



Mailing Date:  
Thursday, April 2, 2026

COMMUNITY DEVELOPMENT

**NOTICE OF PUBLIC HEARING**

**HEARING FORMAT**

The Deschutes County Hearings Officer will conduct the public hearing as described below by video, telephone, and in person. Options for participating in the public hearing are detailed in the Public Hearing Participation section.

**PROJECT DESCRIPTION**

**FILE NUMBER(S):** 247-25-000645-PA, 646-ZC

**SUBJECT PROPERTY/  
OWNER/APPLICANT:**

Mailing Name: CINDER BUTTE ROCK PRODUCTS LLC  
Map and Taxlot: 1413330000500  
Account: 128625  
Situs Address: 395 NW PERSHALL WAY, REDMOND, OR 97756

Mailing Name: CINDER BUTTE ROCK PRODUCTS LLC  
Map and Taxlot: 1413330000400  
Account: 128626  
Situs Address: \*\*NO SITUS ADDRESS\*\*

**REQUEST:** Request for a Comprehensive Plan Amendment to change the designation of ±34.46 acres from Surface Mine (SM) to Rural Industrial (RI), a corresponding Zone Change to rezone ±30.88 acres from SM to RI, and a Resolution of Intent to Rezone ±3.58 acres from SM to RI.

**HEARING LOCATION:** Deschutes Services Building – First Floor – Barnes & Sawyer Rooms (1300 NW Wall Street, Bend, OR 97703) & Zoom

**HEARING DATE & TIME:** Thursday, April 30, 2026, at 1:00 p.m.

**STAFF PLANNER:** Haleigh King, Senior Planner  
[Haleigh.king@deschutes.org](mailto:Haleigh.king@deschutes.org)  
541-383-6710

**RECORD:**

Record items can be viewed and downloaded from:

<https://bit.ly/4ti3glb>



*Scan this code using your phone camera app and a direct link to the website listed above will load.*

**STANDARDS AND APPLICABLE CRITERIA:**

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:

Chapter 18.04, Title, Purpose, and Definitions

Chapter 18.52, Surface Mining Zone (SM)

Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

Chapter 18.84, Landscape Management Combining Zone (LM)

Chapter 18.100, Rural Industrial Zone (RI)

Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

Statewide Planning Goals

Oregon Administrative Rules (OAR), Chapter 660

**TIME LIMITS**

The Deschutes County Planning Division has set the following time limits for testimony at the hearing:

- Applicant: 30 minutes
- Public Agencies: 10 minutes
- General Public: 3 minutes
- Applicant Rebuttal: 10 minutes

Please note, the above time limits can be modified or eliminated by the Hearings Officer at their discretion.

**PUBLIC HEARING PARTICIPATION**

- Members of the public may listen, view, and/or participate in this hearing using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy

this link: <https://us02web.zoom.us/j/81065703770>. Using this option may require you to download the Zoom app to your device.

- Members of the public can access the meeting via telephone, dial 1-253-215-8782. When prompted, enter the following Webinar ID: 810-6570-3770.
- Written comments can also be submitted to the record. Please see the Document Submission section below for details regarding written submittals.
- The public can provide testimony in person at 1 pm in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend.

All documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost at the Deschutes County Community Development Department (CDD) at 117 NW Lafayette Avenue. Seven (7) days prior to the public hearing, a copy of the staff report will be available for inspection at no cost at CDD and on the website listed above. Copies of all documents, evidence and the staff report can be purchased at CDD for (25) cents a page.

**ALL INTERESTED PERSONS MAY APPEAR, BE HEARD, BE REPRESENTED BY COUNSEL, OR SEND WRITTEN SIGNED TESTIMONY. ANY PARTY TO THE APPLICATION IS ENTITLED TO A CONTINUANCE OF THE INITIAL EVIDENTIARY HEARING OR TO HAVE THE RECORD LEFT OPEN IN ACCORDANCE WITH SECTION 22.24.140 OF THE DESCHUTES COUNTY CODE.**

Failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please contact the staff planner identified above.

### **DOCUMENT SUBMISSION**

Any person may submit written comments on a proposed land use action. Documents may be submitted to our office in person, U.S. mail, or email.

#### **In Person**

We accept all printed documents.

#### **U.S. Mail**

Deschutes County Community Development  
Planning Division, Haleigh King  
P.O. Box 6005  
Bend, OR 97708-6005

## Email

Email submittals should be directed to [Haleigh.king@deschutes.org](mailto:Haleigh.king@deschutes.org).

## Limitations

- Deschutes County does not take responsibility for retrieving information from a website link or a personal cloud storage service. It is the submitter's responsibility to provide the specific information they wish to enter into the record. We will print the email which includes the link(s), however, we will not retrieve any information on behalf of the submitter.
- Deschutes County makes an effort to scan all submittals as soon as possible. Recognizing staff availability and workload, there is often a delay between the submittal of a document to the record, and when it is scanned and uploaded to Accela Citizen Access (ACA) and Deschutes County Property Information (DIAL).
- To ensure your submission is entered into the correct land use record, please specify the land use file number(s).
- For any open record period after a public hearing, electronic submittals are valid **if received by the County's server** by the deadline established for the land use action.

**NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.**

This Notice was mailed pursuant to Deschutes County Code Chapters 22.20 and 22.24.



| owner   | agent  | inCareof                       | address  | citySTZip   | type | cdd id            | email  |
|---|--|--------------------------------|--|---|------|-------------------|--|
| DEPT. OF GEOLOGY & MINERAL IND.<br>DESCHUTES CO. ASSESSOR   |  | Melissa Carley                 | 229 BROADALBIN ST, SW<br>ELECTRONIC  | Albany, OR 97321  | NOPH | 25-645-PA, 646-ZC | mlrr.info@dogami.oregon.gov  |
| DESCHUTES CO. ROAD DEPT.<br>DESCHUTES CO. SR. TRANS. PLANNER  | Cody Smith / Quinn Shubert<br>Tarik Rawlings |                                | ELECTRONIC<br>ELECTRONIC   |   | NOPH | 25-645-PA, 646-ZC | Cody.Smith@deschutes.org; quinn.shubert@deschutes.org<br>Tarik.Rawlings@deschutes.org    |
| ODOT REGION 4 PLANNING<br>ODOT Region 4 Planning  |  |                                | ELECTRONIC<br>63055 N. Highway 97, Bldg M                                    | Bend, OR 97703  | NOPH | 25-645-PA, 646-ZC | ODOTR4PLANMGR@odot.state.or.us   |
| REDMOND CITY PLANNING<br>CENTRAL OREGON IRRIGATION DIST.  | Kelly O'Rourke, Craig Horrell                |                                | 411 SW 9th St<br>ELECTRONIC  | Redmond, OR 97756   | NOPH | 25-645-PA, 646-ZC | kyle.roberts@redmondoregon.gov<br>LANDUSE@COID.ORG; CHORRELL@COID.ORG; ddowning@coid.org |
| Cinder Butte Rock Products, LLC<br>Schwabe, Williamson, and Wyatt   |  | C.B. Foss<br>D. Adam Smith     | 395 NW Pershall Way<br>360 SW Bond Street, Suite 500                         | Redmond, OR 97756<br>Bend, OR 97702   | NOPH | 25-645-PA, 646-ZC | cbfoss092@gmail.com<br>asmith@schwabe.com; drobinson@schwabe.com; jburgess@schwabe.com   |
| Central Oregon LandWatch<br>FERRIN, WILLIAM M & DANA L<br>4867 N HIGHWAY 97 LLC   |  | Carol Macbeth                  | 2843 NW Lolo Drive, Suite 200<br>6303 W MONONA DR<br>3350 CHESAPEAKE BAY AVE | Bend, OR 97703<br>GLENDALE, AZ 85308<br>DAVIS, CA 95616                       | NOPH | 25-645-PA, 646-ZC | carol@colw.org   |
| THORNBURGH, AMBERS J & BONNIE J<br>CINDER BUTTE ROCK PRODUCTS LLC<br>KNORR ROCK & LAND CO<br>O'NEIL INVESTMENTS LLC           |  |                                | 19419 W HWY 126<br>PO BOX 395<br>65258 85TH PL                               | REDMOND, OR 97756<br>TERREBONNE, OR 97760<br>BEND, OR 97703                   | NOPH | 25-645-PA, 646-ZC |  |
| HALL, ROSS M<br>DETZEL LIVING TRUST   | DETZEL, GORDON A & BARBARA R TTEES           |                                | 5827 SW HARVEST AVE<br>PO BOX 178<br>812 NW PERSHALL WAY                     | REDMOND, OR 97756<br>REDMOND, OR 97756<br>REDMOND, OR 97756                   | NOPH | 25-645-PA, 646-ZC |  |
| AGUILAR, RICARDO & CASTRO, SONIA<br>TAYLOR, WILLIS & EVANS, SHERYL A<br>BURHART, CHADRICK VERNON<br>DOVE, MICHAEL R & WENDY L |  |                                | 626 NW PERSHALL WAY<br>4431 N CANAL<br>21605 PALOMA DR<br>4315 NW CANAL BLVD | REDMOND, OR 97756<br>REDMOND, OR 97756<br>BEND, OR 97701<br>REDMOND, OR 97756 | NOPH | 25-645-PA, 646-ZC |  |
| 4-R EQUIPMENT LLC<br>PAT C DEAN REVOCABLE LIVING TRUST  | DEAN, PAT C TRUSTEE                          |                                | PO BOX 1669<br>5343 NW 19TH ST<br>20920 KACHINA AVE                          | REDMOND, OR 97756<br>TERREBONNE, OR 97760<br>REDMOND, OR 97756                | NOPH | 25-645-PA, 646-ZC |  |
| GARDNER, TRUDY GAY SMITH<br>KIRKLAND HOLDING 2 LLC<br>SATTLERLEE LAND & CATTLE LLC<br>ARREOLA, GERARDO                        |  | C/O KIRKLAND CAPITAL GROUP (A) | 525 RANDALL AVE #STE 100 PMB 507<br>5199 N HWY 97<br>2319 SW FISSURE LOOP N  | CHEYENNE, WY 82001<br>TERREBONNE, OR 97760<br>REDMOND, OR 97756               | NOPH | 25-645-PA, 646-ZC |  |
| B PIT LLC<br>TILLIA, TIMOTHY P<br>PERSHALL WAY LLC  |  | ATTN: RONALD J ROBINSON JR     | PO BOX 1669<br>4285 NW CANAL BLVD<br>20432 E VIA DE ARBOLES                  | REDMOND, OR 97756<br>REDMOND, OR 97756<br>QUEEN CREEK, AZ 85142               | NOPH | 25-645-PA, 646-ZC |  |



**STAFF REPORT**

**FILE NUMBER(S):** 247-25-000645-PA, 646-ZC

**SUBJECT PROPERTY/  
OWNER/APPLICANT:**

Mailing Name: CINDER BUTTE ROCK PRODUCTS LLC  
Map and Taxlot: 1413330000500  
Account: 128625  
Situs Address: 395 NW PERSHALL WAY, REDMOND, OR 97756

Mailing Name: CINDER BUTTE ROCK PRODUCTS LLC  
Map and Taxlot: 1413330000400  
Account: 128626  
Situs Address: **\*\*NO SITUS ADDRESS\*\***

**REQUEST:**

Request for a Comprehensive Plan Amendment to change the designation of ±34.46 acres from Surface Mine (SM) to Rural Industrial (RI), a corresponding Zone Change to rezone ±30.88 acres from SM to RI, and a Resolution of Intent to Rezone ±3.58 acres from SM to RI.

**STAFF CONTACT:**

Haleigh King, AICP, Senior Planner  
Phone: 541-383-6710  
Email: [Haleigh.King@deschutes.org](mailto:Haleigh.King@deschutes.org)

**RECORD:**

Record items can be viewed and downloaded from:  
<https://bit.ly/4ti3glb>



*Scan this code using your phone camera app and a direct link to the website listed above will load.*

**I. APPLICABLE CRITERIA**

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:

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Chapter 18.84, Landscape Management Combining Zone (LM)  
Chapter 18.100, Rural Industrial Zone (RI)  
Chapter 18.136, Amendments  
Title 22, Deschutes County Development Procedures Ordinance  
Deschutes County Comprehensive Plan  
Chapter 2, Resource Management  
Chapter 3, Rural Growth Management  
Appendix C, Transportation System Plan  
Oregon Administrative Rules (OAR), Chapter 660  
Division 12, Transportation Planning  
Division 15, Statewide Planning Goals and Guidelines  
Division 23, Procedures and Requirements for Complying with Goal 5

## II. **BASIC FINDINGS**

**LOT OF RECORD:** Pursuant to the Hearings Officer's decisions in Belveron (ZC-08-04) and Powell/Ramsey (PA-14-2), legal lot of record status is not applicable to an application for a plan amendment and zone change. Rather, the applicant would be required to receive lot of record verification, if required, prior to any development on the subject property. Therefore, this criterion does not apply.

