrigation	195 AF	117 AF
Reservoir Maintenance	246 AF	206 AF
Other Q/M	971 AF	388 AF
TOTALS	9.28 CFS	2,129 AF
		1,356 AF

2022

Reduced/Revised Water Use at Full Resort Build-Out

<u>WATER USE</u>	<u>ANNUAL VOLUME</u>	<u>CONSUMPTIVE USE</u>
Golf Courses	501 AF	451 AF
Irrigation	111 AF	66 AF
Reservoir Maintenance	51 AF	43 AF
Other Q/M	797 AF	319 AF
TOTALS	1,460 AF	882 AF

The above reductions in estimated annual water usage reflect roughly a one-third in water savings at full buildout of the Resort. Further, the water used for mitigation of the new Resort water usage relies more on groundwater, groundwater that is intended to offset groundwater pumping that could reduce discharges of seeps and springs that contribute cool water to surface flows in the Deschutes River and Whychus Creek at gaining reaches of the River and Creek, respectively. A list of the water rights to be used for mitigation of the Resort water uses are shown below by the referenced name, volume and the water right certificate, transfer or otherwise a cancellation:

Water Rights: Certificated, Transfers, and Cancellations.

1. LeBeau (200 AF) – Surface Water POD: Certificate 95746 and transfer T-13857.
2. Big Falls Ranch (614.4 AF) – Surface Water: Certificate 96192 & 96190 and transfer T-12651 to a groundwater Point of Appropriation.
3. Big Falls Ranch (25.6 AF) – Groundwater POA: Certificate 87558.
4. Tree Farm (327.5 AF) – Groundwater POA: Certificate 94948 and Transfer T13703.
5. Dutch Pacific (49.5 F) – Groundwater POA: Certificate 89259.
6. DRC Temporary Mitigation Credits – 6 AF of mitigation.
7. Three Sisters Irrigation District (1.51 cfs minimum 106 AF) – Surface water. Final order signed for instream transfer. This TSID water will only be used for quality mitigation, not as part of any OWRD mitigation or transfer program.

These above mitigative water rights, upon approval by the Oregon Water Resources Department, will provide mitigation for 1,217 AF of the 1,460 AF required for fully mitigation the estimated Resort water uses. The remaining approximately 243 AF of mitigation will be completed in the future, prior to the OWRD authorizing the full annual water use of 1,460 AF. If the additional 243 AF of mitigation is not necessary, or unavailable, the Resort will be limited to 1,217 AF annually.

Based on the detailed surface and groundwater modelling prepared by Four Peaks Environmental Consulting, and Resource Strategies, Inc., and the analysis of the impacts on Fish Habitat provided by Four Peaks (all submitted into the county written record as of the date of this letter), the mitigation of the Thornburgh Resort groundwater usage achieves compliance with DCC 18.113.070(D), Deschutes County’s “No Net Loss/Degradation” standard as it pertains to fishery resources. Considering the reduced Thornburgh Resort water usage and superior mitigation of future Resort water uses provided by the 2022 FWMP and the ample technical support for the plan, the County should approve the Thornburgh 2022 FWMP.”

III. FINDINGS & CONCLUSIONS

SIGNIFICANT ISSUES RAISED:

The Hearings Officer organized this decision somewhat differently than prior Thornburgh land use decisions. The Hearings Officer recognized that the Staff, Applicant and opponents raised a number of issues that were best addressed at the beginning of the decision. The Hearings Officer notes that in many cases these issues could be determinative of the Hearings Officer’s ultimate decision in this case. The Hearings Officer addresses below the issues the Hearings Officer believes were raised clearly with sufficient detail to allow the Hearings Officer to make a reasoned and supportable determination. The Hearings Officer first deals with **procedural issues** and then addresses what the Hearings Officer characterizes as **substantive issues**.

Procedural Issue #1: Timing of Notice of Hearing

Staff, (Staff Report, page 13), made the following comments related to the notice of hearing in this case:

“...a public hearing before a Hearings Officer was scheduled for October 24, 2022. The County mailed a Notice of a Public Hearing to all parties on September 30, 2022, and published a Public Notice in the Bend Bulletin on October 4, 2022....”

STAFF COMMENT: Staff notes the hearing will occur on the 20th day [footnote 6] from when the Public Notice was published in the Bend Bulletin. DCC 22.24.030(C) requires notice of an in the County at least 20 days prior to the hearing. Staff asks the Hearings Officer to confirm if the notice requirements of DCC 22.24.030 have been met.”

footnote 6: “DCC 22.08.070. Time Computation. Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the County is not open for business pursuant the County is not open for business pursuant to a county ordinance, in which case it shall also be excluded.”

The Hearings Officer finds that the Bend Bulletin published a notice of the October 24, 2022, hearing (the “Hearing”) in this case on October 4, 2022. The Hearings Officer finds that the Hearing did occur on October 24, 2022, which is 20 days after the published notice of hearing. The Hearings Officer finds that DCC 22.24.030 requires that the published notice happen/occur “at least 20 days **prior** to the hearing.” (Emphasis added by the Hearings Officer)

“Prior” is defined in the Meriam-Webster online dictionary as “earlier in time or order.” The Hearings Officer finds that technically DCC 22.24.030, along with DCC 22.08.070, requires 20-days pass *prior* to the scheduled hearing. The October 24, 2022 Hearing in this case was an initial public hearing. The notice of hearing was published on October 4, 2022, and DCC 22.08.070 mandates that day (October 4, 2022) not be counted towards the 20-day requirement. The first “counting” day for DCC 22.24.030 (C) purposes is October 5, 2022 and the 20th day would be October 24, 2022. The Hearings Officer finds that the October 24, 2022 hearing date is *the* 20th day. The Hearings Officer finds that the earliest that a hearing could be scheduled to meet the “20 days *prior*” requirement would have been October 25, 2022. The Hearings Officer finds that technically the county did not meet the DCC 22.24.030 (C) notice requirement.

The Hearings Officer did not make an oral ruling, at the Hearing, related to the published notice comments made by Staff. The Hearings Officer reviewed the entire October 24, 2022, hearing recording and attempted to ascertain whether any person provided comments about the hearing notice in the public record. While the Hearings Officer found various procedural objections to the hearing (See Procedural Error findings related to the open-record period, notice signage and County delays in uploading submissions to the online record), the Hearings Officer found no testimony, evidence, argument arguing that the notice of published notice somehow prejudiced any person’s/participant’s substantial rights.

The Hearings Officer finds the relevant law holds that a failure to provide a required notice provides a basis for reversal or remand *only if* an identifiable person’s/participant’s substantial rights were prejudiced by the error. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993). The Hearings Officer takes note that at least sixteen persons attended the Hearing in person and testified and two testified via the telephone. The Hearings Officer also notes that approximately 275 written submissions were received in the public record prior to the hearing and approximately 17 public agency comments were received. Additionally, the Hearings Officer notes that approximately 101 “new

evidence” submissions were received during the first open-record period and approximately 40 submissions were received during the rebuttal open-record period. The Hearings Officer finds that the public and interested persons actively participated in the hearing process for this case; including attending the Hearing in person, via zoom or by telephone. The Hearings Officer finds the technical error made by the County related to DCC 22.24.030(C) is harmless error and that no identifiable person’s rights were substantially prejudiced.

Procedural Issue #2: Notice of Hearing Signage

Hearing participant Christine Larson (“Larson”) objected to the location of the notice of hearing sign placed on the Thornburgh property. In summary, Larson stated that the location where the notice of hearing sign was placed was difficult to safely read. Larson asserted that the location of the notice of hearing sign did not provide meaningful notice to the community.

Applicant provided the following response to Larson’s notice sign placement argument (Katzaroff, November 21, 2022, pages 12 & 13):

“Ms. Larson, in a Friday, October 21, 2022 Email, suggests the land use notice sign has no hearing date, is posted in “hard to view areas,” are on Thornburgh’s property but “far away from any development” and that there is an entry gate with parking that may make a better location. Respectfully, Thornburgh complied with the code related to posting of notice. As discussed by the planning staff at the Hearing, the land use action sign was filled out properly by staff. DCC 22.24.030(B)(1) requires that the notice be provided on the “subject property” and “where practicable, be visible from any adjacent public right of way.” While we understand the concerns of Ms. Larson, as shown on the map provided in the Staff Report, the only public right of way in the vicinity is Cline Falls Hwy.”

The Hearings Officer notes that the Katzaroff November 21, 2022, submittal also included two maps and additional discussion related to the logistics of the placement of notice signage. The Hearings Officer finds Katzaroff’s comments and maps to be persuasive. Also, the Hearings Officer finds Staff, at the Hearing, concurred that notice of hearing signage met code requirements. The Hearings Officer finds Larson’s notice sign placement argument is not persuasive.

Procedural Issue #3: Open-Record

At the October 24, 2022, public hearing Jennifer Bragar (“Bragar”), an attorney representing Annunziata Gould (“Gould”), requested a period of time for the record to remain open. Bragar requested the record to be kept open for a period of 30-days for new evidence and 30-days for rebuttal evidence and a final 7-days for applicant rebuttal. In Bragar’s initial open-record written submission (Bragar, November 7, 2022, page 4) she stated, in part, the following:

“At the public hearing, Ms. Gould requested an additional 17 days for the record to remain open to account for the missing 10 days and provide the statutorily required seven day period for an open record request under ORS 197.797(6). The Hearings Officer improperly decided that the record should be left open for 14 days. This does not account for the minimum time Ms. Gould and the public would have had available if Thornburgh’s materials had been made available in a timely manner on September 22, 2022 [footnote omitted]. Another way to look at this is that the 10 day delay of posting the Applicant’s Response to Incomplete Letter is overcome, but with only a 14-day

open record period, the statutory seven day open record period has been shortened by three days. In either event, the public has been substantially prejudiced and did not have adequate time to prepare substantive comments for the hearing before the Hearings Officer.”

The Hearings Officer, at the Hearing, requested Applicant’s response to the Gould’s/Bragar’s open-record request. Kameron DeLashmutt (“Applicant” or “DesLashmutt”) and Kenneth Katzaroff (attorney for Applicant - “Katzaroff”) both expressed opposition to the 17-day open-record request and indicated that Applicant would not agree to extend the 150-day clock for any time period exceeding that required by Deschutes County code.

The Hearings Officer takes note of Deschutes County Code (“DCC”) 22.24.140 D. which states:

“Leaving record open. If at the conclusion of the initial hearing the Hearings Body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 14 additional days, allowing at least the first seven days for submittal of new written evidence or testimony and at least seven additional days for response to the evidence received while the record was held open. Written evidence or testimony submitted during the period the record is held open shall be limited to evidence or testimony that rebuts previously submitted evidence or testimony.”

The Hearings Officer also takes note of ORS 197.797 (6). ORS 197.797 (6) sets out the minimum procedures that the county is required to follow when conducting quasi-judicial land use hearings (See, *Emmert v. Clackamas County*, LUBA No. 2011-052). Specifically, ORS 197.797 (6)(c) provides that land use hearing participants must be given an opportunity to rebut evidence submitted during a “first” open-record period.

The Hearings Officer finds that DCC 22.24.141 (D) provides that *if* a hearings officer keeps the record open for the submission of *new* written evidence or testimony *then* the hearings officer *must* allow at least seven additional days for responsive evidence. The Hearings Officer finds that the DCC 22.24.141 (D) responsive open record period satisfies the ORS 197.797(6)(c) opportunity to rebut evidence requirement.

The Hearings Officer finds nothing in the DCC or Oregon Revised Statutes (“ORS”) requiring the Hearings Officer to keep a record open beyond the “seven, seven, seven” DCC 22.24.141 (D) requirement. The Hearings Officer finds that he may exercise discretion in establishing an open-record period so long as the DCC and ORS minimum times requirements are met.

In this case the Hearings Officer extended the first (initial open-record period) from seven days to fourteen days. The Hearings Officer kept the record open for seven days for responsive evidence. The Hearings Officer acknowledged the Applicant’s right to a seven-day final written argument. The Hearings Officer, in this case, provided an additional seven days for any interested person/entity to submit evidence into the record.

The Hearings Officer’s open-record schedule, as set forth at the Hearing and the preceding paragraph, was established considering Bragar’s/Gould’s request in the context of statutory time limitations established to render a local decision. The Hearings Officer finds Bragar provided no persuasive evidence or argument that any party’s rights, in this case, would be substantially prejudiced. The Hearings Officer finds that Bragar’s/Gould’s open-record procedural error argument is not legally persuasive.

Procedural Issue #4: County Delay in Submitting Items to Public Record

Bragar (November 7, 2022, pages 3 & 4) argued that the County delayed “uploading” materials submitted by the Applicant to the online public record. Bragar argued that such delay “robbed Ms. Gould and the public of valuable time to prepare for the public hearing for a highly technical and complicated land use decision.” Bragar went on to say that “this oversight by the County to only maintain a digital record, but to not keep it up to date, substantially prejudiced Ms. Gould and the public in their preparation for the hearing and the land use process more broadly.”

Katzaroff provided Applicant’s response to Bragar’s delay in “uploading” argument, as follows:

“Nothing in the County’s procedures ordinance or state law required the County to immediately upload to the County’s website or Accela the Applicant’s Response to Incomplete Letter. In fact, there is no law or requirement that would have required the County to upload the response in advance of the County issuing a decision on the Application, or in advance of determining that it would send the Application to a hearing. The County complied with DCC 22.20.020, which is all that was required. Like any member of the public, Ms. Gould had the opportunity to specifically request documents or to otherwise seek information from County planning staff related to the Application. The County owes no additional process to Ms. Gould or the general public above what the law required.”

The Hearings Officer concurs generally with Katzaroff’s above-quoted comments. In addition, the Hearings Officer finds that an the open-record period to submit new evidence was extended from seven to fourteen days to allow Bragar, Gould, Applicant and the public to review the record of this case and provide written evidence and argument. As noted by Janet Neuman (“Neuman”), water rights attorney for Applicant (Neuman, November 14, 2022, page 1), “Ms. Gould’s Open Record materials consist of over 3,000 pages of documents attached to a November 7, 2022 letter from her land use counsel, Jennifer Bragar...”

While the Hearings Officer admits to not **counting** the number of pages submitted by Bragar, Gould and the public (nor the Applicant’s submissions) the Hearings Officer can reasonably characterize the opposition open-record submissions as voluminous, extensive and some very technical. In a perfect world all documents submitted to the County would be instantly become a part of the online public record and accessible to all. The Hearings Officer finds that there is no substantial evidence in the record that Bragar, Gould and/or the public was/were substantially prejudiced through the County’s delay in “uploading” documents.

Procedural Error #5: Goal 1

Bragar (November 7, 2022, page 3) stated the following:

“The opportunity for citizens to be involved on all phases of the planning process’ is an integral component to Oregon’s land use planning program. Statewide Planning Goal 1. The public must have access to all documents and evidence in a timely manner to allow adequate opportunity to prepare for a public hearing. Transparency and the availability of documents in the record is the cornerstone for implementing Goal 1 citizen involvement, and ensuring the public’s due process rights. The inability to access record information substantially prejudices the public’s ability to participate in the planning process and disables widespread citizen involvement.”

The Hearings Officer incorporates the findings **Procedural Issue #4: County Delay in Submitting Items to Public Record** as additional findings for the Goal 1 findings. Further, the Hearings Officer finds that Bragar did not reference any case law that would be relevant and in support of her Goal 1 argument. The Hearings Officer finds Bragar's Goal 1 argument is general in nature and lacking sufficient specificity to allow the Hearings Officer to authoritatively respond.⁴ The Hearings Officer finds, based upon the findings for "open-record," "failure to timely upload," and those set forth above that Bragar's Goal 1 argument is not persuasive.

Procedural Error #6: ORS 197.797 & DCC 22.20.055

Bragar (November 14, 2022, pages 5 & 6) argued that "Applicant's continued submission of application materials after the hearing constitutes a violation of ORS 197.797 and substantially prejudices the public." Bragar asserted that Applicant, on November 7, 2022, submitted a "new FWMP as an open record submission." Bragar went on to say that "the public did not have 20 days before a hearing to review Thornburgh's proposed additions to its application." Bragar requested that the Hearings Officer order a "new hearing."

Bragar, in her November 14, 2022 open-record submission (page 6), provided additional comments relevant to her ORS 197.797 argument:

"Significantly, at least 44% of the text in the November 7, 2022 FWMP is brand new. Attachment D, where the yellow highlights indicate new text that was not contained in the August 16, 2022 version. [footnote omitted] The August 16, 2022 version of the FWMP contained six more pages of language no longer found anywhere in the brand new November 7, 2022 FWMP. These significant changes to the Application, at a minimum, signify that under DCC 22.20.055 the Hearings Officer should require the Applicant to submit an application to modify, and restart the 150-day time clock."

Applicant responded to the above-quoted Bragar argument. First, Applicant highlighted (Katzaroff, November 21, 2022, pages 10 & 11) a prior Deschutes County Board ("BOCC") decision (involving opponent Gould) addressing DCC 22.040.010 and DCC 22.20.055 (Case No. CU-05-10, DC No. 2006-151). In that case the BOCC noted that Opponent Gould "argued that Applicant's rebuttal materials, dated September 28, 2005, included so many changes that it resulted in a modification of the application..." The BOCC, in that case, concluded that "Gould did not identify one new DCC criterion that had to be applied or one finding of fact that had to be changed as a result of the alteration she lists. None of the changes made by Applicant in its rebuttal materials required the application of new criteria to the proposal."

Applicant's second response to Bragar's modification argument referenced specific/actual changes made by the November 7, 2022, FWMP submission to the original application 2022 FWMP document (dated August 16, 2022). Applicant concluded that "the updated 2022 document [September 7, 2022 FWMP document] was provided in response to the request from the Hearings Officer to clarify the 2022 FWMP [August 16, 2022 FWMP document]. It provided **no new mitigation measures** or evidence, it simply provides a greater level of description as to how the 2022 FWMP is intended to work." (bold/underline included in original).

⁴ 22.24.120 APPENDIX A PRELIMINARY STATEMENT IN LAND USE ACTION HEARINGS OR APPEALS BEFORE THE BOARD, section titled Hearings Procedures

The Hearings Officer reviewed Bragar's "marked-up" copy of the August 16, 2022, Thornburgh Resort 2022 Fish and Wildlife Mitigation Plan (2022 FWMP) Relating to Potential Impacts of Thornburgh's Reduced Ground Water Withdrawals on Fish Habitat. The Hearings Officer also engaged in the lengthy process of comparing each Bragar yellow highlighted section of the August 16, 2022, FWMP to the November 7, 2022, FWMP which Bragar argued should be considered a DCC 22.20.055 modification (requiring Applicant to submit an application to modify and restart the 150-day time clock).

The Hearings Officer concluded, following the review of the August 16, 2022, and September 7, 2022, versions of Applicant's proposed 2022 FWMP that the September 7, 2022, FWMP version was an Applicant effort to repackage, reorganize and clarify the August 16, 2022 version. The Hearings Officer finds that the September 7, 2022, FWMP version did not change any proposed use, operating characteristic, intensity, scale, site lay out or landscaping element/item that was set forth in the August 16, 2022 FWMP. The Hearings Officer finds that the September 7, 2022, version did not change Applicant's 2022 FWMP proposal in a manner that would require the application of new criteria to the proposal or would require the findings of fact to be changed.

The Hearings Officer finds that the September 7, 2022, FWMP submission was provided in response to a Hearing request, made by the Hearings Officer to the Applicant, to clarify the August 16, 2022, FWMP. The Hearings Officer finds the September 7, 2022, FWMP submission constitutes evidence submitted into the record after the application was deemed complete and prior to the close of the evidentiary record. The Hearings Officer finds Applicant's submission of the September 7, 2022, FWMP is not a "modification of application" as defined by DCC 22.04.020. The Hearings Officer finds Bragar's ORS 197.797 and DCC 22.20.055 arguments are not persuasive.

Substantive Issue #1: Property Considered

Bragar (November 7, 2022, page 25) stated that

"Thornburgh's slide presentation shows a road traversing tax lot 5300, but tax lot 5300 is not included in this Application ... Further tax lots 5103 and 5104 also need to be included in the Application because the Applicant's road and water system are located on those properties."

Applicant provided the following response (Katzaroff, November 14, 2022, page 7):

"Tax Lots 5300, 5103 and 5104 are presumably Tax Lots 5300, 5103 and 5104, Map 15-12-00. These properties are owned by the State of Oregon (DSL) and are leased to Thornburgh on a long-term lease. Thornburgh has easements to build roadways across these properties but the properties are not part of the property subject to the CMP and FMP. This is evident from a review of the CMP and FMP decisions Ms. Bragar filed with her November 7, 2022 letter. At the time the CMP was approved, Tax Lots 5300, 5103 and 5104 were not located in the DR overlay zone. Ms. Gould argued that these access roads were, however, resort development that was prohibited because neither property was zoned with Destination Resort overlay zoning. Her claim was summarily rejected by the Oregon Court of Appeals. Gould v. Deschutes County, 216 Or App 150, 158, 171 P3d 1017, footnote 1 (2007) presumably because the access roads may be built outside of the Resort that is subject to the CMP/FMP."

