

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

File Numbers: 247-24-000097-PA, 098-ZC and 247-25-000021-MA

Applicant: BCL, LLC
250 NW Franklin Street
Bend, Or 97703

Owner: Erickson-Ward Land Trust, LLC
21875 Neff Road/21850 Highway 20/21700 Bear Creek Road/62098
Ward Road
Bend Or 97701

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Application: Approval to change the plan designation for the subject property from Agriculture to Rural Residential Exception Area ("RREA") and to change the zoning of the property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural-10 ("MUA").

Subject Property:

Map/Tax Lot:	Situs Address:
171236000100	21875 Neff Road, Bend, OR 97701
171236000400	21850 Highway 20, Bend, OR 97701
1712360001000	21700 Bear Creek Rd, Bend, OR 97701
171236000900	62098 Ward Road, Bend, Or 97701

I. FINDINGS OF FACT

- A. Hearings Officer's Recommendation:** The Hearings Officer's recommendation dated May 9, 2025, adopted as Exhibit G of Ordinance No. 2026-004, is hereby incorporated as part of this decision, including any and all interpretations of the County's code and comprehensive Plan and modified as follows:

- B. Procedural History:** The County's land use Hearings Officer conducted the initial evidentiary hearing regarding BCL, LLC's Comprehensive Plan Amendment and Zone Change applications on May 9, 2025. After an open record period that ended May 30, 2025, the Hearings Officer recommended that the Board approve the applications in a July 9, 2025 decision. The Board conducted a de novo land use hearing on August 20, 2025. At the close of the hearing on August 20, 2025, the Board ordered an open record period that ended September 10, 2025. On October 15, 2025, the Board deliberated and voted unanimously to approve the application.
- C. Deschutes County Land Use regulations:** The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by the Department of Land Conservation and Development (DLCD) as complying with statewide planning goals, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource land such as the subject property, do not result in a violation of Goal 14. The Board interprets all MUA-10 uses as rural uses; no Goal 14 exception is required.

II. ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW

At the Board's October 15, 2025, meeting where it deliberated the application, County staff presented an issue matrix for the Board to consider. Having considered the questions as presented in that matrix, the Board makes the following additional findings:

1. Soils Report

The applicant relied upon the NCRS soil maps and data for its assertion that the subject property was comprised predominately of non-agricultural soil. It presented a report from Red Hill Soils that explained the NCRS mapping and data. Central Oregon LandWatch (COLW) argued during the proceedings that the Red Hill Soils (Andy Gallagher) report was a "more detailed soil assessment" as defined in OAR 660-033-0030 that had to have been reviewed and approved by DLCD. The Hearings Officer rejected that argument and accepted the applicant's position that the Red Hills report did not have to be reviewed and approved by DLCD.

The Board notes that COLW did not reassert its argument on this issue in either its August 20, 2025, or August 27, 2025, submissions to the Board. Nevertheless, because the issue was presented by staff in the matrix, the Board evaluated COLW's prior arguments and rejects them. A party seeking a rezoning on the basis that property is

not agricultural land is allowed to rely on the NRCS mapping and data. If the existing maps or data are not accurate or complete, an applicant may elect to have a more detailed study done on the site where soils samples are evaluated and additional data is developed. Red Hills Soil did not do that. Rather, it used the existing maps and data to explain how that data relates to the subject property, specifically how the data is interpreted when the property has complex soil types.

The Board finds that the Red Hill Soils report did not include more data on soils but rather explained the application of existing NCRS data. Board interprets OAR 660-033-0030(5) to find Red Hills report is not a soil assessment requiring DLCD certification.

2. Whether the Property meets the definition of agricultural land in OAR 660-033-0020(1)(a).

Staff presented a second issue related to the soils information that the applicant submitted; staff presented that, to continue deliberations on the application, the Board must decide whether the applicant's information demonstrated that the property was predominantly non-agricultural land. OAR 660-033-0020(1)(a) defines agricultural land in Eastern Oregon as predominantly Class 1 through 6 soil. The Board discussed the information presented, particularly the report from Red Hill Soils and finds that the information establishes that the subject property is made up predominantly of Claas 7 and 8 soils that is therefore not agricultural land.

3. Whether the property is agricultural land considering the factors in OAR 660-033-0020(1)(a)(B).

OAR 660-033-0020(1)(a)(B) requires a decision-maker to consider several factors to determine whether land, even if predominantly Class 7 and 8, qualifies as agricultural land. The factors include soil fertility, suitability for grazing, climate, availability of water, land use patterns and accepted farming practices. After the Hearings Officer issued his recommendation, wherein he found that the property was not agricultural land suitable for farming, COLW and the applicant submitted additional evidence and argument.

