

Section 2. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from EFU to RI for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "C."

Section 3. AMENDMENT. DCC Section 23.01.010, Introduction, is amended to read as described in Exhibit "D" attached and incorporated by reference herein, with new language underlined.

Section 4. AMENDMENT. Deschutes County Comprehensive Plan Section 5.12, Legislative History, is amended to read as described in Exhibit "E" attached and incorporated by reference herein, with new language underlined.

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board of County Commissioners as set forth in Exhibit "F" and incorporated by reference herein.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: _____ day of _____, 2022.

Date of 2nd Reading: _____ day of _____, 2022.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Patti Adair	___	___	___	___
Anthony DeBone	___	___	___	___
Phil Chang	___	___	___	___

Effective date: _____ day of _____, 2022.

EXHIBIT A

LEGAL DESCRIPTIONS
TAX LOTS 16-12-26-C-00201 & 16-12-27-D-00104

A parcel of land located in the Southwest one-quarter of Section 26 and the Southeast one-quarter of Section 27, Township 16 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, more fully described as follows:

TAX LOTS 16-12-26-C-00201:

Commencing at a brass disk at the 1/4 corner between said Sections 26 and 27; thence along the east-west centerline of said Section 27, North 89°49'46" West 20.00 feet; thence leaving said east-west centerline, South 00°03'15" East, parallel to and 20 feet westerly of the line common to said Sections 26 and 27, 40.35 feet to a point on the southerly line of the 15.00 foot dedication to the southerly 30.00 foot right-of-way of Tumalo Road per Deed No. 98-29504, and the **Point of Beginning** for this description; thence along said 15-foot dedication line, 67.90 feet along the arc of a 12818.89 foot radius curve right (the long chord of which bears South 89°35'07" East 67.90 feet); thence South 89°26'01" East 997.75 feet to the westerly right-of-way of the Dalles-California Highway per Deed recorded March 22, 1991, in Book 231, Page 81, Deschutes County Records; thence leaving said 15-foot dedication line and along said westerly right-of-way, South 37°03'52" East 23.10 feet, said point being 85.00 feet from the centerline of said Dalles-California Highway; thence continuing along said 85-foot right-of-way line, South 26°22'14" West 1419.88 feet to a point on the south line of the property described in Deed No. 97-45542; thence leaving said 85-foot right-of-way line and along said south line, South 89°56'45" West 447.62 feet to the southwest corner of said 97-45542 property, said point lying 20.00 feet westerly of the line common to Sections 26 and 27; thence leaving said south line, North 00°03'15" West 1301.34 feet to the point of beginning;

EXCEPTING THEREFROM: the new alignment of Tumalo Road per Deed No. 98-32048, further modified for turn lanes per Deed No. 2001-22023, fully described as follows:

Commencing at a brass disk at the 1/4 corner between said Sections 26 and 27; thence along the east-west centerline of said Section 27, North 89°49'46" West 20.00 feet; thence leaving said east-west centerline, South 00°03'15" East, parallel to and 20 feet westerly of the line common to said Sections 26 and 27, 357.34 feet to the northerly right-of-way of the new road alignment, and the **Point of Beginning** for this description; thence leaving said parallel line and along the new right-of-way line, South 59°39'01" East 50.46 feet; thence South 62°39'40" East 442.65 feet; thence South 63°56'22" East 250.70 feet; thence South 59°39'01" East 95.51 feet to the westerly 85 foot right-of-way line of the Dalles-California Highway; thence leaving said new road right-of-way and along said westerly 85 foot right-of-way line, South 26°22'14" West 170.41 feet to the southerly right-of-way line of the new road; thence leaving said westerly 85 foot right-of-way line and along said southerly right-of-way line, North 59°39'01" West 107.34 feet; thence North 55°21'40" West 250.70 feet; thence North 56°38'22" West 442.65 feet, said point lying 20.00 feet westerly of the line common to Sections 26 and 27; thence North 00°03'15" East 99.71 feet to the point of beginning.

Net area for this property is 20.46 acres.

October 14, 2015
Prepared by Baxter Land Surveying, Inc.
P.O. Box 7022, Bend, OR 97708 (541) 382-1962

2015186-Desc.doc

①

EXHIBIT A

TAX LOTS 16-12-27-D-00104:

That portion of Deed No. 97-40139 described as "Parcel 3," further modified by the excepting of Tract 1 and Tract 2 of Deed No. 98-32049, and more fully described as follows:

Beginning at the Point of Beginning for the previous description of TAX LOT 16-12-27-C- 00201, said point being on the southerly 45 foot right-of-way of Tumalo Road and lying 20.00 feet westerly of the line common to Sections 26 and 27; thence along said 20 foot westerly line, North 00°03'15" West 5.00 feet to a point on a 40.00 foot right-of-way of Tumalo Road, per said 98-32049 Deed; thence leaving said 20 foot line, 31.74 feet along the arc of a 12823.89 foot radius curve left (the long chord of which bears North 89°48'29" West 31.74 feet); thence North 89°52'44" West 26.42 feet; thence 219.07 feet along the arc of a 210.00 foot radius curve left (the long chord of which bears South 60°14'07" West 209.27 feet); thence South 30°20'59" West 40.03 feet; thence 47.12 feet along the arc of a 30.00 foot radius curve left (the long chord of which bears South 14°39'01" East 42.43 feet); thence South 59°39'01" East 145.00 feet; thence South 60°51'23" East 142.53 feet to a point lying 20.00 feet westerly of the line common to said Sections 26 and 27; thence North 00°03'15" West 317.00 feet to the point of beginning for this description;

Contains 1.30 acres.

Note: All corners are marked with monuments per recorded survey No. CS14491 by Michael Berry.

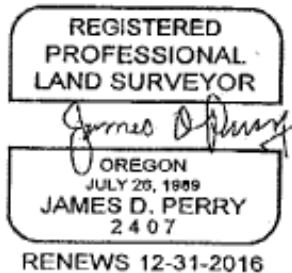
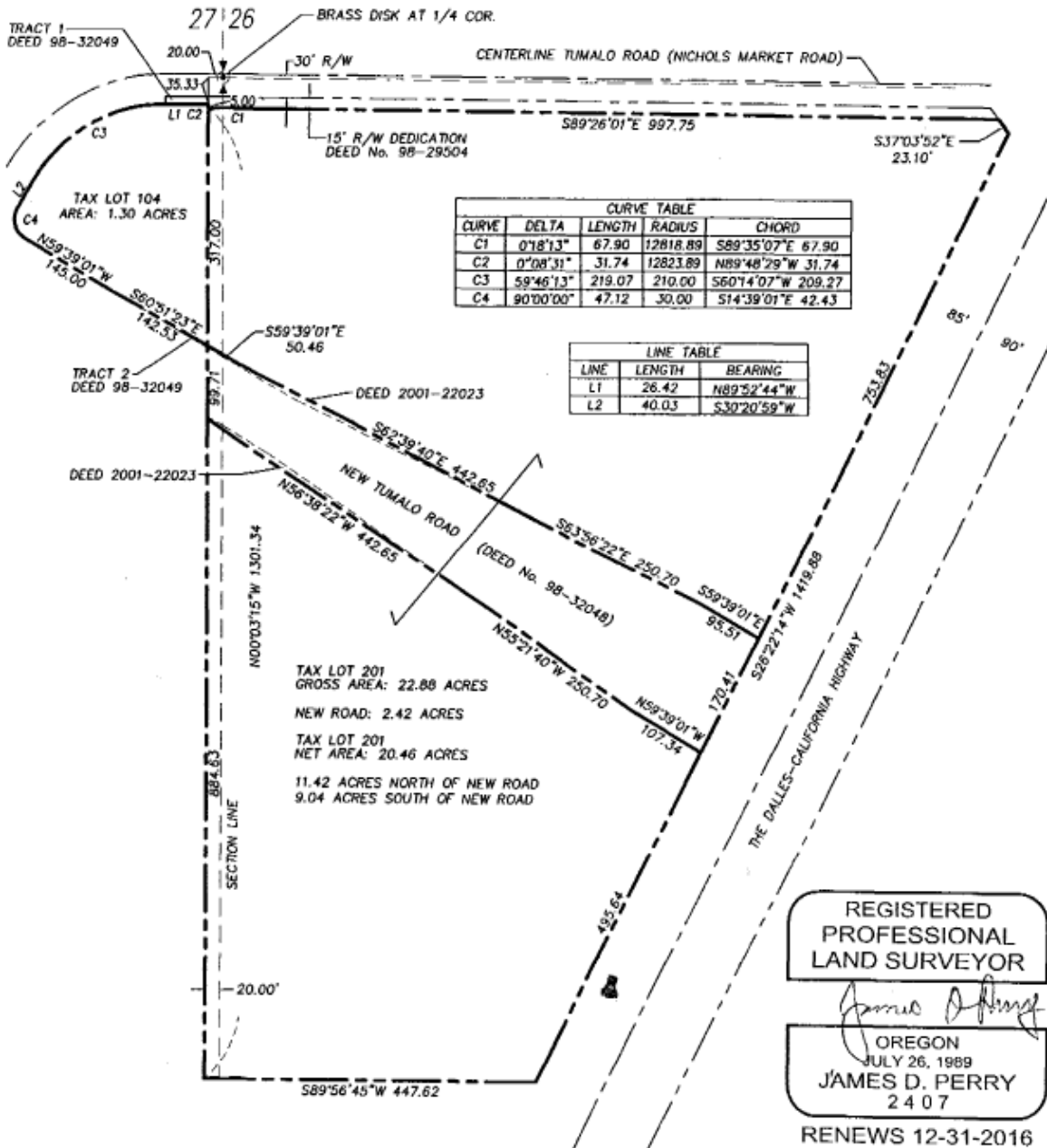