**SITE DESCRIPTION:** Staff includes the applicant's site description from their Burden of Proof ("BoP") below:

The Plan Change Area is a part of Surface Mining Site No. 336 ("**Site No. 336**"). See ESEE for Site No. 336, **Exhibit 5**. The remaining 73.18-acre portion of the Mine Property is vacant scrub land with dispersed juniper trees, sagebrush and grasses. The Mine Property also contains telecommunications facilities pursuant to conditional use permits CU-85-104, CU-09-8, and CU-95-78. The Mine Property has no water rights, is not currently in farm use, and to Applicant's knowledge, has no history of farm use.

**Figure 1: Location Map and Proximity to Redmond UGB**



**PROPOSAL:** The Applicant requests a Comprehensive Plan Amendment to change the designation of ±34.46 acres from Surface Mine (SM) to Rural Industrial (RI), a corresponding Zone Change to rezone ±30.88 acres (“**Rezone Area**”) from SM to RI, and a Resolution of Intent to Rezone (“**ITR Area**”) ±3.58 acres from SM to RI. No development is proposed with this application. Staff has included the Applicant’s map showing the proposed changes as an attachment to this staff report.

The Applicant submitted transportation analysis prepared by Transight Consulting, LLC titled *Cinder Butte Rezone*, hereafter referred to as “transportation study.” The application materials also include a Geotechnical Report, titled *Cinder Butte Rock Products – Goal 5 Evaluation*, prepared by Parker Richmond, R.G., C.E.G., Senior Engineering Geologist of Carlson Geotechnical, hereafter referred to as “geotechnical report.”

Additionally, the Applicant has submitted an application form, a burden of proof statement, and other supplemental materials, all of which are included in the record for the subject applications.

**SURROUNDING LAND USES:** Staff includes the applicant's description of surrounding land uses from their narrative:

The Mine Property shares its western border with properties zoned rural residential (RR-10) and is bounded on the east by Highway 97. It also has exclusive [farm] use (EFU-TRB) on its north, northeast, and southwest borders, although mining and light industrial uses occupy those properties to the southeast. Similarly, light industrial uses appear to also occupy those properties in the multiple use agricultural (MUA-10) zone located on the southeast border along Highway 97. Across from the City of Redmond urban growth boundary, property zoned as urban holding (UH-10) is found southwest of the Mine Property.

**Figure 2 – Surrounding Zoning Designations**



**BACKGROUND:** The subject site was identified as containing mineral resources in the Deschutes County Goal 5 Aggregate inventory adopted by the Board on December 6, 1988. Adoption of this ordinance marked completion of the first step in gaining acknowledgement pursuant to Statewide Planning Goal 5 of the mineral and aggregate portion of Deschutes County's comprehensive plan, which had been remanded to the County pursuant to *Coats v. LCDC*.

Starting in May 1989, the Board held hearings on individual inventory sites to make final decisions on the economic, social, environmental and energy (ESEE) consequences of protecting or not protecting the mineral resources and the conflicting resources and uses. In October 1989, zoning decisions were made on sites that remained on the inventory after consideration by the Board.

In 1990, the County listed the property as Site No. 336 on the Goal 5 Inventory, adopted a site-specific ESEE analysis, and imposed the SM and Surface Mining Impact Area (SMIA) zoning (Ord No. 90-014, 90-025, 90-028, and 90-029). The ESEE did not identify the post mining uses or zoning.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on October 29, 2025, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings, October 29, 2025

I have reviewed the application materials for file no. 247-25-000645-PA, 646-ZC for a Plan Amendment to change the designation of ~34.50 acres from Surface Mine (SM) to Rural Industrial (RI), a corresponding Zone Change to rezone ~23 acres from SM to RI, and a Resolution of Intent to Rezone ~11.5 acres from SM to RI for the following properties:

Mailing Name: CINDER BUTTE ROCK PRODUCTS LLC  
Map and Taxlot: 1413330000500  
Account: 128625  
Situs Address: 395 NW PERSHALL WAY, REDMOND, OR 97756

Mailing Name: CINDER BUTTE ROCK PRODUCTS LLC  
Map and Taxlot: 1413330000400  
Account: 128626  
Situs Address: \*\*NO SITUS ADDRESS\*\*

The applicant's narrative statement (page 26) states that compliance with Oregon Statewide Planning Goal 12 will be demonstrated through a traffic report produced by Joe Bessman of Transight Consulting, LLC as Exhibit 9 of the application materials, to be provided in future supplemental application materials. Staff will review the traffic report and offer additional comments related to the Transportation Planning Rule under Goal 12 once that information is available.

Thank you for the initial coordination and I look forward to reviewing additional information and materials related to this proposal.

Deschutes County Senior Transportation Planner, Tarik Rawlings, April 2, 2026

Haleigh, my apologies – I've included a minor revision to my previous comment, please include this as the official comment:

Haleigh,

I have reviewed the Traffic Impact Analysis from Transight Consulting, LLC (dated March 25, 2026 and labeled Exhibit 14 of the supplemental application materials). While I generally agree with the assumptions and methodologies in the report, I've noted some limited revisions that would need to be addressed:

1. The vehicle trip generation potential for the requested Rural Industrial (RI) Zone noted on pages 6-7 of Exhibit 14 outlines a variety of ITE use categories to encompass the worst-case land use scenarios in the RI Zone. As noted below Table 3 of the report, the "maximum development scenario" likely relies on Manufacturing (ITE 140) as the assigned use category that best represents the worst-case scenario of the requested zoning district. Staff requests that the RI vehicle trip generation potential analysis and related Tables be revised to consider this maximum development scenario under the Manufacturing category (ITE 140).
2. The trip distribution and assignment analysis outlined on page 11 of the report appears to consider only right-in/right-out movements for US 97/Pershall when staff's understanding of ODOT's STIP project description of this intersection is that left-in movements would also be allowed. Staff requests that the trip distribution and assignment section of the report be revised to consider these additional details.

Thank you for the ongoing coordination and please let me know if there are any questions.

Deschutes County Transportation Planner, Tarik Rawlings, April 21, 2026

Haleigh – I have reviewed the memorandum from Transight Consulting, LLC (dated April 20, 2026) and agree with the assumptions, methodology, and conclusions therein. With these revisions in record, addressing worst-case scenario and left-in movement considerations for US 97/O'Neil Hwy – Pershall Ave, I agree that the proposal complies with Goal 12 and no further revisions are requested from the applicant in terms of transportation analysis.

Thank you for the continued coordination and please let me know if there is anything else needed.

Oregon Department of Transportation, Don Morehouse, April 7, 2026

- The STIP project at US97/Pershall - O'Neil will allow right-in/right-out AND left in (US97 NB and SB left turn movements. The text seems to infer only RIRO movements. Does this alter the trip distribution shown?
- Paragraph below Figure 6 says project will not permit any left-turns from any approach. This is not accurate as the project will restrict through and left turns from Pershal[sic] and O'Neil, but will allow NB and SB left turns from US97.

- 2040 No-Build and Build volumes do not accurately portray turning movements at US97/[Pershall]. NB and SB left turns from US97 will be allowed.
- 2040 conditions should be updated to reflect accurate turning [movements](NB and SB left turns from US97 will be allowed).
- Defer to County as to if Trip [Generation] Worst Case [Scenario] analysis is acceptable for proposed land use change.
- Intersection #5, with movements that will be allowed with the ODOT US 97/O'Neill STIP project, the intersection may add trips and it would be a valuable piece of information to identify how many site trips could utilize the intersection [sic], especially if it takes trips off of the local system.

Department of Geology and Mineral Industries, Melissa Carley

You are correct that Bob Houston is longer the correct contact for sending notice. Bob Houston left DOGAMI in 2021. The best way to send notice to MLRR staff is via the mlrr.info@dogami.oregon.gov email address. It will be received by our administrative staff and passed on to a technical staff member for review. I'm currently unable to answer the questions in your email without more specific information. Are you referring to a specific portion of the site or the whole tax lot? What do you mean by fully mined? One of the biggest unknowns is that DOGAMI does not have an Operating Permit application for the site following the loss of the Limited Exemption and so we do not know if the former limited exempt area will continue to be used as part of the mining operation.

Central Oregon Irrigation District, Daniel S Downing

Please be advised that Central Oregon Irrigation District (COID) has reviewed the application received on October 29, 2025, for the above reference project located at 395 NW PERSHALL WAY, REDMOND, OR 97756; Tax lot(s): 1413330000500. The applicant is requesting: Request for a Comprehensive Plan Amendment to change the designation of ±34.50 acres from Surface Mine (SM) to Rural Industrial(RI), a corresponding Zone Change to rezone ±23 acres from SM to RI, and an Resolution of Intent to Rezone ±11.50 acres from SM to RI. COID has no facilities or water rights on the subject property; however, COID has its F lateral that runs to the north of the project area. COID requests to review and approve any plan sets that alter or affect this facility. (No comments).

City of Redmond Engineering, Lindsey Cromsig, PE

Hi Haleigh,

I reviewed this against City code and don't have any substantial comments. Provided below are some notes for your reference:

- I reviewed the proposed impacts at the study intersections (1, 3, 4, 6, and 7). I assumed ODOT/County would look at all others.
  - None of the intersections are on our SDC list, so normally we would collect proportionate payments towards these intersections if there were failures reported. I didn't see any failures reported so we agree no mitigations are needed.
- Upon future development and review of a Subdivision or Site Development Application (or similar), we'd like to ensure that the project frontage on Pershall is brought up to City standards, but I recognize this comment may be too early to include at this point. Pershall would include a 3-lane section, with bike lanes on both sides, curb on both sides, sidewalk on the north side, and street trees on the north side.
- Please also note that two other planned developments, Cinderview West (900 NW PERSHALL WAY) and Canyon Trails Ph 3 (taxlot 141333CA00100) are conditioned to rebuild 10<sup>th</sup>/Pershall so it is at a 90\* angle. They'll also improve portions of Pershall with a 3-lane section.

Please let me know if you have any questions for us as you review this further. Thanks for including us in the review process.

The following agencies did not respond to the notice: Deschutes County Assessor, Deschutes County Onsite Wastewater, Deschutes County Road Department, Redmond City Planning, and Redmond Fire & Rescue.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 250 feet of the subject property on October 29, 2025. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on November 13, 2025. One public comment from Central Oregon LandWatch was received, noted below and included in the record.

Central Oregon LandWatch, Carol Macbeth, November 21, 2025

LandWatch is concerned that the above application to convert rural land to urban industrial use does not demonstrate compliance with Goal 5 or Goal 14 as required for a PAPA, pursuant to ORS 197.175(2)(a).

The scenic view corridor along Hwy 97 from Redmond to Terrebonne is protected as a Goal 5-listed resource. The subject property lies within the scenic view corridor. The application fails to show compliance with Goal 5 and with Deschutes County's acknowledged program to achieve Goal 5 as required by ORS 197.175(2)(a) as that statute has been interpreted by the appellate courts.

The subject property is rural land. The application fails to demonstrate that the proposal does not convert rural land to urban use as explicitly required by the Supreme Court in *1000*

*Friends v. DLCD*, 301 Or 447, 724 P.2d 268 (1985). The application erroneously relies on past amendments to the acknowledged comprehensive plan though to do so is impermissible pursuant to ORS 197.175(2)(a) as the Court of Appeals has held not once, not twice, but three times, beginning in 1985. An exception to Goal 14 is required but none is justified in the application.

For the above reasons LandWatch recommends denial. Please consider us a party to these proceedings and notify us of any further opportunities to participate.

LandWatch requests to receive notice in this case and in all other cases by mail in addition to by email.

Our mailing address is:  
Central Oregon LandWatch  
2843 NW Lolo Drive, Suite 200  
Bend, OR 97703

Best regards,  
Carol Macbeth

**NOTICE REQUIREMENT:** On April 2, 2026, the Planning Division mailed a Notice of Public Hearing to all property owners within 250 feet of the subject property, public agencies, and parties. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, April 5, 2026. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on March 25, 2026.

