



## BOARD OF COMMISSIONERS

### BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, MARCH 1, 2023

Barnes Sawyer Rooms - Deschutes Services Building

(541) 388-6570 | [www.deschutes.org](http://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](http://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](mailto: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](https://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](mailto:brenda.fritsvold@deschutes.org).

## CALL TO ORDER

## PLEDGE OF ALLEGIANCE

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

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

## CONSENT AGENDA

1. Lease with the Department of Environmental Quality for continued use of an air-monitoring site located at the Deschutes County Road Department
2. Consideration of Board Signature of Order No. 2023 - 009, appointing Health Services Director's Designees
3. Consideration of Purchase Agreement, Document No. 2023-061, and Dedication Deed, Document No. 2023-062, from Ted K. Gilbert and Kerry S. Gilbert for Right of Way for the Deschutes Market Road/Hamehook Road Intersection Improvement Project
4. Consideration of Board Signature on letter appointing Loren Kellogg for service on the Deschutes County Extension / 4H Budget Committee.
5. Approval of minutes of the February 17, 2023 BOCC Legislative Update meeting
6. Approval of the minutes of the February 1, 8 and 13, 2023 BOCC meetings

## ACTION ITEMS

*Note: Item Nos. 7 - 11 pertain to the creation of the Deschutes County Road Agency, and will be taken up starting at 9:00 am in the order as shown*

7. **9:00 AM** Approval and signature of Document No. 2023-131, an Intergovernmental Agreement creating the Deschutes County Road Agency

*\*\*convening as the governing body of the Deschutes County 911 Service District\*\**

8. Approval and signature of Document No. 2023-131, an Intergovernmental Agreement creating the Deschutes County Road Agency
9. Public Hearing. Adoption by Emergency, of Ordinance No. 2023-006, an ordinance ratifying the creation of an intergovernmental entity known as the Deschutes County Road Agency

*\*\*reconvening as the governing body of Deschutes County\*\**

10. Public Hearing: Adoption by Emergency of Ordinance No. 2023-005, an ordinance ratifying the creation of an intergovernmental entity known as the Deschutes County Road Agency
- [11.](#) Approval of Resolution 2023-008, creating a new fund and increasing appropriations within the 2022-2023 Deschutes County Budget
- [12.](#) **9:30 AM** Tiny Watts Solar Economic Development Loan Request
- [13.](#) **9:40 AM** Policy Revisions: General Administrative Policies 12, 13, and 16
- [14.](#) **9:50 AM** Consideration of Chair Signature of Document No. 2023-181, a Notice of Intent to Award Contract for the Supplying and Hauling of Crushed, Uncoated Rock for Chip Seal 2023 Contract
- [15.](#) **9:55 AM** Deliberations on the request to change the Comprehensive Plan designation of 59 acres in the 21400 block of Bear Creek Road from Agricultural to Rural Residential Exception Area with a corresponding Zone change from Exclusive Farm Use to Multiple Use Agricultural (Marken)
- [16.](#) **10:25 AM** Second reading of Ordinance No. 2023-001, 2023 Housekeeping Amendments to the Comprehensive Plan
- [17.](#) **10:30 AM** Second reading of Ordinance No. 2023-004, Amateur (HAM) Radio Text Amendments

## **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.*

18. Executive Session under ORS 192.660 (2) (d) Labor Negotiations

## **ADJOURN**



# BOARD OF COMMISSIONERS

## AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** March 1, 2023

**SUBJECT:** Lease with the Department of Environmental Quality for continued use of an air-monitoring site located at the Deschutes County Road Department

**RECOMMENDED MOTION:**

Move approval of Board signature of Document Number 2023-044, a lease with the Department of Environmental Quality for continued use of an air-monitoring site located at the Deschutes County Road Department

**BACKGROUND AND POLICY IMPLICATIONS:**

In 2008, the County and the Department of Environmental Quality (DEQ) entered into an agreement to allow DEQ to install air quality monitoring equipment at the Deschutes County Road Department located at 61150 SE 27<sup>th</sup> Street in Bend.

This location is ideal for monitoring as it provides unobstructed exposure in many different directions and is situated downwind from possible air pollution sources. The area includes 144 square feet with a 7'x7' prefabricated instrument shelter and an adjacent 30' meteorological tower. The equipment transmits collected data to DEQ.

DEQ leases monitoring sites across the state to operate its air quality monitoring program. Collected data is used to inform the public regarding pollution concentrations and long-term trends from a wide array of airborne pollution sources. DEQ does not pay for monitoring sites, but does provide a flat rate utility payment of \$360/annually.

The lease agreement will be reviewed annually and may be extended by one-year terms by a letter of mutual agreement, and the utility fee may also be amended by mutual agreement as needed. The lease may be terminated at any time by providing sixty (60) days written notice.

Air quality in Oregon can be viewed at <https://oraqi.deq.state.or.us/home/map> or by downloading the "OregonAir" mobile application.

**BUDGET IMPACTS:**

\$360 per year paid to the Deschutes County Road Department via utility reimbursement.

**ATTENDANCE:**

Deborah Cook, Property Specialist

Kristie Bollinger, Property Manager

LEGAL COUNSEL  
Deschutes County

## AIR QUALITY MONITORING SITE LEASE

THIS LEASE ("**Lease**") is entered into by and between **Deschutes County, a political subdivision of the State of Oregon**, ("**Landlord**"), and the State of Oregon ("**State**") acting by and through its Department of Environmental Quality ("**Tenant**"). This Lease is effective when it has been executed by both Landlord and Tenant (the "**Parties**"), and all required approvals have been received (the "**Effective Date**").

### BACKGROUND

- A. Landlord owns real property in Bend, Deschutes County, Oregon, at The Deschutes County Road Department location at 61150 SE 27<sup>th</sup> Street. (the "**Property**").
- B. Tenant operates an air quality monitoring program designed to provide public information regarding pollution concentrations and long-term trends from a wide array of airborne pollution sources.
- C. Tenant desires to renew and update the agreement to lease a portion of the Property for use in connection with its air quality monitoring program. This property provides a favorable location for an air monitoring site since it provides unobstructed exposure in many different directions and is situated down-wind from many possible air pollution sources. DEQ has monitored air quality at this location since 2008 and desires to remain at the Property for long term data continuity.
- D. Landlord desires to lease a portion of the Property to Tenant for air quality monitoring purposes.
- E. Lease entirely replaces and cancels the Revocable License 2008-026 as of March 1, 2023.

The Parties agree as follows:

#### 1. LEASE OF PREMISES

Landlord hereby leases to Tenant a portion of the Property which includes an approximately 12ft x 12ft area located 110.5 ft westerly of the Hazmat Building, 80 ft Northerly of Building E, and 11.2 ft Southerly of chain link fence and is more particularly described and depicted in **Exhibit 1]** (the "**Premises**"), together with the right of unrestricted access, as further described in Section 10.

#### 2. PERMITTED USE

Tenant may use the Premises for: (1) the construction, installation, operation, maintenance, repair, replacement and upgrade of a air quality monitoring station consisting of a 7ft x 7ft x 8ft high prefabricated instrument shelter and an adjacent 30ft meteorological tower, **together with**

any **Third Party (as defined below) equipment** (the “**Monitoring Station**”); and (2) the transmission of communications signals from the Monitoring Station. (collectively, the “**Permitted Use**”). Subject to the insurance and indemnification requirements provided in Sections 6 and 8, and in connection with Tenant’s Permitted Use, third parties, including but not limited to Environmental Protection Agency (“EPA”) auditors, private researchers, representatives from academia, and industry representatives (the “**Third Parties**”), may also access the Premises with DEQ personnel and temporarily place equipment thereon for monitoring, evaluation, and comparison study purposes.

**3. TERM**

- (a) The term of this Lease is one (1) year, commencing on the Effective Date (the “**Term**”).
- (b) Subject to the termination provisions in Section 5, at the expiration of the Term, this Lease will automatically renew for successive one (1) year terms (each a “**Renewal Term**”). Unless this Lease has been amended pursuant to Section 21, and subject to Section 4, Rent, each Renewal Term will be on the same terms and conditions as the Term.

**4. RENT**

- (a) The revocable access license issued by Landlord shall be without cost or charge to DEQ.
- (b) Tenant shall reimburse Landlord for non-submetered electrical service at agreed-upon flat rate detailed in section 12.
- (c) The Parties may renegotiate Rent prior to each Renewal Term.

**5. TERMINATION**

- (a) This Lease may be terminated as follows:
  - (A) By agreement of the Parties at any time.
  - (B) By Landlord upon sixty (60) days prior written notice to Tenant for any reason,
  - (C) In the event of a default by a Party under Section 13, by the non-defaulting party after thirty (30) days prior written notice, if the defaulting party remains in default after the applicable cure period set forth in the notice.
  - (D) Immediately, or at such later date as stated by Tenant upon written notice to Landlord, if Tenant: (1) determines in its sole discretion that the Monitoring Station does not meet Tenant’s requirements for continued use as described in Section 2; or (2) experiences interference, in accordance with Section 7.
  - (E) By Tenant upon written notice to Landlord for any reason, at any time prior to Tenant’s placement of the Monitoring Station at the Premises.
  - (F) By Tenant upon sixty (60) days prior written notice to Landlord for any reason.
  - (G) By Tenant in accordance with Section 14. The termination pursuant to this provision shall be without penalty and shall not constitute an event of default under any provision of this Lease.

**6. INSURANCE**

(a) Tenant is self-insured pursuant to the State of Oregon Insurance Fund, ORS Chapter 278, and the state self-insurance program. Upon request by Landlord, Tenant shall provide written proof of self-insurance to Landlord.

(b) Tenant shall require all Third Parties, excluding EPA, to: (A) obtain and maintain insurance equivalent to the insurance provided by Tenant hereunder, or a commensurate program of self-insurance, prior to accessing the Premises; and (B) maintain such insurance while accessing and using the Premises.

**7. INTERFERENCE**

(a) Landlord shall not grant, after the date of this Lease, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the Monitoring Station, the operations of Tenant or the rights of Tenant under this Lease.

(b) Landlord shall not use, nor shall Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the Monitoring Station, the operations of Tenant or the rights of Tenant under this Lease. Landlord shall cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the Parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant may, in addition to any other rights that Tenant may have at law or in equity for Landlord’s breach of this Lease, elect to enjoin such interference or to terminate this Lease upon notice to Landlord.

**8. CONTRIBUTION/THIRD PARTY INDEMNIFICATION**

(a) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “Third Party Claim”) against a Party (the “Notified Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s contribution obligation under this Section 8 with respect to the Third Party Claim.

(b) With respect to a Third Party Claim for which Tenant is jointly liable with Landlord (or would be if joined in the Third Party Claim ), Tenant shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Landlord in such proportion as is appropriate to reflect the relative fault of Tenant on the one hand and of Landlord on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Tenant on the one hand and of Landlord on the other hand shall be determined by reference to, among other



things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Tenant's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State of Oregon had sole liability in the proceeding.

(c) With respect to a Third Party Claim for which Landlord is jointly liable with Tenant (or would be if joined in the Third Party Claim), Landlord shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Tenant in such proportion as is appropriate to reflect the relative fault of Landlord on the one hand and of Tenant on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Landlord on the one hand and of Tenant on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Landlord's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

(d) TENANT SHALL REQUIRE ALL THIRD PARTIES, EXCLUDING EPA, TO INDEMNIFY AND DEFEND LANDLORD FROM AND AGAINST ANY LIABILITY FOR PERSONAL INJURY OR DAMAGE TO LIFE OR PROPERTY ARISING OUT OF, OR RELATING TO THE INTENTIONAL MISCONDUCT OR RECKLESS OR NEGLIGENT ACTS OR OMISSIONS OF THIRD PARTIES OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.

**9. REPRESENTATIONS AND WARRANTIES**

(a) Landlord represents and warrants as follows:

- (A) Landlord is a public County Government, duly organized and validly existing. Landlord has the power and authority to enter into and perform this Lease.
- (B) When delivered and executed, this Lease will be a valid and legally binding obligation of the Landlord enforceable in accordance with its terms.
- (C) Landlord owns the Property.
- (D) To the best of Landlord's knowledge, the Property is in full compliance with applicable state and federal environmental laws and regulations affecting it.
- (E) The Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Lease.
- (F) Landlord's execution and performance of this Lease does not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord.

(G) The individual signing this Lease for Landlord has the authority to enter into this Lease on behalf of Landlord.

(b) Tenant represents and warrants as follows:

(A) It has the right, power and authority to enter into and perform this Lease.

(B) When delivered and executed, the Lease will be a valid and legally binding obligation of Tenant, enforceable in accordance with its terms.

(C) The individual signing this Lease for Tenant has the authority to enter into this Lease on behalf of Tenant.

**10. ACCESS**

Landlord hereby grants to Tenant, its employees, agents, contractors, Tenant’s successors and assigns, and Third Parties at all times throughout the Term of this Lease and any Renewal Term, **twenty-four (24) hour per day, seven (7) day per week access to the Premises.** In addition, Landlord agrees to provide to Tenant and Third Parties such codes, keys and other instruments necessary for such access at no additional cost.

**11. REMOVAL/RESTORATION**

All portions of the Monitoring Station brought onto the Property by Tenant shall be and remain Tenant’s personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Monitoring Station installed or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature installed or placed by Tenant on the Premises remain the property of Tenant and may be removed by Tenant at any time during the Term. Within thirty (30) days of the termination of this Lease, Tenant shall remove the Monitoring Station and Tenant shall, to the extent reasonable, restore the Premises to its condition at the commencement of this Lease, reasonable wear and tear and loss by casualty or other causes beyond Tenant’s control excepted.

**12. MAINTENANCE/UTILITIES**

(a) Tenant shall keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord shall maintain and repair the Property, excluding the Premises, and access thereto, in good and useable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant shall pay all utility charges for electricity or any other utility used by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant may: (A) pay an agreed-upon flat fee to Landlord for Landlord-provided electricity; or (B) submeter from the Landlord at Tenant’s cost and expense. The agreed-upon flat rate fee to Landlord is **\$30.00 monthly**, payable in an annual payment of \$360.00.

(c) The Parties may renegotiate the agreed-upon flat rate prior to each Renewal Term.

**13. DEFAULT AND RIGHT TO CURE**

(a) The following will be deemed a default by Tenant and a breach of this Lease: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of

written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Lease within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant (1) has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence and (2) has a good faith basis upon which to challenge the alleged failure. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord may exercise any and all rights and remedies available to it under law and equity.

(b) Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Lease within forty-five (45) days after receipt of written notice from Tenant specifying the failure will be deemed a default by Landlord. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant may exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

**14. AVAILABLE FUNDS**

The State of Oregon's payment obligations under this Lease are conditioned upon Tenant receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Tenant, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Lease. Nothing in this Lease is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any law regulating liabilities or monetary obligations of the State of Oregon.

**15. ASSIGNMENT/SUBLEASE**

Tenant shall not assign this Lease or sublet any portion of Tenant's rights under this Lease without Landlord's prior written consent, which shall not be unreasonably withheld.

**16. NOTICES**

All notices, requests, demands and communications hereunder must be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices must be addressed to the Parties as follows:

If to Tenant: Oregon Dept. of Environmental Quality – LEAD  
7202 NE Evergreen Pkwy. Suite 150  
Hillsboro, OR 97124-6166  
Attn: Air Quality Monitoring Manager

If to Landlord: Deschutes County Property Management  
If to Payment: P.O. Box 6005  
Bend, OR 97703  
Attn: Property Manager (541) 385-1414

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

**17. SEVERABILITY**

If any term or condition of this Lease is found unenforceable, the remaining terms and conditions will remain binding upon the Parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Lease then the Lease may be terminated by either Party on ten (10) business days prior written notice to the other party hereto.

**18. CONDEMNATION**

If during the Term there is a taking or damaging of all or any portion of the Property by the exercise of any governmental power, whether by legal proceedings or otherwise, or a transfer by Landlord either under threat of condemnation or while legal proceedings for condemnation are pending (a “*Condemnation*”), such that there can be no reasonable use of the Property by Tenant, this Lease will terminate on the date the government agency has the right to possession of the property being condemned. In the event of Condemnation, Landlord shall reimburse Tenant for any prepaid Rent on a prorata basis. If during the Term there is a partial taking of a part of the Property by condemnation, and Landlord and Tenant determine that a reasonable use can be made of the Premises, then this Lease will remain in effect. In the event of a partial taking of the Property, the Parties shall negotiate revised Rent if the Tenant’s use of the Premises is adversely impacted or restricted in any manner.

**19. CASUALTY**

If any part of the Monitoring Station or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant’s sole determination, then Tenant may terminate this Lease by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant may collect all insurance proceeds payable to Tenant on account thereof, and Landlord shall reimburse Tenant for any prepaid Rent on a prorata basis.

**20. LIMITATION OF LIABILITY**

Except for the liability arising under or related to Section 8 of this Lease, neither Party is liable to the other for any indirect, incidental, consequential, or special damages under this Lease.

**21. AMENDMENT AND WAIVER**

This Lease cannot be amended, modified or revised unless done in writing and signed by an authorized agent of Landlord and an authorized agent of Tenant. No provision may be waived except in a writing signed by both Parties.

**22. ENTIRE AGREEMENT**

This Lease and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the Parties hereto and supersede all prior offers, negotiations and agreements with respect to the subject matter of this Lease.

**23. GOVERNING LAW, VENUE AND CONSENT TO JURISDICTION**

This Lease shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between Landlord and Tenant shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. **LANDLORD, BY EXECUTION OF THIS LEASE, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT.**

**24. COUNTERPARTS**

This Lease may be executed in two or more counterparts, by facsimile or otherwise, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all Parties are not signatories to the same counterpart.

**IN WITNESS WHEREOF**, the Parties have caused this Lease to be effective as of the last date written below.

**“LANDLORD”**

**“TENANT”**

Deschutes County  
Board of County Commissioners

State of Oregon acting by and through its  
Department of Environmental Quality

By: \_\_\_\_\_  
Print Name: ANTHONY DEBONE  
Title: Chair  
Date: \_\_\_\_\_

By: Tom Roick  
Print Name: Tom Roick  
Title: Air Quality Monitoring Manager  
Date: 1/31/2023

By: \_\_\_\_\_  
Print Name: PATTI ADAIR  
Title: Vice Chair  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: PHIL CHANG  
Title: Commissioner  
Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Recording Secretary

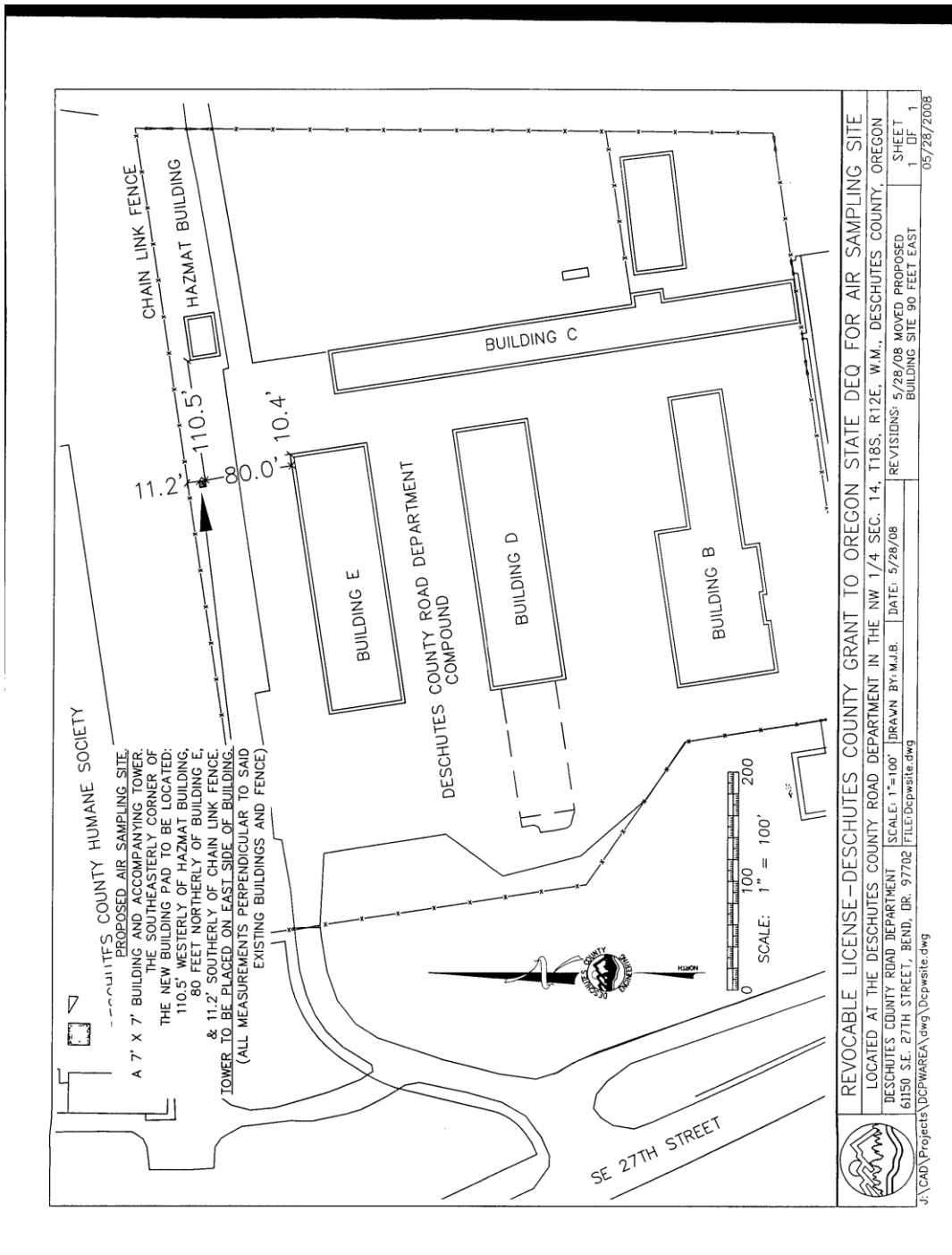
**EXHIBIT 1**

**DESCRIPTION AND DEPICTION OF PREMISES**

**A 7ft x 7ft x 8ft high prefabricated instrument shelter and an adjacent 30ft meteorological tower. This infrastructure has been established since 2008.**



### Location of Premises on Property.





Department of Administrative Services

# POLICY MANUAL

Issuing Program: Risk Management

**Subject:** Liability Self-Insurance Policy Manual  
(Agency Liability Policy)

Number

125-7-201

Effective until cancelled.

Revised July 1, 2015.

Approval

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Department of Administrative Services

POLICY MANUAL

Issuing Program: Risk Management

Subject: Liability Self-Insurance Policy Manual (Agency Liability Policy)

Number: 125-7-201  
Effective until cancelled.  
Revised July 1, 2015.  
*Dany Evans*  
Approval

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## I. Purpose

Under Oregon Revised Statutes (ORS) Chapter 278 and ORS 30.260-300, the state pays its own cost of resolving tort liability claims. The state Insurance Fund provides self-insurance that pays the state's legal liability for torts and legal defense cost. These services are provided to state agencies by the Department of Administrative Services, Enterprise Goods & Services Risk Management program.

This purpose of this policy manual is to establish the liability self-insurance coverage, for state agencies alone, by the Insurance Fund and the conditions, standards, and other requirements that govern or control the use of this coverage. It does not purport to create, define or otherwise affect the rights or powers of anyone except the state's agencies. It does not limit or define the state's rights or defenses in any action at law. This policy does not affect any insurance policy we may own. Should any provision in this policy be contrary to law, the law prevails. This edition applies to all claims with a date of loss on or after the effective date of this policy.

Changes and exceptions to the terms of this policy manual are only effective if the Enterprise Goods & Services Administrator or Risk Manager signs a written policy Amendment or Endorsement. This policy manual is subject to change without prior notice.

Additional liability coverage and related information may also be available under:

- Policy 125-7-101, Property Self-Insurance Policy Manual;
- Policy 125-7-202, Liability Self-Insurance Policy Manual for State Officers, Employees, and Agents;
- Policy 125-7-203, Employee Dishonesty Self-Insurance Policy Manual;
- Policy 125-7-204, Volunteer Injury Coverage Policy
- Policy 125-7-301, Aircraft and Pilot Standards
- Policy 125-7-401, Alcohol Risk Control Policy
- Policy 125-7-501, State Business & Travel Status Policy, and
- OAR Chapter 125, Division 155, State Vehicle Use and Access

## II. Self-Insurance Agreement

The Insurance Fund pays tort liability claims for harm wrongly or negligently done by or on behalf of the state and defends against claims including claims that appear false or unfounded. This self-insurance policy includes the following lines of coverage for state agency tort liability, unless the loss is otherwise excluded or limited in this policy manual:

- A. General Tort Liability
- B. Vehicle Liability & Uninsured/Underinsured Motorist
- C. Fair Labor Standards Act Claims

### III. General Definitions and Exclusions

Throughout this policy manual, “you” and “your” refer to the state and its agencies. “Staff” refers to your officers, employees and agents unless otherwise specified. “We” “us” and “our” refer to the Department of Administrative Services, Enterprise Goods & Services Risk Management. General Definitions and Exclusions apply to all lines of coverage. Other terms have the meaning stated in each respective line of coverage definition and exclusion section.

#### General Definitions

- A. **Agency** means a board, commission, department, division, institution or branch of the State of Oregon. A public corporation is an agency if we have agreed in writing to provide its legal liability.
- B. **Agent.** The courts are likely to decide someone is your agent if that person performs a duty or function on your behalf and is subject to the direction and control of you or your staff. That direction and control applies to the method, manner, means, location and timing of the duty or function.
- C. **Claim** means a formal assertion, notice or demand seeking damages by or on behalf of a third party alleging that you or your staff harmed someone by committing a tort.
- D. **Contract** means any purported agreement or promise which is asserted to impose upon you a legal duty to perform or refrain from some action. The contract need not meet all the contractual tests of legal enforceability. It may be created by operation of law or by federal or state administrative regulations which define benefits or procedures you have chosen to administer.
- E. **Damages** mean all sums recoverable by law from any liability claim covered under this policy manual including judgment awards, settlements, penalties and awards of plaintiff's attorney fees or court costs in connection with a tort claim.
- F. **Losses** mean our costs of defense, damages and related costs for claims against you or your staff. If a claim names multiple defendants or an incorrect defendant, we will determine to whom losses will be charged for premium allocation purposes. Losses also include employee dishonesty losses under this policy manual.
- G. **Property Damage** means injury to or destruction of tangible property.
- H. **State Business (or official state business or state duties)** means any activity directed and controlled by a state agency to advance the lawful policies and purposes of the agency. Note: State law requires a narrow interpretation of state business when it involves any use of vehicles. Coverages under this policy require that you were acting in the scope of your employment or duties. Essentially that means you were engaged in state business at the direction and control of your agency. To determine that, we may look at your position description, your agency's enabling statutes, and other helpful sources.
- I. **Tort** is defined by statute as the breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy.

In evaluating a claim to determine whether it is covered as a tort, we look for these elements:

1. A breach by you or your staff of a legal duty that is not established by a contract or under related contractual theories.
2. The breach of duty must inflict injury to a particular person or class in a manner that is distinct from the injury that the breach inflicts on the general public.
3. The law must provide for, and the claimant must be claiming, damages or some type of protective relief (injunction, declaratory judgment, writ of mandamus) for that injury.
4. Special injury to a particular person or class is a legal element of the relevant claim or of its statutory remedy. (If the complainant may obtain the same remedy without alleging an injury different from the injury to the general public, the claim generally is not a tort.)
5. The procedural conditions for bringing a particular claim are consistent with and can be satisfied without violating the Tort Claims Act (ORS 30.260-300) procedural system (statute of limitations, notice requirements, etc.).
6. There are indications of a legislative intent that the Tort Claims Act not apply to the claim (for example, the claim could already have been brought against the state before the Tort Claims act was passed in 1967).

The first three are essential elements. The rest help us determine claims which remain arguable.

- J. **Volunteer:** An unpaid person appointed by a state agency to work on its behalf. Volunteers are appointed to do state business under agency direction and control. They receive no remuneration. In this policy, volunteer and agent may be used interchangeably unless the context requires otherwise. See further definition of agent.

## General Exclusions

1. Costs of preventing claims. Each agency must take reasonable steps to prevent wrongful acts or foreseeable harm to people who may encounter its property, staff or activities.
2. Legal costs you incur before you report a claim to us or any costs or claims which you have already paid or promised to pay without our approval. Note: You may not deny, approve, pay or defend tort claims for yourself. You may not pay someone to withdraw or abandon a tort claim. We must administer all claims. Even without this exclusion, no state official may, without statutory authority, use public monies to pay anyone for any kind of demand or claim which is not a valid obligation of the State. Avoid personal liability; call us or your counsel if you are unsure.
3. Costs of complying with a protective remedy. This exclusion also applies to fines, penalties, contempt citations or judgments for your delayed conformance to a court's order. Awards of plaintiff's attorney fees are not excluded.
4. Double-dipping. Court awards or judgments for (i) payment of goods or services you have received and for which you should have paid; (ii) For the payment of monies you are withholding in your accounts; or (iii) Payment or transfer of funds required by law, rule or contract which you have refused to pay. This exclusion applies, for example, to wages and

related taxes or benefits you may be ordered to pay. It applies to money the court concludes you are wrongfully withholding. Awarded penalties and plaintiff's costs and your defense are not excluded.

5. Civil fines or penalties imposed by federal or state agencies.
6. Defense or damages for alleged torts by your staff which are excluded from coverage by the Liability Self-Insurance Policy Manual for Officers, Employees and Agents.
7. Contractual liability. Liabilities created by contract. You may not extend coverage to anyone who is not covered as a matter of law and of fact without our knowledge and written permission. Only we may obligate the Insurance Fund or issue certificates of self-insurance or endorsements thereto on behalf of the state.
8. Medical treatment costs for persons in state custody unless treatment is for injury caused by a tort committed by you or your staff.
9. Non-torts. Except as provided for mixed claims, defense or damages for claims that do not meet the definition of 'tort', and claims that we have historically regarded as 'non-tort' in our administration of the Insurance Fund. A list of these "non-tort" claims includes, but is not limited to the following:
  - a. Administrative Procedures. Administrative hearings or other proceedings under ORS Chapter 183 or other statutes, including judicial review or appeals of your administrative orders, hearings or rules.
  - b. "CERCLA" Cost-Recovery Claims. Claims/actions brought by the United States Government, or any other person, for recovery of costs incurred in removing or cleaning-up hazardous substances, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq.
  - c. Contract Issues. Breach of contract, contract disputes, disputes over requests for proposals, bid openings and selection, and related causes of action.
  - d. Election Law Claims. Appeals from acts or omissions of election officers under elections laws brought pursuant to ORS 246.910.
  - e. Habeas Corpus. Actions brought to challenge the legality of confinement, conditions of confinement, conviction or sentence under state and federal constitutions and statutes.
  - f. Public Meetings Law Claims. Actions brought to require compliance, prevent violations, and/or determine the applicability of public meetings law, ORS 192.610 to 192.690, pursuant to ORS 192.680.
  - g. Public Records Law Claims. Actions brought for disclosure of public records under public records law, ORS 192.410 to 192.505.
10. Challenges to election law requirements of ballot titles, measure explanations, and related technical allegations customarily administered by the Secretary of State's Election Division.

**This exclusion does NOT apply to substantive constitutional claims regardless of attorney fee requests, which include but are not limited to, revision claims, single subject claims, and Guaranty Clause claims.**

11. Allegations that the Department of Consumer and Business Services has violated requirements of workers' compensation law in its handling of workers' compensation claim(s).
12. Allegations of inverse condemnation or of damage to properties adjacent to a highway project, and appeals over the condemnation or takings of real property rights and interests by the Department of Transportation, Highway Division.
13. Allegations that the Department of Water Resources has harmed someone by taking administrative actions of issuing orders that impair, reduce, deny or cut-off any right to take or use water.
14. Challenges to environmental studies, reports, or findings; or to alleged environmental impacts; or allegations of federal environmental regulation; all in connection with construction projects federally funded through a state agency.

Note: these exclusions from coverage do not mean that these allegations or challenges do not constitute or contain tort allegations. Rather, these are delegated to the named agencies to resolve at their direct expense and, with the Department of Justice, to defend against any torts that arise within these exclusions.

## IV. General Tort Liability

### A. Coverage

Subject to the provisions of this policy manual:

1. **Tort Claims Seeking Money Damages.** We will pay damages or defend claims against you for your alleged torts. Coverage for your staff, while acting within the scope of their employment or duties, is described in our Liability Self-Insurance Policy Manual for State Officers, Employees, and Agents.
2. **Tort Claims Seeking Non-Monetary, Protective Remedies.** We will defend you against actions seeking a protective remedy for an alleged tort. We will also defend non-tort mandamus actions against the Judicial Department or its staff and against District Attorneys, all in their official capacities. We will also pay awards of plaintiff's attorney fees.
3. **Mixed Claim Coverage.**
  - a. If **non-tort** elements of a Mixed Claim arise from a contract, we will defend the **non-tort** portion of the Mixed Claim against you or your staff only while the part of the claim which alleges a tort continues to be pled and has not been dismissed or withdrawn. If the dismissal of the tort elements is appealed, we will offer to resume defense of the non-tort portion of the Mixed Claim while the tort continues to be appealed. The coverage is for defense cost only.
  - b. Coverage for the **tort** portion of the mixed claim will be provided as stated under IV. General Tort Liability, A. 1. & 2.
4. **Constitutional Challenges.** We will pay the cost to defend declaratory or injunctive actions seeking to prevent implementation of new state laws if the legal action alleges the new law is unconstitutional. The new law must have been written by the Legislative Assembly or by citizen-petitioners and not have been drafted by a state agency.

## B. Definitions

1. **Declaratory Judgment Action** is the legal determination of a court that resolves legal uncertainty for the litigants. It is a form of legally binding preventive adjudication by which a party involved in an actual or possible legal matter can ask a court to conclusively rule on and affirm the rights, duties, or obligations of one or more parties in a civil dispute (subject to any appeal).
2. **Employment claim** means a tort claim based on a state employee's legally protected employment rights and interests. It does not include claims based on rights or interests arising out of collective bargaining agreements or other contracts.
3. **Mixed claim** means a legal action which is not excluded from coverage and which complains of torts and of contractual breaches or other issues which do not fall within the definition of tort.
4. **Injunctive Action** is a court order directing a party to do or cease doing a specific action.
5. **Protective remedy** means legal actions which seek declaratory judgment, injunctive relief or writs of mandamus as remedies for torts.
6. **Writ of Mandamus** is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion.

## C. Exclusions

Except as expressly provided, we do not pay for liability arising out of any General Exclusions under III, GENERAL EXCLUSIONS.

## D. Limits of Liability

Your liability to most tort claims is limited by the Oregon Tort Claims Act in ORS 30.260 to 30.300. There is no limit on your amount of coverage for tort claims under this policy manual.

Coverage for the non-tort portion of a Mixed Claim is only for defense cost and is limited as described under IV. General Tort Liability, A. 3. a.

## E. Deductibles

There are no deductibles. However, we may require that any primary insurance or valid and collectible insurance be applied before the state's self-insurance.

## F. Conditions for Coverage

1. **Cooperate fully with us and the Department of Justice.** Coverage may be forfeited if you fail to cooperate honestly and fully in our investigation, settlement or defense, and recovery of loss from the claim. If coverage is forfeited, you will be informed in writing of our decision and the reason for the decision.
2. You must comply with the terms and conditions of this policy manual.

## G. Claim Filing

Per ORS 30.275, only a claimant or representative of a claimant can provide notice of claim, and the claim must be submitted to us.

## H. Right of Recovery

If we defend or pay damages on a claim, we have the right to recover costs or damages from any party in connection with the claim. We will handle any recovery actions. Our recovery will reduce your losses used in fixing your future billings for coverage. If our recovery efforts could have repercussion on your agency, please notify us of your concern in writing. Recovery, excess of our coverage and costs, will be paid to you.

## V. Vehicle Liability

### A. Coverage

1. **State Vehicle Liability.** We will pay or defend claims against you for property damage or bodily injury to others while your staff operates a state auto or any other state vehicle within the scope of their employment or duties.
2. **Personal or Private Vehicle Liability.** If you authorize your staff to use a personal or private auto on state business, he or she is responsible to carry the minimum liability insurance required by law. Likewise, for private boats, airplanes or other vehicles, he or she is responsible to carry normal and reasonable liability insurance. If your staff operates a personal or private auto, boat, airplane or other vehicle on state business, their personal liability insurance policies are primary and our coverage is secondary. If the amount of liability to third parties exceeds their private policy limits, we will indemnify them according to our policy manuals.

### B. Definitions

Additional definitions relating to Vehicle Liability are included in section III, General Definitions.

1. **Accident** means a sudden vehicular event allegedly causing unplanned and unexpected damage to property or injury to a specific person or persons.
2. **Private or personal vehicle** means a vehicle owned by your staff or any vehicle not owned, rented or leased by, nor in the possession or control of, the state.
3. **State vehicle** means a motor vehicle owned, commercially rented, borrowed, leased, or otherwise under the possession and control of the state. A commercially rented vehicle is a state vehicle if it is rented and used by a duly authorized employee at the cost of the state, solely for official state business. A vehicle, owned by DAS and lawfully rented to a local government or other non-state entity, is not a state vehicle for purposes of this policy. A state vehicle used for any purpose other than official state business is used unlawfully and at the personal liability of the driver.



## C. Exclusions

Except as expressly provided in this policy, we do not pay for anything excluded under Section III. General Exclusions or any of the following:

1. Any other coverage for private vehicles. Except for the excess vehicle liability coverage described, we do not provide any coverage under this policy for any kind of private vehicle (motor vehicle, boat, airplane, or others), regardless of its use, authorization, or contract terms.

## D. Limits of Liability

Your liability to most tort claims is limited by the Oregon Tort Claims Act in ORS 30.260 to 30.300. There is no limit on your amount of coverage for tort claims under this policy manual.

Coverage for the non-tort portion of a Mixed Claim is only for defense cost and is limited as described under IV. General Tort Liability, A. 3. a.

## E. Deductibles

There are no deductibles. However, we may require that any primary insurance or valid and collectible insurance be applied before the state's self-insurance.

## F. Conditions of Coverage

1. **Cooperate fully with us and the Department of Justice.** Coverage may be forfeited if you fail to cooperate honestly and fully in our investigation, settlement or defense, and recovery of loss from the claim. If coverage is forfeited, you will be informed in writing of our decision and the reason for the decision.
2. You must comply with the terms and conditions of this policy manual.

## G. Claim Filing

Per ORS 30.275, only a claimant or representative of a claimant can provide notice of claim, and the claim must be submitted to us.

# VI. Fair Labor Standards Act (FLSA) Claims

## A. Purpose

The purpose of this policy is to insure agencies against unexpected budget disruption for claims alleging violation of the Fair Labor Standards Act (FLSA), promote accountability of agencies that violate the FLSA, and prevent additional exposure to the state for tax, benefit or other liabilities when paying wage settlements/awards.

## B. Coverage

1. We will defend, settle, or pay damages for a defendant agency. FLSA damages may include wages, liquidated damages, reinstatement and attorney fees.

## C. Definitions

Additional definitions relating to FLSA Claims are included in section III, General Definitions.

1. **Exempt Employees** means employees working in occupations and establishments that are exempt from the minimum wage and/or overtime pay provisions, with the largest category: the managerial exemption (usually referred to as “exempt employees”)
2. **Fair Labor Standards Act (FLSA)** is the federal law that sets the federal minimum wage, overtime pay, recordkeeping and child labor standards on full-time and part-time workers in the private sector and in federal, state, and local governments. It also includes recordkeeping obligations for employers for each covered, nonexempt worker concerning the hours worked and the wages earned.

## D. Exclusions

Except as expressly provided in this policy, we do not pay for anything excluded under Section III. General Exclusions or any of the following:

1. We do not pay for costs of employee benefits, nor for agency staff time or other agency expenses.
2. **Double-dipping.** Court awards or judgments for (i) payment of goods or services you have received and for which you should have paid; (ii) For the payment of monies you are withholding in your accounts; or (iii) Payment or transfer of funds required by law, rule or contract which you have refused to pay. This exclusion applies, for example, to wages and related taxes or benefits you may be ordered to pay. It applies to money the court concludes you are wrongfully withholding. Awarded penalties and plaintiff's costs and your defense are not excluded.

## E. Deductibles

There are no deductibles. However, the state is not normally insured for FLSA risks covered by this policy manual. Therefore, any valid and collectible insurance is normally primary, paying before these self-insured coverages.

## F. Conditions of Coverage

1. **Cooperate fully with us and the Department of Justice.** Coverage may be forfeited if you fail to cooperate honestly and fully in our investigation, settlement or defense, and recovery of loss from the claim. If coverage is forfeited, you will be informed in writing of our decision and the reason for the decision.
2. You must comply with the terms and conditions of this policy manual.

## G. Loss Settlement

1. With our and Department of Justice approval the defendant agency pays the wage portion of any settlement/award to the claimant(s) through its payroll system with appropriate deductions. We will then reimburse the agency for the wage portion of any settlement/award.
2. Alternatively, when it is in the state's interest to do so, we may elect to pay a compromised lump sum settlement. In that case, the claimants will indemnify the state for any benefit or tax liability.

Wages, liquidated damages, attorney fees (both defendant and plaintiff), and compromised settlements will accrue as regular losses in the agency's loss history, which determines future risk charges.

## VII. Special Services

Do you have any special needs to cover losses excluded by our policy manuals? Contact us. Options may include amending our policy manuals, endorsing a special coverage for your unique need, developing a new plan of self-insurance, obtaining commercial insurance or controlling the risk to remove the need for coverage.

The major limits on revisions and new coverages are that they should be legal, consistent with statewide risk management policy and timed or funded to merge with budget processes. Some changes require approval of the Emergency Board.

### **HISTORY:**

Effective April 8, 1991

Effective July 1, 2015 replacing April 8, 1991



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 1, 2023

SUBJECT: Consideration of Board Signature of Order No. 2023 - 009, Appointing Health Services Director’s Designees

RECOMMENDED MOTION:

Move approval of Order No. 2023 - 009, appointing Health Services Director’s Designees.

BACKGROUND AND POLICY IMPLICATIONS:

Oregon Revised Statute (ORS) 426.233 (3) provides that the Director of Health Services may authorize a qualified individual to perform certain acts, including accepting custody of a person from a peace officer, taking custody of a person, removing a person in custody to an approved hospital or nonhospital facility, transferring a person in custody to another individual authorized under this resolution or a peace officer, transferring a person in custody from a hospital or nonhospital facility to another hospital facility or nonhospital facility, and retaining a person in custody. The Director has confirmed that each of the individuals identified in Sections 2 and 3 of the attached Board Order are qualified mental health professionals as that term is defined under Oregon law and meet applicable standards established by the Oregon Health Authority.

Board Order 2022-064 was signed November 14, 2022. Since that time, one additional qualified mental health professional who meets the applicable standards has been hired, and two staff have left their designee position. The authorization to provide custody and secure transportation services for allegedly mentally ill persons is being updated to reflect these staff changes through the attached Board Order 2023 - 009.

BUDGET IMPACTS:

None

ATTENDANCE:

Adam Goggins, Program Manager

REVIEWED  
LEGAL COUNSEL

03/01/2023 Item #2.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Repealing Order No. 2022-064 dated \*  
November 14, 2022; and Authorizing Designated \* ORDER NO. 2023 - 009  
Persons to Provide Custody and Secure \*  
Transportation Services for Allegedly Mentally Ill \*  
Persons \*

WHEREAS, on November 14, 2022, the Deschutes County Board of Commissioners signed Order No. 2022-064, “An Order Repealing Order No. 2022-047; and Authorizing Designated Persons to Provide Custody and Secure Transportation Services for Allegedly Mentally Ill Persons”; and

WHEREAS ORS 426.070 through 426.395 authorize or require the Community Mental Health Program Director (“Director”) to take certain actions in matters pertaining to the custody, transport and involuntary commitment of mentally ill persons; and

WHEREAS, OAR 309-033-0210 includes, within the definition of the term “community mental health director,” a person who has been authorized by the Director to act in the Director’s capacity for the purpose of this rule; and

WHEREAS, the Director has authorized each of those individuals identified in Section 2, below, to act as the Director’s designee and in the Director’s capacity for purposes of OAR 309-033-0210; and

WHEREAS, ORS 426.233(3) provides that the Director may authorize a qualified individual to perform certain acts listed in ORS 426.233(3) including, without limitation, accepting custody of a person from a peace officer, taking custody of a person, removing a person in custody to an approved hospital or nonhospital facility, transferring a person in custody to another individual authorized under this resolution or a peace officer, transferring a person in custody from a hospital or nonhospital facility to another hospital facility or nonhospital facility, and retaining a person in custody; and

WHEREAS, the Director has recommended to the Deschutes County governing body that each of those individuals identified in Section 3, below, be authorized to perform those acts listed in ORS 426.233(3); and

WHEREAS, the Director has confirmed that each of the individuals identified in Sections 2 and 3 below is a qualified mental health professional as that term is defined under Oregon law and meets applicable standards established by the Oregon Health Authority; now therefore,

Based upon the foregoing recitals and pursuant to ORS 426.233 and OAR 309-033-0210, THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. An Order Repealing Order No. 2022-064 dated November 14, 2022 “An Order Repealing Order No. 2022-047; and Authorizing Designated Persons to Provide Custody and Secure Transportation Services for Allegedly Mentally Ill Persons” is hereby repealed;

Section 2. The following persons, all of whom are part of the Deschutes County Health Services Department’s Community Assessment Team/Mobile Crisis Team, and all of whom are Qualified Mental Health Professionals, are hereby recognized as designees of the Director and are authorized to act in the capacity of the Director with regard to any action permitted or required to be performed by the Director under ORS 426.070 through ORS 426.395:

- Holly Harris, M.Ed., LPC, Crisis Services Program Manager
- Zoe Bartlett, MS, LMFT
- Rebecca Battleson, MSW, LCSW
- Amanda Copeland, MSW, CSWA
- Savannah DeLuca, MA, LPCi
- Susan Denight, MSW, CSWA
- Bethany Douglas, MS, LPC
- Susanna M. Gallagher, MSW, CSWA
- Adam Goggins, MA, LPC
- Meredith Haddan, MA, LPCi, CADC-R
- Jill Kaufmann, MS, LMFT
- Stephanie Koutsopoulos, MS, LPC
- Jesse Kratz, MA, LPCi
- Hanako Kubori, MS, LPCi
- Taylor McGowan, MSW, CSWA
- Haley Piarulli, MSW, CSWA
- Megan Sergi-Sosa, MSW, LMSW, CADC
- Nicole Von Laven, MA, LPCi
- Megan Weaver, MSW, CSWA
- Hailey Clark, MA, Professional Counselor Associate, NCC
- Briana Schulte, LPC
- Martina Krupinski, M.Ed, LPCi
- Amber Hooper, MA, LMFT
- Ayshea Ali , MSW
- Leah Lewis, MSW, CSWA
- Anna Valencia, M.S., LPC-intern
- Darla Fletcher, LIC, BHS II
- Katie Nikkel, BHS II

Section 3. The following persons, all of whom are part of the Deschutes County Health Services Department’s Community Assessment Team/Mobile Crisis Team, and all of whom are Qualified Mental Health Professionals, are hereby authorized to perform any act set forth in ORS 426.233(3):

- Holly Harris, M.Ed., LPC, Crisis Services Program Manager
- Zoe Bartlett, MS, LMFT
- Rebecca Battleson, MSW, LCSW
- Amanda Copeland, MSW, CSWA
- Savannah DeLuca, MA, LPCi
- Susan Denight, MSW, CSWA
- Bethany Douglas, MS, LPC
- Susanna M. Gallagher, MSW, CSWA
- Adam Goggins, MA, LPC
- Meredith Haddan, MA, LPCi, CADC-R
- Jill Kaufmann, MS, LMFT

Stephanie Koutsopoulos, MS, LPC  
Jesse Kratz, MA, LPCi  
Hanako Kubori, MS, LPCi  
Taylor McGowan, MSW, CSWA  
Haley Piarulli, MSW, CSWA  
Megan Sergi-Sosa, MSW, LMSW, CADC  
Nicole Von Laven, MA, LPCi  
Megan Weaver, MSW, CSWA  
Hailey Clark, MA, Professional Counselor Associate, NCC  
Briana Schulte, LPC  
Martina Krupinski, M.Ed, LPCi  
Amber Hooper, MA, LMFT  
Ayshea Ali , MSW  
Leah Lewis, MSW, CSWA  
Anna Valencia, M.S., LPC-intern  
Darla Fletcher, LIC, BHS II  
Katie Nikkel, BHS II

Section 4. Each individual identified herein in Sections 2 and 3 shall retain the authority granted by this order so long as he or she continuously meets applicable standards established by the Oregon Health Authority and is employed with the County in the Health Services Department except as may otherwise be ordered by the Board of County Commissioners.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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

\_\_\_\_\_  
ANTHONY DeBONE, Vice Chair

ATTEST:

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

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



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 1, 2023

SUBJECT: Consideration of Purchase Agreement, Document No. 2023-061, and Dedication Deed, Document No. 2023-062, from Ted K. Gilbert and Kerry S. Gilbert for Right of Way for the Deschutes Market Road/Hamehook Road Intersection Improvement Project

RECOMMENDED MOTION:

Move approval of Document Nos. 2023-061 and 2023-062 to execute the purchase and dedication of Right-of-Way for the Deschutes Market Road/Hamehook Road Intersection Improvement Project.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of County Commissioners authorized the Road Department to negotiate with owners of properties impacted by the Deschutes Market Road/Hamehook Road Intersection Improvement project for the acquisition of right of way by Resolution No. 2022-044. During preliminary design of the project, it was determined that a portion of Tax Lot No. 171214BA00500, owned by Ted K. Gilbert and Kerry S. Gilbert, would be impacted by the project. The Road Department has negotiated with the property owners for right of way acquisition. The property owners have agreed to the following:

- Instrument: Dedication Deed
Area: ±45,179 sq. ft. (±1.03 acre)
Compensation: \$125,000.00
Other Obligations: None

BUDGET IMPACTS:

County will make payment to the property owner in the amount of \$125,000.00, which is budgeted in the Department's Fiscal Year 2022-2023 Road Capital Improvement Plan budget.

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director



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

**PURCHASE AGREEMENT  
DESCHUTES MARKET ROAD / HAMEHOOK ROAD INTERSECTION  
IMPROVEMENT PROJECT  
Ted K. Gilbert and Kerry S. Gilbert, each as to an undivided one-half interest, as  
tenants in common  
File No.: 001**

**THIS AGREEMENT** is made and entered into by and between **Deschutes County, Oregon**, a political subdivision of the State of Oregon, ("County"); and **Ted K. Gilbert and Kerry S. Gilbert, each as to an undivided one-half interest, as tenants in common** ("Grantor"), on the following terms and conditions:

**RECITALS**

1. Deschutes Market Road and Hamehook Road are part of the County road system under the jurisdiction and control of County.
2. County is constructing the Deschutes Market Road / Hamehook Road Intersection Improvement Project on Deschutes Market Road and Hamehook Road. County has identified that the property described in the attached **Exhibit "A"** and depicted in the attached **Exhibit "B"** is necessary for the Project.
3. Grantor is the owner of the property described in the attached **Exhibits "A"** and depicted in the attached **Exhibit "B"**.

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

## TERMS OF AGREEMENT

1. Grantor shall convey to County the real property described in the attached **Exhibit "A"** and depicted in the attached **Exhibit "B"** by dedication deed for the purchase price of **One Hundred Twenty Five Thousand Dollars (\$125,000.00)**.

## GRANTOR OBLIGATIONS

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

accordance with the Uniform Relocation Act requirements in conformance with the ODOT Right-of-Way Manual.

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

**COUNTY OBLIGATIONS**

1. Within thirty (30) calendar days of execution of this Agreement and receipt of fully signed and executed dedication deed, County will deliver payment to Grantor in the amount of **One Hundred Twenty Five Thousand Dollars (\$125,000.00)**. County will take immediate possession of property upon delivery of payment.
2. County will be responsible for payment of all recording fees or other costs required for recording conveyance instruments.

**GENERAL PROVISIONS**

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

**(Signature Pages to Follow)**

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

GRANTOR

DATED this 6th day of February, 2023.

[Signature]  
Ted K. Gilbert

[Signature]  
Kerry S. Gilbert

STATE OF OREGON )  
multnomah ) SS.  
County of ~~Deschutes~~ )

Before me, a Notary Public, personally appeared Ted K. Gilbert acknowledged the foregoing instrument.

Dated this 6<sup>th</sup> day of February, 2023.



[Signature]  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 6 June 2026

STATE OF OREGON )  
multnomah ) SS.  
County of ~~Deschutes~~ )

Before me, a Notary Public, personally appeared Kerry S. Gilbert acknowledged the foregoing instrument.

Dated this 6<sup>th</sup> day of February, 2023.



[Signature]  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 6 June 2026

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

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

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DEBONE, CHAIR

\_\_\_\_\_  
PATTI ADAIR, VICE-CHAIR

ATTEST:

\_\_\_\_\_  
PHIL CHANG, COMMISSIONER

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

STATE OF OREGON        )  
                                  ) SS.  
County of Deschutes    )

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

# Exhibit "A"

## LEGAL DESCRIPTION

DCO-02

May 2, 2022

Page 1 OF 2

## RIGHT OF WAY DEDICATION

Three (3) tracts of land, being portions of that property described in of Document 2006-38404 Deschutes County Official Records, located in the Northeast one-quarter of the Northwest one-quarter of Section 14, Township 17 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Bearings and Deschutes Market Road centerline stationing are based on CS20788, Deschutes County Survey Records.

### TRACT 1

**Beginning** at a 5/8-inch iron rod with a 2-inch aluminum cap inscribed "DESCHUTES COUNTY ENGINEERING R/W LS2390" marking a point on the northerly Right-of-Way of Deschutes Market Road which falls 30.00 feet left, when measured at a right angle, of Deschutes Market Road centerline station 15+83.60;

Thence along said northerly Right-of-Way South 89°45'16" West a distance of 70.36 feet to a 5/8-inch iron rod with a 2-inch aluminum cap inscribed "DESCHUTES COUNTY ENGINEERING R/W LS2390" marking an angle point in said Right-of-Way;

Thence along said northerly Right-of-Way North 88°23'54" West a distance of 79.88 feet to a point which falls 30.00 feet left, when measured at a right angle, of Deschutes Market Road centerline station 14+32.40;

Thence North 42°02'27" East a distance of 373.59 feet;

Thence North 10°37'01" East a distance of 140.00 feet to a point on the westerly Right-of-Way of Deschutes Market Road which falls 30.00 feet left, when measured at a right angle, of Deschutes Market Road centerline station 21+19.49;

Thence along said Right-of-Way South 00°06'08" East a distance of 289.93 feet to a point which falls 30.00 feet left, when measured at a right angle, of Deschutes Market Road centerline station 18+29.56 and the beginning of curve right;

Thence along said Right-of-Way and along said curve right through a central angle of 89°51'24", with a radius of 126.83 feet (long chord bears South 44°49'34" West, 179.14 feet) a distance of 198.91 feet to the **Point of Beginning**.

Contains 40,806 square feet more or less.

See the attached Exhibit "B" sheet 1, entitled "RIGHT-OF-WAY DEDICATION", which is made a part hereof.

TOGETHER WITH:

**LEGAL DESCRIPTION**

**DCO-02**

May 2, 2022

Page 2 OF 2

**TRACT 2**

**Commencing** at the north One-Quarter corner of said Section 14;

Thence along the north-south centerline of said Section 14 South 00°11'26" East a distance of 1225.95 feet to a point on the southeasterly Right-of-Way of Deschutes Market Road which falls 30.00 feet right, when measured at a right angle, of Deschutes Market Road centerline station 17+57.38 and the true **Point of Beginning** of the tract described herein;

Thence continuing along said centerline of Section 14 South 00°11'26" East a distance of 99.87 feet to the center-north one-sixteenth corner of said Section 14, also being the southeast corner of said Document 2006-38404;

Thence along the south boundary line of said Document 2006-38404 North 89°59'00" West a distance of 127.95 feet to a point on said southeasterly Right-of-Way of Deschutes Market Road which falls 30.00

feet right, when measured at a right angle, of Deschutes Market Road centerline station 16+16.70 and the beginning of a non-tangent curve left;

Thence along said curve left, through a central angle of 51°23'44", with a radius of 186.83 feet (long chord bears North 51°57'53" East, 162.03 feet) a distance of 167.59 feet to the **Point of Beginning**.

Contains 4,373 square feet more or less.