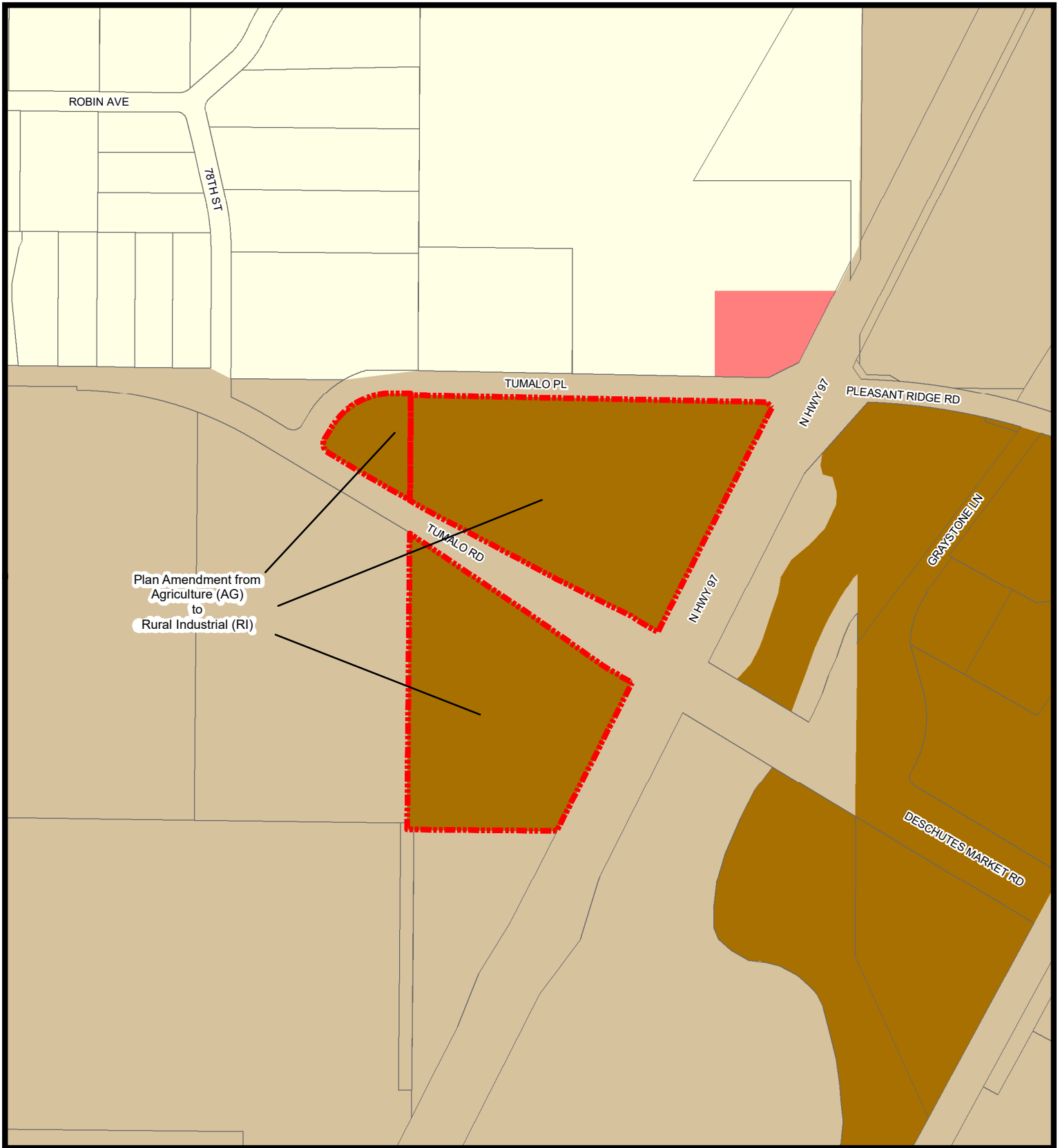
EXHIBIT A

EXHIBIT MAP
TAX LOTS 16-12-26-C-00201
AND 16-12-27-D-00104
 Located in the SW1/4 Sec. 26 and the SE1/4 Sec. 27,
 T.16S., R.12E., W.M.,
 DESCHUTES COUNTY, OREGON



REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
James D. Perry
 OREGON
 JULY 26, 1989
 JAMES D. PERRY
 2407
 RENEWS 12-31-2016

PREPARED BY BAXTER LAND SURVEYING, INC. P.O. BOX 7022 BEND, OR 97708
 20370 EMPIRE AVE. SUITE C-3, BEND, OR 97701 (541) 382-1962

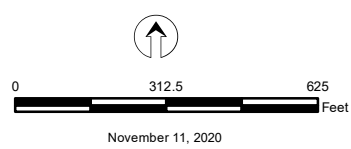


Legend

-  Subject Properties
- Comprehensive Plan**
-  AG - Agriculture
-  RC - Rural Commercial
-  RI - Rural Industrial
-  RREA - Rural Residential Exception Area

**PROPOSED
PLAN AMENDMENT MAP**

Exhibit "B" to
Ordinance 2022-010



BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

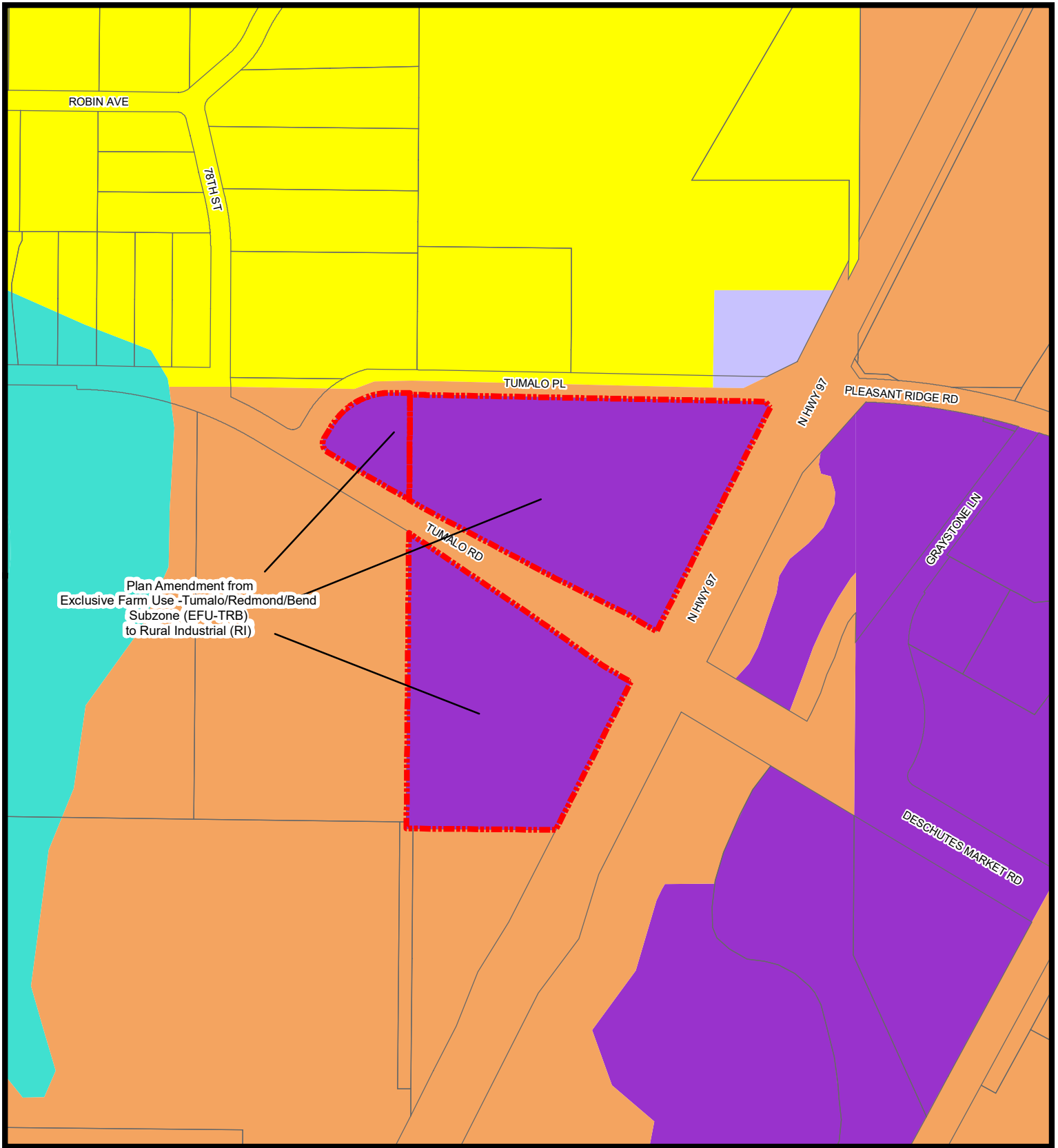
Tony DeBone, Chair

Phil Chang, Vice Chair

Patti Adair, Commissioner

ATTEST: Recording Secretary






Dated this ____ day of ____, 202__
Effective Date: ____, 202__



Legend

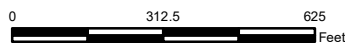
 Subject Properties

Zoning

-  EFU - TUMALO/REDMOND/BEND SUBZONE
-  FLOOD PLAIN
-  MULTIPLE USE AGRICULTURAL
-  RURAL COMMERCIAL
-  RURAL INDUSTRIAL

PROPOSED ZONING MAP

Exhibit "C" to
Ordinance 2022-010



November 11, 2020

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Tony DeBone, Chair

Phil Chang, Vice Chair

Patti Adair, Commissioner

ATTEST: Recording Secretary

Dated this ____ day of _____, 202_
Effective Date: _____, 202_

Chapter 23.01 COMPREHENSIVE PLAN

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
- T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-005, are incorporated by reference herein.
- CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- DD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- EE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- FF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- GG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.
- HH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- II. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- JJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- KK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- LL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- MM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- NN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- OO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- PP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- QQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- RR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.
- SS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

TT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-02, are incorporated by reference herein.

UU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.

VV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.

WW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.

