

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

File Numbers: 247-24-000839-PA, 840-ZC

Owner/Applicant: McKenzie Meadow Village LLC

Attorney(s) for Applicant: Christopher P. Koback
Hathaway Larson LLP
1125 NW Couch Street, Suite 550
Portland, OR 97209
937 NW Newport Avenue, Suite 220
Bend, OR 97703
(541) 585-1088
chris@hathawaylarson.com

Staff Planner: Haleigh King, Senior Planner
Haleigh.king@deschutes.org, 541-383-6710

Application: Request for approval of an application to change the comprehensive plan designation for the subject property, totaling approximately 58 acres, from Forest to Rural Residential Exception Area ("RREA") and to change the zoning of the property from Forest-2 ("F-2") to Multiple-Use Agricultural-10 ("MUA"). The applicant is also requesting a goal exception to Statewide Planning Goal 4.

Subject Property:	Map/Tax Lot:	Situs Address:
	1510050001200	69095 McKinney Ranch Rd., Sisters, OR 97759
	1510050001202	69055 McKinney Ranch Rd., Sisters, OR 97759
	1510050001203	69050 McKinney Ranch Rd., Sisters, OR 97759
	1510050001205	None

I. FINDINGS OF FACT

A. Hearings Officer's Recommendation: The Hearings Officer's recommendation dated June 25, 2025, adopted as Exhibit H of this ordinance, 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:

1. 1990 Subdivision

In its report to the Deschutes County Board of Commissioners ("Board"), staff presented a 1990 subdivision plat that divided the subject property into four lots and a private road tract. The Hearings Officer did not address the 1990 subdivision plat in his

recommendation. The Board finds the subdivision plat significant to the current application. First, the subdivision plat indicates that as early as 1990, the owners and the County anticipated future development of the property. The creation of four legal lots and a road tract to provide access to each lot indicates that the owner intended future development on each lot and the County approved the plat with knowledge of the owner's intention. In fact, Parcel 4 on the 1990 subdivision plat was subsequently annexed into the City of Sisters and developed into a residential subdivision at city densities. Second, the remaining three lots created from the 1990 plat are three lots of record, each of which are eligible for a conditional use dwelling. The parcelization of the property and creation of the road tract are additional facts that support approving an exception to Goal 4.

B. Procedural History: The County's land use Hearings Officer conducted the initial evidentiary hearing regarding McKenzie Meadow Village LLC's ("MMV") Comprehensive Plan Amendment and Zone Change applications on April 7, 2025, and recommended that the Board approve the applications in a June 25, 2025 decision. The Board conducted a *de novo* land use hearing on August 6, 2025. The Board closed the hearing and the written record and deliberated on August 6, 2025, voting to approve the application subject to further deliberations upon receiving and reviewing alternative "decision documents" to be prepared by the applicant. Consistent with Commissioner comments, one alternative is to include conditions related to wildlife corridors, enhanced riparian buffer, and protection of the scenic resources in the northeast corner of the subject property. The "First Alternative Findings of Fact and Conclusions of Law" includes such conditions of approval.

C. Deschutes County Land Use regulations: The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC) as being in compliance with each statewide planning goal, including Goal 14. The County 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 Plan amendment has also been acknowledged by LCDC, 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.

In the event of conflict, the findings in this decision control.

II. ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW

In addition to adopting the Hearings Officer's findings, the Board provides the following supplemental findings to address the arguments and facts presented to it during the August 6, 2025 *de novo* hearing on this application, and to support its decision to approve the MMV applications:

1. Goal 4 Exception

The MMV property is not suitable for commercial forestry operations. The Board finds the professional report by Gary Kitzrow is fundamentally sound and persuasive. The Board finds that another purpose of Goal 4 is the conservation of soil, air, water, natural resources, and wildlife habitat, and that land designated as forestland provides opportunities for such preservation. However, the Board finds that there are reasons that retaining a forestland designation and F-2 zoning of the subject property is not necessary to meet those purposes. As to soil conservation, the Board finds that the soil on the site is low value and limits tree growth. Rezoning the property to MUA-10 will not affect the quality of soil. As to natural resources, including Trout Creek and the vegetation along its corridor, the Board finds the evidence in the record that uses allowed under the F-2 zone, specifically forestry operations, provide less protection to natural resources than uses allowed in the MUA-10 zone when property in the MUA-10 zone is developed consistent with County development standards to be persuasive. The Board notes that in the MUA-10 zone all structures must be located at least 100 feet from each side of a stream. The applicant agreed on the record that when any development of the MMV property is proposed, it will create and record a document restricting development on those portions of the property that are 100 feet from each side of the edges of Trout Creek.

