



## STAFF REPORT

**FILE NUMBER(S):** 247-23-000149-CU, 23-150-SP, 23-151-LR, 23-152-AD

**SUBJECT PROPERTY/  
OWNER:**

Mailing Name: CITY OF REDMOND  
Map and Taxlot: 1413300000101  
Account: 165689  
Situs Address: 5801 NORTHWEST WAY, REDMOND, OR 97756

**ADDITIONAL  
PROPERTIES:**

The Redmond Wetlands Complex is proposed across four (4) additional properties identified in this staff report, and are either federally owned or owned by the City of Redmond. The associated pipeline and easements cross through eight (8) private properties within Deschutes County jurisdiction as identified in this staff report

**APPLICANT:**

City of Redmond  
Attn: Ryan Kirchner, Wastewater Division Manager  
411 SW 9<sup>th</sup> Street  
Redmond, OR 97756

**APPLICANT'S  
REPRESENTATIVE:**

Wendie L. Kellington  
Kellington Law Group, PC  
PO Box 2209  
Lake Oswego, OR 97035

Chris Schmoyer  
Schmoyer Land Use Consulting, LLC  
60939 Zircon Drive  
Bend, OR 97702

**REQUEST:**

Conditional Use Permit, Site Plan Review, Lot of Record Verification, and Major Administrative Determination for the expansion of the Redmond Water Pollution Control Facility Effluent and Biosolids Disposal Complex ("Redmond Wetlands Complex"). The project includes:

- Relocating sanitary sewer treatment facilities to the 608-acre City-owned property and expanding the disposal facilities to the north

onto federally owned property. The relocation and expansion includes new operational buildings, new lined and unlined treatment wetlands for effluent polishing and disposal, new primary treatment facilities with headworks screening, and new aerated lagoon system for secondary treatment.

- Replacing an existing 24-inch diameter interceptor pipeline with a 48-inch diameter pipeline that will be below grade and within established utility easements and/or public rights-of-way on an approximately two (2) mile route to the City of Redmond to connect to existing facilities treatment facility at the north end of Dry Canyon.

**HEARING DATE:** Tuesday, June 20, 2023

**HEARING START:** 6:00 pm

**STAFF CONTACT:** Haleigh King, Associate Planner  
Phone: 541-383-6710  
Email: [Haleigh.king@deschutes.org](mailto:Haleigh.king@deschutes.org)

**RECORD:** Record items can be viewed and downloaded from:  
[www.deschutes.org/redmondwetlandscomplex](http://www.deschutes.org/redmondwetlandscomplex)

## **I. APPLICABLE CRITERIA**

Oregon Administrative Rules, Chapter 660, Division 11

Oregon Revised Statutes, Section 215.296

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

Chapter 18.116, Supplementary Provisions

Chapter 18.124, Site Plan Review

Chapter 18.128, Conditional Use

Title 22, Deschutes County Development Procedures Ordinance

## **II. BASIC FINDINGS**

**LOCATION/LOT OF RECORD:** The proposal will span across 13 parcels, including the expanded City of Redmond wastewater treatment facility as well as the replacement of interceptor pipelines along the existing underground route from the facility into City of Redmond City Limits. These properties

are identified below. Also listed below is how Deschutes County recognizes each property as a legal lot of record. The County does not regulate the interceptor pipeline within the right-of-way or within the City of Redmond Urban Growth Boundary (“UGB”) or City Limits, therefore any of those locations are not identified in the list below and are not subject to County land use review. Staff includes analysis pursuant to File No. 247-23-000151-LR in Section 22.04, below.

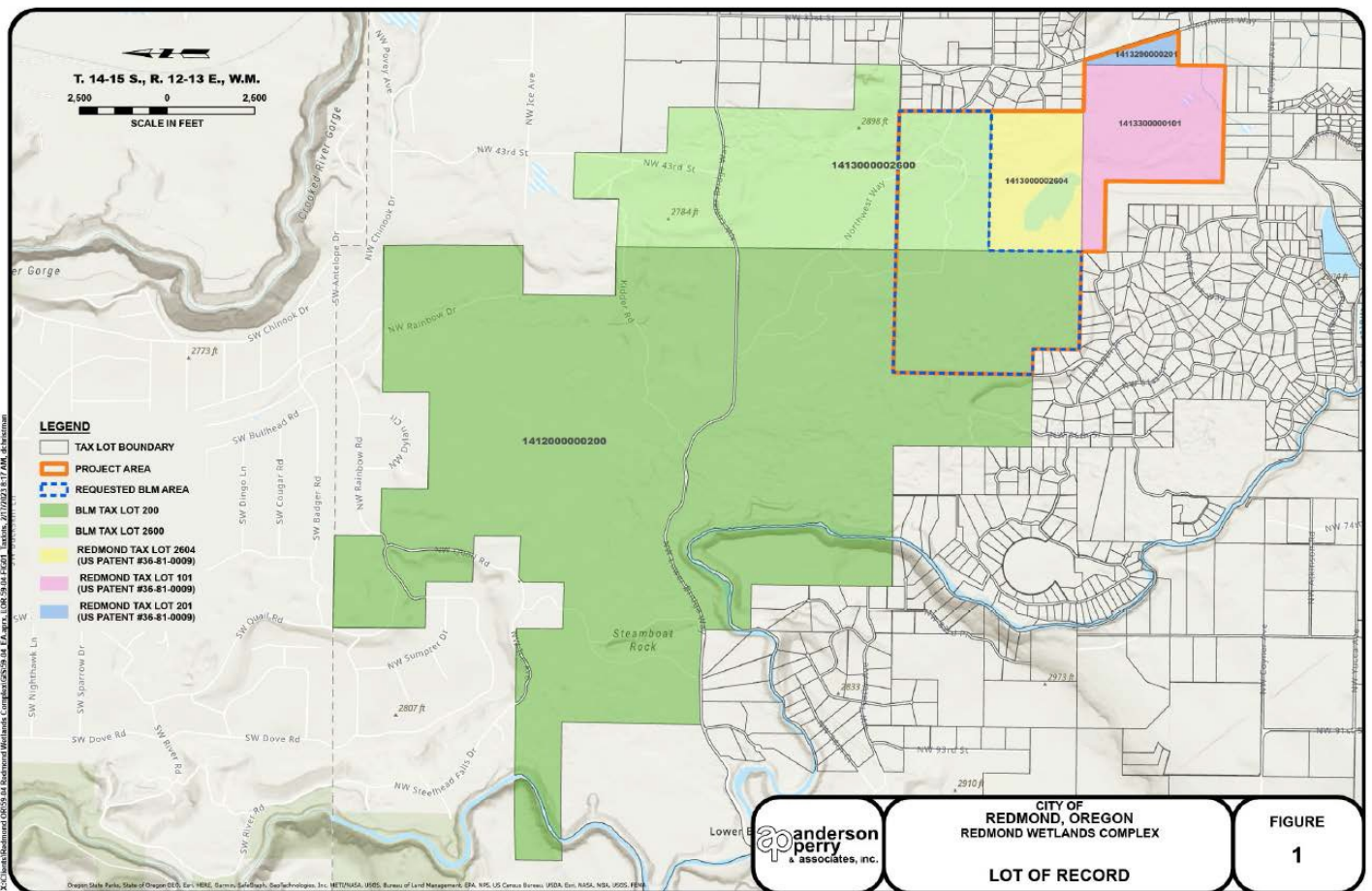
Map and Tax Lot	Situs Address	Property Owner	Zone	Combining Zone	Lot of Record
1413300000101	5801 NORTHWEST WAY, REDMOND, OR 97756	CITY OF REDMOND	EFU	SMIA	Reviewed as part of this application. File No. 247-23-000151-LR
1412000000200	8300 NW LOWER BRIDGE WAY, TERREBONNE, OR 97760	USA	EFU / FP / RR10	LM, SMIA	Reviewed as part of this application. File No. 247-23-000151-LR
1413000002600	4250 NW LOWER BRIDGE WAY, TERREBONNE, OR 97760	USA	EFU	None	Reviewed as part of this application. File No. 247-23-000151-LR
1413000002604	NONE	CITY OF REDMOND	EFU	None	Reviewed as part of this application. File No. 247-23-000151-LR
1413290000201	NONE	CITY OF REDMOND	EFU	SMIA	Reviewed as part of this application. File No. 247-23-000151-LR
1413290001201	3080 NW EUSTON LN, REDMOND, OR 97756	RANDY KEMNITZ LIVING REVOCABLE TRUST	EFU	None	Tract 2 of MP 79-222. Qualifies for exception pursuant to DCC 22.04.040(B)(2)(a) and (c)
1413290001202	2827 NW COYNER AVE, REDMOND, OR 97756	DONLAN, DAVID J & CHERYL L	EFU	None	Tract 1 of MP 79-222. Qualifies for exception pursuant to DCC 22.04.040(B)(2)(a)
1413290001300	2675 NW COYNER AVE, REDMOND, OR 97756	HASTINGS, ZACHARY J & TAMMY J	EFU	None	Parcel 1 of MP-79-72. Qualifies for exception pursuant to DCC 22.04.040(B)(2)(a)
1413290000601	2667 NW EUSTON LN, REDMOND, OR 97756	RANDALL S SCHONING TRUST	MUA10	SMIA	Created via MP-77-25. Qualifies for exception pursuant to DCC 22.04.040(B)(2)(a)
1413290000600	2571 NW EUSTON LN, REDMOND, OR 97756	CARAMELLA, RONALD E & CARYN B	MUA10	SMIA	Created via MP-77-25. Qualifies for exception pursuant to DCC 22.04.040(B)(2)(a)
1413290000700	3085 NW EUSTON LN, REDMOND, OR 97756	PETERSON, CARINA A	MUA10	SMIA	Qualifies for exception pursuant to DCC 22.04.040(B)(2)(e). Verification not required.
1413290000800	5350 NORTHWEST WAY, REDMOND, OR 97756	LUNA, HELIBERTO	MUA10	SMIA	Qualifies for exception pursuant to DCC 22.04.040(B)(2)(e). Verification not required.
1413290000900	3000 NW WILLIAMS WAY, REDMOND, OR 97756	MEDLOCK, BRIAN & LAVON	MUA10	SMIA	Qualifies for exception pursuant to DCC 22.04.040(B)(2)(c)

**SITE DESCRIPTION:** The applicant provided the following description of the subject property on Page 12 of their Burden of Proof:

The tax lots involved in this proposal for the Redmond Wetlands Complex itself (not the

proposed enlargement of the pipeline) consist of the following five (5) tax lots that are now under the ownership of the City of Redmond and USA/BLM: Tax Lot 101, 14-13-30; Tax Lot 201, 14-13-29; Tax Lot 2604, 14-13-00; Tax Lot 2600, 14-13-00; and Tax Lot 200, 14-12-00. The Complex will be located on these tax lots within the project area outlined in orange in Figure 8 (Overview Map). Figure 9 shows a close up of the project area on these tax lots and existing and proposed improvements.

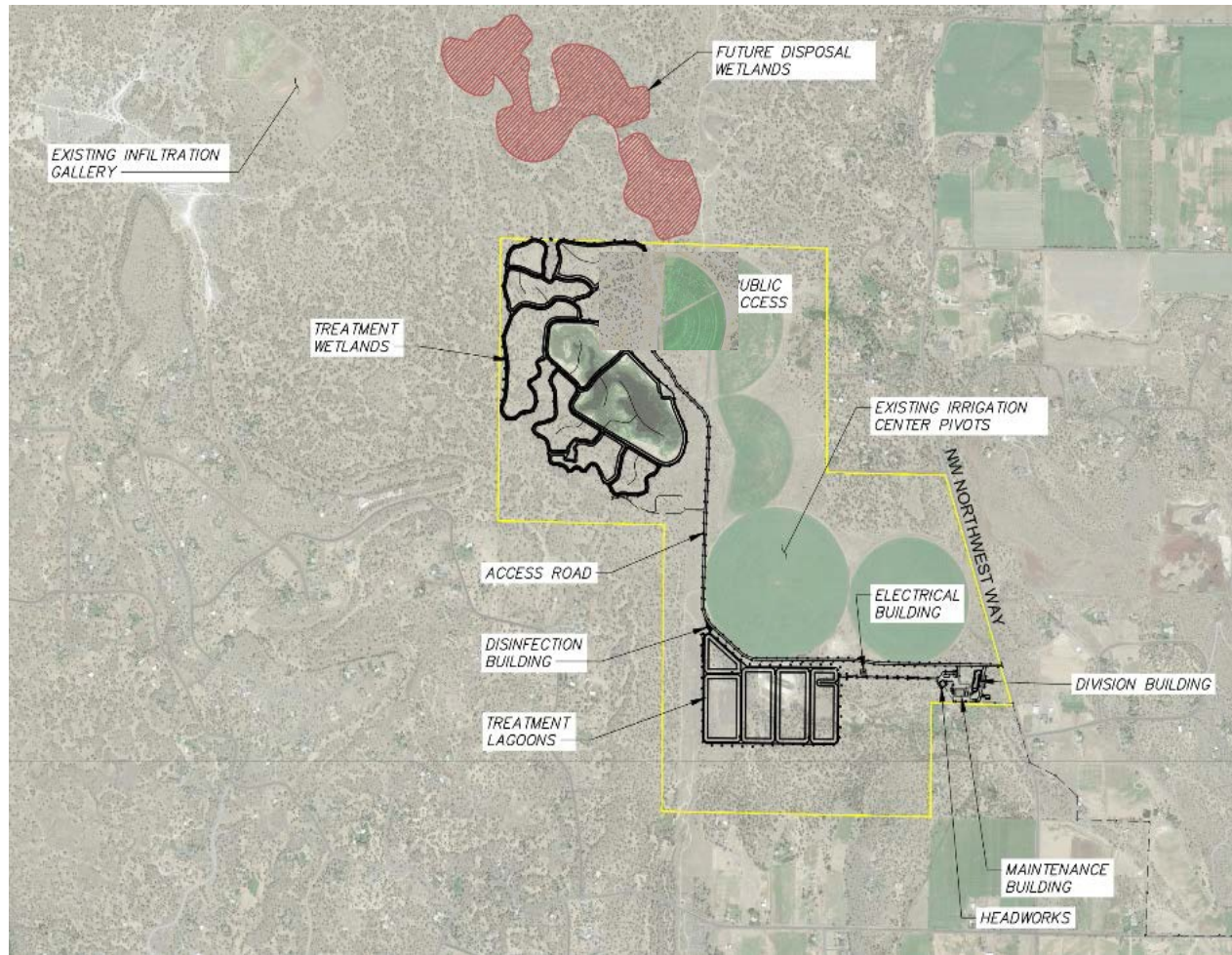
**Figure 1 (Applicant's Figure 8)**



Source: Anderson Perry & Associates, inc.



**Figure 2 (Applicant's Figure 9)**



Source: Excerpt of the Preliminary Overall Site Plan (Sheet G-G07); Anderson Perry & Associates, inc.

Tax Lot 101, 14-13-30 (330.75 acres), Tax Lot 201, 14-13-29 (36.31 acres) and Tax Lot 2604, 14-13-00 (240.76 acres). Together, these lots are approximately 607.82 acres and are owned by the City of Redmond. They were conveyed by the USA to the City of Redmond in Patent #36-81-009 in 1981. These tax lots are now occupied by the City's existing sanitary sewer disposal facilities – biosolids drying beds, drying and vector dump pad, effluent holding pond, and hayfields used for biosolids application and effluent irrigation via center-pivot irrigation. Buildings proposed to be sited on Tax Lot 201 include a division building, a maintenance building and a headworks building. An electrical building and a disinfection building are proposed to be constructed on Tax Lot 101. Improvements to the access road from Northwest Way through Tax Lots 201, 101, and into Tax Lot 2604 to the location of the treatment wetlands, are also proposed. A potential future public access is shown for illustrative purposes but is not being proposed at this time.

Tax Lot 2600, 14-13-00 and Tax Lot 200, 14-12-00 are public lands that are owned by the USA and under the management of BLM. Tax Lot 200 is approximately 4,033.63 acres in size

and Tax Lot 2600 is approximately 1,009.47 acres in size.<sup>1</sup> There is an existing infiltration gallery on approximately 35 acres leased by the City from BLM on the south end of Tax Lot 200 (Figure 10). As part of the proposal, future disposal wetlands will be constructed on the southern portions of Tax Lots 200 and 2600 as shown on the 60% plans, Sheet G-G07, as captured in Figure 9 above. The Deschutes River traverses segments of the western boundary of Tax Lot 200. Steamboat Rock is a rock ridge that is located in the central portion of Tax Lot 200 near the western border. A portion of the northern property line of Tax Lot 200 abuts the County Line common with Jefferson County to the north.

**Figure 3 (Applicant's Figure 10) – Existing Infiltration Gallery on Tax Lot 200**



Imagery ©2022 CNES / Airbus, Maxar Technologies, State of Oregon, Map data ©2022

Source: Google Maps

Outside of developed areas, overall vegetation consists of Juniper Trees, sage brush and other native vegetation, with areas that are both level and undulating terrain, with some areas of steep terrain. These tax lots are within the boundaries of the Redmond Fire & Rescue and outside of the Central Oregon Irrigation District.

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<sup>1</sup> Per Deschutes County Dial Assessors data.

**REVIEW PERIOD:** The subject application(s) were submitted on March 2, 2023 and deemed incomplete by the Planning Division on March 27, 2023. The applicant provided a response to the incomplete letter on May 1, 2023 and the applications were subsequently deemed complete on May 1, 2023. The 150th day on which the County must take final action on these applications is September 28, 2023.

**BACKGROUND:** The applicant provided the following statement in their Background section, page 18 of its Burden of Proof,

For 45 years, the City of Redmond (City) has utilized the Effluent and Biosolids Complex on an approximate 608-acre property to the northwest of the City to repurpose and discharge all of Redmond's treated wastewater effluent and biosolids, which is where the proposed main Redmond Wetlands Complex will be located. The existing Water Pollution Control Facility (WPCF), where the wastewater is now initially treated, is located at the north end of the Dry Canyon.

The population of Redmond and surrounding areas have significantly grown since the last major WPCF Expansion in 2000. The population of Redmond and surrounding areas is expected to increase; as such, the need for an expansion of the treatment facilities is vital to serving growth.

The City plans to expand the approximately 608-acre Effluent and Biosolids Disposal Complex and transition its operation to a more sustainable and environmentally friendly treatment alternative. As early as 1984, the 608- acre Effluent and Biosolids Disposal Complex was identified as a preferred location with long-range opportunities to treat and dispose of wastewater while also offering sustainable development opportunities.

The City will be decommissioning the existing mechanical WPCF in the dry canyon and transitioning all operations to 5801 Northwest Way, Redmond (the subject 608-acre property). In addition to the City's existing approximately 608-acre Effluent and Biosolids Disposal Complex, the City now leases 35 acres on Tax Lot 200 from the Federal Bureau of Land Management, at the site where disinfected water is infiltrated into the ground.<sup>2</sup>

**PROPOSAL:** The applicant provided the following statement in their Proposal section, page 15 of their Burden of Proof:

Applicant requests approval for a Conditional Use, Administrative Determination, and Site Plan Review to expand an existing Utility Facility in the EFU and MUA-10 Zones. The applicant also requests Lot of Record verification where the same is required by the DCC.

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<sup>2</sup> <https://redmondwetlandscomplex.com/>

As to the MUA-10 zone, the proposal includes a Conditional Use Permit and Site Plan Review for increasing the size of existing conveyance lines, increasing the diameter from 24 inches to 48 inches. The expanded pipeline subject to Deschutes County's jurisdiction is within the MUA-10 and EFU zones – there are currently two (2) 24-inch diameter pipes that run from the existing Water Pollution Control Facility (WPCF) at the existing dry canyon site, out to the disposal site<sup>3</sup>. Both pipes transport effluent to the existing irrigation holding pond. The proposed project will remove and replace one (1) existing 24-inch diameter pipeline with a 48-inch diameter pipeline in the same alignment for added capacity. The proposed increased wastewater transmission main line (conveyance lines) crosses nine (9) different properties and multiple public road rights-of-way (See table in Figure 2 above and 60% Plans, Sheet G-G07, Overall Site Plan, of submitted plans). The MUA-10 zone allows as a conditional use utility facilities pursuant to DCC 18.32.030(Y), necessary to serve the area subject to Site Plan Review under DCC 18.124 and under DCC 18.128.015, General Standards Governing Conditional Uses. Accordingly, a Conditional Use Permit and Site Plan Review are required for those portions of the Complex (which are limited to the interceptor pipeline replacement) located within the MUA-10 zone.

As to the EFU zone, Applicant requests approval of an application for an Administrative Determination for a “utility facility necessary for public service” for the actual treatment facility and buildings, as well as treatment lines<sup>4</sup>, treatment lagoons, replacement of interceptor pipeline, expansion of treatment wetlands and the construction of new disposal wetlands, on land zoned Exclusive Farm Use.

Lot of Record verification is sought below.

The proposed facilities will include the following:

- New primary treatment facilities with headworks screening
- New aerated lagoon system for secondary treatment
- New lined treatment wetlands for effluent polishing
- New and expanded unlined wetlands for effluent disposal (on adjacent BLM property; Tax Lot 2600, 14-13-00 and Tax Lot 200, 14-12-00)
- Maintain existing infiltration gallery
- Sloped concrete slab vector dump station
- Headworks structure (three-sided structure covering equipment)
- New operational buildings:
  - Electrical Building
  - Disinfection Building
  - Maintenance Building

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<sup>3</sup> Existing City of Redmond WPCF Site (e.g. dry canyon site) is at 2100 NW 19th Street, Redmond, and is also identified as Tax Lot 102, 15-13-05.

<sup>4</sup> Treatment lines consist of all of the pipes that convey either influent, effluent, return activated sludge, process water, chemical feed lines, or recycled water that are located entirely on the City-owned 608-acre property.



- Division Building

As previously discussed above, in addition to the five (5) tax lots of the Redmond Wetlands Complex property zoned EFU, the project will cross nine (9) privately-owned tax lots. The new 48-inch diameter replacement service line (or pipeline) will cross nine (9) privately-owned tax lots, three (3) of which are located within the EFU Zone, five (5) in the MUA-10 Zone, and one (1) inside the UGB that is not subject to County review, as well as County road rights-of-way that are within both of these zones. The zoning associated with public road rights-of-way affiliated with this project are identified below:

Portions of public road rights-of-way that fall exclusively within the EFU Zone are as follows:

- NW Pershall Way, classified as a County Rural Collector having a 60 foot right-of way.
- NW Coyner Avenue, classified as a County Rural Collector having a 60 foot right-of way.
- Northwest Way, classified as a County Rural Collector having a 60 foot right-of way.

