

EXHIBIT F- Ordinance 2024-010

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

**FILE NUMBERS:** 247-24-000395-A, 247-21-001043-PA, 247-21-001044-ZC

**APPLICANT:** 710 Properties, LLC

**OWNER:** Eden Central Properties, LLC

**APPLICANT'S  
ATTORNEY:** J. Kenneth Katzaroff  
Schwabe, Williamson & Wyatt, P.C.  
360 SW Bond St, Suite #500  
Bend, OR 97702

**STAFF PLANNER:** Haleigh King, AICP, Associate Planner  
[Haleigh.King@deschutes.org](mailto:Haleigh.King@deschutes.org), 541-383-6710

**APPLICATION:** Remand of Board of Commissioners' Decision Approving a Comprehensive Plan Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area and a corresponding Zone Change to change the zoning of the subject property from Exclusive Farm Use – Terrebonne Subzone (EFU-TE) to Rural Residential (RR-10).

**SUBJECT PROPERTY:** Assessor's Map 14-12-28, Tax Lots 100, 200, 300  
Assessor's Map 14-12-28D, Tax Lot 101  
Assessor's Map 14-12-21, Tax Lots 300, 400, 500, 600 and 700

**I. PROCEDURAL HISTORY:**

This matter is on remand to the County following remand by the Land Use Board of Appeals ("LUBA") and the Court of Appeals. This decision ("Decision") addresses only those issues on remand to the County and does not revisit other findings that are outside of the scope of remand; such issues, therefore, are settled. The findings in this document supplement the findings of the Board of Commissioners' ("Board") 2022 decision that approved the plan amendment and zone change requested by 710 Properties, LLC and control over inconsistent findings in that decision, including the Hearings Officer's June 2, 2022 recommendation which was made a part of the decision. Additionally, as stated in our 2022 decision, findings in the Board's decision control over inconsistent findings in the Hearings Officer's recommendation.

The County's land use hearings officer conducted the initial hearing regarding the 710 Properties, LLC Comprehensive Plan Amendment and Zone Change applications on April 19, 2022 and recommended approval of the applications by the Deschutes County Board of Commissioners

(“Board”) in a decision dated June 2, 2022. The Board conducted a *de novo* land use hearing on August 17, 2022. The Board deliberated and voted to approve the applications on September 28, 2022. On December 14, 2022, the Board approved the applications. Appeals of that decision were filed with the Oregon Land Use Board of Appeals (“LUBA”) by Central Oregon LandWatch and the Department of Land Conservation and Development. On July 28, 2023, LUBA issued a decision remanding the applications to the County to address five specific issues. LUBA’s decision was appealed by 710 Properties, LLC, Charles Thomas and 1000 Friends of Oregon. The Oregon Court of Appeals (“Court”) affirmed LUBA’s decision on January 24, 2024. On April 5, 2024, LUBA issued a Notice of Final Judgment that found that the Court’s decision became effective April 4, 2024.

On June 25, 2024 the applicant 710 Properties, LLC initiated a review of its applications on remand. The Board held a hearing on remand on July 24, 2024 and mailed notice of the hearing to all parties to the 2022 review of the plan amendment and zone change applications on July 1, 2024 and July 9, 2024. The notice summarized and listed the issues remanded and reopened the record to address those issues. DCC 22.34.040(C) provides that issues resolved by LUBA or that were not appealed shall be deemed waived and may not be reopened. To the extent parties submitted evidence or arguments that do not relate to the issues on remand, they are not addressed by this decision because they relate to settled issues.

At the close of the hearing on July 24, 2024, the Board considered whether to conduct a second hearing due to the volume of new information filed with the County shortly before and at the public hearing. It determined that this issue could be addressed by providing a two-week long open record period that closed on August 7, 2024 for parties to file new evidence, including evidence responsive to issues raised in those documents. The Board also allowed a 7-day rebuttal period ending August 14, 2024 and a 7-day period ending August 21, 2024 for the applicant to file final argument. No objection was raised to this schedule prior to the close of the hearing. On July 26, 2024, a request was made by opponent Steve Ahlberg to hold a second hearing for the purpose of having two of the three commissioners state their reason for voting to support the plan amendment and zone change. Other opponents supported Mr. Ahlberg’s request. A second hearing was not set, however, because the Board had already decided the issue on July 24, 2024, because the hearing was not requested to address any of the issues remanded to the County by LUBA and because the reasons for supporting the approval of the 2022 decision are set out in length in the Board’s 2022 decision.

On September 4, 2024, the Board deliberated and considered all issues remanded to it by LUBA. Thereafter, it voted 2-1 to again approve the plan amendment and zone change applications. This decision supports the Board’s action.

## **II. FINDINGS AND CONCLUSIONS OF LAW:**

The Board of County Commissioners approves the requested plan designation and zone change applications for the subject property (“Property”) and provides the following supplemental findings and conclusions of law. The Board also expressly incorporates and adopts the additional findings and analysis included in **Attachment A** as a part of this Decision.

**A. Remand Issues 1 and 2: Is the Property “suitable” for farm use considering the factors under OAR 660-033-0020(1)(a)(B) if feed is imported for farm animals or if used in conjunction with other property as required by OAR 660-033-0030(3)?**

**Legal Requirements**

LUBA remanded the Board’s 2022 decision to consider whether the subject property is suitable for farm use considering whether importing feed or using the property in conjunction with adjoining and nearby lands would make the property suitable for farm use.

OAR 660-0033-0030(3) requires that “*nearby or adjacent land*, regardless of ownership, *shall be examined to the extent that a lot or parcel is \*\*\* suitable for farm use* or ‘necessary to permit farm practices to be undertaken on adjacent or nearby lands’ outside the lot or parcel.”

OAR 660-033-0030(C) applies to “adjacent or nearby agricultural lands.” Those lands were identified in our 2022 decision in findings of compliance with OAR 660-033-0030(C). Rec-98-100. 1000 Friends argued that farm practices on those lands had not been identified in our 2022 decision, but LUBA found otherwise. We refer to these lands herein as the “Study Area.” There are four properties in the Study Area that are engaged in activities that might, if conducted with an intention to make a profit in money, qualify as “farm use.” These properties are the Buchanan and Stabb property on Coyner Road and the Nicol Valley and Volwood Farms properties that adjoin Buckhorn Road. These properties and their farm practices are addressed in more detail in our findings regarding the impact of approval of this application on adjacent or nearby agricultural lands..

The suitability analysis is set out in OAR 660-033-0020(1)(a)(B).

OAR 660-033-0020(1)(a)(B) defines agricultural land as:

[I]and in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration:

- soil fertility,
- suitability for grazing,
- climatic conditions,
- existing and future availability of water for farm irrigation purposes.
- existing land use patterns,
- technological and energy inputs required, and
- accepted farming practices.

In relevant part, ORS 215.203(2)(a) states that:

*“‘farm use’ means the current employment of land for the **primary purpose of obtaining a profit in money** by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination*

*thereof.*

Emphasis added.

The definition and Oregon law require more than just having a cow or horses, growing a patch of grapes, or having a passion for rural living. What the law requires is that the land be “currently employed” for “the primary purpose of obtaining a profit in money[.]” ORS 215.203(2)(a). The primary purpose test is an objective, reasonable farmer test.

Oregon courts address profitability as an element of the definition of “agricultural land.” In *Wetherell v. Douglas County*, 342 Or 666 (2007), the Oregon Supreme Court held that profitability is a “profit in money” rather than gross income. In *Wetherell*, the Court invalidated a rule that precluded a local government from analyzing profitability in money as part of this consideration. *Id.* At 683. The Court stated:

“We further conclude that the meaning of “profitability,” as used in OAR 660-033-0030(5), essentially mirrors that of “profit.” For the reasons described above, that rule’s prohibition of any consideration of “profitability” in agricultural land use determinations conflicts with the definition of “farm use” in ORS 215.203(2)(a) and Goal 3, which permit such consideration. OAR 660-033-0030(5) is therefore invalid, because it prohibits consideration of “profitability” The factfinder may consider “profitability” which includes consideration of the monetary benefits or advantages that are or may be obtained from the farm use of the property and the costs or expenses associated with those benefits, to the extent such consideration is consistent with the remainder of the definition of “agricultural land” in Goal 3.

Finally, the prohibition in OAR 660-033-0030(5) of the consideration of “gross farm income” in determining whether a particular parcel of land is suitable for farm use also is invalid. As discussed above, “profit” is the excess or the net of the returns or receipts over the costs or expenses associated with the activity that produced the returns. To determine whether there is or can be a “profit in money” from the “current employment of [the] land \* \* \* by raising, harvesting and selling crops[.]” a factfinder can consider the gross income that is, or could be, generated from the land in question, in addition to other considerations that relate to “profit” or are relevant under ORS 215.203(2)(a) and Goal 3.

We therefore hold that, because Goal 3 provides that “farm use” is defined by ORS 215.203, which includes a definition of “farm use” as “the current employment of land for the primary purpose of obtaining a profit in money[.]” LCDC may not preclude a local government making a land use decision from considering “profitability” or “gross farm income” in determining whether land is “agricultural land” because it is “suitable for farm use” under Goal 3. Because OAR 660-033-0030(5) precludes such consideration, it is invalid.”

Emphasis added. *Id.*, at 681-683.

Opponents in the current proceeding argue extensively that it is possible to conduct agricultural practices and ranching on the subject property but typically do not claim that those practices would be conducted by a reasonable farmer for the primary purpose for obtaining a profit in money. For instance, opponents argue that the property can be used for livestock grazing for a few months in the Spring but none argue that it would support year-round grazing. This is an activity we found in our 2022 decision that would not be undertaken by a reasonable farmer with a primary purpose of making a profit in money.

### **LUBA’s Decision**

In its 710 Properties decision, LUBA faulted the County for adopting a decision which only reviewed “farm uses” and their ability to be profitable if conducted on the *subject property*, as opposed to also being used in conjunction with “nearby and adjacent” agricultural lands. This is because, LUBA reasoned, OAR 660-033-0030(3) requires consideration of uses occurring on adjacent or nearby lands when assessing the suitability of land for farm use.<sup>1</sup> 710 LUBA Decision, pg. 47-48.

LUBA also found that our 2022 decision was deficient in failing to consider the importation of feed from off-site when it found “the subject property is not suitable for the feeding, breeding, management, and sale of livestock and poultry or the stabling or training of equines for the primary purpose of obtaining a profit in money, given the” suitability factors. LUBA also faulted the County for failing to consider the suitability of conducting the on-site construction and maintenance of equipment and facilities used for a “farm use” as defined by ORS 215.203(2)(a) use to serve properties other than the subject property.<sup>2</sup>

LUBA affirmed the County’s determination that “farm use” “means the current employment of land for the primary purpose of obtaining a profit in money.” LUBA agreed that the \$345,000 annual cost of financing the \$8,635,000 cost of acquiring irrigation water rights and developing an irrigation system for a part of the 710-acre Property is a permissible consideration when evaluating whether land is suitable for farm use. LUBA determined that the Board applied the correct test of profitability – “whether a reasonable farmer would be motivated to put the land to agricultural use, for the primary purpose of obtaining a profit in money” and “whether the property is capable of farm use with a reasonable expectation of yielding a profit in money.”

LUBA deferred addressing DLCD’s substantial evidence challenge presented in DLCD’s Assignment of Error 4 (“AOE 4”). DLCD claimed that our findings regarding farm uses involving livestock or other animals were based on statements of farmers and ranchers focused on cattle grazing were conclusory and unhelpful and not “substantial evidence” to support the legal conclusion that the property is not suitable for farm use. DLCD also argued that the information provided regarding animals is “basic, fact sheet-type information that someone might glance through to learn about an animal.”

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<sup>1</sup> We address this rule in further detail below.

<sup>2</sup> We address this issue in further detail, below.

**Remand Issue 1: Is the Property “suitable” for farm use when considering adjacent or nearby lands — or in conjunction with such lands —under OAR 660-033-0030(3)?**

LUBA determined that relating the profitability of farm related activity solely to the activity on the Property places undue weight on profitability” when assessing whether land is suitable for farm use. LUBA held that the findings must consider the ability of a farmer to use the subject property in conjunction with adjacent or nearby agricultural lands with a primary purpose of obtaining a profit in money.

The Board’s 2022 decision identifies nearby or adjacent lands and the farm uses occurring thereon at Rec-97-100, the Study Area. The former Volwood Farms, Nicol Valley Farms, Stabb and Buchanan properties are the only Study Area properties engaged in activities that constitute farm use if conducted with a reasonable expectation of making a profit in money. The Buchanan property is the only property in the Study Area identified as keeping livestock. As determined in 2022, the subject property alone is not suitable for irrigated agriculture due to the prohibitive cost of financing the acquisition of water rights and the development and operation of wells, pumps and irrigation pivots. All other properties in the study area are engaged in crop production that is dependent on irrigation water obtained by pumping groundwater from the aquifer.

The Buchanans use their nearby property for wintering and calving cattle. They claim that the Keystone cattle operation is profitable<sup>3</sup> and that the Eden Central property is “suitable for grazing on at least a seasonal basis, with an eye to making a profit by so doing.” 2024-07-24 Buchanan letter, p. 2. They claim to need to lease or make use of 700-900 non-irrigated acres [Eden Central] near their small ranch to expand their cattle operation and to store farm equipment and horses. 2024-07-24 Buchanan letter, p. 5. In Mr. Buchanan’s combined use plan, he would use the property from April or May until early August which we refer to as Spring or seasonal grazing herein. He would not keep cattle on the Property during other months. He would not feed them hay in that location. This plan confirms the opinion of Rancher Rand Campbell the Property is not a suitable place to feed cattle in winter months. Cattle are typically wintered on feeding grounds in low lying areas that provide cover from the elements; not on the top of a plateau where it is especially cold and windy. Rec-3022.

Mr. Buchanan claims it is feasible to farm “grounds such as this [Eden Central] and make a profit.” He claims that forage production can be increased, without irrigation, by planting additional drought tolerant grasses (crested or Siberian wheatgrass), which may be introduced via broadcasting (by airplane) rather than by drilling. Soils scientist Brian Rabe rebutted this claim with his professional opinion, backed by NRCS-provided information, that:

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<sup>3</sup> This is a change from 2022 when the Keystone business plan acknowledged a lack of profitability and its website included a cartoon that indicated that the business was losing money. Since 2022, the Keystone operation has contracted due to the sale of one of the two Powell Butte properties where Keystone cattle graze on irrigated pastures. The Buchanans offer no explanation of how Keystone can now be profitable with a smaller cattle operation. It is generally understood, that a large cattle operation is necessary to obtain a profit due to economies of scale. See, Rec-3155 (the average ranch runs about 800 cow-calf pairs; according to former OSU Extension Agent Tim DeBoodt, 200 to 250 pairs minimum without debt and low overhead is needed for a ranch to be profitable).

“[W]ithout irrigation, the very low water holding capacity [of most of the soil on the Property] precludes any significant improvement in forage yields since even drought tolerant species require water to grow harvestable (grazable) biomass. The available water holding capacity exacerbates the very low average precipitation (about 10 inches or less).” Applicant’s Exhibit 36.

“Mr. Buchanan has asserted numerous times that crested wheatgrass is a drought tolerant species that would improve forage production at this site and could be broadcast seeded. However, the NRCS, in their Plant Fact Sheet for Crested Wheatgrass states \*\*\* crested wheat grass should be seeded with a drill at a depth of ½ inch or less on medium to fine textured soils and 1 inch or less on coarse textured soils. \*\*\* The site predominantly consists of shallow and rocky Class VII soils that would preclude the use of a drill for establishment and that has a very low water holding capacity to support the production of additional grazable biomass.” Applicant’s Exhibit 76.

We find Mr. Rabe’s opinion more persuasive than that of Mr. Buchanan due to Mr. Rabe’s soils expertise and confirmation of his opinion by the NRCS, an independent government agency that employs persons with expertise on this topic.

Mr. Buchanan also claims that bulls could be raised on the Eden Central property despite the rocky hillsides and uneven terrain. This evidence indicates that cattle could be grazed on much of the subject property, but it does not demonstrate that such an operation would be conducted with an intention to make a profit in money. Mr. Buchanan does not claim that it would or that it would generate more income than would be realized using the Property as a part of the cow-calf grazing operation they currently conduct. Evidence from former owners of the Volwood Farms property also suggests, that the grazing of the property by bulls or any other cattle would not be successful. They advised that they would not graze cattle on most of the Property because the cattle would lose weight due to the lack of forage and steep terrain. Buchanans sell directly to the consumer. They filed a part of a business plan for Keystone Natural Beef. The plan lists “start-up costs” of \$300,000. It states that income, balance and cash flow statements for the business plan are in the appendix but these appendices were not provided to the County. The Keystone “business plan” states “[p]ast 3 year Tax Returns for ranching operation available upon request.” The applicant requested the returns to assess the viability of combined operations but the Buchanans declined to provide the returns and declined to provide any more specific information regarding their size, scope, income, or costs related to Keystone. The Board thus relies upon the public statements made by Keystone, which demonstrate that it operates on irrigated pasture lands, only. In fact, Keystone Natural Beef grazes cattle on irrigated pasture land it owns in Powell Butte, Oregon. Ms. Buchanan told the County in 2022 that “we buy the irrigated land, we turn the places into Airbnbs or rentals, so that pays for our irrigated ground.” Ms. Buchanan recently sold one of her two Powell Butte irrigated properties – indicating that the Keystone business is contracting rather than expanding – rebutting the Buchanans’ claim that the Eden Central property is needed to allow for the expansion of the Keystone Natural Beef business. Ms. Buchanan opted not to purchase other available and suitable adjoining and nearby dryland grazing land – suggesting that this type of land is not actually needed by Keystone.

The Buchanans and Keystone have never made a formal offer to lease or purchase the Eden Central property. They have purchased other properties instead, including irrigated pasture land in Powell Butte. The Board, based on these and other discrepancies, finds the Buchanans' testimony to be less credible than testimony provided by area experts, farmers, and ranchers on the same topics.

Rancher Rand Campbell assessed the viability of operating a combined cattle operation on the Buchanan Coyner Avenue and Eden Central properties. Applicant's Exhibits 73 and 111. He found that combined operations would not be profitable and would not be undertaken by a reasonable farmer with an intention of making a profit in money. Due to the lack of information on revenues and expenditures for Keystone, Mr. Campbell relied on the accepted farm practice of raising and selling cattle at auction to estimate cattle revenue. His results are credible and consistent with those of an OSU Extension Service study of livestock economics that showed losses for Eastern Oregon cattle operations ranging in size from 150 to 400 head of cattle, even where dryland grazing occurred on BLM rangeland at highly favorable lease rates. Applicant's Exhibit 1 (also filed by DLCD). This testimony is also supported by other experts, such as Russ Mattis, Jim Stirewalt, Matt Cyrus, and the former owners of the Volwood Farms property.

Mr. Buchanan criticized Mr. Campbell's Exhibit 73 evidence in his final rebuttal comments. He claims, without any factual support, that the State Department of Agriculture calculation of AUMs which were relied on by Mr. Campbell "don't take into account rotational grazing management or introducing drought-tolerant grasses." B. Buchanan letter, August 14, 2024. Mr. Buchanan, however, offers no factual support for this claim and expert evidence in the record shows that introducing additional drought-tolerant grasses on the subject property is not feasible and would have no measurable impact on forage production. We find that the AUM estimates provided by the State of Oregon Department of Agriculture are conservative (5 to 10 acres per AUM) when compared to the level of grazing allowed by the BLM on the Cline Butte allotment (15+ acres per AUM) and the level of grazing that is typical for dry land grazing of similar Eastern Oregon lands (40 acres per AUM per Pam Mayo-Phillips). Consequently, we find it reasonable for Mr. Campbell to rely on the State's expert evidence regarding AUMs in his assessment of the suitability of the Property for farm use.

Mr. Buchanan also claims that Mr. Campbell has not visited the Property because he says in Applicant's Exhibit 73 that the Property is not fenced or cross fenced but the property is partially fenced. Mr. Campbell has, in fact, visited the Property. Rec-3018. He understands that it is partially fenced as he reported in 2022 but also notes that the majority of the Property is not fenced. Rec-3019. We understand his current comments to mean that cross-fencing and additional perimeter fencing are needed. Mr. Buchanan claims that loading chutes, corrals and livestock handling facilities would not be needed because they exist on his wife's property. Even if this is correct, Mr. Campbell assessed the viability of conducting a combined cattle operation on the Buchanan Coyner Road property and the subject property without consideration of these costs. Applicant's Exhibit 111. Mr. Campbell claims that two separate domestic wells are located at homesites on the Property. There is, however, only one domestic well and it serves a nonfarm dwelling. Even if the domestic well were used as a source of water for cattle, it would need to be taken to places on the property where the cattle are grazing by pipe or by transport by a water hauling vehicle. Furthermore, Mr. Campbell's analysis of combined operation viability does not



rely on the cost of drilling a new well when assessing the economic viability of a combined cattle operation on the Property and the Buchanan Coyner Road property. Such an operation will lose money simply due to the cost of feeding the cattle hay. Other evidence in the record documents the additional costs associated with a cattle operation on the subject property and these expenses not specifically addressed by Mr. Campbell make it clear that a combined operation would not be profitable.

No opponent or owner of any of the three other nearby or adjacent farm properties claim that their property could be used in conjunction with the Property. All three are used exclusively or primarily to raise irrigated farm crops and all three are separated from the plateau area of the subject property which is the only area with the terrain necessary to develop (at great cost) an irrigated farm field. The cost of this endeavor, however, is cost prohibitive. The record shows that it is less expensive to purchase irrigated farm land in the surrounding area than it would be to buy water rights and develop an irrigation system on the subject property.

The current owner of the Volwood Farms property, Two Canyons, LLC, grazes approximately 50 head of cattle on its extensive land holdings in the Lower Bridge area and keeps a few head of cattle on the Volwood Farms property. It has expressed no interest in combined operations. Prior owners of Volwood Farms and other area properties in farm use have not used the Eden Central property for combined operations. Reasons why include the fact that livestock would lose weight on the property due to the lack of adequate forage and the steep terrain, the property does not produce enough AUMs to support a profitable livestock operation and crested wheatgrass would be difficult to seed due to minimal rainfall and unsuitable soils. Applicant's Exhibit 107. A money-losing livestock operation is not attractive to farmers growing crops as it would reduce the profitability of their operations.

The Board's 2022 decision finds that "grazing would not be profitable on the subject property nor would any professional rancher attempt to integrate the subject property with other ranchland holdings or operations." Rec-22. The only party to challenge that finding now is Mr. Buchanan—whom we have determined is less credible than other area ranchers for the reasons discussed above.

The Board's 2022 decision found that "[g]iven the property's location on the top of a plateau, any uses in conjunction with surrounding lands are impracticable due to the substantial physical barrier to cross-property use." Rec-79. We reiterate that finding on remand.

Even if one looks beyond the Study Area of nearby and adjacent agricultural lands, the land use patterns and farm practices on those lands are similar to the Study Area farms as shown by Exhibit 71. The Board finds that no reasonable farmer would attempt to supplement or add the Property to their existing farm operations because the addition of the Property would only lead existing profitable operations to a loss. This is due to setup costs for irrigated agriculture, and lack of prospective profitability of operating a dryland grazing operation on the Property alone or combined with a cattle operation on land with irrigated pasture. Exhibit 111.

The Board finds that the Property, even considering nearby and adjacent lands, is not suitable for farm use or as a combined operation and should be redesignated as proposed by the Applicant.

## **Remand Issue 2: Is the Property “suitable” for farm use with Imported Feed?**

With regards to dryland grazing and livestock uses, we address those now, including whether the Property could be used for such a farm use if feed is imported to supplement the amount of forage available on the Property.

No party other than Billy Buchanan challenged our previous findings in the 2022 decision regarding the amount of forage or potential AUMs that could be supported by the Property and we do not repeat our findings here. On remand, several farmers and ranchers again testified that the Property was not suitable for dryland grazing because of that low production and, even if feed was supplemented, dryland grazing would still result in losses. This included the testimony of Rand Campbell, Russ Mattis, Matt Cyrus, and others. The applicant and DLCD also submitted information from the OSU Extension service (applicant Exhibit 1), that provides a comprehensive analysis of ranching operations in eastern Oregon. That document evaluates several ranching operations of different herd sizes that graze on a mix of private and low-cost BLM grazing land, and showed that each operation would lose substantial sums of money. The report shows that a 150-head cattle operation of this type, which opponents have argued should be conducted by the applicant, would result in a loss of \$137,770 per year. A 300-head cattle operation would have a loss of \$107,155 per year. A 400-head operation would lose \$84,799 a year.

A review and comparison of the assumptions made in estimating revenue by OSU Extension Service shows that the cost of feeding hay makes a cattle operation unprofitable. The cost of purchased hay for a small 150-cattle herd is estimated to be \$75,735 of the \$137,770 loss. The larger operations that did not rely on purchased hay, would lose far less money per head of cattle than would the small operation that feeds their cattle hay.

More tailored to the Property at hand, the applicant provided substantial information regarding the cost of imported feed, the cost of equipment and other start-up costs related to hay and other feeding infrastructure, and the production of hay and alfalfa. *See e.g.*, Exhibits 2, 3, 6, 21, 22, 29. Rancher Rand Campbell also provided a comprehensive analysis regarding the viability of conducting cattle, sheep and goat operations on the Property using a combination of grazing available forage and being fed purchased hay and feed. Exhibits 43, 47. This evidence was submitted at the hearing and was not rebutted. This comprehensive and persuasive evidence supports our finding that the level of hay required to support a cattle, sheep or goat operation on the Property would be cost prohibitive and result in sustained losses. We also find that these costs, including the cost of purchased hay, would not decrease significantly if Keystone Beef used the subject property to graze its cattle.

Mr. Buchanan of Keystone Natural Beef provided testimony that he believed that the Property had enough forage such that, that for a few months of the year, he could rent the Property and graze some of his Keystone Natural Beef (“Keystone”) and it would be profitable. As described in other areas of this Decision, we do not find Mr. Buchanan’s testimony on this, and other points to be credible..

Mr. Buchanan’s testimony is also *directly contrary* to the public statements regarding the Keystone operation, which claims to only raise cows on irrigated pastures and that such lifecycle is its

competitive advantage. *See* Exhibits 13, 54, 63. Mr. Buchanan failed to provide any specific details for the Keystone “Business Plan” which is merely a summary document that doesn’t provide numbers of cows, profit/loss, costs associated with the Keystone operation, or any basic information regarding the scope of the business.. The Keystone operation raises cattle in a *different county*, on irrigated pasture, but may engage in limited calving activities on the adjacent or nearby property owned by Elizabeth Buchanan. Ms. Buchanan specifically chose not to purchase or lease other dryland adjacent to her property to expand the Keystone operation. The testimony of Rand Campbell, Russ Mattis, Matt Cyrus, and other professional ranchers is persuasive.

Several commentators suggested that the Property may be suitable for other livestock uses beyond that of a cattle operation. We reject that position. With regards to alpaca operations, evidence in the record is that in Central Oregon alpacas are raised on irrigated lands and that those operations still lose money. Exhibit 12, 14, Rec-2219, Rec-3090-3093, Rec-3244-3245. Similarly, Mr. Campbell submitted information regarding goat and sheep operations and costs that support our conclusion that such operations would not be profitable on the subject property with or without imported feed. Exhibit 43, 47.

Similarly, Mr. Jim Stirewalt, agreed that in “[his] lifelong experience raising chickens, goats, horses, cows, hogs, sheep, and cattle has taught me you need two things to have any chance of a successful operation: reliable food and water sources.<sup>4</sup> This property offers neither.” We find Mr. Stirewalt’s testimony persuasive. Scott Duggan, Assistant Professor at the OSU Extension Service in Prineville, Oregon, supports Mr. Stirewalt’s testimony. Mr. Duggan provided information that explains why raising cattle or goats or stabling and training horses on the subject property would not be conducted by a reasonable farmer with an intention to make a profit in money, even if supplemented with offsite feed. According to Mr. Duggan, “there’s hardly anything you can do with it [the Property] due to all the rocks and lack of irrigation.” Rec-3243.

Elizabeth Buchanan argued that the subject property is suitable for producing free-range chickens. A review of farms that raise free-range chickens in Central Oregon reveals, however, that irrigated pastures are required for this type of chicken operation. Applicant’s Exhibit 50. We agree with the analysis in Exhibit 50. In short, the cost of financing the expense of bringing irrigation water to the Property and attempting to establish pastures on poor, rocky soils is so large that it would deter a reasonable farmer from attempting to make a profit in money by raising chickens on the Property. The property is also not suitable for an indoor chicken operation which would rely on imported feed. The temperatures experienced on the Property are too high in the summer for raising chickens. Applicant’s Exhibit 50, p. 2. An indoor chicken operation would require the use of electricity to cool the chicken coops. The subject property is not served by any electric utility company and the cost of obtaining that service is so high that no reasonable farmer would expect to obtain a profit in money by raising chickens on the subject property.

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<sup>4</sup> The same is true for game birds which require irrigation and stock water not present on the subject property that is cost-prohibitive to obtain. Rec-2200. Additionally, the subject property lacks the broadleaf plants that attract insects critical for pheasant chick development and quality food source and winter cover required by pheasants. Rec-3247-3248. The subject property also lacks a source of electricity which would be needed to establish a game bird hatchery.

Lastly, comments from DLCD and Ms. Nonella and others suggested that a horse training or other horse facility would be suitable on the Property. We reject that contention for the following reasons. First, we find the testimony of Ms. Fran Robertson, who runs such a facility, persuasive. Second, all examples of horse operations are on properties with irrigated fields and Professor Scott Duggan advised the applicant that pastures are required for horse operations. Exhibit 77, Rec-3242-3243. Other evidence in the record also shows the conditions of the Property based upon topography and climate conditions could cause substantial stress on horses, Exhibit 56. An analysis was also provided by Mr. Rand Campbell which supports our conclusion that the subject property is not suitable for equestrian farm uses. Exhibit 108.

This Board has reviewed all evidence submitted to this record. Project opponents have made isolated statements without supporting evidence. The applicant has submitted comprehensive analysis, expert testimony, and primary source materials. We find that the Applicant has met its burden of proof: the Property is not suitable for a farm use, including livestock or grazing operations even if supplemented by offsite feed. The cost prohibitive nature of such operations is only compounded by increasing the amount feed due to the extremely low production on the Property.

The Property is unsuitable for grazing uses due to its topography and climate conditions. The Property is on an elevated and isolated plateau, and the Applicant submitted substantial testimony regarding the negative impacts of heat and cold stress on cows and bulls, chickens, and other types of livestock.