XX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

YY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

[ZZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-0010, are incorporated by reference herein.](#)

[\(Ord. 2022-0010 §2, 2022;](#) [Ord. 2022-006 §2, 2022;](#) [Ord. 2022-003 §2, 2022;](#) [Ord. 2022-001 §1, 2022;](#) [Ord. 2021-008 §1;](#) [Ord. 2021-005 §1, 2021;](#) [Ord. 2021-002§3, 2020;](#) [Ord. 2020-013§1, 2020;](#) [Ord. 2020-009§1, 2020;](#) [Ord. 2020-006§1, 2020;](#) [Ord. 2020-007§1, 2020;](#) [Ord. 2020-008§1, 2020;](#) [Ord. 2020-003 §1, 2020;](#) [Ord. 2020-002 §1, 2020;](#) [Ord. 2020-001 §26, 2020;](#) [Ord. 2019-019 §2, 2019;](#) [Ord. 2019-016 §3, 2019;](#) [Ord. 2019-006 § 1, 2019;](#) [Ord. 2019-011 § 1, 2019;](#) [Ord. 2019-004 §1, 2019;](#) [Ord. 2019-003 §1, 2019;](#) [Ord. 2019-001 §1, 2019;](#) [Ord. 2019-002 §1, 2019;](#) [Ord. 2018-008 §1, 2018;](#) [Ord. 2018-005 §2, 2018;](#) [Ord. 2018-011 §1, 2018;](#) [Ord. 2018-006 §1, 2018;](#) [Ord. 2018-002 §1, 2018;](#) [Ord. 2017-007 §1, 2017;](#) [Ord. 2016-029 §1, 2016;](#) [Ord. 2016-027 §1, 2016;](#) [Ord. 2016-005 §1, 2016;](#) [Ord. 2016-022 §1, 2016;](#) [Ord. 2016-001 §1, 2016;](#) [Ord. 2015-010 §1, 2015;](#) [Ord. 2015-018 § 1, 2015;](#) [Ord. 2015-029 § 1, 2015;](#) [Ord. 2015-021 § 1, 2015;](#) [Ord. 2014-027 § 1, 2014;](#) [Ord. 2014-021 §1, 2014;](#) [Ord. 2014-12 §1, 2014;](#) [Ord. 2014-006 §2, 2014;](#) [Ord. 2014-005 §2, 2014;](#) [Ord. 2013-012 §2, 2013;](#) [Ord. 2013-009 §2, 2013;](#) [Ord. 2013-007 §1, 2013;](#) [Ord. 2013-002 §1, 2013;](#) [Ord. 2013-001 §1, 2013;](#) [Ord. 2012-016 §1, 2012;](#) [Ord. 2012-013 §1, 2012;](#) [Ord. 2012-005 §1, 2012;](#) [Ord. 2011-027 §1 through 12, 2011;](#) [Ord. 2011-017 repealed;](#) [Ord.2011-003 §3, 2011\)](#)

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/complan>)

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.

2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial
2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.

2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCD's 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.

2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.

2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.
2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County's Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevent Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)

2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener's Error in Ord. 2020-022
2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
<u>2022-010</u>	<u>07-27-22/10-25-22</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)</u>

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

FILE NUMBERS: 247-20-000438-PA, 247-20-000439-ZC, 247-22-000287-A

**APPLICANT/
OWNER:** Anthony J. Aceti
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REQUEST: The applicant requests proceedings on remand from *Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No 2021-028, June 18, 2021) *aff'd* 315 Or App 673 (2021) of the Board of County Commissioner's approval of original application file numbers 247-20-000438-PA and 247-20-000439-ZC, and original Ordinance No. 2021-002.

PROPOSAL: Comprehensive Plan Amendment to re-designate the subject property from Agriculture to Rural Industrial and a corresponding Zone Change to change the zoning from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial Zone (RI).

LOCATION: 21235 Tumalo Place, Bend, OR 97703;
Taxlots: 161226C000201 and 161227D000104

I. FINDINGS OF FACT:

A. Incorporated Findings of Fact: The Findings of Fact from the Hearings Officer's decision dated October 7, 2020, adopted as Exhibit F to Ordinance No. 2021-002, are hereby incorporated as part of this decision.

B. Procedural History: The Deschutes County Board of County Commissioners adopted Ordinance No. 2021-002, approving the requested Comprehensive Plan Amendment and Zone Change of the subject property to Rural Industrial, on January 27, 2021. Central Oregon Landwatch (COLW) appealed Ordinance No. 2021-002 to the Land Use Board of Appeals. LUBA remanded the decision on June 18, 2021 denying all of COLW's arguments except for one. COLW appealed to the Court of Appeals and Applicant filed a cross-petition. The Court of Appeals affirmed on the petition and cross-petition. The Applicant requested in writing on April 7, 2022 that the County Board proceed with the application on remand pursuant to ORS 215.435.

The Board of County Commissioners limited the remand proceeding to the issue remanded by LUBA and permitted new evidence and testimony to address the remand issue. A public hearing on remand was held on May 18, 2022 following public notice. At the hearing the applicant and Central Oregon Landwatch submitted written and oral argument. Because COLW filed a procedural objection that there had not been 20 days between notice of the public hearing and the public hearing, the Board of County Commissioners continued the public hearing to June 8, 2022. On May 18, 2022, twenty-one days before the continued hearing date, the County mailed public notice of the continued hearing. The Board of County Commissioners held a continued public hearing on June 8, 2022, then closed the hearing but left the record open until June 15, 2022 for additional written evidence, a rebuttal period ending June 22, 2022, and applicant's final argument on June 29, 2022. Both parties submitted materials for the June 15 written evidence period. COLW did not submit rebuttal materials for the period ending June 22, 2022. Applicant submitted final written argument with his rebuttal on June 22, 2022 and waived the right to submit additional materials on June 29, 2022. The record closed on June 22, 2022.

The County Board deliberated and voted unanimously to approve the decision on July 6, 2022.

C. LUBA Decision and Guidance: LUBA's Final Opinion and Order for LUBA No. 2021-028, issued on June 18, 2022, provides the basis for the remand. Given that other components of LUBA's final opinion are relevant to the Board of County Commissioners' reasoning and decision on remand, these findings quote extensively from that opinion.

The relevant passage from LUBA's opinion that explains the basis for the remand states:

"The challenged decision does not establish that the county concluded that compliance with the use and dimensional standards for the RI

zone will obviously or inevitably limit the number of employees employed by the most intensive potential industrial use of the property, or that the county relied on the TIA as evidence to support that conclusion. We decline to reach that conclusion under ORS 197.835(11)(b). It is not obvious to us that the RI zone regulations will necessarily result in a small number of workers. Accordingly, we agree with petitioner that remand is required for the county to explain why it concluded that the potential uses would employ a small number of workers.” Slip Op at 35.

On remand, the Board of County Commissioners must address the last sentence in the above passage.

The Board of County Commissioners also finds that LUBA’s opinion accurately explained the County’s approach to demonstrating compliance with Goals 11 and 14 during the acknowledgment process implemented under Ordinances 2002-126 and 2002-127 and the effect of the acknowledgment of those provisions to this and similar type decisions. LUBA correctly explained:

“To bring RI zoning into compliance with Goals 11 and 14, instead of taking exceptions to those goals, the county elected to amend the DCCP and DCC to limit the uses authorized in the RI zone to rural uses. * * *. To comply with Work Task 14 and Goal 14, the county amended the DCCP and DCC to restrict the types and intensity of uses permitted in the RI zone.

“The county relied on the building size limitation in the Unincorporated Communities Rule as the primary reasons of ensuring that industrial uses in the RI zone would remain rural, consistent with Goal 14. * * *. The 2002 Ordinances restrict new rural industrial uses, except primary processing of raw materials produced in rural areas to a maximum of 7,500 square feet of floor space within a building. That floor area limitation is codified in DCC 18.100.040(H)(1).

“Ordinance 2002-126 adopted what is now DCCP Policy 3.4.23, which applies to land designated and zoned RI and provides: ‘To assure that urban uses are not permitted on rural industrial lands, land use regulations in the [RI] zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successor. Ordinance 2002-127 amended DCC chapter 18.100, the RI zone regulations. On January 23, 2003, DLCD issued Order No. 001456, acknowledging the 2002 Ordinances as consistent with Goal 14.” Slip Op at 18-19. *See also*, Slip Op 28

(repeating DLCD acknowledged the 2002 RI zone regulations as consistent with Goal 14).

Likewise, LUBA's opinion repeatedly and correctly recognizes that the Board of County Commissioners' position, as stated in the original adopted findings for this proceeding, is "that even the most intensive industrial use that could be approved on the subject property under the RI regulations and use limitations would not constitute an urban use." Slip Op at 24. LUBA quoted further from the findings that "found that the RI zone 'effectively prevent[s] urban use of rural land' by subjecting all development in the RI zone to the requirements of DCC chapter 18.100[.]". Slip Op at 27. And LUBA correctly noted that "the county agreed with intervenor that 'the policies of the DCCP, implemented by DCC Chapter 18.100, which is an acknowledged land use regulation, do not allow urban uses on RI designated and zoned land.'" Slip Op at 29. LUBA further noted that, "Petitioner does not assign error to that finding on appeal." Finally on this point, LUBA correctly stated,

"The county determined that the DCCP RI policies and implementing DCC RI use and dimensional limitations will limit the scope and intensity of industrial development to rural use. In particular, the county references limitations on maximum floor area and requirements for on-site sewage disposal and on-site wells or public water systems." Slip Op at 31.

Despite that correct understanding of the County's position, LUBA concluded that, because the findings included the second-step *Shaffer v. Jackson County* analysis, the County must have concluded that the acknowledged zoning regulations were not sufficient to ensure only rural uses of the property would take place. As LUBA framed it,

"Accordingly, we assume for purposes of this decision, as the county did and the parties do, that the fact that the RI zone regulations have been acknowledged by DLCD to comply with Goal 14 is not independently sufficient to demonstrate the challenged post-acknowledgment plan amendment applying their plan designation and zone to the subject property also complies with Goal 14." Slip Op 29 (emphasis supplied).

The Board of County Commissioners explicitly disagrees with LUBA's "assumption" and statement about the position taken. Neither the Board of County Commissioners nor the Applicant took the position that the acknowledged RI zone regulations are not independently sufficient to ensure that only rural uses of land can be approved under those regulations. In fact, LUBA's assumption is contrary to the explicit position taken by both parties in this proceeding as plainly expressed in the above-quoted passages from the findings as stated in the LUBA opinion.

Furthermore, LUBA's "assumption" reverses the reasoning behind why both the County and the Applicant did not oppose proceeding to the second-step of the *Shaffer* analysis. *Shaffer* expressly states that if a party challenges whether a proposal would result in an urban use of rural land (which Central Oregon Landwatch did), the local government is required to ask four initial questions. Furthermore, if any one or more of those questions is not answered in the affirmative (i.e., potentially not indicating a rural use), *Shaffer* states that the decision maker must proceed to the next step. *Shaffer* is silent about whether a County with a comprehensive plan and code acknowledged as consistent with Goal 14 is allowed to skip that second step if there is even a single non-affirmative response, nonetheless two as was the case in the initial decision. The Board of County Commissioners does not have the authority to ignore the express directives of LUBA's *Shaffer* opinion, particularly since the other case cited in the findings and by LUBA, *Columbia Riverkeeper v. Columbia County*, was decided in 2014, well after most counties' codes, to include the DCC, have been acknowledged as consistent with Goal 14. The Board of County Commissioners proceeded to the second step of that analysis because the case law said the Board of County Commissioners was required to, not for the reason LUBA assumed.