Portions of public road rights-of-way that contain, or include, non-EFU Zoning consist of the following:

- 19th Street, a Local Access Road, having a 60-foot right-of-way, is within the Urban Holding (UH-10) Zone and inside the Redmond UGB. 19th Street extends north from the City's existing WPCF on 19th Street that is inside the City Limits Boundary and connects to NW Pershall Way.
- NW Pershall Way, classified as a County Rural Collector on Deschutes County TSP Map and having a 60-foot right-of-way, contains a section that is zoned MUA-10 and a section zoned EFU-TRB.
- Northwest Way, classified as a County Rural Collector having a 60 foot right-of way and having a 60-foot right-of-way, contains a section that is zoned EFU-TRB and section that is zoned both EFU-TRB and MUA-10 followed by a section that is zoned EFU-TE.

The majority of the Redmond Wetlands Complex will be located in the County's EFU zone. The Complex is a "utility facility necessary for public service", which is a use permitted as of right in the EFU zone, subject to DCC 18.16.038(A). DCC 18.16.025(E). DCC 18.16.038(A) essentially mirrors LCD's additional criteria for utility facilities necessary for public service in OAR 660-033-0130(16) and ORS 215.275.

## **LAND USE HISTORY:**

- SP-76-40 – Site Plan Review to construct a sewage treatment plant in the A-1 Zone to serve the City of Redmond. This is the original land use for the existing City of Redmond Water Pollution Control Facility in Dry Canyon.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on March 10, 2023, to several public agencies and received the following comments:

Deschutes County Building Division, Randy Scheid

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

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

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the transmittal materials to shift the location of Redmond Water Pollution Control Facility Effluent and Biosolids Disposal Complex, aka Redmond Wetlands Complex to 608-acre parcel owned by the City to the northwest of Redmond and using adjacent Bureau of Land Management (BLM) property. The project will also replace an existing 24-inch diameter pipe with a 48-inch diameter pipe that will be below grade and lie within existing utility easements and/or public rights of way on an approximately two-mile route to connecting to an existing treatment facility at the north end of the Dry Canyon. The subject 3308-parcel is zoned Exclusive Farm Use (EFU) and the pipes will pass through EFU, Multiple Use Agriculture (MUA-10), and Surface Mining Impact Areas (SMIA) zones; the subject parcel is located at 5801 Northwest Way, aka County Assessor's Map 14-13-30, Tax Lot 101.

The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook does not have a category for a wastewater wetlands complex, however, given the County's experience with similar projects in Bend and Sunriver, staff recognizes these services are typically low generators of traffic due to small number of employees. Deschutes County Code (DCC) 18.116.310(C)(3)(a) does not require any traffic analysis for a use that will generate less than 50 new weekday trips. Staff finds no additional traffic analysis is required.

The property accesses Northwest Way, a public road maintained by Deschutes County and functionally classified as a collector. The applicant will need to provide either a copy of a driveway permit approved by Deschutes County or be required to obtain one as a condition of approval to comply with the access permit provisions of DCC 17.48.210(A). Additionally, the City will need to coordinate with the County Road Department to determine which, if any permits are required to perform work in County rights of way to accommodate the new piping.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,080 per p.m. hour trip. As the proposed used will not consume additional roadway capacity as that term is commonly understood, no SDCs are triggered. The burden of proof does mention potential future public access as wetland areas can also function as quasi-

parks for nature hikes, bird watching, and similar recreational activities. If the public is allowed access, then the County reserves the right to revisit the issue of SDCs.

Redmond Fire & Rescue, Tom Mooney

Dear Haleigh, Thank you for the opportunity to review the proposed site plan surrounding the above-named development project. These notes are provided regarding the plans received March 14, 2023 and are based on the current New Construction Guide. There may be more or less requirements needed based upon the final project design, however, Redmond Fire & Rescue will endorse this proposal predicated on the following criteria and conditions of approval.

**FIRE APPARATUS ACCESS:**

**1. FIRE APPARATUS ACCESS ROADS:** Access roads shall be provided for every facility, building, or portion of a building hereafter constructed or moved into or within the jurisdiction. Exception: Approved agricultural and equine structures complying with ORS 455.315 are not required to have fire apparatus access roads (see New Construction Guide Appendix C). Access roads are not required to be modified for commercial buildings that undergo a change in occupancy, change in use, or conversion from agricultural or equine exempt to non-exempt unless there is a change to the structure's square footage or building footprint. (OFC 503.1.1)

**2. FIRE ACCESS ROAD DISTANCE FROM BUILDINGS:** The access shall extend to within 150 feet of all portions of the exterior wall of the first story of the building as measured by an approved route around the exterior of the building or facility. (OFC 503.1.1)

**3. DEAD ENDS AND ROADS IN EXCESS OF 150 FEET (TURNAROUNDS):** Dead end fire apparatus access roads or roads in excess of 150 feet in length shall be provided with an approved turnaround. Diagrams of approved turnarounds are shown below: (OFC 503.2.5 & Figure D103.1).

Due to the length of the roadway will there be areas for fire apparatus to turnaround?

**4. FIRE APPARATUS ACCESS ROAD WIDTH AND VERTICAL CLEARANCE:** Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet (26 feet adjacent to fire hydrants (OFC D103.1)) and an unobstructed vertical clearance of not less than 13 feet 6 inches. (OFC 503.2.1 & D103.1)

Indicate on plans dimensions of roadway.

**5. NO PARKING SIGNS:** Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed.

Signs shall read "NO PARKING - FIRE LANE" and shall be installed with a clear space above grade level of 7 feet. Signs shall be 12 inches wide by 18 inches high and shall have red letters on a white reflective background. (OFC D103.6)

**6. NO PARKING:** Parking on emergency access roads shall be as follows (OFC D103.6.1-2): 1. 20-26 feet road width – no parking on either side of roadway 2. 26-32 feet road width – parking is allowed on one side 3. Greater than 32 feet road width – parking is not restricted Note: For specific widths and parking allowances, contact the local municipality.

**7. PAINTED CURBS:** Where required, fire apparatus access roadway curbs shall be painted red (or as approved) and marked "NO PARKING FIRE LANE" at 25-foot intervals. Lettering shall have a stroke of not less than one inch wide by six inches high. Lettering shall be white on red background (or as approved). (OFC 503.3)

**8. FIRE APPARATUS ACCESS ROADS WITH FIRE HYDRANTS:** Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet and shall extend 20 feet before and after the point of the hydrant. (OFC D103.1)

**9. TURNOUTS:** Where access roads are less than 20 feet and exceed 400 feet in length, turnouts 10 feet wide and 30 feet long may be required and will be determined on a case-by-case basis. (OFC 503.2.2)

**10. SURFACE AND LOAD CAPACITIES:** Fire apparatus access roads shall be of an allweather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 75,000 pounds live load (gross vehicle weight). Documentation from a registered engineer that the final construction is in accordance with approved plans, or the requirements of the Fire Code may be requested. (OFC 503.2.3).

**11. TURNING RADIUS:** The inside turning radius and outside turning radius shall not be less than 30 feet and 50 feet respectively, measured from the same center point. (OFC 503.2.4 & D103.3)

Show apparatus tracking through site using auto turn. A WB 40 can be used.

**12. ACCESS ROAD GRADE:** Fire apparatus access roadway grades shall not exceed 10%. Alternate methods and materials may be available at the discretion of the Fire Marshal (for grade exceeding 10%).

**13. ANGLE OF APPROACH/GRADE FOR TURNAROUNDS:** Turnarounds shall be as flat as possible and have a maximum of 5% grade with the exception of crowning for water run-off. (OFC 503.2.7 & D103.2)

**14. ANGLE OF APPROACH/GRADE FOR INTERSECTIONS:** Intersections shall be level (maximum 5%) with the exception of crowning for water run-off. (OFC 503.2.7 & D103.2)



**15. GATES:** Gates securing fire apparatus roads shall comply with all of the following (OFC D103.5, and 503.6): 1. Minimum unobstructed width shall be not less than 20 feet (or the required roadway surface width). 2. Gates shall be set back at minimum of 30 feet from the intersecting roadway or as approved. 3. Electric gates shall be equipped with a means for operation by fire department personnel 4. Electric automatic gates shall comply with ASTM F 2200 and UL 325.

Plans indicate multiple gates on fire access roads. Gates must meet the above requirements.

**16. ACCESS DURING CONSTRUCTION:** Approved fire apparatus access roadways shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. Temporary address signage shall also be provided during construction. (OFC 3310.1)

**17. TRAFFIC CALMING DEVICES:** Shall be prohibited on fire access routes unless approved by the Fire Marshal. (OFC 503.4.1). **FIREFIGHTING WATER SUPPLIES:**

**18. FIRE FLOW WATER AVAILABILITY:** Applicants shall provide documentation of a fire hydrant flow test or flow test modeling of water availability from the local water purveyor if the project includes a new structure or increase in the floor area of an existing structure. Tests shall be conducted from a fire hydrant within 400 feet for commercial projects, or 600 feet for residential development. Flow tests will be accepted if they were performed within 5 years as long as no adverse modifications have been made to the supply system. Water availability information may not be required to be submitted for every project. (OFC Appendix B)

**19. RURAL COMMERCIAL BUILDINGS - REQUIRED FIRE FLOW:** Commercial structures in rural and suburban areas where adequate and reliable water supply systems DO NOT exist will require a firefighting water supply system sized in accordance with NFPA Standard 1142 (or an approved alternate) capable of delivering a minimum of 500 gpm at 20 psi through an approved fire hydrant in an approved location. (OFC 507, B103.2, and B105) Exception: Buildings less than 24,000 square feet do not require an onsite firefighting water supply. (OFC B103.1).

Conduct NFPA 1142 water flow calculation or provide an alternate water source.

**20. WATER SUPPLY DURING CONSTRUCTION:** Approved firefighting water supplies shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. (OFC 3312.1)

#### **FIRE HYDRANTS:**

**21. FIRE HYDRANTS – COMMERCIAL BUILDINGS:** Where a portion of the building is more than 400 feet from a hydrant on a fire apparatus access road, as measured in an approved

route around the exterior of the building, on-site fire hydrants and mains shall be provided. (OFC 507.5.1)

- This distance may be increased to 600 feet for buildings equipped throughout with an approved automatic sprinkler system.
- The number and distribution of fire hydrants required for commercial structure(s) is based on Table C105.1, following any fire-flow reductions allowed by section B105.3.1. Additional fire hydrants may be required due to spacing and/or section 507.5 of the Oregon Fire Code.

**22. FIRE HYDRANT(S) PLACEMENT:** Hydrant placement will be based on the following guidelines: (OFC C104)

- Existing hydrants in the area may be used to meet the required number of hydrants as approved. Hydrants that are up to 600 feet away from the nearest point of a subject building that is protected with fire sprinklers may contribute to the required number of hydrants. (OFC 507.5.1)
- Hydrants that are separated from the subject building by railroad tracks shall not contribute to the required number of hydrants unless approved by the Fire Marshal.
- Hydrants that are separated from the subject building by divided highways or freeways shall not contribute to the required number of hydrants. Heavily traveled collector streets may be considered when approved by the Fire Marshal.
- Hydrants that are accessible only by a bridge shall be acceptable to contribute to the required number of hydrants only if approved by the Fire Marshal.

**23. PRIVATE FIRE HYDRANT IDENTIFICATION:** Private fire hydrants shall be painted red in color. (OFC 507)

**24. FIRE HYDRANT DISTANCE FROM AN ACCESS ROAD:** Fire hydrants shall be located not more than 15 feet from an approved fire apparatus access roadway unless approved by the Fire Marshal. (OFC C102.1)

**25. PHYSICAL PROTECTION:** Where fire hydrants are subject to impact by a motor vehicle, guard posts, bollards or other approved means of protection shall be provided. (OFC 507.5.6 & OFC 312)

**26. CLEAR SPACE AROUND FIRE HYDRANTS:** A 3-foot clear space shall be provided around the circumference of fire hydrants. (OFC 507.5.5)

**27. FIRE DEPARTMENT CONNECTION (FDC) LOCATIONS:** FDCs shall be located within 100 feet of a fire hydrant (or as approved). Hydrants and FDC's shall be located on the same side of the fire apparatus access roadway or drive aisle, fully visible, and recognizable from the street or nearest point of the fire department vehicle access or as otherwise approved. (OFC 912.2.1 & NFPA 13)

- Fire department connections (FDCs) shall normally be located remotely and outside of the fall-line of the building when required. FDCs may be mounted on the building they serve, when approved.

- FDCs shall be plumbed on the system side of the check valve when sprinklers are served by underground lines also serving private fire hydrants.

If any buildings will have fire sprinklers, indicate location of FDC on plans.

## **BUILDING ACCESS AND FIRE SERVICE FEATURES**

**28. KNOX BOX:** A Knox Box for building access may be required for structures and gates. See Appendix B for further information and detail on required installations. Order via [www.knoxbox.com](http://www.knoxbox.com) or contact Redmond Fire & Rescue for assistance and instructions regarding installation and placement. (OFC 506.1)

**29. FIRE PROTECTION EQUIPMENT IDENTIFICATION:** Rooms containing controls to fire suppression and detection equipment shall be identified as "Fire Control Room." Signage shall have letters with a minimum of 4 inches high with a minimum stroke width of 1/2 inch, and be plainly legible, and contrast with its background. (OFC 509.1)

**30. PREMISES IDENTIFICATION:** New and existing buildings shall have approved address numbers; building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property, including monument signs. These numbers shall contrast with their background. Numbers shall be a minimum of 4 inches high with a minimum stroke width of 1/2 inch. (OFC 505.1)

Address should be visible from NW Northwest Way. Multiple buildings on a site shall be identified by a letter or number.

If you have questions or need further clarification, please feel free to contact me at 541-504-5010.

### Central Oregon Irrigation District, Spencer Stauffer

Please be advised that Central Oregon Irrigation District (COID) has reviewed the City of Redmond's proposed Water Pollution Control Facility Expansion dated November 21, 2022, for the above referenced project located at 5801 Northwest Way, Redmond, OR 97756/tax lot: 1413290000201, 1413300000101, and 14133000002604. The project is also located on Bureau of Land Management land, tax lot: 1413000002600 and 1412000000200. There are both COID facilities and water rights within tax lot 1413300000101. A 2.60-acre COID pond right is located within the project scope and conflicts with the proposed lagoon locations. This pond is managed by COID as a waste/capture pond for excess flows on the C-lateral waste and must be retained in the project. COID's C-lateral waste ditch traverses through tax lot 1413300000101 and will also conflict with the proposed lagoon locations. The C-lateral waste ditch must also be retained in the project. COID's B-lateral waste ditch terminates to the south of tax lot 1413300000101, however unmapped wastewater waste/capture ponds extend into the southwest corner of tax lot 1413300000101. These ponds are critical to COID

operations, capturing water at the end of the B-lateral system. These ponds appear to be out of the scope of the project, but they must remain. Tax lot 1413000002604 does not have any COID water rights appurtenant to it, however, COID does have a pond right appurtenant to lands bordering to the east (located within Westwood Acres). The pond physically extends to the west onto the city's property, tax lot 1413000002604 with several overflow ponds connecting to the south. These ponds are critical to COID operations, capturing water at the end of the F-lateral system. These ponds appear to be out of the scope of the project, but they must remain. COID has no facilities or water rights on tax lot 1413290000201. COID has no facilities on either Bureau of Land Management Properties. Those are tax lots 1413000002600 and 1412000000200.

Listed below are COID's initial comments to the provided project. All development affecting irrigation facilities shall be in accordance with COID's Development Handbook and/or as otherwise approved by the District.

- Tax lot 1413300000101 has 2.60 acres of appurtenant COID pond rights mapped to a specific place of use. The proposed project will impact the pond. Tax lot 1413300000101 has COID's C-lateral waste ditch which traverses across the property. The proposed project will impact the C-lateral waste ditch. The C-lateral waste ditch has a 75-foot ROW easement.
  - The C-lateral waste ditch enters tax lot 1413300000101 from the east and travels northwest to COID's 2.60-acre pond. The C-lateral waste ditch then leaves the pond to the west and travels in a southwesterly direction before leaving tax lot 1413300000101 to the south. The C-lateral waste ditch deposits most of its water into the 2.60-acre pond. The location of the pond and the waste ditch will conflict with the proposed lagoons.
  - The 2.60-acre pond is critical to COID's operations, however COID is open to moving the pond's physical location outside of the project scope. All labor and cost necessary to move the pond to a suitable location is the responsibility of the agent of change.
  - COID is open to quitclaiming the C-lateral waste ditch easement and abandoning the ditch west of COID's 2.6-acre storage pond after the pond has been relocated. This will move the pond and ditch outside of the scope of the project and still provide COID with the necessary infrastructure to maintain operations
  - The mapped location of the pond must remain in place as COID cannot transfer storage rights with Oregon Water Resources Department. At the time when COID can transfer storage rights, COID will move the ponds mapped location to the pond's physical location. Being unable to transfer the pond rights will not affect any ability to physically move the 2.60-acre pond outside of the project scope.
  - Further discussion is required between COID and other interested parties to determine the best action to accommodate all parties involved. Please contact COID as soon as possible to determine next steps.
- Irrigation infrastructure and rights-of-way are required to be identified on all maps and plans



- Any irrigation conveyance, District or private, which passes through the subject property shall not be encroached upon without written permission from this office.
- No structures of any kind, including fence, are permitted within COID property/easement/right of way without written permission from this office.
- Policies, standards and requirements set forth in the COID Developer Handbook must be complied with.

Our comments are based on the information provided, which we understand to be preliminary nature at this time. Our comments are subject to change and additional requirements may be made as site planning progresses and additional information becomes available. Please provide updated documents to COID for review as they become available.

## Department of State Lands, Matthew Unitis

 Wetland Land Use Notice Response				
Response Page				
Department of State Lands (DSL) WN# <sup>*</sup> WN2023-0210				
Responsible Jurisdiction				
Staff Contact Haleigh King	Jurisdiction Type County		Municipality Deschutes	
Local case file # 247-23-000152-AD	County Deschutes			
Activity Location				
Township 14S	Range 13E	Section 29	QQ section	Tax Lot(s) 601,800
Street Address 4000 NW Pershall Way Address Line 2 City Redmond Postal / Zip Code 97756				
Latitude 44.324245		Longitude -121.203178		
Township 14S	Range 13E	Section 00	QQ section	Tax Lot(s) 2600
Street Address Address Line 2 City Postal / Zip Code				
Latitude 44.362939		Longitude -121.223388		
Township 14S	Range 12E	Section 00	QQ section	Tax Lot(s) 200

Street Address

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

**Latitude**

44.324245

**Longitude**

-121.203178

### Wetland/Waterway/Other Water Features

☐ There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.

☐ The National Wetlands Inventory shows wetland, waterway or other water features on the property

### Your Activity

☐ It appears that the proposed project **may** impact wetlands and **may** require a State permit.

### Applicable Oregon Removal-Fill Permit Requirement(s)

☐ A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

### Closing Information

#### Additional Comments

I cannot determine through the application materials provided what exactly is being proposed on the ground on each tax lot and where. Some of the figures, such as those depicting work adjacent to named streets, are easy enough, but the unnamed figures that start on page 16+ of the document that depict land clearing and tree removal is difficult for me to locate. DSL needs more information to provide a detailed response. Please provide a footprint map of proposed disturbance on each tax lot - if tax lot is too big, an inset map may be necessary.

**This is a preliminary jurisdictional determination and is advisory only.**

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

☐ A Federal permit may be required by The Army Corps of Engineers: (503)808-4373

#### Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

#### Response Date

4/19/2023

#### Response by:

Matthew Unitis

#### Response Phone:

503-986-5262

**Staff Comment:** Staff responded to DSL on April 20, 2023 and provided additional maps to clarify portion of the proposed project. Staff did not receive a response. However, staff notes DSL issued a Wetland Delineation (DSL WD # 2022-0595) on April 11, 2023 regarding the site specific wetland delineation report prepared by Anderson Perry & Associates, Inc. for the proposed project area. DSL concurred with the information presented in the report that there are no jurisdictional wetlands or other waters of the State within the study areas. The Wetland Delineation is included in the application record and staff incorporates the report herein by reference.

The following agencies did not respond to the notice: Bureau of Land Management, Department of Environmental Quality, Deschutes County Assessor, Deschutes County Onsite Wastewater, Deschutes County Road Department, Redmond Area Parks and Recreation, and Redmond City Planning.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the land use application to all property owners within 250 feet and 750 feet of the subject property on March 10, 2023. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on March 13, 2023.

Staff received public comments from the individuals indicated below in response to the Notice of Application:

- Steven G. Liday
- Carole Atherton and H. Malarkey Wall
- Paul Johnston
- Dan Marsh
- Jeanmarie Kapp
- Braedi Kolberg

Public comments identified concerns with odor, noise, and visual impacts of the proposed wetlands complex expansion and use. Other comments cited concerns with construction impacts, alternative locations analysis, traffic impacts, impacts to groundwater, and public access.

Public comments also reference a public park use as part of the proposed wetlands complex. Staff notes the applicant has not proposed or otherwise applied for a public park use as part of this application. A public park use at the wetlands complex facility, zoned EFU, would require a separate Conditional Use Permit and Site Plan Review application. The applicant has not proposed to establish a public park or recreational facilities as part of this application. The public comments are included in the record in their entirety and incorporated herein by reference and further discussion on these concerns under any corresponding Deschutes County Code sections.

**NOTICE REQUIREMENT:** On March 18, 2022, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property, agencies, and parties of record. A



Notice of Public Hearing was published in the Bend Bulletin on March 19, 2022. The applicant complied with the posted notice requirements of DCC 22.24.030(B). The applicant submitted Land Use Action sign Affidavits indicating the applicant posted multiple notices of the land use action on June 7, 2023.

### **III. FINDINGS & CONCLUSIONS**

#### **Oregon Administrative Rules**

#### **Chapter 660, Division 11, Public Facilities Planning**

Section 660-011-0060. Sewer Service to Rural Land.

**(1) *As used in this rule, unless the context requires otherwise:***

- (a) *"Establishment of a sewer system" means the creation of a new sewage system, including systems provided by public or private entities;***
- (b) *"Extension of a Sewer System" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer system in order to provide service to a use, regardless of whether the use is inside the service boundaries of the public or private service provider. The sewer service authorized in section (8) of this rule is not an extension of a sewer;***

...

**FINDING:** The applicant provided the following statement in response to this criterion:

The City understands that these provision are inapplicable because the project is not creating a new sewage system and it is not an "extension" of a sewer system "in order to provide service to a use" because the project is improving an existing system that already provides services to a variety of uses. Applicant proposes to increase the diameter of one of the two (2) existing 24-inch diameter interceptor pipelines to a 48-inch diameter pipeline, in the MUA-10 Zone, the EFU Zone and within public rights-of-way that exist extending from the area of service at the City's existing WPCF within the Redmond UGB. Additionally, the proposal includes the expansion of the existing actual treatment facility with new buildings, wetland ponds and other amenities on the EFU-zoned land owned by the City of Redmond and BLM. Accordingly, for these reasons, the project does not involve either a new system or an extension of an existing sewer system, thus, is not seemingly at least, the "establishment" or "extension" of a sewer system as those terms are defined in OAR 660-011-0060(1) above. This provision is inapplicable.