No reasonable farmer or rancher would seek to make a successful farm operation on the Property with or without imported feed, nor alone or in conjunction with other farm operations on adjacent or nearby lands.

### **Other Issues Related to Suitability for Farm Use**

In our 2022 proceedings, COLW (and to a limited degree, others) argued that any number of potential agricultural uses could occur on the property, such as orchard crops, berries, lavender, or other agricultural uses that require irrigation. No party advanced this issue on appeal; instead focusing their arguments on the claimed suitability of the subject property for raising animals. Before LUBA, DLCD's Assignment of Error 4 related to the adequacy of findings related to animals.<sup>5</sup> LUBA found that the County's consideration of interest costs to finance expenditures

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<sup>5</sup> Central Oregon Landwatch's 2024 comments discuss vineyards as a potential farm use. In our 2022 decision we determined that a vineyard is not a viable farm use of the subject property and no party appealed that determination; this issue is settled. The 2022 record shows that a soil depth of 20-30 inches is, according to soil scientist Brian Rabe, needed to grow grapes; not the average of 14" of soil depth found on the subject property (Rec-2220). Our 2022 decision included findings that establish that the subject property lacks the favorable growing conditions that permit the Redside vineyard to produce grapes. The Redside vineyard is located at a lower elevation (400 to 500 feet lower), has alluvial soils, south facing slope and wind protection. Conditions on the subject property make it unsuitable for farm use whether the property is farmed in conjunction with other adjoining or nearby lands. Rec-442, -443, -447. Additionally, no adjoining or nearby lands are growing grapes. The Redside vineyard is not in the

to establish an irrigation system on the Eden Central property were properly considered by the Board in addressing the issue of suitability for farm use. Generally, evidence in the record shows that the cost of establishing irrigation on the Eden Central property is so great that no reasonable farmer would purchase the required water rights to establish agricultural uses. In fact, the cost to do so exceeds the per acre cost of purchasing superior farm land in the area that is already irrigated and developed for farming. This cost is not eliminated if the Property were owned and operated as part of one, overall farm by any of the other farms in the Study Area.

Even if the Property were operated in conjunction with adjacent or nearby lands, the Property remains unsuitable for conducting agricultural uses. Seventy one percent of the subject property is comprised of Class VII soils. According to the NRCS Soil Survey of the Upper Deschutes River Area, “Class VII soils have very severe limitations that make them unsuitable for cultivation” and that the Class VI soils found on 29 percent of the subject property “have severe limitations that make them generally unsuitable for cultivation.” All four properties that are adjoining or nearby lands engaged in farm practices (identified in our 2022 decision) rely on irrigation water to conduct farm operations and are comprised of superior soils. Those lands, however, lie 200 to 250 feet below the plateau area of the subject property and are far better suited for farm use based on location, irrigation and soils and Additionally, the cost of establishing irrigation is too high on the subject property to merit installation of an irrigation system on the Property given that the cost of obtaining irrigated, developed farm land with superior soils is less expensive than attempting to irrigate the Property, with its rocky, poor soils, in order to produce crops like those on adjacent and nearby lands. And, nearby and adjacent farms are already engaged other farm uses, such as hay or grass production. It is unreasonable to assume that any of these nearby and adjacent lands that lie far below and away from the plateau area of the Property<sup>6</sup> would be willing to make the investment in establishing a new, isolated crop field – excluding the purchase cost of the subject property – at a cost that exceeds the cost of buying a more suitable developed, irrigated farm property. Additionally, no area farmer has expressed an interest in conducting a farm use on the subject property other than seasonal grazing of livestock. Given these facts, a reasonable farmer of any of the four adjoining and nearby properties would not purchase and develop the subject property to expand the irrigated crop use of their property, or to graze livestock with the primary intent of making a profit in money. The Board therefore finds, consistent with its past decision, that farm uses that rely upon or require irrigation water are unsuitable on the Property and fail the suitability test under that consideration.

Oregon case law establishes that it is reasonable to look at nearby farm properties to determine whether a property is otherwise suitable for farm use. *Wetherell v. Douglas*, 62 Or LUBA 80 (2010) The only irrigated agriculture in the area includes the raising of hay and grass crops, and, potentially carrot seed. No farm in the Study Area of adjacent or nearby lands we identified in our 2022 findings regarding OAR 660-033-0030 (“Study Area”) is growing orchard crops, lavender, other vegetable crops, or is engaged in other uses such as raising honey bees.<sup>7</sup> Such uses are not

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Study Area of adjoining and nearby lands because it is approximately 1.5 miles north of the subject property.

<sup>6</sup> The steep hillsides of the plateau are not suited for irrigated crop production. The cost of irrigation was estimated based on irrigating the top of the plateau only.

<sup>7</sup> Applicant submitted additional evidence as to why bees cannot be raised on the property. Exhibits 88, 89, 91. Evidence in the 2022 record from Brittany Dye, owner of Brittany’s Bees LLC, a beekeeper,

accepted farming practices in the area. The Board finds that with the exception of a livestock use, which is discussed in more depth below, the Property is unsuitable for farm use. This finding is made having given due weight to the evidence in the record of water needs and costs and the lack of nearby operations of similar uses which we discuss in further detail below.

Although addressed more below, the Board also finds that in considering nearby and adjacent lands, the Property remains unsuitable for such uses. This is because the farm lands in the Study Area could not expand operations onto the Property due to topography and, in all but one case, lack of true adjacency. No operational efficiencies would be achieved by expansion. The record shows that no reasonable farmer would expand profitable farming operations to include a separate irrigated agricultural use on land where farm uses have not occurred in the past, no irrigation water is available and rocky, shallow, barren soils exist. No increased production would be obtained and the profitability of the combined operations would be diminished by the need to finance the expense of establishing an irrigation system on the subject property and removing rocks from the soil.

The evidence submitted regarding the water and other requirements necessary to raise water-dependent crops on the subject property as a farm use is reliable and persuasive. The evidence in the 2022 record regarding crop production is correctly identified and summarized on the chart found at Rec-2213-2221. This evidence includes testimony from a hemp grower and owner of a property used to grow hemp, a site-specific soil study, information regarding soils provided by the NRCS, and references trade organization publication, published university or other articles, and other primary and secondary sources. The fact that crops require irrigation is general knowledge borne out by the fact that all cropland in the surrounding area is irrigated. No party has offered evidence on remand that a farm use that relies on irrigation water would be viable on the subject property. There was no renewed challenge to the sufficiency of the evidence previously relied upon in our 2022 decision.

In the 2022 decision, we addressed varied arguments of opponents that a host of potential farm uses other than livestock grazing could occur on the subject property. We found that no opponent claimed that any of these potential farm uses would be able to be conducted with an intention to make a profit in money and that numerous facts regarding the subject property supported a finding that the property is not suitable for farm use. Rec-169-174. Instead, opponents claimed that the potential farm uses would be a farm use because they would generate gross income.

The Board previously found that “it is not an accepted farm practice in Deschutes County to irrigate and cultivate Class VII and VIII soils.” No party challenged this finding. Given the fact that 71 percent of the Property is comprised of Class VII soil, it follows that it also is not suited for irrigated farm use; a conclusion consistent with the description of Class VII soil provided by the NRCS. While accepted farming practices is only *one* of the considerations in OAR 660-033-0020(1)(a)(B), a determination of suitability can be made on one factor, alone. Paired with the fact that it is cost prohibitive to conduct farm uses that require irrigation water on the subject property,

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estimated gross income of only \$4,000 per year from the property (Rec-2137). This gross income is insufficient to cover the costs of real property taxes, labor, insurance and travel. Additionally, the cost of establishing bee pastures, orchards and pollinator gardens for bees on this property, are cost-prohibitive in part due to the need to irrigate pastures, orchards and gardens (Rec-2219).

the fact that no nearby or adjacent properties are engaged in farm uses other than irrigated farm uses that would be cost-prohibitive to establish on the subject property and a small cattle operation on irrigated and dry land, supports our finding that the Property is not suitable for farm uses that require irrigation to be successful, whether in isolation or in potential combined operations with farms in the Study Area.

**B. Remand Issue 3: Is the Property “suitable” for farm use as for the construction and maintenance of farm equipment and facilities?**

ORS 215.203(2)(a) says:

“‘Farm use’ includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.”

In our prior decision, we found that this use was only a farm use if the subject property is generally suitable for farm use. LUBA held, in response to a challenge by DLCD, that “farm use” includes the [on-site] construction and maintenance of equipment and facilities used for the activities described in ORS 215.203(2)(a) elsewhere. LUBA remanded our 2022 decision to determine whether the subject property is suitable for farm use based upon the suitability factors of OAR 660-033-0020(1)(a)(B) considering the farm uses conducted off-site or in conjunction with the subject property. As we have determined that the subject property is unsuitable for other farm uses alone or in conjunction with adjacent and nearby properties, the construction and maintenance of equipment and facilities for uses conducted on the subject property, which may include adjacent and nearby properties, is not a “farm use.” We, therefore, address the suitability of the subject property for farm uses “elsewhere.”

By its express terms, this farm use is limited to the on-site construction and maintenance of equipment and facilities used for farm uses as defined by ORS 215.203(2)(a). Construction is the act of building something, typically a large structure, and maintenance is keeping a structure or farm equipment in good repair once it is built. These acts, and these acts only, are the “farm use” covered by this part of ORS 215.203(2)(a). The construction and maintenance use does not extend to include uses that occur within constructed or maintained facilities or with equipment once it has been constructed or maintained on-site. The use of the facilities and equipment must be for a use defined elsewhere in ORS 215.203(2)(a) as a farm use.

ORS 215.203(2)(a) separately defines storage, as well as the preparation and sale of farm products, as a “farm use” but it limits the use to “products or by-products raised on such land for human or animal use.” This farm use does not include the storage, preparation or sale of farm products raised elsewhere and, therefore, the maintenance or construction of equipment or facilities to conduct that use for farm uses conducted elsewhere is not a farm use.

DLCD alleges that the on-site construction or maintenance of “barns, agricultural storage sheds and other preparation facilities, processing facilities allowed by ORS 215.255, hay covers, cattle lanes, driveways, holding pens and similar improvements and structures” are included in the definition of farm use. This is correct for farm uses occurring on the subject property but not for farm uses occurring elsewhere for at two reasons. First, a “facility” is not “construction or maintenance” which are the uses defined as a farm use by ORS 215.203(2)(a). Second, other than

processing facilities and driveways, the construction and maintenance of the facilities identified by DLCD are used to store, prepare and sell farm products. ORS 215.203(2)(a) makes it clear that the construction and maintenance of facilities or equipment used to store, prepare or sell farm products is only a farm use if the farm products are produced on the subject property; not elsewhere.

Processing facilities allowed by ORS 215.255 are *not* a “farm use” as defined by ORS 215.203(2)(a), which are the only “farm use[s]” that are relevant for the “suitability” analysis in OAR 660-033-0020(1)(a)(B). It does not include farm product processing. Processing is separately authorized by ORS 215.213(1)(u) and ORS 215.283(1)(r) and the use is limited by ORS 215.255. Consequently, the construction and maintenance of a farm product processing facility is not a “farm use” and we need not determine whether the subject property is suitable for that use.

DLCD also argues:

“We do not interpret this remand item as an obligation to evaluate the economic viability of new farm and ranch stores and farm equipment repair companies that exist without a primary farm use on the subject parcel. If allowable at all, these types of uses would need to be reviewed as commercial activities in conjunction with farm use or home occupations and are not farm uses under ORS 215.203.”  
DLCD Letter, pg. 4-5.

The Board agrees that farm and ranch stores and farm equipment repair businesses require approval as commercial activities in conjunction with farm use. Nonetheless, it has considered evidence about these businesses because a literal application of the construction or maintenance use appears to include these uses if they are limited to serving “farm uses” and do not include any sales activity. The Board recognizes the fact that farm and ranch stores and farm equipment repair facilities typically sell farm equipment or parts and do not limit sales to farmers who are engaged in farm activities with an objectively reasonable belief that they will achieve a profit in money. The Board also finds that the manufacturing of farm equipment or structures for properties for use elsewhere if farm use is occurring elsewhere may fit under LUBA’s interpretation of the construction and maintenance use and, therefore, has addressed it in its findings below.

The Board, however, believes that the better answer, given the direction of the Oregon Court of Appeals regarding the construction of land use laws to protect agricultural land and the comments provided by DLCD on remand, is that a manufacturing facility is an industrial use not included with the “construction” of farm equipment and facilities uses. It is the County’s belief that Statewide Goal 14 views industrial uses as uses that will occur only within urban growth boundaries or in rural industrial development areas established in compliance with state statutes and LCDC rules. Statewide Goal 14, Rural Industrial Development. If LUBA so finds on appeal, our findings regarding manufacturing facilities will be surplusage but the remaining findings continue to support our conclusion that the subject property is unsuitable for the construction and maintenance use that is a farm use.

The applicant surveyed Deschutes County to identify uses similar to the maintenance and repair use and has shown it occurs, in conjunction with other uses, on small properties such as the seven-



acre site of farm equipment manufacturer Newhouse Manufacturing in the City of Redmond. The record includes evidence about what is necessary for a site to be suitable for manufacturing farm equipment or facilities. John Jenkins, the Sales Manager for Newhouse Manufacturing Company, a company that manufactures farm equipment in the City of Redmond, Oregon, stated that to run a successful farm equipment manufacturing or repair operation, several important factors are needed but are missing on the subject property. These include a central location, easy accessibility to a highway, and a flat grade. Mr. Jenkins also stated:

“I do not think it’s economically feasible to open an on-site farm equipment repair and maintenance facility on the rural 710-acre subject property in Redmond. The subject property is in a remote location, 3.5 miles off Highway 126, which makes it more difficult for both customers to find and large trucks to make daily deliveries of parts, broken down farm equipment, and other packages. The setup construction costs for a farm equipment repair facility on the subject property would be a high barrier to entry because the subject property is not flat and is remotely located outside of city limits.” Applicant’s Exhibit 7. I believe the various established farm equipment repair facilities in Central Oregon are located inside city limits because of the central location, easier accessibility to major highways, and they offer commercial or industrial zoning.”

Barry Penington of Bobcat of Central Oregon, a business located in the City of Bend that repairs farm equipment, echoed Mr. Jenkins’ concerns:

“Our customers require a consistent and reliable service to maintain their businesses. A location within a city allows for a better predictability of delivery times which in turn allows for better scheduling. Commercial or industrial zoned areas allow for proper freight deliveries and access. In our understanding, the EFU zoning would allow for some farm only types of services but we felt that would be impossible to keep the scope of business within the regulation. Examples would be a customer with a nursery/greenhouse operation which may be serviceable within the EFU description. However if that customer also performed commercial work as a landscaper the equipment used in that process would not be eligible for repair at the facility located in the EFU zone. This scenario would create an impossible situation for our type of business as customer satisfaction is extremely important.” Applicant’s Exhibit 40.

Mark Stockamp made a diligent search of Deschutes County to locate businesses that construct or repair farm equipment or facilities and that search confirms the information provided by Mr. Newhouse and Mr. Penington. Mr. Stockamp found no business that serves farm uses “elsewhere” that is engaged solely in “the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection [ORS 215.203(2)(a)]” anywhere in Deschutes County. Applicant’s Exhibit 79. These would be businesses that do not sell products other than parts they use to maintain farm equipment that also limit their services to persons who are not engaged in “farm use” as defined by ORS 215.203(2)(a) which makes it unlikely such a business would be conducted by anyone on the subject property. The businesses Mr. Stockamp identified, however, engage in activities that fit the construction and maintenance category in addition to other

activities that do not fit the category. Even Newhouse Manufacturing sells over-the-counter parts to customers in addition to constructing and repairing farm equipment. Exhibit 79.

The key issue on remand is whether the subject property is a suitable place to construct or maintain farm facilities or farm equipment utilized by a farm use that occurs elsewhere. In all cases, if the farm use occurs elsewhere, transportation of the farm equipment or facilities to and/or from the subject property is a necessity. For instance, a typical business day for Newhouse Manufacturing (repair and manufacturing) and Peterson Cat Redmond (repair) involves 20 to 50 visits by walk in customers (40 to 100 vehicle trip ends per day), parts delivery by a large truck (two vehicle trip ends per day) and UPS delivery (two vehicle trip ends per day). Bobcat of Central Oregon (repair) serves 50-80 customers a day (100-160 vehicle trip ends per day), parts delivery by a large truck (two vehicle trip ends per day) and UPS delivery (two vehicle trip ends per day). Applicant's Exhibit 38. Pape Machinery Agriculture & Turf sells farm equipment parts and provides on-the-farm and in-house repair services for farmers, in addition to selling products for recreational, construction and residential use. Applicant's Exhibit 39.

A review of the seven suitability factors of OAR 660-033-0020(1)(a)(B) shows that the property alone or in conjunction with adjacent or nearby lands is not suitable for construction and maintenance uses that serve farm uses occurring elsewhere based on three or more of the seven suitability factors. The suitability factors are discussed below.

#### **a. Soil Fertility**

The vast majority of the soil on the subject property is not fertile being 71% NRCS Class VII and VIII soils. Fertile soil is essential for growing crops but is not essential for the construction and repair of farm equipment and facilities. The lack of fertile soil, in this case, is due to the presence of a large amount of surface and subsurface rock and lack of soil depth. Testimony from John Jenkins is that seven acres of flat ground and a flat grade was necessary to support its manufacturing operation. It follows that the cost of preparing a site for the construction of a manufacturing or repair facility would be substantial due to the need to remove the rocks that render the soil infertile. As it relates to this use, the Board finds soil fertility makes the site somewhat less suitable and that the rocky condition of the site that makes the soil infertile requires extensive energy inputs to make the site potentially suitable for the construction and maintenance of farm equipment and facilities for farms located elsewhere. The Board also finds that even if it is determined that the site is suitable despite the lack of soil fertility, that other suitability factors make it clear that the subject property is not otherwise suitable for farm use.

#### **b. Suitability for Grazing**

The subject property is suitable for grazing but not at a level that constitutes a farm use due to the sparse forage and soils found on the property. This factor generally does not relate to the equipment and facilities use. To the extent this factor is relevant, the evidence supports our finding that the property is suitable for seasonal grazing only.

#### **c. Climatic Conditions**

This factor does not appear to provide a barrier to suitability, except as it relates to the location and distance from a localized customer base with easy access to highways. Several equipment repair facilities expressed easy accessibility to a highway as an important factor due to daily deliveries. Exhibit 38. The subject property is far from these areas, and, during times of inclement weather or snow, it is unlikely that ODOT or the County would provide snow removal. This would inhibit this use.

**d. Existing and Future Availability of Water for Farm Irrigation Purposes**

This factor does not appear to relate to the establishment of farm equipment maintenance or other facilities. The County previously found, and LUBA generally agreed, that the subject property was not generally suitable for irrigated agriculture based upon the cost of purchasing water rights and financing the improvements needed to irrigate the property.

**e. Existing Land Use Pattern**

No properties within one mile and more of the subject property are used for on-site construction and maintenance of equipment and facilities for any other farm property not in the same ownership. This has been documented by a survey conducted by the applicant (Applicant’s Exhibit 71). We find that this study area is sufficient to determine the existing land use pattern of the area in part because a one-mile radius is routinely used by the county to study the impacts of nonfarm dwellings on farm uses and because it includes lands in the Odin Valley and Lower Bridge areas that adjoin the subject property.

It is not also an accepted farm practice in Deschutes County to engage in the construction and maintenance of farm equipment or facilities anywhere other than on the property where farm practices are occurring or at a farm equipment maintenance facility or factory located within an urban growth boundary or rural industrial area, as we have determined above.

As shown by Applicant’s Exhibit 71, the existing land use pattern established in a one mile and more radius around the subject property is a checkerboard of non-farm dwelling and uses, rural subdivisions and farm uses. This pattern does not include facilities that provide for the maintenance or construction of farm equipment or facilities. This is an indication that the subject property is not a suitable location for these uses. Moreover, no testimony in the record asserts that the subject property could or should be used to conduct such a use. The same pattern exists in the area closest to the subject property, the Study Area of adjacent and nearby EFU zoned properties. There are four adjacent or nearby EFU zoned properties in farm use. The remainder of the adjacent and nearby privately-owned properties are developed with nonfarm dwellings and nonfarm properties. The public lands adjacent or nearby are a large property developed as an all-terrain vehicle/off-road vehicle recreational area and a property being held in a conservation status.

As we have found, in findings that precede our discussion of the seven suitability factors, these uses occur in or near cities or in rural industrial areas with clear and close access to public highways. These uses also service a variety of equipment types, and range from 20 to 80 customers walking in per day and do not restrict their customers to persons engaged in “farm use.”

Moreover, the County's Code permits these types of facilities within the Rural Industrial and Rural Commercial zones. The County considers these zones the appropriate rural location for industrial and commercial land uses like farm equipment repair and manufacturing facilities. The land use pattern of the County reflects that choice.

Additionally, the land use pattern of the area reflects the fact that the remote nature of this property, and its lack of the typical road access to a nearby highway and nearby customer base make it an unsuitable location from which to provide maintain and construction services to persons engaged in an ORS 215.203(2)(a) farm use.

#### **f. Technology and Energy Inputs Required**

The technology and energy inputs that would be required to both establish and operate a business that provides on-site construction and maintenance of farm equipment and facilities on the subject property are significant and contribute to a determination that the subject property is unsuitable for this farm use.

The subject property lacks electric utility service. Electricity is needed to operate any type of business on the property. A reliable source of electricity is essential for any farm equipment repair or construction business as these businesses use specialized tooling and machinery to maintain equipment. A business that manufactures farm equipment or farm facilities would also use machinery that requires electricity to be operative.

In order to establish a farm equipment maintenance or construction facility on the subject property, it would be necessary to install an extension of the electrical power infrastructure to the property. Depending on the location of the facility and utility service areas, either Central Electrical Cooperative (CEC) or Pacific Power would need to extend service lines to the site and owner of the property would need to install facilities needed to receive and use the electricity in their business.

CEC has capacity issues on its Coyner Road and Buckhorn Canyon lines. CEC indicated a couple of years ago that they would be able to upgrade the power along Buckhorn Road and bring power to the Eden Central property up the side of Buckhorn Canyon at an approximate cost of \$572,103.00. To obtain power from Pacific Power, Eden Central properties would need to pay to extend Pacific Power utility lines from NW 93<sup>rd</sup> Avenue for a distance of over 2000 feet over an undeveloped County right-of-way and land owned by the USA and managed by the BLM. This extension was estimated to cost approximately \$365,000 about two years ago. This cost alone is so expensive that it would preclude the single farm equipment repair facility DLCD says is the use allowed on the property or any other small-scale business that fits the "on-site maintenance and construction use" definition from locating on the subject property.

It is likely that only an industrial-sized farm equipment manufacturing facility, assuming LUBA finds it to be a "construction facility" allowed in the EFU zone, despite the fact industrial uses are generally urban uses or rural industrial uses that would not be able to be located on the subject property due to Statewide Goal 14, would be able to bear the high cost of bringing power to the subject property. Given the limitations on the use imposed by ORS 215.203(2)(a) (no use of the

equipment built by it for any use other than an ORS 215.203(2)(a) farm use), it is highly unlikely that such a facility would be large enough to bear the cost of bringing power to the property, installing a connection to the line and then paying to use the supplied power. Furthermore, the restriction of the EFU zone that applies to the property makes the property unsuitable for the construction and maintenance use for farm uses occurring elsewhere.” It would create an impossible situation for construction and maintenance business as it would be impossible to ensure that farm equipment or facilities would only be used as a part of a farm use. Applicant’s Exhibit 40. Additionally, sales of equipment or facilities constructed on the subject property would need to be enforced by vendors of the equipment or facilities and an expectation that they would do so is objectively unreasonable. A product with that limitation is simply not marketable and, even if it were, it would not be developed at a scale that would merit paying to extend power to the subject property and then developing it with a farm equipment or facilities manufacturing facility.

A farm equipment maintenance facility suited to serving customers would also require the construction of at least one or two restrooms and the installation of a commercial septic system which involves technology inputs and adequate soil to assure that sewage is properly treated. The approximate cost of installing a typical septic system would be several thousand dollars to more than \$35,000 if an alternative system is required. Exhibit 101. A septic facility for farm equipment construction facilities would be much more costly and would depend on the size and type of facility built. Costs might be approximately \$100-250,000+. Exhibit 101. Larger systems would require permitting through DEQ with additional requirements that could come at larger price tag.

We find that the cost of energy inputs alone, outlined above, is sufficient to support our finding that the subject property is not suitable for farm use. The following technological or energy inputs required to conduct the construction and maintenance use also contribute to making the subject property unsuitable for farm use:

- (1) At a minimum, one exempt well would need to be drilled to serve these uses and water use would be limited to 5,000 gpd per well (commercial use). The cost to drill an exempt well on the Eden Central land would be approximately \$29,610.00 according to a March 30, 2023 estimate obtained from Jack Abbas of Abbas Well Drilling. The cost to drill a larger well to serve a large manufacturing (construction) facility would be roughly similar to the cost of drilling one agricultural well at a cost of approximately \$295,000.<sup>8</sup>
- (2) Improving the property to permit a construction and/or maintenance use or for additional facilities will also include the cost of improving, at a minimum, the access road. This is necessary so that trucks delivering parts and equipment for repair or materials for the construction of equipment or facilities could access the property. A cost estimate from Robinson & Owen Heavy Construction concluded that preparation and construction costs for just the mile access road would cost in excess of \$612,203.50. Applicant’s Exhibit 81.
- (3) Farm equipment repair or maintenance facilities require technology inputs because they rely on specialized tooling, parts and machinery to repair farm equipment. Applicant’s Exhibit 40.

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<sup>8</sup> This evidence is from the 2022 record and so may be higher using today’s prices.

In total, the basic requirements to establish the onsite maintenance and construction of equipment and facilities for “farm use” on the property would likely exceed \$1,200,000.<sup>9</sup> Financing the cost of such capital improvements at a favorable farm loan interest rate of 4% would cost at least \$48,000 per year in interest costs.<sup>10</sup> This additional cost for technology and energy inputs is so substantial that no one would attempt to establish farm equipment or facilities repair or maintenance facilities on the subject property.

Moreover, the County’s Code permits these types of facilities within the Rural Industrial and Rural Commercial. These are the appropriate location and land use patterns to establish similar uses.

In summary, the Technology and Energy Inputs factor alone is sufficient for the Board to determine that such uses are not “suitable” on the subject property.

#### **g. Accepted Farming Practices**

No property within a one-mile plus radius or within in the Study Area of adjoining and nearby lands are used to conduct the maintenance or construction of farm equipment or facilities for farms located elsewhere. In other words, it is not an accepted farm practice to construct or maintain farm equipment or facilities for farms located elsewhere. This factor does not support a determination of suitability.

#### **C. Remand Issue 4: Is the Property’s existing designation “necessary” to permit the continuance of farm practices on nearby and adjacent lands?**

OAR 660-033-0020(1)(a)(C) defines “agricultural land” as “Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.” LUBA remanded our 2022 Decision to determine whether the retention of the property’s agricultural designation and zoning is “necessary” to permit farm practices to occur on adjacent or nearby agricultural lands” based on traffic, water, nuisance and trespass impacts. We note that opponents Lori Johnson and Kelsey Nonella who live in Odin Valley about one mile from the subject property both advised the county in a letter filed July 16, 2024 that the agricultural designation of the subject property is not necessary to permit farming practices in the area. We concur for the reasons set out below.

#### **Identification of Farm Practices on Agricultural Lands**

Adjacent or nearby lands and farm practices were identified in three tables in our 2022 Decision at Rec 509-511. LUBA found that these findings “do identify the surrounding farm practices” and is the starting point for our review of compliance with OAR 660-033-0020(1)(a)(C). The charts and findings provided therein, with the addition of a response to the “necessary to permit farm practices test” and introductory findings are provided below. No party challenged our

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<sup>9</sup> This number reflects establishment of an exempt well at roughly \$30,000 and septic system at \$35,000, and not the larger systems that may be required by DEQ.

<sup>10</sup> This favorable interest rate was used in the earlier proceeding and accepted by LUBA.

identification of “adjacent or nearby lands” in 2022 or in 2024. We will refer to these agricultural lands as the “Study Area.”

The record contains a wealth of evidence that shows how and where lands employed in farm use have been developed, how they are used, and what farm practices are occurring on those lands. All such properties rely on groundwater, wells and pumps to irrigate farm fields that are used either to grow crops or as pasture land. The location of irrigated land in the study area and irrigation equipment and information about wells on these properties is provided by the Applicant’s Exhibit 58, as well as elsewhere. The aerial photographs also show the location of farm buildings and homes on these properties. We have relied on this information in assessing likely impacts to area farm practices.

**West and North:** Properties to the west and of the subject property are separated from the subject property by topography. The dramatic change in topography makes it infeasible to use the subject property for farm use in conjunction with these properties. Additionally, the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands to the west. Farm practices have been occurring on these properties for decades without the necessity of having to use the subject property in order to conduct farm practices on these properties.

**EFU PROPERTIES TO THE NORTH AND WEST (SOUTH TO NORTH)**

<b>Tax Map, Lot and Size</b>	<b>Farm Use</b>	<b>Potential Farm Practices</b>	<b>EFU Zoning Necessary for Farm Practices to Continue?</b>
14-12-21, 200 & 100 372.71 acres  <b>Volwood Farms</b>	Irrigated fields currently growing orchard grass, hay and alfalfa	Irrigation Growing and harvesting crops Fertilizing fields Baling hay Herbicide use	No, the separation due to elevation and distance has prevented conflicts between existing nonfarm dwelling on the property and this farming operation. No change in farm practices is necessary to allow this use to continue as demonstrated by creation of nonfarm parcels and dwellings in close proximity of irrigated fields for the Johnson/Nonella and Stabb properties. Additionally, the Volwood Farms property adjoins Lower Bridge Estates, a large rural residential subdivision and small rural parcels developed with residences that are zoned RR-10. Despite this development, farm practices are occurring on the Volwood Farms property. It also adjoins a 557.3-acre area owned by Redside that was rezoned RR-10. No traffic impact as the property lacks direct access to Buckhorn Road and Lower Bridge Road – the roads that adjoin this property. Water study by GSI determined that there would not be measurable interference with the Volwood Farms well.