**REVIEW PERIOD:** According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

### **III. FINDINGS & CONCLUSIONS**

#### **Title 18 of the Deschutes County Code, County Zoning**

##### **Chapter 18.100, Rural Industrial Zone**

**FINDING:** The Rural Industrial Zone Chapter does not contain a purpose statement.

##### **Chapter 18.52, Surface Mining Zone**

Section 18.52.200, Termination Of The Surface Mining Zoning And Surrounding Surface Mining Impact Area Combining Zone

- A. *When a surface mining site has been fully or partially mined, and the operator demonstrates that a significant resource no longer exists on the site, and that the site has been reclaimed in accordance with the reclamation plan approved by DOGAMI or the reclamation provisions of DCC 18, the property shall be rezoned to the subsequent use zone identified in the surface mining element of the Comprehensive Plan.***

**FINDING:** The submitted Burden of Proof includes the following response to this criterion:

This standard requires that Site No. 336be: 1) fully or partially mined; 2) no longer containing a significant resource; and 3) reclaimed in accordance with the reclamation plan approved by DOGAMI. The portion of the Rezone Area within the limited exemption area has been fully mined out and has no remaining significant cinder resources. Similarly, the portion of the Rezone Area outside of the limited exemption area has never had significant resources that can be economically mined. Last, the ITR Area will have no significant cinder resources remaining after August 2026. The Rezone Area and the ITR Area are not subject to DOGAMI reclamation requirements either because they are exempt under the DOGAMI limited exemption (see **Exhibit 7**), or because those areas were never mined. To Cinder Butte's knowledge the County has not imposed any reclamation plan or requirement on Site No. 336, and it is not subject to any County reclamation requirements pursuant to DCC Chapter 18.

The mining element of the Comprehensive Plan does not identify a subsequent use for Site No. 336, and subsequent uses are not identified in the ESEE analysis for Site No. 336 adopted by the County. See **Exhibit 5**. The first two criteria are met, and the last criterion is not applicable to the Plan Change Area.

As described in Kimble (PA-07, ZC-07-2), this standard requires that Site No. 336: 1) be fully or partially mined; 2) no longer contains a significant resource; 3) be reclaimed in accordance with the reclamation plan approved by DOGAMI; and 4) be rezoned to the subsequent use zone identified in the surface mining element of the Comprehensive Plan. The first two prongs are addressed in the responses to OAR 660-023-0180, below, which sets out the standards for determining whether an aggregate resource is significant.

Staff addresses each prong of the criteria below:

1. The site has been fully or partially mined

According to the applicant, the mining area within Site No. 336 and subject to the current request, "...has been fully mined out and has no remaining significant cinder resources." Further, the property owner and mine operator signed an affidavit (Applicant's Exhibit 13) stating the following:

2  
3 5. The portions of the Rezone Area that are not subject to the limited  
4 exemption (as indicated in the attached site plan) do not contain, and have never  
5 contained, significant cinder resources that can be economically mined. In the  
6 northernmost Rezone Area lying north of the Intent to Rezone Area, cinders are  
7 present but mixed with soils, rendering extraction challenging and economically  
8 unfeasible to mine. In the southern Rezone Area between the southern boundary of  
9 the limited exemption area and the southern property boundary, extraction is  
10 economically unfeasible.  
11  
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Staff notes that neither DCC 18.52 nor DCC 18.04 define “partially mined.” Staff finds the totality of evidence indicates Site No. 336 has been partially mined. There is no evidence in the record indicating it has not been partially mined and mine operations have been conducted on this property since the late 1940s. Aerial imagery, as shown in Figure One and Two, indicates the site has been partially mined due to the presence of cinder pits and excavated areas.

Further, the current property owner and mine operator states they have been mining the site since 1993.

Based on the evidence in the record, staff finds that the subject site has been partially mined. However, Staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

## 2. A significant resource no longer exists on the site

The Board in *Kimble* (PA-07-2, ZC-07-2) held that the term ‘significant resource’ is not defined in Title 18 or the Comprehensive Plan. The Board also held that a plan amendment and zone change to rezone an inventoried surface mining site constitutes a post-acknowledgement plan amendment (PAPA) and therefore the provisions of OAR 660-023-0180 concerning mineral and aggregate resources apply to such an application to the extent they reasonably can be applied to a decision to remove a site from the County’s adopted inventory. The Board found that OAR 660-023-180(3) identifies the pertinent standards for determining the “significance” of a mineral and aggregate resource.

Staff addresses the significance standard under the applicable OAR section below. To the extent the request complies with the applicable section of OAR 660-023-180(3), the Hearing’s Officer may find this test, pursuant to 18.52.200, is also met. However, Staff asks the Hearings Officer to amend or

add to these findings as the Hearings Officer sees fit.

3. The site has been reclaimed according to DOGAMI specifications.

Staff repeats the applicant's statement in part below as it pertains to this third prong:

The Rezone Area and the ITR Area are not subject to DOGAMI reclamation requirements either because they are exempt under the DOGAMI limited exemption (see **Exhibit 7**), or because those areas were never mined. To Cinder Butte's knowledge the County has not imposed any reclamation plan or requirement on Site No. 336, and it is not subject to any County reclamation requirements pursuant to DCC Chapter 18.

Staff did not receive a comment from DOGAMI regarding any official reclamation plan and DOGAMI renewal documentation provided to the County for the Grant of Limited Exemption permits indicate the permittee is granted an exemption from the requirements for a reclamation plan. Based on this evidence, staff agrees that it does not appear a DOGAMI reclamation plan exists or was required by Title 18 since the mine was in operation prior to codification of the Surface Mining Zone requirements.

4. The property shall be rezoned to the subsequent use zone identified in the surface mining element of the Comprehensive Plan.

Staff agrees with the applicant that the evidence in the record shows the surface mining element in the Comprehensive Plan and the ESSE for Site No. 336 on the Goal 5 inventory do not identify a subsequent use or zone for the subject property. A similar issue was addressed in *Tumalo Irrigation District*, where the Board stated:

*Ordinarily, the ESEE identifies the post-mining uses and zoning for properties deemed Goal 5 significant mineral resources. The ESEE for the subject property does not include any such discussion. The Board's interpretation of this omission is that had the subject property been classified as agricultural land, then the ESEE would have specified EFU zoning. The ESEE for other mining sites in Deschutes County make such a designation and specify such a post-mining use.*

LUBA, in *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019), concluded that the BOCC's interpretation "of the ESEE analysis for the property and of the purpose of the SM zoning designation is not inconsistent with the express language of either DCCP [Deschutes County Comprehensive Plan] provision and we are required to affirm it."

For these reasons, Staff agrees with the applicant that Comprehensive Plan does not identify a subsequent use or zone for the portion of the subject property subject to the rezone request.

- B. Concurrent with such rezoning, any surface mining impact area combining zone which surrounds the rezoned surface mining site shall be removed. Rezoning shall be subject to DCC 18.136 and all other applicable sections of DCC 18, the Comprehensive Plan and DCC Title 22, the Uniform Development Procedures**

## **Ordinance.**

**FINDING:** Staff notes this criterion is contingent on approval of the subject Comprehensive Plan Amendment and Zone Change. If the subject application is ultimately approved by the Board of County Commissioners, the adopting Ordinance will also remove the Surface Mining Impact Area Combining Zone associated with the property.

### **Chapter 18.136, Amendments**

#### Section 18.136.010, Amendments

***DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.***

**FINDING:** The Applicant, also the property owner, has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant has filed the required Planning Division's land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

#### 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.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

As understood by Applicant, this paragraph establishes two requirements: (1) that the zone change conforms to the Comprehensive Plan; and (2) that the change is consistent with the Comprehensive Plan's introductory statement and goals. Both requirements are addressed below:

**1. Conformance with the Comprehensive Plan:** Applicant proposes a plan amendment to change the Deschutes County Comprehensive Plan designation of the Plan Change Area from Surface Mine to Rural Industrial. The proposed rezoning from SM to RI is required for consistency with the Plan Change Area's proposed new plan designation.

**2. Consistency with the Plan's Introductory Statement and Goals.** In previous decisions,

County Hearings Officers found the Comprehensive Plan's introductory statement and goals are not approval criteria for proposed plan amendments and zone changes.<sup>1</sup> Notwithstanding that, however, the Hearings Officer in the *Porter Kelly Burns Landholdings, LLC* decision (247-16-000317-ZC/318-PA) ("*Landholdings*") found that depending on the language, some plan provisions may apply. That Hearings Officer further found the following amended Comprehensive Plan goals and policies discussed below require consideration. See *Powell/Ramsey* decision (PA-14-2/ZC-14-2) and *Landholdings* decision.

The present application is nevertheless consistent with the introductory statement because the requested change, as demonstrated herein, is consistent with State law and County Comprehensive Plan provisions and zoning code provisions implementing the Statewide Planning Goals.<sup>2</sup>

Staff agrees with the Applicant's analysis and finds the above provision to be met based on Comprehensive Plan conformance as demonstrated in subsequent findings. Relevant sections of the Deschutes County Comprehensive Plan are reviewed below within this Staff Report. In previous comprehensive plan and zone change recommendations<sup>3</sup> to the Board of County Commissioners, Hearings Officers have found that the introductory statement of the Comprehensive Plan is aspirational in nature and not necessarily approval criteria. The Board affirmed this finding in its approvals.

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

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Cinder Butte is proposing to change the zone classification from SM to RI. Approval of the application is consistent with the purpose of the RI zoning district, which can be inferred from the outright approved uses stated in DCC 18.100.010:

**Farming or forest use.**

**Primary processing, packaging, treatment, bulk storage and distribution of the following products:**

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<sup>1</sup> See *Powell/Ramsey* decision (PA-14-2/ZC-14-2) and *Landholdings* decision (247-16-000317-ZC/318-PA).

<sup>2</sup> This application addresses the goals and policies as set forth in the "2030 Comprehensive Plan." Although the County recently adopted Ordinance No. 2025-007 re-adopted the "2040 Comprehensive Plan," section 5 of the ordinance clarifies that if appealed, the effective date of the new 2040 Comprehensive Plan will be "the date the ordinance is no longer subject to appeal." On September 22, 2025, Central Oregon LandWatch appealed Ordinance No. 2025-007, and that appeal has not yet been resolved. Accordingly, the "2030 Comprehensive Plan" is still applicable because the "2040 Comprehensive Plan" is not yet effective.

<sup>3</sup> *Powell/Ramsey* decision (PA-14-2, ZC-14-2) and *Landholdings* Decision (247-16-000317-ZC, 318-PA).

**Agricultural products, including foodstuffs, animal and fish products, and animal feeds.**

**Ornamental horticultural products and nurseries.**

**Softwood and hardwood products excluding pulp and paper manufacturing.**

**Sand, gravel, clay and other mineral products.**

**Residence for caretaker or night watchman on property.**

**Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck.**

**Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no outside storage is permitted unless enclosed by sight-obscuring fencing.**

**Ice or cold storage plant.**

**Wholesale distribution outlet including warehousing, but excluding open outside storage.**

**Welding, sheet metal or machine shop provided such is wholly enclosed within a building or all outside storage is enclosed by sight obscuring fencing.**

**Kennel or a Veterinary clinic.**

**Lumber manufacturing and wood processing except pulp and paper manufacturing.**

**Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.**

**Class III road or street project.**

**Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.**

The Plan Change Area has been used for surface mining for decades, a use related to the outright allowed use of “[p]rimary processing, packaging, treatment, bulk storage and distribution of ...[s]and, gravel, clay and other mineral products.” Other allowed uses in the RI zone fit with the existing uses in the surrounding area, which include a metal fabrication shop, a butcher shop and game processing facility, telecommunications facilities, farms, and other surface mines. The rezoning of the Subject Property to RI would establish an orderly

transition of the exhausted portion of Site No. 336 to uses that fit with existing surrounding uses.

Staff notes Section 3.4 of the Deschutes County Comprehensive Plan (DCCP), includes the following language for the rural industrial designation:

***Rural Industrial***

***The county may apply the Rural Industrial plan designation to specific property within existing Rural Industrial exception areas, or to any other specific property that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, this Comprehensive Plan and the Deschutes County Development Code, and that is located outside unincorporated communities and urban growth boundaries. The Rural Industrial plan designation and zoning brings these areas and specific properties into compliance with state rules by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.***

The subject property is not within existing Rural Industrial exception areas and is located outside unincorporated communities and urban growth boundaries. Therefore, the property must be found to satisfy the requirements for a Comprehensive Plan designation change set forth by State Statute, Oregon Administrative Rules, the DCCP and the Deschutes County Development Code. As stated in Section 3.4 of the DCCP, quoted above, the RI plan designation and zoning brings specific properties, such as the subject property, into compliance with state rules “by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.”

