

**RECOMMENDATION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER**

FILE NUMBERS: 247-23-000547-PA, 247-23-000548-ZC

HEARING DATE: November 13, 2023, 6:00 p.m.

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

APPLICANT: Caldera Land, LLC

**OWNER/
SUBJECT PROPERTY:** Miller Pit LLC
Map and Taxlot: 1812210000200
Account: 110218
Situs Address: N/A

REQUEST: Applicant requests approval of a Comprehensive Plan Amendment to change the designation of the Subject Property from Surface Mine (SM) to Rural Residential Exception Area (RREA). Applicant also requests a corresponding Zone Change to rezone the Subject Property from Surface Mining to Multiple Use Agricultural (MUA-10).

HEARINGS OFFICER: Tommy A. Brooks

SUMMARY OF RECOMMENDATION: The Hearings Officer finds that the Applicant has met its burden of proof with respect to the requested Comprehensive Plan Amendment and Zone Change and, therefore, recommends APPROVAL of the Application based on the Findings set forth in this Recommendation.

I. APPLICABLE STANDARDS AND CRITERIA

Title 18 of the Deschutes County Code, the County Zoning Ordinance:
Chapter 18.04, Title, Purpose, and Definitions
Chapter 18.32, Multiple Use Agricultural (MUA10)
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

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Nature of Proceeding

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) 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 from Surface Mining (SM) to Multiple Use Agricultural (MUA10). If approved, the Plan Amendment would also remove the Subject Property, designated as “Site No. 391”, from the County’s Goal 5 inventory of significant mining resources.

The primary bases of the request in the Application are the Applicants’ assertions that: (1) the Subject Property has been mined to the extent that it no longer qualifies as a significant Goal 5 resource; and (2) 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 3 for the Plan Amendment or Zone Change.

B. Notices and Hearing

The Application is dated June 23, 2023. On July 7, 2023, 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 on October 9, 2023.

The County mailed a Notice of Public Hearing on October 10, 2023 (“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 13, 2023, opening the Hearing at 6:00 p.m. The Hearing was held via videoconference, with Staff and representatives of the Applicant in the hearing room. The Hearings Officer appeared remotely. The Hearing concluded at 6:51 p.m.

Prior to the Hearing, on November 7, 2023, 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”).

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, Staff recommended, and the Applicant 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 November 20, 2023, for any participant to provide additional evidence (“Open Record Period”); (2) until November 27, 2023, for any participant to provide rebuttal evidence to evidence submitted during the Open Record Period; and (3) until December 4, 2023, for the Applicant only to provide a final legal argument, without additional evidence.

C. 150-day Clock

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.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Staff Report

On November 7, 2023, Staff issued the Staff Report, setting forth the applicable criteria and presenting evidence in the record at that time.

The Staff Report does not make a final recommendation. However, the Staff Report does make several findings with respect to the approval standards. Because much 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. No participant in this proceeding asserted that those criteria do not apply, or that other criteria are applicable. This Recommendation therefore addresses each of those criteria, as set forth below.

¹ ORS 215.427(7).

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 submitted the Application with the consent of the owner of the Subject Property, as evidenced by the owner's signature on the Application form. The Applicant has requested a quasi-judicial Plan Amendment and filed the Application for that purpose, together with the request for a 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, with which the Staff Report agrees, the County's application of this Code provision does not 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 2.4 of Chapter 2, relating to Goal 5 resources; (2) Section 2.10 of Chapter 2, relating to surface mining; (3) Section 3.3 of Chapter 3, relating to rural housing; and (4) Section 3.4 of Chapter 3, relating to the rural economy. The Application explains how the Plan Amendment and Zone Change is consistent with these goals and policies. No participant disputes the Applicant's characterization of the goals and policies, asserts the Application is inconsistent with those goal and policies, or identifies other goals and policies requiring consideration. Separate findings appear below relating to the identified Comprehensive Plan policies.

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

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² See page 15-17 of the Application narrative prepared by AKS Engineering and Forestry ("Application Narrative").
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- B. *That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.*

The Applicant and Staff each offer evidence and argument with respect to the purpose of the MUA-10 zone. 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.

