



Mailing Date:
Friday, February 16, 2024

COMMUNITY DEVELOPMENT

STAFF REPORT

FILE NUMBERS: 247-22-000436-ZC / 247-22-000443-PA / 247-23-000651-MA

HEARING: February 27, 2023, 6:00 p.m.
Zoom & Barnes & Sawyer Rooms

**SUBJECT PROPERTY/
OWNER:** Mailing Name: DESTINY COURT PROPERTIES LLC
Maps and Taxlots: 1712070000100¹
Accounts: 113037
Situs Address: 19975 DESTINY CT, BEND, OR 97703

Note: The subject property has been recently reconfigured as part of a property line adjustment.

APPLICANT'S ATTORNEY: Elizabeth Dickson, Dickson & Hatfield LLP

REQUEST: The Applicant requests a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"); and a Zone Change to rezone the subject property from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone ("EFU-TRB") to Multiple Use Agricultural ("MUA10").

Note: The Applicant has also applied for conditional use and tentative plan approval for a 14-lot residential Planned Unit Development (PUD). This request is not a part of this review.

STAFF PLANNER: Caroline House, Senior Planner
Caroline.House@deschutes.org / 541-388-6667

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000436-zc-247-22-000443-pa-destiny-court-properties-llc-comprehensive-plan-amendment>

¹ The Deschutes County Assessor's Office updated the tax map between the mailing of the Notice of Public Hearing and the release of this staff report. The subject property is now identified as a singular tax lot and account (ref. TL 100 / 113037).

I. APPLICABLE CRITERIA

Deschutes County Code ("DCC")

- Title 18, Deschutes County Zoning Ordinance
 - Chapter 18.04, Title, Purpose, and Definitions
 - Chapter 18.16, Exclusive Farm Use Zones ("EFU")
 - Chapter 18.32, Multiple Use Agricultural ("MUA10")
 - Chapter 18.56, Surface Mining Impact Area Combining Zone ("SMIA")
 - Chapter 18.84, Landscape Management Combining Zone ("LM")
 - Chapter 18.136, Amendments
- Title 22, Deschutes County Development Procedures Ordinance
 - Chapter 22.20.055, Modification of Application

Deschutes County Comprehensive Plan ("DCCP")

- Chapter 2, Resource Management
- Chapter 3, Rural Growth Management
 - Appendix C, Transportation System Plan

Oregon Administrative Rules ("OAR") Chapter 660

- Division 6, Forest Lands
- Division 12, Transportation Planning
- Division 15, Statewide Planning Goals
- Division 33, Agricultural Land

II. BASIC FINDINGS

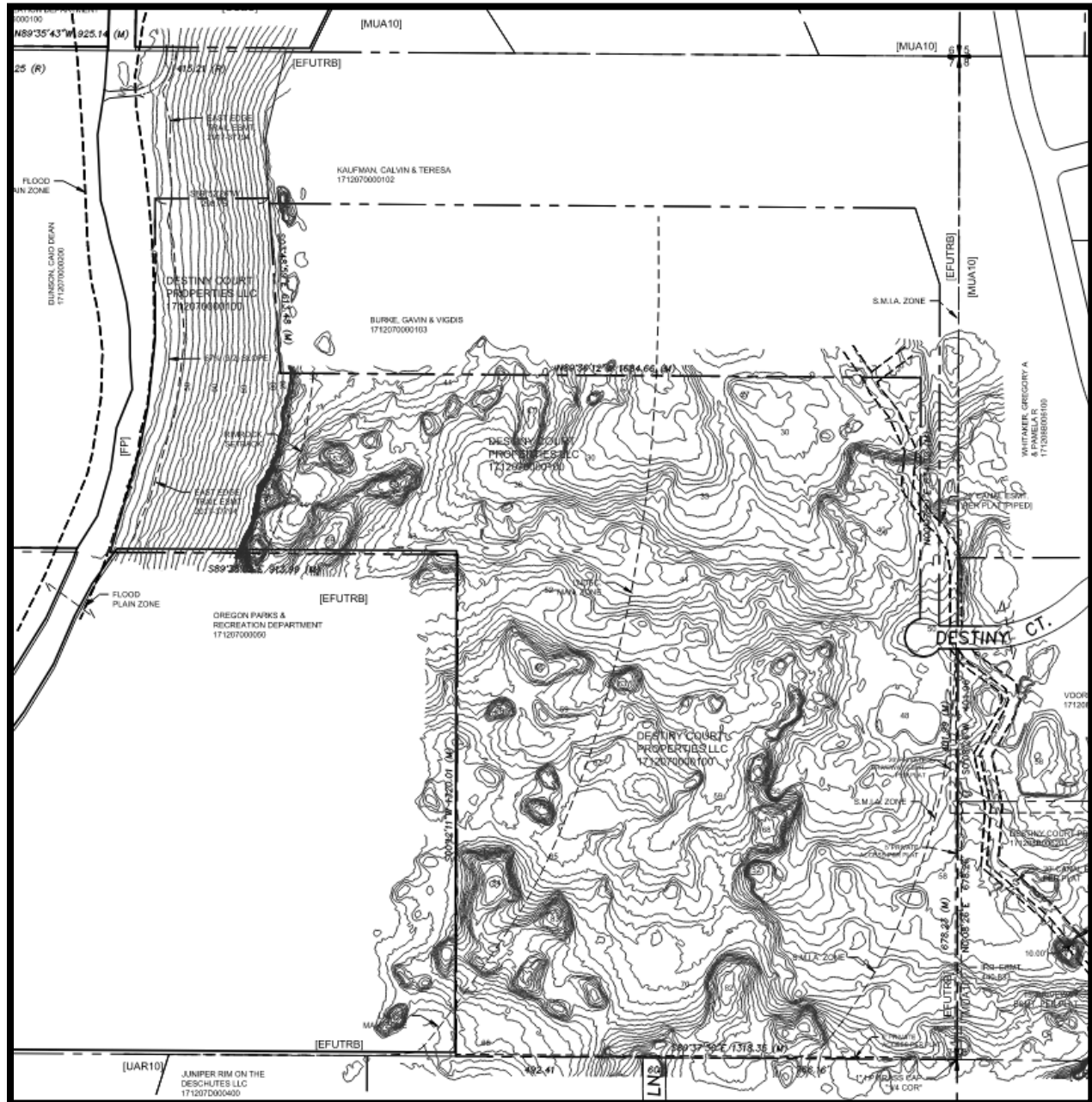
LOT OF RECORD: The subject property is one (1) legal lot of record (ref. file no. 247-22-000433-LR) and its current configuration reflects a recently perfected property line adjustment (ref. file no. 247-23-000653-LL).

ZONING: The subject property is zoned EFU-TRB subzone and is partially located in the LM and SMIA Combining Zones. Staff notes the recently perfected property line adjustment removed all Flood Plain ("FP") zoned areas on the subject property (ref. file no. 247-23-000653-LL) and the Applicant filed a modification of application to incorporate the changes associated with the reconfigured property (ref. file no. 247-23-000651-MA).

SITE DESCRIPTION: According to the Applicant's materials, the subject property is +/-65.1 acres in size, irregularly shaped, and there are no structures or improvements on the subject property except for a small pond adjacent to the eastern property line and near the terminus of Destiny Court. Some areas of the property have been previously used for raising livestock and/or horses. However, there are currently no irrigation rights appurtenant to the subject property and the property does not appear to be engaged in any type of farm use. The remaining undisturbed areas of the property consist of native vegetation and rock outcroppings.

Destiny Court, a paved County Road², terminates at the northeastern property line and Northern Estates Lane, a paved Local Access Road³, terminates at the southern property line. As shown in Figure 1 below, grade varies across the property with the most dramatic changes along the northwestern corner of the property, which consists of rimrock along the Deschutes River canyon. The nearest boundary for the City of Bend's Urban Growth Boundary ("UGB") is located approximately 2,000 feet to the southeast of the subject property.

Figure 1 – Topographical Map of the Subject Property



² Per DCC 12.04.060, "County Road" means a public road under the jurisdiction of a county that has been designated as a county road under ORS 368.016 and maintained by Deschutes County.
³ Per DCC 12.04.060, "Local Access Road" means any public street or road which is not maintained by the County but over which the County has jurisdictional authority.

SOILS: The Natural Resources Conservation Service (“NRCS”) map shown on the County’s DIAL GIS mapping program identifies three (3) soil complex units on the subject property: 38B, Deskamp-Gosney complex, 0 to 8 percent slopes, 58C, Gosney-Rock outcrop-Deskamp complex, 0-15 percent slopes, and 106E, Redslide Lickskillet complex, 30-50 percent slopes.

An Agricultural Soils Capability Assessment (Order 1 Soil Survey) was conducted by Brian T. Rabe, CPSS, WWS, for the majority of the subject property and found the following⁴:

Cascade Earth Sciences (CES) was retained to conduct a site-specific soil survey on a substantial portion of the above referenced parcels (Site) consisting of approximately 63 acres. The subject acreage is zoned Exclusive Farm Use Tumalo Redmond Bend (EFUTRB). Those areas not specifically evaluated generally consisted of steeper slopes with rocky soils leading into the adjacent Deschutes River canyon. We understand that an application to Deschutes County is being prepared to request a zone change to a non-resource designation (rural residential). The soil-related criteria for this process is contained in Oregon Administrative Rules (OAR) 660-033. Parcels need to consist predominately of soils in land capability classes VII and VIII to be considered for a non-resource designation.

...

SUMMARY AND CONCLUSIONS

The purpose of this report is to present the results of an assessment to verify and, where necessary, refine the soils, map units, and boundaries mapped on the Site and to determine whether the soils on the Site meet the land capability classification criteria for a non-resource zoning designation. The published soil survey information was reviewed and direct observations of soil conditions were made at representative locations across the Site. CES has determined that the information from the published soil survey was generally consistent with observations on the ground with boundary refinements limited to delineating components of the complexes mapped by the NRCS. CES has determined that 41.35 acres, or 65.8 percent, of the Site consists of Class VII and Class VIII soils. Since the Site is predominantly Class VII and Class VIII soils and does not otherwise meet the criteria for further consideration as agricultural land, the Site meets the soils criteria for consideration of a non-resource zoning designation.

Further discussion regarding soils is found in Section III below.

LAND USE HISTORY:

- **LR-94-42:** The County approved a Lot of Record Verification.
- **MP-94-29:** The County approved a three-parcel partition. The subject property was originally platted as a part of Parcel 1 (ref. PP1995-05).
- **CU-95-68:** The County conditionally approved a non-farm dwelling on Parcel 1 of MP-94-29.
- **MP-96-07/FPA-96-39:** The County approved a three-parcel partition. The subject property was platted as a part of Parcel C (ref. PP1995-05).

⁴ Ref. Applicant’s Exhibit 3 and Exhibit 24.

- **V-97-3/LL-97-10:** The County approved a minor variance and a lot line adjustment between the subject property and properties identified on Assessor's Map 17-12-07, as tax lots 102 and 103.
- **E-97-16:** The County approved a 1-year extension of CU-95-68.
- **E-98-28:** The County approved a 2-year extension of CU-95-68.
- **E-99-26:** The County approved a second 2-year extension of CU-95-68.
- **LM-00-195/SMA-00-33:** Site plan approval for the previously approved non-farm dwelling in the Landscape Management and Surface Mining Impact Area Combining Zones. However, the non-farm dwelling use was never initiated and the approvals expired.
- **247-22-000433-LR:** The County found the subject property is recognized as one legal lot of record.
- **247-23-000653-LL:** The County approved a property line adjustment between the subject property and a property identified on Assessor's Map 17-12-07, as tax lot 200.

SURROUNDING LAND USES: The subject property is surrounded by a variety of uses and zoning designations as detailed below:

North: The two closest properties to the north are zoned EFU-TRB and are developed with non-farm dwellings. Beyond these two properties is Tumalo State Park and other residentially developed MUA10 zoned properties. Tumalo State Park is zoned Open Space & Conservation Zone "(OS&C)", FP, MUA10, and EFU-TRB.

East: The properties to the east are zoned MUA10 and are predominantly developed with residential uses. The lot sizes vary from less than one (1) acre to 16 acres. State Highway 20 is approximately 1,700 feet to the east.