The BOCC adopted the following Hearings Officer Decision findings as part of their *LBNW, LCC* decision (247-21-0000881-PA/882-ZC):

...The County may apply the RI plan designation to any other specific property (outside of an RI exception area, and outside unincorporated communities and urban growth boundaries) that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, the Deschutes County Comprehensive Plan (“DCCP”) and the Deschutes County Development Code. The Hearings Officer finds that the fact the subject property is outside of an RI exception area does not preclude consideration of the application.

There is no longer a “purpose” statement in DCC Chapter 18.100 regarding the intent of the RI zone.<sup>4</sup> Chapter 18.100 merely sets forth uses permitted outright, conditional uses, use

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<sup>4</sup> Former DCC 18.100.010 stated that the purpose of the RI zone is “to encourage employment opportunities in rural areas and to promote the appropriate economic development of rural service centers which are rapidly becoming urbanized and soon to be full-service incorporated cities, while protecting the existing rural character of the area as well as preserving or enhancing the air, water and land resources of the area.” As amended in 2021, there is no longer a purpose statement in this chapter concerning the RI zone.

limitations, dimensional standards, off-street parking and loading requirements, site design, “additional requirements” and solar setback requirements and includes a separate section concerning a limited use combining zone, Deschutes Junction. Without a “purpose and intent” statement for the RI zone, the Hearings Officer cannot make findings as to whether the application is consistent with the proposed zone classification’s purpose and intent.

As stated in Section 3.4 of the Comprehensive Plan, RI plan designation and zoning brings specific properties into compliance with state rules “by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.” The Hearings Officer finds the applications are consistent with the general statement in the DCCP regarding RI plan designation and zoning, given that the RI zone does not allow urban uses. The Hearings Officer finds that the proposed change in designation and zone classification to RI will ensure that the property remains rural and that the uses allowed are less intensive than those allowed in unincorporated communities.

In addition to the applicant’s narrative, Staff believes the same findings noted above are appropriate for the subject request but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

**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.**

**FINDING:** Although there are no plans to develop the properties in their current state, the above criterion specifically asks if the proposed zone change will *presently* serve public health, safety, and welfare. The Applicant provided the following response in the submitted burden of proof statement:

Necessary public facilities and services are available to serve the Plan Change Area, including electric power from Central Electric Cooperative. Applicant intends to obtain will serve letter from a water service utility or explore well-drilling options when development of the Plan Change Area is contemplated. Transportation access to the property is available from Highway 97 and NW Pershall Way. The Mine Property receives police services from the Deschutes County Sheriff. It is in Redmond Fire and Rescue District and receiving assessments from the district. See **Exhibit 8**. Neighboring properties contain a variety of commercial, industrial and residential uses. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare.

Staff agrees with the Applicant’s response and further notes the subject property is bordered to the south by NW Pershall Way, which is a County-maintained rural collector. The property is bordered to the east by State Highway 97. The property does not presently have direct access to State Highway 97, but has direct access from NW Pershall Way. The Applicant provided two well logs from

nearby properties indicating static water levels ranging from 275 to 290 feet, thus demonstrating water availability in the general area. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. No issues have been identified in the record regarding service provision to the subject property.

Prior to development of the properties, the Applicant would be required to comply with the applicable requirements of the Deschutes County Code. Through these development review processes, assurance of adequate public services and facilities will be verified. Staff finds this provision is met.

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

**FINDING:** The Applicant provided the following response in the submitted burden of proof statement:

RI zoning for the Plan Change Area is consistent with the specific goals and policies in the County's Comprehensive Plan, as discussed above. RI zoning allows rural uses consistent with the uses of many other properties in the area of the Plan Change Area. The zone change will not impose new impacts on the EFU-zoned land adjacent to or nearby the Plan Change Area (to the north, northeast, and southwest of the Mine Property) because many of those properties are engaged as hobby farms, or already developed in rural commercial or industrial uses similar to the allowed uses under the RI zone, making the proposed RI zoning for the Plan Change Area consistent with existing zoning. In all events, the permitted RI uses are less impactful on EFU lands than the existing surface mining activities at the ITR Area.

The Applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. Staff finds the Applicant has demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan, and asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

**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.***

**FINDING:** The Applicant provided the following response in the submitted burden of proof statement:

As Cinder Butte has exhausted the cinder resources of the Rezone Area already and will exhaust the cinder resources of the ITR Area by August 2026, the circumstances of the Plan Change Area have changed since it was zoned as SM in 1980.<sup>5</sup> The foregoing qualifies as a change in circumstances under the Code.

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<sup>5</sup> To applicant's knowledge, the Mine Property has been zoned as SM since at least 1980, according to the 1980 zoning map attached as **Exhibit 10**.

Provided the site no longer contains a significant resource and is eligible to be rezoned pursuant to DCC 18.52.200, Staff finds the exhaustion of the resource and termination of mining constitute a change in circumstances since the property was last zoned. However, Staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

Additional requirements for changing conditions related to surface mining are addressed in the responses to DCC 18.52.200, above.

Section 18.136.030, Resolution of Intent to Rezone

- A. *If from the facts presented and findings and the report and recommendations of the Hearing Officer, as required by this Section, the County Commission determines that the public health, safety, welfare and convenience will be best served by a proposed change of zone, the County Commission may indicate its general approval in principal of the proposed rezoning by the adoption of a "resolution of intent to rezone." This resolution shall include any conditions, stipulations or limitations which the County Commission may feel necessary to require in the public interest as a prerequisite to final action, including those provisions that the County Commission may feel necessary to prevent speculative holding of property after rezoning. Such a resolution shall not be used to justify "spot zoning" or to create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning.***
  
- B. *The fulfillment of all conditions, stipulations and limitations contained in the resolution on the part of the applicant shall make such a resolution a binding commitment on the Board of County Commissioners. Upon completion of compliance action by the applicant, the Board shall, by ordinance, effect such rezoning. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including any time limit placed in the resolution, shall render the resolution null and void automatically and without notice, unless an extension is granted by the Board.***
  
- C. *Content of Site Plan. Where a site plan is required pursuant to Chapter 19.92, it shall include location of existing and proposed buildings, structures, accesses, off street parking and loading spaces and landscaping; existing and proposed topography; mechanical roof facilities, if subject property is so oriented as to become part of the view from adjacent properties; architectural perspective, layout and all elevations drawn without exaggerations, except where noted, including locations, area and design of signs and all landscaping.***

**FINDING:** The Applicant provided the following response in the submitted burden of proof statement:

For the reasons provided throughout this application supporting the plan change and rezone

for the Rezone Area, Cinder Butte requests approval for intent to rezone the ITR Area upon exhaustion of the cinder resources in that portion of the Plan Change Area. The only difference between the Rezone Area and ITR Area as of the date of this Application's submittal is that ITR Area is not yet exhausted of cinder resources. Accordingly, Cinder Butte proposes conditioning approval of rezoning the ITR Area upon exhaustion of the cinder resources in the ITR area.

The updated narrative from the Applicant, dated March 24, 2026 also includes the following information regarding the revised ITR area:

Since submitting the original application, the Applicant has concluded all mining in what was previously proposed as the 11.50-acre Intent to Rezone Area-2. In consultation with DOGAMI and County staff, the Applicant is concurrently submitting a site plan application to the County to permit expanded cinder mining to the west of the historic mine site. The smaller 3.58-acre ITR area now shown by Exhibit 16 will be utilized for operations and processing activities as cinder mining expands and proceeds to the west. Those activities will follow the mining and ultimately exit the 3.58-acre ITR area, allowing that area to then be fully rezoned following the process established by DCC 18.136.030. Notably, the 3.58-acre ITR area qualifies for rezoning now pursuant to DCC 18.52.200 as that acreage has been "fully mined," but the Applicant is electing to maintain that acreage subject to the ITR status to account for the expanded mining operations to the west.

As noted in the applicant's response, the ITR area has been reduced to 3.58 acres. The applicant asserts this area is fully mined but the applicant wants to pursue the intent to rezone process so this area can be utilized in conjunction with a westward expansion of the surface mining operations on the subject property. The applicant submitted a Site Plan application<sup>6</sup> on March 24, 2026, requesting approval to expand surface mine operations to the west of the current areas proposed to be redesignated and rezoned. That application is pending as of the date of this staff report. Future development of the ITR area is not subject to DCC 19.92; therefore, a site plan pursuant to DCC 19.92 is not required.

As part of this decision, the Board may indicate their general approval in principle of the proposed rezone by the adoption of a Resolution of Intent to Rezone. Upon completion of any compliance action by the applicant, the Board shall, by ordinance, effect such rezoning.

The Applicant provided additional narrative on April 21, 2026, regarding the time limit to act on the Intent to Rezone:

After conferring with our client, we respectfully request that the County allow Applicant 5-8 years to rezone the ±3.58-acre portion of the subject property for which the intent to rezone (ITR) is requested.

Applicant would like to have an initial 5-year period to rezone the ITR area, with options to

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<sup>6</sup> File No. 247-26-000176-SP

extend by an additional 3 years. This period of time is necessary because of the practical limitations of applicant's mining the new mining area (i.e. the ±33-acre portion of the subject property under 247-26-000176-SP). As noted in Applicant's narrative for 247-26-000176-SP, Applicant will continue using the ITR area for processing materials mined in the new mine area until Applicant can switch to processing mined materials in the "future processing area." Simply put, it will take Applicant 5-8 years to transition to processing within the future processing area, which is when Applicant will no longer need to do its processing within the ITR area and it can commence the rezone of the ITR area.

Based on the reasons provided by the Applicant above, Staff finds it reasonable to allow a five-year duration for the Resolution of Intent to Rezone.

For these reasons, staff suggests the following conditions of approval for consideration:

1. The Resolution of Intent to Rezone shall expire five (5) years from the date this approval Decision is final, unless the conditions and stipulations, if any, set forth above have been satisfied or an extension is granted pursuant to DCC Title 22.
2. The date the above described decision is final shall be the date the final County decision of approval is signed and mailed or, if the final County decision is appealed, the date the final appellate body affirms the County decision or dismisses the appeal.

## **Deschutes County Comprehensive Plan**

### **Chapter 1, Comprehensive Planning**

#### Section 1.3, Land Use Planning

***Goal 1, Maintain an open and public land use process in which decisions are based on the objective evaluation of facts.***

**FINDING:** The subject application is being evaluated based on an objective review of compliance with Statewide Planning Goals, Deschutes County Comprehensive Plan policies, and Oregon Administrative Rules. A public hearing will be held before a Hearings Officer on April 30, 2026, and members of the public can attend and testify at that hearing. Pursuant to DCC 22.28.030, the Board of County Commissioners will take final action on the application and may choose to either adopt the Hearings Officer findings or conduct their own hearing. This Comprehensive Plan Amendment and Zone Change application will be evaluated through an open process that allows for public input and follows Deschutes County's Procedures Ordinance.

Staff finds that within each of the steps described above, there is an open and public process that is based on an objective evaluation of facts. This criterion will be met.

### **Chapter 2, Resource Management**

## Section 2.2, Agricultural Lands Policies

***Goal 1 Preserve and maintain agricultural lands and the agricultural industry.***

***Goal 2 Promote a diverse, sustainable, revenue-generating agricultural sector.***

***Goal 3 Ensure Exclusive Farm Use policies, classifications and codes are consistent with local and emerging agricultural conditions and markets.***

**FINDING:** The Applicant provided the following response in the submitted burden of proof statement:

Cinder Butte is pursuing a plan amendment and zone change on the basis that neither the Mine Property nor the Plan Change Area constitute "agricultural lands," and therefore, it is not necessary to preserve or maintain the subject lands as such. As noted previously, mining has occurred on the Mine Property since at least 1948. Further, Cinder Butte's application will have no negative impact on the County's efforts to promote the agricultural sector and to ensure that EFU policies, code and classifications are consistent with conditions and markets. Simply put, agricultural goals do not apply to Cinder Butte's Application. In both the *Landholdings* and *Powell/Ramsey* decisions, those Hearings Officers found that Goal 1 is an aspirational goal and not an approval criterion. As demonstrated in this Application, the Plan Change Area does not constitute "agricultural land" and therefore, is not necessary to preserve and maintain the County's agricultural industry.

The subject property has a Comprehensive Plan designation of Surface Mine and is therefore not categorized as agricultural lands. In addition, staff finds there is nothing in the record that indicates the property is or historically was in farm use. The portion of the subject property subject to the plan amendment and zone change request is comprised of predominantly soil unit 97, "Pits" and has a land capability classification of 8.

There is no evidence the subject property is in agricultural use and the existing soils condition and NRCS maps demonstrate that it does not contain agricultural soils. Staff agrees with the applicant that agricultural lands policies do not apply.

