

## HEARING OFFICER FINDINGS AND RECOMMENDATIONS

**FILE NUMBERS:** 247-22-000792-PA, 793-ZC

**HEARING DATE:** February 28, 2023, 6:00 p.m.

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

**SUBJECT PROPERTIES/  
OWNER:**

Mailing Name: GRIFFIN, KEVIN J  
Map and Taxlot: 181201D000200  
Account: 109857  
Situs Address: 21900 RASTOVICH RD, BEND, OR 97702

**APPLICANT:** Kevin Griffin and Libby Renfro

**ATTORNEY  
FOR APPLICANT:**

Tia Lewis

**REQUEST:**

The Applicant requests approval of a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural (AG) to Rural Residential Exception Area (RREA). The Applicant also requests a corresponding Zone Change to rezone the Subject Property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

**HEARINGS OFFICER:** Alan A. Rappleyea

**STAFF CONTACT:**

Rachel Vickers, Associate Planner  
Phone: (541) 388-6504  
Email: [Rachel.Vickers@deschutes.org](mailto:Rachel.Vickers@deschutes.org)

**RECORD:**

Record items can be viewed and downloaded from:  
<https://www.deschutes.org/cd/page/247-22-000792-pa-793-zc-%E2%80%93-comprehensive-plan-amendment-and-zone-change>

**SUMMARY OF  
RECOMMENDATION:**

The Hearings Officer finds that the Applicants have met their burden of proof with respect to the requested Comprehensive Plan Amendment and Zone Change and, therefore, recommends APPROVAL of the Application based on the Findings set forth in this Recommendation.

## **I. APPLICABLE CRITERIA**

Title 18 of the Deschutes County Code, the 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 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

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

Oregon Administrative Rules (OAR), Chapter 660

- Division 12, Transportation Planning
- Division 15, Statewide Planning Goals and Guidelines
- Division 33, Agricultural Land

Oregon Revised Statutes (ORS)

- Chapter 215.010, Definitions
- Chapter 215.211, Agricultural Land, Detailed Soils Assessment

## **II. BACKGROUND AND PROCEDURAL FINDINGS**

**NATURE OF PROCEEDING:** This matter comes before the Hearings Officer as a request for approval of a Comprehensive Plan Map Amendment (“Plan Amendment”) to change the designation of the Subject Property from Agricultural (AG) to Rural Residential Exception Area (RREA). The Applicants also request approval of a corresponding Zoning Map Amendment (“Zone Change”) to change the zoning of the Subject Property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10). The basis of the request in the Application is the Applicants’ assertion that the Subject Property does not qualify as “agricultural land” under the applicable provisions of the Oregon Revised Statutes or Oregon Administrative Rules governing agricultural land. Based on that assertion, the Applicants are not seeking an exception to Statewide Planning Goal 3 for the Plan Amendment or Zone Change.

**NOTICES:** The Application was filed on April 14, 2022. On October 5, 2022, the County issued a Notice of Application to several public agencies and to property owners in the vicinity of the Subject Property (together, “Application Notice”). The Application Notice invited comments on the Application.

Following additional submittals by the Applicants, the County mailed a Notice of Public Hearing on February 3, 2023 (“Hearing Notice”) announcing an evidentiary hearing (“Hearing”) for the requests in the Application. Notice of the hearing was published in the Bend Bulletin on February 5, 2023. Notice was given to the DLCD of the hearing on January 17, 2023. Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on February 28, 2023, opening the Hearing at 6:00 p.m. The Hearing was held via videoconference, with Staff and a representative of the Applicants in the hearing room. The Hearings Officer appeared remotely. On February 21, 2023, the

Deschutes County Planning Division (“Staff”) issued a report setting forth the applicable criteria and presenting the evidence in the record at that time (“Staff Report”). The Hearings Officer finds that all procedural notice requirements were met.

**HEARING:** At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I asked for but received no objections to the County’s jurisdiction over the matter or to my participation as the Hearings Officer. Next, Staff provided a summary of the staff report. The applicant’s attorney, Ms. Lewis then made a presentation. The Applicant, Mr. Kevin Griffin also testified in support of the application. There was no one present either in person or remotely to offer neutral testimony or opposition testimony. Staff reported on the letters in opposition from Kristen Sabo and Carol Macbeth of COLW, Devin Kesner of 1000 Friends of Oregon including one that recently arrived from Ms. Macbeth from Central Oregon Land Watch (COLW), and Mr. Jerry Wilke. I noted that I had read the letters that were submitted but had not yet seen the COLW most recent letter. I have now reviewed that letter.

The applicant stated that the letter in opposition from Jerry Wilke was likely addressing a different application as the current application does not propose a drug rehabilitation facility. I concur in that statement.

The applicant also rebutted the arguments provided by COWL and 1000 Friends. The applicant and staff then responded to my questions. I mentioned that the Board would be hearing a similar application in Marken 247-22-000353-PA and 247-22-000354-ZC. I wanted to take judicial notice of that decision when it is issued for the record. The applicant did not have an issue with having that decision reviewed by the Hearings Officer. I noted that I have a contractual obligation to issue timely decisions.

