



MEMORANDUM

TO: Deschutes County Board of Commissioners
FROM: Peter Gutowsky, AICP, Director
DATE: October 27, 2021
SUBJECT: Fee Waiver Request / Yreka Butte Enterprises

I. Summary

The purpose of this work session is to consider a Fee Waiver Request from Yreka Butte Enterprises (Attachment 1). The request, submitted by Edward Fitch, is to reduce the fees for a plan amendment and zone change to \$6,000 to establish a surface mine operation near Hampton. The subject property is approximately 5 acres and zoned Exclusive Farm Use (EFU) with Wildlife Area and Sage Grouse Combining Zones. Deschutes County's plan amendment and zone change fees for this property range from \$24,183 to \$27,408.¹ Establishing a surface mine requires changing the Comprehensive Plan, rezoning the property from EFU to Surface Mine (SM), creating a Surface Mining Impact Area Combining Zone (SMIA), and entitling a surface mine operation per Deschutes County Code (DCC) 18.52.050 and 18.124.030.²

The applicable Fee Waiver Policies are:

4. *Fee waivers under this policy to provide a public benefit provided by a non-profit or public organization are subject to Board of County Commissioners approval.*
8. *The Board of County Commissioners may waive fees in any other case where the public benefit is served and other remedies have been exhausted.*

The following summarizes Yreka Butte Enterprises' request:

[the] property is just South of Highway 20. There is a need for some aggregate for the local farmers around this area for their roads and pivots, as well as a need by Deschutes County for some aggregate for Fredrick Butte Road. It is not economical to transport these small amounts of aggregate from sites near the City of Bend all the way to this area of the county.

¹ Application fees represent a plan amendment (with or without a Goal exception) and two zone changes, one from EFU to SM, and the other establishing a SMIA. The fee range also includes a \$5,500 Hearings Officer and Administrative Deposit.

² Conditional Use and Site Plan Review will be required upon a successful re-designation to SM and SMIA. The fees are \$2,984 and \$4,728, respectively.

The main issue here is whether or not we can arrange for a small-scale mining operation that would fit the economic needs of the farmers in the area in question for some aggregate, as well as Deschutes County, vis-à-vis Fredrick Butte Road. To mine and crush the rock in this area, at approximately five thousand to ten thousand (5,000 – 10,000) yards every two to three (2-3) years, would only be available if the land use application fees for such project were on a scale that would make this operation feasible. Currently, the fees for the zone change and plan amendments for this small operation is approximately eighteen thousand dollars (\$18,000).

The purpose [of this letter] is to request that Deschutes County adjust that fee for this operation to be six thousand dollars (\$6,000) instead. This would enable this operation to become economically feasible, which in turn would benefit the eastern portion of Deschutes County and its local farmers in that area, as well as the Deschutes County Public Works Department.

The proposal for Yreka does provide a public benefit in that it will provide material for Fredrick Butte Road when Public Works Department needs material.

Further, my client is not asking for a Fee Waiver, it is asking for a discount on the Fees due to the economics of this whole application. This is a very isolated parcel out in the eastern reach of Deschutes County. The agricultural community out there has limited access to these aggregate resources due to the distance between the ranches and any area where the resources are available or reasonable economic basis. Given the very small scale of this operation and its distance from the main center of Deschutes County, the potential benefit of the Public Works Department on Fredrick Butte Road and the local agricultural community in this general area, I believe the fee discount makes sense. It will still ensure that the Planning Department receives sufficient funds to process this application. We have previously reviewed the application with the Oregon Department of Fish and Wildlife, who have opined that there should not be any negative impact on the Sage Grouse population.

II. Previous Fee Waiver Actions

Randy Scheid, Acting Community Development Director, denied the fee waiver request on September 29, 2001 stating the Community Development Department does not have the authority to approve it per the Fee Waiver Policy.³ Nick Lelack, County Administrator, denied the fee waiver request on appeal, on October 13, interpreting the Fee Waiver Policy “public benefit” to only apply to non-profit and public organizations and not to private applications (Attachment 2). His decision was subsequently appealed to the Board of County Commissioners on October 25.