Staff generally agrees with the applicant's response in that the proposal does not include the establishment of a new sewer system or the extension of a sewer system, as defined above. Staff also notes that Deschutes County does not have land use authority on federally owned property.

However, staff notes the public comment from Steven G. Liday raises concerns surrounding the applicant's characterization of the use and proposed components. Staff asks the Hearings Officer to make specific findings on this criterion.

- (f) "Sewer system" means a system that serves more than one lot or parcel, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal. The following are not considered a "sewer system" for purposes of this rule:**
  - (A) A system provided solely for the collection, transfer and/or disposal of storm water runoff;**
  - (B) A system provided solely for the collection, transfer and/or disposal of animal waste from a farm use as defined in ORS 215.303.**

**FINDING:** The applicant acknowledges that the proposal involves a sewer system.

- (2) Except as provided in sections (3), (4), (8), and (9) of this rule, and consistent with Goal 11, a local government shall not allow:**
  - (a) The establishment of new sewer systems outside urban growth boundaries or unincorporated community boundaries;**
  - (b) The extension of sewer lines from within urban growth boundaries or unincorporated community boundaries in order to serve uses on land outside those boundaries;**
  - (c) The extension of sewer systems that currently serve land outside urban growth boundaries and unincorporated community boundaries in order to serve uses that are outside such boundaries and are not served by the system on July 28, 1998.**

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposal does not establish a new sewer system, or newly extend sewer lines from a UGB, and is not designed to serve land outside UGBs that was not served on July 28, 1998. As noted elsewhere in this narrative, the Applicant proposes to increase capacity of one (1) of the existing interceptor pipelines and make additional improvements to the existing City of Redmond sewer system. The replacement pipeline and improvements on the subject property will be for the current service area that is within the City's urban growth boundary. This standard does not appear to apply. However, if this standard did apply, it is met because the proposal is expressly authorized by section (3), addressed below ("Except as provided in sections (3) \*\*\*").

Staff notes the public comment from Steven G. Liday raises concerns surrounding the applicant's characterization of the use as it relates to the above criterion.

Staff notes the applicant asserts that if this standard does apply, the proposal is authorized by section (3) as discussed below.

Staff requests the Hearings Officer make specific findings on this issue.

**(3) *Components of a sewer system that serve lands inside an urban growth boundary (UGB) may be placed on lands outside the boundary provided that the conditions in subsections (a) and (b) of this section are met, as follows:***

**(a) *Such placement is necessary to:***

**(A) *Serve lands inside the UGB more efficiently by traversing lands outside the boundary;***

**FINDING:** The applicant provided the following statement in response to this criterion:

OAR 660-011-0060 is met for the reasons explained below. The proposed improvements to the City's existing sewer system serve the area within the current City limits and UGB of Redmond. The proposal improves the existing facilities to continue to serve the area within the City's UGB efficiently and effectively, in order to meet its sewerage needs over the long-term planning horizon. This is necessary because the existing system needs significant improvement upgrades to meet the City's anticipated long-term horizon needs and there is not room at the existing facilities in the City's UGB to do so. Creating an entirely new facility on a new property inside the UGB (if one could be found to do so) is inefficient because the City already maintains part of its existing system on the subject property's 608-acre site. It is more efficient to expand the existing pipeline that now conveys effluent to the existing facilities on the 608-acre site, than to abandon the existing 608-acre site, and the existing pipelines that lead to it, in favor of a wholly new system with new piping in the UGB. Therefore, the proposal includes increasing the diameter of one of the existing interceptor pipelines and the facilities on the City-owned and BLM EFU-zoned properties, which are located approximately one and one-half (1.5) miles north of the City of Redmond's UGB. The project will serve lands inside Redmond's UGB more efficiently and allow for anticipated population increases and resulting capacity demands in the future.

Staff generally agrees with the applicant's response. Staff notes the public comment from Steven G. Liday raises concerns surrounding the applicant's characterization of the use as it relates to the above criterion and suggests that the applicant must demonstrate why each component of the project, including the operational buildings, must be sited on the EFU land to provide the wastewater treatment service.

Staff asks the Hearings Officer to make specific findings on this criterion.

**(B)      *Serve lands inside a nearby UGB or unincorporated community;***

**FINDING:** The applicant provided the following statement in response to this criterion:

The consolidation of all of the City's sewer system components on the land that currently serves as treatment that is currently situated outside the UGB is necessary to serve land inside the nearby Redmond UGB and its projected growth for the next 20 years and beyond.

Staff agrees with the applicant's response and finds that the proposed project will serve lands inside the Redmond UGB, as allowed by this criterion.

**(C)      *Connect to components of the sewer system lawfully located on rural lands, such as outfall or treatment facilities; or***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposal involves consolidating the City's sewer system on City land that currently serves City waste treatment needs. Serving the goal of consolidation, the proposal will relocate the treatment facilities from Dry Canyon, Redmond's existing WPCF, to the Northwest Way property (referred to in this narrative variously as the Redmond Wetlands Complex 608-acre property) and expand the existing disposal facilities on the subject property (owned by the City of Redmond) to adjacent BLM property zoned EFU. The system is an expansion and improvement to an existing treatment facility in the EFU Zone, that includes increasing capacity of conveyance through expansion of one of the interceptor pipelines that is located on rural lands in a variety of zones approximately one and one-half (1.5) miles north of the area that it serves. Redmond's WPCF was lawfully established in 1976 through County Land Use File No. SP-76-40 (See Exhibit B).

As the applicant notes above, the existing Redmond Water Pollution Control Facility (WPCF) was approved via County Land Use File No. SP-76-40. While this facility is currently within Redmond City Limits, at the time of approval, the property was within County jurisdiction and was zoned A-1, Exclusive Agricultural. The applicant indicates in their narrative that the City of Redmond will be decommissioning the existing mechanical WPCF and transitioning all operations to the subject 608-acre property.

Staff finds the increased pipeline conveyance is an improvement to the existing pipeline and will continue to connect to the area of service within the City UGB as well as the treatment facility located on rural lands.

Staff generally agrees with the applicant's response. However, staff asks the Hearings Officer to make specific findings on this issue.

**(D)      *Transport leachate from a landfill on rural land to a sewer system inside a UGB;***

**FINDING:** The applicant provided the following statement in response to this criterion:

Applicant does not propose to transport leachate from a landfill.

Staff agrees and finds the applicant is not proposing to transport leachate from a landfill and thus this criterion is not applicable.

**(b) The local government:**

- (A) Adopts land use regulations to ensure the sewer system shall not serve land outside urban growth boundaries or unincorporated community boundaries, except as authorized under section (4) of this rule; and**

**FINDING:** The applicant provided the following statement in response to this criterion:

Applicant does not propose to serve land outside Redmond's UGB or an unincorporated community. The City will adopt a land use regulation that states "the City of Redmond sewer system shall not serve land outside urban growth boundaries or unincorporated community boundaries except as authorized by OAR 660-0011-0060(4)" or other applicable law. This requirement can be imposed as a condition of approval.

Staff agrees with the applicant's response. The proposed facility and pipeline replacement will not serve land outside Redmond's UGB or an unincorporated community. To ensure compliance, staff includes a recommended condition of approval that the utility facility/sewer system shall not serve land outside urban growth boundaries or unincorporated community boundaries except as authorized by OAR 660-0011-0060(4) or other applicable law.

- (B) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.**

**FINDING:** The applicant provided the following statement in response to this criterion:

Oregon Revised Statutes (ORS) 215.296(1) and (2) require the following:

*215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.*

- (1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:**

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or*
  - (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*
- (2) An applicant for a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.*

This standard appears to apply only to property zoned EFU and that is not situated in the subsurface of public roads and highways.

To the extent relevant, no nearby lands are zoned for forest use or are in forest practices. Accordingly, the proposed use will not force a significant change in accepted forest practices on surrounding land or significantly increase the cost of accepted forest practices on surrounding lands.

There are only three properties involved in the project that are zoned EFU, not including the City's 608-acre site. The expanded pipeline will traverse those three EFU-zoned properties. The three properties possess existing facility pipelines and easements that are not in road rights-of-way. They are at 3080 NW Euston Ln, Redmond; 2827 NW Coyner Ave., Redmond and 2675 NW Coyner Ave, Redmond. The latter, 2675 NW Coyner Ave., is composed of 13.67 acres according to the county assessor; has a nonfarm dwelling approval from Deschutes County that was issued on January 13, 2017 (File No. 247-16-000359-CU); and according to Deschutes County Assessment Records, per Deschutes County DIAL, is not receiving farm deferral tax assessment. No farm uses are observed on this property.

3080 NW Euston Ln (approximately 19.81 acres) and 2827 NW Coyner Ave (approximately 19.43 acres), appear to have small-scale farm operations consisting of hay or grass. The proposed expanded pipeline will replace the existing pipeline on these properties and will be buried, and the affected ground will be restored. Any impacts will be temporary during construction and construction activity will be coordinated with the landowners. The pipeline to be upgraded already exists. Any impacts of having a subsurface pipe on the land have been accounted for in the existing farming operations. Moreover, no off-site impacts are anticipated from the upgraded pipeline, which is all underground. The proposal will not force a significant change in accepted farm practices on surrounding lands or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

Some irrigated farm fields are located approximately one-half of a mile from the proposed expanded facilities to include the replaced pipeline as well as the relocation of facilities to the existing 608-acre wetlands complex property. However, no construction or other impacts are foreseen to these properties from any part of the proposal. Accordingly, no part of the proposal will force a significant change in accepted farm practices on surrounding lands or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

In fact, the existing treatment facility is the reason there is productive farm use in the area. The facility provides irrigation water to the 138-acre orchard grass hay farm operation on the 608-acre main site, which produces roughly 830 tons of hay annually. Due to the fact that most of the properties near the Redmond Wetlands Complex are not within an irrigation district, there are very few farm operations nearby.

Staff agrees that the standard above does not apply to the portions of the project situated in the subsurface of public roads and highways. Therefore, this analysis would not apply to the pipeline replacement located in the EFU Zone and within the subsurface of public roads. No nearby lands are zoned for forest use. Therefore, the proposed use will not force a significant change in accepted forest practices on surrounding land or significantly increase the cost of accepted forest practices on surrounding lands.

Staff notes DCC 18.16.038(A)(11) requires a farm impacts analysis as it relates to the siting of a utility facility. The applicant provided a detailed response in that corresponding section. Staff incorporates that response herein by reference.

Staff generally agrees with the applicant's response contained herein as well as the response to DCC 18.16.038(A)(11). However, staff asks the Hearings Officer to make specific findings on this issue.

## **Title 22, Deschutes County Development Procedures Ordinance**

### **Chapter 22.04, Introduction and Definitions**

#### Section 22.04.040 Verifying Lots of Record.

- D. Findings; Declaratory Ruling ... If an applicant is applying for a permit listed in subsection (B)(1) that does not require public notice, or prior to applying for any permit, an applicant may request a declaratory ruling pursuant to DCC Chapter 22.40. If the lot or parcel meets the "lot of record" definition in 18.04.030, the County shall issue the declaratory ruling determining that the lot or parcel qualifies for all permits listed in subsection (B)(1). If the lot or parcel does not meet the "lot of record" definition in 18.04.030, the County shall not issue the declaratory ruling and instead shall provide the applicant information on permit options that do not***



***require verification and information on verification exceptions that may apply pursuant to subsections (B)(2).***

**FINDING:** The applicant has requested a declaratory ruling pursuant to DCC Chapter 22.40 to confirm the subject property, described below, meets the “lot of record” definition in DCC 18.04.030.

## **Chapter 22.40, Declaratory Ruling**

### Section 22.40.010, Availability of Declaratory Ruling.

**A. Subject to the other provisions of DCC 22.40.010, there shall be available for the County's comprehensive plans, zoning ordinances, the subdivision and partition ordinance and DCC Title 22 a process for:**

...

**6. Verifying that a lot of parcel meets the “lot of record” definition in 18.040.030 pursuant to DCC 22.04.040(D).**

**FINDING:** The applicant has requested a declaratory ruling pursuant to DCC Chapter 22.40 to confirm that the subject property, consisting of the five (5) tax lots listed below, meets the “lot of record” definition in DCC 18.04.030. The applicant asserts that the five (5) tax lots listed below constitute one legal lot of record.

Map and Tax Lot	Situs Address	Property Owner	Zone	Combining Zone	Lot of Record
1413300000101	5801 NORTHWEST WAY, REDMOND, OR 97756	CITY OF REDMOND	EFU	SMIA	Reviewed as part of this application. File No. 247-23-000151-LR
1412000000200	8300 NW LOWER BRIDGE WAY, TERREBONNE, OR 97760	USA	EFU / FP / RR10	LM, SMIA	Reviewed as part of this application. File No. 247-23-000151-LR
1413000002600	4250 NW LOWER BRIDGE WAY, TERREBONNE, OR 97760	USA	EFU	None	Reviewed as part of this application. File No. 247-23-000151-LR
1413000002604	NONE	CITY OF REDMOND	EFU	None	Reviewed as part of this application. File No. 247-23-000151-LR
1413290000201	NONE	CITY OF REDMOND	EFU	SMIA	Reviewed as part of this application. File No. 247-23-000151-LR

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

### **Chapter 18.04, Title, Purpose and Definitions**

#### Section 18.04.030, Definitions.

***“Lot of Record” means:***

**A. A lot or parcel at least 5,000 square feet in area and at least 50 feet wide, which conformed to all zoning and subdivision or partition requirements, if any, in effect**

***on the date the lot or parcel was created, and which was created by any of the following means:***

**FINDING:** Major historical changes in the County's subdivision, partition, and zoning requirements are outlined below.

**PL-2 – Subdivision Ordinance – September 9, 1970**

Required the approval of and recording of a subdivision plat to "Subdivide land", which was defined to mean "to partition a parcel of land into four or more parcels, any one of which, is less than ten (10) acres each for the purpose of transfer of ownership or building development, whether immediate or future, pursuant to O.R.S. 92.010."

**PL-5 – Deschutes County Zoning – November 11, 1972**

Provided zoning and minimum lot sizes for parcels created by subdivision. Because no zoning maps were adopted contemporaneously with PL-5's "approval", zoning became effective in a piecemeal fashion in the County, as maps were adopted for various geographic regions of the County.

**ZM-1 – Zoning Map – November 15, 1972**

Applied A-1 countywide agricultural zoning outside the urban areas of Redmond and Sisters, the Bend UGB, the rural service centers of Terrebonne and Tumalo, but not including certain land to the west of Bend, as well as applying PD zoning to Sunriver and Black Butte.

**ZM-2 through ZM-11 – Zoning Maps (November 15, 1972 – June 30, 1973)**

Various zoning maps were adopted for specific areas throughout the County.

**PL-7 - Deschutes County Land Partition Ordinance No. PL-7 – April 5, 1977**

Required that "no person shall partition an area or tract of land without compliance with the provisions of this ordinance".

**PL-14 Deschutes County Subdivision/Partition Ordinance–November 1, 1979**

All land division regulated.

**PL-15 – Deschutes County Zoning Ordinance of 1979 – November 1, 1979**

Updated zoning throughout the County.

Any lot(s) of record identified in this decision are at least 5,000 square feet in area and at least 50 feet wide.

- 1. By partitioning land as defined in ORS 92;***
- 2. By a subdivision plat, as defined in ORS 92, filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk;***

**FINDING:** The applicant does not assert that the subject property was created by partitioning land as defined in ORS 92 or created by a subdivision plat, as defined in ORS 92, filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk.

3. ***By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;***

**FINDING:** The applicant provided the following statement in response to this criterion:

As discussed in more detail in the following paragraphs, based on the lot of record standards in the County code, the five tax lots that are the subject property for the proposed expanded treatment system combined constitute one legal lot of record.

**Tax Lot 101, 14-13-30, Tax Lot 201, 14-13-29 and Tax Lot 2604, 14-13-00** are a combined total of 608 acres and are owned by the City of Redmond, conveyed in 1981 by U.S. Patent #36-81-0009 from Tax Lots 200 and 2600. Exhibit C. No land division process was pursued for this conveyance. The County's code does not appear to recognize this transfer via patent as lawfully dividing Tax Lots 101, 201, and 2604 from their parent parcels. If that is the case, then as a matter of law that means that until partitioned, Tax Lots 101, 201 and 2604 are simply recognized as a part of Tax Lots 200 and 2600, their parent parcels, and together are a single "lot of record" within the meaning of the DCC, as explained below.

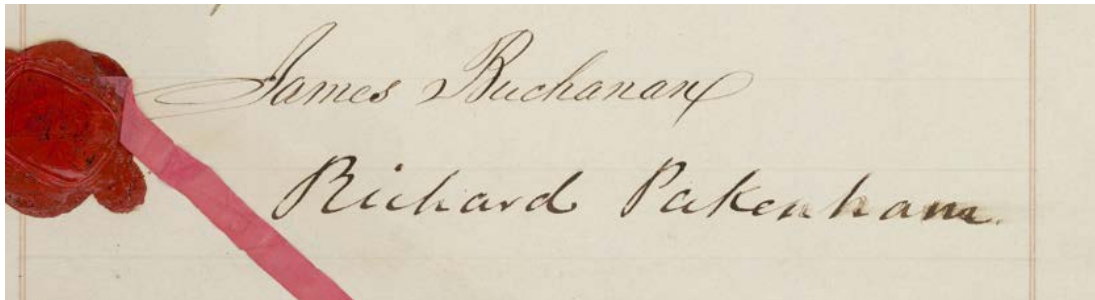
**Tax Lot 200, 14-12-00 and Tax Lot 2600, 14-13-00**

DCC 18.04.030 describes the circumstances under which a legal lot of record can be created to include "[b]y \* \* \* contract dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance." It further specifies that "If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat." These parcels are public lands owned by the United States government and were created by federal treaty before statehood and have never been subsequently divided.

As explained in *Dykes v. Arnold*, 204 Or App 154, 159 (2006), "As is true of all land in the United States north of the Ohio River and west of the Mississippi River, title to land in Oregon was originally vested in the federal government[.]" The Oregon Territory was acquired by the USA in the Adams-Onís Treaty (aka Transcontinental Treaty) of 1819, in which Spain ceded its

claims north of the 42<sup>nd</sup> parallel to the U.S.,<sup>5</sup> and with the signing of the Oregon Treaty in 1846, in which Great Britain and the U.S. agreed to U.S. ownership of land south of the 49<sup>th</sup> parallel.<sup>6</sup> The Oregon Treaty is a "contract".

The Treaty is signed and dated by the parties to the transaction, U.S. Secretary of State James Buchanan and Sir Richard Pakenham, British minister to the U.S.:



Source: [https://upload.wikimedia.org/wikipedia/commons/e/e0/Oregon\\_Treaty\\_-\\_NARA\\_-\\_299808.pdf](https://upload.wikimedia.org/wikipedia/commons/e/e0/Oregon_Treaty_-_NARA_-_299808.pdf) (Relevant portions are Exhibit C, p 30-38).

The Treaty contains a "legal description" of the property:

"From the point on the forty-ninth parallel of north latitude where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver Island; and thence southerly through the middle of said channel, and of Fuca's Straits to the Pacific Ocean; \* \* \*

The Treaty was made before any zoning or partition/subdivision requirements, County or otherwise. In fact, the Treaty was made in 1846, which is before Deschutes County was even an entity and so before any Deschutes County rules regarding partitions or subdivisions.

There were no recording requirements for treaties at the time, other than they were required to be memorialized in federal law, which the 1846 Treaty was.

Accordingly, all land described in that treaty that is still owned by the USA and has never been conveyed into private ownership is legally created and is a single "lot of record" under DCC 18.04.030(A)(3).

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<sup>5</sup> *Treaty of Amity, Settlement, and Limits Between the United States of America and His Catholic Majesty*. 1819, [https://avalon.law.yale.edu/19th\\_century/sp1819.asp](https://avalon.law.yale.edu/19th_century/sp1819.asp)

<sup>6</sup> Lang, William L. *Oregon Treaty*, 1846, <https://www.oregonencyclopedia.org/articles/oregon-treaty/#.Y8dVGXZKiUk>

In addition, the Property Clause of the United States Constitution (Article IV Sec. 3, Clause 2) gives Congress authority over federal property.<sup>7</sup> These properties are held by the BLM under the Federal Land Policy Management Act or "FLPMA", codified at 43 USC Sec 1701 et seq. Once these lands are transferred to the City as is contemplated, they will be transferred by deed under the FLPMA process established in 43 USC § 1713 and will be partitioned following County land division rules.

The applicant includes with this application, a lot of record verification application for these tax lots.

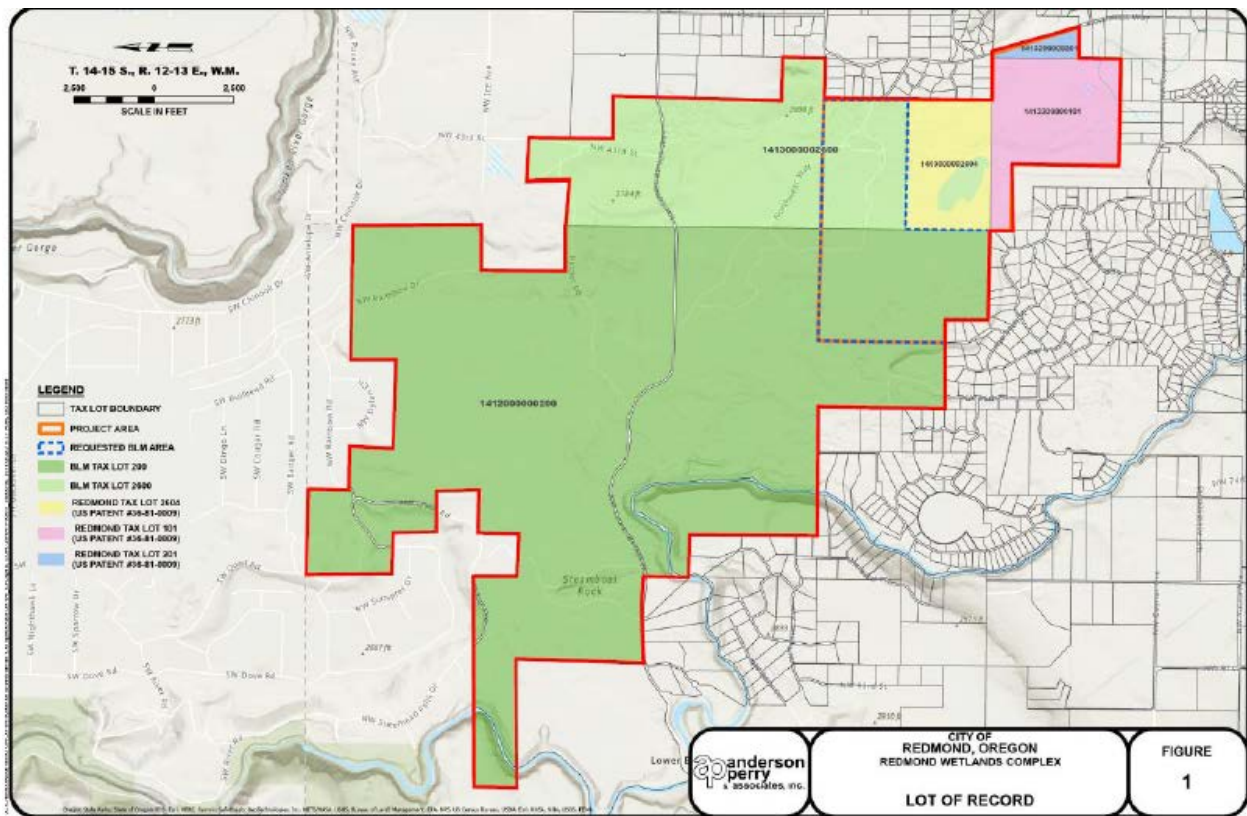
All lots and parcels subject to this application are "Lots of Record" under applicable County criteria.