## Section 2.3, Forests

**FINDING:** The subject property has a Comprehensive Plan designation of Surface Mine and is therefore not categorized as forest land. Staff therefore finds forest land policies do not apply.

## Section 2.4, Goal 5 Overview Policies

***Goal 1, Protect Goal 5 Policies***

**FINDING:** The Applicant does not propose to modify or repeal Goal 5 policies. The Applicant proposes to remove the subject property from the list of significant aggregate and mineral

resources in Deschutes County, based on site-specific conditions. Re-designating the subject property will not impact any County-wide Goal 5 policies. Staff therefore finds the proposed Comprehensive Plan Amendment and Zone Change will not have an adverse impact on Goal 5 policies.

***Policy 2.4.4, Incorporate new information into the Goal 5 inventory as requested by an applicant or as County staff resources allow.***

**FINDING:** The Applicant provided the following response in their Burden of Proof:

This Application provides new information supporting rezoning of the Plan Change Area. Mining of the Plan Change Area will cease in August 2026, when Cinder Butte will exhaust the cinder available resources in the ITR Area. As shown in the DOGAMI Exemption Letter (see **Exhibit 7**), a majority of the Plan Change Area is exempted from DOGAMI reclamation requirements, due to it being located within the limited exemption area.

Staff finds the Applicant has submitted new information for the purpose of amending the Goal 5 mineral aggregate inventory.

Section 2.5, Water Resources Policies

***Goal 6, Coordinate land use and water policies.***

***Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.***

**FINDING:** The Applicant provided the following response in their Burden of Proof:

Cinder Butte does not propose any development of the Plan Change Area at this time, and the Cinder Butte will address this criterion during future development of the Plan Change Area, which would be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat). This criterion, therefore, does not apply.

Staff agrees with the applicant's proposed finding.

Section 2.6, Wildlife

**FINDING:** There are no Goal 5-listed wildlife species present on the subject property, based on the Goal 5 inventory nor threatened or endangered species. There is no identified wildlife habitat on the subject property.

Section 2.7, Open Spaces, Scenic Views and Sites

***Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic view and sites.***

***Policy 2.7.1 Goal 5 open spaces, scenic views and sites inventories, ESEEs and programs are retained and not repealed.***

***Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.***

***Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.***

**FINDING:** The Applicant provided the following response in their Burden of Proof:

As a County Hearings Officer recently ruled in a similar matter under Deschutes County File Nos. 247-21-001043-PA, 247-21-001044-ZC, these policies are fulfilled by the County's Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management Combining Zones (LM) to adjacent properties. The LM zone applicable to the Plan Change Area has been acknowledged and applied consistently with the proposed RI zone and will remain applicable to any future development. This issues [sic] is addressed further in Section D below.

These policies are fulfilled by the County's Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones on adjacent properties. Portions of the subject property proposed to be rezoned contain the LM Combining Zone associated with State Highway 97. However, the subject application does not propose to remove the LM Combining Zone. The standards associated with the LM Combining Zone are reviewed for compliance when a new structure or substantial alteration of an existing structure is proposed and would be addressed with future development of the property.

The applicant provided an updated ESEE analysis<sup>7</sup> on March 24, 2026 which evaluates all new potentially conflicting uses permitted outright or conditionally under the RI zone that would not have been otherwise allowed under the current SM Zoning. Analysis pursuant to OAR 660-023, Procedures and Requirements for Complying with Goal 5, are addressed below in this staff report.

Staff finds these policies are met.

#### Section 2.10, Surface Mining

***Goal 1, Protect and utilize mineral and aggregate resources while minimizing adverse impacts of extraction, processing and transporting the resource.***

***Policy 2.10.1, Goal 5 mining inventories, ESEEs and programs are retained and not repealed.***

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<sup>7</sup> Included as part of Applicant's Response to Issues Letter, March 24, 2026

**FINDING:** The Applicant provided the following response in their Burden of Proof:

The subject application asks the County to remove property from Site No. 336 and SM zoning because it no longer has significant cinder resources. The Plan Change Area should be rezoned for a subsequent use consistent with the surrounding uses as it is ready for a subsequent use outside of the SM zone. Cinder Butte has no objection to the modification of the surface mining impact area combining zone following the rezone of the Rezone Area and the ITR Area. DOGAMI was sent notice of the subject application and of the public hearing.

No changes are proposed to Comprehensive Plan policies or other programs regarding surface mining in Deschutes County. The Applicant does not propose to modify the ESEE associated with the subject property, or modify the County's Goal 5 program.

Staff finds to the extent they apply, these plan policies have been met, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

***Policy 2.10.2, Cooperate and coordinate mining regulations with the Oregon Department of Geology and Mineral Industries.***

**FINDING:** Staff sent a Notice of Application and Notice of Public Hearing to the Oregon Department of Geology and Mineral Industries. Their agency comment is included in the Agency Comment Section. The applicant provided the following information in their burden of proof regarding ongoing coordination with DOGAMI:

The Issues Letter requested "updates on the status of the Limited Exemption/Reclamation Permit No. 09-0041 with DOGAMI." In response, the Applicant provides as Exhibit 16 a revised site plan altering the proposed 30.88-acre "Rezone Area" and 3.58-acre "Intent To Rezone ("ITR") Area." Since submitting the original application, the Applicant has concluded all mining in what was previously proposed as the 11.50-acre Intent to Rezone Area-2. In consultation with DOGAMI and County staff, the Applicant is concurrently submitting a site plan application to the County to permit expanded cinder mining to the west of the historic mine site. The smaller 3.58-acre ITR area now shown by Exhibit 16 will be utilized for operations and processing activities as cinder mining expands and proceeds to the west. Those activities will follow the mining and ultimately exit the 3.58-acre ITR area, allowing that area to then be fully rezoned following the process established by DCC 18.136.030. Notably, the 3.58-acre ITR area qualifies for rezoning now pursuant to DCC 18.52.200 as that acreage has been "fully mined," but the Applicant is electing to maintain that acreage subject to the ITR status to account for the expanded mining operations to the west.

No additional comments from DOGAMI have been received. The subject application does not specifically impact or otherwise propose changes to mining regulations. Staff finds to the extent this policy applies, it is met.

***Policy 2.10.3, Balance protection of mineral and aggregate resources with conflicting resources and uses.***

**FINDING:** The record includes does not include any comments or objections regarding the conflict between surface mining and surrounding uses. Additionally, if the plan amendment and zone change are approved, it would eliminate conflicts between current mining activities and nearby uses.

***Policy 2.10.4, Review surface mining codes and revise as needed to consider especially mitigation factors, imported material and reclamation.***

**FINDING:** No amendment is proposed to the provisions or text of the Surface Mining Zone or the Surface Mining Impact Area Combining Zone. Staff finds this policy does not apply.

***Policy 2.10.5, Review surface mining site inventories as described in Section 2.4, including the associated Economic, Social, Environmental and Energy (ESEE) analyses.***

***Policy 2.10.6, Support efforts by private property owners and appropriate regulatory agencies to address reclamation of Goal 5 mine sites approved under 660-016 following mineral extraction.***

**FINDING:** The Applicant provided the following response in the submitted Burden of Proof:

The subject application asks the County to remove property from Site No. 336 and SM zoning because it no longer has significant cinder resources. The Plan Change Area should be rezoned for a subsequent use consistent with the surrounding uses as it is ready for a subsequent use outside of the SM zone. Cinder Butte has no objection to the modification of the surface mining impact area combining zone following the rezone of the Rezone Area and the ITR Area.

As discussed throughout this staff report, the Applicant has entered evidence in the record indicating that a portion of Site No. 336 no longer contains significant aggregate resources and the area should be rezoned to Rural Industrial. Future development under the RI Zone would be subject to development permits. As noted by the Applicant in prior findings, it does not appear a Reclamation Plan was approved or required for the subject mine site.

Staff finds to the extent they apply, these plan policies have been met, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

## **Chapter 3, Rural Growth**

### Section 3.4, Rural Economy Policies ***Rural Industrial***

***The county may apply the Rural Industrial plan designation to specific property within existing Rural Industrial exception areas, or to any other specific property that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, this Comprehensive Plan and the Deschutes County Development Code, and that is located outside unincorporated communities and urban growth boundaries. The Rural Industrial plan designation and zoning brings these areas and specific properties into compliance with state rules by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.***

***Goal 1, Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.***

***Policy 3.4.1 Promote rural economic initiatives, including home-based businesses, that maintain the integrity of the rural character and natural environment.***

***a. Review land use regulations to identify legal and appropriate rural economic development opportunities.***

**FINDING:** The Applicant provided the following response to this criterion:

As discussed below, the proposed plan change and rezoning for the Plan Change Area fits with the existing uses in the surrounding areas, and is an appropriate change given the existing use and the allowed uses of the RI zone. The Mine Property is not located within an unincorporated community, as defined in OAR 660.022.010(9), and thus is not subject to lot size or intensity restrictions under that regulation.

The Applicant further states and attests to in the affidavit of C.B. Foss, that the areas to be rezoned present challenging extraction methods and are economically unfeasible to mine. Staff notes, if approved, the Rural Industrial zone presents additional opportunities for rural industrial uses in accordance with the applicable rural zone district, which may present a range of economic opportunities. Any future rural industrial uses on the subject property will be subject to a separate development review process. Staff finds this policy is met.

Section 3.7, Transportation

***Appendix C – Transportation System Plan  
ARTERIAL AND COLLECTOR ROAD PLAN***

...

***Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.***

...

***Policy 4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure***

***that proposed land uses do not exceed the planned capacity of the transportation system.***

**FINDING:** This policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The County will comply with this direction by determining compliance with the Transportation Planning Rule (TPR), also known as OAR 660-012, as described below in subsequent findings.

## **OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

### **DIVISION 12, TRANSPORTATION PLANNING**

#### OAR 660-012-0060 Plan and Land use Regulation Amendments

- (1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:***
- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);***
  - (b) *Change standards implementing a functional classification system; or***
  - (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.***
    - (A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;***
    - (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or***
    - (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.***

**FINDING:** This above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of a portion of the subject properties from SM to RI and change the zone from SM to RI. The applicant is not proposing any land use development of the plan amendment and zone change area at this time.

The Applicant submitted a transportation study, Exhibit 14, dated March 25, 2026, and prepared by Joe Bessman of Transight Consulting LLC. The transportation study examined vehicle trips under the proposed RI zoning and made the following conclusions:

The comparative assessment provided above showed that the zone change could generate up to +442 weekday daily trips including +72 weekday p.m. peak hour trips. This analysis was prepared to evaluate whether the surrounding transportation facilities will operate acceptably with respect to safety, operations, and functional classification of affected transportation facilities with the potential added traffic from the rezone.

...

The year 2040 future analysis scenarios were prepared for comparative purposes to demonstrate the impact of the proposed zone change on the surrounding transportation infrastructure. This analysis assumes the completion of the STIP project to modify the US 97/NW Pershall Way intersection to right-in and right-out movements only. As shown in Table 7, all study intersections are expected to meet applicable performance requirements in 2040 with the proposed rezone.

The report was reviewed by the County Transportation Planner, Tarik Rawlings, who generally agreed with its assumptions and methodology. Mr. Rawlings requested the following revisions:

1. The vehicle trip generation potential for the requested Rural Industrial (RI) Zone noted on pages 6-7 of Exhibit 14 outlines a variety of ITE use categories to encompass the worst-case land use scenarios in the RI Zone. As noted below Table 3 of the report, the “maximum development scenario” likely relies on Manufacturing (ITE 140) as the assigned use category that best represents the worst-case scenario of the requested zoning district. Staff requests that the RI vehicle trip generation potential analysis and related Tables be revised to consider this maximum development scenario under the Manufacturing category (ITE 140).
2. The trip distribution and assignment analysis outlined on page 11 of the report appears to consider only right-in/right-out movements for US 97/Pershall when staff’s understanding of ODOT’s STIP project description of this intersection is that left-in movements would also be allowed. Staff requests that the trip distribution and assignment section of the report be revised to consider these additional details.

In response to Mr. Rawlings, the Applicant provided an updated TIA on April 21, 2026 evaluating a more intense land use trip generation scenario (all manufacturing rather than a combination of manufacturing and warehousing) as well analysis to show the retention of mainline left-turns at the planned US 97/O’Neil – Pershall intersection as part of the STIP project. The updated report resulted

in the potential for up to +513 weekday daily trips including +84 weekday p.m. peak hour trips. County Transportation staff agreed with the updated reports' methodologies and conclusions.

Based on the County Senior Transportation Planner's concurrence with the April 21, 2026 TIA from Transight Consulting, LLC, Staff finds compliance with the Transportation Planning Rule has been effectively demonstrated. Based on the TIA, Staff believes that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area and will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system.

