



## BOARD OF COMMISSIONERS

### BOARD OF COUNTY COMMISSIONERS MEETING

1:00 PM, MONDAY, JULY 1, 2024

Allen Room - Deschutes Services Building - 1300 NW Wall Street – Bend

(541) 388-6570 | [www.deschutes.org](http://www.deschutes.org)

### AGENDA

**MEETING FORMAT:** In accordance with Oregon state law, this meeting is open to the public and can be accessed and attended in person or remotely, with the exception of any executive session.

Members of the public may view the meeting in real time via YouTube using this link: <http://bit.ly/3mmlnzy>. **To attend the meeting virtually via Zoom, see below.**

**Citizen Input:** The public may comment on any topic that is not on the current agenda. Alternatively, comments may be submitted on any topic at any time by emailing [citizeninput@deschutes.org](mailto:citizeninput@deschutes.org) or leaving a voice message at 541-385-1734.

When in-person comment from the public is allowed at the meeting, public comment will also be allowed via computer, phone or other virtual means.

**Zoom Meeting Information:** This meeting may be accessed via Zoom using a phone or computer.

- To join the meeting via Zoom from a computer, use this link: <http://bit.ly/3h3oqD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press \*9 to indicate you would like to speak and \*6 to unmute yourself when you are called on.
- When it is your turn to provide testimony, you will be promoted from an attendee to a panelist. You may experience a brief pause as your meeting status changes. Once you have joined as a panelist, you will be able to turn on your camera, if you would like to.



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, call (541) 388-6572 or email [brenda.fritsvold@deschutes.org](mailto:brenda.fritsvold@deschutes.org).

**Time estimates:** The times listed on agenda items are estimates only. Generally, items will be heard in sequential order and items, including public hearings, may be heard before or after their listed times.

## CALL TO ORDER

**CITIZEN INPUT:** Citizen Input may be provided as comment on any topic that is not on the agenda.

**Note:** In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to [citizeninput@deschutes.org](mailto:citizeninput@deschutes.org) or you may leave a brief voicemail at 541.385.1734..

## ACTION ITEMS

- [1.](#) **1:00 PM** Amendment to the County Employee Health Benefits Medical and Dental Plan to cover registered opposite sex domestic partners
- [2.](#) **1:10 PM** Intergovernmental Agreement with the Oregon Department of Transportation for the All Roads Transportation Safety Program – Driver Feedback Signs Project
- [3.](#) **1:25 PM** Proposed Solid Waste Disposal Fee Waivers for Fiscal Year 2025
- [4.](#) **1:35 PM** Preparation for Public Hearing: Psilocybin Service Center at Juniper Preserve
- [5.](#) **1:55 PM** Plan Amendment and Zone Change of approximately 65 acres at 19975 Destiny Court from Agricultural/Exclusive Farm Use to Rural Residential Exception Area/ Multiple-Use Agricultural (MUA-10)

## OTHER ITEMS

*These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.*

## EXECUTIVE SESSION

*At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.*

*Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.*

6. Executive Sessions under ORS 192.660 (2) (h) Litigation and ORS 192.660 (2) (e) Real Property Negotiations

## ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 1, 2024

SUBJECT: Amendment to the County Employee Health Benefits Medical and Dental Plan to cover registered opposite sex domestic partners

RECOMMENDED MOTIONS:

- 1. Move approval of an amendment to the Deschutes County employee medical and dental plan to include registered opposite sex domestic partners in the definition of "Domestic Partner" effective August 1, 2024.
2. Move to authorize the County Administrator to sign Document No. 2024-574, amending the medical and dental plan as stated.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County, as the health benefits plan sponsor, proposes amending the employee health benefits medical and dental plan documents effective August 1, 2024, to include registered opposite sex domestic partners in the definition of "Domestic Partner."

BUDGET IMPACTS:

\$100,000 estimated cost.

ATTENDANCE:

Kathleen Hinman - Human Resources Director and Trygve Bolken - Human Resources Analyst



**PLAN AMENDMENT #1**

Client Name: Deschutes County  
Group Number: G0037173  
IRS Tax ID Number: 93-6002292  
Plan Name: Medical Standard Plan  
Medical High Deductible Plan  
Dental Plan

Effective August 1, 2024, until further notification from the Plan Sponsor, the Plan Document is amended as follows, all other language and sections remains the same.

The following definition has been updated to read as follows:

- Domestic Partner** means an individual that meets the following definition:
- **Registered Domestic Partner** means an individual, age 18 or older, who is joined in a domestic partnership, and whose domestic partnership is legally registered in any state.

**DC 2024 - 574**



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 1, 2024

SUBJECT: Intergovernmental Agreement with the Oregon Department of Transportation for the All Roads Transportation Safety Program – Driver Feedback Signs Project

RECOMMENDED MOTION:

Move approval of Document No. 2024-560, an Intergovernmental Agreement with the Oregon Department of Transportation for the All Roads Transportation Safety Program – Driver Feedback Signs Project

BACKGROUND AND POLICY IMPLICATIONS:

The All Roads Transportation Safety (ARTS) program is a federally-funded highway safety program administered by the Oregon Department of Transportation (ODOT) for the construction of highway safety improvements to reduce the number of fatal and serious injury crashes on Oregon roads. In 2020, Deschutes County submitted an ARTS project application for the installation of speed feedback signs on the following County roads on segments with a history of fatal or serious injury crashes where speeding was a contributing factor:

- Alfalfa Market Road
- Burgess Road, Mileposts
- Cline Falls Highway
- Day Road
- Old Bend-Redmond Highway
- Powell Butte Highway
- South Canal Boulevard
- South Century Drive

The County's application was selected for ARTS funding for the 2024-2027 ODOT State Transportation Improvement Program (STIP). Under the proposed intergovernmental agreement, ODOT will deliver the project at an estimated total cost of \$1,032,873.00. Federal funds for the project will be limited to \$929,585.70, which is 90% of the estimated total cost. The County will be responsible for all remaining project costs.

Project design is anticipated to begin in late summer of 2024; project construction is

anticipated to begin in Fiscal Year 2026.

**BUDGET IMPACTS:**

The County will make payment to ODOT in the amount of \$103,287.30, which is included in the Road Capital Improvement Plan (Fund 465) budget for Fiscal Year 2025.

**ATTENDANCE:**

Cody Smith, Assistant Road Department Director/County Engineer

Misc. Contracts and Agreements

No. 73000-00032098

A156-G092921

**ODOT Delivered Federal Project  
On Behalf of Deschutes County**

**Project Name:** Driver Feedback Signs (Deschutes County)

**Key Number:** 22767

THIS AGREEMENT ("Agreement") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and DESCHUTES COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

### RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.
2. Powell Butte Highway, Alfalfa Market Road, Canal Boulevard, Old Bend-Redmond Highway, Cline Falls Highway, Cook Avenue, Day Road, Burgess Road and South Century Drive are a part of the county road system under the jurisdiction and control of Agency.
3. Agency has agreed that State will deliver this project on behalf of the Agency.
4. The Project was selected as a part of the All Roads Transportation Safety (ARTS) Program and may include a combination of federal and state funds. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement.
5. The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

**NOW THEREFORE** the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

### TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering driver feedback signs on behalf of Agency, hereinafter referred to as "Project. The location of the Project is shown in the table below and on the maps attached hereto, marked "Exhibit A," and by this reference made a part hereof. Locations of the driver feedback signs are

approximate and subject to refinement during Preliminary Engineering.

