Mailing Date:
Wednesday, February 26, 2025

Attachment B Hearings Officer Recommendation

RECOMMENDATION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: 247-24-000392-PA, 393-ZC

HEARING DATE: November 14, 2025, 1:00 p.m.

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

APPLICANT: Cascades Academy of Central Oregon

SUBJECT PROPERTY:
- 64325 O.B. Riley Rd; Assessor map 17-12-06, tax lot 301
- 64345 O.B. Riley Rd; Assessor map 17-12-06, tax lot 300
- 64375 O.B. Riley Rd; Assessor map 17-12-06, tax lot 302
- 64385 O.B. Riley Rd; Assessor map 17-12-06B, tax lot 100
- No address; Assessor map 16-12-31D, tax lot 4200
- No address; Assessor map 16-12-31D, tax lot 4300
- 64411 O.B. Riley Rd; Assessor map 16-12-31D, tax lot 4400

REQUEST: Applicant requests approval of a Comprehensive Plan Amendment to change the designation of the Subject Property. If approved, Tax Lots 4200, 4300, and 4400 would change from the Surface Mine (SM) designation to Rural Residential Exception Area (RREA), and Tax Lots 100, 300, 301, and 302 would change from Agriculture (AG) to Rural Residential Exception Area (RREA). Applicant also requests a corresponding Zone Change to rezone all Tax Lots on the Subject Property from either Surface Mining (SM) or Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

HEARINGS OFFICER: Tommy A. Brooks

SUMMARY OF RECOMMENDATION: The Hearings Officer finds that the record is not sufficient to support the requested Comprehensive Plan Amendment and Zone Change, specifically with respect to the requirements of Statewide Planning Goal 5. The Hearings Officer therefore recommends the Deschutes County Board of Commissioners DENY the Application unless the Applicant demonstrates the requested Comprehensive Plan Amendment and Zone Change are consistent with Statewide Planning Goal 5.

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I. STANDARDS AND 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 (MUA-10)
- Chapter 18.52, Surface Mining (SM)
- 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 23, Procedures and Requirements for Complying with Goal 5
- Division 33, Agricultural Land

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

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Nature of Proceeding

The Subject Property consists of seven Tax Lots. Tax Lots 4200, 4300, and 4400 currently carry the Surface Mine (SM) Comprehensive Plan designation and are zoned Surface Mining (SM). Tax Lots 100, 300, 301, and 302 currently carry the Agriculture (AG) Comprehensive Plan designation and are zoned Exclusive Farm Use-Tumalo/Redmond/Bend subzone (EFU). This matter comes before the Hearings Officer as a request for approval of a Comprehensive Plan Map Amendment ("Plan Amendment") to change the designation of the Subject Property from Surface Mining (SM) and Agriculture (AG) to Rural Residential Exception Area (RREA). The Applicant also requests approval of a corresponding Zoning Map Amendment ("Zone Change") to change the zoning of the Subject Property to Multiple Use Agricultural (MUA-10).

The primary bases of the request in the Application are the Applicants' assertions that: (1) the Subject Property does not contain a significant Goal 5 resource; (2) the Subject Property is not part of the

remaining surface mining operation; and (3) the Subject Property does not qualify as "agricultural land" under the applicable provisions of the Oregon Revised Statutes or Oregon Administrative Rules governing agricultural land. Based on those assertions, the Applicant is not seeking an exception to Statewide Planning Goal ("Goal") 3 for the Plan Amendment or Zone Change. Although the Applicant intends to use the Subject Property for the expansion of an existing school on an adjacent parcel, the Applicant is not requesting the approval of the school or of any other specific development as part of the Application.

B. Notices and Hearing

The Application is dated June 24, 2024. On July 16, 2024, the County issued a Notice of Application to several public agencies and to property owners in the vicinity of the Subject Property (together, "Application Notice"). The Application Notice invited comments on the Application. The County also provided notice of the Plan Amendment to the Department of Land Conservation and Development ("DLCD") on September 27, 2024.

The County mailed a Notice of Public Hearing on September 30, 2024 ("Hearing Notice") announcing an evidentiary hearing ("Hearing") for the requests in the Application. Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on November 14, 2024, opening the Hearing at 1:00 p.m. The Hearing was held via videoconference, with Staff, representatives of the Applicant, and other participants in the hearing room. The Hearings Officer appeared remotely. The Hearing concluded at 2:06 p.m.

At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I asked for but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

Prior to the conclusion of the Hearing, the Applicant requested and agreed to leaving the written record open to take additional evidence. At the conclusion of the Hearing, I announced that the written record would remain open: (1) until December 5, 2024, for any participant to provide additional evidence ("Open Record Period"); (2) until December 19, 2024, for any participant to provide rebuttal evidence to evidence submitted during the Open Record Period; and (3) until January 2, 2025, for the Applicant only to provide a final legal argument, without additional evidence.

C. Review Period

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

[1] ORS 215.427(7).

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Staff Report

Prior to the Hearing, on November 4, 2024, the Deschutes County Planning Division ("Staff") issued a report setting forth the applicable criteria and presenting the evidence in the record at that time ("Staff Report").

The Staff Report concludes that the Applicant has met the burden of proof necessary to justify the Plan Amendment and Zone Change, and it makes several findings with respect to the approval standards. Because some of the information, analysis, and findings provided in the Staff Report are not refuted, portions of the findings below refer to the Staff Report and, in some cases, adopt sections of the Staff Report as my findings. In the event of a conflict between the findings in this Decision and the Staff Report, the findings in this Decision control.