			Trespass will be prevented by fencing. No wastewater impacts per soils scientist Brian Rabe.
14-12-20, 200 146.37 acres  <b>Nicol Valley</b>	Irrigated field suitable for growing orchard grass, hay, and alfalfa	Irrigation Growing and harvesting crops Fertilizing field Baling hay Herbicide use	No, this property is located too far away from the subject property to be impacted by uses allowed in the RR-10 zone to the extent this property would need to change or discontinue farm practices. This property adjoins two nonfarm parcels (TL 300 & 301, Map 14-12-20) on its south boundary that are developed with nonfarm dwellings and its irrigated farm field is only 170 feet north of the dwelling on TL 300 and has not altered its farm use. It also adjoins a nonfarm parcel, TL 402, Map 14-12-20, on its western boundary. No traffic impact as the property lacks direct access to Buckhorn Road and Lower Bridge Road – the roads that adjoin this property. Water study by GSI determined no impact on agricultural wells. Trespass will be addressed by fencing. No wastewater impacts per soils scientist Brian Rabe.

All of the other land north of the subject property that may theoretically rely on the subject property in order to conduct farm practices is zoned RR-10, is not in farm use and is not designated as “agricultural land” by the Deschutes County Comprehensive Plan (DCCP).

**EFU PROPERTIES TO EAST (NORTH TO SOUTH)**

<b>Tax Map, Lot and Size</b>	<b>Farm Use</b>	<b>Potential Farm Practices</b>	<b>EFU Zoning Necessary for Farm Practices to Continue?</b>
14-12-22B, 700 80 acres	Open space public land	Livestock grazing	No farm use is occurring. Accessible from NW 93 <sup>rd</sup> north and east of the subject property.
14-12-22C, 500 120 acres	Open space public land	Livestock grazing	No farm use is occurring. Accessible from NW 93 <sup>rd</sup> north and east of the subject property.
14-12-27, 200 120 acres	Open space public land	Livestock grazing	No farm use is occurring. Accessible from NW 93 <sup>rd</sup> north and east of the subject property.
14-12-27, 301 17.50 ac	None. Nonfarm	None	No farm use is occurring.



	parcel and dwelling		
14-12-00, 300 62.58 acres <b>Stabb</b>	Irrigated cropland suitable for growing orchard grass, hay, and alfalfa	Irrigation Growing/ harvesting crops Fertilizing field Baling hay Herbicide use	EFU zoning is not necessary to continue the irrigated cropland use of this property because it is surrounded by nonfarm parcels (including the subdivision to permit a nonfarm dwelling) and has continued to conduct the identified farm practices. Additionally, EFU zoning permits the applicant to build a nonfarm dwelling within 45’ of this property. Thus, approval of the zoning change and comprehensive plan amendment will not alter potential impacts. Topography dictates any building location be no closer than about 700’ away from the farm field on this property (with an intervening residence on the subject property) – providing a buffer that will mitigate potential impacts. Traffic impacts will not prevent farm practices associated with growing a crop on this property. The only potential conflict would be between drivers and slow-moving farm equipment. Slow moving farm equipment does not often use this road and the added traffic will not prevent its use by farm equipment as there is room to pass on the existing roads that provide access to Highway 126. Water study by GSI determined no impact on agricultural wells. Trespass will be addressed by fencing. Additionally, this property was created by a partition that found that a nonfarm dwelling created on a nonfarm parcel removed from TL 300 would not interfere with farm use on Tax Lot 300 and other area farms.
14-12-34B, 200 80 acres	Approved for nonfarm dwelling	None	No farm use is occurring.

**EFU PROPERTIES TO THE SOUTH**

The land south of the subject property is zoned EFU and includes a large tract of federally-owned land in the Cline Butte Recreational area that is managed by the Bureau of Land Management (BLM) as a motorcycle and all-terrain vehicle (ATV) park. No farm use is allowed to occur on this property. There are three nonfarm dwellings and parcels zoned EFU on the north side of NW Coyner Avenue that are not engaged in farm use, 10305 NW Coyner Avenue, 10255 NW Coyner

Avenue, and 10135 NW Coyner Avenue. These parcels range in size from 19 to 28 acres. A 37.5-acre parcel at the southeast corner of NW Coyner and NW 103<sup>rd</sup> Street owned by Elizabeth Buchanan (10142 NW Coyner Avenue) is developed with a non-farm dwelling (CU-90-97). A part of this property is engaged, part of the year, in agricultural use.

Tax Map, Lot and Size	Farm Use	Potential Farm Practices	EFU Zoning Necessary for Farm Practices to Continue?
14-12-28D, 100 28.60 acres	None, nonfarm dwelling	None; land determined to be “generally unsuitable for the production of farm crops, livestock and merchantable timber” when dwelling approved.	No farm use is occurring.
14-12-28D, 200 19.11 acres	None, nonfarm dwelling	None	No farm use is occurring.
14-12-28D, 300 19.65 acres	None, nonfarm dwelling	None	No farm use is occurring.
14-12-20, 3200 1588.55 acres (duplicate listing removed)	Open space public land	Livestock grazing	No farm use is occurring. No farm use is allowed on this property. It is a part of the Cline Butte Recreational Area and is used for recreation by off-road vehicles. Accessible from a trailhead on Buckhorn Road a short distance north of Highway 126. Rec-4084.
14-12-00, 1923 37.51 acres  <b>Buchanan</b>	Nonfarm dwelling. Small irrigated pasture for horses and small pivot suitable for growing hay, grass or alfalfa.	Irrigation Growing/ harvesting crops; Fertilizing fields; Baling hay Herbicide use	All parts of this property, with one exception, are one-quarter of a mile away from the subject property and are separated from it by two nonfarm parcels, TL 200 and 300, Map 14-12-28D that are developed with nonfarm dwellings. This distance makes it unlikely that there will be any impact on farm practices. No potential impacts will occur that will result in preventing the continuation of farm use or farm practices. Traffic impacts will not prevent farm practices associated with growing crops on this property or in keeping horses or other livestock. The

			<p>only potential conflict would be between drivers and slow-moving farm equipment. Slow moving farm equipment does not often use this road and the added traffic will not prevent its use by farm equipment as there is room to pass on the existing roads that provide access to Highway 126.</p> <p>TL 101, Map 14-12-28D (part of subject property) is the only part of the subject property in close proximity to TL 1923. It is located NW across the road from this property. TL 101 has a valid land use approval for a nonfarm dwelling. The change to RR10 zone will not allow more dwellings to be built on this property due to its size (less than 10 acres) and will create no additional potential conflicts between uses. The traffic, water, wastewater, trespass and nuisance impacts associated with this parcel will be the same. Additionally, the water study by GSI determined no likely impact on agricultural or residential wells.</p>
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**Additional Farm Practices Not Addressed by the Chart Above**

There are two additional agricultural uses occurring on surrounding lands not addressed above. They are both small cattle operations. One is a cattle operation of about 50 head of cattle that graze, at times, on the former Volwood property that is now owned by Two Canyons, LLC and other area lands, and the other is the winter use of the Buchanan property by the Keystone Natural Beef (“Keystone”) operation that is conducted in Crook County for the remainder of the year.

We will address these uses and related farm practices because LUBA’s decision recognizes the fact that the Buchanan property is used by Keystone cattle and because new evidence was received from opponent Redside Restoration Project One, LLC (“Redside”) that cattle are moved by Dry Creek Ranch on Hunt Road, Lower Bridge Road and Buckhorn Road on a “cattle circulation route \*\*\* shown in the dashed yellow line on this map” that shows the route crosses the Volwood Farms property. Letter from James Howsley for Redside dated July 23, 2024. The applicant also provided information that a few cows are kept on the former Volwood Farms property and that the owner of that property, Two Canyons, LLC has approximately 50 head of cattle “located across other properties” that apparently include Dry Creek Ranch. First Declaration of Robert Turner, August 6, 2024. A carrot seed crop is now being grown on the Volwood Farms property in an irrigated farm field and the farm practices related to irrigated fields on the Volwood Farms property are addressed by the above chart.

From information in the record provided by the OSU Extension Service that inventories accepted farm practices in Deschutes County, grazing, dry lot feeding and moving livestock to or through unvegetated areas are accepted farm practices. All may, potentially, occur year-round. According

to OSU, grazing usually occurs for 5 to 7 months in Spring, Summer and Fall at all hours. Impacts associated with this use are dust, manure odor, flies, cattle sounds, livestock escape and property damage. According to OSU, dry lot feed may occur at all hours and result in a concentration of manure odor, flies and cattle sounds in a relatively small area. Moving livestock to or through unvegetated areas typically occurs during the daytime and may generate dust, cattle noises and result in possible interference with vehicular traffic on local roads.

Keystone cattle are kept on the Buchanan property during the Winter and then transported by truck to Powell Butte where they graze on irrigated pasture land owned by Elizabeth Buchanan. Hay is imported by truck to feed the Keystone cattle. Imported feed is needed to supplement the small amount of forage provided by the small irrigated pastures on the property. Mr. Buchanan keeps six head of Corriente roping cattle for roping practice which is not claimed by the Buchanans to be a farm use. Mr. Buchanan also keeps five horses on the Coyner Avenue property that, also, are not claimed to be farm animals. It is possible that the horses are used in conducting the cattle operation so accepted farm practices related to horses have been addressed in the chart, above.

The information provided by Redside about Dry Creek Ranch and its cattle operation is scanty. From property listing information prepared by Realtor Pam Mayo Phillips, Dry Creek Ranch is located on Hunt Road and is outside of the area identified in our prior decision as the Study Area. Rec-783-784. Impacts to its farm practices, therefore, are not a basis for denial of the 710 Properties plan amendment and zone change applications. According to the map provided by Redside, Dry Creek Ranch is owned by Two Canyons, LLC; the current owner of the Volwood Farms property (the 9 Peaks Ranch Rec-783-784).

## **Property-by-Property Analysis of Whether it is Necessary to Retain EFU Zoning to Protect**

### **Farm Practices on Adjacent and Nearby Agricultural Lands**

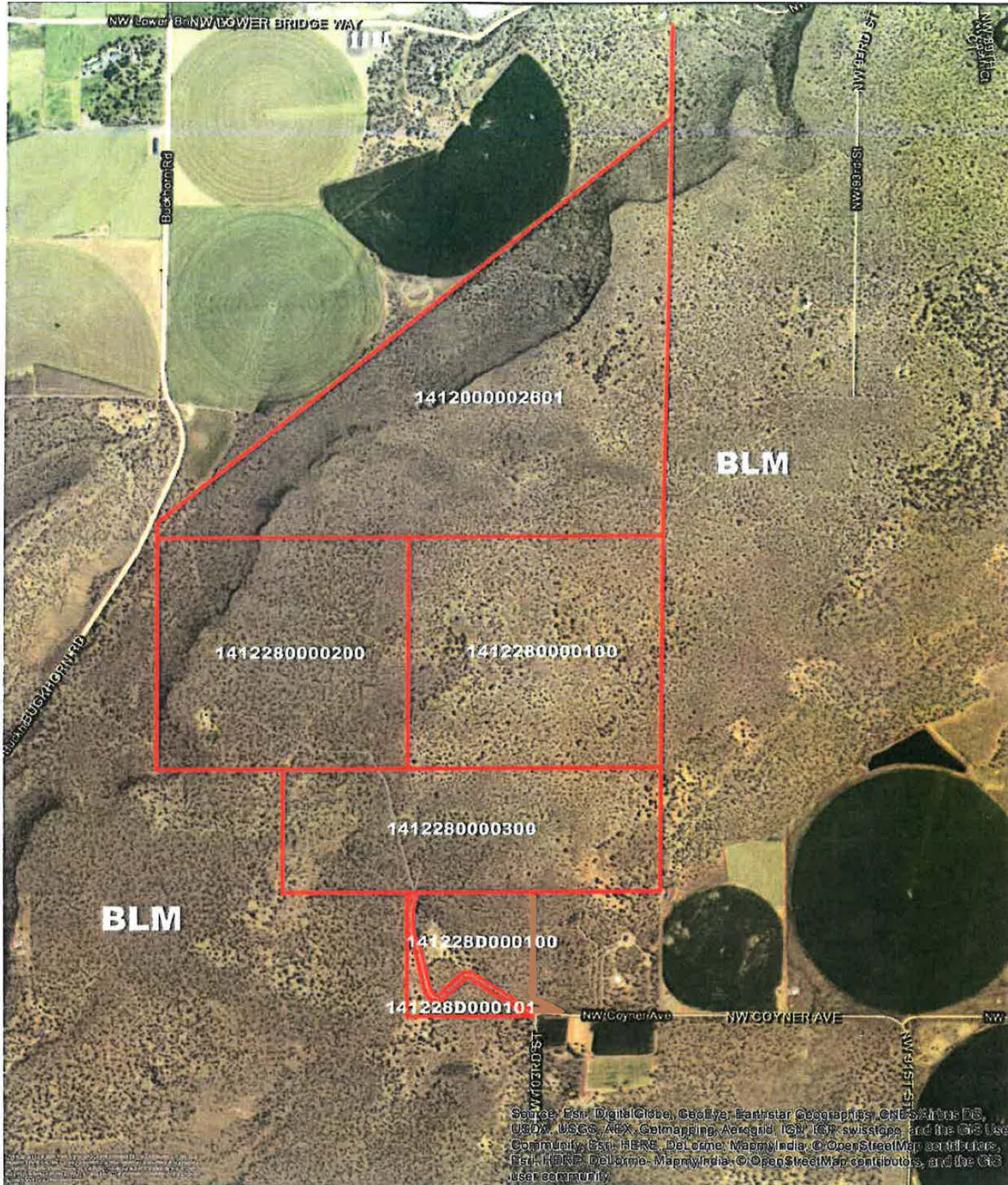
The Study Area contains four properties that engage in farm practices: (a) the Buchanan and Stabb properties on Coyner Avenue southeast of the subject property; and (b) the Volwood Farms and Nicol Valley properties west of the subject property. Each is addressed further below. The owners of the Nicol Valley and Volwood properties have not objected to the approval of the plan amendment and zone change and have not claimed that approval will prevent them from continuing farm practices on their agricultural properties. The subject property and the relation of each of the four properties to it is addressed below and is followed by a discussion of specific potential impacts LUBA required us to address on remand as they relate to the four properties.

We note that opponents presented arguments that the zone change will create significant change and significant increase in cost of farm practices test of ORS 215.296 and violate that test as interpreted by the Oregon Supreme Court in the *Stop the Dump* case. Neither test, however, applies to our review of the plan amendment and zone change because ORS 215.296, in Deschutes County, applies to the review of ORS 215.283 (2) and (4) “conditional” uses only. LUBA’s decision directs the County to determine whether the retention of EFU zoning is necessary to permit farm practices to continue on adjacent or nearby agricultural lands and that is the test applied here.



## Existing Status of the Subject Property

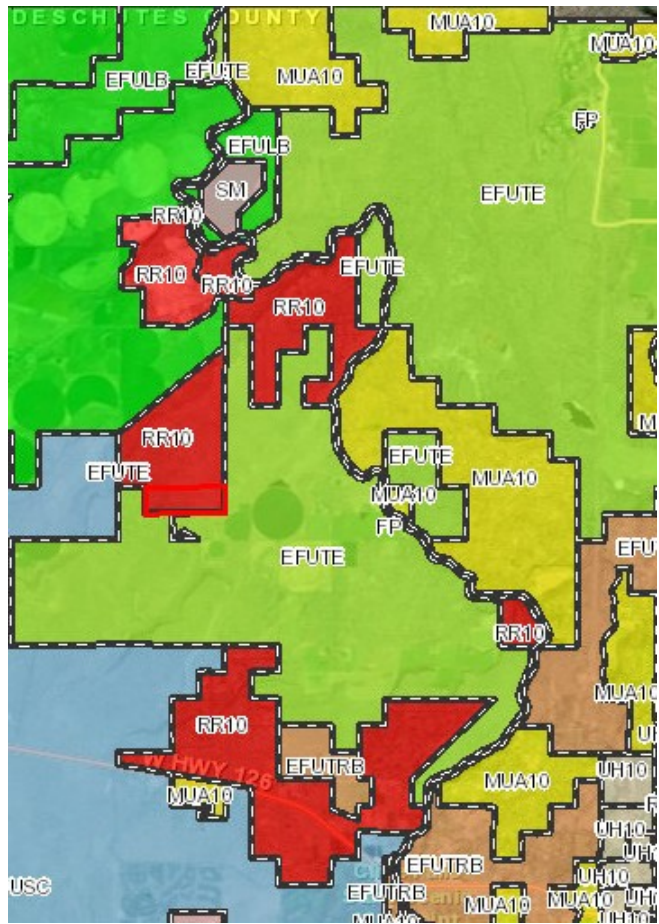
The aerial photograph below shows the location of the subject property in relationship to other area properties. The subject property and the extension of Coyner Avenue are outlined in red. Tax Lot 100, Map 14-12-28D is not a part of the subject property. Tax lot numbers are correct with the exception of the northernmost lot, Tax Lot 2601, Map 14-12-00. It is now comprised of Tax Lots 300, 400, 600, Map 14-12-21.



There is an existing nonfarm dwelling in the southeast corner of Tax Lot 200, Map 14-12-28. Tax Lot 101, Map 14-12-28D and Tax Lot 300, Map 14-12-28 each have obtained a nonfarm dwelling approval that is unexpired. All of these lots are located in the southern part of the 710 Property. The Buchanan property adjoins the 8.66-acre Tax Lot 101, Map 14-12-28D at one point across the intersection of NW Coyner Avenue and NW 103<sup>rd</sup> Street. If this application is not approved, that tax lot will be able to be developed with a nonfarm dwelling and the same is true for Tax Lot 300 north of it.

The majority of the subject property is located on a long, large plateau. On the east side, the subject property drops approximately 250 feet to the closest property to the west, Volwood Farms and land owned by the USA that is not engaged in farm use. The Odin Valley is located far below the plateau as well. It drops approximately 200' in a short distance where it adjoins, for a short distance, one privately-owned parcel zoned EFU, Tax Lot 301, Map 14-12-27. Tax Lot 301 is a nonfarm parcel that has been developed with a nonfarm dwelling. The Stabb property is a short distance east and south of this property.

The only development that has occurred on the plateau is rural residential development. The typical lot size in the developed area is approximately ten acres. The developed area of the plateau is also a part of a vast area of land north of the subject property that is zoned RR-10 in the approximate center of the area shown on the County zoning map:





The remainder of the lands on the plateau are federally-owned lands managed by the BLM. These lands adjoin approximately one-half or more of the boundary of the subject property. No livestock grazing or farm use is allowed on these federally-owned lands.

A major part of the subject property, an area of approximately 250 acres, is mapped for Destination Resort development. This area adjoins the Volwood Farms property and is depicted on the County's zoning map maintained on the DIAL system (Rec-3838) as follows (Tax Lot 300, Map 14-12-28 outlined in red):



It was established in our prior decision and on appeal that, without consideration of the DR overlay zoning, the subject property has the potential to be developed with a total of approximately 24 nonfarm dwellings.

### **Traffic Impacts**

The proposed zone change to RR-10 zoning will not increase the maximum amount of traffic that can be generated by development of the subject property. This is the case because a destination resort use is allowed in the EFU zone and in the RR-10 zone and that use would produce a level



of traffic that would far exceed the level of traffic associated with a development of 71 homes on the subject property.

Furthermore, our conditions of approval will lessen the maximum level of traffic that may use area roadways that pass by agricultural lands inside and outside the Study Area by imposing a condition of approval that prohibits destination resort development of the property and that limits development of the property to 71 new homes. The fact that this will lower the volume of traffic that may be generated by the subject property with its current EFU-TE and DR zoning is established by expert evidence provided by Joe Bessman, P.E. of Transight Consulting LLC, Applicant's Exhibit 94. A conditions of approval agreement with restrictive covenants enforceable by Deschutes County (**Attachment B**) must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.

The record also establishes that even if development of the subject property with a destination resort is not considered, the traffic related to development of the subject property with up to 71 single-family homes will not force farm properties in the Study Area to discontinue farm use. In fact, no owner of property in the Study Area or the greater area beyond it has made such a claim.

Owner Ed Stabb's only concern was that the west end of Coyner Avenue is not designed for heavy roadway loads such as loads associated with the build out of a residential subdivision. He did not claim that this issue would prevent him from continuing farm practices on his property, and the evidence provided by Transight Consulting makes it clear that the County facility is sufficient. Coyner Avenue is a County-maintained public road that is repaired and maintained by the county as needed. Additionally, the adequacy of this road for heavy traffic is confirmed by the fact Keystone uses the road to import hay and to transport its cattle to and from Powell Butte.

Owner Elizabeth Buchanan's husband, Billy Buchanan stopped short of claiming that RR-10 traffic will prevent Keystone from conducting farm practices on the Buchanan property. He claimed "we would have no way of continuing our operation *if* we cannot get haying equipment down Coyner Avenue and onto our ranch" – not that he would discontinue any farm practice if the rezone is approved. He also claimed that transportation engineer Joe Bessman, P.E. "was absolutely incorrect" in testifying:

"[T]here is enough shoulder on this road [Coyner Avenue] for farm equipment to safely pass. Farm equipment (not just ours) is often seen traveling on Coyner, especially during haying season. The road is not wide shouldered enough in many places to accommodate for the expected increase in traffic to pass our trucks and our pieces of equipment, especially haying equipment. Many of these areas along the narrow 2 lanes of Coyner Avenue have fences very close to the shoulder and do not allow for large farm equipment to 'pull off the road onto a shoulder.' They would end up stuck in a ditch or in a situation where cars would have to stop and back up for long distances to get out of the way of the farm equipment."

We, however, disagree with Mr. Buchanan's characterization of Coyner Avenue and find that the road, its shoulders and fencing are such that additional traffic at the level allowed by approval of

the 710 Properties application will not prevent Mr. Buchanan or others from moving farm equipment down the 3960 feet length of Coyner Avenue to NW 91<sup>st</sup> Street. We are persuaded by the evidence and photographs provided by transportation engineer Joe Bessman on pages 1 through 4 of Applicant's Exhibit 99 which clearly contradict Mr. Buchanan's claim that fences are "very close to the shoulder" and that farm equipment or residential traffic would be unable to pull off onto the shoulder.

Furthermore, it is implicit in Mr. Buchanan's statements there is existing traffic in the area other than farm traffic and that the Buchanans are able to move trucks and haying equipment onto and off of their property. The width and condition of the roadway and area fencing does not preclude passing or use of the road by farm equipment or trucks. The increase in traffic projected by Mr. Bessman, also, is not great so there will not be a steady stream of traffic leaving the subject property at any one time. Applicant's Exhibit 46.

According to Mr. Buchanan, Keystone calves frequently crawl under "standard five wire fencing." Mr. Buchanan argued that additional fencing would be required to ensure the safety of these calves. He fails, however, to quantify the cost of additional fencing or to show that the cost is "significant." Mr. Buchanan does not claim that this cost would be so great that it would prevent Keystone from continuing current farm practices on his wife's property. We find that this unquantified cost will not prevent Keystone from continuing to winter cattle on the property or to keep calves on the property. We reach this conclusion based on approximate fencing costs provided by rancher Rand Campbell.

We also find that cattle are raised along Highway 126, a busy state highway (Rec-3097), demonstrates that the existence of additional traffic alone will not prevent Keystone from keeping its cattle on the Buchanan property during the Winter.

Owner Ed Stabb's only concern related to traffic was that the west end of Coyner Avenue is not designed for heavy roadway loads such as loads associated with the build out of a residential subdivision. He did not claim that this issue would prevent him from continuing farm practices on his property. Mr. Stabb grows hay and it is likely he moves haying equipment on Coyner Avenue because he owns other farm property in the Odin Valley. Coyner Avenue is a County-maintained public road that is repaired and maintained by the county as needed. Additionally, the adequacy of this road for heavy traffic is confirmed by the fact Keystone uses the road to import hay and to transport its cattle to and from Powell Butte and the evidence provided by the applicant, including the evidence provided by transportation engineer Joe Bessman, including the evidence discussed above regarding the Buchanan property. For the reasons we have provided in response to Mr. Buchanan's testimony regarding new residential traffic and Coyner Avenue, we find that it is not necessary for the subject property to retain EFU zoning in order to allow Mr. Stabb to continue using Coyner Avenue to move farm equipment, including haying equipment, to and from his Coyner Avenue property.

The remaining two Study Area properties that are conducting farm practices are the Volwood Farms and Nicol Valley properties. Volwood Farms and Nicol Valley both adjoin Buckhorn Road. Volwood Farms also adjoins Lower Bridge Way. Volwood Farms is on the east side of Buckhorn Road and Nicol Valley is west of the road and the Volwood Farms property. Both are engaged in

growing crops in irrigated farm fields. A few cows are kept on the Volwood Farms property and, according to an illustration provided by Redside, a “cattle circulation route” crosses the Volwood Farms property.

Redside argued that Dry Creek Ranch cattle are moved on Hunt Road, Lower Bridge Way and Buckhorn Road as a part of the cattle circulation route and that passenger vehicles “can frighten cattle.” Howsley letter of July 23, 2024, p. 5. As noted above, Dry Creek Ranch is located outside the Study Area so impacts to this ranch property are not considered in addressing the “necessary” test. We will do so nonetheless without conceding that these findings are required as they pertain to the Dry Creek Ranch property.

Redside is not the owner of either the Dry Creek Ranch or the Volwood Farms property. Redside did not provide testimony from Two Canyons, LLC, the owner of the Volwood Farms property, regarding its use of Lower Bridge Way, Hunt Road and Buckhorn Road as a part of a cattle circulation route or to express concern about the impact of approval of the plan amendment or zone change application on its small cattle operation or other irrigated crop farm uses, including impacts related to new traffic. Given this lack of evidence and the lack of objection to the applications from the prior owner of the property (Volwood Farms), it is reasonable to conclude that none of the potential impacts, including traffic impacts, are of such a magnitude that they would force Two Canyons, LLC to discontinue farm practices, including use of public roads and the Volwood Farms property to move cattle and the raising of a few head of cattle on the Volwood Farms property.

Furthermore, the subject property does not adjoin or have convenient or direct access to Hunt Road, Buckhorn Road or Lower Bridge Way. All traffic coming and going from the subject property, with the possible future exception of emergency or public utility vehicles, will use Coyner Avenue and NW 91<sup>st</sup> to access other area roads, including Highway 126 and almost no vehicle trips associated with the RR10 development of the subject property will use these roads. Applicant’s Exhibit 49. The applicant is seeking a 20-foot wide right-of-way from BLM to cross its property to obtain access to utility lines along Buckhorn Road. The applicant is also seeking a 60’-wide right-of-way to allow access to NW 93<sup>rd</sup> Street north of the subject property for utility and emergency access use. These are the only uses that BLM will allow on either road. Residential traffic will not be able to use these rights-of-way to come and go from the subject property. We have imposed a condition of approval upon approval of this application to assure that this remains the case. Given this fact we are not persuaded that the rezoning of the subject property will force Two Canyons, LLC to discontinue using its cattle circulation route or to discontinue raising a few cattle on the Volwood Farms property.

These utility and emergency-only access points are unlikely to have significant impacts on the Volwood Farms operations and no party has claimed that they will. Using planned and existing access, the Volwood Farms property is more than 10-miles from the subject property, making it highly unlikely that any impact from typical residential traffic will be felt by any farming practices on the Volwood Farms property. Exhibit 16.

The owners of the Nicol Valley property have not opposed approval of this land use application. They have an irrigated farm field and raise hay, alfalfa and/or orchard grass. Haying and other

farm equipment associated with this use may use Buckhorn Road or Lower Bridge Road to move haying or other farm equipment. Given the fact that only a very small amount of traffic from the subject property might use Buckhorn Road to come or go from the Lower Bridge farm area after traveling a significant distance to the south to reach Highway 126, it is reasonable to find that it is not necessary to deny approval of this land use application in order to allow farm practices to continue on the Nicol Valley property.

We are also persuaded by the testimony of Mr. Riley Gallant. Mr. Gallant, a local farmer who owns a farm servicing business, provided testimony relevant to the use of area roads to access the subject property, including the roads that link the subject property to Highway 126. Mr. Gallant stated that he regularly moves his farm equipment on similar roads that have higher traffic volumes and that the nearby roads are “suitable for moving farm equipment while also sharing the road with other vehicles.” Exhibit 41.

The applicant also submitted a detailed inventory of land uses outside of the Study Area to demonstrate the land use pattern of the area. Applicant’s Exhibit 71. The properties that are in agricultural use outside of the Study Area are all engaged in uses similar to those in the Study Area. It is reasonable to find that traffic impacts to these properties that are further away from the subject property than those in the Study Area are similarly negligible and therefore it is not necessary to deny approval for farm practices to continue on these properties.<sup>11</sup>

## **Water Impacts**

All four properties in the Study Area rely on groundwater for irrigation and the Buchanans rely on groundwater for stock watering. Volwood Farms, Stabb and Nicol Valley use groundwater to grow crops. The Buchanans use groundwater to irrigate a pasture that is grazed by cattle and to provide water to livestock.<sup>12</sup> Given the fact that all four properties rely on groundwater pumped from the regional aquifer, our analysis of the water impacts issue addresses impacts on all four Study Area properties where farm practices are occurring, as well as farm practices beyond that area where impacts will be no greater. After a review of the expert evidence related to water impacts, we find that the existing resource designation and zoning is not necessary in order to allow existing farm practices in the Study Area and beyond to continue.

Establishing and using water in the volumes necessary to attempt irrigated agriculture—although infeasible given existing soil conditions and the high cost of purchasing water rights from existing farms that hold irrigation water right—would have far greater impacts on area wells that would the use of water by 71 homes. According to Cascade Geoengineering, a conservative estimate of the 710 Properties water use is equivalent to the irrigation of 27 acres of land whereas at least 405 acres of the subject property might, theoretically, be irrigated. Moreover, the existing zoning would permit a destination resort, which also would use substantially more water than used by up to 71 homes with small lawns. Additionally, RR-10 zone development of the subject property will result in smaller potential and in-fact water impacts than the existing designation and zoning.

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<sup>11</sup> This finding is not required to address the issue on remand which requires the Board to address impacts to adjoining and nearby lands only.

<sup>12</sup> Mr. Buchanan has stated that he imports hay to feed his horses and roping cattle, cattle that are not, based on its advertising, a part of the Keystone business.

Putting comparison aside, the expert opinions of GSI Water Solutions (Applicant's Exhibit 31), Cascade Geoengineering (Applicant's Exhibits 74 and 110), and that of Kyle Gorman of OWRD (Rec-692-696), is sufficient for a reasonable person to determine that potential water impacts will not violate the "necessary to adjacent and nearby farm practices" test. Many commentators mentioned that the groundwater in the Deschutes Basin is declining and that the pending applications should be denied due to that fact. This decline is primarily due to climate change. Rec-4049 (70% impact). According to Kyle Gorman of OWRD, the decline of groundwater in the area of the subject property is gradual and an abundant supply of water exists to support new 710 property water uses. GSI's study, confirmed by Cascade Geoengineering, shows this can be done without likely interference to agricultural or domestic wells in the area.