No participant requested that the record remain open. The Hearing concluded at approximately 6:59 p.m. At that time, I closed the Hearing and the record, and I took this matter under advisement.

**150-DAY CLOCK:** Because the Application includes a request for the Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable. ORS 215.427(7). The Staff Report also notes that the 150-day review period is not applicable by virtue of Deschutes County Code (“DCC” or “Code”) 22.20.040(D). No participant to the proceeding disputed that conclusion.

### **III. SUBSTANTIVE FINDINGS AND CONCLUSIONS**

#### **Adoption of Factual Findings in Staff Report:**

The Staff Report contains a comprehensive summary of evidence in the record as it relates to each of the applicable criteria. The Staff Report, although it expresses agreement with the Applicants in many places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicants have met the burden of proof necessary to justify the Plan

Amendment and the Zone Change. Comments have challenged some specific evidence or findings presented in the Staff Report. Where the staff legal finding have been challenged, those will be addressed below. There is only one area that challenges the factual finding and will be addressed here. For those factual and legal findings that are not challenged, I hereby adopt as fact the evidentiary findings in the Staff Report as my evidentiary findings. To the extent any of the findings in this Recommendation conflict with the findings in the Staff Report, my intent is to have these findings control. The remainder of this Recommendation sets forth the legal criteria and adopts legal findings based on those factual findings.

The factual finding that is challenged by COWL is the determination of the soils report provided by the applicant. Although there is also a legal aspect to this challenge as COWL believes that the County's NRCS maps should prevail over the applicant's soil study (which will be addressed subsequently), a primary factual challenge is the make up of the soil. COWL's testimony is that the soil is predominantly Class 3-6. Macbeth COLW Public Comment 2/28/23. The Applicant's soil study finds that the property is predominantly Class 7-8 (hereinafter, except for quotes, I will use the Arabic numerals instead of Roman for ease of reading). The Hearings Officer finds that the expert testimony provided by the applicant concerning soils along with staff's analysis of Applicants submittal is more persuasive than the testimony provided by Ms. Macbeth. 2022-09-30 App Materials 22-792-PA, 793-ZC Page 176. Ms. Macbeth relies on the more general NRCS studies and the applicant's study is more detailed. The applicant has met the burden of proof that the soil is predominantly class 7-8 and is not predominantly class 3-6.

## **Title 18 of the Deschutes County Code, County Zoning**

### **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 Applicants are the owners of the Subject Property and have requested a quasi-judicial Plan Amendment and filed applications for that purpose, together with the request for a Zone Change. No participant to this proceeding objects to this process. It is therefore appropriate to review the Application using the applicable procedures contained in Title 22 of the Deschutes County Code.

#### Section 18.136.020, Rezoning Standards

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

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

**FINDING:** According to the Applicants, the County applies this Code provision by considering whether: (1) the zone change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan's introduction statement and goals.

With respect to the first factor, the Applicants note that they are also seeking a Plan Amendment, which will change the Comprehensive Plan designation of the Subject Property from Agriculture to Rural Residential Exception Area. If that Plan Amendment is approved, which is addressed in more detail below, the proposed change from the EFU zone to the MUA-10 zone will be consistent with the new Comprehensive Plan designation. No participant to this proceeding disputes that conclusion.

With respect to the second factor, the Staff report goes into detail describing the criteria which the hearings officer has to apply relying on past Hearing Officers decision on a similar application. Powell/Ramsey decision (PA-14-2 / ZC-14-2) and Landholdings Decision (247-16-000317-ZC / 318-PA). The staff report states that "introductory statement and goals are not approval criteria for the proposed plan amendment and zone change." The Hearings Officer adopts the Applicant's statement and the staff report's legal analysis on the standards that apply. The staff report then proceeds to address the relevant requirements.

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

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

**FINDING:** Only the Applicants and Staff offer any evidence or argument with respect to the purpose of the MUA-10 zone. The purpose of the MUA-10 zoning district is stated in DCC 18.32.010 as follows:

*The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to fulltime commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.*

According to the Applicants, the Subject Property is not suited to full-time commercial farming. The MUA-10 zone will instead allow the owners to engage in hobby farming, and the low-density of development allowed by the MUA-10 zone will conserve open spaces and protect natural and scenic resources. As a result, the MUA-10 zoning provides a proper transition zone from city, to rural, to

EFU zoning. Additionally, the staff report finds that the maximum density of the approximately 40.0-acre property is 7 lots, if developed with a cluster development under Title 18. This low density will preserve open space, allow owners to engage in hobby farming, if desired, and preserve natural and scenic resources and maintain or improve the quality of air, water, and land resources. The MUA-10 zoning provides a proper transition zone from the City, to rural zoning, to EFU zoning.

