Mailing Date:
Wednesday, June 25, 2025

RECOMMENDATION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS:	247-24-000839-PA / 247-24-000840-ZC
HEARING DATE:	April 7, 2025 1:00 p.m.
HEARING LOCATION:	Videoconference and Barnes & Sawyer Rooms Deschutes Services Center 1300 NW Wall Street Bend, OR 97708
APPLICANT/OWNER:	McKenzie Meadow Village LLC
SUBJECT PROPERTIES:	Map and Tax Lots: 1510050001200 1510050001202 1510050001203 1510050001205 Situs Addresses: 69095 McKinney Ranch Rd., Sisters, OR 97759 69055 McKinney Ranch Rd., Sisters, OR 97759 69050 McKinney Ranch Rd., Sisters, OR 97759 No Situs Address
REQUEST:	The Applicant requests approval of a Comprehensive Plan Amendment to change the designation of the Subject Properties from Forest to Rural Residential Exception Area (RREA) and a corresponding Zone Change to rezone the Subject Properties from Forest Use 2 (F-2) to Multiple Use Agricultural (MUA-10). The Applicant also requests a "reasons exception" to Statewide Planning Goal 4.
HEARINGS OFFICER:	Tommy A. Brooks

SUMMARY OF RECOMMENDATION: The Hearings Officer finds that the record is sufficient to support the requested Comprehensive Plan Amendment, Zone Change, and Goal 4 Exception.

I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:

Chapter 18.04, Title, Purpose, and Definitions
Chapter 18.32, Multiple Use Agricultural Zone (MUA10)
Chapter 18.40, Forest Use Zone (F2)
Chapter 18.80, Airport Safety Combining Zone (AS)
Chapter 18.84, Landscape Management Combining Zone (LM)
Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

Oregon Administrative Rules (OAR) - Chapter 660

Oregon Revised Statutes (ORS)

Statewide Planning Goals

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Nature of Proceeding

This matter comes before the Hearings Officer as a request for approval of a Comprehensive Plan Map Amendment ("Plan Amendment") to change the designation of the Subject Properties from Forest to Rural Residential Exception Area ("RREA"). The Applicant also requests approval of a corresponding Zoning Map Amendment ("Zone Change") to change the zoning of the Subject Properties from Forest Use 2 (F-2) to Multiple Use Agriculture (MUA-10). As presented by the Applicant, the request also seeks an exception to Statewide Planning Goal 4 ("Goal 4 Exception").

The Application requests a Plan Amendment, which is ultimately a decision for the County's Board of Commissioners ("County Board"). Several applicable criteria require a weighing of policy choices, and the record before the County Board may be different than the current record. This Recommendation therefore determines if the Applicant has met its burden of proof in a manner that would support the County Board's approval of the Application based on the current record.

B. Notices, Hearing, Record Materials

The Applicant initially filed the Application on December 24, 2024, and provided supplemental materials throughout this proceeding.

On January 3, 2025, staff in the County's Community Development Department ("Staff") mailed a Notice of Application identifying the standards and criteria governing the review of the Application and seeking public comment on the Application. On March 13, 2025, Staff mailed a Notice of Public Hearing ("Hearing Notice") to agencies, interested persons, and all property owners within 750 feet of the Subject Properties, announcing a public hearing to be held on April 7, 2025. The Hearing Notice was also published in the Bend Bulletin on Sunday, March 16, 2025. Notice of the Hearing was also submitted to the Department of Land Conservation and Development ("DLCD").

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on April 7, 2025, opening the Hearing at 1:00 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at approximately 3:04 p.m. Prior to the conclusion of the Hearing, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until April 21, 2025 ("Open Record Period"); (2) any participant could submit rebuttal materials (evidence or argument) until May 5, 2025 ("Rebuttal Period"); and (3) the Applicant could submit a final legal argument, but no additional evidence, until May 12, 2025. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. No participant objected to the post-hearing procedures.

Various participants submitted post-Hearing materials within the time limits described above, and no objections were made to any of those submittals. The record therefore includes all materials submitted to the County as reflected on the County's website for this matter.

C. Review Period

Because the Application includes a request for the Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable.[1] The Staff Report also concludes that the 150-day review period is not applicable by virtue of Deschutes County Code ("DCC" or "Code") 22.20.040(D). No participant to the proceeding disputes that conclusion.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Staff Report

On March 28, 2025, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time ("Staff Report").

[1] ORS 215.427(7).

The Staff Report, although it expresses agreement with the Applicant in some places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicant has met the burden of proof necessary to justify the Plan Amendment, Zone Change, and Goal 4 Exception.