According to the Applicant, the Subject Property is not suited to commercial farming. The MUA-10 zone will instead allow the owners to engage in low-density development allowed by the MUA-10 zone, which will conserve open spaces and protect natural and scenic resources. As a result, the Applicant asserts that the MUA-10 zoning provides a proper transition zone from urban to EFU zoning. The Staff Report agrees that the change in classification is consistent with the purpose and intent of the MUA10 Zone.

The record contains several comments expressing potential concerns arising from residential development on the Subject Property. Those comments, however, are based on the fact that no specific development is yet proposed, and those comments do not assert that the change to MUA-10 is inconsistent with the purpose of that zone.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that 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
- 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 the trip generation potential
- The Subject Property receives police services from the Deschutes County Sheriff and fire service

- from Rural Fire Protection District # 2, which has a fire station 1.4 miles from the Subject Property
- The close proximity of the Subject Property to urban development will allow for efficient service provision of water, electric, and telephone, which already exist on surrounding properties

The Staff Report acknowledges that no service issues have been identified for the Subject Property. The Staff Report also 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 assurances of adequate public services and facilities will be verified.

Comments in the record express concerns about the adequacy of water supplies for agriculture or irrigation purposes. Those comments do not expressly state that this Code provision is not satisfied, but they do provide testimony that the Arnold Irrigation District has not supplied adequate water in recent years and that inadequate water poses increased fire risks if the Subject Property is developed with residential uses. The Applicant relies on a service provider letter from Avion Water Company, Inc. That letter confirms that Avion is able to serve the Subject Property and can provide water both for domestic purposes and for fire flow. No participant challenges Avion's ability to serve the Subject Property.

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:

Any potential impacts on surrounding land would be minimal due to the consistent zoning and the fact that most of the surrounding MUA-10 properties are less than five acres in size, have been subdivided, and contain residential uses. Regardless, the development and uses permitted under the MUA-10 Zone are far less impactful to surrounding land than uses permitted under the SM Zone. Applicable Comprehensive Plan goals and policies are addressed in the responses above. The standards are met.

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. Some testimony in the record expresses concerns about the impact of future development on the Subject Property, but that testimony does not assert that any potential impacts are inconsistent with Plan goals and policies. Nor does that testimony dispute the Applicant's characterization of the applicable goals and policies.

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

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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.

According to the Applicant, a change in circumstances exists because the Subject Property has been mined and reclaimed, meaning there are no longer any viable uses for the Subject Property under the SM zone. The Staff Report agrees that the termination of mining and the reclamation of the Subject Property constitute a change in circumstances. No other participant appears to dispute those arguments or otherwise assert that there has been no change in circumstances.

Based on the foregoing, and in the absence of any countervailing evidence or argument, 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.

The Applicant provided information documenting that the Subject Property no longer has a significant resource. The Subject Property has been mined since the late 1940's. No participant in opposition to the Application asserts that any mineable resource remains, much less a significant resource. The Applicant has also documented that DOGAMI has acknowledged the reclamation of the site.

Based on the foregoing, the Code contemplates that a reclaimed site will be rezoned. The Code specifically provides that a reclaimed site will be rezoned to the "subsequent use zone identified in the surface mining element of the Comprehensive Plan." For the Subject Property, the surface mining element of the Comprehensive Plan does not identify a subsequent use zone.

A comment submitted by Central Oregon LandWatch ("COLW") asserts that the subsequent use zone for the Subject Property is "agriculture". The sole basis of COLW's comment is that "[t]he only subsequent use zone identified anywhere, in both the property's reclamation plan on file with DOGAMI and in the 1979 Comprehensive Plan, is Agriculture." COLW points to the County's original Comprehensive Plan Map, on which the Subject Property appears to be depicted as "agriculture". COLW also points to the 1974 Reclamation Plan Guideline submitted to DOGAMI in which the property owner indicated that the "planned subsequent 'beneficial use' of the permit area" would be "Immediate – Agriculture (pasture)".