If, as LUBA suggests in its footnote 9, the *Shaffer* analysis has been superseded by the Unincorporated Communities Rule or acknowledgment of a land use code as consistent with Goal 14, LUBA should expressly state so, because its subsequently-dated rulings suggest that is not the case.

Furthermore, the Board of County Commissioners now expressly finds that the policies and provisions of the DCCP and DCC are independently sufficient to both demonstrate that post-acknowledgment plan amendments that apply the Rural Industrial (RI) plan designation and zoning to rural land are consistent with Goal 14 and that uses and development permitted pursuant to those acknowledged provisions constitute rural uses, do not constitute urban uses, and maintain the land as rural land. Given that finding, any further analysis under *Shaffer* is redundant and precautionary only.

However, given that LUBA remanded the decision for us to address our response to one of the initial *Shaffer* inquiries, these findings now discuss *Shaffer* further.

One of the four *Shaffer* questions is, as the adopted findings explain, whether the industrial use, "Is significantly dependent on a site-specific resource and there is a practical necessity to site the use near the resource." Rec-73. As the County Board of Commissioners understands, under *Shaffer*, any industrial use that is not a mining, logging or another use that utilizes an on-site resource would necessarily result in a non-affirmative answer and would require the decision maker to proceed

to the second-step, which is to take one of the three options set forth in *Shaffer* and subsequent opinions. Under *Shaffer*, as the Applicant and the County understand it, that sole non-affirmative answer requires proceeding to the second step of the analysis. *Shaffer* doesn't even require a local government to address all 4 first-step questions at the first step if one of the questions is not answered in the affirmative; the county is simply required to proceed to the second step, which Deschutes County then did in the original findings.

Relatedly, any general application for the RI designation and zoning that does not include a specific development proposal, as is the case here, cannot answer that "site-specific resource" question in the affirmative because the ultimate use of the property is unknown. In these situations, under *Shaffer*, the decisionmaker must always proceed to the second step. The County's undertaking of that second step in this proceeding, contrary to LUBA's erroneous assumption, had nothing to do with a belief that the acknowledged DCC provisions were not independently sufficient to ensure that development would, in fact, be consistent with Goal 14. The County's undertaking of the second step analysis had to do with the fact that at least one of the first-step questions could not be answered in the affirmative and *Shaffer* requires proceeding to the second step in such instances. In fact, the Applicant's answer for the second-step analysis, despite non-affirmative responses to two of the first-step questions in those findings, was that the DCCP and DCC provisions were sufficient to ensure that development would be consistent with Goal 14 and that those provisions, "[l]imit[ed] the allowed uses to effectively prevent urban use of rural land[]" as stated in the original findings. The Board of County Commissioners again concurs with that response. That conclusion is reached, in large part, because DCC chapter 18.100 has been acknowledged by LCDC as consistent with and fully implementing Goal 14 as LUBA recognized in its final opinion and order. LUBA misconstrued the Board of County Commissioners' reasoning. LUBA's "assumption" to the contrary was wrong.

The Board of County Commissioners finds nothing in *Shaffer*, *Columbia Riverkeeper*, or any other case that applies the *Shaffer* analysis that has been cited by the parties or LUBA, that requires the second step of the *Shaffer* analysis to disprove any of the non-affirmative responses to any of the four first-step *Shaffer* questions. All a non-affirmative first-step response requires is that the county proceed to the requirements stated under *Shaffer's* second step. Furthermore, the cases state that none of those first-step questions is dispositive regarding whether a proposal is consistent with Goal 14. A non-affirmative response simply requires additional analysis and findings via the second step. The County's obligation in that second-step response is to do one of the following:

- "(1) limit allowed uses to effectively prevent urban use of rural land,
- (2) take an exception to Goal 14, or (3) adequately explain why the

proposed use, notwithstanding the presence of one or more factors pointing toward an urban nature, should be viewed as a rural use." *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 *aff'd without opinion*, 267 Or App 673, 342 P3d 181 (2014); *See also, Shaffer v. Jackson County*, 17 Or LUBA 922, 925 (1989) (*Shaffer II*) (citing *Shaffer I*, 16 Or LUBA 871, 875 (1988), using different wording).

The purpose of *Shaffer's* second step is not to necessarily further analyze the response(s) to the first-step questions; it is to make the demonstration that a proposal is consistent with Goal 14 despite the non-affirmative responses or for the local government to take an exception to Goal 14 or include the property within a UGB.

In written testimony on remand, COLW suggested that *Shaffer* stands for the proposition that a finding only of a lack of need for urban services must lead to a conclusion that the use is not rural. *Shaffer* states that such a finding alone, without further explanation, is insufficient to support a conclusion that a proposed use (in that case an asphalt batch plant) will be rural. This proceeding is unlike the one in *Shaffer*. In this instance, there is more in the original record and on remand to support the conclusion that there will be a small number of workers and that the uses permitted by the DCC under the development requirements imposed by the RI-zone will allow only rural uses to be developed on the property. The supporting evidence includes the numbers of employees derived from the TIA related materials, the potential limitations on septic capacity on the property as well as the application of the acknowledged DCC use and dimensional limitations for the RI zone.

Also, in written testimony on remand, COLW mischaracterized our original *Shaffer* findings and LUBA's resolution of those findings. Namely, COLW contended that our initial decision found that no findings are possible for two of the four factors and "the fourth factor indicates the proposal is not for a rural use." The County Board of Commissioners finds that description to be incorrect. The initial findings concluded that two of the factors indicated the proposed uses would be rural (the number of workers and the public facilities and services factors) and that for the other two, there was insufficient evidence to support an affirmative finding. LUBA Record page 189. LUBA remanded only on the number of workers finding, thereby also affirming our finding that the proposal does not require public facilities or services.

LUBA correctly noted that the original findings conclude that compliance with the use limitations, dimensional requirements, parking and loading requirements, site plan review requirements and review, and additional DCC requirements will limit permissible RI uses on the property to rural uses and ensure that development is consistent with Goal 14. Slip Op at 24; *see also*, Rec-190. The Board of County

Commissioners finds that COLW failed to successfully challenge that ultimate conclusion.

LUBA remanded the decision for the Board of County Commissioners to adopt adequate findings related to one of the *Shaffer* first-step questions. Those findings and related conclusions on remand are provided under Section II below.

- D. Deschutes County Land Use Regulations:** As noted in LUBA's opinion, the Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by LCDC as consistent with every statewide planning goal, to include Goal 14.

The Comprehensive Plan states that the Rural Industrial plan designation and zoning are applied to specific properties to provide compliance with state rules by adopting zoning *to ensure that those properties remain rural* and that the uses allowed there are less intensive than those allowed in unincorporated communities as defined in OAR 660-022. Comprehensive Plan, Ch. 3, p. 11 (emphasis supplied).

Specific Comprehensive Plan Policies implement this statement. These include:

Policy 3.4.23 To assure that urban uses are not permitted on rural industrial lands, land use regulations in the Rural Industrial zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successor.

Policy 3.4.27 Land use regulations shall ensure that new uses authorized within the Rural Industrial sites do not adversely affect agricultural and forest uses in the surrounding area.

Policy 3.4.28 New industrial uses shall be limited in size to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural areas, for which there is no floor area per use limitation.

Policy 3.4.31 Residential and industrial uses shall be served by DEQ approved on-site sewage disposal systems.

Policy 3.4.32 Residential and industrial uses shall be served by on-site wells or public water systems.

Policy 3.4.33 Community sewer systems shall not be allowed in Rural Industrial zones.

The Deschutes County Code Chapter 18.100 RURAL INDUSTRIAL ZONE – R-I, implements the above Comprehensive Plan policies. It limits the types of industrial uses, whether permitted outright or through conditional approval, to rural industrial uses at levels less intensive than for those allowed for in unincorporated communities. DCC 18.100.010 and .020. The DCC further restricts those industrial uses through use limitations, dimensional standards, off-street parking and loading standards, site design, additional requirements, and solar setback restrictions. DCC 18.100.030 through .080.

The Board of County Commissioners expressly finds, as did DLCD in its acknowledgment order, that rural industrial development of uses, permitted outright by DCC 18.100.010 and conditionally under DCC.100.020, that is consistent with the development limitations imposed by the DCCP and DCC is consistent with Goal 14, constitutes rural use of rural land and does not constitute urban uses or development.

- E. Issues on Remand:** The issue on remand concerns adequate findings regarding the *Shaffer* inquiry whether the uses allowed under the proposal would employ a small number of workers and, relatedly, how that may affect the second-step Goal 14 analysis and conclusion that the approved comprehensive plan and zone change to RI will allow only rural use and not urban use of the subject property such that no Goal 14 exception is required. LUBA succinctly framed the action to be taken on remand:

“(R)emand is required for the county to explain why it concluded that the potential uses would employ a small number of workers.” Slip Op at 35.

All other issues in this proceeding have either been resolved by LUBA or are otherwise precluded because they were waived, not raised or otherwise not preserved in the appeal to LUBA. These resolved and waived issues include, but are not limited to:

- Whether the applicant’s TIA evidence provided the ‘worst case’ development scenario that assumes the most intensive level of development that could be allowed under RI zoning on the property given that the uses are subject to zone, site plan review and conditional use criteria that apply not only as a result of any specific use, but also as a result of the property’s location and relationships to adjacent residential uses.
- Challenges to the accuracy or credibility of the traffic-related evidence and analysis including but not limited to traffic counts, whether it represents a reasonable worst-case scenario, or is otherwise valid.

- Whether the Deschutes County Comprehensive Plan limits the RI plan designation to existing rural industrial development and cannot be applied to the subject property.
- That the proposal fails to comply with Goals 6 and/or 11.
- That industrial development is a *per se* urban use that requires a Goal 14 exception if on rural land.
- That the County misconstrued the *Curry County* decision as it applies to Goal 14.
- Whether the County deferred its determination of Goal 14 compliance.
- That the County is prohibited as a matter of law from analyzing Goal 14 compliance in the context of RI zoning in the absence of a specific proposed industrial use.
- Challenges to the finding that the RI zone “effectively prevent[s] urban use of rural land” by subjecting all development in the RI zone to the requirements of DCC chapter 18.100, which allow development that is less intense than that allowed under the Unincorporated Communities Rule.”
- Challenges to the finding that “the policies of the DCCP, implemented by DCC Chapter 18.100, which is an acknowledged land use regulation, do not allow urban uses on RI designated and zoned land.”
- Challenges to the finding that “[t]he property is located about 3.25 miles north of Bend and 6.5 miles south of Redmond via US 97.”
- Challenges to the finding that the subject property is served with existing private water service.