<b>County Facility Name</b>	<b>Beginning and Ending Mile Points</b>
Alfalfa Market Road	0.00– 9.44
Burgess Road	0.00- 5.10
Cline Falls Highway	0.00 – 10.24
Day Road	0.00 – 3.50
Old Bend-Redmond Highway	7.32 – 13.86
Powell Butte Highway	8.00 – 18.03
South Canal Boulevard	3.94 – 7.32
South Century Drive	2.15 – 5.19

2. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.
  
3. Project Costs and Funding.
  - a. The total Project cost is estimated at \$1,032,873.00, which is subject to change. Federal funds for this Project shall be limited to \$929,585.70. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the ten (10) percent (%) match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. “Total Project Cost” means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.
  
  - b. With the exception of Americans with Disabilities Act of 1990-related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency’s concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget. However, State may award a construction contract up to ten (10) percent (%) over engineer’s estimate without prior approval of Agency.
  
  - c. Federal funds under this Agreement are provided under Title 23, United States Code.
  
  - d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction. Agency is not eligible to be reimbursed for work performed under this Agreement.



Deschutes County/ODOT  
Agreement No. 73000-00032098

- e. State will submit the requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.
  - f. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency’s share of the Project.
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
5. Termination.
- a. This Agreement may be terminated by mutual written consent of both Parties.
  - b. State may terminate this Agreement upon 30 days’ written notice to Agency.
  - c. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
    - i. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
    - ii. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
    - iii. If Agency fails to provide payment of its share of the cost of the Project.
    - iv. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
    - v. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
  - d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. **Americans with Disabilities Act Compliance:**

Deschutes County/ODOT  
Agreement No. 73000-00032098

a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:

- i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
- ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
- iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>.

b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:

- i. Pedestrian access is maintained as required by the ADA,
- ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
- iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the

facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,

- iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
- v. Applicable permitting and regulatory actions are consistent with ADA requirements.

c. Maintenance obligations in this section shall survive termination of this Agreement.

- 7. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
- 8. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
- 9. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.
- 10. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are incorporated by this reference and made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
- 11. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement.
- 12. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by

name herein and expressly described as intended beneficiaries of the terms of this Agreement.

- 13. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 14. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 3.e (Funding), 5.d (Termination), 6.b (ADA maintenance), 9-14, 17 (Integration, Merger; Waiver); and Attachment 2, paragraphs 1 (Project Administration), 7, 9, 11, 13 (Finance), and 37-41 (Maintenance and Contribution).
- 15. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
- 16. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- 17. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right of Way Services Agreement in furtherance of the Project.
- 18. State’s Contract Administrator for this Agreement is Abbey Driscoll – Transportation Project Manager, 63055 N. Highway 97, Bldg M, Bend, OR 97703, (541) 410-5906, [abbey.driscoll@odot.oregon.gov](mailto:abbey.driscoll@odot.oregon.gov), or assigned designee upon individual’s absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Deschutes County/ODOT  
Agreement No. 73000-00032098

19. Agency’s Contract Administrator for this Agreement is Cody Smith – County Engineer, 61150 SE 27<sup>th</sup> Street, Bend, OR 97702, (541) 322-7113, [Cody.smith@deschutes.org](mailto:Cody.smith@deschutes.org), or assigned designee upon individual’s absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2024-2027 Statewide Transportation Improvement Program (STIP), (Key #22767) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

**SIGNATURE PAGE FOLLOWS**

Deschutes County/ODOT  
Agreement No. 73000-00032098

**DESCHUTES COUNTY**, by and through  
its elected officials

By \_\_\_\_\_  
Commission Chair

Date \_\_\_\_\_

By \_\_\_\_\_  
Commissioner

Date \_\_\_\_\_

By \_\_\_\_\_  
Commissioner

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL (If required  
in Agency’s process)**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Cody Smith – County Engineer  
61150 SE 27<sup>th</sup> Street  
Bend, OR 97702  
(541) 322-7113  
[Cody.smith@deschutes.org](mailto:Cody.smith@deschutes.org)

**State Contact:**

Abbey Driscoll – Transportation Project  
Manager  
63055 N. Highway 97, Bldg M  
Bend OR, 97703  
(541) 410-5906  
[abbey.driscoll@odot.oregon.gov](mailto:abbey.driscoll@odot.oregon.gov)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Region 4 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 4 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
State Traffic Roadway Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Central Oregon Area Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

### EXHIBIT A – Project Location Maps (1 thru 8)

ALFALFA MARKET RD (MP 0.0 - 9.44)

