

REVIEWED  
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LEGAL COUNSEL

For Recording Stamp Only

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

**FILE NUMBERS:** 247-22-000436-ZC, 247-22-000443-PA, 247-23-000651-MA

**SUBJECT PROPERTY/**

**OWNER/** DESTINY COURT PROPERTIES, LLC

**APPLICANT:** Map and Taxlot: 171207A000100

Account: 113037

Situs Address: 19975 DESTINY CT, BEND, OR 97703

**APPLICANT'S**

**ATTORNEY:** Elizabeth Dickson, Dickson Hatfield LLP

**STAFF PLANNER:** Caroline House, Senior Planner

Anthony Raguine, Principal Planner

**REQUEST:**

Comprehensive Plan Amendment from Agricultural to Rural Residential Exception Area and Zone Change from Exclusive Farm Use to Multiple Use Agricultural Zone.

**I. SUMMARY OF DECISION**

In this decision, the Board of County Commissioners ("Board") considers whether to approve the proposed Comprehensive Plan Amendment and Zone Change. Hearings Officer Frank recommended approval in his April 26, 2024, recommendation, after a Public Hearing held on February 27, 2024. No appeals were filed. Land Use File Numbers 247-22-000436-ZC, 247-22-000443-PA and 247-23-000051-MA contain the Hearings Officer's Recommendation ("Recommendation") and related documents as referenced herein. The Board considered the applications *de novo*, incorporating the Record below, and a public hearing before the Board was held on July 24, 2024.

On October 9, 2024, following deliberation, the Board voted 2-1 finding the applicant had met their burden of proof, and moved to uphold the Recommendation and approving the Comprehensive Plan Amendment and Zone Change applications on the subject property.

The Recommendation dated April 26, 2024, is hereby incorporated as part of this decision, including any and all interpretations of the County's code, and modified as follows. In the event of conflict, the findings in this decision control.

## **II. BASIC FINDINGS OF FACT:**

The Board adopts and incorporates by reference the code interpretations, findings of fact, and conclusions of law in the Recommendation as set forth in Section I, Applicable Criteria, and Section II, Basic Findings. The Recommendation is attached as Exhibit A to the Board's Decision. The following additions are made to the basic findings in the Recommendation.

- A. PROCEDURAL HISTORY:** A public hearing was held before a Hearings Officer on February 27, 2024, and the Recommendation was issued on April 26, 2024. The Board conducted a *de novo* hearing on July 24, 2024. The Board left the record open until August 7, 2024, for all parties to submit written legal argument; until August 14, 2024, for all parties to submit rebuttal; and until August 21, 2024, for applicant's final argument. The Board rendered its oral decision after deliberations on October 9, 2024, affirming the Recommendation and modifying the findings as described herein. This written Decision memorializes that decision.
  
- B. REVIEW PERIOD:** The applications were submitted on May 27, 2022. Planning Division deemed the applications incomplete on June 24, 2022. Applicant submitted First Supplement on November 23, 2022, a Second Supplement and Modification of Application on September 1, 2023. The 150-day clock does not apply to the applications for the Comprehensive Plan Amendment and Zone Change.

The Board takes note that the subject property achieved its current configuration via property line adjustment approval 247-23-000653-LL.

- C. PUBLIC COMMENTS:** Planning Division received three comments from the public between the issuance of the Recommendation and the close of the Public Record for public comment after the Board Public Hearing on August 14, 2024. The Planning Division also received one comment from a public agency, Department of Land Conservation and Development ("DLCD"), on August 7, 2024, in response to the Planning Division's inquiry about applicability of a recent statute adopted to allow Accessory Dwelling Units ("ADUs"). The Cherrie Brooks comment dated July 16, 2024,

did not address relevant criteria to the application. Consequently, the Board did not consider these comments. Carol Macbeth filed two comments on behalf of Central Oregon Land Watch, one on July 24, 2024, and a second comment on August 8, 2024. Both contained arguments regarding subjects raised before the Hearings Officer below, and introduced additional facts. Applicant addressed all relevant arguments raised within the allowed time periods for rebuttal, submitting supplemental evidence where needed. The Board considered all arguments raised in deliberations, finding the Macbeth arguments unpersuasive.

Planning Division's inquiry to DLCD addressed whether ADUs could be allowed on the Subject Property if it were rezoned. DLCD entered a comment into the Record on the afternoon of the last day of the Open Comment Period, noting that the unusual circumstances of the proposed rezone make the approval of ADUs "entirely up to the county..." [underline original]. Applicant, in rebuttal period, addressed the possibility of the rezone impact with additional evidence and argument. The Board considered the argument in deliberations, finding Applicant addressed the issue to the Board's satisfaction.

### **III. FINDINGS**

This Board adopts the Recommendation for Approval, as supplemented by noted Findings related to matters which arose after the Recommendation was issued.