B. Preliminary Discussion

In order to identify and better address the applicable criteria, it is necessary both to discuss the Applicant's stated purpose of the Application and to describe what the Applicant is not requesting.

The Applicant candidly presented its long-term goal for the use of the Subject Properties, which is to make those properties more available for eventual consideration by the City of Sisters ("City") to be included in its urban growth boundary ("UGB"). As explained by the Applicant and acknowledged by other participants, the City is in the process of expanding its UGB. Under state law, the City is to give certain properties (e.g. exception areas) higher priority than other properties (e.g. resource lands) when deciding which areas to bring into its UGB.

The Applicant's stated long-term goal understandably prompted a wide variety of comments relating to whether and how the Subject Properties should be brought into the City's UGB or otherwise be developed with urban uses. I agree with the Applicant, however, that these comments are largely not relevant to the Application. The decision to include the Subject Properties in the City's UGB is not part of the request in the Application. That decision belongs to the City and will be governed by other standards and criteria. Further, the requested Plan Amendment, Zone Change, and Goal 4 Exception, if approved, may give the City more options for including the Subject Properties within its UGB, but as DLCD noted in its comments, they are not necessary, and there is a process in state administrative rules that could allow the City to consider the Subject Properties for inclusion in its UGB even with their current designations under the County's Comprehensive Plan ("Plan").

The Applicant is not requesting, through this Application, that the Subject Properties actually be included in the City's UGB, nor is the Applicant requesting approval of any specific type of development if the Zone Change is approved. The findings below therefore address only the specific requests in the Application as a stand-alone application made to the County, regardless of what impact the outcome may or may not have on the City's UGB process. Those specific requests are: (1) the Goal 4 Exception, based on the "reasons exception" component of ORS 197.732; (2) the Plan Amendment; and (3) the Zone Change.

C. Findings for Specific Requests in the Application

1. Goal 4 Exception

Pursuant to ORS 197.175(2), if the County amends its Plan, it must do so in compliance with Statewide Planning Goals (each a "Goal" and, together, the "Goals"). Because the Plan has been acknowledged, the requested Plan Amendment must adhere to the procedures for a post-acknowledged plan amendment ("PAPA") set forth in state statutes and rules. The Applicant does not assert that the requested Plan Amendment is in compliance with Goal 4-Forest Lands. Rather, the Applicant requests an "exception" to

that Goal. ORS 197.732 and its implementing rules govern the process and standards for obtaining such a "Goal Exception".

Although state statutes allow different types of Goal Exceptions, the Applicant has "confirmed that the application seeks a plan amendment and zone change using a Goal 4 reasons exception under ORS 197.732." The "Reasons Exception" is a reference to ORS 197.732(2)(c), which allows a Goal Exception if the following standards are met, each of which are addressed below:

> (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
> (B) Areas that do not require a new exception cannot reasonably accommodate the use;
> (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
> (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

ORS 197.732(2)(c)(A)

With respect to the reasons that the state policy embodied in Goal 4 should not apply, the Applicant's argument is best summarized in its Final Legal Argument. In that submittal, the Applicant identifies the policy embodied in Goal 4 in part as "to preserve forest land for forest related use and timber production," along with conserving soil, air, water quality and providing for fish and wildlife resources, recreational and agricultural opportunities appropriate in a forest environment. According to the Applicant, these policies "in most or all respects are advanced better under the proposed [MUA-10] zoning." The Applicant has also asserted that there is a specific need for MUA-10 zoning near the City of Sisters to provide a better transitional zone between urban and rural development. I infer from the Applicant's arguments that a reason for the Goal Exception is to establish this transitional zone on the Subject Properties, which the Applicant asserts is more beneficial than keeping Goal 4 protections in place on a property that is not suitable for Goal 4 uses.

In support of its argument, the Applicant relies on evidence such as a soils report that confirms the Subject Properties are not suitable for commercial forestry and, therefore, that preserving the property for forestry uses is not appropriate. The Applicant also cites to certain natural area protections imposed through the MUA-10 zone, such as a stream setback requirement, that it asserts will be more protective of Trout Creek (an identified Goal 5 resource) than the regulations of the F-2 zone.

A major issue raised in this proceeding is whether the Applicant has sufficiently established the "reasons" Goal 4 should not apply to the Subject Properties. The arguments in opposition to the Application center around OAR 660-004-0020 and OAR 660-004-0022, which implement ORS 197.732, and which

participants in this proceeding say must be satisfied. The Applicant asserts that OAR 660-004-0022 is not applicable at all because it "applies only to requests for an exception to allow specifically identified uses." The Applicant argues that it is proposing a broad range of uses (anything allowed in the MUA-10 zone), which do not fit neatly into any of the specific uses in the rule. The Applicant's primary argument is that only OAR 660-004-0020 is applicable.