The applicant provided the additional response in their May 1, 2023 incomplete response,

There can be no dispute that the subject property was a part of a much larger swath of land that was created by federal treaty before statehood. This is explained in detail the application materials. DCC 18.04.030 describes the circumstances under which a legal lot of record can be created to include "[b]y \* \* \* contract dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance." It further specifies that "If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat." As explained in the application materials, the treaty meets these specifications. There can be no dispute that the parent parcel (TL 200 and 2600) was lawfully created. The large federal lot of record is shown in red in the image below.

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<sup>7</sup> "The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."



A subsequent U.S. Patent (#36-81-0009) conveyed Tax Lot 101, 14-13-30, Tax Lot 201, 14-13-29 and Tax Lot 2604, 14-13-00 from the United States to the City in 1981, from the much larger Tax Lots 200 and 2600 federal parent parcel. The land conveyed from the federal government to the City was not divided in a land use process. County staff takes the position that in 1981 a land use process was required. If that is correct, what that means is that the subject properties are owned jointly by the federal government and by the City as tenants in common. In other words, the subject property is then merely a part of a very large legal lot of record created by treaty that the City and Federal government both have interests in. As also explained in the application, the City is willing to accept a condition of approval that it obtain partition approval from the City. But with all due respect, there is no basis for a claim that the subject property is not a legal lot of record. Tax Lot 101, 14-13-30, Tax Lot 201, 14-13-29 and Tax Lot 2604, 14-13-00 are either a legal lot of record via the 1981 patent and Tax Lots 200 and 2600 are another lot of record, or, if the 1981 patent was ineffective to divide the City parcels from the federal parent, all of the subject property is a part of the very large legal lot of record created by treaty.

As the applicant notes, Tax Lot 101, 201, and 2604 were conveyed as separate units of land in a Federal Patent dated July 8, 1981, recorded in Volume 349, Page 26, Deschutes County Book of Records. At the time of this conveyance, PL-7 governed the partitioning (dividing) of property. No records of a lawful partition were found for the division of the parent parcel into Tax Lot 101, 201, and 2604. Because the subject properties were separated at a time when the County required a partition plat to be filed, it appears to staff that Tax Lot 101, 201, and 2604 may not have been

lawfully established as three individual units of land, separate from the parent parcel (Tax Lot 200 and 2600). However, staff requests the Hearings Officer make specific findings on this issue.

If it is determined the three tax lots noted above were not lawfully partitioned, then, the applicant asserts that the five tax lots are “part of a very large legal lot of record created by treaty...” However, it is not clear to staff if the treaty referenced by the applicant in their burden of proof meets the requirements to be deemed a legal lot of record under DCC 18.04.030(A)(3). At the time of the referenced treaty, in 1846, Deschutes County did not have any zoning or land division requirements for the creation of lot(s)/parcel(s) by deed or contract. Staff requests the Hearings Officer make specific findings on this issue. Staff notes the County does not have land use authority on federal lands.

**4. *By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or***

**FINDING:** The applicant does not assert that the subject property was created by a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats.

**5. *By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel.***

**FINDING:** The applicant does not assert that the subject property was created by the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel.

**B. *Notwithstanding subsection (A), a lot or parcel validated pursuant to ORS 92.176 shall be recognized as a lot of record.***

**FINDING:** The subject property has not been validated pursuant to ORS 92.176.

**C. *The following shall not be deemed to be a lot of record:***

- 1. *A lot or parcel created solely by a tax lot segregation because of an assessor's roll change or for the convenience of the assessor.***
- 2. *A lot or parcel created by an intervening section or township line or right of way.***
- 3. *A lot or parcel created by an unrecorded subdivision, unless the lot or parcel was conveyed pursuant to subsection (A)(3) above.***
- 4. *A parcel created by the foreclosure of a security interest.***

**FINDING:** The applicant does not claim that the subject property includes a lot of record created by any of these means.



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

### Chapter 18.16, Exclusive Farm Use Zones (EFU)

#### Section 18.16.020. Uses Permitted Outright.

...

- F. *Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.***

...

- M. *Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:***
- 1. *A public right of way;***
  - 2. *Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or***
  - 3. *The property to be served by the utility.***

**FINDING:** The applicant provided the following statement in response to this criterion:

As previously described above, the corridor associated with the replacement interceptor pipeline will span across privately-owned tax lots and within public road rights-of-way which are located within the MUA-10 Zone, but also the EFU Zone. The replacement interceptor pipeline of the utility facility will be located within public rights-of-way and on land adjacent to or near a public right-of-way within existing easements with adjacent property owners. Access to the project route will be limited to occasional visits from maintenance personnel. Service lines associated with the project are an outright permitted use in the EFU and MUA-10 zones as described earlier.

The Redmond Wetlands Complex is a “utility facility necessary for public service” permitted “as of right” on EFU-zoned land under ORS 215.283(1)(c) and DCC 18.16.025(E). In 1999, the legislature adopted amendments to ORS 215.283(1)(c) that specifically includes “wetland waste treatment systems” as is proposed here as being within the scope of “utility facilities necessary for public service”. In *Cox v. Polk County*, 174 Or App 332, rev. den. 332 Or 558 (2001), a case decided before the above-referenced 1999 amendments applied, the Oregon Court of Appeals interpreted the term “utility facility” as used in ORS 215.283(1)(c), based on its plain meaning, to mean “equipment or apparatus, whether standing alone or as part of a structure, that functions to perform or provide, in whole or in part, a service such as the production, transmission, delivery or furnishing of electricity or natural gas, the purification

of drinking water, or the treatment of solid or liquid waste. The equipment comprising the facility need not be extensive or complex; in addition, the facility may include ancillary or off-site equipment \* \* \*. However, at a minimum, the facility must include some equipment or apparatus that itself performs the relevant production, transmission or similar function or service.” 174 Or App 332, 343-44 (2001).

DCC 18.04.030 provides the County’s definition of “utility facility”:

*“any major structures, excluding hydroelectric facilities, owned or operated by a public, private or cooperative electric, fuel, communications, sewage or water company for the generation, transmission, distribution or processing of its products or for the disposal of cooling water, waste or by-products, and including power transmission lines, major trunk pipelines, power substations, telecommunications facilities, water towers, sewage lagoons, sanitary landfills and similar facilities, but excluding local sewer, water, gas, telephone and power distribution lines, and similar minor facilities allowed in any zone. This definition shall not include wireless telecommunication facilities where such facilities are listed as a separate use in a zone.”*

The proposal is for major structures that are both owned and operated by the City of Redmond for the transmission and processing of wastewater. All facilities proposed are interconnected components that are designed to serve this end and only this end. All buildings are devoted exclusively to enable the transmission and processing of wastewater. Accordingly, the proposed Redmond Wetlands Complex is a “utility facility” both within the meaning of the statutory term as interpreted by Cox and the County code’s definition of the same.

The proposed facility is also “necessary for public service”. A utility facility is “necessary for public service” if the facility meets certain tests that show it must be sited on EFU zoned land in order to provide the service. DCC 18.16.038(A); ORS 215.275; OAR 660-033- 0130(16)(a); *see also McCaw Communications, Inc. v. Marion County*, 96 Or App 552, 555-56 (1989). To demonstrate that a utility facility is necessary for public service, the applicant must show that reasonable alternatives have been considered and that the facility must be sited on EFU due to one or more factors set forth in DCC 18.16.038(A)-(E)/OAR 660-033- 0130(16)(a)(A)/ORS 215.275. The proposal involves the creation of significant wetlands using effluent. Applying the factors of DCC 18.16.038(A)/OAR 660-033-0130(16)(a)(A)/ORS 215.275, it is necessary for the proposed facility to be located on EFU zoned land.

The relevant DCC 18.16.025 provisions and relevant DCC 18.16.038(A)-(E) factors are analyzed below.

Staff finds the portions of the pipeline replacement within the EFU zone will be within the subsurface of public roads and within the public right-of-way. No new land parcels will result and no removal

or displacement of buildings are proposed to occur. For these reasons, staff finds this portion of the project is permitted outright subject to any County Road Department permits or requirements.

Tax Lot 1201, 1202, and 1300 on Deschutes County Assessor's Map 14-13-29 and are private properties zoned EFU. These properties include portions of the pipeline replacement within the current easements. Staff does not consider this interceptor pipeline to be a utility service line as described above as the pipeline does not end at the point where the utility service is received by the customer. Instead, the interceptor pipeline is a major sewer line that transports flows to the wastewater treatment facility. For these reasons, staff finds the portions of the pipeline replacement on private property zoned EFU are subject to 18.16.025(E). However, staff asks the Hearings Officer to make specific findings on this issue.

Section 18.16.025. Uses Permitted Subject To The Special Provisions Under DCC Section 18.16.038 Or DCC Section 18.16.042 And A Review Under DCC Chapter 18.124 Where Applicable

***E. Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale and transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:***

- 1. DCC 18.16.038(A); or***
- 2. DCC 18.16.038(E) if the utility facility is an associated transmission line, as defined in ORS 469.300.***

**FINDING:** The applicant proposes to expand and relocate the City of Redmond's sanitary sewer treatment facilities, and replace and enlarge an existing sewage interceptor pipeline. For reference, staff includes the following definition from DCC 18.04.030:

"Utility facility" means any major structures, excluding hydroelectric facilities, owned or operated by a public, private or cooperative electric, fuel, communications, sewage or water company for the generation, transmission, distribution or processing of its products or for the disposal of cooling water, waste or by-products, and including power transmission lines, major trunk pipelines, power substations, telecommunications facilities, water towers, sewage lagoons, sanitary landfills and similar facilities, but excluding local sewer, water, gas, telephone and power distribution lines, and similar minor facilities allowed in any zone. This definition shall not include wireless telecommunication facilities where such facilities are listed as a separate use in a zone.

The proposed facility is owned and operated by the City of Redmond, which is a public government entity that provides a utility to the people it serves. The facility, both the pipeline and the treatment facility, is for the transfer, treatment, and disposal of sewage and wastewater.

Regarding whether the utility facility is 'necessary for public service,' the applicant provided the following statement:

The proposal is the expansion of the City's existing sanitary sewer treatment facilities, and the replacement and enlargement of an existing interceptor pipeline, and therefore is an expansion and improvement to an existing City of Redmond facility, thus, is a utility facility *necessary for public service*. Redmond's population is forecast to grow to roughly 58,000 people by 2045. The expansion of the treatment facility is needed to accommodate that growth.

Currently, the wastewater system can process and treat roughly 2.8 million gallons per day. This expansion will increase treatment capacity to roughly 4.6 million gallons per day to serve the projected population. Compliance with DCC 18.16.038(A) is discussed below.

At the outset we note that portions of the proposed project are not required to go through Site Plan Review under the Oregon Supreme Court's holding in *Brentmar v. Jackson County*, 321 Or 481, 496 (1995), and County staff have concurred in this conclusion. This is because the proposed facility is a use permitted "as of right" on EFU-zoned land under ORS 215.283(1)(c). In *Brentmar*, the Court decided that the uses allowed under ORS 215.281(1), to include "utility facilities necessary for public service," are uses "as of right" and local governments err if they seek to impose more stringent criteria than those in the statute. See also *Save Our Rural Oregon v. Energy Facility Siting Council*, 339 Or 353, 383, 121 P3d 1141 (2005) (citing *Brentmar*).

Because the proposed facilities are not a transmission line, as defined in ORS 469.300, the applicant addresses the provisions of DCC 18.16.038(A) below. The provisions of DCC 18.16.038(E) do not apply.

Staff incorporates the following background description provided by the applicant (Page 18 of Burden of Proof) as staff finds it relevant to this criterion:

For 45 years, the City of Redmond (City) has utilized the Effluent and Biosolids Complex on an approximate 608-acre property to the northwest of the City to repurpose and discharge all of Redmond's treated wastewater effluent and biosolids, which is where the proposed main Redmond Wetlands Complex will be located. The existing Water Pollution Control Facility (WPCF), where the wastewater is now initially treated, is located at the north end of the Dry Canyon.

The population of Redmond and surrounding areas have significantly grown since the last major WPCF Expansion in 2000. The population of Redmond and surrounding areas is expected to increase; as such, the need for an expansion of the treatment facilities is vital to serving growth.

The City plans to expand the approximately 608-acre Effluent and Biosolids Disposal Complex and transition its operation to a more sustainable and environmentally friendly treatment alternative. As early as 1984, the 608- acre Effluent and Biosolids Disposal Complex was identified as a preferred location with long-range opportunities to treat and dispose of wastewater while also offering sustainable development opportunities.

The City will be decommissioning the existing mechanical WPCF in the dry canyon and transitioning all operations to 5801 Northwest Way, Redmond (the subject 608-acre property). In addition to the City's existing approximately 608-acre Effluent and Biosolids Disposal Complex, the City now leases 35 acres on Tax Lot 200 from the Federal Bureau of Land Management, at the site where disinfected water is infiltrated into the ground.<sup>8</sup>

Due to the necessity of this waste disposal for both human and environmental health and the limited capacity of existing facilities based on anticipated demand, staff agrees with the applicant's response and finds the proposed utility facility is necessary for public service. Staff notes the public comment from Steven G. Liday raises concerns surrounding the applicant's characterization of the use as it relates to the above criterion and suggests that the applicant must demonstrate why each component of the project, including the operational buildings, must be sited on the EFU land to provide the wastewater treatment service. Staff asks the Hearings Officer to make specific findings on this issue.

Staff agrees with the applicant that the provisions of DCC 18.124 do not apply to the proposed project. The applicant proposes a utility facility, which is a use listed in ORS 215.283(1). As determined through prior rulings, including *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), the proposed use is permitted by state statute and not subject to additional local regulations. Therefore, staff finds the provisions of Chapter 18.124 do not apply to the subject application.

However, staff notes the public comment from Steven G. Liday questions the applicability of *Brentmar* to the proposed project and contends that the site plan review criteria would apply to the proposed facilities pursuant to DCC 18.124.030(B)(5). Staff asks the Hearings Officer to make specific findings on this issue.

Section 18.16.038. Special Conditions For Certain Uses Listed Under DCC 18.16.025

- A. *A utility facility necessary for public use allowed under DCC 18.16.025 shall be one that must be sited in an agricultural zone in order for service to be provided. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:***

**FINDING:** In order to meet this standard, the applicant must demonstrate why the utility facility and

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<sup>8</sup> <https://redmondwetlandscomplex.com/>

pipeline replacement needs to be sited in the EFU Zone, and show that reasonable alternatives on non-EFU land were considered. The following case law provides guidance on how infeasible an alternative site must be for it to be disqualified from consideration. The Land Use Board of Appeals (LUBA) made the following finding in a previous application for a utility facility, consisting of a cellular tower, in the EFU Zone. *Harshman v. Jackson County*, 41 Or LUBA 330, 335 (2002):

As we noted in *City of Albany v. Linn County*, 40 Or LUBA 38, 46 (2001), under ORS 215.275, an applicant who wishes to site a utility facility on EFU-zoned land must show that it is infeasible to locate the facility on land that is not zoned EFU. While the statute is somewhat ambiguous concerning how difficult development of a non-EFU-zoned site for the intended purpose must be before it can be found to be infeasible, it is quite clear that a finding that the proposed site is the *best* of the available sites is inadequate.

Staff interprets this finding to mean the subject property cannot be selected solely on the basis that it ranks best in comparison to alternate sites, when evaluated based on the factors in subsections (1-7), below. Instead, the applicant must demonstrate that other sites were considered for the utility facility, and were not feasible based on the factors below. Other cases have examined the threshold for how difficult a property must be to develop, for it to be disqualified from consideration. Further guidance is provided in the LUBA opinion below, regarding an application to site a water treatment facility in the Farm/Forest Zone. *City of Albany v. Linn County*, 40 OR LUBA 38, 47 (2001):

The core of petitioner's arguments under both assignments of error is that Millersburg has failed to demonstrate that reasonable alternatives, which would not require the use of EFU or F/F-zoned land, are not available. According to petitioner, the F/F-zoned land that Millersburg proposes to use for its proposed treatment facility and storage reservoir would not be needed for the proposed public service if the city instead utilized other feasible options... In petitioner's view, EFU or F/F-zoned land should be selected only if no other option is feasible...

Before and after adoption of ORS 215.275, the ultimate legal standard was a requirement that the applicant demonstrate that "the facility must be sited in an EFU zone in order to provide the service." That legal standard, in turn, requires that an applicant explore non-EFU-zoned alternative sites.

In this case, LUBA ruled that this criteria cannot be met without an analysis of other, non-EFU options. However, LUBA went on to find that the alternatives analysis can disqualify a non-EFU site based on any one of the factors listed in ORS 215.275(2). This LUBA decision further clarifies that the applicant is not required to consider alternate means of designing the utility facility. Staff finds this relevant to the subject application because the applicant is not required to defend their selected methods of transmission and processing of wastewater, and can narrow their alternatives analysis to properties that work best for a facility design that they have already selected. For example, the County cannot require the applicant to evaluate other methods of wastewater transmission, processing or treatment which may require less area, or are less dependent on slope and soil conditions.

The applicant included the following statement in response to this criterion:

The subject utility facility that is necessary for public use is an existing facility. The proposal involves an expansion of the existing facility on property under the ownership of the City of Redmond and USA/BLM, that is already devoted to this use. Therefore, it is not logical, nor is it practical, to seek a new site for the utility facility, as the subject property is currently devoted to utility facility uses associated with wastewater treatment. Further, the component of the existing wastewater reclamation facility that is currently located within the dry canyon in the City has no room to expand nor would such an expansion be a compatible use with the growing urban community.

Nearby non-EFU zoned land includes property in the Surface Mining (SM) zoned properties. Nearby Surface Mining zoned properties lack suitable soils for effluent disposal, as topsoil has been removed from the sites. Additionally, nearby SM zoned properties are currently devoted to surface mining activities. Other non-EFU zoned land in the area consists of MUA-10 and Rural Residential (RR-10) Zoning. However, these properties are too small in size and are devoted in one way or another to residential uses, many of which are on subdivision lots. Although, all nearby non-EFU zoned lands may be considered to be potential “alternatives”, they are not reasonable ones. These lands have been “considered” by Applicant and found to be not suitable for the proposed use. In large measure they are unsuited because they would require significant disruption to existing established private uses situated on them and they do not have any of the existing waste treatment infrastructure on them that is situated on the subject 608-acre City-owned property. Moreover, there is no requirement to demonstrate that among EFU-zoned lands, one set of lands is better than another. This is because in *Dayton Prairie Water Ass’n v. Yamhill County*, 170 Or App 6 (2000), the court explained that to show “necessity”, the applicant must demonstrate that there are no other *non-EFU*-zoned sites that could feasibly accommodate the utility facility. The court rejected an argument that the local government must compare alternative *EFU-zoned sites* and choose the site that is “least disruptive” to agriculture. 170 Or App at 11.

Factors 1-6 below are the “factors” that must be considered in demonstrating that the proposed Redmond Wetlands Complex is a “necessary” utility facility. These factors mirror LCDC’s factors for determining necessity at OAR 660-033-0130(16)(A)(i) – (vi). *See also* ORS 215.275(2). Items 7-12 are not “factors”, but rather are additional criteria that mirror LCDC’s additional criteria at OAR 660-033-0130(16)(B) – (G) (albeit in different order).

Accordingly, the application must demonstrate that the Complex is “necessary” by showing that (1) reasonable alternatives (types of facilities and locations) have been considered (see above), and (2) the Complex must be sited on EFU-zoned land due to one or more of the listed factors 1-6.

The applicant provided the following additional response in their incomplete response dated May 1, 2023, related to their consideration of alternative sites:



...

Below is an alternative site analysis of non-EFU zoned properties in the area surrounding the subject property:

**To the East:**

Abutting the property to the east, across Northwest Way, is Tax Lot 200, 14-13-29, an approximate 80.95 acre MUA-10 zoned parcel that is owned by the United States and managed by the Bureau of Land Management (BLM). Tax Lot 200 is too small to serve the City's wastewater treatment needs. And it is not desirable for the proposed facility as it directly abuts a residential subdivision, Squire Ridge Phases 1 through 3, to the east and south. This subdivision is also zoned MUA-10 and contains a total of twenty-three (23) lots that are developed with single family dwellings on lots that are approximately five (5) acres in size. Any potential impacts from noise or odor would certainly be greater on these residential lots within the Squire Ridge subdivision and parcels if the proposed facility were to be developed on Tax Lot 200. Additionally, Tax Lot 200 is physically separated from the existing facility by the County Road, Northwest Way, making it highly impractical.

Also adjoining Tax Lot 200 to the west are SM zoned tax lots (Tax lots 102, 103 and 104, 14-13-29) that are committed to surface mining usage.

**To the Northeast:**

Lots within Westwood Acres Sections 1 and 2 directly abut the subject property to the west, located on the west side of Northwest Way. This residential subdivision is zoned MUA-10, with the lots being approximately 2.5 acres in size and it is developed with single family dwellings. There is inadequate space in this residential subdivision to use to convert it to serve the City's wastewater treatment needs. All the lots in this subdivision are developed with residences in any event.