II. **CONCLUSIONS OF LAW:**

Summarizing the analysis and conclusions below, the Board of County Commissioners concludes that the evidence in the record establishes that development on the subject property under the requested plan designation and zone change to RI will employ a small number of workers. That conclusion is consistent with the Board’s original decision, which LUBA has otherwise affirmed. The Board of County Commissioners concludes that approval of the application and the reasonable worst case scenario of approximately 90 employees, will continue to allow only rural use of rural land on the subject property. The Board of County Commissioners again approves the requested plan designation and zone change applications.

In the alternative and as a precaution only, in the event that LUBA disagrees with our conclusion that the proposal will only allow development that will employ a small number of workers, the Board of County Commissioners concludes that, even if there is the potential that the uses allowed could employ more than a small number of workers, the RI zone regulations have been acknowledged by DLCD to comply with Goal 14 and the application of those regulations is independently

sufficient to demonstrate that this post-acknowledgment plan amendment, which applies the RI plan designation and zone to the subject property, also complies with Goal 14. The adopted and acknowledged use limitations, dimensional standards, off-street parking and loading standards, site design, additional requirements, solar setbacks, and restrictions imposed under DCC 18.100.030 through .080 and other invoked DCC provisions so limit the scale, scope and intensity of allowed uses and development on the subject property to effectively prevent urban use of rural land. The Board of County Commissioners' conclusion now, as it was originally, is that the DCC 18.100 provisions that will apply to all development on the property will ensure that any allowed uses and development will constitute rural use of rural land consistent with Goal 14 and related comprehensive plan rural and urbanization policies even if one or more uses does not necessarily employ a small number of workers. Consequently, an exception to Goal 14 is not required to approve the applications. Under this precautionary alternative analysis, the Board of County Commissioners approves the requested plan designation and zone change applications.

Development allowed under the proposed plan designation and zone change will employ a small number of workers and constitutes a rural use of rural land.

Given that there is not a specific development proposal for the subject property, it is difficult to make a precise determination on the number of employees resulting from the proposed application. That does not mean, however, that the analysis of this factor is mere supposition or is not based on evidence a reasonable decision maker would rely upon. Three pillars underly the Board of County Commissioner's analysis: (1) the site context; (2) the applicable DCC 18.100 requirements and other relevant standards; and (3) the evidence and analysis in the record, to include the Transportation Impact Analysis (TIA) and supplemental analysis provided during the remand proceedings by Transight Consulting and evidence concerning the suitability of the site's soils for septic systems. Based upon this evidence in the record the Board of County Commissioners concludes that approval of the applications and the development it will permit under a reasonable worst-case scenario will result in 90 workers, which is thereby recognized as a "small" number of workers.

As an initial matter, the Board of County Commissioners notes that neither LUBA nor any party has identified any regulations or case law that establish, as a matter of law, what constitutes a "small" number of employees. The record shows that Central Oregon Landwatch has argued that "small" means 1 to 3 workers per property, but cites to no statute, rule, code provision or case that mandates that as the standard. The Board of County Commissioners accepts that 1 to 3 workers per property would be small, but rejects the idea that more than 3 workers per property

cannot constitute a small number of workers. It is common for commercial and industrial uses, even in rural areas, to have more than 3 numbers of workers and still constitute a rural use.

During the remand proceedings, COLW submitted an analysis of the City of Bend's economy that indicates the average "firm" size had eight employees. Based on that evidence, COLW asserts that eight (8) workers is an "urban" number of workers. Applicant responds that the inquiry remanded by LUBA concerns whether the uses will employ a "small number of workers" not an "urban" or "rural" number of workers and that in order to characterize the number of workers as "urban" or "rural" requires the analysis of a number of other factors. The Board of County Commissioners agrees with Applicant and that the focus of this remand proceeding is to determine whether the uses allowed will employ a small number of workers.

The Board of County Commissioners finds that the site context limits the development potential of the subject property. The Applicant's extensive evidence regarding surrounding land uses establishes that there are adjacent residential dwellings located to the north, west and south of the subject property. The proximity of those residential uses trigger RI-zone development limitations that further restrict the type and intensity of development that can occur on the property. The adjacent residential dwellings, in addition to the location of major roads adjacent to and through the subject property, also trigger greater setbacks than otherwise would be required, which further limits the amount and intensity of development that can occur on the subject property. That in turn limits the number of workers that can be employed on the subject property as it is developed with RI permitted uses under the RI-zone development standards.

Given the location and number of those residential uses, much of the property is within 600 feet of a residential dwelling and consequently, pursuant to DCC 18.100.010 and 18.100.020(A), all of the uses permitted outright under DCC 18.100.010 in those areas are subject to conditional use review. Given the property's location adjacent to and bisected by major roadways and residential uses, the footprint available for development is further reduced pursuant to DCC 18.100.040(C) and (D), which impose greater set-back standards than normally apply. The TIA provided by the applicant, at Rec-1267 noted by the applicant, contains a diagram showing the existing parcel sizes, setbacks, and easements on the subject property. The TIA explains that approximately 15.5 acres of the property is developable, with one acre presently developed. Within that buildable area, DCC 18.100.040(B) further limits any lot within 600 feet of a residence to 70 or less percent lot coverage, to include buildings, storage areas or facilities, and required off-street parking and loading areas. Last, DCC 18.100.040(H)(1) limits the maximum size of a building anywhere on the RI-zoned site to 7,500 square feet of developed floor space per lot, whether as a single building or combined buildings per lot.

While it may seem that none of the above standards expressly speak to the number of workers that may use a site, the above affects the amount of floor space that can be reasonably built on the subject property. As Transight Consulting's letter on remand and the TIA plainly establishes, vehicle trips that include worker trips is based on the size of the building for permitted uses. Contrary to COLW's assertion that there is no way to determine the number of workers that might be employed by an unidentified factory, the ITE Trip Generation manual is based on just that type of general use analysis and is not dependent on a specific development proposal. As Transight Consulting explains, the TIA process yields a total daily number of trips per use category based on building size(s). The evidence submitted on remand supports that statement. The Goal 12 rule relies on that very ability to estimate the traffic flow from different possible use scenarios and requires the analysis to use a reasonable "worst case" development scenario. These ITE-based daily trip counts incorporate all types of trips, to include worker trips, deliveries, customers and business clients. Transight Consulting's letter and TIA, and its reliance on ITE best practices, constitutes credible and reliable evidence that takes into account the development restrictions the code imposes on the subject property, the maximum building sizes allowed under the code, and the number of workers associated with various uses and permitted building sizes.

The Transight Consulting TIA included in the record, as summarized by the Transight Consulting letter submitted for the remand proceedings, sets forth a reasonable "worst case" scenario about how the subject property could be developed under the proposed RI plan designation and zoning at applicant's noted record item Rec-1269 and Table 2. The Board of County Commissioners notes that County Transportation staff expressly agreed with the assumptions, methodology and conclusion of the TIA, although staff did not fully agree with its initial proposed mitigation measures. ODOT likewise did not challenge the TIA's assumptions, methodology or conclusions other than posing several questions regarding the underlying basis and growth rates used in the calculations and requesting additional safety analysis not relevant here. ODOT did not object to or otherwise challenge Transight Consulting's responses to ODOT's questions.

At the remand public hearing, COLW claimed that the TIA analysis is irrelevant to the number of workers issue and that the worst-case scenario for Goal 12 purposes is irrelevant to the number of workers issue. The Board of County Commissioners disagrees. The TIA analysis methodology takes into consideration the types of uses the zoning code permits for the property, the size of development that can be authorized, and the traffic flow that is generated from the number of workers for those uses in those sized buildings, as well as the traffic volumes that deliveries and customers to those uses and permitted development would bring under a worst-case development scenario. In short, embedded in the TIA analysis is the number of

workers that will result from the most intensive development of the property permissible under the code.

The Board further notes that COLW did not directly challenge the accuracy or credibility of the Transight Consulting TIA. Significantly, COLW did not in any way challenge during the prior local appeal proceeding or at LUBA whether the TIA's development scenario represented a reasonable "worst case" development scenario as is required by Goal 12. The Board also notes that COLW made no effort to submit evidence during the original proceeding or on remand regarding development of the property consistent with the constraints imposed by the DCC and the subject property's characteristics. During testimony on remand, COLW alleged that "thousands" of workers could be employed under RI development of the subject property, but provided no evidence that would support that claim. That unsubstantiated claim is contradicted by the daily trip count data provided in the TIA, which County Transportation Staff concurred and ODOT did not object to. The Board of County Commissioners find the TIA to be credible and that it provides a "worst case" development scenario for the subject property.

The Board of County Commissioners note that, as found in the original adopted findings, the Applicant will be able to partition or subdivide the subject property, and such subdivision may remove some, but not all, of the limitations on development imposed by DCC standards. Furthermore, the Board notes that it is possible to discern from TIA Table 2, in record item Rec-1269 per the applicant, based on the maximum permitted building size of 7,500 square feet, that the property could be subdivided into 10 lots in a reasonable "worst case" scenario. *See also*, Transight Consulting remand letter, Table 1 (indicating similar data).

On remand, Transight Consulting submitted a letter that explains what the 63,160 square feet of building uses that could be developed on the property on those 10 lots could represent in terms of the numbers of workers employed by the uses described in the TIA. The Transight Consulting remand letter states that the "worst case" scenario would employ 90 workers. Table 2 of the remand letter shows the breakdown of total employees based upon the various land uses. Transight Consulting further testified at the hearing and provided additional background material to substantiate its conclusions. The Board of County Commissioners finds that evidence credible and agrees that 90 workers is a "worst case" scenario regarding the potential number of workers for the subject property given the fact that the ITE use data is based on suburban employment levels and, as the Transight consulting letter explains, rural uses "tend to result in more land-intensive uses as is evident by the surrounding development patterns of similarly zoned industrial lands." Despite that aspect of the ITE data, the Board of County Commissioners bases its conclusion on the figure shown by the ITE analysis – 90 workers. The

Board of County Commissioners concludes that for a property of this size, 21.54 acres, 90 workers is a small number of workers.

In addition, Transight Consulting's analysis further explains that this does not mean that 90 employees will be on the property at any given time. Rather, Transight Consulting states that approximately half of the employees are likely to be at work and present on the property at any given time.