The MUA-10 zone is a transition zone; among the listed purposes for the zone is to allow for an orderly transition from rural uses to urban uses. There is no MUA-10 property close to the Sisters' city limits that may provide opportunities for an orderly transition from rural to urban uses.

The MMV property is appropriate for MUA-10 zoning and rezoning is consistent with the purpose of that zone. The Property is adjacent to the Sisters' urban growth boundary ("UGB"). Although the property is not served by public streets and utilities, many public facilities, including streets, water, sewer, and electricity are stubbed to the southern boundary of the MMV property. The MMV property connects in one corner to the Sisters' School District property where the high school campus is located. It is within safe, convenient walking and biking distance to downtown, medical services, and other amenities. Thus, the Board agrees that there is a need for MUA-10 zoning close to the Sisters' current UGB and that it is appropriate to rezone the subject property to provide for that transitional zoning.

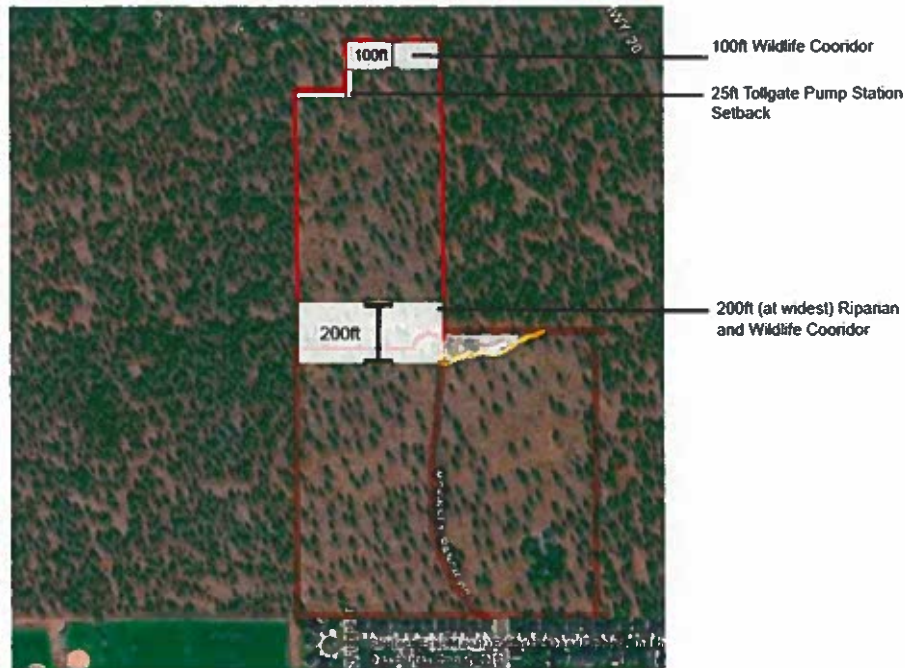
Other exception lands cannot reasonably accommodate new MUA-10 uses. Other properties in the area are designated RREA and are predominantly zoned RR-10. Maps presented in the proceedings illustrate that those exception lands cannot reasonably accommodate new MUA-10 development. Most of the other RREA land consists of smaller parcels between two and 10 acres. Those properties have been developed with valuable improvements and encumbered with CC&Rs that require residential development and restrict further division. Thus, those properties cannot reasonably be developed with many MUA-10 uses. Further, it cannot reasonably be developed to add rural housing because of existing improvements that would have to be removed and the recorded restrictions prohibiting further division. It is not reasonable to assume that owners of such

properties will agree to assemble their parcels, remove valuable improvements, and obtain the necessary votes to amend or remove the private restrictions, all of which would be required before new MUA-10 development could be proposed.

2. Goal 5 Natural Resources

Trout Creek is an ephemeral stream with intermittent water flow. It is designated in the County's Goal 5 resource inventory as a protected resource. From the Trout Creek Conservation Tract, the basin runs east and southeast through the MMV property. As noted above, the Board finds that this resource can be equally or better protected under the development standards for the MUA-10 zone. All structures must be setback at least 100 feet on each side of the creek creating a wide protective buffer. The Board notes that in addition to the DCC code provision that requires all structures in the MUA-10 zone to be setback 100 feet from any stream, the applicant affirmed in an open meeting that it is committed to placing Trout Creek and the associated a riparian buffer into a separate 200 foot-wide tract designated for conservation and protection of the resources within it.