## **DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES**

OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

**Goal 1, Citizen Involvement. *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.***

**FINDING:** A land use action sign was posted on the subject property on November 13, 2025, and a Notice of Application was mailed to nearby property owners on October 29, 2025. A public hearing will be held before a Hearings Officer and a decision will ultimately be made by the Board of County Commissioners. Notice of all public hearings will be mailed to impacted individuals and a notice will also be printed in the Bend Bulletin newspaper. The published and mailed notices comply with the requirements of DCC 22.12.020.

**Goal 2, Land Use Planning. *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Goals, policies, and processes related to zone change applications are included in the Deschutes County Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code. The outcome of the application will be based on findings of fact and conclusions of law related to the applicable provisions of those laws as required by Goal 2.

The County will review and process this quasi-judicial Plan Amendment and Zone Change consistent with the procedures detailed in DCC Title 22, including consideration of any public comments received regarding the application. Therefore, consistency with this Statewide Planning Goal is established.

Furthermore, the application provides an adequate factual basis for the County to review the application because it describes the site and its physical characteristics and applies those facts to the relevant approval criteria. Goal 2 requires coordination of the application by the County with

affected governmental entities. Coordination requires notice of an application, an opportunity for the affected governmental entity to comment on the application, and the County's incorporation of the comments to a reasonable extent. Coordination of this application was accomplished in two ways: by the Applicant prior to submittal of the application and by the County in the review process for the application. As noted previously, the applicant initiated discussions with DOGAMI prior to submitting the application.

For the reasons stated above, Staff finds this Goal will be met.

**Goal 3, Agricultural Lands. *To preserve and maintain agricultural lands.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

The Plan Change Area is not agricultural land because it is comprised predominantly of Class 8 soils ("pits") and other disturbed areas that are not suitable for farm use, and it has never been used or classified as agricultural land. Therefore, the proposal is consistent with Goal 3.

The subject property is designated as Surface Mining and had been mined since the late 1940s. There is no evidence of prior agricultural use, the property predominantly consists of Class VII and VIII soils (Exhibit F), and the property does not have water rights (Exhibit J). The subject property is not identified as agricultural land on the acknowledged Deschutes County Comprehensive Plan map

The property was identified as containing mineral resources in the Deschutes County Goal 5 Aggregate inventory adopted by the BOCC on December 6, 1988. In 1990, the County listed the property as Site No. 336 on the Goal 5 Inventory, adopted a site-specific economic, social, environmental and energy (ESEE) analysis and imposed the SM and SMIA zoning (Ord No. 90-014, 90-025, 90-028, and 90-029). The subject property's status as something other than agricultural land was confirmed in the 1990 ESEE. Ordinarily, the ESEE identifies the post-mining uses and zoning for properties deemed Goal 5 significant mineral resources. The ESEE for the subject property does not include any such discussion.

In *Tumalo Irrigation District* (247-17-000775-ZC/247-17-000776-PA), the BOCC interpreted that a similar ESEE omission on a Goal 5 site would have specified EFU zoning if the property had been classified as agricultural land, and concluded that the SM Zone was "intended to be a distinct zoning and Comprehensive Plan designation and the properties designated as other than 'resource uses' (lands subject to Goals 3 and 4)."

In *Caldwell v. Klamath County*, 45 Or. LUBA 548 (2003), LUBA concluded that a proposed zone change from Non-Resource to Rural Residential (e.g., SM to MUA-10) did not require revising the County's original determination that the property did not qualify as agricultural land, memorialized through a zoning designation that zoned the property Non-Resource, a zone that applied to lands that were not protected by Goals 3 and 4.

Furthermore, in *Urquhart v. Lane Council of Governments*, 80 Or App 176, 181-82, 721 P2d 870 (1986), the Court of Appeals held that a statewide goal is only implicated for review purposes if the PAPA itself affects the goal, either directly or indirectly. Under the *Urquhart* rule, a PAPA is not reviewable “on the basis of a defect in the inventory which is not directly or indirectly attributable to the plan amendment.” This was affirmed in *Central Oregon Landwatch v. Deschutes County*, 301 Or App 701 (2020), where the Court of Appeals upheld Deschutes County’s approval in *Tumalo Irrigation District* of a plan amendment and zone change from SM to MUA-10. LUBA concluded Deschutes County was not required to revisit its prior determination that the subject property was not agricultural land subject to Goal 3. Therefore, Staff finds Goal 3 does not apply.

**Goal 4, Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.**

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Goal 4 is not applicable because the Plan Change Area does not include any lands that are zoned for, or that support, forest uses. Forest land is defined by OAR 660-005-0010 as lands suitable for commercial forest use protection under Goal 4, which are identified using NCRS soil survey maps to determine average annual wood fiber production figures. The NCRS maps for the subject property map it with soil mapping units 151D, 97, and 31B, none of which are suitable for wood crop production. See Exhibit 6.

Staff agrees and finds that Goal 4 is not applicable.

**Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. To protect natural resources and conserve scenic and historic areas and open spaces.**

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

The application materials establish the Plan Change Area no longer contains significant cinder resources, and will exhaust the cinder resources in the ITR Area by August 2026. The Mine Property has LM overlay zone associated with Highway 97 and the geological feature known as “Tetherow Butte.” The uses in the proposed RI zone have been acknowledged to be consistent with and applied compatibly with the LM zone provisions, which will remain applicable to the Plan Change Area under the proposed zoning classification.

The subject property does not contain fish or wildlife habitat or wetlands or watersheds. The subject property contains portions of the LM Combining Zone associated with scenic views when viewed from Highway 97. However, this application does not remove the protections of the LM Combining Zone. Additionally, as detailed below, the applicant submitted an ESEE analysis with respect to the

LM Zone and uses allowed in the proposed RI Zone. Staff asks the Hearings Officer to determine whether the ESEE analysis demonstrates the scenic resource associated with Highway 97 would be protected.

The applicant's proposal includes a request to rezone portions of the property from SM to RI. As described below in the responses to OAR 660-023-0180, the Applicant asserts that portions of the subject property no longer contain significant aggregate resources.

Provided the Hearing's Officer finds the submitted ESEE demonstrates protection of scenic resources associated with Highway 97 and that Rezone Area and ITR Area no longer contain significant aggregate resources pursuant to OAR 660-23-0180, this plan policy is met.

**Goal 6, Air, Water, and Land Resources Quality. *To maintain and improve the quality of the air, water, and land resources of the state.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

The approval of this application will not impact the quality of the air, water, and land resources of the County. Any future development of the property would be subject to local, state, and federal regulations that protect these resources.

Staff agrees with this analysis and finds development of the subject property be subject to local land use review and, where applicable, permitting through appropriate state and federal agencies.

**Goal 7, Areas Subject to Natural Disasters and Hazards. *To protect people and property from natural hazards.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

According to the Deschutes County DIAL property information and Interactive Map, the entire Deschutes County, including the Plan Change Area, is located in a Wildfire Hazard Area. The Plan Change Area is also located in Redmond Fire and Rescue District. Rezoning the property to RI does not change the Wildfire Hazard Area designation. Any future development of the property would need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.

Staff agrees with this analysis and finds the Goal is met.

**Goal 8, Recreational Needs. *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

This goal is not applicable because no development is proposed and the property is not planned to meet the recreational needs of Deschutes County. Therefore, the proposed rezone will not impact the recreational needs of Deschutes County.

Staff agrees with this statement and notes the subject property has not been identified as a current or future recreational facility. Therefore, Goal 8 is not applicable.

**Goal 9, Economy of the State. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.**

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

This goal does not apply to this application because the Plan Change Area is not designated as Goal 9 economic development land. In addition, the approval of this application is anticipated to positively affect economic activities of the state and Deschutes County. The proposed zone change will promote economic opportunities by rezoning underutilized property for a subsequent use.

The subject property no longer contains sufficient quantity or quality of mining or aggregate materials for profitable economic use. However, the proposed plan amendment and zone change will promote continued economic opportunities by allowing the currently undeveloped and underutilized property to be put to productive use. Therefore, Goal 9 is satisfied.

Staff finds if the subject property is found to no longer contain sufficient quantity and quality of mining or aggregate materials to be deemed a significant resource pursuant to the OARs, the proposed plan amendment and zone change may promote continued economic opportunities by allowing the former mined area to be put to other economic uses as allowed in the proposed Rural Industrial Zone. For these reasons, staff finds Goal 9, to the extent it applies, is satisfied.

**Goal 10, Housing. To provide for the housing needs of citizens of the state.**

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Goal 10 defines needed housing as housing within urban growth boundaries. The Mine Property is outside the urban growth boundary, and therefore Goal 10 is not applicable.

Staff agrees and finds this Goal is not applicable as the proposed plan amendment and zone change will not affect existing or needed housing.

**Goal 11, Public Facilities and Services. *To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Central Electric Cooperative serves the Plan Change Area with power, and Applicant intends to source water and septic on-site upon future development, and the proposal will not result in the extension of urban services to rural areas.

Staff agrees with this statement and notes that this goal has generally been held to prohibit extension of urban services, such as sewer and water, to rural lands outside urban growth boundaries. This application does not propose the extension of urban services to rural areas. Public facilities and services necessary for future development under the requested Rural Industrial zoning are available and will be developed in accordance with applicable local and state statute. Staff finds Goal 11 is met.

**Goal 12, Transportation. *To provide and encourage a safe, convenient and economic transportation program.***

**FINDING:** Compliance with Goal 12 is demonstrated by meeting the Transportation System Planning Rule, OAR 660-012-0060. Compliance with this rule is addressed above. Based on compliance with the TPR, discussed in this report, staff finds Goal 12 is met.

**Goal 13, Energy Conservation. *To conserve energy.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

The approval of this application does not impede energy conservation, nor will it result in an increase or inefficient use of energy.

Staff agrees and further finds that Planning Guideline 3 of Goal 13 states “land use planning should, to the maximum extent possible, seek to recycle and re-use vacant land...” In any case, the request may provide additional economic opportunities and services for individuals and businesses on the subject property, adjacent to a major state highway, therefore conserving energy. The proposal is consistent with Goal 13.

**Goal 14, Urbanization. *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

This goal is not applicable because the applicant's proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. All uses allowed in the RI zone are "rural" uses, as noted in *Central Oregon Landwatch v. Deschutes County, \_Or LUBA\_* (LUBA 2025-034, September 22, 2025), and *Central Oregon Landwatch v. Deschutes County, LUBA No 2023-008* (April 24, 2023).

Staff agrees with this analysis.

**Goal 15, Willamette Greenway.**

**FINDING:** This criterion does not apply because the subject property is not located in the Willamette Greenway.

**Goals 16 through 19.**

**FINDING:** These goals do not apply to land in Central Oregon.

Staff asks the Hearings Officer to determine whether the applicant has demonstrated compliance with the Statewide Planning Goals.

**DIVISION 23, PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5**

OR 660-023-0250, Applicability

***(2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR 660, division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section "initiated" means that the local government has deemed the PAPA application to be complete.***

**FINDING:** The subject application was initiated after September 1, 1996, and is therefore subject to the requirements of this division.

***(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:***

...

***(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list;***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

As provided in *Central Oregon Landwatch v. Deschutes County*, \_Or LUBA\_ (LUBA 2025-034, September 22, 2025), Applicant's proposed plan change and rezone will allow new uses which could conflict with the County's Goal 5 scenic view resources, therefore requiring compliance with the Procedures and Requirements for Complying with Goal 5 as set forth in OAR Chapter 660, Division 23. Although the subject application only proposes amending the current SM base zone and does not propose to remove the LM overlay zone, Applicant nonetheless includes proposed findings addressing OAR 660-023-0030 through 660-023-0050.

Staff agrees with the applicant that the requested plan amendment and zone change application may allow new uses which could conflict with the applicable Goal 5 scenic resources. The applicable provisions are addressed below.

OAR 660-023-0030, Inventory Process

***(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:***

- (a) Collect information about Goal 5 resource sites;***
- (b) Determine the adequacy of the information;***
- (c) Determine the significance of resource sites; and***
- (d) Adopt a list of significant resource sites.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

As stated within OAR 660-023-0030(1), this rule's purpose is "to compile or update a list of significant Goal 5 resources in a jurisdiction." Importantly here, the inventory process has already been completed: see attached **Exhibit 5** with the 1989 ESEE for Site No. 336, which corresponds to Section 5.5 of the Comprehensive Plan titled *Goal 5 Inventory: Open Spaces, Scenic*

*Views and Sites*, and identifies as a Goal 5 resource an area of land extending ¼-mile on either side of the centerline of certain roadways, including Highway 97 from the Redmond UGB to the north boundary of Deschutes County. The entirety of the Plan Change Area falls within that inventoried Goal 5 resource area.