See the attached Exhibit "B" sheet 2, entitled "RIGHT-OF-WAY DEDICATION" which is made a part hereof.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
Nov. 08, 2010  
JOHN TAYLOR HAGLUND  
55022PLS

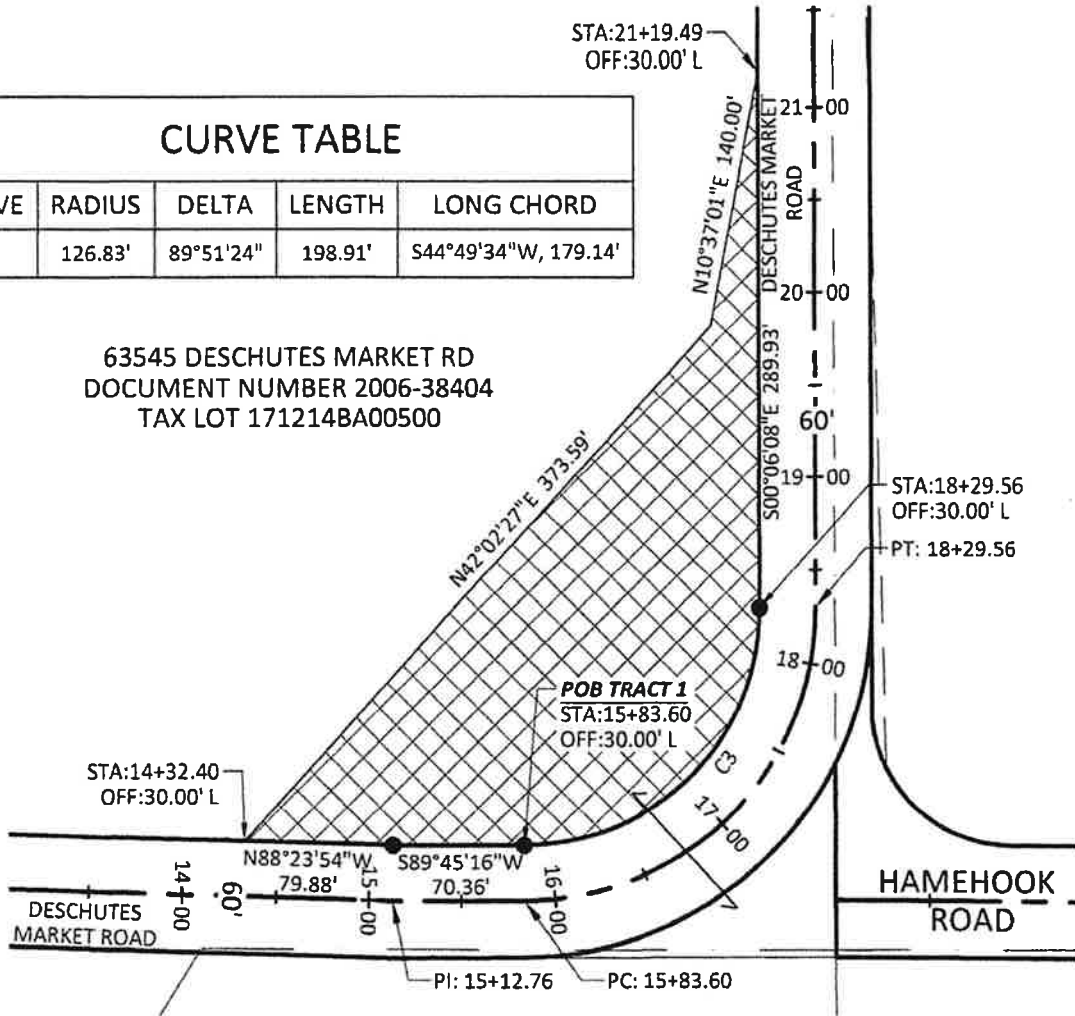
RENEWES: 6-30-23

## EXHIBIT "B" RIGHT-OF-WAY DEDICATION

LOCATED IN THE NORTHEAST ONE-QUARTER OF THE NORTHWEST  
ONE-QUARTER OF SECTION 14, TOWNSHIP 17 SOUTH, RANGE 12  
EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON

CURVE TABLE				
CURVE	RADIUS	DELTA	LENGTH	LONG CHORD
C3	126.83'	89°51'24"	198.91'	S44°49'34"W, 179.14'

63545 DESCHUTES MARKET RD  
DOCUMENT NUMBER 2006-38404  
TAX LOT 171214BA00500



BASIS OF BEARINGS AND DESCHUTES MARKET ROAD  
CENTERLINE STATIONING ARE PER CS20788



SCALE: 1" = 100'

### LEGEND

- TRACT 1  
±40,806 SQ.FT.
- - FOUND MONUMENT PER CS20788
- POB - POINT OF BEGINNING

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*John Taylor Haglund*  
OREGON  
NOVEMBER 08, 2010  
**JOHN TAYLOR HAGLUND**  
55022



**Harper  
Houf Peterson  
Righellis Inc.**

ENGINEERS • PLANNERS  
LANDSCAPE ARCHITECTS • SURVEYORS  
250 NW Franklin Avenue, Suite 404, Bend, OR 97703  
phone: 541.318.1161 www.hhpr.com fax: 541.318.1141

SEE ATTACHED LEGAL DESCRIPTION

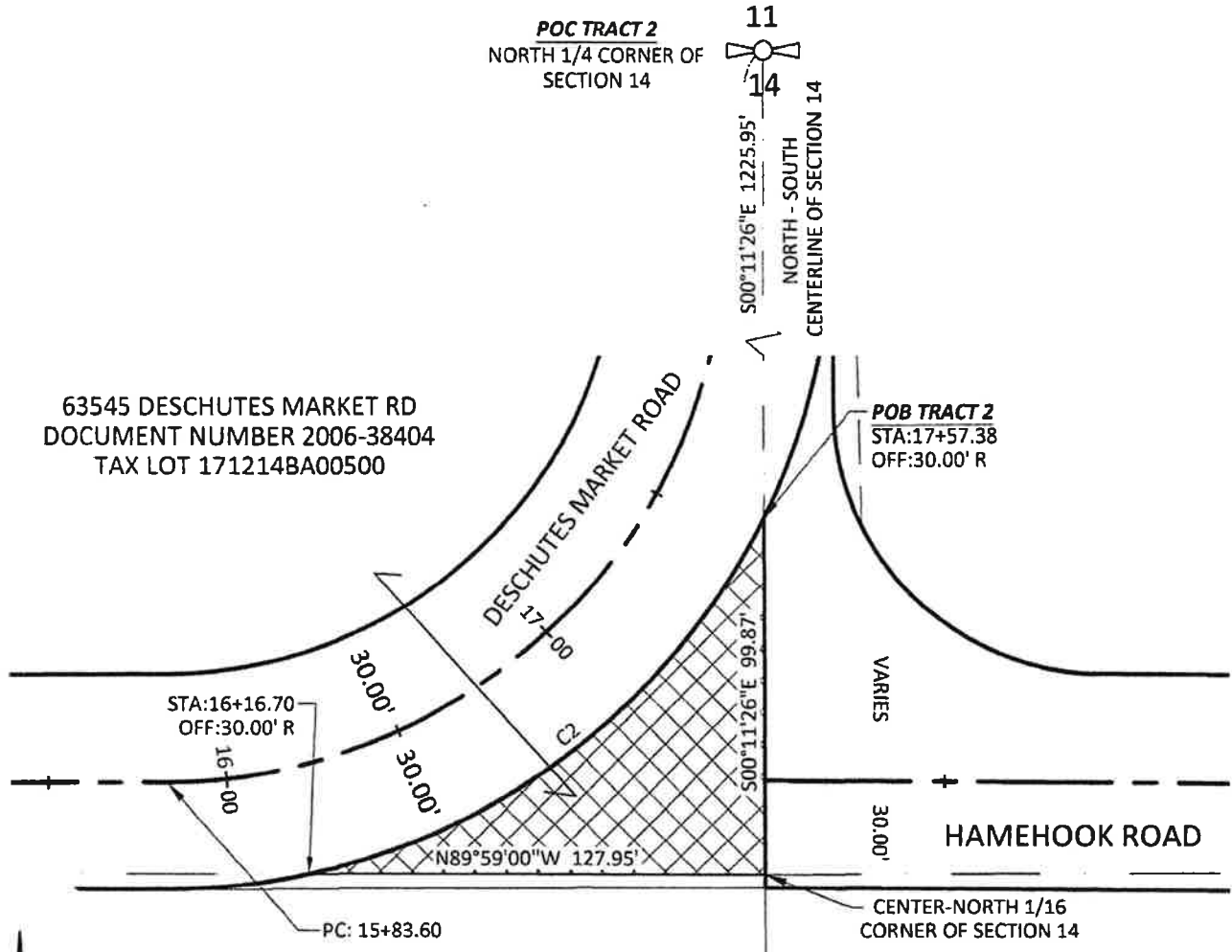
RENEWS: 6-30-2023

DCO-02 CLG 5/2/2022 SHEET 1 OF 2



# EXHIBIT "B" RIGHT-OF-WAY DEDICATION

LOCATED IN THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 14,  
TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON



BASIS OF BEARINGS AND DESCHUTES MARKET ROAD  
CENTERLINE STATIONING ARE PER CS20788

CURVE TABLE				
CURVE	RADIUS	DELTA	LENGTH	LONG CHORD
C2	186.83'	51°23'44"	167.59'	N51°57'53"E, 162.03'



SCALE: 1" = 50'

### LEGEND

- TRACT 2  
±4,373 SQ.FT.
- - FOUND MONUMENT PER CS20788
- POB - POINT OF BEGINNING
- POC - POINT OF COMMENCEMENT

SEE ATTACHED LEGAL DESCRIPTION

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*[Signature]*  
OREGON  
NOVEMBER 08, 2010  
**JOHN TAYLOR HAGLUND**  
55022

RENEWS: 6-30-2023

**HHPR** Harper  
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DCO-02 CLG 5/2/2022 SHEET 2 OF 2

REVIEWED  
LEGAL COUNSEL

For Recording Stamp Only

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

DEED OF DEDICATION

**Ted K. Gilbert and Kerry S. Gilbert, each as to an undivided one-half interest, as tenants in common**, Grantor, does hereby dedicate to the public for roadway and utility purposes that parcel of land described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference incorporated herein.

The true consideration for this conveyance is **One Hundred Twenty Five Thousand Dollars (\$125,000.00)**.

DATED this 6<sup>th</sup> day of February, 2023.

  
\_\_\_\_\_  
Ted K. Gilbert

  
\_\_\_\_\_  
Kerry S. Gilbert

STATE OF OREGON )  
Multnomah ) SS.  
County of Deschutes )

Before me, a Notary Public, personally appeared Ted K. Gilbert acknowledged the foregoing instrument.

Dated this 6<sup>th</sup> day of February, 2023.



*Leslie Gillian Abel*  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 6 June 2026

STATE OF OREGON )  
Multnomah ) SS.  
County of Deschutes )

Before me, a Notary Public, personally appeared Kerry S. Gilbert acknowledged the foregoing instrument.

Dated this 6<sup>th</sup> day of February, 2023.



*Leslie Gillian Abel*  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 6 June 2026

ACCEPTANCE

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

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

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DEBONE, CHAIR

\_\_\_\_\_  
PATTI ADAIR, VICE CHAIR

ATTEST:

\_\_\_\_\_  
PHIL CHANG, COMMISSIONER

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

STATE OF OREGON     )  
                                  ) SS.  
County of Deschutes    )

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

# Exhibit "A"

## LEGAL DESCRIPTION

DCO-02  
May 2, 2022  
Page 1 OF 2

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Contains 40,806 square feet more or less.

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TOGETHER WITH:

**LEGAL DESCRIPTION**

**DCO-02**

May 2, 2022

Page 2 OF 2

**TRACT 2**

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REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
Nov. 08, 2010  
JOHN TAYLOR HAGLUND  
55022PLS

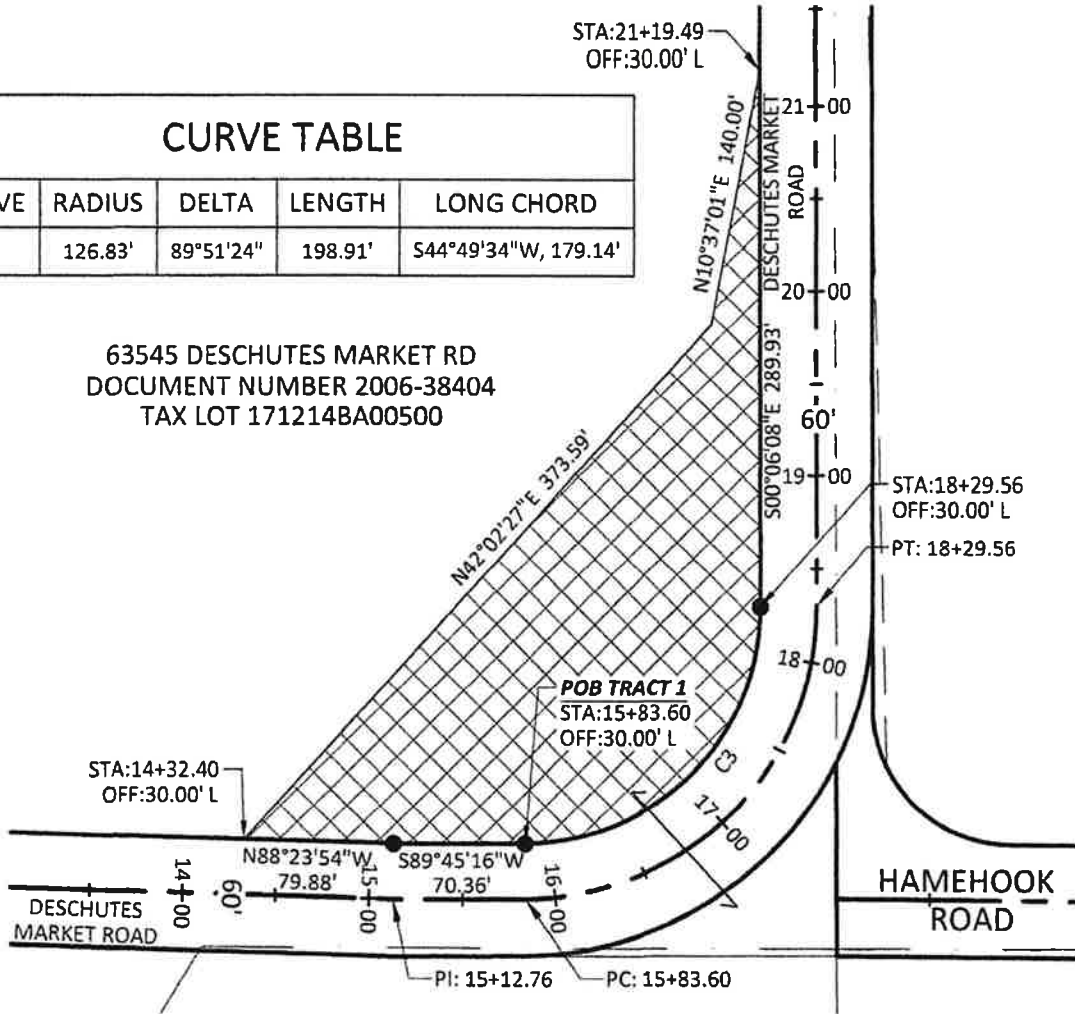
RENEWS: 6-30-23

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BASIS OF BEARINGS AND DESCHUTES MARKET ROAD  
CENTERLINE STATIONING ARE PER CS20788

### LEGEND

TRACT 1  
±40,806 SQ.FT.

- - FOUND MONUMENT PER CS20788
- POB - POINT OF BEGINNING

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
NOVEMBER 08, 2010  
**JOHN TAYLOR HAGLUND**  
55022

RENEWS: 6-30-2023

SCALE: 1" = 100'



**Harper  
Houf Peterson  
Righellis Inc.**

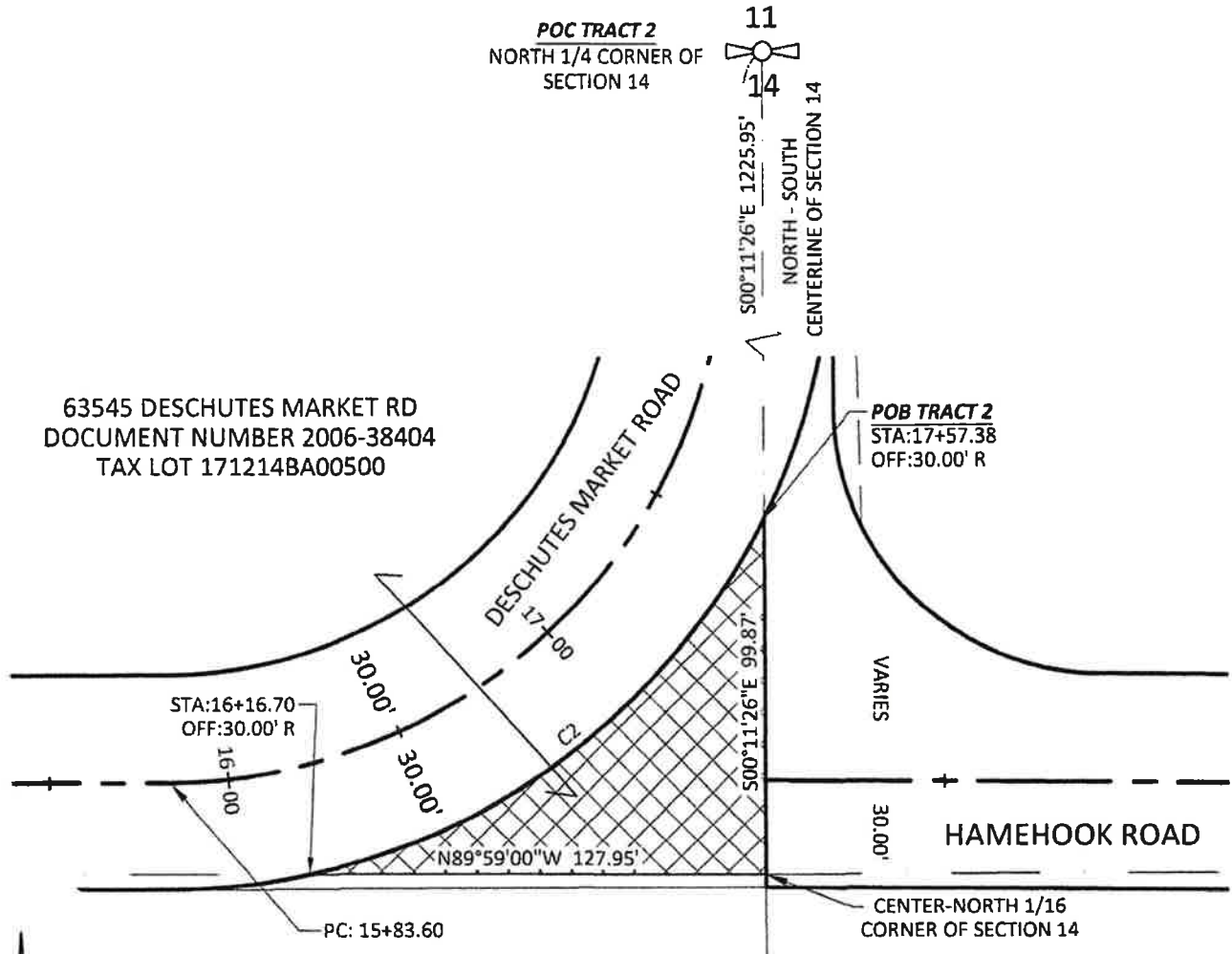
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SEE ATTACHED LEGAL DESCRIPTION

DCO-02 CLG 5/2/2022 SHEET 1 OF 2

# EXHIBIT "B" RIGHT-OF-WAY DEDICATION

LOCATED IN THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 14,  
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BASIS OF BEARINGS AND DESCHUTES MARKET ROAD  
CENTERLINE STATIONING ARE PER CS20788

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CURVE	RADIUS	DELTA	LENGTH	LONG CHORD
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### LEGEND

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SEE ATTACHED LEGAL DESCRIPTION

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*[Signature]*  
OREGON  
NOVEMBER 08, 2010  
**JOHN TAYLOR HAGLUND**  
55022

RENEWS: 6-30-2023



**Harper  
Houf Peterson  
Righellis Inc.**

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DCO-02 CLG 5/2/2022 SHEET 2 OF 2





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 1, 2023

SUBJECT: Approval and signature of Document No. 2023-131, an Intergovernmental Agreement creating the Deschutes County Road Agency

RECOMMENDED MOTION:

As the governing board of Deschutes County, move approval and signature of IGA No. 2023-131.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County receives federal funding from two primary funding programs:

- 1. PILT (Payment in Lieu of Taxes): Funding to (partially) offset the loss in tax revenue from federal land in the County. Approximately 80% of Deschutes County is federal land. PILT revenue is allocated at the discretion of the Board of County Commissioners and has historically been allocated between the General Fund, Road Department, and Natural Resource Program.
2. SRS (Secure Rural School and Community Self-Determination Act): Funding to offset the loss in timber revenue from federal lands. Timber revenue, via federal law, is partially distributed to counties to fund education, road maintenance, wildfire prevention, and search and rescue services.

The allocation of federal funding to the PILT and SRS programs is prescribed via a methodology that subtracts SRS funding received in a prior year from the county's entitled maximum PILT payment. This methodology is inequitable to counties such as Deschutes with significant federal land and SRS payment, such that any increase in SRS results in less PILT revenue.

In 2021, the Legislature approved HB 2174 to enable Oregon counties to divert SRS funding into an Intergovernmental Entity as prescribed within ORS 190. In doing so, a county is able to receive its SRS funding in a non-County entity and bypass the PILT methodology inequity, thereby increasing the federal PILT payment up to the County's maximum entitlement. Once enabled, Deschutes County expects to receive an additional \$800,000 in federal funding via PILT.

**BUDGET IMPACTS:**

*Anticipated \$800,000.00 annually.*

**ATTENDANCE:**

*Road, DC 911, Legal*

**INTERGOVERNMENTAL AGREEMENT  
CREATING DESCHUTES COUNTY ROAD AGENCY**

This Intergovernmental Agreement creating Deschutes County Road Agency (this "Agreement") effective March 2, 2023 (the "Effective Date"), and is entered into between Deschutes County ("County"), a political subdivision of the State of Oregon, whose address is 1300 NW Wall Street, Bend OR 97703, and the Deschutes County 911 Service District, a duly enacted and operating county service district, whose mailing address is P.O. Box 6005, Bend, Oregon 97708-6005. Each of the parties hereto is referred to herein individually as a "Party" and collectively "Parties."

**RECITALS:**

A. The Parties desire to form an intergovernmental entity to be named the Deschutes County Road Agency (the "Agency"). Agency will be formed to receive and distribute certain road funds.

B. This Agreement is made pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

C. The Parties are authorized to enter into this Agreement creating an intergovernmental entity pursuant to their respective principal acts and ORS 190.003 to 190.130.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the Parties' respective obligations under this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**Section 1. Agency.**

**1.1 Creation.** Pursuant to this Agreement, the Agency is hereby created as an intergovernmental entity pursuant to ORS Chapter 190.

**1.2 Purpose.** Agency's purposes include receiving and distributing U.S. Forest Service Secure Rural Schools ("SRS") funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto.

**1.3 Responsibilities and General Powers.**

**1.3.1** Agency will have responsibility and authority to receive and distribute County’s apportionment of SRS road funds for road construction, including functions related thereto, within the boundaries of County, and subject to the terms of this Agreement and/or ORS chapter 190, perform such other functions as may be assigned by the Parties from time to time.

**1.3.2** Agency shall have the power to adopt, through action of its Board of Directors (the “Board”), such bylaws, rules, regulations, and policies necessary to further the purposes of Agency and/or this Agreement.

**1.3.3** Agency shall have the power to enter into agreements with other public or private entities and to exercise all powers pursuant to the Laws (as defined below), including, without limitation, the principal acts of the Parties and ORS chapter 190. For purposes of this Agreement, the term “Law(s)” means all federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting Agency, this Agreement, and/or Agency’s purposes, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and ORS chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

**1.4 Offices.** The offices of Agency shall be located at the Deschutes County Services Building, 1300 NW Wall Street, Bend, OR 97703.

**1.5 Governing Body.** The Board, unless otherwise provided herein, shall be the governing body and shall exercise authority over all matters of Agency concern.

**Section 2. Board of Directors.**

**2.1 Membership.** Agency shall be governed by the Board consisting of the commissioners serving on the Deschutes County Board of Commissioners.

**2.2 Authority.**

**2.2.1** The Board shall have authority to do the following:

- a. Adopt bylaws for Agency, which shall set forth the rules by which the Agency shall be run. The bylaws may be amended from time to time by the Board.
- b. Oversee and to have full responsibility for all matters pertaining to the development and operations of Agency.
- c. Enter into contracts for goods and services for Agency’s development and operations.
- d. Review and approve the Agency’s budget pursuant to Oregon Local Budget Law, when applicable.
- e. Appoint advisory boards to consider any issue before it, if it so desires.
- f. Establish the Agency mission and goals.

g. Recommend and monitor expenditures consistent with the manner and restrictions of ORS 368.705-368.722.

**2.2.2** The Board shall not have authority to do the following:

- a. Commit the taxing authority or general funds of any Party.
- b. Expend funds in excess of the SRS funding received by the Agency.

**2.3 Meetings.** Regular meetings of the Board shall be held on at least a quarterly basis at such time and place as determined by the Board. Special meetings may be called by the chairperson as needed or desired. All motions presented for approval shall require an affirmative vote of a majority of the whole membership of the voting members of the Board. Two (2) members of Board shall constitute a quorum. Members appearing by telephone or other electronic means are considered present.

The rules of parliamentary practice comprised in the Robert's Rules of Order shall be used as a guide to address procedural questions to the extent not inconsistent with Agency's policy and procedures.

**Section 3. Budget; Funding; Costs; Revenue.**

**3.1 Budget.** Agency, through County, shall prepare the annual operating budget of the Agency. The Board shall adopt a final budget, in accordance with ORS 294.900 to 294.930, no later than June of each preceding year. The budget period shall be on a fiscal year basis beginning on the first of July each year. The Board shall consider and adopt the budget on behalf of the Agency. If there are any program changes any supplemental budget shall go through the budget stages set forth herein and comply with all applicable budget policies and Oregon Local Budget Law.

**3.2 Funding.** The Agency will receive funds under ORS 293.560 apportioned to the County road fund. County will request that the Oregon Department of Administrative Services credit the moneys described in ORS 294.060(1) to the Agency pursuant to ORS 294.060(8).

**3.3 Expenses.** County will be responsible for providing all funds necessary to pay for Agency's costs, expenses, obligations, and/or liabilities. Notwithstanding anything contained in this Agreement to the contrary, District will not be responsible for (and will not pay) any funds for Agency's costs, expenses, obligations, and/or liabilities.

**3.4 Revenue.** Revenue or fees derived from the functions or activities of the Agency will be apportioned to County.

**Section 4. Term, Termination and Amendment.**

**4.1 Term.** Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect

until June 30, 2024 (the “Initial Term”), unless sooner terminated as provided in this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one or more term(s) of one year each, unless sooner terminated in accordance with this Agreement. Commencing on or about July 1, 2023 and continuing on or about the same day each year thereafter during the term of this Agreement, the Parties will review this Agreement to determine whether any changes and/or modifications to this Agreement are necessary or appropriate. Any changes and/or modifications to this Agreement require the Parties’ mutual written agreement.

**4.2 Termination.** Notwithstanding anything contained in this Agreement to the contrary, (a) the Parties may terminate this Agreement and dissolve the Agency by the Parties’ unanimous written agreement, (b) upon expiration of the Initial Term, either Party may terminate this Agreement by providing the other Party no less than one hundred eighty (180) days’ prior written notice (provided, however, termination under this Section 4.2(b) will not take effect between February 1 and June 30 of any fiscal year), and (c) either Party may terminate this Agreement immediately upon written notice to the other Party if the other Party breaches and/or otherwise fails to perform the other Party’s obligations under this Agreement.

**Section 5. Additional Parties.** Subject to the Laws, including, without limitation, ORS chapter 190, additional governmental entities may be allowed to join the Agency subject to approval by the governing bodies of all Parties.

**Section 6. Insurance; Liability; Indemnification; Relationship.**

**6.1 Insurance.** Agency will obtain and maintain adequate insurance to cover Agency’s operations and that at least equal the applicable limits of liability identified under the Oregon Tort Claims Act (ORS 30.260 – ORS 30.300). Insurance requirements may be satisfied by programs of self-insurance.

**6.2 Liability.** Except as otherwise provided under Section 6.3, there shall be no joint and several liability of the Parties either in contract or tort, and all obligations of Agency or the Parties shall be several only. Without limiting the foregoing, no Party to this Agreement shall be liable for damages, debts or claims caused solely by the negligent act, omission or other wrongful act by Agency or other Parties hereto. The Party causing damages by its sole negligent act, omission, or wrongful act shall be individually liable.

**6.3 Agency and County Indemnification.** To the fullest extent permitted under applicable law, Agency and County each jointly and severally release and will defend, indemnify, and hold District and District’s Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of Agency’s formation and operations and/or County’s breach and/or

failure to perform County's representations, warranties, covenants, and/or obligations under this Agreement.

**6.4 Relationship.** Each Party is an independent contractor of the other Parties. This Agreement does not create a joint venture and/or agency relationship between the Parties. No Party has the authority to bind the other Party or represent to any person that a Party is an agent of the other Party. No Party will provide any benefits to any other Party; each Party will be solely responsible for obtaining the Party's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Notwithstanding anything contained in this Agreement to the contrary, Agency (and/or the Board) will not have the authority to bind and/or encumber a Party in any manner except as agreed in writing by the Party.

**Section 7. Dissolution.** Upon dissolution of Agency, County shall remain solely liable for any Agency obligation that has been specifically incurred in accordance with the terms of this Agreement, or by other resolutions, or by separate agreement of the parties. Upon dissolution, the assets of Agency will be distributed to Deschutes County.

**Section 8. General Provisions.**

**8.1 Coordination; Assignment; Binding Effect.** The Parties will maintain adequate levels of communication to ensure maximum cooperation and coordination between the Parties. No Party may assign any of the Party's rights and/or obligations under this Agreement to any person without the prior written consent of all other Parties. Subject to the immediately preceding sentence, this Agreement will be binding on the Parties and their respective administrators, successors, and permitted assigns and will inure to their benefit. The Parties will execute all documents or instruments and will perform all lawful acts necessary or appropriate to carry out the intent of this Agreement. All exhibits, schedules, instruments, and other documents referenced in this Agreement are part of this Agreement.

**8.2 Notices; Severability; Remedies.** Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable Party to the address shown in the preamble of this Agreement (or any other address that a Party may designate by notice to the other parties), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Subject to the terms and conditions contained in this Agreement, each Party will pay all wages and benefits due the Party's personnel, including, without limitation, overtime,

workers' compensation, and death benefits. If a Party breaches and/or otherwise fails to perform any of the Party's representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting Parties may, in addition to any other remedy provided to the non-defaulting Parties under this Agreement, pursue all remedies available to the non-defaulting Parties at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

**8.3 Waiver; Entire Agreement; Amendment; Counterparts.** Notwithstanding anything contained in this Agreement to the contrary, no provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the Parties. No waiver by a Party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between Parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements. No addition, modification, amendment, or alteration to this Agreement will be effective against the Parties unless specifically agreed upon in writing and signed by the Parties. This Agreement may be signed in one or more counterparts.

**8.4 Applicable Law; Venue; Attorney Fees.** This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Deschutes County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Deschutes County, Oregon. Each Party is responsible for its own attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

**8.5 Debts, Liabilities and Obligations.** All debts, liabilities and obligations of any of the Parties shall be and shall remain debts, liabilities and obligations of that or those Parties and shall not become debts liabilities and obligations of the other parties or of the Agency. All debts, liabilities and obligations incurred by or on behalf of the Agency shall remain debts, liabilities and obligations of the Agency.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

///



COUNTY:

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

\_\_\_\_\_  
Patti Adair, Commissioner

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

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

911 SERVICE DISTRICT:

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

\_\_\_\_\_  
Patti Adair, Commissioner

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

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



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 1, 2023

SUBJECT: Approval and signature of Document No. 2023-131, an Intergovernmental Agreement creating the Deschutes County Road Agency

RECOMMENDED MOTION:

As Deschutes County 911 Service District, move approval and signature of IGA No. 2023-131.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County receives federal funding from two primary funding programs:

- 1. PILT (Payment in Lieu of Taxes): Funding to (partially) offset the loss in tax revenue from federal land in the County. Approximately 80% of Deschutes County is federal land. PILT revenue is allocated at the discretion of the Board of County Commissioners and has historically been allocated between the General Fund, Road Department, and Natural Resource Program.
2. SRS (Secure Rural School and Community Self-Determination Act): Funding to offset the loss in timber revenue from federal lands. Timber revenue, via federal law, is partially distributed to counties to fund education, road maintenance, wildfire prevention, and search and rescue services.

The allocation of federal funding to the PILT and SRS programs is prescribed via a methodology that subtracts SRS funding received in a prior year from the county's entitled maximum PILT payment. This methodology is inequitable to counties such as Deschutes with significant federal land and SRS payment, such that any increase in SRS results in less PILT revenue.

In 2021, the Legislature approved HB 2174 to enable Oregon counties to divert SRS funding into an Intergovernmental Entity as prescribed within ORS 190. In doing so, a county is able to receive its SRS funding in a non-County entity and bypass the PILT methodology inequity, thereby increasing the federal PILT payment up to the County's maximum entitlement. Once enabled, Deschutes County expects to receive an additional \$800,000 in federal funding via PILT.

**BUDGET IMPACTS:**

*Anticipated \$800,000.00 annually.*

**ATTENDANCE:**

*Road, DC 911, Legal*

**INTERGOVERNMENTAL AGREEMENT  
CREATING DESCHUTES COUNTY ROAD AGENCY**

This Intergovernmental Agreement creating Deschutes County Road Agency (this “Agreement”) effective March 2, 2023 (the “Effective Date”), and is entered into between Deschutes County (“County”), a political subdivision of the State of Oregon, whose address is 1300 NW Wall Street, Bend OR 97703, and the Deschutes County 911 Service District, a duly enacted and operating county service district, whose mailing address is P.O. Box 6005, Bend, Oregon 97708-6005. Each of the parties hereto is referred to herein individually as a “Party” and collectively “Parties.”

**RECITALS:**

A. The Parties desire to form an intergovernmental entity to be named the Deschutes County Road Agency (the “Agency”). Agency will be formed to receive and distribute certain road funds.

B. This Agreement is made pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

C. The Parties are authorized to enter into this Agreement creating an intergovernmental entity pursuant to their respective principal acts and ORS 190.003 to 190.130.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the Parties’ respective obligations under this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**Section 1. Agency.**

**1.1 Creation.** Pursuant to this Agreement, the Agency is hereby created as an intergovernmental entity pursuant to ORS Chapter 190.

**1.2 Purpose.** Agency’s purposes include receiving and distributing U.S. Forest Service Secure Rural Schools (“SRS”) funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto.

**1.3 Responsibilities and General Powers.**

**1.3.1** Agency will have responsibility and authority to receive and distribute County’s apportionment of SRS road funds for road construction, including functions related thereto, within the boundaries of County, and subject to the terms of this Agreement and/or ORS chapter 190, perform such other functions as may be assigned by the Parties from time to time.

**1.3.2** Agency shall have the power to adopt, through action of its Board of Directors (the “Board”), such bylaws, rules, regulations, and policies necessary to further the purposes of Agency and/or this Agreement.

**1.3.3** Agency shall have the power to enter into agreements with other public or private entities and to exercise all powers pursuant to the Laws (as defined below), including, without limitation, the principal acts of the Parties and ORS chapter 190. For purposes of this Agreement, the term “Law(s)” means all federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting Agency, this Agreement, and/or Agency’s purposes, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and ORS chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

**1.4 Offices.** The offices of Agency shall be located at the Deschutes County Services Building, 1300 NW Wall Street, Bend, OR 97703.

**1.5 Governing Body.** The Board, unless otherwise provided herein, shall be the governing body and shall exercise authority over all matters of Agency concern.

**Section 2. Board of Directors.**

**2.1 Membership.** Agency shall be governed by the Board consisting of the commissioners serving on the Deschutes County Board of Commissioners.

**2.2 Authority.**

**2.2.1** The Board shall have authority to do the following:

- a. Adopt bylaws for Agency, which shall set forth the rules by which the Agency shall be run. The bylaws may be amended from time to time by the Board.
- b. Oversee and to have full responsibility for all matters pertaining to the development and operations of Agency.
- c. Enter into contracts for goods and services for Agency’s development and operations.
- d. Review and approve the Agency’s budget pursuant to Oregon Local Budget Law, when applicable.
- e. Appoint advisory boards to consider any issue before it, if it so desires.
- f. Establish the Agency mission and goals.

g. Recommend and monitor expenditures consistent with the manner and restrictions of ORS 368.705-368.722.

**2.2.2** The Board shall not have authority to do the following:

- a. Commit the taxing authority or general funds of any Party.
- b. Expend funds in excess of the SRS funding received by the Agency.

**2.3 Meetings.** Regular meetings of the Board shall be held on at least a quarterly basis at such time and place as determined by the Board. Special meetings may be called by the chairperson as needed or desired. All motions presented for approval shall require an affirmative vote of a majority of the whole membership of the voting members of the Board. Two (2) members of Board shall constitute a quorum. Members appearing by telephone or other electronic means are considered present.

The rules of parliamentary practice comprised in the Robert's Rules of Order shall be used as a guide to address procedural questions to the extent not inconsistent with Agency's policy and procedures.

**Section 3. Budget; Funding; Costs; Revenue.**

**3.1 Budget.** Agency, through County, shall prepare the annual operating budget of the Agency. The Board shall adopt a final budget, in accordance with ORS 294.900 to 294.930, no later than June of each preceding year. The budget period shall be on a fiscal year basis beginning on the first of July each year. The Board shall consider and adopt the budget on behalf of the Agency. If there are any program changes any supplemental budget shall go through the budget stages set forth herein and comply with all applicable budget policies and Oregon Local Budget Law.

**3.2 Funding.** The Agency will receive funds under ORS 293.560 apportioned to the County road fund. County will request that the Oregon Department of Administrative Services credit the moneys described in ORS 294.060(1) to the Agency pursuant to ORS 294.060(8).

**3.3 Expenses.** County will be responsible for providing all funds necessary to pay for Agency's costs, expenses, obligations, and/or liabilities. Notwithstanding anything contained in this Agreement to the contrary, District will not be responsible for (and will not pay) any funds for Agency's costs, expenses, obligations, and/or liabilities.

**3.4 Revenue.** Revenue or fees derived from the functions or activities of the Agency will be apportioned to County.

**Section 4. Term, Termination and Amendment.**

**4.1 Term.** Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect

until June 30, 2024 (the “Initial Term”), unless sooner terminated as provided in this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one or more term(s) of one year each, unless sooner terminated in accordance with this Agreement. Commencing on or about July 1, 2023 and continuing on or about the same day each year thereafter during the term of this Agreement, the Parties will review this Agreement to determine whether any changes and/or modifications to this Agreement are necessary or appropriate. Any changes and/or modifications to this Agreement require the Parties’ mutual written agreement.

**4.2 Termination.** Notwithstanding anything contained in this Agreement to the contrary, (a) the Parties may terminate this Agreement and dissolve the Agency by the Parties’ unanimous written agreement, (b) upon expiration of the Initial Term, either Party may terminate this Agreement by providing the other Party no less than one hundred eighty (180) days’ prior written notice (provided, however, termination under this Section 4.2(b) will not take effect between February 1 and June 30 of any fiscal year), and (c) either Party may terminate this Agreement immediately upon written notice to the other Party if the other Party breaches and/or otherwise fails to perform the other Party’s obligations under this Agreement.

**Section 5. Additional Parties.** Subject to the Laws, including, without limitation, ORS chapter 190, additional governmental entities may be allowed to join the Agency subject to approval by the governing bodies of all Parties.

**Section 6. Insurance; Liability; Indemnification; Relationship.**

**6.1 Insurance.** Agency will obtain and maintain adequate insurance to cover Agency’s operations and that at least equal the applicable limits of liability identified under the Oregon Tort Claims Act (ORS 30.260 – ORS 30.300). Insurance requirements may be satisfied by programs of self-insurance.

**6.2 Liability.** Except as otherwise provided under Section 6.3, there shall be no joint and several liability of the Parties either in contract or tort, and all obligations of Agency or the Parties shall be several only. Without limiting the foregoing, no Party to this Agreement shall be liable for damages, debts or claims caused solely by the negligent act, omission or other wrongful act by Agency or other Parties hereto. The Party causing damages by its sole negligent act, omission, or wrongful act shall be individually liable.

**6.3 Agency and County Indemnification.** To the fullest extent permitted under applicable law, Agency and County each jointly and severally release and will defend, indemnify, and hold District and District’s Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of Agency’s formation and operations and/or County’s breach and/or

failure to perform County's representations, warranties, covenants, and/or obligations under this Agreement.

**6.4 Relationship.** Each Party is an independent contractor of the other Parties. This Agreement does not create a joint venture and/or agency relationship between the Parties. No Party has the authority to bind the other Party or represent to any person that a Party is an agent of the other Party. No Party will provide any benefits to any other Party; each Party will be solely responsible for obtaining the Party's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Notwithstanding anything contained in this Agreement to the contrary, Agency (and/or the Board) will not have the authority to bind and/or encumber a Party in any manner except as agreed in writing by the Party.

**Section 7. Dissolution.** Upon dissolution of Agency, County shall remain solely liable for any Agency obligation that has been specifically incurred in accordance with the terms of this Agreement, or by other resolutions, or by separate agreement of the parties. Upon dissolution, the assets of Agency will be distributed to Deschutes County.

**Section 8. General Provisions.**

**8.1 Coordination; Assignment; Binding Effect.** The Parties will maintain adequate levels of communication to ensure maximum cooperation and coordination between the Parties. No Party may assign any of the Party's rights and/or obligations under this Agreement to any person without the prior written consent of all other Parties. Subject to the immediately preceding sentence, this Agreement will be binding on the Parties and their respective administrators, successors, and permitted assigns and will inure to their benefit. The Parties will execute all documents or instruments and will perform all lawful acts necessary or appropriate to carry out the intent of this Agreement. All exhibits, schedules, instruments, and other documents referenced in this Agreement are part of this Agreement.

**8.2 Notices; Severability; Remedies.** Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable Party to the address shown in the preamble of this Agreement (or any other address that a Party may designate by notice to the other parties), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Subject to the terms and conditions contained in this Agreement, each Party will pay all wages and benefits due the Party's personnel, including, without limitation, overtime,



workers' compensation, and death benefits. If a Party breaches and/or otherwise fails to perform any of the Party's representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting Parties may, in addition to any other remedy provided to the non-defaulting Parties under this Agreement, pursue all remedies available to the non-defaulting Parties at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

**8.3 Waiver; Entire Agreement; Amendment; Counterparts.** Notwithstanding anything contained in this Agreement to the contrary, no provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the Parties. No waiver by a Party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between Parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements. No addition, modification, amendment, or alteration to this Agreement will be effective against the Parties unless specifically agreed upon in writing and signed by the Parties. This Agreement may be signed in one or more counterparts.

**8.4 Applicable Law; Venue; Attorney Fees.** This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Deschutes County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Deschutes County, Oregon. Each Party is responsible for its own attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

**8.5 Debts, Liabilities and Obligations.** All debts, liabilities and obligations of any of the Parties shall be and shall remain debts, liabilities and obligations of that or those Parties and shall not become debts liabilities and obligations of the other parties or of the Agency. All debts, liabilities and obligations incurred by or on behalf of the Agency shall remain debts, liabilities and obligations of the Agency.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

///

COUNTY:

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

\_\_\_\_\_  
Patti Adair, Commissioner

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

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

911 SERVICE DISTRICT:

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

\_\_\_\_\_  
Patti Adair, Commissioner

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

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



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 1, 2023

Convening as the Governing Body for Deschutes County 911 Service District

SUBJECT: Public Hearing. Adoption by Emergency, of Ordinance No. 2023-006, an ordinance ratifying the creation of an intergovernmental entity known as the Deschutes County Road Agency (DCRA).

RECOMMENDED MOTION:

- (1) Move first and second reading, including emergency adoption, by title only of Ordinance No. 2023-006.
(2) Move adoption of Ordinance No. 2023-006.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County and Deschutes County 911 Service District have entered into an IGA which created the Deschutes County Road Agency (DCRA). DCRA will receive and distribute U.S. Forest Service Secure Rural School funds for road construction in Deschutes County.

ORS 190.085 requires local governments to enact ordinances ratifying the creation of an intergovernmental entity through intergovernmental agreements (IGA).

BUDGET IMPACTS:

Anticipated \$800,000.00 annually.

ATTENDANCE:

Road, DC 911, Legal

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON,  
CONVENING AS THE GOVERNING BODY FOR THE DESCHUTES COUNTY 911 SERVICE DISTRICT

An Ordinance Ratifying the Creation of an Intergovernmental Entity Known as the Deschutes County Road Agency (DCRA), and Declaring an Emergency. \* \* \* \* \* ORDINANCE NO. 2023-006

WHEREAS, ORS 190.085 requires local governments to enact ordinances ratifying the creation of intergovernmental entities through intergovernmental agreements prior to the effective date of the agreement; and

WHEREAS, Deschutes County and the Deschutes County 911 Service District wish to establish an intergovernmental entity comprised of the governing bodies of Deschutes County and the Deschutes County 911 Service District to oversee a county road agency to be created consistent with Oregon HB2174 (2021); and

WHEREAS, the intergovernmental entity shall have the power to receive and distribute U.S. Forest Service Secure Rural Schools (“SRS”) funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto, including but not limited to entering into contracts, adopting rules for administrative and business operations, and perform any lawful act as allowed by ORS Chapter 190; and

WHEREAS, it is the intent of the Board of County Commissioners of Deschutes County, Oregon, convening as the Governing Body for the Deschutes County 911 Service District to create an intergovernmental entity by intergovernmental agreement; and

WHEREAS, the intergovernmental agreement shall be effective on March 2, 2023 or when both Deschutes County and Deschutes County 911 Service District adopt it, whichever occurs last; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, CONVENING AS THE GOVERNING BODY OF THE DESCHUTES COUNTY 911 SERVICE DISTRICT ORDAINS as follows:

Section 1. Pursuant to ORS 190.085, it is the intent of the Board of Commissioners to create an intergovernmental entity known as the Deschutes County Road Agency (DCRA) by intergovernmental agreement among Deschutes County and the Deschutes County 911 Service District for the purpose of receiving and distributing U.S. Forest Service Secure Rural Schools (“SRS”) funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto, including but not limited to entering into contracts, adopting rules for administrative and business operations, and performing any lawful act as allowed by ORS Chapter 190; and establishing that the governing bodies of the two entities will provide coordinated oversight of the Deschutes County Road Agency.

Section 2. The DCRA Intergovernmental Agreement, Document No. 2023-131, a copy of which is attached hereto as Exhibit 1, is ratified by the Deschutes County 911 Service District.

Section 3. The DCRA Intergovernmental Agreement creating the DCRA shall be effective on March 2, 2023 or whenever all the parties approve it, whichever occurs last.

Section 4. The public purpose of the DCRA is to establish a governing body to oversee the receipt and distribution of U.S. Forest Service Secure Rural Schools (“SRS”) funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto, including but not limited to entering into contracts, adopting rules for administrative and business operations, and performing any lawful act as allowed by ORS Chapter 190.

Section 5. The DCRA shall have the powers, duties and functions as set out in the Intergovernmental Agreement.

Section 6. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

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

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON,  
CONVENING AS THE GOVERNING BODY OF  
THE DESCHUTES COUNTY 911 SERVICE  
DISTRICT

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

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

ATTEST:

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

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

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

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

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

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

# **EXHIBIT 1**

## **(to Ordinance No. 2023-006)**

**INTERGOVERNMENTAL AGREEMENT  
CREATING DESCHUTES COUNTY ROAD AGENCY**

This Intergovernmental Agreement creating Deschutes County Road Agency (this “Agreement”) effective March 2, 2023 (the “Effective Date”), and is entered into between Deschutes County (“County”), a political subdivision of the State of Oregon, whose address is 1300 NW Wall Street, Bend OR 97703, and the Deschutes County 911 Service District, a duly enacted and operating county service district, whose mailing address is P.O. Box 6005, Bend, Oregon 97708-6005. Each of the parties hereto is referred to herein individually as a “Party” and collectively “Parties.”

**RECITALS:**

A. The Parties desire to form an intergovernmental entity to be named the Deschutes County Road Agency (the “Agency”). Agency will be formed to receive and distribute certain road funds.

B. This Agreement is made pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

C. The Parties are authorized to enter into this Agreement creating an intergovernmental entity pursuant to their respective principal acts and ORS 190.003 to 190.130.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the Parties’ respective obligations under this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**Section 1. Agency.**

**1.1 Creation.** Pursuant to this Agreement, the Agency is hereby created as an intergovernmental entity pursuant to ORS Chapter 190.

**1.2 Purpose.** Agency’s purposes include receiving and distributing U.S. Forest Service Secure Rural Schools (“SRS”) funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto.

**1.3 Responsibilities and General Powers.**

**1.3.1** Agency will have responsibility and authority to receive and distribute County’s apportionment of SRS road funds for road construction, including functions related thereto, within the boundaries of County, and subject to the terms of this Agreement and/or ORS chapter 190, perform such other functions as may be assigned by the Parties from time to time.

**1.3.2** Agency shall have the power to adopt, through action of its Board of Directors (the “Board”), such bylaws, rules, regulations, and policies necessary to further the purposes of Agency and/or this Agreement.

**1.3.3** Agency shall have the power to enter into agreements with other public or private entities and to exercise all powers pursuant to the Laws (as defined below), including, without limitation, the principal acts of the Parties and ORS chapter 190. For purposes of this Agreement, the term “Law(s)” means all federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting Agency, this Agreement, and/or Agency’s purposes, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and ORS chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

**1.4 Offices.** The offices of Agency shall be located at the Deschutes County Services Building, 1300 NW Wall Street, Bend, OR 97703.

**1.5 Governing Body.** The Board, unless otherwise provided herein, shall be the governing body and shall exercise authority over all matters of Agency concern.

**Section 2. Board of Directors.**

**2.1 Membership.** Agency shall be governed by the Board consisting of the commissioners serving on the Deschutes County Board of Commissioners.

**2.2 Authority.**

- 2.2.1** The Board shall have authority to do the following:
  - a. Adopt bylaws for Agency, which shall set forth the rules by which the Agency shall be run. The bylaws may be amended from time to time by the Board.
  - b. Oversee and to have full responsibility for all matters pertaining to the development and operations of Agency.
  - c. Enter into contracts for goods and services for Agency’s development and operations.
  - d. Review and approve the Agency’s budget pursuant to Oregon Local Budget Law, when applicable.
  - e. Appoint advisory boards to consider any issue before it, if it so desires.
  - f. Establish the Agency mission and goals.



g. Recommend and monitor expenditures consistent with the manner and restrictions of ORS 368.705-368.722.

**2.2.2** The Board shall not have authority to do the following:

- a. Commit the taxing authority or general funds of any Party.
- b. Expend funds in excess of the SRS funding received by the Agency.

**2.3 Meetings.** Regular meetings of the Board shall be held on at least a quarterly basis at such time and place as determined by the Board. Special meetings may be called by the chairperson as needed or desired. All motions presented for approval shall require an affirmative vote of a majority of the whole membership of the voting members of the Board. Two (2) members of Board shall constitute a quorum. Members appearing by telephone or other electronic means are considered present.

The rules of parliamentary practice comprised in the Robert's Rules of Order shall be used as a guide to address procedural questions to the extent not inconsistent with Agency's policy and procedures.

**Section 3. Budget; Funding; Costs; Revenue.**

**3.1 Budget.** Agency, through County, shall prepare the annual operating budget of the Agency. The Board shall adopt a final budget, in accordance with ORS 294.900 to 294.930, no later than June of each preceding year. The budget period shall be on a fiscal year basis beginning on the first of July each year. The Board shall consider and adopt the budget on behalf of the Agency. If there are any program changes any supplemental budget shall go through the budget stages set forth herein and comply with all applicable budget policies and Oregon Local Budget Law.

**3.2 Funding.** The Agency will receive funds under ORS 293.560 apportioned to the County road fund. County will request that the Oregon Department of Administrative Services credit the moneys described in ORS 294.060(1) to the Agency pursuant to ORS 294.060(8).

**3.3 Expenses.** County will be responsible for providing all funds necessary to pay for Agency's costs, expenses, obligations, and/or liabilities. Notwithstanding anything contained in this Agreement to the contrary, District will not be responsible for (and will not pay) any funds for Agency's costs, expenses, obligations, and/or liabilities.

**3.4 Revenue.** Revenue or fees derived from the functions or activities of the Agency will be apportioned to County.

**Section 4. Term, Termination and Amendment.**

**4.1 Term.** Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect

until June 30, 2024 (the “Initial Term”), unless sooner terminated as provided in this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one or more term(s) of one year each, unless sooner terminated in accordance with this Agreement. Commencing on or about July 1, 2023 and continuing on or about the same day each year thereafter during the term of this Agreement, the Parties will review this Agreement to determine whether any changes and/or modifications to this Agreement are necessary or appropriate. Any changes and/or modifications to this Agreement require the Parties’ mutual written agreement.

**4.2 Termination.** Notwithstanding anything contained in this Agreement to the contrary, (a) the Parties may terminate this Agreement and dissolve the Agency by the Parties’ unanimous written agreement, (b) upon expiration of the Initial Term, either Party may terminate this Agreement by providing the other Party no less than one hundred eighty (180) days’ prior written notice (provided, however, termination under this Section 4.2(b) will not take effect between February 1 and June 30 of any fiscal year), and (c) either Party may terminate this Agreement immediately upon written notice to the other Party if the other Party breaches and/or otherwise fails to perform the other Party’s obligations under this Agreement.

**Section 5. Additional Parties.** Subject to the Laws, including, without limitation, ORS chapter 190, additional governmental entities may be allowed to join the Agency subject to approval by the governing bodies of all Parties.

**Section 6. Insurance; Liability; Indemnification; Relationship.**

**6.1 Insurance.** Agency will obtain and maintain adequate insurance to cover Agency’s operations and that at least equal the applicable limits of liability identified under the Oregon Tort Claims Act (ORS 30.260 – ORS 30.300). Insurance requirements may be satisfied by programs of self-insurance.

**6.2 Liability.** Except as otherwise provided under Section 6.3, there shall be no joint and several liability of the Parties either in contract or tort, and all obligations of Agency or the Parties shall be several only. Without limiting the foregoing, no Party to this Agreement shall be liable for damages, debts or claims caused solely by the negligent act, omission or other wrongful act by Agency or other Parties hereto. The Party causing damages by its sole negligent act, omission, or wrongful act shall be individually liable.

**6.3 Agency and County Indemnification.** To the fullest extent permitted under applicable law, Agency and County each jointly and severally release and will defend, indemnify, and hold District and District’s Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of Agency’s formation and operations and/or County’s breach and/or

failure to perform County's representations, warranties, covenants, and/or obligations under this Agreement.

**6.4 Relationship.** Each Party is an independent contractor of the other Parties. This Agreement does not create a joint venture and/or agency relationship between the Parties. No Party has the authority to bind the other Party or represent to any person that a Party is an agent of the other Party. No Party will provide any benefits to any other Party; each Party will be solely responsible for obtaining the Party's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Notwithstanding anything contained in this Agreement to the contrary, Agency (and/or the Board) will not have the authority to bind and/or encumber a Party in any manner except as agreed in writing by the Party.

**Section 7. Dissolution.** Upon dissolution of Agency, County shall remain solely liable for any Agency obligation that has been specifically incurred in accordance with the terms of this Agreement, or by other resolutions, or by separate agreement of the parties. Upon dissolution, the assets of Agency will be distributed to Deschutes County.

**Section 8. General Provisions.**

**8.1 Coordination; Assignment; Binding Effect.** The Parties will maintain adequate levels of communication to ensure maximum cooperation and coordination between the Parties. No Party may assign any of the Party's rights and/or obligations under this Agreement to any person without the prior written consent of all other Parties. Subject to the immediately preceding sentence, this Agreement will be binding on the Parties and their respective administrators, successors, and permitted assigns and will inure to their benefit. The Parties will execute all documents or instruments and will perform all lawful acts necessary or appropriate to carry out the intent of this Agreement. All exhibits, schedules, instruments, and other documents referenced in this Agreement are part of this Agreement.

**8.2 Notices; Severability; Remedies.** Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable Party to the address shown in the preamble of this Agreement (or any other address that a Party may designate by notice to the other parties), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Subject to the terms and conditions contained in this Agreement, each Party will pay all wages and benefits due the Party's personnel, including, without limitation, overtime,

workers' compensation, and death benefits. If a Party breaches and/or otherwise fails to perform any of the Party's representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting Parties may, in addition to any other remedy provided to the non-defaulting Parties under this Agreement, pursue all remedies available to the non-defaulting Parties at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

**8.3 Waiver; Entire Agreement; Amendment; Counterparts.** Notwithstanding anything contained in this Agreement to the contrary, no provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the Parties. No waiver by a Party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between Parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements. No addition, modification, amendment, or alteration to this Agreement will be effective against the Parties unless specifically agreed upon in writing and signed by the Parties. This Agreement may be signed in one or more counterparts.

**8.4 Applicable Law; Venue; Attorney Fees.** This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Deschutes County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Deschutes County, Oregon. Each Party is responsible for its own attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

**8.5 Debts, Liabilities and Obligations.** All debts, liabilities and obligations of any of the Parties shall be and shall remain debts, liabilities and obligations of that or those Parties and shall not become debts liabilities and obligations of the other parties or of the Agency. All debts, liabilities and obligations incurred by or on behalf of the Agency shall remain debts, liabilities and obligations of the Agency.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

///

COUNTY:

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

\_\_\_\_\_  
Patti Adair, Commissioner

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

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

911 SERVICE DISTRICT:

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

\_\_\_\_\_  
Patti Adair, Commissioner

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

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



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** March 1, 2023

**SUBJECT:** Public Hearing: Adoption by Emergency of Ordinance No. 2023-005, an ordinance ratifying the creation of an intergovernmental entity known as the Deschutes County Road Agency

**RECOMMENDED MOTION:**

- (1) *Move first and second reading, including emergency adoption, by title only of Ordinance No. 2023-005.*
- (2) *Move adoption of Ordinance No. 2023-005.*

**BACKGROUND AND POLICY IMPLICATIONS:**

Deschutes County and Deschutes County 911 Service District have entered into an IGA which created the Deschutes County Road Agency (DCRA). DCRA will receive and distribute U.S. Forest Service Secure Rural School funds for road construction in Deschutes County.

ORS 190.085 requires local governments to enact ordinances ratifying the creation of an intergovernmental entity through intergovernmental agreements (IGA).

**BUDGET IMPACTS:**

*Anticipated \$800,000.00 annually.*

**ATTENDANCE:**

*Road, DC 911, Legal*

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Ratifying the Creation of an Intergovernmental Entity Known as the Deschutes County Road Agency (DCRA), and Declaring an Emergency.

\*  
\*  
\*  
\*

ORDINANCE NO. 2023-005

WHEREAS, ORS 190.085 requires local governments to enact ordinances ratifying the creation of intergovernmental entities through intergovernmental agreements prior to the effective date of the agreement; and

WHEREAS, Deschutes County and the Deschutes County 911 Service District wish to establish an intergovernmental entity comprised of the governing bodies of Deschutes County and the Deschutes County 911 Service District to oversee a county road agency to be created consistent with Oregon HB2174 (2021); and

WHEREAS, the intergovernmental entity shall have the power to receive and distribute U.S. Forest Service Secure Rural Schools ("SRS") funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto, including but not limited to entering into contracts, adopting rules for administrative and business operations, and perform any lawful act as allowed by ORS Chapter 190; and

WHEREAS, it is the intent of the Board of County Commissioners of Deschutes County, Oregon, to create an intergovernmental entity by intergovernmental agreement; and

WHEREAS, the intergovernmental agreement shall be effective on March 2, 2023 or when both Deschutes County and Deschutes County 911 Service District adopt it, whichever occurs last; now therefore,

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

Section 1. Pursuant to ORS 190.085, it is the intent of the Board of Commissioners to create an intergovernmental entity known as the Deschutes County Road Agency (DCRA) by intergovernmental agreement among Deschutes County and the Deschutes County 911 Service District for the purpose of receiving and distributing U.S. Forest Service Secure Rural Schools ("SRS") funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto, including but not limited to entering into contracts, adopting rules for administrative and business operations, and performing any lawful act as allowed by ORS Chapter 190; and establishing that the governing bodies of the two entities will provide coordinated oversight of the Deschutes County Road Agency.

Section 2. The DCRA Intergovernmental Agreement, Document No. 2023-131, a copy of which is attached hereto as Exhibit 1, is ratified by Deschutes County.

Section 3. The DCRA Intergovernmental Agreement creating the DCRA shall be effective on March 2, 2023 or whenever all the parties approve it, whichever occurs last.

Section 4. The public purpose of the DCRA is to establish a governing body to oversee the receipt and distribution of U.S. Forest Service Secure Rural Schools (“SRS”) funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto, including but not limited to entering into contracts, adopting rules for administrative and business operations, and performing any lawful act as allowed by ORS Chapter 190.

Section 5. The DCRA shall have the powers, duties and functions as set out in the Intergovernmental Agreement.

Section 6. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

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

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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

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

ATTEST:

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

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

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

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

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

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



# **EXHIBIT 1**

## **(to Ordinance No. 2023-005)**

**INTERGOVERNMENTAL AGREEMENT  
CREATING DESCHUTES COUNTY ROAD AGENCY**

This Intergovernmental Agreement creating Deschutes County Road Agency (this “Agreement”) effective March 2, 2023 (the “Effective Date”), and is entered into between Deschutes County (“County”), a political subdivision of the State of Oregon, whose address is 1300 NW Wall Street, Bend OR 97703, and the Deschutes County 911 Service District, a duly enacted and operating county service district, whose mailing address is P.O. Box 6005, Bend, Oregon 97708-6005. Each of the parties hereto is referred to herein individually as a “Party” and collectively “Parties.”

**RECITALS:**

A. The Parties desire to form an intergovernmental entity to be named the Deschutes County Road Agency (the “Agency”). Agency will be formed to receive and distribute certain road funds.

B. This Agreement is made pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

C. The Parties are authorized to enter into this Agreement creating an intergovernmental entity pursuant to their respective principal acts and ORS 190.003 to 190.130.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the Parties’ respective obligations under this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**Section 1. Agency.**

**1.1 Creation.** Pursuant to this Agreement, the Agency is hereby created as an intergovernmental entity pursuant to ORS Chapter 190.

**1.2 Purpose.** Agency’s purposes include receiving and distributing U.S. Forest Service Secure Rural Schools (“SRS”) funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto.

**1.3 Responsibilities and General Powers.**

**1.3.1** Agency will have responsibility and authority to receive and distribute County’s apportionment of SRS road funds for road construction, including functions related thereto, within the boundaries of County, and subject to the terms of this Agreement and/or ORS chapter 190, perform such other functions as may be assigned by the Parties from time to time.

**1.3.2** Agency shall have the power to adopt, through action of its Board of Directors (the “Board”), such bylaws, rules, regulations, and policies necessary to further the purposes of Agency and/or this Agreement.

**1.3.3** Agency shall have the power to enter into agreements with other public or private entities and to exercise all powers pursuant to the Laws (as defined below), including, without limitation, the principal acts of the Parties and ORS chapter 190. For purposes of this Agreement, the term “Law(s)” means all federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting Agency, this Agreement, and/or Agency’s purposes, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and ORS chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

**1.4 Offices.** The offices of Agency shall be located at the Deschutes County Services Building, 1300 NW Wall Street, Bend, OR 97703.

**1.5 Governing Body.** The Board, unless otherwise provided herein, shall be the governing body and shall exercise authority over all matters of Agency concern.

**Section 2. Board of Directors.**

**2.1 Membership.** Agency shall be governed by the Board consisting of the commissioners serving on the Deschutes County Board of Commissioners.

**2.2 Authority.**

- 2.2.1** The Board shall have authority to do the following:
  - a. Adopt bylaws for Agency, which shall set forth the rules by which the Agency shall be run. The bylaws may be amended from time to time by the Board.
  - b. Oversee and to have full responsibility for all matters pertaining to the development and operations of Agency.
  - c. Enter into contracts for goods and services for Agency’s development and operations.
  - d. Review and approve the Agency’s budget pursuant to Oregon Local Budget Law, when applicable.
  - e. Appoint advisory boards to consider any issue before it, if it so desires.
  - f. Establish the Agency mission and goals.

- g. Recommend and monitor expenditures consistent with the manner and restrictions of ORS 368.705-368.722.

**2.2.2** The Board shall not have authority to do the following:

- a. Commit the taxing authority or general funds of any Party.
- b. Expend funds in excess of the SRS funding received by the Agency.