B. Code, Plan, and Statewide Planning Goal Findings

The legal criteria applicable to the requested Plan Amendment and Zone Change were set forth in the Application Notice and appear in the Staff Report. This Recommendation addresses each of those criteria, as set forth below, in addition to other issues raised by the participants.

1. Title 18 of the Deschutes County Code, County Zoning

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.

The Applicant is the owner of the Subject Property and submitted the Application and the necessary Application form. The Applicant has requested a quasi-judicial Plan Amendment and filed the Application for that purpose, together with the request for the Zone Change. It is therefore appropriate to review the Application using 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.

According to the Applicant and the Staff Report, the County's application of this Code provision does not necessarily involve the direct application of the Plan's introductory statements and goals as approval

criteria. Rather, consistency with the Plan can be determined by assessing whether the proposal is consistent with specific Plan goals and policies that may be applicable to the proposal.

The Applicant identified multiple Plan goals and policies it believes are relevant to the Application.[2] Among those goals and policies are those set forth in: (1) Section 2.2 of Chapter 2, relating to Agricultural Land Policies; (2) Section 2.4 of Chapter 2, relating to Goal 5; (3) Section 2.10 of Chapter 2, relating to surface mining; (4) Section 2.7 of Chapter 2, relating to Open Spaces, Scenic Views and Sites; (5) Section 3.2 of Chapter 3, relating to Rual Development; (6) Section 3.3 of Chapter 3, relating to rural housing; and (7) Section 3.7 of Chapter 3, relating to transportation. The Application explains how the Plan Amendment and Zone Change is consistent with these goals and policies.

No participant asserts that the Application does not comply with DCC 18.136.020(A), disputes the Applicant's characterization of the Plan's goals and policies presented in the Application, or identifies other Plan goals and policies requiring consideration. Central Oregon LandWatch ("COLW") does raise issues related to some of these policies – e.g., whether the Subject Property constitutes agricultural land and the Applicant's compliance with transportation rules – but does so in the context of whether the Application satisfies various state administrative rules, and COLW does not go as far to say that the Application is inconsistent with these Comprehensive Plan policies. COLW's specific arguments are addressed below in separate findings responding to the specific issues COLW raises.

Based on the foregoing, I find that this Code provision is satisfied.

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

The purpose of the MUA-10 zoning district 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 Applicant's Burden of Proof asserts that "[a]pproval of the application is consistent with the purpose of the MUA-10 zoning district," and quotes the purpose set forth above. The Applicant supports that assertion by stating that the Subject Property is not suited to full-time commercial farming, and that the

[2] *See* page 8-16 of the Applicant's Burden of Proof Statement submitted with the Application ("Application Narrative").

zone change will allow the expansion of a school, which the Applicant asserts is a low-density development that conserves open spaces and protects natural and scenic resources. The Staff Report repeats the Applicant's assertions and agrees that the requested Zone Change is consistent with the purpose of the proposed zoning.

COLW disputes the Applicant's assertion that the Subject Property is not suitable for farming, but it does not dispute the Applicant's other assertions that the requested zone change is consistent with the purpose of the zone. Nor does COLW assert that this Code provision is not satisfied. Although COLW argues that the zone change is not "necessary" to allow the contemplated school expansion (because some schools are allowed on EFU land), that argument does not describe why the requested zone change would be inconsistent with the purpose of the MUA-10 designation. Nor does this Code provision require a showing that the Zone Change is "necessary." COLW's arguments relating to the suitability of the Subject Property for farming are addressed in other findings below.

Based on the foregoing, and in the absence of persuasive countervailing evidence or argument, I find that the requested zone change is consistent with the purpose of the MUA-10 zone and this Code provision is satisfied.

C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:

1. The availability and efficiency of providing necessary public services and facilities.

As noted in the Staff Report, this criterion specifically asks if the Zone Change will *presently* serve public health, safety, and welfare. The Applicant provided the following as support for why this criterion is met:

- Necessary public facilities and services are available to serve the Subject Property, including electric power and water
- Transportation access to the Subject Property is available, and the impact of increased traffic on the transportation system is non-existent and, to the contrary, the planned rezone results in a reduction in potential trips generated from the Subject Property
- The Subject Property receives police services from the Deschutes County Sheriff and fire service from Rural Fire Protection District # 2
- There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare

The Staff Report confirms that, prior to development of the Subject Property, the Applicant would be required to comply with the applicable requirements of the Code, at which time additional assurances of adequate public services and facilities will also be verified.

No participant in this proceeding disputed the Applicant's or Staff's characterization of this Code provision or the Applicant's evidence presented to show compliance with this Code provision.

Based on the foregoing, I find that services are currently available and sufficient for the Subject Property, and that they can remain available and sufficient if the Subject Property is developed under the MUA-10 zone. I therefore find this Code provision is satisfied.

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

The Applicant asserts the following:

> The MUA-10 zoning is consistent with the specific goals and policies in the comprehensive plan discussed above. The MUA-10 zoning allows rural uses consistent with the uses of many other properties in the area of the subject property.
>
> The zone change will not impose new impacts on the EFU-zoned land adjacent to or nearby the subject property because many of those properties are residential properties, hobby farms, already developed with dwellings, not engaged in commercial farm use, are idle, or are otherwise not suited for farm use due to soil conditions, topography, or ability to make a profit farming.
>
> As discussed below, the subject property is not agricultural land, is comprised of predominantly Class 7 and 8 soils, and as described by the soil scientist, Mr. Kitzrow, the nonproductive soils on the subject property make it not suitable for commercial farming or livestock grazing. The subject property is not land that historically has been or could be used in conjunction with the adjacent irrigated property for any viable agricultural use and any future development of the subject property would be subject to building setbacks.