III. Recommendation

Consistent with previous decisions, staff recommends the Board deny the fee waiver request.

³ Attachment 1. Pages 5 and 6.

IV. Board Options

- (1) Approve the fee waiver adjustment in the amount of \$6,000 and find that the action is in the public benefit;
or
- (2) Approve a partial fee waiver and find that the action is in the public benefit; or
- (3) Deny the fee waiver request.

Attachments

1. Fee Waiver Request to the Board
2. County Administrator Fee Waiver



Edward P. Fitch
Attorney
ed@fitchandneary.com

Randi N. Anderson
Paralegal
randi@fitchandneary.com

October 25, 2021

VIA: FIRST CLASS MAIL
Notification of Mailing Sent Via Email

Deschutes County Services Building, Administration
ATTN: Nick Lelack, Deschutes County Administrator
P.O. Box 6005
Bend, OR 97708
E: nick.lelack@deschutes.org

Re: David Barker - Zone Changes and Plan Amendment

Dear Nick,

Enclosed please find the completed Appeal Application for my client concerning the partial fee waiver previously submitted to your department for the zone change and plan amendment. Please let me know what procedure will entail with this appeal at your earliest convenience.

I am assuming since this is a fee waiver issue that there is no fee for the submission of the Appeal Application, but let me know if this is not the case. Should you have any questions or concerns, please do not hesitate to reach out to me. Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Edward P. Fitch", is written over a horizontal line.

EDWARD P. FITCH
Attorney for David Baker

EPF: RNA
Encl: As Indicated Above
CC: Client



APPEAL APPLICATION

FEE: _____

EVERY NOTICE OF APPEAL SHALL INCLUDE:

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

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

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

Appellant's Name (print): YALTA BODE ENTERPRISES Phone: (541) 306-0319
 Mailing Address: 40105 Hwy 20 City/State/Zip: Brookings OR 97712
 Land Use Application Being Appealed: FEE waiver (Partial)
 Property Description: Township 22 Range 20 Section 00 Tax Lot 804
 Appellant's Signature: [Handwritten Signature]

EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANT SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANT SHALL SUBMIT THE TRANSCRIPT TO THE PLANNING DIVISION NO LATER THAN THE CLOSE OF THE DAY FIVE (5) DAYS PRIOR TO THE DATE SET FOR THE *DE NOVO* HEARING OR, FOR ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.

(over)



Edward P. Fitch
Attorney at Law
ed@fitchandneary.com

Patricia Jane Roberts
Paralegal
patricia@fitchandneary.com

September 30, 2021

VIA FACSIMILE AND US FIRST CLASS MAIL

Nick Lelack
Deschutes County Administrator
Deschutes Services Building
PO Box 6005
Attn: Administration
Bend, OR 97708-6005
Fax: 541-385-3202

Re: Yreka Butte Enterprises, LLC - Fee Waiver (deduction) Request

I am enclosing the email we received back from Randy Scheid at the Deschutes County Planning Department. I understand that they do not have the authority to reduce the fee. I am also enclosing our rationale for the deduction in the letters I originally sent to the county commissioners.

Please consider this letter an appeal of the Planning Department's decision to determine whether or not the commissioners would be interested in reducing the fee on this request given the economics of the use and the distance from any urban area, the potential benefit to the county and public works department to address Fredrick Butte Road from time to time.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward P. Fitch", written over a horizontal line.

EDWARD P. FITCH

EPF:pjr

Enclosures

cc: David Baker

G:\Clients\EPF\Baker, David\Baker, David LU\Lelack ltr 093021.wpd

Ed Fitch

From: Randy Scheid <Randy.Scheid@deschutes.org>
Sent: Wednesday, September 29, 2021 3:23 PM
To: Ed Fitch
Cc: Randi Anderson
Subject: RE: Discount on Fees for Zone Changes and Plan Amendment

Mr. Fitch,

A letter of appeal to the County Administrator will suffice.