**2.3 Meetings.** Regular meetings of the Board shall be held on at least a quarterly basis at such time and place as determined by the Board. Special meetings may be called by the chairperson as needed or desired. All motions presented for approval shall require an affirmative vote of a majority of the whole membership of the voting members of the Board. Two (2) members of Board shall constitute a quorum. Members appearing by telephone or other electronic means are considered present.

The rules of parliamentary practice comprised in the Robert's Rules of Order shall be used as a guide to address procedural questions to the extent not inconsistent with Agency's policy and procedures.

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**3.1 Budget.** Agency, through County, shall prepare the annual operating budget of the Agency. The Board shall adopt a final budget, in accordance with ORS 294.900 to 294.930, no later than June of each preceding year. The budget period shall be on a fiscal year basis beginning on the first of July each year. The Board shall consider and adopt the budget on behalf of the Agency. If there are any program changes any supplemental budget shall go through the budget stages set forth herein and comply with all applicable budget policies and Oregon Local Budget Law.

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**3.3 Expenses.** County will be responsible for providing all funds necessary to pay for Agency's costs, expenses, obligations, and/or liabilities. Notwithstanding anything contained in this Agreement to the contrary, District will not be responsible for (and will not pay) any funds for Agency's costs, expenses, obligations, and/or liabilities.

**3.4 Revenue.** Revenue or fees derived from the functions or activities of the Agency will be apportioned to County.

### **Section 4. Term, Termination and Amendment.**

**4.1 Term.** Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect

until June 30, 2024 (the “Initial Term”), unless sooner terminated as provided in this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one or more term(s) of one year each, unless sooner terminated in accordance with this Agreement. Commencing on or about July 1, 2023 and continuing on or about the same day each year thereafter during the term of this Agreement, the Parties will review this Agreement to determine whether any changes and/or modifications to this Agreement are necessary or appropriate. Any changes and/or modifications to this Agreement require the Parties’ mutual written agreement.

**4.2 Termination.** Notwithstanding anything contained in this Agreement to the contrary, (a) the Parties may terminate this Agreement and dissolve the Agency by the Parties’ unanimous written agreement, (b) upon expiration of the Initial Term, either Party may terminate this Agreement by providing the other Party no less than one hundred eighty (180) days’ prior written notice (provided, however, termination under this Section 4.2(b) will not take effect between February 1 and June 30 of any fiscal year), and (c) either Party may terminate this Agreement immediately upon written notice to the other Party if the other Party breaches and/or otherwise fails to perform the other Party’s obligations under this Agreement.

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failure to perform County's representations, warranties, covenants, and/or obligations under this Agreement.

**6.4 Relationship.** Each Party is an independent contractor of the other Parties. This Agreement does not create a joint venture and/or agency relationship between the Parties. No Party has the authority to bind the other Party or represent to any person that a Party is an agent of the other Party. No Party will provide any benefits to any other Party; each Party will be solely responsible for obtaining the Party's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Notwithstanding anything contained in this Agreement to the contrary, Agency (and/or the Board) will not have the authority to bind and/or encumber a Party in any manner except as agreed in writing by the Party.

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**Section 8. General Provisions.**

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workers' compensation, and death benefits. If a Party breaches and/or otherwise fails to perform any of the Party's representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting Parties may, in addition to any other remedy provided to the non-defaulting Parties under this Agreement, pursue all remedies available to the non-defaulting Parties at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

**8.3 Waiver; Entire Agreement; Amendment; Counterparts.** Notwithstanding anything contained in this Agreement to the contrary, no provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the Parties. No waiver by a Party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between Parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements. No addition, modification, amendment, or alteration to this Agreement will be effective against the Parties unless specifically agreed upon in writing and signed by the Parties. This Agreement may be signed in one or more counterparts.

**8.4 Applicable Law; Venue; Attorney Fees.** This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Deschutes County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Deschutes County, Oregon. Each Party is responsible for its own attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

**8.5 Debts, Liabilities and Obligations.** All debts, liabilities and obligations of any of the Parties shall be and shall remain debts, liabilities and obligations of that or those Parties and shall not become debts liabilities and obligations of the other parties or of the Agency. All debts, liabilities and obligations incurred by or on behalf of the Agency shall remain debts, liabilities and obligations of the Agency.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

///

COUNTY:

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

\_\_\_\_\_  
Patti Adair, Commissioner

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

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

911 SERVICE DISTRICT:

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

\_\_\_\_\_  
Patti Adair, Commissioner

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

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





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 1, 2023

SUBJECT: Approval of Resolution 2023-008, creating a new fund and increasing appropriations within the 2022-2023 Deschutes County Budget.

RECOMMENDED MOTION:

Move approval and Board signature of Resolution No. 2023-008.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County and Deschutes County 911 Service District have entered into an IGA which created the Deschutes County Road Agency (DCRA). DCRA will receive and distribute U.S. Forest Service Secure Rural School funds for road construction in Deschutes County.

Compliance with budget law requires that the Board approve a Resolution creating a new fund to receive SRS funding, and also increasing appropriations within the current fiscal year budget.

BUDGET IMPACTS:

Anticipated \$800,000.00 annually.

ATTENDANCE:

Road, DC 911, Legal, Finance

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

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,  
OREGON

A Resolution Creating a New \*  
Fund and Increasing Appropriations \* RESOLUTION NO. 2023-008  
within the 2022-23 \*  
Deschutes County Budget \*

WHEREAS, On March 1st, 2023, the Board of County Commissioners discussed the creation of a new fund for the Deschutes County Road Agency, and

WHEREAS, it is projected that this fund will receive approximately \$800,000 in U.S. Forest Service Secure Rural Schools (“SRS”) for road construction in Deschutes County in Fiscal Year 2022-23, and

WHEREAS, in accordance with ORS 294.346 a fund may be established to hold moneys to be accumulated and expended for a specified purpose, and

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

Section 1. That the following fund be added:

Fund Name: Deschutes County Road Agency

Fund Number: 715

Fund Purpose: The purpose of this fund is to receive and distribute U.S. Forest Service Secure Rural Schools (“SRS”) funds for road construction in Deschutes County, Oregon, and all other necessary or appropriate functions related thereto, including but not limited to entering into contracts, adopting rules for administrative and business operations, and perform any lawful act as allowed by ORS Chapter 190.

Section 2. That the following revenue be budgeted in the 2022-23 Deschutes County Budget:

**Revenue**

Deschutes County Road Agency

State Miscellaneous

\$ 800,000

**Total Revenue**

**\$ 800,000**

Section 3. That the following amounts be appropriated in the 2022-23 Deschutes County Budget:

**Appropriation**

Deschutes County Road Agency

Transfer Out

\$ 800,000

**Total Appropriation**

**\$ 800,000**

Section 4. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to show the above appropriations:

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

BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

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

ATTEST:

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

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

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



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** March 1, 2023

**SUBJECT:** Tiny Watts Solar Economic Development Loan Request

**BACKGROUND AND POLICY IMPLICATIONS:**

Redmond Economic Development Inc. (REDI) and the Economic Development for Central Oregon (EDCO) came before the Board on January 23, 2023 to request an economic development loan in the amount of \$12,000 for Tiny Watts Solar.

At that time, it was indicated that Tiny Watts Solar would agree to create six (6) new jobs with an average wage of \$76,960 per year in return for a loan of \$12,000. The Board approved a motion for a Tiny Watts Solar forgivable loan.

Since that time the County has come to understand that Tiny Watts Solar relocated to Redmond from Portland in April 2022 with three employees including the husband and wife co-owners. Between May 2022 and February 6, 2023, Tiny Watts Solar added three more positions for a total of six employees.

REDI and EDCO are requesting a forgivable economic development loan be granted to Tiny Watts Solar and that the loan for the creation of the six new jobs be retroactive to April 2022 and include all employees who are currently employed at Tiny Watts Solar.

Staff seeks next steps from the Board that could include:

1. The Board can approve a motion to grant a loan of \$12,000 that includes creating six new jobs in Redmond retroactive to April 2022.
2. The Board can approve a motion to grant a forgivable loan that includes \$2,000 per the creation of a specified number of new jobs starting January 23, 2023.
3. The Board can deny the request of a forgivable loan.

**BUDGET IMPACTS:**

Loans are made from the Economic Development Loan Fund; current balance is \$282,600.

**ATTENDANCE:**

Jen Patterson, Strategic Initiatives Manager  
 Steve Curley, REDI Director, EDCO  
 Bruce Barrett, EDCO, Due Diligence Committee



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** March 1, 2023

**SUBJECT:** Policy Revisions: General Administrative Policies 12, 13, and 16

**RECOMMENDED MOTION:**

Move approval of recommended revisions to Deschutes County General Administrative Policies 12, 13, and 16.

**BACKGROUND AND POLICY IMPLICATIONS:**

Following an audit in the Fall of 2022, ODOT recommended that the County update its ADA, Title VI and Record Retention policies to align with state and federal public transit program requirements. Proposed revisions were subsequently incorporated into the three policies, as follows:

- **Americans with Disabilities Public Notice and Grievance Procedure (GA-13) and Title VI of the Civil Rights Act (GA-16):**  
The recommendation was to adopt a combined Title VI/ADA complaint form to clearly designate the potential categories upon which the discrimination complaint is filed. Staff created a combined Title VI/ADA complaint form and added to both policies.
- **Records Retention Policy (GA-12):**  
The recommendation was to establish and implement a records retention procedure which is specific to STIF Funds, in alignment with OAR Rule 732-040-0020(4).

During this review, the policies were also updated to reflect a consistent policy formatting and add more inclusive language.

**BUDGET IMPACTS:**

N/A

**ATTENDANCE:**

Stephanie Robinson, Administrative Analyst  
Erik Kropp, Deputy County Administrator



**Deschutes County Administrative Policy No: GA - 13**

**Effective Date: October 27, 2004**

**Reissued: March 4, 2019**

**Reissued: March 1, 2023**

## **AMERICANS WITH DISABILITIES PUBLIC NOTICE AND GRIEVANCE PROCEDURE**

### A. STATEMENT OF POLICY

The purpose of this policy is to adopt Americans with Disabilities (ADA) requirements of selecting an ADA Coordinator and adopting Department of Justice Public Notice and Grievance language. In any case, Deschutes County values inclusiveness and is committed to providing programs and services that are free of all forms of discrimination based on factors that include, but are not limited to, race, ethnicity, age, disability status, sexual orientation, and gender identity.

### B. APPLICABILITY

All departments/offices and all County locations.

### C. POLICY AND PROCEDURE

The County adopts the attached Americans with Disabilities Grievance Procedure and Public Notice. Deschutes County selects its Risk Manager as the ADA Coordinator.

- A. Public Notice- In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, Deschutes County will not discriminate against individuals with disabilities on the basis of disability in Deschutes County's services, programs, or activities.
- B. Grievance Procedure - The Grievance Procedure attached hereto and incorporated, is established to meet the requirements of the Americans with Disabilities Act of 1990. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by Deschutes County.

- C. ADA Coordinator - Deschutes County selects the Risk Manager to coordinate ADA activities and to serve as the primary contact for ADA issues.

Approved by the Deschutes County Board of Commissioners on October 27, 2004 and reissued on March 4, 2019 and March 1, 2023.

Nick Lelack  
County Administrator



If this policy is needed in another language or format, please call 541-388-6570.

Si se necesita esta política en un idioma o formato diferente, por favor llame a 541-388-6570.



## DESCHUTES COUNTY, OREGON NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of title II of the Americans with Disabilities Act of 1990, Deschutes County will not discriminate against individuals with disabilities on the basis of disability in Deschutes County's services, programs, or activities.

**Employment:** Deschutes County does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under title I of the Americans with Disabilities Act (ADA).

**Effective Communication: Upon request,** Deschutes County will provide reasonable aids and services leading to effective communication for persons with disabilities so they can participate equally in the County's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

**Modifications to Policies and Procedures:** Deschutes County will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all County programs, services, and activities. For example, individuals with service animals are welcomed in County offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a County program, service, or activity, should contact the ADA Coordinator at 388-6584 or his/her designee at 617-4747, as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require Deschutes County to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a County program, service, or activity is not accessible to persons with disabilities should be directed to the ADA Coordinator.

Deschutes County will not place a surcharge on a particular individual with a disability or



any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.



## Deschutes County, Oregon Grievance Procedure under The Americans with Disabilities Act

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the County. The County's Personnel Policies govern employment-related complaints of disability discrimination.

The complaint should be filed in writing using the ADA Complaint form in Appendix A. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or their designee as soon as possible but no later than 60 calendar days after the alleged violation to:

**ADA Coordinator  
Administrative Services Department  
1300 NW Wall Street  
Bend, Oregon 97701  
(541) 388-6584 or (541) 617-4747**

**Or emailed to: [accessibility@deschutes.org](mailto:accessibility@deschutes.org)**

Within 15 calendar days after receipt of the complaint, the **ADA Coordinator** or their designee will contact or meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the contact, the **ADA Coordinator** or their designee will respond in writing, and where appropriate, in format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the **County** and offer options for substantive resolution of the complaint.

**Disputes:** If the response by the **ADA Coordinator** or their designee does not satisfactorily resolve the issue, the complainant and/or their designee may appeal the ADA Coordinator's response within 15 calendar days after receipt of the response to the **County Administrator** or their designee.

Within 15 calendar days after receipt of the appeal, the **County Administrator** or their designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the **County Administrator** or their designee

will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the **ADA Coordinator** or their designee, appeals to the **County Administrator** or their designee, and responses from these two offices will be retained by the County for at least three years.

Deschutes County prefers that complaints and disputes be filed directly with the County such to expedite a response. However, complaints and disputes can also be filed with:

**Office for Civil Rights**  
**U.S. Dept. of Health and Human Services**  
**2201 Sixth Avenue- Mail Stop RX-11**  
**Seattle, Washington 98121-1831**  
**1-800-368-1019**  
**TDD: 1-800-537-7697**

If you are a member of the Oregon Health Plan you have the additional option of:

**Contacting your managed care plan or Oregon Health Plan Ombudperson**  
**Office 1-800-442-5238**

**DESCHUTES COUNTY  
ADA COMPLAINT FORM**

**CONSOLIDATED CIVIL RIGHTS COMPLAINT FORM**

Your Name	Phone	Alternative Phone
Street Address	City, State	Zip Code

Person(s) discriminated against (if different than the preparer of this form)		
Street Address	City, State	Zip Code

I believe that I (or the person(s) listed above) has been discriminated against on the basis of:					
	Race (Title VI)		Color (Title VI)		National Origin (Limited English Proficiency) (Title VI)
	Disability (ADA)				

Please describe the alleged discrimination incident. Provide the names and titles of all employees involved, if available. Explain what happened and whom you believe was responsible. Please use the back of this form if more space is required. **NOTE: This form consolidates information required by multiple federal civil rights programs. Information will be shared based on the type of discrimination identified above. Title VI of the Civil Rights Act covers Race, Color, and National Origin complaints ONLY. Americans with Disabilities Act covers Disability complaints.**

Date of Incident:	

Have you filed this complaint with any other federal, state, or local agency?		Yes	No
If yes, Agency Name			
Agency Address			
Agency Contact Name (if available)			

I affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

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

Print Name: \_\_\_\_\_

The form may be hand delivered, mailed, or emailed:

Hand deliver to:  
 ADA Coordinator  
 Administrative Services Department  
 Deschutes County  
 1300 NW Wall Street  
 Bend, OR 97703

Mail to:  
 ADA Coordinator  
 Administrative Services Department  
 Deschutes County  
 PO Box 6005  
 Bend, OR 97703

Email to: [accessibility@deschutes.org](mailto:accessibility@deschutes.org)

If this form is needed in another language or format, please call 541-388-6570.

Si se necesita esta información en un idioma o formato diferente, por favor llame a 541-388-6570.



**Deschutes County Administrative Policy No: GA - 13**  
**Effective Date: October 27, 2004**  
**Reissued: March 4, 2019**  
**Reissued: March 1, 2023**

## **AMERICANS WITH DISABILITIES PUBLIC NOTICE AND GRIEVANCE PROCEDURE**

### A. STATEMENT OF POLICY

The purpose of this policy is to adopt Americans with Disabilities (ADA) requirements of selecting an ADA Coordinator and adopting Department of Justice Public Notice and Grievance language. In any case, Deschutes County values inclusiveness and is committed to providing programs and services that are free of all forms of discrimination based on factors that include, but are not limited to, race, ethnicity, age, disability status, sexual orientation, and gender identity.

### B. APPLICABILITY

All departments/offices and all County locations.

### C. POLICY AND PROCEDURE

The County adopts the attached Americans with Disabilities Grievance Procedure and Public Notice. Deschutes County selects its Risk Manager as the ADA Coordinator.

- A. Public Notice- In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, Deschutes County will not discriminate against individuals with disabilities on the basis of disability in Deschutes County's services, programs, or activities.
- B. Grievance Procedure - The Grievance Procedure attached hereto and incorporated, is established to meet the requirements of the Americans with Disabilities Act of 1990. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by Deschutes County.

- C. ADA Coordinator - Deschutes County selects the Risk Manager to coordinate ADA activities and to serve as the primary contact for ADA issues.

Approved by the Deschutes County Board of Commissioners on October 27, 2004 and reissued on March 4, 2019 and March 1, 2023.

Nick Lelack  
County Administrator



If this policy is needed in another language or format, please call 541-388-6570.

Si se necesita esta política en un idioma o formato diferente, por favor llame a 541-388-6570.





## DESCHUTES COUNTY, OREGON NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of title II of the Americans with Disabilities Act of 1990, Deschutes County will not discriminate against individuals with disabilities on the basis of disability in Deschutes County's services, programs, or activities.

**Employment:** Deschutes County does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under title I of the Americans with Disabilities Act (ADA).

**Effective Communication: Upon request,** Deschutes County will provide reasonable aids and services leading to effective communication for persons with disabilities so they can participate equally in the County's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

**Modifications to Policies and Procedures:** Deschutes County will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all County programs, services, and activities. For example, individuals with service animals are welcomed in County offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a County program, service, or activity, should contact the ADA Coordinator at 388-6584 or his/her designee at 617-4747, as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require Deschutes County to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a County program, service, or activity is not accessible to persons with disabilities should be directed to the ADA Coordinator.

Deschutes County will not place a surcharge on a particular individual with a disability or

any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.



## Deschutes County, Oregon Grievance Procedure under The Americans with Disabilities Act

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the County. The County's Personnel Policies govern employment-related complaints of disability discrimination.

The complaint should be filed in writing using the ADA Complaint form in Appendix A. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or their designee as soon as possible but no later than 60 calendar days after the alleged violation to:

**ADA Coordinator  
Administrative Services Department  
1300 NW Wall Street  
Bend, Oregon 97701  
(541) 388-6584 or (541) 617-4747**

**Or emailed to: [accessibility@deschutes.org](mailto:accessibility@deschutes.org)**

Within 15 calendar days after receipt of the complaint, the **ADA Coordinator** or their designee will contact or meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the contact, the **ADA Coordinator** or their designee will respond in writing, and where appropriate, in format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the **County** and offer options for substantive resolution of the complaint.

**Disputes:** If the response by the **ADA Coordinator** or their designee does not satisfactorily resolve the issue, the complainant and/or their designee may appeal the ADA Coordinator's response within 15 calendar days after receipt of the response to the **County Administrator** or their designee.

Within 15 calendar days after receipt of the appeal, the **County Administrator** or their designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the **County Administrator** or their designee

will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the **ADA Coordinator** or their designee, appeals to the **County Administrator** or their designee, and responses from these two offices will be retained by the County for at least three years.

Deschutes County prefers that complaints and disputes be filed directly with the County such to expedite a response. However, complaints and disputes can also be filed with:

**Office for Civil Rights**  
**U.S. Dept. of Health and Human Services**  
**2201 Sixth Avenue- Mail Stop RX-11**  
**Seattle, Washington 98121-1831**  
**1-800-368-1019**  
**TDD: 1-800-537-7697**

If you are a member of the Oregon Health Plan you have the additional option of:

**Contacting your managed care plan or Oregon Health Plan Ombudperson**  
**Office 1-800-442-5238**

Appendix A

**DESCHUTES COUNTY  
ADA COMPLAINT FORM**

**CONSOLIDATED CIVIL RIGHTS COMPLAINT FORM**

Your Name	Phone	Alternative Phone
Street Address	City, State	Zip Code

Person(s) discriminated against (if different than the preparer of this form)		
Street Address	City, State	Zip Code

I believe that I (or the person(s) listed above) has been discriminated against on the basis of:					
	Race (Title VI)		Color (Title VI)		National Origin (Limited English Proficiency) (Title VI)
	Disability (ADA)				

Please describe the alleged discrimination incident. Provide the names and titles of all employees involved, if available. Explain what happened and whom you believe was responsible. Please use the back of this form if more space is required. **NOTE: This form consolidates information required by multiple federal civil rights programs. Information will be shared based on the type of discrimination identified above. Title VI of the Civil Rights Act covers Race, Color, and National Origin complaints ONLY. Americans with Disabilities Act covers Disability complaints.**

Date of Incident:	

Have you filed this complaint with any other federal, state, or local agency?		Yes	No
If yes, Agency Name			
Agency Address			
Agency Contact Name (if available)			

I affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

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

Print Name: \_\_\_\_\_

The form may be hand delivered, mailed, or emailed:

Hand deliver to:  
 ADA Coordinator  
 Administrative Services Department  
 Deschutes County  
 1300 NW Wall Street  
 Bend, OR 97703

Mail to:  
 ADA Coordinator  
 Administrative Services Department  
 Deschutes County  
 PO Box 6005  
 Bend, OR 97703

Email to: [accessibility@deschutes.org](mailto:accessibility@deschutes.org)

If this form is needed in another language or format, please call 541-388-6570.

Si se necesita esta información en un idioma o formato diferente, por favor llame a 541-388-6570.



**Deschutes County Administrative Policy No. GA-16**  
**Effective Date: January 27, 2016**  
**Reissued: August 26, 2020**  
**Reissued: March 1, 2023**

## **TITLE VI OF THE CIVIL RIGHTS ACT**

### **A. STATEMENT OF POLICY**

Deschutes County is committed to providing programs and services that are free of all forms of discrimination based on factors that include, but are not limited to, race, ethnicity, age, disability status, gender identity, and sexual orientation. The County will take preventive, corrective, and/or disciplinary action when necessary against behavior that violates this policy or the rights and privileges it is designed to protect.

### **B. APPLICABILITY**

All programs of Deschutes County are subject to this policy regardless of funding source. Individual grants and programs may carry additional requirements.

### **C. DEFINITIONS**

For the purpose of this policy, unless otherwise specified, the following definitions shall apply:

- **Color:** Skin color or complexion
- **Discrimination:** An intentional or unintentional action through which a person, solely because of race, color, disability, national origin, religion, gender/gender identification, or sexual orientation has been subjected to unequal treatment under a program or activity offered by the County.
- **National Origin:** A person's or a person's ancestor's, place of birth. May also refer to the physical, cultural, or linguistic characteristics associated with ethnicity or ancestry.
- **Race:** A social classification of people which includes, but may not



be limited to, White, Hispanic or Latino, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander as defined by the U.S. Census.

- Limited English Proficiency (LEP): One who does not speak English as a primary language and who has limited ability to read, speak, write, or understand English.

#### **D. PROCEDURES**

##### Title VI Coordinator:

The Deputy County Administrator serves as Deschutes County's Title VI Coordinator and acts as the focal point for Title VI implementation and monitoring.

##### Public Notice:

A Title VI Notice to the Public will be posted on Deschutes County's website at [www.deschutes.org](http://www.deschutes.org) and in a public area within each County facility. A copy of the Deschutes County Title VI Notice to the Public is attached to this document as Appendix A. The Department of Administrative Services will also provide copies to departments for posting.

##### Complaints:

Any person who believes they have been discriminated against by Deschutes County on the basis of race, color, or national origin may file a complaint by completing and submitting a Title VI Complaint Form. Complaints must be complete in both form and content to be reviewed and must be submitted within 180 days of the alleged incident of discrimination to be considered. A copy of the Deschutes County Title VI Complaint Form is attached to this document as Appendix B. To request a separate Title VI Complaint Form:

- Call 541-388 -6570
- Visit the Deschutes County Department of Administrative Services located at: 1300 NW Wall Street, Suite 200, Bend, OR 97703

- Write to:  
Department of Administrative Services Deschutes Co unty  
PO Box 6005  
Bend, OR 97708-6005
- Email: [admin@deschutes.org](mailto:admin@deschutes.org)
- Download the document from Deschutes County's website at [www.deschutes.org](http://www.deschutes.org)

Complaints may be submitted to the Deputy County Administrator by hand-delivery at the physical address or by U.S. postal service to the mailing address shown above or can be submitted directly to the ODOT Office of Civil Rights or the Federal Transit Administration (FTA) at:

ODOT Office of Civil Rights-MS 23  
3930 Fairview Industrial Drive SE  
Salem, OR 97302  
(503) 986-3169

Federal Transit Administration, Region 10  
Attn: Civil Rights Officer  
Jackson Federal Building  
915 Second Avenue Suite 3142  
Seattle, WA 98174-1002  
(206) 220-7954; Fax (206) 220-7959

When applicable, a complainant may also file a Title VI complaint directly with any federal agency that supplies funding to Deschutes County in support of the applicable program or service in which the alleged incident occurred. Examples of federal agencies that provide funding to the County include, but are not limited to, the U.S. Environmental Protection Agency, Department of Agriculture, Department of Justice, Department of Health and Human Services, Department of Homeland Security, and Department of Transportation. Contact information for the Office of Civil Rights operating in such agencies may be found online.

At such time as the complaint is received; the Department of Administrative Services will review it to determine if Deschutes County has jurisdiction over the

matter. Within 10 business days, the County will return an acknowledgment letter stating whether the complaint will be investigated by the County. Deschutes County will make every effort to investigate complaints within no more than 90 days following the date on this letter. However, in the event of complex complaints, which address multiple issues and/or involve legal action, the County may require an extended period to fully investigate and respond. In such cases, the complainant will be informed of the delay.

If more information is needed to resolve the case, the assigned investigator may contact the complainant. The complainant has 10 business days from the date of the letter to return the requested information to the investigator. If the investigator is not contacted by the complainant or does not receive the requested information within 10 business days, Deschutes County will administratively close the case. A case will also be administratively closed upon withdrawal by the complainant.

After the investigator reviews the complaint, they will issue one of two letters to the complainant: A closure letter or a letter of finding (LOF). A closure letter summarizes the allegations and investigation, indicates that a Title VI violation did not occur, and states that the case will be closed. An LOF summarizes the allegations and investigation and explains whether corrective or other action will occur. If the complainant wishes to appeal the decision, they have 10 business days following the date of the letter or the LOF to do so. To submit an appeal, complainants must deliver a written letter explaining the basis of the appeal to the Deputy County Administrator. County officials will review the factors presented and issue a final formal decision within 30 business days following the date of the appeal letter.

The County will provide, upon request, a list of all active investigations, lawsuits, or complaints made on the basis of race, ethnicity, age, disability status, gender/gender identification, and sexual orientation. A copy of the Deschutes County List of Title VI Investigations, Complaints, and Lawsuits form is included in the County's Title VI plan and contains a name, date of filing, summary of the allegation(s), status of the investigation, and action(s) taken.

#### **E. Public Participation:**

Deschutes County employs a wide variety of strategies to solicit, consider, and

incorporate the perspectives of diverse populations in policy and decision-making processes. Such opportunities for involvement are outlined in the County's Title VI plan, which is updated in accordance with federal and state requirements.

**F. Language Assistance:**

Deschutes County takes reasonable steps to offer assistance for LEP clients and residents seeking access to services and opportunities. When appropriate, the County will use population composition and client needs in regard to language for the purpose of developing and providing programs and services, disseminating information, conducting outreach, and encouraging public involvement. A copy of the most current data and a description of the strategies the County uses to help serve LEP persons is included in the County's Title VI plan.

**G. Reporting:**

Deschutes County will report information required to determine compliance with Title VI of the Civil Rights Act as required by federal and state government agencies for grant funding and other purposes. The contents and format of such reports will be determined by the requesting party.

Approved by the Deschutes County Board of Commissioners on January 27, 2016, reissued on August 26, 2020 and March 1, 2023.

Nick Lelack  
County Administrator

## Appendix A

**DESCHUTES COUNTY TITLE VI NOTICE**

Deschutes County operates its programs and services without discrimination based on race, color, or national origin in accordance with Title VI of the Civil Rights Act. Any person who believes they have been subjected to an unlawful discriminatory practice as defined under Title VI of the Civil Rights Act may file a complaint with the Deschutes County Department of Administrative Services.

For more information about Deschutes County's civil rights program and the obligations and procedures required to file a complaint:

- Call 541-388-6570
- Visit the Deschutes County Department of Administrative Services located at:  
1300 NW Wall Street, Suite 200, Bend, OR 97703
- Write to:  
Department of Administrative Services  
Deschutes County  
PO Box 6005  
Bend, OR 97708-6005
- Email to: [admin@deschutes.org](mailto:admin@deschutes.org)
- Download the document from Deschutes County's website at  
[www.deschutes.org](http://www.deschutes.org).

Complaints can also be submitted directly to:

ODOT Office of Civil Rights-MS 23  
3930 Fairview Industrial Drive SE  
Salem, OR 97302  
(503) 986-3169

Federal Transit Administration, Region 10  
Attn: Civil Rights Officer  
Jackson Federal Building  
915 Second Avenue Suite 3142  
Seattle, WA 98174-1002  
(206) 220-7954; Fax (206) 220-7959

When applicable, a complainant may also file a Title VI complaint directly with any federal agency that supplies funding to Deschutes County in support of the applicable program or service in which the alleged incident occurred. Examples of federal agencies that provide funding to the County include, but are not limited to, the U.S. Environmental Protection Agency, Department of Agriculture, Department of Justice, Department of Health and Human Services, Department of Homeland Security, and Department of Transportation. Contact information for the Office of Civil Rights operating in such agencies may be found online.

**If this information is needed in another language or format, please call 541-388-6584.**

**Si se necesita esta informacion en un idioma o formato diferente, por favor Harne a 541-388-6570.**

**DESCHUTES COUNTY**

## TITLE VI COMPLAINT FORM

### **CONSOLIDATED CIVIL RIGHTS COMPLAINT FORM**

Your Name	Phone	Alternative Phone
Street Address	City, State	Zip Code

Person(s) discriminated against (if different than the preparer of this form)		
Street Address	City, State	Zip Code

I believe that I (or the person(s) listed above) has been discriminated against on the basis of:					
	Race (Title VI)		Color (Title VI)		National Origin (Limited English Proficiency) (Title VI)
	Disability (ADA)				

<p>Please describe the alleged discrimination incident. Provide the names and titles of all employees involved, if available. Explain what happened and whom you believe was responsible. Please use the back of this form if more space is required. <b>NOTE: This form consolidates information required by multiple federal civil rights programs. Information will be shared based on the type of discrimination identified above. Title VI of the Civil Rights Act covers Race, Color, and National Origin complaints ONLY. Americans with Disabilities Act covers Disability complaints.</b></p>	
Date of Incident:	

Have you filed this complaint with any other federal, state, or local agency?		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
If yes, Agency Name					
Agency Address					
Agency Contact Name (if available)					

I affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

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

Print Name: \_\_\_\_\_

Hand deliver this form to:  
Deputy County Administrator  
Department of Administrative Services  
Deschutes County  
1300 NW Wall Street  
Bend, OR 97703

Or mail it to:  
Deputy County Administrator  
Department of Administrative Services  
Deschutes County  
PO Box 6005  
Bend, OR 97703

If this form is needed in another language or format, please call 541-388-6570.

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**Deschutes County Administrative Policy No. GA-16**  
**Effective Date: January 27, 2016**  
**Reissued: August 26, 2020**  
**Reissued: March 1, 2023**

**TITLE VI OF THE CIVIL RIGHTS ACT**

**A. STATEMENT OF POLICY**

Deschutes County is committed to providing programs and services that are free of all forms of discrimination based on factors that include, but are not limited to, race, ethnicity, age, disability status, gender identity, and sexual orientation. The County will take preventive, corrective, and/or disciplinary action when necessary against behavior that violates this policy or the rights and privileges it is designed to protect.

**B. APPLICABILITY**

All programs of Deschutes County are subject to this policy regardless of funding source. Individual grants and programs may carry additional requirements.

**C. DEFINITIONS**

For the purpose of this policy, unless otherwise specified, the following definitions shall apply:

- Color: Skin color or complexion
- Discrimination: An intentional or unintentional action through which a person, solely because of race, color, disability, national origin, religion, gender/gender identification, or sexual orientation has been subjected to unequal treatment under a program or activity offered by the County.
- National Origin: A person's or a person's ancestor's, place of birth. May also refer to the physical, cultural, or linguistic characteristics associated with ethnicity or ancestry.
- Race: A social classification of people which includes, but may not

be limited to, White, Hispanic or Latino, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander as defined by the U.S. Census.

- Limited English Proficiency (LEP): One who does not speak English as a primary language and who has limited ability to read, speak, write, or understand English.

#### **D. PROCEDURES**

##### Title VI Coordinator:

The Deputy County Administrator serves as Deschutes County's Title VI Coordinator and acts as the focal point for Title VI implementation and monitoring.

##### Public Notice:

A Title VI Notice to the Public will be posted on Deschutes County's website at [www.deschutes.org](http://www.deschutes.org) and in a public area within each County facility. A copy of the Deschutes County Title VI Notice to the Public is attached to this document as Appendix A. The Department of Administrative Services will also provide copies to departments for posting.

##### Complaints:

Any person who believes they have been discriminated against by Deschutes County on the basis of race, color, or national origin may file a complaint by completing and submitting a Title VI Complaint Form. Complaints must be complete in both form and content to be reviewed and must be submitted within 180 days of the alleged incident of discrimination to be considered. A copy of the Deschutes County Title VI Complaint Form is attached to this document as Appendix B. To request a separate Title VI Complaint Form:

- Call 541-388 -6570
- Visit the Deschutes County Department of Administrative Services located at: 1300 NW Wall Street, Suite 200, Bend, OR 97703

- Write to:  
Department of Administrative Services Deschutes Co unty  
PO Box 6005  
Bend, OR 97708-6005
- Email: [admin@deschutes.org](mailto:admin@deschutes.org)
- Download the document from Deschutes County's website at [www.deschutes.org](http://www.deschutes.org)

Complaints may be submitted to the Deputy County Administrator by hand-delivery at the physical address or by U.S. postal service to the mailing address shown above or can be submitted directly to the ODOT Office of Civil Rights or the Federal Transit Administration (FTA) at:

ODOT Office of Civil Rights-MS 23  
3930 Fairview Industrial Drive SE  
Salem, OR 97302  
(503) 986-3169

Federal Transit Administration, Region 10  
Attn: Civil Rights Officer  
Jackson Federal Building  
915 Second Avenue Suite 3142  
Seattle, WA 98174-1002  
(206) 220-7954; Fax (206) 220-7959

When applicable, a complainant may also file a Title VI complaint directly with any federal agency that supplies funding to Deschutes County in support of the applicable program or service in which the alleged incident occurred. Examples of federal agencies that provide funding to the County include, but are not limited to, the U.S. Environmental Protection Agency, Department of Agriculture, Department of Justice, Department of Health and Human Services, Department of Homeland Security, and Department of Transportation. Contact information for the Office of Civil Rights operating in such agencies may be found online.

At such time as the complaint is received; the Department of Administrative Services will review it to determine if Deschutes County has jurisdiction over the

matter. Within 10 business days, the County will return an acknowledgment letter stating whether the complaint will be investigated by the County. Deschutes County will make every effort to investigate complaints within no more than 90 days following the date on this letter. However, in the event of complex complaints, which address multiple issues and/or involve legal action, the County may require an extended period to fully investigate and respond. In such cases, the complainant will be informed of the delay.

If more information is needed to resolve the case, the assigned investigator may contact the complainant. The complainant has 10 business days from the date of the letter to return the requested information to the investigator. If the investigator is not contacted by the complainant or does not receive the requested information within 10 business days, Deschutes County will administratively close the case. A case will also be administratively closed upon withdrawal by the complainant.

After the investigator reviews the complaint, they will issue one of two letters to the complainant: A closure letter or a letter of finding (LOF). A closure letter summarizes the allegations and investigation, indicates that a Title VI violation did not occur, and states that the case will be closed. An LOF summarizes the allegations and investigation and explains whether corrective or other action will occur. If the complainant wishes to appeal the decision, they have 10 business days following the date of the letter or the LOF to do so. To submit an appeal, complainants must deliver a written letter explaining the basis of the appeal to the Deputy County Administrator. County officials will review the factors presented and issue a final formal decision within 30 business days following the date of the appeal letter.

The County will provide, upon request, a list of all active investigations, lawsuits, or complaints made on the basis of race, ethnicity, age, disability status, gender/gender identification, and sexual orientation. A copy of the Deschutes County List of Title VI Investigations, Complaints, and Lawsuits form is included in the County's Title VI plan and contains a name, date of filing, summary of the allegation(s), status of the investigation, and action(s) taken.

#### **E. Public Participation:**

Deschutes County employs a wide variety of strategies to solicit, consider, and

incorporate the perspectives of diverse populations in policy and decision-making processes. Such opportunities for involvement are outlined in the County's Title VI plan, which is updated in accordance with federal and state requirements.

**F. Language Assistance:**

Deschutes County takes reasonable steps to offer assistance for LEP clients and residents seeking access to services and opportunities. When appropriate, the County will use population composition and client needs in regard to language for the purpose of developing and providing programs and services, disseminating information, conducting outreach, and encouraging public involvement. A copy of the most current data and a description of the strategies the County uses to help serve LEP persons is included in the County's Title VI plan.

**G. Reporting:**

Deschutes County will report information required to determine compliance with Title VI of the Civil Rights Act as required by federal and state government agencies for grant funding and other purposes. The contents and format of such reports will be determined by the requesting party.

Approved by the Deschutes County Board of Commissioners on January 27, 2016, reissued on August 26, 2020 and March 1, 2023.

Nick Lelack  
County Administrator

## Appendix A

**DESCHUTES COUNTY TITLE VI NOTICE**

Deschutes County operates its programs and services without discrimination based on race, color, or national origin in accordance with Title VI of the Civil Rights Act. Any person who believes they have been subjected to an unlawful discriminatory practice as defined under Title VI of the Civil Rights Act may file a complaint with the Deschutes County Department of Administrative Services.

For more information about Deschutes County's civil rights program and the obligations and procedures required to file a complaint:

- Call 541-388-6570
- Visit the Deschutes County Department of Administrative Services located at:  
1300 NW Wall Street, Suite 200, Bend, OR 97703
- Write to:  
Department of Administrative Services  
Deschutes County  
PO Box 6005  
Bend, OR 97708-6005
- Email to: [admin@deschutes.org](mailto:admin@deschutes.org)
- Download the document from Deschutes County's website at  
[www.deschutes.org](http://www.deschutes.org).

Complaints can also be submitted directly to:

ODOT Office of Civil Rights-MS 23  
3930 Fairview Industrial Drive SE  
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Federal Transit Administration, Region 10  
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915 Second Avenue Suite 3142  
Seattle, WA 98174-1002  
(206) 220-7954; Fax (206) 220-7959

When applicable, a complainant may also file a Title VI complaint directly with any federal agency that supplies funding to Deschutes County in support of the applicable program or service in which the alleged incident occurred. Examples of federal agencies that provide funding to the County include, but are not limited to, the U.S. Environmental Protection Agency, Department of Agriculture, Department of Justice, Department of Health and Human Services, Department of Homeland Security, and Department of Transportation. Contact information for the Office of Civil Rights operating in such agencies may be found online.

**If this information is needed in another language or format, please call 541-388-6584.**

**Si se necesita esta informacion en un idioma o formato diferente, por favor llame a 541-388-6570.**

**DESCHUTES COUNTY**

## TITLE VI COMPLAINT FORM

### **CONSOLIDATED CIVIL RIGHTS COMPLAINT FORM**

Your Name	Phone	Alternative Phone
Street Address	City, State	Zip Code

Person(s) discriminated against (if different than the preparer of this form)		
Street Address	City, State	Zip Code

I believe that I (or the person(s) listed above) has been discriminated against on the basis of:					
	Race (Title VI)		Color (Title VI)		National Origin (Limited English Proficiency) (Title VI)
	Disability (ADA)				

<p>Please describe the alleged discrimination incident. Provide the names and titles of all employees involved, if available. Explain what happened and whom you believe was responsible. Please use the back of this form if more space is required. <b>NOTE: This form consolidates information required by multiple federal civil rights programs. Information will be shared based on the type of discrimination identified above. Title VI of the Civil Rights Act covers Race, Color, and National Origin complaints ONLY. Americans with Disabilities Act covers Disability complaints.</b></p>	
Date of Incident:	



Have you filed this complaint with any other federal, state, or local agency?		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
If yes, Agency Name					
Agency Address					
Agency Contact Name (if available)					

I affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

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

Print Name: \_\_\_\_\_

Hand deliver this form to:  
Deputy County Administrator  
Department of Administrative Services  
Deschutes County  
1300 NW Wall Street  
Bend, OR 97703

Or mail it to:  
Deputy County Administrator  
Department of Administrative Services  
Deschutes County  
PO Box 6005  
Bend, OR 97703

If this form is needed in another language or format, please call 541-388-6570.

Si se necesita esta información en un idioma o formato diferente, por favor llame a 541-388-6570.



## Deschutes County Administrative Policy No. GA-12

Effective Date: February 28, 2018

Reissued: March 1, 2023

# Records Retention and Destruction

## A. STATEMENT OF POLICY

It is the policy of Deschutes County to manage records from creation to final disposition in accordance with State of Oregon public records laws.

## B. APPLICABILITY

This policy applies to all County departments/offices and the 9-1-1 Deschutes County Service District.

## C. DEFINITIONS

“Archive” means to retain permanently with either the County Clerk’s Office or within a department.

“Destroy” means to delete (electronic records), recycle (paper records that do not contain confidential, sensitive, or protected information), or shred (paper records with confidential, sensitive, or protected information).

“Public Records” include any written communication relating to the conduct of the County’s business that are prepared, owned, used or retained by Deschutes County regardless of physical form or characteristics (ORS 192.005[5]).

“Retain” means to keep for a period of time but not permanently.

## D. POLICY AND PROCEDURES

All Deschutes County employees will retain, archive, and destroy public records in accordance with the Secretary of State’s [“County and Special District Retention Schedule” \(OAR 166-150\)](#). In general, records listed in the “County and Special District Retention Schedule” are common to most counties and districts and are necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the County. For Oregon Department of Transportation STIF Funds, all Deschutes County employees will retain, archive, and destroy public

records in accordance with OAR Rule [732-040-0020\(4\)](#).

The department/office that creates the record (or receives the record from an outside entity) is responsible for proper retention of the record. However, this does not mean that the responsible department needs to maintain duplicates of records that are kept centrally (for example, payment vouchers entered into the Munis software program).

## I. Records That Are Not a Public Record

ORS 192.005(5) defines what is not a public record. Those applicable to the County are:

- Extra copies of a document, preserved only for convenience or reference.
- A stock of publications.
- Messages on voice mail or other telephone message storage and retrieval systems.
- Spoken communication that is not recorded.

Additionally, although not specifically mentioned in ORS 192.005(5), more examples of records that are not a public record include the following:

- Listserv messages, advertisement, junk mail/spam
- General mailings such as blood drive announcements, timesheets are due, etc.
- Reference material (articles, magazines, books, etc.) that were not produced by the County and are not unique or specific to the County department.

Records that are not classified as a public record do not need to be retained.

## II. Public Records and Criteria for Retention/Archive

A public record includes any written communication containing information relating to the conduct of the County's business, regardless of physical form or characteristics (email, hand written, computer generated). Attachment A lists common public records. A public record falls under the record retention law if the record meets all three (1 - 3) of the following criteria:

1. Is prepared, owned, used or retained by a County employee (including elected officials); and

2. Relates to an activity, transaction or function of a County department;  
and
3. Is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the County. Generally, records fitting these criteria are listed in the Secretary of State's ["County and Special District Retention Schedule"](#) (OAR 166-150).

A public record must be retained for the time specified by the Secretary of State's "County and Special District Retention Schedule." A record with a permanent retention requirement must be archived as a paper document or in microfilm.

### III. Public Records that Do Not Need to be Retained

In addition, although still considered a public record, there is generally no retention requirement for the following records (please note: an employee may choose to retain for business purposes):

- Drafts
- Databases, spreadsheets, and other structured data held in a computer that changes frequently.
- Emails - unless the content meets the requirements contained in Section II, items 1 – 3, of this policy. For example, if an email constituted a contract between the County and a vendor, it would require retention. If the email included an attached PDF of a final signed contract, the contract would need to be retained, not the email message transmitting the contract.
- Texts - unless the content meets the requirements contained in Section II of this policy, items 1 - 3.
- Social media postings and correspondences - unless the content meets the requirements contained in Section II, items 1 – 3, of this policy.
- Instant messages (such as a message using "Jabber" or other instant message system).

### IV. Options for Retaining Records

There are three options for retaining electronic records:

1. E-filing system
2. Print and file
3. Hybrid

There are three options for retaining paper records:

1. File
2. Scan and save electronically
3. Hybrid

Each department head shall decide the best method to retain its records that fall under the Secretary of State's "County and Special District Retention Schedule." Best practice is for departments to use a functional filing system for electronic and paper records that categorizes the types of record and/or organizes by broad functional areas, and groups records by retention requirements. Folders, electronic or paper, are not recommended to be used as "keep forever" files. It is also not recommended to use paper or electronic personal folders (such as the "h" drive, "c" drive, or a file cabinet located in an employee's office/cubicle) to store records requiring retention. The County Clerk's Office and Information Technology Department are available for consultation by departments.

#### **V. Suspension of Destruction of Records**

Upon receipt of a Litigation Hold memorandum or other notice from the County Legal Department, destruction of all specified records shall be immediately suspended in accordance with the terms of the notice.

Nick Lelack  
County Administrator

## **Attachment A – Common Public Records for Deschutes County**

- Contracts
- Leases
- Emails related to County business.
- Intergovernmental Agreements (IGAs)
- Purchasing records
- Payroll records
- Personnel records
- Customer survey responses
- Press releases
- Departmental reports
- Minutes from a staff meeting
- Staff reports that go to the Board of Commissioners
- Policy and procedures
- Employee instruction manuals
- Work orders



## Deschutes County Administrative Policy No. GA-12

Effective Date: February 28, 2018

Reissued: March 1, 2023

# Records Retention and Destruction

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- elected officials); and
2. Relates to an activity, transaction or function of a County department; and
  3. Is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the County. Generally, records fitting these criteria are listed in the Secretary of State's ["County and Special District Retention Schedule" \(OAR 166-150\)](#).

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Nick Lelack

County Administrator

## **Attachment A – Common Public Records for Deschutes County**

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- Leases
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- Purchasing records
- Payroll records
- Personnel records
- Customer survey responses
- Press releases
- Departmental reports
- Minutes from a staff meeting
- Staff reports that go to the Board of Commissioners
- Policy and procedures
- Employee instruction manuals
- Work orders



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: March 1, 2023

SUBJECT: Consideration of Chair Signature of Document No. 2023-181, a Notice of Intent to Award Contract for the Supplying and Hauling of Crushed, Uncoated Rock for Chip Seal 2023 Contract

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2023-181, a Notice of Intent to Award a contract for the supply and hauling of crushed, uncoated rock for the 2023 Chip Seal project

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Road Department prepared bid solicitation documents for the Supplying and Hauling of Crushed, Uncoated Rock for Chip Seal 2023 contract. The project scope of work includes furnishing and delivery of crushed, uncoated rock for chip seal to specified stockpiles in the Redmond, Bend, and La Pine maintenance zones. The project was advertised in the Daily Journal of Commerce and The Bulletin on February 1, 2023. The Department opened bids at 2:00 P.M. on February 15, 2023.

Two (2) bids were received for this project. The bid results are as follows:

<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
TAYLOR NORTHWEST LLC	\$ 331,886.00
KNIFE RIVER CENTRAL OREGON DIV.	\$ 357,400.00
Engineer's Estimate	\$ 353,000.00

This action issues a Notice of Intent to Award the contract to the apparent low bidder, TAYLOR NORTHWEST LLC, and allows seven days for concerned parties to protest the award. If there is no protest within the seven-day period, the contract will be awarded to the apparent low bidder. The bid tabulation, including the Engineer's estimate, is attached.

BUDGET IMPACTS:

A portion of the project cost is budgeted in the Road Fund budget for Fiscal Year 2023. The

remaining project cost will be included in the proposed Road Fund budget for Fiscal Year 2024.

**ATTENDANCE:**

Cody Smith, County Engineer/Assistant Road Department Director



## BOARD OF COUNTY COMMISSIONERS

March 1, 2023

\*\*Posted on the Deschutes County, Oregon Bids and RFPs website at <http://www.deschutes.org/rfps> prior to 5:00 PM on the date of this Notice.\*\*

Subject: **Notice of Intent to Award Contract**  
Supplying and Hauling of Crushed, Uncoated Rock for Chip Seal 2023

To Whom It May Concern:

On March 1, 2023, the Board of County Commissioners of Deschutes County, Oregon considered proposals for the above-referenced project. The Board of County Commissioners determined that the successful bidder for the project was TAYLOR NORTHWEST LLC with a bid of Three Hundred Thirty One Thousand Eight Hundred Eighty Six Thousand dollars (\$331,886.00).

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279B.135. Any entity which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice may submit a written protest within seven (7) calendar days after the issuance of this Notice of Intent to Award Contract to the Board of County Commissioners of Deschutes County, Oregon, at Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703. **The seven (7) calendar day protest period will end at 5:00 PM on Wednesday, March 8, 2023.**

Any protest must be in writing and specify any grounds upon which the protest is based. Please refer to Oregon Administrative Rules (OAR) 137-047-0740. If a protest is filed within the protest period, a hearing will be held at a regularly-scheduled business meeting of the Board of County Commissioners of Deschutes County, Oregon, acting as the Contract Review Board, in the Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703 within two (2) weeks of the end of the protest period.

If no protest is filed within the protest period, this Notice of Intent to Award Contract becomes an Award of Contract without further action by the County unless the Board of County Commissioners, for good cause, rescinds this Notice before the expiration of the protest period.

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

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

Sincerely,

DESCHUTES COUNTY, OREGON

---

Anthony DeBone, Chair

SUPPLYING AND HAULING OF CRUSHED, UNCOATED  
 ROCK FOR CHIP SEAL 2023  
 DESCHUTES COUNTY, OREGON

**BID RESULTS**

BID OPENING : 2:00 PM 2/15/2023

ITEMS	UNITS	QNTY	ENGINEER'S ESTIMATE			Taylor Northwest LLC			Knife River Central Oregon Division		
			UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL			
1	Redmond Stock Pile Site e-Negus Transfer	TON	3,000	\$25.00	\$75,000.00	\$24.40	\$73,200.00	\$24.00	\$72,000.00		
2	Tumalo StockPile Gerking Negus Transfer	TON	2,700	\$27.00	\$72,900.00	\$26.33	\$71,091.00	\$29.00	\$78,300.00		
3	Cascade Lakes Stockpile Todd Lake Pit	TON	1,500	\$38.00	\$57,000.00	\$36.00	\$54,000.00	\$37.00	\$55,500.00		
4	Bend Stockpile Site County Yard	TON	650	\$34.00	\$22,100.00	\$27.30	\$17,745.00	\$34.00	\$22,100.00		
5	Sunriver Stockpile Ann's Butte Sand Shed	TON	3,500	\$36.00	\$126,000.00	\$33.10	\$115,850.00	\$37.00	\$129,500.00		
6											
7											
8											
9											
<b>TOTAL</b>				\$353,000.00	<b>TOTAL</b>	\$331,886.00	<b>TOTAL</b>	\$357,400.00			



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** March 1, 2023

**SUBJECT:** Deliberations on the request to change the Comprehensive Plan designation of 59 acres in the 21400 block of Bear Creek Road from Agricultural to Rural Residential Exception Area with a corresponding Zone change from Exclusive Farm Use to Multiple Use Agricultural (Marken)

**RECOMMENDED MOTION:**

The Hearings Officer recommends approval of file nos. 247-22-000353-PA, 354-ZC pursuant to DCC 22.28.030. On March 1, 2023, the Board will deliberate on the proposed Plan Amendment and Zone Change requests. If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations. If the Board finds no additional deliberations are necessary, the Board may then vote on the application.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Board will deliberate on March 1, 2023 in relation to a request for a Plan Amendment and Zone Change (file nos. 247-22-000353-PA, 354-ZC) for two tax lots totaling approximately 59 acres, to the east of Bend and south of Highway 20. This request was submitted by the property owner, Harold Marken. A public hearing was held on January 18, 2023 and the open record period associated with the request ended on February 8, 2023.

The entirety of the record can be found on the project website at:

<https://www.deschutes.org/cd/page/247-22-000353-pa-and-247-22-000354-zc-marken-comprehensive-plan-amendment-and-zone-change>

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Audrey Stuart, Associate Planner





## MEMORANDUM

**TO:** Board of County Commissioners

**FROM:** Audrey Stuart, Associate Planner

**DATE:** February 21, 2023

**SUBJECT:** March 1<sup>st</sup> Deliberations for Marken Plan Amendment and Zone Change

The Board of County Commissioners (“Board”) held a public hearing on January 18, 2023, to consider a request for a Comprehensive Plan Amendment and Zone Change (file nos. 247-22-000353-PA, 354-ZC) for two tax lots totaling approximately 59 acres, to the east of Bend and south of Highway 20. The Board is scheduled to deliberate on March 1, 2023, in consideration of this request.

### I. BACKGROUND

The applicant and property owner, Harold Marken, is requesting a Comprehensive Plan Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area, and a Zoning Map Amendment to rezone the property from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA-10). The applicant argues that the subject property does not meet the definition of “agricultural land” due to its poor soil quality, and previous attempts to engage in farm use on the property were unsuccessful. For these reasons, the applicant states a mistake was made when the property was originally zoned and MUA-10 zoning is more appropriate.

The applicant provided a supplementary soil study that identifies non-high value (Class VII and VIII) soils on a majority (61.2%) of the subject properties. Additionally, the applicant provided a traffic study, and findings within the burden of proof that demonstrate compliance with state and local requirements and policies.

A public hearing was held before a Hearings Officer on September 6, 2023. On November 7, 2022, the Hearings Officer issued a recommendation of approval for the proposed Plan Amendment and Zone Change evaluating compliance with all applicable review criteria. The second required public hearing was held before the Board on January 18, 2023.

### II. PUBLIC COMMENTS

Seven written comments were submitted in advance of the September 6, 2022, hearing before the Hearings Officer; of these, five were in opposition to the applications, one was neutral, and one was in support. Two members of the public testified in opposition to the applications at the public hearing. During the subsequent open record period, one written comment was submitted by a surrounding property owner and additional materials were submitted by Central Oregon LandWatch.

Comments in opposition to the applications expressed concerns regarding impacts to wildlife, increased housing density, preservation of agricultural properties, loss of neighborhood character, inconsistencies with local Code and state law, and efforts to put the subject property to farm use. The one neutral written comment inquired about adding additional land to the subject applications. The comment received in support of the applications addressed the minimal impacts to nearby agriculture, and poor soil quality of both the subject property and surrounding area.

Following the Board hearing on January 18, 2023, public comments were submitted by Central Oregon Land Watch and one member of the public in opposition. The applicant then submitted a rebuttal argument and a final legal argument. The open record period for the Board hearing was closed on February 8, 2023.

### **III. BOARD DELIBERATIONS**

If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations. If the Board finds no additional deliberations are necessary, the Board may then vote on whether to approve or deny the Plan Amendment and Zone Change request.

Per DCC Section 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change is not subject to the 150-day review period typically associated with land use decisions. The full record is available for inspection at the Planning Division and at the following link: <https://www.deschutes.org/cd/page/247-22-000353-pa-and-247-22-000354-zc-marken-comprehensive-plan-amendment-and-zone-change>

#### **Board Decision Matrix**

Staff prepared a matrix outlining key issue areas for the Board's deliberation. This matrix is included as an attachment, and provides additional review and discussion of the application's compliance with applicable approval criteria.

### **IV. NEXT STEPS**

If the Board determines that additional deliberations are necessary, staff will work with the Board to schedule a future meeting for continued deliberations. If the Board concludes their deliberations during the March 1, 2023, meeting, the Board may then vote on whether to approve or deny the Plan Amendment and Zone Change. If the Board renders a vote during the March 1, 2023, meeting, staff will coordinate with the Board to return for a future meeting to review the draft decision, draft

ordinance and relevant exhibits. If appropriate, the first reading of the ordinance can be initiated at that time.

## **V. SUGGESTED MOTION**

To the extent the Board decides to approve Plan Amendment and Zone Change, a motion as follows will likely be appropriate:

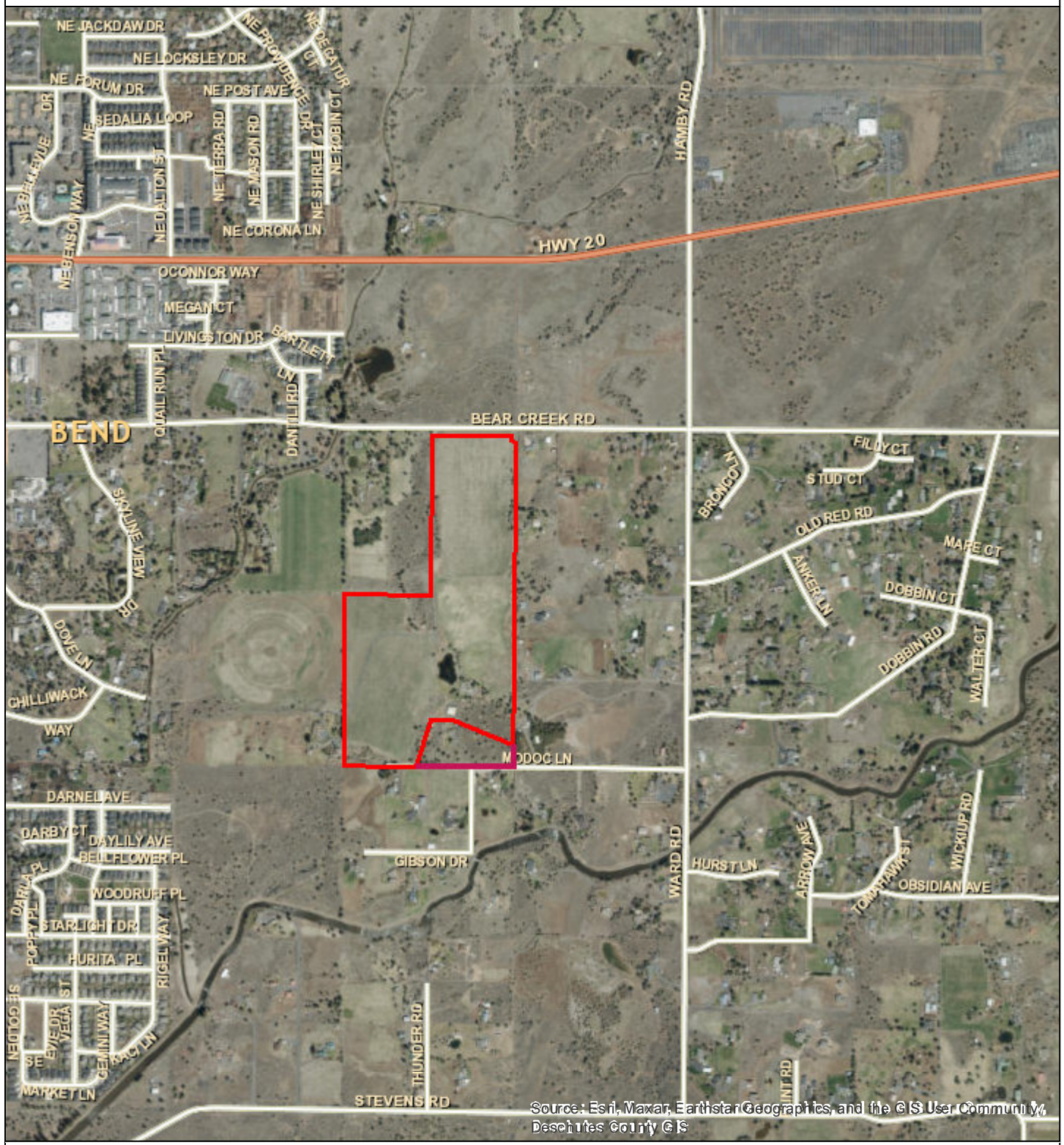
The Board moves to approve the Plan Amendment and Zone Change for file nos. 247-22-000353-PA and 247-22-000354-ZC.

To the extent the Board decides to modify or reverse the Hearings Officer's decision, that motion will need to be crafted to address the Board's specific concerns, as discussed in the deliberations.