The Staff Report agrees that the change in classification is consistent with the purpose and intent of the MUA10 Zone, and no participant to this proceeding disputes that conclusion. Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

**C. *That changing the zoning will presently serve the public health, safety and welfare considering the following factors:***

**1. *The availability and efficiency of providing necessary public services and facilities.***

**FINDING:** As noted in the Staff Report, this criterion specifically asks if the Zone Change will *presently* serve public health, safety, and welfare. The Applicants and the Staff Report provided the following as support for why this criterion is met:

- Necessary public facilities and services are available to serve the Subject Property including power and water.
- Transportation access to the Subject Property is available off a Rastovich Road, and the impact of increased traffic on the transportation system is negligible.
- The Subject property receive police services from the Deschutes County Sheriff and fire service from Rural Fire Protection District # 2, which has a fire station two miles from the Subject Property.
- The close proximity of the Subject property to urban development will allow for efficient service provision.
- Prior to development of the properties, the Applicants would be required to comply with the applicable requirements of the Code, including possible land use permit, building permit, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

Staff concludes and the Hearings Officer finds that there are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

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

**FINDING:** Only the Applicants and Staff offer any evidence or argument with respect to this criterion. Specifically, the Applicants noted the following:

*The MUA-10 zoning is consistent with the specific goals and policies in the comprehensive plan discussed above. The MUA-10 zoning is the same as the zoning of many other properties in the area west and south of the subject property. In addition, the MUA-10 zoning provides a proper transition zone from the City, to rural zoning, to EFU zoning.*

*The zone change will not impose new impacts on the EFU-zoned land adjacent to the subject property because many of those properties are residential properties, hobby farms, already developed with dwellings, not engaged in commercial farm use, are idle, or are otherwise not suited for farm use due to soil conditions, topography, or ability to make a profit farming.*

*Some of the properties adjacent and near the subject property are in small, hobby farm use and are receiving farm tax deferral. Tax Lots 1100, 100, 301, and 200 are adjacent to the east and southwest and are in common ownership and part of Rastovich Farm. Most of the Rastovich properties are receiving farm tax deferral and are being used for raising livestock. One of the Rastovich parcels adjacent to the subject property is a nonfarm parcel developed with a nonfarm dwelling. Submitted herewith as Exhibit 12 is a letter from Robert and Colleen Rastovich stating they have no objection to the requested zone change and attesting to the fact that the subject property is not intermingled and is not necessary or useful to them for any farming on the Rastovich parcels.*

*The adjacent properties to the north and northeast, Tax Lots 101, 102, 1101, are currently receiving farm tax deferral and appear to be used as residential properties with hobby farms. Attached hereto as Exhibit 13 are letters from David Nader, owner of Tax lot 101 adjacent to the north of the subject property and Steve and Keri Sawyer, owners of Tax lot 1101 adjacent to the northeast of the subject property stating they have no objection to the requested zone change and attesting to the fact that the subject property is not intermingled and is not necessary or useful to them for any farming occurring on their parcels. These properties will not suffer new impacts from the proposed zone change because they are hobby farms, already developed with dwellings, not engaged in commercial farm use, and are smaller size than the subject property. The zone change would allow the subject property to be divided into parcels similar size to the adjacent properties to the north and be used for similar hobby farming uses.*

*As discussed below, the subject property is not agricultural land, is comprised of predominantly Class 7 and 8 soils, and as described by the soil scientist, Mr. Gallagher, the nonproductive soils on the subject property make it not suitable for commercial farming or livestock grazing. The subject property is not land that could be used in conjunction with the adjacent property and any future development of the subject property would be subject to building setbacks.*

The Staff Report agrees that the Applicants have demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

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

**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:** Only the Applicants offer any evidence or argument with respect to this criterion. According to the Applicants, a mistake in zoning was made and the EFU zoning designation on the Subject property was likely based on the best soils data that was available to the County at the time it was originally zoned, during the late 1970's, when the Comprehensive Plan and Map were first adopted. The Applicants also assert that there has been a change in circumstances since that time. Specifically, the Applicants note that there are new data regarding soils on the Subject Property and that the updated soils report shows the Subject Property do not have agricultural soils. The Applicants also assert that the economics of farming and the viability of commercial farm uses in Deschutes County have significantly changed, and farming for a profit has become increasingly difficult. The applicant also notes the encroachment of the urban area to the Subject Property. Although the Hearings Officer agrees with the applicant that the urban area is encroaching on this property, he does not find that this encroachment would be a change in circumstance that should be considered as any such plan change would further create encroachment for other properties.

Staff finds that “[i]t is unclear to staff why the Subject Property was initially zoned EFU. Staff is unaware of any evidence such as soil classification, availability of irrigation, or historic farming, which explains its current zoning.” Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

## **Deschutes County Comprehensive Plan**

### **Chapter 2, Resource Management**

**FINDING:** Chapter 2 of the Comprehensive Plan relates to Resource Management. Section 2.2 of that Chapter relates specifically to Agricultural Lands. The Applicants and Staff have identified the following goals and policies as relevant to the Application.