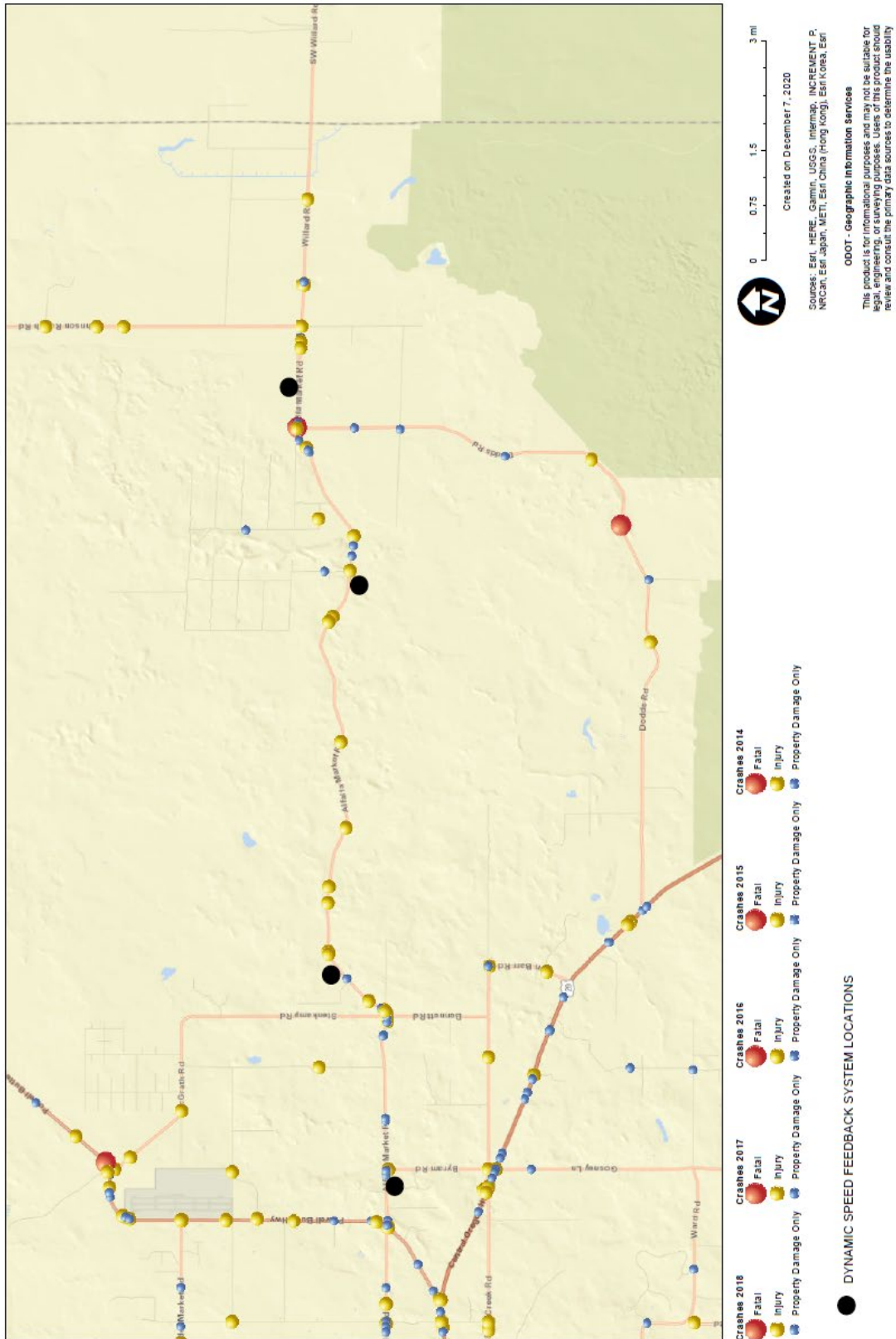


Figure 1. Note that locations are approximate and subject to refinement during preliminary engineering.



BURGESS RD (MP 0.0 - 5.10)

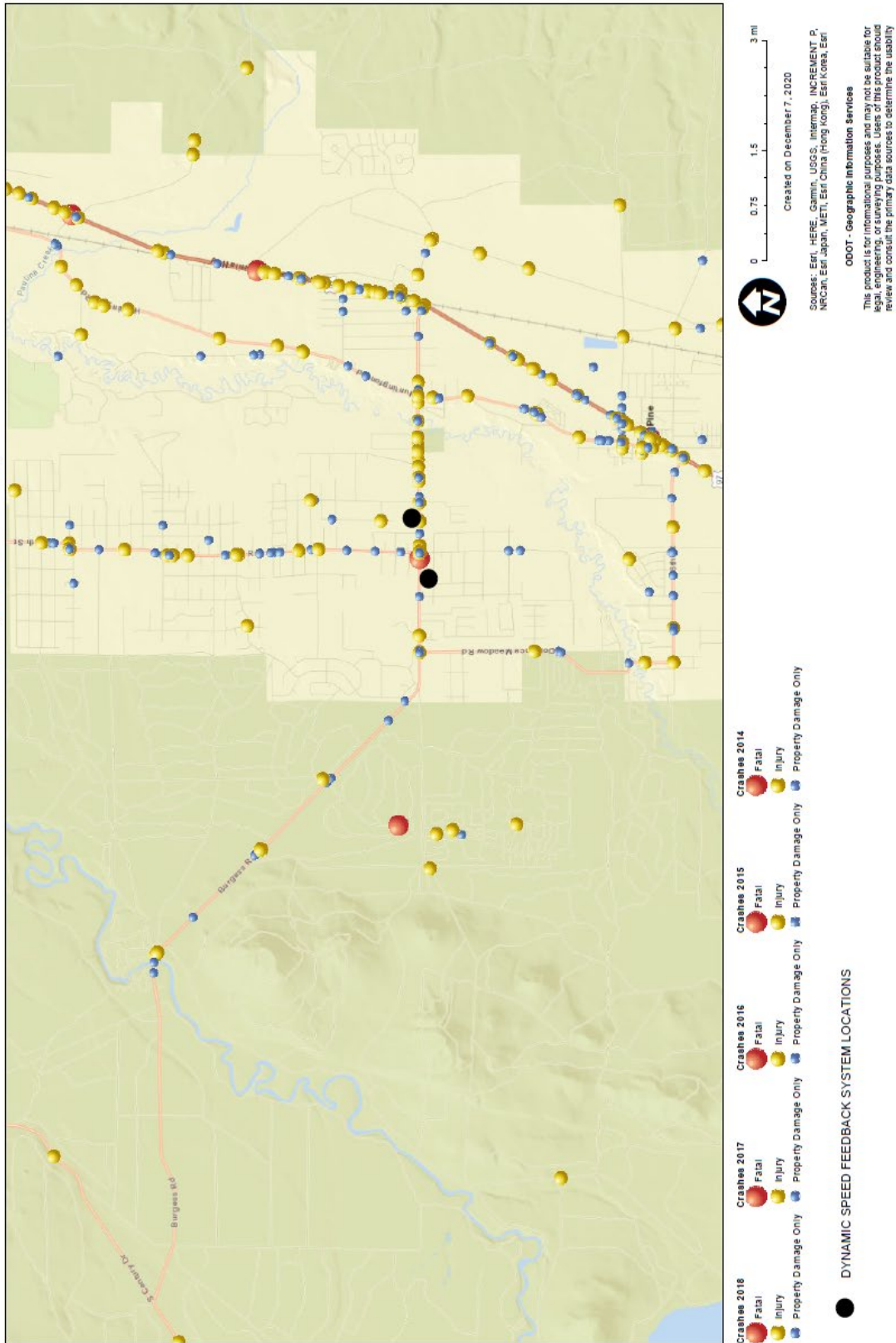


Figure 2. Note that locations are approximate and subject to refinement during preliminary engineering.