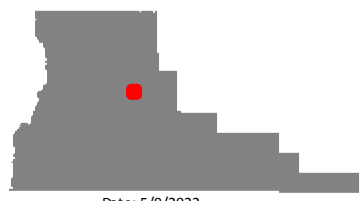
Enclosures: Area Map  
Board Decision Matrix  
Hearings Officer Recommendation

# 247-22-000353-PA, 247-22-000354-ZC

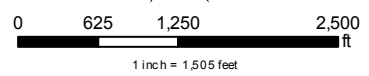
## Location Map



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community, Deschutes County GIS



Date: 5/9/2022



**HEARING OFFICER FINDINGS AND RECOMMENDATIONS**

**FILE NUMBERS:** 247-22-000353-PA, 354-ZC

**HEARING:** September 6, 2022, 6:00 p.m.  
Virtual (Zoom), and  
In Person @ Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**SUBJECT PROPERTIES/  
OWNER:**

Property 1:  
Mailing Name: HAROLD K MARKEN REV TRUST ETAL  
Map and Tax Lot: 1812020000201  
Account: 119057  
Situs Address: 21495 BEAR CREEK RD, BEND, OR 97701

Property 2:  
Mailing Name: HAROLD K MARKEN REV TRUST ETAL  
Map and Tax Lot: 1812020000203  
Account: 265281  
Situs Address: 21493 BEAR CREEK RD, BEND, OR 97701

(Property 1 and 2 collectively referred to as the "Subject Property")

**APPLICANT:** Harold Marken

**ATTORNEY  
FOR APPLICANT:** Liz Fancher  
2465 NW Sacagawea Lane  
Bend, OR 97703

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

**REQUEST:** The Applicant requested approval of a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"). The Applicant also requested a corresponding Zone Change to rezone the

Subject Property from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (“EFU-TRB”) to Multiple Use Agricultural (“MUA10”).

**STAFF CONTACT:** Audrey Stuart, Associate Planner  
Phone: 541-388-6679  
Email: Audrey.Stuart@deschutes.org

**RECORD:** Record items can be viewed and downloaded from:  
<https://www.deschutes.org/cd/page/247-22-000353-pa-and-247-22-000354-zc-marken-comprehensive-plan-amendment-and-zone-change>

## **I. APPLICABLE CRITERIA**

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

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

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

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

Oregon Administrative Rules (OAR), Chapter 660

- Division 12, Transportation Planning
- Division 15, Statewide Planning Goals and Guidelines
- Division 33, Agricultural Land

Oregon Revised Statutes (ORS)

- Chapter 215.010, Definitions
- Chapter 215.211, Agricultural Land, Detailed Soils Assessment

## **II. BASIC FINDINGS**

**LOT OF RECORD:** Property 1 described above is a legal lot of record because it is Parcel 1 of Partition Plat 2009-36. Property 2 described above is a legal lot of record because it is Parcel 2 of Partition Plat 2009-36.

**SITE DESCRIPTION:** The Subject Property consists of two tax lots. Tax Lot 201 is 53.3 acres in size and Tax Lot 203 is 5.74 acres in size. Both tax lots contain frontage on Bear Creek Road to the north and Modoc Lane to the south. Bear Creek Road is designated as a County-maintained Rural Collector and Modoc Lane is designated as a privately-maintained Rural Local Road.

The grade of the Subject Property slopes up gently from the north to the southwest, with areas of more pronounced slopes and rock outcrops. A significant portion of the Subject Property was

previously cleared and used as pasture and to grow hay. A portion of the Subject Property was previously irrigated. Vegetation on the Subject Property differs between areas that were previously irrigated and areas that were retained as native vegetation, including juniper trees, sagebrush, rabbit brush and bunch grasses. Vegetation in areas that were formerly irrigated consists of sparse grasses.

Property 1 is developed with a dwelling and agricultural accessory structure, which are both located in the southeast portion of the Subject Property. Property 2 is developed with a manufactured home. Both residences take access from Bear Creek Road via a shared driveway that extends south along the west boundary of Property 1.

The Subject Property has 9.49 acres of water rights with Central Oregon Irrigation District ("COID"). The Subject Property has previously been in farm use with Property 1 currently receiving special tax assessment for farm use. The Applicant indicated that he intends to relinquish the farm tax status. The submitted Burden of Proof includes the following background on the Subject Property's current water rights:

*"Given continued financial losses over approximately four decades, the applicant relinquished most of his Central Oregon Irrigation District water rights so that they could be applied on properties better suited for irrigated farm use. A part of the subject property is irrigated to maintain a lawn for the Marken residence on TL 201. There is also an irrigation pond on this tax lot."*

The nearest portion of the City of Bend's Urban Growth Boundary ("UGB") is located approximately 0.13 miles to the east of the Subject Property, to the north of Bear Creek Road. Two parcels located to the north of the Subject Property, across Bear Creek Road, are pending a Comprehensive Plan Amendment and Zone Change for inclusion in the City of Bend's UGB. These properties are identified on Assessor's Map 17-12-35D, as Tax Lots 100 and 200. Assuming this UGB expansion receives all final approvals, the Subject Property will only be separated from the UGB by 90 feet of Bear Creek Road right-of-way. The south portion of the Subject Property is located approximately 0.25 miles from the City of Bend's UGB.

**PROPOSAL:** The Applicant requested approval of a Comprehensive Plan Map Amendment to change the designation of the Subject Property from an Agricultural ("AG") designation to a Rural Residential Exception Area ("RREA") designation. The Applicant also requested approval of a corresponding Zoning Map Amendment to change the zoning of the Subject Property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA10"). The Applicant requested a Deschutes County plan and zone change for the Subject Property because the Subject Property does not qualify as "agricultural land" under Oregon Revised Statutes ("ORS") or Oregon Administrative Rules ("OAR") definitions. The Applicant proposed that no exception to Statewide Planning Goal 3, Agricultural Land, is required because the Subject Property is not 'Agricultural Land.'

Submitted with the application was an Order 1 Soil Survey of the Subject Property, titled *Site-Specific Soil Survey of Property Located at 21493 and 21495 Bear Creek Road, also known as T18S, R12E, Section 2, Tax Lots 203 and 201 (total of 59.04 acres), East of Bend in Deschutes County, Oregon* (hereafter referred

to as the “Applicant Soil Study”) prepared by soil scientist Brian T. Rabe, CPSS, WWSS of Valley Science and Engineering (hereafter collectively referred to as “Rabe/Valley”). The Applicant also submitted a traffic analysis prepared by Transight Consulting, LLC titled *Marken Property Rezone* (hereafter referred to as “Traffic Study”). Additionally, the Applicant submitted an application form, a burden of proof statement (“Burden of Proof”), and other supplemental materials, all of which are included in the record for the subject applications.

**SOILS:** The composition/characterization of the soils at the Subject Property is in dispute in this case. Central Oregon LandWatch (“COLW”) argued that the Subject Property soil composition/characterization should be based upon the Natural Resources Conservation Service (“NRCS”) maps of the area. Based upon the NRCS maps, the Subject Property contains two different soil types as described below. The Subject Property, per the NRCS maps, contains 58C – Gosney-Rock Outcrop-Deskamp complex, and 36A – Deskamp loamy sand. The 36A soil unit, per the NRCS maps/descriptions, is defined as high-value soil by DCC 18.04 when it is irrigated. The 58C soils complex is not defined as high-value farmland, regardless of irrigation. Using the NRCS maps, COLW argued that the Subject Property is comprised of soils that do qualify as Agricultural Land<sup>1</sup>.

The Applicant Soil Study was prepared by Rabe/Valley. The purpose of the Applicant Soil Study was to inventory and assess the soils on the Subject Property and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The Applicant Soil Study determined the Subject Property contained approximately 61 percent Land Capability Class 7 and 8 non-irrigated soils, which was primarily observed as shallow, sandy Gosney soils and smaller rock outcroppings. The Land Capability Class 6 soil identified by the Applicant Soil Study was entirely classified as Deskamp soils, which is consistent with the NRCS soils unit map. The Gosney and Deskamp soils are interspersed throughout the Subject Property in pockets that range in size from 6.9 acres to less than one acre. The rock outcroppings were primarily observed in the southeast portion of the Subject Property. Based upon the Applicant Soil Study the Subject Property is comprised of soils that do not qualify as Agricultural Land.

The NRCS soil map units identified on the Subject Property is described below.

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

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water

<sup>1</sup> As defined in OAR 660-033-0020, 660-033-0030



capacity is about 3 inches. The major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 3.7 percent of the subject properties is made up of this soil type, all located within the northern parcel.

Further discussion regarding soils is found in the relevant findings below.

**UTILITY SERVICES, PUBLIC SERVICES AND COUNTY ZONING AND COMPREHENSIVE PLAN HISTORY:** Applicant, in its Burden of Proof (pages 12 – 14), provided a summary of utility services, public services and the county zoning and comprehensive plan history.

**SURROUNDING LAND USES:** The general surrounding area of the Subject Property is defined by the City of Bend's UGB to the west and then a mix of residential and agricultural uses spreading out to the east. The Subject Property is surrounded on three sides by lands zoned MUA10, including a 35.32-acre parcel located to the north of Bear Creek Road which is pending annexation into the City of Bend for development with affordable housing. Other surrounding MUA10 properties are developed with dwellings, and hobby farming primarily consisting of stables and fenced pastures. The northwest corner of the Subject Property adjoins land zoned UAR10, which is developed with dwellings and hobby farming consisting of irrigated fields. Adjoining properties to the west and northwest are zoned EFU and located immediately between the Subject Property and the City of Bend's UGB.

The adjacent properties are outlined below in further detail:

**North:** The property immediately north of the Subject Property (Tax Lots 100 and 200 on Assessor's Map 17-12-35D) is zoned MUA10 and is pending an application for inclusion in the City of Bend's UGB. In 2017, Deschutes County previously approved a Comprehensive Plan Amendment from Agriculture to Rural Residential Exception Area and Zone Change from EFU to MUA10 through file numbers 247-16-000317-ZC, 247-16-000318-PA for this property. The current application with City of Bend (file number PLUGB20220115) is for a Comprehensive Plan designation change to Residential Medium Density and a concurrent Zone Change to Urbanizable Area. If approved, the Subject Property will be located across Bear Creek Road from the City of Bend UGB. To the northeast of the Subject Property are three other MUA10 zoned parcels, two of which are developed with single-family dwellings (Tax Lots 1601 and 1600 on Assessor's Map 17-12-35). Farther north are properties zoned UAR10 (Urban Area Reserve) and EFU, none of which appear to be engaged in farm use. Overall, surrounding properties to the north appear to be undeveloped or developed with single-family dwellings.

**West:** Adjacent properties to the west of the Subject Property are all zoned EFU. Beyond that, the City of Bend UGB is located 0.25 miles from the western boundary of the Subject Property. These adjacent EFU parcels (Tax Lots 200, 1003, and 1001 on Assessor's Map 18-12-2) are 16.99 acres, 27.19, and 12.45 acres in size and all appear to contain some type of farm use. Tax Lot 1003 contains pivot irrigation system and no structures, but was recently approved for a Lot of Record Dwelling through Deschutes County file 247-21-000018-CU. Tax Lot 1001 contains a nonfarm dwelling

approved through Deschutes County file CU-01-75 and Tax Lot 200 contains a 1969 dwelling that predates the EFU Zone. The property northwest of the Subject Property is comprised of urban area reserve and urban lands. One UAR10 property grows hay and the remainder of the UAR10 lands are either developed with single-family homes or vacant.

**East:** All properties due east of the Subject Property for a distance of one mile are zoned MUA10 and developed with single-family dwellings. The Dobbin Acres subdivision is located to the east of Ward Road, approximately 0.25 miles from the Subject Property. Lots within the Dobbin Acres subdivision generally range in size from one to two acres. Surrounding MUA10 properties to the east that are not within the Dobbin Acres subdivision range in size from approximately one acre to 19.52 acres (Tax Lot 1312 on Assessor's Map 18-12-2) and are developed with single-family dwellings in addition to small-scale hobby farming. Properties to the northeast of the Subject Property primarily consist of large, undeveloped lots that are zoned MUA10 and EFU. These larger properties do not appear to be in active farm use and contain two churches, a Pacific Power substation, and two commercial-scale solar farms. The remainder of this area to the northeast includes vacant, non-irrigated lands with the exception of a few small EFU-zoned properties north of Highway 97 that have irrigated fields. These smaller, irrigated properties are almost one-half mile away from the Subject Property and separated by Bear Creek Road, Highway 20, and large undeveloped tracts.

**South:** Immediately south of the Subject Property are four MUA10-zoned parcels that are approximately five acres each in size. Tax Lots 1102, 1105, 1104, and 1100 (Assessor's Map 18-12-2) are each developed with a dwelling, residential and agricultural accessory structures, and irrigated and non-irrigated pasture. This development pattern continues farther south to Stevens Road, and properties to the east and west of Thunder Road are also approximately five acres each in size and are developed with single-family dwellings, with several appearing to contain small-scale agriculture uses. Tax Lot 1208 on Assessor's Map 18-12-2 is 36.65 acres in size and consists of undeveloped land with native vegetation. This parcel is owned by Central Oregon Irrigation District and the Central Oregon canal passes through this property and runs from southwest to northeast. The majority of land to the south of the Subject Property is zoned MUA10; only two parcels located to the south of the Subject Property and to the west of Ward Road are zoned EFU. These parcels, Tax Lot 1005 and Tax Lot 1308 on Assessor's Map 18-12-2, are 3.34 and 39.18 acres in size, respectively. Both parcels contain a dwelling, and Tax Lot 1308 is currently receiving special tax assessment for farm use and appears to contain some pasture or hay production.

The Applicant, in its Burden of Proof (pages 8 – 12), provided a detailed inventory of nearby properties setting forth the specific tax lot, size, physical improvements, tax status and comments related to the use (i.e., "farm use") of each property.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on May 12, 2022, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell, May 20, 2022, Comments

*"I have reviewed the transmittal materials for 247-22-000353-PA/354-ZC to amend the Comprehensive Plan designation of two abutting properties totaling approximately 59 acres from Agriculture (AG) to Rural Residential Exception Area (RREA) and change the zoning for those same properties from Exclusive Farm Use (EFU) to Multiple Use Agriculture (MUA-10). The properties are located at 21493 and 21495 Bear Creek Rd., aka County Assessors Map 18-12-02, Tax Lots 203 and 18-12-02, Tax Lot 201, respectively. For reasons discussed below, staff finds more information is needed to address the Transportation Planning Rule (TPR) and County code.*

*The applicant's traffic study dated April 22, 2022, is incomplete for two reasons. The TPR at Oregon Administrative Rule (OAR) 660-012-0060 requires the demonstration of whether a plan amendment/zone change will have a significant effect or not. To determine that, the traffic study must include the operational analysis of the affected intersections pre-development and post-development. The traffic study lacks this information and thus does not comply with the TPR. Second, Deschutes County Code (DCC) 18.116.310(G)(4) requires zone changes to include a 20-year analysis. DCC 18.116.310(G)(10) requires existing and future years levels of service (LOS), average vehicle delay, and volume/capacity (V/C) ratios both with and without the project. (The V/C ratios are only applicable if ODOT facilities are analyzed.) The TIA lacks this feature and thus does not comply with County code. Further, the combination of the TPR and County code helps identify whether the transportation system has adequate capacity to serve the plan amendment/zone change or if the system is already overcapacity regardless of the proposed plan amendment/zone change. By contrast, the applicant has submitted what is in essence a trip generation memo.*

*The property accesses Bear Creek Road, a public road maintained by Deschutes County and functionally classified as a collector. The property has a driveway permit approved by Deschutes County (#247-SW8923) and thus complies with the access permit requirements of DCC 17.48.210(A).*

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

In response to Mr. Russell's comments, above, the Applicant made two subsequent revisions to their traffic study. Updated traffic information was submitted on June 23, 2022, and June 29, 2022.

Deschutes County Senior Transportation Planner, Peter Russell, June 29, 2022, Comments

*"I have reviewed the June 23, 2022, revised traffic analysis for 22-353-PA/354-ZC. While it is better, it still does not provide the information requested in my original comments on April 22, which is attached. Specifically, the revised traffic impact analysis still lacks any data on Level of Service (LOS) of affected County roads pre- and post-plan amendment. Similarly, if there are affected State highways, there is no pre- and post-plan amendment Volume to Capacity (V/C) ratios. The traffic analysis needs to provide that information for the 20-year horizon year. A traffic analysis has two major components: 1) the trip generation from the proposed use and 2) the current and*

*projected traffic volumes from the affected facilities. The combination of information from #1 and #2 then informs how the affected intersections perform now and in 20 years."*

Deschutes County Senior Transportation Planner, Peter Russell, June 30, 2022, Comments

*This is exactly what I needed. The information demonstrates the project complies with the Transportation Planning Rule (TPR) and Deschutes County Code (DCC) 18.116.310. Appreciate the fast response.*

Central Oregon Irrigation District

*"Please be advised that Central Oregon Irrigation District (COID) has reviewed the application received on May 13, 2022 for the above referenced project located 21495 BEAR CREEK RD, BEND, OR 97701/tax lot: 1812020000201 and 21493 BEAR CREEK RD, BEND, OR 97701/ tax lot: 1812020000203. The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).*

*Tax lot 1812020000201 has 9.49 acres of mapped water rights appurtenant COID irrigation water. COID has facilities (point of delivery) adjacent to the southern boundary of tax lot 1812020000201. There appears to be a private irrigation ditch adjacent to the eastern boundary of tax lot 1812020000203.*

*Listed below are COIDs initial comments to the provided pre-application site plan. All development affecting irrigation facilities shall be in accordance with COID's Development Handbook and/or as otherwise approved by the District.*

- *Map and Tax lot: 1812020000201 has 9.49 acres of appurtenant COID irrigation water. Historically there were 36.0 acres of irrigation appurtenant to this tax map. Since 2018, 26.51 acres of irrigation were voluntarily removed by the property owner. Prior to removal, the 36.0 acres was under active irrigation and producing crop.*
- *Map and Tax lot: 1812020000203: There are no COID water rights appurtenant to this parcel.*
- *Irrigation infrastructure and rights-of-way are required to be identified on all maps and plans*
- *Any irrigation conveyance, District or private, which passes through the subject property shall not be encroached upon without written permission from this office.*
- *No structures of any kind, including fence, are permitted within COID property/easement/right of way without written permission from this office.*
- *Policies, standards and requirements set forth in the COID Developer Handbook must be complied with.*

*Our comments are based on the information provided, which we understand to be preliminary nature at this time. Our comments are subject to change and additional requirements may be made as site planning progresses and additional information becomes available. Please provide updated documents to COID for review as they become available."*

The following agencies did not respond to the notice: Bend Fire Department, City of Bend Planning Department, Oregon Department of Agriculture, Oregon Department of Land Conservation and Development, Deschutes County Assessor, Deschutes County Building Division, Deschutes County Road Department, and District 11 Watermaster.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 750 feet of the Subject Property on May 12, 2022. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on May 12, 2022.

Prior to the public hearing, four public comments were received into the record. Courtney Eastwood ("Eastwood") requested the application in this case be denied because approval would impact wildlife and increase density in the general area. Julia and Justin Geraghty ("Geraghty") (May 23, 2022), as neighboring property owners, requested the application be denied. Drew Mills (May 23, 2022) also requested the application be denied. Kristy Sabo, on behalf of COLW (May 27, 2022), indicated that COLW was reviewing the application but indicated that it appeared that all relevant approval criteria were not met by the application.

At the September 6, 2022, hearing (the "Public Hearing") Joleyne Brown ("Brown") and Geraghty testified in opposition to the application's approval. Brown testified that she is concerned with how an approval of the application would impact her adjacent property. In addition, Brown stated that the Applicant had removed rocks on the Subject Property and that Applicant had grown hay for many years. Brown stated that she believed the Subject Property could be successfully farmed with the application of water (irrigation) and fertilizer. Geraghty questioned whether or not the Applicant had made beneficial use of irrigation water within the last five years. Geraghty also questioned whether the application in this case was attempting to circumnavigate urban growth boundary rules.

COLW, through attorney Rory Isbell, submitted a document on the date of the hearing (September 6, 2022) setting forth its evidence/arguments related to the application. In summary, the 9/6/22 COLW submission argued that the application did not meet the Goal 3 agricultural land requirements, did not meet the requirements of Goal 14 and did not satisfy the change/mistake requirements of DCC 18.136.020(D). After the public hearing, and during the open-record period, COLW submitted two additional documents into the record (September 13, 2022 and September 20, 2022). These two COLW documents expanded upon the COLW 9/6/22 submission arguments; excepting that the 9/13/2022 submission also argued that the County had "previously rejected a similar application."

Brown submitted a post-hearing document (September 11, 2022) indicating that she and her husband had grown hay on their property suggesting that hay could be successfully grown on the

Subject Property. Brown also (9/11/2022) expressed her belief that additional traffic that would result if the application in this case is approved.

Tamara Sullivan Holcomb submitted a document (September 6, 2022) indicating she was neutral related to approval/denial of this application in this case. 143 Investments LLC submitted a document on September 2, 2022, indicating general support for approval of the application. The 143 Investments LLC document also indicated that it owns property adjacent to the Subject Property and that the 143 Investment property has poor soil (rocky and unproductive) similar to the Subject Property.

The Hearings Officer addressed relevant public comments in the findings below.

**NOTICE REQUIREMENT:** On August 9, 2022, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the Subject Property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, August 14, 2022. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on July 26, 2022.

**REVIEW PERIOD:** According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

### III. FINDINGS & CONCLUSIONS

#### **Preliminary Findings:**

Central Oregon LandWatch raised an issue that did not neatly fit into the relevant approval criteria discussed below. The Hearings Officer addresses that issue in this Preliminary Findings section.

#### **COLW's Argument: Similar Application Rejected.**

COLW, in its 9/13/2022 record submission (page 2), stated the following:

*"In 1980, a previous owner of the subject property applied to allow non-farm uses, similar to what is proposed in the current application, arguing that the property is not properly agricultural land. The County squarely denied that application, finding that "[s]ome type of farming and/ or grazing can [be] put to use on this property." Exhibit 1 (Deschutes County File No. TP-596). The application in that file also included a soil study, which concluded that the property is predominantly Class I-VI soils and suitable for farm use."*

Applicant responded to COLW's similar application rejected argument (Final Argument, page 18) as follows:

*"COLW claims that a similar application was previously denied by the County. The application, however, was not similar. It was an application that sought approval of the Moore View Acres*

*subdivision. The subdivision proposed lot sizes smaller than allowed by the then-applicable EFU-20 zoning district. As stated by Planning Director John Anderson, 'evidence regarding low soil capability might justify a change to a non-EFU zone but would not permit residential subdivision in a farm use district. \*\*\* A zone change to a Multiple Use Agricultural Zone to be followed by a conditional use for a cluster development would appear to be more productive for the applicant and more consistent with the Plan.'*

*The finding quoted by COLW that 'some type of farming and/or grazing' may occur on the property is correct but those activities are not 'farm use' as defined by ORS 215.203. COLW's claim that a soils study concluded in 1980 that the Marken property is predominantly Class I-VI soils is correct but the 'study' is not one of the quality and detail provided by Mr. Rabe.*

*No formal, scientific soils study was conducted. The applicant's engineer, William Tye, PE provided soils information based on an aerial photograph, visual observations and the application of general soils maps from three different sources (Deschutes Irrigation Project maps circa 1945, 1958 Soil Survey Deschutes Area based on 1945 mapping and Assessor's tax lot maps with soils information. Mr. Tye was not a soils scientist and did not conduct an Order 1 soil survey. The Supplemental Report provided by Mr. Tye says that he subject property 'has limited farm capabilities and has been farmed very little due to location of the farmable land use to rock outcropping and Class VII type soils.'*

*COLW claims, without citing any specific document, that the soils study found that the subject property was suitable for farm use. We have searched the materials filed by COLW and have been unable to find any statement in a document that might be considered a soil study that concludes that the subject property is suitable for farm use."*

The Hearings Officer concurs with Applicant's above-quoted comments. The Hearings Officer reviewed the Moore Acres 1980 land use documents included in the record of this case. The Hearings Officer notes (Applicant Rebuttal, 9/20/2022, Exhibit R-3) that County Staff indicated that the Subject Property (at the time of Moore Acres land use decision) was "not in agricultural use." (Staff Conclusion D.) The Moore Acres application was not a comprehensive plan or zone change application; rather it was requesting a variance. The Hearings Officer also notes that the Moore Acres application (see Burden of Proof, Applicant Rebuttal, 9/20/2022 Exhibit R-3) did not directly and/or comprehensively address the applicability of Goal 3 or whether the Subject Property was Goal 3 "agricultural land."

The Hearings Officer finds COLW's "similar application" argument to have little applicability or relevance, if any, to this case.

## **Title 18 of the Deschutes County Code, County Zoning**

### **Chapter 18.136, Amendments**

#### Section 18.136.010, Amendments

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

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

Section 18.136.020, Rezoning Standards

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

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

**FINDING:** The Applicant provided the following response (Burden of Proof, pages 19 & 20) related to this standard:

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

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

The Applicant utilized this analysis, as well as analyses provided in prior Hearings Officers’ decisions, to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed in the Comprehensive Plan section of this decision/recommendation. The Hearings Officer agrees with the Applicant’s Burden of Proof analysis. The Hearings Officer finds, as demonstrated in subsequent findings, that this provision is met.

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

**FINDING:** The Applicant provided the following response (Burden of Proof, pages 14 & 15) related to this criterion:



*"The approval of this application is consistent with the purpose of the MUA-10 zoning district which [is] stated in DCC 18.32.010 as follows:*

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

*The approval of the application will allow the property to provide rural residential living on land that is not suited to full-time commercial farming without eliminating part-time, non-commercial agricultural use of the land. The large lot size of the MUA-10 zone and planned development rules both help conserve open spaces and protect scenic resources. The location of the property near the City of Bend will help maintain air quality by reducing vehicle trip lengths by future residents of the property and provide an orderly and efficient transition from rural to urban land use."*

The Hearings Officer concurs with the above-quoted Applicant comments. The Hearings Officer finds the Applicant has demonstrated the change in classification is consistent with the purpose and intent of the MUA10 Zone.

**C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:**

**1. The availability and efficiency of providing necessary public services and facilities.**

**FINDING:** Although there are no disclosed plans to develop the Subject Property, the above criterion specifically asks if the proposed zone exchange will *presently* serve public health, safety, and welfare. The Applicant provided the following response (Burden of Proof, page 20) related to this criterion:

*"Necessary public facilities and services are available to serve the subject property. Will-serve letters from Pacific Power, **Exhibit C** and Avion Water Company, **Exhibit D** show that electric power is available to serve the property.*

*The existing road network is adequate to serve the use. This has been confirmed by the transportation system impact review conducted by Joe Bessman, PE of Transight Consulting, LLC, **Exhibit L** of this application. The property receives police services from the Deschutes County Sheriff. The Marken property is within the boundaries of a rural fire protection district and is close to the City of Bend."*

Adjacent properties on all sides contain dwellings, with the exception of one property that has received approval for a dwelling which has not been constructed yet. Neighboring properties are served by wells, on-site sewage disposal systems, electrical service, and telephone service. No issues have been identified in the record regarding service provision to the surrounding area.

The northwest corner of the Subject Property is located 0.13 miles from the City of Bend UGB. This close proximity to urban development will allow for, in the future, efficient service provision. The application materials include will-serve letters indicating electrical service and water service are available to the Subject Property.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the Subject Property, the Applicant would be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permits, building permits, and sewage disposal permits processes. Assurance of adequate public services and facilities will be verified in future land use permitting processes. The Hearings Officer finds this provision is met.

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

**FINDING:** The Applicant provided the following response (Burden of Proof, pages 20 & 21) related to this criterion:

*“The application of MUA-10 zoning to the subject property is consistent with the specific goals and policies in the comprehensive plan as shown by the discussion of non-resource land plan policies above.*

*Four EFU-zoned properties lie between the City of Bend and the Marken property. These properties will remain protected for farm use by the EFU zoning district as intended by the goals and policies of the comprehensive plan, including Policy 2.2.1. None of the four properties is, however, engaged in commercial farm use and they, also, appear to be good candidates to be rezoned MUA-10 and designated RREA so that they are positioned to be considered for annexation into the City of Bend...*

*...  
All other surrounding properties for a distance of .25 miles and more are zoned MUA- 10 and developed with single-family homes on lots that are predominantly much smaller than 10 acres in size. The rezoning of the Marken property will not have impacts that are inconsistent with any specific comprehensive plan goal or policy.”*

In addition to these comments, the Applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below the Burden of Proof (pages 15 - 20). These findings are included later in this recommendation in the Findings section titled: DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES, OAR 660-015, Division 15, Statewide Planning Goals and Guidelines. The Hearings Officer incorporates the findings for DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES, OAR 660-015, Division 15, Statewide Planning Goals and Guidelines as additional findings for this criterion.

The Hearings Officer finds Applicant's Comprehensive Plan goal/policy specific findings (Burden of Proof, pages 15 – 20) are reasonable and appropriate, and constitute substantial evidence that this criterion has been met. The Hearings Officer finds the Applicant demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

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

**FINDING:** The Applicant proposed to rezone the Subject Property from EFU to MUA10 and re-designate the properties from Agriculture to Rural Residential Exception Area. COLW argued that the Applicant had failed to provide substantial evidence in the record that this criterion had been met. COLW (September 6, 2022, page 3) stated the following:

*"There has been no change in circumstances since the property was last zoned. The soils and agricultural suitability of the subject property have also not changed since it was planned and zoned for agricultural use by the County. There has further been no mistake in the current EFU zoning of the subject property. The County embarked on legislative efforts in both 2014 and 2019 to establish whether errors exist in its EFU zoning designations, but concluded both times that no such errors exist. In 2015, the County consulted with Jon Andersen, who was a Senior Planner, and later became the Community Development Department Director, when the County developed its first comprehensive plan. Mr. Andersen confirmed that none of the County's agricultural land designations were made in error. Exhibit 1 (January 15, 2015 Deschutes County Community Development Department notes from phone conversation with John Andersen). DLCD also commented to the County at the time that it was 'unable to determine the nature and scope of the mapping error' of agricultural land designations. Exhibit 2 (January 8, 2015 DLCD letter)."*

The Hearings Officer notes that "DLCD" refers to the Oregon Department of Land Conservation and Development. Applicant provided the following responsive comments to COLW's above-quoted evidence and argument (Final Argument, 9/26/2022, pages 12 -14):

*"There are numerous changes in circumstance that merit approval of a zone change and plan amendment for the Marken property. Zoning the Marken property EFU in 1979/1980 was also a mistake because its soils were far less productive than believed at the time. Additionally, zoning Marginal Land believed to be unprofitable to farm was a mistake as shown by the Supreme Court's Wetherell decision. The following are some of the many changes that have occurred since the Marken property was zoned EFU and mistakes that support approval of the Markens' applications:*

- A. *Since the time the property was zoned EFU, a large tract of land zoned EFU has been rezoned MUA-10 (Porter Kelly Burns and Eastside Bend) and annexed to the City of Bend. The residential development area of the Porter Kelly Burns property will be developed at an urban density of 11 units per acre.*

- B. *In 2022, the COID property that adjoins the SE corner of the Marken property was rezoned from EFU to MUA-10. Its plan designation was changed from Agriculture to RREA, Rural Residential Exception Area.*
- C. *The State of Oregon located a short distance due south of the Marken and COID properties obtained County approval to rezone and redesignate 640 acres of land from Agricultural Land and EFU to RREA and MUA-10 by ordinances approved in 2013 and 2018. The land rezoned in 2013 has been annexed to the City of Bend.*
- D. *The adjoining 143 Investments, LLC property (TL 1003, Map 18-12-02) recently received approval of a lot of record dwelling after demonstrating that approximately 86.5% of the soils on that property are LCC VII (Gosney) and VIII (Rock outcrop) nonagricultural soils. NRCS mapping was mistaken in mapping the majority of the 143 Investments property Class 36A, Deskamp loamy sand – the same soil the NRCS erred in mapping as being found on more than 50% of the Marken property.*
- E. *US Census data shows that the population of Deschutes County has increased by at least 336% since the time the County last zoned the Marken property.*
- F. *The potential viability of farming has decreased since 1979/1980 when the Marken property was zoned for farm use. Even when the plan was adopted, it was recognized that farming the area that includes the Marken property was marginal and not likely to produce a profit in money.*
- G. *The Oregon Supreme Court decided the Wetherell case and struck LCDC's administrative rule that defined "farm use" as any agricultural activity that generates gross income.*
- H. *The applicant obtained a more-detailed soils survey that shows that NRCS mapping was in error. This is both a change of circumstances and an error that justify rezoning and redesignating the Marken property.*

*COLW argues no that no mistake or change in circumstances exist to support approval of the Marken applications. This argument is based on the following representation that is not correct:*

*'The County embarked on legislative efforts in both 2014 and 2019 to establish whether errors exist in its EFU zoning designations, but concluded both times that no such errors exist.'*

*The County did not conclude that mapping errors do not exist and the legislative efforts were not designed to establish whether error exist in its EFU zoning designations.*

*COLW offered two documents to support its erroneous assertions –notes of a phone conversation with former CDD Director John Andersen ("Anderson Notes") and a January 8, 2015 letter written by Rob Hallyburton, Community Services Division Manager for DLCD (DLCD letter).*

*The Anderson Notes do not, however, "confirm that none of the County's agricultural land designations were made in error" as is claimed by COLW. The Anderson Notes indicate only that the County relied on what was the best available information available in 1979/1980 – historic soil maps no longer in use that were general and incomplete and information regarding irrigated*

*lands provided by irrigation districts. The Anderson Notes do not say that the County mapping efforts were conducted without error or that soils information was such that it was infallible. The County's 1979 comprehensive plan's Resource Element explains that a "general soil study" was completed in 1973 and that detailed mapping was done only for land north of Bend (not the Marken property). The 1979 plan relied on this general information; not property specific Order 1 soils surveys. Exhibit PH-6. The very general nature of the soils mapping information relied on to apply EFU zoning to the Marken property is evident on the Soils Associations map included in the Resource Element, Exhibit PH-6.*

*Furthermore, as documented by our Post-Hearing Evidence, the County's 2014 and 2019 legislative efforts were not undertaken to determine whether errors exist in its EFU zoning designation. In fact, Deschutes County believed that it was not necessary for it to make such a determination. Exhibit PH-12. The County's 2014 legislative effort was confined to 840 acres of the County. DLCD questioned whether the County would be able to establish that an error in mapping had occurred for the 840 acres but the claim that the County concluded no errors existed is not correct. The 2014 effort was paused by the Board of Commissioners in 2015 with a request for LCDC rulemaking because DLCD and the County held differing views of whether HB 2229 is limited to properties with mapping errors or may be applied more broadly to any resource property based on changed circumstances. Exhibit PH-12, PH-7 (Applicant's PostHearing Evidence).*

*Likewise, the DLCD Letter says that the County's 2014 HB 2229 "re-acknowledgment" effort relates to "several non-contiguous problem areas" – not to the entire County. The letter notes that it was unable to determine the nature and scope of the mapping error the county intends to address in rezoning "the areas the county has shared with the department" (a number of small areas totaling 840 acres). The DLCD Letter clearly does not support COLW's claim that no errors were made by Deschutes County in mapping resource lands.*

*The County's 2019 legislative review revitalized efforts to rezone the 840 acres and to create a zoning district to apply to non-resource lands. The County did not seek to determine whether mapping errors exist in designating resource lands. See, Exhibits PH-3 and PH-6 Considering the Applicant's above response, staff requests the Hearings Officer make specific findings on this issue."*

The Hearings Officer finds the above-quoted Applicant's Final Argument comments, along with the accompanying referenced exhibits, represent credible substantial evidence. The Hearings Officer adopts the above-quoted Applicant comments as the Hearings Officer's findings for this criterion. The Hearings Officer finds, based upon the Applicant's above-quoted comments, that there have been changes in circumstances since the Subject Property was last zoned. Further, the Hearings Officer finds, based upon the Applicant's above-quoted comments and the record as a whole, that the NRCS soil classifications were imprecise (mistaken) and that the Applicant's site-specific soil study accurately represents the correct soil classifications.

## **Deschutes County Comprehensive Plan**

## Chapter 2, Resource Management

### Section 2.2 Agricultural Lands

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

**FINDING:** COLW and Applicant disagree as to whether the Subject Property is Goal 3-defined "Agricultural Land" (see, COLW's 9/6/2022, 9/13/2022 and 9/2022 record submissions and Applicant's Burden of Proof plus Applicant's 9/6/2022, 9/20/2022 and 9/26/2022 record submissions). The "Agricultural Land" issue is closely related to the Applicant and COLW disagreement with respect to whether the Subject Property is "Non-resource Land." The "Agricultural Land" issue is relevant to a number of approval criteria in this case. The Hearings Officer, in these findings for Section 2.2 Agricultural Lands, Goal 1, provides general findings related to the "Agricultural Land" issue.

The Hearings Officer finds that COLW most concisely set forth its "Agricultural Land" evidence and arguments in its 9/6/2022 record submission. The Hearings Officer quotes the relevant COLW comments below:

*"The subject property is agricultural land and protected for exclusive farm use by statewide land use planning Goal 3 because it is predominantly comprised of Class I-VI soils as determined by the NRCS. Goal 3, OAR 660-033-0020(1)(a), DCC 18.040.030. According to the NRCS, the soils of the subject property are predominantly Class III irrigated and Class VI unirrigated, as documented in the application. Application at Exhibit A, Appendix A (NRCS Web Soil Survey).*

*It is also well documented in the application that the property has a long history of farm use, and that the primary purpose of that use has been to obtain a profit. The application readily admits that the applicants obtained the property in 1981 and since then "grew hay and occasionally raised cattle." The application explains that while the profit from those agricultural activities has varied, the applicants made "efforts to make a profit in money by farming the property." Application at 24. The purpose of those agricultural activities was to obtain a profit from raising crops. The property is agricultural land because it has been in farm use for over 30 years.*

*Further, the County's definition of "agricultural use" specifically excludes considerations of profit. DCC 18.04.030 ("Agricultural use" means any use of land, whether for profit or not, related to raising, harvesting and selling crops[.]")*

*The property is additionally in farm use because it contains an impoundment of water. ORS 215.203(2)(b)(G).*

*The applicant's hired soil scientist's study is deficient for excluding "water" and "developed land" from its analysis. Application Exhibit A Figure 4.*

*The soil study further finds that 29 of its observation sites found "conditions most closely matching Deskamp soils" which are Class III irrigated and Class VI unirrigated; and finds that only 24 of its*

observation sites found “conditions mostly closely matching Gosney soils” which are Class VII. Application Exhibit A at page 4. Despite this majority of the soil study’s observations showing Class III/VI soils, the soil study finds a majority of the property as Class VII-VIII. This conclusion cannot be squared with the reported results of the 58 observation locations, which show a majority of Class III/VI Deskamp soils.

*The property currently has 9.49 acres of water rights. The application explains that it used to have 36 acres of water rights, but the applicant chose to sell the majority of those water rights. Application at 26. That choice is now being used to argue that the property’s limited water rights detract from its suitability for agriculture. This applicant’s own willful choice to reduce water availability on the property should not now be considered as a reason the property’s agricultural land status. The applicant could buy back water rights just as readily as they sold them.”*

Applicant, through its Burden of Proof, hearing testimony of attorney Fancher, and its record submissions, addressed each of the “Agricultural Land” issues raised above by COLW. Applicant also provided a Subject Property site-specific soil study/survey (the “Applicant Soil Study”) and supplemental comments provided by Rabe/Valley. The Hearings Officer finds that Applicant’s Final Argument (September 26, 2022 submission), while lengthy, provides a credible and persuasive analysis of the “Agricultural Land” issue. The Hearings Officer includes Applicant’s Final Argument “Agricultural Land” comments below:

**“1. Central Oregon LandWatch’s Claim that Marken Property is Goal 3 “Agricultural Land” based on its NRCS Soils Mapping (COLW Letters of September 6, 2022 and September 20, 2022)**

**Summary of Response:** *The text of Statewide Goal 3 allows counties to rely on soil surveys that are more detailed than soil surveys prepared by the NRCS. ORS 215.211 allows property owners to obtain and submit soil surveys to a county to determine whether land is “Agricultural Land.” DLCD reviews all such surveys. It requires that the surveys be prepared by soils classifiers and that the NRCS (SCS) land capability classification system (LCC Classes I through VIII) be used in the survey. This process provides an exception to LCDC’s rule that says that soils classified LCC I-VI in Eastern Oregon by the NRCS are agricultural land. DLCD’s program and website recognize this fact.*

**Detailed Response:** *COLW repeats an argument that it has made without success before – that the County must rely on NRCS soils mapping work to determine whether land is “Agricultural Land” and that it must disregard the more-detailed soil survey results presented by DLCD approved soils classifier, Brian Rabe. COLW’s argument was presented and rejected by LUBA Page 2 – Applicant’s Final Argument (Marken) in Central Oregon LandWatch v. Deschutes County (Aceti), 74 Or LUBA 156 (2016). It was also presented and rejected in the Swisher plan amendment and zone change application by the County’s hearings officer and Board of Commissioners at pages 28-43 of **Exhibit E** to Ordinance 2022-003 (decision filed 9/6/2022 by Liz Fancher). **PH-10 and PH-11** (Applicant’s Post-Hearing Evidence).*

*In Aceti, COLW argued that the results of an Order 1 soil survey were not supported by substantial evidence because the data in the Order 1 soil survey and the NRCS soil survey conflict. LUBA found*

that OAR 660-033-00030 allows the county to rely on more detailed data on soil capability than provided by NRCS soil maps to define agricultural land provided the soils survey has been certified for use by Deschutes County by DLCD. LUBA also noted that "NRCS maps are intended for use at a higher landscape level and include the express statement "Warning: Soil Ratings may not be valid at this scale." The Order 1 survey prepared by Mr. Rabe for the Markens is a higher order survey than the NRCS survey. This fact was confirmed by DLCD's review of the soil survey, **Exhibit A** (Applicant's Burden of Proof). The Rabe soil survey was approved by DLCD for use by the County to determine whether the Marken Property is "Agricultural Land" as defined by Statewide Goal 3. As a result, COLW's argument lacks merit.

The following is a step-by-step analysis of the applicable law. It shows that LUBA's decision is correct and should be followed by Deschutes County:

1. Goal 3's definition of 'agricultural land' does not say that counties must rely on the soils maps and ratings provided by NRCS soil surveys. Instead, it says that the determination of whether land is agricultural land is based on the soil classes (I-VIII) described in the Soil Capability Classification System of the US Soil Conservation Service.

The following is the relevant part of the Goal 3 definition:

*"Agricultural Land - \*\*\* in eastern Oregon is land predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service \*\*\*"*

The Soil Capability Classification System of the US Soil Conservation Service (now NRCS) is the NRCS Land Capability Classification (LCC) system used to rate soils in classes from Class I to VIII based on soil characteristics. It is described on page 187 of the Soil Survey of Upper Deschutes River Area, Oregon (hereinafter "NRCS Soil Survey"). It is not an NRCS soil survey or survey maps that show the approximate locations of soil mapping units based on the NRCS's "landscape level" soils work. The NRCS mapping is less detailed than Mr. Rabe's Order 1 soil survey.

2. Goal 3 specifically allows local governments to rely on more detailed soils data than provided by the NRCS. It says:

*'More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.'*

*The purpose of Goal 3 is to preserve agricultural land. It is not intended to preserve land that does not meet the definition of "agricultural land."*

3. LCDC administrative rule OAR 660-033-0020(1)(a)(A), Definitions, says that "agricultural land" includes "lands classified (mapped) by the US Natural Resources Conservation Service (NRCS) as predominantly \*\*\* Class I-VI soils in Eastern Oregon." The rule broadens the definition of Agricultural Land provided by Statewide Goal 3 to rely on



*NRCS mapping. This is permissible, however, only if the rule is consistent with Goal 3. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007) (administrative rule that conflicts with definition of Agricultural Land in Goal 3 is invalid). The rule is consistent with Statewide Goal 3 only if it respects the plain language of the Goal and State law that allows counties to rely on more detailed soils data to determine whether land is "Agricultural Land" in lieu of the less accurate NRCS soils maps.*

4. *The Oregon Legislature adopted ORS 215.211(1) to regulate the more-detailed soil surveys allowed by Goal 3. The statute also assures property owners the right to provide local governments with more detailed soils information than provided by the NRCS's Web Soil Survey to "assist a county to make a better determination of whether land qualifies as agricultural land." ORS 215.211 requires that the soil scientists who conduct the more-detailed assessment be soils classifiers who are certified in good standing with the Soil Science Society of America and who have received approval from DLCD to conduct more-detailed soil surveys. ORS 215.211 also requires that soils reports be reviewed and approved for use by counties by DLCD. Mr. Marken obtained DLCD's permission to rely on the Valley/Rabe soils study to address the question whether his property is "agricultural land."*

*ORS 215.211(5) recognizes the fact that this "additional information" may be used "in the determination of whether land qualifies as agricultural land" and explains that the soils report information does not "otherwise affect the process by which a county determines whether land qualifies as agricultural land. The use of the word "**otherwise**" makes it clear that more-detailed soils information does affect the process of determining whether land is agricultural land.*

5. *LCDC's Goal 3 rules plainly state that property owners may rely on more detailed data to define "agricultural land." The rules require that the more detailed data be related to the NRCS land capability classification system (LCC) which places soils in LCC I-VIII based on their suitability for agricultural use. OAR 660-033-0030(5)(a) states:*

*'(5)(a) More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data **shall be related to the NRCS land capability classification system.**' (emphasis added by Applicant)*

*The fact that this LCDC rule requires that the soils survey report results be based on the NRCS soil classification system (LCC I through VIII) makes it clear that the classifications determined by the survey are intended to be considered by counties when they determine whether land is "Agricultural Land."*

6. *Subsection (5)(b) of OAR 660-033-0030, Identifying Agricultural Land, says:*

*'If a person concludes that **more detailed soils information than that contained in the Web Soil Survey operated by the NRCS**, would assist a county to make a better determination of **whether land qualifies as agricultural land**, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person using the process in OAR 660-033- 0045.'* (emphasis added by Applicant)

*Mr. Marken followed the process in OAR 660-033-0045 to obtain permission to provide the County with more detailed soils information about the subject property. He hired a soil scientist certified by DLCD to conduct a more detailed soils study. The Order 1 soils detailed study prepared by soils classifier Brian Rabe relates to the soil classification system of the NRCS as required by OAR 660-033-0030(5)(a). **Exhibit A**, Burden of Proof. The more-detailed Order 1 soil study prepared by soil classifier Brian Rabe was then reviewed and approved for use by Deschutes County by DLCD for the purpose of determining whether the Marken property "qualifies as agricultural land" protected by Statewide Goal 3. **Exhibit A**, Burden of Proof.*

7. LCDC rules explain that the more-detailed soils study may be used during the review of a zone change and plan amendment application. OAR 660-033- 0030(5)(c)(A) says that its soils study rules apply to:

*'A change to the designation of a lot or parcel planned and zoned for exclusive farm use to a non-resource plan designation and zone on the basis that such land is not agricultural land.'*

8. DLCD understands that the more detailed soils surveys allowed by Statewide Goal 3 and ORS 197.211 may be used in lieu of NRCS soils surveys. On its website, DLCD explains:

*'Soil mapping done by the USDA Natural Resources Conservation Service (NRCS) is the most common tool used for identifying the types of soils in an area. The NRCS provides a rating for each soil type that indicates how suited the soil is for agriculture. \*\*\**

*NRCS does not have the ability to map each parcel of land, so it looks to larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils Page 5 – Applicant's Final Argument (Marken) information on a specific property. Owners who believe soil on their property has been incorrectly mapped may retain a 'professional soil classifier ... certified by and in good standing with the Soil Science Society of America' \*\*\* through a process administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for the property.'*

*Exhibit PH-2, pp. 1-2 (Applicant's Post-Hearing Comments).*

9. *The NRCS states, in the Web Soil Survey report provided with the Rabe soils survey, Exhibit A of the Burden of Proof (Appendix A), that:*

*'Although soil survey information can be used for general farm, local, and wider area planning, onsite investigation is needed to supplement this information in some cases. \*\* Great differences in soil properties can occur within short distances.'*

*\* \**

*'The objective of mapping is not to delineate pure taxonomic classes but rather to separate the landscape into landforms or landform segments that have similar use and management requirements. The delineation of such segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, however, onsite investigation is needed to define and locate the soils and miscellaneous areas.'* Page 13, Appendix A, **Exhibit A** (Applicant's Burden of Proof).

*In the Soil Survey of Upper Deschutes River Area, the NRCS explains on page 16 that the average size of the delineations of soils for the typical higher-level survey (Order 2) provided by NRCS maps is 40 acres and the smallest mapped delineation is five acres. Exhibit PH-1. Mr. Rabe's Order 1 soil survey surveyed the entire Marken property in far greater detail. DLCD's review of the Rabe soil survey confirms that the survey is an Order 1 survey and that it is more detailed than the NRCS soil survey. **Exhibit A**, Burden of Proof, pdf page 2.*

10. *State law, including DLCD's rules and Goal 3, would not allow use of a more-detailed soils survey based on the NRCS soil classification system if the soils classifications provided by NRCS soils studies that utilize the same system at a less detailed less were intended to be unassailable.*

## **II. COLW's Challenge to Expert Evidence Provided by Order 1 Soils Survey (COLW Letters of September 6, 2022 and September 20, 2022)**

**Summary of Response:** *Brian Rabe's soil survey for the Marken property provides substantial evidence upon which the county may rely on to determine whether the Marken property is 'Agricultural Land' as defined by Statewide Goal 3. It has been approved by DLCD for this purpose. It is more-detailed than the NRCS soils survey and it utilizes the NRCS soil classification system as required by OAR 660-033-0030(5)(a).*

*COLW's criticism of Mr. Rabe's professional and expert assessment of soils reflects a lack of understanding of the fundamentals of the soil classification system. COLW's attempt to equate the percentage of observation points documented in the soils report with the percentage of land in each soil classification presents an illogical argument that is thoroughly disproven by the detailed soils map provided with the Rabe study and the text of the Rabe report.*

**Detailed Response:** *Mr. Rabe is an expert soil scientist and soils classifier. He has been qualified by the Department of Land Conservation to conduct more detailed soils surveys for use by the County in determining whether the Marken property is Statewide Goal 3 "Agricultural Land." Mr. Isbell is a lawyer. He has no known expertise or training in soils science. His comments should be considered in that light. Oregon Coast Alliance v. City of Brookings, 72 Or LUBA 222 (2015)(the nature of certain issues may be such that some technical expertise is necessary to provide substantial evidence to support required findings; attorney's opinion that stormwater runoff will not adversely impact salmon is not substantial evidence).*

*Mr. Isbell claims that Mr. Rabe erred by "excluding" water and developed land from his soils survey. Mr. Rabe did not, however, exclude water and developed land from his survey. Instead, Mr. Rabe correctly classified these areas according to the NRCS land capability classification system. This is what he is required to do by OAR 660-033-0030(5)(a), quoted in Section I, Number 5, above.*

*The NRCS soil classification system classifies miscellaneous areas including ponds and urban/developed land Class VIII and this is the classification applied by Mr. Rabe. Mr Rabe explained in his post-hearing comments, Exhibit PH-8 (Applicant's Post-Hearing Evidence):*

*'Miscellaneous areas are addressed in the Soil Survey Manual (USDA/NRCS Soil Survey Staff, 1993). "Miscellaneous areas have essentially no soil and support little or no vegetation . . . Map units are designed to accommodate miscellaneous areas, and most map units named for miscellaneous areas have inclusions of soil." Specifically listed and defined miscellaneous areas include "Urban land (identified as Developed Land in my report) is land mostly covered by streets, parking lots, buildings, and other structures of urban areas." The roadways on this property are mostly paved and, together with the structures and other developed elements, meet the definition of this miscellaneous area. Another applicable miscellaneous area is water. "Water includes streams, lakes, ponds, and estuaries that in most years are covered with water at least during the period warm enough for plants to grow . . ." Rock outcrop is another miscellaneous area. All miscellaneous areas are considered Class VIII.*

*The areas identified and delineated as Water and Developed Land in the sitespecific soil survey are consistent with the definitions in the Soil Survey Manual. Even if, for the sake of argument, the acreage represented by these two map units were excluded from the analysis, the property would still predominantly consist of Class VII and VIII soils. The Water and Developed Page 7 – Applicant's Final Argument (Marken) Land represent 5.19 acres, or 8.67% of the property. Gosney and Rock outcrop represent 52.51% of the remaining acreage.'*

*Mr. Isbell's September 6, 2022 letter then makes the illogical claim that the Rabe soil survey cannot be correct because more of the observation sites listed in the survey reported Class III or VI soils than reported Class VII and VIII soils. Mr. Rabe responded:*

*The analysis by Central Oregon Land Watch misrepresents what was presented in the soil report. "Conditions most closely matching Gosney soils were observed at 24 grid locations and at least 21 additional locations along boundaries between grid points." The additional locations were used to refine the boundary conditions between differing grid points (e.g. between 36 and 53, 39 and 42, 43 and 44, etc.). Although the additional locations were not shown on the map or tabulated, they were identified and noted nonetheless. In addition, there are 55 spot symbols (R) for Rock outcrops too small to delineate. The number of observation points identifying Class VII and Class VII conditions were more than 3 times the number of observation points identifying Class VI conditions and fully support the delineated boundaries and associated acreages.*

*Gosney is only given a better rating for irrigation when mapped as a minor component in a complex, such as with Deskamp (Map Unit 38B, Deskamp-Gosney complex, 0 to 8% slopes). In this example, the incidental production from the Gosney acreage is expected to be only 1/3 to 1/2 that of the Deskamp. That equates to 1/3 to 1/2 the gross revenue but with the same expenses for fertilizer, water, power, equipment, and labor. When mapped alone or as the major component of a complex, Gosney is not rated when irrigated. Irrigation of Gosney soils would not change the NRCS rating of this soil and irrigation is an inefficient and inappropriate use of a scarce resource.'*

*On September 20, 2022, Mr. Isbell responded to Mr. Rabe's comments by claiming that the table of test hole location in the Marken soils survey is "the only substantial evidence in the soil scientist report." This claim is not correct. The soils survey sets out Mr. Rabe's expert opinion about the soil types found on the Marken property and the land capability classifications for each soil found. Mr. Rabe's determinations are based on all information gathered during his survey of the Marken property. The results of the survey are reported on a Site Specific Soils Map that delineates the areas of land of each identified soil type. This map is Figure 4 of Exhibit A of the Applicant's Burden of Proof.*

*The NRCS reports soil mapping units using a similar but less detailed map than provided by Mr. Rabe. The NRCS soils survey (included in Rabe report) provides no observation point information whatever. Despite the complete lack of observation point information, COLW argues that the information presented by the NRCS map is reliable and that Mr. Rabe's map is not substantial evidence. It only follows that if the NRCS map is substantial evidence of the information it provides, the same must be true for the more-detailed Rabe soils survey map. It, together with the rest of the Rabe soil survey document, is substantial evidence upon which to find that 61.2% of the subject property is comprised of Class VII and VIII soils classified according to the NRCS soil classification system.*

### **III. COLW Argument that the Marken Pond is a Farm Use**

*COLW argues that the Marken pond is a farm use due to the provisions of ORS 215.203(2)(b)(G). This argument is not correct as applied to the Marken property. Furthermore, even if it were correct, this argument has no bearing on the results of the Rabe soils survey which must be based on the NRCS land capability classification system.*

No agriculture use has been occurring on the Marken property for many years. The use of the property is residential. Ponds are in "farm use" only when "lying in or adjacent to and in common ownership with farm use land." Farm use is defined in ORS 215.203(1) as the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock and similar activities not occurring on the Marken property. As explained further below, the Markens have never engaged in "farm use." They have never believed they would make a profit in money by using their land for agricultural purposes. They hoped they would break even but ended up losing money.

#### **IV. COLW re County Definition of 'Agricultural Use'**

The County Code definition of the term "Agriculture Use" is not relevant to a resolution of the issues presented by this application. The issue presented is whether the Marken property is "Agricultural Land" as defined by Statewide Goal 3; not whether the property is suitable for "agricultural use" as the term is defined by the County. Goal 3 asks whether the Marken property is suitable for "farm use" as defined by ORS 215.203(1) – a use conducted with an intention of making a profit in money.

#### **V. Repurchase of Water Rights**

The applicant is not arguing that the limited water rights appurtenant to the Marken property detract from its suitability for farm use. Instead, as explained in the Rabe soils survey and post-hearing comments, irrigating Class VII and VIII soils will not increase their soil classification and will not make them suitable for farm use. In this case, irrigating more of the property would be a waste of water that is a precious resource in the Deschutes Basin.

#### **VI. COLW's Claim of Long History of Farm Use (September 6, 2022 Letter)**

COLW's claim that the Markens' evidence shows that primary purpose of engaging in agricultural activities was to obtain a profit. This claim is, however, erroneous. The burden of proof does not say, as COLW alleges, that "profit has varied." Instead, it says that unsuccessful efforts were made to make a profit in money by farming the property. This statement was made by the Markens' attorney based on an unwitting and erroneous assumption.

In discussing this specific issue with Mr. Marken, the applicant's attorney learned that the Markens purchased their property hoping to break even on their agricultural activities. They purchased the subject property but did not expect to make a profit. Given the poor soil conditions of the property and the fact that the property was considered marginal farmland by the County's 1979 comprehensive plan, the Markens hope to break even was overly optimistic – hope that quickly evaporated due to an unbroken string of farm losses.

Any reasonable farmer would, like the Markens, consider it unlikely that they would make a profit farming the Marken property due to its extremely poor soils, high cost of inputs and

*extensive amount of rock existing on the property when purchased (rocks have been removed from some areas of the property but it remains unsuitable for 'farm use). The County's 1979 comprehensive plan (see **Exhibit R-3**, Applicant's Rebuttal) classified the subject property Marginal Farm Land which it describes as "land [that] will support agricultural production only if subsidized to some extent." In other words, it is land that is not suitable for 'farm use' as defined by ORS 215.213(1), the Supreme Court's Wetherell decision and Statewide Goal 3.*

*The 1979 Deschutes County Comprehensive Plan's Resource Element (**Exhibit PH-6**) noted that many farmers could only hope to make a profit when selling their property. This situation has not improved over time. The 2017 Census of Agriculture shows that 83.96% of farm operators report significant farm losses that average \$12,866 per year per farm and that a similar situation existed in 2012. This issue is discussed further in Section IX, below.*

*The Markens' experience is mirrored by that of their former neighbor[s], Dick Springer. The Springer family, until recently, owned the 143 Investments, LLC property (TL 1003, Map 18-12-02) that adjoins the west boundary of the Marken property for decades. Mr. Springer explained in comments filed with Deschutes County that Tax Lot 1003 "is too rocky to farm and too small for major, profitable grazing," "barren, rock bound" and "anything but farmland." According to Mr. Springer, due to zone changes "[w]e have become an island with Harold Marken directly to the east of us, between/among the City/UGB and County five acre parcels." Mr. Springer explained that his family typically lost \$8,000 to \$10,000 per year to obtain gross farm income of \$3,000. His effort to grow grass hay resulted in a loss of \$35,000 over a period of two years despite Mr. Springer's reliance on expert advice and his installation of an irrigation pivot system. The prior owner of the property, Bill Tye, also attempted to farm the property and gave up due to the rocky soil conditions. **Exhibit PH-6**, Applicant's Post-Hearing Evidence"*

The Hearings Officer, after considering the COLW and Applicant evidence and arguments, addresses COLW's specific "Agricultural Land" arguments in the following findings.

**COLW ARGUMENT: NCRS soil mapping designations (COLW 9/6/2022 submission – page 1)**

The Hearings Officer finds that the essence of this COLW argument is whether or not the NRCS soil mapping designations constitute the only or the persuasive authority when determining, for Oregon land use planning purposes, the soil classifications of a discrete parcel of real property (such as the Subject Property). The Hearings Officer finds Applicant's above-quoted discussion related to NCRS mapping and site-specific soils study mapping accurately reflects Oregon law. The Hearings Officer finds that the clear and unequivocal language of Goal 3 and OAR 660-033-0030(5) allows Deschutes County and the Applicant to use more detailed soil capability studies, than the NCRS, to determine if a specific parcel/property is "Agricultural Land." (See also, *Wetherell v. Douglas County*, 342 Or 666 (2007) and *Central Oregon Landwatch v. Deschutes County (Aceti)* (2016)).