The Applicant responds, and I agree, that COLW's assertion is misplaced for several reasons. First, this Code provision refers not just to any identified subsequent use, but rather to the "subsequent use zone identified in the surface mining element of the Comprehensive Plan." That is a very specific reference, and the surface mining element of the Comprehensive Plan contains a specific table that identifies a

subsequent use zone for various properties in the Surface Mining Zone. Second, even if the 1979 Comprehensive Plan Map were relevant, the County has since made a determination that the Map was in error for the Subject Property, and the Subject Property was not “agriculture” as COLW suggests. Finally, the 1974 Reclamation Plan Guideline COLW relies on is also irrelevant. That document asked the property owner to identify a subsequent “beneficial use” and does not itself refer to what zone was contemplated. Even so, the portion of that document COLW relies on is not a complete characterization of the subsequent beneficial use the property owner anticipated. That document also states that, beyond the immediate pasture use, the long-term use was unknown but could be a race track or stadium.

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 the Code does not require the Applicant to change the zoning of the Subject Property to an agriculture use.

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 described in the Staff Report, this criterion is contingent upon approval of the Application and, if approved, the Surface Mining Impact Area Combining Zone would also be removed from affected surrounding properties. No participant objects to that description. 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. Deschutes County Comprehensive Plan Goals and Policies

The Applicant and Staff Report both identify several Comprehensive Plan goals and policies potentially relevant to this Application. Staff’s discussion of those goals and policies appears on pages 12 through 19 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 Comprehensive Plan goals and policies.

3. Oregon Administrative Rules

The Applicant and Staff agree that the Transportation Planning Rule – OAR 660-012-00060 – is relevant to the Plan Amendment and Zone Change. Only the Applicant and Staff address that rule.

OAR 660-012-0060

- (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.*

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. The Applicant asserts that its proposal will not result in a significant effect to the transportation system. In support of that assertion, the Applicant submitted a transportation impact analysis memorandum dated March 22, 2023, prepared by traffic engineer, Joe Bessman, PE. No participant to this proceeding disputed the information in the impact analysis or otherwise objected to the use of that information.

The County's Transportation Planner agreed with the report's conclusions. 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, and in the absence of any countervailing evidence or argument, I find that the Application satisfies this administrative rule.

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4. 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 that COLW asserts that the Subject Property is agricultural land protected by Statewide Planning Goal 3. The Staff Report generally agrees with the Applicant and asks the Hearings Officer to address Statewide Planning Goal 3. Having reviewed the evidence and arguments presented, I adopt the Applicants' position and find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as follows:

Goal 1, Citizen Involvement. Deschutes County has an established citizen involvement program. The application will be processed as a quasi-judicial Plan Amendment and Zone Change, which is a land use action involving public notification and public hearings as established in DCC Title 22. Therefore, Goal 1 is satisfied.

Goal 2, Land Use Planning. The County reviewed and processed this quasi-judicial Plan Amendment and Zone Change consistent with the procedures detailed in DCC Title 22, including consideration of any public comments received regarding the Application. Therefore, consistency with this Statewide Planning Goal is established.

Further, the Application provides an adequate factual basis for the County to approve the Application because it describes the site and its physical characteristics and applies those facts to the relevant approval criteria. Goal 2 also requires coordination of the Application by the County with affected governmental entities. Coordination requires notice of an application, an opportunity for the affected governmental entity to comment on the application, and the County's incorporation of the comments to a reasonable extent. Coordination of this Application has been accomplished in two ways: by the Applicant prior to submittal of the Application and by the County in the review process for the Application.

Goal 3, Agricultural Lands. The Subject Property is designated as Surface Mining and had been mined since the late 1940s. There is no evidence of prior agricultural use, the property predominantly consists of Class VII and VIII soils, and the property does not have water rights. The Subject Property is not identified as agricultural land on the acknowledged Deschutes County Comprehensive Plan Map. The 1980 zone change (Z-80-13) to SM included findings acknowledging that active surface mining sites at the time of plan adoption should have been zoned SM, the Subject Property was active and designated as site #58 on a preliminary map, and a "simple error" resulted in site #58 not being transposed to the final zoning map with adoption of the 1979 Comprehensive Plan. The Subject Property was again identified as containing mineral resources in the Deschutes County Goal 5 Aggregate inventory adopted by the County's Board on December 6, 1988. In 1990, the County listed the property as Site No. 391 on the Goal 5 Inventory, adopted a site-specific economic, social, environmental and energy ("ESEE") analysis, and imposed the SM and SMIA zoning (Ord No. 90-014, 90-025, 90-028, and 90-029).