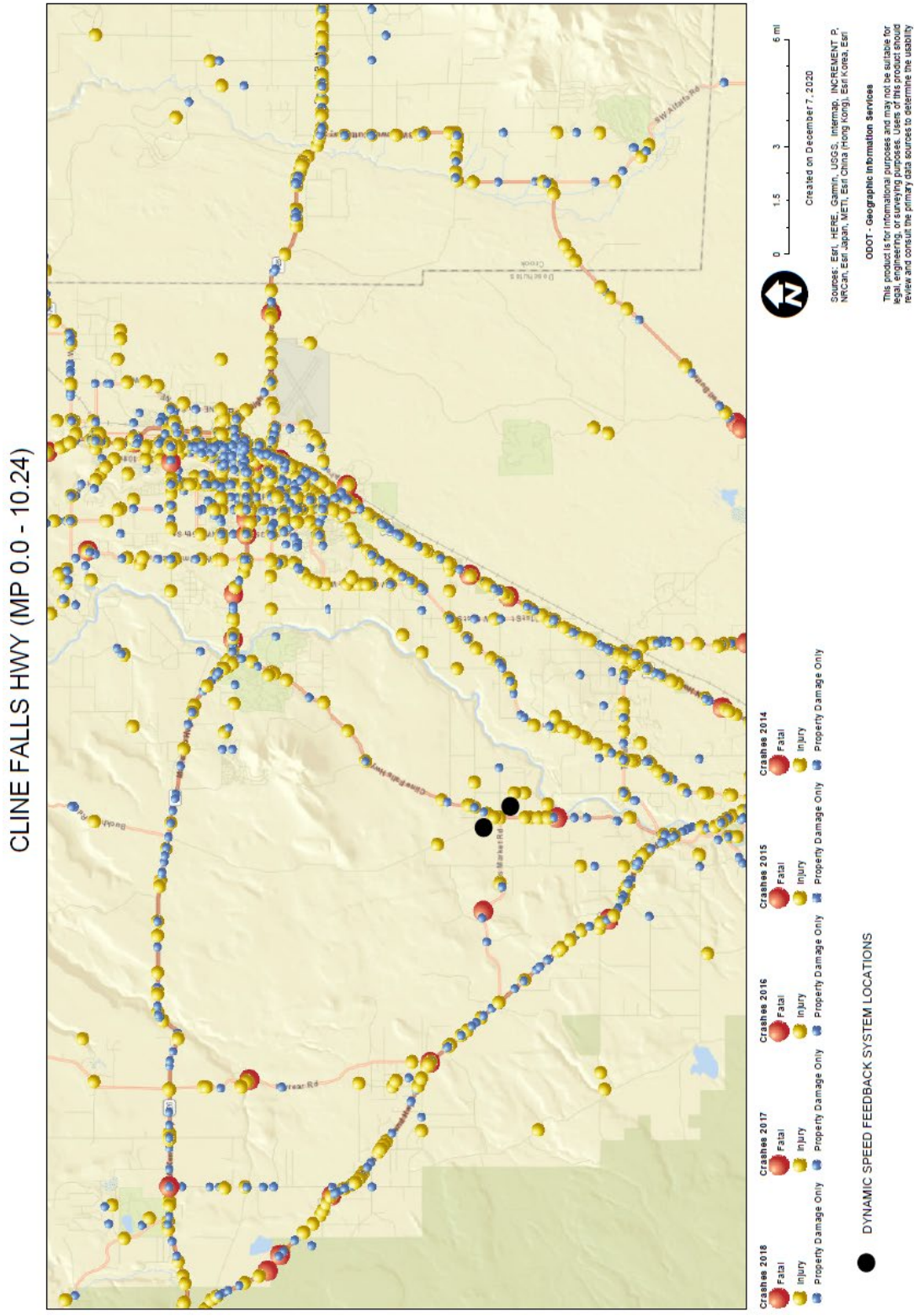


Figure 3. Note that locations are approximate and subject to refinement during preliminary engineering.

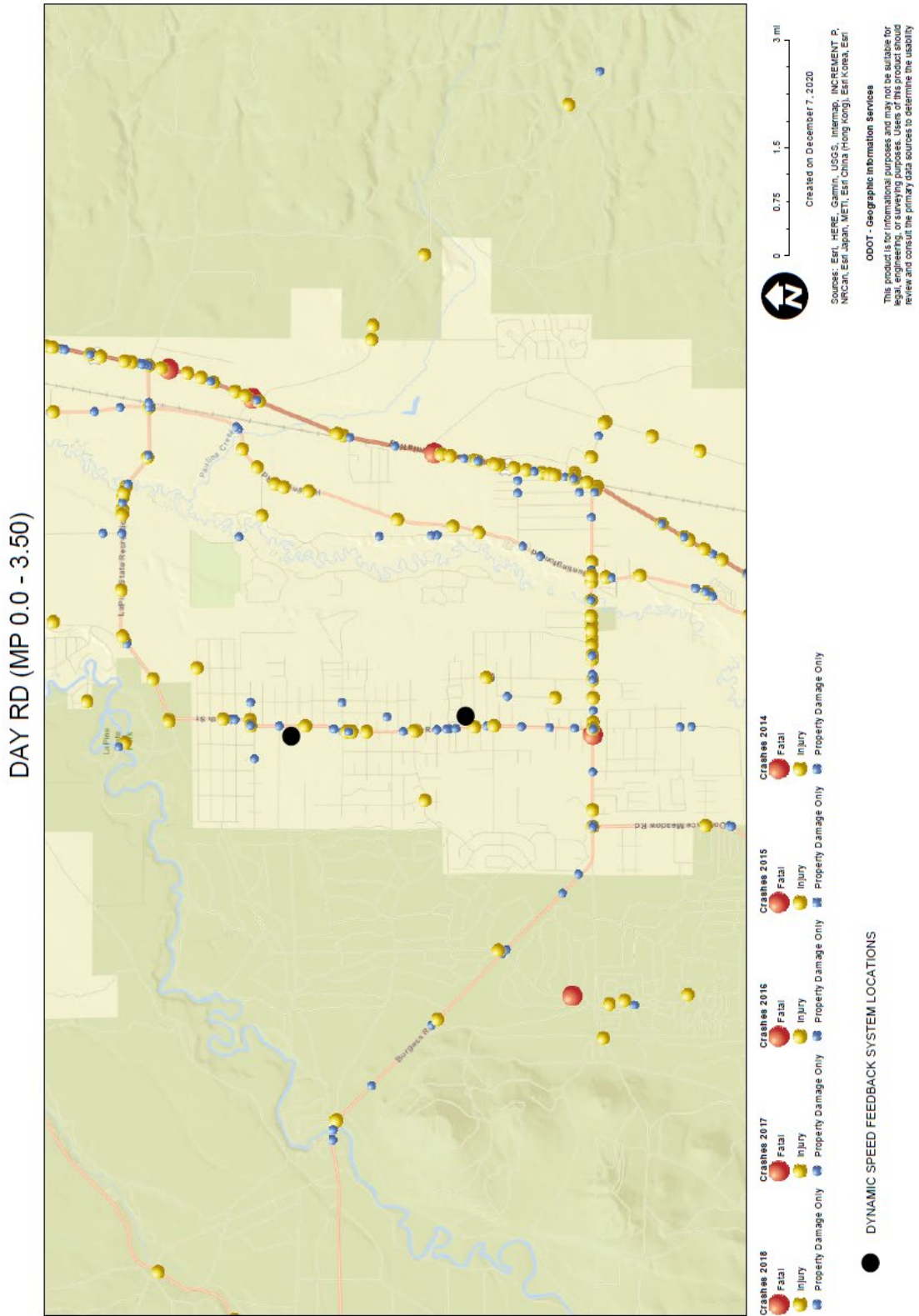


Figure 4. Note that locations are approximate and subject to refinement during preliminary engineering.