Robert Long of CwM-H2O offered the only technical expert opinion on water impacts. Mr. Long did not directly challenge the conclusion of GSI that water use by 71 homes on the subject property ("710 water use") is unlikely to interfere with agricultural or domestic well use in the area around the subject property. Instead, Mr. Long asked whether this use of groundwater will have *any* adverse impact on the regional aquifer or agricultural water use and operations which is not the question that must be addressed on remand.

The gist of Mr. Long's response to his own question is that any exempt water use, no matter how small, will "contribute to further diminishment of the area aquifer resource and reduce groundwater availability for irrigation of crops and watering of livestock." He claims this will be the case because new homeowners will not be required to purchase and transfer irrigation water rights to their property from elsewhere in the Deschutes Basin or to provide surface water mitigation for their water use. This is true for any exempt well in the Deschutes basin, including exempt wells drilled for livestock watering or farm dwellings.

The question on remand is whether the proposed potential impacts of the 710 water use will preclude farming practices on nearby or adjacent lands. To answer that question, it is logically necessary to determine whether there will be an impact on area wells due to the 710 water use and the amount of that impact, if any. Mr. Long did not answer that question. According to Cascade Geoengineering, the conservative (high) use of water by 71 exempt wells and homes, without a restriction on irrigation water use beyond the restriction set by State law, is 51-acre feet annually. This is 0.0000182% of the annual recharge of the aquifer.

Instead, Mr. Long addressed the potential future impacts of a groundwater decline trend caused primarily by drought and discussed the cost impacts of that decline. These are costs that farmers and residents alike will address regardless of whether the subject property is zoned RR10. Mr. Long did not separate out the impact that the 710 water use might have on the water supply provided by the regional aquifer and on area wells – information needed to identify cost impacts, if any, attributable to the 710 water use and to answer the question on remand. He did not find that the 710 water use will hasten the day when wells must be deepened by area farmers due to groundwater declines due to causes unrelated to the approval of the plan amendment and zone change applications.

Mr. Long's cost estimate of addressing the existing issue of groundwater decline as a whole is based on a theoretical five-foot drop in well water levels he selected. This amount of drop is in

excess of any slight impact the 71 new homes might have on the aquifer. According to Kyle Gorman of OWRD and the OWRD chart of historic declines in the Lower Bridge and other areas, the groundwater in the area has dropped nine feet in 25 years in a relatively steady fashion with a slight increase in recent years. With a straight-line decline, it would take almost 14 years for a decline of five feet to occur. Assuming a more rapid rate of decline, it might take as little as ten years for this amount of decline to occur due to factors other than the 710 water use. We find that, since the 710 water use and potential impact on other wells is so small, it will not create a financial hardship on area farms that will cause them to discontinue using irrigation water or to continue to farm their properties. It is important to note that this is an impact that is already occurring and cannot be attributed, based on the evidence and testimony in the record, to potential new domestic exempt use of water on the subject property.

Furthermore, none of Mr. Long's statements overcome the test that the property's existing designation is necessary to permit farm use to continue—they illustrate that factors outside of the existing property are leading to adverse impacts. They do not tie the proposal to those impacts. Moreover, Mr. Long's testimony was rebutted by Cascade Geoengineering, including responses to claims made regarding annual recharge and *specific recharge rates* in the particularized area of the proposal. This more specific information is reasonable to rely upon.<sup>13</sup>

Mr. Long's comments also argue that additional water use would harm groundwater resource flows of the Deschutes River. This is not the test that is to be addressed on remand nor are there agricultural uses within the Lower Bridge area or in the Study Area that rely upon surface water flows. Applicant's Exhibit 110.

In summary, Mr. Long did not answer the question posed by LUBA on remand.

Redside's lawyer James Howsley attacks the methodology employed by the GSI Report to assess the impact of the 710 water use on agricultural and domestic wells in the area of the subject property and the expert evidence provided by Cascade Geoengineering. Mr. Howsley faults the study for not including current well conditions and levels on nearby farm properties and not digging a test well to test results of the GSI study. Mr. Howsley also claims that the study simulated "the equivalent of the cumulative impact of pumping from 5-6 homes" which he claimed underestimated impacts of pumping by a factor of 10.

Redside's water expert Mr. Long, however, did not support any of Mr. Howsley's arguments. This silence on such a key issue suggests that Mr. Howsley's lay speculation about the merits of the GSI report are not well founded. Also, the GSI report was co-authored by hydrogeologist Ken Lite (Rec-2618). Mr. Lite is a former USGS employee who is an expert on groundwater declines in the Deschutes Basin and one of the authors of the 2017 study of the topic published by the USGS, Simulation of groundwater and surface-water flow in the upper Deschutes Basin, Oregon: USGS Scientific Investigations Report 2017 (Rec 1437) and co-author of the 2013 USGS Analysis of 1997-2008 groundwater level changes in the upper Deschutes Basin, Central Oregon (Rec-1335-1378) as well as being a co-author of a number of earlier groundwater studies and flow

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<sup>13</sup> Interestingly, area irrigation wells are shallow with the deepest at 316 feet. This is the Buchanan's well and based upon water recharge direction and patterns obtains water before any potential domestic exempt well on the property would. Applicant's Exhibit 58.

simulations of the upper Deschutes Basin. Rec-2622. We find that Mr. Lite understands what information is needed to estimate impacts to groundwater in the Deschutes Basin and that Redside’s attorney, a person who is unqualified to offer an expert opinion on groundwater issues, does not.

Cascade Geoengineering directly responded to Mr. Howsley’s arguments. It stated “[i]t is not necessary to study ‘actual well condition’ nor is it an accepted practice for water experts to dig a test well to assess whether a new use will cause draw down with the well” for reasons provided on Applicant’s Exhibit 74, p.3. Cascade Geoengineering also explained that Mr. Howsley misunderstood the analysis conducted by GSI and that it did, in fact, study and overestimated the potential impact of water use by 71 homes on both agricultural and residential wells in the area surrounding the subject property. Applicant’s Exhibit 74, p.3-4. This response is not contested on its facts or “on the science” by Mr. Howsley or Mr. Long during the rebuttal comment period. Instead, Mr. Howsley argues that the conclusion of Cascade Geoengineering (and GSI) that 710 water use is unlikely to interfere with agricultural water use in the area is not legally sufficient because the failure to study current well conditions is “directly contrary to the Oregon Supreme Court’s ruling that when examining potential impacts to surrounding farms, the farm practices must be analyzed on a farm by farm basis.” *Stop the Dump Coalition v. Yamhill County*, 365 Or 432 (2019). *Stop the Dump*, however, addresses the requirements of ORS 215.296(1), a more rigorous impacts test and does not address the meaning or requirements of the “necessary to permit farm practices” test.

The *Stop the Dump* decision does not make it impermissible to address an impact that applies to all lands and farm practices with a single set of evidence related to the regional aquifer below all of the Study Area properties. The *Stop the Dump* court held that, based on the legislative history of the adoption of ORS 215.296(1), that the ORS 215.296(1) impact test applies “practice by practice and farm by farm.” We have done so for the “necessary to permit farm practices” test by identifying all farm uses occurring on adjacent and nearby lands and the farm practices occurring thereon. LUBA rejected the claim by 1000 Friends that we had not done so, and we have used that information, with supplemental information regarding one new and one overlooked farm use, to answer impact questions on remand.

Evidence in the record addresses the possible impacts of the 710 water use on **any and all** farms and farm practices in the Study Area. It supports our finding that no farm in the Study Area or beyond will require the subject property to retain EFU zoning to enable them to continue farm practices, including irrigation from agricultural wells. The evidence provided by Cascade Geoengineering addresses the water issue that exists for all farms and farm practices that might be impacted by the 710 water use. Based on this analysis, we find that there will be no likely impact on the ability of any of the farms or their groundwater use and no impact of sufficient magnitude to prevent any farmer from continuing the farm practice of using groundwater to irrigate their properties or to use water for any other farm purpose. *Stop the Dump* does not hold that this approach is impermissible where evidence answers the impact question for all farm practices within a study area.

It was also claimed by opponents that domestic exempt water uses on farm lands should be further protected because those domestic uses may be necessary for farming practices. Again, the evidence

in this record is that the potential impact of domestic exempt wells on the subject property are unlikely to impact area wells due to the significant amount of recharge in this area. Similarly, as Cascade Geoengineering opined, “[b]ased on general conditions a domestic well may last between 20 to 50 years if the best well completion and materials are used, also keeping mind that ongoing well maintenance is necessary and that may include cleaning of the well[.]” And, while not insubstantial, the only verified evidence of the costs of deepening domestic well in the record is found at Exhibit 80. In that case, a 751-foot deep well needed to be cleaned and an additional 139 feet deepened at the cost of \$6,537.00.

Despite the expert testimony of both GSI Water Solutions and Cascade Geoengineering that water impacts of the proposal are unlikely to have *any* impact, the fact remains that groundwater exempt wells, although not requiring a water right, are treated as if they are a certificated right. ORS 537.545(2). This also means that if such a use results in substantial or undue interference with another authorized well or water user, OWRD may regulate the exempt use of water by homes built on the subject property to prevent interference with existing agricultural and domestic wells. OAR 690-250-0130. A comprehensive legal memorandum on exempt uses that supports this finding is found at Applicant’s Exhibit 84. In the Deschutes Basin, OWRD has never regulated off a groundwater user. Applicant’s Exhibit 110, pg. 3.

Lastly, the County accepts the applicant’s offer to reduce the amount of water that could be used by the 71 new wells by agreeing to a condition of approval, enforceable by a recorded document, that the amount of land that may be irrigated per exempt well be limited to ¼ acre rather than the ½ acre figure allowed by State law. Compliance with this requirement can be monitored by aerial photography available from a number of sources, including the County Assessor’s DIAL system.

Given the evidence in the record and our findings herein we find that it is not necessary to maintain the property’s existing resource designation and zoning in order to prevent water impacts to farm practices on nearby and adjacent agricultural land in the Study Area.

The applicant also submitted a detailed inventory of land uses to determine the land use pattern of the area. Applicant’s Exhibit 71. This exhibit includes properties outside of the Study Area. The properties that are in agricultural use on the area but outside of the Study Area are all engaged in similar uses as those in the Study Area. It is reasonable to find that water impacts to these properties that are further away than those in the Study Area are similarly negligible and therefore it is not necessary to deny approval of the rezone and comprehensive plan re-designation in order for farm practices to continue on these properties.<sup>14</sup>

### **Nuisance and Trespass**

No party has argued on remand that nuisance or trespass impacts that might affect farm practices on adjacent or nearby lands due to the RR-10 redesignation of the subject property will result in the discontinuation of accepted farm practices in the Study Area. This may be because many nonfarm dwellings have been approved in the Odin Valley with assurances from property owners like the Johnsons and Ed Stabb, assuring the County that nonfarm dwellings will not result in a

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<sup>14</sup> This finding is not required to address the issue on remand which requires the Board to address impacts to adjoining and nearby lands only.



significant change or increase in the cost of farm practices – in both cases where farm dwellings were approved nearly adjacent to irrigated farm pasture and crop land.

The county recognized the fact that the area of the Odin Valley near the Stabb property is primarily residential when it approved the Stabb nonfarm dwelling application in 2019. This dwelling was approved on Tax Lot 301, Map 14-12-27 on a nonfarm parcel that adjoins the southeast boundary of the subject property and the Stabb hay field on Tax Lot 300, Map 14-12-27. The county decision found that the one-mile study area around that property in the Odin Valley “is predominantly one of rural residential use,” that “[t]he land use pattern appears to be stable, with the dwellings in the area approved mostly as nonfarm dwellings and that “[t]he proposed dwelling will be consistent with the land use pattern of the area by allowing a nonfarm dwelling on dry, unproductive land.” It also found that the nonfarm dwelling would not force a significant change or increase in the cost of accepted farm practices, a more stringent test than the “necessary” test of OAR 660-033-0020(1)(a)(C). As shown by the testimony offered in this case, farm uses continue to occur in this area despite the prevalence of nonfarm dwellings.

Given the topography of the subject property, the level ground on top of the plateau and the steep slopes and the mountain views available from that location, new homes will be built on the plateau rather than on the steep slopes below. Given this fact, it is likely that most homes will be separated from farms to the northwest and southeast. This will make it unlikely that the owners of homes on the subject property will venture down the steep slopes and trespass onto adjacent or nearby properties where farm practices are occurring on the Volwood Farms, Stabb and Nicol Valley properties.<sup>15</sup> Furthermore, this vertical separation will also make it unlikely that there will be any nuisance impacts due to the approval of RR10 zone and no impacts will force area farmers to discontinue farm practices. To further assure that nuisance and trespass issues will not impact area farm practices, we have imposed a condition of approval that requires the applicant to post and fence the property to discourage trespass, to require property owners to record a waiver of remonstrance agreement waiving rights to object to accepted farm practices and to observe a minimum setback of 100’ from properties where farm practices are occurring (Buchanan, Stabb and Volwood Farms). These requirements are more stringent than the requirements imposed on nonfarm development in the EFU zone that are designed to minimize potential conflicts between farm and nonfarm uses.

The farm practices that may be occurring on these four properties are irrigation, growing and harvesting crops (grass, hay, alfalfa), fertilizing farm fields, baling hay, and herbicide use. Horse and cattle grazing may also be occurring in the area. The record includes information from the Oregon State University Extension Service that describes the types of impacts farm practices in the surrounding area could generate on nearby lands. Maintaining irrigated pasture and crop land can generate dust from reseeding, drift of herbicides from spraying, vehicle noise from trucks, manure odor from fertilizing, and possible water run-off from irrigation. Grazing livestock can generate dust, manure odor, possible interference with vehicular traffic and property damage if livestock escape.

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<sup>15</sup> The likelihood of trespass onto the Buchanan property will not be materially increased because the Buchanan property only adjoins a small nonfarm parcel, Tax Lot 101, Map 14-12-28D, that has been approved for the construction of a nonfarm dwelling. RR10 zoning will not allow that parcel to be developed with more than one dwelling. All other parts of the subject property are one-quarter mile or more away from the Buchanan property and the Buchanan property is fenced.

Dry lot feeding, such as occurs on a part of the Buchanan property, may generate dust, manure, odor and flies and livestock may escape and property damage may occur as a result. Some horse and cattle operations move livestock to or through unvegetated areas. This might create dust and, on rare occasions, slow the progress of vehicular traffic on area roadways. There is a potential for overspray of irrigation water and herbicides. None of these farm practices will, however, be prevented from occurring on any of these four properties by approval of the proposed plan amendment and zone change.

There are significant federal BLM holdings in the area. These lands are part of the Cline Buttes Recreational Area. They include an OHV Trail System which adjoins the subject property. This system also adjoins or is in close proximity to the Nicol Valley, Volwood and Buchanan properties. The risk of trespass and nuisance from these activities is higher than that of a residential use because recreational users are unlikely to be as familiar with the area and the boundaries of the BLM property.

Lastly, the applicant submitted a detailed inventory of land uses within a radius of one mile and more of the subject property to demonstrate the land use pattern of the area. This includes properties outside of the Study Area. The properties that are in agricultural use in the area but outside of the Study Area are all engaged in similar uses as those in the Study Area. It is reasonable to find that nuisance and trespass impacts to these properties that are further away than those in the Study Area are similarly negligible and therefore it is not necessary to deny approval of the application in order for farm practices to continue on these properties.<sup>16</sup>

The following are additional facts related to each of the four properties that support our conclusion that neither trespass nor nuisance issues require that the subject property retain its EFU zoning designation.

### ***Stabb Property Near Southeast Corner of Subject Property***

Only one privately-owned tax lot adjoins the eastern boundary of the subject property. It is Tax Lot 301, Map 14-12-27 (“Tax Lot 301”). Tax Lot 301 is a nonfarm parcel created by an irrigated land division that is approximately 17.5 acres in size. It is located adjacent to the southeast corner of the subject property of Tax Lot 300, Map 14-12-28 (“Eden TL 300”). Mr. Stabb obtained approval of a CUP for a nonfarm dwelling on Tax Lot 301 in 2019 (File #247-18-000796-CU).

The nonfarm dwelling on Tax Lot 301 is approximately 600 feet from the farm field on the adjoining Stabb property, Tax Lot 300, Map 14-12-27 (“Tax Lot 300”). Mr. Stabb’s Tax Lot 300 also contains a dwelling that is about 200 feet away from the irrigated farm field. Rec-2522. Neither of these dwellings have prevented continuation of the Stabb farm operation or farm practices. At no point does TL 300 adjoin Eden TL 300. Rec. 4738-4739.

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<sup>16</sup> This finding is not required to address the issue on remand which requires the Board to address impacts to adjoining and nearby lands only.

Eden TL 300 has a valid land use permit that allows it to develop a nonfarm dwelling within 25 feet of Tax Lot 301 and approximately 45 feet of Tax Lot 300. Rec. 4763. That nonfarm dwelling was allowed because the County determined that the dwelling will not force a significant change in or significantly increase costs of accepted farm practices on surrounding farm lands, including the Stabb property. The impacts of a dwelling or dwellings built on Eden Tax Lot 300 once it is zoned RR10 will be less because new homes will be required to be built farther away from the Stabb farm field than required by the Eden nonfarm approval. Given this fact, the retention of EFU zoning is not necessary to protect the Stabb property from impacts, including nuisance or trespass impacts.

Furthermore, the County found, in its land use decision approving the Stabb nonfarm dwelling, that the presence of a nonfarm dwelling on Tax Lot 301 close to the irrigated farm field on the Stabb farm property (TL 300, 14-12-00) would not force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices in the area, including farm practices on Tax Lot 300/Stabb and the nearby Buchanan property. According to the County decision approving the Stabb nonfarm dwelling:

“The applicant has stated in their burden of proof that the characteristics of the surrounding area is predominantly rural residential with some farming in the form of irrigated pasture, hay production, and livestock grazing.” Rec-5156.

These findings were based on information provided by Mr. Stabb and detailed information regarding the development pattern of the area within a one-mile radius of the Stabb property provided to Mr. Stabb by Deschutes County. In the case of the 710 Properties rezone, the question is whether uses allowed by the approval of RR-10 zoning for the property will prevent farm practices from occurring on adjoining and nearby lands. The Stabb property is nearby. The standard applied in nonfarm dwelling application reviews is more rigorous – whether the nonfarm dwelling will substantially interfere with or cause alteration of accepted farm practices. Compliance with the standard applied to the review of nonfarm dwelling applications would also, on the same or similar facts, demonstrate compliance with the “prevent” farm use standard applicable to the zone change application.

The fact that the surrounding area is predominantly rural residential has not prevented Mr. Stabb from growing hay, grass and/or alfalfa on Tax Lot 300. Tax Lot 300 is surrounded by five nonfarm parcels (Tax Lot 301, Map 14-12-27 on the north and east; Tax Lots 401 and 402 on the east; and Tax Lots 100 and 200, Map 14-12-34B). There are also four nonfarm parcels (including one of parcels being rezoned RR-10) and three nonfarm dwellings on the 80-acres due west of the irrigated part of the Stabb property and north of Coyner Avenue. The same is true for all properties south of Coyner Avenue and Tax Lot 300 between the subject property and NW 91st Street (including the nonfarm dwelling on the Buchanan property).<sup>17</sup>

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<sup>17</sup> Coyner Avenue provides access to the subject property. From its intersection with NW 91<sup>st</sup> Street three-quarters of a mile away, all properties on the south side of the road are nonfarm parcels or are developed with nonfarm dwellings. These parcels adjoin the part of the Cline Butte Recreational Area designated for off-highway vehicle use or another nonfarm parcel that adjoins the recreation area.

In all of these cases it was necessary for the County to find that placing nonfarm dwellings on the surrounding lots would not force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices in the area, including farm practices on the Stabb property. The dwellings on the 710 Property tract, also, like the nonfarm dwellings already in closer proximity to Tax Lot 300, will not cause Mr. Stabb to discontinue any farm practice occurring on Tax Lot 300.

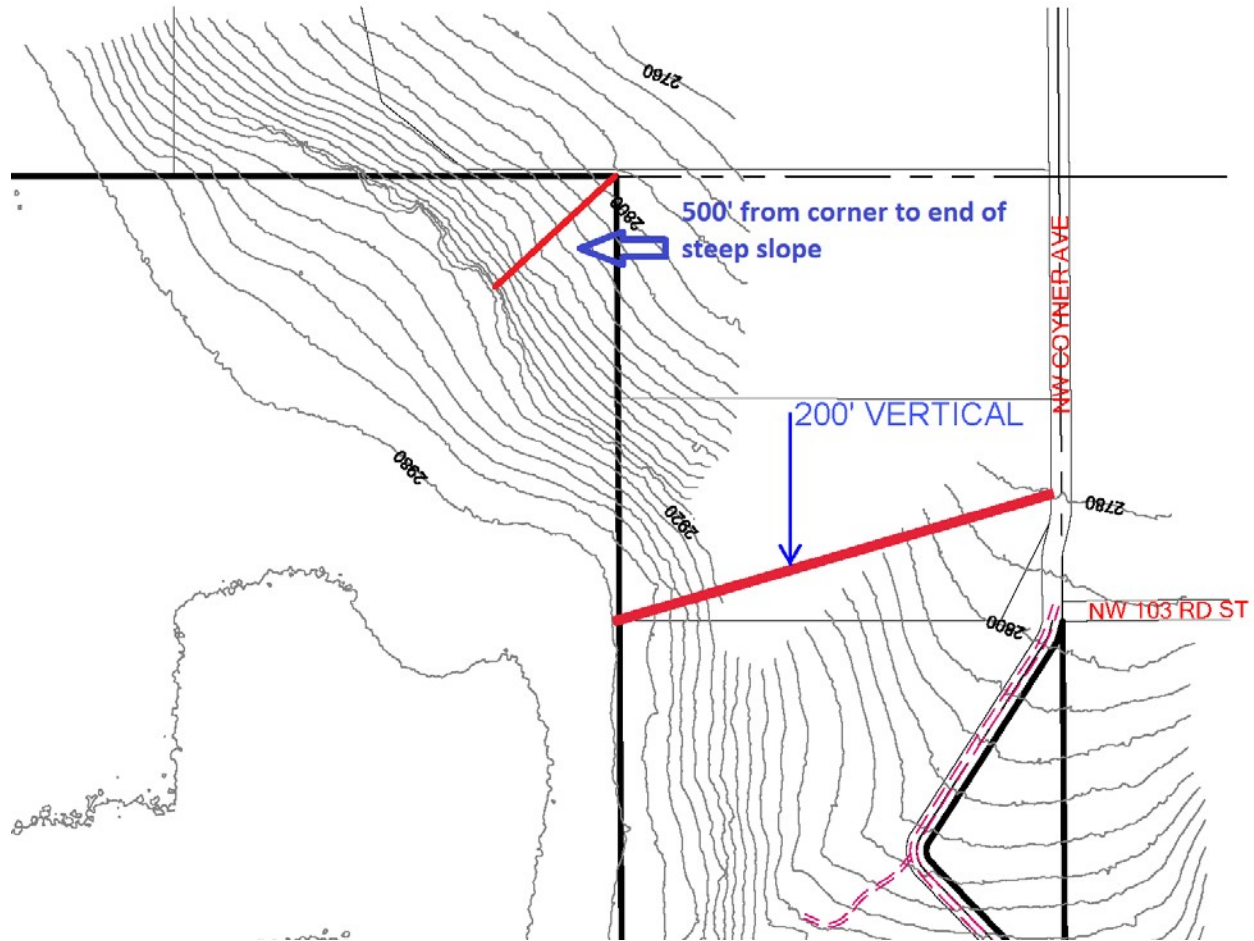
The addition of new homes on the subject property will not materially change the impacts on farm uses occurring on Tax Lot 300 and it will not prevent Mr. Stabb from engaging in any accepted farm use because they will not introduce a new or different use than already occurring in close proximity to his farm property – residential dwellings. Any of the occupants or owners of these other nonfarm dwellings will be impacted by farm practices at the same time as or before residents of the subject property due to distance and topography.

The irrigated hay ground on the Stabb property touches the flag pole part of Tax Lot 301, a nonfarm parcel. The flag pole area is a 20-foot-wide strip of land. It lies between the hay field and the Hayes nonfarm parcel and dwelling to the west, Rec-2518, 3389, 1000 (scaled aerial photograph). Three other nonfarm parcels lie west of the irrigated field along Coyner Road. The closest two nonfarm parcels are developed with nonfarm dwellings. The other has a valid approval for approval of a nonfarm development (Tax Lot 101, 14-12-28D). This parcel is a part of the plan amendment and zone change application. Approval of the pending zone change will not alter the allowed use or density of development of this parcel.

For approximately 450 feet, Mr. Stabb's Tax Lot 300 is about 20 feet from the southeast part of the subject property. Rec-1000, 2518, 3389. This area is not irrigated and it is developed with a residence and structures that separate the hay field from the subject property. The structures also buffer potential conflicts between uses on the two properties. Rec-3389.

The irrigated field on the Stabb property is approximately 700 feet from and 200 below the part of the 710 Property that could feasibly be developed with a single-family dwelling and about 1200 feet from the top of the east side of the plateau. There is a total drop of approximately 200 feet in elevation from the subject property to the farm field on Tax Lot 300, the Stabb property. There is a drop in elevation of about 130 feet distance over a distance of 500 feet between the potentially buildable part of the subject property and the southeast corner of the 710 Property. This is the part of the property closest to the field on Tax Lot 300. This steep slope will reduce the odds that a homeowner on the 710 Property will venture onto Tax Lot 301 and onto Stabb 300 because traversing the slope is not easy.

Any building location on the 710 Property would, as a practical matter, need to be built on top of the plateau or on the slopes near the top of the rim. The point of the sloping area of the plateau that might be suitable for building a home that is the closest point to farm uses occurring on Tax Lot 300 is approximately 500 feet from the SE property corner of the 710 Property. This is illustrated below using the HWA topographic map of the 710 Property as a base map:



There is no access to the southeast part of the subject from any public road so access would need to be obtained from on top of the plateau.

This change in elevation between Tax Lot 300, the Stabb farm field, and the subject property creates a wall of separation between uses. It makes it impossible for irrigation water to create a nuisance by flooding the subject property. Overspray of irrigation water, if it occurs, will benefit the subject property because water is desirable in a desert environment to support plant life. The change in elevation will also minimize the odds that herbicide drift, if any, would rise to the level of a nuisance. The growing and harvesting and baling of grass, hay and alfalfa crops will likely create noise and dust during planting and harvesting. Harvesting might occur in evening hours but is a transient impact. The impacts of fertilizing farm fields may include odor and, fertilizing beyond the boundaries of Stabb Tax Lot 300 but these are transient impacts of very limited duration that would impact Tax Lot 301 and its nonfarm dwelling before it would impact the subject property. Furthermore, any drift would simply enrich the soils at the lower elevations of the subject property where homes will not be built. Furthermore, the farm practices on Stabb's Tax Lot 300 have continued without diminishment, as confirmed by current and historic aerial photography despite its close proximity to single-family dwellings on the Stabb and nearby nonfarm parcels.

In evidence provided to the County in support of his CUP application for TL 301, Mr. Stabb's representative stated that 3.85 acres of the upper part of Tax Lot 301 (60.7% of the building area of TL 301) is generally unsuitable for the production of farm crops and livestock as it is comprised of class 7 soil; the type of soil present on 71 percent of the 710 Property. Mr. Stabb's application also said that "[t]he understory is very sparse and would only support very minimal dryland grazing" and that the property "could not be farmed profitably and therefore, would not be suitable for the production of livestock." The same is true of the 710 Property.

The Stabb application states that Tax Lot 301 abuts two farm operations but "would not be combined with any adjacent property for farm use, as the subject property has no water rights and has an abundance of poor soil and somewhat steep slopes."

### ***Buchanan Property Near One Point of Southern Boundary of Subject Property***

The Buchanan property is one of the three properties located on the south side of Coyner Avenue. All have been approved for development with nonfarm dwellings. Nonfarm dwellings have been built on two of the three properties, including on the Buchanan property. The Buchanans have also built a second dwelling on their property that they rent as a vacation rental. The property has a small irrigated pasture on a part of the property comprised of soils that are predominantly high-value when irrigated in close proximity to the Buchanan's nonfarm dwelling and another small area that has irrigation water rights but that is not currently irrigated.

The part of the subject property that is the closest to the Buchanan property is Tax Lot 101, Map 14-12-28D. It is separated from the Buchanan property by a public road. This property has a valid conditional use permit that authorizes it to be developed with one nonfarm dwelling. Tax Lot 101 was created by nonfarm partition and is a nonfarm parcel that is approximately 8.66 acres in size. Since a nonfarm house is approved to be built on this lot, the closest other house – one allowed as a result of approval of the pending plan amendment and zone change – is at least at least one quarter of a mile away. The property one quarter mile away, Eden Tax Lot 300 also holds a valid nonfarm dwelling approval.

The Buchanan Coyner Avenue parcel is used to winter cattle owned by Keystone Natural Beef ("Keystone"). The farm practices occurring on the Buchanan property include growing pasture grass, livestock grazing, irrigation of pasture, importing hay to feed cattle and horses and transporting cattle to and from the subject property to the irrigated pasture land Ms. Buchanan owns property in Powell Butte. Mr. Buchanan also uses the property for roping practice and keeps six Corriente roping cattle on the property over the summer which are not a part of the Keystone farm use. The Buchanans also have five horses used for roping cattle and, most likely for moving Keystone cattle.

Accepted farm practices that are or may occur on this property are irrigation, growing and harvesting crops (grass, hay, alfalfa), fertilizing farm fields, baling hay, and herbicide use related to growing crops and maintaining pastures. The farm uses of horse and cattle grazing and dry lot feeding may generate dust, manure, odor and flies; livestock may escape and that property damage may occur. While some cattle and horse operations move livestock to or through unvegetated areas, this might create dust, but most of the subject property is irrigated. Moving livestock may cause interference with vehicular traffic. The parts of the subject property that would be eligible for a new home if RR-10 zoning is approved is about a quarter mile away and elevated about 200 feet above the

Buchanan property. The three properties between the Buchanan and subject properties are all nonfarm parcels that are developed with nonfarm dwellings. This has not prevented the Buchanans from engaging in farm practices on their property. The construction of similar homes in more distant locations should, therefore, not cause the cessation of farm practices.