An examination of the above evidence is revealing. The most intensive of the remand letter Table 2 "worst case" scenario listed uses is specialty trade contractor. With 12,000 square feet of building, under the DCC's development standards the total employees (34) would be spread over two different lots. That makes 17 workers each for those two lots. At any given time, half, or 9 employees would be on each lot. The Board of County Commissioners finds that to be a low number of workers per industrial use – at either the 17 or 9 number of workers. Each of the other "worst case" scenario uses have an even lower number of workers per lot. Worth noting is that the mini-storage facility example posited by COLW has among the lowest number of workers of any permitted use on the subject property as demonstrated by the Transight Consulting responding evidence.

During the remand hearing, the Board of County Commissioners inquired whether there were any other site-specific considerations that might limit the number of workers that could be permitted on the subject property. In response to an inquiry regarding the septic capacity of the subject property's soils, the Applicant submitted the detailed soils study for the property ("Borine study") and an email exchange between the Applicant and Todd Cleveland, the County's Environmental Soils Supervisor. The analysis and conclusions reached by the County's expert regarding the number of workers that could be employed on the property are similar to those noted above.

Mr. Cleveland explained that the soil mapping shows that at least 60% of the subject property is not suitable for any type of onsite treatment system and that none of the property is suitable for a standard septic system. Mr. Cleveland further explains that any system, whether an absorption or holding tank system, will only operate with constraints that ensure very low total water usage. DEQ's rules will have the direct effect of limiting the types of industrial uses and the total number of persons at any of the facilities. Mr. Cleveland concluded that, even with multiple holding tank facilities, the total number of workers that could be employed on the site would number in the dozens, not hundreds, because of the site limitations. The Board of County Commissioners recognizes that this information is preliminary and serves informational purposes, not providing any specific approvals, and provides adequate general guidance regarding the impacts of septic feasibility and its impacts on the potential number of employees. The Board finds the Borine study

and Mr. Cleveland's analysis and conclusions from that study to be credible, albeit general in nature. The analysis and conclusions are based on site-specific evidence and are consistent with what Mr. Cleveland states is typical elsewhere in the county.

COLW argues that Mr. Cleveland's testimony is not probative and should be rejected because: the soils data does not satisfy all the requirements for a DEQ septic site evaluation; the evidence does not provide an exact number of workers that could be employed on the site; and that the analysis fails to consider potential use of a composting or combustion waste disposal facility or use of surrounding lands for septic drainfields. The Board of County Commissioners disagrees for the following reasons.

Whether the soils study Mr. Cleveland bases his opinion on satisfies DEQ septic site evaluation regulations does not go to the probative value of Mr. Cleveland's analysis, it goes to the scope of the underlying evidence. The Board of County Commissioners finds that Mr. Cleveland appropriately qualified his analysis, indicating both the soil study's value and its limitations and explaining where additional information would be required in order to make more precise conclusions. The Board finds the evidence both probative and credible for the professional opinion being expressed within the limitations explained by Mr. Cleveland. The Board also notes that this information is solely for the purpose of anticipating the potential number of employees, and that further analysis would be required prior to any use operating on the property.

As noted above, although Mr. Cleveland does not offer an exact number of workers that on-site DEQ approved systems could support, the "dozens and not hundreds" conclusion is consistent with the Transight Consulting analysis and rebuts COLW's claim that it could mean 180 or 250 (i.e., hundreds) workers. The lack of exactness does not make Mr. Cleveland's analysis not probative.

Regarding potential alternative means of disposal, Mr. Cleveland's analysis is directed to the suitability of the site to on-site septic systems and is probative as to the suitability of such systems. That Mr. Cleveland's analysis does not consider other system types or off-site drainfield locations goes to the scope of the analysis, not its probative value.

With respect to the cited sewage disposal systems, the Board of County Commissioners notes that COLW submitted no evidence that such systems could be utilized on the property, which is relevant because neither composting nor combustion waste facilities is a permitted use in the RI zone. Likewise, COLW's claims that an "off-site" septic drainfield could be used is contrary to the express requirements of DCC 18.100.030(K) which requires industrial uses to "be served by DEQ approved on-site sewage disposal systems."

Mr. Cleveland's conclusion, that an on-site septic system may act as a further restriction on the level of development and, consequently, further limit the number of workers on the property to that less than what could otherwise be permitted under a DCC worst-case development scenario, is credible and probative to the issue on remand. COLW's arguments do not demonstrate otherwise.

COLW also contends that the Board of County Commissioners' acceptance of and reliance on Mr. Cleveland's analysis opens the decision up to charges of prejudice and prejudgment and claims of bias. The County Commissioners expressly state that they are not biased or prejudiced in either their review of Mr. Cleveland's statements or with respect to this proceeding. Mr. Cleveland's review of the study presented to him is no different than the County or ODOT analysis of the Applicant's TIA. The Board of County Commissioners reaches this decision on remand by applying the relevant standards based on the evidence and arguments presented in this remand proceeding and the original proceeding. The Board of County Commissioners has not prejudged the evidence or the final decision in this remand proceeding.

The Board of County Commissioners also notes that sewer services cannot be provided to the subject property and that any approval for development will require DEQ approval for the proposed septic system. If a normal on-site septic system is used, this site-specific soil condition will likely further ensure that employment on the subject property under RI zoning is limited to a small number of workers.

The Board of County Commissioners concludes that, given the number of lots and the types of industrial uses that could be developed on the subject property even under a "worst case" scenario, as well as the limitations on development imposed by the soil conditions for the property, the industrial uses that could be approved under the DCC will employ a small number of workers. The Board of County Commissioners reaches this conclusion whether one looks at the subject property as a whole, employing 90 workers, or as individual subdivided/partitioned lots with the smaller numbers of workers per lot that would be permitted under the DCC restrictions, as explained in the Transight Consulting materials.

During the original local appeal proceedings, COLW argued that the number of employees "could number into the hundreds per factory." As noted above, at the hearing on remand COLW raised that generalized amount to "thousands." The Board of County Commissioners notes that COLW did not submit any evidence to support such allegations. As the Applicant rightly explained, attorney assertions do not constitute evidence. The Board further notes that COLW submitted no evidence regarding the number of workers typically employed by rural industrial uses, nor did COLW attempt to explain in any way, how the number of workers it claimed could

be employed on the subject property is possible under the scale of development consistent with the limitations imposed on uses and development by DCC Chapter 18.100.

It is difficult to imagine “hundreds” of workers in a 7,500 square foot building. Furthermore, for example, COLW’s claim that 300 workers or more could be employed at a single factory would likely result in an average daily trip count approaching 600 (assuming some workers carpool) for that factory for only the workers. That trip count would not include deliveries to or from the factory, or visits by clients. That daily trip count number is refuted by the ITE-based daily trip count evidence in the record, which COLW made no effort to challenge in the previous proceeding. Simply put, the claim of hundreds of employees per lot or thousands for the entire site cannot be reconciled with the TIA analysis, to which County Transportation staff concurred. That analysis establishes much lower daily trip counts for the entire subject property under a reasonable “worst case” development scenario than COLW contends could be allowed under the DCC standards for a single factory. Furthermore, such claims are refuted by the soils evidence and analysis provided by Todd Cleveland, the County’s Environmental Soils Supervisor. Mr. Cleveland concluded that, given the poor soils on the property and the unusual septic systems that would be required to serve rural industrial uses, at best “dozens of workers could be employed on the subject property not “hundreds.” Mr. Cleveland also indicated that the soils conditions would limit the types of rural industrial uses to those that produce a low volume of waste water.

Given the above evidence regarding a worst case development scenario under the DCC and further limitations on development posed by the soil conditions on the property, the Board of County Commissioners rejects COLW’s assertion that the Applicant must submit evidence or the Board must make findings regarding every type of possible use or factory – be it a cellophane, cork or feathers factory or a mini-storage unit. Nothing COLW has entered into the record undermines the Applicant’s evidence. Likewise, none of the potential development scenarios described by COLW, such as 122 factories each 7,500 square feet in size, could be developed on the subject property. Approval of such scenarios are not possible under the DCC. The Board of County Commissioners hereby adopts Applicant’s responses to each of the posited scenarios as to the unfeasibility of those proposals under the DCC Chapter 18.100 development standards as its own. Consequently, the Board of County Commissioners finds as not credible COLW’s various unsubstantiated claims regarding possible numbers of workers that could be employed on the property.

One final comparison is worth noting. The unincorporated communities rule at OAR 660-022-0030(3)(c) limits new industrial uses to “small-scale, low impact uses[.]” As discussed above, the purpose for RI zoning is to ensure that the uses allowed are

less intensive than those allowed for unincorporated communities. OAR 660-022-0030(11) goes on to state that the size of such a “small-scale” industrial building shall not exceed 40,000 square feet of floor space for unincorporated communities and 60,000 square feet of floor space for urban unincorporated communities. By comparison, DCC 18.100.040(H)(1) limits the maximum size of a building in the RI zone to 7,500 square feet of floor space, which is less than one-fifth the size of a “small-scale” unincorporated community industrial building. As the Transight Consulting TIA plainly demonstrates, trip counts, to include employee vehicle trips, are dependent on building sizes in association with a given use. It is reasonable to deduce that, at one-fifth the permissible building size of a “small-scale” unincorporated community industrial use, there will be a corresponding reduction in vehicle trips, to include numbers of workers and their vehicle trips, under the DCC RI development limitations. If only “small-scale” industrial uses are permitted in rural unincorporated communities, it stands to reason that one-fifth of “small-scale” is even smaller scale, with a correspondingly small number of workers.

For the reasons provided above, the Board of County Commissioners conclude that the evidence in the record demonstrates that industrial uses and development that could be approved under the proposed RI plan designation and zone change under a reasonable worst case scenario would employ a small number of workers. Because this conclusion is consistent with our previous determination and LUBA denied each of COLW’s other assignments of error regarding all other portions of the Board of County Commissioners’ Goal 14 and the *Shaffer* analysis in the original decision, the Board of County Commissioners again approves the requested plan designation and zone change applications.

Alternatively, even if the plan designation and zone change will employ more than a small number of workers as a matter of law, the provisions of DCC Chapter 18.100 will ensure that any allowed uses and development will constitute rural use of rural land.

In the alternative and as a precaution only, if LUBA concludes that the above determination that the proposal will employ a small number of workers is in error the Board of County Commissioners adopts the following findings based on the presumption that approval of the applications will allow “more” than a “small number of workers” on the property.