COLW asserted two primary points in its August 2025 submissions. First, it noted that there is some evidence of past farming and possible irrigation. Second, it asserted that the Board is required to make findings that the property cannot be put to any farm use for horse breeding, boarding, training; or for goats or sheep or llamas or other farm use in order to approve the applications.

The Board reads LUBA's decision in *Central Oregon LandWatch v. Deschutes County (Destiny Court)*, LUBA No. 2025-015 to say that only if participants present evidence

regarding certain farm activities other than grazing and hay growing, which are the most commonly accepted activities, does a decision-maker have to make specific findings related to other possible farm activities. In this matter, COLW did not present any such evidence with enough specificity to respond to; it merely listed possible farm activities that are set forth in the definition of farming. COLW presented some information on one horse training facility in Deschutes County and one goat farm, but failed to demonstrate how the subject property was suitable for these farm uses.

As an initial matter, the Board finds that the subject property is not irrigated and has no ability to be irrigated presently. The images that COLW submitted as evidence of past farming are not clear and do not prove that there was any farm activity engaged in on the property for the purpose of making a profit. Furthermore, the latest photograph was 50 years ago and there is no evidence of any farming activity on the property since that time. The Board finds persuasive the testimony of Eric Hagerty, a local farmer/rancher who stated that the cost to acquire water rights, if that is even possible, would be prohibitive. Further, his testimony on the ability to conduct dry grazing for any profit is credible.

As to a horse facility, the applicant presented evidence from Mr. Hagerty, who also operates an equestrian facility, who explained that the subject property is not suitable for such use noting the prohibitive cost with constructing the required facilities, the need for irrigation for pasturing and the cost to obtain irrigation right and then, install the necessary equipment. The evidence illustrated that the land could not produce pollinating plants for bees. Further, the applicant presented evidence that the equestrian facility used by COLW in its arguments has better soil and ample irrigation, and yet still operates as a non-profit. The Board finds that farm use is defined as the current employment of land primarily for the purpose of making a profit from activities listed in ORS 215.203.

The example of the goat farm was from a city in North Carolina. The Board finds that that information is not relevant to this matter in Deschutes County. The Board is not required to make any specific finding on whether a goat farm could be operated primarily for the purpose of a profit on the subject property.

After carefully evaluating all of the evidence in the record, including the detailed testimony from a local ranch and horse facility operator, the Board finds that in applying the factors in OAR 660-033-0020, the subject property is not agricultural land and that a reasonable farmer would not attempt to engage in the activities listed in ORS 215.203 for the primary purpose of making a profit. Board applies *Wetherell* economic feasibility test and finds the land is unsuitable for profitable farm use.

4. Landscape Management

The property is within the Highway 20 scenic corridor and thus subject to the Landscape Management Combining Zone (LM) overlay. The Hearings Officer found that the Economic, Social, Environmental, and Energy (ESEE) analysis presented by the applicant adequately addressed the requirement for a conflicting use analysis. COLW argued to the Board that the analysis presented was deficient because it did not cover the entire Highway 20 scenic corridor. The Board rejects COLW's position and finds that the applicant's ESEE analysis satisfied the applicable administrative rules and County code. The focus of the LM review is to assess how development on the subject property may conflict with the resource. The applicant's analysis did that. The Board interprets its code to not require that extent of an ESEE analysis. Furthermore, the Board finds that it is not reasonable to expect an applicant to prepare a conflicting use analysis for the entire scenic corridor, including property on which no development is contemplated by the specific zone change.

5. Compliance with Rezoning Standards

DCC 18.136.020 provides that an applicant for rezoning must establish that the public interest is best served by rezoning the property and identifies factors to be demonstrated by the applicant: (A) that the change confirms to the Comprehensive Plan, and changes are consistent with the plan's introductory statement and goals; (B) That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification; (C) That changing the zoning will presently serve the public health, safety and welfare considering the availability and efficiency of providing necessary public services and facilities and the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan and (D) That there has been a change in circumstances since the property was last zoned or a mistake was made in the zoning of the property. Board interprets 'public interest is best served' to mean compliance with subsections (A)-(D).