Thanks,
Randy.



Randy Scheid | Building Official
DESCHUTES COUNTY COMMUNITY DEVELOPMENT
117 NW Lafayette Avenue | Bend, Oregon 97703
Tel: (541) 317-3137



Let us know how we're doing: [Customer Feedback Survey](#)

Enhancing the lives of citizens by delivering quality services in a cost-effective manner.

Every Time Standards

We respond in a timely and courteous manner, identifying customer needs and striving for solutions.

We set honest and realistic expectations to achieve optimum results.

We provide knowledgeable, timely, professional, respectful service.

We take ownership of customers' needs and follow through.

We value our customers and approach them with an open mind.

From: Ed Fitch <ed@fitchandneary.com>
Sent: Wednesday, September 29, 2021 1:03 PM
To: Randy Scheid <Randy.Scheid@deschutes.org>
Cc: Randi Anderson <randi@fitchandneary.com>
Subject: RE: Discount on Fees for Zone Changes and Plan Amendment

[EXTERNAL EMAIL]

Thanks. Is this a formal appeal or is a letter appeal sufficient.

From: Randy Scheid <Randy.Scheid@deschutes.org>
Sent: Wednesday, September 29, 2021 12:53 PM
To: Ed Fitch <ed@fitchandneary.com>

Cc: Randi Anderson <randi@fitchandneary.com>
Subject: RE: Discount on Fees for Zone Changes and Plan Amendment

Mr. Fitch,

Thank you for your email requesting a discount on fees for zone changes and plan amendment dated September 29th, 2021.

As the acting Deschutes County CDD Director, I have reviewed our fee waiver policy and your request.

I find that CDD does not have the authority to approve your fee waiver request as proposed per the Fee Waiver Policy.

You may appeal my decision to the Deschutes County Administrator, Nick Lelack.

Sincerely,
Randy.



Randy Scheid | Building Official
DESCHUTES COUNTY COMMUNITY DEVELOPMENT
117 NW Lafayette Avenue | Bend, Oregon 97703
Tel: (541) 317-3137



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We provide knowledgeable, timely, professional, respectful service.

We take ownership of customers' needs and follow through.

We value our customers and approach them with an open mind.

From: Peter Gutowsky <Peter.Gutowsky@deschutes.org>
Sent: Wednesday, September 29, 2021 10:57 AM
To: Randy Scheid <Randy.Scheid@deschutes.org>
Subject: FW: Discount on Fees for Zone Changes and Plan Amendment

FYI.



Peter Gutowsky, AICP | Planning Manager
DESCHUTES COUNTY COMMUNITY DEVELOPMENT
117 NW Lafayette Avenue | Bend, Oregon 97703
Tel: (541) 385-1709



Enhancing the lives of citizens by delivering quality services in a cost-effective manner.

From: Randi Anderson <randi@fitchandneary.com>
Sent: Wednesday, September 29, 2021 10:55 AM

To: Peter Gutowsky <Peter.Gutowsky@deschutes.org>
Cc: Ed Fitch <ed@fitchandneary.com>
Subject: RE: Discount on Fees for Zone Changes and Plan Amendment

You don't often get email from randi@fitchandneary.com. [Learn why this is important](#)

[EXTERNAL EMAIL]

Good morning,

Attached please find a copy of correspondence from Mr. Ed Fitch as of today's date. Please note, I have also sent a copy via First Class Mail.

Should you have any questions or concerns, please do not hesitate to reach out to me. Thank you.

Randi N. Anderson
Paralegal



Fitch & Neary, P.C.