The Board of County Commissioners reiterate, as LUBA’s opinion recognizes, that DLCDD’s acknowledgment of the DCCP and DCC as consistent with Goal 14 was not based on measures that limited the number of employees permitted on land zoned rural industrial. Rather, during acknowledgment the County took a different approach and adopted DCCP and DCC provisions that operate to limit the types and intensity of the uses allowed and its related development. Framed differently,

DLCD's acknowledgement of the DCCP and DCC as consistent with Goal 14 and allowing only the rural use of rural land is independent of the number of workers that may be ultimately employed by permitted uses developed consistent with the DCC limitations. In short, *Shaffer's* "small number of workers" inquiry has little significance regarding whether the DCC is consistent with Goal 14 and adequately imposes limits on allowed uses to ensure they constitute rural use of land. Even if there may be more than a "small" number of employees, that fact alone does not categorically mean that the uses allowed under the adopted and acknowledged DCC standards do not constitute a rural use of rural land. Consequently, the potential number of workers alone is not a basis to conclude that the DCC limitations do not ensure that only rural uses are approved on rural land. There is no County or State standard or approval criteria for this application that make the number of workers a determining factor for approval of the application.

Nothing in state statutes, administrative rules, *Shaffer* or any other case law cited to the Board of County Commissioners stands for the proposition that a use can only constitute a rural use on rural land if it employs a small number of workers. Such a contention would be contrary to DLCD's acknowledgement of the DCCP and DCC as well as with express statements in *Shaffer* and other caselaw that says the "small number of workers" and other first-step *Shaffer* questions are not determinative of whether rural use of rural land will flow from the decision, they are only indicators that further inquiry and possible actions are required. In this instance, the evidence in the record shows what a "worst case" development scenario would look like on the subject property under the adopted and acknowledged DCC provisions. Development under the DCC is not unlimited as COLW's testimony suggests. The evidence in the record establishes that the types of uses and levels of activity permitted under the DCC are consistent with Goal 14's mandate to allow only rural use of rural land. Indeed, LUBA affirmed our Goal 14 conclusions, rejecting COLW's Goal 14 challenges.

As discussed above, the TIA demonstrates that, even if LUBA determines that the evidence does not support the conclusion that the allowed uses will employ a "small" number of workers, that number is not substantial, particularly given the total number of vehicle trips development of the site could produce in a "worst case" scenario. As discussed above, that relatively low number of vehicle trips is the direct result of acknowledged DCC standards, such as the DCC 18.100.040(H)(1) dimensional standard that imposes a 7,500 square foot maximum for a building or buildings in a single use on an individual lot, and other standards that apply in this instance such as the applicable 70 percent lot coverage limitation and setback requirements. Those restrictions limit the scope and intensity of the allowed development on the property. That analysis is just as valid here as it is above, even if LUBA reaches a different conclusion regarding whether the possible number of employees that the daily trip totals suggest is "small." That possible characterization

for the number of workers does not change the fact that DLCD has acknowledged that development of the allowed uses under the development restrictions imposed by the DCC will constitute rural use of rural land consistent with Goal 14.

COLW contends that the issue of whether the RI zone has been determined to be in compliance with Goal 14 by prior acknowledgement was waived by the Applicant, claiming that the Court of Appeals so held. The Board of County Commissioners rejects the argument that the issue of DLCD's acknowledgment of the RI zone's consistency with the Statewide Planning Goals, to include Goal 14, has been waived. The Court of Appeals statement quoted by Appellant concerned whether the argument, "that LUBA should not have applied the *Shaffer* test at all" had been waived. *Central Oregon Landwatch v. Deschutes County*, 315 Or App 673, 680, 501 P3d 1121 (2021). That is not the same as saying that the issue of whether the DCC is acknowledged as consistent with Goal 14 and the other Statewide Planning Goals has been waived. The goal compliance issue has not been waived. As quoted extensively above in Section C of these findings, LUBA recognized that the DCC has been acknowledged as consistent with Goal 14 and that our original findings repeatedly asserted that the DCC is consistent with Goal 14 such that "that even the most intensive industrial use that could be approved on the subject property under the RI regulations and use limitations would not constitute an urban use." *Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No 2021-028, June 18, 2021) (Slip Op at 24). The Board of County Commissioners also notes, as discussed in Section C above, that LUBA "assumed" we did not believe the application of our RI zone regulations was not sufficient to ensure development would comply with Goal 14. *Id.*, Slip Op at 29. As explained above, LUBA's "assumption" was incorrect. LUBA did not conclusively resolve that issue and it has not been waived.

At the remand hearing and in written materials, COLW made various claims about potential impacts from different development scenarios. The Board of County Commissioners find none of those scenarios to be credible. The most specific of the COLW development scenario claims is that 122 buildings, each 7,500 square feet in size, could be built on the property if the RI plan designation and zoning were approved. As the Applicant explained, that figure represents 915,000 square feet of building space, which is equivalent to the entire 21-acre subject property. The Board of County Commissioners finds that such a development scenario could not be approved for the subject property because it disregards the limitations imposed by the DCC setback standards, 70 percent lot coverage on large portions of the property and all other development standards discussed in these findings. COLW's claim that a mini-storage facility could be developed on the property that has 18,000 units is not based on any evidence that such a facility could be designed in a manner that complies with the DCC development standards noted above. Furthermore, COLW's mini-storage vehicle trip and employee claims are refuted by Transight Consulting evidence that addresses vehicle trips and numbers of

employees for mini-storage facility uses. Similarly, COLW's allegations about cellophane, cork and feather factories are not supported by any evidence in the record and represent mere allegations. The Board of County Commissioners finds that such extreme claims so undermine COLW's credibility as to make any statement or assertion by COLW, not supported by explicit, detailed factual evidence, highly suspect and not credible. The Applicant carried his burden of proof with credible evidence. Rejecting arguments and scenarios that are not based on any evidence in the record or that represents development that cannot be approved under the acknowledged DCC development standards does not shift the burden of proof as COLW has argued.

The Board of County Commissioners further note that the original decision that concluded the proposal will prevent the urban use of rural land was based, in part, upon transportation considerations. Those considerations necessarily included the TIA. The Board of County Commissioners' analysis of the TIA and the conclusions reached were based on the daily trips generated under that "reasonable worst-case" development scenario and are valid regardless of whether the number of worker trips within those traffic volumes is properly classified as a "small" or "more than small" number of workers. The Board of County Commissioner's conclusion is the same here as with the initial decision – the development of uses represented by a "worst case" rural industrial development of the site under the DCC maintains the land as rural land consistent with Goal 14. Whether the 90 workers represents a "small number or workers" or not, does not change our ultimate Goal 14 conclusion or the second-step of our *Shaffer* analysis. Our conclusion remains that the DCCP and DCC so limit the allowed uses as to effectively prevent urban use of rural land, and the evidence supports that conclusion. Again, COLW presented no evidence that challenges, nonetheless refutes, that underlying evidence, nor did COLW challenge on appeal to LUBA any of the other findings from our original decision that support the Board's ultimate conclusion.

Other acknowledged DCC standards similarly restrict the scope and intensity of permissible RI uses such that approval of development proposals under the acknowledged standards ensure that only rural uses will occur on rural land. For example, DCC 18.100.030(B) limits uses on lots adjacent to residential dwellings to no more than 30 truck trailer or other heavy equipment trips per day. That is not an urban level of activity. More importantly, this is the first time that a vehicle trip cap by type – to include employee, customer and delivery vehicle trips – has been assigned to an acknowledged DLCD RI approval standard within the county code to ensure approved uses remain rural and compatible with surrounding uses. That standard demonstrates that there exists a relationship between vehicle trips and the intensity of approved rural industrial uses, to include the number of employees (who may be driving such vehicles to and from the property during the course of business). That limitation applies to portions of the subject property given the

relationship of the property to surrounding residential lots and imposes strict limits on activities that can be approved for the subject property.

Likewise, DCC 18.100.030(K) and (L) limit industrial uses to those that can be served by DEQ approved on-site sewage disposal systems and on-site wells or public water systems respectively. Again, those two provisions operate to ensure only rural uses are permitted and developed on rural industrial land by greatly limiting the services that could facilitate larger more intensive services, much like limiting building size. Such limitations are significant for the subject property. The soil suitability evidence submitted during the remand proceeding establishes that 60% of the property is not suitable for any type of onsite treatment system and that none of the property is suitable for a standard system. The costs of utilizing a holding tank system as well as the extreme volume limitations of such systems means that uses that involve the use and disposal of high volumes of water, or that employ a high number of workers that will have sewer needs will not be able to satisfy the DCC requirements for DEQ permits and ultimately cannot be approved for the subject property.

Continuing with the DCC's development limitations, other provisions restrict allowed uses on the subject property due to the fact that most of the property is within 600 feet of a residential dwelling. DCC 18.100.030(D) prohibits uses that emit odors, dust, fumes, glare, flashing lights, noise or similar disturbances perceptible without instruments more than 200 feet in the direction of an affected residential use. That limitation greatly reduces the intensity of permissible development. Also, DCC 18.100.020(A) mandates that even permitted uses within 600 feet of a residential dwelling be subject to conditional use review. The general standards governing conditional uses under DCC 18.125.015(A) and (B) require that the site be suitable for the proposed use, to include the "operating characteristics of the use," and that the proposed use be compatible with existing and projected uses on surrounding properties, which are rural uses. An industrial use that has excessive disturbances or is not consistent with the rural designation and zoning of the subject property or the surrounding rural designated and zoned properties cannot be approved on the subject property under the above standards.

While COLW argued during the initial proceedings that giant lumber and pulp mills or plastic manufacturing factories could be approved on the subject property and that such uses could employ hundreds of employees, COLW made no effort to demonstrate through evidence or argument that any such proposal could satisfy any, nonetheless all, of the limiting standards or physical site conditions discussed above on the subject property. COLW's evidence and testimony, whether during the initial proceedings or on remand, totally ignore the DCC use limitations and dimensional standards that were the basis for LCDC acknowledging the DCC as consistent with the Statewide Planning Goals. The Board of County Commissioners find that the purpose of the DCC use limitation and dimensional standards is to

prevent the very types of intensive industrial development that COLW bases its arguments upon. Uses of that scale and intensity could never be approved for the subject property under the DCC restrictions acknowledged by DLCD.

The Board of County Commissioners expressly reiterates the following findings drawn from the original decision that the DCC so limits allowed uses as to effectively prevent urban use of rural land and that a Goal 14 exception is not required for approval of the applications.