Highway 20 Scenic Corridor extends into part of the MMV property. The scenic corridor measures .25 miles from the centerline of the highway. The northeast corner of the MMV property is approximately .17 miles from the highway centerline as the applicant measured it using the measuring tool on DIAL. The scenic corridor boundary cuts diagonally across that corner of the property. However, the Board finds that the intervening area between Highway 20 and the subject property is forested with a healthy growth of Ponderosa Pine trees on land owned by the United States. That mature forest provides a visual buffer such that it is unlikely that any development of the MMV property zoned MUA-10 will be visible from the highway. Notwithstanding the existing forest buffer between the highway and the northeast corner of the subject property that is within the LM overlay, the applicant proposed to create a 100-foot-wide wildlife corridor along the entire northern boundary of the subject property. That corridor will effectively create a no-build area where the LM overlay exists over the northeast corner of the subject property. A graphic description of corridors that the Board finds appropriate is below:



The Board finds that with the agreed upon conditions and application of the Landscape Management standards in DCC Chapter 18.64, the riparian area will be protected, and potential visibility of future development will be further mitigated.

3. Wildlife Migration

The subject property does not include any mapped or designated wildlife corridors. However, the Board acknowledges that the Sisters School District conservation tract is immediately west of the MMV property and forestland exists to the east. Retaining the ability for wildlife to migrate through the site is desirable. The Board finds that Trout Creek traverses the subject property from the School District conservation tract to the property east of the subject property. The Board finds that the development standards for the MUA-10 zone and in particular the restriction on developing structures within 100 feet of either side of Trout Creek will effectively create a corridor for wildlife to migrate across the site from the School District's conservation tract to the US forest land located east of the subject site creates some desired wildlife connection. In addition, the parcel size standards in the MUA-10 zone will allow low intensity rural development that preserves sufficient open space to facilitate wildlife migration between the School District Conservation tract and the National Forest north and east of the subject site. However, the Board finds that the additional wildlife corridor located generally along the northern portion of the subject property will enhance wildlife connectivity over the subject property. As noted above, the applicant agreed to a condition requiring an additional wildlife corridor.

4. Goal 14

As discussed above, it is the acknowledged Comprehensive Plan, amended in 2016 to create the RREA designation and its associated MUA-10 and RR-10 zones, was acknowledged by LCDC as being consistent with all Statewide Planning Goals, including Goal 14. This confirms that uses allowed within those zones are all rural uses and not urban uses. The Comprehensive Plan 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 “provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities ...” DCCP Section 1.3. DCCP Table 1.3.3 states that the 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 Planning Goals. Thus, the allowable lot sizes and uses under the RREA plan designation and in the RR-10 and MUA-10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the applicable DCCP provisions.

The purpose statement for the MUA-10 zone states that it is intended 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. No individual analysis of whether specific allowable uses in the MUA-10 zone violate Goal 14 is required.

Curry County Analysis

As stated above, the Board finds that an analysis of Goal 14 applying the factors set forth in *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986) is not 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.

Overview

The court in *Curry County* acknowledged that there is no established definition of rural use and urban uses. The court discussed a few factors to consider in evaluating whether development allowed is rural or urban including the density, dependence on urban services and proximity to the urban area. None of the factors were deemed to be determinative and all must be applied in the context of the individual situation presented. The court’s discussion in that case noted that parcel sizes of 10 acres are clearly rural and postulated

that parcels at .5 acres would certainly create an urban density. Later, the court emphasized that the urban services most relevant are water and sewer. In other words, if development on rural land has or depends on public water and sewer, that factor is more indicative of urban development. In contrast, the court noted that rural services are generally considered to include protective services (police and fire), electrical power, communication facilities, and schools.

The Board applies the *Curry County* factors to the subject application as follows:

Density

Rezoning the subject property to MUA-10 will not lead to development at urban densities. 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 parcel size in the MUA-10 zone to 10 acres and the provisions in the zoning code that allow smaller parcels under cluster and planned development provisions. The Board is currently in the process of updating the DCCP to address the *Destiny Court* remand. However, anticipating that cluster and planned development options remain in the zoning code and allow creation of parcels that average 10 acres in size when taking into consideration corresponding open space, such development will not result in urban density.