210 SW 5th Street, Ste. 2

Redmond, OR 97756

(P) [541-316-1588](tel:541-316-1588)

(F) [541-316-1943](tel:541-316-1943)

(E) randi@fitchandneary.com

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September 22, 2021

VIA: FIRST CLASS MAIL
Notification of Mailing Sent Via Email

Deschutes County Commissioners Office
ATTN: Mr. Anthony DeBone, Commissioner
P.O. Box 6005
ATTN: BoCC
Bend, OR 97708-6005
E: Tony.DeBone@deschutes.org

Deschutes County Commissioners Office
ATTN: Ms. Patti Adair, Commissioner
P.O. Box 6005
ATTN: BoCC
Bend, OR 97708-6005
E: Patti.Adair@deschutes.org

Deschutes County Commissioners Office
ATTN: Mr. Phil Chang, Commissioner
P.O. Box 6005
ATTN: BoCC
Bend, OR 97708-6005
E: Phil.Chang@deschutes.org

Deschutes County Planning Department
ATTN: Peter Gutowsky
117 NW Lafayette Avenue
Bend, Oregon 97703
E: Peter.Gutowsky@deschutes.org

Re: Discount on Fees for Zone Changes and Plan Amendment

Dear Commissioners and Peter,

Peter Gutowsky sent provided me with information regarding the Fee Waiver Policy. We did not complete those policy documents due to the fact that Yreka Butte Enterprises, LLC does not qualify as the policy is written. Yreka Butte Enterprises, LLC is not indigent. The proposal for Yreka does provide a public benefit in that it will provide material for Fredrick Butte Road when the Public Works Department needs material.

Further, my client is not asking for a Fee Waiver, it is asking for a discount on the Fees due to the economics of this whole applicate. This is a very isolated parcel out in the eastern reaches of Deschutes County. The agricultural community out there has limited access to these aggregate resources due to the distance between the ranches and any area where the resources are available or reasonable economic basis. Given the very small scale of this operation and its distance from the main center of Deschutes County, the potential benefit to the Public Works Department on Fredrick Butte Road and the local agricultural community in this general area, I believe the fee discount makes sense. It will still ensure that the Planning Department receives sufficient funds to process this application. I seriously there would be any opposition to this fee reduction. We have previously reviewed the application with the Oregon Department of Fish and Wildlife, who have



FITCH & NEARY
P.C.

Edward P. Fitch
Attorney
ed@fitchandneary.com

Kelly Barber
Paralegal
randi@fitchandneary.com

opined that there should not be any negative impact on the Sage Grouse population. We do not foresee any adverse impact on any other resource or wildlife given the very limited nature of this application.

Very truly yours,

EDWARD P. FITCH
Attorney for David Baker

EPF: KB
Encl: N/A
CC: Client



TRUE COPY

Edward P. Fitch
Attorney
ed@fitchandneary.com

Randi N. Anderson
Paralegal
randi@fitchandneary.com

August 31, 2021

VIA: FIRST CLASS MAIL
Notification of Mailing Sent Via Email

Deschutes County Commissioners Office
ATTN: Mr. Anthony DeBone, Commissioner
P.O. Box 6005
ATTN: BoCC
Bend, OR 97708-6005
E: Tony.DeBone@deschutes.org

Deschutes County Commissioners Office
ATTN: Ms. Patti Adair, Commissioner
P.O. Box 6005
ATTN: BoCC
Bend, OR 97708-6005
E: Patti.Adair@deschutes.org

Deschutes County Commissioners Office
ATTN: Mr. Phil Chang, Commissioner
P.O. Box 6005
ATTN: BoCC
Bend, OR 97708-6005
E: Phil.Chang@deschutes.org

Re: Discount on Fees for Zone Changes and Plan Amendment

Dear Commissioners,

This office represents Mr. David Baker, individually, and Yreka Butte Enterprises, LLC, as an entity, in regard to a proposed five (5) acre surface mine on the eastern edge of Deschutes County. My client's property is located at the Deschutes County line with Harney County. I am enclosing a map showing the general location of the property for your reference. As you can see, the property is just South of Highway 20. There is a need for some aggregate for the local farmers around this area for their roads and pivots, as well as a need by Deschutes County for some aggregate for Fredrick Butte Road.

