

Exhibit "F" to Ordinance 2025-003

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

FILE NUMBERS: 247-22-000573-ZC / 247-22-000574-PA

SUBJECT PROPERTY/

OWNER: Mailing Name: LAST RANCH LLC
Map and Tax Lots: 161226B000101 / 161226B000700 / 161226B000800
Accounts: 180410 / 132961 / 132960
Situs Addresses: No Situs Address / 64994 Deschutes Market Road,
Bend, OR 97701 / 64975 Deschutes Pleasant Road, Bend, OR 97701

APPLICANT: Mark Rubbert

APPLICANT'S

REPRESENTATIVE: Patricia A. Kliewer, MPA

STAFF PLANNER: Caroline House, Senior Planner
Anthony Raguine, Principal Planner

REQUEST: Comprehensive Plan Amendment from Agricultural to Rural Industrial and Zone Change from Exclusive Farm Use ("EFU") to Rural Industrial ("RI") Zone.

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 recommended denial in his June 13, 2023, recommendation ("Recommendation"), after a Public Hearing held on March 21, 2023. The Recommendation of denial was based on 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 12, 2024.

On December 4, 2024, following deliberation, the Board voted 2-0 finding the applicant had met their burden of proof, and moved to approve the Comprehensive Plan Amendment and Zone Change applications on the subject property.

The 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 G to Ordinance 2025-003. 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 March 21, 2023, and the Recommendation was issued on June 13, 2023. The Board conducted a *de novo* hearing on June 12, 2024. The Board left the written record open until June 26, 2024, for all parties to submit new evidence and testimony; until July 3, 2024, for all parties to submit rebuttal; and until July 11, 2024, for the applicant's final argument. On July 2, 2024, prior to the close of the written record, the applicant requested an extension of the record to allow submission of additional materials related to compliance with Statewide Planning Goal 5 and the associated Economic, Social, Environmental, and Energy ("ESEE") analysis. On July 10, 2024, and pursuant to Order No. 2024-027, the Board modified the open record period. The extended written record period was left open until August 14, 2024, for all parties to submit new evidence and testimony; until September 4, 2024, for parties to submit rebuttal; and until September 18, 2024, for the applicant's final argument.

The Board rendered its oral decision after deliberation on December 4, 2024, 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. REVIEW PERIOD:** The subject applications were submitted on July 13, 2022, and deemed incomplete by the Planning Division on August 12, 2022. The applicant provided responses to the incomplete letter and confirmed no further information or materials would be provided in response to the County's incomplete letter on November 14, 2022. Therefore, the subject applications were deemed complete on November 14, 2022. According to Deschutes County Code 22.20.040(D)(1), the review of the proposed quasi-judicial plan amendment and zone change applications are not subject to the 150-day review period.

III. **FINDINGS**

This Board adopts the Recommendation except as supplemented below.

A. Subject Property as “Agricultural Land” with respect to Soils

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

FINDING: The Board adopts the Recommendation unanimously, finding that the Subject Property is predominantly NRCS Class VII and VIII soils, and consequently is not Agricultural Land.

B. Subject Property as “Agricultural Land” with respect to Factors

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

FINDING: The Board adopts the Recommendation unanimously, finding that the Subject Property 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 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 construction and maintenance uses that serve farm uses occurring elsewhere based on two or more of the seven suitability factors. The suitability factors are discussed below.

Soil Fertility

The Board finds soil fertility is not relevant to the suitability of the subject property as it relates to the on-site construction and maintenance of equipment and facilities.

Suitability for Grazing

The Board finds the grazing capability of the subject property is not relevant to the suitability of the subject property as it relates to the on-site construction and maintenance of equipment and facilities.

Climatic Conditions

The Board finds climatic conditions are not relevant to the suitability of the subject property as it relates to the on-site construction and maintenance of equipment and facilities. Given the property's access to Highway 97, climatic conditions would not

likely preclude or otherwise hinder the construction and maintenance of equipment and facilities on-site.

Water Availability

The Board finds water availability is not relevant to the suitability of the subject property as it relates to the on-site construction and maintenance of equipment and facilities.

Existing Land Use Pattern

As noted previously, there are very few farms nearby, with most of the farm uses occurring to the east of the railroad. To the south are lands zoned RI and developed with industrial uses, including a mini-storage facility; an RV and boat storage facility; and a facility for the processing, storage and distribution of masonry products. To the west is Highway 97 along with various uses including farm, residential and industrial uses.

We find that it is not an accepted farm practice in Deschutes County to engage in the construction and maintenance of farm equipment or facilities anywhere other than on the property where farm practices are occurring; at a farm equipment maintenance facility; or a factory located within an urban growth boundary or rural industrial area. In fact, the convenient access to Highway 97 and the redesignation of the subject property to RI zoning could result in a facility for the maintenance of farm equipment.

Technology and Energy Inputs

The technology and energy inputs necessary to establish a facility for construction and/or maintenance of farm equipment would be significant, though not impossible. While a business person could certainly expend the capital necessary to establish such a facility in the EFU Zone, we continue to hold to our findings in the *710 Properties* remand decision on this issue. A more appropriate location for a facility for the construction and/or maintenance of farm equipment are properties where the farm practices are occurring or a facility within an urban growth boundary or rural industrial area.

For the reasons detailed above, the Board finds the subject property is not suitable for farm use considering the factors in OAR 660-033-020(1)(a)(B).