#### Section 2.2 Agricultural Lands

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

**FINDING:** According to the Applicants, they are pursuing the Plan Amendment and Zone Change because the Subject Property do not constitute "agricultural lands", and therefore, it is not necessary to preserve or maintain the Subject Property as such. In support of that conclusion, the Applicants rely on a soils report showing the Subject Property consist predominantly (58.5%) of Class 7 and 8 nonagricultural soils. Such soils have severe limitations for agricultural use as well as low soil fertility, shallow and very shallow soils, abundant rock outcrops, low available water capacity, and major management limitations for livestock grazing.

The Staff Report notes the property has 5 acres of water rights. The fact that the property has some water rights and that the soils are only 58% class 7 and 8 makes this decision more difficult. It is



likely that many properties in Deschutes County are used for farming, particularly hobby farming, have worse soil conditions. However, the majority of the soils are predominantly class 7 and 8.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

***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 Applicants have not asked to amend the subzone that applies to the Subject Property. Instead, the Applicants requested a change under Policy 2.2.3 and have provided evidence to support rezoning the Subject Property as MUA-10.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

***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 Applicants request approval of the Plan Amendment and Zone Change to re-designate the Subject Property from Agricultural to Rural Residential Exception Area and rezone the Subject Property from EFU to MUA-10. The Applicants do not seek an exception to Goal 3 for that purpose, but rather seek 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).

In support of this approach, the Applicants rely in part on the Land Use Board of Appeals' decision in *Wetherell v. Douglas County*, 52 Or LUBA 677 (2006), where LUBA states as follows:

*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.*

The Applicants assert that the facts presented in the Application are sufficiently similar to those in the *Wetherell* decision and in other Deschutes County plan amendment and zone change applications. The Staff Report agrees and concludes the Applicants have the potential to prove the Subject Property is not agricultural land and do not require an exception to Goal 3 under state law.

The opposition letter submitted by Ms. Kesner from 1000 Friends argues that the applicant did not adequately address the agricultural land factors in the rule. This argument will be addressed specifically under OAR 660-033-0020.

Based on the foregoing, I find that the Application is consistent with this portion of the Comprehensive Plan.

***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 Applicants assert this plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations and that the Application is consistent with this policy. The Staff Report also concludes the proposal is consistent with this policy.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

***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:** The Applicants assert that this Comprehensive Plan policy requires the County to identify and retain agricultural lands that are accurately designated. The Applicants propose that the Subject Property was not accurately designated as demonstrated by the soil study in the record.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Section 2.5, Water Resources Policies

**FINDING:** Section 2.5 of Comprehensive Plan Chapter 2 relates specifically to Water Resource Policies. The Applicants and Staff have identified the following goal and policy in that section as relevant to the Application.

***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:** The Applicants and Staff assert that the Applicants are not required to address water impacts associated with development because they have not proposed a specific development application at this time. Instead, the Applicants will be required to address this criterion during

development of the Subject Property, which would be reviewed under any necessary land use process for the site.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

#### Section 2.7, Open Spaces, Scenic Views and Sites

**FINDING:** Section 2.7 of Comprehensive Plan Chapter 2 relates specifically to Open Spaces, Scenic Views and Sites. The Applicants and Staff have identified the following goal and policies in that section as relevant to the Application.

***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 Applicants assert these policies are fulfilled by the County's Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. Because there is no LM combining zone applicable to the Subject Property, the Subject Property is not identified as a Goal 5 resource, and no new development is proposed, the Applicants argue there is no applicable regulation that requires the Subject Property to be protected as open space or for scenic views.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

### **Chapter 3, Rural Growth**

#### Section 3.2, Rural Development

**FINDING:** Chapter 3 of the Comprehensive Plan relates to Rural Growth. Within that chapter, Section 3.2 relates specifically to Rural Development. The Applicants and Staff have identified the following language in that section as relevant to the Application.

#### ***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 Comprehensive Plan does not contain Goals or Policies but does provide the guidance above. In response to this section, the Applicant provided the following response in the burden of proof:

*The above part of the plan is not a plan policy and is not an applicable approval criterion but rather an explanation of how the County calculated expected growth. As shown above, the County's Comprehensive Plan provisions anticipate the need for additional rural residential lots as the region continues to grow. This includes providing a mechanism to rezone farm lands with poor soils to a rural residential zoning designation. While this rezone application does not include the creation of new residential lots, the applicant has demonstrated the subject property is comprised of poor soils that are adjacent to rural residential, MUA-10 zone, uses to the west as well as near rural residential, RR-10 zone and MUA-10 zone, uses to the south and is near (within 1 mile) of the City limits of Bend to the west and even closer to the Stevens Road Tract, which will be brought inside the UGB pursuant to HB 3318.*