Applicant employed Rabe/Valley to conduct a site-specific soil study/survey of the Subject Property (the "Applicant Soil Study" - Burden of Proof, Exhibit A). Based upon the review of the record, the Hearings Officer finds Rabe/Valley is a currently certified soil classifier and recognized as such by

DLCD (Burden of Proof, Exhibit A – DLCD Soil Assessment Completeness Review). The Hearings Officer finds that DLCD reviewed the Applicant Soil Study and found that it met all OAR 660-033-0030 requirements (Burden of Proof, Exhibit A). The Hearings Officer finds that the Applicant Soil Study utilized the required NCRS land capability system (“LCC”). The Hearings Officer finds that the Applicant Soil Study is a more detailed site-specific analysis of the soil conditions and classifications at the Subject Property than the NRCS soil survey. The Hearings Officer finds the County may rely upon the detailed site-specific Applicant Soil Study in determining whether or not the Subject Property is “Agricultural Land.”

**COLW ARGUMENTS: History of Farm Use & Impoundment of Water  
(COLW 9/6/2022 submission, pages 1 and 2)**

COLW, in its 9/6/2022 submission, stated the following:

*“It is also well documented in the application that the property has a long history of farm use, and that the primary purpose of that use has been to obtain a profit. The application readily admits that the applicants obtained the property in 1981 and since then “grew hay and occasionally raised cattle.” The application explains that while the profit from those agricultural activities has varied, the applicants made “efforts to make a profit in money by farming the property.” Application at 24. The purpose of those agricultural activities was to obtain a profit from raising crops. The property is agricultural land because it has been in farm use for over 30 years.”*

The Hearings Officer finds COLW did not reference any legal authority that would empower the Hearings Officer to conclude the Subject Property is “Agricultural Land” on the sole basis that it has a long *history* of “farm use.” The Hearings Officer finds that COLW’s historical use argument could possibly be relevant to the COLW “primary purpose is profit” or Goal 3; OAR 660-033-0020(1)(b) arguments. The Hearings Officer discusses those arguments in findings below.

The Hearings Officer takes notice of the ORS 215.203 (2)(a) definition of “farm use” which, in part, states the following:

*“As used in this section, ‘farm use’ means the **current employment** of land for the primary purpose of obtaining a profit in money by...harvesting and selling crops...” (bolding emphasis added by the Hearings Officer)*

The Hearings Officer finds that “farm use,” as defined by ORS 215.203(2)(a), means the **current employment** of land *not* the **historical** employment of land. “Current employment” is defined in ORS 215.203(2)(b) by a listing of very specific activities (or, non-activities). The Hearings Officer finds that COLW did argue that the Subject Property is being used for a specific activity that meets the current employment of land requirement of ORS 215.203(2)(a). Specifically, COLW argued that the existence of a water impoundment on the Subject Property is a ORS 215.203(2)(b)(G) current use of land.<sup>2</sup>

<sup>2</sup> COLW, in its 9/6/2022 submission, made the following statement: “The property is additionally in farm use because it contains an impoundment of water. ORS 215.203(2)(b)(G).”



Applicant responded with the following comments related to COLW's ORS 215.203(2)(b)(G) water impoundment argument as follows:

*"COLW argues that the Marken pond is a farm use due to the provisions of ORS 215.203(2)(b)(G). This argument is not correct as applied to the Marken property. Furthermore, even if it were correct, this argument has no bearing on the results of the Rabe soils survey which must be based on the NRCS land capability classification system.*

*No agriculture use has been occurring on the Marken property for many years. The use of the property is residential. Ponds are in "farm use" only when "lying in or adjacent to and in common ownership with farm use land." Farm use is defined in ORS 215.203(1) as the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock and similar activities not occurring on the Marken property. As explained further below, the Markens have never engaged in "farm use." They have never believed they would make a profit in money by using their land for agricultural purposes. They hoped they would break even but ended up losing money."*

The Hearings Officer concurs with Applicant's above-quoted comments and incorporates them as findings for this COLW Argument. In addition, the Hearings Officer finds that the plain language of ORS 215.203(2)(b)(G) refutes the COLW "water impoundment" argument. ORS 215.203(2)(b)(G) says that "current employment" of land for farm use includes:

*"Water impoundments lying in or adjacent to and in common ownership with farm use land."*

The Hearings Officer finds that Applicant does not dispute there is a pond on the Subject Property and does not dispute that the pond is a water impoundment as described in ORS 215(2)(b)(G). The Hearings Officer finds the Subject Property is not "farm use" land, per ORS 215.203 (2)(a), because the Subject Property is not currently being employed for the primary purpose of obtaining a profit from engaging in farm related activities. The Hearings Officer incorporates, as additional findings for this COLW argument, the findings for COLW Argument: Primary Purpose is Profit. The Hearings Officer finds that that the Subject Property water impoundment (pond) does not lay in or adjacent to and in common ownership with "farm use" land. The Hearings Officer finds that the COLW water impoundment argument is not persuasive.

The Hearings Officer finds COLW's only reference to the pond (water impoundment) and ORS 215.203(2)(b)(G) is the quoted statement above (COLW, 9/6/2022, page 2 – see footnote 2 above). Therefore, as alternative findings, the Hearings Officer notes that COLW did not provide the Hearings Officer, Applicant or any participant in this case even a basic analysis of ORS 215.203(2)(b)(G) in the context of the Subject Property. Therefore, the Hearings Officer finds that COLW failed to present any persuasive legal support for its Impoundment of Water (ORS 215(2)(b)(G)) argument. The Hearings Officer finds that COLW's Impoundment of Water argument

was not sufficiently developed and supported to allow the Hearings Officer to authoritatively make a decision. The Hearings Officer finds COLW's Impoundment of Water argument is not persuasive.

**COLW ARGUMENT: Primary Purpose is Profit (COLW 9/6/2022 submission, pages 1 and 2)**

The Hearings Officer incorporates the findings for the preceding section (COLW ARGUMENTS: History of Farm Use & Impoundment of Water) as additional findings for this COLW Argument.

As noted above, ORS 215.203(2)(a), includes the following language:

*"As used in this section, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by...harvesting and selling crops..."*

The Hearings Officer finds the **current employment** of the Subject Property is not for the primary purpose of growing/harvesting any crop or any other activity described in ORS 215.203(2)(a).

The Hearings Officer incorporates as additional findings for this COLW Final Argument the quoted sections of the above-quoted Applicant's Burden of Proof statements related to soil fertility, suitability for grazing, climate, and existing and future availability of water for farm irrigation purposes (Burden of Proof, pages 24 – 26). The Hearings Officer interprets Applicant's Burden of Proof statements as credible and substantial evidence that the Applicant did not farm the Subject Property for the primary purpose of making a profit. The Hearings Officer finds, based upon the evidence in the record, that Applicant's intent or purpose of farming the Subject Property, in the past, was to break even financially. The Hearings Officer also finds no persuasive evidence in the record that either the Subject Property or any adjacent or nearby parcel of real property is being farmed for the primary purpose of making a net profit.

The Hearings Officer finds, based upon the record of this case, that the Subject Property is not currently employed for the primary purpose of obtaining a profit from raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the production of livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use.

**COLW Argument: DCC 18.04.030 (COLW 9/6/2022 submission, page 2)**

COLW, in its 9/6/2022 submission, made the following statement:

*"... the County's definition of 'agricultural use' specifically excludes considerations of profit. DCC 18.04.030 ('Agricultural use' means any use of land, whether for profit or not, related to raising, harvesting and selling crops[.]")"*

Applicant, in its Final Argument quoted above (section VI. COLW re County Definition of 'Agricultural Use'), asserted that the County definition of "Agricultural Use" is not relevant to this case/application. The Hearings Officer agrees with Applicant's statement that the issue in this case is whether or not

the Subject Property is “Agricultural Land” under Goal 3. Determining if a Goal 3 exception is required is the issue to be decided; not whether DCC 18.04.030 is satisfied.

The Hearings Officer finds the Oregon Supreme Court’s *Wetherell* analysis clearly pointed out that if there is a conflict between the language of the statute (ORS 215.203) and enabling regulation (OAR 660-033-030(5)), the statute prevails. In this instance a relevant statute (ORS 215.203) includes reference to obtaining a profit and a County Code section (DCC 18.04.030) states “agricultural use” means “any use of land, whether for profit or not...” The Hearings Officer finds that the “Agricultural Land” or “agricultural use” issue must be decided consistent with the relevant ORS 213.203 statutory language and not by a contrary/conflicting DCC 18.04.030 provision.

The Hearings Officer concurs with and adopts as the Hearings Officer findings the Applicant’s analysis quoted above (section VI. COLW re County Definition of ‘Agricultural Use’). The Hearings Officer finds COLW’s DCC 18.04.030 argument is not persuasive.

**COLW Argument: Soil Study Excluded “Water” and “Developed Land.”  
(COLW 9/6/2022 submission, page 2)**

COLW, in its 9/6/2022 submission, made the following statement:

*“The applicant’s hired soil scientist’s study is deficient for excluding “water” and “developed land” from its analysis. Application Exhibit A Figure 4.”*

The Hearings Officer incorporates as findings for this COLW argument the Applicant’s above-quoted comments related to “water” and “developed land” (Section II. COLW’s Challenge to Expert Evidence Provided by Order 1 Soils Survey). Applicant also provided a post hearing record submission (Applicant’s Post-Hearing Evidence, Exhibit PH-8) addressing this COLW assertion.

*“Miscellaneous areas are addressed in the Soil Survey Manual (USDA/NRCS Soil Survey Staff, 1993). ‘Miscellaneous areas have essentially no soil and support little or no vegetation . . . Map units are designed to accommodate miscellaneous areas, and most map units named for miscellaneous areas have inclusions of soil.’ Specifically listed and defined miscellaneous areas include ‘Urban land (identified as Developed Land in my report) is land mostly covered by streets, parking lots, buildings, and other structures of urban areas.’ The roadways on this property are mostly paved and, together with the structures and other developed elements, meet the definition of this miscellaneous area. Another applicable miscellaneous area is water. “Water includes streams, lakes, ponds, and estuaries that in most years are covered with water at least during the period warm enough for plants to grow . . .” Rock outcrop is another miscellaneous area. All miscellaneous areas are considered Class VIII.*

*The areas identified and delineated as Water and Developed Land in the site-specific soil survey are consistent with the definitions in the Soil Survey Manual. Even if, for the sake of argument, the acreage represented by these two map units were excluded from the analysis, the property would still predominantly consist of Class VII and VIII soils. The Water and Developed Land*

*represent 5.19 acres, or 8.67% of the property. Gosney and Rock outcrop represent 52.51% of the remaining acreage."*

The Hearings Officer finds COLW's assertion that Applicant excluded "water" and "developed land" from the Applicant Soil Study is a mere allegation unsupported by substantial evidence or persuasive legal argument. The Hearings Officer finds Applicant's above-quoted Final Argument comments and the Rabe/Valley post hearing comments to be credible and persuasive. The Hearings Officer finds that Rabe/Valley did consider "water" and "developed land" in the Applicant Soil Study. The Hearings Officer finds COLW's Soil Study Excluded "Water" and "Developed Land" argument is not persuasive.

### **COLW ARGUMENT: Predominant Soils (COLW 9/6/2022 submission, page 2)**

COLW, in its 9/6/2022 submission, made the following statement:

*"The soil study further finds that 29 of its observation sites found 'conditions most closely matching Deskamp soils' which are Class III irrigated and Class VI unirrigated; and finds that only 24 of its observation sites found 'conditions mostly closely matching Gosney soils' which are Class VII. Application Exhibit A at page 4. Despite this majority of the soil study's observations showing Class III/VI soils, the soil study finds a majority of the property as Class VII-VIII. This conclusion cannot be squared with the reported results of the 58 observation locations, which show a majority of Class III/VI Deskamp soils."*

COLW also addressed the issue of "predominant soils" in a 9/20/2022 record submission. The Hearings Officer considered both the COLW 9/6/2022 statements quoted above and the COLW 9/20/2022 submission in making these findings.

Applicant, in its above-quoted comments (Section II. COLW's Challenge to Expert Evidence Provided by Order 1 Soils Survey – pages 5 to 8 of the Final Argument), responded to COLW's Predominant Soils arguments. Rabe/Valley responded to COLW's Predominant Soils arguments in a September 12, 2022, email (Applicant's Post-Hearing Evidence, Exhibit PH-8). In relevant part, Rabe/Valley stated, in Exhibit PH-8, the following:

*"The analysis by Central Oregon Land Watch misrepresents what was presented in the soil report. 'Conditions most closely matching Gosney soils were observed at 24 grid locations and at least 21 additional locations along boundaries between grid points.' The additional locations were used to refine the boundary conditions between differing grid points (e.g. between 36 and 53, 39 and 42, 43 and 44, etc.). Although the additional locations were not shown on the map or tabulated, they were identified and noted nonetheless. In addition, there are 55 spot symbols (R) for Rock outcrops too small to delineate. The number of observation points identifying Class VII and Class VI conditions were more than 3 times the number of observation points identifying Class VI conditions and fully support the delineated boundaries and associated acreages.*

*Gosney is only given a better rating for irrigation when mapped as a minor component in a complex, such as with Deskamp (Map Unit 38B, Deskamp-Gosney complex, 0 to 8% slopes). In this*

*example, the incidental production from the Gosney acreage is expected to be only 1/3 to 1/2 that of the Deskamp. That equates to 1/3 to 1/2 the gross revenue but with the same expenses for fertilizer, water, power, equipment, and labor. When mapped alone or as the major component of a complex, Gosney is not rated when irrigated. Irrigation of Gosney soils would not change the NRCS rating of this soil and irrigation is an inefficient and inappropriate use of a scarce resource."*

The Hearings Officer reviewed the Rabe/Valley Applicant Soil Study (Application Materials, Exhibit A). The Hearings Officer finds that DLCD conducted a Soil Assessment Completeness Review and concluded that the Applicant Soil Study was "complete and consistent with reporting requirements." The Hearings Officer finds the Applicant Soil Study was conducted by Rabe/Valley; a currently certified soil scientist/classifier. The Hearings Officer finds the opinions and conclusions of Rabe/Valley should be considered as opinions and conclusions of an expert soil scientist/classifier.

Isbell, an attorney representing COLW and the person making the above-quoted COLW comments, objected to "predominant soils" conclusions made by Rabe/Valley. Isbell argued that the percentage of soils (i.e., LLC Class IV, V, VI or VII, etc.) should be based on data points used by Rabe/Valley. Specifically, Isbell argued that the Rabe/Valley general characterization of soil types as either Deskamp or Gosney provided the correct basis to determine which LLC soil class or classes were predominant. Isbell also argued that the Rabe/Valley comments contained in Exhibit PH-8 related to "additional locations" did not constitute "substantial evidence." Isbell argued that the "additional locations" were not shown on the Applicant Soil Study map and therefore not "actually analyzed for their capability."

Applicant argued that the Isbell comments were made by a lawyer who had not provided, into the record, any evidence that he (Isbell) was also trained or had special expertise in the preparation, interpretation or technically critiquing soil studies. Citing *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015) Applicant included the following statement:

*"The nature of certain issues may be such that some technical expertise is necessary to provide substantial evidence to support required findings; attorney's opinion that stormwater runoff will not adversely impact salmon is not substantial evidence."*

The Hearings Officer finds Isbell provided no evidence in the record that he is qualified in the science of soil analysis and classification. The Hearings Officer finds that Isbell provided no persuasive evidence to support his statement that the utilization of only the raw number of data points is a justified technique (i.e., by reference to recognized soil scientist industry conventions or standards). The Hearings Officer finds that Isbell's opinion related to the use of the raw number of data points as the appropriate technique/method in determining soil classifications, in this case, is not substantial evidence of the actual soil classifications at the Subject Property.

The Hearings Officer finds that Rabe/Valley is a qualified soil classifier. The Hearings Officer finds, following review of the Applicant Soil Study and the September 12, 2022 supplemental submission (Exhibit PH-8), that the methods used by Rabe/Valley are reasonable and appropriate. The Hearings Officer finds that the Rabe/Valley soil classification conclusions reached in the Applicant Soil Study constitute credible and substantial evidence in this case. The Hearings Officer finds the Rabe/Valley

September 12, 2022 supplemental submission (Exhibit PH-8) provided a rational and plausible response to Isbell's Predominant Soils arguments. The Hearings Officer finds the Rabe/Valley conclusion (Application Materials, Exhibit A, page 7) that "36.62 acres, or 61.2%, of the Site consists of Class VII and Class VIII soils" is supported by substantial evidence in the record.

**COLW ARGUMENT: Water Rights (COLW 9/6/2022 submission, page 2)**

COLW, in its 9/6/2022 submission, made the following statement:

*"The property currently has 9.49 acres of water rights. The application explains that it used to have 36 acres of water rights, but the applicant chose to sell the majority of those water rights. Application at 26. That choice is now being used to argue that the property's limited water rights detract from its suitability for agriculture. This applicant's own willful choice to reduce water availability on the property should not now be considered as a reason the property's agricultural land status. The applicant could buy back water rights just as readily as they sold them."*

The Hearings Officer is uncertain as to what, if any, relevant approval criterion is being addressed by COLW in the above-quoted comments. The Hearings Officer finds that COLW failed to provide into the record, with sufficient specificity, evidence or legal argument related to the COLW Water Rights issue.

In the alternative, the Hearings Officer finds that the current status at the Subject Property is that it owns 9.49 acres of water rights. The Hearings Officer finds that evidence of water rights held by the Subject Property, in the past, is not relevant to making the current decision as to whether the Subject Property is "Agricultural Land."

**COLW ARGUMENT: Goal 3; OAR 660-033-0020(1)(b) (COLW 9/13/2022 submission, page 1)**

COLW, in its 9/13/2022 submission, made the following statement:

*"In addition to the reasons we explained in our September 6, 2022 submittal, the subject property is also "agricultural land" and protected by Goal 3 because it is a farm unit. The definition of "agricultural land" at OAR 660-033-0020(1)(b) includes land that may include some soils Class VI-VIII when that land is intermingled with soils Class I-VI in a farm unit:*

*'(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;' (OAR 660-033- 0020(1)(b))*

*Oregon courts have interpreted the meaning of this rule, finding that the history of farm operations on a parcel and whether there is a significant obstacle to resuming farm operations are key factors in determining whether land is a "farm unit" for purposes of OAR 660-033-0020(1)(b):*

*'[W]hen farm operations have recently ceased on a parcel that historically has been used for farming operations with other lands as part of a single 'farm unit,' the parcel is within the unit unless the applicant can demonstrate circumstances—the most important of 2 which is whether there is a significant obstacle to resumed joint operation—that dictate a contrary result.'* (Wetherell v. Douglas County, 235 Or App 246, 260, 230 P3d 976, 984 (2010), rev den, 349 Or 57 (2010))

*Here, the subject property was historically used for farm operations for decades as one single farm unit operation, as documented in the application, and only recently ceased. Now, the applicant argues that because its hired soil scientist found portions of the subject property as having Class VII-VIII soils, which are intermingled with Class I-VI soils, those portions of the subject property cannot be cropped or grazed and should not be identified as agricultural land. The "farm unit" rule at OAR 660-033-0020(1)(b) specifically precludes that conclusion.*

*Further, the application's response to this criterion fails to identify any significant obstacle that would prevent resumed operation of the farming operation on the subject property. Instead, the application argues this rule does not apply: "This rule does not apply here because the Markens are seeking to rezone an entire farm tract rather than a part of it." Application at 27. Although some cases applying the "farm unit" rule have dealt with factual circumstances where a parcel had previously been part of a larger farm unit operation, there is nothing in the rule limiting the rule to those circumstances. The 59.1 acre property here has been a single farm unit operation for decades, and OAR 660-033-0020(1)(b) requires it remain agricultural land protected by Goal 3."*

Applicant responded to the COLW above-quoted Goal 3; OAR 660-033-0020(1)(b) comments (Final Argument, pages 16 & 17) as follows:

*"The Wetherell v. Douglas County, 235 Or App 246, 230 P3d 976 (2010) rev den 349 Or 57 (2010)(Wetherell/Garden Valley) case cited by COLW applies the farm unit rule to a part of a farm property that had been removed from a farm tract and operated separately that had been operated profitably before being divided. According to DLCD, the rule is 'a rule designed to address a parcel's relationship to surrounding land' – 'by its location with respect to neighboring land in certain soil classes and its relationship to those lands as a farm unit.' Wetherell/Garden Valley, 235 Or App at 256. The Wetherell/Garden Valley court applied this purpose to interpret the meaning of the rule. With this in mind, it is clear that the farm unit rule prevents the rezoning of land that was a part of and then removed from a tract of land employed in 'farm use.' This is how the rule has been applied by Oregon's appellate courts. Given this intent, it would be erroneous for the County to apply the farm unit rule to the Marken property because it has not since the later half of the 1970s [been] farmed in conjunction with other area properties. [footnote omitted]*

*The Oregon Supreme Court has stated, when applying a tract analysis to EFU farm land, that 'the philosophy of SB 101 was 'to keep the economical farm units intact.'" Smith v. Clackamas County, 313 Or 519, 836 P2d 716 (1992). In the case of the entire unit of land that the Markens attempted to farm is before the County for rezoning in its entirety. It is not a part of an 'economical farm unit' that merits protection by the farm unit rule. The land, in its entirety, does not meet Goal 3's*

*definition of Agricultural Land.*

*In Meyer v. Lord, 37 Or App 59, 586 P2d 367(1978)(“Meyer”), the Court of Appeals laid the groundwork for the ‘farm unit’ rule. The Court held that a 70-acre parcel of a 250-acre commercial farm that might not by itself be an economically profitable farm unit is within the definition of ‘farm use’ if employed as part of a ‘profit-capable farming operation.’ The purpose of this approach was to assure that an unproductive part of a farm unit is not considered for rezoning as an isolated tract. In this case, all land the Markens attempted to farm is proposed for rezoning. All of it is not productive farm land.*

*The farm unit rule is an LCDC rule. It supplements Goal 3. The rule says that it applies when ‘land’ is ‘adjacent and intermingled’ within a farm unit. The term ‘land’ is not defined but, as it has been applied by appellate courts, it means a parcel or area of land that is or was a part of a larger farm property proposed to be rezoned without addressing the zoning of the rest of the tract that has historically been engaged in farm use. It is not applied to convert the results of a soils survey from a mix of Class I-VI soils and VII-VII soils into 100% Class I-VI soils/Agricultural Land.*

*COLW’s argues that the farm unit rule should be applied to any piece of property proposed for rezoning from EFU to a nonresource zoning district. This, however, differs from how the rule has been applied and is inconsistent with the intent of the rule. It is also an interpretation conflicts with and renders meaningless the predominance test set out in Goal 3. An interpretation of an LCDC rule must be consistent with Goal 3 or it will not be applied by Oregon courts. Wetherell v. Douglas County, 204 Or App 732, 132 P3d 41 (2005), *aff’d and reversed* 342 Or 666, 160 P3d 614 (2007). When the farm unit rule is applied to parcels removed from a larger ‘profit-capable’ farm unit, Oregon courts have held that it is. When the rule is applied to a single tract of land like the Marken property, it is not consistent with Goal 3 or the intent of the rule set out in Meyer. [footnote: We have found no appellate court case that applies the farm unit rule in any situation other than one where a unit of ‘land’ was removed from a tract of land that was used in one farm operation and then proposed for rezoning. Deschutes County has declined to apply the rule as requested by COLW in prior decisions. [footnote: Deschutes County has declined to apply the farm unit rule to applications where the entire unit of land formerly used for agricultural activities was before it for rezoning/redesignation. The ‘farm unit’ rule issue was an issue and was addressed in two cases with similar facts to those presented by the Marken application (prior unsuccessful farm use and a mix of Class VI and VII/VIII soils): Kelly Porter Burns (adjoins N boundary of Marken) and Eastside Bend (property touches NE corner of Marken).*

*To read the farm unit rule to apply within the boundaries of land proposed for rezoning if any Class VI-VIII soils are present and any effort was to farm it would render the predominance soils test used by Goal 3 to define ‘Agricultural Land’ meaningless. To do so would replace the predominance test of the Goal (over 50%) with a 100% rule of DLCD’s own making for essential any EFU-zoned property because few if any EFU-zoned properties are comprised 100% of Class VII and VIII soils.”*

The Hearings Officer adopts as additional findings for this section the above-quoted Applicant Final Argument comments. The Hearings Officer finds that the above-quoted Applicant Final Argument



comments related to OAR 660-033-020 (b) are legally correct. The Hearings Officer finds the Subject Property to be a single tract of land that is not, because of soil classifications, Goal 3 “Agricultural Land.” The Hearings Officer finds that the Subject Property is not adjacent to or intermingled with one/more “farm unit” unit as defined by Oregon law. The Hearings Officer finds COLW’s Goal 3; OAR 660-033-0020(1)(b) argument is not supported by substantial evidence or persuasive legal argument contained in the record of this case.

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

**FINDING:** The Applicant did not ask to amend the subzone that applies to the Subject Property; rather, the Applicant requested a change under Policy 2.2.3 and has provided evidence to support rezoning the Subject Property to MUA10.

***Policy 2.2.3 Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.***

**FINDING:** The Applicant requested approval of a plan amendment and zone change to re-designate the Subject Property from Agricultural to Rural Residential Exception Area and rezone the Subject Property from EFU to MUA10. The Applicant did not seek an exception to Goal 3 – Agricultural Lands, but rather sought to demonstrate that the Subject Property does not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

The Applicant provided the following response in its Burden of Proof (pages 15 & 16):

*“This plan policy has been updated to specifically allow non-resource land plan and zone change map amendments on land zoned EFU. The applicant is seeking a comprehensive plan amendment from Agriculture to RREA and a zone change from EFU-TRB to MUA-10 for non-resource land. This is the same change approved by Deschutes County in PA-11-1/ZC-11-2 on land owned by the State of Oregon (DSL) on a property with a significantly lower percentage of Class VII and VIII soils. In findings in the decision attached as Exhibit G, Deschutes County determined that State law as interpreted in Wetherell v. Douglas County, 52 Or LUBA 677 (2006) allows this type of amendment. LUBA said, in Wetherell at pp. 678-679:*

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

property. *Caine v. Tillamook County*, 25 Or LUBA 209, 218 (1993); *DLCD v. Josephine County*, 18 Or LUBA 798,802 (1990).'

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

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

*The Wetherell court held that when deciding whether land is agricultural land "a local government may not be precluded from considering the costs or expenses of engaging in those activities." Wetherell, 342 Or at 680. In this case, the applicant has shown that the subject property is primarily composed of Class VII and VIII nonagricultural soils making farm-related endeavors, including livestock grazing, unprofitable. The property is not currently employed in any type of agricultural activity and prior efforts at farming were unprofitable. The property is not forest land. Accordingly, this application complies with Policy 2.2.3."*

The Hearings Officer adopts and incorporates as additional findings for this policy the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry* (findings related to COLW specific arguments). The Hearings Officer finds the above-quoted Applicant Final Argument statements to be credible and persuasive. The Hearings Officer finds that Applicant provided evidence in the record adequately addressing whether the Subject Property qualified as non-resource land. The Staff also noted that the Applicant provided evidence in the record addressing whether the Subject Property qualifies as non-resource land. The Hearings Officer, based upon the incorporated findings (Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry*), the above-quoted Applicant Final Argument statements, and the Staff Report comments referenced above, finds that the Subject Property is not Goal 3 "Agricultural Land" and does not require an exception to Goal 3 under state law.

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

**FINDING:** This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. Staff, in the Staff Report (page 16) indicated that it concurred with Applicant's conclusion that this application was consistent with prior County determinations in similar plan amendment and zone change applications. The Hearings Officer agrees with these Staff comments. The Hearings Officer finds that Applicant's proposal in this case is consistent with this policy.

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

***Policy 2.2.13 Identify and retain accurately designated agricultural lands.***

**FINDING:** This plan policy requires the County to identify and retain agricultural lands that are *accurately* designated. The Applicant asserted that the Subject Property was not accurately designated as “Agricultural Land”. Restated, the Applicant asserted that the NRCS map soil designations did not accurately reflect the actual soil conditions on the Subject Property. The Applicant, through the Applicant Soil Study, demonstrated that the Subject Property was not Goal 3 “Agricultural Land.”

The Hearings Officer adopts and incorporates as additional findings for this policy the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry* (findings related to COLW specific arguments). The Hearings Officer also adopts and incorporates as additional findings for this policy the findings for Policy 2.2.3. The Hearings Officer finds approval of Applicant’s application in this case would accurately reflect the actual soil conditions at the Subject Property. The Hearings Officer finds that approval of Applicant’s application would accurately reflect the fact that the Subject Property is not Goal 3 “Agricultural Land.” Further, discussion on the soil analysis provided by the Applicant is detailed under the OAR Division 33 criteria below.

Section 2.5, Water Resources Policies

***Goal 6, Coordinate land use and water policies.***

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

**FINDING:** The Applicant has not proposed a specific development application at this time. Therefore, the Hearings Officer finds that the Applicant is not required to address water impacts associated with development. Rather, the Applicant will be required to address this criterion during development of the Subject Property, which would be reviewed under any necessary land use process for the site (i.e., conditional use permit, tentative plat). The Hearings Officer finds that this criterion does not apply to the application in this case.

Section 2.7, Open Spaces, Scenic Views and Sites

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

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

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

**FINDING:** These policies are fulfilled by the County's Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management ("LM") Combining Zones to adjacent properties. Staff noted, in the Staff Report (page 17), that no LM Combining Zone applies to the Subject Property at this time. Furthermore, no new development is proposed under the present application. The Hearings Officer finds that these provisions of the plan are not impacted by the proposed zone change and plan amendment.

**Chapter 3, Rural Growth**

Section 3.2, Rural Development

***Growth Potential***

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

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

**FINDING:** This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance in the language set forth above. The Applicant provided the following response to this section in its Burden of Proof (page 18):

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

*This section makes it clear, however, that EFU-zoned land with poor soils adjacent to rural residential development is expected to be rezoned for rural residential development during the planning period. The subject property has poor soils and it adjoins rural residential areas and uses on three sides. The property that adjoins the Marken property to the north is pending annexation to the City of Bend for the development of affordable housing."*

Staff noted that the MUA10 Zone is a rural residential zone and, as discussed in previous findings, is located adjacent to properties to the north, east and south that are zoned MUA10. One of these surrounding MUA10 properties has received approval for a Comprehensive Plan Amendment and Zone Change to be included in the City of Bend UGB. This property is identified on Assessor's Map 17-12-35 as Tax Lot 1500, and is located to the north of the Subject Property, across Bear Creek Road. Staff noted this policy also references the soil quality. Soil quality is discussed in the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry.*

The Hearings Officer finds that this policy is not an approval criterion applicable to this case. The Hearings Officer finds this policy is aspirational. Further, the Hearings Officer incorporates the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry.* The Hearings Officer finds that even if this policy is determined to apply, the incorporated findings adequately address the policy.

Section 3.3, Rural Housing

***Rural Residential Exception Areas***

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

***In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a nonresource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.***

**FINDING:** The Applicant provided the following response to this provision in its Burden of Proof (page 18 & 19):

*"The quoted language is a part of the background text of the County's comprehensive plan. It is not a plan policy or plan goal written to guide the review of zone change and plan amendment applications. It does, however, recognize the fact that a Rural Residential Exception Area designation is an appropriate plan designation to apply to nonresource lands.*

*As LUBA and the Oregon Supreme Court recognized in the Wetherell decision, there are two ways a county can justify a decision to allow non-resource use of land previously designated and zoned*

*for farm or forest uses. The first is to take an exception to Goal 3 and Goal 4 and the other is to adopt findings that demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. Here, the applicant is pursuing the latter approach.”*

The Hearings Officer incorporates the Applicant’s above-quoted statements as findings for this policy. The Hearings Officer finds Applicant sought to demonstrate that the Subject Property was nonrecourse land. The Hearings Officer adopts and incorporates the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry* as additional findings for this policy. The Hearings Officer also adopts and incorporates as additional findings for this policy the findings for Policy 2.2.3.

The Hearings Officer takes note that Staff agreed (Staff Report, pages 18 & 19) with prior Deschutes County Hearings Officers’ interpretations and decisions which concluded that the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Hearings Officer agrees with this Staff approach and conclusion. The Hearings Officer finds that the proposed RREA plan designation is the appropriate plan designation to apply to the Subject Property.

Section 3.7, Transportation

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

...

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

...

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

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

**OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**Division 6, Goal 4 – Forest Lands**

OAR 660-006-0005, Definitions

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

**FINDING:** The Applicant provided the following response to Goal 4 in their burden of proof:

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

*This plan amendment does not involve any forest land as the term is defined by OAR 660-005-0010. That rule says that lands suitable for commercial forest use and protection under Goal 4 shall be identified using NRCS soils survey mapping to determine the average annual wood production figures. The NRCS maps the subject property as soil mapping units 364 and 58C. The NRCS Soils Survey of the Upper Deschutes River lists all soils mapped by its survey that are suitable for wood crop production in Table 8. Neither 36A nor 58C soils are soil mapping units the NRCS considers suitable for wood crop production because neither is listed on Table 8 as such.”*

The Subject Property is not zoned for forest lands, nor are any of the properties within a 3.5-mile radius. The Subject Property does not contain merchantable tree species and there is no evidence in the record that the Subject Property has been employed for forestry uses historically. The Hearings Officer finds that the Subject Property does not qualify as forest land.

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

**FINDINGS:** The Hearings Officer incorporates as additional findings for this section the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry*. The Hearings Officer also adopts and incorporates as additional findings for this policy the findings for Policy 2.2.3. In addition, the Hearings Officer finds that the Staff proposed findings set forth in the Staff Report (pages 20-34), except as modified or supplemented by the Hearings Officer in this recommendation, are factually and legally correct. The Hearings Officer includes (unedited) the Staff Report proposed findings from pages 20-34 as additional findings for Division 33 – Agricultural Lands & Statewide Planning Goal 3 – Agricultural Lands.

**Quoted Staff Report Findings (Pages 20-34)**

"OAR 660-015-0000(3)

***To preserve and maintain agricultural lands.***

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

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

OAR 660-033-0020, Definitions

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

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

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

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

*ORS 215.211 grants a property owner the right to rely on more detailed information than provided by the NRCS Web Soil Survey of the NRCS to "assist the county to make a better determination of whether land qualifies as agricultural land." Statewide Goal 3, discussed above, and OAR 660-033-0030(5) also allow the County to rely on the more detailed and accurate information by a higher order soil survey rather than information provided by the NRCS. The law requires that this survey use the NRCS soil classification system in conducting the survey, making it clear that the point of the survey is to provide better soil classification information than provided by the NRCS for use in making a proper decision whether land is or is not "Agricultural Land."*

**Continued: Quoted Staff Report Findings (Pages 20-34)**

*The more detailed **Exhibit A** soils survey prepared by certified soil classifier Brian Rabe shows that approximately 61.2% of the subject property is composed of Class VII and VIII soils and, therefore, is not predominantly Class I-VI soils.*

Staff has reviewed the soil study provided by Brian Rabe of Valley Science and Engineering, and agrees with the Applicant's representation of the data for the Subject Property. Staff finds, based on the submitted soil study and the above OAR definition, that the Subject Property is comprised



predominantly of Class 7 and 8 soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above.

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

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

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

*The **Exhibit A** soils report includes an evaluation of whether the subject property is land in other soil classes that is suitable for farm prepared by soil classifier, Brian Rabe that begins on page 4 of the study. The review considers all of factors set out in the rule, above, and concludes that the Marken property is not suitable for farm use as defined in ORS 215.203(2)(a).*

*The applicant offers the following additional information regarding the seven considerations:*

**Soil Fertility:** *Class 7 and 8 soils are not fertile soils. They are not suited for the production of farm crops. This fact has been recognized in numerous County land use cases, including*

#### **Continued: Quoted Staff Report Findings (Pages 20-34)**

*The zone change and plan amendment applications being filed with this land use application. Farm use on these soils is limited to rangeland grazing at a level that does not qualify as "farm use." No person would expect to make a profit by grazing livestock on the subject property. Additionally, it is not profitable to irrigate the islands of Class VI or better soils that are located on the property.*

*The primary agricultural activity that has occurred on the subject property during the time the property has been owned by the Markens is growing hay. The Markens acquired the property in 1981 and thereafter made determined and unsuccessful efforts to make a profit in money by farming the property. The Markens grew hay and occasionally raised cattle. Neither endeavor was profitable. The Markens removed rocks from the land to improve crop yields but this and accepted*

*farm practices (irrigation, fertilization, etc.) did not yield a profit in money from their agricultural enterprises. The Markens suffered financial losses in every year of farm operations, including the following years:*

<b>Year</b>	<b>Loss</b>
2016	\$5,153
2015	\$3,049
2014	\$6,020
2013	\$1,480
2012	\$7,571
2011	\$6,316
2009	\$11,417
2008	\$3,949
2007	\$13,854

*From 2017 until present, the Markens continued to irrigate their property but did not grow hay or attempt to earn a profit in money from farming. This, on average, resulted in smaller losses as follows:*

<b>Year</b>	<b>Loss</b>
2021	\$2,762
2020	\$3,395
2019	\$2,276
2018	\$4,704
2017	\$4,407

**Suitability for Grazing:** *The primary agricultural use conducted on properties that lack irrigation water rights and have poor soils is grazing cattle. The poor soils and development pattern of the surrounding area make the Marken property a poor candidate for dryland grazing at an economic scale. The dry climate makes it difficult to produce adequate forage on the property to support a viable or potentially profitable grazing operation or other agricultural use of the property. This issue is addressed in greater detail in the **Exhibit A** soils study.*

*Given the high cost of irrigating and maintaining the property as pasture or cropland (high labor costs, labor-intensive, high cost of irrigation equipment and electricity, high cost of fertilizer, etc.), dry land grazing is the only accepted farm use of poor soils in Deschutes County. This use can be conducted until the native vegetation is removed by grazing (see the discussion of the suitability of the property for grazing, below). The soils study includes an analysis of the level of cattle grazing that would be able to be conducted on the property without overgrazing it. It finds that the Marken property would support from 9 to 14 cow-calf pairs (AUMs) for a month or about one cow-calf pair for a year.*

*Deschutes County uses a more aggressive formula to assess potential income from dry land grazing. It assumes that the Marken property would support 49 AUMs per year which is approximately 4 cow-calf pairs per year. We've been told that this formula was developed by the*

OSU Extension Service. It assumes that one acre will produce 900 pounds of forage per year and makes no allowance for good soil stewardship.

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

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

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

$60.0 \text{ lbs. Beef}/\text{acre} \times 49 \text{ acres of undeveloped land with Deskamp and Gosney soils} \times \$1.15/\text{lb.} =$   
\$ 3,381 of gross income per year

Using the OSU/County formula, the total gross beef production potential for the subject property would yield approximately \$3,381 annually. This figure represents gross income. It does not take into account real property taxes, fencing costs, land preparation, purchase costs of livestock, veterinary costs, labor costs or any other costs of production. These costs would far exceed gross income. One veterinary emergency could easily erase all \$3,381 of annual gross income.

Property taxes for the subject properties were \$7,886.01 in 2021. The payment of a modest wage of \$15.00 per hour to the rancher and/or employee for one FTE would cost the ranch operation \$31,200 in wages and approximately an additional \$7,800 to \$12,480 (1.25 to 1.4 of salary) for employment taxes paid by the employer and standard employee benefits. Even at part-time only, labor costs would far exceed the income received from the sale of cattle.

While the amount of forage will be higher on irrigated land, the costs of farm operations and cost to purchase irrigation water rights impose costs that are not offset by the additional income obtained because the quality of the soil is so poor. Additionally, raising hay on the irrigated acreage, although unprofitable, makes better economic sense due to higher gross income, lower labor costs and a lack of a need for veterinary care and fencing. It, however, is not profitable.

**Climate:** The climate is cold and dry. The growing season is very short. The subject property is located between Redmond and Sisters. According to the OSU Extension Service the growing season for Bend is only 80 to 90 days long. **Exhibit O.** The average annual precipitation for Bend is only 11.36 inches. This means that the amount of forage available for dry land grazing is low and will be slow to regrow. This also means that a farmer has a short period of amount of time to grow crops. Crops require irrigation to supplement natural rainfall. This makes it difficult for a farmer

to raise sufficient income to offset the high costs of establishing, maintaining and operating an irrigation system and to purchase water from Central Oregon Irrigation District.

**Existing and Future Availability of Water for Farm Irrigation Purposes:** *The subject property is located in the Central Oregon Irrigation District. The subject property has 9.49 acres of irrigation water rights. He originally had 36 acres of COID water rights but sold them because he was unable to make a profit from farm the poor soils present on his property. Water rights in the Deschutes Basin are limited because surface water is fully or over appropriated and now new groundwater withdrawals are allowed without retiring existing water rights - typically water rights from other irrigated land in Central Oregon that, most likely, is better suited for farm use than the subject property. Such a transaction would run counter to the purpose of Goal 3 to maintain productive Agricultural Land in farm use.*

**Existing Land Use Patterns:** *The applicant's analysis of existing land use patterns provided earlier in this burden of proof shows that the subject property is surrounded on three sides by properties zoned MUA-10. On one side (west) it on adjoins a narrow strip of EFU-zoned land that lies between the Bend UGB and the Marken property. This strip contains a total of four properties that total approximately 60 acres and that are not engaged in commercial farm activities intended to make a profit in money. The only property being assessed as farm land contains 86.5% Class VII and VIII soils that do not yield farm profits. **Exhibit P.** The proposed MUA-10 zoning will allow future development that will be consistent with this established land use pattern.*

**Technological and Energy Inputs Required:** *Given its poor soils, the Marken property requires technology and energy inputs over and above accepted farming practices. The poor soils and dry climate create a need for excessive fertilization and soil amendments and very frequent irrigation. Pumping irrigation water requires energy inputs. The application of lime and fertilizer typically requires the use of farm machinery that consumes energy. The irrigation of the property requires the installation and operation of irrigation systems.*

**Accepted Farming Practices:** *As determined by the County in the Aceti case, farming lands comprised of soils that are predominately Class VII and VIII is not an accepted farm practice in Central Oregon. Dryland grazing, the farm use that can be conducted on the poorest soils in the County, typically occurs on Class VI non-irrigated soils. Crops are typically grown on soils in soil class III and IV when irrigated. These soils are Class VI without irrigation. No accepted farm practice will enable the Markens to obtain a profit in money from agricultural use of the property.*

Staff agrees with the Applicant that many of the factors surrounding the subject property – such as the current residential land uses in the area, soil fertility, and amount of irrigation required result in a relatively low possibility of farming on the subject property.

The submitted burden of proof indicates the subject property has historically been used for agriculture but this use consistently did not generate a profit in money. Staff also notes the owner of the subject property has relinquished 25.61 acres of Central Oregon Irrigation District water rights. Staff requests the Hearings Officer make specific findings on this issue.

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

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

*The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. None of the properties in the small strip of EFU-zoned land between the Marken property and the Bend UGB relies on the Marken property to undertake farm uses.*

The submitted burden of proof also included the following summary of all EFU-zoned properties within an area of approximately one mile of the subject property.

<b>Tax Lot</b>	<b>Size</b>	<b>House/ Structures</b>	<b>Tax Status</b>	<b>Farm practices/farm use?</b>
TL 200, 18-12-02	16.99 acres	1969 house	Not deferred	Irrigation ponds; property irrigated to keep green; no farm use
TL 202, 18-12-02	1.47 acres	1961 house	Not deferred	Not in farm use
TL 1003, 18-12-02	27.19 acres	Approved for Lot of Record dwelling	Deferred	Soil class of property was changed for purpose of Lot of Record application to 86.5% LCC 7 and 8 based on soils study and by review of the study by OR Dept of Agriculture  An irrigation pivot was purchased in an attempt to grow hay and maintain farm tax deferral but not profitable due to poor soils.
TL 1001, 18-12-02	12.45 acres	Nonfarm Dwelling	Not deferred	No farming; may be keeping a horse for riding (not a farm use)
TL 1000, 18-12-02	36.65 acres	Vacant COID property	Exempt	BOCC voted to change zoning to MUA-10 from EFU-TRB and is expected to adopt ordinances rezoning property and changing plan designation to RREA; no farm use
TL 1005 18-12-02	3.34 acres	1980 single-family home and utility building	Not deferred	No farm use
TL 1308, 18-12-02	39.18 acres	1965 single-family house and shed	Deferred	Some irrigation (15 of 40 acres per Assessor) and pond; unclear whether there is any farm use; most likely farm use, if any, based on aerial photography

				would be pasturing livestock or growing hay
TL 701, 18-12-12	12.12 acres	1973 single-family home and GP building	Deferred	Landscape Maintenance of Bend (landscape and lawn maintenance business) per Assessor Some irrigation (5 acres per Assessor)
TL 700, 18-12-12	26.22 acres	2000 machine shed (2595 sq ft)	Deferred; will be disqualified when approved nonfarm dwelling is built	Hemp Farm/hemp flower/hemp biomass/hemp trimming in 2020 About one acre in row crops; likely hemp. Aerial includes two greenhouses and a pasture/hay field on part of the property.  CU-08-78 approval for nonfarm dwelling notes 7.53 acres of irrigation/hay.  247-17-000891-CU/247-18-000552-MC nonfarm dwelling approval; extension granted 247-21-000915-E.
TL 600, 18-12-12	41.37 acres	2006 farm building	Deferred	Two cell towers Irrigated field (wheel lines and hand lines); likely grows hay.
TL 601, 18-12-12	4.0 acres	1999 nonfarm dwelling authorized by CU-99-19	Not deferred	No visible farm use; nonfarm dwelling.
TL 900, 17-12-36	43.89 acres	vacant	Deferred	Not irrigated; no visible farm use Mostly 58C soil per NRCS which is predominantly Class VII nonagricultural soil.
TL 1000, 17-12-36	57.33 acres	vacant	Deferred	Not irrigated; no visible farm use.
TL 500, 17-12-36D	19.46 acres	2000 single-family nonfarm dwelling per CU-99-123	Not deferred	Hay and paddocks suitable for one or two horses.
TL 500, 17-12-36D	16.97 acres	1976 single-family home	Deferred	May or may not be irrigated; no signs of commercial farm use (hay or fenced

		and loft barn and lean-to		pastures); may be flood irrigating to keep green.
TL 400, 17-12-36D	16.36 acres	2000 single-family nonfarm dwelling, CU-99-124	Not deferred	No farm use; appears to be a race track for dirt bikes
TL 100, 17-12-36	100.89 acres	Solar farm	Not deferred	No farm use
TL 700, 17-12-36	83.40 acres	Solar farm	Not deferred	No farm use
TL 500, 17-12-36	51.54 acres	Solar farm	Not deferred	No farm use
TL 400, 17-12-36	38.06 acres	Vacant; part of solar farm site	Not deferred	No farm use
TL 600, 17-12-36	18.78 acres	1994 single-family nonfarm dwelling CU-93-46 and utility building	Not deferred	No signs of farm use
TL 601, 17-12-36	19.29 acres	Nonfarm dwelling, CU-98-27	Not deferred	No signs of farm use
TL 801, 17-12-36	34.99 acres	Church and amphitheater	Some exempt; rest taxed	No farm use
TL 200, 17-12-36	3.09 acres	Church	exempt	No farm use
TL 800, 17-12-36	8.89 acres	vacant	Not deferred	No farm use
TL 1401, 17-12-35	2.19 acres	Approved for dog training facility and kennel; no kennel yet	Not deferred	No farm use; no visible irrigation or farming
TL 1200 & 1201, 17-12-35	93.36 acres	vacant	Not deferred	No apparent farm use; not irrigated
TL 1205, 17-12-35	2.78 acres	Single-family nonfarm dwelling	Not deferred	No farm use
TL 1001, 17-12-35	1.76 acres	1948 single-family	Not deferred	No farm use

		dwelling and outbuildings		
TL 1402, 17-12-35	4.97 acres	1978 single-family home and outbuildings	Not deferred	No visible farm use; Google Maps shows as location for Destination Sideways, LLC (car rebuilding).
TL 1403, 17-12-35	10.0 acres	vacant	Not deferred	No apparent farm use per aerial photography (road closed).
TL 1301, 17-12-35	10.0 acres	2003 house (replacement dwelling)	Deferred	Pond and irrigated acres; unclear if in farm use; might be able to be used as a pasture.
TL 1300 and 1302, 17-12-35	28.01 acres	Farm parcel	Deferred	Tax lots owned as a tract – one parcel is a nonfarm dwelling and the surrounding property is a farm parcel.  Unable to drive by property. Aerials may show some grapevines, a pond and an irrigated field (pasture or hay).
	2.06 acres	Nonfarm dwelling	Not deferred	
TL 1203, 17-12-35	.92 acres	2016 nonfarm dwelling	Not deferred	No farm use

*This review shows that a significant majority of EFU-zoned properties inventoried (about 70%) are not receiving farm tax deferral. Additionally, two large properties that are receiving farm tax deferral are dry parcels that do not appear to be engaged in any type of farm use.*

Staff agrees with the Applicant’s analysis and finds no feasible way that the subject property is necessary for the purposes of permitting farm practices on any nearby parcels discussed in the Findings of Fact section above, or the larger area more generally. This finding is based in part on poor quality, small size, and existing development on surrounding EFU properties. If the Hearings Officer disagrees with Staff’s assessment, Staff requests the Hearings Officer make specific findings on this issue.

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

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

*This rule applies when a property owner seeks to rezone a parcel that was formerly a part of a farm unit without addressing the land capability of the entire farm unit. This rule does not apply here because the Markens are seeking to rezone an entire farm tract rather than a part of it. Furthermore, all parts of the subject property were studied by the applicant’s soils analysis, **Exhibit A**. The analysis shows that the predominant soil type found on the property is Class VII and VIII,*



*nonagricultural land. Some Class VI soils are intermingled with the nonagricultural soil not vice versa. As a result, this rule does not require the Class VII and VIII soils to be classified agricultural land.*

The submitted soils analysis indicates the subject property contains land in capability classes other than I-IV that is adjacent to or intermingled with lands in capability classes I-VI. Given the soil capability and prior agricultural use of the subject property, staff requests the Hearings Officer make specific findings on this issue.

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

**FINDING:** The subject property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4.

OAR 660-033-0030, Identifying Agricultural Land

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

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

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

***or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.***

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

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

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

The NRCS mapping for the subject properties is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the subject properties contain approximately 85.3% 36A soil and contain approximately 14.7% 58C soil.

Continued: Quoted Staff Report Findings (Pages 20-34)

Figure 1: NCRS Soil Mapping on the Subject Property



The soil study finds the soil types on the subject property vary from the NRCS identified soil types. The soil types described in the soil study are described below (as quoted from Exhibit A of the submitted application materials) and the characteristics and LCC rating are shown in **Table 1** below.

Continued: Quoted Staff Report Findings (Pages 20-34)

**Table 1: Site-Specific Map Unit Acreage and LCC Rating**

Site-Specific Symbol	Unit Name	Acreage	%	Land Capability Class <sup>1</sup>	
				non-irrigated	irrigated
36A	Deskamp loamy sand, 0 to 3% slopes	23.23	38.81%	6s	3s
57A	Gosney stony loamy sand, 0 to 3% slopes	25.76	43.0%	7e	--
57C	Gosney stony loamy sand, 0 to 15% slopes	3.85	6.4%	7e	--
109	Rock outcrop	1.82	3.0%	8s	--
D	Developed land	4.57	7.6%	8s	--
W	Water	0.62	1.0%	8s	--
<b>Total</b>		<b>59.85</b>	<b>100%</b>		

NOTES:

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

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

*Delineations of map unit 36A, Deskamp loamy sand, 0 to 3% slopes and map unit 58C, Gosney-Rock outcrop-Deskamp complex, 0 to 15% slopes were mapped on the Site by the NRCS. As shown in Table 1, the NRCS classifies Gosney soils as Class VII and Rock outcrops as Class VIII. Deskamp soils are Class VI. Map unit 58C is expected to consist of about 75%o Class VII and VIII soils. The conditions observed on the Site are generally consistent with the published soil survey (Appendix A), except that much more of the shallower Gosney soils were encountered throughout the Site. There were no issues with access across the Site. Conditions most closely matching Gosney soils were observed at 24 grid locations and at least 21 additional locations along boundaries between grid points. Rock outcrops large enough to delineate were noted at 9 locations with smaller rock outcrops observed at over 55 additional locations. Conditions most closely matching Deskamp soils were observed at 29 locations. The area between points and along boundaries was walked and often probed for confirmation. The native vegetation typically associated with both Gosney and Deskamp soils are similar. However, most of the native vegetation at the Site had been cleared in an effort to establish a stand of pasture grass with mixed results. This required a higher density of points than typical.*

*Slopes were typically within the range associated with letter "A" used to identify the slope class of 0 to 3% for slope phases of map units. A few areas with slopes greater than 3% were better represented by the letter "C" used to identify slope classes of 8 to 15 percent or 0 to 15% for slope phases of map units. This is the only difference between the map units formally defined by the NRCS in the published soil survey and this site-specific soil survey.*

The soil study concludes that 61.2% of the subject property consists of Class 7 and Class 8 soils. The submitted soil study is accompanied in the submitted application materials by correspondence from the Department of Land Conservation and Development (DLCD). The DLCD correspondence

confirms that the soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Based on Mr. Rabe's qualifications as a certified Soil Scientist and Soil Classifier, staff finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject properties. Staff requests the Hearings Officer make specific findings on this issue.

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

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

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

**FINDING:** The Applicant submitted a soil study dated September 7, 2021. The soils study was submitted following the ORS 215.211 effective date. The Applicant also submitted acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCD, dated December 6, 2021, that the soil study is complete and consistent with DLCD's reporting requirements. Staff finds this criterion to be met based on the submitted soil study and confirmation of completeness and consistency from DLCD.

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

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

#### **End of Quoted Staff Report Findings (Pages 20-34)**

Based upon the Hearings Officer's findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1, Preserve and maintain agricultural lands and the agricultural industry, the Staff Report findings quoted above, and evidence and argument provided by the Applicant, the Hearings Officer finds that the Subject Property is not Goal 3 "Agricultural Land" and that the application in this case does not require a Goal 3 exception.

## DIVISION 12, TRANSPORTATION PLANNING

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

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

**FINDING:** The Hearings Officer finds the above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the Subject Property from AG to RREA and change the zone from EFU to MUA10. The Applicant is not proposing any land use development of the Subject Property at this time.

The Applicant submitted a traffic impact analysis (“TIA”), Exhibit L, dated April 22, 2022, prepared by Joe Bessman, PE of Transight Consulting LLC. As noted in the agency comments section above, the County Transportation Planner identified deficiencies with the submitted TIA and requested additional information. The Applicant then submitted a revised TIA dated June 23, 2022. The County Transportation Planner determined that additional information was still required regarding Level of Service and Volume to Capacity ratios in order to fully address OAR 660-012-0060. The Applicant then submitted a revised TIA dated June 29, 2022.

The revised TIA was reviewed by the County Transportation Planner, who agreed with the supplemented TIA report's conclusions. Based upon a review of the revised TIA and the County Transportation Planner's comments, the Hearings Officer finds that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area. The Hearings Officer finds that the proposed zone change will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. Regarding the TIA dated June 29, 2022, the County Transportation Planner provided the following comments in an email dated June 30, 2022:

*"The information demonstrates the project complies with the Transportation Planning Rule (TPR) and Deschutes County Code (DCC) 18.116.310."*

Based on the County Senior Transportation Planner's comments and the supplemented TIA, the Hearings Officer finds compliance with the Transportation Planning Rule has been effectively demonstrated.

## **DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES**

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

**FINDING:** The Statewide Planning Goals and the Applicant's findings are quoted below:

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

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

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

***Goal 4, Forest Lands.*** The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands "are those lands acknowledged as forest lands as of the date of adoption of this goal amendment." The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that "[w]here \*\*a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are

necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources."

This plan amendment does not involve any forest land as the term is defined by OAR 660-005-0010. That rule says that lands suitable for commercial forest use and protection under Goal 4 shall be identified using NRCS soils survey mapping to determine the average annual wood production figures. The NRCS maps the subject property as soil mapping units 364 and 58C. The NRCS Soils Survey of the Upper Deschutes River lists all soils mapped by its survey that are suitable for wood crop production in Table 8. Neither 36A nor 58C soils are soil mapping units the NRCS considers suitable for wood crop production because neither is listed on Table 8 as such.

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

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

**Goal 7, Areas Subject to Natural Disasters and Hazards.** The subject property is not identified by the comprehensive plan as a known natural disaster or hazard area with the exception that the entire county is recognized as being a wildfire hazard area. The change of zoning and plan designation is not, however, precluded by this fact. Development is allowed despite the recognized hazard and the county has taken steps to develop programs that minimize this known risk.

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

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

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

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



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

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

**Goal 14, Urbanization.** *This goal is not applicable because the applicant's proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was acknowledged when the County amended its comprehensive plan in 2011. The comprehensive plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Area.*

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

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

COLW (September 6, 2022, page 2) provided the following comments related to Goal 14:

*"The application has not shown that it complies with Goal 14. The requested zoning would allow 1 dwelling per 10 acres on this 60-acre property, or perhaps more under cluster or planned development conditional uses. As the property currently has only one dwelling, a six-fold increase in the residential density on this property would urbanize rural lands in violation of Goal 14, and thus requires an exception to Goal 14."*

Applicant, in its Final Argument (pages 9 – 12), provided the following response to COLW's Goal 14 arguments:

*Central Oregon LandWatch ("COLW") argues that the County must approve an exception to Statewide Goal 14, Urbanization, in order to apply the MUA-10 zone and RREA plan designation to the Marken property even if it is found to be non-agricultural land. An exception to Goal 14 is only required, however, if the proposed zone and designation allows urban development of the subject property.*

*In another similar plan amendment and zone change case, COLW relied on the legal case of 1000 Friends of Oregon v. LCDC (Curry County), 310 Or 447, 498-511, 724 P2d 268 (1986) for the proposition that a county may need to approve a goal exception to apply the RREA plan Page 10 – Applicant's Final Argument (Marken) designation and RR-10 zoning districts to the subject property. The Curry County case, however, does not support that argument.*

*In Curry County, the Oregon Supreme Court determined that rural residential zoning for exception areas must be proven to be rural in nature when first adopted, even for zones and plans adopted prior to the allowance of exceptions to Goal 14. Curry County at 476. This means that when Deschutes County's comprehensive plan and zoning code were acknowledged by LCDC around 1980, it was necessarily determined that RREA plan designation and zoning comply with Goal 14 and do not allow urban development.*

*Deschutes County Comprehensive Plan ('DCCP') Policy 2.2.3 specifically allows nonresource lands zoned EFU to be redesignated and rezoned and identifies the property zoning and plan designations to be applied to non-agricultural lands. The plan also states, in Section 3.3, Rural Residential Exception Areas:*

*'As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land \*\*\*'*

*The Plan states that '[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses are allowed for each area.' DCCP Section 1.3, p. 15. Rural Residential Exception Areas, according to the DCCP, 'provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities \*\*\*' DCCP Section 1.3, p. 15. DCCP Table 1.3.3 provides that Title 18's RR-10 and MUA-10 are the 'associated Deschutes County Zoning Code[s]' for the RREA plan designation.*

*The determination that the RREA plan designations and RR-10 and MUA-10 zoning districts should apply to non-agricultural lands was made when the County amended the DCCP in 2016. Ordinance 2016-005. The comprehensive plan, with that amendment, has been acknowledged by DLCD as complying with the Statewide Goals. This means that the lot sizes and uses allowed by the RREA plan designation and RR-10 zone are Goal 14-compliant. The proposed plan amendment simply proceeds exactly as described by the County's acknowledged comprehensive plan. It provides no occasion for the County to revisit the issue of whether the MUA-10 zone and RREA plan designation allow urban development that violates Goal 14. [footnote 2: In Deschutes Development Co. v. Deschutes County, 5 Or LUBA 218 (1982) LUBA held that 'We lack authority after acknowledgment of a comprehensive plan to review goal issues related to the plan. Fujimoto v. MSD, 1 Or LUBA 93, 1980, aff'd, 52 Or App 875, 630 P2d 364 (1981).] COLW's challenge to the application of MUA-10 zoning to the Markens' property that is nonagricultural land is an impermissible collateral attack on the County's acknowledged comprehensive plan.*

*This issue is addressed in detail by the Oregon Court of Appeals in Central Oregon LandWatch v. Deschutes County, 301 Or App 701, 457 P3d 369 (2020)(TID). In TID, the Court held that a decision made by Deschutes County decades earlier not to apply a resource plan designation to the subject property made it unnecessary for the property owner to establish that the property is nonresource land when remapping it from Surface Mining to RREA and MUA-10. This is consistent with earlier Court of Appeals decisions that hold that Goal 5 is not a relevant issue in a plan amendment and zone change application if the subject property has not been identified as a Goal 5 resource by*

the applicable comprehensive plan. *Urquhart v. Lane Council of Governments*, 80 Or App 176, 181-182, 721 P2d 870 (1986); *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 911 P2d 350, *rev den* 323 Or 136 (1996).

The case of *Jackson County Citizens' League v. Jackson County*, 171 Or App 149, 15 P3d 42 (2000) holds that it is unnecessary to establish compliance with Goal 14 for uses conditionally allowed by the EFU zone; just as it is unnecessary for the Markens to establish that Deschutes County's comprehensive plan, a plan that provides that the RREA plan designation and RREA zones (RR-10 and MUA-10) should be applied to nonagricultural lands, complies with Statewide Goal 14.