It is not economical to transport these small amounts of aggregate from sites near the City of Bend all the way to this area of the county. My client, David Baker, on behalf of Yreka Butte Enterprises, LLC, has proposed a very small-scale mining operation on his property to remedy this issue. This project will be located on Tax Lot 804 and Tax Lot 500. The second map I am enclosing will show the location of that proposed surface mine. It is only five (5) acres in size. We have reviewed this application with the Department of Fish and Wildlife, and it does not appear that there is any need for mitigation, vis-à-vis the Sage Grouse population in that area. Also, the property subject to this proposed mine does not have any agricultural value.

The main issue here is whether or not we can arrange for a small-scale mining operation that would fit the economic needs of the farmers in the area in question for some aggregate, as well as Deschutes County, vis-à-vis Fredrick Butte Road. To mine and crush the rock in this area, at



FITCH & NEARY
P.C.

Edward P. Fitch
Attorney
ed@fitchandneary.com

Randi N. Anderson
Paralegal
randi@fitchandneary.com

approximately five thousand to ten thousand (5,000 – 10,000) yards every two to three (2-3) years, would only be available if the land use application fees for such project were on a scale that would make this operation feasible. Currently, the fees for the zone change and plan amendments for this small operation is approximately eighteen thousand dollars (\$18,000).

The purpose of this letter is to request that Deschutes County adjust that fee for this operation to be six thousand dollars (\$6,000.00) instead. This would enable this operation to become economically feasible, which in turn would benefit the eastern portion of Deschutes County and its local farmers in that area, as well as the Deschutes County Public Works Department. We would be happy to review this proposal in person, or by phone, if so desired by the Commissioners. We have reviewed this request with representatives of the Community Development Department as well. They have suggested that we make this request to the Commission directly.

I am also enclosing the Partial Fee Waiver Application Form for your consideration. We are hopeful that we can come to an agreement, and will look forward to your response. Should you have any questions or concerns, please do not hesitate to reach out to me. Thank you for your attention to this matter.

Very truly yours,

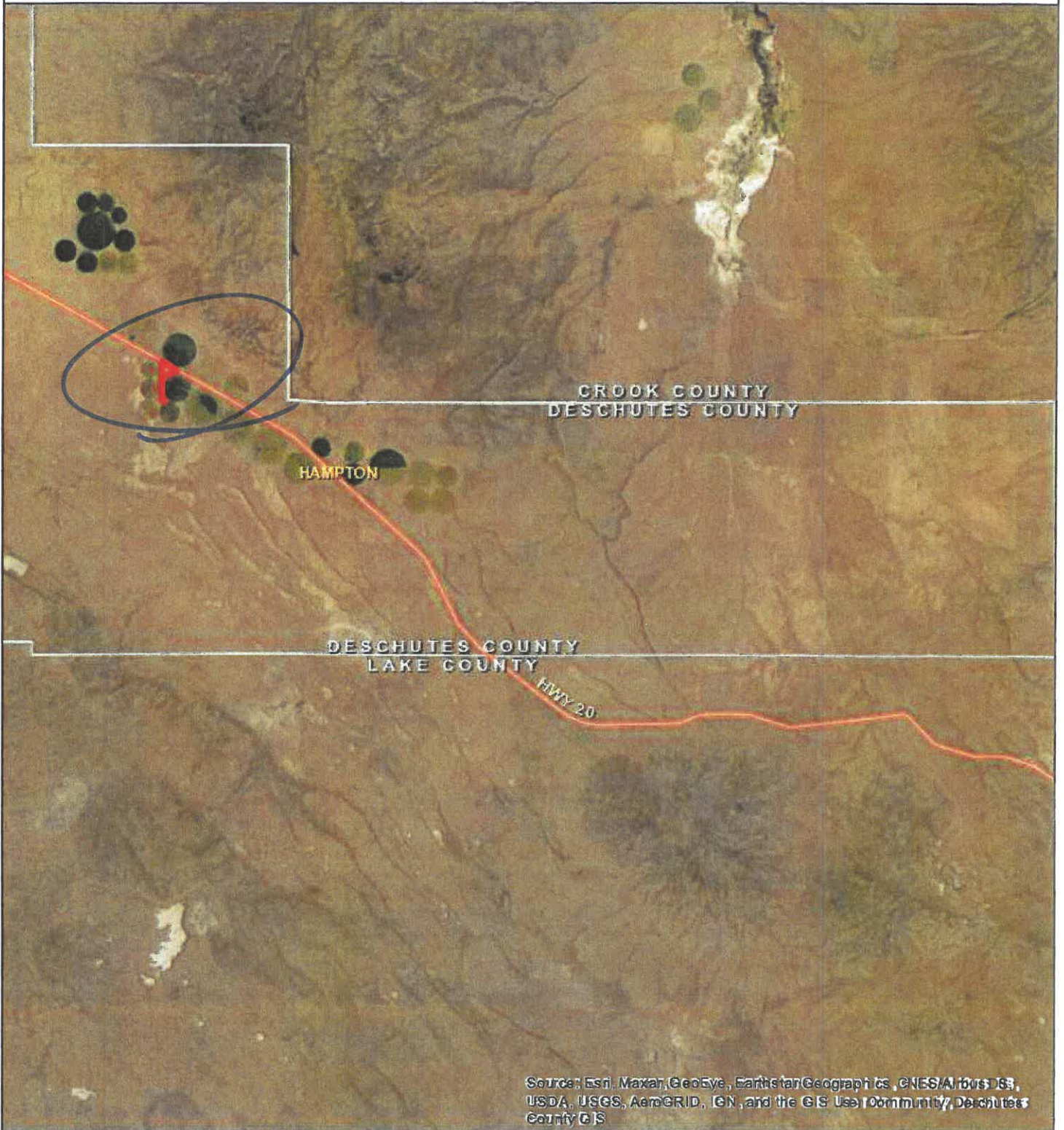
EDWARD P. FITCH
Attorney for David Baker