OLD BEND-REDMOND HWY (MP 7.32 - 13.86)

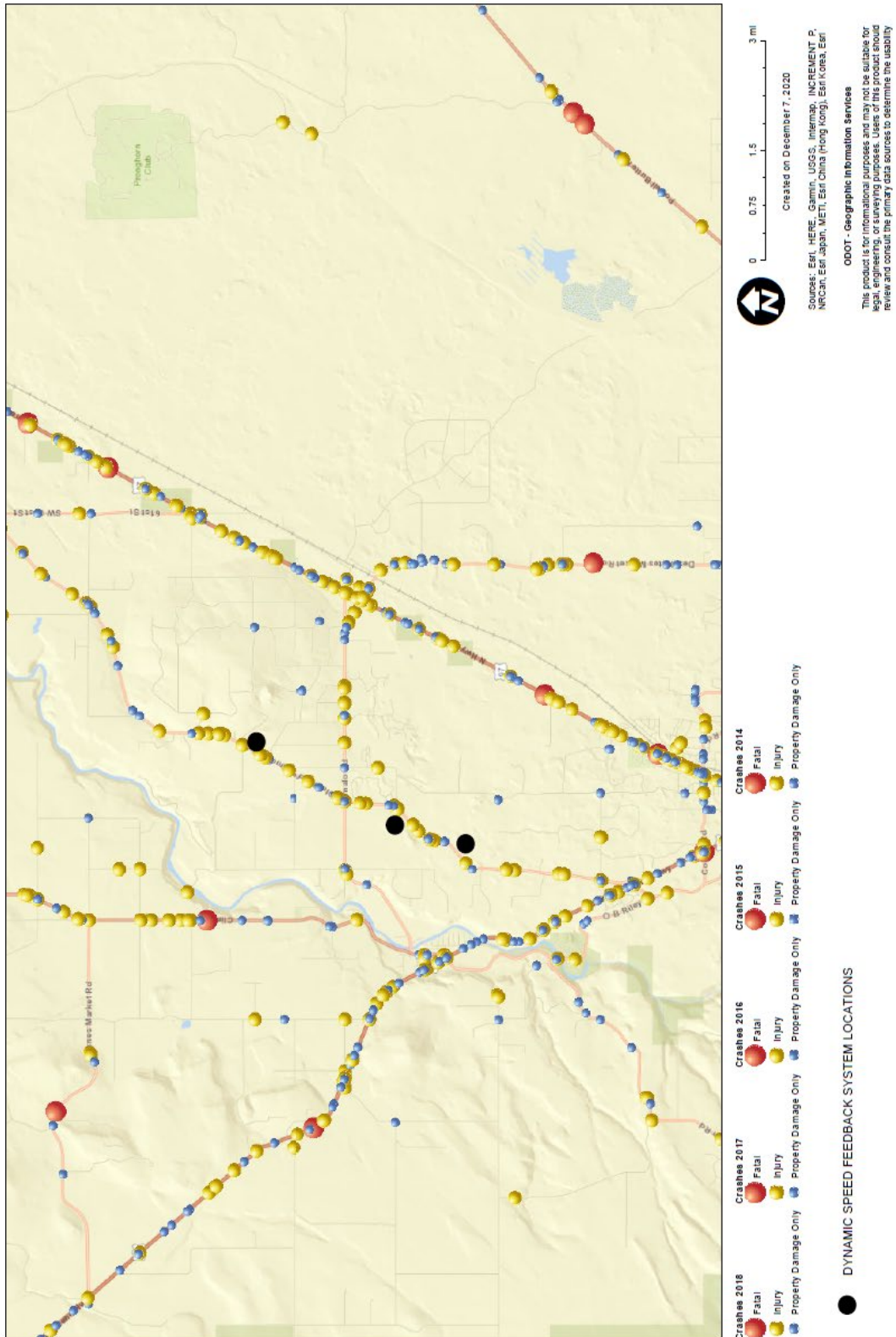


Figure 5. Note that locations are approximate and subject to refinement during preliminary engineering.



POWELL BUTTE HWY (MP 8.0 - 18.03)