The Hearings Officer finds the Applicant's above-quoted statement to be credible and responsive to Bragar's above-quoted comments. The Hearings Officer finds, based upon the evidence in the record, that the Applicant included all necessary tax lots in the modification application subject to this decision.

Substantive Issue #2: Intermittent Streams

Bragar (November 7, 2022, page 25) asserted, based upon correspondence from the Oregon Department of State Lands ("DSL") (Bragar attachment 35, page 2), that intermittent streams "crisscross the entirety" of a portion of the Thornburgh Resort property. Bragar argued that the environmental impacts of the intermittent streams must be analyzed prior to approval of the current application to modify.

The Hearings Officer finds the "intermittent streams" issue has been raised in the past by opponents and has been adequately addressed. The Hearings Officer takes note that DSL has previously emailed Staff indicating that notice to DSL was not necessary (October 19, 2022). Further, the Hearings Officer takes note that Applicant submitted a letter from HWA engineering stating that "there are no intermittent streams on the Thornburgh Resort property" (Applicant Exhibit rebuttal exhibit 8).

The Hearings Officer finds the DSL email and HWA letter referenced above are substantial evidence that there are no intermittent streams on the property subject to this application.

Substantive Issue #3: Removal of one golf course

Staff (Staff Report, page 20) and opponents asserted that the Applicant's proposed elimination/removal of one golf course from the Thornburgh project would amount to a substantial change of the CMP/FMP approvals. The Hearings Officer will address the "substantial change" issue in later findings. However, the Hearings Officer addresses the status of the golf course to be removed at this time.

The Hearings Officer reviewed the CMP and FMP documents. The Hearings Officer finds the CMP/FMP approved three golf courses for the Thornburgh Resort. The Hearings Officer finds that one golf course is required and two are optional. The Hearings Officer finds the golf course Applicant proposes to eliminate through the 2022 FWMP modification application is an optional course. The Hearings Officer finds that the removal of one of the optional golf courses cannot be considered a substantial change to the CMP/FMP. The CMP/FMP authorized not building two of the approved golf courses and the application in this case is following that CMP/FMP authorization.

Substantive Issue #4: On-the-ground changes

Staff (Staff Report, page 10) expressed concern about possible "on the ground" changes being requested in Applicant's 2022 FWMP modification proposal. The Hearings Officer finds that Applicant has proposed no "on the ground changes" in the 2022 FWMP application being reviewed in this case. The Hearings Officer finds that map references related to the one optional golf course to be eliminated will need to be addressed in a future site plan or preliminary plan review application. The one golf course proposed to be eliminated was at the time of the CMP and FMP approvals purely optional; it was anticipated during the CMP and FMP stages of approval that the one golf course to be eliminated would in fact not be constructed. If this application is approved such approval will limit golf course development to one required course and one optional course (not two optional courses).

Substantive Issues #5: Additional development

This issue is closely related to **Substantive Issue #4: On-the-ground changes**. Staff (Staff Report, page 52) asked the Hearings Officer to “make findings on whether the applicant’s proposal only modifies the FWMP”. Applicant (Katzaroff, October 2, 2022, page 6) responded by saying that

“Staff request[s] a finding as to whether the Applicant’s tailored request should be broadened beyond the request of the Applicant. It should not, nor is there authority in the code for staff to so require. As noted, the code requires a modification to be related to a discrete aspect of the proposal.”

The Hearings Officer reviewed the hearings officer’s FMP remand decision and Applicant’s Modification proposal in this case. The Hearings Officer finds that the FMP decision (M-07-2, MA-08-6) approved the 2008 FWMP. The Hearings Officer finds the primary references to water use (i.e., consumptive and mitigation -quantity and quality) at the Thornburgh Resort are found in the 2008 FWMP. The Hearings Officer finds that Applicant’s Modification proposal in this case is to update/change only the 2008 FWMP.

The Hearings Officer finds that Applicant’s proposed reduction in water use, changes in the sources of mitigation water and changes to the source of Thornburgh consumptive water are all related to Applicant’s proposed update to the 2008 FWMP. The Hearings Officer finds Applicant’s proposed modification in this case does not propose changes to CMP / FMP approved development at the Thornburgh Resort. No changes are proposed in the location of streets, open space, number of single-family residences, number of overnight living units or resort amenities (welcome center, clubhouse, etc.). The only development being proposed in this case is a reduction in CMP/FMP optional development (the optional golf course).

Substantive Issue #6: Illustrations/Graphics Required

Staff, as part of its incomplete letter response to Applicant indicated that it had requested Applicant to provide updated illustrations and graphics. Staff (Staff Report, pages 29 – 32) included Applicant’s comments in response to its request to provide updated illustrations and graphics. Applicant also addressed the illustrations and graphics issue in a record submission (October 21, 2022, page 3).

The Hearings Officer finds that Applicant’s modification proposal relates specifically to the FWMP. The Hearings Officer does acknowledge that the Applicant proposed to eliminate one golf course. The golf course to be eliminated, per the CMP, was optional; not required. The Hearings Officer agrees with Staff that updated illustrations and graphics would provide the county and persons interested in the Thornburgh Resort project with a timely picture of what has already been approved and what the Applicant is expecting to occur in the future. However, the Hearings Officer finds no participant in this case has provided the Hearings Officer with any legal authority and/or justification to require the Applicant to provide updated illustrations and graphics.

Substantive Issue #7: Number and Location of Onsite Wells

Staff (Staff Report, page 26) “asks the Hearings Officer to make findings on well location requirements for the Resort and to review the applicable criteria, if any, associated with changes to the location of and/or the number of wells for the Resort’s water supply.”

Applicant (Katzaroff, October 21, 2022, page 3) responded that Applicant is “not seeking the approval of new well sites.” The Hearings Officer reviewed the Applicant’s modification proposal in this case and concludes that Applicant is not formally applying for a change in the number or location of wells on the Thornburgh Resort property. The Hearings Officer finds that if the 2022 FWMP were to be approved in this decision that approval cannot be considered approval of any specific number of wells or any specific location of wells on the Thornburgh Resort property.

Substantive Issue #8: Definition of Surrounding properties – DCC 22.36.040

Staff (Staff Report, page 52) asked the Hearings Officer to define “surrounding properties” as that phrase is used in DCC 22.36.040 (C). Applicant (Katzaroff, October 21, 2022, pages 5 & 6) provided a response to Staff’s “surrounding properties” inquiry. The Hearings Officer agrees with Applicant that “surrounding properties,” as used in DCC 22.36.040 (C), literally means the real property ownerships that are directly adjacent to (surrounding) the Subject Property.

Substantive Issue #9: ODFW – Agreement

The level of (required or optional input) participation of the Oregon Department of Fish and Wildlife’s (“ODFW”) was hotly debated during the record of this case. Many opponents argue that the ODFW must “agree” to Applicant’s proposed 2022 FWMP and must agree to measures assuring the satisfaction of the County “No Net Loss” standard. Applicant disagreed and argued ODFW “agreement” with the proposed 2022 FWMP is not necessary. This section of findings addresses the ODFW level of participation issue.

Staff, in the Staff Report (page 43), requested that the Hearings Officer “determine what authority, if any, shall be given to the ODFW’s verification that the Resort’s proposal complies with DCC 18.113.070(D).” Bragar (November 7, 2022, page 5) stated that “*Ms. Gould continues to think that the Hearings Officer erred in finding that Thornburgh’s failure to obtain ODFW, and as described below, BLM agreement with its FWMP modification is integral to a complete application.*”

Applicant (Katzaroff, October 21, 2022, page 4) provided the following comments related to ODFW authority in this case:

“Staff requests finding on whether ODFW has been granted specific review authority of the FWMP and compliance with the no net loss/degradation standard. ODFW has no authority over Thornburgh’s application. The County code does not provide for any jurisdictional oversight by ODFW. ODFW has not asserted that it has any jurisdiction to approve or deny wildlife management plans. To the extent ODFW provides testimony it should be weighed and reviewed the same as any evidence in the record.”

DCC 18.113.070(D) states any negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.”

The Hearings Officer concurs with Applicant’s above-quoted statement that there is nothing in DCC 18.113.070 (D) requiring participation and/or agreement of ODFW in determining whether or not an application impacting fish and wildlife resources results in “No Net Loss.” Stated another way, the Hearings Officer finds that DCC 18.113.070 (D) does not require ODFW approval of Applicant’s 2022

FWMP proposal. This finding does not mean that ODFW comments, recommendations, or technical expertise are irrelevant or not to be considered. To the contrary, as noted in findings below, the Hearings Officer considered ODFW comments in this case to be very relevant. The Hearings Officer considered the ODFW comments to be provided by persons within ODFW who are competent and technically skilled in matters related to fish and wildlife habitats.

Substantive Issue #10: Is the Thornburgh CMP “void”

Bragar (November 7, 2022, pages 6 – 9) provided a historical and analytical analysis of Gould’s argument that because the CMP was void there is nothing to modify in this case. The conclusion of Bragar’s “CMP void” argument was that Applicant must submit an application for a “new” CMP before requesting approval of any proposed 2022 FWMP. The Hearings Officer finds that Bragar made frequent reference to the *Central Land and Cattle Co. v. Deschutes County*, 74 Or LUBA 236 (2016) land use decision (hereafter referred to as the case as the “*LUBA FMP 2016 Decision*”). Bragar argued that the *LUBA FMP 2016 Decision* held that the Thornburgh CMP was “ineffective and void.”

The Hearings Officer finds that Bragar’s “void CMP” argument, and even the *LUBA FMP 2016 Decision* related to the “void CMP issue,” a bit puzzling. This Hearings Officer has presided over and decided a number of post *LUBA FMP 2016 Decision* Thornburgh cases.⁵ The “void CMP” issue has not been effectively raised in any of the prior Thornburgh cases where this Hearings Officer presided. Further, the Hearings Officer notes that in those prior cases the Thornburgh CMP was referenced and in numerous instances CMP conditions of approval were reviewed to determine if an application should be approved. This Hearings Officer finds it difficult to comprehend the “void CMP” issue is relevant at this late stage of the development process. With that said the Hearings Officer did review and consider carefully Bragar’s argument.

The Gould “void CMP” considered was by LUBA in the *LUBA FMP 2016 Decision* (see pages 27 – 32). LUBA noted, in the *LUBA FMP 2016 Decision* (pages 29 & 30) that a Deschutes County Hearings Officer (not the Hearings Officer in this case) “*rejected Gould’s ‘void CMP’ argument for several reasons.*” As noted in the *LUBA FMP 2016 Decision* the Hearings Officer found that “*the FMP was filed pursuant to a CMP that ultimately was affirmed.*” LUBA found, in the *LUBA FMP 2016 Decision* that the appropriate approach to the CMP and FMP relationship is that the FMP “*has effectively incorporated and displaced the CMP approval*” (page 31).

The Hearings Officer, based upon a review of the record and relevant appellate decisions, finds that there is no substantial evidence or persuasive legal authority in the record of this case to allow the Hearings Officer to conclude that the CMP is “void.” As such, the Hearings Officer finds the CMP is not “void” and that the Applicant’s modification proposal may be processed in this case.

Substantive Issue #11: Overview of the Interaction Between the CMP and FMP

Closely related to the previous issue (**Substantive Issue #10: Is the Thornburgh CMP “void”**) is a staff (Staff Report, page 35) and opposition (Bragar, November 7, 2022, page 9) concern related to an Applicant representation that “*the CMP/FMP is one document.*” (Applicant’s Response to Issues Raised in Incomplete Application Letter, page 41). The Hearings Officer believes that Applicant’s position is

⁵ Including, but not limited to, the following: Phase A-1 Remand, Phase A 80 OLUs, Phase A-1 Resort Facilities, Modification of FMP regarding OLUs, Welcome Center and other resort amenities, Phase A-2.

sourced from LUBA language contained in the *LUBA FMP 2016 Decision*. LUBA stated, in the *LUBA FMP 2016 Decision*, the following:

“As Gould correctly notes, the CMP potentially remains a relevant source of FMP approval considerations because at least some of the CMP conditions of approval effectively cannot be performed until the FMP approval. But those conditions of approval were carried forward in the county’s first FMP approval decision and remain part of the current FMP decision. All requirements of the CMP approval are now requirements of the county’s FMP approval. The FMP approval has effectively incorporated and displaced the CMP approval.”

Bragar provided the following comments related to the “CMP/FMP **one** document” issue:

“The Applicant’s attempt to redefine its CMP and FMP approvals as a single step instead of two separate distinct steps does not tell the whole story. Characterizing the CMP and FMP as one and the same decision based on the FMP containing some mirror, but not always identical conditions of approval or otherwise attempting to address the CMP conditions with a ‘satisfied’ statement, does not by mere assertion change the nature of each independent decision.”

Bragar’s comments quoted above are generally consistent with the Gould argument presented in the *LUBA FMP 2016 Decision* (See *LUBA FMP 2016 Decision* page 31, footnote 10).

The Hearings Officer, while appreciating the Applicant’s definitional efforts (Katzaroff, November 14, 2022, page 4, footnote 4), conceptually agrees with Bragar, Gould’s and possibly Staff’s description of the relationship between the CMP and FMP. The Hearings Officer finds the County has a three-step destination resort application/approval process. The CMP, the first step, is a singularly unique document not dependent upon any prior approval. The FMP, the second step, is a document that may well be dependent upon the CMP but from a legal perspective is itself an independent document. Site plan or preliminary plan approval documents may well be dependent upon the CMP **and/or** the FMP. Site plan and preliminary plan approvals are legally independent documents.

The Hearings Officer concurs with LUBA (*LUBA FMP 2016 Decision*) that the FMP “effectively incorporated and displaced the CMP approval.” However, that LUBA language does not state that the CMP and FMP are “one document.” In this case the Hearings Officer finds that the Thornburgh CMP and Thornburgh FMP are legally distinct documents and not technically “one document.” The Hearings Officer finds that such a conclusion is appropriate considering that the Deschutes County Code provides a process to modify a CMP (DCC 18.113.080) but not a separate process to modify a FMP document. The Hearings Officer finds that in this case the CMP approval deferred the FWMP decision to be made as part of the FMP. Therefore, the Hearings Officer finds that any decision to change the FMP by changing the FWMP necessarily implicates the CMP. The Hearings Officer finds that modifying a second stage FMP document may require a modification of the first stage CMP document. That appears to the Hearings Officer what is being done in this case.

SUBSTANTIVE ISSUES - SUBSTANTIAL CHANGE OVERVIEW

A significant number of opponents asserted that Applicant’s 2022 FWMP modification proposal constituted a “substantial” or “significant” change from past approvals. The “substantial change” issue is addressed in a number of findings below. The Hearings Officer chose to address the interpretation of the phrase in the two specific sections where that phrase is used (DCC 18.113.080 and Condition 1). The

Hearings Officer, in separate findings, considers how the phrase “substantial change,” as used in the two specific instances, can be “harmonized” by reference to DCC 22.36.040.

Substantive Issue #12: Substantial Change - DCC 18.113.080

DCC 18.113.080 states:

“Any substantial change, as determined by the Planning Director, proposed to an approved CMP shall be reviewed in the same manner as the original CMP. An insubstantial change may be approved by the Planning Director. Substantial change to an approved CMP, as used in DCC 18.113.080, means an alteration in the type, scale, location, phasing or other characteristic of the proposed development such that findings of fact on which the original approval was based would be materially affected.”

The Hearings Officer finds that the DCC 18.113.080 “as determined by the Planning Director” includes Planning Director designees. The Hearings Officer finds that a hearings officer is a Planning Director designee. The Hearings Officer finds the DCC 18.113.080 language “as determined by the Planning Director” allows, permits and authorizes this Hearings Officer to determine if Applicant’s proposed modifications in this case are “substantial changes.” The Hearings Officer takes note that Staff, Applicant and opponents all raised the issue of “substantial changes” in their evidentiary and legal arguments. Applicant, Staff and opponents all asked the Hearings Officer to determine whether or not its proposed modifications were “substantial changes.” No arguments were presented by any participant that the Hearings Officer in this case could not interpret DCC 18.113.080.

This is not the first instance where this Hearings Officer has been required to address the “substantial” or “significant” change issue. The latest instance where the Hearings Officer addressed this issue was in Applicant’s request to modify the Thornburgh CMP/FMP in relation to CMP/FMP Overnight Lodging Units (“OLU’s”) (the Hearings Officer’s “*OLU Modification Decision*”). Gould appealed the OLU Modification Decision to LUBA. LUBA addressed the “substantial” or “significant” change issue, in part, as follows:

“The hearings officer interpreted FMP Condition 1, DCC 18.113.080, and DCC 22.36.40 in a manner that harmonizes and gives effect to all those provisions. While FMP Condition 1 or DCC 18.113.080 do not expressly define ‘substantial change’ as a change that will result in significant additional impacts on surrounding properties, the hearings officer did not err in interpreting those criteria as implying that analysis. See ORS 174.010 (‘Where there are several provisions or particulars such construction, if possible, to be adopted as will give effect to all.’) In that context, the hearings officer did not err in concluding that a potential loss of 95 units of overnight tourist lodging is not a substantial change that would require a new application. Substantial change to an approved CMP, as used in DCC 18.113.080 means an alteration in type, scale, location, phasing or other characteristic proposal development such that findings of fact on which the original approval was based would be materially affected.’ DCC 18.113.080. Importantly, petitioner does not identify any ‘findings of fact on which the original approval was based that would be materially affected by a decrease in the overall number of OLU’s. DCC 18.113.080” Gould v. Deschutes County, LUBA No. 2022-011 (2022).

The Hearings Officer, in the OLU Modification Decision, was faced with Applicant requests that reduced, by a relatively small amount, the number of OLU’s required to be constructed and also proposed to change “bonding” requirements. The Hearings Officer found, in the OLU Modification Decision, the

reduction of number of OLU units and the changes in bonding requirements would reduce the scope of the Thornburgh project and correspondingly reduce impacts from the development. The Hearings Officer, in the OLU Modification Decision, did not hold that **any** proposed modification of the CMP/FMP that reduces impacts could not be considered a “substantial change.” By way of example only, if the Thornburgh Applicant offered a modification proposal that reduced the number of single-family units to be constructed to under 10, eliminated all golf courses, restaurants and club house facilities then the decision maker would likely be justified, despite a reduction in impacts, to find that such an application was a “substantial change.”

In this instance the Applicant is seeking approval to modify the CMP/FMP/FWMP in two ways (Hearings Officer summary):

- (1) Limit (lower) the amount of annual water use at the Resort; and
- (2) Change the source of FWMP mitigation water.

The first modification, the limitation of the amount of annual water use allowed by the Resort, proposes to reduce the Resort’s water use from 2,129 Acre Feet (“AF”) to an estimated 1,460 AF. The Applicant proposes to achieve this reduction by “agreeing” not to build a golf course (which the CMP/FMP designated as “optional”) and reducing the amount of water used by Resort lakes and various irrigation systems. Many opponents argue that the imposition of a lower use of water limitation meets the DCC 18.113.080 definition of “substantial change.” Opponents argue that Applicant’s proposed 2022 FWMP changes/alters the “*type, scale, location, phasing or other characteristic of the proposed development.*”

Applicant argued that placing a lower limit on the amount of annual water that can be used by the FWMP is not “development.” The Hearings Officer agrees a reduction of water use is not “development.” However, the Hearings Officer finds that what DCC 18.113.080 language “of the proposed development” is directed to is **THE** “proposed development.” In this case **THE** “proposed development” is the “Thornburgh Resort.” DCC 18.113.080 is asking whether or not the Thornburgh Resort, is being altered in type, scale, etc.

Clearly, the “scale” of water use is being proposed to change at the Thornburgh Resort (the “proposed development”); Thornburgh proposes to place a limit (lower than approved) on the water use at the Resort. Additionally, it is clear to the Hearings Officer that reducing the number of golf courses at a destination resort can reasonably be considered a change in scale and location of an important resort amenity at the Thornburgh Resort (the “proposed development”). The Hearings Officer finds that both the Applicant’s proposed reduced water use limitation and the elimination of one of three proposed golf courses meet the “alteration” portion of DCC 18.113.080.