EPF: RNA
Encl: N/A
CC: Client

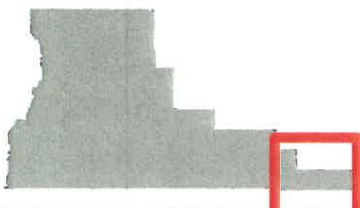
Mr. Nick Lelack, Community Development Director
via Email: Nick.Lelack@deschutes.org

Deschutes County Property Information - Dial

Overview Map



Map and Taxlot: 2120000002300



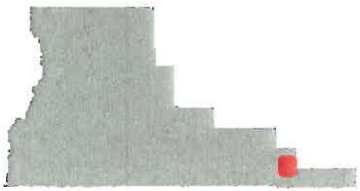
Deschutes County Property Information - Dial

Overview Map



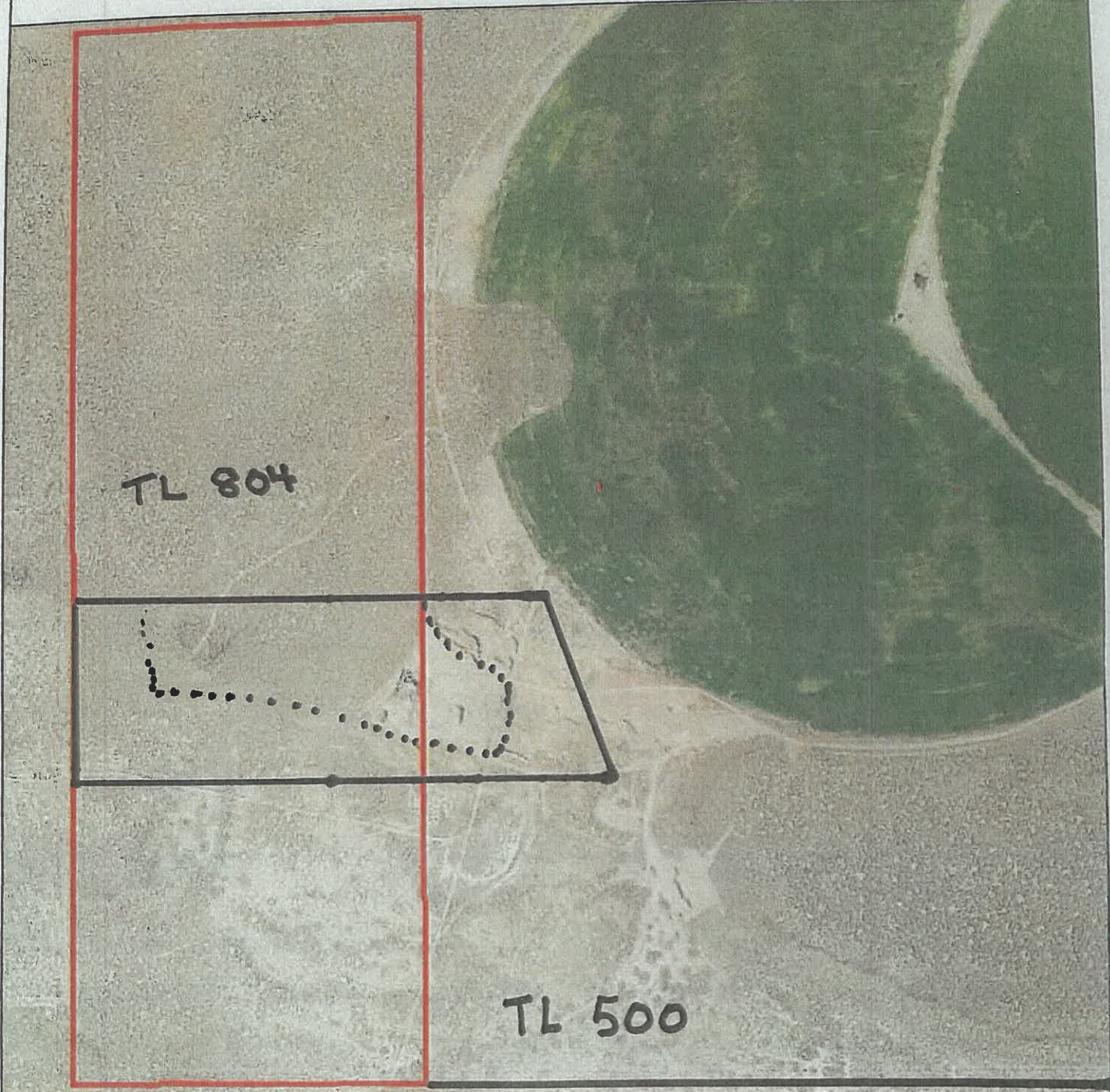
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Deschutes County GIS

Map and Taxlot: 2120000002300



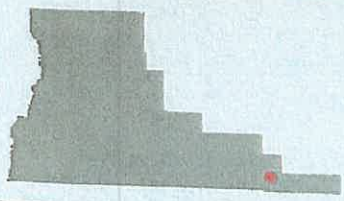
Deschutes County Property Information - Dial

Overview Map



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Deschutes County GIS

Map and Taxlot: 2220000000804



—
..... IMPACT AREA
proposed





COUNTY ADMINISTRATOR NICK LELACK

Edward P. Fitch
210 SW 5th Street, Suite 2
Redmond, OR 97756

October 13, 2021

RE: Yreka Butte Enterprises, LLC – Fee Waiver (Reduction) Request

Dear Mr. Fitch:

Thank you for your Facsimile and letter regarding a fee waiver (reduction) request on behalf of your client, Yreka Butte Enterprises, LLC.

I am denying the request for the following reasons:

1. In coordination with former Community Development Department (CDD) Director and County Administrator Tom Anderson, who authored the Fee Waiver Policy (adopted in 2006), the County has interpreted “public benefit” to only apply to non-profit and public organizations and not to private applications. This interpretation matches my implementation of the Policy while serving as CDD Director.
2. CDD’s fees are based on the average costs to process land use applications rather than the actual cost of service for a specific application.

This decision may be appealed to the Board. If appealed, please submit the appeal to me for processing.

Sincerely,

Nick Lelack, County Administrator