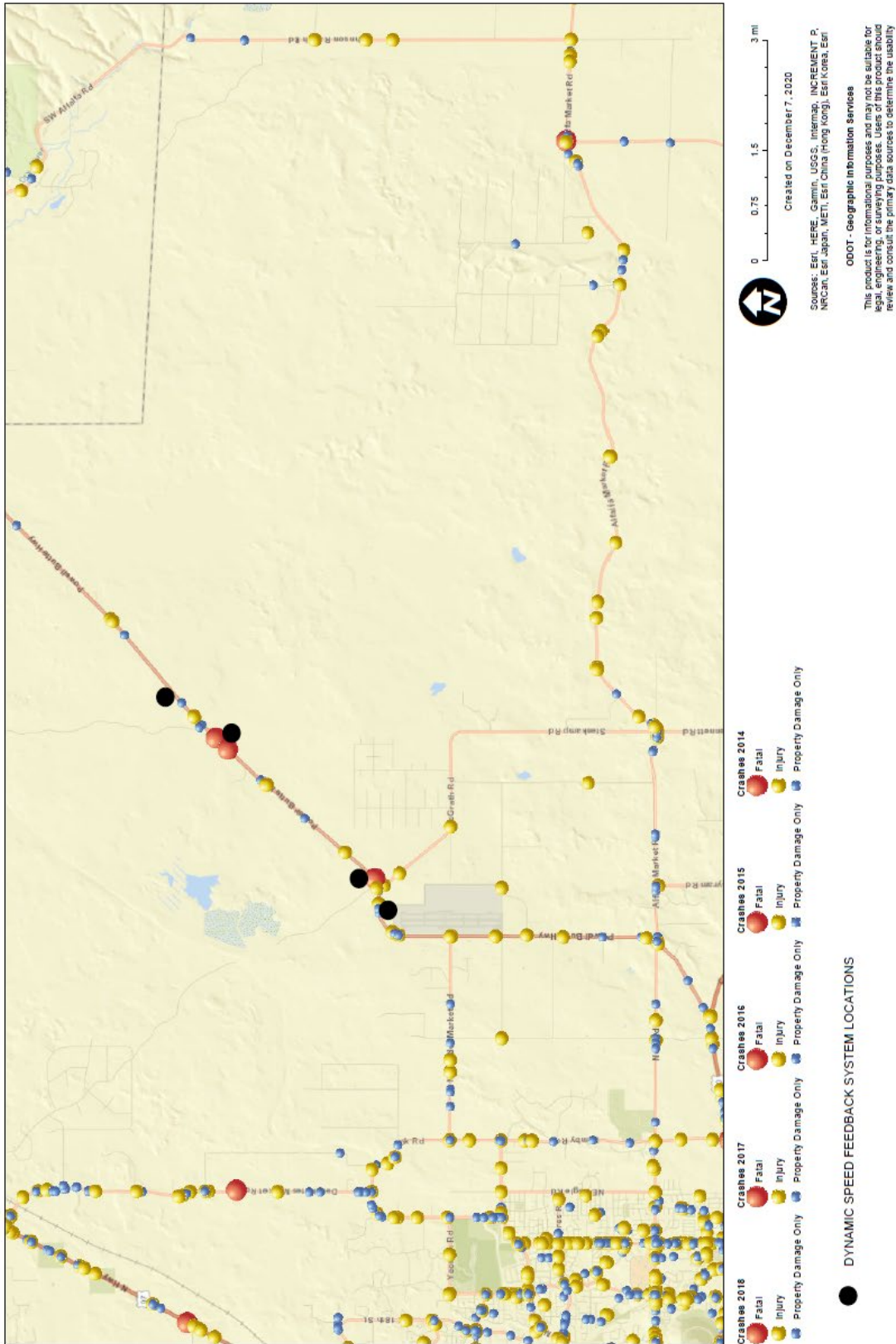


Figure 6. Note that locations are approximate and subject to refinement during preliminary engineering.

Deschutes County/ODOT  
Agreement No. 73000-00032098

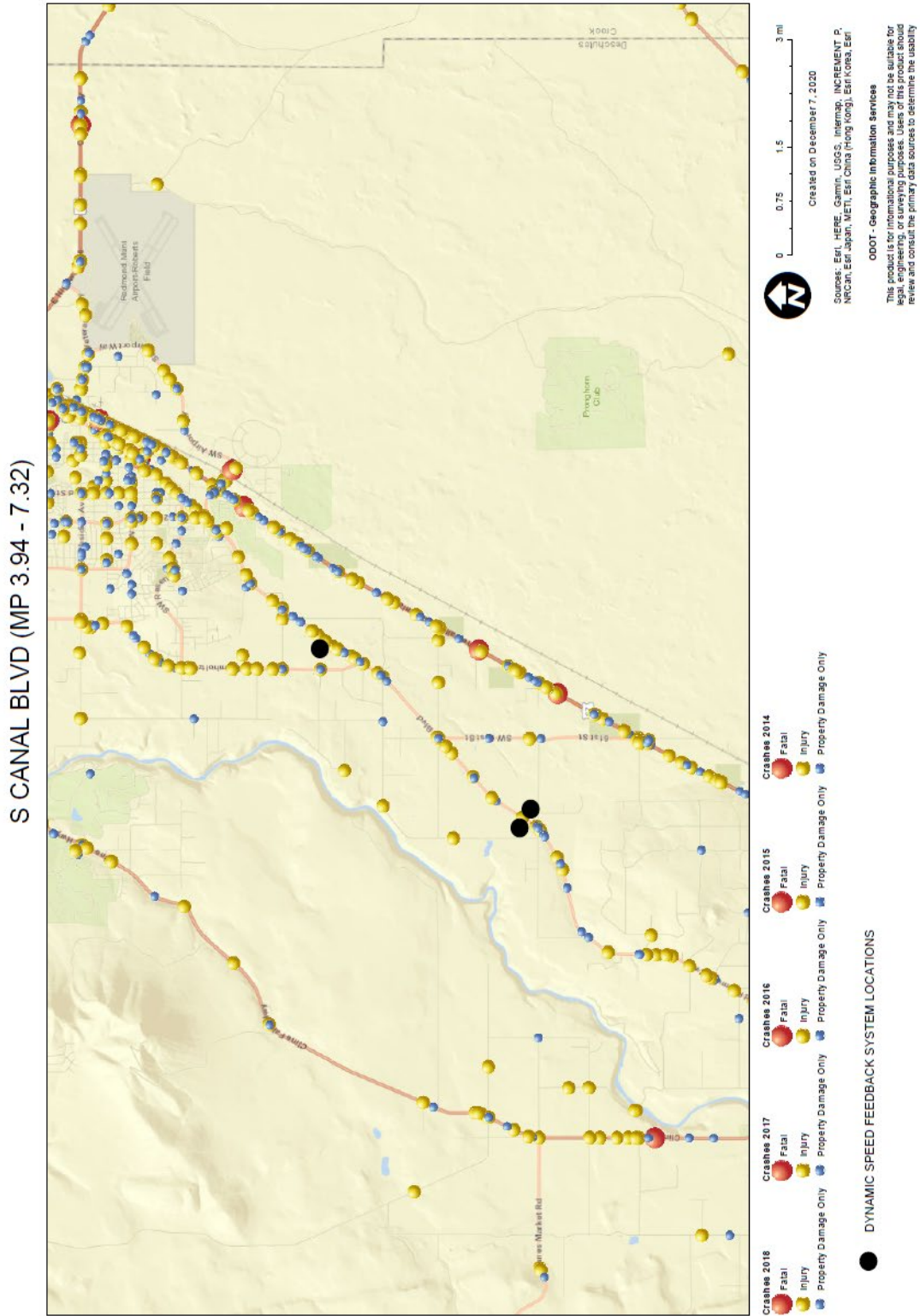


Figure 7. Note that locations are approximate and subject to refinement during preliminary engineering.