The Buchanans live in a nonfarm residence on their own property in close proximity to farm uses. Rec- 3387; Rec-3861. They have a second dwelling that is frequently occupied by guests and operated year-round as a short term rental. These uses have not prevented the Buchanans from engaging in the uses of keeping horses and cattle on the property. Both distance and the change in elevation buffer impacts and will help assure that nuisance impacts associated with the farm uses conducted on the Buchanan property and impacts of the zone change impacts will not prevent the Buchanans from conducting a farm use on their property.

The odds of trespass on the Buchanan property are very low and likely no greater than the risk posed by the future nonfarm dwelling allowed to be built on Eden's TL 101, Map 14-12-28D property. In either case, only one home will be able to be built there. Any other new homes will be at least a quarter mile away in a straight line and closer to the road, making casual trespass by new neighbors nearly impossible. Furthermore, the Buchanan property is fenced which will prevent and significantly reduce the odds of anyone trespassing on their property. Consequently, we find that the possible increase in trespassing is not an impact that would prevent the Buchanans or Keystone from continuing farm practices on their property.

### ***Volwood Farms and Nicol Deschutes Valley Farms***

There are two farm properties to the west of the subject property that located on the adjacent or nearby lands. One is Volwood Farms. It adjoins the northern part of the western boundary of the subject property. A steep canyon wall and rock outcrops lie along and east of the common boundary line of Volwood Farms and the subject property. The rim of the canyon is approximately 250 feet above the elevation of the Volwood farms property. There is no public road access to the area below the rim.<sup>18</sup> The distance between the common boundary and the plateau area of the property where homes will be built varies from approximately 375 feet to 800 feet and a minimum setback of 100 feet from Volwood Farm is required by this decision. Steep rimrock and canyon sides separate the plateau area of the subject property from the farm fields on this property.

The other farm is Nicol Deschutes Valley Farms. It is located west of Volwood Farms and Buckhorn Road. It and Volwood Farms are engaged in the same type of farm practices – irrigation of hay fields, growing and harvesting crops, fertilizing fields, baling hay and, possibly, herbicide use. Nicol Deschutes Valley Farms is, according to DIAL's interactive mapping measurement tool, over 1000 feet west of the 710 Property and separated from it and the Volwood Farms property by Buckhorn Road. As a result, the analysis of impacts for Volwood Farms also addresses impacts for the more distant Nicol Deschutes Valley Farms property. And, using the existing access roads, Volwood Farms is more than 10 miles from the 710 Property. Applicant's Exhibit 16.

Neither Volwood Farms nor Nicol Deschutes Valley Farms objected to approval of the 710 Properties plan amendment and zone change nor did they raise concern about the impacts of the change on

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<sup>18</sup> There is one point of public road access to the subject property – Coyner Avenue. It provides access to the plateau area of the subject property only.

existing farm practices. The change in elevation and distance between these farms and the plateau, separate and buffer farm uses and practices from new nonfarm dwellings such that approval of the zone change will not prevent these farms from continuing conducting farm uses. Given the topography, there is no risk that the irrigation of farm fields will flood or otherwise harm the subject property. The growing of crops is mostly a quiet activity except during planting and harvesting seasons. Planting and harvesting of hay crops, including baling hay, are of short duration and the activity is protected against lawsuits by neighbors or others impacted by farm practices by the right-to-farm law and by the waiver of remonstrance we are requiring be recorded. The physical barrier provided by the canyon wall and distance will also allow these farms to continue fertilizing their fields and, if they choose to do so, use herbicides. Any drift of chemicals or fertilizer, if it occurs, should not reach homes on the plateau area of the subject property. As a result it is very unlikely, particularly given the waiver of remonstrance, that any new neighbor on the subject property will attempt to interfere with accepted farm practices on any adjacent or nearby lands. Given these facts, we find that potential nuisance impacts are not so great that they would prevent farms in the Study Area from continuing any farm practices.

We assess the risk of trespass by new homeowners onto the Volwood Farms property as low due to the steep hillside on the west side of the subject property and the attractiveness of the upper level of the plateau for building homes and the risk of trespass onto the Nicol Valley property nearly nonexistent due to topography, distance and the existence of Volwood Farms between it and the subject property. To significantly reduce and prevent trespass, because it is possible that homes might be built as close as 100' feet from the west boundary, we have required that the subject property be fenced along or near its boundary with Volwood Farms and that no trespassing signs be posted at 250' intervals. With this restriction, we are confident that trespassing will not present a problem of such a magnitude that it will prevent either Two Canyons LLC as owner of Volwood Farms or Nicol Valley from continuing to engage in accepted farm practices.

#### ***Alternative Findings re Trespass and Nuisance Impacts***

As an additional and alternative basis for finding compliance with OAR 660-033-0020(1)(a)(C), we find that the EFU zone and the DR overlay zone and destination resort map allows development of a destination resort on the subject property. Such a development, if approved, would allow far more residences to be constructed on the subject property than allowed by RR10 zoning. We have imposed a condition of approval that prohibits destination resort development of the subject property. As a result, approval of the zone change and plan amendment applications will decrease the potential maximum development of the subject property and impacts related to trespass and nuisance. We find it is not necessary to retain EFU zoning on the subject property, given the possibility it offers of development of a destination resort, to permit the continuation of farm practices in the area.

Additionally, as a condition of approval, we require a conditions of approval agreement to be recorded against the subject property that establishes a residential setback from any property engaged in farm use and the Buchanan property consistent with **Attachment B**. We also require a recorded waiver against complaints in substantially the same form as included in **Attachment B**.

#### **D. Remand Issue 5: Is the Decision Consistent with DCC 18.136.020(C) and the Deschutes County Comprehensive Plan's Agricultural Goal 1?**



LUBA has required the County on remand to consider evidence of traffic, water and wastewater impacts, on surrounding agricultural lands in findings addressing compliance with DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1. LUBA determined that the County need not address impacts on nonresource lands. All lands inventoried in our findings regarding compliance with OAR 660-033-0020(1)(a)(C), above, are designated by the comprehensive plan as agricultural land with the exception of lands to the north of the subject property that are zoned RR10 and are addressed by these findings.

DCC 18.136.020(C)(2) requires that “impacts on surrounding land use will be consistent with the specific goal and policies contained within the Comprehensive Plan.” DCCP Agricultural Lands Goal 1 is to “[p]reserve and maintain agricultural lands and the agricultural industry.”

LUBA did not interpret the meaning of DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1. Our prior decision, also, does not provide an express interpretation of those provisions. We, therefore, interpret each before proceeding to make findings regarding them.

DCCP Agricultural Lands Policy Goal 1 is a part of DCCP Chapter 2 and Section 2.2 Agricultural Lands Policies. The purposes of Goal 1 are met by compliance with its implementing policies, DCCP Policies 2.2.1 – 2.28. Policy 2.2.1 is to “retain agricultural lands through Exclusive Farm Use zoning.” This makes it the policy of the County to retain “agricultural lands” as defined by Statewide Goal 3 and OAR 660-033-0020(1)(a), including the “necessary to permit farm practices” test of its subsection (C). Policy 2.2.3 makes it clear that lands that do not meet these definitions may be redesignated and rezoned, and that such changes do not violate Goal 1. Policy 2.2.3 states:

“Allow comprehensive plan and zoning map amendments, including those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.”<sup>19</sup>

DCCP Section 3.3 provides that a non-resource plan designation of Rural Residential Exception Area should be applied to the non-resource lands that Policy 2.2.3 allows to be redesignated.

These plan provisions make it clear that DCCP Agricultural Lands Goal 1 is met when lands that meet the Statewide definition of “agricultural land” are designated “agricultural land” and when lands that are non-resource lands are redesignated RREA in compliance with State law. The only impacts test set by State law for a redesignation of this type is OAR 660-033-

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<sup>19</sup> Policy 2.2.4 also directs the County to develop “comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.” We have addressed this issue in quasi-judicial land use decisions, but have not attempted to draft code and policies to provide clarity to this issue.

0020(1)(a)(C). We find that this is the impacts test required to achieve compliance with DCCP Agricultural Lands Goal 1.

DCCP Section 2.1, Introduction, supports our interpretation of DCCP Agricultural Lands Goal 1. It explains that the structure for protecting Oregon’s resource lands is provided by Statewide Planning Goals and the associated Oregon Revised Statute and Oregon Administrative Rules. It states that [f]arm lands are protected by Statewide Goal 3, Agricultural Lands, ORS 215 and OAR 660-033” and that statutes and the OARs define which land should be designated farm land. The OAR that defines farm land is OAR 660-033- 0020(1)(a). The land necessary to permit farm practices requirement is used to define farm land. Section 2.1 also states that “the policies in this chapter also acknowledge that sometimes the appropriate government act is to \*\*\* remove obstacles.” Policy 2.2.3 is one such policy.

DCC 18.136.020(C)(2) requires that we find that “impacts on surrounding land use will be consistent with the specific goal and policies contained within the Comprehensive Plan.” We interpret this requirement to be met when impacts on surrounding land comply with OAR 660-033-0020(1)(a)(C) are, therefore, are consistent with Goal 1 and the policies that implement it. We also find that the term “surrounding land use” on means land use occurring on all lands designated Agriculture by the comprehensive plan map that touch the boundaries of the subject property. Our findings of compliance with OAR 660-033-0020(1)(a)(C) address all such lands and, additionally, “nearby lands” and, therefore, serve to address the study area we must address to find compliance with DCC 18.136.020(C)(2).

Our interpretation of DCC 18.136.020(C)(2) is supported by the definition of “surround” provided by Webster’s Third New International Dictionary Unabridged. It defines “surround,” in this context, to mean “to be situated or found around, about, or in a ring around: as \*\*\* **b**: to live around on all or most sides \*\*\* **f**: to form a ring around : extend around or about the edge of : constitute a curving or circular boundary for : lie adjacent to all around or in most directions.” We apply the term “adjacent” to mean land that, as defined by DCC 18.04.030, “Adjoining” means land that is “contiguous; touching or connected” which is also how the term is used in OAR 660-033-0020(1)(a)(C) which also includes “nearby lands.” Our findings that demonstrate compliance with OAR 660-033-0020(1)(a)(C), therefore, establish compliance with DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1.

### **Water and Traffic Impacts**

Findings of compliance with OAR 660-033-0020(1)(a)(C) regarding water and traffic impacts assure compliance with DCC 18.136.020(C)(2) for those impacts by ensuring that farm practices on agricultural lands will be able to continue after the subject property is redesignated RREA. The protection of farm practices will ensure that agricultural lands will be preserved and maintained for their intended purpose of engaging in farm use. This protection will logically help preserve and maintain the agricultural industry.

Findings regarding compliance with OAR 660-033-0020(1)(a)(C) look only to lands where farm practices are occurring. We find that this is sufficient to find compliance with the County's code and plan. Impacts to nonfarm uses on surrounding lands, if they occur, are not inconsistent with any specific goal or policy contained within the comprehensive plan. Goal 1 does not extend any protections to those potentially conflicting uses. No specific policy or goal offers protection to nonfarm uses, including nonfarm dwellings.

All properties that are surrounding ("nearby and adjacent") lands that we did not specifically address in findings related to OAR 660-033-0020(1)(a)(C) are developed or approved for development with nonfarm dwellings or are public lands where no farm use is occurring. We find that since nonfarm dwelling properties are not engaged in farm use and a nonfarm dwelling is a single-family dwelling which is the same use allowed by the RR-10 zone. Therefore, RR-10 zoning will not negatively impact these lands contrary to Goal 1 to preserve and maintain agricultural lands. Because nonfarm dwellings do not contribute to the agricultural industry, impacts to lands where nonfarm dwellings exist and have been approved, will not negatively impact the agricultural industry. All of these nonfarm properties have been determined by the County to be generally unsuitable for the production of farm crops and livestock or merchantable tree species.

In an excess of caution, however, we address potential water, traffic and wastewater impacts on all Study Area properties that are not engaged in farm use and that are also not engaged in farm practices for agricultural activities that do not amount to "farm use." This is an alternative basis for approval of this application.

None of the public lands that adjoin the subject property are engaged in farm use; farm practices are not occurring on those lands. Tax Lot 3200, Map 14-12-20 is a recreational area designated for use by all-terrain and off-road vehicles. It is accessible from a trailhead on Buckhorn Road a short distance north of Highway 126 and a considerable distance south of the subject property. This recreational use is not water dependent so will not be impacted by the 710 water use. The traffic impact analysis and commentary provided by the applicant's transportation engineers demonstrates the amount of 710 property traffic that will use Buckhorn Road is so low that it will not impact this recreational use which, other than coming and going from the trailhead, occurs off-road. Tax Lot 700, Map 14-12-22B, Tax Lot 500, 14-12-22C and Tax Lot 200, 14-12-27 comprise a single tract of open space land that is north and east of the subject property. Its sole use is as open space; not public recreational or private agricultural (grazing) use. Traffic from new homes in the subdivision will not create any impact that would impair the use of this property as open space. Water use by the subject property will also have no impact on this tract because it is undeveloped and does not use water as is evident in aerial photographs.

There are five nonfarm dwelling properties in the study area. All five of these properties are located south of the bulk of the subject property and east of the 8.66-acre Tax Lot 101, Map

14-12-28D. One is Tax Lot 100, Map 14-12-28D. This parcel is owned by the applicant who is not claiming that traffic or water impacts will harm its residential use of this property. Traffic will pass by this lot and the four other nonfarm dwellings and lots in the Study Area. All adjoin Coyner Avenue. Tax Lots 200 and 300, Map 14-12-28D and Tax Lot 301, Map 14-12-27 adjoin Coyner Avenue along their southern boundaries. As shown by aerial photography in the record, all homes are sited a significant distance to the north of Coyner Avenue. The remaining property is an 80-acre parcel on the south side of Coyner Avenue. It that has received approval to build a nonfarm dwelling in the south part of the property a significant distance from Coyner Avenue. Applicant's Exhibit 32, p. 2.

While the amount of traffic that will pass by these nonfarm properties will increase, such increase will not prevent any of these properties from continuing to be used as single-family residences nor will the amount of traffic be so great that residents will be unable to come and go from their homes in motor vehicles. The impact of traffic on the livability of the homes on Tax Lots 200 and 300, Map 14-12-28D, Tax lot 301, Map 14-12-27 should be negligible because both are setback a considerable distance away from Coyner Avenue at the north end of each lot.

All nonfarm residences in the area obtain water for residential use from groundwater. GSI assessed the groundwater impacts of the 710 water use on all wells in the area, including the exempt wells that serve area residences and concluded it is unlikely that any will be adversely impacted by the 710 water use.

Given these facts, the impacts of the approval of the plan amendment and zone change will DCC 18.136.020(C)(2) and not violate DCCP Agricultural Lands Goal 1.

### **Wastewater Impacts**

Certified Professional Soil Scientist and Registered Wastewater Specialist Brian Rabe, CPSS, WWS, based on his professional certifications, expertise and experience in addressing septic system and soils issues and his site-specific soil survey and septic site testing for the Eden Central property, advised "given the location of the property and the size of potential residential lots, it is my professional opinion that there will be no wastewater impacts on nearby or surrounding agricultural lands or the farm uses or farm practices on such lands." Applicant Exhibit 36. Mr. Rabe explained that where soil depth is insufficient to effectively treat sewage with a standard septic system, a capping fill or a capping fill and alternative treatment technology treatment system approved by DEQ. Mr. Rabe explained that onsite sewage treatment systems are based on a prescriptive code that is intended to be protective of groundwater and that the minimum lot size of 10 acres is 20 time larger than the half-acre minimum required where sensitive groundwater conditions exist. Applicant Exhibit 36.

Redside attorney James Howsley, in comments dated July 23, 2023, offered his opinion that the permeability of subsoils on the subject property “means that wastewater from septic drain fields will flow down to the groundwater at a relatively high rate.” Mr. Rabe responded to this claim by stating:

“The fact that subsoils are highly permeable does not mean that septic tanks serving new homes will contaminate the aquifer that runs below the subject property. The aquifer is a long distance below the surface and the soils between it and a septic drainfield will effectively treat effluent discharged by the drainfield before it reaches the aquifer.” Applicant Exhibit 48, p. 1.

This means that no surrounding property, whether in agricultural use or not, will be impacted by the wastewater use associated with homes built on the subject property or by the approval of the plan amendment and zone change.

We find that the expert opinion of Mr. Rabe is more reliable than the lay opinion of Mr. Howsley. Consequently, we find that we may rely on Mr. Rabe’s opinion that there will be no negative wastewater impacts on the aquifer, on agricultural lands, or on any and all other lands surrounding the subject property. Consequently, DCC 18.136.020(C)(2) does not preclude the County from approving the 710 plan amendment and zone change applications.

Mr. Howsley also argued that testing area agricultural wells for nitrates is required to allow the county to find that septic systems will not impact groundwater quality. Mr. Rabe’s professional opinion, which we find reliable, is that “[i]t is not necessary to test adjoining wells for nitrates in order to determine that the septic systems associated with new development will not prevent nearby or adjoining farms from continuing existing farm practices – in this case irrigating farm fields or providing water for livestock because it is highly unlikely that such contamination will occur. Applicant Exhibit 48.

Billy Buchanan claimed that “the drainage of sewage from 71 homes would result in significant negative changes in our farm practices” but did not identify any farm practices that would be impacted or offer any proof of this assertion. See, Billy Buchanan letter of 2024-08-07 and testimony at July 24, 2024 hearing. Brian Rabe rebutted Mr. Buchanan’s claim stating that no evidence supports Mr. Buchan’s claim. Applicant Exhibit 76.

### **III. DECISION:**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** on remand the Applicant’s applications for a Comprehensive Plan Map amendment to re-designate the subject properties from Agriculture (AG) to Rural Residential Exception Area (RREA) and a corresponding zone map amendment to change the

zoning of the properties from Exclusive Farm Use – Terrebonne (EFU-TE) to Rural Residential (RR-10) subject to the following conditions of approval:

1. A conditions of approval agreement with restrictive covenants enforceable by Deschutes County must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.

Attachments:

- Attachment A: Board Findings Chart
- Attachment B: Conditions of Approval Agreement and Restrictive Covenant

Dated this \_\_\_\_ day of \_\_\_\_\_ 2024

Date Received	Person/Entity	Comment Summary	Findings of Fact
2024-07-05	Gary Bendix	Additional traffic at exit from Hwy 126 to 101 <sup>st</sup> through to the end of NW Coyner – huge impact from new home and construction-related traffic/delivery vehicles.	Mr. Bendix makes no claim that traffic will impact farm practices in the area. Transportation engineer Joe Bessman has confirmed that the roads that provide access to the subject property and the Hwy 126/101 <sup>st</sup> intersection have the capacity to handle the level of traffic attributable to approval of the zone change and plan amendment applications and that they are able to do so without preventing use of the roads by farm equipment. Additional traffic will not prevent roads from being used to move livestock; although there is little to no evidence that livestock are moved using area roadways and the current traffic has not caused such an impact.
2024-07-05	Gary Bendix	Added strain on water table.	Kyle Gorman of OWRD testified that the supply of water in the water table in the area from which water will be drawn for use by new residents is “robust.” GSI Water Solutions studied the impacts of the new water use on area domestic and irrigation wells and found it unlikely the new use will result in interference with any existing well. The validity of their results was confirmed by Cascade Geoengineering.
2024-07-05	Gary Bendix	Mule deer migration through area in winter – negative impact of fences and more humans in area.	Impacts to mule deer are not an issue on remand nor are they relevant to an applicable approval criterion.
2024-07-12	Zach Russell	A successful farmer or rancher would not use the subject property in combination with their farm operations to grow and harvest crops or have cattle operations due to lack of feed.	The Board finds this evidence to be credible opinion evidence from a person who has the experience needed to render such an opinion. Mr. Russell owns and operates a cattle ranch in Redmond, OR on a 106-acre parcel that has 35 acres of irrigation water rights.
2024-07-12	Zach Russell	I have been on the subject property. The source of feed is scarce. Animals would go	An analysis of the costs associated with importing feed for livestock prepared by rancher Rand Campbell confirms Mr. Russell’s opinion that it is not cost effective to import feed and water to this property

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		hungry. Farmers and ranchers would go broke hauling in water and feed.	to support a livestock operation. We find Mr. Russell’s opinion consistent with the majority of testimony on the topic and persuasive.
2024-07-12	Zach Russell	Businesses that sell and maintain farm equipment are located on industrial or commercial property usually 1 to 10 acres in size.	This information was confirmed by Mark Stockamp who conducted a survey of businesses that maintain or construct farm equipment in Deschutes County.
2024-07-12	Zach Russell	This property is on a ridgetop of lava rock and juniper trees and has nothing to do with adjacent farm land.	This description is consistent with photographs and a topographical map prepared by Hickman Williams that is a part of the record.
2024-07-16	Robin Vora	Cattle are raised on lands similar to this throughout eastern Oregon.	The applicant and DLCD have provided persuasive evidence from the OSU Extension Service that demonstrates that cattle ranching in eastern Oregon is not profitable. A rancher with a herd between 150 to 400 head of cattle should reasonably expect to lose money rather than intend to make a profit in money.
2024-07-16	Del Johnson	I have raised hay and cattle <b>adjacent</b> to the subject property for 30 years.	The Johnson property, where the Johnsons have raised hay and grazed cattle for thirty years, is not adjacent to the subject property. According to DIAL, it is about 1.25 miles by road and about .9 miles in a straight line away from the southeast corner of Tax Lot 101, Map 14-12-28D. Tax Lot 101 is a nonfarm parcel that has a valid nonfarm dwelling approval and the part of the subject property closest to the Johnson property. Mr. Johnson’s testimony on this point is disproven.
2024-07-16	Del Johnson	The purpose of EFU zone is to apply EFU zoning to “small inclusions of non-high-value farm soils to avoid potential conflicts between commercial farming activities” – cites “Oregon General Code 17.136.010 Purpose.”	There is no such thing as OGC 17.136.010. OAR 660-033-0010 states the purpose of the Agricultural Land chapter is “to preserve and maintain <b>agricultural lands</b> as defined by Goal 3 for farm use, and to implement ORS 215.327 and 215.438 through 215.459 and 215.700 through 215.799.” The subject property is not agricultural land and approval of the zone change will not prevent agricultural farm practices from continuing in the area impacted by the zone and plan change.



			ORS 215.245 describes the purpose of the EFU zone. It is discussed by the Court of Appeals in this case. It does not say what Mr. Johnson claims is the purpose of the EFU zone.
2024-07-16	Del Johnson	Cites <i>Wetherell v. Douglas County</i> , 50 Or LUBA 167 (2005) and OAR 660-033-0030(5)(2005) as relevant to the remand.	This <i>Wetherell</i> decision was reversed by the Oregon Supreme Court and OAR 660-033-0030(5) has been repealed as it was inconsistent with Statewide Goal 3.
2024-07-16	Del Johnson	It is possible to graze Eden Central seasonally. This makes it suitable for farm use.	It is possible for a very small number of cattle to graze the land seasonally at a financial loss to the rancher and property owner. This does not constitute “farm use” because a reasonable farmer would not do so with an intention to make a profit in money. The record also establishes that a seasonal operation in conjunction with nearby and adjacent lands would also lose money such that no reasonable farmer would attempt that operation.
2024-07-16	Del Johnson	710 acres “would not provide the basis for a stand-alone cattle operation yet they are absolutely farmland and protected by EFU zoning.” BLM leases provide land for combined ranching operations.	There is no nearby or adjacent BLM land that is available for livestock grazing in conjunction with the Eden Central property. Nearby BLM lands are reserved for recreational use, including OHV use, and conservation.
2024-07-16	Del Johnson	Fact that 710 Properties is proposing houses on the property makes it obvious that buildings can be erected for any purpose including for maintenance of equipment and facilities used for farm use.	This issue requires an analysis of the seven suitability factors of Statewide Goal 3. That analysis demonstrates that the subject property is not suitable to conduct a use that serves a “farm use” – an agricultural activity that can be undertaken with an intention to make a profit in money.
2024-07-16	Del Johnson	71 new households on ten-acre parcels will create a large demand for water.	Evidence in the record shows that relatively speaking, the new use of water is small in comparison to the size of the aquifer and when compared to the use of water by agriculture in the Deschutes Basin and nearby areas, including by the Johnson farm that is .9 miles and more away from the subject property.

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2024-07-16	Del Johnson	We had to lower our well by 25 feet to reach water table last year.	Water remains available despite lower levels which are not caused by development and water use of the subject property. Irrigation for agricultural purposes have a greater impact on the water level of the aquifer. Drought, however, is the primary cause that the level of the aquifer is dropping.
2024-07-16	Del Johnson	Additional traffic will create more traffic problems with farm equipment. This equipment is often wider than a single land and moves down roads at speeds of 10-20 mph. It is common for drivers to pass farm equipment. “You see bad accidents in farm communities every year” from this situation.	As shown by evidence in the record, including expert evidence provided by Joe Bessman, P.E., area roads provide sufficient room for passing. This is confirmed by Mr. Riley Gallant, who frequently operates farming equipment on similar roads. Here. in most segments the roads are level and straight. The issue raised by Mr. Johnson is a road safety issue. He does not claim that additional traffic will cause area farmers to discontinue the farm practices or farming. Mr. Johnson operates a successful horse supplement business on his farm property that sells supplements across the USA. His business is supported by truck traffic that uses the same roads that will be used by new Eden Central residents to access Hwy 126 and their homes – apparently without impact to area farm practices in the Odin Valley.
2024-07-16	Del Johnson	It is not uncommon for livestock to escape fencing. This is dangerous.	The issue raised by Mr. Johnson relates to road safety but does not present a claim that additional traffic will require the discontinuation of any particular accepted farm practice or result in taking any particular agricultural land out of farm use.
2024-07-16	Del Johnson	Residential development in rural areas increases the price of farm land so that it is not affordable for farm uses.	LUBA directed the County to look at specific impacts on remand: water, wastewater, traffic, nuisance and trespass and our review on remand is limited to issues remanded to us by LUBA. The price of land is not an issue on remand and this claim is not supported by evidence that identifies the cause of rising prices as related to rural residential development.
2024-07-16	Kelsey and Roger Nonella Lori Johnson	Property can be leased for grazing.	No reasonable farmer would buy this land to lease it for cattle grazing due to its lack of forage and unavailability of other large tracts of land suitable for grazing in the area and the fact, documented in this record, that lease revenue would not cover real property taxes with farm tax deferral on all eligible parts of the Eden Central property.

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2024-07-16	Kelsey and Roger Nonella Lori Johnson	The Eden Central property is suitable for the construction of buildings.	This fact does not mean that, after a consider of the seven suitability factors, that the property is suitable for the on-site construction and maintenance of equipment and facilities for farm use.
2024-07-16	Kelsey and Roger Nonella Lori Johnson Steve Ahlberg	Concerned re dropping aquifer and water availability. Had to lower our farm well by 25 feet to reach sufficient water. RR-10 zoning will decrease water resources and add to drawdown.	The existing condition of the gradually dropping aquifer in the area impacted by water use on the subject property is not caused by residential development and will not be caused or exacerbated by approval of the plan and zone change applications. The use of water by new homes on the subject property is minor and of little impact on the level of the abundant aquifer or area wells, as shown by expert evidence from GSI, Cascade Geoengineering and Kyle Gorman of OWRD.
2024-07-16	Kelsey and Roger Nonella Lori Johnson	Retaining an agricultural designation is not necessary to permit farming practices in the area but RR-10 zoning will increase costs/value of land.	The Board, based on all evidence in the record, agrees that retaining the agricultural designation of the subject property is not necessary to permit farm practices from continuing in the area that will be impacted by approval of the plan and zone change. The cost of land is not an issue on remand.
2024-07-16	Kelsey and Roger Nonella	Rezoning will increase the cost of farming.	The Nonellas provide no explanation of how or what costs will increase due to RR-10 zoning or for whom.
2024-07-16	Pam Mayo-Phillips Steve Ahlberg	ADUs are now allowed on the property and this will double the volume of cars.	State law ORS 215.495(1)(b) and (2) allows ADUs only in areas with acknowledged exceptions to a statewide planning goals; not on nonresource lands. DLCD opined that the County, however, may elect to allow ADUs on nonresource land. Since it is unknown whether that is correct, the Board will require the recording of a conditions of approval agreement that will be enforceable by the County and that will limit residential development of the subject property to 71 additional homes.
2024-07-16	Pam Mayo-Phillips	Over 15,000 acres MUA and RR10 per AmeriTitle list	This is not an issue on remand. Furthermore, this list is not correct regarding acreage. It lists many of the large properties multiple times. The nearby Redside property that is 452.86 acres is listed at this acreage four times. The list also includes large tracts used as public park land, USA forest land, an HOA's septic system and unbuildable common areas of cluster and planned developments all of which are lands not available for residential development.

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2024-07-16	Pam Mayo-Phillips	The Eden Central property could support a “few cows” and they could “clean up the grasses.” This would help a farmer get cattle off from irrigated fields so they can recover.	The fact that the subject property may be used for limited duration grazing on sparse vegetation and rocky ground does not make the subject property suitable for farm use. No claim is made that this would be done with an intention of making a profit in money – an essential part of the definition of a farm use.
2024-07-16 2024-07-18	Pam Mayo-Phillips Renee Bates	Greenhouses for crops, chickens, goats, pigs and feedlots could be established on the Eden Central property.	No claim is made that these farm activities could be conducted with an intention of making a profit in money. These uses require a new well and/or the installation of an irrigation system to create pastures and meet the cooling and hydration needs of plants and animals. These uses also require electric service which is not present on the subject property and which is cost-prohibitive to obtain for the low returns associated with agriculture in Deschutes County, a fact confirmed by the US Census of Agriculture.
2024-07-16	Pam Mayo-Phillips	State of OR states that EFU is created to stop small inclusions of tracts composed predominantly of non-high value farm soils to avoid potential conflicts.	This property is composed of nonagricultural soils – a step below non-high value farm soils. See our findings re same claim made by Del Johnson on the same date.
2024-07-16	Pam Mayo-Phillips	Suitable for seasonal grazing e.g. occurs in surrounding counties.	This property is not designated as rangeland and is too small alone to be successfully used for livestock grazing with an intention to make a profit in money. Tim Deboodt, PhD with a doctorate in Rangeland Ecology from OSU, and former OSU Extension Agent for Crook County stated in 2014 that “[t]o stay profitable a ranch needs to run 200 to 250 pairs, minimum, without debt and with low overhead” and that the average ranch runs about 800 cow-calf pairs. At only 71 to 142 AUMs, the subject property could not accommodate herds of those sizes.
2024-07-16	Pam Mayo-Phillips	Unaffordable land due to sprawl. Urbanites do not understand farm practices.	The cost of land is not an issue on remand. The County will be requiring property owners to sign and record waivers of remonstrance against accepted farm practices to prevent conflicts between new neighbors and persons conducting farm practices.