**To the North and Northwest:**

To the north and northwest of Tax Lot 200 of the subject property are two blocks of MUA-10 zoning that are committed to residential usage within Crooked River Ranch (CRR) No. 4 and No. 5, respectively. Lots within these subdivisions are committed to single-family residential uses and are too small to accommodate the use. These blocks of MUA-10 zoned subdivision lots are located approximately 2.5 miles or farther north of the nearest component of the proposed facility (future disposal wetlands on Tax Lot 2600), making them an impractical location in any event.

**To the West:**

To the west, abutting Tax Lots 101 and 200 of the subject property, proximate to Tax Lot 2604 of the subject property, are MUA-10 zoned lots within various phases of the Tetherow

Crossing subdivision, which are roughly between two and five acres in size and developed with singlefamily dwellings. There is inadequate land available in this development to establish facilities to serve the City's wastewater treatment needs.

Farther to the west of Tax Lot 200 of the subject property are MUA-10 zoned lots within Mark K Falls Estates Subdivision and River Springs Estates subdivision. Lots within these subdivisions are primarily 3.5 to 12 acres in size. There are also multiple MUA-10 zoned tax lots (many of which are partition platted parcels) outside of these subdivisions to the west that are up to 21 acres in size. Lots within these subdivisions are developed with single-family dwellings and are located over one (1) mile west of the proposed facility. None of these areas have property of sufficient size to support the proposal.

Also, abutting Tax Lot 200 of the subject property to the west, on the west side of the Deschutes River and its associated deep canyon, are lots within Lower Bridge Estates subdivision that is zoned Rural Residential, 10-acre Minimum (RR-10). Many of these lots are developed with single family dwellings that are between 6 and 10 acres in size. The closest of these RR-10 zoned lots are over 1.5 miles west of the proposed facility (including expansion of existing treatment wetland and future disposal wetlands). Here too, there is insufficient area to establish a facility for the City's waste treatment needs.

#### **To the South and Southwest:**

Properties abutting Tax Lots 101 and 201 of the subject property are zoned EFU-TRB. The property abutting Tax Lot 101 of the subject property to the west is Tax Lot 100, 14-13-33, zoned EFU-TRB, that is owned by the United States and managed by BLM. The BLM has not offered this property to the City. West and southwest of Tax Lot 100 is a large block of MUA-10 zoning comprised of smaller subdivision lots, 2.5 to 5 acres in size, within Tetherow Crossing, Phase IV Subdivision, developed with single-family dwellings, which has inadequate land to meet the City's treatment needs. Approximately one-half mile south of Tax lots 101 and 201 of the subject property is another large block of MUA-10 zoning that consists of lots within La Casa Mia Subdivision, comprising of approximate one-acre lots that are developed with single family dwellings. This also has inadequate area to satisfy the City's wastewater treatment needs. Farther south, there are small parcels developed with single-family dwellings and many devoted to hobby farm uses. These lands are also too small to satisfy the City's wastewater treatment needs. Even farther south, within this MUA-10 zoned block is Hidden Valley Mobile Estates No. 1. Subdivision, consisting of small lots (mostly .25 of an acre in size) that are developed with single-family dwellings, that has the same is – inadequate land area for the City's waste treatment needs. Beyond the block of MUA-10 zoning is property that is within the Urban Growth Boundary (UGB) of Redmond.

Properties within all of the subdivisions surrounding the subject property, referenced above, zoned either MUA-10 or RR-10, are too small to accommodate the proposed use (requiring approximately 600 acres). All of these sites in the MUA-10, RR-10 and SM Zones, addressed above, are already committed and/or developed to either residential or surface mining

usage, therefore, there are no non-EFU zoned properties in the vicinity of the proposed expanded facility that are feasible alternative sites for the proposed use, considering the factors under 18.16.038 (A).

Staff accepts the applicant's response above and notes the applicant considered reasonable, non-EFU zoned alternatives. However, staff asks the Hearings Officer to make specific findings on this issue.

Below, the applicant addresses the locational dependency of the project as well as factors 1 through 6 below.

**1. *Technical and engineering feasibility;***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed Redmond Wetlands Complex on the subject property complies with this factor as much of the utility facility on EFU lands is already devoted to this use and engineered plans demonstrate that the proposed expansion of the facilities that are already there, is feasible and of technically sound design.

The applicant provided the following additional response to this criterion in their incomplete response dated May 1, 2023:

The City's existing Water Pollution Control Facility (WPCF) at 3100 NW 19th Street, sits on roughly 30 acres on the north end of Redmond in the dry canyon. Treated effluent from this facility is conveyed to the property at 5801 Northwest Way that the City owns, through existing piping for disposal via irrigation. This existing City WPCF located at 3100 NW 19th Street has reached its capacity to treat effluent as is demonstrated in detail in the City 2019 Wastewater Facility Plan at p 54-62. In sum, that plan demonstrates that the existing "Orbal" treatment system is either at or over capacity in 2020; disinfection is projected to be at or over capacity in 2025 and the infiltration basins are projected to be at or over capacity in 2025. The waste activated sludge ("WAS") storage maximum per each month at the existing NW 19th Street facility was at capacity in 2020 and dewatering was at capacity by 2020.

The 3100 NW 19th Street property has inadequate area for long-term expansion of this system or to accommodate the new system that the City has selected to meet its current and projected wastewater treatment needs. The existing 3100 NW 19th Street site is situated in a canyon with steep basalt rock walls and simply provides no possibility of additional space for increased capacity.

To respond to City needs, the City has chosen a wetland treatment technology that will meet the City's wastewater treatment needs using created wetlands. The proposed site is large enough to provide unlimited capacity to meet the City's short and long-term waste treatment and disposal needs. Although we note that the existing disposal methodology will not change

at the Northwest Way site. The only thing that is changing at the Northwest Way site under the proposal is the addition of incoming processing using a headworks (a fully enclosed) facility, lagoons, disinfection building, and created wetlands for treatment.

The City's new treatment facility and program is environmentally beneficial and is a program requiring a large volume of land to create wetlands for tertiary treatment of the effluent. The wetland treatment area needs exceed the amount of land available at the 3100 NW 19th Street site therefore rendering it technically and spatially infeasible.

Staff finds the applicant has provided a detailed response to why the facilities must be sited on EFU-zoned land due to technical and engineering requirements. However, staff asks the Hearings Officer to make specific findings on whether the applicant has demonstrated that the facility must be sited in an exclusive farm use zone due to this factor.

***2. The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed Redmond Wetlands Complex (expansion of an existing utility facility) is locationally dependent because the subject property is owned and operated by a municipality (City of Redmond) that also manages the existing utility service (WPCF site inside the Redmond City Limits) and the water treatment facilities are existing on the EFU-zoned subject property, as well as within an existing interceptor pipeline corridor. The interceptor pipelines must cross some EFU properties in order to achieve/maintain the existing reasonably direct route between the existing WPCF inside the Redmond City Limits and the proposed expanded treatment facility. That route already exists with existing easements and any new lands would require new easements and new disruptions the proposal can avoid by being on land already devoted to these uses.

Additionally, the proposed facilities are locationally dependent as the proposal takes advantage of the existing facility compound, existing City ownership of the main 608 acres of land, a lease with BLM for use of Tax Lots 200 and 2600, existing easements and the interceptor pipelines, and existing ingress/egress easements, as well as the existing road system for the access road onto the subject property. Further, the subject property is owned and operated by a municipal utility provider and already has utility facilities. Thus, the only reasonably direct route is the one that already exists and the site should continue to be used for utilities and not encumber additional EFU lands with utilities for which they are not now devoted.

Based on the above, coupled with plans submitted with the applications, the facility is locationally dependent, as there are no suitable non-EFU zoned lands for the proposed

use and especially because the proposal is to *expand* an existing utility facility, as described above.

The applicant provided the following additional response to this criterion in their incomplete response dated May 1, 2023:

The proposed facility is locationally dependent. The City must significantly increase its wastewater treatment capacity. It cannot do that at the existing dry canyon facility. The City's existing wastewater disposal at 5801 Northwest Way is already situated on that site that is proposed to be the situs of the City's treatment facilities. It is an efficient and prudent use of scarce public funding resources to consolidate operations at the existing 5801 Northwest Way site now used for a part of the City's wastewater processing needs, which site will be a suitable size for the City's current and long-term waste treatment and disposal needs. There is already piping that connects City sewage to the 5801 Northwest Way site. Currently, that piping connects to the dry canyon treatment facility to convey the treated effluent to the 5801 Northwest Way site. Under the proposal, the existing conveyance system will continue to be used only under the proposal, untreated effluent will be conveyed directly from the existing piping that serves the user to the 5801 Northwest Way site for treatment as well as disposal. To reach the 5801 Northwest Way site, the effluent piping system now crosses and must continue to cross land zoned exclusive farm use. That already reasonably direct route now exists and the proposal merely increases the size of the existing conveyancing piping system (increasing the size of one of the two existing conveyance pipes) in order to maintain that reasonably direct route.

The City also notes that due to the large volume of acreage needed for the proposed wetland treatment technology, the City's existing WPCF site is too small for the City's wastewater treatment needs. The proposed RWC will consolidate City operations at the City's existing wastewater disposal site and will be located adjacent to the existing City effluent disposal area (orchard grass farm) and the existing City waste solids drying beds. To meet its wastewater disposal needs, the City has leased roughly 36 acres of land from the Bureau of Land Management (BLM) since 1978, for use as infiltration basins for ground water recharge. Through that relationship, the opportunity to purchase an additional 640 acres of BLM land adjacent to the existing facilities arose. Currently, the City possesses a deed allowing it exclusive use of roughly 610 acres of land which includes the existing drying beds, sewage conveyance lines, a 36-acre recycled water irrigation pond, a 146-acre orchard grass farm upon which treated effluent is sprinkled and a large buffer area.

When the City obtains the additional acreage from BLM (and, if necessary, completes a partition process to separate it from the BLM's larger holdings), the entire City site will total roughly 1,250 acres. This entire 1,250-acre City property will be used in the following manner:

- roughly 200 acres will contain lagoons, chlorine treatment, wetlands treatment and disposal wetlands.

- 146-acre orchard grass farm on which treated wastewater will be deposited as irrigation (as is currently being performed).
- 36-acre recycled water irrigation pond.
- Remaining acreage to be used as buffer from surrounding properties.

The current operation contains large acreages (610 acres owned by City + 35 acres owned by USA/BLM and leased by the City) that now provides a buffer from surrounding properties. The addition of the BLM property that the City plans to acquire and consolidate with its other holdings as a part of the proposal, provides room for the needed wetlands operations based on current population projections as well as provides additional space for expansions in the future that will be necessary in order to serve the fast-growing Redmond community. Further, the total 1,250 acres will provide a buffer from the proposed wetlands to the nearest residences.

This facility is locationally dependent for these reasons.

As noted throughout this staff report, the existing interceptor pipeline utilizes non-EFU zoned lands along the project route. However, based on the zoning of the area, the pipeline crosses lands that are in one or more areas zoned EFU. As the applicant states, the interceptor pipeline route already exists within existing easements and any new lands would require new easements and new disruptions that can be avoided by utilizing the existing pipeline route. Staff notes the applicant has proposed a preferred realignment of a portion of the pipeline as discussed later in this report. However, the alternative realignment would not be located on private, EFU-zoned properties and is addressed in the responses to DCC 18.32, 18.124 and 18.128.

Staff finds the proposed interceptor pipeline replacement, where located on private, EFU-zoned properties, is locationally dependent to take advantage of existing easements and minimize disruption to EFU-zoned lands.

Regarding the wastewater treatment facilities, staff generally agrees with the applicant's response regarding its locational dependence on EFU-zoned land. However, staff asks the Hearings Officer to make specific findings on whether the applicant has demonstrated that the facility must be sited in an exclusive farm use zone due to this factor.

### **3. *Lack of available urban and nonresource lands;***

**FINDING:** The applicant provided the following statement in response to this criterion:

There no nearby urban and nonresource lands that are suitable for the proposed use. The existing WPCF in the City of Redmond is not capable of handling the anticipated capacity resulting from expected population growth of Redmond. It is an aged system that is too small for the benign environmentally pleasing, responsible and efficient proposal here for a wetlands complex to treat City effluent. There is insufficient room on the existing parcel in the UGB to create wetlands for a complex as is proposed here. Moreover, expansion of a

wastewater treatment facility is not compatible with a rapidly growing surrounding urban environment, nor an efficient use of urban lands, as here. The interceptor pipelines exist within the established corridor that traverses multiple public road rights-of-way, eight (8) privately owned tax lots outside of the UGB and the subject property. Thus, it is most efficient, least disruptive and best for the fulfillment of the public's interests to continue using the existing 608-acre treatment facility site and existing pipeline corridors for the sewerage facilities to which they are already devoted rather than to encumber additional EFU lands with new utilities. The existing facility on the subject 608-acre property, existing rights-of-way and existing easements, is owned and operated by a municipal utility provider and already has utility facilities. The facility must be sited in an exclusive farm use zone because in part that is where these facilities already are. This factor is met.

The applicant provided the following additional response to this criterion in their incomplete response dated May 1, 2023:

As explained above, the RWC requires roughly 1,250 acres of land for effective wastewater treatment, providing adequate room for long-term expansion and appropriate buffer area. This technology, while environmentally beneficial, is land intensive. Urban land acreage of this size is not available at all and there is no other non-resource land in the vicinity of where the City's existing sewage conveyance lines already deliver wastewater.

Staff generally agrees with the applicant's response. However, staff asks the Hearings Officer to make specific findings on whether the applicant has demonstrated that the facility must be sited in an exclusive farm use zone due to this factor.

#### ***4. Availability of existing rights of way;***

**FINDING:** The applicant provided the following statement in response to this criterion:

The interceptor pipelines are within an existing and available corridor that traverses public road rights-of-way as well as private easements and will continue to be utilized. No expansion into additional rights-of-way is proposed. Therefore, this factor is met.

The applicant provided the following additional response to this criterion in their incomplete response dated May 1, 2023:

Existing rights of way are proposed to continue to be used for the conveyance of wastewater to the proposed site. The RWC will benefit from existing rights-of-way and existing sewer line easements that already provide the necessary alignment for the existing pipelines that convey wastewater to the RWC. These existing rights of way and easements will be relied on as the City replaces one of the existing 24-inch conveyance lines with a 48-inch line.

Staff generally agrees with the applicant's response. A portion of the proposed project, the interceptor pipeline replacement, will include the use of existing rights-of-way. Northwest Way, NW



Coyner and NW Pershall are zoned EFU. However, there are no nearby non-EFU zoned rights-of-way to be utilized.

**5. *Public health and safety; and***

**FINDING:** The applicant provided the following statement in response to this criterion:

The project is proposed as an expansion of the City's existing sanitary sewer treatment and disposal facilities necessary to meet the City's growing needs and address aging infrastructure concerns. Redmond has grown significantly since its first wastewater treatment facility was installed in 1978. It is projected that by 2045, Redmond's population will be 58,000, a 60% increase in the city's population today. Redmond's current wastewater system can process and treat just 2.8 million gallons per day and must be expanded in order to process and treat the 4.6 million gallons per day required to serve the projected 2045 population. Neglecting to expand the facility, as proposed, in its existing location could potentially lead to public health and safety concerns. This factor is met.

The applicant provided the following additional response to this criterion in their incomplete response dated May 1, 2023:

Public health and safety requires that the City establish a wastewater treatment facility with adequate capacity for the City's current and long-term needs. Many of the existing treatment components are already over-capacity. Establishing new wastewater conveyance routes and negotiating new easements for a new route would cause significant delay in the City's ability to provide the needed treatment capacity. Public health and safety is not served by delaying the proposal simply for the sake of establishing new conveyance locations, when there are perfectly good existing locations and existing easements that can be used and that enable efficient establishment of needed service capacity.

Staff generally agrees with the applicant that public health and safety is a limiting factor with respect to where this type of utility facility can be sited. However, staff asks the Hearings Officer to make specific findings on whether the applicant has demonstrated that the facility must be sited in an exclusive farm use zone due to this factor.

**6. *Other requirements of state and federal agencies.***

**FINDING:** The applicant provided the following statement in response to this criterion:

At present, there are no state or federal requirements that the expanded utility facility must be sited in any particular zone including not in any exclusive farm use zone. This factor does not apply.

The applicant provided the following additional response to this criterion in their incomplete response dated May 1, 2023:

At this time the only required permit will be a 1200-C (construction stormwater general permit) from the Oregon Department of Environmental Quality.

Staff finds the applicant did not assert that the facility must be sited in the EFU Zone due to this factor. Staff finds this criterion does not apply.

- 7. *Costs associated with any of the factors listed in 1-6 above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities that are not substantially similar.***

**FINDING:** The applicant provided the following statement in response to this criterion:

Applicant does not contend that the facility must be sited in an exclusive farm use zone due to cost alone under this factor. However, the cost of purchasing new land can and should be considered, particularly, because the facility exists and approximately 608 acres of the facility's land is already owned by the City of Redmond and the interceptor pipeline exists within a corridor that possesses easements and right-of-way permits. A copy of the existing easements are attached as Exhibit D to this application.

The applicant provided the following additional response to this criterion in their incomplete response dated May 1, 2023:

There is no suitable urban land for the project. The costs of acquiring new non-resource land for the project and of abandoning the existing conveyance system, establishing a conveyance system to a new site and then to the existing City drying and disposal facilities situated at the subject property is cost prohibitive, not to mention wasteful. Moreover, there are no suitable alternative non-resource lands for the proposed consolidated wastewater treatment operations, in any event.

The City reviewed County records in scanned documents and permits in Deschutes County DIAL, and did not find any complaints on record regarding the City's existing farm uses irrigated with treated effluent and or the City's existing biosolid drying or any other part of the existing facility on Northwest Way. The proposal will add treatment facilities and expanded wetlands disposal facilities to the existing disposal facilities on the Northwest Way site. Any non-resource zoned property must not only be large enough to accommodate the proposed expansion of the facility, but must also be in reasonable proximity to the existing conveyance lines and have adequate distance from residential uses (as is proposed) to provide a buffer.

Below is an alternative site analysis of non-EFU zoned properties in the area surrounding the subject property:

**To the East:**

Abutting the property to the east, across Northwest Way, is Tax Lot 200, 14-13-29, an approximate 80.95 acre MUA-10 zoned parcel that is owned by the United States and managed by the Bureau of Land Management (BLM). Tax Lot 200 is too small to serve the City's wastewater treatment needs. And it is not desirable for the proposed facility as it directly abuts a residential subdivision, Squire Ridge Phases 1 through 3, to the east and south. This subdivision is also zoned MUA-10 and contains a total of twenty-three (23) lots that are developed with single family dwellings on lots that are approximately five (5) acres in size. Any potential impacts from noise or odor would certainly be greater on these residential lots within the Squire Ridge subdivision and parcels if the proposed facility were to be developed on Tax Lot 200. Additionally, Tax Lot 200 is physically separated from the existing facility by the County Road, Northwest Way, making it highly impractical.

Also adjoining Tax Lot 200 to the west are SM zoned tax lots (Tax lots 102, 103 and 104, 14-13-29) that are committed to surface mining usage.

**To the Northeast:**

Lots within Westwood Acres Sections 1 and 2 directly abut the subject property to the west, located on the west side of Northwest Way. This residential subdivision is zoned MUA-10, with the lots being approximately 2.5 acres in size and it is developed with single family dwellings. There is inadequate space in this residential subdivision to use to convert it to serve the City's wastewater treatment needs. All the lots in this subdivision are developed with residences in any event.

**To the North and Northwest:**

To the north and northwest of Tax Lot 200 of the subject property are two blocks of MUA-10 zoning that are committed to residential usage within Crooked River Ranch (CRR) No. 4 and No. 5, respectively. Lots within these subdivisions are committed to single-family residential uses and are too small to accommodate the use. These blocks of MUA-10 zoned subdivision lots are located approximately 2.5 miles or farther north of the nearest component of the proposed facility (future disposal wetlands on Tax Lot 2600), making them an impractical location in any event.

**To the West:**

To the west, abutting Tax Lots 101 and 200 of the subject property, proximate to Tax Lot 2604 of the subject property, are MUA-10 zoned lots within various phases of the Tetherow Crossing subdivision, which are roughly between two and five acres in size and developed with singlefamily dwellings. There is inadequate land available in this development to establish facilities to serve the City's wastewater treatment needs.

Farther to the west of Tax Lot 200 of the subject property are MUA-10 zoned lots within Mark K Falls Estates Subdivision and River Springs Estates subdivision. Lots within these subdivisions are primarily 3.5 to 12 acres in size. There are also multiple MUA-10 zoned tax lots (many of which are partition platted parcels) outside of these subdivisions to the west that are up to 21 acres in size. Lots within these subdivisions are developed with single-family dwellings and are located over one (1) mile west of the proposed facility. None of these areas have property of sufficient size to support the proposal.

Also, abutting Tax Lot 200 of the subject property to the west, on the west side of the Deschutes River and its associated deep canyon, are lots within Lower Bridge Estates subdivision that is zoned Rural Residential, 10-acre Minimum (RR-10). Many of these lots are developed with single family dwellings that are between 6 and 10 acres in size. The closest of these RR-10 zoned lots are over 1.5 miles west of the proposed facility (including expansion of existing treatment wetland and future disposal wetlands). Here too, there is insufficient area to establish a facility for the City's waste treatment needs.

### **To the South and Southwest:**

Properties abutting Tax Lots 101 and 201 of the subject property are zoned EFU-TRB. The property abutting Tax Lot 101 of the subject property to the west is Tax Lot 100, 14-13-33, zoned EFU-TRB, that is owned by the United States and managed by BLM. The BLM has not offered this property to the City. West and southwest of Tax Lot 100 is a large block of MUA-10 zoning comprised of smaller subdivision lots, 2.5 to 5 acres in size, within Tetherow Crossing, Phase IV Subdivision, developed with single-family dwellings, which has inadequate land to meet the City's treatment needs. Approximately one-half mile south of Tax lots 101 and 201 of the subject property is another large block of MUA-10 zoning that consists of lots within La Casa Mia Subdivision, comprising of approximate one-acre lots that are developed with single family dwellings. This also has inadequate area to satisfy the City's wastewater treatment needs. Farther south, there are small parcels developed with single-family dwellings and many devoted to hobby farm uses. These lands are also too small to satisfy the City's wastewater treatment needs. Even farther south, within this MUA-10 zoned block is Hidden Valley Mobile Estates No. 1. Subdivision, consisting of small lots (mostly .25 of an acre in size) that are developed with single-family dwellings, that has the same is – inadequate land area for the City's waste treatment needs. Beyond the block of MUA-10 zoning is property that is within the Urban Growth Boundary (UGB) of Redmond.

Properties within all of the subdivisions surrounding the subject property, referenced above, zoned either MUA-10 or RR-10, are too small to accommodate the proposed use (requiring approximately 600 acres). All of these sites in the MUA-10, RR-10 and SM Zones, addressed above, are already committed and/or developed to either residential or surface mining usage, therefore, there are no non-EFU zoned properties in the vicinity of the proposed expanded facility that are feasible alternative sites for the proposed use, considering the factors under 18.16.038 (A).