The second aspect of Applicant’s proposal is the FWMP modification (from 2008 FWMP to 2022 FWMP) involving the change of sources of water to be used for fish and wildlife mitigation. Applicant, in its Burden of Proof (page 8) suggests that changing the source of mitigation water is not DCC 18.113.080 “development.” Again, the Hearings Officer agrees with Applicant that changing FWMP mitigation water sources is not “development.” But (once again), the Hearings Officer notes that DCC 18.113.080 is not asking if the alteration is in and of itself “development” but rather is asking if the “proposed development” (Thornburgh Resort) is being altered in type, scale, location, phasing or other characteristic? The Hearings Officer finds that a characteristic (source of water for the FWMP) of the “proposed development” (Thornburgh Resort) is being “altered.”

Staff inquired, in the Staff Report, as to whether “other characteristics” of the Thornburgh Resort were being proposed to be altered. Staff was unsure if Applicant’s proposed elimination of a golf course somehow altered the Thornburgh open space requirements. The Hearings Officer finds that the golf course being proposed to be eliminated was designated as open space in the CMP/FMP. The Hearings Officer finds Applicant did not propose to change any open space requirements. The Hearings Officer finds that so long as the Applicant meets its CMP/FMP and third level application requirements (i.e., tentative plan and site plan approval criteria) then this application does not allow the Hearings Officer to conclude that there is a proposed change in CMP/FMP open space obligations.

Opponents (i.e., Bragar, November 14, 2022, page 12) suggested that Applicant’s reduction of water (limitation) would result in changes to fire and sewage disposal CMP/FMP obligations. The Hearings Officer finds that Applicant did not propose any changes to the CMP/FMP fire suppression and sewage disposal obligations. The Hearings Officer finds opposition allegations related to changes in CMP fire suppression and sewage disposal obligations are not supported by substantial evidence in the record and/or legal authority.

The DCC 18.113.080 definition of “substantial change” has a second requirement (in addition to the “alteration” requirement addressed in the previous paragraphs). That requirement is that the “alteration” must materially affect findings of fact on which the original approval was based. The Hearings Officer reviewed the record in this case to determine if one or more specific CMP/FMP findings would be materially affected by Applicant’s proposed reduction (limitation) on the use of water. As stated by LUBA, in *Gould v. Deschutes County*, LUBA No. 2022-011 (2022), case participants must identify “any findings of fact on which the original approval was based that would be materially affected...” Since no participant in this case identified for the Hearings Officer one or more finding of fact in the original decisions (CMP/FMP) that would be materially affected the Hearings Officer finds Applicant’s proposal to modify the CMP/FMP water usage or elimination of an optional golf course are not a “substantial changes” under DCC 18.113.080.

With respect to Applicant’s proposed changes in the source of FWMP mitigation water the Hearings Officer takes note of the following Applicant statement (Burden of Proof, page 8):

“The applicant acknowledges that an amendment of the FWMP would materially affect the findings of compliance with the ‘no net loss/degradation’ standard but in a way that would reduce impacts.”

The Hearings Officer agrees with Applicant that an amendment to the FWMP changing water sources would materially affect the findings related to DCC 18.113.070 (D). Further, the Hearings Officer takes note that the FMP hearings officer findings (Hearings Officer Decision: M-07-2 & MA-08-6, hereafter the “HO FMP Decision) specifically identified water sources proposed to supply mitigation obligations and considered the impacts of those specific sources upon equally specific fish and wildlife habitat. These findings need to be changed in a wholesale fashion and not just tweaked. No reasonable person could conclude that the CMP/FMP findings related to the 2008 FWMP need only minor changes if the proposed 2022 FWMP is approved.

The Hearings Officer finds that Applicant’s proposed changes in sources of FWMP mitigation water would materially affect the FMP findings related to the FWMP. The Hearings Officer finds, based upon the evidence and analysis set forth above, that Applicant’s proposed modification of the FWMP mitigation water sources is a DCC 18.113.080 “substantial change.”

The Hearings Officer will address processing issues related to DCC 18.113.080 (“reviewed in the same manner”), Condition 1 (“will require a new application”) and DCC 22.36.040 in separate findings below.

Substantive Issue #13: Substantial Change - Condition 1

FMP Condition 1 states the following:

“Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application.”

The Hearings Officer incorporates the preceding findings (**Substantive Issue #12: Substantial Change – DCC 18.113.080**) as additional findings for this section. LUBA generally agreed with the Hearings Officer’s analysis as set forth in the OLU Modification Decision. LUBA concurred with the Hearings Officer that Condition 1 does not include a definition of “substantial change” and that the Hearings Officer’s utilization of the DCC 18.113.080 “substantial change” definition was appropriate.

The Hearings Officer, therefore, finds that Applicant’s proposed modification related to reducing (limiting) the amount of water use at Thornburgh is not a Condition 1 “substantial change” to the CMP/FMP/FWMP. The Hearings Officer finds that Applicant’s proposed modification to the FWMP mitigation water sources is a Condition 1 “substantial change.”

The Hearings Officer will address processing issues related to DCC 18.113.080 (“in the same manner”) Condition 1 (“will require a new application”) and DCC 22.36.040 (subsections 3. And 4.) in the findings for **Substantive Issue #15: Process**.

Substantive Issue #14: DCC 22.36.040

The Hearings Officer incorporates the findings for **Substantive Issue #12: Substantial Change – DCC 18.113.080** as additional finding for this section.

DCC 22.36.040 (A) states:

“An applicant may apply to modify an approval at any time after a period of six months has elapsed from the time a land use action approval has become final.”

The Hearings Officer finds that six months have elapsed since the FMP became final. The Hearings Officer finds this section of DCC 22.36.040 is met.

DCC 22.36.040 (B) states:

“Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.”

The Hearings Officer finds that DCC 18.113.080 (B) sets forth a number of requirements. Those requirements include (1) a change in circumstances has occurred since the approval, (2) the application

for modification is not a “substitute for an appeal,” (3) the application is not a “substantially new proposal,” and (4) the application would not have “significant additional impacts on surrounding properties.” DCC 322.36.040 (B) also states “unless otherwise specified in a particular zoning ordinance.” The Hearings Officer finds that no participant in this case presented credible evidence or persuasive argument that there is a “particular zoning ordinance” that overrides or otherwise makes DCC 18.113.080 inapplicable. The Hearings Officer finds no credible evidence or persuasive argument in the record suggesting that DCC 18.113.080 (B) is not relevant to this case.

Applicant provided the following comments related to DCC 22.36.040 (B) (Katzaroff, November 21, 2022, page 26):

“To the extent the hearings officer determines that a change of circumstances is necessary, both Thornburgh and project opponents have argued that current conditions related to drought and water constraints warrant reduction in water use and to provide better mitigation for water use. Thornburgh is requesting just that, an update from the 2008 FWMP to the 2022 FWMP that will provide more water instream with net benefits to habitat quality through decreases in water temperatures.”

Applicant provided additional support that there have been changes in circumstances (Burden of Proof, pages 6-8). The Hearings Officer concurs with the Applicant conclusionary comments quoted above and Applicant’s Burden of Proof comments that there has been a change in circumstances. The Hearings Officer takes notice that the FMP proposal was originally submitted in 2008 and since that time the concepts of climate change and need for water conservation have become more accepted. The Hearings Officer also takes notice that during the interim between CMP/FMP/FWMP approval opponents have raised concerns about the amounts and sources of water to be used at the Thornburgh Resort and also challenged the viability of actually completing the current FWMP. The Hearings Officer finds that circumstances related to the Thornburgh Resort CMP/FMP/FWMP have changed making it *desirable* for the Applicant to modify the CMP/FMP/FWMP.

The Hearings Officer finds there is no credible or substantial evidence in the record to conclude that Applicant is filing the modification requests in lieu of an appeal. Opponents have suggested that Applicant submitted the 2022 FWMP application as a substitute for an appeal. The Hearings Officer finds that opponents have not identified any specific land use decision(s) where the current application would in any way act as a “substitute for appeal” for that/those decisions.

The Hearings Officer acknowledges that the 2022 FWMP modification application is a “new FWMP.” However, the Hearings Officer interprets DCC 22.36.040 (B) phrase “substantially new proposal” relates to the CMP that is being proposed to be modified (See findings for DCC 18.113.080, the Destination Resort code section relating to modifications of approved CMP’s). The Hearings Officer finds that the current 2022 FWMP modification application relates to a discrete and relatively small element of the CMP/FMP approval. The application in this case is not a proposal for new resort it is a proposal to modify one part of the CMP/FMP approved resort project.

The Hearings Officer finds Applicant’s reduction of water use is in fact just that: a request to reduce (limit) water use at the Thornburgh Resort. The Hearings Officer finds Applicant’s request to eliminate one of three golf courses at the Thornburgh resort is not a new proposal; it is a request to clarify the number of golf courses that must and/or can be constructed at the Thornburgh Resort (one golf course is currently required and two may be constructed at the option of the Applicant). The changing of the

FWMP water sources is a requested *change* of the existing FWMP. The Hearings Officer finds, based upon the record in this case, that Applicant's modification proposals are not "substantially new proposal(s)." The Hearings Officer finds Applicant is proposing no new or additional housing units, infrastructure or amenities as part of the current modification proposal. While the application for the 2022 FWMP approval is a *change* the Hearings Officer finds there is no credible and persuasive evidence in the record that even attempts to demonstrate that the application "substantially" changes the CMP.

The final requirement of DCC 22.36.040 (B) asks if the Applicant's modification proposal will have "significant additional impacts on surrounding properties." The Hearings Officer incorporates the findings for **Substantive Issue #8: Definition of Surrounding properties – DCC 22.36.040** as additional findings for this section. The Hearings Officer acknowledges that opponents have made general reference to "potential impacts" on surrounding properties but have not provided the Hearings Officer with credible and persuasive evidence that those impacts are "significant" and are "additional" to the impacts of the current CMP/FMP/FWMP.

DCC 22.36.040 (C) states:

"An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in DCC 22.36.040, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal."

The Hearings Officer addressed the "substantially new proposal" and "significant additional impacts on surrounding properties" issues in the findings for DCC 22.36.040 (B) above. Those findings are applicable to DCC 22.36.040 (C).

The Hearings Officer finds that Applicant's proposed modification of the use of water, elimination of one (of three) golf courses and changing the source of FWMP mitigation water are "discrete" aspects of the CMP/FMP approval. The Hearings Officer finds no credible and substantial evidence in the record to support a conclusion that Applicant's proposal, in this case, is a modification of an approval (CMP/FMP/FWMP). The Hearings Officer finds that the proposals, in this case, are not such that they are greater in scope than allowable as a modification. The Hearings Officer finds DCC 22.36.040 allows Applicant's proposals to be treated as a modification.

DCC 22.36.040 (D) states:

"An application for a modification shall be handled as a land use action."

The Hearings Officer finds that Applicant's proposed modifications to the CMP/FMP/FWMP have been processed as a land use action. There is no evidence in the record to support a contrary conclusion.

Substantive Issue #15: Process

Many opponents of Applicant's 2022 FWMP proposal argued that the Applicant should be required to submit an entirely new CMP/FMP application; in essence "start the resort approval process over." (i.e.,

Bragar referenced the need for a new CMP/FMP application in her November 7, 2022 submission on at least the following pages – 2, 3, 9, 13, 14, 15, 17, 18, 20, 23, 25, 26, 27, 28, 35 and 37).

DCC 18.113.080 states, in part, the following:

“Any substantial change, as determined by the Planning Director, proposed to an approved CMP shall be reviewed in the same manner as the original CMP.” (underlining added by the Hearings Officer)

Condition 1 states, in part, the following:

“Any substantial change to the approved plan will require a new application.” (underlining added by the Hearings Officer)

The Hearings Officer found that Applicant’s proposal to change the 2008 FWMP mitigation water sources, by adopting the 2022 FWMP, was a “substantial change” as described in DCC 18.113.080 (See findings above for **Substantive Issue #12: Substantial Change - DCC 18.113.080**) and Condition 1 (**Substantive Issue #13: Substantial Change – Condition 1**). Therefore, the Hearings Officer finds that the 2022 FWMP modification application must be “reviewed in the same manner as the original CMP” (DCC 18.113.080) and as “a new application.” (Condition 1). The balance of these Substantive Issue #15 findings address the phrases “reviewed in the same manner” and “new application.” Neither of these phrases is defined in the Deschutes County Code or in the CMP/FMP.

The Hearings Officer’s initial attempt to interpret the phrases “reviewed in the same manner” and “new application” considered dictionary definitions.⁶ The phrase “reviewed in the same manner” (DCC 18.113.080) is not defined in the Deschutes County Code (“DCC” or the “Code”).⁷ The word “**review**” is defined in the Merriam-Webster Online dictionary as “a formal assessment or examination of something with the possibility or intention of instituting change if necessary.” The word “**same**” is defined in the Merriam-Webster Online Dictionary as “resembling in every relevant respect” and “conforming in every respect.” Merriam-Webster lists the word “identical” as a synonym to the word same. The word “**manner**” is defined in the Merriam-Webster Online Dictionary as “a characteristic or customary mode of acting” and “a mode of procedure or way of acting.” Combining these three terms (“review,” “same” and “manner”) the Hearings Officer finds a reasonable interpretation of “reviewed in the same manner” is: “**identical procedure or identical way of acting.**”

The phrase “new application” is not a defined in the Code. DCC 1.04.010 does define “Applicant and application” as “the person who applies, and the process for applying, for a franchise, license, permit or other benefit or privilege given by the County.” That definition does employ the word “process” but otherwise is not useful in addressing the Condition 1 “new application” issue. The Hearings Officer notes that no participant in this case provided to the Hearings Officer a BOCC case decision or relevant LUBA or appellate decision case that provided any useful insight into a defensible interpretation of “new application.” The Hearings Officer finds, based upon the evidence in the record, that the Condition 1 phrase “new application” is unique to the Thornburgh CMP/FMP.

⁶ The Hearings Officer acknowledges that DCC 22.36.040 may assist in interpreting “reviewed in the same manner” and “new application.” The Hearing Officer, later in these findings, does address the interpretive impact of DCC 22.36.040.

⁷ The complete first sentence of DCC 18.113.080 states: Any substantial change, as determined by the Planning Director, proposed to an approved CMP shall be reviewed in the same manner as the original CMP. (underlining added by the Hearings Officer)

The phrase “new application” is also not defined in Code. The term “**new**” has a temporal connotation; something that is recent and not old. The singular term “**application**” is defined in the code (DCC 1.04.010) as “the process for applying, for a franchise, license, permit or other benefit or privilege given by the County.” The Hearings Officer finds a reasonable interpretation of “new application,” utilizing definitions, is: “**filing a new request for approval.**”

The Hearings Officer attempted a slightly different definition based interpretative approach. The Hearings Officer finds that the “review in the same manner” phrase is directed towards a *process* that is the “same.” The Hearings Officer finds that “new application” is directed towards something “*new*.” The Hearings Officer finds that both the phrase “review in the same manner” and “new application” are directed to “process.” DCC 18.113.080 mandates the same process as used for reviewing the CMP be used if a modification request is deemed a substantial change. The Hearings Officer finds the Condition 1 “new application” language is also focused on process. Condition 1 requires that a substantial change request must be processed through a new application. The Hearings Officer finds that the DCC 18.113.080 “reviewed in the same manner” language and Condition 1 “new application” language are functionally equivalent as both address processing applications.

The Hearings Officer finds that an attempted harmonization of DCC 18.113.080 and Condition 1 does not assist in answering the “new application” interpretation issue. The Hearings Officer next considered the possibility that DCC 22.36.040 might assist in providing Deschutes County Code insight into how Condition 1 may be interpreted.

The Hearings Officer finds that the dictionary definitions discussed above and the Hearings Officer’s dictionary interpretation of the phrases at issue do not convince the Hearings Officer that “reviewed in the same manner” and/or “new application” require a “start-over” new CMP application or, in the alternative, simply a “modification of the CMP” application. The Hearings Officer next considers the relevance of DCC 22.36.040 to this interpretive issue.

DCC 22.36.040 (C) states in part the following:

“Any proposed modification, as defined in DCC 22.36.040, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.”

The Hearings Officer, in earlier findings, concluded that the Applicant’s proposed 2022 FWMP application did meet the requirements of DCC 22.36.040 (A) and (B). The Hearings Officer found that Applicant’s proposed 2022 FWMP application was a DCC 22.36.040 allowable modification. The Hearings Officer, in the alternative, found that Applicant’s 2022 FWMP proposal was not a request to modify an approval in a scope greater than allowable as a DCC 22.36.040 modification.

The Hearings Officer finds the DCC 22.36.040 (C) language “*shall be reviewed only under the criteria applicable to that particular aspect of the proposal*” provides important interpretative assistance. The Hearings Officer finds, at least under DCC 22.36.040, that if an application is deemed a modification (not exceeding scope greater than allowable as a modification) then review is limited to only the discrete modification request. The Hearings Officer interprets the “*reviewed only under the criteria applicable to that particular aspect of the proposal*” as meaning that only a modification application is necessary and

not an application considering the entire scope of the prior approval (a “start-over” CMP/FMP application).

The Hearings Officer, in the “substantial change” findings, with at least tacit support of LUBA (*Gould v. Central Land and Cattle Company*, LUBA No. 2022-011 (2022)) attempted to “harmonize” the DCC 18.113.080 and Condition 1 “substantial change” language. The Hearings Officer extends that “harmonization” approach to the DCC 18.113.080, Condition 1 and DCC 22.36.040 process issue. The Hearings Officer was also not comfortable interpreting “reviewed in the same manner” and “new application” phrases using dictionary definitions of the included words/terms. The Hearings Officer then attempted to use a relevant DCC section addressing “modifications of proposals” (DCC 22.36.040) to assist in interpreting “reviewed in the same manner” and “new application” phrases.

The Hearings Officer finds that it is appropriate to utilize DCC 22.36.040 (C) as an interpretive aide. Hearings Officer finds that the DCC 18.113.080 phrase (“reviewed in the same manner”) and the Condition 1 phrase (“new application”) means that so long as a modification application meets the requirements of DCC 22.36.040 (A) and (B), and can be reasonably considered a modification request in a scope allowed by DCC 22.36.040, then only a modification application -- not a brand new CMP/FMP application -- is required by DCC 18.113.080 and Condition 1 when a substantial change modification to a CMP/FMP is requested.

The Hearings Officer, in addition to the above “reviewed in the same manner” and “new application” findings takes this opportunity to respond to selected Applicant comments (Katzaroff, November 21, 2022, pages 14 & 15) set forth below:

Opponent Gould argues, at Bragar OR, p. 15, and Bragar Rebuttal, p. 8, that FMP Condition 1 on its own requires a ‘new application.’

FMP Condition 1 states that ‘Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application.’ What is not contained in that condition is a requirement that a new destination resort (or CMP or FMP) must be applied for; it only requires a ‘new application.’ This makes sense because it makes it clear that any substantial change must be reviewed by a land use process before the County that allows public input regarding the proposed changes [footnote 16: No substantial change was requested here. However, it goes without saying that Thornburgh filed ‘a new application’ which is all that condition requires for compliance.] In this case, the land use process to be followed to review a new or amended FWMP is set out in CMP Condition 37 and is a review at a public hearing. As with any land use approval, the approval is limited to a review of what is requested and the land use criteria relevant to the request. This reading of Condition 1 is consistent with the code. DCC 18.113.080 specifically allows modification of a Conceptual Master Plan which in this case has been incorporated into the FMP. It provides: “Any substantial change, as determined by the Planning Director, proposed to an approved CMP shall be reviewed in the same manner as the original CMP. An insubstantial change may be approved by the Planning Director. Substantial change to an approved CMP, as used in DCC 18.113.080, means an alteration in the type, scale, location, phasing or other characteristic of the proposed development such that findings of fact on which the original approval was based would be materially affected. DCC 18.113.100 says that the new application required when an FWMP proposes a significant change from the CMP is an application to modify or amend the CMP – not to file a new CMP.

Further, the County has routinely permitted other destination resorts to modify their resort master plans utilizing the same process as applied to Thornburgh's same request. Exhibit 23, p. 5 (highlighting six other modification requests with the same housekeeping changes).[footnote omitted]

Importantly, this argument also relies on the idea that a condition can impose additional requirements that are not authorized or based in the law or relevant code. They cannot. ORS 215.416(4)(a) only permits "such conditions as are authorized by statute or county legislation." It does not authorize a Hearings Officer to adopt conditions separately. See also, ORS 215.416(8)(a); ORS 215.427(3)(a)(approval or denial must only be based upon the County's land use regulations). The most reasonable and logical interpretation is that FMP Condition 1 is a reference to the provisions of the County code that govern amendments of land use decisions and resort plans. This requires any changes be authorized during land use review but does not require an entirely new resort application be filed."