The Staff Report agrees that the Applicant has demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Plan. COLW disputes the Applicant's assertion that the Subject Property is not suitable for agriculture, or that it is predominantly composed of Class 7 and Class 8 soils, but COLW does not assert that any potential impacts are inconsistent with Plan goals and policies. Nor does COLW dispute the Applicant's characterization of the applicable goals and policies. COLW's arguments relating to farming suitability and soil classifications are addressed below.

Based on the foregoing, and in the absence of persuasive countervailing evidence or argument, I find that this Code provision is satisfied.

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

The Applicant's Burden of Proof addresses this Code provision, in part, with an explanation that purports to describe a mistake in the zoning of the property. However, that explanation simply describes the history

of EFU zoning in the state and the fact that resource zoning was originally applied "using a broad brush." But this portion of the Burden of Proof also acknowledges that "[t]he EFU zoning designation was likely based on the best soils data that was available to the County at the time it was originally zoned." I find that the Applicant has not established that an actual mistake was made when the property was zoned EFU. According to the Applicant, a change in circumstances exists since the Subject Property was originally zoned for agriculture in the 1970's, including: (1) the collection of new soils data showing the property does not have agricultural soils; (2) the transfer of the property from the owner of mining Site No. 370; (3) market changes reducing the viability of commercial farming both on the Subject Property and in the area in general; and (4) encroaching development. The Staff Report agrees with the Applicant's findings regarding the existence of a change in circumstances.

COLW submitted comments asserting that the Application does not satisfy CDC DCC 18.136.020(D), but those comments simply state that the property was rezoned to EFU in 2001 and "there has neither been a change in circumstances since that decision, nor was any mistake made in that decision." COLW repeated that conclusion in oral comments during the Hearing. COLW does not attempt to explain the portion of its comments relating to an absence of changed circumstance, nor does it attempt to refute the evidence provided by the Applicant that circumstances have indeed changed. COLW's argument in this regard is therefore not developed enough for me to respond to, and lacks supporting evidence that allows me to infer the basis on which is makes its claim.

Based on the Applicant's evidence, and in the absence of evidence or a developed argument challenging the Applicant's evidence, I find that this Code provision is satisfied.

Section 18.52, Surface Mining Zone

Section 18.52.200, Termination of the Surface Mining Zoning and Surrounding Surface Mining Impact Area Combining Zone

A. When a surface mining site has been fully or partially mined, and the operator demonstrates that a significant resource no longer exists on the site, and that the site has been reclaimed in accordance with the reclamation plan approved by DOGAMI or the reclamation provisions of DCC 18, the property shall be rezoned to the subsequent use zone identified in the surface mining element of the Comprehensive Plan.

This Code provision contemplates that a property with the SM zoning designation may be rezoned under certain circumstances. Specifically, property can be rezoned once the "surface mining site" has been fully or partially mined, no longer has a significant resource, and has been reclaimed in accordance with applicable reclamation plans and Code provisions. The Code also contemplates that a post-mining "subsequent use zone" will be identified and that, through the rezoning process, that subsequent use zone will apply to the property.

The Applicant asserts that this criterion is not applicable. Currently, only tax lots 4200, 4300, and 4400 of the Subject Property retain the SM zoning designation. The Applicant notes that those parcels, which are part of Site No. 370, were included in the County's inventory of mineral and aggregate sites only for "storage" uses. According to the Applicant, it was never intended that these tax lots would be mined, no

minerals were ever extracted from these tax lots, no Department of Geology and Mineral Industries ("DOGAMI") or County reclamation plan applies to these tax lots, and the soils reports confirms that there is no significant resource on these tax lots. The Staff Report agrees with the Applicant's analysis. COLW asserts that the Application does not satisfy DCC 18.52.200, but only as it relates to tax lots 300, 301, and 302, which is discussed in more detail below. COLW does not dispute the Applicant's assertion that DCC 18.52.200 is not applicable to tax lots 4200, 4300, and 4400.

I agree with the Applicant that DCC 18.52.200 is not applicable in this context. Looking at the language in that Code provision, it applies to a "surface mining site" that was identified as having a significant resource and that is capable of being mined (wholly or partially) and later reclaimed. The inventory of mineral and aggregate sites included in the record shows that Site No. 370 is not such a site, as evidenced by the fact that it is listed as a "storage" site rather than as a mining type (e.g. sand and gravel or pumice) and the fact that no quantity of mineral is listed for that site. The absence of any intended mining is further evidenced by the fact that no reclamation plan applies to these tax lots.

As just noted, COLW asserts that the Application nevertheless violates DCC 18.52.200 with respect to tax lots 300, 301, and 302. Those tax lots previously carried the SM zoning designation, but have been zoned EFU since 2001 when the County adopted Ordinance No. 2001-027 (the "2001 Rezoning Decision"). The 2001 Rezoning Designation applied DCC 18.52.200 to these three tax lots, which were part of mining Site No. 304. According to COLW, DCC 18.52.200 states that when the County removes the SM zone from a surface mining site, "the property shall be rezoned to the subsequent use zone identified in the surface mining element of the Comprehensive Plan." As a result of that language, according to COLW, once that subsequent use zone is in place, it cannot be changed again. Specifically, COLW states that "[a]pproving the current application would violate DCC 18.52.200 by rezoning the subject property to a different zone than the zone identified in the County's comprehensive plan."