The Subject Property's status as something other than agricultural land was confirmed in the 1990 ESEE. Ordinarily, the ESEE identifies the post-mining uses and zoning for properties deemed Goal 5 significant mineral resources. The ESEE for the Subject Property does not include any such discussion. In *Tumalo Irrigation District* (247-17-000775-ZC/247-17-000776-PA), the County's Board interpreted that a similar ESEE omission on a Goal 5 site would have specified EFU zoning if the property had been classified as agricultural land, and concluded that the SM Zone was "intended to be a distinct zoning and Comprehensive Plan designation and the properties designated as other than 'resource uses' (lands subject to Goals 3 and 4)."

In 1992, as part of periodic review and a revamping of the County's agricultural lands program, the County again inventoried its agricultural lands. Once again, the County did not classify the Subject Property as agricultural land. The agricultural land analysis was incorporated into the County's Comprehensive Plan, which was again acknowledged.

Based on the foregoing, the Subject Property is not agricultural land subject to the protections of Statewide Planning Goal 3 and, as such, the Plan Amendment and Zone Change is consistent with that Goal.

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.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. The Subject Property does not contain any inventoried significant resources related to energy sources, habitat, natural areas, scenic views, water areas or watersheds, wilderness areas, historic areas, or cultural areas. The Subject Property no longer contains any significant aggregate resources.

The Subject Property contains a small strip of "wetland" within the southern pit. The Comprehensive Plan has no specific protections for wetlands; protections are provided by ordinances that implement Goal 5 protections (for example, fill and removal zoning code regulations). Because the Plan Amendment and Zone Change are not development, there is no impact to any Goal 5 resource. Any potential future development of a wetland – no matter what zone the wetland is in – will be subject to review by the County's fill and removal regulations. Therefore, Goal 5 is satisfied.

Goal 6, Air, Water, and Land Resources Quality. The surface mine has been reclaimed and mining activities have ceased. Rezoning the Subject Property will not impact the quality of the air, water, and land resources of the County because no specific development is proposed at this time. However, any future uses permitted in the MUA-10 zone are likely to have less adverse impacts to air, water, and land resources than the historical mining use or uses permitted in the SM Zone. Future development of the property will be subject to local, state, and federal regulations that protect these resources. Therefore, Goal 6 is satisfied.

Goal 7, Areas Subject to Natural Disasters and Hazards. The Subject Property does not include areas subject to flooding or landslide activity. 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 Subject Property will have to demonstrate compliance with applicable local and state health, environmental quality, and wildfire regulations. Therefore, Goal 7 is satisfied.

Goal 8, Recreational Needs. Goal 8 is not applicable because the proposed Plan Amendment and Zone Change do not reduce or eliminate any opportunities for recreational facilities on the Subject Property or in the general vicinity.

Goal 9, Economy of the State. The Subject Property no longer contains sufficient quantity or quality of mining or aggregate materials for profitable economic use. However, the proposed Plan Amendment and Zone Change will promote continued economic opportunities by allowing the currently undeveloped and underutilized property to be put to productive use. Therefore, Goal 9 is satisfied.

Goal 10, Housing. The Plan Amendment and Zone Change do not reduce or eliminate any opportunities for housing on the Subject Property or in the general vicinity. Rather, they will allow rural residential development, consistent with Goal 10 as implemented by the acknowledged Deschutes County comprehensive plan. Therefore, Goal 10 is satisfied.

Goal 11, Public Facilities and Services. The approval of the Application will have no adverse impact on the provision of public facilities and services to the 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. Therefore, Goal 11 is satisfied.

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

Goal 13, Energy Conservation. Approval of the Application does not reduce or eliminate the ability to conserve energy. 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...” Surface mining activities have ceased on the subject property and has been vacant for decades. The Subject Property abuts the Bend City Limits and is surrounded by other rural residential uses. The Plan Amendment and Zone Change will allow for rural residential development that would provide homes close to urban services and employment, as opposed to more remote rural locations. Siting homes close to urban services and employment results in fewer vehicle miles traveled and related energy expenditures as residents travel to work, school, and essential services. Therefore, Goal 13 is satisfied.

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.

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

IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has met its 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 APPROVED.

Dated this 8th day of January 2024

A handwritten signature in blue ink, appearing to read 'T. Brooks', with a long horizontal flourish extending to the right.

Tommy A. Brooks
Deschutes County Hearings Officer