#### **1. Subject Property as "Agricultural Land" with respect to Soils**

Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(A)

**FINDING:** The Board adopts the Recommendation unanimously, finding that the Subject Property is predominantly NRCS Class VII and VIII soils, and consequently is not Agricultural Land.

#### **2. Subject Property as "Agricultural Land" with respect to Factors**

Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(B)

This rule analyzes what constitutes "Agricultural Land" as referenced in Statewide Planning Goal 3. One of those factors is "existing and future availability of water for farm irrigation purposes." At the time of the Public Hearing before Hearings Officer Frank and in the Open Record period leading up to draft of the Recommendation by Hearings Officer Frank, confirmation from Swalley Irrigation District was not available to verify the status of irrigation water appurtenant to the Subject Property. The Hearings Officer's Findings noted on Page 46, paragraph 2, that irrigation rights did

exist at the Subject Property. He went on to note that existence may be suggestive of agricultural land, but standing alone, did not determine that the land was agricultural land.

On August 7, 2024, Applicant submitted Exhibit 42 into the Record before the Board. That Exhibit conclusively determined by letter from Swalley Irrigation District dated August 1, 2024, that there are no longer any Swalley water rights on the Subject Property.

**FINDING:** The Board adopts the Recommendation regarding “Agricultural Land” where it is determined that the Subject Property is not properly characterized as Agricultural Land. By correction, the Board finds that no irrigation water rights exist at the Subject Property, as evidenced by Exhibit 42 in the Record, Swalley Letter of No Appurtenant Water Rights. This does not change the Hearings Officer’s conclusion that the Subject Property is not Agricultural Land.

The Board adopts the Recommendation by a vote of 2 to 1, finding that the Subject Property is not Agricultural Land when considering factors established by the Goal, the Administrative Rules, Oregon Revised Statutes, and relevant common law.

### **3. Subject Property as “Agricultural Land” when considering Adjacent or Nearby Agricultural Lands**

Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(C)

**FINDING:** The Board unanimously adopts the Recommendation, finding no adjacent or nearby agricultural lands and no evidence to suggest that a nearby farm would benefit from agricultural use of the Subject Property including use as a storage or maintenance facility.

### **4. Goal 14 Exception Requirement**

Statewide Planning Goal 14

**FINDING:** The Board adopts the Recommendation by a vote of 2 to 1, finding that the Plan Amendment / Zone Change proposed will not result in urbanization such that an exception to Goal 14 is required.

### **5. Allowance of Accessory Dwelling Units under ORS 215.495, ORS 215.501 on Rural Lands, such as Subject Property**

Transportation Planning Rule, OAR 660-012-0060, DCC 18.116.310(E)(4)

A question posed by a member of the public at a public hearing preceding the subject application on July 24, 2024, raised the issue of whether ADUs would be allowed on rural lands rezoned without necessity of exception to Statewide Planning Goals under ORS 215.495 and ORS 215.501, recently effective. Such additional use could pose concerns related to increased density on rural lands and rural roadways. Planning Division staff addressed the question to the DLCD. DLCD's response was received and submitted into the Record on August 7, 2024. The Department's response was inconclusive, noting that "[t]he department concludes approved rezones of resource land could result in the development of ADUs if the county permits rural ADUs on non-resource lands."

Applicant subsequently submitted Transight Consulting Transportation's Errata, providing an analysis of possible ADU impacts resulting from approval of the subject rezone. It is entered into the Record as Exhibit 43. It concludes that the additional ADU-related trips would not violate applicable standards.

**FINDING:** The Board finds unanimously that ADUs, if allowed on the Subject Property, are not foreseen to reduce operation levels on OB Riley Road and Destiny Court to an unacceptable level of service, based on the expected trip generation for 14 ADUs. The Board further finds ADUs would not change the functional classification of existing roads, change standards implementing a functional classification system, or result in types of travel that are inconsistent with the functional classification of existing roads. For purposes of the Transportation Planning Rule (OAR 660-012-0060) a significant impact does not occur with or without the inclusion of ADUs on the Subject Property.

**IV. DECISION:**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant's application for a Deschutes Comprehensive Plan Amendment and Zone Change for the Subject Property.

Dated this \_\_\_\_\_ 2024

BOARD OF COUNTY COMMISSIONERS  
FOR DESCHUTES COUNTY

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Patti Adair, Chair

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Anthony DeBone, Vice Chair

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Phil Chang, Commissioner

**THIS DECISION BECOMES FINAL WHEN SIGNED. PARTIES MAY APPEAL THIS DECISION TO THE LAND USE BOARD OF APPEALS WITHIN 21 DAYS OF THE DATE ON WHICH THIS DECISION IS FINAL.**

**EXHIBIT**

- A.** Hearings Officer's Decision dated April 26, 2024