South: The properties to the south-southwest are platted 10-acre residential lots in the Pacific Cascade Heights and Juniper Rim subdivisions. These properties are zoned Urban Area Reserve Zone ("UAR10"). The properties to the south-southeast are also residentially developed and zoned UAR10. However, these lots are not part of a recorded subdivision or partition and range in size from +/- .96 acres to +/- 17.84 acres. Further to the south is a large UAR10-zoned tract of land owned by the Elkins Revocable Trust and Bend Metro Parks & Recreation District's Riley Ranch Reserve. As noted above, the City of Bend's UGB is approximately 2,000 feet to the southeast and properties within the UGB are in the City of Bend's zoning jurisdiction.

West: The Oregon Parks & Recreation Department owns the abutting land to the west-southwest. The Deschutes River crosses this property and continues generally in a north-south direction. This Oregon Parks & Recreation Department property is zoned EFU-TRB and FP and appears to be undeveloped. However, there is a public trail along the banks of the Deschutes River connecting Tumalo State Park, to the north, and Riley Ranch Reserve, to the south. Abutting the northwest corner of the property is a privately owned EFU and FP zoned property that is developed residentially and also includes a segment of the publicly accessible trail connecting Tumalo State Park and Riley Ranch Reserve. Further to the west is Surface Mining Site No. 303, which Oregon

Department of Geology and Mineral Industries (“DOGAMI”) identifies as a “permitted”⁵ surface mine, and privately owned EFU-TRB zoned properties.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on June 3, 2022, and September 9, 2023, to several public agencies and received the following comments:

Bend Fire & Rescue, Jason Bolen

A three-page letter was submitted by Bend Fire & Rescue and is incorporated herein by reference.

STAFF COMMENT: The Bend Fire & Rescue comments appear to be related to the Fire Department standards that apply to the 14-lot PUD. This request is not a part of this review.

Deschutes County Addressing Coordinator, Tracy Griffin

Addresses and street names for this proposed subdivision will be determined and approved during the tentative plat phase of this development.

Deschutes County Building Division, Randy Scheid

NOTICE: The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

Deschutes County Onsite Wastewater Division, Todd Cleveland

Prior to final plat approval, each proposed residential lot must have a complete approved site evaluation.

Deschutes County Road Department, Cody Smith

I have reviewed the application materials for the above-referenced file numbers, proposing 14-lot PUD subdivision of Tax Lots 100 and 101 on County Assessor’s Tax Map 17-12-07 and Tax Lot 6201 on County Assessor’s Tax Map 17-12-08B. The subject property is accessed by Destiny Court, which presently terminates at the eastern boundary of the subject property, and Northern Estates Lane, which presently terminates at the southern boundary of the subject property. Road Department records indicate that both roads have the following attributes where they abut or provide access to the subject property:

⁵ DOGAMI’s *Mining Permit & Status Code Reference* defines “permitted” as Certificate, Exemption, or Permit has been approved and issued - does not necessarily indicate site is active.

Destiny Court

- Road Status: County Road
- Surface Type: Asphalt Concrete
- Surface Width: 28 feet
- Functional Classification: Rural Local
- Right of Way Width: 60 feet
- Right of Way Instrument: Partition Plat No. 1995-5

Northern Estates Drive

- Road Status: Local Access Road
- Surface Type: Asphalt Concrete
- Surface Width: 28 feet
- Functional Classification: Rural Local
- Right of Way Width: 60 feet
- Right of Way Instrument: Partition Plat No. 1995-5

Where they provide access to or abut the subject property, Destiny Court and Northern Estates Drive meet or exceed the minimum rural local road standards given in Deschutes County Code (DCC) 17.48A

The applicant has proposed an interior private road system that would be an extension of both Destiny Court and Northern Estates Drive. Staff note that the site traffic report submitted with the application materials recommends that "All internal streets should be constructed within a dedicated public access easement." State law and DCC do not differentiate between "public access easements" and "public rights of way"; they are one and the same. Road Department staff assume that the applicant's intent is to build public internal roads to the private road standard.

Deschutes County Road Department requests that approval of the proposed land uses be subject to the following conditions:

Prior to construction of road improvements:

- Applicant shall submit road improvement plans and stormwater drainage report to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. The roads shall be designed to the minimum road standard given in 17.48.160, 17.48.180, and 17.48A. Stormwater drainage shall be designed in accordance with DCC 17.48.190 and the latest edition of the Central Oregon Stormwater Manual. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

Prior to final plat approval by Road Department:

- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter

- from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
 - If roads are dedicated to the public, applicant shall dedicate internal road rights of way to provide for the minimum standard rural local road right of way width of 60 ft. pursuant to DCC 17.16.105, 17.36.040, 17.36.060, and 17.48A. Dedication shall be by plat declaration.
 - All easements of record or existing rights of way shall be noted on the final plat pursuant to DCC 17.24.060(E),(F), and (H).
 - The surveyor preparing the plat shall, on behalf of Applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).
 - Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.24.070(E)(1).
 - Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.

STAFF COMMENT: Most of the comments above appear to be related to DCC standards that apply to the 14-lot residential PUD. This request is not a part of this review.

Deschutes County Senior Transportation Planner, Peter Russell (June 23, 2022)

I have reviewed the transmittal materials for 247-22-000346-ZC/438-TP/439-CU/443-PA/433-LR/434-LR/435-LR for properties totaling approximately 83 acres to change the Comprehensive Plan designation from Agriculture to Rural Residential Exception Area (RREA) and the zoning from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The properties lie in the Exclusive Farm Use (EFU), Surface Mining Impact Area (SMIA), Landscape Management (LM) and Flood Plain (FP) zones and add a 14-lot Planned Unit Development (PUD) at 19975 and 19995 Destiny Ct., aka County Assessor's Maps 17-12-07, Tax Lots 100 and 101 and 17-12-08B, Tax Lot 6201. For reasons discussed below, staff finds more information is needed to address the Transportation Planning Rule (TPR).

Deschutes County Code (DCC) 18.116.310(4) requires a 20-year analysis for zone changes. The application has submitted what in essence is a trip generation memo from Transight, the applicant's traffic engineer, that is dated Sept. 15, 2021. The memo does not have any operational analysis regarding performance of affected intersections. Staff therefore cannot determine compliance with the TPR at Oregon Administrative Rule (OAR) 660-012-0060 for significant effect. The applicant needs to provide operational analysis of the affected intersections pre-zone change and post-zone change. Staff does agree with the consultant that the difference in trip generation between EFU and MUA-10 is negligible. Historically, staff has used single-family home as its base case for reasonable worst-case scenario for uses in the EFU zone. The outright permitted uses are listed at DCC 18.16.020. The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Manual lists Single Family Detached Home (Land Use 210) has having 9.43 weekday trips. Staff has also reviewed the outright permitted uses in the MUA-10 at DCC 18.32.020 as well as the outright permitted uses listed in Oregon Revised Statute (ORS) 215.213(1) and 215.283(1).

The property accesses Destiny Court, a public road maintained by Deschutes County, and functionally classified as a local. The property has an access permit approved by Deschutes County (#247-SW1403) and thus complies with the access permit requirements of DCC 17.48.210(A).

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$4,757 per p.m. peak hour trip. As the plan amendment/zone change by itself does not generate any traffic, no SDCs apply at this time. SDCs will be assessed based on development of the property. When development occurs, the SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC RATE IS ONLY VALID UNTIL JUNE 30, 2022. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.

BEGINNING JULY 1, 2022, THE SDC RATE WILL INCREASE TO \$5,080 PER PEAK HOUR TRIP AND LAST UNTIL JUNE 30, 2023. AGAIN, THIS IS INFORMATIONAL ONLY AS SDCS ARE NOT ASSESSED UNTIL DEVELOPMENT OCCURS.

STAFF COMMENT: In response to Mr. Russell's comments above, the Applicant submitted a supplemental transportation memorandum dated August 8, 2022⁶.

⁶ Ref. 2023-09-15 E. Dickson - Destiny Transportation Analysis Response.

I have reviewed the transmittal materials for 247-23-000651-MA, 652-MA, 653-LL which modifies original files 247-22-000436-ZC/438-TP/439-CU/443-PA/433-LR/434-LR/435-LR for properties totaling approximately 83 acres to change the Comprehensive Plan designation from Agriculture (AG) to Rural Residential Exception Area (RREA) and the zoning from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The properties lie in the Exclusive Farm Use (EFU), Surface Mining Impact Area (SMIA), Landscape Management (LM) and Flood Plain (FP) zones and add a 14-lot Planned Unit Development (PUD) at 19975 and 19995 Destiny Ct. recognized on County Assessor's Maps 17-12-07 as Tax Lots 100 and 101 and 17-12-08B as Tax Lot 6201. For reasons discussed below, originally stated in response to the initial Plan Amendment/Zone Change/Tentative Plat application, staff finds that the additional information provided by the applicant and their traffic engineer addresses the requests made in the County Transportation Planner's original June 23, 2022 comment.

I have reviewed Mr. Bessman's August 8, 2023, Site Traffic Report/TPR Analysis related to the subject application and I agree with the assumptions, methodology, and conclusions contained therein. As Mr. Bessman utilizes the 2040 planning horizon year (reflective of the most recent data included in the County's forthcoming Transportation System Plan update) this analysis appears to comply with relevant criteria. Mr. Bessman utilizes the acceptable road segment standard of 13,900 Average Daily Trips (ADT) which is incorporated into the County's most recent 2020-2040 Transportation System Plan. The analysis and references therein related to peak hour trips (16 to 22 total weekday p.m. peak hour trips) are adequate. Staff agrees with Mr. Bessman's summary of Transportation Planning Rule (TPR) Compliance and finds that relevant TPR provisions appear to be satisfied through the submittal of this additional information.

The property accesses Destiny Court, a public road maintained by Deschutes County, and functionally classified as a local. The property has an access permit approved by Deschutes County (#247-SW1403) and thus complies with the access permit requirements of DCC 17.48.210(A).

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,603 per p.m. peak hour trip. As the plan amendment/zone change by itself does not generate any traffic, no SDCs apply at this time. SDCs will be assessed based on development of the property. When development occurs, the SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC RATE IS ONLY VALID UNTIL JUNE 30, 2024. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.

BEGINNING JULY 1, 2024, THE SDC RATE WILL INCREASE AND LAST UNTIL JUNE 30, 2025. AGAIN, THIS IS INFORMATIONAL ONLY AS SDCS ARE NOT ASSESSED UNTIL DEVELOPMENT OCCURS.

Oregon Department of Land Conservation & Development, Hilary Foote

DLCD has reviewed a soil assessment as requested by Ron Cochran for QRR Properties LLC. Attached are the soil assessment, DLCD completeness review, and DLCD application form.

In accordance with OAR 660-033-0045(6)(a), the Department of Land Conservation and Development (DLCD) finds that this soils assessment is complete. DLCD has reviewed the soils assessment for completeness only and has not assessed whether the parcels qualify as agricultural land as defined in OAR 660-033-0020(1) and 660-033-0030.

The county may make its own determination as to the accuracy and acceptability of the soils assessment.

Oregon Parks and Recreation Department, Fiona Noonan

Based on the information in this Notice of Application, tax lots 1712070000100, 1712070000101, and 1712070000200 are all within the Middle Deschutes State Scenic Waterway. To my understanding, no structural development has been proposed here yet, but please correct me if I'm wrong. If/when the relevant property owners wish to build or remodel any structures, remove/alter vegetation, or conduct other similar activities, they will need to submit a Notification of Intent Application to the State Scenic Waterway Program. If possible, please have them reach out to me directly beforehand.

The following agencies did not respond to the notice: 911, Bend Metro Parks & Recreation, Deschutes County Assessor, Deschutes County Sheriff, Deschutes County Surveyor, Oregon Department of Agriculture – Land Use Planning Coordinator, Oregon Department of Environmental Quality, Oregon Department of Fish & Wildlife, Oregon Water Resources Department (Watermaster – District 11), and Swalley Irrigation District.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on June 3, 2022, and September 9, 2023. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on June 15, 2022. Eleven (11) public comments were received and below staff has summarized the concerns/issues raised:

1. Road and traffic impacts
2. Design consistency of roads between developments
3. Damage to Northern Estates Lane during construction or development
4. Small Lot sizes
5. Lots should be at least 10 acres

6. Loss of natural habitat
7. Impacts on rural character of the area
8. Concerns the applications are incomplete
9. Need for the County to require a Road Maintenance Agreement
10. Comments in support of the PA/ZC request, but opposed to the 14-lot Planned Development
11. Need for equitable sharing of road maintenance costs
12. Concerns the applicable criteria are generally not met
13. Increased traffic impacts on O.B. Riley Road
14. Desire for a “peaceful wilderness environment” near Tumalo State Park
15. Spacial restrictions/5-acre minimum lot sizes associated with the LM Combining Zone
16. Open space acreage requirements
17. Cluster Development standards not being met
18. Lot of Record issues
19. Need for Goal 14 Exception
20. Establishment of “neighborhood-style subdivision housing” outside of the UGB
21. Need for fire gates between the proposed subdivision and Pacific Cascade Heights to reduce road maintenance, trespassing, vagrants, houseless, camping, speed contests, etc.