Staff finds the analysis provided under subsections (1-6), above, do not rely on cost alone to demonstrate the utility facility is necessary for public service.

- 8. *The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.***

**FINDING:** The applicant provided the following statement in response to this criterion:

This factor provides that the owner of the utility facility shall be responsible for restoring, as nearly as possible, to its former condition any land and associated improvements that may be damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.

Applicant proposes to employ standard Erosion and Sedimentation Control Measures and Best Management Practices (BMP's) consistent with construction work in this region, which will be outlined in the contractor's Erosion and Sedimentation Control Plan, compliance with which can be made a condition of approval. Additionally, Applicant proposes to restore disturbed work areas with native seeding at a minimum and will adhere to warranted conditions of the land use approval and easement terms. This provision is met.

Staff finds construction, and associated ground disturbances will be limited to within the subject properties. Due to the large size of the subject property for the wastewater treatment facilities and the amount of undeveloped land that will remain as a buffer, staff believes it is unlikely the proposed use will damage agricultural land.

As it pertains to the pipeline replacement within EFU-zoned land, the applicant proposes to restore disturbed work areas with native seeding and adhere to any conditions of approval or easement agreement terms. However, to ensure compliance, staff recommends the following conditions of approval:

Land Restoration: The owner of the utility facility shall be responsible for restoring, as nearly as possible, to its former condition any lands zoned EFU and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.

Erosion Control Plan: Prior to the start of construction activities, the applicant shall provide an Erosion Control Plan to the Planning Division prepared by a licensed, professional engineer. Staff recommends that a licensed, professional engineer use the *Central Oregon Stormwater Manual* as the basis for the plan.

As conditioned, staff finds this criterion will be met.

- 9. *In addition to the provisions of 1-6 above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The Complex is not the “establishment” or “extension” of a sewer system as those terms are defined in OAR 660-011-0060(1). This factor is inapplicable.

Staff agrees and finds the proposed project is not the establishment or extension of a sewer system. However, Staff asks the Hearings Officer to make a specific finding on this issue.

- 10. *The provisions above do not apply to interstate gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.***

**FINDING:** The applicant provided the following statement in response to this criterion:

No interstate gas pipelines, and associated facilities are proposed. This criterion is inapplicable.

Staff agrees and finds this criterion does not apply.

- 11. *The County shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use, in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.***

**FINDING:** The applicant provided the following statement in response to this criterion:

Factor 11 provides that the County may impose only clear and objective conditions to mitigate and minimize impacts to farm practices on surrounding farmlands to prevent either a significant change in accepted farming practices or a significant increase in their costs.

No significant adverse impacts to surrounding lands devoted to farm use will occur as a result of this project. Other than the irrigated center-pivot hay fields on the City-owned portion of the subject property, the EFU-zoned land being utilized for this project is primarily undeveloped, non-irrigated land not in intensive farm use. The facility itself on the 608-acre parcel will have no impact on farming on surrounding lands. Similarly, other than temporary construction impacts, the enlargement of the City’s existing pipelines will not cause significant adverse impacts to accepted farming practices or their costs because all work will be temporary and will be coordinated with the underlying landowners. Moreover, at the

completion of the project, the interceptor pipeline will be below grade and disturbance to any impacted land will be negligible. Thus, no significant change to accepted farm practices or change in farming costs are anticipated. Therefore, no mitigation is required.

The applicant provided the following additional response to this criterion in their incomplete response dated May 1, 2023:

Regarding factor 11, the applicant has established that the proposed use would not have any negative impacts on farm uses in the area that would either cause a significant increase in the cost of accepted farming practices or a significant change in accepted farming practices. There are a very limited number of surrounding properties that are devoted to farm use – especially in the direct vicinity of where the RWC facility will be located. The wetlands will be constructed west of the City's existing pivot systems. There are no lands devoted to farm use adjacent to this area or within a distance of approximately 1,000 feet. In review of aerial photographs, the nearest agricultural operation to the west is located approximately 1.5 miles. The nearest agricultural operation to the southwest is located approximately one-half mile. Most of the lands to the west and south are dry, high desert, undulating landscape not devoted to farm use. There is also a rural residential subdivision zoned MUA-10 west and south of the property with little acreage devoted to farm use except for the noted pivot system. There are no roads that will lead to the west from the RWC further limiting any impact from vehicular traffic.

The lands to the east-northeast, contain lands devoted to farm use. A review of aerial photographs shows that there are a variety of irrigated properties located between Highway 97 and the vicinity of NW Northwest Way/NW 31st Street, approximately one-quarter mile from the subject property boundary and over one mile from the any of the proposed facilities.

Of particular note is that the existing operation which now occurs onsite does not introduce adverse impacts to the farm uses in the area. In fact, the existing operation provides irrigation water to four pivot systems and roughly 146 acres of orchard grass hay farming which produces 830 tons annually - allowing farm use in the vicinity to occur versus disrupting such uses.

The expanded operations of the RWC does not introduce activities that are disruptive to accepted farming practices or increase the costs of such practices. Operations of the head works, treatment lagoons and wetland ponds requires use of some heavy machinery but is mostly controlled through operational control devices with occasional manual maintenance. The County specifically requested information related to odor and noise. The facility relies on aeration systems and lagoons for treatment. Proper operation of the system assures that the aeration systems are working properly which manages odor. Further, the lagoons have a water cap which also contains odors. See the detailed explanation for more information on this issue. Odor from this facility will be much lower in comparison to odors emitted from allowed farm uses such as livestock operations and hemp production. The evidence is that

the proposal will not negatively impact accepted farm practices or increase the cost of allowed farming practices, significantly or otherwise.

### **Specific Response to Odor Concerns:**

To begin with, it must be noted that the proposed RWC uses a treatment process that generates far less odors than the City's existing treatment plan. Thus, odor concerns based upon the City's existing dry canyon treatment facility are inapplicable to the proposal.

Detectable off-site odors from the City's current operation originate from the biosolids operation at the Dry Canyon site. Currently, these odorous biosolids are conveyed on an open belt into trucks at the plant and then driven to and dumped on a paved drying pad at the Northwest Way site. As the concentration of biosolids moves through the current system, from aeration basins to the dump trucks, odors are generated that people off-site may note. The proposed RWC will not have any external biosolids operations as the biosolids will be contained and treated in lagoons as detailed below. Not only will the new operation eliminate external biosolids handling, it will also eliminate the current odorous activity at the existing drying pad and land application located at the Northwest Way site.

The proposed facility consists of the following treatment processes where potential for odor generation exists:

### **Headworks:**

The headworks describes the part of the proposed facility that will receive raw wastewater from the City conveyance pipes, and will screen it to remove debris. The debris that is removed is washed with equipment before it is transported into dumpsters and hauled to the landfill for disposal. The screen, washing system, transport system, and dumpsters are enclosed in the "headworks" building in order to contain possible odors

### **Lagoons:**

Lagoon technology is one of the most popular methods for wastewater treatment around the world and they have been in use for hundreds of years. Lagoons are relatively inexpensive in terms of equipment, maintenance, operating cost, energy cost and labor. When wastewater enters a lagoon that has a large volumetric capacity, it stays in the lagoon for an extended period of time. This allows bacteria to grow and remove many of the components of the wastewater. The current treatment plant in the Dry Canyon is a compact mechanical activated sludge treatment facility, which differs greatly in operation and design than the proposed Redmond Wetlands Complex lagoon natural treatment system. Lagoon treatment systems have less concentrated odors than mechanical treatment systems and when operated within design parameters produce nominal odors. The proposed lagoon cell treatment system will have 96% more water and 97% less solids concentration than the



current treatment plant aeration basins in the Dry Canyon. As a result, off-site odors are not expected. By way of comparison, consider the below:

**Current Mechanical Treatment System:**

Total Aeration Basins (\*2) Volume – 3.8 million gallons  
Aeration Basins Concentration – 2,500 parts per million

**Proposed Lagoon Treatment System:**

Total Lagoon Cells (5) Volume – 93.6 million gallons  
Lagoon Average Cells Concentration – 67 parts per million

This treatment approach creates a situation where the wastewater to be treated is diluted significantly and treated over a larger area which reduces associated odors.

**Treatment Wetlands:**

The treatment wetlands will receive oxygenated and disinfected water into a shallow wetland system. These wetlands will have a mild, moist, earthy smell, similar to the existing irrigation pond at the site.

**Disposal Wetlands:**

The Disposal Wetlands will have similar odor to the treatment wetlands except that they will at times be dry, based on City operations. During times when they are dry, they will have no odor.

The reality is that generation of odor is significantly reduced compared to the City's existing treatment facility due to the dispersed nature of the treatment processes, the diluted nature of the wastewater to be treated and the lack of solids handling. No off-site odors are anticipated from the disposal wetlands.

Because offsite odors are not anticipated, there is no reasonable possibility that there will be any offsite odors that could significantly increase the cost of accepted farming practices or significantly change accepted farming practices.

Finally, we note that the land application of biosolids is permitted by right in the Exclusive Farm Use Zone, which can and does produce odors. Deschutes County Code (DCC) Section 18.16.020 provides the following (excerpted):

**18.16.020 Uses Permitted Outright**

*The following uses and their accessory uses are permitted outright:*

1) Farm use as defined in DCC Title 18.

*14) The land application of reclaimed water, agricultural process or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone, subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246 to 215.251. For the purposes of this section, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.*

**Specific Response to ground water concerns:**

Some commentators have expressed concerns about the proposal on groundwater. Since the late 1970's the City has discharged all of its treated wastewater and biosolids at the proposed project site located at Northwest Way. To protect groundwater and all waters of the State, Oregon Department of Environmental Quality (DEQ) stringently regulates the City's operations.

City staff analyze and report to DEQ over a thousand water quality tests a year. Staff monitor and perform monthly water quality analysis at seven (7) different ground water monitoring locations at the proposed site on Northwest Way. In over forty years of discharging treated wastewater at this site the City has never had a groundwater permit violation with DEQ. While the proposed project is moving the treatment process to a new location, the discharge of the treated wastewater is largely unchanged and will continue with additional monitoring. There is no new possible groundwater impact anticipated from the proposal because the only connection between the groundwater is a connection that now exists and will continue to exist and will not change under the proposal. There has never been an issue with ground water, and none is expected. Therefore, the proposal cannot and will not have any impact on groundwater, let alone a significant one on the cost of accepted farming practices and will not cause any significant change to accepted farming practices.

**Specific Response to mosquito concerns:**

Some commentators expressed concern that the proposal will cause mosquito infestations. The proposal will create wetlands and wetland areas which are natural habitat for a variety of insects, macro invertebrates, amphibians, waterfowl, and other animal life. We note at the outset that there has not been a mosquito problem under the existing Northwest Way operations. The City has contracted mosquito monitoring for the past two years and is committed to continuing this monitoring to ensure a mosquito nuisance is not introduced in the area. If a mosquito problem occurs, the City will implement control measures.

However, many created wetland systems that treat waste similarly to what is being proposed in this instance have been analyzed to determine whether they cause an increase in mosquito populations. The conclusion of those analyses is that once a mature ecosystem has been established, mosquito predators become present and consume the mosquito population. If there is a problem in the interim, the City will address it using best practices. However, the wetland systems receiving wastewater that have been studied, have recorded lower numbers of mosquitos than that of the surrounding agricultural areas receiving irrigation, and lower than residential areas with open water ditches and irrigated lawns. Accordingly, the proposal will not have any impact on accepted farm practices or their costs regarding mosquitoes, and in the unlikely event that any problem should arise, the City will mitigate it with mosquito control measures.

### **Specific Response to Access Concerns**

There have been concerns expressed regarding access to the proposed facility and its associated traffic. At the outset we note that the truck traffic that currently trucks biosolids from the existing dry canyon site to the Norwest Way site, will stop. Therefore, the proposal results in a significant decrease in truck traffic on the surrounding road network. Access proposed for the RWC will rely on the same access that is already in place. Additional circulation will be constructed within the site but will not extend beyond the facility. In other words, no new road connections from the site to surrounding existing roads will be constructed. This reality limits the traffic to and from the site to relying on the access that already exists. This also limits impact on surrounding lands generally and imposes no significant changes or significant increased costs in accepted farm practices on surrounding lands.

### **Specific Response to Noise Concerns**

The source of noise from this facility consists of operations of farm machinery for the 146-acre orchard grass farm and vehicles driving to and from the site. These operations occur now with no noise complaints and detectable off-site noise is not expected. Regardless, these operations will overwhelmingly be conducted during regular business hours (however, occasionally an emergency may present itself outside those hours requiring that people drive around the site causing automobile noise). Noise from the irrigation machinery and trucks does not significantly adversely impact farm operations or increase the cost of such operations. These are the same types of machines and vehicles used as part of accepted farm practices, including the farm activities occurring onsite.

The proposed RWC does not introduce urban-level uses that can significantly adversely impact farm uses or increase their costs; rather, the RWC is a use that is more rural in nature than urban based on number of operators, types of operations and equipment. The RWC will continue to provide irrigation for the orchard grass farm operations contributing to farm use in the area, not detracting from it.

Potential noise impacts from the proposed use will be most prominent during the construction phase of the buildings and facilities, which would include truck traffic, excavation activities, pouring of cement and asphalt for foundations, pads and internal roads, as well as usage of contractor's tools such as saws, nail guns, impact wrenches, etc. Following completion of the proposed facility, primary noise associated with the facility would be equipment and machinery associated with the use on the EFU-zoned portion of the property as described above.

Based on the above, it is not necessary for the County to impose conditions on the applications for the proposed use in regard to mitigation or minimization of noise or odor impacts, as the use will not cause a significant change in, or cause a significant increase to, the cost of farm practices on surrounding farmlands.

*215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.*

*(1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:*

*(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or*

*(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

*(2) An applicant for a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.*

As discussed above, based on the nature of the operations for the RWC, its presence and operation will not force a significant change in nor significantly increase the costs of accepted farm practices on surrounding lands devoted to farm use. In fact, its operation will allow the continued operations of a productive orchard grass farming operation.

To the extent that any condition of approval contained in this decision require the property owner to mitigate impacts to surrounding lands devoted to farm use, staff finds such conditions are authorized by this section.

Staff notes a number of public comments identified concerns with potential odors, vector control, site security, and view impacts associated with the expanded facility. However, is not clear to staff that these comments directly relate to impacts on accepted farm practices or would result in a significant increase in the cost of farm practices on surrounding farmlands as the comments did not include enough specificity as it relates to the criterion above. Staff notes the public comment from Steven G. Liday proposes a variety of conditions of approval related to a number of concerns raised.

Staff defers to the Hearings Officer on the appropriateness of those conditions proposed and whether those specific conditions of approval or any additional conditions not already recommended are warranted under this criterion.

- 12. *Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this provision are subject to OAR 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.***

**FINDING:** The applicant provided the following statement in response to this criterion:

No workforce housing is proposed. This criterion is inapplicable.

Staff agrees and finds this criterion does not apply.

Section 18.16.060. Dimensional Standards.

- E. *Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.***

**FINDING:** The applicant provided the following statement in response to this criterion:

All proposed structures will be less than 30 feet in height from finished grade.

The applicant provided elevation drawings for proposed buildings including the headworks building, maintenance building, division building, disinfection building, electrical building, and utility cart building. Based on these elevations, staff finds all buildings will be 30 feet or less in height. As a recommended condition of approval, no building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.

Section 18.16.070. Yards.

- A. *The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.***
- B. *Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.***
- C. *Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling***

***proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.***

- D. The setback from the north lot line shall meet the solar setback requirements in Section 18.116.180.***
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.***

**FINDING:** The applicant provided the following statement in response to this criterion:

“Yard” and “setback” both mean “an open space on a lot which is unobstructed from the ground upward”. DCC 18.04.030 (Definitions, “Yard” and “Setback”). “Setbacks” are measured throughout the DCC in terms of distance from a building. See, e.g., “Setback, side” means “a setback between the front and rear yard measured horizontally at right angles from the side lot line to the nearest point of a building.” DCC 18.04.030 (Definition, “Setback, side”). The proposal is not subject to 100-foot nonfarm dwelling setbacks for side and rear yards because no nonfarm dwellings are proposed. The proposed buildings comply with the applicable setback criteria. The proposed interceptor pipeline will remain underground, thus, is not a building and therefore not subject to yard setback requirements. The interceptor pipeline includes manholes with the top of the manhole ring and cover matching finished grade, thus, are not subject to yard setbacks. The manhole standard detail drawings are I-D01 and I-D02. The proposed site plan (60% Plans, Sheet S-C01) shows that all new structures will meet these required setbacks including solar setback requirements in DCC 18.116.180.

The proposal is not subject to 100-foot nonfarm dwelling setbacks. The required setbacks for the buildings on the wastewater treatment property are 60 feet from Northwest Way and 25 feet from all other lot lines. The proposed site plan shows that all new structures will meet required setbacks under (A) to (D) above. Staff recommends the following condition of approval, structural setbacks from any north lot line shall meet the solar setback requirements in DCC 18.116.180 and in addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

Staff agrees with the applicant that the below-grade pipeline and manholes are not subject to yard and setback requirements.

Section 18.16.080. Stream Setbacks.

***To permit better light, air, vision, stream pollution control, protection of fish and wildlife areas and preservation of natural scenic amenities and vistas along streams and lakes, the following setbacks shall apply:***

- A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum***

***of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.***

- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.***

**FINDING:** There are no streams or lakes in the project vicinity.

Section 18.16.090. Rimrock Setback.

***Notwithstanding the provisions of DCC 18.16.070, setbacks from rimrock shall be as provided in DCC 18.116.160 or 18.84.090, whichever is applicable.***

**FINDING:** There is no rimrock in the project vicinity.

**Chapter 18.32, Multiple Use Agricultural Zone (MUA-10)**

The proposed interceptor pipeline will span across a total of nine (9) private properties, five (5) of which are located in the MUA-10 Zone and within portions of existing rights-of-way. The private properties are identified below.

Map and Tax Lot	Situs Address	Property Owner	Zone	Combining Zone
1413290000601	2667 NW EUSTON LN, REDMOND, OR 97756	RANDALL S SCHONING TRUST	MUA10	SMIA
1413290000600	2571 NW EUSTON LN, REDMOND, OR 97756	CARAMELLA, RONALD E & CARYN B	MUA10	SMIA
1413290000700	3085 NW EUSTON LN, REDMOND, OR 97756	PETERSON, CARINA A	MUA10	SMIA
1413290000800	5350 NORTHWEST WAY, REDMOND, OR 97756	LUNA, HELIBERTO	MUA10	SMIA
1413290000900	3000 NW WILLIAMS WAY, REDMOND, OR 97756	MEDLOCK, BRIAN & LAVON	MUA10	SMIA

Section 18.32.030, Conditional Uses Permitted.

***The following uses may be allowed subject to DCC 18.128:***

- Y. Utility facility necessary to serve the area subject to the provisions of DCC 18.124.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The area of the proposed interceptor pipeline replacement includes properties and road rights-of-way in the MUA-10 Zone as identified in Figure 1 above.

The proposed expansion of the City's existing utility facility, including replacement of an existing 24-inch diameter underground pipeline with a 48-inch diameter pipeline in the MUA-10 Zone, is an improvement to an existing water reclamation facility, therefore, is a utility facility necessary to serve the area within the Redmond UGB.

The proposed use is permitted conditionally in the MUA-10 Zone and thus can be allowed pursuant to applicable approval criteria. Compliance with DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Uses, is addressed below.

The applicant has proposed two options for a portion of the pipeline replacement alignment in the MUA-10 Zone.

Option 1 would replace the 24-inch pipeline with a 48-inch pipeline in its current alignment which runs within NW Euston Way to the point where it crosses private property (Tax Lot 700 and 800) in a northerly direction and bisects the northeast corner of Tax Lot 800. The alternative, and preferred alignment would continue west within NW Euston Lane to the connection with NW Northwest Way. The preferred alternative alignment consists of a roughly 464-foot stretch within the existing road segment on NW Euston Lane. The applicant indicates the change would require a new easement with the property owner of Tax Lot 800 (5350 Northwest Way). The applicant has addressed the criteria below as it pertains to both Option 1 and Option 2. Except for the alternative route discussed above, the applicant proposes to replace the pipeline in its current alignment along the rest of the project route. The applicant's description and discussion of the alternative alignment is included in its entirety in the application record<sup>9</sup>.

The proposed pipeline replacement is an improvement to an existing facility and is a utility facility necessary to serve the area within the Redmond UGB but is located on lands outside the UGB. The proposed use is permitted conditionally and thus can be allowed pursuant to applicable approval criteria. The applicant has provided written documentation of access agreements with property owners in the MUA-10 Zone (and EFU Zone) as noted in Figure 1A and 1B included in their May 1, 2023 incomplete response. However, to ensure compliance, staff recommends a condition of approval that the applicant shall provide to the Community Development Department written documentation of easement agreements for the sewer line construction and access, where applicable. Compliance with DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Uses, is addressed below.

#### Section 18.32.040. Dimensional Standards

***In an MUA Zone, the following dimensional standards shall apply:***

...

***D. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.***

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<sup>9</sup> Reference May 25, 2023, R. Kircher Supplemental App Mtrls



**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed facility elements in the MUA-10 Zone are underground interceptor pipelines, thus, will be well below the 30-foot height maximum. This provision is either inapplicable or is met.

Staff agrees and finds the criterion will be met.

Section 18.32.050. Yards

- A. *The front yard setback from the property line shall be a minimum of 20 feet for property fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way, and 80 feet from an arterial right of way unless other provisions for combining accesses are provided and approved by the County.***
- B. *Each side yard shall be a minimum of 20 feet. For parcels or lots created before November 1, 1979, which are one-half acre or less in size, the side yard setback may be reduced to a minimum of 10 feet. For parcels or lots adjacent to property receiving special assessment for farm use, the adjacent side yard for a dwelling shall be a minimum of 100 feet.***
- C. *Rear yards shall be a minimum of 25 feet. Parcels or lots with rear yards adjacent to property receiving special assessment for farm use, the rear yards for a dwelling shall be a minimum of 100 feet.***
- D. *The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.***
- E. *In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.***

**FINDING:** The applicant provided the following statement in response to this criterion:

As explained above, “yard” and “setback” both mean “an open space on a lot which is unobstructed from the ground upward”. DCC 18.04.030 (Definitions, “Yard” and “Setback”). “Setbacks” are measured throughout the DCC in terms of distance from a building. See, e.g., “Setback, side” means “a setback between the front and rear yard measured horizontally at right angles from the side lot line to the nearest point of a building.” DCC 18.04.030 (Definition, “Setback, side”). The proposed interceptor pipeline will remain underground, thus, is not a building, as explained above, and therefore, is not subject to yard setback requirements. As previously explained above, manholes associated with the pipeline would at or below grade, thus, are not subject to yard setbacks. This section is not applicable to the proposed replacement pipeline.