I disagree with COLW's argument for multiple reasons. First, DCC 18.52.200 applies to properties that are zoned SM. Tax lots 300, 301, and 302, however, are zoned EFU. Nothing in the language of this Code provision states or implies that it can or should be applied to properties in zones other than the SM zone. This Code provision therefore does not apply to these three tax lots. Second, this Code provision is silent with respect to subsequent applications for rezoning property. The language simply states that, once a site no longer has a significant resource it can be rezoned and, if it is rezoned, the County must apply the identified subsequent use zone. The 2001 Rezoning Decision did just that – by rezoning these three tax lots to the EFU zone. If the Code were intended to prohibit a future property owner from rezoning the property again, one would expect to find such a limitation in the Code language, but no such limitation exists. Third, the 2001 Rezoning Decision itself is silent on this matter. It contains no conditions of approval or other limiting language preventing the property owner from seeking to rezone the property in the future. Finally, this Code provision must be read in context with other language in the Code. DCC 18.136.020 establishes the criteria for rezoning property. Those criteria contain no exceptions for properties that were already rezoned pursuant to DCC 18.52.200.

Based on the foregoing, I find that a Plan Amendment and Zone Change is available to the Applicant as long as all other criteria are satisfied, and that DCC 18.52.200 is not applicable to any of the tax lots comprising the Subject Property under these circumstances.

B. Concurrent with such rezoning, any surface mining impact area combining zone which surrounds the rezoned surface mining site shall be removed. Rezoning shall be subject to DCC 18.136 and all other applicable sections of DCC 18, the Comprehensive Plan and DCC Title 22, the Uniform Development Procedures Ordinance.

As proposed by the Applicant, the Surface Mining Impact Area (SMIA) combining zone associated with the Subject Property and the remaining properties within Site No. 370 would remain in place. No participant objects to that portion of the Applicant's proposal. Based on the foregoing, I find that this Code provision will be implemented if the Application is approved as part of the final action by the County's Board of Commissioners ("Board").

2. DCC 22.20.015(A)(2)

COLW asserts that the Application cannot be approved because the Applicant is in violation of a condition of approval applicable to portions of the Subject Property. DCC 22.20.015(A)(2) provides that the County cannot make a land use decision for a property if the "property is in violation of applicable land use regulations, and/or the conditions of approval of any previous land use decisions or building permits previously issued by the County."

According to COLW, prior County decision SP-93-59 approved a site plan for surface mining and reclamation on tax lots 300, 301, and 302. As part of that decision, the County imposed certain reclamation requirements, including the reclamation plan associated with a DOGAMI permit, and incorporated those into the conditions of approval for that decision. COLW asserts that the conditions of the Subject Property as described in the Applicant's Soil Report demonstrates that these reclamation requirements are unmet and, therefore, in violation of the conditions of approval in the County's prior decision. COLW further asserts that, until the site reclamation is complete, the County cannot make any land use decisions concerning the Subject Property.

The Applicant responds that the County has previously determined that the reclamation requirements from the SP-92-59 decision have been completed. According to the Applicant, the 2001 Rezoning Decision discussed above conclusively establishes that the conditions of SP-92-59, the DOGAMI reclamation plan, and a related development agreement containing the same requirements were met, which is what justified the rezoning of tax lots 300, 301, and 302 back to the EFU zone. The Applicant asserts that COLW's arguments constitute an impermissible "collateral attack" on the 2001 Rezoning Decision.

I find that this issue can be resolved without the need to determine whether COLW's arguments amount to a collateral attack of the County's prior decision for three distinct and independent reasons. First, the restriction set forth in DCC 22.20.015(A) applies only where there has been a "violation" of a condition of approval. DCC 22.20.015(C) defines a "violation" as existing when "the property has been determined to not be in compliance either through a prior decision by the County or other tribunal, or through the review process of the current application, or through an acknowledgement by the alleged violator in a signed voluntary compliance agreement." Here, not only has a violation not been determined to exist, the only prior adjudication of the issue came to the opposite conclusion and determined no violation existed.

Second, the evidence in the record is that the County and DOGAMI each determined that the reclamation activities that occurred were satisfactory. Those determinations were made in 2001 and were closer in time to when the reclamation activities occurred. The result of the reclamation as it exists today may not be what COLW would expect them to be, but the entities reviewing the results at the time provide better evidence of whether and how the reclamation activities were implemented.

Finally, I disagree with COLW that the reclamation conditions it points to are ongoing obligations of the property owner. Those conditions were imposed as part of the review of a site plan allowing surface mining activities. With the approval of the 2001 Rezoning Decision, the property was rezoned and the surface mining use was no longer allowed on the property. The conditions of approval relating to surface mining therefore no longer had any purpose. Absent any condition of approval in the 2001 Rezoning Decision that kept those conditions alive, there is simply no basis to apply a condition of approval where there is no longer an approved use to be conditioned.

Based on the foregoing, I find that DCC 22.20.015(A)(2) does not prevent the Applicant from seeking the Plan Amendment or Zone Change, and that the County is not precluded from approving the Application on that basis.

3. Deschutes County Comprehensive Plan Goals and Policies

As previously noted, the Applicant and Staff Report both identify several Plan goals and policies potentially relevant to this Application. Staff's discussion of those goals and policies appears on pages 14 through 23 of the Staff Report. No participant in this proceeding identified other applicable goals and policies, or otherwise asserted that the proposal is inconsistent with the plans and policies the Applicant and Staff identified. I therefore adopt the findings in the Staff Report as my findings relating to the Plan goals and policies. The issues raised by COLW that are related to the County's Plan goals and policies, but which specifically address various state administrative rules, are addressed in later findings.