STAFF COMMENT: Most of the comments above appear to apply standards that will be evaluated during the review of the 14-lot residential PUD. As part of the County’s review of those applications, staff or the hearings body will address these comments and their relevancy to the applicable standards. Compliance with the applicable rural growth and transportation standards for a comprehensive Plan Amendment and Zone Change are addressed below. Staff notes the Lot of Record issue has been resolved as part of files nos. 247-22-000433-LR / 247-22-000435-LR / 247-23-000653-LL. The subject property is recognized as one (1) lot of record.

HEARING NOTICE: On January 19, 2024, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property, public agencies, and parties. A Notice of Public Hearing was also published in the Bend Bulletin on Sunday, January 21, 2024. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development (“DLCD”) on January 19, 2024.

REVIEW PERIOD: According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change application is not subject to the 150-day review period.

III. FINDINGS & CONCLUSIONS

Title 18, Deschutes County Zoning Ordinance

Chapter 18.136, Amendments

Section 18.136.010, Amendments

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDING: The Applicant, also the property owner, has requested a quasi-judicial Plan Amendment and filed the applications for a Plan Amendment and Zone Change. The Applicant has filed the required Planning Division's land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the DCC.

Section 18.136.020, Rezoning Standards

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

A. That the change conforms with the Comprehensive Plan, and the change is consistent with the plan's introductory statement and goals.

FINDING: The DCCP's introductory statement explains land use must comply with the statewide planning system and sets out the legal framework set by State law. It also summarizes the Statewide Planning Goals and explains the process the County used to adopt the current DCCP. Prior Deschutes County quasi-judicial zoning approvals, some of which have been affirmed by the Land Use Board of Appeals ("LUBA") and other appellate courts⁷, have found that the introductory statement of the Comprehensive Plan is aspirational in nature and not necessarily approval criteria and it is appropriate to only respond to the DCCP goals that apply to a particular request.

The Applicant identifies what they believe are the applicable DCCP provisions on pgs. 10-15 of their Burden of Proof. However, staff believes DCCP provisions related to protected Goal 5 resources may need further review by the Hearings Officer. Conformance with the DCCP and consistency with the applicable DCCP provisions is addressed in the subsequent findings in the DCCP section of this staff report.

⁷ *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 441 (*Aceti II*), aff'd, 288 Or App 378, 405 P3d 197 (2017), *Central Oregon Landwatch v. Deschutes County*, 79 Or LUBA 253 (*Aceti III*), aff'd, 298 Or App 375, 449 P3d 534 (2019), *Central Oregon Landwatch v. Deschutes County*, ___ Or LUBA _ (LUBA No 2021-028, June 18, 2021) (*Aceti IV*), aff'd, 315 Or App 673, 501 P3d 1121 (2021), and *Central Oregon Landwatch v. Deschutes County*, (LUBA No 2022-075, December 6, 2022) (*Aceti V*).

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

FINDING: The Applicant provided the following response on pgs. 15-16 of their Burden of Proof:

The proposed zone change from EFU to MUA-10 is consistent with the purpose and intent of the MUA zone classification. Per DCC 18.60, the stated purposes of the MUA-10 zone are:

"The purposes of the Multiple Use Agricultural Zone is 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 areal to preserve and maintain agricultural lands not sited 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 MUA-10 zone is the optimal county zone to transition the Subject Property to a rural residential use. As detailed above and incorporated herein by reference, the subject property is not suited for agricultural use. This property is more appropriately zoned MUA-10. The Subject Property is currently zoned Exclusive Farm Use (EFU) likely due to general classification as undeveloped, rather than consideration of the agricultural capability of the land. The Property has never been successfully used for farming or pasture, despite repeated attempts over many years. Agricultural uses are also not practical or compatible with the existing residential uses surrounding the similar property, already zoned MUA-10.

This Comprehensive Plan Map and Zoning Map Amendment request will resolve the incorrect classification of the subject properties. Because most surrounding properties are used as MUA-10 properties, there is an incompatibility between the presently zoned EFU permitted uses and the adjacent, surrounding lands developed or committed for urban and residential uses. The requested Comprehensive Plan Map and Zoning Map amendments will result in a zoning assignment that is compatible with neighboring properties and the realities of the site, rather than the current EFU zoning, which poses potential conflict with established residential uses.

Rezoning of the Subject Property from EFU to MUA-10 will resolve the latent conflict between EFU permitted uses and the immediately adjacent rural residential uses. Furthermore, the Comprehensive Plan Map and Zone Map change will serve the interests of the northwest Bend residents, surrounding neighborhoods, and public investments in public facilities and services. This development will allow infrastructure to go "to and through" the subject property, connecting the development to the south with Destiny Court, giving better connectivity to the neighborhood, rather than a series of dead-ends and inaccessible lots.

The requested Rural Residential Comprehensive Plan Map designation is also sought at this time promote a logical transition for inclusion in a future expansion of the Bend UGB and/or in the designation of urban reserves. This request to re-designate and re-assign the Comprehensive Plan and Zoning Maps from Agriculture to Rural Residential and MUA-10, respectively, will allow this site to be developed in a transitional use.

The requested MUA-10 zone emphasizes the conservation of open spaces and the protection of natural and scenic resources. While the subject property is not suitable for agriculture, it does represent a significant planned open space area. The MUA-10 zone will encourage that preservation and protection while also maintaining consistency with the MUA-10 lands in the vicinity.

By allowing for single family dwellings as an outright permitted use (DCC 18.32.020(8)), the MUA-10 zone recognizes that rural lands may sometimes be better suited for residential use than agricultural uses, depending on their resource value. Other non-resource land uses are conditionally permitted; any nonresource land development proposal on the property other than a single family dwelling would not be allowed unless it was found to be consistent with the surrounding properties and the applicable conditional use evaluation standards. Therefore, the proposed change in zoning is consistent with the intent and purpose of the MUA-10 zone, and will be compatible with surrounding properties.

Staff finds the Applicant has demonstrated the change in classification is consistent with the purpose and intent of the MUA10 Zone. Staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

- C. *That changing the zoning will presently serve the public health, safety and welfare considering the following factors:***
 - 1. *The availability and efficiency of providing necessary public services and facilities.***

FINDING: The Applicant provided the following response on pg. 16 of their Burden of Proof:

The proposed change from EFU will not require the extension of new public services to the subject property, other than expansion of the existing road system in the area. The site is already adjacent to urban infrastructure (Destiny Court and Northern Estates Lane). The site will be served by Avion Water Co. and on-site septic systems, accommodated by planned patterns of development. Thus, public facilities are available and can be efficiently provided to the site.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Development of the property under MUA-10 zoning would need to comply with applicable requirements of the DCC, including land use permits,

building permits, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

The Applicant also provided the following response as part of their modification application (ref. pg. 10 of the Applicant's Second Supplemental Submittal):

Public Facilities and Services demand will still be able to accommodate the proposal's impacts, including Bend's high school systems which added Caldera High School in the fall of 2021.

The subject property is located in the Bend Rural Fire Protection District, Bend La Pine School District, and police services are provided by the Deschutes County Sheriff's Office. Adjacent and nearby properties to the north, east, and south contain dwellings. These properties are served by Avion Water Company or onsite wells, onsite sewage disposal systems, electrical service, telephone service, and the regional public service providers noted above. No issues have been identified in the record regarding service provision to the surrounding area.

The southeast corner of the subject property is located +/-2,000 feet from the City of Bend's UGB. This close proximity to urban development will likely result in efficiency of providing necessary public services. The application materials include will-serve letters indicating electrical service and water service are available to the subject property. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the subject property, the Applicant will be required to comply with the applicable requirements of the DCC, including approval of required land use, building, and onsite wastewater disposal permits. Through the review of these development permits, assurance of adequate public services and facilities will be verified. Staff finds this provision is met.

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

FINDING: The Applicant provided the following response on pgs. 16-17 of their Burden of Proof:

The relevant goals of the Comprehensive Plan are implemented through the MUA-10 purpose statement in the zoning ordinance, as set forth above. The zone is unique in that it serves as a transition between EFU lands with productive soils and other rural lands that are "not suited to full time commercial farming" and are more appropriately suited for "diversified or part time agricultural uses." The MUA-10 zone retains consistency with EFU lands by allowing a limited array of rural uses and mandating a 10-acre minimum lot size (except in planned developments, in which the smaller lot sizes are offset by the 65% open space requirement). There are only a limited number of uses allowed in the MUA-10 zone that are not also allowed in the EFU zone. Further, the majority of the different non-resource land uses in the MUA-10 zone are conditional, thereby ensuring that potential impacts on surrounding land uses will be further reviewed by the County during each site specific land use application.

In summary, the MUA-10 zone remains a rural zone devoted to a mix of part-time agricultural and residential uses. This minimizes potential impacts on surrounding lands. The MUA-10 zoning would emphasize the continued protection of the open space and wildlife values of the property with the planned development design proposed, which distances homesites from the river's rim as well as surrounding uses.

In addition to these comments, the Applicant provided specific findings for specific goals and policies contained within the DCCP, which are addressed below. DCCP goals and policies related to protected Goal 5 resources may require further review as it pertains to the impacts on surrounding land use. Staff asks the Hearings Officer to determine if the Applicant has demonstrated the impacts on surrounding land use will be consistent with the all the relevant goals and policies contained within the DCCP.

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

FINDING: The Applicant proposes to rezone the subject property from EFU to MUA10. The Applicant provided the following response on pg. 17 of their Burden of Proof:

Circumstances have changed since the zoning of the property. When the property was first given an EFU zoning assignment, it was in the early days of Oregon zoning, approximately half a century ago. Much of our undeveloped and unirrigated lands were zoned EFU, for lack of a better zone or label, even though these parcels were dry and not farmable. If they weren't forest or already developed in a denser pattern, they were zoned farm by default. This property was zoned without detailed or site specific consideration given to its soil, geologic, and topographic characteristics. Now that a certified soils scientist has conducted a detailed Soils Investigation (See Exhibit 3), it is documented that the parcels do not qualify as farmland. The change in circumstance is the soil study. It also evidences a mistake of sorts in classifying poor soil as farmland.

In summary, the County's zoning of agricultural lands has been a process of refinement since the 1970s. The Subject Property has never been suitable for agriculture and has never been actively farmed successfully due to its poor soil. Although it was assigned EFU zoning, this property likely should not have been originally zoned EFU due to its location, soils, and geology. Therefore, the parcels should be rezoned to MUA-10, consistent with the zoning of adjacent rural-residential uses. The MUA-10 zoning assignment supports logical, compatible, and efficient use of the land.

Staff asks the Hearings Officer to determine if the Applicant has demonstrated there has been a change in circumstances since the property was zoned to warrant rezoning the subject property from EFU to MUA10.

Title 22, Deschutes County Development Procedures Ordinance

Chapter 22.20, Review of Land Use Action Applications

Section 22.20.055, Modification Of Application

- A. *An applicant may modify an application at any time during the approval process up until the close of the record, subject to the provisions of DCC 22.20.052 and DCC 22.20.055.***

FINDING: The Applicant filed a modification on September 1, 2023, which was 462 days following the submittal of the original applications and prior to the close of the record. Compliance with the remaining requirements of DCC 22.20.052 is addressed below.

- B. *The Planning Director or Hearings Body shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in DCC 22.04) unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 150-day time clock as of the date the modification is submitted. The 150-day time clock for an application, as modified, may be restarted as many times as there are modifications.***

FINDING: The Applicant applied for a modification, paid all required modification fees, and agreed in writing to restart the 150-day time clock as of the date the modification was submitted. Staff notes the plan amendment and zone change are not subject to the 150-day clock. This criterion is met.