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2024-07-16	Steve Ahlberg	I am concerned about new vehicle trips due to the “additional pollution, traffic, noise, etc.” which will be significant.	Mr. Ahlberg does not raise a concern about the possible impacts to farm practices.
2024-07-18	Ryder Redfield	Irresponsible growth constitutes “urban” sprawl.	The uses allowed in the RR-10 zone are rural uses; not urban uses. This issue was settled in favor of the applicant by LUBA during appellate review.
2024-07-18	Ryder Redfield	Mule deer habitat	The impact of the proposed change on mule deer habitat is not an issue on remand. The property is not a Goal 5 wildlife resource property.
2024-07-18	Ryder Redfield	Wildfire is a concern.	This is not an issue on remand.
2024-07-18	Ryder Redfield	More traffic in area with overwhelmed and missing infrastructure. Buckhorn Road and Lower Bridge Way intersection is too busy. Lower Bridge Road near Borden Beck Park is also too busy.	These comments appear to relate to Lower Bridge Way and Buckhorn Road. The subject property does not adjoin either of these roads or any road that would permit ready access to them. Future access to these roads, if approved, will be limited to utility and emergency access by the terms of a recorded conditions of approval agreement.
2024-07-20	Renee Bates	Drought, existing wells are failing.	Some wells are being redrilled as the aquifer drops; according to OWRD, however, water remains abundant and available to support farm and residential uses in the area.
2024-07-22 2024-07-24	Sarah Redfield Steve Ahlberg	The definition of farm use in ORS 308A.056 includes wasteland.	This definition does not apply. It is the definition for purposes of taxation. The applicable definition of farm use to determine the suitability of land for farm use is provided by ORS 215.203(2)(a). <i>See</i> , OAR 660-033-0020(1)(a)(B).
2024-07-22	Sarah Redfield	ADUs would be allowed and will dangerously impact water level, traffic patterns, neighboring agricultural uses and environmental health.	The number of new dwellings will be capped at 71 to address this issue.
2024-07-22	Paul Lipscomb	Requests denial based on LUBA and Court of Appeals decisions,	The cited statutes are not an open issue on remand. OAR 660-033-0020(1)(a)(C) is the only law that is to be addressed on remand. The

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		ORS 215.243 and ORS 215.700(2) and <i>Stop the Dump</i> in addition to OAR 660-033-0020(1)(a)(C).	<i>Stop the Dump</i> decision relates to a different impacts test. Nonetheless, the County identified the relevant study area of “nearby and adjacent” lands and the farm practices occurring in those areas and this information will be used to address the impacts issues remanded to the County by LUBA.
2024-07-22	Tygh Redfield	Lower Bridge basin is great farm ground with best growing season and water supply. This allows the area the ability to produce a wider range of crops. Subject property shares a border with this farm area and would have negative impacts on it.	The subject property is not in the Lower Bridge subzone or farm area. It does not share the favorable conditions for farming found there. Negative impacts on this area are alleged but not identified.
2024-07-23	Marilyn Koenitzer, LOWV	Water crisis has increased since 2022. Exempt wells likely to be detrimental to Deschutes River and surrounding wells. Land should be conserved and protected.	These issues have been raised by others and the response to them is the same.
2024-07-23	Carol Macbeth COLW	Property can be put to farm use to produce livestock (cattle, goats, llamas, sheep and swine), poultry or equines with imported feed. Can buy feed from feed stores in Redmond – this is a common practice for other farms so should be able to sustain a farm use on the 710 Property with supplemental feed.	This is not the relevant issue. The issue is whether a reasonable farmer would intend to make a profit in money by engaging in these agricultural uses on the subject property if they import feed to supplement the limited forage available on site. Rancher Rand Campbell has addressed this issue and has shown, as claimed by Redmond rancher Zach Russell, that farmers and ranchers would go broke hauling in water and feed to the subject property.
2024-07-23	Carol Macbeth COLW	Issue is the comparison to other farms and ranches in Central Oregon.	In 2017, approximately 84% of farm operations in Deschutes County had significant financial losses and the net income of all Deschutes County farms average a negative \$12,866 per farm. It is reasonable

			<p>to conclude from this information that most farms in Deschutes County are not engaged in “farm use” as defined by State law. This property has the worst possible soil conditions in Deschutes County for farm use because it has such a high percentage of Class VII and VIII soils and only .7% soils (5.05 acres in small pockets) that are high-value when irrigated and only when irrigated. Soils in the Lower Bridge area to the west that are engaged in farm use are predominantly high-value when irrigated. Soils on properties in farm use in the Odin Valley include large areas of mapping unit 26A and 65A soils that are high-value when irrigated.</p>
2024-07-23	Carol Macbeth COLW	Cattle and chickens do not require soil fertility.	<p>Chickens are not raised in the area for sale to the general public. Chickens in Central Oregon are pasture raised and require irrigated pasture land. It is cost-prohibitive to finance the cost of purchasing irrigation water rights, drilling a well, installing a pump and purchasing and installing a pivot irrigation system or laying and moving irrigation lines. Additionally, the subject property lacks electric utility service needed to raise chickens (to keep them cool indoors, to make ice to add to their water, and to light the chicken coops used when chicken are not able to be free ranging) which is also cost prohibitive to finance due to its high cost. Cattle, indirectly, require soil fertility. It is necessary to produce an adequate density of forage so that the cattle do not lose weight grazing the property. This is a particular concern given the fact that a part of the subject property is a steep hillside that require cattle to burn additional calories to get to ungrazed forage.</p>
2024-07-23	Carol Macbeth COLW	Groundwater for stock watering is exempt from water rights permitting. Can use an exempt well for watering stock.	<p>A well and pump would, however, need to be installed at considerable cost to the farmer. The interest costs for that needed infrastructure would be significant and with other expenses prevent a reasonable farmer from intending to obtain a profit in money from the raising chickens or livestock on the property.</p>
2024-07-23	James Howsley Redside Restoration	Redside owns nearby property	<p>The Redside property, at its closest point, is approximately .2 miles west and .25 north of the Eden Central property. It is comprised of four properties zoned RR-10 and RR-10/FP. It was rezoned RR-10 from SM and EFU zoning in 2011 by Ordinance 2011-014. It is</p>

			<p>comprised of Tax Lot 1501, Map 14-12-00 = 457.32 ac, Tax Lot 1502, Map 14-12-00 = 10 ac, Tax Lot 500, Map 14-12-15 = 63 ac and most of Tax Lot 1505, Map 14-12-00 = 72.47 ac less approx. 10 acres zoned EFU (the EFU part of this property is not engaged in farm use and appears to have been surface mined).</p> <p>A long narrow strip of land at the north end of the Eden Central property that is approximately 1000’ long and 10’ wide and that is not buildable adjoins the RR-10 zone and TL 1506, Map 14-12-00, a parcel zoned EFU that is not engaged in farm use, has no irrigated land and is developed with a single-family dwelling and accessory structure.</p>
2024-07-23	James Howsley Redside Restoration	Land that is necessary to permit farm practices on adjacent or nearby agricultural lands. Increase from 24 to 71 dwellings impact must be addressed.	This is generally correct but does not account for the fact that the EFU zone permits development of a significant part of the property immediately adjacent to the former Volwood Farms property as a destination resort. The impacts of an RR-10 development of the intensity that will be allowed by this rezone and plan amendment are lower. This statement also contradicts Mr. Howsley’s subsequent claim that the impact of 71 dwellings is the impact to be addressed. The Board’s findings, in an excess of caution, address the impact of allowing 71 dwellings.
2024-07-23	James Howsley Redside Restoration	This is a spot zone.	The subject property is not a spot zone. It adjoins land zoned RR-10 to the north.
2024-07-23	James Howsley Redside Restoration	GSI admits groundwater is declining and says new water demand will be less than 177,500 gallons per day.	Kyle Gorman of OWRD testified in 2022 that the Deschutes Basin, while experiencing exceptional drought conditions that have impacted water levels, is a very robust aquifer that supplies very clear, plentiful water for use in the basin. Rec 692. Mr. Gorman also testified that in-home use “is a very small use compared to outdoor agricultural use” and the aquifer in the area can sustain domestic water use (new homes). Rec 694.
2024-07-23	James Howsley Redside Restoration	Dry Creek Ranch at 70300 NW Hunt Road has had to deepen its well. Additional homes can only accelerate decline in water levels.	Dry Creek Ranch is about ½ mile and more west of the Eden Central land. The need to deepen its well is not caused by residential development of the subject property. The amount of was used by residences is small and it was determined by GSI to be unlikely to have any impact on the well on the former Volwood Farms property



			adjacent to the subject property and predicted no impacts on other wells.
2024-07-23	James Howsley Redside Restoration	Mariah and Amin Patel of Alpaca Country Estates at 70397 Buckhorn Road also complain about the risk of additional exempt wells in the area.	The supply of water is abundant. Although not relevant to the questions on remand, the Patels do not live at 70397 Buckhorn Road and do not own Alpaca Country Estates.
2024-07-23	James Howsley Redside Restoration	GSI only performed a desktop evaluation without any study of actual well conditions on either the subject property or nearby farm properties. No test well was “dug” to test desktop assumptions.	Mr. Howsley’s water expert, Robert Long, did not find fault with the findings of the GSI study nor did he join in faulting GSI for performing a desktop evaluation. The GSI study was prepared by Ken Lite who studied the Deschutes Basin aquifer for the USGS and published a scientific analysis of the causes of dropping groundwater levels. His determination that this type of study was appropriate and is of more weight than Mr. Howsley’s lay opinion that something different should have been done and that it would be probative of the question at hand. Additionally, Mr. Howsley fails to provide any competent evidence that supports the idea that a study of “actual well conditions” or digging a test well would be appropriate or necessary to determine likely impacts of pumping by new wells on the subject property.
2024-07-23	James Howsley Redside Restoration	The Well Interference Potential portion of the applicant’s study simulated the equivalent of the cumulative impact of pumping from 5-6 homes but 71 lots are proposed; more than ten times the number of homes. The simulation thereby underestimates the adverse irrigation impacts by a factor of 10. That report doesn’t support a finding that 71 new residential lots will not adversely affect	Mr. Howsley is not correct that the study underestimates irrigation impacts by a factor of 10 as explained by Cascade Geoengineering, a firm hired to review GSI’s study methodology and results.

		irrigation wells and farm operations.	
2024-07-23	James Howsley Redside Restoration	Must apply <i>Stop the Dump</i> analysis re identification of farm practices required to comply with ORS 215.296 to farm operations on adjacent and nearby lands.	First, the farm impacts test in this case is based on OAR 660-033-0020(1)(a)(C) not ORS 215.296 (1) – the terms and legislative history of which were relied on to create the methodology to be used to address that particular test. (364 Or App at 444, 446-458). Second, the holding of <i>Stop the Dump</i> is only that a farm-by-farm and farm practice by farm practice analysis is required and a finding that a nonfarm use will not affect the supply of agricultural land in the surrounding and nearby area despite forcing a change in accepted farm practices on nearby and adjacent farms is not sufficient. The County’s decision identifies farm land in the adjacent and nearby area, farm uses on each property and farm practices that are or may be undertaken on each property. No party challenged this identification of properties, farm uses or farm practices.
2024-07-23	James Howsley Redside Restoration	Farm operations include the water supply, well levels and irrigation practices of these farms.	The record includes facts regarding well levels, water supply (groundwater) and photographs showing irrigation practices that exist on the four properties identified as adjacent and nearby lands in the 2022 BOCC decision that are being farmed. There is no credible evidence that suggests that the retention of EFU zoning on the subject property is necessary to allow irrigation practices of these farms or any farms to continue.
2024-07-23	James Howsley Redside Restoration	Record lacks evidence of water supply of area farms.	All four farms on adjoining and nearby lands are irrigated by groundwater. The same is true for all farms in the Odin Valley that are irrigated and for farms in the part of the Lower Bridge area west of the subject property. Well information for the adjoining former Volwood Farms property and Dry Creek Ranch is also included in the record and shows that the former Volwood Farms obtains its water from groundwater.
2024-07-23	James Howsley Redside Restoration	There is no public sewer and no evidence in the record of current or potential future nitrate levels in nearby wells identified in the applicant’s water study.	The subject property is suitable for septic disposal of wastewater on the subject property. It is unlikely that septic systems will cause groundwater contamination according to sanitation and soils expert Brian Rabe. Mr. Rabe also offered evidence that nitrates are not

			harmful to agriculture and, therefore, would not cause the farm practice of groundwater irrigation to be discontinued.
2024-07-23	James Howsley Redside Restoration	The area is open range.	Cattle and livestock in the adjoining and nearby area are all fenced and do not roam at large. The open range law protects ranchers from financial harm if their livestock escape their fencing and are harmed by motor vehicles or other means.
2024-07-23	James Howsley Redside Restoration	Traffic study shows trips will use unpaved Spruce Avenue; a road that is not maintained by Deschutes County.	The level of use will be low. No party has claimed that the infrequent use of Spruce Avenue will impact farm practices. Additionally, Spruce Avenue is outside the study area of “nearby and adjacent” lands.
2024-07-23	James Howsley Redside Restoration	Record has evidence of livestock crossings at Rec 4567.	There are no “livestock crossings” along the route of travel to Highway 126 for traffic associated with homes that might be built on the Eden Central property. The text relied on by Mr. Howsley only says “livestock crossing” which means that livestock may cross the road.
2024-07-23	James Howsley Redside Restoration	Applicant must identify other routes because evidence shows conflicts on NW Coyner and NW Spruce.	Conflicts must rise to the level that they prevent the continuation of farm practices but they do not rise to that level here. This fact was confirmed by opponents, farmers and Odin Valley area residents Lori Johnson and Kelsey Nonella who have advised the County that the agricultural designation of the subject property is not necessary to permit farming practices in the area.
2024-07-23	James Howsley Redside Restoration	New points of access will increase traffic on “other nearby roads.” Dry Creek Ranch moves cattle on Hunt Road, Lower Bridge Road and Buckman [sic] Road.	The subject property has no access to Hunt Road, Lower Bridge Road or Buckhorn Road. It is landlocked and new road access for use by residential traffic is not available from adjoining owners or BLM. The applicant is pursuing access to NW 93 <sup>rd</sup> Street to the north and east across BLM land along a previously approved route and has been told that its access will be limited to emergency and utility access only. The applicant is also seeking access to Buckhorn Road across BLM land but that access will be limited to utility use only.
2024-07-23	James Howsley Redside Restoration	Redside filed a copy of a Groundwater Application Review Summary form dated July 10, 2023 for Thornburgh Destination Resort.	This review summary has no bearing on the supply of water available for use by the subject property and does not contradict the evidence provided to the county by OWRD (Kyle Gorman) in 2022. The property is miles away in a different groundwater area and the application reviewed seeks the right to use a vast amount of water

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			to irrigate golf courses and to provide water for destination resort uses.
2024-07-23	Russ Mattis	I would never consider grazing this property alone or in conjunction with my other ranch and hay properties in Central Oregon. I would never recoup my setup costs to fence, remove rock, pay taxes and attempt to establish water rights.	This evidence confirms other evidence on this topic provided by Rand Campbell and the applicant that the subject property is not suitable for grazing livestock or for growing a hay crop.
2024-07-23	Russ Mattis	If 710 Properties land were used in conjunction for grazing cattle with any of the nearby or adjacent agricultural properties, it does not change the property. It is still not generally suitable for farm use with the intention to make a profit in money. In conjunctive use, the property still has no water rights, poor rocky soils, lack of forage, and a terrain with elevation change and a long rimrock cliff that would be costly and difficult to fence. The lack of improvements for combined grazing with other lands is missing confirming the fact that it is not suited for combined use with other area lands. Given the fact a cattle operation would lose money even in conjunction with surrounding hay or pasture lands, it would not be	The Board agrees with Mr. Mattis.

		reasonable for a farmer to add a cattle or livestock operation on the property and diminish or erase the profits derived by the existing operation.	
2024-07-23	Russ Mattis	Given the fact a cattle operation would lose money even in conjunction with surrounding hay or pasture lands, it would not be reasonable for a farmer to add a cattle or livestock operation on the property and diminish or erase the profits derived by the existing operation.	The Board agrees. The only possible exception would be the Buchanan property. The Buchanans claim they want to use the subject property for seasonal cattle grazing (about 3 to 4 months per year) for \$28 per AUM. Combined operations with the Buchanan property, is addressed separately below and in the body of our findings document and would not constitute a “farm use” as defined by ORS 215.203(2)(a).
2024-07-23	Russ Mattis	It is impractical to import feed to support a cattle grazing operation. It would be very expensive to truck in the majority of the high-quality feed to support a cattle operation.	This is consistent with the applicant’s evidence that feeding cattle hay for most of the year would not be cost effective.
2024-07-23	Russ Mattis	Additional traffic from more rural residence near 710 Properties in the Odin Valley will not cause ranchers, hay farmers, horse owners, etc. to discontinue accepted farm practices on their properties.	We agree. Furthermore, no opponent makes the claim that EFU zoning is necessary to permit the continuation of existing farm practices in the Odin Valley or elsewhere.
2024-07-23	Karen Elliott	Lives on 101 <sup>st</sup> Street in the Odin Crest Estates subdivision on a 5.05-acre lot zoned RR10; argues that roads are inadequate for the traffic associated with the	The area roads are adequate for large and heavy vehicle traffic associated with Desert Valley Equine Center, the veterinary practice of Tim Phillips, located on Spruce Avenue and the Horse Guard business horse supplement manufacturing business occurring at 3848 NW 91 <sup>st</sup> Street on the Johnson property.

		development of the subject property.	
2024-07-24	Elizabeth and Billy Buchanan	Land is not available due to over development with nonfarm dwellings; particularly EFU land.	This is not an alleged/possible impact of rezoning that LUBA required to be addressed on remand.
2024-07-24	Elizabeth and Billy Buchanan	Keystone Natural Beef is now profitable.	The Keystone business plan showed that the business was not profitable in 2022. Its claim to be profitable in 2024 is not substantiated by the Buchanans and not credible because they offered, but then declined, to provide proof of profitability and removed cost and income information from the business plan they filed with the County. Ms. Buchanan also sold one of the two pastures she owned in Powell Butte; the location where Keystone cattle are pasture-raised, not the adjacent property owned by Ms. Buchanan.
2024-07-24	Elizabeth and Billy Buchanan	The subject property is suitable for grazing at least on a seasonal basis, with an eye to making a profit by so doing.	Numerous other ranchers who do not have a stake in the outcome of the zone change disagree. We find their testimony more credible.
2024-07-24	Elizabeth and Billy Buchanan	The property is suitable for the construction and maintenance of equipment and facilities used in their farm activities occurring on the Buchanan property.	The three parcels of the subject property that are closest to the Buchanans' Coyner Avenue property are developed with nonfarm dwellings. They would not be put to this conflicting use. Consequently, it would be necessary for the Buchanans to travel over three quarters of a mile and up a steep hill to reach land that might be placed into this use. This is not practicable – particularly given the lack of road access to this part of the Eden Central property. It is also not an accepted farm practice in Deschutes County to use other property for the sole purpose of storing equipment or using farm buildings and facilities of other farms to supplement an off-site operation.
2024-07-24	Elizabeth and Billy Buchanan	Rezoning would have a major impact on their ability to continue and to expand their farming/ranch operations	The Buchanans lack the expertise necessary to make this claim and to dispute the findings to the contrary reached by GSI and confirmed by Cascade Geoengineering.

		because of the consumption of water and need to deepen wells.	
2024-07-24	Elizabeth and Billy Buchanan	Rezoning will significantly affect our ability to carry out farm practices on Coyner Avenue, including movement of slow-moving farm equipment and bringing in new cows by truck.	Transportation engineer Joe Bessman has submitted evidence that shows that new traffic will not prevent the Buchanans from using roadways for slow-moving farm equipment or from bringing cows in and out of their property by truck. The roads are mostly straight and wide enough and have gravel shoulders so that passing can occur safely. The Buchanans do not claim these issues will require them to discontinue farm practices associated with their cattle business.
2024-07-24	Elizabeth and Billy Buchanan	Traffic will endanger young calves who often slip through the fence onto Coyner Avenue.	This issue can be resolved by improved fencing or by keeping young calves in a more secure location on the Buchanan’s property. Additionally, if a new resident’s vehicle harms a young calf, they will be required by law to pay the Buchanans for the harm caused because the area is Open Range land. The Buchanans did not claim that this increased risk would force a change in or impede their ability to continue this practice on their land.
2024-07-24	Elizabeth and Billy Buchanan	If we are able to expand across the road, we will be driving cattle back and forth and the impact would be worse.	There is no property across the road (Coyner Avenue) other than nonfarm parcels developed with nonfarm dwellings. The Buchanans have also said there is no other land in the area other than the subject property that Keystone Natural Beef would be able to use for grazing cattle. Cattle will not be driven back and forth between the Buchanan property and Eden Central applicant if these applications are approved and, most likely, if they are denied because the three properties that total 279.35 acres in size that are the closest parcels to the Buchanan property are approved for or developed with nonfarm dwellings. We also find the Buchanans’ claims of wanting to expand in the area are not credible. The record shows that in recent years, the Buchanans have decided not to purchase similar property, some of which has been adjacent to Ms. Buchanan’s land, in favor of property in other counties, and in at least one instance, other states.
2024-07-24	Steve Ahlberg	Property is suitable for spring grazing.	This use is not a farm use because it would not be conducted on the subject property by a reasonable farmer with an expectation to make a profit in money.

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2024-07-24	Steve Ahlberg	My well went dry 2 years ago and was deepened 100 feet. Ed Staub has needed to deepen his well within the last 10-12 years.	These facts do not establish that approval of the zone change will cause area wells to go dry. Expert evidence in the record indicates otherwise.
2024-07-24	Steve Ahlberg	One access road is a safety issue.	This is not an issue on remand as it is not linked to impacts on farm practices.
2024-07-25	Jeff W. Roberg, DVM	No mention of wildlife.	Wildlife is not an issue on remand.
2024-07-25	Jeff W. Roberg, DVM	Wells are drying up.	Water expert GSI has determined that the expected water use of new homes will have no likely impact on residential wells.
2024-07-25	Jeff W. Roberg, DVM	ADUs are now allowed.	ADUs are allowed by State law but only on exceptions lands; not the subject property. Given the fact that DLCD has opined otherwise, to assure that actual impacts of RR10 do not exceed the estimated impacts, the Board has limited the number of new residences allowed on the Eden Central property to 71.
2024-07-27	Del Johnson	Urban sprawl.	RR-10 zoning does not allow urban uses that violate Statewide Goal 14. This was settled by LUBA in this case. <i>Central Oregon LandWatch v. Deschutes County</i> (710 Properties), __ Or LUBA __ (LUBA No. 2023-006, July 28, 2023, slip op pages 80, 83).
2024-07-27	Del Johnson	I have raised hay and cattle adjacent to the subject property for over 30 years.	Mr. Johnson’s property is not adjacent to the subject property. According to the DIAL measurement tool, the Johnson property is 1.2 miles by road from the subject property’s entrance on Coyner Avenue. In a straight line, the Johnson property it is about .9 miles away. Rec. 2518 (identifying and illustrating lands within a one-mile radius from Johnson property).
2024-07-27	Del Johnson	“I see why so many EFU properties and [are] now zoned RR10. Yes, over 24 square miles.” * * * “There are currently over 24.375 sq miles of RR-10 and MUA zoning.”	These claims are inaccurate, a fact acknowledged by Pam Mayo-Phillips, the person who supplied the information upon which the claim is based. Ms. Mayo-Phillips admitted on July 24, 2024 that the 24 square mile figure was based on a list that listed large properties numerous times. Second, the information filed by Ms. Mayo-Phillips did not purport to list properties rezoned RR10 from EFU as suggested by the first of the two quotations. Instead, Ms. Phillips claimed to be providing a list of all lands in Deschutes County zoned RR10 or MUA10.



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2024-07-27	Del Johnson	The property is EFU land and “[i]t does not have to be usable farm ground or make a profit. It is usable as farm ground for seasonal grazing and other [unspecified] uses.”	Mr. Johnson does not understand the applicable legal standard that defines farm use as an activity that would be undertaken with an intention to make a profit in money.
2024-07-28 2024-07-29	Steve Ahlberg Del and Lori Johnson	Requests 2 <sup>nd</sup> hearing on remand for commissioners who voted in favor of rezone to “state their reasoning.”	The Board stated its reasoning in its prior decision and in comments made when deliberating on this application in 2022. The Board considered setting a second hearing on remand but decided, instead, to permit a two-week comment period.
2024-07-30	Kelsey Nonella	My husband and I partitioned a 4-acre parcel of land from and built a nonfarm dwelling adjacent to the irrigated farm field on my parents’ farm property to be agricultural managers of the farm property. It is prudent to live nearby.	The Nonellas drilled an exempt well on what used to be the Johnson farm property, a property that is approximately 75 acres of usable land area and 70 acres of irrigation water rights per Partition Plat No 2022-10. Rec-3367-3368. The lot and new exempt well are less than one quarter mile south of the agricultural well used to irrigate the Johnson’s farm field. Rec-2296-2298; Applicant’s <b>Exhibits 97</b> and <b>98</b> .
2024-07-30	Kelsey Nonella	In 2015, we had to lower the pump in our well at 3848 NW 91 <sup>st</sup> . Brian Skidgel had to deepen his well in 2021.	There is no evidence that these events were the result of development of residential homes on a distant property. The primary cause of groundwater decline, according to all of the water experts, is drought. Furthermore, despite these facts, the Nonellas drilled an exempt well on their property.
2024-07-30	Kelsey Nonella	The property would qualify for farm use assessment provided the owner maintains an acceptable farm practice with the intent to make a profit as defined by ORS 308A.056.	Tax law and land use law are not the same; as explained by the manual filed in the record by Ms. Nonella. Furthermore, it is clear on this record that a reasonable farmer would not intend to make a profit from farming the subject property. We find the record testimony of Mr. Campbell and other ranchers and farmers to be more credible.
2024-07-30	Kelsey Nonella	Horse uses weren’t considered.	Horse uses were addressed in 2022 in comments filed by Fran Robertson, an experience equestrian and owner of Robertson Ranch, a horse boarding, training and riding facility in Tumalo. The subject property is not a suitable location for horse breeding, training, or boarding. Rec-3445, -1036.

2024-07-30	Kelsey Nonella	Horses thrive in harsh environments e.g. the mustangs that roam south of Burns where much of the terrain is very similar to the property in question.	The terrain for the Kiger mustang herd south of Burns is not “very similar” to the subject property. Also, the Kiger mustangs are wild horses; not domesticated horses kept by owners who expect a higher level of care. Furthermore, horse boarding, training and riding facilities, arenas and similar horse facilities sited on lands unlike the subject property. They are typically sited on level land that is free of surface rock and that includes irrigated pasture.
2024-07-30	Kelsey Nonella	Many horses need dry land acreage and this land would provide that and the subject property will provide that.	Horses need both dry land and irrigated pastures. The terrain and condition of the subject property is not suitable for horse-related farm uses particularly due to the presence of so much surface rock and lack of an existing water source.
2024-07-30	Kelsey Nonella	Four examples of full-care boarding being a viable option for this property are listed from websites below.	All four full-care boarding facilities cited by Ms. Nonella have irrigated pasture land, level land devoid of observable rocks and locations near major roadways; disproving Ms. Nonella’s claim that the subject property without irrigation would be suitable for a horse center use.
2024-07-30	Kelsey Nonella	Stephanie Schmidt Performance Horses runs a profitable operation less than 2 miles from the subject property where she boards and trains horses.	The Facebook page for this business does not advertise horse boarding facilities which need to be located near the homes of horse owners so they can visit their horses regularly. The property used by Stephanie Schmidt Performance Horses is very different from the subject property. It has five acres of irrigation water rights and, in the area used by horses, has level ground without visible rocks.
2024-07-30	Kelsey Nonella	It would be profitable to raise goats on the subject property.	Information gathered by rancher Rand Campbell rebuts the claim that raising goats would be profitable. Applicant’s <b>Exhibits 4, 5, 47</b> .
2024-07-31	Ian Isaacson, Oregon Chapter of Backcountry Hunters & Anglers	New zoning should not be approved due to impact on local wildlife habitats.	Wildlife impacts are not an issue on remand.
2024-07-31	Ian Isaacson, Oregon Chapter of Backcountry Hunters & Anglers	Approval will set a precedent.	The County’s local decision has no precedential effect. This also is not an issue on remand.