The Hearings Officer agrees with Applicant that Condition 1 does not contain a "requirement that a new destination resort (or CMP or FMP) must be applied for." As noted in the finding above the Hearings Officer concluded only a modification application and not an entirely new ("start-over") CMP/FMP application was required in this case. Applicant also stated its interpretation of the Condition 1 requirement for a "new application" makes sense because Condition 1 "makes it clear" that any substantial change must be reviewed by a public land use process. The Hearings Officer finds Condition 1 does not say that a substantial change requires a land use process requiring public input regarding the proposed changes. The Applicant certainly may infer a land use process requiring public input but the Hearings Officer finds Condition 1 does not explicitly say that.

Applicant, in the comments quoted above, suggests CMP Condition 37 sets forth the land use process that applies in this case.⁸ The Hearings Officer notes that CMP Condition 37 was "satisfied" through the approval process of the FMP (Hearings Officer FMP Decision, page 29). This Hearings Officer finds CMP 37 does not reference a modification of the CMP/FMP/FWMP but rather is only directed towards to initial approval of the wildlife mitigation plan. The Hearings Officer finds that even if Condition 37 language were to be considered relevant and/or instructive to Condition 1, the process in this case does in fact involve a public hearing with the same participatory rights allowed in the CMP approval hearing. Condition 37 is not helpful in interpreting Condition 1. Had the FMP hearings officer intended to incorporate CMP condition 37 into Condition 1, that hearings officer could have done so; however, she did not.

Applicant comments that DCC 18.113.080 specifically allows for the modification of the CMP. The Hearings Officer agrees. However, what is being considered here is the interpretation of language contained in a specific condition of approval. The Hearings Officer finds the Condition 1 "new application" language somehow must defer to the language of DCC 18.113.080 is not correct.

Applicant argues that the county has routinely permitted other destination resorts to modify FMP's using the same process proposed by Applicant in this case is true. However, the Hearings Officer notes that the cases reviewed by the Hearings Officer either (1) do not contain the exact language of the

⁸ CMP Condition 37: Applicant shall demonstrate compliance with DCC 18.,113.070 (D) by submitting a wildlife mitigation plan to the County as part of its application for Final master plan approval. The County shall consider the wildlife mitigation plan at a public hearing with the same participatory rights as to allowed in the CMP approval hearing.

Thornburgh CMP/FMP Condition 1, or (2) those cases do not involve requests to make substantial changes (exception: Eagle Crest Long-Term Sewage Case, MC-02-3, MC-02-4, MC-02-5).

The Eagle Crest – Long Term Sewage Case was processed as a modification proposal and only addressed the modification relevant criteria but there is no reference in the decision to the Eagle Crest FMP containing the CMP/FMP Condition 1 “new application” language. The Hearings Officer finds that blindly deferring to DCC 18.113.080, when Condition 1 does in fact exist and is relevant and applicable, is not legally justified.

Finally, Applicant argues that somehow ORS 215.416(4)(a) applies to the Condition 1 analysis in this case. The Hearings Officer references Applicant’s oft-used “collateral attack” argument; it is improper to contest the validity of a final decision. The FMP is a final decision. Condition 1 is included in the FMP final decision. Applicant had the right to object to Condition 1 as being violative of ORS 215.416 and/or ORS 215.427. The Hearings Officer finds Applicant’s ORS 215.416 and/or ORS 215.427 argument was not sufficiently developed to allow the Hearings Officer to meaningfully review and decide that issue.

The Applicant also argued that the Hearings Officer should consider DCC 18.113.100 in the context of interpreting “new application” in Condition 1. DCC 18.113.100 (B) states:

“If the Planning Director finds evidence in the FMP of a substantial change from the CMP, the Planning Director shall advise the applicant to submit an application for modification or amendment of the CMP.”

The Hearings Officer finds Applicant’s DCC 18.113.100 (B) argument inapposite. This section only relates to the “process for approval of Final Master Plan.” The CMP and FMP are finalized and no longer subject to approval and/or appeal. DCC 18.113.100 was pertinent at one time but that time has passed.

In conclusion the Hearings Officer, in this case, was faced with a difficult issue – what does the DCC 18.113.080 language “reviewed in the same manner” and Condition 1 language “new application” mean? The Hearings Officer found the record to contain a dearth of legal support for any particular definition/interpretation of “reviewed in the same manner” and “new application.” In the end the Hearings Officer reviewed Deschutes County Code, prior modification land use decisions and the comments of Applicant, Staff and opponents. In the end the Hearings Officer found the DCC 18.113.080 language “reviewed in the same manner” and Condition 1 language “new application” means that Applicant was required to submit a “new modification application” and not a “new CMP/FMP application.”

Substantive Issue # 16: Relevant Approval Criteria

Staff, in response to a request by the Hearings Officer at the Hearing, provided an open-record memorandum (House, November 7, 2022). Staff addressed the issue of what criteria should be considered in this case as follows:

“Staff agrees with the applicant that the review in these land use review proceedings for the application is such that, if the Hearings Officer determines the proposal will effect a ‘substantial change,’ the application may nonetheless be considered as against the applicable criteria per DCC 18.113.080, which requires review of a proposed modification of a CMP ‘in the same manner as the original CMP.’ The ‘same manner’ provision in DCC 18.113.080 means an evaluation of the entire

resort, as modified, against all of the approval criteria under 18.113.070, Approval Criteria, and all criteria under DCC 18.113.050, Requirements for Conditional Use Permit and Conceptual Master Plan Applications. The applicant appears to argue the question of ‘substantial change’ is not determinative and asserts that there will not be any procedural error, or resulting substantial prejudice, because the applicant has consented to a heightened process. This position is based in part on the applicant’s position that DCC 18.113.100 allows FMPs to vary from CMPs in ways that are not substantial, and the position that ‘reduction of water use and choice to not build an optional golf course is not a substantial change.’ Similarly, DCC 18.113.080 allows for Planning Director review of insubstantial changes to an approved CMP, but requires a full review of a proposed modification that results in ‘substantial change.’”

The Hearings Officer incorporates the findings for **Substantive Issue #15: Process** as additional findings for this section. The Hearings Officer finds that DCC 22.36.040 (D) is applicable to this application. The Hearings Officer finds the relevant approval criteria for a DCC 22.36.040 modification of approval application are only those that relate to the discrete changes being requested. The Hearings Officer, in the context of DCC 22.36.040 (C), finds Staff’s recommendation that “all CMP” approval criteria must be considered is not correct.

Substantive Issue # 17: DCC 18.113.070 (D) – “No Net Loss”

Overview: The Hearings Officer finds DCC 18.113.070 (D) to be the most important criterion in this case. DCC 18.113.070 (D) is commonly referred to as the “No Net Loss” standard or test. No participant in this case indicated that DCC 18.113.070 (D) was irrelevant to the determination of whether Applicant’s proposed 2022 FWMP modification should be approved.

DCC 18.113.070 (D) states:

“Any negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.”

The primary Thornburgh Resort document addressing DCC 18.113.070 (D) is the Thornburgh Fish and Wildlife Mitigation Plan. The existing Thornburgh Fish and Wildlife Mitigation Plan shall be referred to as the 2008 FWMP. The current proposal, for the purposes of this decision, shall be referred to as the 2022 FWMP. The version of Applicant’s 2022 FWMP considered by the Hearings Officer is identified by Applicant as the Fish and Wildlife Mitigation Plan – 2022 FWMP Relating To Potential Impacts of Thornburgh’s Reduced Ground Water Withdrawals on Fish Habitat, Cascade Geoengineering, LLC, August 16, 2022 Reorganized and Updated November 7, 2022. The Hearings Officer refers to this document in the findings for this section as the 2022 FWMP.

Even though a detailed history of the 2008 FWMP will not be given in this decision some history of the development and interpretation of the 2008 FWMP is appropriate. The wildlife mitigation topic was first considered as part of the CMP approval process. The BOCC, at the CMP stage (1st application/approval stage in Deschutes County for a Destination Resort), deferred a final decision related to adoption of a FWMP until the FMP stage (2nd application/approval stage for Destination Resort) *Central Land and Cattle Company, LLC. V Deschutes County & Gould*, LUBA No. 2015-107 @37 (2016). The 2008 FWMP was eventually approved as part of the FMP application/approval process. After extensive litigation the FMP and FWMP were finally approved. The 2008 FWMP was found to meet

the DCC 18.113.070 (D) “No Net Loss” standard *Gould v. Deschutes County*, LUBA No 2021-112 @ 11 (2022).

The hearings officer issuing the Hearings Officer FMP Decision (October 8, 2008 – Hearings Officer Corcoran-Briggs) provided insight into the evidence and arguments leading to approval of the 2008 FWMP. The Hearings Officer FMP Decision (Page 24)⁹, in part, made the following findings:

“The applicant acknowledges that the proposal require[s] the development of wells on the property that will affect basin water flows. However, the applicant argues that it has addressed those Impacts by purchasing mitigation credits from COID, and by acquiring irrigation water rights that will return water to Deep Canyon Creek. They argue that both OWRD and ODFW have reviewed its proposal and have agreed that the proposal mitigates both water quantity and quality that will be removed from the aquifer due to the resort development. The applicant supplied a copy of an agreement between the owners of Deep Falls Ranch and the Daniels Group showing those owners have agreed to the removal of two dams that diverted flow from Deep Canyon Creek. [footnote omitted] In response to testimony from opponents that the proposed mitigation does not adequately address increases in water temperature in Whychus Creek, the applicant argues its proposal will have little or no impact on water temperatures on the creek. Even if water temperatures in Whychus Creek does increase incrementally, the applicant asserts that the increase can be addressed by requiring the applicant to fund a water conservation project sponsored by the Three Sisters Irrigation District to return 106 acre-feet of water to instream uses.

The OWRD mitigation requirement adequately addresses water quantity; it does not fully address water habitat quality. Its assumptions regarding the benefits of replacing more water during the irrigation season than is consumed on an average daily basis by the resort does not account for the higher water consumption that will likely occur during the summer months. Therefore, the hearings officer concludes that the additional mitigation offered through the Three Sisters Irrigation District restoration program is necessary to assure that water temperatures in Whychus Creek are not affected by the proposed development.”

The hearings officer, in the FMP HO Decision, imposed conditions of approval in order to assure the 2008 FWMP fully met the “No Net Loss” mitigation obligations; the most relevant is FMP Condition 38. The Hearings Officer notes that in addition to the FMP HO Decision the BOCC, LUBA and Oregon appellate courts have all taken the opportunity to refine how the DCC 18.113.070 (D) “No Net Loss” standard should be interpreted. The Hearings Officer, in this decision, intends to follow the interpretive guidance set forth in relevant hearings officer, BOCC, LUBA and appellate court decisions related to approval of the FMP and 2008 FWMP.

The Hearings Officer does take note of a few of the LUBA and Oregon Court of Appeals holdings that are relevant to this decision.¹⁰ First, to satisfy the “No Net Loss” standard the record must contain

⁹ See also, FMP HO Decision, page 24 *“The meaning of the standard, and the sufficiency of the evidence to address it was the major focus of the parties in the FMP proceeding. The applicant provided a wildlife mitigation plan that had been reviewed by the BLM and ODFW, and both agencies endorse the applications identification of likely impacts on fish and wildlife, and conclude that the applicant’s plan addresses the impact of the development on those resources such that the ‘no net loss’ standard of DCC 18.113.070(D) is satisfied.”*

¹⁰ The Hearings Officer does not represent that the cited BOCC, LUBA or Oregon Court of Appeals cases are the only cases addressing and/or resolving a particular issue. The citations are intended only to direct the reader to at least one relevant case and holding.

substantial evidence that the 2022 FWMP provides mitigation water – of both the quantity and quality required by the 2022 FWMP – before pumping water for uses allowed by the approved phase of development. *Gould v. Deschutes County & Thornburgh Resort Company, LLC*. 233 and *Gould & Central Oregon LandWatch v. Central Land and Cattle Company, LLC*, LUBA No. 2022-026 @ 13 (2022). The focus of the “No Net Loss” standard is the preservation of habitat *Gould v. Deschutes County & Thornburgh Resort Company, LLC*. 233 Or App 623 @ 634 (2022). The 2022 FWMP does not need to mitigate every potential impact on habitat rather impacts must be minimized or offset impacts. *Gould v. Deschutes County & Central Land and Cattle Company, LLC*. 2018-008 @ 26 (2018). The 2022 FWMP mitigation plan, to meet the “No Net Loss” Standard, must provide mitigation water that is likely and reasonably certain to succeed in mitigating any adverse impacts. *Gould v. Deschutes County & Central Land and Cattle Company, LLC*. 2018-008 @ 28 (2018).

Technical Evidence Related to the “No Net Loss” Standard

Applicant, in its final argument (Katzaroff, November 21, 2022, pages 3 & 4) provided a listing of reports/memorandums/models submitted in support of the proposed 2022 FWMP satisfying the “No Net Loss” standard. The Hearings Officer includes Applicant’s list below:

- 1. Flow and Temperature Modeling of the Middle Deschutes River, Kellie Vache, Ph.D., and Joe Eilers, PH-WQ, Resource Specialists, Inc., dated October 2022. (RSI-1)*
- 2. Evaluation of the Impacts of Proposed Groundwater Pumping at Thornburgh Resort Project, Pradeep Mugunthan, Ph.D., Four Peaks Environmental Consulting, dated 10/19/22. (GSFlow).*
- 3. Flow and Temperature Modeling of the Middle Deschutes River, Part II-Impacts of GSFlow-based Changes in Stream Discharge, Kellie Vache, Ph.D., and Joe Eilers, PHWQ, Resource Specialists, Inc., dated October 22, 2022. (RSI-2)*
- 4. Evaluation of the Fish Habitat Impacts of Proposed Groundwater Pumping at Thornburgh Resort Project from RSI-1, Lucius Caldwell, Ph.D., Four Peaks Environmental, dated 10/21/22. (Fish 1)*
- 5. Evaluation of the Fish Habitat Impacts of Proposed Groundwater Pumping at Thornburgh Resort Project to Include Modeled Changes in Surface Water Resulting from Changes in Groundwater Discharge, Lucius Caldwell, Ph.D., Four Peaks Environmental, dated 10/21/22. (Fish 2)*
- 6. Evaluation of Flow and Temperature Mass Balance Calculations for Crooked River. Lucius Caldwell, Ph.D., Four Peaks Environmental, dated 10/24/22. (Fish-Crooked River)*
- 7. Evaluation of Flow and Temperature Mass Balance Calculations for Little Deschutes River. Lucius Caldwell, Ph.D., Four Peaks Environmental, dated 10/24/22. (Fish-Little Deschutes)*
- 8. Supplemental Memorandum Regarding Reduction of Water Needs and Amendment of FWMP for Thornburgh Resort. Jim Newton, C.W.R.E., P.E., R.G., Cascade GeoEngineering, dated October 24, 2022. (CGE -2)*
- 9. Updated Fish Habitat Evaluations in the Crooked River, Whychus Creek, and the Deschutes River, Lucius Caldwell, Ph.D., Four Peaks Environmental, dated 11/14/22. (Fish-Spring Evaluations)*
Additional flow and thermal modeling work which was undertaken in response to questions and requests by staff at the Oregon Department of Fish and Wildlife. This work included:
- 10. Flow Modeling by Four Peaks to determine impacts of Thornburgh pumping with and without additional flow from the transfer wells. Report to ODFW in email on November 2, 2022. See Exhibit 30.*
- 11. Flow Modeling by Four Peaks to determine the seasonality of impacts. Reported to ODFW in email on November 2, 2022. See Exhibit 30.*

12. *Flow Modeling by Four Peaks to determine the impacts of the ODFW requested “Spring” reaches in the Deschutes River, Whychus Creek, and the Crooked River. Reported to ODFW in email on November 14, 2022. See Exhibit 26.*

13. *Thermal and Flow analysis by RSI to determine thermal impacts in the ODFW Springs. Reported to ODFW in email on November 14, 2022. See Exhibit 26.*

The technical work was completed by 4 individuals, 3 holding Ph.D.’s, 1 holding a master’s degree, all in relevant disciplines. Mr. James Newton, Cascade GeoEngineering, holds the professional designations of Certified Water Rights Examiner C.W.R.E., Professional Engineer, P.E., and Registered Geologist R.G. (See Resumes previously submitted) The extensive technical analysis these scientists performed provides detailed support for the original conclusions reached by Cascade GeoEngineering, that the 2022 FWMP complied with the NNL found in DCC 18.113.070(D).

In addition, Thornburgh’s experts provided rebuttal evidence, including:

14. *Four Peaks – November 14: Comments on E-PUR Memorandum Regarding Groundwater Impacts. (Exhibit 29)*

15. *CGE – November 14: Responses to E-PUR Memorandum Dated November 4, 2022, and General Responses to ODFW Concerns. (Exhibit 33)*

16. *RSI – November 14: Response to Reviewer Comments Regarding QUAL2Kw Model Application. (Exhibit 34)”*

Applicant, in its Final Argument (Katzaroff, November 21, 2022, pages 4 & 5) also volunteered a brief summary of “technical” evidence provided by opponents. The Hearings Officer finds the Applicant’s comments quoted below are a fair summary of opponents’ opposition technical evidence but certainly do not represent a complete or comprehensive discussion of that evidence. Applicant’s summary follows:

“The only technical evidentiary submittals in this record from another party are three technical memorandums submitted on behalf of Ms. Gould. All three memorandums are drafted by E-PUR LLC’s Mr. John Lambie:

** E-PUR LLC Technical Memorandum dated September 9, 2022; Bragar OR, Attachment 16, pps. 294-303.*

** This memorandum comments only two transfers (T-14074 and T-14075) proposed by Thornburgh and does not comment on the 2022 FWMP.*

** E-PUR LLC Technical Memorandum dated November 4, 2022; Bragar OR, Attachment 38.*

** This memorandum appears to be the only memorandum that provides any sort of technical response to the 2022 FWMP. CGE, RSI, and Four Peaks each address it as outlined above.*

** E-PUR LLC Technical Memorandum dated November 14, 2022; Bragar Rebuttal, Attachment B.*

** This memorandum argues three things, summarized at Attachment B, p. 1-2:*

- o 1) that “water rights identified in Thornburgh’s FWMP demonstrates that it cannot provide sufficient water for fire safety protection”⁴;*
- o 2) that “water rights identified in Thornburgh’s FWMP demonstrates that it cannot handle wastewater load without revising the CMP”⁵; and*

- 3) the “water rights identified in Thornburgh’s FWMP demonstrate that its plan for water supply does not have the resilience that is required by OWRD for a municipal water supply.

The Hearings Officer is tasked with weighing technical evidence in the record. The Hearings Officer finds that the technical evidence submitted by Applicant is extensive. The Hearings Officer finds Applicant’s technical evidence appears to utilize recognized modeling methods, and contain data/conclusions related addressing habitat impacts resulting from the proposed 2022 FWMP. The Hearings Officer finds Applicant’s technical evidence constitutes substantial evidence of the facts and conclusions stated in its submitted technical reports. The Hearings Officer acknowledges that the opposition technical evidence does challenge Applicant’s consultant’s modeling and data. The Hearings Officer finds that Applicant’s technical evidence was prepared by credentialed experts who provided an extreme level of analysis and detail. The Hearings Officer finds opponents expert evidence is not nearly as comprehensive as Applicant’s. The Hearings Officer finds opponents expert evidence is less focused on the specific water sources proposed by Applicant and their impacts on fish habitat. The Hearings Officer finds opponents technical evidence is less credible and persuasive than the technical evidence proved by Applicant.

ODFW Input

The Hearings Officer finds that the Hearings Officer FMP Decision appeared to rely heavily upon the Oregon Department of Fish and Wildlife’s (“ODFW”) conclusion that the proposed 2008 FWMP met the “No Net Loss” standard. In this case the ODFW strongly indicated, based upon the evidence it reviewed prior to making its final submission (November 7, 2022), that the proposed 2022 FWMP does not meet the DCC 18.113.070 (D) “No Net Loss” standard. ODFW concluded (Page 4 of 8) that:

“Based on our current understanding of the 2022 Mitigation Proposal, it is yet unclear if the 2022 will result in outcomes that meet the County’s standard in DCC 18.113.070(D), including actions that fully mitigate the Habitat Category 2 impact through in-kind, in-proximity mitigation. The proposed 2022 Plan is lacking in detail to provide substantial evidence for stated claims, though some of the follow up correspondence and information submitted late to ODFW (and perhaps to the record) may include applicable evidence.”