- C. *The Planning Director or Hearings Body may require that the application be re-noticed and additional hearings be held.***

FINDING: Notice of the modification was mailed to all parties on September 8, 2023. The initial hearing will be held on February 27, 2024. Staff does not believe any additional hearings are necessary beyond what is required for a Plan Amendment and Zone Change request pursuant to DCC Title 22. However, any Hearings Body may require additional hearings be held.

- D. *Up until the day a hearing is opened for receipt of oral testimony, the Planning Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Hearings Body shall make such determinations. The Planning Director or Hearings Body's determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the County on an application.***

FINDING: As noted above, the initial hearing is scheduled for February 27, 2024. Therefore, the Planning Director determined the Applicant's submittal constitutes a modification. DCC 22.04.020 establishes the following definition:

"Modification of application" means the applicant's submittal of new information after an application has been deemed complete and prior to the close of the record on a pending application that would modify a development proposal by changing one or more of the following previously described components: proposed uses, operating characteristics, intensity, scale, site lay out (including but not limited to changes in setbacks, access points, building design, size or orientation, parking, traffic or pedestrian circulation plans), or landscaping in a manner that requires the application of new criteria to the proposal or that would require the findings of fact to be changed. It does not mean an applicant's submission of new evidence that merely clarifies or supports the pending application.

The Applicant submitted new information after the County received the Applicant's response to the County's incomplete letter and prior to the close of the record. The modification changes the site lay out in a manner that would require the findings of fact to be changed. The modification removed the FP Zoned areas of the property and reconfigured/reduced the area included in the subject Plan Amendment and Zone Change request, which requires the findings of fact to be changed. To the extent a party wishes to challenge the County's decision to require a modification of application, it is appealable only to LUBA and shall be appealable only after a final decision is entered by the County on an application.

Deschutes County Comprehensive Plan ("DCCP")

Chapter 2, Resource Management

Section 2.2, Agricultural Lands

Goal 1, Preserve and maintain agricultural lands and the agricultural industry.

FINDING: The Applicant provided the following response on pg. 11 of their Burden of Proof:

As discussed below, the Applicant's soil study, NRCS soil data, and the submitted burden of proof effectively demonstrate that the subject property is not suitable for designation as Agriculture in the Comprehensive Plan. It does not contain the soils required for agricultural use. See Soil Study attached as Exhibit 3. These properties are not "agricultural" as defined by state statute and administrative rules. They are properly rezoned to exception land in accordance with their character.

In addition, the Applicant submitted to the record as Exhibit 24 a copy of the DLCD Soil Assessment Completeness Review, deeming said analysis complete. Staff concurs that the submitted soil study demonstrates the subject property is predominantly Class VII and Class VIII

soils. Staff requests the Hearings Officer make specific findings on compliance with this DCCP goal.

Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.

FINDING: The Applicant is not seeking to amend the subzone that applies to the subject property; rather, the Applicant requests a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to MUA10.

Policy 2.2.3 Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.

FINDING: The Applicant requests approval of a Plan Amendment and Zone Change to re-designate the property from AG to RREA and rezone the property from EFU to MUA10. The Applicant does not seek an exception to Goal 3 – Agricultural Lands, but rather to demonstrate that the subject property does not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

The Applicant provided the following response on pg. 11 of their Burden of Proof:

The Applicant has applied for a Zone Change to rezone Tax Lots 100 and 101 from EFU(TRB) to MUA-10. The Applicant has also applied for a Plan Amendment to support this Zone Change, which would designate the approximately 69 acres as Rural Residential rather than Agricultural. Rather than pursuing an exception to Goal 3, which would ordinarily be the method of effectuating such a change, the Applicant has attempted to demonstrate that the subject property does not meet the state definition of "Agricultural Land", as defined in Statewide Planning Goal 3 (OAR 660-033-0020). Neither of the tax lots are in farm production of any type and are unirrigated. It should be noted that farm production has been repeatedly attempted and has consistently failed. Now that the soil study has been performed, this result is understandable.

The Land Use Board of Appeals (LUBA) allowed this approach in *Wetherell v. Douglas County*, 52 Or LUBA 677 (2006). The County Hearings Officer also accepted this method in file PA-10-5 (Rose & Associates) and in *Wetherell v. Douglas County*, LUBA states at pp. 678-679:

As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3

or Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798,802 (1990).

The facts pertinent to the subject application are sufficiently similar to those in PA-10-5 to allow the Applicant to attempt to show that the subject property is not agricultural land, rather than seeking an exception to Goal 3 under state law. This criterion is satisfied.

Additionally, the Applicant submitted the following response as part of their Incomplete Letter Response titled Supplemental Submittal dated November 23, 2022:

The Applicant has applied for a Zone Change to rezone Tax Lots 100 and 101 from EFU(TRB) to MUA-10. The Applicant has also applied for a Plan Amendment to support this Zone Change, which would designate the approximately 69 acres as Rural Residential rather than Agricultural.

Applicant submits to the record with this submittal a copy of the DLCD Soil Assessment Completeness Review, deeming said analysis complete, as Exhibit 24. Applicant submits to the record with this submittal an Affidavit by Mr. and Mrs. Ferguson attesting to their attempts to farm the subject property of the PA/ZC, and their failure to succeed. This is submitted as Exhibit 25.

Staff agrees the facts presented by the Applicant in their Burden of Proof are similar to those in the *Wetherell* decisions and in the aforementioned Deschutes County Plan Amendment and Zone Change decision. The Applicant has provided evidence addressing whether the subject property qualifies as non-resource land. Therefore, the Applicant has the potential to prove the subject property is not agricultural land and does not require an exception to Goal 3 under state law.

Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.

FINDING: The Applicant provided the following response on pg. 12 of their Burden of Proof:

This provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. In the findings for the previous Plan Amendment and Zone Change for the subject property, the County found that this policy does not impose a moratorium on requests for applications of this type, and that nothing in this policy prohibits the conversion of EFU parcels to other designations (see PA-1 1-7, also 247 -16-000318-PA, PA-10-5, PA-07-1). Previous determinations and the proposal are consistent with this policy.

Staff agrees with the Applicant's analysis of prior decisions by the County and finds the subject proposal is consistent with this policy.

Goal 3, Ensure Exclusive Farm Use policies, classifications and codes are consistent with local and emerging agricultural conditions and markets.

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: This DCCP policy requires the County to identify and retain agricultural lands that are accurately designated. The Applicant argues the subject property was not accurately designated as demonstrated by the soil study and detailed in the Applicant's Burden of Proof. Further discussion on the soil analysis is detailed under the OAR Division 33 criteria below.

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.

FINDING: In *Aceti IV* (247-20-000438-PA, 439-ZC), the Hearings Officer found and the Board of County Commissioners ("BOCC") adopted the following finding:

The Hearings Officer found in *Aceti 1* that this policy is directed at the County. In said decision, the Hearings Officer cited a previous decision of Hearings Officer Green for file nos. PA-14-2 and ZC-14-2 that stated, "Nevertheless, in my decision in NNP I held it is not clear from this plan language what "water impacts" require review -- impacts to water supplies from use or consumption on the subject property, or Impacts to off-site water resources from development on the subject property." The Applicant has not proposed any particular land use or development, and any subsequent applications for development of the subject property would be reviewed under the County's land use regulations that include consideration of a variety of on- and off-site impacts.

The Hearings Officer finds it is premature to review "water impacts" because the Applicant has not proposed any particular land use or development. Thus, there are no "significant land uses or developments" that must be reviewed or addressed in this decision. Any subsequent applications for development of the subject property will be reviewed under the County's land use regulations, which include consideration of a variety of on- and off-site impacts. Notwithstanding this statement, the Hearings Officer includes the following findings.

The Applicant's requested zone change to RI would allow a variety of land uses on the subject property. The land east of the subject property (57 acres) is zoned RI and developed with a variety of rural industrial uses. Consequently, it is likely that similar development may occur on the property if it were re-designated and rezoned to RI. In light of existing uses in the surrounding area, and the fact that Avion Water Company provides water service in the Deschutes Junction area, and a 12-inch diameter Avion water line and two fire hydrants are already installed on site, future development of the subject property with uses permitted in the RI Zone will have water service.

The subject property has 16 acres of irrigation water rights and, therefore, the proposed plan amendment and zone change will result in the loss or transfer of water rights unless it is possible to bring some irrigated water to the land for other allowed beneficial uses, such as irrigated landscaping. As stated in the Applicant's Burden of Proof, the 16 acres of irrigation water rights are undeliverable and are not mentioned in the property deed. The Applicant has not grown a crop on the subject property or effectively used his water right since the overpass was constructed in 1998.

The Hearings Officer finds that the proposal will not, in and of itself, result in any adverse water impacts. The proposal does not request approval of any significant land uses or development.

The Applicant is not proposing a specific development application at this time⁸. Following the analysis in *Aceti IV* (247-20-000438-PA, 439-ZC), the Applicant is not required to demonstrate the water impacts associated with development. Rather, the Applicant will be required to address this criterion during development of the subject property, which would be reviewed under any necessary land use review process for the site (e.g. conditional use and tentative plan approval). The Hearings Officer made, and the BOCC adopted, similar findings in the *LBNW, LLC* decisions (ref. files nos. 247-23-000398-A, 247-21-000881-PA, 882-ZC). Staff asks the Hearings Officer to determine if similar findings are warranted for the subject request.

Section 2.7, Open Spaces, Scenic Views and Sites

Open Space and Scenic View Designations and Protections

...

Scenic view protection is implemented through the Landscape Management Combining Zone regulations, with the list of landscape management roads and rivers in the Goal 5 resource list in Chapter 5 of this Plan.

Goal and Policies

Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic view and sites.

Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.

Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.

FINDING: The Applicant provided the following response on pg. 12 of their Burden of Proof:

⁸ The Applicant has applied for conditional use and tentative plan approval for a 14-lot residential PUD. However, this request is not part of this review.

Applicant's proposal requests permits to develop fourteen lots approximately 1.75 acres in size, within a planned development configuration as described in detail below, which will allow for significant setback from the river's rim, allow open space between the development and other developments, creating visual separation from neighboring properties, and remain consistent with the pattern of development in the area. Further, the subject property is not within the Open Space and Conservation (OS&C) Zone. The properties are located within a Landscape Management (LM) Combining Zone associated with designated scenic highways, roads, rivers, and streams.

It should be noted that no actual development of the property is proposed at this time.

The western half of the subject property is located within the LM Combining Zone associated with the Deschutes River scenic corridor. The standards associated with the LM Combining Zone are generally reviewed for compliance when a new structure or substantial alternation of an existing structure is proposed.

LUBA recently held in *Central Oregon Landwatch v. Deschutes County* (LUBA No. 2023-008, April, 24 2023) the following:

Goal 5 is “[t]o protect natural resources and conserve scenic and historic areas and open spaces.” OAR 660-023-0250(3) provides:

“Local governments are not required to apply Goal 5 in consideration of a PAPA [Post-Acknowledgement Plan Amendment] unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

“* * * *

“(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list[.]” Footnote 11

Footnote 11 – If Goal 5 applies, then the local government is required to comply with OAR 660-023-0040 and OAR 660-023-0050.

The BOCC addressed this issue in their *LBNW, LLC* remand decision (ref. files nos. 247-23-000398-A, 247-21-000881-PA, 882-ZC). The applicant for this review also requested a Plan Amendment and Zone Change for a property located in a LM Combining Zone and the BOCC found:

As stated within OAR 660-023-0030(1), this rule’s purpose is “to compile or update a list of significant Goal 5 resources in a jurisdiction.” Importantly here, the inventory process has already been completed. Accordingly, the Board finds that Section 5.5 of the Deschutes County Comprehensive Plan (“DCCP”) entitled Goal 5 Inventory: Open Spaces, Scenic Views and Sites identifies an area extending ¼-mile on either side of the centerline of certain roadways, including Highway 97 between the Bend and Redmond Urban Growth Boundaries (“UGBs”), as a Goal 5 scenic view resource.

...