**a. RREA Argument and Goal 14 Factors**

While not conceding that an analysis of Goal 14, Urbanization is required, we provide one below. The MUA-10 zoning district does not authorize urban development that violates Statewide Goal 14. DCCP Chapter 1, Section 1.3 p. 15 (Definitions) says that RREAs provide opportunities for rural residential living; not urban living that violates Goal 14. A review of the factors identified by the Supreme Court in Curry County all confirm that the MUA-10 zoning district does not allow urban development.

**i. Density**

The MUA-10 zone imposes a maximum density of 1 dwelling per 10 acres. This is not an urban density. Such a density would never be allowed in any urban residential zoning district other than a reserve or holding zone. By way of comparison, the Porter Kelly Burns property will be developed at a density of 11 homes per acre (excluding a small park). In *Curry County*, the Supreme Court accepted the concession of 1000 Friends a density of one house per ten acres is generally "not an urban intensity." COLW argues that the comprehensive plan requires a 10-acre minimum parcel size. If they are correct, this minimum will apply during a review of any subdivision on the subject property and assure that development is "not an urban intensity. Furthermore, in *Curry County*, 1000 Friends of Oregon argued that densities greater than one dwelling per three acres (e.g. one dwelling per one or two acres) are urban. The density allowed by the RR-10 zone in a planned development is 2.5 times less dense. For a standard subdivision, the density allowed (1 house per 10 acres) is over 3 times less dense.

The density of the RR-10 zone is not, as claimed by COLW, six times greater than the density of development allowed in the EFU-zone. Deschutes County's EFU zone allows for non-irrigated land divisions for parcels as small as 40 acres to create two nonfarm parcels (1:20 acres density). It also allows for 2-lot irrigated land divisions that, in Deschutes County can occur on parcels zoned EFU-TRB subzone that are less than 30 acres in size. This division requires 23 acres of irrigated land and imposes no minimum lot size on the nonfarm parcel or parcels. This is a density greater than one house per 15 acres. A density of one house per 10 acres is not an urban density of development.

**ii. Lot Size**

*The MUA-10 zoning district requires a minimum lot size of one house per ten acres. Smaller lots are allowed only if 65% to 80% of the land being divided is dedicated as open space.*

*The EFU zone that applies to the subject property imposes no minimum lot size for new nonfarm parcels. DCC 18.16.055. The only exception is that 5-acre minimum is required for non-irrigated land divisions of properties over 80 acres in size. DCC 18.16.055(C)(2)(a)(4). The EFU zone requires that other nonfarm uses be on parcels that are “no greater than the minimum size necessary for the use.” Although not relevant to this Application because the property is nonresource land rather than land in an exceptions area, OAR 660-004-0040 contemplates lot sizes as small as two acres in rural residential exceptions areas.*

**iii. Proximity to Urban Growth Boundaries**

*The Marken property adjoins the City of Bend. This makes it an excellent candidate for inclusion in the Bend UGB if properly identified as non-agricultural land. Skipping over the Marken property to annex the MUA-10 zoned properties east of the Marken property to the City of Bend will require an inefficient extension of urban services and urban sprawl.*

**iv. Services**

*Sewer service is prohibited by Goal 11. An increase in the density of development is not allowed if a public water system is developed to serve the subject Property so the approval of this application will not result in a violation of Goal 11.*

**v. Conclusion of Factors**

*In totality, the above-factors do not indicate that the Applicant’s rezoning request implicates Goal 14. Applicant’s proposal would increase that allowable density, but not to urban levels. Instead, approval of the proposal will enable the land to remain in a rural state until such time as it is included in the Bend UGB. At that time, it can be developed at urban densities.”*

Staff, in the Staff Report (page 38) stated that it generally accepted *“the Applicant’s responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated.”* Staff, in the Staff Report, also stated that it took:

*“note of public comments concerning potential loss of farmland, impacts to wildlife, and potential for increased housing density. While these comments detail concerns related to specific potential use patterns, staff finds the overall proposal appears to comply with the applicable Statewide Planning Goals for the purposes of this review.”*

The Hearings Officer concurs with and adopts, as additional findings for this section, the Applicant’s legal analysis and conclusions (Burden of Proof, page 33, Final Argument, pages 9-11) related to the applicability of Goal 14 to this case. Applicant concluded, and the Hearings Officer agrees, that Goal 14 does not apply to this case. As alternative findings (if it is later determined that Goal 14 does apply to this case) the Hearings Officer adopts Applicant’s “RREA Argument and Goal Factors” as

findings. The Hearings Officer finds that if Goal 14 is applicable to this case the analysis provided by Applicant (Final Argument, pages 11 and 12) demonstrates the requirements of Goal 14 are met.

**IV. CONCLUSIONS**

The Hearings Officer considered the comments of neighboring property owners and the objections expressed by COLW in making this recommendation. The Hearings Officer finds the primary issues raised by neighboring property owners involved potential impacts resulting from approval of the application and the ability of the Subject Property to be farmed. The Hearings Officer finds that COLW’s primary issues related to (1) the Applicant’s soil scientist/classifier soil classifications at the Subject Property were not correct or relevant, (2) the application did not comply with Goal 14 and, (3) the application was not consistent with DCC 18.136.020(D).

The Hearings Officer reviewed and considered each neighboring property owner and COLW objection to the approval of the application. The Hearings Officer concluded that the application did meet all relevant policies and approval criteria. The Hearings Officer recommends approval of the Applicant’s Comprehensive Plan Amendment and Zone Change requests.

**V. RECOMMENDATIONS**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer recommends the Deschutes County Board of County Commissioners approval Applicant’s request to change the designation of the Subject Property from Agricultural (AG) to Rural Residential Exception Area (RREA) and approval of Applicant’s request for a Zone Change to rezone the Subject Property from Exclusive Farm Use–Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

Dated: November 4<sup>th</sup>, 2022



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Gregory J Frank  
Deschutes County Hearings Officer

## BOCC DECISION MATRIX

MARKEN PLAN AMENDMENT / ZONE CHANGE Land Use File Nos. 247-22-000353-PA, 354-ZC					
	Issue Area	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
1	<p><u>Goal 3: Part 1</u></p> <p>Does the subject property constitute agricultural land, as defined by OAR 660-033-0020(1)(a)?</p>	<p>Deschutes County Comprehensive Plan Policy 2.2.3, and Statewide Planning Goal 3.</p>	<p>The Applicant asserts the property owners unsuccessfully attempted to obtain a profit through farming the property, even with the use of irrigation and fertilizer. The applicant asserts it is not feasible to obtain a profit in money due to the poor soil capability and high cost of required inputs.</p> <p><u>Oppositional comments</u> assert the subject property is predominantly Class I-VI soils according to the NCRS, has a long history of farm use, and contains a water impoundment for farm use. The property owners voluntarily relinquished the majority of their water rights, and oppositional comments assert this should not be used as justification that the property is unsuitable for farming.</p> <p>Oppositional comments assert the property has been in farm use for over 30 years, with the intent to obtain a profit. Questions were raised about the methods that were attempted to farm the property for profit, and whether it could have been possible to successfully obtain a profit. Additionally, the definition of 'agricultural use' from DCC 18.04.030 specifically excludes the requirement to obtain a profit.</p>	<p>The Hearings Officer (HOff) found the subject property is not Goal 3 agricultural land (HOff Decision p. 57).</p> <p>The Hearings Officer found that the definition of farm use in ORS 215.203(2)(a) refers only to the <b>current</b> employment of land. The current employment of the property is not for the primary purpose of growing or harvesting crops, or other farm activities described in ORS 215.203(2)(a).</p> <p>The Hearings Officer also found that the pond on the subject property does not constitute a water impoundment for farm use, per ORS 215.203(2)(b)(G). (HO Decision p. 28-30).</p> <p>Staff agrees with the Hearings Officer's findings.</p>	<p>Does the subject property constitute agricultural land under OAR 660-033-0020(1)(a)?</p> <ol style="list-style-type: none"> <li>1. If no, the Board can continue reviewing the applications, and move to approve the Plan Amendment and Zone Change (PA/ZC).</li> <li>2. If yes, the Board must deny the PA/ZC.</li> </ol>

## BOCC DECISION MATRIX

MARKEN PLAN AMENDMENT / ZONE CHANGE Land Use File Nos. 247-22-000353-PA, 354-ZC					
	Issue Area	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
2	<p><u>Goal 3: Part 2</u></p> <p>Whether the soil study provided by the applicant is sufficient to demonstrate the subject property consists of predominantly unproductive soils, or Class VII-VII.</p>	<p>OAR 660-033-0020(1)(a) and Statewide Planning Goal 3.</p>	<p><u>The Applicant</u> asserts the site-specific soil study was prepared by a certified soil classifier and reviewed by DLCD. The site-specific soil study was conducted according to the Soil Survey Manual, appropriately delineated different soil classifications, and correctly categorized developed land and water bodies.</p> <p><u>Oppositional comments</u> assert that the NCRS mapping must be considered, and that the site-specific soil study is deficient because the summary of observation points does not support the conclusion that the property is predominantly Class VII-VIII soils.</p>	<p>The Hearings Officer found that Statewide Planning Goal 3 and OAR 660-033-0030(5) allow the County to use a more detailed soil study than the NCRS (Hoff Decision p. 27).</p> <p>The Hearings Officer found the key issue was whether the NCRS soil mapping constitutes the only authoritative source for land use planning. The Hearings Officer concurred with the Applicant’s legal analysis showing that site-specific soil studies may be used to determine whether a property is agricultural land.</p> <p>Staff agrees with the Applicant and Hearings Officer on this issue area. The Board has previously approved Plan Amendment and Zone Change applications that relied on property-specific soil studies.</p>	<p>Does the site-specific soil study show the property is predominantly Class VII-VIII soils?</p> <ol style="list-style-type: none"> <li>1. If yes, the Board can continue reviewing the applications, and move to approve the PA/ZC.</li> <li>2. If no, the Board may deny the application because the property meets the definition of Goal 3 ‘agricultural land.’</li> </ol>

## BOCC DECISION MATRIX

<b>MARKEN PLAN AMENDMENT / ZONE CHANGE</b> Land Use File Nos. 247-22-000353-PA, 354-ZC					
	Issue Area	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
3	<p><u>Goal 3: Part 3</u></p> <p>A previous land use application (PA-13-1, ZC-13-1) denied a request for a Plan Amendment and Zone Change for a different property, despite finding the property was predominantly Class VII soil.</p>	<p>OAR 660-033-0020(1)(a) and Statewide Planning Goal 3.</p>	<p><u>Applicant comments</u> assert there is nothing in the record to support the notion the subject property is capable of generating even a small profit from farming, even with available irrigation. The Newland case is not applicable because the application was for an aggregated group of farm parcels, and there was no record of income lost through attempting to farm those properties, as there is with the subject property.</p> <p><u>Oppositional comments</u> assert that in the Newland case (PA-13-1, ZC-13-1), the Board denied a PA/ZC application even though a soil study indicated the property was predominantly Class VII soils. Oppositional comments assert the Board found the Newland property could generate a profit through farming, even if that profit was very small. In particular, available irrigation was cited as a key reason the application was denied on the basis the property may be suitable for some type of farm use.</p> <p>Oppositional comments also cite a finding made in file PA-13-1, ZC-13-1, which states profitability is not the only or most important factor to consider when determining whether a property constitutes agricultural land.</p>	<p>The oppositional comments citing Deschutes County file PA-13-1, ZC-13-1 were submitted in the open record period following the Board hearing. The Hearings Officer recommendation had already been issued at this time, so the Hearings Officer did not address it in their analysis.</p> <p>However, staff notes the Hearings Officer findings regarding the definition of Goal 3 agricultural land are applicable to many of the points raised in the oppositional comments. Specifically, the Hearings Officer found the subject property is not engaged in farm use for the primary purpose of obtaining a profit.</p>	<p>Does the subject property constitute agricultural land under OAR 660-033-0020(1)(a)?</p> <ol style="list-style-type: none"> <li>1. If no, the Board can continue reviewing the applications, and move to approve the Plan Amendment and Zone Change (PA/ZC).</li> <li>2. If yes, the Board must deny the PA/ZC.</li> </ol>



## BOCC DECISION MATRIX

<b>MARKEN PLAN AMENDMENT / ZONE CHANGE</b> Land Use File Nos. 247-22-000353-PA, 354-ZC					
	Issue Area	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
4	<p>A previous land use application (CU-80-42, TP-596) was denied on the subject property, on the basis that the property is suitable for farming.</p>	<p>Oppositional comments did not cite relevant approval criteria. However, staff notes this topic may be relevant to Comprehensive Plan Policy 2.2.3 and Statewide Planning Goal 3, because it may relate to whether the property meets the definition of agricultural land.</p>	<p><u>Applicant comments</u> assert the land use application cited by the opposition was a request for a residential subdivision, under the former EFU-20 zoning designation. The information provided on the property’s soils was not prepared by a certified soils scientist. The Applicant concurs that staff made findings regarding agriculture on the subject property, but these findings did not address the definition of ‘farm use,’ or otherwise show the property met the definition of agricultural land, per Goal 3.</p> <p><u>Oppositional comments</u> assert a previous application on the subject property, Deschutes County file TP-596, was denied. These comments assert the record for this prior application include a soil study showing the property is predominantly Class I-Vi soils, and that the County found the property was suitable for farming and grazing. Oppositional comments assert this previous application was denied because there was potential for farm use on the subject property, and these findings should inform the current Zone Change and Plan Amendment request.</p>	<p>The Hearings Officer notes the cited land use application was for a Variance, not a Plan Amendment or Zone Change. The Hearings Officer finds this previous County decision did not explicitly address whether the property qualified as agricultural land, as defined by Goal 3.</p> <p>Staff agrees with the Hearings Officer’s finding that the cited land use application does not address the applicable approval criteria for the subject Plan Amendment and Zone Change, and therefore is not applicable.</p>	<p>Are the findings regarding suitability for farm use in the Hearings Officer decision for file CU-80-42, TP-596 relevant to this application?</p> <ol style="list-style-type: none"> <li>1. If no, the Board can continue reviewing the applications, and move to approve the PA/ZC.</li> <li>2. If yes, are the findings in the cited decision are sufficient to demonstrate the property is agricultural land, as defined by OAR 660-033-0020(1)(a)?                             <ol style="list-style-type: none"> <li>A. If yes, the Board may deny the PA/ZC.</li> <li>B. If no, the Board can continue reviewing the applications, and move to approve the PA/ZC.</li> </ol> </li> </ol>

## BOCC DECISION MATRIX

MARKEN PLAN AMENDMENT / ZONE CHANGE Land Use File Nos. 247-22-000353-PA, 354-ZC					
	Issue Area	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
5	Proximity to Bend Urban Growth Boundary (UGB), and the impact of the subject Plan Amendment/Zone Change on future UGB expansions.	Statewide Planning Goal 14. Staff notes the criteria of DCC 18.136.020(C)(1) may relate to this specific topic.	<p>The <u>Applicant</u> asserts this area is a top candidate for future expansion of the Bend UGB, and would allow for an orderly extension of urban services and compact urban development. The applicant cites previous expansions of the Bend UGB in the general surrounding area, and asserts the proposed Plan Amendment will increase the likelihood of the subject property being included in future expansions.</p> <p>The applicant asserts Goal 14 is not a relevant approval criteria. The MUA-10 zoning district is consistent with the adopted Comprehensive Plan and does not constitute urban development.</p> <p><u>Oppositional comments</u> assert that adding density in this area is costly and inefficient. Comments raised concerns about land speculation inflating the price of agricultural land, and raised questions about the type and intensity of development that will occur on the subject property.</p>	<p>The Hearings Officer found Goal 14 does not apply to the subject application.</p> <p>Because future expansion of the Bend UGB was not tied to an applicable approval criteria, the Hearings Officer did not make any substantive findings regarding this topic.</p> <p>Staff agrees with the Hearings Officer and notes the subject Plan Amendment and Zone Change does not approve any new development on the subject property. Future uses may require a separate land use review, and will require the developer to obtain all required permits.</p>	<p>Is there an approval criterion which requires the Board to analyze the proximity of the proposed PA/ZC with respect to the UGB and future UGB expansions?</p> <ol style="list-style-type: none"> <li>1. If no, the Board can continue reviewing the applications, and move to approve the PA/ZC.</li> <li>2. If yes, the Board may identify relevant criteria and make additional findings under those criteria.</li> </ol>

## BOCC DECISION MATRIX

<b>MARKEN PLAN AMENDMENT / ZONE CHANGE</b> Land Use File Nos. 247-22-000353-PA, 354-ZC					
	Issue Area	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
6	Does the application require an exception to Statewide Planning Goal 14: Urbanization?	OAR 660-015-0000(14)	<p><u>Applicant comments</u> assert compliance with Goal 14 was reviewed when the County adopted its Comprehensive Plan and the MUA-10 zoning district. Therefore, any allowed uses within the MUA-10 Zone are consistent with Goal 14, and a Plan Amendment and Zone Change application is not the appropriate forum to revisit whether the County’s MUA-10 Zone is consistent with Statewide Planning Goal 14.</p> <p>The Applicant cites <i>1000 Friends of Oregon v. LCDC</i> (Curry County), 310 Or 447, 498-511, 724 P2d 268 (1986) and Deschutes County Comprehensive Plan Policy 2.2.3, to assert the Rural Residential Exception Area designation has already been determined to be consistent with Goal 14.</p> <p><u>Oppositional comments</u> assert an exception to Goal 14 is required because the Zone Change would allow denser, urban levels of development, and would essentially allow rural lands to urbanize. The subject property currently contains two dwellings, and the Zone Change would allow for a significant increase in density and the possibility of cluster development. This increase in allowed housing density is significant enough to require an exception to Goal 14.</p>	<p>The Hearings Officer found Goal 14 does not apply. However, the Hearings Officer also adopted alternate findings in case it was later determined that Goal 14 does apply. These alternate findings demonstrate that Goal 14 is satisfied, if it does apply.</p>	<p>Does Goal 14: Urbanization apply to the subject application?</p> <ol style="list-style-type: none"> <li>1. If yes, the Board will need to determine whether Goal 14 has been satisfied.                             <ol style="list-style-type: none"> <li>A. If Goal 14 applies, and the Board finds it has been satisfied by the Applicant, they may adopt the alternate findings and approve the application.</li> <li>B. If Goal 14 applies, and the Board finds it has not been satisfied, the Board may deny the application because a goal exception is required.</li> </ol> </li> <li>2. If no, the Board can continue reviewing the applications, and move to approve the PA/ZC.</li> </ol>

## BOCC DECISION MATRIX

MARKEN PLAN AMENDMENT / ZONE CHANGE Land Use File Nos. 247-22-000353-PA, 354-ZC					
	Issue Area	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
7	Has there been a change in circumstances since the property was originally zoned?	DCC 18.136.020 Rezoning Standards  D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.	<p><u>Applicant comments</u> assert there has been a change in circumstances, since the soil of the land was found to be less suitable for farming than originally anticipated. Other changes in circumstance that were cited include development and annexation of properties in the surrounding vicinity. The applicant also cited other similar Plan Amendment and Zone Change requests that have been approved, and were therefore found to satisfy this criterion.</p> <p><u>Oppositional comments</u> assert the soils and agricultural productivity of the property have not changed since it was last zoned. Oppositional comments also assert the County has previously determined that there were not mapping errors in the EFU zoning designation.</p>	The Hearings Officer adopts the Applicant’s findings, and agrees the County has not determined that no mapping errors exist (HOff Decision p. 17). The Hearings Officer finds the NCRS soil mapping was imprecise and the site-specific soil study is therefore new information.	Has there been a change in circumstances since the property was zoned?  1. If yes, the Board can continue reviewing the applications, and move to approve the PA/ZC.  2. If no, the Board may deny the application for failure to comply with DCC 18.136.020(D).



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** March 1, 2023

**SUBJECT:** Second reading of Ordinance No. 2023-001, 2023 Housekeeping Amendments to the Comprehensive Plan

**MOTIONS:**

1. Move approval of second reading of Ordinance No. 2023-001 by title only
2. Move adoption of Ordinance No. 2023-001.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Planning Division regularly amends Deschutes County Code (DCC) and the Comprehensive Plan to correct minor errors identified by staff, other County departments, and the public. This process, commonly referred to as "housekeeping," also incorporates updates from rulemaking at the state level through amendments to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR), and allows for less substantive code changes to continue efficient County operations.

The Board of County Commissioners (Board) conducted a public hearing on February 15, 2023 to consider staff-initiated housekeeping amendments (file no. 247-22-000922-TA). Following the conclusion of the hearing, the Board voted in favor of approving the proposed amendments as drafted and conducted first reading of Ordinance 2023-001. Second reading of Ordinance 2023-001 is scheduled for Wednesday, March 1, 2023. The proposed housekeeping amendments will take effect on May 30, 2023, if approved on March 1, 2023.

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Kyle Collins, Associate Planner



## MEMORANDUM

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

**FROM:** Kyle Collins, Associate Planner

**DATE:** February 22, 2023

**SUBJECT:** 2023 Housekeeping Amendments - Second Reading

The Board of County Commissioners (Board) will hold second reading on March 1, 2023 at 9:00 A.M. at the Deschutes Services Center, 1300 Wall Street, Barnes and Sawyer rooms for housekeeping amendments (file no. 247-22-000922-TA). Attached to this memorandum are the proposed text amendments and a staff report summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~.

### I. BACKGROUND

The Planning Division regularly amends the Deschutes County Code (DCC) and the Comprehensive Plan to correct minor errors identified by staff, other County departments, and the public. This process, commonly referred to as housekeeping, also incorporates updates from rulemaking at the state level through amendments to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR). The last time Deschutes County adopted housekeeping amendments occurred in December 2021 and January 2022.<sup>1</sup>

The record is available for inspection at the Planning Division and at the following website: <https://www.deschutes.org/cd/page/2023-housekeeping-text-amendments>.

### II. OVERVIEW OF AMENDMENTS

The proposed text amendments will affect the following chapters of the Deschutes County Code and the Comprehensive Plan:

Title 17, Subdivisions  
Chapter 17.24. FINAL PLAT

<sup>1</sup> Ordinances 2021-013 and 2021-014.

## Title 18, County Zoning

- Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS
- Chapter 18.16. EXCLUSIVE FARM USE ZONES
- Chapter 18.32. MULTIPLE USE AGRICULTURAL ZONE; MUA
- Chapter 18.36. FOREST USE ZONE; F-1
- Chapter 18.40. FOREST USE ZONE; F-2
- Chapter 18.48. OPEN SPACE AND CONSERVATION ZONE; OS AND C
- Chapter 18.60. RURAL RESIDENTIAL ZONE; RR-10
- Chapter 18.61. URBAN UNINCORPORATED COMMUNITY ZONE; LA PINE
- Chapter 18.65. RURAL SERVICE CENTER; UNINCOPORATED COMMUNITY ZONE
- Chapter 18.76. AIRPORT DEVELOPMENT ZONE; A-D
- Chapter 18.80. AIRPORT SAFETY COMBINING ZONE; A-S
- Chapter 18.96. FLOOD PLAIN ZONE; FP
- Chapter 18.100. RURAL INDUSTRIAL ZONE; R-I
- Chapter 18.108. URBAN UNINCORPORATED COMMUNITY ZONE; SUNRIVER
- Chapter 18.116. SUPPLEMENTARY PROVISIONS
- Chapter 18.124. SITE PLAN REVIEW

## Title 22, Deschutes County Development Procedures Ordinances

- Chapter 22.04. INTRODUCTION AND DEFINITIONS

## Title 23, Deschutes County Comprehensive Plan

- Chapter 23.01. COMPREHENSIVE PLAN

## Deschutes County Comprehensive Plan

- Chapter 5. SUPPLEMENTAL SECTIONS

### III. PLANNING COMMISSION REVIEW

The Planning Commission held a work session on this item on January 12, 2023, followed by a public hearing on January 26, 2023<sup>2</sup>. No written comments were received and no parties testified during the hearing. The Planning Commission closed the oral and written portions of the hearing on January 26, 2023 and voted to unanimously to recommend approval of the proposed amendments during the same meeting.

### IV. BOARD REVIEW

The Board of County Commissioners (Board) held a public hearing on February 15, 2023<sup>3</sup> concerning the proposed amendments to the Deschutes County Code and the Deschutes County Comprehensive Plan. The proposed amendments are described in Ordinance 2023-001.

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<sup>2</sup> See Planning Commission January 26, 2023 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-32>

<sup>3</sup> See Board February 15, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-80>

Following the conclusion of the hearing, the Board voted in favor of approving the proposed amendments as drafted and conducted first reading of Ordinance 2023-001. The amendments will take effect on May 30, 2023, if approved on March 1, 2023.

Attachment

- Ordinance 2023-001 with Exhibits



REVIEWED  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 17, Subdivision and \*  
Partition Ordinance, Title 18, Zoning Ordinance, \* ORDINANCE NO. 2023-001  
Title 22, Procedures Ordinance of the Deschutes \*  
County Code, and Title 23, Deschutes County  
Comprehensive Plan to Incorporate Changes to State  
Law, and Provide Clarification of Existing  
Regulations, Procedures, and Policies.

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-22-000922-TA) to the Deschutes County Code (“DCC”), Chapter 17.24 – Final Plat, Chapter 18.04 – Purpose and Definitions, Chapter 18.16 – Exclusive Farm Use Zones, Chapter 18.32 – Multiple Use Agricultural Zone MUA, Chapter 18.36 – Forest Use Zone F1, Chapter 18.40 – Forest Use Zone F2, Chapter 18.48 – Open Space and Conservation Zone OS&C, Chapter 18.60 – Rural Residential Zone RR-10, Chapter 18.61 – Urban Unincorporated Community Zone La Pine, Chapter 18.65 – Rural Service Center Unincorporated Community Zone, Chapter 18.76 – Airport Development Zone A-D, Chapter 18.80 – Airport Safety Combining Zone AS, Chapter 18.96 – Flood Plain Zone FP, Chapter 18.100 – Rural Industrial Zone R-I, Chapter 18.108 – Urban Unincorporated Community Zone Sunriver, Chapter 18.116 – Supplementary Provisions, Chapter 18.124 – Site Plan Review, Chapter 22.04 – Introductions and Definitions, and Title 23 – Deschutes County Comprehensive Plan Chapter 5; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed amendments on January 26, 2023, and subsequently forwarded a recommendation of Approval to the Deschutes County Board of County Commissioners (“Board”); and

WHEREAS, the Board considered this matter after a duly noticed public hearing on February 15, 2023, and concluded that the public will benefit from the proposed changes to the Deschutes County Comprehensive Plan Title 23 and Deschutes County Code Chapter Titles 17, 18, and 22; now, therefore,

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

Section 1. AMENDMENT. DCC 17.24 is amended to read as described in Exhibit “A,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 2. AMENDMENT. DCC 18.04 is amended to read as described in Exhibit “B,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 3. AMENDMENT. DCC 18.16 is amended to read as described in Exhibit “C,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 4. AMENDMENT. DCC 18.32 is amended to read as described in Exhibit “D,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 5. AMENDMENT. DCC 18.36 is amended to read as described in Exhibit “E,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 6. AMENDMENT. DCC 18.40 is amended to read as described in Exhibit “F,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 7. AMENDMENT. DCC 18.48 is amended to read as described in Exhibit “G,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 8. AMENDMENT. DCC 18.60 is amended to read as described in Exhibit “H,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 9. AMENDMENT. DCC 18.61 is amended to read as described in Exhibit “I,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 10. AMENDMENT. DCC 18.65 is amended to read as described in Exhibit “J,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 11. AMENDMENT. DCC 18.76 is amended to read as described in Exhibit “K,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 12. AMENDMENT. DCC 18.80 is amended to read as described in Exhibit “L,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 13. AMENDMENT. DCC 18.96 is amended to read as described in Exhibit “M,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 14. AMENDMENT. DCC 18.100 is amended to read as described in Exhibit “N,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 15. AMENDMENT. DCC 18.108 is amended to read as described in Exhibit “O,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 16. AMENDMENT. DCC 18.116 is amended to read as described in Exhibit “P,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 17. AMENDMENT. DCC 18.124 is amended to read as described in Exhibit “Q,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 18. AMENDMENT. DCC 22.04 is amended to read as described in Exhibit “R,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 19. AMENDMENT. DCC 23.01 is amended to read as described in Exhibit “S,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 20. AMENDMENT. Deschutes County Comprehensive Plan, Section 5.9, Cultural and Historic Resources, is amended to read as described in Exhibit “T,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 20. AMENDMENT. Deschutes County Comprehensive Plan, Section 5.12, Legislative History, is amended to read as described in Exhibit “U,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 21. FINDINGS. The Board adopts as its findings Exhibit “V”, attached and incorporated by reference herein.

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Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DeBONE, Chair

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

ATTEST:

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

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

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

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

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

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

ATTEST

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

**CHAPTER 17.24 FINAL PLAT**[17.24.010 Applicability](#)[17.24.020 Submission; Extensions](#)[17.24.030 Submission For Phased Development](#)[17.24.040 Form](#)[17.24.050 Requirements Of Survey And Plat](#)[17.24.060 Required Information](#)[17.24.070 Supplemental Information](#)[17.24.080 \(Repealed\)](#)[17.24.090 Approval By Irrigation Districts](#)[17.24.100 Technical Review](#)[17.24.105 Final Plat Review](#)[17.24.110 Conditions Of Approval](#)[17.24.120 Improvement Agreement](#)[17.24.130 Security](#)[17.24.140 Approval](#)[17.24.150 Recording](#)[17.24.160 Approval And Recordation Of Subdivision Interior Monuments](#)[17.24.170 Correction Of Errors](#)**17.24.060 Required Information**

In addition to that required for the tentative plan or otherwise specified by law, the following information shall be shown on the submitted plat:

- A. Name of subdivision and plat number for a final subdivision plat, or the partition application number and space for the partition plat number for a final partition plat.
- B. Name of owner, applicant and surveyor.
- C. The date, scale, true north, key to symbols, controlling topography such as bluffs, creeks and other bodies of water, and existing highways and railroads.
- D. Legal description of the tract boundaries.
- E. The exact location and width of streets and easements intercepting the boundary of the tract.
- F. Tract, lot or parcel boundary lines and street rights of way and centerlines, with dimensions, bearing or deflection angles, radii, arcs, points of curvature and tangent bearings. Normal high water lines for any creek, bay or other body of water. Tract boundaries and street bearings shall be shown to the nearest second with the basis of bearings. Distances shall be shown to the nearest 0.01 feet.
- G. Streets. The width of the streets being dedicated and the curve data shall be based on the street centerline. In addition to the centerline dimensions, the radius and central angle shall be indicated, together with the long chord distance and bearing.

- H. Easements. The location, dimensions and purpose of all recorded and proposed public easements shall be shown on the plat along with the County Clerk's recording reference if the easement has been recorded with the County Clerk. All such easements shall be denoted by fine dotted lines and clearly identified. If an easement is not of record, a statement of the grant of easement shall be given. If the easement is being dedicated by the plat, it shall be properly referenced in the owner's certificate of dedication. .
- I. Southern Building Line. The southern building line shall be shown on each lot or parcel which is benefited by solar height restrictions on burdened lots within the subdivision or partition.
- J. Bicycle and Pedestrian Facilities. The location, width and type (i.e., route, lane or path) of all bicycle and pedestrian facilities, including access corridors.
- K. Lot or Parcel Numbers. Lot or parcel numbers beginning with the number one and numbered consecutively.
- L. Block Numbers. Block numbers shall not be allowed for any subdivision application submitted for tentative approval after January 1, 1992, unless such subdivision is a continued phase of a previously recorded subdivision, bearing the same name, that has previously used block numbers or letters. The numbers shall begin with the number one and continue consecutively without omission or duplication throughout the subdivision. The numbers shall be placed so as not to obliterate any figure. Block numbers in an addition to a subdivision of the same name shall be a continuation of the numbering in the original subdivision.
- M. Public Lands. Public lands, including strips and easements, shall be clearly marked to distinguish them from lots or parcels intended for sale.
- N. Access Restrictions. Limitations on rights of access to and from streets, lots or parcels and other tracts of land.
- O. Area. The area of each lot or parcel, if larger than one acre, to the nearest hundredth of an acre; and the area of each lot or parcel less than one acre, to the nearest square foot.
- P. Statement of Water Rights.
1. Each subdivision or partition plat shall include a statement of water rights on the plat. The statement shall indicate whether a water right or permit is appurtenant to the subject property. If a water right is appurtenant, the certificate number must appear with the statement. If a water permit rather than a perfected water right is appurtenant, the permit number shall be included on the plat.
  2. If a water right is appurtenant, the applicant shall submit a copy of the final plat to the State Water Resources Department, except for those plats with lots or parcels served by irrigation districts.
  3. All final plats for parcels within an irrigation district shall be signed by an authorized person from the district.
- Q. Statements. The following statements are required:

1. Land Divider's Declaration.
    - a. An acknowledged affidavit of the person proposing the land division (declarant) stating that he has caused the plat to be prepared in accordance with the provisions of ORS 92 and dedicating any common improvements, such as streets, bike paths or walkways, parks or open space, sewage disposal or water supply systems, required under DCC 17.24.060 or as a condition of approval of the tentative plan or plat. The declaration shall also include the creation of any other public or private easements.
    - b. If the declarant is not the fee owner of the property, the fee owner and the vendor under any instrument of sale shall also execute the declaration for the purpose of consenting to the property being divided and to any dedication or creation of an easement or other restriction. Likewise, the holder of any mortgage or trust deed shall also execute the declaration for purposes of consenting to the property being divided and for the purpose of assenting to any dedication or creation of an easement or other restriction.
    - c. In lieu of signing the declaration on the plat, any required signatory to the declaration other than the declarant may record an acknowledged affidavit consenting to the declaration and to any dedication or donation of property for public purposes or creation of an easement or other restriction.
  2. A certificate certifying preparation of the plat in conformance with the provisions of state law signed by the surveyor responsible for the survey and final plat and stamped with his seal.
  3. Any other affidavit required by state regulations.
- R. Signature Lines. Unless otherwise stated herein, signature lines for the following officials signifying their approval:
1. County Surveyor.
  2. Road Department Director.
  3. County Environmental ~~Health Director~~ Soils Division, unless the property is to be connected to a municipal sewer system.
  4. County Assessor (subdivisions and nonfarm partitions only).
  5. County Tax Collector (subdivisions only).
  6. Authorized agent for any irrigation district servicing the subdivision or partition.
  7. County Planning Director.
  8. County Commissioners.
  9. Any other signature required by state regulation.

- S. The plat shall contain a statement located directly beneath the signatures of the County Commissioners stating as follows: "Signature by the Board of Commissioners constitutes acceptance by the County of any dedication made herein to the public."
- T. Adjacent SM Zone. Any plat of a subdivision or partition adjoining an SM zone must clearly show where such zone is located in relation to the subdivision or partition boundaries.

#### HISTORY

*Adopted by Ord. [PL-14](#) §4.050 on 11/1/1979*

*Repealed & Reenacted by Ord. [81-043](#) §§1, 3, 4.030 on 12/31/1981*

*Amended by Ord. [83-039](#) §6 on 6/1/1983*

*Renumbered by Ord. [90-003](#) §1 on 1/8/1990*

*Amended by Ord. [90-015](#) §1 on 2/21/1990*

*Amended by Ord. [93-012](#) §26 on 8/4/1993*

*Amended by Ord. [2006-007](#) §4 on 8/29/2006*

*[Amended by Ord. 2023-001 §1 on X/XX/2023](#)*



**CHAPTER 18.04 TITLE, PURPOSE AND DEFINITIONS**18.04.010 Title18.04.020 Purpose18.04.030 Definitions**18.04.030 Definitions**

As used in DCC Title 18, the following words and phrases shall mean as set forth in DCC 18.04.030.

"Community service use" means any public or semi-public uses, such as ~~landfills~~ land disposal sites, schools, utility facilities, churches, community buildings, fire stations, cemeteries, mausoleums, crematories, airports and private uses which attract significant numbers of people, such as airports, livestock sales yards and other similar uses.

"Public use" means a use owned or operated by a public agency for the benefit of the public generally. This does not include ~~landfill~~ land disposal sites, garbage dumps or utility facilities.

"Utility facility" means any major structures, excluding hydroelectric facilities, owned or operated by a public, private or cooperative electric, fuel, communications, sewage or water company for the generation, transmission, distribution or processing of its products or for the disposal of cooling water, waste or by-products, and including power transmission lines, major trunk pipelines, power substations, telecommunications facilities, water towers, sewage lagoons, ~~sanitary landfills~~ land disposal sites and similar facilities, but excluding local sewer, water, gas, telephone and power distribution lines, and similar minor facilities allowed in any zone. This definition shall not include wireless telecommunication facilities where such facilities are listed as a separate use in a zone.

**HISTORY**

*Adopted by Ord. [PL-15](#) on 11/1/1979*

*Amended by Ord. [82-013](#) §1 on 5/25/1982*

*Amended by Ord. [83-037](#) §2 on 6/1/1983*

*Amended by Ord. [83-033](#) §1 on 6/15/1983*

*Amended by Ord. [84-023](#) §1 on 8/1/1984*

*Amended by Ord. [85-002](#) §2 on 2/13/1985*

*Amended by Ord. [86-032](#) §1 on 4/2/1986*

*Amended by Ord. [86-018](#) §1 on 6/30/1986*

*Amended by Ord. [86-054](#) §1 on 6/30/1986*

*Amended by Ord. [86-056](#) §2 on 6/30/1986*

*Amended by Ord. [87-015](#) §1 on 6/10/1987*

*Amended by Ord. [88-009](#) §1 on 3/30/1988*

*Amended by Ord. [88-030](#) §3 on 8/17/1988*

*Amended by Ord. [88-030](#) §4 on 8/17/1988*

*Amended by Ord. [89-004](#) §1 on 3/24/1989*

*Amended by Ord. [89-009](#) §2 on 11/29/1989*

*Amended by Ord. [90-014](#) §2 on 7/12/1990*

*Amended by Ord. [91-002](#) §11 on 2/6/1991*

*Amended by Ord. [91-005](#) §1 on 3/4/1991*

Amended by Ord. [92-025](#) §1 on 4/15/1991  
Amended by Ord. [91-020](#) §1 on 5/29/1991  
Amended by Ord. [91-038](#) §§3 and 4 on 9/30/1991  
Amended by Ord. [92-004](#) §§1 and 2 on 2/7/1992  
Amended by Ord. [92-034](#) §1 on 4/8/1992  
Amended by Ord. [92-065](#) §§1 and 2 on 11/25/1992  
Amended by Ord. [92-066](#) §1 on 11/25/1992  
Amended by Ord. [93-002](#) §§1, 2 and 3 on 2/3/1993  
Amended by Ord. [93-005](#) §§1 and 2 on 4/21/1993  
Amended by Ord. [93-038](#) §1 on 7/28/1993  
Amended by Ord. [93-043](#) §§1, 1A and 1B on 8/25/1993  
Amended by Ord. [94-001](#) §§1, 2, and 3 on 3/16/1994  
Amended by Ord. [94-008](#) §§1, 2, 3, 4, 5, 6, 7 and 8 on 6/8/1994  
Amended by Ord. [94-041](#) §§2 and 3 on 9/14/1994  
Amended by Ord. [94-038](#) §3 on 10/5/1994  
Amended by Ord. [94-053](#) §1 on 12/7/1994  
Amended by Ord. [95-007](#) §1 on 3/1/1995  
Amended by Ord. [95-001](#) §1 on 3/29/1995  
Amended by Ord. [95-075](#) §1 on 11/29/1995  
Amended by Ord. [95-077](#) §2 on 12/20/1995  
Amended by Ord. [96-003](#) §2 on 3/27/1996  
Amended by Ord. [96-082](#) §1 on 11/13/1996  
Amended by Ord. [97-017](#) §1 on 3/12/1997  
Amended by Ord. [97-003](#) §1 on 6/4/1997  
Amended by Ord. [97-078](#) §5 on 12/31/1997  
Amended by Ord. [2001-037](#) §1 on 9/26/2001  
Amended by Ord. [2001-044](#) §2 on 10/10/2001  
Amended by Ord. [2001-033](#) §2 on 10/10/2001  
Amended by Ord. [2001-048](#) §1 on 12/10/2001  
Amended by Ord. [2003-028](#) §1 on 9/24/2003  
Amended by Ord. [2004-001](#) §1 on 7/14/2004  
Amended by Ord. [2004-024](#) §1 on 12/20/2004  
Amended by Ord. [2005-041](#) §1 on 8/24/2005  
Amended by Ord. [2006-008](#) §1 on 8/29/2006  
Amended by Ord. [2007-019](#) §1 on 9/28/2007  
Amended by Ord. [2007-020](#) §1 on 2/6/2008  
Amended by Ord. [2007-005](#) §1 on 2/28/2008  
Amended by Ord. [2008-015](#) §1 on 6/30/2008  
Amended by Ord. [2008-007](#) §1 on 8/18/2008  
Amended by Ord. [2010-018](#) §3 on 6/28/2010  
Amended by Ord. [2010-022](#) §1 on 7/19/2010  
Amended by Ord. [2011-009](#) §1 on 10/17/2011  
Amended by Ord. [2012-004](#) §1 on 4/16/2012  
Amended by Ord. [2012-007](#) §1 on 5/2/2012

Amended by Ord. [2013-008](#) §1 on 7/5/2013  
Amended by Ord. [2014-009](#) §1 on 8/6/2014  
Amended by Ord. [2015-004](#) §1 on 4/22/2015  
Amended by Ord. [2016-015](#) §1 on 7/1/2016  
Amended by Ord. [2016-026](#) §1 on 11/9/2016  
Amended by Ord. [2016-006](#) §1 on 2/27/2017  
Amended by Ord. [2017-015](#) §1 on 11/1/2017  
Repealed by Ord. [2018-005](#) §8 on 10/10/2018  
Amended by Ord. [2018-006](#) §4 on 11/20/2018  
Amended by Ord. [2019-010](#) §1 on 5/8/2019  
Amended by Ord. [2019-016](#) §1 on 2/24/2020  
Amended by Ord. [2020-001](#) §1 on 4/21/2020  
Amended by Ord. [2020-010](#) §1 on 7/3/2020  
Amended by Ord. [2020-007](#) §7 on 10/27/2020  
Amended by Ord. [2021-013](#) §3 on 4/5/2022  
Amended by Ord. [2023-001](#) §2 on X/XX/2023

## Exhibit C - Ordinance 2023-001

### CHAPTER 18.16 EXCLUSIVE FARM USE ZONES

[18.16.010 Purpose](#)

[18.16.020 Uses Permitted Outright](#)

[18.16.023 Lawfully Established Dwelling Replacement](#)

[18.16.025 Uses Permitted Subject To The Special Provisions Under DCC Section 18.16.038 Or DCC Section 18.16.042 And A Review Under DCC Chapter 18.124 Where Applicable](#)

[18.16.030 Conditional Uses Permitted; High Value And Non-High Value Farmland](#)

[18.16.031 Conditional Uses On Non-High Value Farmland Only](#)

[18.16.033 Conditional Uses On High Value Farmland Only](#)

[18.16.035 Destination Resorts](#)

[18.16.037 Guest Ranch](#)

[18.16.038 Special Conditions For Certain Uses Listed Under DCC 18.16.025](#)

[18.16.040 Limitations On Conditional Uses](#)

[18.16.042 Agri-Tourism And Other Commercial Events Or Activities Limited Use Permit](#)

[18.16.043 Single Permit](#)

[18.16.050 Standards For Dwellings In The EFU Zones](#)

[18.16.055 Land Divisions](#)

[18.16.060 Dimensional Standards](#)

[18.16.065 Subzones](#)

[18.16.067 Farm Management Plans](#)

[18.16.070 Yards](#)

[18.16.080 Stream Setbacks](#)

[18.16.090 Rimrock Setback](#)

#### 18.16.070 Yards

- A. The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.
- B. Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.
- C. Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.

D. The setback from the north lot line shall meet the solar setback requirements in Section 18.116.180.

~~D-E.~~ In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

#### HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

*Amended by Ord. [83-037](#) §8 on 6/1/1983*  
*Amended by Ord. [91-038](#) §§1 and 2 on 9/30/1991*  
*Amended by Ord. [92-065](#) §3 on 11/25/1992*  
*Amended by Ord. [93-004](#) §3 on 3/31/1993*  
*Amended by Ord. [94-008](#) §16 on 6/8/1994*  
*Amended by Ord. [2009-014](#) §1 on 6/22/2009*  
*[Amended by Ord. 2023-001 §3 on X/XX/2023](#)*

**Exhibit D - Ordinance 2023-001****CHAPTER 18.32 MULTIPLE USE AGRICULTURAL ZONE; MUA**

[18.32.010 Purpose](#)

[18.32.020 Uses Permitted Outright](#)

[18.32.030 Conditional Uses Permitted](#)

[18.32.035 Destination Resorts](#)

[18.32.040 Dimensional Standards](#)

[18.32.050 Yards](#)

[18.32.060 Stream Setbacks](#)

[18.32.070 Rimrock Setback](#)

**18.32.030 Conditional Uses Permitted**

The following uses may be allowed subject to DCC 18.128:

- A. Public use.
- B. Semipublic use.
- C. Commercial activities in conjunction with farm use. The commercial activity shall be associated with a farm use occurring on the parcel where the commercial use is proposed. The commercial activity may use, process, store or market farm products produced in Deschutes County or an adjoining County.
- D. Dude ranch.
- E. Kennel and/or veterinary clinic.
- F. Guest house.
- G. Manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in DCC 18.116.070.
- H. Exploration for minerals.
- I. Private parks, playgrounds, hunting and fishing preserves, campgrounds, motorcycle tracks and other recreational uses.
- J. Personal use landing strip for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. No aircraft may be based on a personal use landing strip other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal use landing strip lawfully existing as of September 1, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.
- K. Golf courses.
- L. Type 2 or Type 3 Home Occupation, subject to DCC 18.116.280.

- M. A facility for primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in DCC 18.32.030, means the use of a portable chipper or stud mill or other similar method of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in DCC 18.32.030, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.
- N. Destination resorts.
- O. Planned developments.
- P. Cluster developments.
- Q. A disposal site which includes a land disposal site for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation.~~Landfills when a written tentative approval by the Department of Environmental Quality (DEQ) of the site is submitted with the conditional use application.~~
- R. Time share unit or the creation thereof.
- S. Hydroelectric facility, subject to DCC 18.116.130 and 18.128.260.
- T. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland cement concrete, when such uses are in conjunction with the maintenance or construction of public roads or highways.
- U. Bed and breakfast inn.
- V. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and 18.128.270.
- W. Religious institutions or assemblies, subject to DCC 18.124 and 18.128.080.
- X. Private or public schools, including all buildings essential to the operation of such a school.
- Y. Utility facility necessary to serve the area subject to the provisions of DCC 18.124.
- Z. Cemetery, mausoleum or crematorium.
- AA. Commercial horse stables.
- AB. Horse events, including associated structures, not allowed as a permitted use in this zone.
- AC. Manufactured home park or recreational vehicle park on a parcel in use as a manufactured home park or recreational vehicle park prior to the adoption of PL 15 in 1979 and being operated as of June 12, 1996, as a manufactured home park or recreational vehicle park, including any expansion of such uses on the same parcel, as configured on June 12, 1996.
- AD. A new manufactured home/recreational vehicle park, subject to Oregon Administrative Rules 660-004-0040(8)(g) that:

1. Is on property adjacent to an existing manufactured home/recreational vehicle park;
2. Is adjacent to the City of Bend Urban Growth Boundary; and
3. Has no more than 10 dwelling units.

AE. The full or partial conversion from a manufactured home park or recreational vehicle park described in DCC 18.32.030 (CC) to a manufactured home park or recreational vehicle park on the same parcel, as configured on June 12 1996.

AF. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).

AG. Guest lodge.

AH. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.

#### HISTORY

*Adopted by Ord. [PL-15](#) on 11/1/1979*

*Amended by Ord. [80-206](#) §3 on 10/13/1980*

*Amended by Ord. [83-033](#) §2 on 6/15/1983*

*Amended by Ord. [86-018](#) §7 on 6/30/1986*

*Amended by Ord. [90-014](#) §§27 and 35 on 7/12/1990*

*Amended by Ord. [91-002](#) §7 on 2/6/1991*

*Amended by Ord. [91-005](#) §§19 and 20 on 3/4/1991*

*Amended by Ord. [91-020](#) §1 on 5/29/1991*

*Amended by Ord. [91-038](#) §1 on 9/30/1991*

*Amended by Ord. [92-055](#) §2 on 8/17/1992*

*Amended by Ord. [93-043](#) §§4A and B on 8/25/1993*

*Amended by Ord. [94-008](#) §11 on 6/8/1994*

*Amended by Ord. [94-053](#) §2 on 12/7/1994*

*Amended by Ord. [96-038](#) §1 on 6/12/1996*

*Amended by Ord. [97-017](#) §2 on 3/12/1997*

*Amended by Ord. [97-029](#) §2 on 5/14/1997*

*Amended by Ord. [97-063](#) §3 on 11/12/1997*

*Amended by Ord. [2001-016](#) §2 on 3/28/2001*

*Amended by Ord. [2001-039](#) §2 on 12/12/2001*

*Amended by Ord. [2004-002](#) §4 on 4/28/2004*

*Amended by Ord. [2009-018](#) §1 on 11/5/2009*

*Amended by Ord. [2015-002](#) §1 on 7/8/2015*

*Amended by Ord. [2015-002](#) §1 on 7/8/2015*

*Amended by Ord. [2016-015](#) §3 on 7/1/2016*

*Amended by Ord. [2020-001](#) §4 on 4/21/2020*



Amended by Ord. [2021-004](#) §2 on 5/27/2021

Amended by Ord. [2021-013](#) §5 on 4/5/2022

Amended by Ord. [2023-001](#) §4 on X/XX/2023

**CHAPTER 18.36 FOREST USE ZONE; F-1**[18.36.010 Purpose](#)[18.36.020 Uses Permitted Outright](#)[18.36.030 Conditional Uses Permitted](#)[18.36.040 Limitations On Conditional Uses](#)[18.36.050 Standards For Single-Family Dwellings](#)[18.36.060 Siting Of Dwellings And Structures](#)[18.36.070 Fire Siting Standards For Dwellings And Structures](#)[18.36.080 Fire Safety Design Standards For Roads](#)[18.36.085 Stocking Requirement](#)[18.36.090 Dimensional Standards](#)[18.36.100 Yards And Setbacks](#)[18.36.110 Stream Setbacks](#)[18.36.120 State Law Controls](#)[18.36.130 Rimrock Setbacks](#)[18.36.140 Restrictive Covenants](#)**18.36.020 Uses Permitted Outright**

The following uses and their accessory uses are permitted outright, subject to applicable siting criteria set forth in DCC 18.36 and any other applicable provisions of DCC Title 18.

- A. Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4.
- B. Temporary on-site structures, that are auxiliary to and used during the term of a particular forest operation, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4. As used here, temporary structures are those which are portable and/or not placed on a permanent foundation, and which are removed at the conclusion of the forest operation requiring its use. For the purposes of this section, including DCC 18.36.020(B) and (C) "auxiliary" means a use or alteration of a structure or land, that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.
- C. Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills/land disposal sites, dams, reservoirs, road construction or recreational facilities, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4). Gravel extraction and processing not covered by DCC 18.36.020 is governed by DCC 18.52.
- D. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
- E. Farm use as defined in ORS 215.203.

- F. Local distribution lines (e.g., electric, telephone, natural gas, etc.) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups.
- G. Temporary portable facility for the primary processing of forest products. The facility shall not be placed on a permanent foundation and shall be removed at the conclusion of the forest operation requiring its use.
- H. Exploration for mineral and aggregate resources as defined in ORS 517.
- I. Towers and fire stations for forest fire protection.
- J. Widening of roads within existing rights of way in conformance with the transportation element of the comprehensive plan including public road and highway projects as described in ORS 215.283(1).
- K. Water intake facilities, canals and distribution lines for farm irrigation and ponds.
- L. Uninhabitable structures accessory to fish and wildlife enhancement.
- M. Alteration, restoration or replacement of a lawfully established dwelling that:
  1. Has intact exterior walls and roof structure;
  2. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
  3. Has interior wiring for interior lights;
  4. Has a heating system; and
  5. In the case of replacement, is removed, demolished or converted to an allowable use within three months of completion of the replacement dwelling.
- N. An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under OAR 660-006.

#### HISTORY

*Adopted by Ord. [PL-15](#) on 11/1/1979*

*Amended by Ord. [91-002](#) §8 on 2/6/1991*

*Amended by Ord. [92-025](#) §2 on 4/15/1991*

*Amended by Ord. [91-020](#) §1 on 5/29/1991*

*Amended by Ord. [94-038](#) §1 on 10/5/1994*

*Amended by Ord. [2003-007](#) §1 on 3/26/2003*

*Amended by Ord. [2012-007](#) §3 on 5/2/2012*

*[Amended by Ord. 2023-001 §5 on X/XX/2023](#)*

## Exhibit F - Ordinance 2023-001

### CHAPTER 18.40 FOREST USE ZONE; F-2

[18.40.010 Purpose](#)

[18.40.020 Uses Permitted Outright](#)

[18.40.030 Conditional Uses Permitted](#)

[18.40.040 Limitations On Conditional Uses](#)

[18.40.050 Standards For Single-Family Dwellings](#)

[18.40.060 Siting Of Dwellings And Structures](#)

[18.40.070 Fire Siting Standards For Dwellings And Structures](#)

[18.40.080 Fire Safety Design Standards For Roads](#)

[18.40.085 Stocking Requirement](#)

[18.40.090 Dimensional Standards](#)

[18.40.100 Yards And Setbacks](#)

[18.40.110 Stream Setbacks](#)

[18.40.120 State Law Controls](#)

[18.40.130 Rimrock Setback](#)

#### **18.40.020 Uses Permitted Outright**

The following uses and their accessory uses are permitted outright, subject to applicable siting criteria set forth in DCC 18.40 and any other applicable provisions of DCC Title 18:

- A. Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4.
- B. Temporary on-site structures that are auxiliary to and used during the term of a particular forest operation, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4. As used here, temporary structures are those which are portable and/or not placed on a permanent foundation, and which are removed at the conclusion of the forest operation requiring its use. For the purposes of this section, including DCC 18.36.020(B) and (C) "auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.
- C. Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, ~~landfills~~ land disposal sites, dams, reservoirs, road construction or recreational facilities, subject to the Forest Practices Act (ORS Chapter 527 and Goal 4). Gravel extraction and processing not covered by DCC 18.40.020 is governed by DCC 18.52.
- D. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
- E. Farm use as defined in ORS 215.203.

- F. Local distribution lines (e.g., electric, telephone, natural gas, etc.) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups.
- G. Temporary portable facility for the primary processing of forest products. The facility shall not be placed on a permanent foundation and shall be removed at the conclusion of the forest operation requiring its use.
- H. Exploration for mineral and aggregate resources as defined in ORS 517.
- I. Towers and fire stations for forest fire protection.
- J. Widening of roads within existing rights of way in conformance with the transportation element of the comprehensive plan including public road and highway projects as described in ORS 215.283(1).
- K. Water intake facilities, canals and distribution lines for farm irrigation and ponds.
- L. Uninhabitable structures accessory to fish and wildlife enhancement.
- M. Alteration, restoration or replacement of a lawfully established dwelling that:
  1. Has intact exterior walls and roof structure;
  2. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
  3. Has interior wiring for interior lights;
  4. Has a heating system; and
  5. In the case of replacement, is removed, demolished or converted to an allowable use within three months of completion of the replacement dwelling.
- N. An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under OAR 660-006.

#### HISTORY

*Adopted by Ord. [PL-15](#) on 11/1/1979*

*Amended by Ord. [91-002](#) §9 on 2/6/1991*

*Amended by Ord. [91-005](#) §21 on 3/4/1991*

*Amended by Ord. [92-025](#) §3 on 4/15/1991*

*Amended by Ord. [91-020](#) §1 on 5/29/1991*

*Amended by Ord. [94-038](#) §2 on 10/5/1994*

*Amended by Ord. [2003-007](#) §2 on 3/26/2003*

*Amended by Ord. [2012-007](#) §4 on 5/2/2012*

*[Amended by Ord. 2023-001 §6 on X/XX/2023](#)*

**Exhibit G - Ordinance 2023-001****CHAPTER 18.48 OPEN SPACE AND CONSERVATION ZONE; OS AND C**[18.48.010 Purpose](#)[18.48.020 Uses Permitted Outright](#)[18.48.030 Conditional Uses Permitted](#)[18.48.040 Dimensional Standards](#)[18.48.050 Setbacks](#)[18.48.060 Limitations On Conditional Uses](#)[18.48.070 Limitations On Small Hydroelectric Facilities](#)**18.48.030 Conditional Uses Permitted**

The following uses may be allowed subject to DCC 18.128:

- A. Private parks, picnic areas or hunting and fishing preserves.
- B. Public parks and recreational areas owned and operated by a governmental agency or nonprofit community organization.
- C. Utility facility except ~~landfills~~ land disposal sites.
- D. Water supply and treatment facility.
- E. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and DCC 18.128.270.
- F. Campground.
- G. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- H. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.

**HISTORY**

*Adopted by Ord. [PL-15](#) §4.090(3) on 11/1/1979*

*Amended by Ord. [91-038](#) §1 on 9/30/1991*

*Amended by Ord. [92-004](#) §9 on 2/7/1992*

*Amended by Ord. [94-041](#) §1 on 9/14/1994*

*Amended by Ord. [97-063](#) §3 on 11/12/1997*

*Amended by Ord. [2001-016](#) §2 on 3/28/2001*

*Amended by Ord. [2001-039](#) §3 on 12/12/2001*

*[Amended by Ord. 2023-001 §7 on X/XX/2023](#)*

## Exhibit H - Ordinance 2023-001

### CHAPTER 18.60 RURAL RESIDENTIAL ZONE; RR-10

[18.60.010 Purposes](#)

[18.60.020 Uses Permitted Outright](#)

[18.60.030 Conditional Uses Permitted](#)

[18.60.035 Destination Resorts](#)

[18.60.040 Yard And Setback Requirements](#)

[18.60.050 Stream Setback](#)

[18.60.060 Dimensional Standards](#)

[18.60.070 Limitations On Conditional Uses](#)

[18.60.080 Rimrock Setback](#)

[18.60.090 Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone](#)

#### 18.60.030 Conditional Uses Permitted

The following uses may be allowed subject to DCC 18.128:

- A. Public park, playground, recreation facility or community center owned and operated by a government agency or nonprofit community organization.
- B. Dude ranch.
- C. Type 2 or Type 3 Home Occupation, subject to DCC 18.116.280.
- D. Personal use landing strip for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal use landing strip as used in DCC 18.60.030 means an airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by invited guests. No aircraft may be based on a personal-use landing strip other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use landing strip lawfully existing as of September 1, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.
- E. Planned development.
- F. Cluster development.
- G. Recreation-oriented facility requiring large acreage such as off-road vehicle track or race track, but not including a rodeo grounds.
- H. A disposal site which includes a land disposal site for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation. Landfill when a written tentative approval by Department of Environmental Quality (DEQ) of the site is submitted with the application.
- I. Cemetery.
- J. Time-share unit or the creation thereof.
- K. Hydroelectric facility, subject to DCC 18.116.130 and 18.128.260.

- L. Bed and breakfast inn.
- M. Golf course.
- N. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and 18.128.270.
- O. Religious institutions or assemblies.
- P. Public Uses.
- Q. Semipublic Uses.
- R. Commercial horse stables.
- S. Private or public school, including all buildings essential to the operation of such a school.
- T. Manufactured home park or recreational vehicle park on a parcel in use as a manufactured home park or recreational vehicle park prior to the adoption of PL-15 in 1979 and being operated as of June 12, 1996 as a manufactured home park or recreational vehicle park , including expansion, conversion and combination of such uses on the same parcel, as configured on June 12, 1996.
- U. The full or partial conversion from a manufactured home park or recreational vehicle park described in DCC 18.60.030 (T) to a manufactured home park or recreational vehicle park on the same parcel, as configured on June 12, 1996.
- V. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- W. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.