*Rezoning the subject property to MUA-10 is consistent with this criterion, as it will provide for an orderly and efficient transition from the Bend Urban Growth Boundary to rural and agricultural lands. Additionally, it will link the non-productive lands of the subject property with existing residential development and street systems to the west, furthering the creation a buffer of MUA-10 zoned land along the City's eastern boundary where the quality of soils are poor and the land is not conducive for commercial agriculture.*

Staff noted that the MUA-10 zone is a rural residential zone and as discussed in the Basic Findings section, there are several nearby properties to the north and northeast that are zoned MUA-10 as well as nearby EFU zoned properties developed with residential uses. Staff noted this policy references the soil quality, which staff has discussed above. Staff agreed with the Applicant's response and finds the proposal complies with this policy.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

### 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:** Prior Hearings Officer's decisions have found that Section 3.3 is not a plan policy or directive. PA-11-17/ZC-11-2; 247-16-000317-ZC/318-PA; 247-18-000485-PA/486-ZC. I hereby adopt the findings in the staff report for this criterion.

Based on the above, the Hearings Officer agrees with the past Deschutes County Hearings Officer interpretations and with the staff interpretation and finds that the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. Staff finds the proposed RREA plan designation is the appropriate plan designation to apply to the Subject Property. In the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

#### Section 3.7, Transportation

**FINDING:** Section 3.7 of Comprehensive Plan Chapter 3 relates specifically to Transportation. The Applicants and Staff have identified the following goal and policy in that section as relevant to the Application.

#### ***Appendix C – Transportation System Plan 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:** The Applicants and the Staff Report assert this policy advises the County to consider the roadway function, classification and capacity as criteria for Comprehensive Plan amendments and zone changes. Compliance with OAR 660-012, also known as the Transportation Planning Rule (TPR),

is described below in subsequent findings, and the Applicants and Staff assert that such compliance is sufficient to demonstrate compliance with these transportation goals and policies.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

**OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**FINDING:** The Applicants and the Staff Report identify several administrative rules as potentially applicable to the Application.

**Division 6, Goal 4 – Forest Lands**

OAR 660-006-0005

- (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 Applicants and the Staff Report assert that the Subject Property does not appear to qualify as forest land and, therefore, the administrative rules relating to forest land are not applicable. The Subject Property is not zoned for forest lands, nor are any of the Subject Property within a 3-mile radius of forest lands. 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.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with these administrative rules.

**Division 33 - Agricultural Lands & Statewide Planning Goal 3 - Agricultural Lands;**

OAR 660-015-0000(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 Oregon];**

**FINDING:** The Applicant’s basis for not requesting an exception to Goal 3 is based on the premise that the Subject Property is not defined as “Agricultural Land.” In support, the Applicant offers the following response as included in the submitted burden of proof statement:

*ORS 215.211 grants a property owner the right to rely on more detailed information that provided by the NRCS Web Soil Survey of the NRCS to “assist the county to make a better determination of whether land qualifies as agricultural land.” Statewide Goal 3, discussed above, and OAR 660-033-0030(5) also allow the County to rely on the more detailed and accurate information by a higher order soil survey rather than information provided by the NRCS. The law requires that this survey use the NRCS soil classification system in conducting the survey, making it clear that the point of the survey is to provide better soil classification information than provided by the NRCS for use in making a proper decision whether land is or is not “Agricultural Land.” The Subject Property is not properly classified as Agricultural Land and does not merit protection under Goal 3. The soils are predominately Class 7 and 8, as demonstrated by the site-specific soils assessment conducted by Mr. Gallagher, a certified soils scientist. State law, OAR 660-033-0030, allows the County to rely on for more accurate soils information, such as Mr. Gallagher's soil assessment. Mr. Gallagher found that approximately 58.5 percent of the soils on the Subject Property (approximately 23.4 acres) are Land Capability Class 7 and 8 soils that have severe limitations for farm use. He also found the site to have low soil fertility, shallow and very shallow soils, abundant rock outcrops, rock fragments on the soil surface, restrictive for livestock accessibility, and low available water holding capacity, all of which are considerations for the determination for suitability for farm use.*

*Because the Subject Property is comprised predominantly of Class 7 and 8 soils, the property does not meet the definition of “Agricultural Land” under OAR 660-033-020(1)(a)(A), listed above as having predominantly Class I-VI soils.*

Ms. Macbeth from COLW argued that applicant misconstrues this rule in its burden of proof statement. Ms. Macbeth finds fault with the applicant referring to OAR 660-033-0030 to provide “more accurate soils information.” She argues that a “more detailed study is not more accurate”. Page 2, February 28, 2023 testimony. Ms. Macbeth argues that the applicant’s soil study cannot “change or replace the NRCS data...”

The applicants responded to this testimony in its February 28, 2023, submittal.