ODFW (November 7, 2022, pages 4 of 8) listed “specific concerns” leading up to the agency’s conclusion that the 2022 Mitigation Proposal did not meet the “No Net Loss” standard. While likely oversimplifying ODFW’s concerns in lay terms the Hearings Officer summarizes reasons ODFW appears to conclude that the 2022 FWMP does not meet the “No Net Loss” standard:

- Deep Canyon Creek mitigation water (per 2008 FWMP) provided **local/nearby habitat benefits in close proximity** to the Thornburgh Resort (where consumptive water would be sourced) and the proposed 2022 FWMP plan relies upon discontinuing use of groundwater sources “which allegedly provide benefits to the basin for over 100 miles. The claims for these distances are unsubstantiated and unlikely to be realized for this distance” (bolding added by the Hearings Officer); and
- “Discontinuation of groundwater use does not necessarily result in an equal amount of surface flow, nor does it discharge at the same period or at the same location;” and
- Modeling used by Applicant’s experts/consultants was limited; and
- Some water rights relied upon by Applicant in the 2022 FWMP “lack verified past use data;” and

- Offsetting Thornburgh Resort pumping with groundwater transfers “provides no assurances that groundwater discharge from ecologically important seeps and springs and surface water flows are protected in the future;” and
- “Additional water use” is proposed to be mitigated “solely through OWRD’s Groundwater Mitigation Program” which does not account for thermal impacts on fish habitat; and
- **Assurance of compliance with the FWMP 2022 water mitigation proposal is uncertain and/or ambiguous** (bolding added by the Hearings Officer); and
- The quantity of “excess water” mitigation is uncertain; and
- Protection of habitat during “shoulder months” (period of time prior to and immediately after irrigation season) is not assured; and
- **Condition 38 may not provide an objective** process to assure compliance with the proposed 2022 FWMP (bolding added by the Hearings Officer).

Applicant (DeLashmutt, November 14, 2022) provided a comprehensive bullet point by bullet point response to the ODFW November 7, 2022, concerns which are summarized above. The Hearings Officer also finds that the DeLashmutt November 14, 2022, record submission provides a comprehensive response to the ODFW concerns.

The Hearings Officer, despite the findings in the preceding paragraph, remains concerned about how to deal with the ODFW November 7, 2022, comments. Recall that the hearings officer issuing the Hearings Officer FMP Decision emphasized that the ODFW conclusion that the 2008 FWMP met the “No Net Loss” standard was an important factor. The Hearings Officer FMP Decision made it clear that ODFW’s support of the 2008 FWMP was relevant and perhaps critical to her decision to find the “No Net Loss” standard was met. While not required by the Deschutes County Code, or other law/rule, the Hearings Officer finds that ODFW’s input is a relevant **evidentiary consideration** in determining if the “No Net Loss” standard is met.¹¹

ODFW requested prior to, at and after the Hearing (ODFW letters dated October 21, 2022, November 7, 2022 and Hearing public testimony) additional time to review, analyze and then coordinate with Applicant regarding the proposed 2022 FWMP. Applicant’s legal counsel, at the Hearing, declined the Hearings Officer’s invitation to provide additional time (beyond the open-record schedule set by the Hearings Officer) for ODFW to submit a comprehensive review and analysis of Applicant’s technical submissions.

Pursuant to Applicant’s listing of its technical studies¹² they were dated October 19, 2022 (item 2), October 21, 2022 (items 4 & 5), October 22, 2022 (item 3), October 24, 2022 (items 6, 7 & 8), November 2, 2022 (items 10 & 11), and November 14, 2022 (items 9, 12, 13, 14, 15 & 16). The Hearing occurred on October 24, 2022, the open-record period for new evidence ended November 7, 2022, and the open-record period for rebuttal evidence ended on November 14, 2022. As noted in the procedural issue findings above the Hearings Officer is fully aware of relevant state statutes and county code related to post hearing submissions.

¹¹ Cascade Geoengineering, November 7, 2022, page 1 – “The 2022 FWMP presented very detailed changes to the original 2008 FWMP that was **approved** by the Oregon Department of Fish and Wildlife (ODFW).” [emphasis added by the Hearings Officer]

¹² See Katzaroff, November 21, 2022, Final Argument; dates and item number references are extracted from technical expert listing found on pages 3 and 4.

The Hearings Officer is also fully aware of the quantity (number of pages) and complexity of the Applicant's post hearing record submissions. Having reviewed, as best a lay person can do that, Applicant's technical submissions it is easy for the Hearings Officer to say that expecting an authoritative response from ODFW, within the time allowed by the open-record schedule, was not likely. The Hearings Officer finds that Applicant, fully within its legal rights, denial of additional time for ODFW review of Applicant's technical submissions, precluded the Hearings Officer from being able to consider a meaningful ODFW response.

The 2022 FWMP – Is the 2022 FWMP likely and reasonably certain to succeed

Moving on from the "technical evidence" aspect of the proposed 2022 FWMP the Hearings Officer next considers whether the 2022 FWMP is "likely and reasonably certain to succeed." As noted by the Oregon Court of Appeals, in a case they reference as *Gould IV*, "a final adjudication of compliance requires a showing that compliance with DCC 18.113.070 (D) is 'likely and reasonably certain to succeed.'" *Gould v. Deschutes County*, 233 Or App 623 (2010) citing 227 Or App at 610. In this decision the Hearings Officer interprets the "likely and reasonably certain to succeed" language in the context of the proposed 2022 FWMP plan logistics. Restated, this Hearings Officer inquiry asks if the 2022 FWMP, as drafted, provides the Applicant, interested persons, and future decision makers (including but not limited to the public, County Staff, hearings officers, BOCC, LUBA, Oregon Court of Appeals and Oregon Supreme Court) clear and enforceable standards that ensure the plan is likely and reasonably certain to succeed?

At this point the Hearings Officer steps back to recognize the reality facing the Applicant, opponents and Staff with respect to the Thornburgh Resort: The Thornburgh Resort is one of the most litigated development projects in the State of Oregon. It is not lost on this Hearings Officer (who has presided over and issued at least five Thornburgh land use decisions) that the 2008 FWMP mitigation obligations have been the focus of multiple disputes requiring, in many instances, BOCC, LUBA, Oregon Court of Appeals and Oregon Supreme Court intervention.

Even during this case issues have been raised as to whether or not the Applicant has strictly met the requirements of the 2008 FWMP. For example, the 2008 FWMP states (page 1) that "Thornburgh will use a total of 2,129 acre feet of water..." The source of **that** water remains controversial as of the date of this decision.

The Hearings Officer notes that the 2008 FWMP used phrases such as "*most likely*," "*if needed, can be secured from sources*," and "*continue to pursue*." The Hearings Officer notes that Condition 10, which is closely related to the 2008 FWMP, uses terminology "*updated documentation for the state water right permit and an accounting of the full amount of mitigation*." Condition 38 requires the Applicant to "*abide by the April 2008 Mitigation Plan...and agreements with the BLM and ODFW for management of off-site mitigation efforts*." Hindsight is 20/20 and had the hearings officer and other decision makers involved with the FMP and FWMP approval process had been aware of the challenges the language contained in those decisions has caused she/they may have imposed more definitive and objective language in those documents.

The Hearings Officer, in this case, finds that the proposed 2022 FWMP is certainly longer (number of pages) and contains significantly more narrative description than the 2008 FWMP. The Hearings Officer is appreciative of Applicant's November 7, 2022 "Executive Summary" and "Reorganized and Updated November 7, 2022 FWMP" documents.

The Hearings Officer believes that the actual “plan” which must be adhered to if the 2022 FWMP modification application is approved is described in Section H (starting on page 14). But this interpretation may be wrong. What is clear to the Hearings Officer is that the 2022 FWMP commits to reduce water use (needs from 2129 AF to 1,460 AF and consumptive use from 1,356 AF to 882 AF). Section H.A.1. (Limit Pumping to a Maximum of 1,460 AF Annually) includes the statement “*Thornburgh will submit as part of the annual Mitigation Report summaries of the resort’s annual water reports that are required to be provided to OWRD.*” This part of the proposed 2022 FWMP is clear and Applicant’s commitment may reasonably be considered likely and reasonably certain of success (page 4, and page 14 – Section H.A.1).

Sections D and H address directly the DCC 18.113.070 (D) “No Net Loss” standard. As best the Hearings Officer can ascertain Sections D and H are the “meat” of the 2022 FWMP. These sections appear to set forth Applicant’s mitigation obligations.

The Hearings Officer finds Sections D and H seem to be interrelated in some way but the two sections leave a great deal to the imagination.¹³ The Hearings Officer attempted, on multiple occasions and for varying lengths of time, to outline Sections D and Section H; particularly the portions of Sections D and H that relate to the various water rights associated with use at the Thornburgh Resort and water rights intended for mitigation purposes. The Hearings Officer is certain that the Applicant, Applicant’s legal counsel and Applicant’s experts/consultants believe that what is presented in sections D and H of the 2022 FWMP are clear. However, the Hearings Officer finds interpreting Sections D and H is challenging because these sections overlap and supplement each other in ways that are not clear to the Hearings Officer.

The 2022 FWMP Section D appears to establish a series of options open to the Applicant to meet the “No Net Loss” standard. For example, Section D. states that the Applicant commits to “*discontinue pumping water in the location appurtenant to the right*” then states “*if any transfer is not approved, the water right could be cancelled in lieu of mitigation (both the groundwater and surface water rights) or transferred instream (just the surface water rights) for mitigation credits.*” The Hearings Officer finds the “if any transfer is not approved...” language is not mirrored or reflected in Section H. The Hearings Officer is unsure if the inclusion of the quoted language was not intended to be in Section H was intentional.

The Hearings Officer believes that the Applicant, public, Staff, BOCC and any appellate authority should be able, without resorting to an “expert” or “consultant” or “attorney,” to comprehend and apply the language used in the 2022 FWMP. Sections D and H of the proposed 2022 FWMP do not meet or satisfy that goal.

Section H.4 (remaining water use BFR...) provides an additional area of confusion and imprecision of the proposed 2022 FWMP. This paragraph begins by stating that “*the water rights described in 1. above will provide up to 1,217 AF of the resort’s total water needs of 1,460 AF leaving at least 243 AF of additional water needed.*” Footnote 20 follows the quoted statement and says that “*if there was some reduction in the amount Thornburgh is allowed to transfer under the LeBeau water right, like the 7% reduction*

¹³ The Hearings Officer references section labels (i.e., Section D and Section H) as set forth in the 2022 FWMP. The Hearings Officer does, however, note that the Section labeling (Reorganized and Updated November 7, 2022) does not include not a “Section E.”

expected in the NUID transfer, the amount of additional water could be increased somewhat.” The Hearings Officer defies an attorney or professional planner, let alone a lay person, to objectively describe the meaning of that language. The Hearings Officer finds the language contained in Applicant’s proposed 2022 FWMP Section H. is imprecise.

The Hearings Officer in this case is fully aware that the primary reporting and enforcement mechanisms for matters related to the FWMP are FMP Conditions 38 and 39. Condition 38 states:

“The applicant shall abide by the April 2008 Wildlife Mitigation Plan, the August 2008 Supplement, and agreements with the BLM and ODFW for management of off-site mitigation efforts. Consistent with the plan, the applicant shall submit an annual report to the county detailing mitigation activities that have occurred over the previous year. The mitigation measures include removal of existing wells on the subject property, and coordination with ODFW to model stream temperatures in Whychus Creek.”

The Hearings Officer reviewed Applicant’s Burden of Proof and notes that it provided (page 3, paragraph 7) a clarification of what constitutes compliance under Condition 38.¹⁴ The Hearings Officer could find no language remotely similar to the Burden of Proof Condition 38 language in the 2022 FWMP version 1 (August 16, 2022) or version 2 (November 7, 2022). Applicant, in its pre-hearing record submission (Kataroff, October 21, 2022, page 4), stated that:

“Staff is concerned with the implementation of FMP Condition 38 and assurance of ongoing compliance. Condition 38 was adopted as part of the FMP approval. It requires that Thornburgh follow the FWMP and its mitigation measures and to report mitigation actions to the County. Thornburgh will follow the plan.”

Applicant, in its pre-hearing record submission (Kataroff, October 21, 2022, page 4), also said that Condition 38 *“is imprecisely worded.”* (emphasis added by the Hearings Officer)

The Hearings Officer finds Applicant’s approach to Condition 38 in the context of the 2008 FWMP and, if approved, 2022 FWMP misses the mark. The Hearings Officer finds that as it now stands (per 2008 FWMP) and as proposed (2022 FWMP), Condition 38 must be viewed as the only practical method of

¹⁴ Burden of Proof, Page 3, Item 7. “The purpose of this paragraph 7 is to clarify what constitutes compliance with FMP Condition 38, whether during the review of Resort land use applications, as reported as part of annual monitoring, or for any other purpose. Once the Resort’s water provider [footnote omitted] has purchased water rights to be used for pumping or mitigation and pumping at the point of diversion or appropriation of the certificate has been discontinued, compliance with Conditions 3, 4 and 6 shall be found to be met in the manner discussed in this paragraph 7. As noted below, compliance will occur differently for water appropriated from a surface water Point of Diversion versus a groundwater Point of Appropriations or for a mitigation credit that is acquired as follows:

- a. Point of Appropriation-Groundwater: Compliance occurs upon submittal to OWRD of any of the following: an assignment of the water right to Thornburgh, an application that seeks OWRD approval of a transfer to pump at the Resort property, or cancellation in-lieu of mitigation so long as any use of the particular water right by farmers discussed below, if any, has been discontinued.
- b. Point of Diversion-Surface Water: Compliance occurs upon submittal to OWRD, and OWRD approves any of the following: an application that transfers to pump at the Resort property, application that transfers the water to an in-stream lease, cancellation in-lieu of mitigation, or transfer to obtain mitigation credits, so long as any use of the particular water right by farmers discussed below, if any, has been discontinued.
- c. Mitigation Credit: In the event that Thornburgh acquires mitigation credits, compliance occurs when Thornburgh provides proof of ownership or proof of submittal to OWRD of an application to transfer water in-stream.”

assuring compliance with the FWMP.¹⁵ It cannot be said that the 2008 FWMP or the proposed 2022 FWMP can be considered likely and reasonably certain to succeed without something akin to Condition 38.

The Hearings Officer finds, at a minimum, Condition 38 needs to be modified to reference the 2022 FWMP. Condition 38, as it currently exists, mandates that Applicant “shall abide” by “agreements with BLM and ODFW for the management of off-site mitigation efforts.” Applicant represented (Katzaroff, October 21, 2022, page 4) that no Applicant/ODFW agreement exists. While Condition 38 is not clear on timing, whether required to *have been done* or *must be done at some time in the future*, the Applicant has not provided any evidence of well removal on the Subject Property. The Hearings Officer also finds that Condition 38 requires coordination with ODFW to model stream temperatures. The Hearings Officer, based on the evidence in the record, is uncertain if that provision remains relevant. The Hearings Officer finds that Applicant’s statement that Condition 38 is “imprecisely worded” is an understatement.

The Hearings Officer’s above stated Condition 38 comments are amplified by ODFW. ODFW stated, in its November 7, 2022 record submission (page 6 of 8) the following:

“ODFW is concerned with the lack of information regarding how compliance will be ensured over time. Compared to legally protected instream water rights, the monitoring, reporting, compliance, and enforcement of mitigation via groundwater transfer is complex and difficult to quantify. It is our understanding that compliance (or noncompliance) with the mitigation measures will be established by annual reporting required by FMP Condition 38, but it is unclear who reviews the reports, who has access to the reports, what repercussions are in place for non-compliance, and if/how ODFW would be engaged in habitat protection. OWRD administrative processes will only address part of the compliance necessary, and sole reliance on OWRD well and streamflow monitoring data is unlikely to be at the appropriate scale and locations to track compliance. Surface water quality and quantity must be replaced in perpetuity or for the life of the project as intended or continued pumping at the Resort would result in a net loss of the resource.”

Applicant responded to the above-quoted ODFW comments (DeLashmutt, November 14, 2022, page 8) as follows:

“Thornburgh will provide annual reporting of mitigation measures taken under both the terrestrial wildlife and FWMP plans. This reporting will include the water usage and the mitigation measures taken under this 2022 FWMP. Thornburgh agrees to provide copies of reporting to Deschutes County, ODFW and in case of that mitigation measures taken on the Terrestrial Wildlife plan, the BLM.”

The Hearings Officer finds the Thornburgh quoted comments to simply repeat the Condition 10 and Condition 38 reporting requirements that currently exist and then to proceed to propose language to modify those conditions by adding recipients of the reports.¹⁶ The Hearings Officer repeats that the proposed 2022 FWMP does not include any reporting requirements. As such the proposed 2022 FWMP is totally reliant upon Conditions 38 and 39 to assure compliance.

¹⁵ Condition 39 relates to Three Rivers Irrigation District conservation project. Applicant did not propose to change its Condition 39 obligations.

¹⁶ Condition 38 requires annual reporting to the county only. Condition 10 is silent who the required documentation must be sent to; presumably it is the county as the information must be provided “at the time of tentative plat/site plan review.

The Hearings Officer finds that unless clear, objective and enforceable compliance language contained in the 2022 FWMP, or a meaningful modification of the existing Condition 38, there can be no assurance that the 2022 FWMP is “likely or reasonably certain to succeed.” The Hearings Officer finds that Applicant did not propose modifying the language of Condition 38 and if it did the Hearings Officer could not find it in the proposed 2022 FWMP.

The Hearings Officer finds the application in this case does not provide clear, concise and objective compliance standards to assure that the 2022 FWMP will secure the water rights represented in the 2022 FWMP and that its proposed 2022 FWMP mitigation is likely and reasonably certain to assure that the DCC 18.113.070 (D) “No Net Loss” standard is met. The Hearings Officer finds Applicant failed to carry its burden of proof requirement that its proposed 2022 FWMP meets relevant approval criteria. The Hearings Officer finds, based upon the findings above, that Applicant’s proposed 2022 FWMP modification application must be denied.

Summary & Conclusion – DCC 18.113.070 (D)

The Hearings Officer finds Applicant’s technical data and conclusions related to the impacts of various water rights proposed to be used as OWRD and DCC 18.113.070(D) mitigation is generally credible in relation to the proposed 2022 FWMP *potentially* meeting the “No Net Loss” standard. The ODFW questioned Applicant’s technical data, modeling, approach and conclusions. Opponents questioned the credibility of Applicant’s technical data, modeling, approach and conclusions.

ODFW expressed reservations about the proposed 2022 FWMP meeting ODFW standards *and* the DCC 18.113.070 (D) “No Net Loss” standard. The Hearings Officer finds that Applicant (DeLashmutt, November 14, 2022) provided a thoughtful response to ODFW comments. The Hearings Officer also takes notice that ODFW did not have an opportunity to respond to Applicant’s (DeLashmutt’s) comments. The Hearings Officer finds that the hearings officer, in the Hearings Officer FMP Decision (who approved the 2008 FWMP), appeared to rely heavily upon ODFW’s concurrence/support of the data, modeling and approach taken by Applicant in the 2008 FWMP. As at least one other hearings officer dealing with the “No Net Loss” issue stated: “It is a close call” and ultimately concluded that Applicant’s 2008 FWMP met DCC 18.113.070 (D) requirements in part because of ODFW’s approval of the plan.

The Hearings Officer finds the proposed 2022 FWMP includes a number of very important sections that are subject to multiple interpretations and likely to lead to appeals seeking interpretive declarations. The Hearings Officer finds that the proposed 2022 FWMP does not provide objective reporting, compliance/enforcement provisions. The Hearings Officer finds that relying upon the current version of Condition 38 is not appropriate if the 2022 FWMP is approved as proposed. The Hearings Officer finds Condition 38, if the 2022 FWMP were approved, would need to be revised to reflect 2022 FWMP changes and ensure that the Applicant, public and future decision makers can reasonably be expected to understand the Applicant’s mitigation obligations and the consequences for failure to meet those obligations.

The Hearings Officer believes it is inappropriate for the Hearings Officer to revise the proposed 2022 FWMP to assure it contains clear and objective Applicant obligations. The Hearings Officer finds it is inappropriate to revise Condition 38 when it is clear that Applicant did not include any proposed revisions in its application for this case.

The Hearings Officer finds, based upon the record of this case, that Applicant has failed to satisfy the one criterion it argues is relevant: DCC 18.113.070 (D). The Hearings Officer denies Applicant's request to revise the 2008 FWMP with a proposed 2022 FWMP.

IV. DECISION

Applicant's proposal to modify the CMP/FMP by replacing the 2008 FWMP with a 2022 FWMP proposal is denied.

Dated this 19th day of December, 2022.

A handwritten signature in black ink that reads "Gregory J. Frank". The signature is written in a cursive, flowing style.

Gregory J. Frank
Deschutes County Hearings Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Authorization to apply for a grant in the amount of \$3.25 million from FEMA's Building Resiliency in Communities program and also for a \$500,000 grant from the Oregon State Fire Marshall

RECOMMENDED MOTION:

Move to authorize staff to apply for a grant in the amount of \$3.25 million from FEMA Building Resiliency in Communities and to also apply for a grant in the amount of \$500,000 from the Oregon State Fire Marshall based on SB 762 legislation.