[T]he Board finds that the LUBA Decision already “identified conflicting uses” in this case, i.e., the first step as set forth in OAR 660-023-0040(1)(a) and further identified in OAR 660-023-0040(2). The Board unanimously finds that those “identified conflicting uses” are those uses allowed outright or conditionally under the RI zone on the subject Properties that would not have otherwise been allowed under the current EFU zoning. Accordingly, these findings focus on the second, third, and fourth steps in the ESEE [Economic, Soil, Environmental & Energy] Decision Process as further detailed by OAR 660-023-0040(3) through (5).

...

The Board accepts and agrees with the identification of the conflicting uses as identified in the LUBA Decision, as those uses allowed outright or conditionally under the RI zone on the Subject properties that would not have otherwise been allowed under the current EFU zoning.

...

The Board presumes that the Applicant initially suggested such a limited impact area because of the second sentence in OAR 660-023-0040(3) stating that that the impact area should “include only the area in which allowed uses could adversely affect the identified resources.”

...

As understood by the Board, this “impact area” disagreement between the Applicant and COLW [Central Oregon LandWatch] stems from the Applicant focusing on the second sentence set forth in OAR 660-023-0040(3) and COLW focusing on the third sentence. The Board further notes that it is hard to reconcile what appears to be contradictory direction provided by those two sentences. Nevertheless, the Board does not need to resolve that issue presently because the Applicant’s July 19 rebuttal submittal and July 26 final legal argument both proposed an expanded impact area to address COLW’s concerns. Consistent with the Applicant’s aforementioned submittals, the Board unanimously finds that the appropriate impact area in this case includes “those properties to the west of Highway 97 and within the existing LM Zone (i.e., within ¼-mile of the centerline of Highway 97) between the 61st Street intersection to the north and the Tumalo Road off ramp to the south.” The Board favors this expanded impact area for three reasons.

...

As understood by the Board, every ESEE analysis is intended to be context specific, and the Board is “afforded fairly broad discretion in considering potential impacts from allowing or prohibiting a particular use * **.” See *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No 202-019, March 22, 2021) (internal citations omitted). Pursuant to OAR 660-023-0040(1), the Board again notes that an “ESEE analysis need not be lengthy or complex but should enable the reviewers to gain a clear understanding of the conflicts and the consequences to be expected.” In this case, the majority of the Board () finds that the Updated ESEE Analysis provides a “clear understanding of the conflicts and consequences to be expected” if the RI uses are allowed on the subject Properties.

DCCP Section 5.5 also identifies Goal 5 scenic view resources as the land within the boundaries of a state scenic waterway or a federal wild and scenic river corridor; and all land within 660 feet of

the ordinary high water mark of portions the following designated rivers and streams which are not designated as state scenic waterways or federal wild and scenic rivers. Therefore, staff believes the area of the subject property located within the LM Combining Zone is an inventoried Goal 5 scenic view resource associated with the Deschutes River.

The Applicant's Burden of Proof was submitted prior to the BOCC's *LBNW, LLC* remand decision. Based on the information in the record at this time, it is unclear if there are any conflicting uses that could be permitted in the MUA10 Zone that are not permitted in the EFU Zone and, if yes, is an ESEE analysis needed to demonstrate compliance with Goal 5 and DCCP Section 2.7. Staff asks the Hearings Officer to make detailed findings on this issue.

Section 2.10, Surface Mining

Goal 1, Protect and utilize mineral and aggregate resources while minimizing adverse impacts of extraction, processing and transporting the resource.

Policy 2.10.3 Balance protection of mineral and aggregate resources with conflicting resources and uses.

FINDING: The subject property, except for the southeast corner, is located within the SMIA Combining Zone associated with Surface Mining Site No. 303. This mining site is approximately 400 feet to the west and County records indicate pumice and aggregate can be extracted from approximately 30 acres of the 80-acre Surface Mine ("SM") zoned property.

The Applicant submitted the following response to DCCP Section 2.10, Goal 1 as part of their Incomplete Letter Response titled Supplemental Submittal dated November 23, 2022:

The purpose of the SMIA combining zone in Tls 100 and 101 is to analyze impacts and protect the resources located across the Deschutes River in property owned by Pink Pit LLC, referenced as Tax Lots 300 and 301. That pit, commonly referenced as the "Pink Pit" or Johnson Road Pit, is inventoried as ID No. 09-0124. It is operated by Mark Latha[m] Excavation Inc. The latest operating permit on file for this site as supplied by Deschutes County is dated August 6, 2021, and requires renewal by July 31, 2022. It requires that "[t]he Permittee must: 1. Notify DOGAMI prior to pumice mining at this site." To date, no such notice is on file.

The land use compliance status of this site has been the subject of extensive controversy and litigation. Deschutes County Circuit Court Case No. 14CV0979, decided on September 8, 2016, held that a 30-acre area under a 1981 DOGAMI permit is a lawful non-conforming use, but any surface mining operations outside of the 30 acres is subject to Deschutes County land use planning rules. Available records indicate no further mining has occurred on site.

It appears that this site is not active, but available to be used again upon notice to DOGAMI.

Applicant submits to the record with this submittal a copy of the 1989 ESEE Analysis as Exhibit 23.

If LUBA's analysis of the Goal 5 requirements in *Central Oregon Landwatch v. Deschutes County* (LUBA No. 2023-008, April 24, 2023) applies to protections for this Goal 5 mining resource, it is unclear to staff if any new uses permitted outright or conditionally in the MUA10 Zone will conflict with this Goal 5 mining resource. It appears potentially conflicting uses in the MUA10 Zones may have been evaluated as part of Surface Mining Site No. 303's ESEE analysis. However, at the time of writing this staff report, the Applicant has not provided a response on this issue. Staff asks the Hearings Officer to make clear findings on the Goal 5 protection requirements and compliance with this DCCP section.

Chapter 3, Rural Growth Management

Section 3.2, Rural Development

Growth Potential

As of 2010, the strong population growth of the last decade in Deschutes County was thought to have leveled off due to the economic recession. Besides flatter growth patterns, changes to State regulations opened up additional opportunities for new rural development. The following list identifies general categories for creating new residential lots, all of which are subject to specific State regulations.

...

- ***2009 legislation permits a new analysis of agricultural designated lands***
- ***Exceptions can be granted from the Statewide Planning Goals***
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

FINDING: This section of the DCCP does not contain goals or policies but does provide the guidance above. The Applicant provided the following response on pg. 13 of their Burden of Proof:

The County Comprehensive Plan notes that "Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential." The requested Plan amendment is based on the results of the submitted Soils Investigation which has demonstrated that the subject property is made up of "poor soils" so does not constitute "agricultural lands" as defined in the Goal, based upon a site-specific soils study conducted by a certified, professional soil scientist (Brian Raby). Therefore, the proposal is consistent with this section of the Comprehensive Plan, given that the subject property has been determined to be non-resource land, so appropriate for rural residential development.

It should also be noted that the MUA-10 Zone is a rural residential zone and as discussed above, there are many adjacent and surrounding properties that are zoned MUA-10. This proposal fits well with this criterion.

Staff notes the MUA10 Zone is a rural residential zone and as discussed in the Basic Findings above, adjacent and nearby properties to the east, northeast, and north are zoned MUA10. Staff notes this guidance text also references poor soil quality as a consideration, which is discussed in more detail under the OAR Division 33 criteria below.

Section 3.3, Rural Housing

Rural Residential Exception Areas

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a nonresource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.

FINDING: The Applicant provided the following response on pg. 14 of their Burden of Proof:

To the extent that the quoted language above represents a policy, it appears to be directed at a fundamentally different situation than the one presented in this application. The quoted language addresses conversions of "farm" or "forest" land to rural residential use. In those cases, the language indicates that some type of exception under state statute and DLCDC rules will be required in order to support a change in Comprehensive Plan designation. See ORS 197.732 and OAR 660, Division 004.

That is not what this application seeks to do. The analysis below explains that the Applicant has been successful in demonstrating that the subject property is composed predominantly of nonagricultural soil types and is unirrigated. It is not "agricultural." Therefore, it is permissible to conclude that the property is not "farmland" as defined under state statute, DLCDC rules, and that it is not correctly zoned for exclusive farm use.

It is important to distinguish that this application does not seek to convert "agricultural land" to rural residential use. If the land is demonstrated to not be composed of agricultural soils, then there is no "exception" to be taken. There is no reason that the Applicant should be made to demonstrate a reason, developed or committed exception under state law because the subject property is not composed of the type of preferred land

which the exceptions process was designed to protect. For all these reasons, Applicant should not be required to obtain an exception to Goal 3. It is reasonable to conclude that the requirement of an Exception is not applicable here.

Past Deschutes County Hearings Officer and BOCC interpretations have found the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Applicant has provided evidence in the record addressing whether the subject property qualifies or does not qualify as agricultural or forest land. Staff finds the proposed RREA plan designation is the appropriate plan designation to apply to the subject property assuming the applicable standards identified in this staff report are met.

Section 3.7, Transportation

The Transportation System was adopted in Ordinance 2012-005 and is hereby incorporated into this Plan as Appendix C. The Deschutes County Transportation System Plan Map will be retained in official replica form as an electronic map layer within the County Geographic Information System and is adopted as part of this Comprehensive Plan.

***DCCP Appendix C – Transportation System Plan
Executive Summary***

...

ARTERIAL AND COLLECTOR ROAD PLAN

...

Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.

...

Policy 4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system.

FINDING: Staff notes the heading for this section of the Transportation System Plan (“TSP”) is titled “Arterial and Collector Road Plan”. It is unclear to staff if the goals and policies included in this section of the TSP apply to properties without frontage or clear impacts on a roadway classified as an arterial or collector. Prior Hearings Officer recommendations and Board decisions have included the following finding for similarly situated properties without frontage on an arterial or collector:

This policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The County will comply with this direction by determining compliance with the Transportation Planning Rule (“TPR”), also known as OAR 660-012, as described below in subsequent findings.

As noted in the Basic Findings, the subject property does not have frontage on an arterial or collector. The subject property abuts Destiny Court, a County Road, and Northern Estates Drive, a Local Access Road. Additionally, the Traffic Reports and TPR Analysis submitted by the Applicant do not identify any impacts on an arterial or collector roadway. For these reasons, it is unclear to staff if this policy applies to the subject application and staff asks the Hearings Officer to determine if this DCCP policy applies.

OAR Chapter 660, Land Conservation and Development Department

Division 6, Forest Lands

OAR 660-006-0005, Definitions

- (7) "Forest lands" as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:**
- (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and**
 - (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.**

FINDING: The Applicant provided the following response on pg. 18 of their Burden of Proof:

The subject property is not zoned for forest lands, nor are any of the surrounding properties. The property does not contain merchantable timber and there is no evidence in the record that the property has been employed for forestry uses historically. None of the soil units comprising the parcel are rated for forest uses according to NRCS data. The property does not appear to qualify as forest land and there is no evidence of it ever having been zoned as such. This standard is not applicable.

The subject property is not zoned for forest lands, nor are any of the properties within a 1.5-mile radius. The subject property does not contain merchantable tree species and there is no evidence in the record that the subject property has been employed for forestry uses historically. Additionally, none of the soil units comprising the parcel are rated for forest uses according to NRCS data. For these reasons, staff finds the property does not qualify as forest land.

Division 12, Transportation Planning

OAR 660-012-0060, Plan and Land use Regulation Amendments

- (1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed**

under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);***
- (b) Change standards implementing a functional classification system; or***
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.***
 - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;***
 - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or***
 - (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.***

FINDING: This above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed Plan Amendment would change the designation of the subject property from AG to RREA and change the zone from EFU to MUA10. The Applicant is not proposing any land use development of the property as a part of this review request.

The Applicant submitted a Site Traffic Report (“STR”) and TPR analysis dated September 15, 2021, and prepared by Joe Bessman of Transight Consulting LLC. As noted in the agency comments section above, the County’s Senior Transportation Planner identified deficiencies with the submitted STR and TPR analysis and requested additional information. The Applicant then submitted a memorandum, dated August 8, 2022, and prepared by Joe Bessman, to supplement the information provided in the original STR and TPR analysis.