Contrary to the Applicant's argument, OAR 660-004-0022 appears to apply to all reasons exceptions, regardless of the specific use proposed. As described by the Land Use Board of Appeals ("LUBA"): "OAR 660-004-0022 sets out the types of 'reasons' that can justify exceptions to various specific goals. For uses not specifically addressed in OAR 660-004-0022, OAR 660-004-0022(1) sets out a 'catch-all' provision that lists a non-exclusive set of reasons sufficient to justify an exception."[2]

OAR 660-004-0022 confirms that all Reasons Exceptions must comply with OAR 660-004-0022. The lead-in language of that rule states "[i]f a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception." In other words, before applying OAR 660-004-0020, the Applicant must first establish the reasons that justify a Goal Exception by meeting the criteria set forth in OAR 660-004-0022. If those reasons can be established, the Applicant must then show compliance with the other provisions of OAR 660-004-0020. For some uses, OAR 660-004-0022 sets forth the types of reasons that may be relied on, beginning with subsection (2) of that rule. For all other uses, the Applicant can rely on the catch-all provision of OAR 660-004-0022(1).

Participant Central Oregon LandWatch ("COLW") raises a more specific issue in this regard, asserting that the Applicant must show compliance with OAR 660-004-0022(2), which sets forth the reasons on which a Goal Exception can be based when approving "Rural Residential Development.":

> (2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned that require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.

[2] *VinCEP v. Yamhill County*, 53 Or LUBA 514 (2007).

COLW's argument is that OAR 660-004-0022(2) is triggered because the MUA-10 zone is a rural residential zone, which the Applicant disputes.[3]

It should be noted that the different reasons justifying a Goal Exception set forth in OAR 660-004-0022 are not mutually exclusive. That is, an applicant can seek to justify a Goal Exception for a specific use listed in the rule and, alternatively, seek to justify the Goal Exception based on the catch-all provision of OAR 660-004-0022(1).[4] In the *1000 Friends of Oregon v. Jackson County* case, a county approved a Goal Exception under OAR 660-004-0022(3) and OAR 660-004-0022(1) for a use that could be described as a rural industrial use. Although LUBA reversed the county's approval, it analyzed the Goal Exception under both rules, stating "we see nothing in the rule that would preclude the county from attempting to justify a reasons exception for an indisputable rural industrial use using the standards set out in the 'catch-all' provision at OAR 660-004-0022(1), in lieu of the non-exclusive set of reasons listed in OAR 660-004-0022(3).

Based on the *1000 Friends of Oregon v. Jackson County* case, I find that the Applicant can attempt to show compliance with either OAR 660-004-0022(1) or any other provision of OAR 660-004-0022 as the basis for the Reasons Exception. While the Applicant responds to COLW's argument by presenting alternative arguments for why OAR 660-004-0022(2) is satisfied, the Applicant notes that its proposal is to rezone the Subject Properties to the MUA-10 zone without regard to specific uses. This means that, if approved, while some rural residential development would be allowed, other non-residential uses would also be allowed. I agree with the Applicant that it makes little sense to proceed under a rule that applies only to residential uses. Even if there are reasons for the Goal Exception to justify the rural residential portion of the proposal, there must still be a basis to justify the non-rural residential components. I therefore find that the Goal 4 Exception can be approved only if the Applicant shows compliance with OAR 660-004-0022(1), the catch-all provision of the rule that would apply to all uses allowed in the MUA-10 zone.

One of the difficulties in applying OAR 660-004-0022(1) to this Application is that the Applicant has not directly addressed that criterion. As noted above, the Applicant asserts that this rule does not apply at all. That is not detrimental to the Application, however, as the plain text of OAR 660-004-0022(1) states that "the reasons shall justify why the state policy embodied in the applicable goals should not apply," which is simply a restatement of ORS 197.732(2)(c)(A), a criterion the Applicant does address.

Another difficulty in applying OAR 660-004-0022(1) to this Application is that it is not immediately clear if the specific provisions of that subsection of the rule require the Applicant to address all of the language in that subsection. That is, under this part of the rule, an applicant can justify a Goal Exception by showing

---

[3] COLW also asserts that OAR 660-004-0022 requires the Applicant to comply with OAR 660-004-0040 to the extent the Applicant seeks to justify the establishment of new urban development on undeveloped rural land. I find that this assertion is not relevant because the Applicant does not propose urban development in this Application even though that is the Applicant's long-term desire for use of the Subject Properties. As explained in other findings, the MUA-10 zone is a rural zone allowing rural uses.

