

Exhibit "F" to Ordinance 2026-005

**BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON FINDINGS OF FACT AND CONCLUSIONS OF LAW**

FILE NUMBERS: 247-24-000392-PA / 247-24-000393-ZC

**APPLICANT/
SUBJECT
PROPERTY
OWNER:**

Cascades Academy of Central Oregon

REQUEST:

Comprehensive Plan Amendment from Surface Mine and Agricultural to Rural Residential Exemption Area and Zone Change from Surface Mine ("SM") and Exclusive Farm Use ("EFU") to Multiuse Agricultural ("MUA-1").

I. SUMMARY OF DECISION

In this decision, the Board of County Commissioners ("Board") considers whether to approve the proposed Comprehensive Plan Amendment and Zone Change. Hearings Officer Brooks found the Applicant met all applicable approval criteria except those implementing Statewide Planning Goal 5 related to the Goal 5 scenic resources. Hearings Officer Brooks therefore recommended denial in his February 21, 2025, recommendation ("Recommendation"), after a Public Hearing held on November 14, 2024. In the Board's *de novo* consideration of the applications, the Applicant introduced evidence addressing the requirements of Statewide Planning Goal 5. The Board considered the applications *de novo*, incorporating the Record below, and a public hearing before the Board was held on June 18, 2025.

On August 27, 2025, following deliberation, the Board voted 2-1 finding the applicant had met their burden of proof, and approved the Comprehensive Plan Amendment and Zone Change applications on the subject property.

The Hearings Officer Recommendation is hereby incorporated as part of this Decision, including any and all Hearings Officer interpretations of the County Code, and modified as follows. In the event of conflict, the findings in this Decision control.

II. **BASIC FINDINGS OF FACT:**

The Board adopts and incorporates by reference the code interpretations, findings of fact, and conclusions of law in the Recommendation as set forth in Section I, Applicable Criteria, and Section II, Basic Findings. The Recommendation is attached as Exhibit F to Ordinance 2026-005. The Board adds the following to the basic findings in the Recommendation.

- A. **PROCEDURAL HISTORY:** A public hearing was held before a Hearings Officer on November 14, 2024, and the Recommendation was issued on February 21, 2025. Following the Hearings Officer Recommendation of denial based on a determination the applicant had not demonstrated consistency with Goal 5, the Applicant submitted an Environmental, Social, Economic and Energy (“ESEE”) Analysis prepared by DOWL Engineering and Planning to address the Goal 5 issues and related administrative rules and criteria related to scenic resources along Highway 20 and the Deschutes River. The Board conducted a *de novo* hearing on June 18, 2025, and left the written record open post-hearing to allow submission of additional evidence and argument.

The Board rendered its oral decision after deliberation on August 27, 2025, approving the proposed Comprehensive Plan Amendment and Zone Change and modifying the Recommendation findings as described herein. This written Decision memorializes that oral decision.

- B. **PROCEDURAL OBJECTION:** The Board closed the oral portion of the public hearing on June 18, 2025, and established an open record period of fourteen (14) days for new evidence, seven (7) days for rebuttal and seven (7) days for the Applicant’s final legal argument.

In its final legal argument, the Applicant objected to the Rebuttal submission by Central Oregon LandWatch (“COLW”) on the basis it contained new evidence, not rebuttal, in violation of the Board’s order regarding the post-hearing record. At its August 27, 2025, deliberations, the Board agreed not to consider the rebuttal testimony submitted by Central Oregon Landwatch, as it constituted new evidence, and proceeded with deliberations.

III. **FINDINGS**

This Board adopts the Hearings Officer Recommendation except as supplemented and/or modified by this Decision as set forth below.

A. Can the Zoning be changed for the subject properties under DCC 18.52.200(A)?

FINDING: Central Oregon LandWatch reasserts the position it argued before the Hearings Officer that the rezoning request for Tax Lots 300, 301, and 302 violates DCC 18.52.200(A) because they were previously zoned SM and were changed to EFU in 2001. According to COLW, the rezoning would be a collateral attack on the prior decision. A majority of the Board disagrees. The present request is a separate, subsequent land use application filed almost 25 years after the prior rezone and is fully supported by the evidence in the present record. There is nothing in the SM zone criteria or elsewhere that the Board can find to prevent a rezone request based on COLW arguments. The cited criteria apply to lands zoned SM, not lands formerly zoned SM.