*Goal 3 specifically allows local governments to rely on more detailed soils data than provided by the NRCS. It says:*

*"More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal."*

*The purpose of Goal 3 is to preserve agricultural land. It is not intended to preserve land that does not meet the definition of "agricultural land."*

The applicants then argues that ORS 215.211(1) the legislature specifically provided the rights for applicants to provide more detailed soils information. The applicant argues that the rules support this finding:

*DLCD understands that the more detailed soils surveys allowed by Statewide Goal 3 and ORS 197.211 may be used in lieu of NRCS soils surveys. On its website, DLCD explains:*

*"Soil mapping done by the USDA Natural Resources Conservation Service (NRCS) is the most common tool used for identifying the types of soils in an area. The NRCS provides a rating for each soil type that indicates how suited the soil is for agriculture. \*\*\**

*NRCS does not have the ability to map each parcel of land, so it looks to larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils information on a specific property. Owners who believe soil on their property has been incorrectly mapped may retain a 'professional soil classifier ... certified by and in good standing with the Soil Science Society of America ' \*\*\* through a process administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for the property."*

I find that the applicant's argument is more convincing. That statutes and the rules and the DLCD's interpretation of their rules allow applicants to submit more detailed soils information which can be used to determine whether the property meets the definition of "agricultural lands." See following sections.

Staff reviewed the soil study provided by Andy Gallagher of Red Hill Soils (dated September 26, 2022) and agree with the Applicant's representation of the data for the Subject Property. Staff found that based on the submitted soil study and the above OAR definition, that the Subject Property is comprised predominantly of Class 7 and 8 soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above.

Based on the foregoing, I find that the Subject Property should not be considered agricultural land under this part of the administrative rules.

**(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:** According to the Applicants, this part of the definition of "Agricultural Land" requires the County to consider whether the Class 7 and 8 soils found on the Subject Property are suitable for farm use despite their Class 7 and 8 soil classification. The Applicants rely on a decision by the Oregon Supreme Court that determined the term "farm use" as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors.<sup>1</sup> Applying that definition, the Applicants describe various limitations on the ability of the Subject Property to support farm uses, including, among other factors, a limited water rights and low soil fertility. Applicant argues that these factors demonstrate that the property is not agricultural land.

Mr. Kesner from 1000 Friends of Oregon argues in its February 28<sup>th</sup> submittal that:

*The applicant's analysis as to whether the property is agricultural land as defined by DC 18.04.030 and OAR 660-033-0020(1)(a) is faulty in several ways. First, the applicant fails to demonstrate that the property is not suitable for any "farm use" as defined under ORS 215.203(2)(a). See OAR 660-033-0020(1)(a)(B) (agricultural land includes "[l]and in other soil [soil] classes that is suitable for farm use as defined in ORS 215.203(2)(a)). "Farm use" is defined as "current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof." ORS 215.203(2)(a). The applicant has only addressed capacity for raising crops and livestock, and has not considered the capability of the land to support other activities classified as a "farm use."*

Mr. Kesner makes an interesting argument here that the applicant and the County must consider other farm uses such poultry, fur-bearing animals or honeybees etc. in making the determination of whether the property is agricultural land. Mr. Kesner would require a review of the general definition of "farm use" found in the statute for the determination of whether the property is "agricultural land."

I find that Mr. Kesner's interpretation is not persuasive. The legislature would not have adopted ORS 215.211 and allowed a county to consider more detailed soils information "to make a better determination of whether land qualifies as agricultural land..." if they also had to consider whether the applicants could raise bees etc.. The rules also specifically allow for the consideration of soil types in determining "agricultural land". This statute and the rules implementing it all lead to my conclusion that this additional analysis of whether the property must meet the broad definition of agricultural in ORS 205.203(2)(a) is not required.

---

<sup>1</sup> *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007).

Mr. Kesner also argues that since the property has a significant amount of class 3-6 soils and that there are many farms in Deschutes County that operate with much smaller acreage than the Subject Property. Mr Kesner argues that this demonstrates that these small farms are “an accepted and predominant farm practice in Deschutes County.” This is also an interesting argument. However, under the statute and administrative rules the County is examining whether this property is “agricultural land” based on its soils and other factors. I find that based on the above-described law as applied to soils types and the other factors described in the staff report, that the property is not property classified as “agricultural land.”

Staff agrees with the Applicant that many of the factors surrounding the Subject Property – such as nearby residential and non-agricultural related land uses, high-cost of dryland grazing, soil fertility, and lack of availability of water rights result in an extremely low possibility of farming on the Subject Property.

Based on the foregoing, I find that the Subject Property should not be considered agricultural land and is not suitable for farming under this part of the administrative rules.

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

**FINDING:** The staff report found that the Applicant provided an analysis of land uses and agricultural operations surrounding the Subject Property. The Applicant analysis determined that barriers for the Subject Property to engage with these properties in a farm use include: poor quality soils, lack of irrigation, proximity and significant topography changes.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural land under this part of the administrative rules.

**(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:** Staff report agrees with the Applicant’s findings that this property is not part of a farm unit with the surrounding agricultural lands.

The staff report include the applicant’s response to arguments from 1000 Friends as to the Farm Unit rule.