BACKGROUND AND POLICY IMPLICATIONS:

If awarded, the \$3.25 million grant from FEMA's BRIC program would be used for a water storage and heat-activated sprinkler system on the High Desert Museum campus to protect irreplaceable museum articles and over 150 animals, some of which are threatened and endangered, from wildland fire. This grant would require a match of either 25% (\$700,000) or 10% (\$325,000); in either case, both in-kind and cash contributions will supply the necessary match, with no fiscal impact on the County. A 5% administrative allowance (\$162,500) would be allowed for administering the grant.

The \$500,000 grant from the State's Fire Marshall Office has no match requirement and would include a 10% grant administration allowance.

BUDGET IMPACTS:

\$162,500 administrative fees for the BRIC grant and \$50,000 for the SB 762 grant.

ATTENDANCE:

Kevin Moriarty, County Forester

Joe Stutler, Senior Advisor and Contact Administrator, Oregon Living With Fire

Building Resilient Infrastructure Communities (BRIC)

BRIC Notice of Funding Opportunity (NOFO) Intent: *To support the adoption and enforcement of building codes, standards, and policies that will protect the health, safety, and general welfare of the public with long lasting impacts on community risk reduction. This includes critical services, facilities, and future disaster costs. FEMA will provide financial assistance to eligible BRIC applicants for the following activities:*

1. **Capability- and Capacity-Building (C&CB) activities** – Enhance the knowledge, skills, expertise, etc., of the current workforce to expand or improve the administration of mitigation assistance. This includes activities in the following sub-categories: building codes activities, partnerships, project scoping, mitigation planning and planning-related activities, and other activities.
2. **Mitigation Projects** – cost-effective projects designed to increase resilience and public safety; reduce injuries and loss of life; and reduce damage and destruction to property, critical services, facilities, and infrastructure from natural hazards and the effects of climate change.
3. **Management Costs** – financial assistance to reimburse the recipient and subrecipient for eligible and reasonable indirect costs, direct administrative costs, and other administrative expenses associated with a specific mitigation measure or project in an amount up to 15 percent of the total amount of the grant award, of which not more than 10 percent of the total award amount may be used by the recipient and 5 percent by the subrecipient for such costs generally.
4. **Applicant Eligibility** – State, Local, Tribal or Federal Cooperators must apply on behalf of individuals, community members, or businesses. In the spirit of collaboration, they may not apply for BRIC funding independently as the primary applicant.

Federal Award Information

Application Closure	January 13, 2023 to OEM
Pre-Award Selection	Summer 2023
Performance Period	36 Months from Receipt of Federal Award
Available Funding for the NOFO:	\$1,900,000,000
State/Territory Allocation Total:	\$ 56,000,000
Tribal Set-Aside Total	\$ 25,000,000
National Competition Total	\$ 1,919,000,000

Cost Share

75 percent federal / 25 percent non-federal. This means federal funding is available for up to 75 percent of eligible costs. The remaining 25 percent of eligible costs must be derived from non-federal sources. The non-federal cost share may consist of cash, donated or third-party in-kind services, materials, or any combination thereof. Cash and third-party in-kind matches must consist of eligible costs (i.e., same eligibility as the federal share). If applying under an economically depressed rural community, cost share becomes 90 percent federal/10 percent non-federal.

Hazard Mitigation Benefits: *Natural hazards pose a serious risk to states, localities, tribes, and territories throughout the United States. These hazards include flooding, drought, hurricanes,*



Building Resilient Infrastructure Communities (BRIC)

landslides, wildfires and more. Many natural hazards are expected to become more frequent and more severe. Therefore, reducing the impacts these hazards have on lives, properties and the economy is a top priority for many communities. Although the general population understands “that” this is a reality, they do not understand “how” to effectively respond or prepare for these events. FEMA has previously provided financial assistance to BRIC applicants for the following activities:

1. **Colorado Springs Wildfire Mitigation** – The community has taken actionable steps to mitigate against future damage by adopting a stronger fire-resistive building code, mapping wildfire risk, and participating in strategic community engagement. The City of Colorado Springs Fire Department collaborated with the Colorado Springs Housing and Building Association to identify ways to mitigate the impacts of wildfires on residential buildings. This information led to Ordinance No. 18-50, which amended the International Fire Code to address wildland/urban interface mitigation requirements for high-risk areas. Benefits include but are not limited to:
 - a. Reduced physical damage to structures/contents as well as infrastructure.
 - b. Life-safety benefits for areas with potential rapid wildfire risk.
 - c. Improved air quality and community health due to a reduction of wildfire smoke/pollutants.
 - d. Retained timber values and reduced fire suppression costs.
 - e. As more structures are built with fire-resistant materials in the area, it decreases the cost for materials and installation.

Total Project Cost: \$1.33 Million

Partnerships: City of Colorado Springs Fire Department, Colorado Springs Housing and Building Association, and FEMA

2. **Camptonville Biomass Plant** – The Camptonville Community Partnership is developing a 5.5-megawatt biomass plant in Camptonville, CA. This plant will support healthy forests by generating electricity from materials removed from forests that are overstocked or suffering from tree die-off. The project provides incentives for fuel reduction activities and otherwise utilizing forest waste. It includes a power-purchase agreement with the local utility (PG&E) to purchase electricity created by the biomass facility. This plant will provide a market focused on sustainable forest management projects, reducing forest fuels, and minimizing the threat of wildfire. This plant will provide a market focused on sustainable forest management projects, reducing forest fuels, and minimizing the threat of wildfire. Benefits include but are not limited to:
 - a. Reduced physical damage to structures/contents as well as infrastructure in at risk areas.
 - b. Life-safety benefits for areas with potential rapid wildfire risk.
 - c. Improved air quality and community health due to a reduction of wildfire smoke/pollutants
 - d. An alternative power generation source which also provides jobs in the community
 - e. Potentially results for long-term wildfire fuels reduction without additional grants.
 - f. Reduced fire suppression and emergency response costs.

Total Project Cost: \$5.1 Million

Partnerships: Camptonville Community Partnership, Yuba Water Agency, and PG&E

Community Benefits

The above examples of BRIC funded projects can provide both short and long-term environmental, economic, and social advantages which improve a community’s quality of life or make it more



Building Resilient Infrastructure Communities (BRIC)

attractive to new residents/businesses. BRIC prioritizes projects that mitigate risk to public infrastructure, community lifelines, incorporate nature-based solutions, and support modern building codes. The community benefits from these efforts may include:

1. **Wildfire Smoke Mitigation (Improved Air Quality)** – Hazardous fuels reduction work ensures that wildfires have less vegetation (fuels) to feed on. Less fuel means less opportunity for intense wildfire and smoke. Until landscape resiliency is achieved and maintained, Smoke Mitigation measures are likely an opportunity for the BRIC grant process. For example, Sonoma County in California was recently awarded \$36.98 Million to develop a system within the Wildland Urban Interface (WUI). The system establishes zones containing an inner and outer core. The inner core is hardened by encouraging property owners to create and maintain defensible space around their homes to reduce the potential for ignition from embers, direct flame, or radiant heat. The outer core absorbs the impacts from wildfires before they get to this hardened inner core. This is accomplished by reducing vegetation in large-parcel infill sites and or wildland areas that abut communities. Infill sites are created to provide buffers to decrease fire spread and intensity, provide anchor points, and increase environmental benefits including improved forest health/wildlife habitats, improved water quality, less extreme wildfire, and effective smoke mitigation.
2. **Economic Health** – The utilization and removal of forest waste/fuel loading supports community economic health. As with the Colorado Springs Mitigation Project, these efforts have the capacity/capability to reduce damage to community lifelines and infrastructure due to less extreme wildfire or wildfire spread. Moreover, local job creation, property values, renewable energy, green building materials, and fire adaptive landscapes may increase.
3. **Community Partnerships** – BRIC is a firm believer in creating meaningful partnerships and community collaboration. Applicants are limited only by their imagination so long as they can successfully prove their proposal(s) have the capability and capacity to ***support the adoption and enforcement of building codes, standards, and policies that will protect the health, safety, and general welfare of the public with long lasting impacts on community risk reduction.*** The possibilities are only limited by our wiliness to work with one another toward a common goal. Thus, the list of potential shareholders in this effort are endless. Some examples may include:

- City, State, Local, or Municipal Government(s)
- Counties and County Leadership
- Local Tribes and Tribal Leadership
- Health Departments
- Forestry Professionals, Representatives, and Associations
- Community Organizations
- Wildfire & Emergency Responders
- Wildland Urban Interface (WUI) and related Councils
- FEMA

BRIC funded projects offer financial incentive to offset cost while providing a mechanism to enhance community lifelines and education to withstand damages resulting from disaster events. Think carefully, which project do you think would most benefit your community?



SB 762 Grant Opportunity

The OSFM is offering the **Community Wildfire Risk Reduction Grant (Award)** to assist local governments and organizations in accomplishing greater wildfire preparedness and increasing community resiliency to wildfire.

A. Eligibility:

1. Counties, municipalities, non-governmental organizations, Oregon fire agencies, special districts, and Rangeland Fire Protection Associations (RFPAs).
2. Counties are allocated \$5 million in competitive funds with a maximum award of \$500,000 for any one county.
 - a. If a county is acting as the administrator for another county or other organization for the purposes of this grant, only one award is eligible.
3. Municipalities and special districts are allocated \$5 million in competitive funds with a maximum award of \$250,000 for any one municipality.
 - a. If a municipality or county or other organization is acting as the administrator for another municipality or other organization for the purposes of this grant, only one award is eligible.
4. Fire agencies and RFPAs are allocated \$5 million in competitive funds with a maximum of \$500,000 for any one fire agency.
5. Nonprofit, non-governmental organizations ("NGOs") are allocated \$3 million in competitive funds with a maximum of \$250,000 for any one agency. Nonprofit or NGOs are voluntary groups of individuals or organizations, usually not affiliated with any government, formed to provide services, or advocate a public policy.
6. The OSFM reserves the right to reallocate funds as agency needs dictate.
7. Applicants are encouraged to coordinate applications in the same jurisdiction, but each organization must apply separately for different aspects for the project.
8. All grants are for three (3) years or less, with grant funds spent by March 31, 2026.

B. Allowable Costs:

1. Personnel costs for staff to manage the grant program activities, such as a program coordinator, program manager, or similar.
2. Projects should prioritize socially and economically vulnerable communities, persons with limited proficiency in English and persons of lower income as defined in ORS 456.055, critical or emergency infrastructure or schools, or hospitals and facilities that serve seniors.
3. Defensible space programs, including but not limited to:
 - A locally managed defensible space program for private landowners.
 - Direct contracts or work to create fire-resistant landscapes around residential, commercial, municipal structures, and/or other critical infrastructure.
 - Create or support existing community programs, such as Firewise USA sites.
4. Community common area projects, including but not limited to:

- Municipal or county properties or parks intended to be used for emergency evacuation centers, recovery centers, defensible space demonstration spaces, greenways, houseless camps or communities, or fire breaks around critical infrastructure.
 - Improvement of access, ingress, and egress route projects, including but not limited to planning of egress routes, including primary and secondary routes.
 - Brushing and clearing roads for defensible space/fire break.
 - Reflective address and road signage.
5. Educational projects, including but not limited to:
 - a. Fire prevention and preparedness messaging campaigns and billboards.
 - b. Community clean-up days for outdoor debris.
 - c. Work with a community-based organization or other means to address fire safety education among people experiencing houselessness or people whose first language is other than English.
 6. Vegetative fuel reduction and mitigation projects, including but not limited to:
 - a. Prescribed grazing (e.g., goats) for fuel mitigation work around communities.
 - b. Vegetation mitigation crews.
 - c. Equipment for fuel reduction efforts such as chippers. This line item cannot exceed \$75,000.
 - d. Defensible space treatment around critical infrastructure.
 7. Contracts for tree service and debris clearing companies to service areas of the jurisdiction.
 8. Planning costs such as needed to update Community Wildfire Protection Plans.
 9. Administrative costs, including management, payroll services, and supplies, up to 10% of the grant award. *Please note, administrative costs are separate from personnel costs, except for management personnel costs.*

C. Unallowable Costs:

1. Fire suppression equipment, such as fire trucks or engines, or their maintenance.
2. Fire response equipment such as radios, water tanks, hoses, etc.
3. Direct firefighting equipment, such as personal protective equipment.

4. Prescribed burns.
5. Building infrastructure projects such as building or infrastructure hardening, water tank installations, utility line burying, etc.
6. Reimbursement of costs for projects completed before the grant application.
7. Road paving projects for egress.
8. Home hardening supplies and labor.
9. By the time this application is due, the OSFM will have made some strategic investments in consultation with local communities and fire agencies for fire risk reduction. These investments are considered pilot projects. If an applicant received the OSFM funds for a fire risk reduction pilot project, that project is not eligible for this grant.
10. A federal grant match for a project that matches the above criteria.
11. Contracting or funding a state agency.

Applications must be received no later than 5 p.m. January 31, 2023, via the application form link.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, January 11, 2023

SUBJECT: Consideration of Administrative Policy GA-23, Removal of Unsafe Encampments Located on County-owned Property

RECOMMENDED MOTION:

Staff recommends moving approval of County Administrator signature of Administrative Policy GA-23, Removal of Unsafe Encampments Located on County-owned Property

BACKGROUND AND POLICY IMPLICATIONS:

At the direction of the Board of County Commissioners, a workgroup was formed in 2022 to draft a policy to address unsafe encampments located on County-owned property. The workgroup includes staff from Property Management, County Counsel and the Sheriff's Office. And more recently, the Executive Director of the Coordinated Houseless Response Office, Cheyenne Purrington.

The policy was drafted in accordance with Oregon Revised Statute (ORS) 195.500 through 195.530, to 1) recognize the social nature of the problem of homeless individuals camping on public property; and 2) implement the policy as developed, to ensure the most humane treatment for removal of homeless individuals from camping sites on public property.

The policy outlines the process to remove personal property from an encampment located on County-owned property when an imminent or immediate threat to public health and/or safety has been identified. This may include but is not limited to personal property that poses a threat, fire, increase public health vectors, and/or illegal activities such as known illicit drug use, stolen property or violence.

Prior to finalizing the policy, input was solicited from the Board of County Commissioners, Administration, Deschutes County Behavioral Health and Community Justice, Cities (Bend, La Pine, Redmond, and Sisters) and a number of community service providers. The workgroup reviewed input received and incorporated in the policy as appropriate.

BUDGET IMPACTS:

Property Management budgeted \$50,000 in FY 2023 for encampment cleanups as needed.

ATTENDANCE:

Kristie Bollinger, Property Management

Cheyenne Purrington, Coordinated Houseless Response Office



Deschutes County Administrative Policy No. GA-23
Effective Date: January 11, 2023

Removal of Unsafe Encampments Located on County-owned Property

I. INTRODUCTION

- a. Deschutes County recognizes that people experiencing homelessness need a place to sleep, shelter themselves, and store belongings. The County is committed to the safety and security of all people in the County that access County-owned property including people experiencing homelessness, adjacent property owners, and the general public, while protecting County-owned property from environmental threats, destruction, and unsafe and dangerous conditions.
- b. This policy outlines the process to remove an encampment located on County-owned property when an imminent or immediate threat to public health and/or safety has been identified. This may include but is not limited to Personal Property that poses a threat, fire, increased public health vectors, and/or illegal activities such as known illicit drug use, stolen property or violence.

II. PURPOSE

- a. In accordance with Oregon Revised Statute (ORS) 195.500 through 195.530, Deschutes County developed this policy to:
 1. Recognize the social nature of the problem of homeless individuals camping on public property;
 2. Ensure the most humane treatment of “homeless individuals” when removing Personal Property from encampments on County-owned property that constitutes an imminent or immediate threat to public health and/or safety.

III. DEFINITIONS

- a. For the purpose of this policy, the following definitions apply.
 1. “Established campsite or encampment” means a location on County-owned property where one or more tents, awnings, lean-tos, sleeping or bedding materials, cooking implements or materials, or other items or structures have been erected, constructed, or placed including vehicles and recreational vehicles, and that appear to be used for human habitation, including but not limited to sleeping, preparing cooking or warming fires, storing personal belongings, and urinating or defecating.
 2. “Garbage” means items voluntarily left on County-owned property for collection by a third party, or otherwise abandoned by its apparent owner, and items not reasonably recognizable as belonging to individuals and which have no apparent utility or are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination.

3. "Notice or Notices" means any type of notice described herein that provides an encampment specific information about an issue identified by the County and specific to remedy the issue by warning or removal of the encampment; see Example 3.
4. "Personal Property" means any item that is reasonably recognized as belonging to an individual and that has apparent utility. This may include camping equipment, bicycles, books, photographs, personal documents such as identification and social security cards, clothing, etc.
5. "Posting Notices" means law enforcement officials posting a written notice, in English and Spanish, at all entrances to the camping site to the extent that the entrances can reasonably be identified, pursuant to ORS 195.505.
6. "Removal of Personal Property" means the method the County will use to remove the encampment by use of contractors, county staff, community service or other resources as determined.
7. "Unsafe Campsite" means a segment or portion of a County-owned property that the Property Manager, County Administrator or public safety officials has determined is being used as an established campsite consisting of one (1) or more tents, structures, vehicles, or other items used for human habitation, that has been determined poses a threat to public health and/or safety to other encampments and the general public.

IV. OVERVIEW

- a. When the Deschutes County Property Manager (PM), County Administrator or public safety officials within the County, identifies an issue at an encampment that poses an imminent or immediate threat to public health and/or safety, including but not limited to fire, public health vectors, threat of fire or illegal activities, the County at its sole discretion, may take steps to 1) remedy the issue before removing the encampment, and/or 2) proceed with removing the encampment as outlined in this policy.
- b. When an issue is identified at an encampment, the PM will provide notification (Notification 1) to the County Administrator, County Counsel, Coordinated Houseless Response Office, Board of County Commissioners and other County departments and/or partner agencies as appropriate, of the intent to issue a notice to the encampment. The Notification 1 will be sent in the form of an email and will include the issue, the type of intended notice, and the location of the encampment with a map of the approximate area.
- c. Prior to issuing notice to an encampment, an Inter-Agency Land Management Notification (see attached for Notification 2 example) will be emailed to partner agencies and relevant community services providers. Notification 2 will be forwarded via email to the County Administrator, County Counsel, the Coordinated Houseless Response Office, Risk Management, Sheriff's Office designee and to the Board of County Commissioners. Notice may also be sent to adjacent and nearby property owners.

V. NOTICES

- a. In the event an issue(s) has been identified at an encampment and the issue(s) poses an immediate or imminent threat or danger to the encampment, adjacent encampments, adjacent property, or the environment, the County at its sole discretion, may issue the encampment an Emergency or 72-Hour Notice as provided by ORS 195.505. Under certain circumstances, a notice providing a different allotted time may be issued.
- b. The Notice will include the following and will be provided in English and Spanish (see attached example Notification 3):
 1. Date of Notice
 2. Type of Notice, e.g. Emergency , 72-Hour, or other
 3. A description of the issue(s) identified
 4. Request for the encampment to remove all Personal Property from the area by date noted
 5. The process the County will use to remove Personal Property if all Personal Property is not removed by the deadline
- c. The Property Manager will provide law enforcement a copy of the Notice for posting and distributing at the encampment.
- d. Law enforcement will date the Notice before posting and will provide the Property Manager with a “return of service.”
- e. The Notice must be posted at all entrances to the encampment site to the extent that the entrances can reasonably be identified, pursuant to ORS 195.505.
- f. At the expiration of the Notice period, but no later than twenty (20) days from the Notice expiration date and if Personal Property is still present at the encampment, the County will remove all Personal Property from the encampment with use of contractors, county staff, community service or other resources as determined.
- g. If the posted Notice is not present at the encampment on the date Personal Property is removed, copies of the original notice must be reposted at that time.

VI. REMOVAL AND STORAGE OF PERSONAL PROPERTY

- a. Upon the expiration of an Emergency, 72-hour or other specified timeframe Notice was posted, the County at its sole discretion may proceed with removing Personal Property from the encampment’s general vicinity.
- b. Personal Property within the general vicinity that was identified when the Notice was posted and provided to the encampment that has been relocated during the Notice period, may be removed by the County or its designee if it appears to be within 200 feet of the posted Notice.
- c. At the time the Personal Property is scheduled to be removed, the following must occur prior to removing any Personal Property from the area.
 1. Photos must be taken showing the general condition of the encampment area before items are removed, including the major Personal Property items in the area including but not limited to bicycles, camping equipment, etc.
 - i. Photos and other documentation should be kept at least two (2) years after the removal of the encampment.