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2024-07-31	Pam Mayo-Phillips – PH (Post-Hearing) Comment 1	There is grass on the hillsides of the Eden Central property in the spring so it is suitable for spring grazing.	The State of Oregon determined that the property as a whole could support one AUM (animal unit month) per 10 acres in the dry years experienced in the area in recent years and one AUM per 5 acres in a wet year. Rec-1430. This level of productivity is far higher than the one AUM to 40-acre figure offered by Ms. Mayo-Phillips. Central Oregon is in an extended period of prolonged drought making the dry land productivity figure the most likely to be accurate.
2024-07-31	Pam Mayo-Phillips – PH Comment 1	If the developers allowed horses, 4-h cows, chickens, gardens then that will also support farm use.	Horses and chickens require irrigated pasture land. It is not economically feasible to establish pasture land on the subject property. Gardens must be irrigated. It is not economically feasible to bring power and water to this property to establish gardens on land that is 71% Class VII and VIII soil. It has been shown that the only theoretically viable cattle-related use of the subject property is dryland grazing. That use is not, based on evidence provided by numerous experienced and well-qualified ranchers, to be economically viable.
2024-07-31	Pam Mayo-Phillips – PH Comment 1	The Assessor’s Office says that anything on EFU is described as farming with an intent to make a profit.	This is an incorrect statement of the law as it applies to land use planning – having been rejected by the Oregon Supreme Court in its <i>Wetherell</i> decision. <i>Wetherell v. Douglas County</i> , 342 Or 666, 160 P3d 614 (2007). Furthermore, “land use laws reflect different policies than tax laws.” <i>King Estate Winery, Inc. v. Dept. of Rev.</i> , 329 Or 414, 422, 988 P2d 369 (1999).
2024-07-31	Pam Mayo-Phillips – PH Comment 1	Well reports show that area wells have been redrilled.	This evidence does not establish that the use allowed by RR10 zoning is necessary to allow the farm practice of irrigating farm land to continue. The amount of water used by RR10 houses is very small; particularly compared to the amount of water used by irrigated agriculture.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	I grew up on a very large cattle ranch (50,000 deeded acres and ½ million acres of public land) in Riley, OR – about one hour from the subject property.	Riley is 124 miles south and east of the subject property. Google Maps estimates a driving time of 2 hours and 4 minutes using the fastest route.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Most ranches have a hay base for their operation.	The subject property lacks a hay base that can be used for its operation. Although they have a small irrigated pasture, the

			Buchanans import hay to feed their cattle. Their property, therefore, would not provide a sufficient hay base for livestock operations on the subject property. An example of a Central Oregon cattle ranch that is operated with an intention to make a profit in money and that has an adequate hay base, for purposes of comparison with the Eden Central property, is included as Applicant’s <b>Exhibit 96</b> .
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Historically, you would run 40 acres to 1 cow unit on land our ranch property which is like the subject property.	The rate of 1 AUM per 40 acres is likely more accurate than the 1 AUM per 10 acres (dry) and 1 AUM per 5 acres (wet) rate estimated by the State of Oregon that has been used to estimate cattle income. At this rate, the subject property would support only 17.75 AUMs per year. This evidence supports the conclusion that the subject property is not suitable for farm use as defined by Statewide Goal 3.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Trimming and thinning juniper trees will increase forage.	The removal and thinning of junipers would not merit the application of a different AUM rate because the soil types and depth (water holding capacity) and rocks on the property impose the primary limitations on the growth of plants and grasses. Applicant’s <b>Exhibit 95</b> .
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Water table is a big issue. Wells in the area have been deepened.	The issue on remand is the impact of development of the subject property on farm use on surrounding and nearby lands – not the water table per se. The scientific evidence is that development of the subject property with 71 homes will not likely impact area wells, in particular agricultural wells.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Where is the fire access route? Coyner will not support the traffic if we have a fire nor will the chip base paving on our road.	The fire access route issue is not an issue on remand and has not been connected to remand issues by Ms. Mayo-Phillips. Ms. Mayo-Phillips lacks the expertise to opine on the durability of the area County-maintained roads and their capacity to handle traffic. Also, Mr. Phillips operates a full-service equine veterinary clinic at his property on Spruce and the chip base paving on their road is durable enough for the horse trailer and truck traffic associated with this business that regularly use these roads.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Spruce is a 10-mph road because half the road is very narrow and has huge rocks you must go around. You cannot	The issue on remand is not the condition of Spruce. It is whether it is necessary to retain EFU zoning of the Eden Central property in order to allow farm practices occurring in the area to continue. We find that It is not.

		take a trailer through Spruce without damaging your vehicle. We keep half the road graveled and open to traffic but the other half is about 10’ wide and would not work for traffic or any increased amount of traffic.	Spruce Avenue is passable by a passenger vehicle but is used only infrequently due to the superiority of NW 101 <sup>st</sup> Street, the primary route to Highway 126. For example, area resident Chuck Thomas has only used Spruce on three occasions in the past year. Ms. Mayo-Phillips’ comments indicate that the traffic associated with her husband’s equine veterinary practice on Spruce Avenue, Desert Valley Equine Center (two employees, customers and horse patients), is able to travel to and from their property on existing roads without event – most likely because they will do what Eden Central traffic will do which is using paved roads to reach Highway 126. This would include trucks pulling horse trailers which, according to Ms. Phillips, cannot traverse the east part of Spruce Avenue. Ms. Phillips’ estimate of the road width of Spruce east of her property is not consistent with the width of the road when measured on DIAL aerial photographs which show a width of about 15 feet.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	The property is not in a fire protection district so how will the property be protected from wildfire?	This is untrue. The subject property is located in the Redmond Fire & Rescue District. Applicant’s <b>Exhibit 78</b> .
2024-07-31	Pam Mayo-Phillips – PH Comment 2	The corrected list of MUA10/RR10 properties I filed on July 24, 2024 still shows there are 104,000 +/- acres of land that have not been built on.	This is not true and is not an issue on remand. The original list filed July 16, 2024 was stated by Ms. Phillips to include over 15,000 acres of land zoned MUA10/RR10 – including both developed and undeveloped land. By removing duplicate entries of an extensive amount of land, the total acreage of developed and undeveloped land of this type should be about 1/10 the size of the land area Ms. Phillips now claims is all undeveloped land. The information is not of sufficient detail to allow a determination of the facts relative to Ms. Phillips’ claims.
2024-07-31	Rima Givot	Loss of agricultural land	The subject property is not agricultural land
2024-07-31	Rima Givot	Increased traffic	The livestock and crop farm uses conducted east and west of the subject property are conducted along long stretches of busy highways (e.g. Highway 20, Highway 126) and roadways (e.g. Cline

			Falls Road and Lower Bridge Road) that carry more traffic than will uses Odin Valley roads to access Highway 126. Rec-3097.
2024-07-31	Rima Givot	Wildfire risk, strain on public services, mule deer habitat impacts are of concern.	These are not issues on remand.
2024-07-31	Rima Givot	Injury to groundwater.	Groundwater use will not interfere with area farm properties and their wells. This fact is shown by the GSI water study. The lead person who prepared the report for GSI was Ken Lite. According to the GSI website: “Ken has decades of experience conducting groundwater resource characterization studies throughout Oregon. He is an expert in the hydrogeology of volcanic terranes. Ken spent more than 30 years as a hydrogeologist for the Oregon Water Resources Department (OWRD), where he specialized intergovernmental groundwater studies and groundwater administrative law. Ken is an expert in conducting basin-wide groundwater investigations and developing strategies to effectively manage groundwater resources for all beneficial uses. He is experienced in applying groundwater study results such as hydraulic head trends and groundwater flow simulations to help guide policy development. Ken’s research has focused on quantitative analysis of groundwater flow systems in volcanic terranes; specifically, quantifying the influence of the geologic framework on groundwater recharge, water chemistry, hydraulic head distribution, and the interaction of groundwater and surface water.” He is a co-author of the OWRD publications Simulation of Groundwater and Surface-Water Flow in the Upper Deschutes Basin, Oregon (2017) and Analysis of 1997-2008 Groundwater Level Changes in the Upper Deschutes Basin, Central Oregon (2013).
2024-08-01	Deb Brewer	SB 100 purpose	Not an issue on remand.
2024-08-01	Deb Brewer	Eden Central should lease land to area farmers.	Lease payments would be insufficient to pay taxes, even if all lots potentially eligible for farm use were able to qualify for farm tax deferral. The Buchanans stated a rate of \$28 per AUM as the amount they might pay to lease the subject property. In a typical dry year, this is less than \$2000 in annual lease income. Taxes alone, with

			farm tax deferral, would have exceeded this amount by a large margin. Lease revenue also would not compensate the property owner for the cost of financing the completion of fencing of the subject property to make it suitable for grazing or for the cost of installing water stations for cattle. If those costs were to be borne by the Buchanans instead of the property owner, they would make livestock grazing of the property by the Buchanans alone or in conjunction with their Coyner Avenue property even less unprofitable. We find the testimony of Mr. Campbell, Russ Mattis, and other ranchers as more credible with regards to combined use with other ranch or farm properties; no reasonable rancher or farmer would use the subject property in an attempt to make a profitable farm use.
2024-08-01	Jeremy Fox	High fire risk so a poor choice for residential development. Too far from urban centers.	Not issues on remand.
2024-08-02	Lindsay Overstreet	Concern re water overuse and depletion of groundwater.	This issue was addressed by GSI and OWRD in 2022. There is sufficient groundwater for the residential use allowed by RR10 zoning.
2024-08-02	Lindsay Overstreet	Precedent setting.	Not a remand issue. A county decision has no precedential effect. A number of similar rezoning applications have already been approved by Deschutes County.
2024-08-02	Lindsay Overstreet	Not a viable housing solution.	Not an issue on remand.
2024-08-02	Lindsay Overstreet	Increased urban/wildland interface impacting [allegedly] insufficient fire management resources.	Not relevant to the issues on remand. A fire started on the subject property in July 2024 and was promptly extinguished.
2024-08-02	Lindsay Overstreet	Disregard for neighboring farms; increased traffic will likely lead to stress for their animals and more automobile related livestock loss.	According to the website for the Sisters School District, her employer, Ms. Overstreet is a Child Development Specialist with a Masters in Social Work. According to DIAL, she lives in the RR10-zoned Tollgate subdivision in the forest outside Sisters on a lot that is .61 acres not in a farming area of the County.

Exhibit F, Attachment A – Ordinance No. 2024-010

2024-08-06	Eva Eagle	Noise, dust and traffic impacts will result.	These impacts will not rise to the level of making it necessary to retain EFU zoning of the subject property to allow area farm practices to continue and to protect EFU-zoned lands.
2024-08-06	Eva Eagle	Wells have gone dry and development will impact government services.	Under either EFU or RR10 zoning, wells will go dry and need to be drilled deeper if groundwater continues to decline due to drought conditions in the basin. OWRD, however, has advised that the supply of water is robust and the level of decline in the area of the subject property is slow. The impact on government services is not an issue on remand.
2024-08-06	Tim Phillips	Large scale cattle grazing and ranching is not the only use.	The BOCC’s decision remanded by LUBA found that grazing is the only accepted farm practice that can occur on non-irrigated Class VII soils. This finding was not challenged by any appellant. Evidence has been provided during the remand regarding other uses. In an excess of caution, it has been addressed in the Board’s findings on remand.
2024-08-07	Blair Batson, 1000 Friends	Removing this land from agricultural use would increase agricultural land pricing and thus not support purpose of Goal 3.	The purpose of Goal 3 is not an issue on remand.
2024-08-07	Blair Batson, 1000 Friends	The County’s past practice of approving nonagricultural lands rezoning applications has impacted land costs, introduced costly conflicts with farming and converted thousands of acres of agricultural land to nonfarm use.	This is a new argument that is not relevant to the issues on remand. It bears mention, however, that Ms. Batson offers no factual support for her claims by citing particular instances where impacts have occurred. Real property prices increased dramatically in Deschutes County between 2017 and 2022 for all types of real estate – rendering it unlikely that the price increase in farm properties is due to rezoning.
2024-08-07	Blair Batson, 1000 Friends	Goal 3 was designed to protect farmland in large blocks.	LUBA rejected this argument of 1000 Friends in their appeal.
2024-08-07	Blair Batson, 1000 Friends	Individual review of agricultural lands is not permitted. The Oregon Legislature has created the exclusive path for counties to redesignate agricultural land in ORS 215.788 and 215.794 and periodic review.	Central Oregon LandWatch raised this claim at LUBA and it was rejected. It may not be revisited.



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2024-08-07	Blair Batson, 1000 Friends	OAR 660-033-0020(1)(a)(C) implements the policy of ORS 215.423 to preserve agricultural land in large blocks.	The large block issue is settled against 1000 Friends. The scope of review of OAR 660-033-0020(1)(a)(C) is limited to the specific potential impacts identified by LUBA.
2024-08-07	Blair Batson, 1000 Friends	The subject property would not have been zoned EFU if its soils were inadequate, it was unsuitable for farm use, and it was not necessary to permit farm practices on nearby and adjacent lands.	<p>The "necessary to permit farm practices on adjacent and nearby lands" requirement is imposed by DLCD regulations that were not adopted until 1992 or later – long after the County applied EFU zoning to the subject property.</p> <p>Deschutes County did not make individualized determinations of suitability for farm use when it applied EFU zoning to a high percentage of the County land that is not forest land. It applied the zone liberally to undeveloped areas and required individual property owners to petition the County for a change to a rural residential zoning designation. In the case of the subject property, the NRCS offered the County no soils information by which to assess the suitability of the subject property for farm use. See, Applicant's <b>Exhibit 93</b> (the 1958 Soil Survey that was in existence when subject property was designated agricultural land in 1979 and 1980). The County's comprehensive plan was also adopted before the Oregon Supreme Court adopted <i>Wetherell</i> and corrected the prevailing notion that any land that could produce a crop or be grazed by livestock was agricultural land if it was not urbanized, committed to development that violated the Statewide Goals or forest land. This was the wrong test and it is fair to allow individual property owners to seek a correction to zoning made without a factual basis, with an individualized review of land and without application of the correct legal standard set by Goal 3.</p>
2024-08-07	Billy Buchanan	The Eden Central property is "highly suitable for grazing cows on the site."	The subject property is suitable for grazing at a very limited level as attested to by the opinion of the State Agencies and the lower yields achieved on similar lands (1:15+ on Cline Butte Allotment and 1:40 per Pam Mayo-Phillips). It is not, however, a "farm use."
2024-08-07	Billy Buchanan	Grazing would start in April or May and continue until August.	AUMs in a typical dry year are only 17-18 AUMs for a four-month period. According to the Buchanans, their cattle only winter on their

			property. A rancher intending to make a profit in money from cattle ranching would not keep a herd of this small size on the Buchanan property and subject property as a joint operation with an intention of making a profit in money.
2024-08-07	Billy Buchanan	Grazing cattle will enhance the soil and its fertility.	The soils on most parts of the subject property are very shallow. Cattle will erode shallow soils rather than enhance them. Additionally, the Board agrees with the analysis of this issue provided by soils scientist Brian Rabe, Applicant’s <b>Exhibit 76</b> .
2024-08-07	Billy Buchanan	Additional drought tolerant grasses may be introduced via broadcasting as an alternative to drilling (Crested and Siberian Wheatgrass).	Soils scientist Brian Rabe disagrees and has documented his reasons for disagreement with Mr. Buchanan on this point. His professional assessment is more persuasive than the opinion of Mr. Buchanan. Applicant’s <b>Exhibit 76</b> .
2024-08-07	Billy Buchanan	The land use pattern in the area is ranching and farming.	Ed Stabb, an area farmer whose property is nearby but not contiguous to the Eden Central property, advised Deschutes County that the Odin Valley area where the Buchanan property is located is primarily residential. Applicant’s <b>Exhibit 37</b> . All properties on Coyner Avenue from the subject property until the intersection of NW 93 <sup>rd</sup> , with the exception of two properties, are approved for or developed with nonfarm dwellings. <b>Rec 2019-2020</b> . About half of the subject property adjoins large tracts of public land that are not engaged in farm use and which are not available for farm use. Large areas of land to the north and northeast are zoned RR-10 and are not engaged in farm use.
2024-08-07	Billy Buchanan	I successfully grazed 70 head of cattle on a steeper, rockier 600-acre site in Jefferson County.	The applicant has not argued that it is not possible to graze cattle on the subject property. It has, however, demonstrated that one would not do so with a reasonable expectation of making a profit in money. Mr. Buchanan provides no details about the ownership of the land grazed, its cost (if leased), or its location or whether his operation was financially successful – making it impossible to provide a meaningful response to this unsubstantiated claim or to assess whether it bears on the issue of whether a “farm use” can be conducted on the Eden Central property.

2024-08-07	Billy Buchanan	Our natural beef business is profitable.	The Buchanan offered and then refused to share tax returns for their business. They have provided no profit and loss statements with their “business plan” to show profitability – a common element for a typical business plan. This suggests that the business, consistent with the 2022 testimony of Elizabeth Buchanan, does not earn money and that the Buchanans make money from vacation rentals and by speculating in farm real estate. The fact that Elizabeth Buchanan sold one of the two irrigated farm properties she owned in Powell Butte where Keystone cattle grazed indicates that their business is contracting; not growing. Also, the Buchanans have not asserted that wintering cattle on their Coyner Avenue property and grazing cattle on the Eden Central property in spring and summer would be done with an intention to make a profit in money. Keystone Natural Beef sells beef from pasture raised cattle; not cattle raised on rangeland.
2024-08-07	Billy Buchanan	Any reasonable rancher in the same circumstances would feel they could profitably graze that property.	Mr. Buchanan provides no facts about anticipated costs or income associated with grazing to support this claim. The subject property was for sale for many years while the Buchanans lived next door but they chose not to purchase it for use by Keystone Natural Beef. The Buchanans, also, have not purchased nearby and adjoining non-irrigated parcels that have been for sale in recent years and Keystone does not lease any of these dry pasture parcels for grazing. Also, an analysis of combined operations of the Buchanan’s Coyner Avenue property and the Eden Central property prepared by rancher Rand Campbell shows that it is not reasonable to graze cattle on the two properties with an expectation of making a profit in money. The Board finds the contrary testimony provided by rancher Rand Campbell, Russ Mattis, and others to be more persuasive: the subject property could not be profitably grazed on its own or in conjunction with nearby and adjacent lands.
2024-08-07	Billy Buchanan	A breeding development center is under consideration by us for the Eden Central property. At Buchanan Angus Ranch in	The subject property would only support this type of operation for a period of a little over one month. No more than 12 bulls would be able to be kept on the Eden Central property for six months of the year. Additionally, placing cattle on this property in the winter

		Klamath Falls, 60 head of bulls are fed on a steep and rocky hillside for approximately 6 months (October-March). The Eden property would be used for the same period of time.	would require more forage to compensate for the weight loss caused by cold temperatures and the exposed, windy location of the property.
2024-08-07	Billy Buchanan	Traffic conflict with slow-moving vehicles. We would have no way of continuing our operation <u>if</u> we cannot get haying equipment down Coyner Ave and onto our ranch.	Mr. Buchanan does not claim that added traffic will prevent him from getting haying equipment down Coyner Avenue and onto his property. This impact is not likely to occur given the relatively low volume of Eden Central traffic that will use Coyner Avenue at any one time during the day, particularly during off-peak hours. Additionally, transportation engineer Joe Bessman has shown that there is adequate room on Coyner Avenue and its shoulders for haying equipment and other traffic to share the road.
2024-08-07	Billy Buchanan	Roads are narrow and fences are in the ROW.	Fences are in the correct location at the edge of the ROW. Photographs of area roads, including those filed by Joe Bessman, PE, confirm this fact.
2024-08-07	Billy Buchanan	The subject property will be necessary for the planned expansion of Keystone Natural Beef and to give our existing farm grasses time to rest and recover from winter grazing. Having to transport our cattle elsewhere for seasonal grazing would greatly impede our ability to make a profit.	This statement suggests that Keystone’s practice of transporting cattle to irrigated pasture land in Powell Butte in the summer and transporting them back in the winter is not profitable and may be discontinued. This is consistent with the testimony of Elizabeth Buchanan in 2022. Keystone Natural Beef, however, is a pasture raised and grass-fed beef operation. Without more irrigated pasture land than exists on the subject property, the Buchanans entire business model will not be feasible.
2024-08-07	Billy Buchanan	We and our water supply will be impacted by sewage from the 71 homes because we are downhill.	Mr. Buchanan lacks the professional qualifications needed to make such an assessment. Soil scientist and certified wastewater specialist Brian Rabe, disagrees. <b>Exhibit 76.</b> Also, according to water experts GSI, the groundwater in the area below the subject property is flowing towards the north, northeast and north west – away from the Buchanan property which is located at the south end of the subject property. Rec-2619.

2024-08-07	Angie Brewer DLCD	Ms. Brewer disagrees with the claim that no reasonable farmer would make the choice to expand their farm to include the subject property due to a lack of irrigation rights.	The history of the subject property confirms the fact that it would not be put to use with a nearby or adjoining farm due to its lack of irrigation and its poor soils. The property was for sale for many years in the recent past and no area farmer chose to purchase it for combined use. The topography of the site with most of the land being located on top of a plateau separated from any other farm land is also another reason the property would not be incorporated into another adjoining farm property's operation.
2024-08-07	Angie Brewer DLCD	The greater central Oregon region includes seasonal rotation of livestock over multiple properties and large areas, many of which do not contain irrigation rights.	The issue on remand is whether using the property in conjunction with nearby and adjoining lands – not more distant lands – will make it suitable for farm use. Livestock grazing on the property alone is not profitable and this problem is not cured by conducting a farm operation on it together with a nearby and adjoining property. Additionally, Ms. Brewer filed an economic analysis of cattle ranching that analyzed the viability of cattle operations that are graze on public and private lands and all were found to be unprofitable.
2024-08-07	Angie Brewer DLCD	Buchanan Ranch said they would like to buy the land and expand their operation.	The Keystone business plan assumes that Keystone will be able to lease; not buy the subject property. Rec. 1590. The Buchanans have made no offer to purchase the subject property from its current owner. Mrs. Buchanan told the BOCC in 2022, “[w]e need this ground. Like, we’ll take it. We’ll buy it. We’ll lease it. We’re obviously not going to buy it at development pricing but that is the reason for the Oregon zoning laws.” Rec-712. Ms. Buchanan then explained if the property was valued as “nonbuildable land” – it would be in her price range. Rec-713. The EFU zone, however, offers a number of options for development including the development with up to 24 nonfarm dwellings, a church, dog training facilities, etc. The current fair market value of the Eden Central property without structures (bare land only) according to the Deschutes County Assessor is \$5,790,730. This is the EFU zone value – a value that is too high to support acquisition of the property for seasonal cattle grazing for a low number of AUMs.

2024-08-07	Angie Brewer DLCD	Combined Buchanan/Eden Central operation must be examined for suitability for farming as required by OAR 660-033-0020(1)(B) and described at OAR 660-033-0030(2) and (3).	The applicant has provided information about a combined operation prepared by Rand Campbell that demonstrates that the combined use of these two properties to conduct the farm use occurring on the Buchanan property on both would not be conducted with a purpose of obtaining a profit in money.
2024-08-07	Angie Brewer DLCD	The applicant is implying that the short-term rental on the Buchanan property precludes the ranch from being a profitable farm.	The use of the property to generate income from Air BnB rentals is relevant to assessing the Buchanans' claims of profitability. In 2022, Mrs. Buchanan testified: "[W]e've got some places out in Powell Butte. What we do is we, we buy the irrigated land, we turn the places into Air BnBs or rentals, <b>so that pays for our irrigated ground.</b> " Short-term rentals such as this are not permitted anywhere in the State of Oregon in EFU zones.
2024-08-07	Angie Brewer DLCD	County must consider all farm uses, including feed lots and equestrian indoor and outdoor arenas and equestrian facilities like Expo Center. Condition of Expo Center "closely resembles the subject property with regard to underlying soil capacity."	The Expo Center is located on land that bears little if any actual resemblance to the subject property. It is not a plateau. It is not covered with rocks. It does not contain rock outcrops like those found on the Eden Central property. It was also financed with public funds and resources raised from activities not allowed on EFU lands; not by a single property owner who will derive income only from use of the equestrian facilities and who, for many equestrian uses, bears the expense of feeding the horses. It is also within an urban growth boundary and close to a population center to which it provides its services.
2024-08-07	Angie Brewer DLCD	Livestock grazed on a combination of owned and leased land and a combination of pasture and dry rangeland for six to seven months than are fed hay in late Fall to early Spring. Lands grazed are generally not the same lands where feeding occurs.	No low-cost federal land exists nearby for livestock grazing. The Buchanans confirmed this fact by testifying they would need to truck cattle two hours away if they are not grazed on the subject property. The profitability analysis relied on by DLCD in its post-hearing comments shows farm losses for all cattle operations studied that were operated in this manner. Furthermore, the issue is not the viability of grazing on the subject property in combination with remote lands – it is whether combined use with adjacent or nearby lands makes the subject property suitable for farm use.

<p>2024-08-07</p>	<p>Angie Brewer DLCD</p>	<p>Farm and ranch stores are commercial activities in conjunction with farm use.</p>	<p>As the evidence shows, these stores repair farm equipment but also engage in businesses that would not be permitted in the farm zone as a “farm use.” This is where farm repairs occur – in these shops or on farms by workers dispatched by these businesses to area farms to perform repairs. A farm equipment repair shop without sales of parts or machinery, however, is one LUBA may find is a “farm use.” This farm use, however, was found in cities and on land zoned rural industrial; not on land zoned EFU. This is the established land use pattern of Deschutes County.</p> <p>It would be almost impossible for a store that repairs farm equipment used in farming to operate in a farm zone in compliance with the law. It would be nearly impossible for an operator of such a business to determine whether the farm equipment presented for maintenance is used for a “farm use” as defined by ORS 215.203. This cannot be readily determined by any operator of a repair or farm equipment construction business because the test is so subjective and it is highly unlikely farmers would share their private financial information with the business operator. Also, only a small percentage of area farms meet the definition of being engaged in “farm use” as only approximately 16% of Deschutes County farms made a net profit in 2017 and the number of the other farms that might be operating a farm use that is intended to achieve a profit in money is likely relatively low as this pattern of unprofitability is one that has persisted over time.</p> <p>LUBA may find that a factory that constructs farm equipment is a “farm use” so we have addressed those uses. The applicant located one such facility in all of Deschutes County that might fit the definition of “farm use” because it manufactures farm equipment. It is Newhouse Manufacturing. It is located in the City of Redmond. Applicant’s <b>Exhibit 79</b>. See also <b>Exhibit 83</b> from Newhouse Manufacturing. Newhouse also sells farm equipment parts but this</p>
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			use would not be allowed in the EFU zone. Sales of constructed equipment on-site would also not be allowed.
2024-08-07	Angie Brewer DLCD	Residential traffic will exceed that of a single farm equipment business.	The subject property is 710 acres in size. Uses commensurate with its size are appropriately studied to determine relative impacts. If the subject property is in fact is suitable for this use, it would be able to be a very large business that would draw a high volume of trips each day. The type of trips, also, would be more impactful because farm equipment and machinery would need to be transported to the subject property for maintenance. Inoperable farm equipment would likely need to be hauled to the site on a large truck. This use would be much more likely to impact farm practices than would typical residential vehicles.
2024-08-07	Angie Brewer DLCD	Retaining EFU zoning may be necessary because residential use may have significant impacts related to new residential traffic and new water demands where there currently are none. No substantial evidence to address this issue.	The applicant has provided substantial evidence to address these issues. The GSI water report that addresses these issues has been in the record since 2022.
2024-08-07	Angie Brewer DLCD	Residents have raised concerns re safety and insufficiency of roads and impacts to area groundwater.	<p>OWRD has weighed in re water and advised the County there is a robust supply of groundwater for all users despite slowly dropping groundwater levels. GSI established that the proposed use will not be likely to have any impact on area wells on agricultural lands.</p> <p>Roads in the area that provide access to Highway 126 are sufficient to carry subdivision traffic. Both the Johnsons and the Phillips operate businesses on their area properties that generate more trips than associated with a typical farm property and trips by larger and heavier vehicles than are typically used by rural residents, e.g. trucks hauling horse trailers, trucks delivering supplies and materials used to make and package nutritional horse supplements and to export the nutritional supplement materials to dealers.</p>



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2024-08-07	Angie Brewer DLCD	71 homes and 71 ADUs would be allowed if the rezone is approved.	State law allows ADUs on exception lands only; not nonagricultural lands. The Board will require the applicant to agree, however, to record a binding covenant enforceable by Deschutes County to restrict development of the subject property to 71 new homes.
2024-08-07	Robert Long	Any exempt use, without transferring water rights, adversely affects the local groundwater resource.	Residential water use is a minor, low-level use that will not prevent farmers from continuing to irrigate their farm fields and that will not force them out of business. Also, if interference occurs between Eden Central wells and existing wells in the area, the Eden Central wells will need to stop operating and obtain water from another source, such as imported water. Jim Newton, however, has advised the applicant’s attorneys that no groundwater user in the Deschutes Basin has been regulated off. This is further proof that the water supply is ample, despite slowly declining in the area of the subject property.
2024-08-07	Robert Long	Difficult to enforce limit of ½ acre of irrigation.	Aerial photography will make it relatively easy to enforce a limit on irrigation. The County has imposed a limit of ¼ acre on each exempt well enforceable by the County by a covenant recorded against the property to assure reduced water use.
2024-08-07	Robert Long	177,500 gpd predicted not able to be limited.	This amount of water, according to a discussion with Jim Newton, PE, includes far more water than will be used by the property outside of irrigation season and it is a generous estimate of use. Water law prohibits the waste of water. According to Mr. Newton, the 15,000 gpd figure allowed by law for exempt wells is so high that it would be necessary to waste water in order for an Eden Central property owner to use that much water.
2024-08-07	Robert Long	Impact to aquifer relied on by agriculture? Yes, will increase decades-long decline.	This does not rise to the level of “necessity” required by the relevant impacts test.
2024-08-07	Robert Long	No mitigation so there will be a net loss of flow in the Deschutes River	This is not the question presented on remand.
2024-08-07	Robert Long	Does additional use of groundwater harm flows in the	State law looks to nearby and surrounding lands and the County code looks to a similar area to assess impacts. Mr. Long has not identified any agricultural uses that rely on flows in the Deschutes

		Deschutes River on which some agricultural uses rely?	River. Irrigation water for Deschutes and Jefferson County farms are taken by irrigation districts from the river a long distance upstream from the point in the Deschutes River that might be impacted by water use by the subject property. These districts and groundwater wells serve almost all farm properties in Deschutes County.
2024-08-07	Robert Long	Increased use of water will increase rate of current decline. Dropping groundwater imposes costs on agriculture.	Use won't make any real difference in when wells must be deepened because the use is so small compared to other causes of groundwater decline.
2024-08-07	Robert Long	The use allowed is a 10% reduction in recharge and a measurable reduction in the flow of the Deschutes River as defined by OAR 690-505-0605.	This is not an issue on remand.
2024-08-07	Robert Long	Well cost increases for pumping due to drop in water level at agricultural wells.	No interference is expected to occur at any agricultural wells according to the GSI study and supporting evidence from Cascade Geoengineering. Mr. Long says there will be increased costs for pumping due to lower well depths but he failed to quantify the well decline he believes is attributable to development of the Eden Central property. He provided an example of cost increases he claims would be attributable to a decline of five feet which is not a drop shown to be expected to occur from use of water by homes on the Eden Central property.
2024-08-07	James Howsley, Redsidés	Deepening a well costs \$60,000 to over \$150,000.	This number is not supported by documentation from a well driller or an explanation of the source of the information. Retaining the EFU zoning of the subject property will not obviate the need to deepen wells if the current drought continues which is the primary reason well deepening has been occurring in Deschutes County.
2024-08-07	James Howsley, Redsidés	No mitigation water proposed so harm will occur.	Any impact will be small compared to other factors currently impacting the level of the aquifer such as drought and agricultural groundwater use; it will not cause discontinuation of the farm practice of obtaining irrigation water for area farms from groundwater.