4. Oregon Administrative Rules

The participants to this proceeding have identified several state administrative rules that may be directly applicable to the Applicant's proposal. The findings in this section address each of those rules.

a. OAR 660-023-0180

The Applicant and the Staff Report identify multiple provisions in OAR 660-023-0180 as being applicable to the Application. In summary, those provisions provide a process by which a County should amend an acknowledged inventory or plan with regard to mineral and aggregate resources, including a process for determining the significance of a resource, whether for the purpose of listing a new resource or de-listing an existing resource. Only the Applicant and the Staff Report address this administrative rule, and no other participant asserts that the Application does not satisfy the provisions in OAR 660-023-0180. I therefore adopt the findings on pages 23-26 of the Staff Report addressing this administrative rule as my findings.

b. OAR 660-006-0005

The Applicant addresses OAR 660-006-0005 to demonstrate that the Subject Property does not qualify as "forest lands" and, therefore, that Goal 4 is not applicable to the request in the Application. The Staff Report indicates that it agrees with the Applicant's analysis, and no other participant objects to the Applicant's conclusion that the Subject Property does not qualify as "forest lands". For the reasons stated in the Application and the Staff Report, I agree that the Subject Property does not qualify as "forest lands" and, therefore, that Goal 4 does not apply.

c. Goal 3 Administrative Rules

A major issue in this proceeding is whether the Subject Property qualifies as "agricultural land" under Goal 3 and its implementing rules. The Applicant seeks to establish that the Subject Property is not agricultural land. In support of its position, the Applicant submitted to the record an Order 1 Soil Survey ("Soil Study") prepared by a certified professional soil scientist, Gary A. Kitzrow of Growing Soils Environmental Associates (GSEA). The Staff Report agrees with the Applicant's position and the findings in the Soil Study, concluding that the Subject Property consists predominantly of Class VII and VIII soils and, therefore, does not constitute agricultural lands. COLW, on the other hand, asserts that the Subject Property is not only agricultural land, but that it is high value farmland that must be zoned EFU, and that the EFU designation cannot be changed without first taking an exception to Goal 3.

As a starting point, COLW argues that the Applicant cannot rely on ORS 215.211 and the Soil Study to change the zoning designation of the Subject Property because the property qualifies as high value farmland using U.S. Natural Resources Conservation Service ("NRCS") classifications. COLW's argument is rooted in OAR 660-033-0030(8), which COLW believes requires that the NRCS must be used for the approval of certain land use applications on high-value farmland and that additional soil information cannot be used. According to COLW, OAR 660-033-0090 and OAR 660-033-0120, which are referenced in OAR 660-033-0030(8), mean, together, that "[w]hen the NRCS soil classes and rating show that a property is high-value farmland, the only uses allowed on that land are those specified in OAR 660-033-0120, and counties must apply EFU zoning to such lands."

COLW's argument in this regard does not reflect the actual language of the rules. First, OAR 660-033-0090 states that the EFU zone must apply to "agricultural lands", which may be high-value farmland or not high-value farmland. Once it is determined that land is agricultural land, and that it is high-value farmland, that rule states that only those uses authorized on high-value farmland under OAR 660-033-0120 are allowed. But the current application is not concerned with allowing a particular use, so the provisions of OAR 660-033-0090 and OAR 660-033-0120 are not at issue. Those provisions would be triggered only if the Subject Property were first deemed to be agricultural land and then a specific use were proposed. Here, the task is to determine if the Subject Property is agricultural land at all. If it is, then the rule provisions COLW relies on may be applicable. If it is not, then the Subject Property will not be agricultural land at all, whether high-value farmland or something else, and those provisions would not apply.

OAR 660-033-0020(1)(a)(A)

COLW alternatively argues that the Subject Property qualifies as agricultural land under the definitions set forth in OAR 660-033-0020(1)(a), the first of which, in subsection (A), relies on the NRCS classifications. Under that definition, "agricultural lands" includes "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." The Subject Property could qualify as "agricultural lands" under that definition because the applicable NRCS soil classifications include large amounts of Class III soils (when irrigated). However, the Applicant relies on ORS 215.211, which it asserts grants a property owner the right to rely on more detailed information in lieu of the NRCS classifications. The Applicant uses the Soil Study for that purpose, and the Soil Study concludes that the soils on the Subject Property are predominantly Class VII and VIII soils.

As the Land Use Board of Appeals ("LUBA") has explained, "ORS 215.211 allows a site-specific analysis of soils where a person believes that such information would, compared to the information provided by the NRCS, assist a county in determining whether land is agricultural land."[3] In that case, the applicant sought to change a property's Plan designation from AG to Rural Industrial (RI). The applicant in that case also relied on a site-specific Order 1 soil survey prepared by a qualified soil scientist. LUBA upheld the County's reliance on that soil survey as part of its determination that the property at issue in that case consisted predominantly of Class VII and Class VIII soils unsuitable for farming.

Based on the language in ORS 215.211 and LUBA's acknowledgment of that statute, I find that the County is not precluded from considering the Order 1 soil survey when applying OAR 660-033-0020(1)(a)(A), as long as doing so is consistent with OAR 660-033-0030(5), which implements ORS 215.211. COLW does not dispute that the survey complies with OAR 660-033-0030(5). The Staff Report, however, notes that the Applicant has not provided confirmation of the Soil Study from DLCD, a requirement of OAR 660-033-0030(5)(b) by virtue of its cross reference to OAR 660-033-0045. The Applicant and Staff suggest a condition of approval requiring a response from DLCD prior to the Plan Amendment and Zone Change becoming final. No other participant objected to that approach. Because this Decision does not recommend approval of the Plan Amendment and Zone Change, it does not include any suggested conditions. However, if the Board subsequently approves the Application, and if the Applicant still has not provide documentation from DLCD, such a condition seems warranted and necessary.