- d. County staff, contractors or others as determined by the County, shall make a reasonable effort to engage owners of Personal Property to determine what items are viable and when possible preserve that property for storage as described below. Personal Property that is considered viable should be placed on a tarp or other barrier and photos should be taken of the item(s).
1. Items should be arranged so that they are distinguishable from one another in the photos.
 2. Bulky items such as blankets or clothing believed to be from the same tent or encampment may be piled on the tarp/barrier rather than spread out individually for the photos.
 3. Large items such as a bicycle, tent, or furniture may be photographed without placing on a tarp/barrier.
 4. Crews are not required to open boxes, bags or other containers to display items and contents.
 5. Non-bulky Items are placed in plastic bags and labeled for transport and storage.
 6. Bulky items are labeled for transport and storage.
 7. Labels must include:
 - i. Date of removal of Personal Property
 - ii. Approximate location
 - iii. Any names provided at the time the Personal Property is sorted, bagged and labeled.
 - iv. Expiration date of storage period, which will be no less than thirty (30) calendar days
- e. Items including but not limited to firearms and knives, drugs, drug paraphernalia and items that reasonably appear to be either stolen or evidence of a crime must be turned over to the appropriate law enforcement agency.
- f. Personal Property that is considered contaminated will be properly disposed of. This may include items that are wet from weather, urine or feces, fire or smoke damage, broken, or deemed inoperable or unsafe.
- g. Personal Property that is labeled will be stored in a weather proof environmental container at the sole discretion of the County. This may include a rented storage unit, storage container or another location as appropriate.
1. Personal Property will be stored within a reasonable distance from where the Personal Property was removed and will be made available by appointment during regular business hours.
- h. Cards similar to the size of a business card will be provided to those who had Personal Property removed. Cards may also be attached to Notices in the area.
- i. Cards must include:
1. Date of removal
 2. Approximate location
 3. Location Personal Property will be stored

4. Contact information to claim Personal Property (Claimant Contact)
 5. Expiration date of storage period, which will be no less than thirty (30) calendar days
- j. Following the removal of Personal Property from an encampment, law enforcement officials, local agency officials and outreach workers may meet to assess the notice and removal policy, to discuss whether the removals are occurring in a respectful humane and just manner and to determine any recommended policy changes.

VII. CLAIMING AND DISPOSAL OF PERSONAL PROPERTY

- a. Any person claiming ownership of Personal Property removed from an encampment must contact the Claimant Contact during regular offices hours to make an appointment to arrange a time to recover Personal Property within thirty (30) days of the removal of the Personal Property.
 1. Any claimant who recovers Personal Property, will be required to sign a release form.
- b. Unclaimed Personal Property may be disposed either by discarding or donation after the expiration of the 30-day period.
 1. If the expiration of the thirty (30) day period falls on a weekend or holiday, the storage period will be extended to at least the next business day.

Approved by the Deschutes County Board of Commissioners January 11, 2023.

Nick Lelack
County Administrator



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Courthouse Expansion Scope of Work

BACKGROUND AND POLICY IMPLICATIONS:

Commissioners have expressed interest in further reviewing the project scope of the Courthouse expansion. Programming Options 1 and 2 described below were presented to the Board on December 7, 2022. The information below is provided as background for this continued discussion.

Beginning in the fall of 2021, Deschutes County began assembling a project team to expand the Deschutes County Courthouse based on concepts that were first developed in 2004. Those concepts have been refined over the past several years in expectation of additional judges being assigned to Deschutes County. In the 2021 legislative session, two additional judges were allocated to the County and began work in early 2022. With input from the County's Facilities Project Review Committee, publicly advertised RFP processes were conducted in early 2022 to assemble a team comprised of Cumming Group, LRS Architects, and Pence Construction.

In June, the team began the Programming phase with stakeholder engagement tours, multiple programming meetings, and design charrettes. Questionnaires were completed by core user groups and the team integrated that feedback into the programming process.

Due diligence performed by the team included review of adjacent street design, a coordination meeting with City of Bend staff, and the development of guiding principles and priorities to be carried throughout the project, informing the design process and project outcomes. Those principles include: Security, User Experience, Functionality, Maintenance, Design, Wellness, and Additional Area.

With the guiding principles in place, two programming concepts are being presented for Board consideration. The concepts share a common layout that includes basement secure parking and in-custody transport; 1st floor lobby, security checkpoint and administrative

offices; and a “set” of two courtrooms with judges’ chambers and support staff offices on the second floor with potential to expand to multiple floors above. Option No. 1 includes a 3rd floor shell space. Option No. 2 expands upon the priority of providing space for future growth by including a 3rd and 4th floor shell space. Each floor would consist of approximately +/- 13,000 square feet to accommodate a “set” of two future courtrooms, judges’ chambers and support staff offices. Each floor could also be finished to accommodate open office space.

Construction of additional shell space is a cost effective way of “future proofing” the Courthouse by allowing for lower cost expansion in the future and takes full advantage of remaining buildable space adjacent to the existing Courthouse. The cost for Option No. 1 is estimated at \$40M and the cost for Option No. 2 with a 4th floor for future growth is estimated at \$44.5M.

If approval to proceed is received, the team expects to complete Schematic Design in the spring of 2023. A construction cost estimate will be prepared based on those documents. At that time, the team will present the schematic design floorplans to the Board of Commissioners along with the construction cost estimate and seek approval to proceed to the Design Development phase of the project.

BUDGET IMPACTS:

Funding for project design is budgeted for FY 2023 in the Campus Improvements Fund 463.

ATTENDANCE:

Lee Randall, Facilities Director



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Oregon Department of Energy Community Renewable Energy Grant Program

BACKGROUND AND POLICY IMPLICATIONS:

In 2021, the Oregon Legislature created the Community Renewable Energy Grant Program to support projects outside Portland city limits. The program has a total budget of \$50 million.

The Oregon Department of Energy (ODOE) is now accepting applications for Round 2 of the program. In this application period, ODOE is making \$12 million available to support planning and developing of community renewable energy and energy resilience projects for tribes, public bodies, and consumer-owned utilities. Applications are due by February 15, 2023.

At least half of the grant funds will be awarded for projects that serve environmental justice communities, including communities of color, lower-income communities, rural communities, and others. Similarly, at least half of the grant funds will be awarded to projects that support community energy resilience.

The County applied for multiple projects in Round 1 of the grant program including funding for a biomass project at Mt. Bachelor. The Mt. Bachelor project was selected to receive funding.

If the Board is interested in submitting a second application, staff recommends submitting one project application for consideration:

DESCHUTES COUNTY FAIR AND EXPO CENTER (New Well with Solar Power, EV Charging)

This project would include the installation of a hybrid grid-tied and battery back-up solar photovoltaic system to provide continuous power to a new water well to replace a well currently used for irrigation. The existing well is providing roughly 50% of the water output it had previously provided. The proposed project would install a new well to provide 500,000 additional gallons per minute to the property, install a new submersible pump, install a water filtration system to convert to potable water, install potable water storage facility, provide power for Emergency Operations staging, and provide EV charging stations.

The new site would be located on a 40 acre undeveloped parcel of land on the East side of the property, closer to public access.

The County's Fair & Expo Center is routinely used during natural disasters to provide temporary emergency shelter and support for displaced community members and livestock. It also serves as a command post to support regional Emergency Response. Fair & Expo has agreements with multiple local, state and federal emergency response agencies to provide this type of support when needed.

This project would allow Fair & Expo to support Emergency Operations in the event that a natural disaster disrupts power supply. It would also provide a fresh water supply for displaced residents and ensure that electric vehicle users would have access to "off-grid" charging in the event of a prolonged power outage.

Grant Requests:

\$1,000,000 grant request for constructing a community energy resilience project
Potential matching funds from the Fair and Expo Center

ATTENDANCE:

Lee Randall, Facilities Director

Jen Patterson, Strategic Initiatives Manager



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Request and Discussion of Worrell Wayside Park Application for a City of Bend Upland Area of Special Interest (ASI) Designation

RECOMMENDED MOTION:

To be determined based on the Board's discussion.

BACKGROUND AND POLICY IMPLICATIONS:

On December 27, 2022, a community member, Donna Owens, requested Deschutes County, the landowner of Worrell Wayside Park, to authorize an individual or organization to submit an application to the City of Bend to designate the Park as a New Upland Area of Special Interest (ASI) per City of Bend Code 2.7.700.

The email request and Bend City Code 2.7.700 are attached.

The section below provides the process to designate a New Upland Area of Special Interest.

City of Bend Code 2.7.700(G). *Standards for Designating New Upland Areas of Special Interest.* Any individual or organization may apply for designating new Upland Areas of Special Interest. Designation of new areas shall be coordinated with the affected property owners. An "Upland Area of Special Interest" designation may be imposed or modified pursuant to an ASI analysis. During January of each "odd numbered" calendar year, individuals may apply to the City for new ASI designations to be added to the Bend Comprehensive Plan and Zoning Maps. The City will process applications received during this time without fee. During the same time period, the City shall review City-owned properties for potential new ASI designations. A new designation shall be processed as a map amendment to both the Bend Comprehensive Plan and Zoning Maps pursuant to the City of Bend Procedures Ordinance and this section.

Other sections of this Code include, but are not limited to:

- Activities on the designated property that would be subject to review, such as site modifications;
- Development standards, such as removal of vegetation or enhancement of the area;
- Exceptions and variances, such as the construction of public trails or paths that provide public access; and
- Mitigation standards.

BUDGET IMPACTS:

None

ATTENDANCE:

Nick Lelack, County Administrator

DEVELOPMENT CODE

[Development Code](#) → [Title 2, Land Use Districts](#) → [Ch. 2.7, Special Planned Districts, Refinement Plans, Area Plans and Master Plans](#) →

Article VI. Upland Areas of Special Interest Overlay Zone



2.7.700

Upland Areas of Special Interest Overlay Zone.



As early as 1975, Areas of Special Interest have been identified as important features in the landscape intended to be preserved as growth occurs. These areas represent potential private and public open space. The upland features consist of scattered rock outcrops, stands of trees, and dominant ridges and faults that are typical of the Central Oregon landscape. These areas contain high points or changes in elevation that break the line of sight so that the area retains a feeling of undeveloped open space.

A. *Purpose.* Bend is a community that values its natural features of trees and rocks. This section will fulfill the vision of the Bend Comprehensive Plan to retain and conserve the “natural character” of Bend. Natural resources such as rock outcroppings, draws, mature trees, natural vegetation and animal habitat are assets to the community.

The Upland Areas of Special Interest Overlay Zone is intended to protect valuable natural resources within the City of Bend’s Urban Growth Boundary while ensuring reasonable use of the property. This section will establish clear and objective design and development standards to protect these resources and preserve and enhance this vision for Bend’s future livability.

B. *Applicability.*



1. *Affected Property.* The procedures and requirements of the Upland Areas of Special Interest Overlay Zone apply to any real property designated as having an ASI as mapped on the Bend Comprehensive Plan Map and the City Zoning Map. These standards shall be in addition to the standards of the underlying zone.

2. *Activities Subject to Review.* Unless specifically exempted from review as described in subsection [\(B\)\(3\)](#) of this section, activities subject to review and which require a permit shall include all development on properties described below:

- a. Partitioning and subdividing of land.

- b. New structural development.
- c. Exterior expansion of any building or structure, or increases in impervious surfaces or storage areas.
- d. Site modifications including grading, excavation or fill, installation of new utilities, construction of roads, driveways, or paths.
- e. Removal of trees or cutting or clearing of any native vegetation within the Upland Area of Special Interest.

3. *Exemptions.* Activities exempt from this section include:

- a. The sale of property.
- b. Temporary emergency action necessary for the safety and protection of property or the public.
- c. Commercial forest practices regulated by the Oregon Forest Practices Act.

C. *ASI Review Process.* For all activity subject to the Upland Area of Special Interest Overlay review, the following shall apply:

- 1. The ASI Review shall be processed as a "Land Use Permit" as defined in BDC Chapter [4.1](#), Development Review and Procedures. When practicable, the ASI Review shall be processed concurrently with other land use permits.
- 2. The ASI Review application is subject to the provisions of this chapter.
- 3. The ASI Review application shall be filed on a form provided by the City and shall be accompanied by a filing fee, drawings and information specified in this chapter.

D. *Development Standards.* The ASI Boundary is delineated by the outside edge of the boundary line shown on the Bend Comprehensive Plan Map and the City Zoning Map. No development as defined in this chapter shall occur within an Upland Area of Special Interest boundary unless expressly permitted by the provisions of this chapter.

The development standards shall apply to structures, fences, impervious surfaces including streets and driveways except where provided for in this section and landscaping as described in subsection [\(D\)\(5\)](#) of this section. In addition, no stock piling of fill materials, parking or storage of equipment or personal property shall be placed within an Upland Area of Special Interest.

- 1. *Setbacks.* There shall be a 25-foot setback from the ASI boundary for all structures requiring a building permit to provide adequate fire fuel break and to reduce the visual impact to the Area of Special Interest. This additional setback area may be used in addition to the ASI area to calculate any density credit.

The permanent alteration of an Upland Area of Special Interest by grading, excavation or fill, the placement of impervious surfaces, or by the removal of existing vegetation is only permitted in association with the following enumerated uses and subject to the requirements.

- 2. *Streets and Driveways.* Public or private streets and driveways may be placed within an Upland Area of Special Interest to access development activities if it is shown that no other practicable method of access exists. If allowed, the applicant shall demonstrate that:
 - a. No other practicable access to the buildable area exists, or access from an off-site location through the use of easements is not possible;
 - b. Roads and driveways are designed to be the minimum width necessary and the minimum intrusion into the Upland Area of Special Interest while also allowing safe passage of vehicles and/or pedestrians;

c. The need for future extensions of shared access, access easements, or private streets to access potential new building sites have been considered at the time of this application in order to avoid subsequent encroachments into an Upland Area of Special Interest.

3. *Utilities and Drainage Facilities.* Public and private utilities or drainage facilities may be placed underground within an Upland Area of Special Interest when it is shown that no other practicable alternative location exists. If allowed, the applicant shall demonstrate that:

- a. No other practicable access exists or access from an off-site location through the use of easements is not possible;
- b. The corridor necessary to construct utilities shall be the minimum width practicable;
- c. Removal of existing trees and native vegetation shall be avoided unless absolutely necessary.

Any permanent alteration of an Upland Area of Special Interest by the construction of public or private streets, driveways, utilities or drainage facilities is subject to the mitigation requirements under subsection (F) of this section.

4. *Removal of Vegetation.* Removal of existing vegetation from an Upland Area of Special Interest is prohibited, except as indicated below:

- a. A tree in danger of falling and thereby posing a hazard to life or property may be removed, following an assessment evaluation from a Qualified Professional. If no hazard will be created, the tree or snag may be required to be left in place within the Upland Area of Special Interest to provide wildlife habitat.
- b. Diseased or dying trees that may pose a threat to the health of surrounding vegetation as determined by a Qualified Professional.
- c. The removal of noxious weeds and nonnative grasses (e.g., knap weed, toad flax or cheat grass) is encouraged when practicable with minimal disturbance to the ASI.

5. *Enhancement of an Upland Area of Special Interest.* Planting of additional vegetation within an Upland Area of Special Interest is permitted as indicated below:

- a. Plant materials shall be native to Central Oregon and similar to the existing plant species in the vicinity of the ASI.
- b. No permanent irrigation shall be installed.

6. *Development Credit.* When an applicant preserves an Upland Area of Special Interest, the development potential for the preserved area may be transferred to the balance of the parcel for development or applied to the subject property as indicated below:

- a. For residential lands where the property owner preserves an Upland Area of Special Interest, the property owner shall receive a density credit equivalent to the area being preserved as determined through the land use permit process.
- b. Where the applicant preserves an Upland Area of Special Interest, the property owner may initiate one or more of the activities listed below; provided, that the compensation does not exceed the benefit of the ASI protection as determined through the land use permit process.
 - Substitute the preserved ASI as the equivalent required on-site landscaping;

- Receive up to 10 percent reduction in the required on-site parking spaces;
- Reduce the front yard setback up to 50 percent of the standards required for the applicable zone;
- Develop accessory dwelling units on lots abutting an area of special interest.

c. For subdivision development, where the applicant preserves an Upland Area of Special Interest, the property owner may incorporate flexible lot development standards typical of a PUD when the area of special interest occupies more than 20 percent of the subject property.

d. Opportunities for tax benefit in accordance with the provisions of the Deschutes County Tax Assessor.

E. *Exceptions and Variances.* An exception or variance to the provisions of this code shall apply to property where no further land division is feasible. An exception or variance is permitted only when considered necessary to allow reasonable economic use of the subject property or to provide public benefit.

1. *Exceptions.*

a. Properties which have existing structures or site development within an ASI on the effective date of the ordinance codified in this chapter, and which do not conform to the standards stated herein, shall be considered nonconforming.

b. For existing platted lots where the location of an Upland Area of Special Interest results in a building area depth for a single-unit dwelling of 25 feet or less or a building envelope of 800 square feet or less, or a commercial building area depth of 100 feet, the front and side yard setbacks may be reduced up to 50 percent of the standard required for the applicable zone.

c. For existing platted lots where the entire lot is located within an ASI, the property may be developed with permitted uses, subject to the applicable land use review, in a manner that will have the least impact to the ASI.

d. The construction of public trails or paths that provide public access into the preserved Upland Areas of Special Interest.

2. *Variances.* A variance shall only apply to property where strict interpretation of the standards would preclude reasonable use of the land that could be expected to occur in the zone, and that the property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity.

Criteria: No variance request shall be granted unless the applicant can establish:

a. That special conditions exist which are peculiar to the subject property which make conformance to the standards of this chapter impractical.

b. The variance is the minimal deviance from the standards of this chapter needed to accomplish the objective.

c. The varied standard will conform to the purpose and objectives of the Bend Comprehensive Plan and this chapter.

In any case, the granting of a variance shall not adversely affect the potential for public access into an Area of Special Interest, adequate provision for fire protection or the visual integrity of the Area of Special Interest.

A variance to the standards of this chapter shall be processed as a "Land Use Permit" as defined in BDC Chapter [4.1](#), Development Review and Procedures. The Review Authority may attach conditions to any variance granted to ensure that the variance

meets the objectives of the Bend Comprehensive Plan and this chapter.

F. *Areas of Special Interest Mitigation Standards.* The development activities listed in subsections (B) and (D) of this section may trigger a requirement for mitigation. When a proposed development impacts an Upland Area of Special Interest by grading, excavation, or fill, the placement of impervious surfaces, or by the removal of vegetation, a mitigation plan prepared by a qualified professional shall be submitted to the Review Authority. The mitigation plan shall include the following:

1. The location of the impact, the existing conditions and area size of the resource prior to impact, the location and size of the proposed mitigation area, and a proposed mitigation plan that represents a 1:1 replacement value;
2. All proposed vegetation planted within the mitigation area shall be native to the region and similar to the vegetation removed. Species to be planted in the mitigation area shall replace those impacted by the development activity at a 2:1 ratio;
3. Additional mitigation measures may be required based on the nature of the impact such as:
 - Site reclamation.
 - Screening of structures, cuts or fills.
 - Increased vegetative quantities and/or sizes.

G. *Standards for Designating New Upland Areas of Special Interest.* Any individual or organization may apply for designating new Upland Areas of Special Interest. Designation of new areas shall be coordinated with the affected property owners. An "Upland Area of Special Interest" designation may be imposed or modified pursuant to an ASI analysis. During January of each "odd numbered" calendar year, individuals may apply to the City for new ASI designations to be added to the Bend Comprehensive Plan and Zoning Maps. The City will process applications received during this time without fee. During the same time period, the City shall review City-owned properties for potential new ASI designations. A new designation shall be processed as a map amendment to both the Bend Comprehensive Plan and Zoning Maps pursuant to the City of Bend Procedures Ordinance and this section.

1. *Procedure.*
 - a. The applicant shall file an application for a Bend Comprehensive Plan Map amendment and Zoning Map amendment on a form provided by the City and shall be accompanied by a filing fee, drawings and appropriate information.
 - b. The Review Authority shall conduct an evaluation. Using the "ASI" Analysis Methodology, the outcome of the analysis must establish that the proposed sites merit resource protection as an "Area of Special Interest" in order to proceed.
2. *ASI Analysis Methodology.* The City shall evaluate potential Upland Areas of Special Interest using the 1999 Natural Areas Scoring System (NASS) developed by the Bend Urban Land Survey team. The NASS is a numerical ranking which represents the relative values of a natural resource site. The following nine criteria and scoring system are used to determine the total score.