- “DCC Chapter 18.100 implements DCCP Policies 3.4.9 and 3.4.23, which together direct land use regulations for the Rural Commercial and Rural Industrial zones to ‘allow uses less intense than those allowed in unincorporated communities as defined by Oregon Administrative Rule 660-022 or its successor[.]’”
- “[T]he application of DCC Title 18 to any development proposed on Rural Commercial or Rural Industrial designated land will ensure that the development approved is consistent with the requirements set forth in DCCP Policies 3.4.12 and 3.4.27 to not adversely affect surrounding area agricultural or forest land, or the development policies limiting building size (DCCP Policies 3.4.14 and 2.4.28), sewers (DCCP Policies 3.4.18 and 3.4.31) and water (DCCP Policies 3.4.19 and 3.4.32) intended to limit the scope and intensity of development on rural land.”

COLW did not challenge those findings in its appeal to LUBA.

The analysis and conclusion, that development permitted and authorized consistent with the applicable DCC RI-zone approval standards will not authorize urban uses on rural land and will ensure rural use of rural land on the subject property, is based on the DCC’s limitation of uses authorized in the RI zone and imposition of building size and other development restrictions on permissible development. It is entirely independent of whether permissible development on the property will employ only a small number of workers. With acknowledgment, DLCD concluded that the approach taken by the County and the measures adopted to implement that approach ensure that industrial uses approved in the RI zone under the acknowledged standards would remain rural, consistent with Goal 14. Furthermore, evidence submitted during the remand proceedings demonstrates that the soil conditions on the property will likely act to further limit the intensity of development that can be placed on the property. Nothing in the evidence or argument submitted by COLW demonstrates that to not be the case.

Shaffer expressly allows, in response to a non-affirmative answer to whether a proposed use will employ a small number of workers, a local government to limit the allowed uses to effectively prevent urban use of rural land. That is what the

acknowledged DCC RI Zone standards do. *Shaffer* does not require a local government to prove that only a small number of workers could be employed in the second-step analysis before it approves a proposal as consistent with Goal 14; *Shaffer* only requires that a local government explain why allowed uses will constitute rural use of rural land despite such a finding, or to take an exception or include the property within a UGB.

The Board of County Commissioners hereby reiterates what must not have been clear from the original findings. The adopted and acknowledged rural industrial DCCP policies and DCC development standards for permitted rural industrial uses operate to ensure that any allowed uses and development on the subject property that is consistent with the applicable DCC standards will constitute rural use of rural land as required by Goal 14. That conclusion is valid even if those uses will employ more than a “small” number of workers because, in part, the County’s approach to acknowledgement was not dependent upon the number of workers employed by industrial uses, but upon other factors that DLCD acknowledged as consistent with and that fully implement Goal 14 without the use of limitations on the number of workers. Furthermore, site limitations may act as a further restrictive measure to limit the development potential of the subject property so that only rural uses will be allowed on rural land.

For the above reasons, the Board of County Commissioners approves the requested plan designation and zone change applications.

III. FINDINGS, ANALYSIS AND CONCLUSIONS IN RESPONSE TO ARGUMENTS SUBMITTED ON REMAND

This section addresses some of the issues and arguments raised by parties to the remand proceeding that are not expressly addressed above. The fact that an issue or argument is addressed in this section does not mean it necessarily falls within the scope of the remand proceeding and is not intended to preclude the County or any other party from arguing on subsequent appeal that the issue lies outside the scope of the remand or has otherwise been previously resolved or waived.

Scope of the Remand Proceeding

The Board of County Commissioners limited the scope of the remand proceeding to the issue remanded by LUBA and parties were permitted to submit new evidence directed towards that issue as part of the *de novo* hearing on remand. DCC 22.34.040.A directs the Board of County Commissioners to review remanded issues and provides the Board the discretion to open the record in instance which it deems it to be appropriate. DCC 22.34.040.C authorizes the Board of County Commissioners to limit new testimony to the remanded issues or to issues raised by

new evidence that was directed towards the issue on remand. That provision also states that issues resolved by LUBA or that were not appealed to LUBA are deemed to be waived and may not be reopened. The Board of County Commissioners has so limited the remand proceeding. Furthermore, the Board of County Commissioners interprets the above provisions to implicitly mean that only the standards and criteria that expressly relate to LUBA's remand are live on remand and that issues related to standards and criteria that were resolved by LUBA or that could have been resolved by LUBA in an earlier proceeding are deemed resolved or waived and that compliance of the proposal with those standards and applicable criteria may not be challenged on remand. The Board of County Commissioners also notes that caselaw supports the above principles.

In an email submitted before the public hearing, COLW argued that the standards and applicable criteria for the upcoming hearing are not limited to those that formed the basis of the LUBA and Court of Appeals remand decisions, but also include the Standards and Applicable Criteria that formed the basis for the decisions appealed to LUBA. The Board of County Commissioners disagrees with that broad statement. The Board of County Commissioners has not exercised its discretion to expand the scope of the remand hearing, the issues that may be raised or the standards that may be visited. The only standards and applicable criteria that are live on remand are those that directly relate to the issue remanded by LUBA.

During the remand proceedings, both parties addressed the *Shaffer* factors not remanded by LUBA. COLW at one point argued that because of our resolution of the other three factors in the original decision, we could not conclude that rural use of the land would result from approval of the application. The Board of County Commissioners disagrees with that conclusion, in part because if that were the case, LUBA would not have remanded for the Board to adopt findings for the remaining factor. Also, the findings above correct a COLW misstatement regarding our response to one of the *Shaffer* factors. In written comments, the Applicant posited that the Board could now conclude that the *Shaffer* inquiry regarding whether the use "is a type of use typically located in rural areas" could now be answered in the affirmative because of the additional evidence submitted after our initial findings, particularly that DLCD acknowledged that the RI permitted uses are rural uses. If that were a live issue on remand, the Board of County Commissioners would conclude that the uses allowed in the RI zone are types of uses typically located in rural areas for the reasons provided by the Applicant. However, the Board of County Commissioners has limited this remand proceeding to the sole issue of adopting findings regarding the number of workers and whether that alters our conclusion that approval of the applications will allow only rural use of rural land. Consequently, Applicant's raising of the "type of use inquiry" plays no part of our decision on remand.

Statewide Planning Goals

In written testimony submitted at the public hearing, COLW argued that, under ORS 197.175(2)(a), the proposal must be in compliance with the statewide planning goals and that the findings cannot rely on a “prior amendment.” The main point of COLW’s argument, which refers to an unidentified prior amendment, is not sufficiently clear for the Board of County Commissioners to directly address and therefore the Board of County Commissioners finds that whatever issue COLW sought to present was insufficiently raised.

That said, the Board of County Commissioners notes that the original decision had findings that concluded the proposal was consistent with each of the statewide planning goals. On appeal to LUBA, COLW only challenged the findings and conclusions related to Goals 6, 11 and 14. All of COLW’s goal-based arguments were denied by LUBA. And while LUBA stated that the appeal’s first assignment of error concerned Goal 14, the remand did not concern the challenge to the Goal 14 finding of consistency, but rather the findings regarding the number of workers under the *Shaffer* analysis. Compliance with the Statewide Planning Goals is a resolved issue. If it is not, at most, the only Goal that may be live, is compliance with Goal 14.

Misstatements About Previous Findings

During the remand proceedings, COLW has made several misstatements about the findings the Board of County Commissioners adopted in the initial decision to approve the applications. Those misstatements should not go uncorrected.

First, as discussed above, COLW contended that our initial findings concluded that the response to the *Shaffer* “does not require public facilities or services” inquiry indicated the proposal is not for a rural use. That characterization is incorrect. The board of County Commissioners, as did the Hearings Officer, concluded that the response to that inquiry indicated the proposal is a rural use. LUBA did not remand on that issue.

Second, COLW suggests that it is law of the case that there is insufficient evidence to base a determination that the type of uses that will occur on the property are of a type typically located in rural areas. The Board of County Commissioners notes the previous findings found, as LUBA plainly explained in its decision, that all of the uses and conditional uses, as limited by the development and other approval standards contained in the DCC, were acknowledged by DLCD as complying with Goal 14 to not constitute urban uses.

Reasonable Worst-Case Scenario

COLW challenged the worst-case scenario approach used in this proceeding arguing that it provides only an “estimate” of workers, which is inadequate to demonstrate compliance with Goal 14, and attempted to distinguish between the use of the terms “reasonable worst-case” and “worst-case.”

Applicant addressed the worst-case development scenario analysis process in his rebuttal material, pointing to recent examples where LUBA used the term “reasonable worst-case” scenario and explaining when findings using that approach are inadequate. The Board of County Commissioners finds that when applied properly, the reasonable worst-case development scenario approach is an appropriate methodology to evaluate potential impacts for plan designation and zone change applications that do not propose specific development. In support of this finding, the Board of County Commissioners adopts Applicant’s rebuttal response as its own.

The Board of County Commissioners also notes that COLW failed to challenge the use of the reasonable worst-case scenario approach for the Goal 12 findings in the initial appeal, or to challenge that the development scenario represented in the original TIA, a scenario approved by County Transportation Staff and ODOT, represented a worst-case development scenario of the subject property. Last, the Board of County Commissioners finds, as explained above, that Petitioner failed to provide any development scenario that could, in fact, be developed on the subject property. Had COLW done so, these findings would be required to either base its analysis and conclusions on that development scenario or to provide an adequate justification as to why that development scenario does not constitute a worst-case scenario. Nothing requires the County to consider development scenarios that could not be approved under acknowledged development standards.

IV. 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 property from Agriculture to Rural Industrial and a corresponding Zone Map Amendment (Zone Change) to reassign the zoning from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial Zone (RI) subject to the following conditions of approval:

1. The Applicant shall submit to the Planning division a metes-and-bounds description of the subject site to be re-designated and rezoned.

2. The applicant shall submit a certification regarding the purpose of the application, consistent with DCC 22.20.025(B)(2).
3. The Applicant shall enter into a Voluntary Compliance Agreement ("VCA") with the Deschutes County Code Enforcement division of the Community Development Department to resolve alleged code violations in file no. 247-19-00064-CE
4. As part of any development of the subject property, the developer shall be subject to assessment of transportation system development charges (SDCs) on that development at the current SDC rate then applicable. Additionally, further traffic analysis may be required, depending on whether a proposed development triggers the traffic analysis thresholds of DCC 18.116.310(C)(3). The County may also consider imposition of non-infrastructure mitigations under OAR 660-012-0060(11).

Dated this ____ day of July, 2022