[4] *See, e.g., 1000 Friends of Oregon v. Jackson County*, __ Or LUBA __ (LUBA No. 2071-066, Oct. 27, 2017).

"a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19" (a "Need" component), together with a demonstration that either: (a) that the proposed use or activity requires a location near a resource available only at the proposed exception site; or (b) the proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site (a "Location" component). The Applicant has not directly addressed that additional rule language. But the rule language also says "[s]uch reasons include but are not limited to" a demonstrated Need and Location. The question then, is if the Applicant can rely on other reasons to justify the Goal Exception even if it does not base its reasons on the Need and Locational components of the rule.

No participant to this proceeding has offered any argument to help explain the meaning of the "include but are not limited to" language. Nor does the case law appear to clarify that language, as most of the cases addressing this rule analyze different issues. In the absence of such arguments and authority, I am left with the plain language of the rule. Based on that language, I find that the Applicant can rely on other reasons to justify the Goal Exception, as long as those reasons demonstrate why the state policy embodied in Goal 4 should not apply. The use of "but are not limited to" in the rule implies that other reasons may exist, and the specific reason set forth in the rule (based on Need and Location) is more of a safe harbor that, if met, satisfies the rule. If other reasons could not be relied on, the "but are not limited to" language would not be necessary.

Having reviewed the information provided by the Applicant and other participants, I find that the Applicant has met its burden to show there are reasons why the state policy embodied in Goal 4 should not apply to the Subject Properties. Most of the opposing comments in the record do not address Goal 4 Exception criteria. Those that do simply express the opinion that the Applicant's stated reasons for the Goal Exception are "not sufficient." They do not, however, dispute with any particularity the Applicant's assessment of the capability of the Subject Properties to support forest uses, or the Applicant's assertion that other Goal 4 policies, like natural resource protections, can actually be enhanced by the MUA-10 zoning.

ORS 197.732(2)(c)(B)

This part of the statute requires a decision approving a Goal Exception to demonstrate that areas that do not require a new Goal Exception cannot reasonably accommodate the use.

The Applicant acknowledges that this criterion is difficult to apply because no one specific use is being proposed. By seeking to rezone the Subject Properties without specifying any limitation on which uses are or are not allowed, the Applicant is proposing that all uses in the MUA-10 zone be allowed. More specifically, however, the Applicant is proposing to allow those uses through the establishment of a transitional zone adjacent to the City that allows a variety of rural uses, including housing. Looking at the "proposed use" through that lens, ORS 197.732(2)(c)(B) requires a determination of whether other areas not requiring a Goal Exception could also be used to establish a transitional zone adjacent to the City of Sisters to allow a variety of rural uses. According to the Applicant, they cannot.

As the Applicant notes, OAR 660-004-0020(2)(b) implements ORS 197.732(2)(c)(B). Under that rule, the consideration of alternative sites for the proposed use can be done through a broad review of similar types of areas. The rule specifically states "[s]ite specific comparisons are not required of a local government

taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use." The Applicant's submittals include information showing that the Applicant has assessed the ability of other areas to accommodate the rural uses allowed in the MUA-10 zone. That information includes evidence that existing exception areas, like the RR-10 zone, do not allow the same suite of uses as the MUA-10 zone, and that other areas are encumbered by restrictions preventing certain types of development.

The Applicant's analysis is largely unchallenged by other participants. With the exception of COLW's comments, opposing comments in the record do not specifically address ORS 197.732(2)(c)(B) or OAR 660-004-0020(2)(b). COLW's comments, however, state that this criterion is not met because "ample areas that do not require a new exception can reasonably accommodate the proposed use of future urban development in the City of Sisters." As explained above, the Applicant is not proposing urban development with this Application, and COLW's comments do not address the rural uses proposed generally, or the MUA-10 zone as a transitional zone near the City specifically.

Based on the foregoing and the materials currently in the record, I find that the Applicant has met its burden to demonstrate that the proposed use (transitional zoning for the City of Sisters to allow a variety of rural uses) cannot reasonably be accommodated in areas that do not require a new Goal Exception.

ORS 197.732(2)(c)(C)

This subsection of the statute requires an analysis of the long term environmental, economic, social and energy ("ESEE") consequences resulting from the use compared to the ESEE consequences if the same proposal were located in other areas that would also require a Goal Exception. By the plain language of the statute, the ESEE consequences on the Subject Properties do not have to be lower than the ESEE consequences on alternative sites, and they can even be greater; but they cannot be "significantly more adverse". Similar to the prior portion of the statute, this statute's implementing rule – OAR 660-004-0020(2)(c) – expressly states that "[a] detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding."