<p>2024-08-07</p>	<p>James Howsley, Redsides</p>	<p>Must address traffic impacts farm by farm.</p>	<p>The Buchanans are the only persons conducting farm practices on nearby or adjoining lands who have suggested that farm practices on their Coyner Avenue property might be impacted by Eden Central traffic. Mr. Buchanan claimed that his calves escape from his property but has not claimed that the additional traffic will prevent him from continuing to raise cattle and calves in his pasture. With open range laws, the financial burden of a calf/car collision will be borne by the car owner – not the rancher.</p> <p>Mr. Buchanan also said he would be impacted if trucks bringing hay to his wife’s property were unable to reach the property. He did not claim that new traffic will, in fact, prevent trucks from bringing hay to their property. Trucks are larger and heavier than passenger vehicles and are able to assert their right to all of the roadway if and when necessary. The traffic associated with the Eden Central property will simply have to wait a short period of time for the truck to drive down Coyner to the Buchanan property before proceeding on their way.</p> <p>Mr. Stabb previously advised Deschutes County that a nonfarm dwelling on his property would not interfere with area farm uses, presumably including his own hay operation and presumably including the traffic generated by a nonfarm dwelling that will enter Coyner Avenue “upstream” of his farm property. Many other nonfarm dwelling approvals along Coyner Avenue west of 93<sup>rd</sup> were already granted and many such homes have been constructed along Coyner Avenue west of 93<sup>rd</sup>, including the Buchanan’s nonfarm dwelling and an Air BnB rental dwelling without any known conflicts. It is unlikely that the Buchanans would invite Air BnB guests to the Buchanan property or allow them to pass the Stabb property if additional vehicles trips would prevent Mr. Stabb from moving farm equipment or harvesting and trucking hay from his property and Mr. Buchanan from moving cattle in trucks. The only concern Mr. Stabb expressed about area roads is a concern that the road surface on</p>
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			<p>some part of NW Coyner is chip sealed and might not tolerate traffic by concrete trucks. The road currently handles similar heavy truck traffic, including trucks hauling hay to the Buchanan property, cattle to and from the Buchanan property and, likely, hay from the Stabb property.</p> <p>There will be no traffic conflicts with Nicol Valley Farms and former Volwood Farms because no residential vehicle access to Buckhorn or Lower Bridge Road is possible. The subject property does not adjoin and other road or a road that provides direct access to either road.</p>
2024-08-07	James Howsley, Redsides	Movement of cattle by Two Canyons, LLC is a farm practice.	This farm practice is occurring on Lower Bridge Road but the traffic from residential development of the subject property will not have any access to Lower Bridge Road or Buckhorn Road and, therefore, virtually no impact on this practice.
2024-08-07	Carol Macbeth, COLW	The applicant can put 71 goat sheds, sheep sheds, donkey stables, mule stables, horse stables or other livestock shelters, riding schools or horse barns on the 71 home sites.	This is untrue. EFU zoning will not allow the applicant to create 71 parcels. It will not allow the construction of 71 farm dwellings for operators of these farm uses who are needed to conduct these farm uses in this particular location. Each would need to gross \$40,000 in income which is highly unlikely for any of these uses other than equestrian uses.
2024-08-07	Carol Macbeth, COLW	The applicant can produce goats, sheep, donkeys, mules, llamas, horses, poultry, or bees on the property. Each of these types of livestock are routinely raised for the primary purpose of obtaining a profit in money in Deschutes County according to the USDA Census of Agriculture. Rec. 2400-2401.	Ms. Macbeth misstates the evidence provided by the USDA 2017 Census of Agriculture at Rec. 2400-2401. It does not offer any evidence of whether these activities are being conducted for the primary purpose of obtaining a profit in money. In fact, USDA statistics from the 2017 Census show that in that year only 16.03% of Deschutes County farms were profitable and that the remainder lost an average of \$21,386 dollars per farm. Rec-5135. The document cited by Ms. Macbeth also does not establish that bees or llamas are produced in Deschutes County because they are not listed by the cited document. It also does not establish that donkeys and mules are raised in Deschutes County because they are listed in the same category as horses, ponies and burros. The same is the case with sheep and goats. Both are listed together.
2024-08-07	Carol Macbeth, COLW	The question is not whether anyone would attempt a farm	If this is a claim that a use is a “farm use” solely if it could occur on the subject property, such a claim is not correct.

		<p>use with an intention of making a profit in money on the property; it is whether they could do so on this land.</p>	<p>The issue is whether the land is suitable for current use for the “primary purpose of obtaining a profit in money” through certain agricultural or farm activities. <i>Wetherell</i>, 342 Or at 680-689. Evidence from farmers and ranchers as to whether they would undertake farm uses on the subject property “with an intention of making a profit in money” is relevant in determining whether the land is of such a quality as to support a farm activity that could be conducted with the primary purpose of obtaining a profit in money.</p>
<p>2024-08-07</p>	<p>Carol Macbeth, COLW</p>	<p>The definition of agricultural land is so broad, encompassing land used for poultry and honey and farm equipment maintenance and riding schools, none of which require any particular soil type, that the land easily meets the definition.</p>	<p>Soil fertility is just one of the seven suitability factors. Furthermore, it is not correct that these uses are not dependent on soil type to establish an agricultural use with the primary purpose of obtaining a profit in money. It is an accepted farm practice in raising chickens in Central Oregon to raise them on irrigated pastures. Developing pastures is reliant on irrigation water and soils suited to growing grasses that are edible by chickens. Likewise, honey bees need flowering plants that are in short supply on the subject property to survive and thrive as well as a constant source of clean water. Applicant’s <b>Exhibits 88, 89, 91</b>. Bee keepers who produce honey, such as the Lazy Z Ranch, have established regenerative bee pastures which they irrigate to produce the flowering plants needed by their honey bee colonies.</p> <p>Farm equipment and facilities maintenance and construction facilities could be a number of different businesses with different needs but it is clear that any such use that would offer farm uses to other farmers would require the energy input of electricity, an input not available on the subject property. Applicant’s <b>Exhibit 100</b>. It would also require technology inputs such as a septic system. Applicant’s <b>Exhibit 101</b>. Given the high likelihood that trucks and heavy farm machinery would need to be able to reliably get up the steep grade to reach the plateau of the subject property (canyon wall are not suitable for this use due to their steep grade), road building technology and expertise would be needed to build a roadway to the property. Applicant’s <b>Exhibit 81</b>.</p>

2024-08-07	Carol Macbeth, COLW	The issue is whether it is more expensive to conduct farm uses on the subject property than on other agricultural land.	That is not correct, the issue is whether the land is suitable for farm use, considering the seven suitability factors of Goal 3 and whether a reasonable farmer would engage in a farm activity with an intention of making a profit in money. The costs to establish and conduct the use and likely returns are relevant in determining suitability. The expected returns from the sale of crops and animals raised on fertile, irrigated lands like those found in the Lower Bridge area to the west of the subject property are obviously higher than the paltry returns expected on the subject property.
2024-08-07	Carol Macbeth, COLW	The property can be used for seasonal grazing.	This is correct. This activity, however, is not a “farm use” because it would not be conducted on this property with an expectation of making a profit in money. Given the low number of AUMs that can be seasonally grazed on the subject property, the cost of taxes, even with farm tax deferral on all eligible parcels, would exceed the likely income of seasonal livestock grazing by cattle – the only type of livestock known to be raised on open range land in the County and in the surrounding area. No party has claimed otherwise.
2024-08-07	Carol Macbeth, COLW	Del Johnson said that the applicant can use this land in conjunction with surrounding farms.	No reasonable farmer whose use constitutes a “farm use” would add the subject property to their farm operation and thereby make the subject property suitable for “farm use.” We find the testimony of Rand Campbell and Russ Mattis, among others, to be more persuasive.
2024-08-07	Carol Macbeth, COLW	Kelsey Nonella, who opposes approval of this application, says the subject property is suitable for grazing by horses and goats.	Dr. Nonella did not claim or demonstrate that this type of grazing would be conducted with an intention to make a profit in money.
2024-08-07	Carol Macbeth, COLW	According to Dr. Nonella, horse boarding would gross over \$100,000 annually.	The horse boarding facilities referenced by Dr. Nonella all have irrigated pasture land – something that does not exist on the subject property. The subject property has no pasture and no irrigation water rights and it is cost prohibitive to acquire water rights, bring electricity to the property, install a well and pump, purchase and install an irrigation system, to clear a vast quantity of rocks and to establish pastures.

			The Johnsons keep horses on their property but are not engaged in horse boarding notwithstanding the gross income stated by Dr. Nonella. Instead, they engage in the profitable business of making and packaging Horse Guard equine supplements on their EFU-zoned farm property for online sales and sales in farm stores in Oregon, Colorado, Texas, Wyoming, New Mexico, California, Utah, Minnesota, Illinois, Arizona, Washington, Wisconsin, Idaho, Mississippi, Louisiana, Montana, Georgia, Ohio, South Carolina, Virginia, North Carolina, Florida, Pennsylvania, Maine, Alaska, and Hawaii according to the Wilco website.
2024-08-07	Carol Macbeth, COLW	Horse boarding could be combined with facilities for goats or alpacas or sheep or swine or chickens.	Ms. Macbeth does not assert or make the case that any of these farm uses would be conducted with an intention to make a profit in money. Additionally, an alpaca operation occurs on irrigated pasture land like the lush pastures on the Chapel property in the Lower Bridge area; not rocky land lacking in adequate forage to support livestock where purchased feed would be needed for any livestock operation. Additionally, it is not an accepted farm practice in the area to combine uses of this type on a single property. Each requires different skills, facilities and conditions to be successful.
2024-08-07	Carol Macbeth, COLW	The subject property is suitable for farm use because it can be supplemented by feed imported from off-site.	Imported feed is costly. Given the exposed location of this property, livestock would need more feed to survive over the winter than would livestock kept on other area properties. Also, the subject property is, according to soils scientist and wastewater specialist Brian Rabe, not suited for a feedlot operation.
2024-08-07	Carol Macbeth, COLW	The County must consider the element of soil fertility through the proper lens of feeding livestock supplemental feed.	This is illogical. Supplemental feeding has no relevance to the issue of soil fertility.
2024-08-07	Carol Macbeth, COLW	Class VII soils are, according to the NRCS, suitable for the grazing of livestock.	The NRCS publication Soil Survey of the Upper Deschutes River Area, Oregon says the following on page 187: “Class VII soils have very severe limitations that make them unsuitable for cultivation.” It does not say that they are categorically suitable for the grazing of livestock.

2024-08-07	Carol Macbeth, COLW	The Buchanans seek to lease or buy the property to expand ranch operations.	The fair market value of the subject property with EFU zoning (bare land excluding structures) is, according to the Deschutes County Assessor, \$5,790,730. The Buchanans have not presented any offer to Eden Central to purchase or lease the subject property. They've told the County in their business plan that they would like to lease unspecified dry grazing land for \$28 per AUM but that is not enough money to pay the property taxes of the Eden Central property. The business plan does not propose to purchase of the Eden Central property, likely because it is simply too expensive to pay the cost of interest to finance the purchase price of the land from Keystone Natural Beef revenue. Even at the low rate of 4% per annum on a no down payment loan, the interest expense that would need to be paid to run cattle on the property and to own the land would be \$231,629.20 annually for an interest only loan. If Mrs. Buchanan paid 20% down (\$1,158,146.00), she would have an annual interest expense of \$185,303.36 on an interest only loan.
2024-08-07	Carol Macbeth, COLW	The Buchanans say there is an advantage to dryland acreage.	This supposed advantage is not articulated by Ms. Macbeth. Even if there is an advantage, however, vegetation on the property is so sparse livestock would lose weight grazing on the subject property.
2024-08-07	Carol Macbeth, COLW	Photographs show abundant foliage and level ground.	The forage on the subject property is sparse. This fact is borne out by the fact that in dry years only one AUM would be supported by the forage available on ten acres and in wet years only one AUM per five acres (State Agencies). The standard, accepted OSU formula for grazing income on rangeland assumes one AUM per acre – a rate 5 to 10 times better than the rate estimate of State Agencies and 15 times the rate of grazing allowed by the USA on the Cline Butte allotment that has similar conditions to the subject property and 40 time the rate of grazing on similar lands in Eastern Oregon (per Ms. Mayo-Phillips).
2024-08-07	Carol Macbeth, COLW	Unidentified photographs of the property suggest the applicant is mischaracterizing the property's suitability for farm use.	Information from the State Agencies who oppose this application was relied on to determine suitability for farm use. Ms. Macbeth is not qualified to estimate forage production on agricultural lands. Other competent evidence in the record indicates that the State Agency yield may be too high. Cattle rancher Awbrey Cyrus is only



			allowed one AUM per 15+ acres on similar federal land (Cline Butte allotment) and opponent Pam Mayo-Phillips stated a yield of one AUM per 40 acres on similar land in Eastern Oregon.
2024-08-07	Carol Macbeth, COLW	Climactic conditions are identical to other area farms.	This is not correct. The subject property is unique because it is located high above area farms (located to the east and west) on an exposed plateau.
2024-08-07	Carol Macbeth, COLW	The County must consider the element of existing and future availability of water for farm irrigation purposes through the lens of whether livestock can be produced on the property with supplemental forage imported from off-site. Farmers typically purchase irrigation water rights usually as a part of purchasing the property. There is nothing about this land that makes acquiring water for farm irrigation purposes any different than it is for any other property.	The issue of the future availability of water is settled. The fact that the County needs to consider importing feed in assessing whether the subject property is suitable for farm use does not reopen the issue of whether irrigation water is available. LUBA rejected COLW’s argument that costs associated with bringing irrigation water to the subject property should not be considered in assessing suitability for farm use. It held at slip opinion 26, “[t]he annual cost of procuring water for irrigation is a permissible consideration when evaluating whether land is suitable for farm use.” This cost also includes the cost of electricity. Information about that cost for agricultural wells on the adjoining former Volwood Farms and Hunt Road Two Canyons LLC property is attached as Applicant’s <b>Exhibit 90</b> .
2024-08-07	Carol Macbeth, COLW	There is no impediment to raising livestock or training horses or establishing a riding school with feed imported from elsewhere and there is no impediment to doing so.	The importation of feed does not correct the issues that make the subject property unsuitable for these uses. A large part of land is too steep for horse boarding, training or riding schools. The level area of the property is covered with juniper trees and an abundance of surface rocks and shallow soils that are not found on Central Oregon horse facilities such as those identified by Dr. Nonella. The cost to purchase hay and to keep cattle on the property year round, also, are too high to make it reasonable for a property owner or farmer to expect to make a profit in money from conducting a farm operation on the Eden Central property.
2024-08-14	James Howsley	Transight Engineering addresses the TPR and does not cite OAR 660-033-0026(1)(a)(C).	Transight Engineering provides evidence that bears on the question asked by OAR 660-033-0026(1)(a)(C). Whether the rule is cited in its report does not affect the reliability of its conclusion that traffic

			impacts from new homes will not prevent area farmers from continuing farm practices.
2024-08-14	James Howsley	Transight does not explain what farm operations are occurring on NW Coyner Avenue or explain their transportation methods or equipment.	The Board identified nearby and adjoining farm properties and their farm practices in its 2022. The two farm properties that use Coyner Avenue in this study area are the Buchanan and Stabb properties. The Buchanans offered evidence regarding their use of Coyner Avenue and Transight addressed that evidence. Applicant’s <b>Exhibit 99</b> . In so doing, it addressed all types of farm equipment and the same roadway thus effectively addressing the Stabb property and its hay operation which also uses farm equipment to conduct its use. Additionally, despite the fact that Mr. Stabb did not raise any concern about traffic impacting his farm practices, Transight’s evidence and other evidence in the record provided by the applicant addresses the question of whether additional traffic would prevent Mr. Stabb from conducting farm practices on his hay property.
.2024-08-14	James Howsley	Transight does not consider the additional costs that nearby farms will incur such as flagging costs for slow-moving vehicles.	The law requires slow-moving farm equipment to be flagged and marked as such. This is an existing cost; not one attributable to additional traffic. Applicant’s <b>Exhibit 49</b> .
2024-08-14	James Howsley	The Oregon Fire Code requires a second access point for the proposed single-family development in Appendix D, Section D107.1.	This statement is not entirely correct. Section D107.1, Exception 1 says that “[w]here more than 30 dwelling units accessed from a single public or private fire apparatus access road and all dwellings are equipped throughout with an approved automatic sprinkler in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3, access from two directions shall not be required.”
2024-08-14	James Howsley	The site nearly abuts Buckhorn Road on the west and the flagpole part of the property to the north is clearly designed to extend to NW Teater Avenue on the north. The county must consider traffic issues impacting farm uses on all sides of the property.	Mr. Howsley’s evidence demonstrates that no access exists to these roads. The Board restricts residential access to the west and the north with the exception of emergency access in its conditions of approval. There will be no traffic impacts to the only other farms on nearby and adjacent lands which are located to the west of the subject property.

Exhibit F, Attachment A – Ordinance No. 2024-010

2024-08-14	James Howsley	The fact that farmers will be compensated for farm losses attributable to new traffic due to the Open Range law does not mean the cost of farm practices “will not be materially increased” due to the time and effort necessary to obtain compensation.	Mr. Howsley applies the wrong test and does not claim that this issue will prevent ranchers from continuing to raise livestock in the area. It is not likely that the effort of seeking compensation, something it already must do if harm is caused to livestock by existing area residents, will be so onerous as to put a cattle operation out of business.
2024-08-14	James Howsley	LUBA’s remand requires an analysis of surrounding lands and traffic impacts. The cattle circulation path between the Two Canyons LLC properties in the Lower Bridge area is on nearby public roads that will experience a substantial increase in passenger trips that will increase costs and thereby no longer permit customary farm practices including cattle grazing and circulation on nearby farms.	Mr. Howsley’s argument relies on his assertion that the subject property will obtain access it lacks to Buckhorn Road and Lower Bridge Road that will generate a substantial amount of new passenger trips on Lower Bridge Way and Buckhorn Road. This result has been precluded by the imposition of conditions of approval that limit access to those areas, if it is obtained, to emergency access only. Furthermore, Mr. Howsley lacks the expertise to estimate trip routes from the subject property and has provided no facts that support his position that the amount of traffic that would use these roads if access were possible would be “substantial” and would impact farm practices.
2024-08-14	James Howsley	The fact that there will be no likely measurable impact on water levels within wells off-site attributable to water use from exempt wells on the subject property is not adequate because it is necessary to study existing well conditions on each adjoining farm.	This is illogical because the issue is the impact, if any, on the aquifer; not the existing condition of area wells that bear no relation to the impact of development of the subject property. The GSI report, also, studied well logs of wells in the area and they are included with their reports. Mr. Howsley’s water expert does not join in this argument.
2024-08-14	James Howsley	Cascade Geoengineering does not measure or address the	This is not required because the use of water by the subject property will be slight and there will be no likely measurable impact

		increased costs to nearby farms of well deepening.	on water levels from the use. If wells need to be deepened, it will not be due to use of water by the homes on the subject property.
2024-08-14	Billy Buchanan	Rand Campbell is a developer's attorney who filed comments under the letterhead of Hopper, LLC and is a principal in a large Grant County destination resort, Silvies Valley Ranch.	Mr. Campbell is "a Central Oregon hay farm owner, cattle ranch manager and lawyer who visited the subject property to assess its suitability for livestock grazing." Rec-2135. He operates his ranching and farming businesses under the names of Hopper LLC – Hopper Ranch (4,045 acres in Grant County) and Back Forty LLC – Back Forty Hay Farm (40 acres in Tumalo, Oregon). Rec-670, -3023. Silvies Valley Ranch is a guest ranch; not a destination resort.
2024-08-14	Billy Buchanan	The subject property is needed for our planned expansion.	The Buchanans have recently sold irrigated pasture land in Powell Butte that was used for grazing for most of the year by Keystone's cattle. This is a contraction rather than expansion of the Keystone cattle operation. The cattle only winter on the Buchanan Coyner Avenue property. Presumably, since the Coyner Avenue was of a sufficient size for wintering cattle when Keystone had a larger operation (prior to the sale of one of its two Powell Butte pastures), it should be of sufficient size now.
2024-08-14	Billy Buchanan	The county's calculations of AUMs don't take into account rotational grazing management or introducing drought-tolerant grasses.	Drought-tolerant grasses already exist on the subject property and soil scientist Brian Rabe has provided expert evidence that Mr. Buchanan's plan to broadcast seed the property with drought-tolerant grass seed would be unsuccessful in establishing additional grazable biomass. The calculations of AUMs, based on information about forage provided by the Oregon Department of Agriculture ("ODA"), have not been challenged by any other party and evidence in the record suggests that the calculation may overestimate the productivity of the subject property. Mr. Buchanan also fails to explain how it would be possible for him to conclude that this practice was not taken into account or that rotational grazing would increase forage yield above what was assumed by the AUM figures provided by ODA.
2024-08-14	Billy Buchanan	The subject property has partial perimeter fencing and two wells located at the homesites.	Mr. Buchanan does not understand where the subject property is located because it does not include two home sites. There is only one nonfarm dwelling home and one exempt well on one of the nine parcels and Mr. Campbell accounted for this fact in his analysis and

			is of the opinion a separate source of water would be needed for agricultural use. See, Applicant’s <b>Exhibit 43</b> , p. 6 and <b>Exhibit 73</b> , p. 3.
2024-08-14	Jeffrey Kleinman	There is no legitimate question as to the real and continuing operation of Keystone’s ranching business.	This is not the issue. Keystone’s cattle operation is primarily conducted in Powell Butte on lands that are not “nearby or adjacent” to the subject property. Instead, the question is whether the use of the small Buchanan property in conjunction with the subject property will make the agricultural use of the subject property one a reasonable farmer or rancher would undertake with an intention of making a profit in money. Substantial evidence provided by rancher Rand Campbell demonstrates that the answer to this question is no and that the combined operation, itself, would not be profitable. This is consistent with the financial analysis of cattle ranching in northeastern Oregon conducted by the OSU Extension Service and other evidence in the record, including the informed opinions of ranchers.
2024-08-14	Jeffrey Kleinman	I reminded Mr. Katzaroff that my clients’ offer to share tax information was made to the Board [only].	The offer to share tax information is contained in the Keystone business plan. It says “[p]ast 3 year Tax Returns for ranching operation available upon request.” This offer was not made to the Board. If it was, it would be one that could not be accepted by the Board because all information used by the Board to decide this case must be included in the public record that is shared with all parties. The Buchanan’s refusal to provide the tax information they offered to share combined with the removal of the five annual and twelve quarterly (three years) income statements, balance sheets and cash flow statements from the business plan’s appendix is consistent with the claim made by the applicant that the cattle business is not one a reasonable rancher would operate with an intention of making a profit in money.

# Exhibit F, Attachment B

**After recording return to:**  
Deschutes County Community Development  
117 NW Lafayette Avenue  
Bend, OR 97703

## CONDITIONS OF APPROVAL AGREEMENT AND RESTRICTIVE COVENANT

This conditions of approval agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2024 by Eden Central Properties, LLC, an Oregon limited liability company (hereinafter “Eden”) and Deschutes County, a political subdivision of the State of Oregon (hereinafter “County”).

### RECITALS

WHEREAS, Eden sought approval of a plan amendment from Agriculture to RREA and zone change from EFU-TRB to RR-10 in File Nos. 247-21-001044-ZC and 247-21-001043-PA and 247-24-000395-A, for the property described on **Exhibit A** (the “Property”), a copy of which is attached and incorporated by reference herein; and

WHEREAS, the applicant and in the land use review process asked the County to impose a condition of approval on future development of the Property that will apply while the Property is zoned RR-10: and

WHEREAS, the Board of Commissioners approved the land use applications and imposed the condition of approval requested; and

WHEREAS, the condition of approval requires that an agreement be recorded that memorializes the condition of approval and applies it to the rezoned property:

NOW THEREFORE, the parties agree as follows:

1. Eden shall sign and record a Waiver of Remonstrance in a form substantially similar to **Exhibit B** which precludes complaints against nearby farm practices.
2. No residential structure shall be constructed within 100-feet of any property that is currently engaged in farm use and is receiving farm tax deferral, including the property currently owned by Elizabeth A. Buchanan and described on **Exhibit C** that has been disqualified from the farm tax deferral program because it contains a nonfarm dwelling.

3. Any exempt well on the Property existing now or later developed shall be limited to residential use and a maximum of one quarter (1/4) acre of irrigation.
4. Residential development on the Property shall be limited to a maximum of seventy one (71) new dwellings.
5. Residential access to the Property shall be NW Coyner Avenue. Any additional access shall be limited to emergency or utility purposes.
6. No destination resort may be established on the Property.
7. “No Trespassing” signs shall be posted and maintained at intervals of no more than 250 feet near the boundary line between the Property and the Two Canyons, LLC property (former Volwood Farms) and described in **Exhibit D**. Applicant shall complete and maintain fencing along or near this border to prevent trespass. These requirements shall be met as long as that property remains in farm use.
8. This agreement is not assignable.
9. This agreement runs with the land and is enforceable against future owners of the **Exhibit A** property.







Return to:  
Haleigh King, Associate Planner  
Community Development Department  
117 NW Lafayette, P.O. Box 6005  
Bend, Oregon 97708-6005

*Space Reserved for Recorder's Use*

**EASEMENT  
(WAIVER OF REMONSTRANCE)**

\_\_\_\_\_ and \_\_\_\_\_, herein called the Grantor/s, is/are the owner/s of real property described as set forth in that certain [Statutory Warranty Deed] dated [DATE], as recorded in [the Official Records of Deschutes County as instrument number 20xx-xxxxx] OR [Volume xx, Page xx of the Deschutes County Book of Records] and by this reference incorporated herein, and further identified or depicted on Deschutes County Assessor's Map \_\_\_\_\_, as tax lot \_\_\_\_\_. In accordance with the conditions set forth in the decision of the Deschutes County Planning Division approving land use permit \_\_\_\_\_, Grantor/s hereby grant/s to the owner(s) of all property adjacent to the above described property (Grantees), a perpetual non-exclusive farm practices management easement as follows:

1. The Grantor/s, his/her/their heirs, successors, and assigns, hereby acknowledge/s by the granting of this easement that the above-described property is situated nearby to areas designated farm zone in Deschutes County, Oregon, and may be subjected to conditions resulting from farming on adjacent lands. Such operations include operations related to farm uses under ORS 215.203(2)(a) and ORS 215.283, including the raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof, and other accepted and customary farm management activities conducted in accordance with federal and state laws. Such farm activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantor/s/s' use of Grantor/s/s' property for residential purposes. Except as allowed by ORS 30.930 through 30.947, Grantor/s hereby waive/s all common law rights to object to normal, non-negligent farm management activities legally conducted on adjacent lands that may conflict with Grantor/s/s' use of Grantor/s/s' property for residential purposes, and Grantor/s hereby give/s an easement to the adjacent property owners for the resultant impact on Grantor/s/s' property caused by the farm management activities on adjacent lands.
2. Grantor/s shall preclude residential dwelling development within 100-feet of the property line of any adjacent property engaged in farm practices at the time of residential development.

This easement is appurtenant to all property adjacent to the above-described property, and shall bind the heirs, successors, and assigns of Grantor/s, and shall endure for the benefit of the adjacent landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third-party enforcement of this easement.

***Signature Page to Follow***

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_

GRANTOR/S

\_\_\_\_\_  
\_\_\_\_\_

(CORPORATION NAME, IF CORP.)

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, who is/are known to me to be the identical individual/s described in the above document, and who acknowledged to me that he/she/they executed the same freely and voluntarily.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ known to me to be the \_\_\_\_\_ of \_\_\_\_\_ and who executed the above document on behalf of said corporation.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## Exhibit "A"

### Legal Descriptions of Affected Properties

#### **TRACT 1 (Current tax lot 14-12-2100-00700)**

That portion of the NE1/4 of the NE1/4 of Section 21, T14S, R12E, W.M. lying Easterly and Southeasterly of the following described line:

Beginning at the Northeast corner of said Section 21;  
thence 10.00 feet west along the North line of said Section 21;  
thence South 1000.00 feet along a line parallel to the East line of said Section 21;  
thence on a straight line to the Southwest corner of said Section 21.

#### **TRACT 2 (Current tax lot 14-12-2100-00600)**

The Northerly 165.00 feet of the NE1/4 of Section 28, T14S, R12E, W.M.;  
The S1/2 of the SE1/4 of Section 21, T14S, R12E, W.M.;  
The NE1/4 of the SE1/4 of Section 21, T14S, R12E, W.M., and  
That portion of the SE1/4 of the NE1/4 of Section 21, T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;  
thence 10.00 feet West along the North line of said Section 21;  
thence South 1000.00 feet along a line parallel to the East line of said Section 21;  
thence on a straight line to the Southwest corner of said Section 21.

#### **TRACT 3 (Current tax lot 14-12-2100-00500)**

That portion of the SW1/4 of the NE1/4 of Section 21, T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;  
thence 10.00 feet West along the North line of said Section 21;  
thence South 1000.00 feet along a line parallel to the East line of said Section 21;  
thence on a straight line to the Southwest corner of said Section 21.

#### **TRACT 4 (Current tax lot 14-12-2100-00400)**

That portion of the NE1/4 of the SW1/4 of Section 21, T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;  
thence 10.00 feet West along the North line of said Section 21;  
thence South 1000.00 feet along a line parallel to the East line of said Section 21;  
thence on a straight line to the Southwest corner of said Section 21.

**TRACT 5 (Current tax lot 14-12-2100-00300)**

The Northerly 165.00 feet of the NW1/4 of Section 28, T14S, R12E, W. M., those portions of the NW1/4 of the SE1/4, the SE1/4 of the SW1/4 and the SW1/4 of the SW1/4 of Section 21 T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;  
thence 10.00 feet West along the North line of said Section 21;  
thence South 1000.00 feet along a line parallel to the East line of said Section 21;  
thence on a straight line to the Southwest corner of said Section 21.

**TRACT 6 (Current tax lot 14-12-2800-00100)**

The NE1/4 of Section 28, T14S, R12E, W.M.

EXCEPTING the Northerly 165.00 feet THEREOF.

**TRACT 7 (Current tax lot 14-12-2800-00200)**

The NW1/4 of Section 28, T14S, R12E, W.M.  
EXCEPTING THEREFROM the Northerly 165.00 feet THEREOF.

**TRACT 8 (Current tax lot 14-12-2800-00300)**

The NE1/4 of the SW1/4 and the N1/2 of the SE1/4 of Section 28, T14S, R12E, W.M.

**TRACT 9 (Current tax lot 14-12-28D0-00101)**

PARCEL 2 of Partition Plat No. 2015-15 according to the official Plat THEREOF as recorded in the office of County Clerk for Deschutes County, Oregon.