The memorandum was reviewed by the County’s Senior Transportation Planner, who agreed with the report’s conclusions. Staff finds that the proposed Plan Amendment and Zone Change will be consistent with the identified function, capacity, and performance standards of the County’s transportation facilities in the area. The proposed zone change will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. Regarding the memorandum dated August 8,

2022, the County's Senior Transportation Planner provided the following comments in an email dated October 17, 2023:

I have reviewed Mr. Bessman's August 8, 2023, Site Traffic Report/TPR Analysis related to the subject application and I agree with the assumptions, methodology, and conclusions contained therein. As Mr. Bessman utilizes the 2040 planning horizon year (reflective of the most recent data included in the County's forthcoming Transportation System Plan update) this analysis appears to comply with relevant criteria. Mr. Bessman utilizes the acceptable road segment standard of 13,900 Average Daily Trips (ADT) which is incorporated into the County's most recent 2020-2040 Transportation System Plan. The analysis and references therein related to peak hour trips (16 to 22 total weekday p.m. peak hour trips) are adequate. Staff agrees with Mr. Bessman's summary of Transportation Planning Rule (TPR) Compliance and finds that relevant TPR provisions appear to be satisfied through the submittal of this additional information.

Based on the County Senior Transportation Planner's comments and the traffic study from Transight Consulting LLC, staff finds compliance with the Transportation Planning Rule has been effectively demonstrated. Staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

Division 15, Statewide Planning Goals and Guidelines

OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

FINDING: The Statewide Planning Goals and the Applicant's findings are quoted below:

Goal 1, Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

RESPONSE: Deschutes County has adopted and publicized a program for citizen involvement in policy formulation and implementation. This program complies with this goal as part of an acknowledged Comprehensive Plan. In this case, the public in the area will be mailed notices, a notice will be published in the local newspaper, and a sign will be posted on the subject property. In addition, at least two public hearings will be held on the proposed plan amendment before it can be approved - one before the Hearings Officer and one before the Deschutes County Board of Commissioners. The citizenry will have notice and opportunity to be involved in the process that is the subject of this application. This program, as practiced, complies with this goal.

Goal 2, Land Use Planning.

PART I -- PLANNING To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

PART II – EXCEPTIONS

PART III -- USE OF GUIDELINES

RESPONSE: Deschutes County's land use planning process and policy framework are acknowledged. They rely on factual offerings of proof from knowledgeable and verified sources on which to base quasi-judicial and legislative decisions.

An exception to one of the Goals is not requested by this application, so is not relevant.

Deschutes County's guidelines comply with state law as required.

This application complies with Deschutes County's Code regarding land use planning. Deschutes County's land use planning system and implementation comply with this Goal. Therefore, this application complies with the Goal.

Goal 3, Agricultural Lands. To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

RESPONSE: This Goal focuses on the resource value of lands suitable to sustain agriculture. It mandates that such lands shall be saved for farm use. However, "agricultural land" is clearly defined as NRCS Class 1-6 lands in eastern Oregon. Applicant has engaged experts to determine whether the Subject Property truly is agricultural land, and the experts have determined that it is predominantly Class 7-8 soils, so does not fit definitionally within the resource class. (See Exhibit 3). Since it is not "agricultural land," state law has determined that reclassification may be performed without taking a goal exception.

The Applicant has elected not to take an exception to Goal 3 for the subject property, but rather to provide evidence supporting findings that the subject property does not constitute "agricultural land" as defined in Goal 3. The application includes a professionally prepared Soils Investigation that demonstrates that the subject property does not constitute "agricultural land" and therefore the proposed plan amendment and zone change to MUA-10 is consistent with Goal 3.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. To protect natural resources and conserve scenic and historic areas and open spaces.

RESPONSE: Relevant to this Application, the western 2 lots (TLs 100 and 101) border on and include the Deschutes River to its center line. As such a riparian corridor is impacted by the Application. It is also a regulated river and impacts a recreational trail along the river,

where an easement has been dedicated to the State Parks and Recreation Department, in preparation for the subject development.

The proposal is crafted specifically with Goal 5 in mind. The development proposed designates open space all along the river and river rim, precluding development from the view corridor that is the river as well as the OPRD Trail. See Tentative Plan, Exhibit 5. It shows the following features of this proposal relevant to Goal 5:

1. Trail Easement (2017 -31794) dedicated to OPRD (Exhibit 6)
2. Open Space from Centerline Deschutes River to approximate top of rimrock
3. Open Space along western edge of southern development
4. Open Space along eastern edge of southern development
5. High elevation areas identified so that buildable areas exist on each future lot

These features are the backbone of the proposed development, permitted under MUA-10 zoning. The use proposed is consistent with preservation of open space, as well as protection of both uses and views of the Deschutes River, while recognizing that the true "highest and best use" of the Class 7 and 8 land is not farmland.

Goal 6, Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

RESPONSE: This Application utilizes the planned development configuration allowed in rural planned unit developments where land resources are optimally arranged to allow such use with minimal impacts. Lots platted in size[s] of approximately 1.75 acres provide enough room for on site services for each home, without overloading capacities. As illustrated on Exhibit 5, all homes are well back from the river, and up above a significantly steep canyon formation. As specified in Goal 6, the Plan buffers residential uses from other resources. The proposal is consistent with Goal 6 because it will not result in any adverse impact on air or water quality and land resources.

Goal 7, Areas Subject to Natural Disasters and Hazards. To protect people and property from natural hazards.

RESPONSE: Statewide Planning Goal 7 focuses on natural hazard areas and accommodations needed for them. In Central Oregon, these are most likely wildfires and steep slopes. Deschutes County has devoted planning to both. On the subject property, the rimrock issue is relevant. Construction along rimrock is protected with setbacks, and though no construction is proposed by this application, lots are arranged to avoid potential conflict in the future. See Tentative Plan, Exhibit 5. This Goal has been considered, and planned accordingly.

Goal 8, Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

RESPONSE: The two western lots of this proposal, TLs 100 and 101, border and reach to the centerline of the Deschutes River. The river has carved a deep canyon into this portion of the County, creating steep rimrock ledges. Lots in "T" formation are proposed back from the rim, allowing the river and riverbanks to be preserved in their natural state, without visual infringement by private homes.

Applicant (now Destiny Court Properties, LLC, previously QRR Properties, LLC) has dedicated a specifically defined public easement along the river's edge to enhance recreational use of the area. A previously dedicated (1957) easement was determined to be ambiguous (Vol. 117, Page 530), dedicated to the Oregon State Game Commission for foot travel "adjacent to the east side of the Deschutes River and between said trail and the center of the Deschutes River" and has been defined and perpetually protected by the dedication by Ronald Cochran, member manager of Applicant. See Exhibit 6, including both the 2017-37794 surveyed dedication of trail easement, and the 1957 prior dedication.

This Application, paired with the 2017 [trail] dedication to OPRD, provides more recreational benefit to Oregon's citizens, and allows more recreational access to the river without reducing the visual enjoyment of this resource as a recreational center of the County.

Goal 9, Economy of the State. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

RESPONSE: The proposal is consistent with Goal 9 because it will not adversely impact economic activities in the state. Deschutes County development doesn't generally involve economic development and the commercial and industrial development at its core, but it can, with a little vision. We address those concerns here.

Economic stability is central to this Goal. Trend analysis shows the City of Bend is growing quickly and the current urban area reserve is immediately south and east of the subject property. This is a factor somewhat unique to this County site. It is foreseeable that future Bend UGB expansion will include the subject property. It is currently approximately 1500 feet from the SE corner of the subject property, and the Urban Reserve Area is on the southern property line of the subject property. The property is not comprised of "agricultural land", so rezoning to MUA-10 is a logical transition of classification of use. Further, by arranging the homesites in a "T" formation, future development may fill around the homesites as urban needs for density dictate. This form of transition lends predictability, and so stability to land use patterns in keeping with concerns of Goal 9.

Goal 9 implementation requires that plans should take such regional conditions into account. Coordinating regional and local economic plans and programs is an essential part of good governance, as applied to land use decisions on a case-by-case basis. In this instance, where the EFU zoning designation is error now that soil classifications are known,

a transition to non-resource designation is good economic planning as envisioned by Statewide Planning Goal 9.

Goal 10, Housing. To provide for the housing needs of citizens of the state.

RESPONSE: Like Goal 9, Deschutes County doesn't traditionally focus on Goal 10 Housing. However, there are facets of the goal that merit consideration while considering this Application.

Buildable lands for residential use are a particular concern in these times of housing shortages. This proposal will provide 14 new homesites on land that is currently underutilized because it is improperly zoned. Deschutes County's Board of County Commissioners and Planning Commission have devoted time and resources to the search for more buildable lands. This application is an example of using critical thinking to identify mis-zoned properties that can be opened up for residential use.

Goal 11, Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

RESPONSE: The proposal is consistent with Goal 11 because the proposed plan amendment and zone change will have little impact upon the provision of public facilities and services to the subject property. As a rural development pattern, Avion Water Co. and septic systems will serve the 14 parcels, consistent with rural lands.

When City of Bend urban density demands reach the subject property, transition will be customary to provide public facilities and services at that time.

Goal 12, Transportation. To provide and encourage a safe, convenient and economic transportation system.

RESPONSE: Deschutes County's Transportation System Plan, incorporated into the Comprehensive Plan and adopted as Exhibit C to it, is part of the acknowledged County Plan. The proposal is consistent with that plan, complying with County Level of Service standard D. The proposal is compliant with the TPR as well, and therefore is also consistent with Goal 12 as demonstrated by the attached, professionally prepared Transportation Analysis. See Exhibit 4.

Goal 13, Energy Conservation. To conserve energy.

RESPONSE: No known sources of non-renewable energy exist on the subject property. However, the proposed Tentative Plan (Exhibit 5) does show implementation of energy conservation strategies by grouping homes together rather than spreading them out on individual 10 acre lots. All homesites will have potential southern orientation available for solar power optimization if desired, where 1.75 acre lots will reduce solar shadowing,

combined with lot setbacks. The proposal is consistent with this goal because it will have no negative impact on energy use or conservation.

Goal 14, Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

RESPONSE: Like Goals 9 and 10, this Goal doesn't traditionally utilize significant portions of County Planning resources. And like Goals 9 and 10, population growth in the County and the cities within it, is changing that focus. Portland State University's (PSU) Oregon Population Forecast Program provided its latest datum in March, 2022. That forecast predicted a continued annual growth rate of 1.2%, in contrast to the national Average Annual Growth Rate ("AAGR") which has been generally declining since 1980. Deschutes County's population in 2022 is 207,921, at a growth rate of 2.2%. Using conservative growth rates, Deschutes County's 2050 forecast population is 308,894, over 100,000 its current population, and almost double what it is now.

Bend's population is also forecast to grow, despite shrinking nationwide trends. Bend's 2022 population is calculated to be 106,062. In 2047, it is conservatively forecast to have 164,835 people, over half again as many as it has today. Bend is now 51% of Deschutes County's population. In 2047, it will be 55.1%.

Forecasting housing needs, both Bend and Deschutes County will need more housing. Because this property is approximately 1500 feet from the northeast edge of Bend's UGB and right on the boundary of Bend's URA, it's likely to be part of Deschutes County's growth in the immediate future, then part of Bend's growth after the next legislative UGB expansion. Either way, it's much needed based on the PSU forecasts.

Statewide Planning Goal 14 focuses not only on housing supply, but also "an orderly and efficient transition from rural to urban. . . ." This site's optimal location, just outside of Bend's current urban boundary, makes it an excellent candidate for rezoning, particularly where we now know the soil is not suitable for farming. It's not really "agricultural land." It is properly exception land, ideally developed in a less sprawled configuration in preparation for a more dense housing pattern in the future. These factors make it an excellent candidate for planned development in MUA-10 zoning.

This proposal meets the needs set out in Statewide Planning Goal 14. In summary, the proposal is consistent with Goal 14 for the following reasons:

1. The proposal does support a likely, though not certain, eventual transition from rural to urban land use that responds to identified needed lands;
2. The proposal represents an orderly growth pattern that eventually will efficiently enhance and utilize public facilities and services;

3. The proposal will ultimately result in the maximum efficiency of land uses on the fringe of the existing urban area;
4. The subject property has been found to be not predominantly agricultural land as defined in OAR 660-033-0020; and
5. The proposal will promote compatibility with surrounding urban uses and will not adversely impact any nearby commercial agricultural uses because there are none.

The Applicant's responses demonstrate compliance with the applicable Goals.