Based on the foregoing, and considering the more detailed evidence provided by the Applicant's soil scientist against the NRCS designation of the Subject Property, I find that that the Subject Property does not qualify as agricultural land under Goal 3 as defined in OAR 660-033-0020(1)(a)(A), but that the Applicant has not complied with all procedural aspects of OAR 660-033-0030(5) and must do so before the Plan Amendment and Zone Change are approved. That does not end the inquiry, however, as COLW also argues that the Subject Property qualifies as agricultural land under the other sections of OAR 660-033-0020(1)(a).

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[3] *Central Oregon Land Watch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-008, April 24, 2023) ("LUBA No. 2023-008").

OAR 660-033-0020(1)(a)(B)

COLW next argues that the Subject Property is "agricultural land" as defined in OAR 660-033-0020(1)(a)(B). That rules states that land qualifies as agricultural land if it 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."

COLW addresses each of the subsection (B) factors, concluding that the Subject Property is suitable for farm use based on any one of those factors. The Applicant similarly addresses each of those factors, concluding that the Subject Property is not suitable for farm use. Having reviewed the evidence and arguments presented by these participants, a primary difference in their positions comes down to the definition of "farm use", which ORS 215.203(2)(a) defines 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, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof.

According to COLW, the Subject Property could be employed for multiple farm uses because: (1) the soil fertility is high-value farmland; (2) it can be used for livestock, on its own or in conjunction with other lands; (3) the climate is the same as the climate of surrounding agricultural lands; (4) irrigation water is available; (5) it is part of a larger block of productive agricultural land; (6) any technological and energy inputs needed to farm the property are not unique; and (7) it is an accepted farm practice to improving the property for farming, such as removing rocks, tilling and fertilizing soil, and improving irrigation infrastructure. COLW also notes that the Subject Property has historically had an irrigated pasture.

The Applicant does not dispute that some "farming" may be possible on the Subject Property. Rather, the Applicant asserts that, based on these same factors, farming activities would not be "profitable" and, therefore, do not arise to the level of a "farm use" as defined by ORS 215.203(2)(a). The Applicant supports its assertions with evidence from the Soil Study and farmers with experience engaging in farm uses. The Applicant's explanation includes addressing its inability to engage in farm uses on the Subject Property even if the Subject Property is considered in conjunction with other parcels.

As just one example, the Applicant provided evidence that the Subject Property could not support enough forage for even one cow to graze and that any revenue gained from raising one cow would be more than offset by all the costs necessary to engage in that activity. Similarly, the Applicant provided evidence that the costs of adding additional irrigation infrastructure are unreasonable and prohibitive. The Applicant also notes that the historical use on the site as an irrigated pasture does not necessarily inform whether such a use constitutes a "farm use" under current conditions as COLW suggests – for example, because the economics of farm activities have changed over time.

As it relates to this administrative rule, the competing evidence submitted by the parties makes this a close call. Having reviewed and weighed that evidence, however, I find that the quantitative and more-detailed

evidence provided by the Applicant is more persuasive, and I conclude that it is more likely than not that the Subject Property is not suitable for farm uses as defined in ORS 215.203(2)(a).

OAR 660-033-0020(1)(a)(C)

As a final argument on this issue, COLW asserts that the Subject Property is "agricultural land" as defined in OAR 660-033-0020(1)(a)(C). That rule states that land qualifies as "agricultural land" if it "is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands." COLW specifically asserts that the extra traffic, noise, and human presence resulting from a zone change "threatens the viability of current and potential farm practices in the area." The Applicant responds, in part, by noting how LUBA has interpreted this rule to require "some connection between the subject property and adjacent or nearby farm practices, such that the property must remain as 'agricultural land' in order to permit such practices on other lands to be undertaken."[4] In that case, LUBA agreed that it is not only that the land itself must be necessary to permit farm practices on other lands, but the land's resource designation and zoning must be "necessary" to permit farm practices on other lands.

LUBA acknowledges that this "necessary" standard is a high one, and some conflicts may be allowed. But where specific conflicts are identified, they must be assessed. COLW, however, does not identify specific conflicts that will happen as a result of the change in zoning, only potential conflicts that may arise. Indeed, specific conflicts would be difficult to identify because the Application does not propose a specific development. The Applicant does contemplate using the Subject Property for the expansion of an existing school, but COLW acknowledges that such a use is authorized under current zoning. Thus, the change in zoning would not be the cause of the conflicts COLW urges must be avoided in order for other properties to continue farming.

Based on the foregoing, I find that the evidence in the record does not allow me to conclude that the Subject Property is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands and, therefore, the Subject Property does not qualify as agricultural land under this part of the rule.

OAR 660-033-0020(1)(b)

The state's administrative rules provide one more definition of "agricultural lands" in OAR 660-033-0020(1)(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;…" The Applicant states that the Subject Property does not fall into this category and "is not, and has not, been a part of a farm unit". The Staff Report agrees with the Applicant's assessment, and no other participant challenges that assessment or argues that the Subject Property falls within this definition. Based on the foregoing, I find that the Subject Property is not "agricultural land" under OAR 660-033-0020(1)(b).