B. Is the property in violation of previous land use approval and subject to DCC 22.20.015(A)(2)?

FINDING: COLW asserts conditions of approval in SP-93-59 associated with a previous reclamation on the subject property are unmet and therefore the County cannot make any further land use decisions concerning the subject property until those conditions are met. The Hearings Officer disagreed, finding the subject property was rezoned in 2001 and past conditions related to the surface mining activity are no longer applicable. A majority of the Board agrees with the Hearings Officer that the property is not in violation of a

previous land use approval, DCC 22.20.015(A)(2) is not applicable, and the 2001 rezoning Decision concerning the surface mining is valid and binding.

C. Subject Property as "Agricultural Land" with respect to Soils

Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(A)

FINDING: A majority of the Board adopts the Hearings Officer Recommendation, finding that the Subject Property is predominantly NRCS Class VII and VIII soils, and consequently is not Agricultural Land.

D. Subject Property as "Suitable" for Farm Use with respect to Factors

Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(B)

FINDING: A majority of the Board adopts the Hearings Officer Recommendation, finding that the Subject Property is not suitable for farm Use and is not Agricultural Land when considering factors established by the Goal, the Administrative Rules, Oregon Revised Statutes, and relevant common law.

A review of the substantial evidence submitted by the Applicant addressing the seven suitability factors of OAR 660-033-0020(1)(a)(B) shows that the property alone or in conjunction with adjacent or nearby lands is not suitable for farm use nor for construction and maintenance uses that serve farm uses occurring elsewhere based on the seven suitability factors including soil fertility, suitability for grazing, climatic conditions, water availability, existing land pattern and technological and energy impacts.

E. Subject Property necessary to permit Farm Practices on Adjacent or Nearby Agricultural Lands

Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(C)

FINDING: COLW argues the application has not demonstrated compliance with OAR 660-033-0020(1)(a)(C) with respect to Tax Lot 300 because there is

existing farm use which will be impacted. The Applicant submitted evidence from the owners of adjacent and nearby properties, including historic owners of Tax Lot 300 refuting the alleged farm use and supporting the applicant's request. A majority of the Board agrees with the Hearings Officer and the Applicant that the subject property is not necessary to permit farm practices adjacent or nearby Agricultural lands.

F. Goal 14 – Will the zone change results in urbanization such that an exception to Goal 14 is required.

FINDING: The Applicant addressed the *Curry* factors by providing a site-specific analysis to demonstrate the use is rural in nature, with rural lot sizes, a rural density and the proposed MUA-10 zone places size and operational limits on what could be considered “magnet” uses that would draw UGB residents to rural properties. The Applicant submitted evidence showing the property will be served by on-site sewer and wells and not by urban services. A majority of the Board finds the substantial evidence in the record demonstrates the proposal is rural in nature and does not require an exception to Goal 14.

G. Goal 5 and Conflicting Uses

Statewide Planning Goal 5, OAR 660-23-0250(3)

FINDING: As noted previously, Hearings Officer Brooks found that the applicant did not adequately address Goal 5 and recommended denial on that basis. Hearings Officer Brooks noted that the Applicant may be able to show that the County's prior Goal 5 analysis considered the proposed development allowed by the MUA-10 zone on the subject property or demonstrate that the new uses allowed on the subject property do not significantly affect a Goal 5 resource.

In response to the Hearings Officer Recommendation of denial, the applicant submitted the 1992 ESEE analysis associated with the Highway 20 and Deschutes River scenic corridors, as well as a current, site-specific ESEE prepared by DOWL Engineering and Planning to demonstrate the uses allowed under the MUA-10 zone will not introduce new uses which conflict with the Highway 20 and Deschutes River scenic corridors. Based on the ESEE

prepared by DOWL, the Board agrees with the conclusions within that report that the uses allowed in the MUA-10 zone will not conflict with the Highway 20 and Deschutes River scenic corridors.

The evidence shows there is significant development in and around the subject property which is visually more prominent in both the highway and river corridors than any uses which could occur on the subject property, including the aggregate storage and processing site and the nearby mini-storage development. The subject property is well screened from the highway and river corridors by distance, intervening vegetation and topography. The provisions of the LM zone will continue to apply to future development of the subject property. For these reasons, a majority of the Board finds Goal 5 is satisfied and any new uses allowed under the MUA-10 zone will not conflict with the Goal 5 scenic resources.

IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant's application for a Deschutes Comprehensive Plan Amendment and Zone Change for the Subject Property.