Applicant does not seek to remove the Plan Change Area from the County's LM zone, nor does Applicant seek to otherwise amend or modify Comprehensive Plan Section 5.5 or the LM zone's governing provisions contained in DCC Chapter 18.84. The subject application only seeks to change the base zone from SM to RI in the Plan Change Area. In such a case, OAR 660-023-0030 specifically provides as follows: "when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process."

Because the inventory process required by OAR 660-023-0030 has already been completed, the results of which are set forth in Comprehensive Plan Section 5.5, Applicant's analysis does not include the initial inventory step.

Staff agrees with the applicant's response.

***(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:***

***(a) Notify state and federal resource management agencies and request current resource information; and***

***(b) Consider other information submitted in the local process.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

As discussed in the preceding response, OAR 660-023-0030(2) does not apply.

The subject application includes a PAPA pertaining to a specified site. Therefore, Staff agrees and finds that OAR 660-023-0030(2) does not apply.

***(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as***

***provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:***

***(a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.***

***(b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.***

***(c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

As discussed above, the existing inventory of Goal 5 scenic view resources contained in Comprehensive Plan Section 5.5 does not need to be amended or revisited. The previous Boards of County Commissioners that initially adopted the County's Goal 5 program and then subsequently re-adopted that same program several times throughout the past decades (most recently as part of the County's current 2040 Comprehensive Plan update) deemed the information for the inventoried properties adequate. As Applicant is not seeking to amend that inventory, this requirement is satisfied.

Staff agrees with the Applicant's response.

***(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:***

***(a) The quality, quantity, and location information;***

***(b) Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and***

***(c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Applicant refers to the existing inventory of Goal 5 scenic view resources contained in Comprehensive Plan Section 5.5. Accordingly, because Applicant does not seek to amend or alter previous determinations that the Goal 5 scenic view resources on the Mine Property are significant, this requirement is satisfied.

Staff agrees with the applicant.

***(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(2)(c) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Applicant refers to the existing inventory of Goal 5 scenic view resources contained in Comprehensive Plan Section 5.5, which specifically contains the list of significant resource sites.

Staff agrees with the applicant.

***(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Applicant refers to the existing inventory of Goal 5 scenic view resources contained in Comprehensive Plan Section 5.5. As discussed in response to OAR 660-023-0030(4) above, Applicant does not assert that the responses below recognizing the diminished quality of the Goal 5 scenic view resources on the Plan Change Area suggest that there are no significant Goal 5 scenic view resources on the Plan Change Area. Notably, the Mine Property has been mined since at least 1948, which pre-dated the County's original identification of the Mine Property as containing significant Goal 5 scenic view resources.

Staff agrees with the applicant.

**(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:**

**(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and**

**(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.**

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Applicant refers to the existing inventory of Goal 5 scenic view resources contained in Comprehensive Plan Section 5.5 such that the County need not adopt interim protection measures. This subsection (7) is inapplicable.

Staff agrees with the applicant.

OAR 660-023-0040, ESEE Decision Process

**(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:**

**(a) Identify conflicting uses;**

**(b) Determine the impact area;**

**(c) Analyze the ESEE consequences; and**

**(d) Develop a program to achieve Goal 5.**

**FINDING:** The applicant addresses the four steps in the following responses and in their updated ESEE analysis document within the document title "2026-03-25 Applicant's Response to Issues Letter," referred to as **Applicant's Exhibit 17**.

**(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. \* \* \***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

The "identified conflicting uses" at issue in this Application are those uses allowed outright or conditionally under the RI zone in the Plan Change Area that would not have otherwise been allowed under the current SM zoning. The conflicting uses are addressed in depth in the ESEE Analysis attached as **Exhibit 11**, and as applicable in the ensuing responses to the second, third, and fourth steps in the ESEE decision process as further detailed by OAR 660-023-0040(3) through (5). This ESEE is a site-specific update to Ordinance No 92-41391 and the original ESEE analysis adopting the current Landscape Management (LM) zone. A copy of that ESEE is included as **Exhibit 12**, ESEE Analysis (Landscape Management).

Staff notes the applicant provided an updated ESEE analysis document dated March 25, 2026, and provided additional narrative response, in part, to the above criterion:

For this ESEE analysis, the conflicting uses studied are the new array of uses that are allowed in the RI zone which are not already allowed under the Subject Property's SM zoning designation. Uses that are allowed in the RI zone that are also allowed in the SM zone, are excluded from review within this ESEE analysis as the Subject Property has been zoned SM since the 1992 adoption of the LM regulations, meaning these uses were contemplated in the County's original ESEE and as such, are not new conflicting uses.

The applicant's analysis describes existing surrounding site conditions and demonstrates that the consequences of allowing RI development on the subject property are minimal because the Goal 5 scenic view is currently diminished in the impact area. The applicant's analysis recommends that the conflicting uses identified be allowed without further restrictions beyond those already applied to new development pursuant to the regulations imposed by the LM Combining Zone.

Staff finds the updated ESEE Analysis, incorporated herein as reference, provides a "clear understanding of the conflicts and consequences to be expected" if the RI uses are allowed on the subject Properties.

However, staff asks the Hearings Officer to modify these findings as they see fit.

***(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement and updated ESEE Analysis:

As noted above, the majority of the Mine Property and all of the Plan Change Area lie within the existing LM zone (i.e., the ¼-mile corridor extending from the centerline of Highway 97). Consistent with *LandWatch Lane County v. Lane County*, \_Or LUBA\_ (LUBA No. 2019-048, August 9, 2019), the Applicant proposes that an appropriate "impact area" in this case should

include properties west of Highway 97 within the existing LM zone between the north end of the City of Redmond UGB and south of the intersection of Highway 97 and NW Canal Boulevard (the “**Impact Area**”). See **Exhibit 11**.

Applicant notes that the second and third sentences of OAR 660-023-0040(3) appear to be contradictory regarding the size of the impact area. Notwithstanding that contradiction and in the abundance of caution, Applicant elected to analyze a larger impact area for its ESEE Analysis that specifically includes adjacent properties rather than just the Mine Property even though only a portion of the Mine Property will be rezoned.

Applicant additionally notes that the ESEE Analysis intentionally considers ESEE consequences which may occur outside of the formal Impact Area. That broader analysis was conducted to addresses [sic] the differing definitions of the terms "ESEE Consequence" and "Impact Area" contained in OAR 660-023-0010(2) and (3), respectively. Applicant distinguished the two aforementioned terms specifically because the ESEE Consequence definition does not reference the Impact Area definition, nor does the ESEE Consequence definition include any language suggesting a geographical limit. Further, the overarching intent of the ESEE Analysis is to “enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected” from any particular decision. See OAR 660-023-0040(1).

The applicant also asserts that properties within the Redmond UGB that are south of the subject property should not be included in the Impact Area as they are not a part of Deschutes County's Goal 5 program, with the exception of a portion of Deschutes County Assessor's Map and Tax Lot 141333001400 (855 NW Pershall Way).

Staff agrees with the Applicant's selected impact area and analysis above. However, the Hearings Officer may modify these findings as they see fit.

***(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goals. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

The ESEE Analysis provided at **Exhibit 11** analyzes all of the different uses allowed by the RI zone in a comprehensive manner. Although separately analyzed in the ESEE Analysis, many of the described consequences for each of the conflicting uses are similar, reflecting the specific Goal 5 resource at issue. Every ESEE analysis is intended to be context specific, and the ESEE Analysis in this case provides a "clear understanding of the conflicts and consequences to be expected" if the RI uses are allowed on the Plan Change Area. The ESEE Analysis is supported by substantial evidence in the record, as it was prepared by a land use consultant with specific expertise and knowledge of Central Oregon.

The County is "afforded fairly broad discretion in considering potential impacts from allowing or prohibiting a particular use \* \* \*." *See Central Oregon LandWatch v. Deschutes County, \_Or LUBA\_* (LUBA No 2020-019, March 22, 2021) (internal citations omitted). Accordingly, Applicant submits the ESEE Analysis for the County's adoption.

The applicant provided an updated ESEE analysis document dated March 25, 2026, and provided additional narrative response, in part, to the above criterion:

An ESEE analysis describes the economic, social, environmental, and energy consequences of allowing, limiting, or prohibiting a possible conflicting use with an inventoried Goal 5 resource. For the purpose of this ESEE analysis, the conflicting uses are the new array of potential uses introduced by the proposed RI zoning designation.

For the purpose of this analysis, "allow," "limit," and "prohibit" are defined as follows:

*Allow Conflicting Uses:* "Allowing" conflicting uses means that Deschutes County is not applying additional protections to Goal 5 scenic resources beyond baseline protection provided by other, non-Goal 5 local, state, and federal requirements. As previously mentioned, the LM zone would continue to apply to the Subject Property when the proposed Comprehensive Plan Map and zoning map amendments are approved.

*Limit Conflicting Uses:* "Limiting" conflicting uses strikes a balance between completely developing Goal 5 resources and completely protecting them. This alternative involves developing lands in ways that minimize negative environmental and economic tradeoffs, supporting the development goals embodied in local and regional land use plans, and protecting the most important Goal 5 resources. In 1992, Deschutes County prepared an ESEE analysis for scenic resources, including for scenic viewsheds and natural landscapes, and implemented the LM zone, which is intended to limit conflicting uses while still allowing development to occur (Ordinance 92-052, see Exhibit B). In this case, limiting the conflicting use would mean applying the standards and regulations of the LM zone to the new array of uses allowed by the RI zone on the Subject Property.

*Prohibit Conflicting Uses:* "Prohibiting" conflicting uses would prevent development actions that conflict with, or degrade, Goal 5 resources. This scenario emphasizes resource protection. Protection measures would exceed baseline protections provided by other local, state, and federal requirements.

As discussed above, the applicant provided an updated ESEE analysis which more clearly evaluates whether a conflicting use should be allowed, limited, or prohibited. The updated ESEE analysis is utilized for purposes of this staff report, and is attached and referred to as Applicant's Exhibit 17. Staff notes, if approved and barring any changes to the document, the updated ESEE analysis would be included by reference in DCC Chapter 23.01 and Section 5.12 of the DCCP.

Staff agrees with the findings of the ESEE analysis, Applicant's Exhibit 17, but asks the Hearings Officer to modify these findings as they see fit.

***(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:***

***(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.***

***(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.***

***(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

In addition to being "afforded fairly broad discretion" in considering the ESEE Analysis pursuant to OAR 660-023-0040(4), state law further provides the County the same "broad discretion" in determining "whether, how, and to what extent a Goal 5 resource will be protected" pursuant to OAR 660-023-0040(5). See *Central Oregon LandWatch v. Deschutes County, \_Or LUBA\_* (LUBA No 202-019, March 22, 2021) (internal citations omitted). Based on the provided ESEE Analysis, Applicant asserts that in this case the conflicting RI zone uses should be allowed in a limited way that protects the scenic view resources pursuant to OAR 660-023- 0040(5)(b). This can be accomplished by leaving the LM zone in place for the Plan Change Area and applying the clear and objective development standards under DCC 18.84. As discussed previously, Applicant specifically did not request that the Mine Property or any portion therefore be removed from the LM overlay zone and instead only seeks to change the base zone.

The ESEE Analysis comprehensively documents numerous positive consequences of approving uses allowed under the RI zone in the Plan Change Area. Those positive consequences include, for example, economic opportunities for current and future owners, employment opportunities for future employees, and additional services for rural landowners outside the City of Redmond. Although the provisions governing the RI zone (i.e., DCC Chapter 18.100) limit the size, scope, and intensity of any industrial use that could be permitted in the Plan Change Area, the ESEE Analysis further documents that industrial developments are in short supply in Deschutes County. The ESEE Analysis specifically notes that the Cities of Bend and Redmond currently have a 3.89% and 3.36% vacancy rate in industrial land supply, respectively.<sup>8</sup> Industrial land as a whole in Deschutes County is limited. The ESEE Analysis further documents positive environmental consequences stemming from reduced travel distances lowering carbon emissions for the numerous rural property owners and existing businesses already located along the Highway 97 corridor near the City of Redmond.

The ESEE Analysis appropriately documents negative consequences that will stem from allowing RI uses on the Plan Change Area. The County's Goal 5 scenic view program primarily benefits what are best described as "social" and "environmental" values, and the ESEE Analysis thereby documents the limited negative consequences under those categories.