/ / /

[4] *Central Oregon LandWatch et al. v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-006/009) (July 28, 2023).

d. Goal 5 Administrative Rules

COLW argues that the Application is not in compliance with OAR 660-023-0250(3)(b), which is part of Goal 5. Goal 5 and its implementing rules protect natural resources, scenic and historic areas, and open spaces. Pursuant to OAR 660-023-0250(3), the County does not have to apply Goal 5 as part of a post-acknowledgment plan amendment ("PAPA") "unless the PAPA affects a Goal 5 resource." One scenario in which a PAPA may affect a Goal 5 resource is when the "PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list."[5]

COLW argues that the proposed Plan Amendment and Zone Change requires the Applicant to apply Goal 5 provisions because the Application "proposes to amend the plan designation and zoning for the subject property that would allow new uses – those permitted in the MUA-10 zone – on the subject property" and that those new uses may conflict with the County's Goal 5-protected resources. The specific resources COLW identifies are Landscape Management Rivers, State Scenic Waterways, and wetlands.

The County regulates conflicting uses with Landscape Management Rivers and State Scenic Waterways through the application of the Landscape Management Combining zone ("LM Zone"), and the Subject Property currently carries the LM Zone designation.

The Applicant asserts that there is no need to apply Goal 5 in light of the County's acknowledged Plan, which contains the LM Zone as a tool for protecting some Goal 5 resources. According to the Applicant, the Subject Property is already subject to the LM Zone and, to the extent there are any conflicts with a Goal 5 resource, that can be resolved at the time when specific development occurs and the County requires site plan approval for any development within the LM Zone. The Applicant specifically states that "[t]here is no requirement to apply Goal 5 directly to the application where, as here, the proposal does [not] introduce 'new uses' which would be conflicting with the Goal."[6]
The Applicant's response is not consistent with a relatively recent LUBA decision – the LUBA No. 2023-008 case cited above in footnote 3. That decision rejects the very approach to Goal 5 the Applicant seeks here. In that case, LUBA explained that its prior decisions require a local jurisdiction "to apply Goal 5 if the PAPA allows a new use that could conflict with Goal 5 resources." LUBA then addressed a situation similar to the situation presented in this case and analyzed whether the new zoning (in that case, the RI zone on property that would retain the LM overlay) allowed uses on the subject property that were not allowed under the previous EFU zoning and whether those uses could conflict with protected Goal 5 resources.

LUBA's decision acknowledged that the County previously conducted the appropriate Goal 5 analysis for other RI-zoned properties and applied the LM Zone to protect the Highway 97 scenic resource from conflicting uses on those properties. However, LUBA determined that, in the absence of evidence showing

[5] OAR 660-023-0250(3)(b).
[6] The Applicant's Final Legal Argument actually states: "[t]here is no requirement to apply Goal 5 directly to the application where, as here, the proposal does introduce 'new uses' which would be conflicting with the Goal." That appears to be a typo and I assume the Applicant intended to say "…does not introduce…". That sentence would not otherwise make sense in the context in which it appears.

the prior Goal 5 analysis considered impacts from RI-type development on all properties, that analysis did not consider whether RI uses on farm-zoned property affected a Goal 5 resource. Indeed, LUBA concluded that "the county could not have, in its [prior Goal 5 analysis], evaluated whether development of those new uses on the subject property would excessively interfere with the protected scenic resource because those uses were not allowed on the property" at that time. Because the County's decision in that case allowed "new uses that could conflict with inventoried Goal 5 resources," LUBA concluded the County was required to address Goal 5 and, specifically, to comply with OAR 660-023-0250(3).

Based on that LUBA decision, I find that the Applicant's argument that Goal 5 is not applicable is incorrect. The Plan Amendment and Zone Change would allow new uses on the Subject Property that were not previously allowed and that could conflict with a protected Goal 5 resource. Although the Applicant notes that its intended use is to expand an existing school, and that the current school was approved in the MUA-10 zone subject to the LM Zone, the Application is not limited to that use, and other uses allowed in the MUA-10 zone would be authorized after the zone change. The Applicant has not addressed those uses, much less considered their potential conflicts with listed Goal 5 resources. The Applicant's response also does not address COLW's assertion that wetlands will be impacted. It may be possible for the Applicant to show that the County's prior Goal 5 analysis considered MUA-10 development on the Subject Property, or, if not, the Applicant may be able to demonstrate that the new uses allowed on the Subject Property do not significantly affect a Goal 5 resource. However, I find that the current record does not allow me to address either option. I therefore find that I cannot recommend approval of the Application on this basis and the Applicant must address this issue further before the Application is approved.

e. Goal 14 Administrative Rules

COLW argues that the Application is not in compliance with Goal 14. Goal 14 and its implementing rules "provide for an orderly and efficient transition from rural to urban land use." *See* OAR 660-015-0000(14).

COLW's specific argument is that the designation of the Subject Property to the MUA-10 zone would constitute urbanization of the Subject Property. According to COLW, the County must analyze several urbanization factors ("*Curry* factors") as set forth in *1000 Friends of Oregon v. Land Conservation and Development Commission*, 301 Or 447, 474 (1986), which are also summarized by LUBA in *Oregon Shores Conservation Coalition v. Coos County*, 55 Or LUBA 545, 550 (2008). COLW bases its argument on its own assessment of the *Curry* factors.