#### HISTORY

*Adopted by Ord. [PL-15](#) on 11/1/1979*

*Amended by Ord. [83-033](#) §5 on 6/15/1983*

*Amended by Ord. [86-018](#) §13 on 6/30/1986*

*Amended by Ord. [90-014](#) §22 on 7/12/1990*

*Amended by Ord. [91-005](#) §32 on 3/4/1991*

*Amended by Ord. [91-020](#) §1 on 5/29/1991*

*Amended by Ord. [92-004](#) §10 on 2/7/1992*

*Amended by Ord. [93-043](#) §§8A and 8B on 8/25/1993*

*Amended by Ord. [94-008](#) §13 on 6/8/1994*

*Amended by Ord. [96-021](#) §1 on 2/28/1996*

*Amended by Ord. [96-038](#) §2 on 6/12/1996*

*Amended by Ord. [97-017](#) §3 on 3/12/1997*

*Amended by Ord. [97-063](#) §3 on 11/12/1997*

*Amended by Ord. [2001-016](#) §2 on 3/28/2001*



Amended by Ord. [2001-039](#) §5 on 12/12/2001  
Amended by Ord. [2004-002](#) §8 on 4/28/2004  
Amended by Ord. [2009-018](#) §2 on 11/5/2009  
Amended by Ord. [2020-001](#) §5 on 4/21/2020  
Amended by Ord. [2023-001](#) §8 on X/XX/2023

**Exhibit I - Ordinance 2023-001****CHAPTER 18.61 URBAN UNINCORPORATED COMMUNITY ZONE; LA PINE**18.61.010 Purpose18.61.020 Standards In All Districts18.61.030 La Pine Planning Area18.61.040 Wickiup Junction Planning Area18.61.050 Neighborhood Planning Area18.61 Table 1 La Pine Neighborhood Planning Area Density Standards18.61 Table 2 La Pine Neighborhood Planning Area Zoning Standards**18.61.030 La Pine Planning Area**

The La Pine Planning Area is composed of eight zoning districts, each with its own set of allowed uses and regulations, as further set forth in DCC 18.61.030.

## A. La Pine Residential District.

1. Uses Permitted Outright. The following uses and their accessory uses are permitted outright:
  - a. Single-family dwelling.
  - b. Manufactured home subject to DCC 18.116.070.
  - c. Two-family dwelling or duplex.
  - d. Agricultural use as defined in DCC Title 18, subject to the following limitations:
    1. Cows, horses, goats or sheep shall not be kept on lots having an area less than 20,000 square feet. The total number of all such animals over the age of six months shall be limited to the square footage of the lot divided by 20,000.
    2. The number of chickens, fowl or rabbits over the age of six months shall not exceed one for each 500 square feet of land.
  - e. Class II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
  - f. Class III road and street project.
  - g. Excavation, grading or fill and removal activities involved in creation of a wetland in areas not requiring a conditional use permit for fill or removal.
  - h. Forest operation and forest practice including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash.

2. Conditional Uses Permitted. The following uses may be allowed subject to applicable provisions of DCC 18.61 and DCC 18.116, Supplementary Provisions, DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Use:
  - a. Multi-family dwelling with three or more units.
  - b. Park, playground and community building.
  - c. Utility facility, except ~~landfill~~ land disposal sites.
  - d. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland.
  - e. Home occupation.
  - f. Church.
  - g. School.
  - h. Manufactured home park.
  - i. Multi-family dwelling complex.
  - j. Cluster development.
  - k. Nursery school, kindergarten and day care facility.
  - l. Nursing home.
  - m. Public use.
  - n. Residential care facility for more than 15 people.
  - o. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
3. Lot Sizes.
  - a. Partitions:
    1. Parcels served by an approved community, municipal or public water system and an approved community or public sewage system shall have a minimum width of 50 feet and a minimum area of 5,000 square feet.
    2. Parcels served by an approved community, non-community, municipal or public water system, but not by sewer, shall have a minimum width of 100 feet and a minimum area of 22,000 square feet.
    3. Parcels not served by either an approved community, municipal or public water system or an approved community or public sewage system shall have a minimum width of 150 feet with a minimum area of one acre. In addition, all lots must meet Oregon Department of Environmental Quality (DEQ) on-site sewage disposal rules.

- b. Subdivisions: For subdivisions, cluster developments or manufactured home parks, the following standards shall apply:
  - 1. All new lots shall be connected to a DEQ permitted community or municipal sewer system.
  - 2. Minimum lot size for a residential subdivision shall be 5,000 square feet. Maximum residential lot size for a subdivision shall be 15,000 square feet.

4. Dimensional Standards. The following dimensional standards shall apply:

- a. Lot Coverage. The main building and accessory buildings located on any building site or lot shall not cover more than 35 percent of the total lot area.
- b. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as approved under DCC 18.120.040.

5. Yard and Setback Requirements.

- a. Front Yard. The minimum front yard shall be 20 feet, or 10 feet if a garage or carport is located a minimum of 20 feet from the front property line, and the lot fronts on a public or private street.
- b. Side Yard. A side yard shall be a minimum of five feet and the sum of the two side yards shall be a minimum of 15 feet. A street side yard shall be a minimum of 10 feet. A parcel or lot with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet.
- c. Rear Yard. The minimum rear yard shall be 10 feet, or 5 feet if there is vehicular access to the rear property line. A parcel or lot with a rear yard adjacent to zoned forest land shall have a minimum rear yard of 100 feet.

B. La Pine Commercial District.

- 1. Uses Permitted Outright. The following uses and their accessory uses are permitted outright:
  - a. Single-family dwelling on a lot existing on March 27, 1996.
  - b. Manufactured home, on a lot existing on March 27, 1996, subject to DCC 18.116.070.
  - c. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
  - d. Class III road and street project.
  - e. Excavation, grading or fill and removal activities involved in creation of a wetland in areas not requiring a conditional use permit for fill or removal.

2. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.61, DCC 18.116, Supplementary Provisions and DCC 18.124, Site Plan Review:
  - a. Park, playground and community building.
  - b. Public use.
  - c. A building or buildings not exceeding 8,000 square feet of floor space housing any combination of:
    1. Retail store, office and service establishment.
    2. Residential use in the same building as a permitted use.
    3. Art studio in conjunction with retail sales.
    4. Medical clinic.
    5. Automobile service station.
    6. Car wash.
    7. Day care facility.
    8. Restaurant and cocktail lounge.
    9. Club and fraternal lodge.
    10. Automobile and trailer sales.
    11. Uses accessory to the uses identified in DCC 18.61.030.
  - d. Any of the uses allowed under DCC 18.61.030(B)(2)(c) housed in a building or buildings exceeding 8,000 square feet, subject to the provisions of DCC 18.61.030(B)(4).
3. Conditional Uses Permitted. The following uses and their accessory uses are permitted subject to applicable provisions of DCC 18.61 and DCC 18.116, Supplementary Provisions, DCC 18.124, Site Plan Review and DCC 18.128, Conditional Use:
  - a. Multi-family dwelling on a lot existing on March 27, 1996.
  - b. Tourist and travelers' accommodation of up to 100 units, provided the use is served by a community water system as that term is defined in OAR 660-22-010(2).
  - c. Manufactured home park and travel trailer park.
  - d. Church.
  - e. School.

- f. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland, subject to DCC 18.120.050 and 18.128.270.
  - g. Water supply and treatment facility.
  - h. Utility facility, except ~~landfill~~ land disposal sites.
  - i. Television and radio station with or without a transmitter tower.
  - j. Nursing home.
  - k. Residential care facility for more than 15 people.
  - l. A building or buildings not exceeding 8,000 square feet of floor space housing any combination of:
    - 1. Veterinary clinic including enclosed kennel.
    - 2. Automobile repair garage.
    - 3. Commercial amusement and recreation establishment.
    - 4. Shopping complex subject to a master plan.
    - 5. Mini-storage facility.
    - 6. Uses accessory to the uses identified in DCC 18.61.030.
  - m. Any of the uses allowed under DCC 18.61.030(B)(3)(l) housed in a building or buildings exceeding 8,000 square feet subject to the provisions of DCC 18.61.030(B)(4).
  - n. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
4. Special Requirements for Large Scale Uses. Any of the uses listed in DCC 18.61.030(B)(2)(d) and 18.61.030(B)(3)(m) may be allowed in a building or buildings exceeding 8,000 square feet of floor space if the Planning Director or Hearings Body finds:
- a. That the intended customers for the proposed use will come from the community and surrounding rural area, or the use will meet the travel needs of the people passing through the area;
  - b. The use will primarily employ a work force from the community and surrounding rural area; and
  - c. That it is not practical to locate the use in a building or buildings under 8,000 square feet of floor space.

For the purposes of DCC 18.61.030, the surrounding rural area shall be that area identified in the map depicted as Figure 5 in the La Pine Urban Unincorporated Community section of the Comprehensive Plan.

5. Lot Size and Dimensional Standards.

- a. Lot Size. New commercial lots shall be served by an approved community or public sewage system and shall have a minimum width of 50 feet and a minimum area of 5,000 square feet.
- b. Lot Coverage. No requirements.
- c. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as approved under DCC 18.120.040.

6. Yard and Setback Requirements.

- a. Front Yard. The front yard shall be no more than 15 feet, except as otherwise allowed by DCC 18.124.070(D)(3) and except when abutting a lot in a Residential District, in which case the front yard shall be the front yard required in the abutting Residential District. All buildings shall be set at the front yard setback line.
- b. Side Yard. None required, except when a parcel or lot with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet.
- c. Rear Yard. None required, except when abutting a yard in a Residential District, and then the rear yard shall be a minimum of 20 feet. A parcel or lot with a rear yard adjacent to zoned forest land shall have a minimum rear yard of 100 feet.

C. La Pine Industrial District.

1. Uses Permitted Outright. The following uses and their accessory uses are permitted outright:
  - a. Agricultural use as defined in DCC Title 18.
  - b. Excavation, grading or fill and removal activities involved in creation of a wetland in areas not requiring a conditional use permit for fill or removal.
  - c. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
  - d. Class III road or street project.
  - e. Forest operation and forest practice including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash.
2. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to DCC 18.61.030(C)(4)(c)(2) and other applicable provisions of DCC 18.61 and DCC 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review:

- a. Expansion of a valid use existing on December 5, 1994.
  - b. Public use compatible with industrial uses.
  - c. Uses that require proximity to rural resources, as defined in OAR 660-04-022(3)(a).
  - d. Scientific research or experimental development of materials, methods or products, including engineering and laboratory research.
  - e. Light manufacturing, assembly, fabricating or packaging and wholesale distribution.
  - f. Cold storage plant, including storage and office.
  - g. Kennel or veterinary clinic operated entirely within an enclosed building.
  - h. Processing use such as bottling plant, creamery, laboratory, blueprinting and photocopying, laundry, carpet and rug cleaning plant, cleaning and dyeing plant and tire retreading, recapping and rebuilding.
  - i. Contractor's equipment storage or sale yard, house mover, delivery vehicles, transit storage, trucking terminal and used equipment in operable condition.
  - j. Manufacture of concrete products and ceramic products using only previously comminuted raw materials.
  - k. All types of automobile, motorcycle, boat, trailer and truck sales, service, repair, storage and rental.
  - l. Retail or combination retail/wholesale lumber and building materials yard, not including concrete mixing.
  - m. Manufactured home sales and service.
  - n. Plant nursery and greenhouse.
3. Conditional Uses Permitted. The following uses may be allowed subject to the applicable provisions of DCC 18.61 and DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Use:
- a. Mini-storage facility.
  - b. Hydroelectric facility, subject to DCC 18.116.130 and 18.128.260.
  - c. Asphalt plant.
  - d. Lumber manufacturing and wood processing including pulp and paper manufacturing.
  - e. Electrical substation.
  - f. Concrete, asphalt and ready-mix plant.



- g. Petroleum products storage and distribution.
  - h. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland cement concrete.
  - i. Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.
  - j. Railroad track, freight depot and related facilities.
  - k. Agricultural products storage and processing plant.
  - l. Transfer station.
  - m. Automotive wrecking yard totally enclosed by a sight-obscuring fence.
  - n. Any use permitted by DCC 18.61.030(C)(2) that is expected to:
    - 1. Require lot coverage in excess of 70 percent;
    - 2. Require more than one acre of land; or
    - 3. Generate any odor, dust, fumes, glare, flashing lights or noise that would be perceptible without instruments 500 feet from the property line of the subject use.
  - o. Service commercial use, such as office, restaurant, cafe, refreshment stand, bar and tavern, whose primary purposes is to serve industrial uses in the surrounding area, provided that such use is allowed as part of an Industrial Park Master Plan.
  - p. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
  - q. Utility facilities
4. Use Limits. The following limitations and standards shall apply to uses listed in DCC 18.61.030(C)(2) and (3):
- a. Sewer and Water Requirements:
    - 1. New uses that require DEQ Water Pollution Control Facility (WPCF) permits shall be required to connect to the La Pine Sewer Treatment Facility in lieu of obtaining a WPCF permit.
    - 2. Uses that do not require a WPCF permit shall demonstrate the ability to obtain approval for an on-site sewage disposal system either before approval of the land use permit or as a condition of permit approval.
    - 3. If a use requires more than 5,000 gallons of water per day, an application shall be made to the Oregon Water Resources Department for a water rights permit or the use must be connected to a municipal, community or public water system.

b. Compatibility:

1. A use that requires a lot area exceeding 9,000 square feet shall not be permitted to locate adjacent to a lot in a residential district.
2. A use expected to generate more than 30 truck trailer or other heavy equipment trips per day to and from the subject property shall not be permitted to locate on a lot adjacent to or across a street from a lot in a residential district.
3. Any use on a lot adjacent to or across the street from a lot in a residential district shall not emit odor, dust, fumes, glare, flashing lights, noise or similar disturbances perceptible without instruments more than 200 feet in the direction of the affected residential use or lot.
4. Storage, loading and parking areas for uses permitted by DCC 18.61.030(C)(2) and (3) shall be screened from residential zones using trees, vegetation, and topography to the maximum extent practicable to screen the area from view of nearby residences.
5. No use requiring air contaminant discharge permits shall be approved by the Planning Director or Hearings Body prior to review by the applicable state or federal permit reviewing authority, nor shall such uses be permitted adjacent to or across a street from a residential lot.
6. A property hosting a service commercial use shall be subject to a waiver of remonstrance recorded in the Deschutes County Book of Records declaring that the operator and his or her successors will not now or in the future file a complaint aimed at curtailing industrial activities on adjacent properties conducted in conformance with DCC 18.61.
7. Exhaust stacks shall be screened from residential zones using trees, vegetation, and topography to the maximum extent practicable to screen the stack from view of nearby residences.

c. Traffic/Parking.

1. A use that generates more than 20 auto or truck trips during the busiest hour of the day to and from the premises shall be served directly by an arterial or collector.
2. An applicant must demonstrate that affected transportation facilities are adequate to serve the proposed use, considering the functional classification, capacity and the level of service of such facilities.
3. All parking demand created by any use permitted by DCC 18.61.030(C) shall be accommodated on the applicant's premises entirely off-street.
4. There shall be only one ingress and one egress from properties accommodating uses covered by DCC 18.61.030(C) per each 300 feet or

fraction thereof of street frontage. If necessary to meet this requirement, uses shall provide for shared ingress and egress.

- d. Requirements for Large Scale Uses. Any industrial use listed in DCC 18.61.030(C)(2) and (3) may be allowed in a building or buildings exceeding 20,000 square feet of floor space if the Planning Director or Hearings Body finds:
  1. That such uses are necessary to provide employment that does not exceed the total projected work force within the community and the surrounding rural area;
  2. That such uses would not rely upon a work force served by uses within urban growth boundaries; and
  3. That the determination of the work force of the community and surrounding rural area considers the total industrial and commercial employment in the community and is coordinated with employment projections for nearby urban growth boundaries.
5. Additional Requirements. As a condition of approval of any use proposed, the Planning Director or Hearings Body may require:
  - a. An increase in required setbacks.
  - b. Additional off-street parking and loading facilities.
  - c. Limitations on signs or lighting, hours of operation and points of ingress and egress.
  - d. Additional landscaping, screening and other improvements.
6. Dimensional Standards. The following dimensional standards shall apply:
  - a. Minimum Lot Size. The minimum lot size shall be determined subject to the provisions of DCC 18.61.030(C) concerning setback requirements, off-street parking and loading.
  - b. Lot Coverage. Notwithstanding DCC 18.61.030(C)(3)(n), a use permitted by DCC 18.61.030(C) is located adjacent to or across the street from a lot in a residential district shall not exceed 70 percent lot coverage by all buildings, storage areas or facilities and required off-street parking and loading area.
  - c. Setbacks.
    1. The minimum building setback between a nonrailroad related structure and a street, road or railroad right of way line shall be 50 feet unless a greater setback is required for compliance with Comprehensive Plan policies.
    2. The minimum setback between a structure and a property line adjoining a residential district shall be 50 feet.

3. The minimum setback between a structure and an existing use shall be three feet from the property line and at least six feet from a structure on the adjoining property.
  - d. Building Heights. The maximum building height for any structure shall be 30 feet on any lot adjacent to a residential district and 45 feet on any lot not adjacent to a residential district or that is separated from a residential district by a street or road. The following exceptions apply:
    1. If a building on a lot adjacent to a residential district, but not separated by a street or road, is set back 100 feet or more from the residential district, the maximum height shall be 45 feet; and
    2. The maximum height for utility facility structures shall be 100 feet provided:
      - A. The structure is located on a lot that is not adjacent to a residential district;
      - B. The structure is the minimum height necessary to accommodate machinery and equipment;
      - C. The structure is equipped with fire sprinkler protection in accordance with current adopted editions of the Oregon Structural Specialty Code, Oregon Fire Code, and National Fire Protection Association 13; and
      - D. The structure is at least 500 feet from the nearest residential district.
  - e. Utility facility exhaust stacks shall meet the DEQ air quality permit requirements, but shall not exceed DEQ permit minimum height requirements or 150 feet in height, whichever is less.
  - f. Minimum Lot Frontage. The minimum lot frontage shall be 50 feet.
  - g. Side Yard. None required, except when a parcel or lot with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet.
  - h. Rear Yard. None required, except when abutting a yard in a Residential District, and then the rear yard shall be a minimum of 20 feet. A parcel or lot with a rear yard adjacent to zoned forest land shall have a minimum rear yard of 100 feet.
- D. La Pine Business Park District.
1. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.61 and 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review:
    - a. Commercial use, as defined in DCC 18.04, in a building or buildings each not exceeding 8,000 square feet of floor space.

- b. Industrial use, as defined in DCC 18.04, in a building or buildings not exceeding 20,000 square feet of floor space.
- 2. Conditional Uses Permitted. Notwithstanding the uses allowed under DCC 18.61.030(D)(1), the following uses may be allowed subject to the applicable provisions of DCC 18.61 and DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Use:
  - a. Mini-storage facility.
  - b. Processing use such as bottling plant, creamery, laboratory, blueprinting and photocopying, laundry, carpet and rug cleaning plant, cleaning and dyeing plant and tire retreading, recapping and rebuilding.
  - c. Contractor's equipment storage or sale yard, house mover, delivery vehicles, transit storage, trucking terminal and used equipment in operable condition.
  - d. Manufacture of concrete products and ceramic products using only previously comminuted raw materials.
  - e. Manufactured home sales and service.
  - f. Lumber manufacturing and wood processing.
  - g. Electrical substation.
  - h. Agricultural products storage and processing plant.
  - i. Any use permitted by DCC 18.61.030(D) that is expected to:
    - 1. Require lot coverage in excess of 70 percent;
    - 2. Require more than one acre of land; or
    - 3. Generate any odor, dust, fumes, glare, flashing lights or noise that would be perceptible without instruments 500 feet from the property line of the subject use.
  - j. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- 3. Additional Requirements for Large Scale Uses. A commercial use in the Business Park District may be allowed in a building or buildings exceeding 8,000 square feet of floor space if the Planning Director or Hearings Body finds:
  - a. That the intended customers for the proposed use will come from the community and surrounding rural area, or the use will meet the travel needs of the people passing through the area, for the purposes of DCC 18.61.030(D), the surrounding rural area shall be that area identified in the map depicted as Figure 5 in the La Pine Urban Unincorporated Community section of the Comprehensive Plan;

- b. The use will primarily employ a work force from the community and surrounding rural area; and
  - c. That it is not practical to locate the use in a building or buildings under 8,000 square feet of floor space.
4. Use Limits. The following limitations and standards shall apply to all uses:
- a. Sewer and Water Requirements:
    - 1. New uses shall be required to connect to the La Pine Sewer Treatment Facility.
    - 2. New uses must be connected to a municipal, community or public water system.
  - b. Compatibility:
    - 1. A use that requires a lot area exceeding 9,000 square feet shall not be permitted to locate adjacent to a lot in a residential district.
    - 2. A use expected to generate more than 30 truck-trailer or other heavy equipment trips per day to and from the subject property shall not be permitted to locate on a lot adjacent to or across a street from a lot in a residential district.
    - 3. Any use on a lot adjacent to or across the street from a lot in a residential district shall not emit odor, dust, fumes, glare, flashing lights, noise, or similar disturbances perceptible without instruments more than 200 feet in the direction of the affected residential use or lot.
    - 4. Storage, loading and parking areas for all uses shall be screened from residential zones.
    - 5. No use requiring air contaminant discharge permits shall be approved by the Planning Director or Hearings Body prior to review by the applicable state or federal permit reviewing authority, nor shall such uses be permitted adjacent to or across a street from a residential lot.
    - 6. A property hosting a service commercial use shall be subject to a waiver of remonstrance recorded in the Deschutes County Book of Records declaring that the operator and his or her successors will not now or in the future file a complaint aimed at curtailing industrial activities on adjacent properties conducted in conformance with DCC 18.61.
  - c. Traffic/Parking
    - 1. A use that generates more than 20 auto or truck trips during the busiest hour of the day to and from the premises shall be served directly by an arterial or collector.

2. An applicant must demonstrate that affected transportation facilities are adequate to serve the proposed use, considering the functional classification, capacity and the level of service of such facilities.
  3. All parking demand created by any use permitted by DCC 18.61.030(D) shall be accommodated on the applicant's premises entirely off-street.
  4. Parking may be allowed within the front yard building setback area except that no parking shall be allowed within 10 feet of any street.
  5. There shall be only one ingress and one egress from properties accommodating uses permitted by DCC 18.61.030(D) per each 300 feet or fraction thereof of street frontage. If necessary to meet this requirement, uses shall provide for shared ingress and egress.
5. Additional Requirements. As a condition of approval of any use proposed, the Planning Director or Hearings Body may require:
- a. An increase in required setbacks.
  - b. Additional off-street parking and loading facilities.
  - c. Limitations on signs or lighting, hours of operation and points of ingress and egress.
  - d. Additional landscaping, screening and other improvements.
6. Dimensional Standards. The following dimensional standards shall apply:
- a. Minimum Lot Size. The minimum lot size shall be determined subject to the provisions of DCC 18.61.030(D) concerning setback requirements, off-street parking and loading.
  - b. Minimum Lot Frontage. The minimum lot frontage shall be 50 feet.
  - c. Lot Coverage. A use permitted by DCC 18.61.030(D), which is located adjacent to or across the street from a lot in a residential district shall not exceed 70 percent lot coverage by all buildings, storage areas or facilities and required off-street parking and loading area.
7. Setbacks.
- a. Front Yard. The minimum setback between a building and the street that provides ingress and egress to that building shall be 30 feet unless a greater setback is required for compliance with Comprehensive Plan policies.
  - b. Side Yard. None required, a structure and a property line adjoining a street shall be 10 feet.
  - c. Rear Yard. None required, except the minimum setback between a structure and a property line adjoining a street or a residential district shall be 20 feet. A

parcel or lot with a rear yard adjacent to zoned forestland shall have a minimum rear yard of 100 feet.

- d. The minimum setback between a structure and an existing use shall be three feet from the property line and six feet from a structure on the adjoining property.

- 8. Building Height. The maximum building height for any structure shall be 30 feet on any lot adjacent to a residential district and 45 feet on any lot not adjacent to a residential district or that is separated from a residential district by a street or road. However, if a building on a lot adjacent to a residential district, but not separated by a street or road, is set back 100 feet or more from the residential district, the maximum height shall be 45 feet.

E. La Pine Sewer Treatment District.

- 1. Uses Permitted Outright. The following uses and their accessory uses are permitted outright:
  - a. Any use that is allowed by ORS 215.283(1), including utility facility necessary for public service, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height.
- 2. Conditional Uses Permitted. The following uses may be allowed subject to applicable provisions of DCC 18.61 and DCC 18.116, Supplementary Provisions, DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Use and DCC 18.16.040(A):
  - a. Parks, playground or community centers owned and operated by a governmental agency or a nonprofit community organization.
- 3. Dimensional Standards. The following dimensional standards shall apply:
  - a. Lot Coverage. No requirements.
  - b. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as approved under DCC 18.120.040.
- 4. Yard and Setback Requirements.
  - a. Front Yard. The minimum front yard shall be 20 feet.
  - b. Side Yard. A side yard shall be a minimum of five feet and the sum of the two side yards shall be a minimum of 15 feet.
  - c. Rear Yard. The minimum rear yard shall be 20 feet.

F. La Pine Flood Plain District. All uses proposed within this district shall be subject to the provisions in DCC 18.96, Flood Plain Zone.

G. La Pine Community Facility District.



1. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.61, DCC 18.116, Supplementary Provisions and DCC 18.124, Site Plan Review:
  - a. Performing arts center.
  - b. Swimming pool.
  - c. Community center.
  - d. Public use.
  - e. School.
  - f. Theater.
2. Yard and Setback Requirements.
  - a. Front Yard. The front yard shall be no more than 15 feet, except as otherwise allowed by DCC 18.124.070(D)(2) and except when abutting a lot in a Residential District, in which case the front yard shall be the front yard required in the abutting Residential District. All buildings shall be set at the front yard setback line. A parcel or lot with a front yard adjacent to zoned forest land shall have a minimum front yard of 100 feet.
  - b. Side Yard. None required, except when abutting a lot in a Residential District in which case the side yard shall be the side yard required in the abutting Residential District. A parcel or lot with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet.
  - c. Rear Yard. None required, except when abutting a yard in a Residential District, and then the rear yard shall be a minimum of 20 feet. A parcel or lot with a rear yard adjacent to zoned forest land shall have a minimum rear yard of 100 feet.
3. Dimensional Standards. The following dimensional standards shall apply:
  - a. Lot Coverage. No requirements.
  - b. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as approved under DCC 18.120.040.
4. Lot Size.
  - a. Lot Size. New lots shall have a minimum width of 50 feet and a minimum area of 5,000 square feet.
  - b. Lot Coverage. No requirements.
  - c. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as approved under DCC 18.120.040.

5. Additional Requirements. As a condition of approval of any use proposed, the Planning Director or Hearings Body may require:
  - a. An increase in required setbacks.
  - b. Additional off-street parking and loading facilities.
  - c. Limitations on signs or lighting, hours of operation and points of ingress and egress.
  - d. Additional landscaping, screening and other improvements.

H. La Pine Community Facility Limited District.

1. Uses Permitted Outright.
  - a. Multi-use path.
2. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to applicable provisions of DCC 18.61 and DCC 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review:
  - a. School.
  - b. Park or playground.

HISTORY

*Adopted by Ord. [96-003](#) §1 on 3/27/1996*  
*Amended by Ord. [97-017](#) §4 on 3/12/1997*  
*Amended by Ord. [97-041](#) §1 on 5/14/1997*  
*Amended by Ord. [97-063](#) §3 on 11/12/1997*  
*Amended by Ord. [2000-015](#) §2 on 8/9/2000*  
*Amended by Ord. [2001-044](#) §3 on 10/10/2001*  
*Amended by Ord. [2002-033](#) §1 on 9/25/2002*  
*Amended by Ord. [2003-002](#) §1 on 4/8/2003*  
*Amended by Ord. [2009-025](#) §1 on 11/30/2009*  
*Amended by Ord. [2010-029](#) §1 on 9/8/2010*  
*Repealed by Ord. [2018-005](#) §10 on 10/10/2018*  
*Amended by Ord. [2019-010](#) §1 on 5/8/2019*  
*[Amended by Ord. 2023-001 §9 on X/XX/2023](#)*

**[18.61.040 Wickiup Junction Planning Area](#)**

The Wickiup Junction Planning Area is composed of one Commercial/Residential zoning district with its own set of allowed uses and regulations, as further set forth in DCC 18.61.040.

- A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright:
  1. Single-family dwelling.
  2. Manufactured home subject to DCC 18.116.070.

3. Two-family dwelling or duplex.
  4. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
  5. Class III road and street project.
  6. Excavation, grading or fill and removal activities involved in creation of a wetland in areas not requiring a conditional use permit for fill or removal.
- B. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to applicable provisions of DCC18.61 and DCC 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review:
1. Park, playground and community building.
  2. Public Use.
  3. A building or buildings not exceeding 8,000 square feet of floor space housing any combination of:
    - a. Retail store, office and service establishment.
    - b. Residential use in conjunction with a permitted use.
    - c. Art studio in conjunction with a permitted use.
    - d. Medical clinic.
    - e. Automobile service station.
    - f. Car wash.
    - g. Day care facility.
    - h. Restaurant and cocktail lounge.
    - i. Club and fraternal lodge.
    - j. Automobile and trailer sales.
    - k. Any new use, or the expansion of an existing use, allowed under DCC 18.61.040(B)(3) housed in a building or buildings exceeding 8,000 square feet of floor space, but not greater than 12,000 square feet of floor space, subject to the provisions of DCC 18.61.040 (D).
- C. Conditional Uses Permitted. The following uses and their accessory uses are permitted subject to applicable provisions of DCC 18.61 and DCC 18.116, Supplementary Provisions, DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Uses:
1. Multi-family dwelling with three or more units.
  2. Tourist and travelers' accommodations of up to 100 units, provided the use is served by a community sewer system as that term is defined in OAR 660-22-010 (2).

3. Manufactured home park.
  4. Travel trailer park.
  5. Cluster development.
  6. Church.
  7. School.
  8. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and DCC 18.128.270.
  9. Water supply and treatment facility.
  10. Utility facility, except ~~landfill~~land disposal sites.
  11. Television and radio station with or without a transmitter tower.
  12. Nursing home.
  13. Residential care facility for more than 15 people.
  14. A building or buildings not exceeding 8,000 square feet of floor space housing any combination of:
    - a. Veterinary clinic including enclosed kennel.
    - b. Automobile repair garage.
    - c. Commercial amusement and recreation establishment.
    - d. Shopping complex subject to a master plan.
    - e. Mini-storage facility.
    - f. Uses accessory to the uses identified in DCC 18.61.040.
  15. Any new use, or the expansion of an existing use, allowed under DCC 18.61.040(C)(14) housed in a building or buildings exceeding 8,000 square feet, but not greater than 12,000 square feet, subject to the provisions of DCC 18.61.040 (D).
  16. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- D. Special Requirements for Large Scale uses. Any of the uses listed in DCC 18.61.040(B)(3) and 18.61.040(C)(14) may be allowed in a building or buildings exceeding 8,000 square feet of floor space but not greater than 12,000 square feet of floor space if the Planning Director or Hearings Body finds, based on evidence submitted by the applicant:
1. That the intended customers for the proposed use will come from the community and surrounding rural area, or the use will meet the travel needs of the people passing through the area;

2. The use will primarily employ a work force from the community and surrounding rural area; and
  3. That it is not practical to locate the use in a building or buildings under 8,000 square feet of floor space but could locate the use in a building not exceeding 12,000 square feet of floor space.
- E. For the purposes of DCC 18.61.040, the surrounding rural area shall be that area identified in the map depicted as Figure 5 in the La Pine Urban Unincorporated Community section of the Comprehensive Plan.
- F. Lot Size.
1. New lots or parcels served by an approved community, municipal or public water system and an approved community or public sewage system shall have a minimum width of 50 feet and a minimum area of 6,000 square feet. Maximum lot size for residential subdivisions shall be 15,000 square feet.
  2. New lots or parcels served by either an approved community, non-community, municipal or public water system shall have a minimum width of 100 feet and a minimum area of 22,000 square feet.
  3. New lots or parcels not served by either an approved community, municipal or public water system or an approved community or public sewer system shall have a minimum width of 150 feet with a minimum are of one acre. In addition, an applicant shall demonstrate that:
    - a. The lot or parcel can meet DEQ on-site sewage disposal rules then in effect, which can be demonstrated either prior to land division approval or as a condition of such approval;
    - b. Residential subdivision will be served by either a municipal or community water system or a non-community public water system.
- G. Dimensional Standards. The following dimensional standards shall apply:
1. Lot Coverage. No requirements.
  2. Building Height. No building or structure shall be erected or enlarged to exceed thirty (30) feet in height, except as approved under DCC 18.120.040.
- H. Yards.
1. Front Yard. The front yard shall be no more than 20 feet, except as otherwise allowed by DCC 18.124.070(D)(2). All buildings shall be set at the front yard setback line.
  2. Side Yard. None required, except when a parcel or lot with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet.
  3. Rear Yard. None required, except when a parcel or lot with a rear yard adjacent to zoned forest land shall have a minimum rear yard of 100 feet.

HISTORY

Adopted by Ord. [96-003](#) §1 on 3/27/1996

Amended by Ord. [97-063](#) §3 on 11/12/1997

Amended by Ord. [2000-015](#) §2 on 8/9/2000

Amended by Ord. [2002-015](#) §1 on 6/19/2002

Amended by Ord. [2003-008](#) §1 on 2/26/2003

Amended by Ord. [2004-013](#) §6 on 9/21/2004

Amended by Ord. [2023-001](#) §9 on X/XX/2023

**CHAPTER 18.65 RURAL SERVICE CENTER; UNINCORPORATED COMMUNITY ZONE****18.65.010 Purpose****18.65.020 RSC; Commercial/Mixed Use District (Brothers, Hampton, Millican, Whistlestop And Wildhunt)****18.65.021 Alfalfa RSC; Commercial/Mixed Use District****18.65.022 Alfalfa RSC; Residential District****18.65.023 RSC; Open Space District****18.65.030 Standards For All Districts****18.65.023 RSC; Open Space District**

- A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright, subject to applicable provisions of this chapter:
1. Agricultural uses, as defined in Title 18, and excluding livestock feed lot sales yard, and hog or mink farms.
  2. Public and nonprofit agencies, museums and exhibits on lands where an exception has been granted in accordance with Oregon Administrative Rules chapter 660, Division 022.
  3. Public wildlife reserve or management area, not including structures.
  4. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
  5. Class III road or street project.
  6. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- B. Conditional Uses Permitted. The following uses and their accessory uses are permitted, subject to the applicable provisions of this chapter, DCC 18.116, Supplementary Provisions, DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Use, of this title:
1. Private parks, picnic areas or hunting and fishing preserves.
  2. Public parks and recreational areas owned and operated by a governmental agency or nonprofit community organization.
  3. Campground.
  4. Utility facility except ~~landfills~~ land disposal sites.
  5. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- C. Yard and Setback Requirements.
1. The front yard setback shall be a minimum of 20 feet from a property line fronting on a local street right of way and 50 feet from an arterial right of way.
  2. The minimum side yard setback shall be 10 feet.

3. The minimum rear yard setback shall be 20 feet.
  4. The minimum side and rear yard setbacks for property that is adjacent to land zoned exclusive farm use shall be 50 feet.
- D. Lot Requirements. The minimum lot size shall be determined by the site plan requirements for a proposed public use.

HISTORY

*Adopted by Ord. [2002-002](#) §2 on 6/5/2002*

*[Amended by Ord. 2023-001 §10 on X/XX/2023](#)*



**CHAPTER 18.76 AIRPORT DEVELOPMENT ZONE; A-D**

[18.76.010 Purpose](#)

[18.76.015 Definitions](#)

[18.76.020 Standards In All Districts](#)

[18.76.030 Uses Permitted Outright](#)

[18.76.040 Conditional Uses](#)

[18.76.050 Use Limitations](#)

[18.76.060 Dimensional Standards](#)

[18.76.070 Airfield Operations District \(AOD\)](#)

[18.76.080 Aviation Support District \(ASD\)](#)

[18.76.090 Aviation-Related Industrial District \(ARID\)](#)

[18.76.100 Design And Use Criteria](#)

[18.76.105 Hangars](#)

[18.76.110 Additional Requirements](#)

**18.76.040 Conditional Uses**

The following uses may be allowed in all of the Airport Districts subject to DCC 18.128.

- A. Farm accessory buildings and uses, excluding residential uses.
- B. Utility facility necessary for public service except ~~landfills~~ land disposal sites.
- C. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and/or DCC 18.128.270.

**HISTORY**

*Adopted by Ord. [PL-15](#) §4.160(3) on 11/1/1979*

*Amended by Ord. [91-038](#) §1 on 9/30/1991*

*Amended by Ord. [2001-016](#) §2 on 3/28/2001*

*Amended by Ord. [2001-039](#) §10 on 12/12/2001*

*Repealed & Reenacted by Ord. [2003-036](#) §2 on 11/5/2003*

*Amended by Ord. 2023-001 §11 on X/XX/2023*

**CHAPTER 18.80 AIRPORT SAFETY COMBINING ZONE; A-S**[18.80.010 Purpose](#)[18.80.020 Application Of Provisions](#)[18.80.022 Definitions](#)[18.80.024 Imaginary Surface And Noise Impact Boundaries](#)[18.80.026 Notice Of Land Use And Permit Applications](#)[18.80.028 Height Limitations](#)[18.80.030 Redmond Municipal Airport](#)[18.80.032 Bend Municipal Airport](#)[18.80.034 Sunriver Airport](#)[18.80.036 Sisters Eagle Air Airport](#)[18.80.038 Cline Falls Airpark](#)[18.80.040 Juniper Airpark](#)[18.80.044 Land Use Compatibility](#)[18.80.050 Uses Permitted Outright](#)[18.80.054 Conditional Uses](#)[18.80.056 Additional Requirements](#)[18.80.058 Non-Conforming Uses](#)[18.80.060 Variances](#)[18.80.062 Dimensional Standards](#)[18.80.064 Procedures](#)[18.80.072 Water Impoundments](#)[18.80.074 Wetland Mitigation, Creation, Enhancement And Restoration](#)[18.80.076 Water Impoundment Notification](#)[18.80.078 FAA Notification \(Form 7460-1\)](#)[18.80 Table 1 Land Use Compatibility](#)[18.80 Table 2 Noise Compatibility](#)[18.80 Declaration Of Anticipated Noise](#)**18.80.026 Notice Of Land Use And Permit Applications**

Except as otherwise provided herein, written notice of applications for land use or limited land use decisions, including comprehensive plan or zoning amendments, in an area within this overlay zone, shall be provided to the airport sponsor and the Department of Aviation in the same manner as notice is provided to property owners entitled by law to written notice of land use or limited land use applications. [ORS 836.623(1); OAR 738-100-010; ORS 215.416(6); ORS 227.175(6)]

For the Redmond, Bend, Sunriver, and Sisters airports:

- A. Notice shall be provided to the airport sponsor and the Department of Aviation when the property, or a portion thereof, that is subject to the land use or limited land use application is located within 10,000 feet of the sides or ends of a runway:
- B. Notice of land use and limited land use applications shall be provided within the following timelines.

1. Notice of land use or limited land use applications involving public hearings shall be provided prior to the public hearing at the same time that written notice of such applications is provided to property owners entitled to such notice.
  2. Notice of land use or limited land use applications not involving public hearings shall be provided at least 20 days prior to entry of the initial decision on the land use or limited land use application.
  3. Notice of the decision on a land use or limited land use application shall be provided to the airport sponsor and the Department of Aviation within the same timelines that such notice is provided to parties to a land use or limited land use proceeding.
  4. Notices required under DCC 18.80.026(B)(1-3) need not be provided to the airport sponsor or the Department of Aviation where the land use or limited land use application meets all of the following criteria:
    - a. Would only allow structures of less than 35 feet in height;
    - b. Involves property located entirely outside the approach surface;
    - c. Does not involve industrial, mining or similar uses that emit smoke, dust or steam; ~~sanitary landfills~~ land disposal sites or water impoundments; or radio, radiotelephone, television or similar transmission facilities or electrical transmission lines; and
    - d. Does not involve wetland mitigation, enhancement, restoration or creation. For the Cline Falls and Juniper airports:
- C. Written notice of applications for land use or limited land use decisions, including comprehensive plan or zoning amendments, shall be provided to the airport sponsor and the Department of Aviation in the same manner and within the same timelines as notice is provided to property owners entitled by law to written notice of land use or limited land use applications. Where the application does not involve a public hearing, such notice shall be provided at least 20 days prior to entry of the initial decision on the land use or limited land use application. [ORS 215.416(6); ORS 227.175(6); OAR 738-100-010]
- D. Notice of the decision on a land use or limited land use application shall be provided to the airport sponsor and the Department of Aviation within the same timelines that such notice is provided to parties to a land use or limited land use proceeding.

#### HISTORY

*Adopted by Ord. [PL-15](#) on 11/1/1979*

*Repealed & Reenacted by Ord. [91-020](#) §1 on 5/29/1991*

*Amended by Ord. [2001-001](#) §2 on 1/22/2001*

*[Amended by Ord. 2023-001 §12 on X/XX/2023](#)*

#### [18.80 Table 1 Land Use Compatibility](#)

	Location:				
Use:	RPZ <sup>(1)</sup>	Transitional Surface	Approach Surface <sup>(8)</sup>	Direct Impact Area	Secondary Impact Area
Public Airport	L <sup>(2)</sup>	P	L <sup>(9)</sup>	P	P
Residential	N	N	L <sup>(10)</sup>	P	P
Commercial	N	L <sup>(14)</sup>	L <sup>(9)</sup>	P	P
Industrial	N	P	L <sup>(9)</sup>	P	P
Institutional	N	L <sup>(14)</sup>	L <sup>(9)</sup>	P	P
Farm Use	P <sup>(3)</sup>	P <sup>(3)</sup>	P <sup>(3)</sup>	P <sup>(3)</sup>	P <sup>(3)</sup>
Road/Parking	L <sup>(4)</sup>	P	P	P	P
Utility	L <sup>(5)</sup>	L <sup>(5)</sup>	L <sup>(5)</sup>	L <sup>(5)</sup>	L <sup>(5)</sup>
Parks/Open Space	L <sup>(6)</sup>	P	P	P	P
Golf Course <sup>(17)</sup>	L <sup>(7)</sup>	L <sup>(7)</sup>	L <sup>(7,9)</sup>	L <sup>(7)</sup>	L <sup>(7)</sup>
Athletic Field	N	N	L <sup>(9)</sup>	P	P
<u>Sanitary Landfill/Land Disposal Site</u>	N	N	N	N	N <sup>(16)</sup>
Waste Water Treatment Plant	N	N	N	N	L <sup>(15)</sup>
Mining	N	N	L <sup>(11)</sup>	L <sup>(11)</sup>	L <sup>(11)</sup>
Water Impoundment	N	N	N,L <sup>(12)</sup>	L <sup>(12)</sup>	L <sup>(12)</sup>
Wetland Mitigation		N	L <sup>(13)</sup>	L <sup>(13)</sup>	L <sup>(13)</sup>

Key to Table:

P = Use is Permitted.

L = Use is Allowed Under Limited Circumstances (see notes). N = Use is Not Allowed.

Numbers in parentheses refer to notes on next page.

Notes for Table 1: 1. No structures shall be allowed within the Runway Protection Zone. Exceptions shall be made only for structures accessory to airport operations whose location within the RPZ has been approved by the Federal Aviation Administration. 2. In the RPZ, public airport uses are restricted to those uses and facilities that require location in the RPZ. 3. Farming practices that minimize wildlife attractants are encouraged. 4. Roads and parking areas are permitted in the RPZ only upon demonstration that there are no practicable alternatives. Lights, guardrails and related accessory structures are prohibited. Cost may be considered in determining whether practicable alternatives exist. 5. In the RPZ, utilities, power lines and pipelines must be underground. In approach surfaces and in airport direct and secondary impact areas, the proposed height of utilities shall be coordinated with the airport sponsor and the Department of Aviation. 6. Public assembly facilities are prohibited within the RPZ. 7. Golf courses may be permitted only upon demonstration, supported by substantial evidence, that management techniques will be utilized to reduce existing wildlife attractants and avoid the creation of new wildlife attractants. Such techniques shall be required as conditions of approval. Structures are not permitted within the RPZ. For purposes of DCC 18.80, tee markers, tee signs, pin cups and pins are not considered to be structures. 8. Within 10,000 feet from the end of the primary surface of a non-precision instrument runway, and within 50,000 feet from the end of the primary surface of a precision instrument runway. 9. Public assembly facilities may be allowed in an approach surface only if the potential danger to public safety is minimal. In determining whether a proposed use is appropriate, consideration shall be given to: proximity to the RPZ; density of people per acre; frequency of use; level of activity at the airport; and other factors relevant to public safety. In general, high-density uses should not be permitted within airport approach surfaces, and non-residential structures should be located outside approach surfaces unless no practicable alternatives exist. 10. Residential densities within approach surfaces should not exceed the following densities: (1) within 500 feet of the outer edge of the RPZ, 1 unit/acre; (2) within 500 to 1,500 feet of the outer edge of the RPZ, 2 units/acre; (3) within 1,500 to 3,000 feet of the outer edge of the RPZ, 4 units/acre. 11. Mining operations involving the creation or expansion of water impoundments shall comply with the requirements of DCC 18.80 regulating water impoundments. 12. See DCC 18.80.072 regulating water impoundments. 13. See requirements in DCC 18.80.074. 14. Overnight accommodations, such as hotels, motels, hospitals and dormitories, are not permitted. 15. Due to land availability constraints, limited wastewater treatment plants within the Secondary Impact Area are permitted on lands owned or managed by the Sunriver Resort or Sunriver utilities. 16. Organic composting facility is permitted. 17. Since Sunriver Resort owns and controls the Sunriver Airport, golf courses operated as part of the Sunriver Resort, Crosswater and their affiliates are exempted.

**CHAPTER 18.96 FLOOD PLAIN ZONE; FP**[18.96.010 Purposes](#)[18.96.020 Designated Areas](#)[18.96.030 Uses Permitted Outright](#)[18.96.040 Conditional Uses Permitted](#)[18.96.050 Prohibited Uses](#)[18.96.060 Limitations On Conditional Uses](#)[18.96.070 Application For Conditional Use](#)[18.96.080 Criteria To Evaluate Conditional Uses](#)[18.96.085 Elevation Certification](#)[18.96.090 Yard And Setback Requirements](#)[18.96.100 Stream Setback](#)[18.96.110 Dimensional Standards](#)[18.96.120 Warning And Disclaimer Of Liability](#)[18.96.130 Interpretation Of FIRM Boundaries](#)[18.96.140 Use Variances](#)[18.96.150 Acreage Calculation For Partition Or Subdivision Of Certain Properties Containing Flood Plain Zoned Lands](#)**18.96.030 Uses Permitted Outright**

The following uses and their accessory uses are permitted outright

- A. Agricultural use conducted without establishing or utilizing a structure. For purposes of DCC 18.96.030(A), a "structure" does not include a boundary fence as long as such fence is designed to impede as little as possible the movement of floodwaters and flood carried material.
- B. Management, propagation and harvesting of a forest product.
- C. Open space.
- D. Portions of a residential use that do not contain structures, such as lawn, garden or play areas.
- E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230 that do not involve Floodplain development.
- F. Class III road or street project that does not constitute Floodplain development as defined in DCC 18.04.030.
- G. Excavation, grading and fill for the routine maintenance and repair of existing roads and roadway drainage within the road right-of-way that will have not adverse effect on flood waters.
- H. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- I. Recreational vehicles on an individual lot for a period not to exceed 180 consecutive days, - as allowed pursuant to DCC 18.116.080, 18.116.090, or 18.116.095, provided they meet the standards and criteria established by DCC 18.116.095.

## HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

Amended by Ord. [88-030](#) §4 on 8/17/1988

Amended by Ord. [91-020](#) §1 on 5/29/1991

Amended by Ord. [93-043](#) §15 on 8/25/1993

Amended by Ord. [2007-019](#) §2 on 9/28/2007

Repealed by Ord. [2018-005](#) §11 on 10/10/2018

Amended by Ord. [2019-010](#) §1 on 5/8/2019

[Amended by Ord. 2023-001 §13 on X/XX/2023](#)

### [18.96.040 Conditional Uses Permitted](#)

The following uses and their accessory uses may be allowed subject to applicable sections of this title:

- A. A roadway, bridge or utility structure, except a [landfill and disposal site](#), that will not impede the waters of a base flood subject to DCC 18.128.
- B. Incidental storage of material or equipment that is either not subject to damage by flood, or is mobile and readily removable from the area within time available after flood warning. If such material is not readily removable, it shall be anchored to prevent flotation and shall not obstruct water flow. Material or equipment stored shall include only items which will not create a hazard to the health or safety of persons, property, animals or plant life should the storage area be inundated.
- C. Single-family dwelling, or a manufactured home subject to DCC 18.116.070, on an individual lot. In addition to the other requirements of DCC 18.96, single-family dwellings proposed to be sited in areas of the Flood Plain Zone designated "Agriculture" on the Comprehensive Plan Map may be approved only as uses identified by DCC 18.16.030(A), (B), (D) or (E) and subject to the applicable provisions of DCC 18.96 governing those uses. In addition to the other requirements of DCC 18.96, single-family dwellings proposed to be sited in areas of the Flood Plain Zone designated "Forest" on the Comprehensive Plan Map may be approved only as uses identified by DCC 18.36.030(Y), 18.40.030(X) or 18.40.030(Y) and subject to the applicable provision of DCC 18.36 and 18.40 governing those uses.
- D. Agricultural accessory buildings.
- E. Hydroelectric facilities subject to DCC 18.116.130 and 18.128.260.
- F. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland, subject to DCC 18.120.050 and 18.128.270. Excavation, grading and fill within any area of special flood hazard identified in DCC 18.96.020.
- G. Recreational uses requiring only structures having an insignificant effect on flood waters outside the Floodway, such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, wildlife or nature preserves, game farms, fish hatcheries, shooting preserves and hunting or fishing areas subject to DCC 18.128, except in areas designated "Forest" or "Agriculture" on the Comprehensive Plan Map.

- H. Subdividing or partitioning of land, any portion of which is located in a flood plain, subject to the provisions of DCC Title 18 and DCC Title 17, the Subdivision/Partition Ordinance.
- I. All new construction expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building.
- J. A boat dock or pier, either individual or community, on private property which lies in the following areas:
  - 1. On the Deschutes River between river miles 226.4 and 224.5. This area is identified in the Scenic Waterway Management Plan as the Wickiup River Community Area;
  - 2. On the Deschutes River between river miles 217.5 and 216.5. This area is identified in the Scenic Waterway Management Plan as the Pringle Falls River Community Area; and
  - 3. On the Deschutes River between river miles 207 and 192. This area is identified in the Scenic Waterway Management Plan as River Community Areas and Recreational River Area respectively.
- K. Those recreational uses described in DCC 18.36.030, "F-1 - Conditional Uses," having an insignificant effect on flood waters where the subject Flood Plain-zoned site is designated by the Comprehensive Plan Map as "Forest" and is adjacent to land zoned F-1.
- L. Those recreational uses described in DCC 18.40.030, "F-2 - Conditional Uses," having an insignificant effect on flood waters where the subject Flood Plain-zoned site is designated by the Comprehensive Plan Map as "Forest" and is adjacent to land zoned F-2.
- M. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- N. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.
- O. Recreational vehicles on an individual lot for a period in excess of 180 consecutive days, as allowed pursuant to DCC 18.116.080, 18.116.090, or 18.116.095(C), provided they meet the following standards and criteria:
  - 1. Placement of a recreational vehicle within a special flood hazard area for a period of time exceeding 180 days requires a conditional use permit subject to the standards and criteria established by DCC 18.96 and a Floodplain Permit as required by the National Flood Insurance Program.

#### HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

Amended by Ord. [88-030](#) §4 on 8/17/1988

Amended by Ord. [89-009](#) §4 on 11/29/1989

Amended by Ord. [91-005](#) §37 on 3/4/1991



Amended by Ord. [91-038](#) §1 on 9/30/1991  
Amended by Ord. [93-002](#) §4 on 2/3/1993  
Amended by Ord. [93-045](#) §1 on 8/18/1993  
Amended by Ord. [95-022](#) §1,2 on 4/5/1995  
Amended by Ord. [95-075](#) §1 on 11/29/1995  
Amended by Ord. [96-032](#) §1 on 5/1/1996  
Amended by Ord. [97-063](#) §3 on 11/12/1997  
Amended by Ord. [2001-016](#) §2 on 3/28/2001  
Amended by Ord. [2001-039](#) §11 on 12/12/2001  
Amended by Ord. [2007-019](#) §2 on 9/28/2007  
Repealed by Ord. [2018-005](#) §11 on 10/10/2018  
Amended by Ord. [2019-010](#) §1 on 5/8/2019  
Amended by Ord. [2023-001](#) §13 on X/XX/2023

**CHAPTER 18.100 RURAL INDUSTRIAL ZONE; R-I**[18.100.010 Uses Permitted Outright](#)[18.100.020 Conditional Uses](#)[18.100.030 Use Limitations](#)[18.100.040 Dimensional Standards](#)[18.100.050 Off-Street Parking And Loading](#)[18.100.060 Site Design](#)[18.100.070 Additional Requirements](#)[18.100.080 Solar Setback](#)[18.100.090 Limited Use Combining Zone; Deschutes Junction](#)**18.100.020 Conditional Uses**

The following uses may be allowed subject to DCC 18.128:

- A. Any use permitted by DCC 18.100.010, which is located within 600 feet of a residential dwelling, a lot within a platted subdivision or a residential zone.
- B. Any use permitted by DCC 18.100.010, which involves open storage.
- C. Concrete or ready-mix plant.
- D. Petroleum products storage and distribution.
- E. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.
- F. Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.
- G. Railroad trackage and related facilities.
- H. Pulp and paper manufacturing.
- I. Any use permitted by DCC 18.100.010, which is expected to exceed the following standards:
  1. Lot coverage in excess of 70 percent.
  2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the property line of the subject use.
- J. Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of odor, noise, dust, smoke, gas, traffic or other factors.
- K. Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.
- L. Public ~~Landfill~~ Land Disposal Site Transfer Station, including recycling and other related activities.

- M. Mini-storage facility.
- N. Automotive wrecking yard totally enclosed by a sight-obscuring fence.
- O. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- P. Utility facility.
- Q. Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.
- R. Electrical substations.
- S. Marijuana retailing, subject to the provisions of DCC 18.116.330.

#### HISTORY

*Adopted by Ord. [PL-15](#) on 11/1/1979*

*Amended by Ord. [86-018](#) §15 on 6/30/1986*

*Amended by Ord. [90-014](#) §38 on 7/12/1990*

*Amended by Ord. [91-020](#) §1 on 5/29/1991*

*Amended by Ord. [91-038](#) §1 on 9/30/1991*

*Amended by Ord. [97-063](#) §3 on 11/12/1997*

*Amended by Ord. [2001-016](#) §2 on 3/28/2001*

*Amended by Ord. [2001-039](#) §12 on 12/12/2001*

*Amended by Ord. [2002-126](#) §1 on 12/11/2002*

*Amended by Ord. [2004-013](#) §10 on 9/21/2004*

*Amended by Ord. [2016-015](#) §8 on 7/1/2016*

*Amended by Ord. [2018-006](#) §12 on 11/20/2018*

*Amended by Ord. [2021-004](#) §5 on 5/27/2021*

*[Amended by Ord. 2023-001 §14 on X/XX/2023](#)*

**CHAPTER 18.108 URBAN UNINCORPORATED COMMUNITY ZONE; SUNRIVER**

18.108.010 Purpose

18.108.020 Standards For All Districts

18.108.030 Single Family Residential; RS District

18.108.040 Multiple Family Residential; RM District

18.108.050 Commercial; C District

18.108.055 Town Center; TC District

18.108.060 Resort; R District

18.108.070 Resort Marina; RA District

18.108.080 Resort Golf Course; RG District

18.108.090 Resort Equestrian; RE District

18.108.100 Resort Nature Center; RN District

18.108.110 Business Park; BP District

18.108.120 Community General; CG District

18.108.130 Community Recreation; CR District

18.108.140 Community Limited; CL District

18.108.150 Community Neighborhood; CN District

18.108.160 Airport; A District

18.108.170 Utility; U District

18.108.175 Utility; U District/Limited Use Combining District

18.108.180 Forest; F District

18.108.190 Flood Plain; FP Combining District

**18.108.160 Airport; A District**

- A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright:
1. Runway, fuel storage and sales and emergency repair.
  2. Facilities approved or mandated by the FAA or Oregon State Aeronautics Division.
  3. Farm use as defined in DCC Title 18.
  4. Related uses which are customarily appurtenant to airports, including but not limited to hangars, tie-down areas and parking facilities.
- B. Conditional Uses Permitted. The following conditional uses may be permitted subject to DCC 18.128 and a conditional use permit:
1. Farm accessory buildings and uses.
  2. Utility facility necessary for public service, except ~~landfills~~ land disposal sites.
  3. Golf course.
  4. Park, playground, other recreational site or facility or community service facility.
  5. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and/or DCC 18.128.270.

C. Use Limitations. In an A District, the following limitations and standards shall apply to all uses permitted:

1. The height of any plant growth or structure or part of a structure such as chimneys, towers, antennas, powerlines, etc., shall not exceed 35 feet.
2. In approach zones beyond the clear zone areas, no meeting place designed to accommodate more than 25 persons for public or private purposes shall be permitted.
3. All parking demand created by any use permitted by DCC 18.108.160 shall be accommodated on the subject premises entirely off-street.
4. No use permitted by DCC 18.108.160 shall require the backing of traffic onto a public or private street or road right of way.
5. No power lines shall be located in clear zones.
6. No use shall be allowed which is likely to attract a large quantity of birds, particularly birds which normally fly at high altitudes.

D. Dimensional Standards. In an A District, the following dimensional standards shall apply:

1. The minimum lot size shall be determined subject to the provisions of DCC 18.108.160 relative to setback requirements, off-street parking and loading requirements, lot coverage limitations or as deemed necessary by the Planning Director or Hearings Body to maintain air, land and water resource quality, protect adjoining and area land uses and to ensure resource carrying capacities are not exceeded.
2. An airport related use or structure located adjacent to or across the street from an existing residential use or platted residential lot shall not exceed 70 percent lot coverage and shall require off street parking and loading areas.
3. The minimum setback between any structure and an arterial right of way shall be 100 feet. The minimum setback between any structure and a collector right of way shall be 50 feet. The minimum setback between any structure and all local streets shall be 20 feet.
4. The minimum setback between any structure and a property line adjoining a residential use or lot shall be 50 feet.
5. The minimum lot frontage shall be 50 feet.
6. The minimum side setback between any structure and a property line shall be three feet, and the minimum total of both side setbacks shall be 12 feet.
7. The minimum rear setback between any structure and a rear property line shall be 25 feet.
8. Utility Runway Visual Approach Zone. Slopes 20 feet outward for each foot upward beginning at the end of and at the same elevation as the primary runway surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

9. Runway Larger than Utility with a Visibility Minimum Greater than Three-Fourths Mile Nonprecision Instrument Approach Zone. Slopes 34 feet outward for each foot upward beginning at the end of and at the same elevation as the primary runway surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
10. Transitional Zones. Slopes seven feet outward for each foot upward beginning at the side of and at the same elevation as the primary runway surface and approach surface, and extending to a height of 150 feet above the airport elevation. In addition to the foregoing, there are established height limits beginning at the sides of and at the same elevation as they approach surface and extending to where they intersect the conical surface.
11. Horizontal Zone. Established at 150 feet above the airport elevation.
12. Conical Zone. Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

#### HISTORY

*Repealed & Reenacted by Ord. [97-078](#) §2 on 12/31/1997*

*[Amended by Ord. 2023-001 §15 on X/XX/2023](#)*

#### **18.108.180 Forest; F District**

- A. Uses permitted outright. The following uses and their accessory uses are permitted outright, subject to applicable provisions of DCC 18.36, Forest Use-F1 Zone, and to applicable provisions of the comprehensive plan:
  1. Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash.
  2. Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation. As used here, temporary structures are those which are portable and/or not placed on a permanent foundation, and which are removed at the conclusion of the forest operation requiring its use.
  3. Physical alterations to commercial forest land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, ~~landfills~~ land disposal sites, dams, reservoirs, road construction or recreational facilities. Gravel extraction and processing not covered by DCC 18.108.180 is governed by DCC 18.52.
  4. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
  5. Farm use as defined in ORS 215.203.
  6. Local distribution lines (e.g., electric, telephone, natural gas, etc.) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal

boxes, pedestals), or equipment which provides service hookups, including water service hookups.

7. Temporary portable facility for the primary processing of forest products. The facility shall not be placed on a permanent foundation and shall be removed at the conclusion of the forest operation requiring its use.
  8. Exploration for mineral and aggregate resources as defined in ORS 517.
  9. Towers and fire stations for forest fire protection.
  10. Widening of roads within existing rights of way in conformance with the transportation element of the comprehensive plan including public road and highway projects as described in ORS 215.283(1)(k) through (n).
  11. Water intake facilities, canals and distribution lines for farm irrigation and ponds.
  12. Uninhabitable structures accessory to fish and wildlife enhancement.
- B. Conditional uses permitted. The following uses and their accessory uses may be allowed in the Forest District, subject to applicable provisions of DCC 18.36, Forest Use-F1 Zone, and to applicable provisions of the comprehensive plan:
1. Television, microwave and radio communication facilities and transmission towers.
  2. Water intake facilities, related treatment facilities, pumping stations and distribution lines.
  3. Reservoirs and water impoundments.
  4. New electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g. electrical, gas, oil, geothermal) with rights of way 50 feet or less in width.
  5. Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.
  6. Commercial composting for which the Oregon Department of Environmental Quality has granted a permit or a similar approval, together with equipment, facilities or buildings necessary for operation, subject to DCC 18.128.015 and 18.128.120.