The Hearings Officer conducted a detailed analysis on how the above standard is interpreted, concluding that the public interest is best served if the proposal meets the factors set forth in DCC 18.136.020 (A) through (D). He then found that those factors were met in the current application. COLW continued to argue to the Board that DCC 18.136.020 requires that an applicant show both that the factors in (A) through (D) are met and independently demonstrate that the rezoning best serves the public interest. The Board considered the countervailing arguments carefully and finds the Hearings Officer's analysis to be sound and correct. The Board adopts the Hearings Officer's interpretation of DCC 18.136.020. Board interprets 'public interest is best served' to mean compliance with subsections (A)-(D).

6. Existing Solar Facility

COLW argued that the existence of a solar array facility on a 63-acre portion of the property was not consistent with the MUA-10 zone proposed to be applied to the property because solar arrays are not a permitted use in the MUA-10 zone and thus, are not consistent with the proposed zone. The Hearings Officer found that state statute and Deschutes County Code allow for the continued use of a lawful non-conforming use, and while the subject application is not a status determination on the existing solar array, the continued use of a lawful non-conforming use is consistent with the purpose and intent of the MUA-10 zone. The Board finds that lawfully established non-conforming uses are allowed to remain after rezoning under *Holmes v. Clackamas County* and the existence of lawful nonconforming uses do not bar rezoning.

The Board agrees with the applicant's point that COLW's argument is not directed at the applicable standard. The question under DCC 18.136.020(B) is not whether a solar facility is consistent or inconsistent with any particular zoning. The question presented is whether the rezoning of property is consistent with the purpose of the proposed zone.

Before the Board, the applicant presented testimony that the solar facilities are on only one portion of the property and that the majority of the property will accommodate uses allowed in the MUA-10 zone. Thus, when examining the entire property, rezoning to MUA-10 is consistent with the purpose of allowing uses under the MUA-10 zone while preserving resources and open space. The applicant also provided evidence that solar facilities have a limited functional lifespan and that the current facility was constructed around 2016. The record includes evidence from a traffic engineer that the expected useful life of such a facility is about 20 years. The applicant also presented testimony that one of the purposes of the MUA-10 zone is to facilitate an orderly transition from rural to urban uses and that if the subject property, which is close to the existing Bend UGB, comes into the UGB, it will not all be developed immediately, meaning that it is reasonably likely that by the time the portion of the property with the solar facility ever transitions to urban uses, it will be after the functional life of the facility, even if that useful life exceeds 20 years.

The Board agrees with the applicant's testimony and evidence. The Board finds that rezoning a 240-acre parcel that has 63 acres devoted to what will then be a lawful nonconforming use is consistent with the purpose of the MUA-10 zone. Most of the property can immediately be used in a way that is consistent with the MUA-10 zone's purpose. The existing solar facility can remain as a lawful non-conforming use and that property can be transitioned to either MUA-10 uses or, if the property were added to Bend's UGB, urban uses in an orderly time after the solar facility passes its

useful life. Moreover, the Board finds that in any rezoning, there will be existing uses that become non-confirming uses. Those uses and associated development are allowed to remain under the new zoning. If the existence of a use or development that is not allowed under proposed new zoning in a rezone/reclassification application is automatically a disqualifying factor, local governments' efforts to add property to a UGB in the future and rezone such property would be frustrated. The Board finds that the existence of the solar facility on the subject property does not render the application inconsistent with the purpose of the MUA-10 zone.

7. Will the change in designation and zoning result in urban uses such that an exception to Goal 14 is required.

On the issue of whether designating land RREA and rezoning it to MUA-10 is consistent with Goal 14 or requires an exception, the Board adheres to the conclusion it has reached in prior similar rezoning applications. The Board finds that its acknowledged Comprehensive Plan, amended in 2016 to create the RREA designation and its MUA-10 and RR-10 zones, confirms that uses allowed within those zones are all rural uses and not urban uses. The Comprehensive Plan (DCCP) states that "[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses allowed for each area." DCCP Section 1.3. Rural Residential Exception Areas, according to the DCCP, "provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities ..." DCCP Section 1.3. DCCP Table 1.3.3 provides that Title 18's RR-10 and MUA-10 zones are the associated zoning codes for the RREA plan designation.

The determination that the RREA plan designation and RR-10 and MUA-10 zoning districts should apply to exception lands was made when the County amended the DCCP in 2016. (Ordinance 2016-005). The ordinance was acknowledged by DLCD as complying with the Statewide Goals. Thus, the lot sizes and uses allowed by the RREA plan designation and the RR-10 and MUA-10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the DCCP provisions.