Staff agrees and finds the standards above do not apply.

Section 18.32.060. Stream Setbacks

***To permit better light, air, vision, stream pollution control, fish and wildlife areas and to preserve the natural scenic amenities and vistas along the streams and lakes, the following setbacks shall apply:***

- A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.***
- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.***

**FINDING:** There are no streams or lakes in the project vicinity.

Section 18.32.070. Rimrock Setback

***Setbacks from rimrock shall be as provided in DCC 18.116.160.***

**FINDING:** There is no rimrock in the project vicinity.

**Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)**

**FINDING:** Multiple tax lots included in the project proposal are located in the Surface Mining Impact Area (SMIA) Combining Zone in association with mine site 331 and 332. However, the applicant does not propose a noise or dust sensitive use, as defined in DCC 18.04, within the SMIA Zone, therefore, Staff finds the provisions of this chapter do not apply.

Section 18.56.030, Application of Provisions.

***The standards set forth in DCC 18.56 shall apply in addition to those specified in DCC Title 18 for the underlying zone. If a conflict in regulations or standards occurs, the provisions of DCC 18.56 shall govern.***

**FINDING:** The standards under DCC 18.56, to the extent they apply, are addressed in the following findings.

Section 18.56.040. Uses Permitted Outright.

***Uses permitted outright shall be those identified in the underlying zone(s) with which the SMIA Zone is combined.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed project is allowed in the underlying zone, the EFU-TE subzone, of which the SMIA Combining Zone is partially applied to. As explained above, the EFU zones allow “utility facilities necessary for public service” as uses permitted, subject to DCC 18.16.038. This criterion is met.

Staff agrees and finds the proposed use is allowed outright in the underlying zone and therefore permitted outright in the SMIA Zone.

Section 18.56.050 Conditional Uses Permitted

***Uses permitted conditionally shall be those identified as conditional uses in the underlying zone(s) with which the SMIA Zone is combined and shall be subject to all conditions of the underlying zone(s) as well as the conditions of the SMIA Zone.***

**FINDING:** Staff finds the portion of the pipeline replacement within the MUA10 Zone is a conditional use and is therefore conditionally allowed within the SMIA Zone. However, as staff noted above, the proposed use is not a noise or dust sensitive use and is therefore not subject to the conditions of the SMIA Zone.

Section 18.56.070. Setbacks.

***The setbacks shall be the same as those prescribed in the underlying zone, except as follows:***

- A. No noise sensitive or dust sensitive use or structure established or constructed after the designation of the SMIA Zone shall be located within 250 feet of any surface mining zone, except as provided in DCC 18.56.140; and***
- B. No noise sensitive or dust sensitive use or structure established or constructed after the designation of the SMIA Zone shall be located within one quarter mile of any existing or proposed surface mining processing or storage site, unless the applicant demonstrates that the proposed use will not prevent the adjacent surface mining operation from meeting the setbacks, standards and conditions set forth in DCC 18.52.090, 18.52.110 and 18.52.140, respectively.***
- C. Additional setbacks in the SMIA Zone may be required as part of the site plan review under DCC 18.56.100.***
- D. An exception to the 250 foot setback in DCC 18.56.070(A), shall be allowed pursuant to a written agreement for a lesser setback made between the owner of the noise sensitive or dust sensitive use or structure located within 250 feet of the proposed surface mining activity and the owner or operator of the proposed surface mine. Such agreement shall be notarized and recorded in the Deschutes County Book of Records and shall run with the land. Such agreement shall be submitted and considered at the time of site plan review or site plan modification.***

**FINDING:** No noise sensitive or dust sensitive use or structure is proposed within one quarter mile of any surface mining zone.

Section 18.56.080. Use Limitations.

***No dwellings or additions to dwellings or other noise sensitive or dust sensitive uses or structures shall be erected in any SMIA Zone without first obtaining site plan approval under the standards and criteria set forth in DCC 18.56.090 through 18.56.120.***

**FINDING:** As noted above, the project does not involve the construction of noise or dust sensitive uses. Therefore, the standards do not apply.

Section 18.56.090. Specific Use Standards.

***The following standards shall apply in the SMIA Zone:***

***New dwellings, new noise sensitive and dust sensitive uses or structures, and additions to dwellings or noise and dust sensitive uses or structures in existence on the effective date of Ordinance No. 90 014 which exceed 10 percent of the size of the existing dwelling or use, shall be subject to the criteria established in DCC 18.56.100.***

**FINDING:** This criterion does not apply to the present application.

## **Chapter 18.116, Supplementary Provisions**

Section 18.116.020, Clear Vision Areas.

- A. *In all zones, a clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height, measured from the top of the curb or, where no curb exists, from the established street centerline grade, except that trees exceeding this height may be located in this area provided all branches and foliage are removed to a height of eight feet above the grade.***

**FINDING:** The applicant provided the following statement in response to this criterion:

Applicant does not propose new intersections from or to public roads along the project route. No planting, fence, wall, structure, or temporary or permanent obstruction will be constructed within a clear vision area along the project route as well. As evident from the submitted plans, no clear vision area will be obstructed by this proposal. This criterion will be met.

Staff agrees with this statement and finds the criterion will be met.

Section 18.116.030, Off street Parking and Loading.

- A. Compliance. No building or other permit shall be issued until plans and evidence are presented to show how the off street parking and loading requirements are to be met and that property is and will be available for exclusive use as off-street parking and loading. The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.**

**FINDING:** The off-street parking requirements, to the extent they apply, for the proposed use are addressed below.

- B. Off-Street Loading. Every use for which a building is erected or structurally altered to the extent of increasing the floor area to equal a minimum floor area required to provide loading space and which will require the receipt or distribution of materials or merchandise by truck or similar vehicle, shall provide off-street loading space on the basis of minimum requirements as follows:**

- 1. Commercial, industrial and public utility uses which have a gross floor area of 5,000 square feet or more shall provide truck loading or unloading berths subject to the following table:**

<b>Sq. Ft. of Floor Area</b>	<b>No. of Berths Required</b>
<b>Less than 5,000</b>	<b>0</b>
<b>5,000-30,000</b>	<b>1</b>
<b>30,000-100,000</b>	<b>2</b>
<b>100,000 and Over</b>	<b>3</b>

**FINDING:** For the properties in the MUA-10 Zone, the applicant is not proposing any buildings and all improvements will be below grade. Therefore, no loading berth is required.

- C. Off-Street Parking. Off-street parking spaces shall be provided and maintained as set forth in DCC 18.116.030 for all uses in all zoning districts. Such off-street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 18 is changed.**

- D. Number of Spaces Required. Off-street parking shall be provided as follows:**

...

- 9. Other uses not specifically listed above shall be provided with adequate parking as required by the Planning Director or Hearings Body. The above list shall be used as a guide for determining requirements for said other uses.**

**FINDING:** As described above, the portion of the project within the MUA-10 Zone is a below grade pipeline. The applicant states, "The interceptor pipeline will only be visited sporadically by maintenance personnel. The unmanned facility will not require any dedicated parking spaces."

Based on this information, staff finds the unmanned facility will not require any dedicated parking spaces.

**E. General Provisions. Off-Street Parking.**

- 1. More Than One Use on One or More Parcels.** *In the event several uses occupy a single structure or parcel of land, the total requirement for off-street parking shall be the sum of requirements of the several uses computed separately.*
- 2. Joint Use of Facilities.** *The off-street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap at any point of time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.*
- 3. Location of Parking Facilities.** *Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located on the same parcel or another parcel not farther than 500 feet from the building or use they are intended to serve, measured in a straight line from the building in a commercial or industrial zone. Such parking shall be located in a safe and functional manner as determined during site plan approval. The burden of proving the existence of such off-premise parking arrangements rests upon the applicant.*
- 4. Use of Parking Facilities.** *Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.*
- 5. Parking, Front Yard.** *Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District, Airport Development (AD) Zone, and properties fronting Spring River Road in the Spring River Rural Commercial Zone, but such space may be located within a required side or rear yard.*

**FINDING:** Staff finds the occasional maintenance visits to the sewer line route does not require defined parking spaces; therefore, these criteria are not applicable.

- 6. On-Street Parking Credit.** *Notwithstanding DCC 18.116.030(G)(2), within commercial zones in the La Pine Planning Area and the Terrebonne and Tumalo unincorporated communities, the amount of required off-street parking can be reduced by one off-street parking space for every allowed on-street parking space adjacent to a property up to 30% of the required off-*

***street parking. On-street parking shall follow the established configurations in the parking design standards under DCC 18.116.030 Table 1.***

***To be considered for the parking credit, the proposed parking surface, along the street frontage under review, must have a defined curb line and improved as required under DCC 17.48, with existing pavement, or an engineered gravel surface. For purposes of establishing credit, the following constitutes an on-street parking space:***

- a. Parallel parking (0 degree), each 20 feet of uninterrupted curb;***
- b. Diagonal parking (60 degree), each with 11 feet of curb;***
- c. Perpendicular parking (90 degree), each with 10 feet of curb;***
- d. Curb space must be connected to the lot that contains the use;***
- e. Parking spaces that would not obstruct a required clear vision area, nor any other parking that violates any law or street standard; and***
- f. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street spaces are permitted.***

**FINDING:** No on-street parking is proposed.

- F. Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows...***
- G. Off-Street Parking Lot Design. All off-street parking lots shall be designed subject to County standards for stalls and aisles as set forth in the following drawings and table...***

**FINDING:** Staff finds that the occasional maintenance visits to the proposed sewer line route does not require defined parking spaces; therefore, these criteria are not applicable.

Section 18.116.031, Bicycle Parking.

***New development and any construction, renovation or alteration of an existing use requiring a site plan review under DCC Title 18 for which planning approval is applied for after the effective date of Ordinance 93-005 shall comply with the provisions of DCC 18.116.031.***

**FINDING:** Staff finds that the occasional maintenance visits to the proposed sewer line route does not require defined parking spaces; therefore, bicycle parking spaces are not required. These criteria do not apply.

## Chapter 18.124, Site Plan Review

As noted above, the provisions of DCC Chapters 18.124 and 18.116 of the County Zoning Ordinance, Title 18, are applicable only to the properties that fall within the MUA-10 Zone, as identified above. The pipeline replacement and improvement crosses five (5) properties in the MUA10 Zone.

The applicant has proposed two options for a portion of the pipeline replacement alignment in the MUA-10 Zone.

Option 1 would replace the 24-inch pipeline with a 48-inch pipeline in its current alignment which runs within NW Euston Way to the point where it crosses private property (Tax Lot 700 and 800) in a northerly direction and bisects the northeast corner of Tax Lot 800. The alternative, and preferred alignment would continue west within NW Euston Lane to the connection with NW Northwest Way. The preferred alternative alignment consists of a roughly 464-foot stretch within the existing road segment on NW Euston Lane. The applicant indicates the change would require a new easement with the property owner of Tax Lot 800 (5350 Northwest Way). The applicant has addressed the criteria below as it pertains to both Option 1 and Option 2. Except for the alternative route discussed above, the applicant proposes to replace the pipeline in its current alignment along the rest of the project route. The applicant's description and discussion of the alternative alignment is included in its entirety in the application record<sup>10</sup>.

The other components of this project, located in the EFU Zone, are a utility facility, which is a use listed in ORS 215.283(1). The proposed use is not subject to additional requirements of Deschutes County Code, such as the provisions of DCC 18.124. Therefore, a separate application for Site Plan review for the portion of the project in the EFU Zone is not required.

### Section 18.124.030. Approval Required.

- A. No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.**
- B. The provisions of DCC 18.124.030 shall apply to the following:**
  - 1. All conditional use permits where a site plan is a condition of approval;**
  - 2. Multiple family dwellings with more than three units;**
  - 3. All commercial uses that require parking facilities;**
  - 4. All industrial uses;**
  - 5. All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and**

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<sup>10</sup> Reference May 25, 2023, R. Kircher Supplemental App Mtrls



6. ***As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).***
7. ***Non-commercial wind energy system generating greater than 15 to 100 kW of electricity.***
- C. ***The provisions of DCC 18.124.030 shall not apply to uses involving the stabling and training of equine in the EFU zone, noncommercial stables and horse events not requiring a conditional use permit.***
- D. ***Noncompliance with a final approved site plan shall be a zoning ordinance violation.***
- E. ***As a condition of approval of any action not included in DCC 18.124.030(B), the Planning Director or Hearings Body may require site plan approval prior to the issuance of any permits.***

**FINDING:** The proposed improvements to the existing interceptor pipeline is a utility facility that serves the general public. Therefore, the provisions of this chapter apply.

Section 18.124.060. Approval Criteria.

***Approval of a site plan shall be based on the following criteria:***

- A. ***The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.***

**FINDING:** In *Father's House*, files 247-18-000061-CU, 247-18-000062-SP, 247-18-000624-A, and 247-18-000643-A, the Board of County Commissioners (Board) made the following finding regarding this standard.

The Board agrees that DCC 18.124.060(A) is subjective and, at times, difficult to apply as the Hearings Officer observed. However, as the Board interprets the provision, DCC 18.124.060(A) does not require a particularly onerous exercise. It requires an applicant to show that its proposed site plan relates "harmoniously" to the natural environment and existing development. Unlike the conditional use standards of DCC 18.128.015(B), this standard does not indicate harmony achieved with "surrounding properties." However, the Board understands that the standard implies that the proposed development shall relate harmoniously on and off the subject property and generally speaking, in the vicinity, by "minimizing visual impacts and preserving natural features including views and topographical features."

The code does not define what it means to "relate harmoniously." The Hearings Officer reported that the online Oxford Living Dictionary defines "harmoniously" to mean arranging something "in a way that forms a pleasing or consistent whole." Both parties in this case, provided various interpretations of the term "harmonious." The Board is not adopting one interpretation of the term over another as each contributes equally to this evaluation. The Board concurs with the Hearings Officer that there is no "particularly useful case law defining or applying this term." In addition, the Board agrees, that the

Hearings Officer is correct that a site plan should be approved in light of this meaning of “harmonious,” so long as the proposed site plan does not create “more disharmony than other uses allowed by right or conditionally in the MUA-10 zone.” In this regard, the Board finds that this standard presumes the use is approved and evaluates only whether the site plan for the use “relates harmoniously.” The Board finds that the proposed church site plan meets the standard set forth in DCC 18.124.060(A).

Specifically, the Board interprets DCC 18.124.060(A) to mean that an applicant must demonstrate that the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features. Minimizing visual impact, as with this case, may include introduced landscaping, design layout, and specific design elements such as siding and roofing color and material. In doing so, this enables the County decision maker to find that the site plan’s impacts create no more disharmony than other uses allowed by right or conditionally in the MUA Zone.

The Board agrees, in part, with the Hearings Officer that this standard is considered differently when compared to the term “compatibility” and its associated standard of DCC 18.128.015(B). The chief differences between the two standards is that the DCC 18.128.015(B) compatibility standard evaluates the compatibility of the proposed use on existing and projected uses of surrounding properties and does so in light of specific factors that are not reproduced in DCC 18.124.060(A). The DCC 18.124.060(A) “harmonious” standard evaluates whether a proposed site plan “relates harmoniously to existing development and the natural environment” considering whether the site plan shows that the applicant has reasonably mitigated its impacts and reasonably preserved views. The Board observes that not every use that requires site plan approval also requires a conditional use permit. However, the Board finds that it is possible that a permitted or approved use is arranged so poorly on a site, that a proposed site plan must be denied under this standard. That is not the case here.

Staff understands the Board’s findings, cited above, to make clear the use itself is not the subject of review under this criterion. Rather, this criterion only evaluates whether the site plan for the use “relates harmoniously.” Staff reads *Father’s House* to require a demonstration, “...the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features.”

The applicant provided the following statement in response to this criterion:

The area of the project that falls within the MUA-10 zone consists of paved, public road rights-of-way and five (5) residentially-developed properties that have mostly level, but some areas of mild sloping, with areas of scattered rock outcrops, small areas of farmed or cleared land and driveways. In addition to small areas of pasture or lawn, vegetation is primarily native

with juniper trees, shrubs, and native grasses. The project area will be largely unaffected with the completion of the project and will be restored to blend harmoniously with the natural environment surrounding it. The visual impacts will not change as a result of this proposed site plan. Visual impacts will be avoided, and preservation of natural features will be exercised for site plan approval.

The proposed development, including the measures proposed above, will relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.

The applicant provided the following statement in response to this criterion as it pertains to the alternative alignment discussed above and noted in the record:

The preferred alignment would be located within an existing road/access easement along the southside of 14-13-29, tax lot 800. The City will work with the property owner to discuss an easement for extension of the interceptor line within that existing easement – which is the western-most section of “NW Euston Lane.” Once constructed, the road along the new easement area would be improved to a higher standard than the existing road. This improvement will relate harmoniously with the existing development, the subsurface pipe will have no visual impacts and no natural features in the vicinity will be disrupted.

Staff agrees with the applicant’s response. Staff suggests the following conditions of approval be added to ensure compliance with this criterion.

Land Restoration: The owner of the utility facility shall be responsible for restoring, as nearly as possible, to its former condition any lands zoned MUA-10 and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.

Erosion Control Plan: Prior to the start of construction activities, the applicant shall provide an Erosion Control Plan to the Planning Division prepared by a licensed, professional engineer. Staff recommends that a licensed, professional engineer use the *Central Oregon Stormwater Manual* as the basis for the plan.

***B. The landscape and existing topography shall be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The project area for the interceptor pipeline replacement in the MUA-10 zone consists of mostly level terrain. No major alterations to the existing topography are proposed or would occur as a result of the construction and completion of the pipeline replacement. All vegetation and existing topography throughout the project route will be retained beyond what is required for temporary construction and then, even after construction, the ground will be restored to its condition with equivalent vegetation in disturbed areas as existed before construction. Any preserved trees or shrubs will be protected to the extent possible. No landscaping changes are proposed beyond what is required for the project footprint within the pipeline corridor. No other impacts to landscape and existing topography are proposed. This criterion will be met.

Staff finds the landscape and existing topography will be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. No significant changes to topography are proposed. Staff finds all trees and shrubs existing on-site, not removed by necessity of the proposed development, are “preserved trees and shrubs.” As a condition of approval, all trees and shrubs existing on-site, not removed by necessity of the proposed development, shall be protected, unless lawfully changed/removed by outright uses (such as farm use) or such change/removal is approved by future land use approvals.

***C. The site plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed development within the MUA-10 Zone will be below grade and within established easements or within public road right-of-way. Because the construction will be below grade, trenches will be backfilled, and the ground restored with native vegetation where applicable. Additionally, manholes as they are now, will be located at intervals along the main line. The manholes will be secured so not to allow easy access by public.

The proposed development is designed to provide a safe environment. Further, the project does not include any public spaces which would impact any adjoining private spaces. This criterion is met.

Staff finds this criterion requires demonstration the site is designed to address common safety hazards, including fire safety, and to address any site-specific natural hazards. Staff finds pedestrian, bicycle, and vehicle safety is addressed under sub-sections (E) and (K) of this section. With regard to fire safety, Redmond Fire & Rescue was sent a request for comment on this application. Redmond Fire & Rescue provided comments and conditions as discussed in the Public Agency Comments section. Redmond Fire & Rescue’s comments and conditions have been incorporated as recommended conditions of approval. With regard to other natural hazards, none have been identified on the site.

**D. *When appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs and Braille signs.***

**FINDING:** The Deschutes County Building Division was sent a request for comment on this application. In the State of Oregon, ORS 455.720 and 447.210 through 447.992 are administered by the Deschutes County Building Safety Division. Deschutes County Building Safety Division is required to determine if a structure is an Affected Building and if so, apply the appropriate sections of Chapter 11 and the American National Standards Institute code A117.1-2009. Consequently, the structures will comply with state and federal ADA requirements. If an Affected Building is approved, inspected and finalized by the Deschutes County Building Safety Division, it meets all code requirements as an accessible structure. Staff finds that such a review is required prior to the issuance of building permits. However, staff notes the pipeline replacement will be located underground, does not include the construction of public buildings, and are to be accessed only by designated persons. Therefore, it is not anticipated accessibility standards will be required for the pipeline replacement. Based on the nature of the proposed utility, together with the fact that the pipelines will not be open or otherwise serviced by the general public, staff finds this criterion is not applicable.

**E. *The location and number of points of access to the site, interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures shall be harmonious with proposed and neighboring buildings and structures.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed development within the MUA-10 Zone will be pipeline that is below grade and within established easements or within public road rights-of-way.

The portion of the project in the MUA-10 Zone presents no access, circulation, or parking conflicts as there are no existing or proposed buildings affected by the MUA-10 segment of the proposal, and construction activities simply consist of replacement of a below grade pipeline in the approximate same location. This criterion is met.

Staff agrees with the applicant's response and notes that no access to the pipeline is required by the public and no parking is proposed or required. Further, the project does not include the construction of public buildings or parking areas. For these reasons, Staff finds this criterion does not apply.

**F. *Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed development within the MUA-10 Zone does not propose any surface drainage

systems. This criterion is inapplicable.

Staff agrees with the applicant's response and further notes the proposed pipeline replacement will be below grade and within established or proposed easements. As noted above, the applicant plans to restore disturbed areas. For these reasons, staff finds a surface drainage system is not required and this criterion does not apply.

**G. *Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed development within the MUA-10 Zone will be below grade and within established easements or public road rights-of-way. There are no areas, structures and facilities for storage, machinery and equipment, services, loading and parking or similar accessory areas or structures proposed. This criterion is inapplicable. Regardless, the construction will be below grade and trenches will be backfilled to match existing grade and, thus, will adequately screen the development from public view, therefore, effectively minimizing adverse visual impacts on the site and neighboring properties. Furthermore, the proposal will include all County required erosion control measures and restoration and reseeding of disturbed areas and compliance may be imposed as a condition of approval.

Staff agrees with the applicant. The proposed pipeline replacement, when completed, will not be visible from public view. For these reasons, staff finds the criterion does not apply.

**H. *All above ground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.***

**FINDING:** The applicant provided the following statement in response to this criterion:

New above-ground utilities are not proposed in the MUA-10 Zone. This criterion does not apply.

Staff agrees and finds the criterion does not apply.

**I. *Specific criteria are outlined for each zone and shall be a required part of the site plan (e.g. lot setbacks, etc.).***

**FINDING:** The applicant provided the following statement in response to this criterion:

As explained above, site design review is only required for the portions of the project located in the MUA-10 Zone. The site plan includes specific criteria for the MUA-10 Zone where applicable.

Each zone affecting the subject property is identified in this decision. The applicable criteria for each zone are addressed in the findings above. This requirement is met.