As noted earlier in this staff report, the County is only reviewing the Applicant's proposed Plan Amendment and Zone Change request at this time. The Applicant's responses above incorporate responses associated with a separate application for a 14-lot residential PUD that is on hold until the subject request is approved. Nevertheless, staff believes the Applicant's responses are sufficient to find compliance with the applicable Statewide Planning Goals has been effectively demonstrated for all listed Goals except, potentially, Goal 5. Staff makes note of public comments concerning potential impacts to wildlife, loss of the rural character, and the need for a Goal 14 exception due to the establishment of new urban development on rural lands. Considering the Applicant's responses, public comments, and staff's comments regarding compliance with Goal 5 in the DCCP section above, staff requests the Hearings Officer make specific findings compliance with the Division 15, Statewide Planning Goals and Guidelines.

Division 33 - Goal 3 - Agricultural Lands

OAR 660-015-0000, Purpose Statewide Planning Goals and Guidelines #1 through #14

(3) To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

FINDING: Goal 3 continues on to define "Agricultural Land," which is repeated in OAR 660-033-0020(1). Staff makes findings on this topic below and incorporates those findings herein by reference.

OAR 660-033-0020, Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:
(1)(a) "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon⁹;

FINDING: The Applicant's basis for not requesting an exception to Goal 3 is that the subject property is not defined as "Agricultural Land." In support, the Applicant offers the following response on pgs. 18-19 of their Burden of Proof:

A professionally conducted Soils Investigation has demonstrated that the subject property is composed predominantly (65.8 %) of Class 7 and 8 soils. To analyze the soils on the site, the Applicant obtained the services of Brian Raby, a Certified Professional Soil Scientist. The complete Soils Investigation report, detailing the procedures and methodology used as well as the complete RESPONSEs, is submitted with this application and burden of proof.

The purpose of the Soils Investigation for the Property was to determine the extent of agricultural land for planning purposes. The soils were found to be predominantly non-agricultural soils according to a certified and well-qualified soils scientist using state sanctioned and approved field investigation methods and techniques. Thus, the Subject Property as defined in OAR 660-033-0020 is not predominantly Agricultural Land.

(See Exhibit 3). The subject property is not irrigated, has not been used effectively for producing crops or grazing livestock, is not part of a farm unit and is currently vacant. None of the surrounding properties are used for active, commercial agriculture including the EFU-zoned abutting properties to the north. These are predominantly developed with rural residences and small hobby farms. There are no commercial farm practices being undertaken on adjacent or nearby agricultural lands.

The subject property is zoned EFU, but this designation is not based on the agricultural capability of the land, as the Subject Property has never been successfully used for farm or pasture.

Agricultural uses are not practical or compatible with the existing residential uses surrounding Subject Property. The soil types are predominantly class I and 8, and the property has no water rights. Agricultural uses are not practical, profitable or compatible with existing and surrounding urban uses and residential development. This Comprehensive Plan Map and Zoning Map Amendment request will help to resolve the potential conflict and incompatibility between the EFU and MUA-10 permitted uses and the adjacent, surrounding lands developed or committed for urban and residential uses.

Staff has reviewed the soil study provided by Brian T. Rabe, CPSS, WWS of Cascade Earth Sciences, and agrees with the Applicant's representation of the data for the subject property. Staff finds, based on the submitted soil study and the above OAR definition, that the subject property is

⁹ OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

comprised predominantly of Class VII and VIII soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above.

(B) *Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and*

FINDING: The Applicant's basis for not requesting an exception to Goal 3 is that the subject property is not defined as "Agricultural Land." The Applicant's Burden of Proof did not address this part of OAR 660-033-0020. However, the Applicant's soil study, prepared by Brian T. Rabe, CPSS, WWS of Cascade Earth Sciences, included the following responses on pgs. 5-7:

[T]his site does not warrant retention as agricultural land based on the criteria outlined in [OAR 660-033-0020](B) above. The specific justification is described below.

Soil Fertility

These soils are predominantly shallow with sandy textures (low clay content) and low organic matter content. These conditions result in a low Cation Exchange Capacity (CEC) that limits the ability of these soils to retain nutrients. Fertilizer must be applied to achieve optimum yields. Proper management requires that fertilizers be applied in small doses on a frequent basis. The revenue from most locally adapted crops are not expected to cover the cost of inputs and management.

Suitability for Grazing

The forage production potential at the Site is limited based on the soil characteristics. The rangeland productivity potential of the soils mapped at the Site are shown in Table 6 of the published soil survey. The productivity ranges from 700 to 900 to 1,100 pounds of dry matter per acre per year (unfavorable, normal, and favorable condition so respectively) for map unit 368. The productivity ranges from 500 to 700 to 900 pounds of dry matter per acre per year (unfavorable, normal, and favorable conditions, respectively) for map unit 57B. According to Technical Note Number 3 (TN Range No. 3, NRCS, June 2009), it takes an estimated 912.5 pounds of dry matter to feed a cow and calf pair, or equivalent, for one month (animal unit month - AUM). Based on the acreages of each soil, the total dry matter production potential for the Site ranges from 33,000 to 45,000 to 60,000 pounds (unfavorable, normal, and favorable conditions, respectively). A common standard for sustainable grazing efficiency is 25 percent. The grazing potential is limited to about 9 to 16 pair for one month or one to two pair for about a year. This does not represent a sufficient number of AUM for a commercially viable livestock operation.

Climatic Conditions

The general climate conditions at the site are typical of those in central Deschutes County with cool, wet winters and warm, dry summers. The frost-free period in the Bend area is typically three months or less resulting in a very short growing season for most crops. The

annual rainfall is typically less than 12 inches with very little falling during the growing season. As a result, native rangeland grasses for grazing are the only realistic crop without irrigation. As described in the previous section, the Site would not support a commercial livestock operation.

Existing and Future Availability of Water for Irrigation

The Site is located within the Swalley Irrigation District and has 28.94 acres of water assigned to it. However, it is not currently irrigated. A portion of the site was irrigated utilizing a pair of half-circle center pivots for a short period of time. The center pivots have since been removed because the limited forage production did not cover operating costs. Gosney soils are Class VII whether irrigated or not and therefore the availability of irrigation does not have an impact on the classification of the Site as Agricultural Land. Deskamp soils are shown in the published soil survey as being capable of producing 1.5 ALM per acre if managed as irrigated pasture. Gosney soils are shown as being capable of producing 0.5 AUM per acre under similar management. Although not practical given the dispersed and irregular shape of the soil delineations, the maximum pasture potential would be to irrigate all of the Deskamp soils first and then apply the remaining water to Gosney soils with the remainder of the Gosney soils managed as dryland range. This would only increase the forage potential for the Site to 40 to 43 total AUM (40 to 43 pair for about a month or about three pair for a year). This does not represent a sufficient number of AUM for a commercially viable livestock operation.

Existing Land Use Patterns

The Site is bound on the north by two parcels that are also in the EFUTRB zone. Tax lot 103, a 17.99-acre parcel immediately to the north, has a previously approved non-farm dwelling and tax lot 102, an 18.42-acre parcel north of tax lot 103 was approved for a non-farm dwelling in 2017. Each of these parcels have a few acres that are irrigated for what appears to be improved pasture. The property to the east is zoned Multiple Use Agricultural 10-acre minimum (MUA10) with no indications of current or recent agricultural activity. The property to the south is zoned Urban Area Reserve 10-acre minimum (UAR10). Tax lot 502 to the west is zoned EFUTRB and is owned by the Oregon Parks and Recreation Department. Across the Deschutes River to the west is tax lot 200, a 12.34-acre parcel that is zoned EFUTRB and has an older dwelling but the parcel is not farmed.

Technological and Energy Inputs Required

There is nothing that has been revealed during the course of this investigation that would suggest there is any technological or energy-related reason to retain the subject property in an agricultural classification. The low fertility, cost of irrigation systems, other inputs, and other infrastructure, as well as the irregular pattern of potentially suitable soils make the use of the Site for commercial agricultural production impractical.

Accepted Farm Practices

Since the Site is surrounded by parcels that are not managed for farm use and there does not appear to be any recent history of farm use, the re-zoning of this parcel is not likely to

represent any significant increase in the potential for conflicts with accepted agricultural practices.

The Applicant submitted an Affidavit prepared by Mark and Cathy Ferguson, who leased 62 acres of the subject property for raising cattle, attesting to their unsuccessful attempts to raise cattle on the subject property¹⁰. Additionally, staff notes the owner of the subject property has relinquished all irrigation water rights on the subject property.

Staff agrees with the Applicant that many of the factors detailed above – such as the current residential land uses in the area, soil fertility, and amount of irrigation required result in a relatively low possibility of farming on the subject property.

However, since the subject request was received, LUBA remanded a locally approved Plan Amendment and Zone Change request back to Deschutes County for failing to fully address the requirements under OAR 660-033-0020(1)(a)(B) and OAR 660-033-0020(1)(a)(C).

LUBA reached the following conclusions in their Final Opinion and Order for *Central Oregon Landwatch et al v. Deschutes County* (LUBA Nos. 2023-006/2023-07, July 28, 2023)¹¹:

[T]he Board of commissioners erroneously concluded (1) that it need not consider whether forage grown on-site can be supplemented by feed imported from off-site, (2) that land is suitable for the construction and maintenance of equipment and facilities used for farm activities only if those farm activities occur on the same land, and (3) that it need not consider nearby or adjacent land at all.

...

On Remand, the board of commissioners must consider the ability to use the subject property for farm use in conjunction with other property, including the Keystone property, and may not limit its review to the profitability of farm use of the subject property as an isolated unit. The board of commissioners must consider the ability to import feed for animals and may not limit its consideration to the raising of animals where adequate food may be grown on the subject property. The board of commissioners must also consider whether the subject property is suitable for farm use as a site for construction and maintenance of farm equipment. Furthermore, the board of commissioners must consider the evidence and adopt findings addressing the impacts of redesignation of the property related to water, wastewater, and traffic and whether retaining the property's agricultural designation is necessary to permit farm practices on adjacent or nearby lands.

Staff asks the Hearings Officer to determine if the Applicant has sufficiently addressed the requirements of OAR 660-033-0020(1)(a)(B) and make detailed findings on this issue.

¹⁰ Ref. Applicant Exhibit 25.

¹¹ The Oregon Court of Appeals has affirmed LUBA's Final Order and Opinion and at this time it is unknown if a Petition for Judicial Review has been filed to the Oregon Supreme Court.

(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

FINDING: The Applicant did not provide a specific response to this subsection of OAR 660-033-0020. Nevertheless, the Applicant describes the farm practices occurring on surrounding lands as follows:

None of the surrounding properties are used for active, commercial agriculture including the EFU-zoned abutting properties to the north. These are predominantly developed with rural residences and small hobby farms. There are no commercial farm practices being undertaken on adjacent or nearby agricultural lands.

Some applicants for similar Plan Amendment and Zone Change requests provide a detailed, tax lot specific, analysis of uses occurring on adjacent and/or nearby agricultural lands. It is unclear if this is necessary for the subject request considering the abutting and nearby properties are owned by the Oregon Parks & Recreation District, are properties located in the Urban Area Reserve Zone (UAR10) and MUA10 Zone, or are EFU zoned properties primarily approved for the establishment of non-farm dwellings, replacement dwellings, or other non-farm related uses. Additionally, the topographical changes due to the rimrock located along the western boundary seem to make it impractical for farm practices to be undertaken on adjacent or nearby agricultural lands to the west. However, the reasons for LUBA's remand in *Central Oregon Landwatch et al v. Deschutes County* (LUBA Nos. 2023-006/2023-07, July 28, 2023) may be relevant to the subject Plan Amendment and Zone Change request.

Staff requests the Hearings Officer make specific findings on whether the requirements of OAR 660-033-0020(1)(a)(C) are met.

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

FINDING: The Applicant did not provide a specific response to this subsection of OAR 660-033-0020. The submitted soils analysis indicates the subject property contains land in capability classes other than I-VI that is adjacent to or intermingled with lands in capability classes I-VI. Given the soil capability and prior agricultural use of the subject property, staff requests the Hearings Officer make specific findings on this issue.

(c) "Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.

FINDING: The subject property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4.

- (1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.**
- (2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands". A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).**
- (3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.**

FINDING: The Applicant provided the following response on pg. 18 of their Burden of Proof:

The evidence shows that the subject property is not suitable for farm use, per Exhibit 3. It is comprised of 65.8% class 7 and 8 soils. Site experience verifies these results. This land is not adjacent to or near commercially viable farming operations. As a result, it is not necessary to keep the land in farming designation to permit farm practices to be undertaken on adjacent or nearby lands.