C. Subject Property as “Agricultural Land” when considering Adjacent or Nearby Agricultural Lands

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

FINDING: 1000 Friends presents the following arguments,

The farm practices occurring in the large block of agricultural land in which the subject property is located are not adequately identified, and there is essentially no analysis of whether the property’s agricultural zoning and exclusive farm use zoning is necessary to permit those farm practices on adjacent and nearby lands.

For these reasons, 1000 Friends concludes the application has not demonstrated compliance with OAR 660-033-0020(1)(a)(C).

Regarding identification of farm practices on the subject property and on the nearby lands, the Hearings Officer made the following findings,

The Applicant provides an exhaustive history of the site and its relationship to various farm activities. According to that history, the chain of owners for the Subject Property since 1941 has mostly consisted of retirees who were not engaged in farming. Prior to that time, there were apparently limited farming activities on the site at a time when the Subject Properties were part of larger holdings that also had farm uses. While the Subject Property does have some historical water rights, the Applicant notes that not all of those rights have been developed. Other structures were apparently used for small-scale hobby farming activities rather than for profitable farm uses. More recent uses of the site, however, included use as a roadside attraction called the “Funny Farm” which, according to the Applicant, at one point had a “hot dog eating goat.”

The Board finds the applicant has sufficiently described current and historic farm practices on the subject property, along with farm practices on adjacent and nearby farm uses. The Board notes that 1000 Friends does not identify any specific farm lands and associated farm practices which should have been identified for analysis under this standard.

Regarding the proposed change in zoning and its effect on adjacent and nearby farms, the Board again notes that there are very few farm uses in the area. Additionally, there are several constraints associated with the subject property which would make it challenging for any nearby farm to beneficially use the subject property in support of farm practices. Highway 97 lies along the entirety of the western boundary of the subject property. The Pilot Butte Canal lies along the entirety of the

eastern boundary of the subject property. Further to the east, farm uses are separated from the subject property by the railroad. Beyond these physical constraints, there is no evidence in the record to suggest that any nearby farm has an interest in using the subject property to support any nearby farm practices. Finally, a change to RI zoning would result in similar levels of development that exist in the RI zoned lands to the south and southwest. The development of these lands does not appear to have impacted the ability of the few farms in the area to continue to operate.

For the reasons stated above, the Board finds there are very few adjacent or nearby farms, and no evidence to suggest that a nearby farm would benefit from agricultural use of the Subject Property.

D. 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 industrial development on the subject property or demonstrate that the new uses allowed on the subject property do not significantly affect a Goal 5 resource.

Pursuant to 660-023-0250(3), the county does not have to apply Goal 5 as part of a Post Acknowledgment Plan Amendment ("PAPA") unless the PAPA affects a Goal 5 resource. Pursuant to OAR 660-023-250(3)(b), a PAPA affects a Goal 5 resource if the PAPA would allow new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list. In this case, the Goal 5 resource is the Highway 97 scenic corridor.

In response to the Recommendation of denial, the applicant submitted arguments to demonstrate that at the time of the 1992 ESEE analysis associated with the Highway 97 scenic corridor, the zoning and development standards within the scenic corridor allowed a wider variety of uses and a more intensive level of development than would be allowed under today's RI Zone.¹ This corridor included properties zoned RI at the time of the 1992 ESEE. For these reasons, the applicant argues that the proposed RI Zone on the subject property will not introduce new uses that would conflict with the Highway 97 scenic corridor. In the alternative, the applicant submitted an ESEE analysis to evaluate which uses in the proposed RI Zone should be allowed; which uses should be allowed with restrictions; and which uses should not be allowed.

¹ Carrie Richter email dated August 14, 2024.

The Board agrees with the applicant that the proposed RI zone will not introduce new uses that would conflict with the Highway 97 scenic corridor. Consequently, the Board finds the Comprehensive Plan Amendment and Zone Change comply with Goal 5. The Board further finds that because the proposal would not introduce new conflicting uses, a site specific ESEE analysis is not required.

E. Goal 6 and Protection of Air, Water and Land Resources

Statewide Planning Goal 6

FINDING: The Board unanimously adopts the Recommendation, finding Goal 6 is satisfied. Consequently, the Board finds no exception to Goal 6 is required.

F. Goal 11 and Public Facilities Plans

Statewide Planning Goal 11, OAR 660-011

FINDING: The Board unanimously adopts the Recommendation, finding Goal 11 is satisfied. The objection in the record is not developed with enough specificity for this Board to address it. For this reason, the Board finds no exception to Goal 11 is required.

G. Quasi-Judicial vs Legislative Process

Finding: 1000 Friends argues that the county does not have the legal authority to remove the agricultural lands designation from a single tract of land in the EFU Zone in a quasi-judicial process. 1000 Friends further argues that redesignation of agricultural land must follow the legislative process set out at ORS 215.788, with subsequent notice of the redesignation to the Department of Land Conservation and Development (“DLCD”) pursuant to ORS 215.794.

Contrary to 1000 Friends’ argument, the Land Use Board of Appeals (“LUBA”) made the following ruling in *Central Oregon LandWatch et al. v. Deschutes County*, 330 Or App 321 (2024),

ORS 215.788 authorizes counties to conduct legislative reviews of geographic areas, and it prescribes the process that counties must follow in conducting those reviews. However, that statute does not prohibit counties from considering applications to redesignate and rezone individual properties in quasi-judicial proceedings...The board of commissioners did not misconstrue ORS 215.788 or exceed its authority in redesignating and rezoning only the subject property in a quasi-judicial process.

The Board finds the quasi-judicial process for the subject Plan Amendment and Zone Change is permitted.

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.