The Applicant presents an analysis of the ESEE consequences and asserts that those consequences are no greater than, and in some cases less than, the ESEE consequences if the proposal were on other lands also requiring a Goal Exception. For example, with respect to environmental consequences, the Applicant argues that converting other forest land, which is capable of sustaining forest uses, would have higher consequences because it would have greater impacts to tree canopy, wildlife habitat, and water and air resources. With respect to social and economic consequences, the Applicant highlights items such as impacts to jobs associated with the loss of farm or forest land if those lands were converted to MUA-10 zoning. With respect to energy, the Applicant relies on the proximity of the Subject Properties to other development and asserts that the ability to serve those properties (e.g. providing electricity or transportation) is less energy intensive.

The record contains a multitude of comments asserting negative ESEE consequences will result from the proposal on the Subject Properties. However, those comments do not address this criterion because they do not compare those alleged consequences to the ESEE consequences that would result from the same

proposal on other properties that also require a Goal Exception. Although COLW's comments specifically identify this criterion as not being satisfied, it does so based on an assertion that other areas "that do not require a new goal exception" could accommodate the proposed use and that those areas are already impacted. As explained above, however, that assertion is not responsive to this portion of the statute or its implementing rule, which require a comparison to other properties that do require a new Goal Exception.

The assessment and comparison of ESEE consequences is ultimately a discretionary exercise to be undertaken by the County Board. However, based on the current record, and having reviewed the information provided by the Applicant and other participants, I find that the Applicant has met its burden to show that the ESEE consequences resulting from the proposal on the Subject Properties are not significantly more adverse than the ESEE consequences that would result if the proposal were sited on other properties also requiring a Goal Exception.

ORS 197.732(2)(c)(D)

The final part of ORS 197.732(2)(c) requires a demonstration of compatibility with other adjacent uses. The statute's implementing rule – OAR 660-004-0020(2)(d) – imposes the following additional requirements:

> The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

The Applicant responds to this criterion by reviewing the various uses allowed in the MUA-10 zone and describing the likely impacts from those uses. For some conditional uses, like dude ranches, golf courses, and destination resorts, the Applicant asserts that the Subject Properties are too small to accommodate those uses and, therefore, no impacts are likely to exist.[5] For other allowed uses, like agricultural operations, horse stables, and home occupations, the Applicant asserts those uses are low-intensity and will not generate significant impacts.

Opposing comments in the record express concern over a wide variety of potential impacts, but those comments are largely grounded on the assumption that the Subject Properties will be used for urban development, which is not a proposed use in the Application. COLW, however, does expressly address this criterion, asserting that some of the adjacent properties are forest zoned lands and that the proposal would introduce conflicts to forest practices on those lands. The Applicant responds by arguing that any

[5] I note that the County Board, if it approves the Goal 4 Exception, has the ability to limit uses allowed on the Subject Properties and, indeed, may be required to do so under OAR 660-004-0018(4), which states that planning and zoning for an area subject to a Reasons Exception must limit uses to those that are justified in the exception. Because the Applicant states that dude ranches, golf course, and destination resorts are not feasible, the County Board may limit its approval to exclude those uses.

potential conflicts can be addressed at a later approval stage if and when portions of the Subject Properties are proposed for development under the new MUA-10 zone.

While this particular issue is a close call, I find that the Application has met its burden with respect to this criterion. In a different context, more details from an applicant may be required. In this context, however, where the proposal is to establish the MUA-10 zone, I find there is a sufficient basis to determine that all of the uses allowed in the MUA10 zone are compatible with adjacent uses and with surrounding natural resources. With respect to non-resource uses, like the adjacent urban area to the south, the MUA-10 zone is a transition zone that actually serves as a buffer between urban and rural areas. With respect to resources on adjacent properties and surrounding areas, I note the purpose of the MUA10 zone:

> The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use. DCC 18.32.010 (emphasis added).

Through that stated purpose, the County has already determined that all of the MUA-10 zone uses are consistent with the character and capacity of natural resources in the area and serve to protect, rather than to harm, agricultural and forest lands.

2. Plan Amendment

DCC 18.136.010 contemplates that an applicant may seek a quasi-judicial amendment to the County's Comprehensive Plan Map ("Plan Map"). Other than a reference to the procedural provisions of DCC Title 22, the Code does not appear to contain any standards or criteria specific to an amendment to the Plan Map. As noted in findings above, however, such an amendment constitutes a PAPA under state law and, therefore, the amendment must be consistent with all applicable Statewide Planning Goals.