***J. All exterior lighting shall be shielded so that direct light does not project off site.***

**FINDING:** The applicant has not proposed exterior lighting for the portion of the project within the MUA-10 Zone. This criterion does not apply.

***K. Transportation access to the site shall be adequate for the use.***

- 1. Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.***
- 2. Mitigation for transportation-related impacts shall be required.***
- 3. Mitigation shall meet applicable County standards in DCC 18.116.310, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed development within the MUA-10 Zone involves replacement of a 24-inch diameter pipeline with a 48-inch diameter pipeline and will be below grade and within established easements or public road rights-of-way. Access to the pipeline will be minimal as it will occur only during construction (replacement of one of the pipelines) and during maintenance or repair. The existing surrounding roadway network provides adequate transportation access to the pipeline corridor when necessary.

The Deschutes County Road Department and Deschutes County Transportation Planner were sent a request for comment on this application. No infrastructure concerns and no required improvements are identified in the record. Portions of the project in the MUA-10 Zone will be located within the road rights-of-way of Northwest Way, NW Coyner Avenue, NW Euston Lane, and NW Pershall Way. As noted by the Deschutes County Transportation Planner, the applicant will be required to comply with any County Road Department permitting requirements for work within the rights-of-way. Staff has included a recommended condition of approval to this effect. As conditioned, staff finds the criterion will be met.

Section 18.124.070. Required Minimum Standards.

- A. Private or shared outdoor recreation areas in residential developments.***  
***B. Required Landscaped Areas.***

1. ***The following landscape requirements are established for multi family, commercial and industrial developments, subject to site plan approval:***
  - a. ***A minimum of 15 percent of the lot area shall be landscaped.***
  - b. ***All areas subject to the final site plan and not otherwise improved shall be landscaped.***

**FINDING:** This project is not a residential, multi-family, commercial, or industrial development. These criteria do not apply.

2. ***In addition to the requirement of DCC 18.124.070(B)(1)(a), the following landscape requirements shall apply to parking and loading areas...***

**FINDING:** As discussed below, the proposal does not include required parking or loading areas. This criterion does not apply.

**C. *Non-motorized Access.***

1. ***Bicycle Parking. The development shall provide the number and type of bicycle parking facilities as required in DCC 18.116.031 and 18.116.035. The location and design of bicycle parking facilities shall be indicated on the site plan.***

**FINDING:** Bicycle parking standards are addressed below in DCC 18.116.031.

2. ***Pedestrian Access and Circulation:***

- a. ***Internal pedestrian circulation shall be provided in new commercial, office and multi family residential developments through the clustering of buildings, construction of hard surface pedestrian walkways, and similar techniques.***

**FINDING:** The proposal does not include new commercial, office and multi-family residential developments. This criterion does not apply.

- b. ***Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi family, public or park use.***
- c. ***Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.***



- d. ***Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method.***
- e. ***To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent slope are permitted, but are treated as ramps with special standards for railings and landings.***

**FINDING:** Staff finds that these criteria do not apply to an unoccupied utility facility, since pedestrian use of the site will be limited to occasional visits from maintenance personnel.

**D. Commercial Development Standards...**

**FINDING:** The applicant is not proposing new commercial buildings. Therefore, staff finds this criterion is not applicable.

Section 18.124.090. Right of Way Improvement Standards

***Any dedications or improvements to the road right of way required under DCC 18.124 shall meet the standards for road right of way improvements set forth in DCC Title 17 and any standards for right-of-way improvements set forth in DCC Title 18 for the particular zone in question.***

**FINDING:** Portions of the project in the MUA-10 Zone will be located within the road rights-of-way of Northwest Way, NW Coyner Avenue, NW Euston Lane, and NW Pershall Way. Neither the Deschutes County Road Department, nor the Deschutes County Transportation Planner, identified transportation infrastructure deficiencies or dedication requirements. As indicated in a foregoing finding, the Road Department may require permitting for the construction within County rights-of-way (see DCC 18.124.060(K)). Staff finds this criterion is met as conditioned.

Section 18.124.080, Other Conditions.

***The Planning Director or Hearings Body may require the following in addition to the minimum standards of DCC Title 18 as a condition for site plan approval.***

- A. ***An increase in the required yards.***
- B. ***Additional off street parking.***
- C. ***Screening of the proposed use by a fence or landscaping or combination thereof.***
- D. ***Limitations on the size, type, location, orientation and number of lights.***
- E. ***Limitations on the number and location of curb cuts.***

- F. Dedication of land for the creation or enlargement of streets where the existing street system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.**
- G. Improvement, including but not limited to paving, curbing, installation of traffic signals and constructing sidewalks or the street system that serves the proposed use where the existing street system will be burdened by the proposed use.**
- H. Improvement or enlargement of utilities serving the proposed use where the existing utilities system will be burdened by the proposed use. Improvements may include, but shall not be limited to, extension of utility facilities to serve the proposed use and installation of fire hydrants.**
- I. Landscaping of the site.**
- J. Traffic Impact Study as identified in Title 18.116.310.**
- K. Any other limitations or conditions that are considered necessary to achieve the purposes of DCC Title 18.**

**FINDING:** To the extent that any conditions of approval contained in this decision require improvement to the site beyond the minimum standards of DCC Title 18, staff finds such conditions are authorized by this section.

## **Chapter 18.128, Conditional Use**

The pipeline replacement and improvement crosses five (5) properties in the MUA-10 Zone. The provisions of DCC 18.128 of the County Zoning Ordinance, Title 18, are applicable only to the property that falls within the MUA-10 Zone. As discussed above, the applicant proposes two options<sup>11</sup> for a portion of the pipeline replacement. Both options are discussed in the findings below.

### Section 18.128.010, Operation.

- A. A conditional use listed in DCC Title 18 shall be permitted, altered or denied in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan.**
- B. In the case of a use existing prior to the effective date of DCC Title 18 and classified in DCC Title 18 as a conditional use, any change in use or lot area or an alteration of structure shall conform with the requirements for a conditional use.**

**FINDING:** The proposed conditional use is reviewed in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan.

### Section 18.128.015, General Standards Governing Conditional Uses.

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<sup>11</sup> Reference May 25, 2023, R. Kircher Supplemental App Mtrls

***Except for those conditional uses permitting individual single family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:***

***A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:***

***1. Site, design and operating characteristics of the use;***

**FINDING:** The applicant is proposing an alteration to the existing City of Redmond interceptor pipeline. The project spans five properties which are within the MUA-10 Zone. The provisions of DCC 18.128 are applicable only to the five properties that fall within the MUA-10 Zone, which includes Tax Lots 600, 601, 700, 800, 900. The following analysis considers the site, design, and operating characteristics of the use.

#### *Site and Design*

The applicant provided the following statement in response to this criterion:

Applicant does not propose any buildings for this portion of the development and all improvements will be below grade. The proposed development within the MUA-10 Zone involves replacement of a 24-inch diameter pipeline with a 48-inch diameter pipeline and will be below grade and within established easements and public road rights-of-way. The proposed replacement of the interceptor pipeline constitutes an improvement to an existing sewer system, a utility facility, in MUA-10 Zone, which is a component of a utility facility, that serves the general public. The area of the project that falls within the MUA-10 zone consists of paved, public road right-of-way and easements on five (5) residentially-developed, privately-owned, properties that have mostly level, but some areas of mild sloping, topography, with scattered rock outcrops, small areas of farmed or cleared land and driveways. The project route, consisting of the easements on these five (5) properties, and multiple road rights-of- way, will continue to be below grade. There are no significant natural site features which would preclude siting of the replacement pipelines on these properties and roadways. In addition, those areas disturbed by the project will be restored to a condition defined by the project plans and easement agreements.

Staff agrees with the applicant's characterization of the site and design characteristics of the use.

#### *Operating Characteristics*

The applicant provided the following statement in response to this criterion:

The operating characteristics include the initial construction activity for replacement of one of the 24-inch diameter pipelines with a 48-inch diameter pipeline, and after completion, periodic inspection of the site, with maintenance and repair as necessary. Trips for maintenance of the enlarged pipe will be the same as for the existing pipe – maintenance

trips will not change under the proposal. Otherwise, operating characteristics are self-contained within the pipe. The completed project will be as it is now – below grade, and neither visible nor impactful to the public.

The pipe enlargement areas under consideration are existing, and the proposal does not include new or extended pipelines, rather simply the replacement of underground pipelines with larger pipe. Thus, the proposed use under consideration is suitable considering the site, design and operating characteristics of the use.

The applicant provided the following statement in response to this criterion as it pertains to the alternative alignment discussed above and noted in the record:

The preferred alignment will provide the easement area needed for the 48-inch pipeline. The preferred alignment would follow an existing roadway easement west along NW Euston Way and connect to the NW Northwest Way right of way where the pipeline would be constructed north towards the RWC. The reason this preferred alignment was chosen was due to the operating characteristics and needed maintenance activities associated with the gravity pipeline. The site of the preferred alignment is already used as a gravel access road. The site is suitable for the construction of the interceptor. The proposed use and preferred alignment under consideration is suitable considering the site, design and operating characteristics of the use.

Staff generally agrees with the applicant's response on the operating characteristics of the proposed use. Further, staff did not receive comments from any property owner on which the pipeline and associated easement currently exists that documents any issues with the siting, design or operating characteristics of the existing pipeline. Based on the applicant's description of the facility's site, design and operating characteristics, staff finds the proposal demonstrates that the site under consideration is suitable for the proposed utility facility alteration.

## **2. *Adequacy of transportation access to the site; and***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed use in the MUA-10 Zone is simple as it involves the replacement of a 24-inch diameter pipeline with a 48-inch diameter pipeline and will be below grade and within easements and public road rights-of-way. Other than initial activities associated with construction for replacement of the pipeline and occasional required maintenance or repair, there will be no traffic impacts associated with the ongoing use. The same number and type of maintenance trips as now occur, will occur in the future – no change to maintenance needs is expected from the larger pipe. Existing access onto private property is allowed through easements with property owners. Transportation access to the site is provided by the existing roadway network and easements and has been and will continue to be adequate to access the site for the initial construction and future intermittent maintenance of the pipeline under this proposal.

The applicant provided the following statement in response to this criterion as it pertains to the alternative alignment discussed above and noted in the record:

Due to the different type of wastewater that will flow through the preferred alignment, access will be needed for routine maintenance. The existing transportation system in the area provides access to the easement. The preferred alignment provides needed access for the City's wastewater operations staff and others as needed to provide routine maintenance activities. Further the easement will be improved to a higher standard than what exists making access along that stretch adequate for maintenance as well as property access for those property owners who use that easement.

Comments from the Deschutes County Road Department and Deschutes County Transportation Planner did not identify any transportation infrastructure deficiencies. The Deschutes County Transportation Planner did note that the applicant will need to work with the County Road Department to determine which, if any permits are required to perform work in the County rights of way. Staff includes a suggested condition of approval to this effect. Comments from other agencies and the general public did not identify any transportation infrastructure deficiencies related to the pipeline replacement. Staff finds, as conditioned, the site is suitable for the proposed use based on adequacy of transportation access to the site.

**3. *The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.***

**FINDING:** The applicant provided the following statement in response to this criterion:

The proposed pipeline replacement for the utility facility will be located in the same location within the five (5) private properties and public rights-of-way as what exists. The area of the project that falls within the MUA-10 Zone consists of paved, public road right-of-way and five (5) residentially developed properties that have mostly level, but some areas of mild sloping, with areas of scattered rock outcrops, small areas of farmed or cleared land and driveways. In addition to small areas of pasture or lawn, vegetation is primarily native with juniper trees, shrubs, and grasses. The project area will be largely unaffected with the completion of the project, and will be restored to blend harmoniously with the natural environment surrounding it.

There are no known natural hazards or distinguishing natural resource values on the properties that merit protection (e.g. Goal 5 inventoried natural resources) that are any different than those experienced by other properties in Central Oregon. There are no natural or physical features on the MUA-10-zoned portion of the project that would prevent the proposed utility facility use. For these reasons, the site is suitable considering natural and physical features.

The applicant provided the following statement in response to this criterion as it pertains to the alternative alignment discussed above and noted in the record:

The preferred alignment is located along an existing access easement. Constructing a sewer line in an existing easement and improving the roadway that sits atop the proposed sewer line will not impact natural or physical features of the site. Once construction is complete and the roadway is improved to a higher standard than its current state, the project area will be largely unaffected.

There are no known natural hazards or distinguishing natural resource values on the preferred alignment property that merit protection. There are no natural or physical features on the MUA-10- zoned portion of the project that would prevent the proposed pipeline. For these reasons, the site is suitable considering natural and physical features.

The *Deschutes County Natural Hazards Mitigation Plan* (2015) identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use. Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features.

Comments from agencies and the general public did not identify any site unsuitability due to general topography, natural hazards, or natural resource values as it relate to the pipeline replacement. Staff finds there are no natural or physical features on the site that will prevent the proposed utility facility use.

***B. The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).***

**FINDING:** The applicant provided the following statement in response to this criterion:

The areas surrounding the pipeline corridor in the MUA-10 Zone consists of a mix of farm and rural residential properties with some properties exhibiting some level of farm or agricultural use. Projected uses on surrounding properties are limited by the zoning restrictions in the area, which are MUA-10, RR-10, Surface Mining (SM), Floodplain (FP) and EFU zoning. The projected pipeline replacement will have the same compatibility with existing and projected uses on surrounding properties as with the existing pipeline it will replace. The proposed pipeline replacement in the MUA-10 zoned areas of the project will be below grade and not visible to the public after construction is completed.

After construction, the area will be restored to a condition defined by the project plans and easement agreements. A majority of the route will be located outside of any area used for farm use, close to property boundaries, and/or within road right- of-way and thus will retain the existing uses, treed areas, and irrigated lands. Trips for maintenance will be the same as now and so impacts to neighboring roadways will be minimal. The proposal does not include adverse noise or glare impacts. Adverse odor conditions are not anticipated. The pipeline

will be below grade and will not interfere with the potential development of other surrounding properties with dwellings and/or farm uses.

Based on the above, coupled with the project being below grade, the proposed pipeline replacement in the MUA-10 Zone will be suitable with surrounding properties considering the siting, design, operating characteristics of the project. Following the construction phase for the pipeline replacement, the proposal will not impact any off-site transportation access. Similarly, the project will not impact any off-site natural or physical features. For these reasons, this criterion is satisfied.

The applicant provided the following statement in response to this criterion as it pertains to the alternative alignment discussed above and noted in the record:

The proposed pipeline replacement in the preferred alignment will be below grade and not visible to the public after construction is completed. A pipeline replacement in the preferred alignment location will have the same compatibility with existing and projected uses on surrounding properties as with the existing pipeline it will replace.

After construction, the preferred alignment area will be restored to a condition defined by the project plans and easement agreements. The proposal does not include adverse noise or glare impacts. Adverse odor conditions are not anticipated. The pipeline will be below grade and will not interfere with the potential development of other surrounding properties.

Based on the above, coupled with the project being below grade, the proposed pipeline replacement in the MUA-10 Zone in the preferred alignment will be suitable with surrounding properties considering the siting, design, and operating characteristics of the project. Following the construction phase for the pipeline replacement, the proposal will not impact any off-site transportation access. Similarly, the project will not impact any off-site natural or physical features.

Staff finds this this criterion requires that the proposed use must be compatible with existing and projected uses on surrounding properties. Staff finds “surrounding properties” are those that might be significantly adversely impacted by their proximity to the proposed use. Existing on surrounding properties include a mix of farm and rural residential properties with most exhibiting some level of agricultural use. Projected uses on surrounding properties are those that have received approvals or are allowed outright and are typical of development of the areas. These projected uses include residential uses and farm uses and those limited by the zoning restrictions in the area, which are EFU, RR-10, and MUA-10. The applicant mentions the Flood Plain Zone but the pipeline replacement is not located on or adjacent to any areas zoned Flood Plain. For these reasons, staff finds the project uses are likely to be similar to existing uses.

***(A)(1). Site, design and operating characteristics of the use;***

Staff finds the proposed use would be unsuitable if the siting, design and operating characteristics of the use significantly adversely impacted existing and projected uses on surrounding properties. Typically, potential adverse impacts could include visual, noise, dust, and odor impacts.

Staff finds the proposed project could cause temporary noise and dust impacts during installation and construction. Staff includes the following recommended conditions of approval to mitigate those impacts:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered, up to two times per day, if airborne dust is visible.
2. The beds of all haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes.
4. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications.
5. Use of equipment and machinery to install any trenching for utilities shall only be conducted between 7 a.m. and 10 p.m.

***(A)(2). Adequacy of transportation access to the site; and***

Staff finds the proposed use would be unsuitable if access to the site would significantly adversely impact existing and projected uses on surrounding properties. No such impacts are anticipated or identified in the record.

***(A)(3). The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.***

Staff finds the proposed use would be unsuitable if it significantly adversely impacted off-site topography, natural hazards, or natural resource values. Natural hazards on surrounding properties include wildfire. There are no significant natural resources values identified in the record on surrounding properties. As the applicant notes, a majority of the route will be located outside of any area used for farm use, close to property boundaries, and/or within road right-of-way and thus will retain the existing uses, treed areas, and irrigated lands. No offsite impacts to wildfire hazard are anticipated or identified in the record. As discussed, the project, upon completion, will be entirely below grade and does not include the construction of structures or buildings. Staff finds this criterion is satisfied.

***C. These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to insure that the standard will be met.***

**FINDING:** To the extent this decision is conditioned under DCC 18.128 criterion, Staff notes such conditions are authorized by this criterion.



The applicant suggested a condition of approval relating to the “either/or” nature of the preferred alignment. Staff has incorporated this condition into the recommended conditions of approval:

**Prior to construction of the 48-inch sewer system pipeline**, the applicant shall provide to the Community Development Department written documentation of easement agreements for the sewer line construction and access.

Section 18.128.020, Conditions.

***In addition to the standards and conditions set forth in a specific zone or in DCC 18.124, the Planning Director or the Hearings Body may impose the following conditions upon a finding that additional restrictions are warranted.***

- A. Require a limitation on manner in which the use is conducted, including restriction of hours of operation and restraints to minimize environmental effects such as noise, vibrations, air pollution, glare or odor.***
- B. Require a special yard or other open space or a change in lot area or lot dimension.***
- C. Require a limitation on the height, size or location of a structure.***
- D. Specify the size, number, location and nature of vehicle access points.***
- E. Increase the required street dedication, roadway width or require additional improvements within the street right of way.***
- F. Designate the size, location, screening, drainage, surfacing or other improvement of a parking or loading area.***
- G. Limit or specify the number, size, location, height and lighting of signs.***
- H. Limit the location and intensity of outdoor lighting and require shielding.***
- I. Specify requirements for diking, screening, landscaping or other methods to protect adjacent or nearby property and specify standards for installation and maintenance.***
- J. Specify the size, height and location of any materials to be used for fencing.***
- K. Require protection and preservation of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.***
- L. Require that a site plan be prepared in conformance with DCC 18.124.***

**FINDING:** To the extent that any conditions of approval contained in this decision require improvement to the site beyond the minimum standards of DCC Title 18, staff finds such conditions are authorized by this section.

Section 18.128.040, Specific Use Standards.

***A conditional use shall comply with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370.***

**FINDING:** As described herein, the proposed conditional use complies with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045

through DCC 18.128.370, as applicable.

## **SYSTEM DEVELOPMENT CHARGE**

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,080 per p.m. hour trip. As the proposed use will not consume additional roadway capacity as that term is commonly understood, no SDCs are triggered. The burden of proof does mention potential future public access as wetland areas can also function as quasi-parks for nature hikes, bird watching, and similar recreational activities. If the public is allowed access, then the County reserves the right to revisit the issue of SDCs.

## **IV. CONCLUSION**

Staff requests the Hearings Officer determine if the Applicant has met the burden of proof necessary to justify approval of a Conditional Use Permit, Site Plan Review, Lot of Record Verification, and Major Administrative Determination to establish the Redmond Wetlands Complex on land zoned EFU as well as the replacement of an existing interceptor pipeline along a two-mile route on lands zoned EFU and MUA-10 through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (the Deschutes County Zoning Ordinance) and applicable sections of OAR and ORS.

## **V. RECOMMENDED CONDITIONS OF APPROVAL**

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
- B.** The property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.
- C.** No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040
- D.** Structural setbacks from any north lot line shall meet the solar setback requirements in DCC 18.116.180.
- E.** In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
- F.** The utility facility/sewer system shall not serve land outside urban growth boundaries or unincorporated community boundaries except as authorized by OAR 660-0011-0060(4) or other applicable law.

- G. Prior to initiation of use and/or issuance of any building permit**, the applicant shall submit to the Planning Division correspondence from Redmond Fire & Rescue indicating all relevant access, fire and water requirements, as detailed in Section II of this decision, have been addressed or met.
- H. Prior to project construction**, the applicant of shall meet County Road Department permitting requirements and conditions regarding the work conducted with road right-of way.
- I.** To mitigate noise and dust impacts during project installation:
1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered, up to two times per day, if airborne dust is visible.
  2. The beds of all haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  3. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes.
  4. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications.
  5. Use of equipment and machinery to install any trenching for utilities shall only be conducted between 7 a.m. and 10 p.m.
- J. Prior to construction of the 48-inch sewer system pipeline**, the applicant shall provide to the Community Development Department written documentation of easement agreements for the sewer line construction and access, where applicable.
- K. Land Restoration**: The owner of the utility facility shall be responsible for restoring, as nearly as possible, to its former condition any lands zoned MUA-10 or EFU and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.
- L. Erosion Control Plan**: Prior to the start of construction activities, the applicant shall provide an Erosion Control Plan to the Planning Division prepared by a licensed, professional engineer. Staff recommends that a licensed, professional engineer use the *Central Oregon Stormwater Manual* as the basis for the plan.
- M. Prior to initiation of use and/or issuance of any building permit**, the applicant shall submit to the Planning Division correspondence from Central Oregon Irrigation District (COID) indicating all relevant comments or conditions, as detailed in Section II of this decision, have been addressed or met.

## **VI. DURATION OF APPROVAL, NOTICE, AND APPEALS**

Staff recommends the Hearings Officer include the following statement as part of any approval:

The applicant shall initiate the use for the proposed development within two (2) years of the date this decision becomes final, or obtain approval of an extension under Title 22 of the County Code, or this approval shall be void.

**This decision becomes final twelve (12) days after the date mailed**, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee, and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

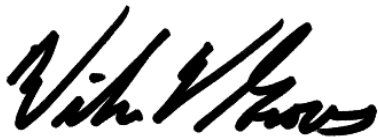
Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

**NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.**

### **DESCHUTES COUNTY PLANNING DIVISION**



Written by: Haleigh King, Associate Planner



Reviewed by: Will Groves, Planning Manager