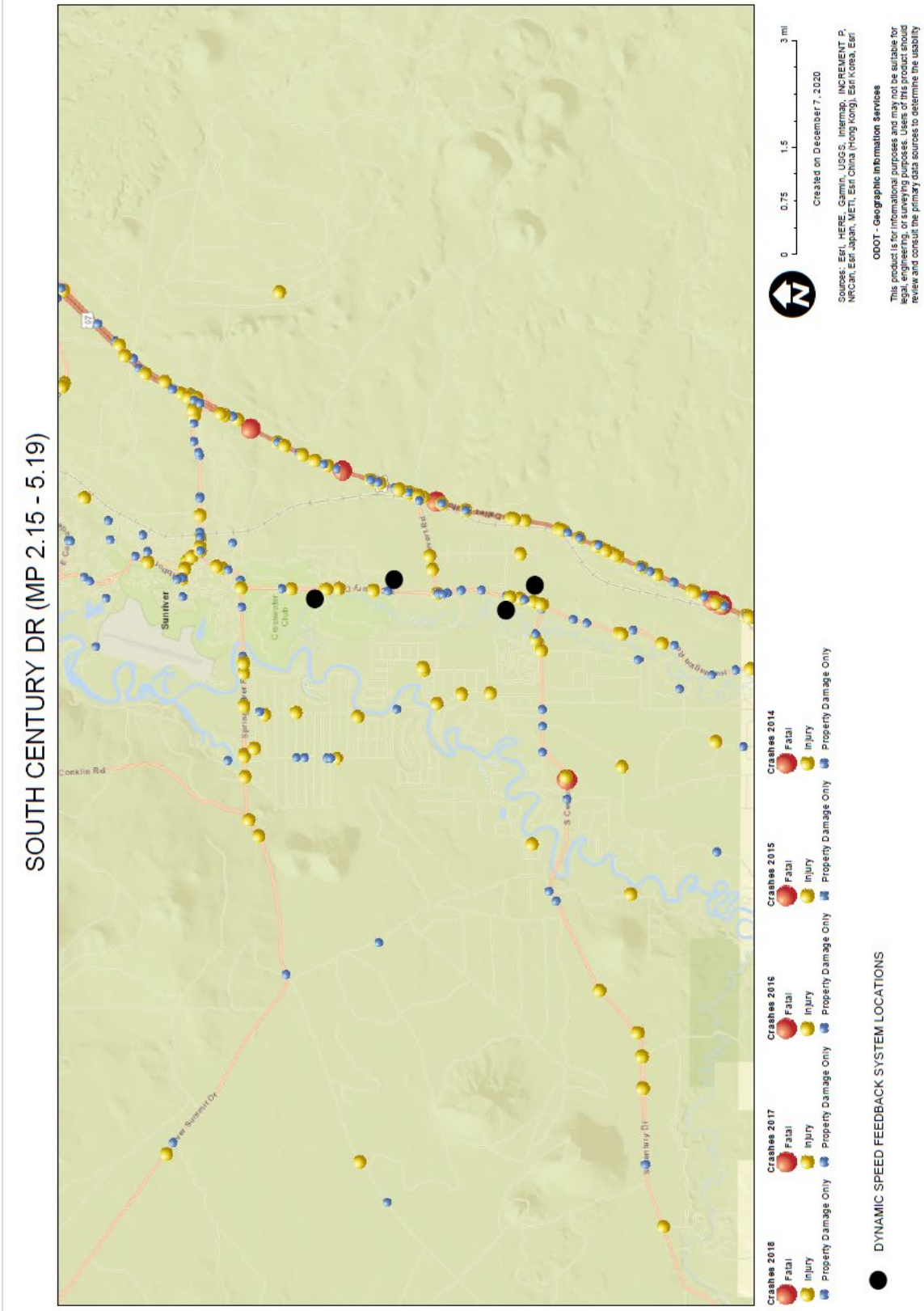


Figure 8. Note that locations are approximate and subject to refinement during preliminary engineering.

**ATTACHMENT NO. 1 to AGREEMENT NO. 73000-00032098  
SPECIAL PROVISIONS**

1. State or its consultant shall conduct all work components necessary to complete the Project, except for those responsibilities specifically assigned to Agency in this Agreement.
  - a. State or its consultant shall conduct preliminary engineering and design work required to produce final plans, specifications, and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; acquire necessary right of way and easements; and arrange for all utility relocations and adjustments.
  - b. State will advertise, bid, and award the construction contract. Upon State’s award of the construction contract State shall be responsible for contract administration and construction engineering & inspection, including all required materials testing and quality documentation. State shall make all contractor payments.
  - c. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.
2. State and Agency agree that the useful life of this Project is defined as 10 years.
3. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
4. State will purchase right of way in State’s name. Upon completion of the Project, State and Agency agree that any right of way purchased outside of State jurisdiction will be transferred to Agency. Agency agrees to take title to the property and shall maintain the property pursuant to this Agreement. Agency shall use the property for public road purposes. If the property is no longer used for public road purposes, it shall revert to State.
5. To reflect the changes made to 23 U.S.C. 102 by the Infrastructure Investment and Jobs Act of 2021 (Public Law 117-58), Paragraph 11.b. of Attachment No. 2 Federal Standard Provisions is deleted in its entirety.

# ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS

## PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. State will provide or secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.
4. Agency may perform only those elements of the Project identified in the special provisions.

## PROJECT FUNDING REQUEST

5. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. State, its consultant or Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

## FINANCE

6. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number



Deschutes County/ODOT  
Agreement No. 73000-00032098

in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or contractor, using the criteria in 2 CFR 200.331.

- 7. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
- 8. Agency’s estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency’s construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer’s estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid, must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor’s written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State’s Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash or check submitted to the Oregon Department of Transportation.
- 9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

Deschutes County/ODOT  
Agreement No. 73000-00032098

- 10. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
- 11. Agency shall, upon State’s written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State’s Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
  - b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State’s Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
- 12. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
- 13. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the final total cost of the Project has been computed, State shall furnish Agency with an itemized statement. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total cost of the Project. Any portion of deposits made in excess of the final total cost of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the final total cost of the Project.

**DESIGN STANDARDS**

- 14. Agency and State agree that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with State’s Oregon Bicycle & Pedestrian Design Guide (current version). State or its consultant shall use either AASHTO’s A Policy on Geometric Design of Highways and Streets (current version) or State’s Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. State or its consultant

Deschutes County/ODOT  
Agreement No. 73000-00032098

may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.

15. Agency agrees that if the Project is on the Oregon State Highway System or a State-owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current CAD Manual and Discipline Specific CAD Manuals.
16. State and Agency agree that for all projects on the Oregon State Highway System or a State-owned facility, any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. State and Agency further agree that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retain authority for said approval. FHWA shall review any design exceptions for projects subject to Project of Division Interest and retains authority for their approval.
17. ODOT agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. State or its consultant shall, on behalf of Agency, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

## **PRELIMINARY & CONSTRUCTION ENGINEERING**

18. Preliminary engineering and construction engineering may be performed by either a) State, or b) a State-approved consultant. Engineering work will be monitored by State to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, or b) a State-approved consultant. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State shall offer Agency the opportunity to review the documents prior to advertising for bids.
19. Architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects must follow the State's processes to ensure federal reimbursement. State will award, execute, and administer the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 731-148-0130, OAR 731-148-0220(3), OAR 731-148-0260 and State Personal Services Contracting Procedures, as applicable and as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the state approved consultant prior to receiving authorization from State to proceed.
20. The State or its consultant responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary

for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.

- 21. State shall prepare construction contract and bidding documents, advertise for bid proposals, award all construction contracts, and administer the construction contracts.
- 22. Upon State’s award of a construction contract, State shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State’s Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
- 23. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State’s liaison shall process reimbursement for federal participation costs.

**Disadvantaged Business Enterprises (DBE) Obligations**

- 24. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State’s DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).”*

- 25. State and Agency agree to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
- 26. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

**RIGHT OF WAY**

- 27. Right of Way activities shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24.
- 28. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. State or its consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way office.
- 29. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be entirely responsible for project acquisition and coordination of the right of way certification.
- 30. State or its consultant shall ensure that all project right of way monumentation will be conducted in conformance with ORS 209.155.
- 31. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

**RAILROADS**

- 32. State shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

**UTILITIES**

- 33. State or its consultant shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. State or its consultant shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility & Railroad Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

**GRADE CHANGE LIABILITY**

- 34. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
- 35. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
- 36. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, in connection with or arising out of the Project covered by the Project Agreement.