One way to address this issue is to consider whether the MUA-10 zone actually authorizes urban uses. As the Applicant notes, this question has been asked and answered by the County, as described in the recent LUBA case *Central Oregon LandWatch v. Deschutes County*, __ OR LUBA __ (LUBA No. 2023-049, Feb. 15, 2024). In that case, LUBA considered nearly identical facts where the County approved a plan amendment and zone change from AG/EFU-TRB to RREA/MUA-10. Before turning to COLW's arguments in that case, LUBA noted that the County's Board of Commissioner's had made the following finding:

> Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by [the Land Conservation and

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

In other words, the County's Board has already interpreted its Plan and Code to mean that all uses allowed in the MUA-10 zone are rural in nature. This is similar to the Board's interpretation of other zones, like the Rural Industrial (RI) zone, which LUBA also considered in a similar case.[7] Based on the Board's interpretation, I find that it is not necessary to apply the *Curry* factors as urged by COLW, and that the change in zone to MUA-10 does not result in urbanization of the Subject Property.

f. Goal 12 Administrative Rules

Goal 12 relates to transportation. COLW argues that the Application fails to comply with Goal 12 and its implementing rules.

A primary regulation implementing Goal 12 is OAR 660-012-0060. That rule states:

> 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

[7] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2022-075, Dec. 6, 2002); *aff'd* 324 Or App 655 (2023) (upholding County's finding that all uses in the RI zone are rural in nature, negating the need to undertake additional Goal 15 analyses).

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.

I find that this administrative rule is applicable to the Plan Amendment and the Zone Change because they involve an amendment to an acknowledged comprehensive plan. COLW asserts that the Application does not comply with this rule because the Applicant has not accurately estimated the vehicle trip generation of the proposed zoning, and specifically because the Applicant has not estimated the trip generation associated with the anticipated use of the Subject Property as a school.

The Applicant counters that its proposal will not result in a significant effect to the transportation system. In support of that assertion, the Applicant submitted a traffic study prepared by traffic engineer Joe Bessman, PE. The Applicant also notes that, because the Application seeks a zone change that allows multiple uses, not just the intended use, it was not required to analyze the school use specifically and, instead, was required to model a worst-case scenario based on all uses allowed.

The County's Transportation Planner agreed with the conclusions of the Applicant's engineer, including the methodology used. As a result, the Staff Report finds that the Plan Amendment and Zone Change will comply with the Transportation Planning Rule.

Based on the foregoing, I agree with the Applicant that it has sufficiently addressed transportation impacts and find that the Application satisfies this Goal 12 administrative rule.

5. Other Statewide Planning Goals

Division 15 of OAR chapter 660 sets forth the Statewide Planning Goals and Guidelines, with which all comprehensive plan amendments must demonstrate compliance. The Applicant asserts the Application is consistent with all applicable Goals and Guidelines. No participant in this proceeding identified a Statewide Planning Goal with which the proposal does not comply, except those discussed above relating to Goal 3, Goal 5, Goal 12, and Goal 14. Having reviewed the evidence presented, and in the absence of any arguments relating to the other Goals, I adopt the Applicants' position and find that the Plan Amendment and Zone Change are consistent with the following applicable Goals:

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 4, Forest Lands. Goal 4 is not applicable because the subject property does not include any lands that are zoned for, or that support, forest uses. Forest land is defined by OAR 660-005-0010 as lands suitable for commercial forest use protection under Goal 4, which are identified using NCRS soil survey maps to determine average annual wood fiber production figures. The NCRS maps for the subject property map it with soil mapping units 98A and B, 26A and 101E. The NCRS Soils Survey for the upper Deschutes River lists all soils mapped by its survey that are suitable for wood crop production in Table 8 (Exhibit 15). None of the soils mapped on the subject property are listed in Table 8 as suitable for wood crop production.

Goal 6, Air, Water, and Land Resources Quality. The approval of this application will not impact the quality of the air, water, and land resources of the County. Any future development of the property would be subject to local, state, and federal regulations that protect these resources.

Goal 7, Areas Subject to Natural Disasters and Hazards. According to the Deschutes County DIAL property information and Interactive Map the entire Deschutes County, including the subject property, is located in a Wildfire Hazard Area. The subject property is also located in Rural Fire Protection District #2. Rezoning the property to MUA-10 does not change the Wildfire Hazard Area designation. Any future development of the property would need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.

Goal 8, Recreational Needs. This goal is not applicable because no development is proposed and the property is not planned to meet the recreational needs of Deschutes County. Therefore, the proposed rezone will not impact the recreational needs of Deschutes County.

Goal 9, Economy of the State. This goal does not apply to this application because the subject property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely affect economic activities of the state or area. The proposed zone change will promote economic opportunities by rezoning underutilized property for a subsequent use.

Goal 10, Housing. The County's comprehensive plan Goal 10 analysis anticipates that farm properties with poor soils, like the subject property, will be converted from EFU to MUA-10 or RR-10 zoning and that these lands will help meet the need for rural housing. Cascades Academy supports rural housing by providing school services for the rural properties. 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. Central Electric Cooperative serves the subject property with power, water and septic are provided on-site and the proposal will not result in the extension of urban services to rural areas.

Goal 13, Energy Conservation. The approval of this application does not impede energy conservation. In fact, Planning Guideline 3 of Goal 13 states "land use planning should, to the maximum extent possible, seek to recycle and re-use vacant land…" Cascades Academy provides school services to the rural community in close proximity to residential uses, thereby reducing vehicle miles traveled and conserving energy.

Goals 15 through 19. These goals do not apply to land in Central Oregon.

V. CONCLUSION

Based on the foregoing findings, I find the Applicant has NOT met the burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change. I therefore recommend to the County Board of Commissioners that the Application be DENIED unless the Applicant can meet that burden.

Dated this 21st day of February 2025

Tommy A. Brooks
Deschutes County Hearings Officer