The Applicant addressed the factors in OAR 660-033-0020(1) as detailed above. The soil study produced by Brian T. Rabe, CPSS, WWS of Cascade Earth Sciences, focuses solely on the land within the subject property. At the time of writing this staff report, it is unclear if the Applicant has sufficiently addressed the conditions existing outside the lot or parcel being inventoried. Therefore, staff requests the Hearings Officer make specific findings on this issue, in part based on the Applicant's responses to OAR 660-033-0020(1), above.

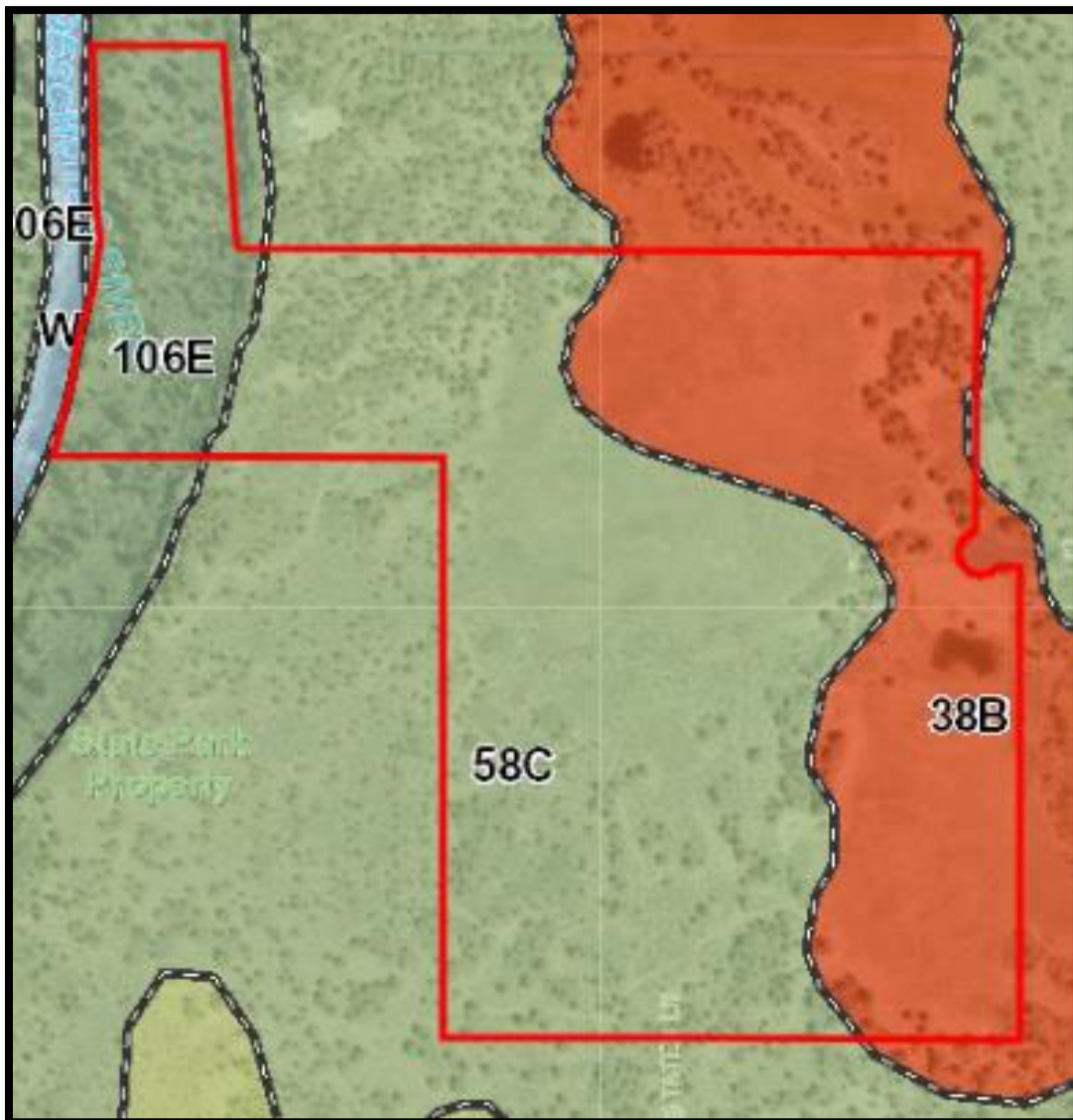
- (5)(a) More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.**
- (b) If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of**

the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.

FINDING: The soil study prepared by Brian T. Rabe, CPSS, WWS of Cascade Earth Sciences, provides more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land. The soil study provides detailed and accurate information about individual parcels based on numerous soil samples taken from the subject property. The soil study is related to the NCRS Land Capability Classification (“LLC”) system that classifies soils class I through VIII. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

The NRCS mapping for the subject property is shown below in *Figure 2*. According to the NRCS Web Soil Survey tool, the subject property contains +/- 31 percent 38B soils, +58 percent 58C soils, and +/- 11 percent 106E soils.

Figure 2 – NRCS Soil Mapping for Subject Property



The soil study finds the soil types on the subject property vary from the NRCS identified soil types. Staff notes the soil study was prepared before the most recent property line adjustment. For this reason, the study area doesn't include the northwestern corner of the property (+/-3 acres). Nevertheless, the topography of this area appears to match the area directly south¹², which Mr. Rabe classified as "rock outcrop - major" with a Class VIII rating in the soil study. Given the similarities of the terrain shown in the Applicant's topographical map, staff believes it is reasonable to presume this area does not need further review as part of an amended soil study.

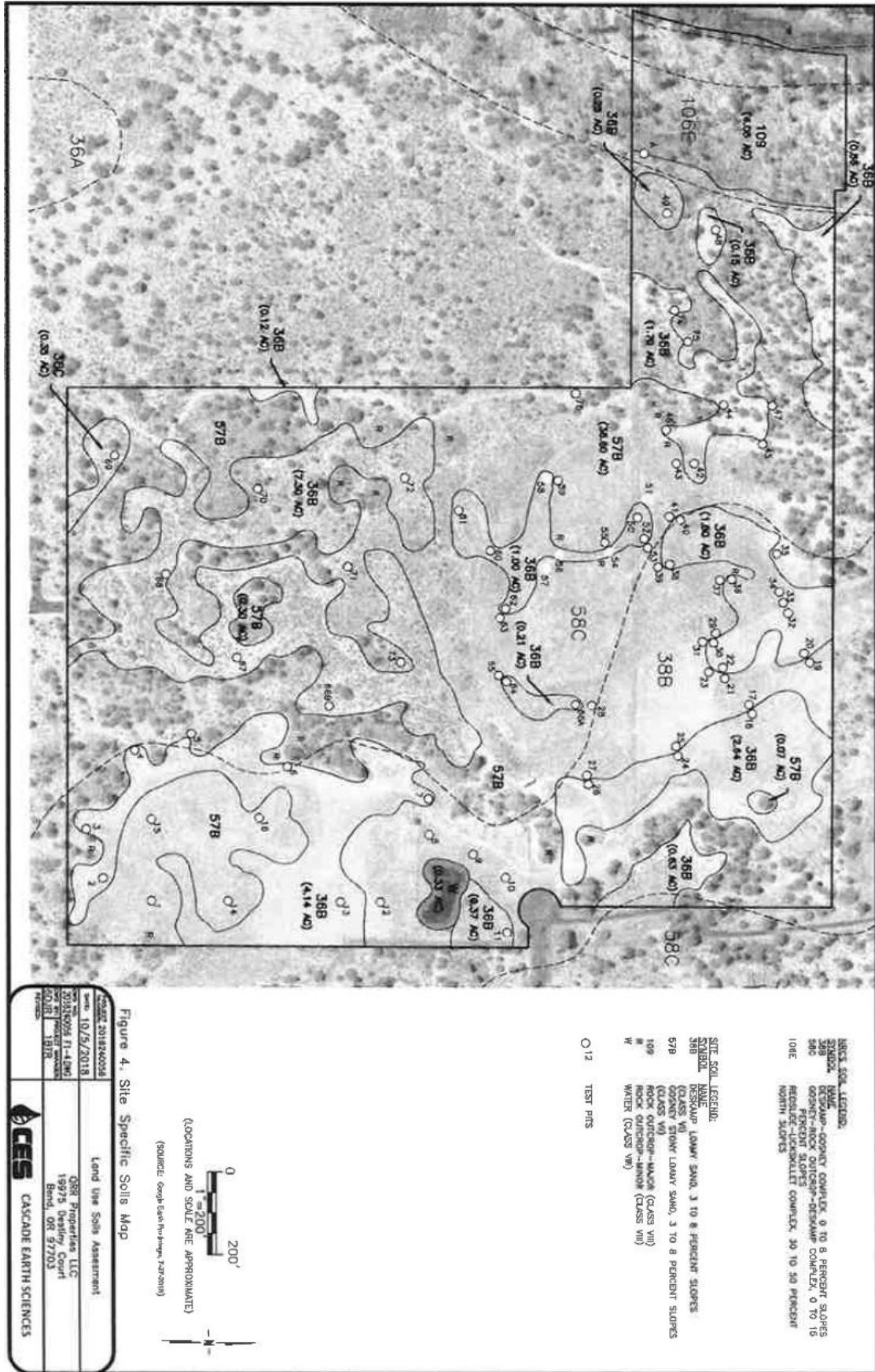
The soil types described in the soil study are shown below as *Figure 3*. Additionally, the Summary and Conclusions sections of the soil study states:

The purpose of this report is to present the results of an assessment to verify and, where necessary, refine the soils, map units, and boundaries mapped on the Site and to determine whether the soils on the Site meet the land capability classification criteria for a non-resource zoning designation. The published soil survey information was reviewed and direct observations of soil conditions were made at representative locations across the Site. CES has determined that the information from the published soil survey was generally consistent with observations on the ground with boundary refinements limited to delineating components of the complexes mapped by the NRCS. CES has determined that 41.35 acres or 65.8 percent, of the Site consists of Class VII and Class VIII soils. Since the Site is predominantly Class VII and Class VIII soils and does not otherwise meet the criteria for further consideration as agricultural land, the Site meets the soils criteria for consideration of a non-resource zoning designation.

The soil study concludes that 65.8% of +/-63 acres of the subject property consists of Class VII and Class VIII soils. As noted above, staff believes it is reasonable to assume the northwestern corner of the property is also comprised of Class VII and Class VIII soils, which potentially increases the percentage of Class VII and Class VIII soils to 66.6%. The submitted soil study is accompanied in the submitted application materials by correspondence from DLCD. The DLCD correspondence confirms that the soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Based on Mr. Rabe's qualifications as a certified Soil Scientist and Soil Classifier, staff finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject property. Staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

¹² Ref. *Figure 1* above.

Figure 3 - Site Specific Soils Map for the Subject Property



- (c) ***This section and OAR 660-033-0045 apply to:***
(A) ***A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and***

FINDING: The Applicant requests approval of a non-resource plan designation on the basis that the subject property is not defined as agricultural land.

- (d) ***This section and OAR 660-033-0045 implement ORS 215.211, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.***

FINDING: The Applicant submitted a soil study dated December 19, 2018. The soils study was submitted following the ORS 215.211 effective date. The Applicant also submitted acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCD, dated November 14, 2022, that the soil study is complete and consistent with DLCD's reporting requirements. Staff finds this criterion to be met based on the submitted soil study and confirmation of completeness and consistency from DLCD.

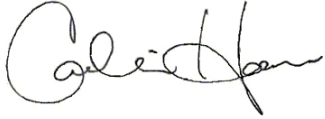
- (e) ***This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.***

FINDING: The Applicant has provided a DLCD certified soil study as well as NRCS soil data. Staff finds the Applicant has demonstrated compliance with this provision.

IV. CONCLUSION & RECOMMENDATION

Staff requests the Hearings Officer determine if the Applicant has met the burden of proof necessary to justify changing the Comprehensive Plan designation from AG to RREA and Zoning of the subject property from EFU to MUA10 through effectively demonstrating compliance with the applicable criteria of DCC Title 18 and Title 22, the DCCP and the applicable sections of OAR and ORS.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Caroline House, Senior Planner



Reviewed by: Anthony Raguine, Principal Planner

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