*Goal 3 applies a predominant soil type test to determine if a property is "agricultural land." If a majority of the soils are Class 1-6 in Central or Eastern Oregon, it must be classified "agricultural land." 1000 Friends position is that this is a 100% Class 7-8 soils test rather than a 51% Class 7 and 8 soils test because the presence of any Class 1-6 soil requires the County to identify the entire property as "agricultural land." Case law indicates that the Class 1-6 soil test applies to a subject*

*property proposed for a non-agricultural plan designation while the farm unit rule looks out beyond the boundaries of the subject property to consider how the subject property relates to lands in active farming in the area that was once a part of the area proposed for rezoning. It is not a test which requires that 100% of soils on a subject property be Class 1-6.*

I find that the applicant's argument is more persuasive. The law allows for land that is not predominantly class 1-6 soils to not be considered agricultural lands. As such, it makes sense that the test under the farm unit rule would not require property to be 100% class 7-8 soils to meet this test. The applicants also argue:

*The farm unit rule is written to preserve large farming operations in a block. It does this by preventing property owners from dividing farmland into smaller properties that, alone, do not meet the definition of "agricultural land." The subject property is not formerly part of a larger area of land that is or was used for farming operations and was then divided to isolate poor soils so that land could be removed from EFU zoning. As demonstrated by the historic use patterns and soils reports, it does not have poor soils adjacent to or intermingled with good soils within a farm unit. The subject property is not in farm use and has not been in farm use of any kind. It has no history of commercial farm use and contains soils that make the property generally unsuitable for farm use as the term is defined by State law. It is not a part of a farm unit with other land.*

I agree with the applicant that the property was not formerly part of a larger area of land that was used for farming operations. As such, I find that the application complies with this part of the administrative rules.

OAR 660-033-0030, Identifying Agricultural Land

- (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).**

**FINDING:** The Applicant addressed the factors in OAR 660-033-0020(1) above. I find that the properties are not "agricultural land," as referenced in OAR 660-033-0030(1) above and contain barriers for farm use including poor quality soils and lack of irrigation as described in the soil study produced by Mr. Gallagher. I also find that the Applicant has provided adequate responses

indicating the Subject Property is not necessary to permit farm practices undertaken on adjacent and nearby lands. Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the administrative rules do not require the Subject Property to be inventoried as agricultural land.

- (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:** As concluded in other findings above, the Subject Property is not suitable for farm use and are not necessary to permit farm practices to be undertaken on adjacent or nearby lands. The ownership of the Subject Property is therefore not being used as a factor to determine whether the Subject Property is agricultural land.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this part of the administrative rules.

- (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:** Mr. Gallagher's soil study concludes that the Subject Property contains 58 percent Class 7 and 8 soils. The submitted soil study prepared by Mr. Gallagher is accompanied in the submitted application materials by correspondence from the Department of Land Conservation and Development (DLCD). The DLCD correspondence confirms that Mr. Gallagher's prepared soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Based on Mr. Gallagher's qualifications as a certified Soil Scientist and Soil Classifier, the staff found the submitted soil study to be definitive and accurate in terms of site-specific soil information for the Subject Property.

I find that the Applicants have elected to provide a more detailed agricultural soil assessment, conducted by Mr. Gallagher, a Certified Professional Soil Scientist approved by the Department of Land Conservation and Development. The analysis under section OAR 660-033-0020(1)(a), above, also applies here to address the comments by COWL. Based on the undisputed facts in that report, the Subject Property do not qualify as "agricultural land."

- (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:** I find that this administrative rule does not establish a particular standard and simply confirms when this section of the administrative rules applies.

- (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 by Mr. Gallagher of Red Hill Soils dated September 26, 2022. The soils study was submitted following the ORS 215.211 effective date. The Applicant submitted to the record an acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCD, dated October 27, 2022, that the soil study is complete and consistent with DLCD's reporting requirements. Staff found this criterion to be met based on the submitted soil study and confirmation of completeness and consistency from DLCD

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this part of the administrative rules.

## **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 MUA-10. The Applicant is not proposing any land use development of the properties at this time.

As referenced in the staff report, the Senior Transportation Planner for Deschutes County requested additional information to clarify the conclusions provided in the traffic study. The Applicant submitted an updated report from Joe Bessman, PE of Transight Consulting, LLC dated January 3, 2023, to address trip distribution, traffic volumes, and Transportation Planning Rule (TPR) criteria. The updates were reviewed by the Senior Transportation Planner who indicated his concerns were satisfied with the amended report. Mr. Bessman includes the following conclusions in the traffic impact analysis dated January 3, 2023:

- *Rezoning of the 40-acre property from EFU-TRB to MUA provides nearly identical potential impacts as the existing zoning, with the potential for a reduction in weekday daily and weekday p.m. peak hour trips, even with inclusion of the conditionally allowed uses within the MUA zoning.*
- *With a comparative assessment of outright allowable uses the rezone reduces the trip generation of the property in comparison to what could be built within the EFU zoning.*
- *The lack of a change in trip generation potential trip generation potential between reasonable build-out scenarios does not meet Deschutes County, ODOT, or City of Bend thresholds of significance at any nearby locations.*
- *Comparison of the maximum outright development in the MUA zoning to the single existing home would only show seven additional weekday p.m. peak hour trips and 66 additional weekday daily trips.*
- *Operational analysis shows that the Stevens Road and Ward Road corridors remain within Deschutes County's performance thresholds using either the adopted 2030 TSP or values within the pending 2040 TSP Update.*

Based on the County Senior Transportation Planner's comments and the traffic study from Transight Consulting, LLC, staff found compliance with the Transportation Planning Rule had been effectively demonstrated. Based on the revised traffic study, staff believed that the proposed plan amendment and zone change would be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application satisfies this administrative rule.

## **DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES**

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

**FINDING:** Division 15 of OAR chapter 660 sets forth the Statewide Planning Goals and Guidelines, with which all comprehensive plan amendments must demonstrate compliance. The Applicants assert the Application is consistent with all applicable Goals and Guidelines, which no participant to this proceeding disputes. In light of the foregoing, and in the absence of any counter evidence or argument, I adopt the Applicants' position and find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as follows:

***“Goal 1, Citizen Involvement.*** Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the Applicants to post a "proposed land use action sign" on the Subject Property. Notice of the Hearings held regarding this application was placed in the Bend Bulletin. A minimum of two public hearings will be held to consider the Application.

***Goal 2, Land Use Planning.*** Goals, policies and processes related to zone change applications are included in the Deschutes County Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code. The outcome of the Application will be based on findings of fact and conclusions of law related to the applicable provisions of those laws as required by Goal 2.

***Goal 3, Agricultural Lands.*** The Applicants have shown that the property is not agricultural land because it consists predominantly of Class 7 and 8 soils that are not suitable for farm use.

***Goal 4, Forest Lands.*** Goal 4 is not applicable because the Subject Property does not include any lands or soils that are zoned for, or that support, forest uses.

***Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces.*** The subject property does not contain any inventoried Goal 5 resources.

***Goal 6, Air, Water, and Land Resources Quality.*** The approval of this Application will not impact the quality of the air, water, and land resources of the County. Any future development of the Subject Property will be subject to applicable local, state, and federal regulations that protect these resources.

***Goal 7, Areas Subject to Natural Disasters and Hazards.*** According to the Deschutes County DIAL property information and Interactive Map, the entirety of Deschutes County, including the Subject Property, is located in a Wildfire Hazard Area. The Subject Property is also located in Rural Fire Protection District #2. Rezoning the property to MUA-10 does not change the Wildfire Hazard

*Area designation. Any future development of the Subject Property will need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.*

**Goal 8, Recreational Needs.** *This goal is not applicable because no development is proposed and the Subject Property is not planned to meet the recreational needs of Deschutes County. Therefore, the proposed rezone will not impact the recreational needs of Deschutes County.*

**Goal 9, Economy of the State.** *This goal is not applicable because the Subject Property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely affect economic activities of the state or area.*

**Goal 10, Housing.** *The County's comprehensive plan Goal 10 analysis anticipates that farm properties with poor soils, like the Subject Property, will be converted from EFU to MUA-10 or RR-10 zoning and that these lands will help meet the need for rural housing. Approval of this Application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County Comprehensive Plan.*

**Goal 11, Public Facilities and Services.** *The approval of this Application will have no adverse impact on the provision of public facilities and services to the Subject Property. Pacific Power has confirmed that it has the capacity to serve the Subject Property and the proposal will not result in the extension of urban services to rural areas.*

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

**Goal 13, Energy Conservation.** *The approval of this application does not impede energy conservation. The Subject Property is located within 1 mile from the city limits of Bend. If the property is developed with additional residential dwellings in the future, providing homes in this location as opposed to more remote rural locations will conserve energy needed for residents to travel to work, shopping and other essential services provided in the City of Bend.*

**Goal 14, Urbanization.** *Staff found that this goal is not applicable because the Applicants' proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was recently acknowledged when the County amended its Comprehensive Plan. The Comprehensive Plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.*

*Mr. Kesner, 1000 Friends of Oregon, argues that the application does not adequately consider this goal or seek an exception. February 28, 2023, submittal. At the hearing, the applicant testified that the MUA-10 zone has been acknowledged to be in compliance with Goal 14. The staff concurred with that decision.*



*I find that this Goal is not applicable for the reasons above.*

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

**IV. CONCLUSIONS**

Based on the foregoing findings, I find the Applicants have met their burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change. I therefore recommend to the County Board of Commissioners that the Application be APPROVED.

Dated this 17<sup>th</sup> Day of March, 2023

*Alan A. Rappleyea*

---

Alan A. Rappleyea  
Deschutes County Hearings Officer