The smallest allowable parcel in the MUA-10 zone, if property is developed pursuant to a cluster development application and is within a mile of a UGB, is five acres or the equivalent density. 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 do not result in urban density. Under either the County's cluster development or planned development standards, the overall density will remain consistent with what is allowed on rural land as rural uses. By way of contrast, the lowest density allowed in the City of Bend is 1.1 units per acre in the Residential Low (RL) zone. There is a significant difference between one dwelling per acre and one dwelling per five acres. The Board notes that, to satisfy minimum urban density requirements, no city is going to allow, much less require, that 65% of otherwise unrestricted and unconstrained property be left open and undeveloped. Such a requirement would not be consistent with creating urban density. 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 court in *Curry County* emphasized that the

services that most strongly indicate urban levels of development are public water and sewer. The Board agrees and notes that the County has permitted significant residential development on other rural exception lands as rural development. That development is served by electricity and communications services but has no public water or sewer. Private wells and septic systems are commonplace in rural residential living. Sisters has no obligation to extend public services; in some cases, the City is prohibited from providing extraterritorial service to rural lands. Any future development on the property under MUA-10 zoning will not be served by public water and sewer. 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 Camp Sherman Fire District and Deschutes County Sheriff's office, both of which serve rural areas. That coverage will remain unchanged.

Proximity to Urban Growth Boundaries

The court in *Curry County* discussed this factor in the context of that County's creation of large exception area and not as it would or should apply to a specific property for which rezoning is requested. 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. This purpose statement confirms that the MUA-10 zone allows rural uses while at the same time facilitates a transition of from rural to urban uses. This is a significant distinction because it would not be reasonable to apply a zone with the purpose of providing for a transition from rural to urban uses, to property far removed from the UGB. The Board finds that MUA-10 zoning of property somewhat near a UGB is appropriate and not inconsistent with Goal 14.

The Board finds that rezoning the subject property to MUA-10 will not be a "magnet" pulling rural residents into the urban area and urban residents to the rural area. That position does not reflect reality of rural zoning near a small town like Sisters. Currently, there are few, if any, resources available to rural residents that are located in rural areas. The schools that rural residents around Sisters attend are in the city. The medical services and major grocery stores are in urban areas. Rural residents already come in large numbers to urban areas for goods and services because they have no other options to get the goods and services they require from rural areas.

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. The Board finds that Central Oregon Land Watch's assertion is not supported by any evidence.

No other participant in these proceedings asserted that other uses permitted outright or conditionally in the MUA-10 zone are urban in nature. The Board finds that they are not. Because the other non-residential uses cannot fall under cluster development standards or

planned development standards, the parcel size cannot be reduced. As noted, they will not be served by public water or sewer.

5. Other Issues

The Board rejects the argument from Central Oregon Land Watch that for the Board to approve an exception to Goal 4, the applicant must present a specific proposed use of the subject property. The Board agrees that ORS 197.732 defines an exception to a statewide planning goal as “a comprehensive plan provision,” including an amendment to an acknowledged comprehensive plan that: (A) is applicable to specific properties or situations and does not establish a planning or policy of general applicability; (B) does not comply with some of all goal requirements applicable to the subject properties or situations; and (C) Complies with standards under subsection (2) of this section.

The plain language in the statute does not require an applicant to propose a specific use or development. Central Oregon LandWatch did not provide any text in the applicable regulations that varied the definition in ORS 197.732. A specific use is not required for an applicant to seek a goal exception.

III. RECORD/PROCEDURAL ARGUMENTS

The applicant requested that the Board not keep the record open for written testimony and argument. The Board agrees that because the August 6, 2025, hearing was not the initial evidentiary hearing, it was not required to keep the record open under ORS 197.797(6).

IV. DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby approves applicant’s applications for a DCCP amendment to redesignate the subject property from forestland to RREA and a corresponding zone map amendment to change the zoning of the property from F-2 to MUA-10 with the following conditions proposed by the applicant:

1. That for any future development under the MUA-10 zone that is reviewed under the jurisdiction of Deschutes County an applicant shall create a conservation tract that extends 100 feet on either side of the ordinary high-water mark of Trout Creek and that no structures or fences shall be constructed within that tract. Recreational paths and other passive recreational uses may be allowed;
2. That for any future development under the MUA-10 zone that is reviewed under the jurisdiction of Deschutes County an applicant shall create a 100-foot-wide wildlife corridor within a tract extending from the Trout Creek Conservation Tract along the northern boundary of the subject property, and that no permanent structures or fences shall be allowed within that corridor.

Dated this 17th of Sept., 2025

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON



ANTHONY DEBONE, Chair



PATTI ADAIR, Vice-Chair

ATTEST:



Recording Secretary



PHIL CHANG, Commissioner

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared ANTHONY DEBONE, PATTI ADAIR, PHIL CHANG, , the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this 17th day of Sept., 2025



Notary Public, State of Oregon