Natural Areas Scoring System

Criteria	Score	Explanation
Existing Site Use	6	Undeveloped
	4	Minor development
	2	Significant development
	0	Development that substantially reduces open space value

Criteria	Score	Explanation
Habitat Value	6	Supports a broad diversity of bird and/or animal life
	4	Supports moderate diversity of bird and/or animal life
	2	Limited habitat value
	0	Almost no habitat value
Trees and Vegetation	6	Mature trees, quality riparian vegetation or other significant vegetation
	4	Some trees, other lower quality vegetation
	2	Little significant vegetation
	0	Almost no vegetation
Natural Features	6	Uncommon or outstanding natural features
	4	Natural features of good quality
	2	Natural features are not distinctive
	0	Almost no natural features
Conflict with Adjacent Land Use	6	No conflicts
	4	Slight conflicts
	2	Moderate conflicts
	0	Severe conflicts
Wildlife Linkages	6	Quality connections to other wildlife areas
	4	Some connections
	2	Minor connections
	0	No connections
Scenic Resources	6	Highly attractive scenic resources
	4	Moderately attractive
	2	Limited scenic value
	0	Unattractive
Public Access	6	Potential for high use
	4	Potential for moderate use
	2	Low potential for use
	0	No potential for use
Type of Water Present	6	Has a variety of flows
	4	Year-round water source of good quality
	2	Seasonal water
	0	No water or low quality water source

H. *Delineation of New Upland Areas of Special Interest.* The ASI delineation is a more precise determination of the location of the designated area. The delineation is determined by several factors including but not limited to the topographical contours, the presence of significant trees and an on-site field location conducted by the Review Authority.

1. *Topography.* The boundary of the designated area will be determined to be at the toe of the slope or slope transition for upland features as illustrated on an adopted map specific to each ASI unless otherwise determined by the Review Authority based on field observation.
2. *Significant Trees.* The ASI boundary may include significant trees as defined in this code measured at the outer edge of the tree canopy based on aerial photos and field observation.
3. *Evaluation Methodology.* A potential new site within the “Upland Feature” category would be evaluated using the following method:

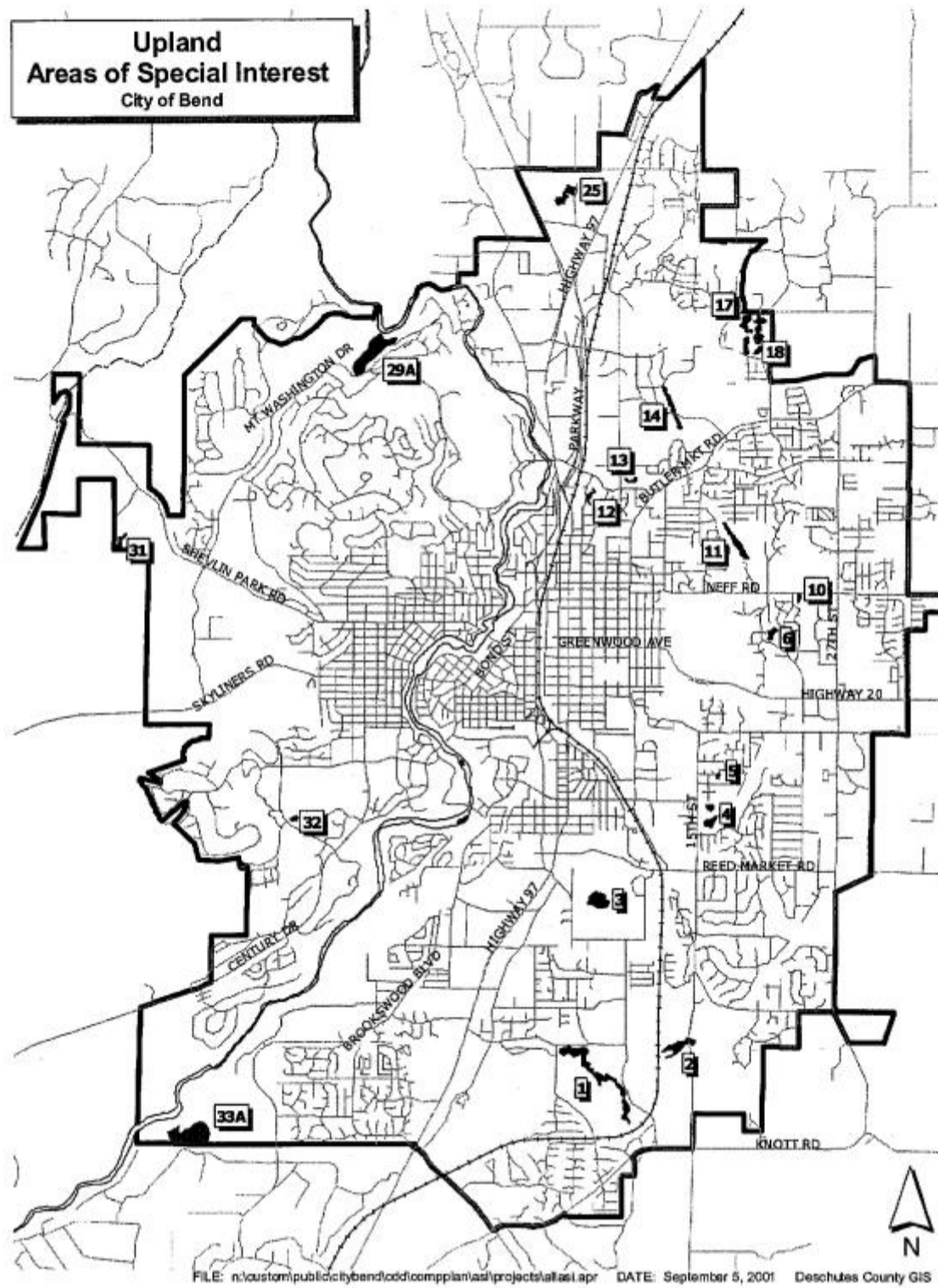


ASI No. 4 on the east side of 15th Street

Upland features are natural areas consisting of geologic features and/or vegetation that provide visual and spatial breaks in the developed landscape.

4. *Upland Features.*
 - a. Use the following three criteria:
 - i. Scenic Resources.
 - ii. Existing Site Use.
 - iii. Natural Features.
 - b. Apply the NASS scoring system for these criteria.
 - c. The combined score must total a minimum of 10 points.

Proposed new sites in the Upland feature category with a minimum score of 10 points would be subject to a second review using all nine NASS criteria. Under the second review, the site must total a minimum of 20 points to be further considered for adoption as an Upland Area of Special Interest.



FILE: n:\custom\public\city\end\add\complan\as\projects\all\as\apr DATE: September 5, 2001 Deschutes County GIS

[Ord. NS-2423, 2021; Ord. NS-2271, 2016; Ord. NS-2016, 2006; Ord. NS-1803, 2001]

The Bend Development Code is current through Ordinance NS-2456, passed October 19, 2022.

Disclaimer: The city recorder's office has the official version of the Bend Development Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

City Website: www.bendoregon.gov

Code Publishing Company

From: [Donna Owens](#)
To: [Patti Adair](#); [Phil Chang](#); [Tony DeBone](#); [Nick Lelack](#); [Lee Randall](#)
Cc: bcampbell@bendoregon.gov; mkebler@bendoregon.gov; amendez@bendoregon.gov; mriley@bendoregon.gov; [Alice Elshoff](#)
Subject: Worrell Wayside in 2023 and beyond
Date: Tuesday, December 27, 2022 5:14:21 PM

[EXTERNAL EMAIL]

Wishing you Seasons Greetings and Happy New Year!

And to extend a thank you for revisiting the parking situation on the downtown County Campus. It should be no surprise that we are thrilled with the BoCC support of the recommendation from the parking analysis that our little Worrell Wayside County Park will not be needed for additional parking in the mid term.

Over most of 2022, a community effort swelled to save Worrell Wayside from being redeveloped into parking. We know the work is just beginning; to weed, plant more native plants, work on the trails, level and repair picnic tables and benches; the list goes on.

We would like to officially adopt the park and work with the BoCC and County Staff to develop a Master Plan and annual operating plan. We have many ideas and many volunteers who want to stay engaged and some who want to “get their hands dirty” by helping.

There is also an opportunity during January of each “odd numbered” calendar year to apply to the City for a new Area of Special Interest designation to be added to the Bend Comprehensive Plan and Zoning Maps. Bend Development Code 2.7.700 outlines the process in more detail and its purpose is intended to protect valuable natural resources within the City of Bend’s Urban Growth Boundary while ensuring reasonable use of the property.

We would like to file an application with the City of Bend to create an Area of Special Interest (ASI) for Worrell Wayside Park. Any individual or organization may apply for this designation and of course we need to coordinate with Deschutes County, the landowner. It seems this would be a valuable designation and it provides an opportunity for the County to acknowledge ...”Bend is a community that values its natural features of trees and rocks...”

Time is critical for the ASI process and we realize this is likely not a high priority for the County. We are committed to stepping up to volunteer to file the application with your support; additionally, to work with your staff to develop a Worrell Wayside operating plan for 2023 assuming you will welcome our offer to adopt Worrell Wayside.

Thank you for considering items in this request and please advise if a different format is required and the best way to follow up.

Happy New Year and Best Regards,

Donna Owens

541-647-7079

owedonna@gmail.com

Sent from [Mail](#) for Windows



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Consideration of Board approval of Document No. 2022-939, amending the agreement with PacificSource for healthcare coordination services

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2022-939, amending the agreement with PacificSource for coordination of care for adults with mental illness.

BACKGROUND AND POLICY IMPLICATIONS:

PacificSource Community Solutions (PSCS) contracted with Deschutes County Health Services (DCHS) to provide oversight and care coordination for adults with serious and persistent mental illness. PSCS provided funding up to \$407,889.02 for the period January 1 through December 31, 2022, with two potential performance payments of \$11,181.17. This amendment to that contract extends the original term to June 30, 2023 and provides funding up to \$203,944.91, and a potential performance payment of \$11,181.17 for the period January 1 to June 30, 2023.

PSCS is an independent, wholly-owned subsidiary of PacificSource Health Plans, a non-profit community health plan. PSCS delivers healthcare solutions to businesses and individuals throughout the Northwest and has been providing Medicaid plans to Oregonians since 1995.

BUDGET IMPACTS:

Annual payment from PSCS is capped at \$203,944.91 for the amendment period January 1 through June 30, 2023. Additionally, a performance payment in the amount of \$11,181.17 may be available if established performance measures are met.

ATTENDANCE:

Kara Cronin, Behavioral Health Program Manager



AMENDMENT TO
PacificSource Community Solutions / Deschutes County Health Services
CHOICE MODEL SERVICES AGREEMENT

Effective January 01, 2023 the PacificSource Choice Model Services Agreement with Deschutes County Health Services is amended as follows:

- I. The expiration date of December 31st, 2022 shall be extended to June 30, 2023, per OHA guidance.
II. Table 1 shall be revised to include the following:

Table 1

Table with 2 columns and 3 rows. Header: Deschutes County Health Services. Row 1: Payment Period January 1, 2023 through June 30, 2023 | Not to exceed: \$203,944.91. Row 2: Eligible Performance Payment January 1, 2023 through June 30, 2023 | \$11,181.17. Row 3: Performance payment is received only if all regions meet the required performance measure in Section 8.3 of the Choice Model Services Agreement.

Except for the changes described herein, the Choice Model Services Agreement remains unchanged.

PACIFICSOURCE COMMUNITY SOLUTIONS

DESCHUTES COUNTY HEALTH SERVICES

By: _____
(Signature)

By: _____
(Signature)

Peter McGarry

(Print or type name)

Title: Vice President – Provider Network

Title: _____

Date: _____

Date: _____

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

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

Date:

Department:

Contractor/Supplier/Consultant Name:

Contractor Contact: **Contractor Phone #:**

Type of Document:

Goods and/or Services: PacificSource Community Solutions (PSCS) contracted with Deschutes County Health Services to provide oversight and care coordination for adults with serious and persistent mental illness (SPMI). PSCS provided funding up to \$407,889.02, with two potential performance payments of \$11,181.17 available if all regional PSCS Choice Model contractors met the performance measures, for the period January 1, 2022 through December 31, 2022.

This Amendment #1 extends the original contract term to June 30, 2023. Funding for the period January 1, 2023 through June 30, 2023 shall not exceed \$203,944.91 with a potential performance payment of \$11,181.17.

Background & History: PSCS delivers healthcare solutions to businesses and individuals throughout the Northwest and is an independent, wholly-owned subsidiary of PacificSource Health Plans a non-profit community health plan. PSCS has been providing Medicaid plans to Oregonians since 1995 and currently offers Oregon Health Plans (OHP) coverage to individuals who need help through the PacificSource Coordinated Care Organization (CCO).

Deschutes County Health Services provides Choice Model Services which are designed to promote more effective utilization of current capacity in facility based treatment settings and community based settings, increase care coordination and increase accountability at a local and state level. Services are designed to promote the availability and quality of individualized community-based services and supports so that adults with mental illness are served in the least restrictive environment possible and use of long-term institutional care is minimized.

Start Date: **Ending Date:**

Annual Value or Total Payment:

Insurance Certificate Received (check box)
Insurance Expiration Date:

Check all that apply:

- RFP, Solicitation or Bid Process
- Informal quotes (<\$150K)
- Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? Yes No

If **No**, has budget amendment been submitted? Yes No

Is this a Grant Agreement providing revenue to the County? Yes No

Special conditions attached to this grant: Monthly invoices and Client Status Reports

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: Yes No

Contact information for the person responsible for grant compliance: Name: _____
Phone #:

Departmental Contact and Title: Kara Cronin, Program Manager
Phone #: 547-322-7526

Department Director Approval: Signature: Tom Kuhn
Tom Kuhn (Dec 27, 2022 14:37 PST)
Email: thomas.kuhn@deschutes.org
Title: Acting HS Director
Company: Deschutes County Health Services

Distribution of Document: Grace Evans, Contract Specialist, Deschutes County Health Services.

Official Review:
County Signature Required (check one): BOCC Department Director (if <\$50K)
 Administrator (if >\$50K but <\$150K; if >\$150K, BOCC Order No. _____)

Legal Review _____ Date _____

Document Number 2022-939



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 11, 2023

SUBJECT: Request to repurpose an existing mediation full time position to support the School-Based Health Center (SBHC)

RECOMMENDED MOTION:

Move approval of repurposing position #1737 for assignment to the School-Based Health Center program.

BACKGROUND AND POLICY IMPLICATIONS:

As part of an effort to meet identified needs as outlined in the Central Oregon Regional Health Improvement Plan and based on national statistics regarding the mental health of youth and young adults, Deschutes County Health Services conducted a needs assessment which examined School Based Health Center (SBHC) data from the 2020-2021 school year and compared it to national averages. The data illuminates major staffing shortages for Redmond and Sisters for equitable access and identifies a need to expand access to mental health care.

According to the Portland State University Population Research Center, Deschutes County has had a stunning growth rate of 28.9% from 2010-2021. Local data through the 2019 RHIP reports that 35.6% of 11th graders seriously considered attempting suicide over the past year. The 2020-2024 RHIP outlines the need to “expand access to primary care clinics (locations, hours such as night/weekends, school based health centers).” The RHIP further outlines the needs for equitable access to services, focusing on access to screening, early intervention services, substance abuse treatment and increased coordination with outpatient treatment providers through SBHC.

Both Redmond High and Sister’s SBHC currently have an allocated 0.5 FTE to their SBHC location. Data suggests that 2.3 FTE in Sisters and 6.5 FTE in Redmond are needed to support national averages. In order to close the identified unmet need we are proposing to increase support to both of these locations, making each position a 1.0 FTE through the utilization of an unfilled BHS-II 1.0 position previously allocated to the Mediation Program, which was transferred to the Circuit Court in 2022-2023 fiscal year. Repurposing this position does not increase Health Services FTE, and will help close the gap of unmet needs in SBHCs.

BUDGET IMPACTS:

With a start date of February 1, the position will cost \$46,209 in FY23 and \$121,937 in FY24. Both years will be covered by increases to capitation payments, which is expected in the 2023 PacificSource agreement. These increases to capitation are part of the requirements to PacificSource from the state to increase funding the Behavioral Health providers.

ATTENDANCE:

Shannon Brister, Behavioral Health Program Manager
Holly Harris, Behavioral Health Deputy Director

“I don’t know who I would have gone to if I didn’t find out about the health center. -SBHC client”

School-Based Health Centers (SBHCs) are medical clinics that offer primary care services either within or on the grounds of a school. With easy access to health care in a school setting, SBHCs reduce barriers such as cost, transportation, and concerns surrounding confidentiality that often keep children and youth from seeking the health services, they need. SBHCs provide a full range of physical, mental and preventive health services to all students, regardless of their ability to pay.

SBHCs have existed in Oregon since 1986, offering 78 certified SBHC sites throughout Oregon. Deschutes County Behavioral Health began providing School Based Health Services in 2011, offering seven (7) certified SBHC’s in Sisters, Redmond (2), Bend (2), LaPine and Gilchrist. In 2021, Deschutes County SBHC provided a served 4,148 clients, and offering 5,420 total visits.

According to the Portland State University Population Research Center, Deschutes County has had a stunning growth rate of 28.9% from 2010-2021. Local data through the 2019 Central Oregon Regional Health Assessment indicates that 35.6% of 11th graders seriously considered attempting suicide over the past year. Outlined in the 2020-2024 Regional Health Improvement Plan (RHIP) strategies outlines the need to “expand access to primary care clinics (locations, hours such as night/weekends, school based health centers).’ The RHIP further outlines the needs for “Equitable Access to Services” focusing on access to screening, early intervention services, substance abuse treatment and increased coordination with outpatient treatment providers through SBHC.

As part of an effort to meet, the identified needs outlined in the RHIP and based on national statistics regarding youth/young adults mental health needs we identified the need to increase support in both Redmond and Sisters SBHC’s. Both Redmond High and Sister’s SBHC have allocated a .5 FTE. In order to serve the unmet need identified we need to increase support to both of these locations by making each position a 1.0 FTE.

Below we have taken the 2020-21 School Year Enrollment and compared that with the national averages. The data suggests that while 1 out of 4 youth report mental health challenges only 13.7% will seek treatment. It also proposes that based on our volume of Mental Health Services offered in SBHC’s we are not able to meet the demand with current staffing levels. While data recommends that Bend/LaPine would need 37.1 therapists, we recognize that youth who live in Bend have better access to panel providers, services through outpatient clinics offered by Deschutes County Behavioral Health Clinics (Wall Street, Courtney, and Antler). The data illuminates major staffing shortages for Redmond and Sisters for “equitable access” and a need to “expand access “to mental health care.

School Year 2020-21			
District	Bend LaPine	Redmond	Sisters
Total Enrollment	17,542	7,069	1,076
1 out of 4 w/MH Issues	4386	1767	269
13.7% or Average of Adolescents Seen for MH	2403	968	147

SBHC Clients	384	239	62
% of Enrolled Served in SBHC Care	2%	3%	6%
SBHC Visits	1215	1534	460
Average of Visits	3.2	6.4	7.4
FTE Requirement for Meeting National Average of 13.7 % Treatment*	37.1	14.9	2.3

In partnership with schools and medical providers as part of the integrated SBHC team the following additional information was offered to support the need:

- Parent Request - School counselors have lots of requests from parents/students asking for additional mental health resources. We just have such a limited number of community-based resources. This would be a blessing for our families!
- Resources - Substance use and mental health referrals to our partner Rimrock Trails have already proven to overload the system. There's a current waitlist and parents are desperate for support.
- Student Struggles - As a result of the pandemic, we are seeing lots of struggles. At the high school level, we are seeing lots of students struggling with eating disorders, anxiety, depression, panic disorders, substance use.
- Culture of Care - The SBHC at Lynch Elementary is a bustling pillar in the community. Community members and schools rely on their services and rely on someone being there full-time. We'd like Redmond HS's location to be the same. A part-time FTE makes it so difficult to really create a culture of care. We'd love for our community to know that we are available and ready to serve.
- Reliability - Part-time schedules change often and make it very difficult to be available for families. Families that may need a higher level of support may not come back a second time.
- Equity - It's would be great to have fully staffed SBHC like Lynch.
- Successful Outcome - I have chatted with counselors and parents that are utilizing Redmond HS's site and are so thankful. In a Kids Center meeting, it was shared that one of our kiddos was accessing support at Redmond HS's SBHC and it felt so good to have that student be able to walk to their appointment.

“Without the health center — knowing how to handle myself in class and deal with my health issues would be immensely harder. The counseling services offered also offer a huge breath of relief. They’ve helped me figure things out and make things manageable as well as set up appointments for treatment and care outside of class time. Both the physical and mental health services we have are a huge benefit/asset to our school! -SBHC client”