Division 15 of OAR chapter 660 sets forth the Statewide Planning Goals and Guidelines, with which all comprehensive plan amendments must demonstrate compliance. The Applicant asserts the Application is consistent with all applicable Goals and Guidelines. Except for Goal 4, Goal 5, and Goal 14, which are addressed in more detail in findings below, and in the absence of any counter evidence or argument, I adopt the Applicants' position on the remining Goals as recited on pages 50 to 52 of the Staff Report, and I find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as set forth there.

The remainder of the findings in this section address specific Goals that are either in dispute or that require additional explanation.

Goal 4 – Forest Lands

The Applicant acknowledges that the Subject Properties are currently zoned for forest use and subject to Goal 4. The Applicant, however, has requested a Goal 4 Exception. As set forth in separate findings above, this Recommendation concludes that the Applicant has met its burden to demonstrate the justification for a Goal 4 Exception. As a result, the Plan Amendment can proceed without showing compliance with Goal 4. If the County Board determines that the Goal 4 Exception is not warranted, the Applicant will need to show compliance with Goal 4.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

Goal 5 and its implementing rules protect natural resources, scenic and historic areas, and open spaces. Pursuant to OAR 660-023-0250(3), the County does not have to apply Goal 5 as part of a PAPA "unless the PAPA affects a Goal 5 resource." One scenario in which a PAPA may affect a Goal 5 resource is when the "PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list."[6] According to information in the record, the Subject Properties contain or are near to two significant Goal 5 resources: (1) Trout Creek and (2) scenic resources along Highway 20.

The Applicant first asserts that the County is not required to apply Goal 5 to this Application because the uses allowed in the MUA-10 zone will not conflict with the identified Goal 5 resources. The Applicant bases this assertion on its arguments that the uses allowed in the MUA-10 zone are rural, low-intensity uses, that Trout Creek will be protected by the County's existing development standards in the MUA-10 zone, and that development on the Subject Properties will not be visible from Highway 20 due to land use patterns between the Subject Properties and the highway.

I disagree with the Applicant that the County is not required to apply Goal 5 in this context. The administrative rule requires Goal 5 to be addressed if a PAPA allows new uses that "could" conflict with a Goal 5 resource. Because the MUA-10 zone allows uses not currently allowed in the F-2 zone, and because the Applicant is not proposing a specific development, any of the new uses allowed could conflict with the identified Goal 5 resources. The Applicant's arguments are more relevant to the remainder of the Goal 5 analysis and whether additional protections are needed.

As an alternative argument, the Applicant does provide an ESEE analysis as required by OAR 660-023-0040(1). In accordance with that administrative rule, the Applicant's analysis identifies conflicting uses, determines an impact area, analyzes the ESEE consequences, and proposes a "program" to achieve Goal 5 protections. The specific program proposed by the Applicant is to allow the conflicting uses in a limited way that protects the Goal 5 resources, as authorized by OAR 660-023-0040(5)(b). For Trout Creek, the proposed limit is the development standards in DCC Chapter 18.32 that the Applicant asserts are already

[6] OAR 660-023-0250(3)(b).

designed to protect environmental resources on the site, including streams. For the scenic resource, the proposed limit is the application of the County's Landscape Management (LM) combining zone, which already applies to a portion of the Subject Properties, and which the County employs to protect scenic resources along Highway 20.

COLW submitted comments arguing that the Applicant's ESEE is deficient. COLW first asserts that the Applicant's analysis "impermissibly groups several allowed uses in the MUA zone, when they would have varying impacts on inventoried Goal 5 resources." COLW cites to OAR 660-023-0040(2) as support for that argument. The language of the rule COLW cites does not support its argument, which is also counter to other rule language. OAR 660-023-0040(2) simply states that the local government "shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area." That rule imposes no requirement mandating or prohibiting the grouping of several uses as part of the analysis. In contrast, OAR 660-023-0040(4) provides that, in analyzing ESEE consequences, "[t]he analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses." (Emphasis added).[7]

COLW next argues that the Applicant's ESEE analysis "conflates ESEE consequences on Riparian Area resources and Scenic Views resources, when separate analyses are required." I disagree with COLW's characterization of the Applicant's analysis. Each of the steps in that analysis has separate references to Trout Creek and to scenic resources.

Finally, COLW argues that the Applicant's ESEE analysis "fails to consider consequences to the entire Scenic Views resource." Again, COLW's characterization of the Applicant's analysis is not accurate. The information provided by the Applicant states that the Subject Properties are not visible from any portion of Highway 20 and, therefore, that there is no impact to the identified scenic resource.

Other than the comments by COLW, which relate only to the methodology of the ESEE analysis and not the outcome, including the proposed "program" to achieve Goal 5, no other participant directly addresses the Goal 5 requirements.

Based on the foregoing and the materials in this record, I find that the Applicant has met its burden of demonstrating compliance with Goal 5.