Further, the purpose statement for the MUA-10 zone expressly states that it is to preserve the rural character of various areas of the County while permitting development consistent with that character and the capacity of the natural resources of the area. When DCC Chapter 18.32 is read in context with that purpose statement, the only plausible interpretation is that all uses allowed in the MUA-10 zone are rural uses. Thus, the application does not provide any basis for the County to revisit whether the RREA designation, or the RR-10/MUA-10 zones violate Goal 14 by allowing urban development and requires no individual analysis of specific uses or of whether the MUA-10 uses violate Goal 14 is required.

The Board also considered and evaluated the factors presented by the applicant referred to often as the *Curry County* factors to assess whether rezoning the property MUA-10 will result in urban uses on rural land.

Curry County Analysis

As stated above, the Board does not agree with COLW that an analysis of Goal 14 applying the factors set forth in *1000 Friends of Oregon v. LCDL (Curry County)*, 301 Or 447 (1986) is required. The MUA-10 zone allows development consistent with the rural character of the area and does not authorize urban uses. However, the Board makes the following alternative findings for a complete record on the urbanization issue. These alternative findings are based on evidence and argument submitted by the applicant on the Goal 14 issue.

Density

Allowing MUA-10 uses on the subject property will not lead to urban density. The minimum parcel size in the MUA-10 zone is 10 acres. The current zoning code allows smaller parcels for cluster developments and planned developments. In *Central Oregon LandWatch v. Deschutes County* (Destiny Court), LUBA No. 2025-015, LUBA remanded a plan amendment and rezone approval for the Board to address a perceived inconsistency between the DCCP that limits parcels size in the MUA-10 zone to 10 acres and the zoning code that allows smaller parcels under the cluster and planned development provisions. The Board is currently in the process of updating the DCCP to address the remand; however, in the event that cluster and planned development remain in the code and allow parcels less than 10 acres with corresponding open space, such development does not result in urban density.

The smallest parcel in the MUA-10 zone, even using a cluster development application and for property within a mile of a UGB, is five acres or the equivalent density. The Board notes that in *Curry County*, 1000 Friends asserted that densities greater than one dwelling per three acres are urban. That argument did not account for provisions requiring large undeveloped open space either. The Board finds that five-acre parcels along with 65% undeveloped open space are not urban density. By way of contrast, the lowest density allowed in the City of Bend is 1.1 units per acre in the RL zone. There is a significant difference between one dwelling per acre and one dwelling per five acres. Moreover, the allowance of 65% of otherwise unrestricted and unconstrained property to be left open and undeveloped is inconsistent with development at urban densities. Even under the cluster development and planned development provisions, while smaller parcels may be approved, the overall density remains consistent with the rural character of the area.

Extension of Urban Services

The Board rejects the notion that rezoning the subject parcel to MUA-10 will lead to the extension of urban facilities to the area. The City of Bend has no obligation to extend public services and in some cases is prohibited from providing extraterritorial service to rural lands. Development will be served primarily by private water and onsite septic systems. Electricity already extends onto the property as evidenced by the approved plat from 1990. For fire and public safety, the area is served by the Bend Rural Fire District and Deschutes County Sheriff's office, both of which serve rural areas. Further, that coverage will remain unchanged under any county zoning.

Proximity to Urban Growth Boundaries

While the court in *Curry County* addressed arguments that rezoning resource land near urban areas could attract people from the urban areas to rural areas, that discussion did not involve the Deschutes County MUA-10 zone which has as one of its purposes to promote an orderly transition from rural uses to urban uses. The purpose statement thus confirms that the MUA-10 zone allows rural uses. It also illustrates that having MUA-10 zoning somewhat near a UGB is appropriate.

The Board does not agree that rezoning the subject property to MUA-10 will be a magnet pulling rural residents into the urban area and urban residents to the rural area. That position does not reflect reality. Currently, there are few, if any, resources available to rural residents that are located in rural areas. The schools that rural residents around Bend attend are in the City. The medical services and major grocery stores are in urban areas. Rural residents living close to Bend already come in large numbers to urban areas for goods and services.

Similarly, the rural area has most of the recreational opportunities that are enjoyed by urban residents. There are other uses such as horse stables and farm stands that already attract urban residents to the rural area. Board finds that zoning property near the City of Bend UGB to MUA-10 will not result in urban uses on rural lands and thus, no Goal 14 exception required.

III. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby approves applicant's applications for a Comprehensive Plan Amendment to redesignate the subject property from Agriculture to RREA and a corresponding zone map amendment to change the zoning of the property from EFU to MUA-10.

Dated this ____ day of _____ 2026.