Further, the ESEE Analysis demonstrates that the negative social and environmental consequences of allowing RI uses on the Plan Change Area are minimized by the numerous existing developments on both the Plan Change Area and surrounding properties in the Impact Area. Many of those existing developments are in direct view of Highway 97 and thereby already diminish the existing scenic view resources. These numerous existing developments are primarily located on properties that are also within the LM zone. The ESEE Analysis also demonstrates that the Mine Property itself, consisting of Tetherow Butte, blocks the more expansive views enjoyed from Highway 97 and/or from other properties also adjacent to Highway 97. And, numerous uses were previously permitted to be developed on Tetherow Butte, including the expansion cinder mining and telecommunications facilities discussed previously in this narrative. Rather than new RI development in an otherwise unobstructed viewshed, the ESEE Analysis appropriately documents the minimal negative consequences of allowing RI development in a Plan Change Area already surrounded by existing and visible development. The scenic view resources in the vicinity of the Plan Change Area are not entirely absent, but these existing developments in plain view of Highway 97 already diminish the scenic view resources near the Plan Change Area such that the positive consequences of allowing RI uses outweigh the minimal negative consequences.

The ESEE Analysis demonstrates that allowing RI uses in the Plan Change Area is "of sufficient importance" because the Goal 5 scenic view resources are already diminished in the vicinity of the Plan Change Area. Stated simply, the negative social and environmental consequences

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<sup>8</sup> COMPASS POINTS Q2 2025 MARKET REPORT, Sophie Brentlinger (July 23, 2025), available at <https://www.compasscommercial.com/compass-points-q2-2025-market-report/>.

caused by visible development in the viewshed has already occurred such that the positive social and environmental consequences of now allowing RI uses clearly outweigh any increased negatives.

For the foregoing reasons, Applicant requests that the conflicting uses be allowed subject to restrictions as provided in OAR 660-023-0040(5)(b).

The applicant further expands in their updated ESEE analysis by stating, "New conflicting uses, as described and analyzed below, could only diminish the ESEE qualities of the Subject Property to a minimal degree because of the current LM standards that would continue to apply. Thus, this ESEE recommends that the conflicting uses identified herein be allowed without further restrictions beyond those already applied to new development by the LM zone" (Page 4-5, Exhibit 17).

As discussed, this application does not remove the LM Combining Zone from the subject property.

Staff generally agrees with the Applicant's response above but asks the Hearings Officer to adjust these findings as they see fit.

#### OAR 660-023-0050, Programs to Achieve Goal 5

***(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Applicant requests that the ESEE Analysis be included by reference in DCC Chapter 23.01 and Section 5.12 of the Comprehensive Plan, and argues that no other amendments to the DCC or Comprehensive Plan are required to implement the County's decision pursuant to OAR 660-023-0040(5). No further amendment to the DCC or the Comprehensive Plan is necessary at this time because Applicant has not proposed to remove the LM zoning designation from the Mine Property.

As previously stated, Staff notes that these findings, including the updated ESEE analysis, barring any updates, would be included by reference in DCC Chapter 23.01 and Section 5.12 of the DCCP. Staff agrees that no other amendment to the DCC or DCCP are required to implement the decision pursuant to OAR 660-023-0040(5).

The applicant does not propose to remove the LM Combining Zone from the subject property. Consequently, if the subject application is ultimately approved, any subsequent development on the subject property must comply with DCC Chapter 18.84.

***(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:***

***(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;***

***(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or***

***(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

As discussed above, allowing the conflicting uses subject to the County's existing LM overlay zone governed by DCC 18.84 will comply with the requirements above. Notably, the County adopted Ordinance No 2025-009 earlier this year which included text amendments to DCC Chapter 18.84, thereby ensuring that the LM overlay zone includes "clear and objective" standards unless an applicant instead elects to pursue a separate permitting path including discretionary performance standards.

Staff agrees with the Applicant's findings and notes that the standards contained in the LM Combining Zone offer a clear and objective review pathway if an applicant elects that route. Staff notes that under (3) below an alternative to the clear and objective review is also an option. Staff notes the current version of the LM Combining Zone includes both clear and objective and discretionary review.

***(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:***

***(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and (b)***

***Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

As noted, the County through Ordinance No 2025-009 adopted text amendments to DCC Chapter 18.84 providing an alternative approval path including discretionary performance standards in addition to the otherwise "clear and objective" standards. Accordingly, allowing the conflicting uses subject to the County's existing LM overlay zone governed by DCC Chapter 18.84 complies with this requirement.

Staff agrees with the Applicant.

OAR 660-023-0180 Mineral and Aggregate Resources

**FINDING:** The applicable provisions identified below and the associated findings are quoted from the applicant's Burden of Proof.

**(2) *Local governments are not required to amend acknowledged inventories or plans with regard to mineral and aggregate resources except in response to an application for a post acknowledgement plan amendment (PAPA) or at periodic review as specified in section (9) of this rule. The requirements of this rule modify, supplement, or supersede the requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, as follows:***

**(b) *Local governments shall apply the criteria in section (3) or (4) of this rule, whichever is applicable, rather than OAR 660-023-0030(4), in determining whether an aggregate resource site is significant;***

**FINDING:** Staff includes an excerpt below from the *Kimball* decision (PA-07-2, ZC-07-2) that the Hearings Officer may find persuasive for purposes of this review:

*In the Hearings Officer's previous decision in Stott ( PA- 98- 12/ ZC- 98- 6), I held the term "significant resource" is not defined in Title 18 or the comprehensive plan, but that a plan amendment and zone change to "de-list" and rezone an inventoried surface mining site constitutes a "PAPA," and therefore the provisions of OAR 660- 023- 0180 concerning mineral and aggregate resources apply to such an application to the extent they reasonably can be applied to a decision to remove a site from the county's adopted inventory. I further found OAR 660-023- 180(3) identifies the pertinent standards for determining the "significance" of a mineral and aggregate resource as follows:*

The proposed amendment constitutes a PAPA. As outlined in the *Stott* and *Kimball* decisions, a determination of significance is required to de-list a Goal 5 aggregate resource. The thresholds for significance are addressed in the responses to OAR 660-023-0180(3) and (4), below.

- (3) **An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:**
- (a) **A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;**

**FINDING:** The County's Goal 5 inventory (Ordinance No. 88-039) indicates that Site No. 336 contains the following:

| #                    | Taxlot                 | Name          | Type    | Quantity            | Quality | Access/Location      |
|----------------------|------------------------|---------------|---------|---------------------|---------|----------------------|
| 336/337 <sup>9</sup> | 141333-AO-00400, 00500 | US Bank Trust | Cinders | 4.5 M <sup>10</sup> | Good    | Cinder Butte/Redmond |

The applicant included findings below to address this criterion:

...please find Exhibit 15 provided by Parker Richmond of Carlson Geotechnical, a division of Carlson Testing, Inc. Mr. Richmond's report specifically addresses the aforementioned state rule and concludes that samples obtained from the Applicant's cinder mine "failed to meet the quality requirements to be considered a 'significant aggregate resource' as defined by OAR 660-023-00180(3)(a).

The Applicant further asserts that Exhibit 15 is also relevant to DCC 18.52.200(A) requiring an "operator [to] demonstrate that a significant resource no longer exists on the site" to then rezone a surface mining zoned property.

Staff notes it appears the significance test pursuant to the above-referenced OAR needs to meet both the quality and quantity test based on a representative set of samples of aggregate material in the deposit on the site to be considered a 'significant aggregate resource.'

Staff includes excerpts from the Carlson Geotechnical report below regarding aggregate quality:

Aggregate Quality

<sup>9</sup> County records indicate Site No. 337 was eventually combined into Site No. 336

<sup>10</sup> Million cubic yards

As shown in Section 3.0 above, the rock samples obtained from the Cinder Butte Quarry met or exceeded the required quality requirements for air degradation, coarse-aggregate soundness, and sand equivalent. The fine-aggregate soundness tests results failed to meet the required 10.0% maximum loss required per the 2024 ODOT SSC Section 02690.30(d), and the abrasion test failed to meet the required 35.0% maximum loss per 2024 ODOT SSC Section 02630.10(c).

Accordingly, the sample obtained from the Plan Change Area does [sic] has failed to meet the quality requirements to be considered a “significant aggregate resource” as defined by OAR 660-023-0180(3)(a).

The report shows while the sampled aggregate material appears to meet the air degradation standard, the report also shows it does not meet the abrasion or fine aggregate soundness specification and therefore has failed to meet the quality requirements to be considered a ‘significant aggregate resource.’ The applicant did not address the quantity standard as the material failed the quality test and therefore asserts the aggregate does not meet the significance test on that factor alone.

There is no evidence in the record challenging the validity of this report and staff relies on the applicant’s subject matter expert for their analysis of the aggregate quality.

Staff requests the Hearings Officer make specific findings on whether the applicant has adequately demonstrated the aggregate quality does not meet classification as a significant aggregate resource.

**(b) *The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or***

**FINDING:** Subsection (b) is not applicable because Deschutes County has not established lower standards for significance.

**(c) *The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

Site No. 336 is included in the County’s inventory of significant aggregate sites and was acknowledged prior to September 1, 1996. However, Subsection (c) is not applicable to this PAPA because the request includes removing the site from the acknowledged inventory.

In *Stott* (PA-98-12/ZC-98-6), the Hearings Officer made the following finding, adopted by the BOCC:

"The subject site is included in the county's inventory of significant mineral and aggregate sites. The Hearings Officer is aware this inventory was acknowledged prior to the effective date of the new Goal 5 administrative rules. Therefore, I find the subject site falls within the 'significant' standard in paragraph (c). Arguable that finding would end the inquiry since under this provision a site is considered 'significant' if it meets any of the three criteria. However, I find such a result would create a 'Catch-22' where, as here, the applicant is seeking to remove a site from the inventory as no longer 'significant.' Consequently, I find the 'significant' standard in paragraph (c) should not be applied to PAPAs requesting removal of a site from an acknowledged inventory..."

The Hearings Officer in *Tumalo Irrigation District* (247-17-000775-ZC/247-17-000776-PA) concurred and concluded that "as in ZC-98-6 and PA-98-12, subsections (b) and (c) are not applicable. Therefore[,] the aggregate resource is significant only if it meets all the criteria in subsection (a)." The BOCC adopted the Hearings Officer's finding in their ultimate approval of the application, and that decision was upheld by LUBA and the Court of Appeals. See *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019), and *Central Oregon Landwatch v. Deschutes County*, 301 Or App 701, 457 P3d 369 (2020).

Staff agrees with the Applicant's response and finds this criterion does not apply.

- (d) *Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:***
  - (A) *More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or***
  - (B) *More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:***
    - (i) *60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;***
    - (ii) *25 feet in Polk, Yamhill, and Clackamas counties; or***
    - (iii) *7 feet in Linn and Benton counties.***

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

This subsection (d) criterion does not apply. The Plan Change Area does not contain

any Class I, Class II, or Unique soils as confirmed by the NRCS Soil Map. See **Exhibit 6**.

Staff agrees with the Applicant's response and finds the criterion does not apply

- (4) Notwithstanding section (3) of this rule, a local government may also determine that an aggregate resource site on farmland is significant if subsections (a) and (b) of this section apply or if subsection (c) of this section applies:**

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

The criterion does not apply. The subject property is not identified as agricultural lands on the acknowledged Deschutes County Comprehensive Plan map, and it has not been farmed or used in conjunction with any farming operation.

Staff agrees with the Applicant's response and finds the criterion does not apply.

#### **IV. CONCLUSION**

Staff requests the Hearings Officer determine if the Applicant has met the burden of proof necessary to justify changing the Plan Designation of ±34.46 acres from Surface Mine (SM) to Rural Industrial (RI), a corresponding Zone Change to rezone ±30.88 acres from SM to RI, and a Resolution of Intent to Rezone ±3.58 acres from SM to RI through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (the Deschutes County Zoning Ordinance), DCC Title 22, the Deschutes County Comprehensive Plan, and applicable sections of the OAR and the ORS.

#### **V. RECOMMENDED CONDITIONS OF APPROVAL**

1. The Resolution of Intent to Rezone shall expire five (5) years from the date this approval Decision is final, unless the conditions and stipulations, if any, set forth above have been satisfied or an extension is granted pursuant to DCC Title 22.
2. The date the above described decision is final shall be the date the final County decision of approval is signed and mailed or, if the final County decision is appealed, the date the final appellate body affirms the County decision or dismisses the appeal.

#### **DESCHUTES COUNTY PLANNING DIVISION**



Written by: Haleigh King, AICP, Senior Planner

*Anthony Raguine*

Reviewed by: Anthony Raguine, Principal Planner

Attachment(s): Applicant's Proposed Plan Amendment and Zone Change Map, March 24, 2026