Goal 14 – Urbanization

Goal 14 and its implementing rules "provide for an orderly and efficient transition from rural to urban land use." *See* OAR 660-015-0000(14).

[7] COLW also cites to OAR 660-023-0040(2) to support an argument that the ESEE analysis is deficient because it "only considers the consequences of a decision to allow development, not a decision to limit or prohibit development." I find that this argument is not developed enough to respond to. The rule COLW cites does not contain language relating to decisions that either allow, limit, or prohibit development, and I am unable to determine what criterion COLW believes is not satisfied.

COLW asserts that the Applicant has not demonstrated compliance with Goal 14. COLW's assertion is largely based on its characterization of the Application as proposing urban development. As noted in earlier findings, however, the Applicant is not proposing any urban uses and is instead proposing that the Subject Properties be zoned MUA-10. Goal 14 would therefore apply only if such a rezoning constitutes urbanization. I find that it does not.

As the Applicant notes, this question has been asked and answered by the County, as described in the LUBA case *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-049, Feb. 15, 2024). In that case, LUBA considered very similar facts where the County approved a plan amendment and zone change from a resource zone to the MUA-10 zone. Before turning to COLW's arguments in that case, LUBA noted that the County Board had made the following finding:

> Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by [the Land Conservation and Development Commission (LCDC)] as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non resource lands. Ordinance 2016-005. This amendment is acknowledged, <u>which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14</u>. (Emphasis added).

As described by LUBA, the County Board has already interpreted its Plan and Code to mean that all uses allowed in the MUA-10 zone are rural in nature. Based on the Board's prior interpretation, I find that the change in the Plan designation to RREA and zoning designation to MUA-10 does not result in urbanization of the Subject Property.

Based on the foregoing, I find that the Applicant has demonstrated the Application does not propose urban uses and Goal 14 is satisfied without the need to take an exception to that Goal.

3. <u>Zone Change</u>

Title 18 of the Deschutes County Code, County Zoning

The Application requests a Zone Change from F-2 to MUA-10. The criteria for rezoning a parcel are set forth in DCC Chapter 18.136. These findings address the applicable zone change criteria in the context of the Applicant's request. That is, the Applicant has also requested the Plan Amendment to change the Plan Map designation applicable to the Subject Properties – from the Forest designation to the RREA designation. As discussed in the findings above, I have found that the Applicant has initially met its burden of demonstrating compliance with the Plan Amendment criteria. The findings in this section are therefore based on the assumption that the Plan designation for the Subject Properties is RREA. If the County Board does not approve the Plan Amendment, these findings will need to be altered to address the request for a Zone Change based on whatever Plan designation the County Board approves.

Section 18.136.020, Rezoning Standards

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

A. That the change conforms with the Comprehensive Plan, and the change is consistent with the plan's introductory statement and goals.

This Code provision requires a consideration of the public interest based on whether: (1) the Zone Change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan's introductory statement and goals.

The Applicant, Staff, and other participants address this Code criterion by discussing specific Plan goals and policies. Before addressing those specific arguments, I note that, if the Plan Amendment is approved, it seems necessary to rezone the Subject Properties in some way. That is, the Forest designation of the Plan is implemented through the F-1 and F-2 zone designations. The RREA Plan designation, in contrast, is implemented only through the RR-10 and MUA-10 zones. There seems to be no basis under the Plan to allow the Plan Amendment to change the designation of the Subject Properties to RREA but to keep the F-2 zoning. Viewed through that lens, it seems that either the RR-10 or the MUA-10 zones inherently conform to the Plan in this context, and that the Applicant must show only that the Zone Change, as applied to the Subject Properties, is consistent with the Plan's introductory statement and goals.

The Staff Report notes that the County generally does not consider the Plan's goals and policies to be mandatory criteria. As described by Staff, the Plan's goals and policies are implemented through the Code, and that consistency with the Code demonstrates consistency with the Plan. No participant to this proceeding appears to dispute Staff's position that the goals and polices are not mandatory criteria or that the Plan is implemented through the Code. Nevertheless, because the Code itself requires a consideration of the Plan's statements and goals, and because some participants have questioned whether the Zone Change is consistent with those Plan provisions, I address those specific issues here.

The Application identifies potentially relevant Plan provisions by pointing to several goals and policies in the Plan set forth in Chapter 1, Comprehensive Planning, Chapter 2, Resource Management, and Chapter 3, Rural Growth Management. The Applicant states that the Application is consistent with those policies and goals. The Staff Report generally agrees with the Applicant's assessment of those policies and goals, but in some areas takes no position. With some exceptions, other participants to this proceeding assert various impacts from the Zone Change that are related to areas covered by Plan policies (e.g. water quality), but do so in a manner that does not directly relate to whether the Zone Change is consistent with the Plan. The remainder of the findings in this section address those Plan goals and policies that were specifically identified by those other participants.