#### HISTORY

*Repealed & Reenacted by Ord. [97-078](#) §2 on 12/31/1997*

*Amended by Ord. [98-016](#) §2 on 3/11/1998*

*Amended by Ord. [2001-040](#) §1 on 12/5/2001*

*Amended by Ord. [2020-007](#) §15 on 10/27/2020*

*[Amended by Ord. 2023-001 §15 on X/XX/2023](#)*

**CHAPTER 18.116 SUPPLEMENTARY PROVISIONS**

[18.116.010 Authorization Of Similar Uses](#)

[18.116.020 Clear Vision Areas](#)

[18.116.030 Off-Street Parking And Loading](#)

[18.116.031 Bicycle Parking](#)

[18.116.035 Bicycle Commuter Facilities](#)

[18.116.036 Special Parking Provisions For The Sunriver Town Center \(TC\) District](#)

[18.116.040 Accessory Uses](#)

[18.116.050 Manufactured Homes](#)

[18.116.070 Placement Standards For Manufactured Homes](#)

[18.116.080 ~~Manufactured Home Or RV as Temporary Residence on An Individual Lot During Construction~~ ~~Manufactured Home Or RV As A Temporary Residence On An Individual Lot~~](#)

[18.116.090 A Manufactured Home Or Recreational Vehicle As A Temporary Residence For Medical Condition](#)

[18.116.095 Recreational Vehicle As A ~~Temporary~~ Residence On An Individual Lot](#)

[18.116.100 Building Projections](#)

[18.116.120 Fences](#)

[18.116.130 Hydroelectric Facilities](#)

[18.116.140 Electrical Substations](#)

[18.116.150 Endangered Species](#)

[18.116.160 Rimrock Setbacks Outside Of LM Combining Zone](#)

[18.116.170 Solar Height Restrictions](#)

[18.116.180 Building Setbacks For The Protection Of Solar Access](#)

[18.116.190 Solar Access Permit](#)

[18.116.200 \(Repealed\)](#)

[18.116.210 Residential Homes And Residential Facilities](#)

[18.116.215 Family Child Care Provider](#)

[18.116.220 Conservation Easements On Property Adjacent To Rivers And Streams; Prohibitions](#)

[18.116.230 Standards For Class I And II Road Projects](#)

[18.116.240 Protection Of Historic Sites](#)

[18.116.250 Wireless Telecommunications Facilities](#)

[18.116.260 Rock Crushing Outside The SM Zone](#)

[18.116.270 Conducting Filming Activities In All Zones](#)

[18.116.280 Home Occupations](#)

[18.116.290 Amateur Radio Facilities](#)

[18.116.300 Wind Energy Systems That Generate Less Than 100 KW](#)

[18.116.310 Traffic Impact Studies](#)

[18.116.320 Medical Marijuana Dispensary](#)

[18.116.330 Marijuana Production, Processing, Retailing, And Wholesaling](#)

[18.116.340 Marijuana Production Registered By The Oregon Health Authority \(OHA\)](#)

[18.116.350 Accessory Dwelling Units In RR10 And MUA Zones](#)

[18.116.360 Nursery Schools](#)



**18.116.080 Manufactured Home Or RV as Temporary Residence on An Individual Lot During Construction ~~Manufactured Home Or RV As A Temporary Residence On An Individual Lot~~**

A manufactured home of any class or a recreational vehicle may be authorized as a temporary residence on an individual lot and shall comply with the following additional provisions:

- A. The manufactured home or recreational vehicle shall be placed upon a lot for which a building permit for a housing unit has been obtained.
- B. The manufactured home or recreational vehicle shall be occupied only during a period in which satisfactory progress is being made toward the completion of the housing unit on the same site.
- C. Electric, water and sewer utility connections shall be made to the manufactured home or recreational vehicle.
- D. The manufactured home shall be removed from the lot not later than 18 months following the date on which the building permit for the housing unit is issued or not later than two months following the date of final building inspection of the housing unit, whichever occurs first. The habitation of the recreational vehicle must cease, and its connection to all utilities other than electric must be discontinued not later than 18 months following the date on which the building permit for the housing unit is issued or not later than two months following the completion of the housing unit, whichever occurs first.
- E. All evidence that the manufactured home has been on the lot shall be removed within the 30 days following the removal of the manufactured home.
- F. A recreational vehicle used as a temporary dwelling unit shall meet the same setbacks required of a manufactured dwelling or single-family dwelling on the subject lot.
- G. A recreational vehicle shall be fully licensed and ready for highway use, on its wheels or jacking system, shall be attached to the site only by quick disconnect type utilities and security devices, and shall have no permanently attached additions.
- E-H. As identified in this section, a single recreational vehicle located within a special flood hazard area is subject to the standards and criteria established by DCC 18.96.

**HISTORY**

*Adopted by Ord. [PL-15](#) on 11/1/1979*

*Amended by Ord. [89-004](#) §4 on 3/24/1989*

*Amended by Ord. [91-005](#) §44 on 3/4/1991*

*Amended by Ord. [93-043](#) §19F on 8/25/1993*

*Amended by Ord. [2023-001](#) §16 on X/XX/2023*

**18.116.090 A Manufactured Home Or Recreational Vehicle As A Temporary Residence For Medical Condition**

- A. Unless otherwise allowed pursuant to DCC 18.116.095(C), A-a temporary use permit for one manufactured home of any class or one recreational vehicle on a lot or parcel in addition to an existing dwelling may be granted when a medical condition exists. In the Exclusive Farm Use and

Forest zones only, an existing building may be used as a temporary dwelling. For the purposes of this section, “existing” means the building was in existence on or before March 29, 2017.

- B. The person with a medical condition must be either one of the property owners or a relative of one of the property owners.
- C. For the purposes of this section, a relative is defined as a grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, sibling, step-sibling, either blood or legal relationship, niece, nephew, uncle, aunt or first cousin.
- D. Such medical condition must be verified by a doctor's written statement, which shall accompany the permit application.
- E. The temporary use permit shall be reviewed annually for compliance with the terms of DCC 18.116.090.
- F. The manufactured home shall be removed or the recreational vehicle shall be vacated, and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than 90 days following the date the medical condition requiring the temporary use permit ceases to exist. In the Exclusive Farm Use and Forest zones the existing building will be converted to a permitted non-residential use within 90 days following the date the medical condition requiring the temporary use permit ceases to exist.
- G. If a recreational vehicle is used as a medical hardship dwelling, it shall have a bathroom, and shall meet the minimum setbacks for the zone in which it is located.
- H. The applicant shall obtain all necessary permits from the County Building and Environmental Health Divisions prior to initiating the use.
- I. A recreational vehicle shall be fully licensed and ready for highway use, on its wheels or jacking system, shall be attached to the site only by quick disconnect type utilities and security devices, and shall have no permanently attached additions.
- H.J. As identified in this section, a single recreational vehicle located within a special flood hazard area is subject to the standards and criteria established by DCC 18.96.

#### HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

Amended by Ord. [89-004](#) §5 on 3/24/1989

Amended by Ord. [91-005](#) §45 on 3/4/1991

Amended by Ord. [2008-022](#) §2 on 11/10/2008

Amended by Ord. [2012-007](#) §5 on 5/2/2012

Amended by Ord. [2017-001](#) §1 on 2/27/2017

Amended by Ord. [2023-001](#) §16 on X/XX/2023

#### [18.116.095 Recreational Vehicle As A ~~Temporary~~ Residence On An Individual Lot](#)

- A. A single recreational vehicle, as defined in DCC Title 18, may be located on a lot or parcel in a manufactured dwelling park, mobile home park or recreational vehicle park, consistent with ORS 197.493(1), provided that:

- 1. The recreational vehicle is occupied as a residential dwelling; and
- 2. The recreational vehicle is lawfully connected to water and electrical supply systems and a sewage disposal system.

~~A-B.~~ A single recreational vehicle, as defined in DCC Title 18, may be located on a lot or parcel not containing a dwelling unit and not within in a manufactured dwelling park, mobile home park or recreational vehicle park and used as a temporary dwelling unit.~~A single recreational vehicle, as defined in DCC Title 18, may be located on a lot or parcel not containing a dwelling and used as a temporary dwelling unit:~~

- 1. For a period totaling not more than 30 days in any consecutive 60-day period without obtaining a land use permit from the Deschutes County Planning Division; or
- 2. For a total period not to exceed six months in a calendar year by obtaining a temporary use permit under the terms of DCC 18.116.095 from the Deschutes County Planning Division. A temporary use permit may be renewed annually for use of a recreational vehicle under the terms of DCC 18.116.095 on the same lot or parcel.

C. A single recreational vehicle, as defined in DCC Title 18, may be located on a lot or parcel containing a manufactured dwelling or single-family dwelling, where such dwelling is uninhabitable due to damages from natural disasters, including wildfires, earthquakes, flooding or storms, until no later than the date:

- 1. The dwelling has been repaired or replaced and an occupancy permit has been issued;
- 2. The local government makes a determination that the owner of the dwelling is unreasonably delaying in completing repairs or replacing the dwelling; or
- 2-3. Twenty-four months after the date the dwelling first became uninhabitable.

~~B-D.~~ \_\_\_\_\_ All necessary permits shall be obtained from the Deschutes County Building Safety Division before connecting a recreational vehicle to sewer, water and/or electric utility services.

~~C-E.~~ A permit shall be obtained from the Deschutes County Environmental Health Division before disposing any wastewater or sewage on-site.

~~D-F.~~ A recreational vehicle used as a residential dwelling unit or temporary dwelling unit shall meet the same setbacks required of a manufactured dwelling or single-family dwelling on the subject lot.

G. A recreational vehicle shall be fully licensed and ready for highway use, on its wheels or jacking system, shall be attached to the site only by quick disconnect type utilities and security devices, and shall have no permanently attached additions.

~~E-H.~~ As identified in this section, a single recreational vehicle located within a special flood hazard area is subject to the standards and criteria established by DCC 18.96.

HISTORY  
 Amended by Ord. [91-038](#) §3 on 9/30/1991  
 Amended by Ord. [95-075](#) §1 on 11/29/1995

Amended by Ord. [98-062](#) §1 on 12/9/1998

Amended by Ord. [2007-019](#) §4 on 9/28/2007

Amended by Ord. [2023-001](#) §16 on X/XX/2023

**CHAPTER 18.124 SITE PLAN REVIEW**[18.124.010 Purpose](#)[18.124.020 Elements Of Site Plan](#)[18.124.030 Approval Required](#)[18.124.040 Contents And Procedure](#)[18.124.050 Decision On Site Plan](#)[18.124.060 Approval Criteria](#)[18.124.070 Required Minimum Standards](#)[18.124.080 Other Conditions](#)[18.124.090 Right Of Way Improvement Standards](#)**18.124.030 Approval Required**

- A. No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.
- B. The provisions of DCC 18.124.030 shall apply to the following:
  - 1. All conditional use permits where a site plan is a condition of approval;
  - 2. Multiple-family dwellings with more than three units;
  - 3. All commercial uses that require parking facilities;
  - 4. All industrial uses;
  - 5. All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, ~~landfills~~ **land disposal sites**, schools, utility facilities, religious institutions or assemblies, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and
  - 6. As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).
  - 7. Non-commercial wind energy system generating greater than 15 to 100 kW of electricity.
- C. The provisions of DCC 18.124.030 shall not apply to uses involving the stabling and training of equine in the EFU zone, noncommercial stables and horse events not requiring a conditional use permit.
- D. Noncompliance with a final approved site plan shall be a zoning ordinance violation.
- E. As a condition of approval of any action not included in DCC 18.124.030(B), the Planning Director or Hearings Body may require site plan approval prior to the issuance of any permits.

**HISTORY**

Adopted by Ord. [PL-15](#) on 11/1/1979

Amended by Ord. [86-032](#) §1 on 4/2/1986  
Amended by Ord. [91-020](#) §1 on 5/29/1991  
Amended by Ord. [91-038](#) §1 on 9/30/1991  
Amended by Ord. [94-008](#) §14 on 6/8/1994  
Amended by Ord. [2003-034](#) §2 on 10/29/2003  
Amended by Ord. [2011-009](#) §1 on 10/17/2011  
Repealed by Ord. [2018-005](#) §14 on 10/10/2018  
Amended by Ord. [2019-010](#) §1 on 5/8/2019  
Amended by Ord. [2020-001](#) §15 on 4/21/2020  
Amended by Ord. [2023-001](#) §17 on X/XX/2023

## CHAPTER 22.04 INTRODUCTION AND DEFINITIONS

### 22.04.010 Introduction And Application

### 22.04.020 Definitions

### 22.04.030 Definition-120-Day (Repealed)

### 22.04.040 Verifying Lots Of Record

#### 22.04.040 Verifying Lots Of Record

- A. Purpose; scope. Concurrent with or prior to the issuance of certain permits, a lot or parcel shall be verified pursuant to this section to reasonably ensure compliance with the zoning and land division laws in effect on the date the lot or parcel was created. Not all permits require verification. If required, verifying that the lot or parcel was lawfully created is a threshold issue that should be addressed before the permit may be issued, but does not supersede or nullify other permit requirements. This section 22.04.040 provides an applicant the option to concurrently verify a lot or parcel as part of applying for a permit that requires verification, or preliminarily apply for a declaratory ruling to thereby determine the scope of available permits.
- B. Permits Requiring Verification.
1. Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:
    - a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);
    - b. Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;
    - c. Any permit for a lot or parcel subject to wildlife habitat special assessment;
    - d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;
    - e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;
  2. Exceptions. Verification shall not be required if one of the following exceptions apply:
    - a. The lot or parcel was created by a subdivision plat, partition plat, condominium plat, or town plat so long as the plat was recorded and approved by the County, another political subdivision of the State of Oregon, or the State of Oregon;
    - b. The lot or parcel was previously validated by the County and an applicable partition plat was subsequently recorded within ~~90~~365 days as required by ORS 92.176(~~45~~);

- c. The lot or parcel was previously determined to be a lot of record in a formal decision issued by the County or a finding in a land use action prior to November 1, 2017;
  - d. The lot or parcel was previously verified pursuant to subsection (C) and a finding was issued to that effect in a land use action or declaratory ruling; or
  - e. For permits listed in subsection (B)(1)(e) only, the lot or parcel previously received a land use or building permit prior to November 1, 2017, a structural permit after November 1, 2017, or a non-emergency on-site sewage disposal permit.
  - e.f. Notwithstanding DCC 22.04.040(B)(2)(b), if a unit of land has been validated by a city or county under ORS 92.176 before January 1, 2022, such unit of land becomes a lawfully established parcel, provided that the owner of the unit of land caused a partition plat to be recorded on or before December 31, 2022.
- C. Verified Lots of Record. Permits that require verification shall only be issued to lots or parcels that meet the “lot of record” definition in 18.04.030.
- D. Findings; Declaratory Ruling. If an applicant is applying for a land use permit listed in subsection (B)(1), the County shall include a finding verifying that the lot or parcel meets the “lot of record” definition in 18.04.030, a finding noting that the lot or parcel does not meet the “lot of record” definition in 18.04.030, or a finding noting that verification was not required because the lot or parcel qualified for an exception pursuant to subsection (B)(2). If an applicant is applying for a permit listed in subsection (B)(1) that does not require public notice, or prior to applying for any permit, an applicant may request a declaratory ruling pursuant to DCC Chapter 22.40. If the lot or parcel meets the “lot of record” definition in 18.04.030, the County shall issue the declaratory ruling determining that the lot or parcel qualifies for all permits listed in subsection (B)(1). If the lot or parcel does not meet the “lot of record” definition in 18.04.030, the County shall not issue the declaratory ruling and instead shall provide the applicant information on permit options that do not require verification and information on verification exceptions that may apply pursuant to subsections (B)(2).

#### HISTORY

*Adopted by Ord. [2017-015](#) §3 on 11/1/2017*

*[Amended by Ord. 2023-001 §18 on X/XX/2023](#)*



TITLE 23 COMPREHENSIVE PLANCHAPTER 23.01 COMPREHENSIVE PLAN

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. [Repealed by Ordinance 2013-001, §1]
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- T. [Repealed by Ordinance 2016-027 §1]
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- AC. [repealed by Ord. 2019-010 §1, 2019]
- AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

- AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.
- AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.
- AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.
- AV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.
- AW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.
- AX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.
- AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

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

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

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

#### HISTORY

Amended by Ord. [2011-027](#) §10 on 11/9/2011  
 Adopted by Ord. [2011-003](#) §2 on 11/9/2011  
 Amended by Ord. [2011-017](#) §5 on 11/30/2011  
 Amended by Ord. [2012-012](#) §1, 2, 3, 4 on 8/20/2012  
 Amended by Ord. [2012-005](#) §1 on 11/19/2012  
 Amended by Ord. [2013-002](#) §1 on 1/7/2013  
 Repealed by Ord. [2013-001](#) §1 on 1/7/2013  
 Amended by Ord. [2013-005](#) §1 on 1/23/2013  
 Amended by Ord. [2012-016](#) §1 on 3/4/2013  
 Amended by Ord. [2013-009](#) §1 on 5/8/2013  
 Amended by Ord. [2013-012](#) §1 on 8/8/2013  
 Amended by Ord. [2013-007](#) §1 on 8/28/2013  
 Amended by Ord. [2014-005](#) §2 on 2/26/2014  
 Amended by Ord. [2014-006](#) §2 on 3/15/2014  
 Amended by Ord. [2014-012](#) §1 on 8/6/2014  
 Amended by Ord. [2014-021](#) §1 on 11/26/2014  
 Amended by Ord. [2015-029](#) §1 on 11/30/2015  
 Amended by Ord. [2015-010](#) §1 on 12/21/2015  
 Amended by Ord. [2015-021](#) §1 on 2/22/2016  
 Amended by Ord. [2015-018](#) §1 on 3/28/2016  
 Amended by Ord. [2016-001](#) §1 on 4/5/2016  
 Amended by Ord. [2016-022](#) §1 on 9/28/2016  
 Repealed & Reenacted by Ord. [2016-027](#) §1, 2 on 12/28/2016  
 Amended by Ord. [2016-005](#) §1 on 2/27/2017  
 Amended by Ord. [2016-029](#) §1 on 3/28/2017  
 Amended by Ord. [2017-007](#) §1 on 11/1/2017  
 Amended by Ord. [2018-002](#) §1 on 1/25/2018  
 Amended by Ord. [2018-005](#) §2 on 10/10/2018  
 Amended by Ord. [2018-008](#) §1 on 10/26/2018  
 Amended by Ord. [2018-008](#) §1 on 10/26/2018  
 Amended by Ord. [2018-008](#) §1 on 10/26/2018  
 Amended by Ord. [2018-006](#) §1 on 11/20/2018  
 Amended by Ord. [2018-011](#) §1 on 12/11/2018  
 Amended by Ord. [2019-004](#) §1 on 3/14/2019  
 Amended by Ord. [2019-003](#) §1 on 3/14/2019

Amended by Ord. [2019-002](#) §1 on 4/2/2019  
Amended by Ord. [2019-001](#) §1 on 4/16/2019  
Amended by Ord. [2019-010](#) §1 on 5/8/2019  
Amended by Ord. [2019-011](#) §1 on 5/17/2019  
Amended by Ord. [2019-006](#) §1 on 6/11/2019  
Amended by Ord. [2019-019](#) §2 on 12/11/2019  
Amended by Ord. [2020-001](#) §26 on 4/21/2020  
Amended by Ord. [2020-003](#) §1 on 5/26/2020  
Amended by Ord. [2020-002](#) §1 on 5/26/2020  
Amended by Ord. [2020-008](#) §5 on 9/22/2020  
Amended by Ord. [2020-007](#) §1 on 10/27/2020  
Amended by Ord. [2020-006](#) §1 on 11/10/2020  
Amended by Ord. [2020-009](#) §4 on 11/17/2020  
Amended by Ord. [2020-013](#) §1 on 11/24/2020  
Amended by Ord. [2021-002](#) §3 on 4/27/2021  
Amended by Ord. [2021-005](#) §1 on 6/16/2021  
Amended by Ord. [2021-008](#) §1 on 6/30/2021  
Amended by Ord. [2022-001](#) §2 on 7/12/2022  
Amended by Ord. [2022-003](#) §2 on 7/19/2022  
Amended by Ord. [2022-006](#) §2 on 7/22/2022  
Amended by Ord. [2023-001](#) §19 on X/XX/2023



## Chapter 5

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## Supplemental



## Sections

## Section 5.9 Goal 5 Inventory Cultural and Historic Resources

### Background

This section lists Locally Significant Historic Resources and National Register Resources in rural Deschutes County. These inventories are acknowledged by the Department of Land Conservation and Development. In 2020, Deschutes County's inventories were updated to comply with Oregon Administrative Rule (OAR) 660-023-0200, Historic Resources. OAR 660-023-0200 was amended in 2017.

#### *Locally Significant Historic Resources*

1. Alfalfa Grange: Grange building and community center, built in 1930, located on Willard Road, Alfalfa. 17-14-26 TL 400.
2. Allen Ranch Cemetery: Oldest cemetery in Deschutes County. 30' by 40' fenced cemetery plot. Situated 100 yards west of South Century Drive, one-half mile south of Road 42. Two marble gravestones, two wooden markers. 20-11-7 TL 1700.
3. Fall River Fish Hatchery "Ice House": The hatchery "Ice House" dates from the beginning of fishery management in Oregon, circa 1920. It is an 18 foot by 18 foot improvement, the only original building remaining on the property, and the only significant building or structure on the site. Located at 15055 S. Century Drive, E $\frac{1}{2}$ ; NE $\frac{1}{4}$ ; Section 32, Township 20S, Range 10 E, Tax Lot 100. (Ordinance 94-006 §1, 1994).
4. Long Hollow Ranch – Black Butte: Headquarters complex of historic ranch, located on Holmes Road in Lower Bridge area, including headquarters house, ranch commissary, equipment shed, barn and bunkhouse. 14-11-1 TL 101.
5. Swamp Ranch – Black Butte: The present day site of the Black Butte Ranch was part of the vast holdings of the Black Butte Land and Livestock Company in 1904. No buildings from the period exist. 14-9-10A, 10B, 15B, 15C, 16A, 21A, 21B, 21C, 22A, 22B.
6. Brothers School: Only one-room schoolhouse currently in use in Deschutes County, located on Highway 20 in Brothers. 20-18-00 TL 3200.
7. Bull Creek Dam: The Bull Creek Dam, a component of the Tumalo Irrigation Project was constructed in 1914 to form a water storage reservoir to increase the amount of irrigated acreage at Tumalo. It is a gravity type of overflow dam. Two cut off walls are extended into solid formation, one at the upper toe and the other at the lower toes of the concrete dam. The dam proper is about 17 feet high from the foundation, although the completed structure is about 25 feet. Located on Tumalo Reservoir-Market Road. 16-11-33 TL 2700 SW- $\frac{1}{4}$ ; SW- $\frac{1}{4}$ .
8. Bull Creek Dam Bridge (Tumalo Irrigation Ditch Bridge): Built in 1914, the bridge, which spans the dam, consists of five continuous filled spandrel, barrel-type concrete deck arch spans, each 25 feet long. The concrete piers are keyed into notches in the arch structure. The structure is the oldest bridge in Deschutes County. On Tumalo Reserve-market Road. 16-11-33 TL 2700/ SW- $\frac{1}{4}$ ; SW- $\frac{1}{4}$ .

9. Camp Abbot Site, Officers' Club: Officers' Club for former military camp, currently identified as Great Hall in Sunriver and used as a meeting hall. 20-11-5B TL 112.
10. Camp Polk Cemetery: One of the last remaining pioneer cemeteries, located off Camp Polk Road near Sisters. The site is composed of a tract of land, including gravestones and memorials, containing 2.112 acres in the Southwest Quarter of the Southeast Quarter of Section 27, Township 14 South, Range 10 E.W.M., TL 2100, described as follows: Beginning at a point North 20 degrees 06' 20" West 751 feet from the corner common to Sections 26, 27, 34 and 35 in Township 14 South Range 10 E.W.M. and running thence South 88 degrees 30' West 460 feet; thence North 1 degree 30' East 460 feet; thence South 1 degree 30' 200 feet to the point of beginning.
11. Camp Polk Military Post Site: One of the oldest military sites in Deschutes County. Located on Camp Polk Cemetery Road. Site includes entire tax lots, listed as follows 14-10-00 TL 2805 & 14-10-34 TL 100, 300.
12. Cloverdale School: School building in Cloverdale, located near 68515 George Cyrus Road. First building built in Cloverdale. 15-11-7 TL 600.
13. Eastern Star Grange: Grange hall for earliest grange organized in Deschutes County, located at 62850 Powell Butte Road. 17-13-19 TL 1900.
14. Enoch Cyrus Homestead Hay Station and Blacksmith Shop: The Enoch Cyrus Homestead was the original homestead of Oscar Maxwell, built in 1892 and purchased in 1900 by Enoch Cyrus. Important stage/store stop for early travelers. The homestead house, including a back porch and cistern, and the Blacksmith Shop are designated. 15-11-10 TL 700.
15. Fremont Meadow: A small natural meadow on Tumalo Creek in Section 34, Township 17 South, Range 11 East, lying within Shevlin Park. TL 5900. Campsite for 1843 Fremont expedition. 17-11-34 TL 5900.
16. Harper School: One-room schoolhouse, located west of South Century Drive, south of Sunriver, moved halfway between the Allen Ranch and the Vandever Ranch from the former townsite of Harper. 20-11-17 TL 1200.
17. Improved Order of Redmond Cemetery: Historic cemetery used by residents of La Pine/Rosland area. Located on Forest Road 4270, east of Highway 97. A 40-acre parcel described as: The Southwest one-quarter of the Southeast one-quarter (SW-1/4; SE-1/4) Section 7, Township 22 south, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.
18. Laidlaw Bank and Trust: One of the few remaining commercial buildings from the community of Laidlaw, located at 64697 Cook Avenue, Tumalo. 16-12-31A TL 2900.
19. La Pine Commercial Club: Building was built in 1912 as a community center, serving as a regular meeting place for civic organizations and occasionally served as a church. One of the oldest and continuously used buildings in La Pine. Located at 51518 Morrison Street, La Pine. 22-10-15AA TL 4600.
20. Lynch and Roberts Store Advertisement: Ad advertising sign painted on a soft volcanic ash surface. Only area example of early advertising on natural material. Lynch and Roberts



- established mercantile in Redmond in 1913. Roberts Field near Redmond was named for J. R. Roberts. Site includes the bluff. 14-12-00 TL ~~150~~1505.
21. Maston Cemetery: One of the oldest cemeteries in County. Oldest grave marker is 1901. About one-half mile from site of Maston Sawmill and Homestead. Site includes the gravestones and memorials and the entire tax lot, identified as 22-09-00 TL 1800.
  22. George Millican Ranch and Mill Site: Ranch established in 1886. Well dug at or near that date. Remains of vast cattle ranching empire. 19-15-33 TLs 100, 300.
  23. George Millican Townsite: Town established 1913. Site includes store and garage buildings, which retain none of the architectural integrity from era. 19-15-33 TL 500.
  24. Petersen Rock Gardens: The Petersen Rock Gardens consist of stone replicas and structures erected by Rasmus Petersen. A residence house and museum are part of the site. The site has been a tourist attraction for over 60 years. Located at 7930 SW 77th, Redmond. Site includes entire tax lot. 16-12-11 TL 400.
  25. Pickett's Island: After originally settling in Crook County, Marsh Awbrey moved to Bend and then homesteaded on this island in the Deschutes River south of Tumalo. The site was an early ford for pioneers. Located in Deschutes River near Tumalo State Park. 17-12-6 NE-¼ TL 100. Portion between Deschutes River and Old Bend Road is designated.
  26. Rease (Paulina Prairie) Cemetery: Historic cemetery on Elizabeth Victoria Castle Rease and Denison Rease's homestead. Earliest known grave is of their son, George Guy Rease, born in 1879, who was also a homesteader on Paulina Prairie. George Guy Rease died of smallpox on the Caldwell Ranch on May 2, 1903. Other known burials are William Henry Caldwell, 1841-October 15, 1910, died on the Caldwell Ranch of injuries sustained on a cattle drive; Melvin Raper, 1892-1914, died in a tent of tuberculosis; Addie Laura Caldwell, 1909-November 16, 1918, died of the Spanish influenza epidemic; and Emma Nimtze Deedon, 1886-April 15, 1915, died of complications from a pregnancy. There are several unmarked graves. The cemetery is a county-owned one-acre parcel on the north edge of Paulina Prairie, two miles east of Highway 97. 210-11-29, SE-¼; NW-¼ TL 99.
  27. Terrebonne Ladies Pioneer Club: The Club was organized in 1910. The building has been a community-meeting place since 1911. Located at 8334 11th Street, Terrebonne. 14-13-16DC TL 700.
  28. Tetherow House and Crossing: Site is an excellent example of an early Deschutes River crossing. Major route from Santiam Wagon Road to Prineville. Tetherow House was built in 1878. The Tetherows operated a toll bridge, store and livery stable for travelers. Oldest house in County. Site includes house and entire tax lot. 14-12-36A TL 4500.
  29. Tumalo Creek – Diversion Dam The original headgate and diversion dam for the feed canal was constructed in 1914. The feed canal's purpose was to convey water from Tumalo Creek to the reservoir. The original headworks were replaced and the original 94.2 ft low overflow weir dam was partially removed in 2009/2010 to accommodate a new fish screen and fish ladder. The remaining original structure is a 90 foot (crest length) section of dam of reinforced concrete. Tax Map 17-11-23, Tax Lot 800 & 1600.

30. Tumalo Community Church: The building is the oldest church in the County, built in 1905. It stands in the former town of Laidlaw, laid out in 1904. Located at 64671 Bruce Avenue, Tumalo. 16-12-31A TL 3900.
31. Tumalo Project Dam: Concrete core, earth-filled dam 75 feet high. First project by State of Oregon to use State monies for reclamation project. On Tumalo Creek. 16-11-29.
32. William P. Vandeventer Ranch Homestead House: The Vandeventer Ranch House stands on the east bank of the Little Deschutes River at 17600 Vandeventer Road near Sunriver. The homestead was established in 1892, and has been recently relocated and renovated. Vandeventer family history in the area spans 100 years. 20-11-18D TL 13800.
33. Kathryn Grace Clark Vandeventer Grave: Kathryn Grace Vandeventer, daughter of William P. Vandeventer, died of influenza during the epidemic of 1918. Her grave is located across a pasture due south of the Vandeventer House, 50 feet east of the Little Deschutes River. Site includes gravestone and fenced gravesite measuring is approximately 15 feet by 25 feet. 20-11-00 TL 1900.
34. Young School: Built in 1928, it is an excellent example of a rural “one-room” school which served homesteaders of the 1920s. Located on Butler Market Road. 17-13-19 TL 400.
35. Agnes Mae Allen Sottong and Henry J. Sottong House and Barn: House and barn are constructed with lumber milled on the property in a portable sawmill run by the Pine Forest Lumber Company in 1911. Henry was awarded homestead patent 7364 issued at The Dalles on Dec 1, 1904. Henry was president of the Mountain States Fox Farm. A flume on the Arnold Irrigation District is named the Sottong Flume. The structures are also associated with William Kuhn, a president of the Arnold Irrigation District; Edward and Margaret Uffelman, who were part of the group that privatized and developed the Hoo Doo Ski Resort; and Frank Rust Gilchrist, son of the founder of the town of Gilchrist and Gilchrist Mill and president of the Gilchrist Timber Company from the time of his father’s death in 1956 to 1988. Frank R. Gilchrist served on the Oregon Board of Forestry under four governors and was appointed by the governors to serve as a member of the Oregon Parks and Recreation Advisory Committee. He served on the Oregon State University’s Forest Products Research Lab and was a director and president of the National Forest Products Association. T18 R12 Section 22, 00 Tax lot 01600.

Inventory note: Unless otherwise indicated the inventoried site includes only the designated structure. No impact areas have been designated for any inventoried site or structure.

National Register Resources listed before February 23, 2017

36. Pilot Butte Canal: A gravity-flow irrigation canal constructed in 1904 that diverts 400 cubic feet of Deschutes River water per second. The canal conveys water through a 225-miles-long distribution system of successively narrower and shallower laterals and ditches on its way to those who hold water rights, serving about 20,711 acres by 1922. The canal was built in an area that had a population of 81 people when it was constructed. The historic district measures 7,435 feet long and encompasses 50 feet on either side of the canal centerline to create a 100-foot corridor. The district has a character-defining rocky, uneven bed, and highly irregular slopes, angles, cuts, and embankments.

37. Elk Lake Guard Station: A wagon road built in 1920 between Elk Lake and Bend sparked a wave of tourism around the scenic waterfront. To protect natural resources of the Deschutes National Forest and provide visitor information to guests, the Elk Lake Guard Station was constructed in 1929 to house a forest guard.
  38. Deedon (Ed and Genvieve) Homestead: The homestead is located between the Deschutes River and the Little Deschutes River. All of the buildings were constructed between 1914 and 1915.
  39. Gerking, Jonathan N.B. Homestead: Jonathan N.B. Gerking, "Father of the Tumalo Irrigation Project," played a crucial role in getting the project recognized and funded.
  40. McKenzie Highway: The McKenzie Salt Springs and Deschutes Wagon Road, a predecessor to the modern McKenzie Highway, was constructed in the 1860s and 1870s.
  41. Paulina Lake Guard Station: The station typifies the construction projects undertaken by the Civilian Conservation Corps and signifies the aid to the local community provided by the emergency work-relief program through employment of youth and experienced craftsmen, purchase of building materials and camp supplies, and personal expenditures of enrollees.
  42. Paulina Lake I.O.O.F Organization Camp: The Paulina Lake I.O.O.F. Organization camp was constructed during the depression era and are the result of cooperative efforts by nonprofessional builders. Such camp buildings are important in Oregon's recreational history as an unusual expression of both its rustic style and its vernacular traditions.
  43. Petersen Rock Gardens: The Petersen Rock Gardens consist of stone replicas and structures erected by Rasmus Petersen. The site has been a tourist attraction for over 60 years.
  44. Rock O' the Range Bridge: Rock O' The Range is the only covered span east of the Cascades in Oregon. To gain access to his property, William Bowen instructed Maurice Olson – a local contractor – to build a bridge inspired by Lane County's Goodpasture Bridge.
  45. Skyliners Lodge: The Skyliners are a Bend-based mountaineering club organized in 1927. In 1935, the group started building the Skyliners Lodge with help from the Deschutes National Forest, the Economic Recovery Act and the City of Bend.
  46. Santiam Wagon Road: The Santiam Wagon Road went from Sweet Home to Cache Creek Toll Station. The road was conceived of in 1859 to create a route across the Cascades. By the 1890s, the road had become a major trade route.
  47. Wilson, William T.E. Homestead: This homestead house was built in 1903 and has an "American Foursquare" architectural style.
- National Register Resources listed on / after February 23, 2017
48. Central Oregon Canal: A gravity-flow irrigation canal constructed in 1905 and enlarged in 1907 and 1913. The canal retains its impressive historic open, trapezoidal shape, dimensions and characteristics. It is characterized by the volcanic rock flows, native materials, rocky bed and sides, and its hurried hand-hewn workmanship. The historic district is 3.4 miles long, crossing rural land between the Ward Road Bridge on the

western edge and the Gosney Road Bridge on the eastern edge. In the historic district, the canal ranges in width from 34' to 78', averaging around 50', and its depth varies from 1' to 9', averaging around 4' deep, depending on the amount of volcanic lava flows encountered, the terrain, and slope. The canal through the historic district carries nearly the full amount of water diverted from the Deschutes River, 530 cubic feet per second during the irrigation season, April through October. The historic district encompasses 50' on either side of the canal centerline to create a 100' corridor that includes the whole of the easement held by COID, and all the contributing resources. (Date listed: 03/18/



## Section 5.12 Legislative History

### Background

This section contains the legislative history of this Comprehensive Plan.

**Table 5.12.1 Comprehensive Plan Ordinance History**

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

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

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



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

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

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

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

2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener's Error in Ord. 2020-022
2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-010	07-27-22/10-25-22	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
<u>2023-001</u>	<u>XX-XX-23/XX-XX-23</u>	<u>23.01.010, 5.9</u>	<u>Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource</u>



## FINDINGS

### HOUSEKEEPING TEXT AMENDMENTS

#### I. **APPLICABLE CRITERIA:**

Title 22, Deschutes County Development Procedures Ordinance

#### II. **BACKGROUND:**

The Planning Division regularly amends Deschutes County Code (DCC) and the Comprehensive Plan to correct minor errors identified by staff, other County departments, and the public. This process, commonly referred to as housekeeping, also incorporates updates from rulemaking at the state level through amendments to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR), and allows for less substantive code changes to continue efficient County operations.

The last time Deschutes County adopted housekeeping amendments occurred in December 2021 and January 2022.<sup>1</sup>

#### III. **BASIC FINDINGS:**

The Planning Division determined minor changes were necessary to clarify existing standards and procedural requirements, include less substantive code alterations, incorporate changes to state and federal law, and correct errors found in various sections of the Deschutes County Code (DCC). Staff initiated the proposed changes and notified the Oregon Department of Land Conservation and Development on December 2, 2022 (File no. 247-22-000922-TA). As demonstrated in the findings below, the amendments remain consistent with Deschutes County Code, the Deschutes County Comprehensive Plan, and the Statewide Planning Goals.

#### IV. **FINDINGS:**

#### **CHAPTER 22.12, LEGISLATIVE PROCEDURES**

Section 22.12.010.

***Hearing Required***

<sup>1</sup> Ordinances 2021-013 and 2021-014.

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

**FINDING:** This criterion will be met because a public hearing was held before the Deschutes County Planning Commission (Commission) on January 26, 2023 and a public hearing was held before the Board of County Commissioners (Board) on February 15, 2023.

Section 22.12.020, Notice

**Notice**

**A. Published Notice**

1. ***Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
2. ***The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

**FINDING:** This criterion is met as notice was published in *The Bulletin* newspaper on January 8, 2023 for the Commission public hearing and on February 4, 2023 for the Board public hearing.

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

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

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

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

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

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

Section 22.12.030 Initiation of Legislative Changes.

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

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

Section 22.12.040. Hearings Body

- A. *The following shall serve as hearings or review body for legislative changes in this order:***
  - 1. *The Planning Commission.***
  - 2. *The Board of County Commissioners.***
- B. *Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

**FINDING:** This criterion is met as the Commission held a public hearing on January 26, 2023. The Board held a public hearing on February 15, 2023.

Section 22.12.050 Final Decision

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

**FINDING:** The proposed legislative changes included in file no. 247-22-000922-TA will be implemented by ordinances upon approval and adoption by the Board.

**V. PROPOSED TEXT AMENDMENTS:**

The proposed text amendments are detailed in the referenced ordinance with additional text identified by underline and deleted text by ~~striketrough~~. Below are summary explanations of the proposed changes.

**Title 17, Subdivisions:**

**Chapter 17.24. FINAL PLAT**

**Section 17.24.060. Required Information - (See Exhibit A)**

DCC 17.24.060(R)(3) states a signature line for the “County Environmental Health Director, unless the property is to be connected to a municipal sewer system” signifying their approval must be included on all subdivision or partition plats. However, in practice the actual review standard for final plats related to wastewater management is reviewed by the supervisor for the Deschutes County Environmental Soils Division. The proposed changes reflect the contemporary review and signature standards.



**Title 18, County Zoning:**

**Chapter 18.04. TITLE, PURPOSE, AND DEFINITION - (See Exhibit B)**

**Section 18.04.030. Definitions**

A previous set of housekeeping amendments<sup>2</sup> altered several terms related to solid waste disposal/recovery including “land disposal site,” “disposal site,” and “solid waste,” among others. These alterations were undertaken to align County definitions with ORS 459 which sets specific definitions for “disposal site” and “land disposal site.” To maintain consistency throughout the Deschutes County Code, several terms related to solid waste disposal/recovery are being amended to align with the ORS definitions of “disposal site” and “land disposal site.” Amended terms include: “Community service use,” “Public Use,” and “Utility facility.” In each of these cases, references to “landfills” or “sanitary landfills” are being replaced with the ORS derived term “land disposal sites.”

**Chapter 18.16. EXCLUSIVE FARM USE ZONES - (See Exhibit C)**

**Section 18.16.070. Yards**

A previous set of housekeeping amendments<sup>3</sup> appears to have erroneously removed section 18.16.070(D), which contains language regarding setbacks from the north lot line as identified in section 18.116.180, otherwise known as solar setbacks. The drafter of the previous amendments appears to have added what would have been the new section 18.16.070(E), while unintentionally bracketing section 18.16.070(D) for deletion as is done in the rest of the ordinance. Staff notes that an internal copy of the County Code used for administrative purposes contains the following note:

*Ord. 94-008 §16, 1994 NOTE: This ordinance inadvertently dropped the previous Section D in adding a new section E.*

Staff understands the removal of the solar setback standards for DCC 18.16.070 was not the legislative intent of the Board of County Commissioners and further notes that the current pattern of practice for development within the Exclusive Farm Use Zone continues to acknowledge solar setback standards. The current amendment clarifies the legislative history for this chapter and continues to acknowledge that within the Exclusive Farm Use Zone setbacks from the north lot line shall meet the solar setback requirements in Section 18.116.180.

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<sup>2</sup> Ordinance 2020-007

<sup>3</sup> Ordinance 94-008

## **Chapter 18.32. MULTIPLE USE AGRICULTURAL ZONE; MUA - (See Exhibit D)**

### **Section 18.32.030. Conditional Uses Permitted**

DCC 18.32.030(Q) references “Landfills when a written tentative approval by the Department of Environmental Quality (DEQ) of the site is submitted with the conditional use application.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, this section is being altered to state “A disposal site which includes a land disposal site for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation.”

## **Chapter 18.36. FOREST USE ZONE; F-1 - (See Exhibit E)**

### **Section 18.36.020. Uses Permitted Outright**

DCC 18.36.020(C) references “Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4). Gravel extraction and processing not covered by DCC 18.36.020 is governed by DCC 18.52.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the reference to “landfills” is being replaced by a reference to “land disposal sites.”

## **Chapter 18.40. FOREST USE ZONE; F-2 - (See Exhibit F)**

### **Section 18.40.020. Uses Permitted Outright**

DCC 18.40.020(C) references “Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4). Gravel extraction and processing not covered by DCC 18.40.020 is governed by DCC 18.52.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the reference to “landfills” is being replaced by a reference to “land disposal sites.”

## **Chapter 18.48. OPEN SPACE AND CONSERVATION ZONE; OS AND C - (See Exhibit G)**

### **Section 18.48.030. Conditional Uses Permitted**

DCC 18.48.030(C) references “Utility facility except landfills.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the reference to “landfills” is being replaced by a reference to “land disposal sites.”

## **Chapter 18.60. RURAL RESIDENTIAL ZONE; RR-10 - (See Exhibit H)**

### **Section 18.60.030. Conditional Uses Permitted**

DCC 18.60.030(H) references “Landfills when a written tentative approval by the Department of Environmental Quality (DEQ) of the site is submitted with the conditional use application.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, this section is being altered to state “A disposal site which includes a land disposal site for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation.”

## **Chapter 18.61. URBAN UNINCORPORATED COMMUNITY ZONE; LA PINE - (See Exhibit I)**

### **Section 18.61.030. La Pine Planning Area**

### **Section 18.61.040. Wickiup Junction Planning Area**

DCC 18.61.030(A)(2)(c), 18.61.030(B)(3)(h), and 18.61.040(C)(10) all contain references to “Utility facility, except landfill.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the references to “landfill” are being replaced by references to “land disposal sites.”

## **Chapter 18.65. RURAL SERVICE CENTER; UNINCORPORATED COMMUNITY ZONE - (See Exhibit J)**

### **Section 18.65.023. RSC; Open Space District**

DCC 18.65.023(B)(4) references “Utility facility except landfills.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the reference to “landfills” is being replaced by a reference to “land disposal sites.”

## **Chapter 18.76. AIRPORT DEVELOPMENT ZONE; A-D - (See Exhibit K)**

### **Section 18.76.040. Conditional Uses**

DCC 18.76.040(B) references “Utility facility necessary for public service except landfills.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the reference to “landfills” is being replaced by a reference to “land disposal sites.”

## **Chapter 18.80. AIRPORT SAFETY COMBINING ZONE; A-S - (See Exhibit L)**

### **Section 18.80.026. Notice Of Land Use And Permit Applications**

DCC 18.80.026(B)(4)(c) and 18.80 Table 1 - Land Use Compatibility contain references to “sanitary landfills.” To align with the amended definitions in DCC 18.04.030 and general conformance with

the standards of ORS 459, the references to “sanitary landfills” is being replaced by references to “land disposal sites.”

#### **Chapter 18.96. FLOOD PLAIN ZONE; FP - (See Exhibit M)**

##### **Section 18.96.040. Conditional Uses Permitted**

DCC 18.96.040(A) references “A roadway, bridge or utility structure, except a landfill, that will not impede the waters of a base flood subject to DCC 18.128.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the reference to “landfill” is being replaced by a reference to “land disposal site.”

#### **Chapter 18.100. RURAL INDUSTRIAL ZONE; R-I - (See Exhibit N)**

##### **Section 18.100.020. Conditional Uses**

DCC 18.100.020(L) references “Public Landfill Disposal Site Transfer Station, including recycling and other related activities.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the reference to “Landfill” is being replaced by a reference to “Land Disposal Site.”

#### **Chapter 18.108. URBAN UNINCOPORATED COMMUNITY ZONE; SUNRIVER - (See Exhibit O)**

##### **Section 18.108.160. Airport District; A District**

##### **Section 18.108.180. Forest District; F District**

DCC 18.108.160(B)(2) and 18.108.180(A)(3) reference “landfills.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the reference to “landfills” is being replaced by references to “land disposal sites.”

#### **Chapter 18.116. SUPPLEMENTARY PROVISIONS - (See Exhibit P)**

##### **Section 18.116.080. Manufactured Home Or RV As A Temporary Residence On An Individual Lot**

##### **Section 18.116.090. A Manufactured Home Or Recreational Vehicle As A Temporary Residence For Medical Condition**

##### **Section 18.116.095. Recreational Vehicle As A Temporary Residence On An Individual Lot**

In conformance with House Bill 2809 and ORS 197.493, the amendment notes that a state agency or local government is prohibited from disallowing the use of a recreational vehicle as a residential dwelling on a lot with a manufactured or single-family dwelling damaged by natural disasters until no later than the date the dwelling has received an occupancy permit, the local government

determines the owner is unreasonably delaying repairs, or 24 months after the dwelling was deemed uninhabitable. The proposed amendments add a new subsection, DCC 18.116.095(C), outlining the standards of House Bill 2809 and ORS 197.493. Additional edits remove inconsistent or conflicting language from other sections of DCC 18.116 dealing with recreational vehicles being utilized for residential dwellings.

**Chapter 18.124. SITE PLAN REVIEW - (See Exhibit Q)**

**Section 18.124.030. Approval Required**

DCC 18.124.030(B)(5) references “landfills.” To align with the amended definitions in DCC 18.04.030 and general conformance with the standards of ORS 459, the reference to “landfills” is being replaced by a reference to “land disposal sites.”

**Title 22, DESCHUTES COUNTY DEVELOPMENT PROCEDURES ORDINANCE:**

**Chapter 22.04. INTRODUCTION AND DEFINITIONS - (See Exhibit R)**

**Section 22.04.040. Verifying Lots Of Record**

In conformance with House Bill 2884 and ORS 92.176, the amendment notes that a unit of land becomes a lawfully established parcel when the county or city validates the unit of land, and the owner records the partition plat within 365 days. The amendment alters DCC 22.04.040(B)(2)(b) to extend the time for a property owner to record the partition plat from 90 to 365 days and adds a new subsection, DCC 22.04.040(B)(2)(f), which allows all existing validated permits to become lawfully established parcels if recorded by December 31, 2022.

**DESCHUTES COUNTY COMPREHENSIVE PLAN:**

**Chapter 5. SUPPLEMENTAL SECTIONS - (See Exhibit S)**

**Section 5.9 Goal 5 Inventory - Cultural and Historic Resources**

One of the identified Cultural and Historic Resource sites in the Deschutes County Goal 5 inventory, the Lynch and Roberts Store Advertisement, is currently identified as being located on the incorrect taxlot. The proposed amendments alter the designated Goal 5 resource list to identify the correct site for the Lynch and Roberts Store Advertisement. The correct site for the Lynch and Roberts Store Advertisement is Deschutes County Map 14-12-00, Taxlot 1505.

**VI. CONCLUSION:**

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments that make minor changes necessary to clarify existing standards and procedural requirements, incorporate changes to state and federal law, and to correct errors in the Deschutes County Code.



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** March 1, 2023

**SUBJECT:** Second reading of Ordinance No. 2023-004, Amateur (HAM) Radio Text Amendments

**MOTIONS:**

1. Move approval of second reading of Ordinance No. 2023-004 by title only
2. Move adoption of Ordinance No. 2023-001

**BACKGROUND AND POLICY IMPLICATIONS:**

On March 1, 2023, staff will present Ordinance No. 2023-004 to the Board of County Commissioners for consideration of second reading.

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Nicole Mardell, AICP, Senior Planner

**MEMORANDUM**

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

**FROM:** Nicole Mardell, AICP, Senior Planner

**DATE:** February 22, 2023

**SUBJECT:** Consideration of Second Reading - Amateur/HAM Radio Facility Amendments

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On March 1, 2023, staff will present Ordinance No. 2023-004 to the Board of County Commissioners (Board) for consideration of second reading. The Board held a public hearing on February 15, 2023<sup>1</sup>, at which time the Board closed the oral and written portions of the record, deliberated to approve the amendments unanimously, and also conducted first reading.

Staff submitted a 35-day Post Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on November 28, 2022. Staff presented the proposed amendments to the Planning Commission at a work session on December 8, 2022<sup>2</sup>. The initial public hearing was held on January 12, 2023<sup>3</sup>, at which time the Planning Commission closed the oral and written record. The Planning Commission then deliberated on January 24, 2023, and recommended approval of the proposed amendments as drafted by staff.

The record, which contains all memoranda, notices, and project materials is available for inspection on the project website:

<https://www.deschutes.org/cd/page/247-22-000912-ta-amateur-ham-radio-text-amendments>

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<sup>1</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-80>

<sup>2</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-23>

<sup>3</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-31>



**NEXT STEPS**

During the February 15 first reading, the Board chose to adopt the ordinance by standard procedure rather than by emergency. The ordinance will be effective 90 days after the date of adoption, on May 30, 2023.

**Attachments:**

Ordinance No. 2023-004 and Corresponding Exhibits  
Exhibit A – 18.116.290 Amateur Radio Facilities  
Exhibit B – Findings

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

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code \*  
Title 18, Chapter 18.116.290, to Streamline \*  
Establishment of Amateur Radio Facilities. \* ORDINANCE NO. 2023-004  
\*  
\*

WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-22-000912-TA) to Deschutes County Code Title 18, Chapter 116.290, Amateur Radio Facilities; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed amendments on January 13 and January 26, 2023 and forwarded to the Deschutes County Board of County Commissioners (“Board”) a unanimous recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on February 15, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 18; now, therefore,

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

Section 1. AMENDMENT. Chapter 18.116.290, Amateur Radio Facilities, is amended to read as described in Exhibit “A”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

///

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

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

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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

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

ATTEST:

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

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

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

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

Record of Adoption Vote:

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

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

**Exhibit A to Ordinance 2023-004: Proposed Text Amendments**

~~Removed~~

New

18.116.290 Amateur Radio Facilities

- A. Amateur radio facilities shall meet the following criteria:
1. Antenna support structures, including guy wires and anchors shall be located outside of the required front, rear and side yard setbacks;
  2. Metal structures shall have a galvanized finish, or flat or matte silver, or flat or matte gray in color;
  3. Amateur radio facilities shall not include attached signage, symbols, or decorations, lighted or otherwise, other than required unlighted signage for safety or regulatory purposes;
  4. The property owner shall obtain a valid building permit if required from the Deschutes County Community Development Department, Building Safety Division.
  5. The height of amateur radio facilities shall be excepted from that of the underlying zoning district in accordance with B and C below, unless located in the AS, AD, or LM zones per 18.120.040(A)(1).
- B. Amateur radio facilities up to 70 feet in height are allowed outright in any zone as an accessory use if the provisions of subsection (A) and (B)(1) are otherwise met.
1. FCC License. The property owner shall obtain a current, valid FCC Amateur Radio License for the operation of amateur (“Ham”) radio services in the name of the property owner.
- C. Amateur radio facilities over 70 feet in height, up to 200 feet maximum height, are subject to the requirements under subsection (A) and (C)(1)(2), and any conditions of land use approval.
- ~~5-1.~~ 1. Compliance with Federal and State Regulations
- a. The property owner shall demonstrate compliance with applicable Federal Communications Commission (FCC), Federal Aviation Administration (FAA), and Oregon Department of Aviation (ODA) restrictions if applicable.
  - ~~b.~~ Compliance may be demonstrated by submitting copies of the FCC’s, FAA’s, and ODA’s written determination to the Deschutes County Community Development Department, ~~Building Safety Division at time of application for a building permit; and~~
- ~~6-2.~~ 2. FCC License
- a. The property owner shall provide documentation of a current, valid FCC Amateur Radio License for the operation of amateur (“Ham”) radio services in the name of property owner.
  - b. Compliance may be demonstrated by submitting a copy of the property owner’s Amateur Radio License to the Deschutes County Community Development Department, ~~Building Safety Division at time of application for a building permit.~~

(Ord. 2023-004, Ord. 2008-007 §2, 2008)

## Exhibit B: Proposed Findings 247-22-000912-TA

### FINDINGS

#### I. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The primary purpose of the amendments is to streamline the review process for certain Amateur Radio (HAM Radio) facilities.

Section 18.116.290, the code section regulating Amateur Radio Facilities, currently contains unclear language regarding the type of land use review application needed and requires written statements of compliance from Oregon Department of Aviation (ODAV), Federal Communications Commission (FCC), and Federal Aviation Administration (FAA), which are often difficult to acquire for smaller facilities.

Staff is proposing the following revisions to clarify the land use process and requirements for these facilities:

- General cleanup of language and organization
- Cross-references requirement from 18.120.040(A)(1) that limits height to 30 feet in Airport Safety (AS), Airport Development (AD), and Landscape Management (LM) zones for clarity.
- Added two tiers of regulations based on height
  - For facilities under 70 feet
    - Streamline review process – allowed as outright permitted accessory use
    - No formal determination of written compliance from FAA, ODAV, FCC
    - Maintains aesthetic and setback requirements
  - For facilities between 70 and 200 feet
    - Explicitly requires land use review
    - Maintains requirement for coordination with FAA, ODAV, FCC
    - Maintains aesthetic and setback requirements

#### II. BACKGROUND

In 2008, the Deschutes County Board of County Commissioners adopted Ordinance 2008-007, establishing regulations for amateur radio facilities. The Board opted to apply the same regulations for any facility regardless of height and opted to except these facilities from the height limitations of the underlying zoning district<sup>1</sup>.

In 2021 during the Community Development Department's annual work plan development, the Board of County Commissioners and the County's Planning Division received testimony from HAM/amateur radio operators expressing concern regarding the onerous requirements to establish

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<sup>1</sup> DCC 18.120.040(A)(1) Building Height Exceptions

smaller scale amateur radio facilities (under 70 feet), including a requirement to provide written demonstrations of compliance from FAA, ODAV, and FCC. Due to the scope of review authority, operators often found that these agencies were not able to provide written determinations of small-scale facilities outside of airport and airport overlay zones, which led to a conflict with the County's code provisions.

Operators were instead seeking a pathway to simplify establishment of facilities under 70 feet, while still maintaining regulations for larger scale facilities that may have aesthetic impacts to surrounding properties.

Staff also notes that ORS 221.295 limits restrictions on amateur radio facilities that are 70 feet or lower to those that are clearly linked to a health, safety, or aesthetic objective. This results from FCC ruling in PRB-1 (codified in 47 CFR Part 97). Therefore, the County has limited authority to apply unnecessary regulations to amateur radio facilities outside of those directly addressing a health, safety, or aesthetic issue.

### III. REVIEW CRITERIA

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

### IV. FINDINGS

#### CHAPTER 22.12, LEGISLATIVE PROCEDURES

##### Section 22.12.010.

##### ***Hearing Required***

**FINDING:** This criterion will be met because a public hearing was held before the Deschutes County Planning Commission on January 12, 2023 and Board of County Commissioners on February 15, 2023.

##### Section 22.12.020, Notice

##### ***Notice***

##### ***A. Published Notice***

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

**FINDING:** This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing on December 27, 2022, and the Board of County Commissioners’ public hearing on February 15, 2023.

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

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

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

**FINDING:** Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

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

**FINDING:** Notice was provided to the County public information official for wider media distribution. This criterion is met.

Section 22.12.030 Initiation of Legislative Changes.

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

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

Section 22.12.040. Hearings Body

- A. The following shall serve as hearings or review body for legislative changes in this order:**
  - 1. The Planning Commission.**
  - 2. The Board of County Commissioners.**
- B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.**

**FINDING:** The Deschutes County Planning Commission held the initial public hearing on January 12, 2023. The Board then held a public hearing on February 15, 2023. These criteria are met.

Section 22.12.050 Final Decision

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

**FINDING:** The proposed legislative changes will be implemented by Ordinance No. 2023-004 upon approval and adoption by the Board of County Commissioners. This criterion will be met.

**A. Statewide Planning Goals and Guidelines**

Goal 1: Citizen Involvement: The amendments do not propose any changes to the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for each public hearing.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on November 28, 2022. The Planning Commission held a public hearing on January 12, 2023 and the Board of County Commissioners held a public hearing on February 15, 2023. This Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: The proposed amendments are to clarify existing requirements for amateur radio facilities. Staff is streamlining requirements for facilities under 70 feet while maintaining the current requirements for facilities over 70 feet up to 200 feet. As noted above, ORS 221.295 limits a local government's authority to regulate towers outside of concerns related to health, safety, or aesthetics. Adverse impacts to farming practices are not anticipated under these amendments and no such impacts have been identified in the record. Oregon Revised Statute and Rule do not contain specific requirements for amateur/HAM radio facilities under 200 feet in exclusive farm use zones. The amendments are consistent with Goal 3.

Goal 4: Forest Lands: The proposed amendments are to clarify existing requirements for amateur radio facilities. Staff is streamlining requirements for facilities under 70 feet while maintaining the current requirements for facilities over 70 feet up to 200 feet. As noted above, ORS 221.295 limits a local government's authority to regulate towers outside of concerns related to health, safety, or aesthetics. Adverse impacts to forestry practices are not anticipated under these amendments and no such impacts have been identified in the record. Oregon Revised Statute and Rule do not contain specific requirements for amateur/HAM radio facilities under 200 feet in forest zones. The amendments are consistent with Goal 4.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: Goal 5 is to protect natural resources and conserve scenic and historical areas and open spaces. OAR 660-023-0250(3) states that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. The proposed amendment is not seeking to change any requirements in the Wildlife Area overlay zone which protects inventoried wildlife resources. The height exemption currently in 18.120.040(A)(1) does not allow for a facility over 30 feet in the County's Landscape



Management Overlay Zone. This zone protects scenic resources through additional aesthetic requirements. The code provision will remain unchanged. Staff finds that the amendments are consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6, they comply.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards; therefore, they comply. Additionally, amateur radio facilities and operators may be of use during times of emergency response and loss of standard means of communication.

Goal 8: Recreational Needs: The text amendments do not propose to change the County's Plan or implementing regulations regarding recreational needs; therefore, they are in compliance.

Goal 9: Economic Development: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans to ensure there is adequate land available to realize economic growth and development opportunities. The proposed amendments apply to rural lands and do not propose to amend the Comprehensive Plan. Compliance is met.

Goal 10: Housing: This goal is not applicable because, unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding public facilities and services.

Goal 12: Transportation: Goal 12 is to provide and encourage a safe, convenient and economic transportation system. The proposed text amendments will not change the functional classification of any existing or planned transportation facility or standards implementing a functional classification system. Compliance with Goal 14 is met.

Goal 13: Energy Conservation: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation. Therefore, compliance with Goal 13 is established.

Goal 14: Urbanization: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding urbanization. Therefore, compliance with Goal 14 is established.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

#### **D. Deschutes County Comprehensive Plan**

Chapter 1, Comprehensive Planning: This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

These actions also satisfy the Goals and relevant Policies of Section 1.3, Land Use Planning Policies. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board reviewed the text amendments.