Participants objecting to the Application assert that it is not consistent with Plan policy 2.3.1. That policy is to "Retain forest lands through Forest 1 and Forest 2 zoning." The basis for that argument appears to be that the Subject Properties are currently zoned F-2 and, therefore, any change to the zoning would be counter to this policy. As noted above, I have concluded that the review of the Plan policies should be done in the context of the approval of the Plan Amendment. Because, for purposes of this analysis, the

Applicant is relying on a Goal 4 Exception and the Subject Properties carry the RREA designation, I do not agree that the Subject Properties remain "forest land". The Zone Change is therefore not inconsistent with Plan policy 2.3.1.

Participants objecting to the Application also assert that it is not consistent with Plan policy 2.3.1. That policy is part of the same set of policies related to Goal 1 under Section 2.3 of the Plan. It identifies the specific characteristics of lands that should be zoned F-2, as opposed to that that should be zoned F-1. However, that policy rests on the assumption that the land is forest land and that the County should determine whether that land should be zoned either as F-1 or F-2. As just noted, for purposes of this analysis, the Applicant is relying on a Goal 4 Exception and the Subject Properties carry the RREA designation. The Subject Properties therefore do not remain "forest land" and the Zone Change is not inconsistent with Plan policy 2.3.3.

Based on the foregoing, and in the context of the approval of the requested Plan Amendment, I find that the Zone Change conforms with the Plan and is consistent with the introductory statements and policies of the Plan.

B. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.

DCC 18.32.010 contains the following purpose of the MUA10 zone:

> The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.

The Applicant states that the Zone Change will allow low-intensity residential uses, while also allowing uses recognized in DCC 18.32.020 and 18.32.030 as being appropriate in the MUA-10 zone. The Applicant also states that the uses allowed are lower intensity, and development can preserve open space and natural resources. The Staff Report agrees with the Applicant's assessment, and no other participant appears to argue that this Code provision is not satisfied.

Based on the foregoing, I find that this Code provision is satisfied.

/ / /

C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:

1. The availability and efficiency of providing necessary public services and facilities.

Only the Applicant and Staff directly address this Code provision. The Applicant notes that development in the MUA-10 zone generally does not rely on public services and facilities. For example, developments in rural areas generally must provide their own water and septic systems. For other facilities, like the transportation system, the Applicant relies on its transportation analysis to demonstrate the adequacy of those facilities. Comments in the record express concerns over groundwater, but those comments do not appear to assert that the availability of groundwater is either a necessary public service, or that it will be impacted by the uses allowed in the MUA-10 zone. The Applicant is not proposing any new development, and no participant has asserted that public services and facilities are insufficient to presently serve the Subject Properties. Any impact to public services and facilities can be assessed at the time of development review if and when a new development is proposed.

Based on the foregoing, and in the absence of more specific countervailing evidence or argument, I find that this Code provision is satisfied as set forth in the Application.

2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

The Applicant states that the Applicant's proposal will not affect surrounding land uses due to the low-intensity uses that are allowed in the MUA-10 zone. I agree with the Applicant that the comments made in opposition to the Application are primarily grounded on the assumption that the Subject Properties will be developed with urban uses, which the Applicant is not proposing. Further, as I have concluded above, the only Plan policies identified by other participants are generally not relevant, and no participants assert that the Zone Change will make surrounding land uses inconsistent with a Plan goal or policy.

Based on the foregoing, and in the absence of more specific countervailing evidence or argument, I find that this Code provision is satisfied as set forth in the Application.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

Although the Applicant and other participants address this criterion, they do so in the context of a potential change in circumstances on the physical ground of the Subject Properties. The Applicant, for example, notes the changes in the commercial viability of timber and a better understanding of the soil qualities on site.

I find that it is not necessary to address the difference in opinion of the Applicant and participants. As noted above, the Zone Change analysis relies on the assumption that the Plan designation for the Subject Properties is RREA. When the Subject Properties were last zoned, their Plan designation was Forestry. I

find that the change in Plan designation is, by itself, sufficient to show there has been a change in circumstances and, therefore, this Code provision is satisfied.

IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has met its burden of proof with respect to the standards for approving the requested Plan Amendment, Zone Change, and Goal 4 Exception. I can therefore recommend to the County Board of Commissioners that it can APPROVE the request in the Application based on the current record.

Dated this 25th day of June 2025

Tommy A. Brooks
Deschutes County Hearings Officer