**MAINTENANCE RESPONSIBILITIES**

- 37. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

**CONTRIBUTION**

- 38. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- 39. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been

capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

40. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

**ALTERNATIVE DISPUTE RESOLUTION**

41. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

**WORKERS' COMPENSATION COVERAGE**

42. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. State and Agency shall ensure that each of its contractors complies with these requirements.

**LOBBYING RESTRICTIONS**

- 43. Agency certifies by signing the Agreement that:
  - a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the

undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing this Agreement, Agency agrees to fulfill the responsibility imposed by 2 CFR Subpart C, including 2 CFR 180.300, 180.355, 180.360, and 180.365, regarding debarment, suspension, and other responsibility matters. For the purpose of this provision only, Agency is considered a participant in a covered transaction. Furthermore, by signing this Agreement, Agency is providing the certification for its principals required in Appendix to 2 CFR part 180 – Covered Transactions.





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 1, 2024

SUBJECT: Proposed Solid Waste Disposal Fee Waivers for Fiscal Year 2025

RECOMMENDED MOTION:

Move approval of Resolution No. 2024-036 approving Solid Waste Disposal Fee Waivers for Fiscal Year 2025.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of Commissioners has established a policy where non-profit organizations that reuse or resell used goods, such as thrift stores, are allowed solid waste disposal fee waivers. Qualified organizations benefit the solid waste system by diverting waste from disposal at Knott Landfill. The policy establishes a maximum amount of \$5,000 for participating organizations, with an overall funding of \$45,000 for the Board authorized thrift store fee waiver program. For FY24, eleven non-profit organizations have applied for the program and the department is proposing a total of \$41,000 in fee waivers, with six of the organizations receiving the maximum \$5,000 amount (see attached table for historical use and distribution summary).

In addition to the thrift store fee waivers, the Board has given the Director of Solid Waste authority to grant fee waivers on a case-by-case basis. Typically, these waivers are granted to groups doing clean-up projects on public lands or similar efforts. The Solid Waste Department also works with the Community Development Department to provide fee waivers to assist in solid waste code enforcement efforts. Additionally, this past Spring the department began a new program with the Forester to provide fee waivers for the disposal of materials collected through Fire-Wise Community fuel reduction activities. Through May of FY24, \$2,605, \$922, and \$2,771.60 in fee waivers were granted for these programs respectively (see attached table).

The Solid Waste Department is working with a growing number of community groups and individuals who are conducting cleanup activities on public lands. Due to these increased demands the department is seeking to modify the authority granted to the Director of Solid Waste to increase individual event awards to \$2,000 per event and a cumulative total of fee waivers to \$10,000 for the fiscal year.

**BUDGET IMPACTS:**

The fee waivers do not result in any expenditures by the department and are considered lost revenue.

**ATTENDANCE:**

Tim Brownell, Director of Solid Waste

REVIEWED  

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LEGAL COUNSEL

07/01/2024 Item #3.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

A Resolution Rescinding Resolution 2001-38 and \*  
Any Amendments of Resolution 2001-38 and \*  
Establishing a Revised Policy for Waiver of Solid \*  
Waste Disposal Fees

RESOLUTION NO.  
2024-036

WHEREAS, the Board of County Commissioners hereby rescinds Resolution 2001-38 and any amendments of Resolution 2001-38 and establishes a revised policy for the waiver of fees for the disposal of solid waste, and

WHEREAS, the Board has determined that the public interest is served by waiving such disposal fees, to a maximum dollar amount, for certain organizations within Deschutes County, and

WHEREAS, the Board desires to establish a general policy describing the procedures, and circumstances under which organizations may qualify for the waiver of imposed fees, now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. Exhibit "A", attached hereto and made a part hereof, constitutes a list organizations, with the maximum dollar amount to be credited to their account by the Solid Waste Department for fiscal year 2024-2025. Exhibit "A" shall be modified during the Solid Waste budget process each year to determine the following fiscal year disposal credit distribution.

Section 2. All charges above the amount authorized for the fiscal year identified shall be paid for by the organization at the adopted fee schedule, through the billing process provided by the Solid Waste Department.

Section 3. To qualify for fee waivers, an organization must be non-profit and engaged as a primary form of business in the processing of abandoned goods for sale or reuse. Application must be made to the Solid Waste Department by April 1 of each year, on a form provided by the department, to qualify for the following fiscal year.

Section 4. Each year during the budget process the Board will review requests for waiver of fees and establish a maximum dollar amount each organization is allowed to dispose. The total aggregate of fees to be waived under this policy shall not exceed \$45,000.00 per year or \$5,000.00 for any one qualifying organization.

Section 5. Each department within the County shall have fees waived for solid waste generated by that department. Waste is defined as material generated from normal daily operations and shall not include demolition, construction, land clearing or waste generated from special projects.

Section 6. The Solid Waste Department is directed to establish a line of credit in the amount of \$10,000 for use at the discretion of the Director of Solid Waste in waiving fees for the purposes of public land and homeless encampment cleanup events by non-profit organizations or community groups, solid waste code enforcement efforts, and other special occurrences. Fee waivers under this section are limited to one per year per organization and no more than \$2,000 per event. The Director of Solid Waste shall report to the Board of County Commissioners prior to the end of the fiscal year regarding how the fee waivers under this section were distributed.

Section 7. Fees established at Knott recycling facility and other County recycling depots for the deposit of recyclables, including tires and appliances, will not be waived.

Section 8. Fees for the disposal of solid waste removed from illegal disposal sites on private or public properties will be paid by the owners of the land containing the illegal sites. However, disposal fees will be waived for such owners in instances where a non-owner is successfully prosecuted and reimburses the County for the illegal disposal.

Section 9. Material generated from the County Road Department's "Adopt a Road" program and deposited in approved "Adopt a Road" bags shall have the disposal fee waived.

Section 10. From Christmas day through January 31 of the following year, fees for the disposal of Christmas trees will be waived for individual households. Disposal fees will not be waived for commercial lots, including those operated by religious, charitable or non-profit organizations.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2024.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, Chair

ATTEST:

\_\_\_\_\_  
ANTHONY DeBONE, Vice Chair

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHIL CHANG, Commissioner

Exhibit A

FY 2024-25 Disposal Fee Credits

Total Amount Allocated - \$ 41,000

<u>ORGANIZATION</u>	<u>FY 2025 (7/1/2024-6/30/2025) CREDIT</u>
1856 City Care/City Thrift	\$ 2,000
2050 Habitat for Humanity – Bend/Redmond	\$ 5,000
1117 Habitat for Humanity – Sisters	\$ 2,500
1140 Humane Society of Central Oregon	\$ 5,000
1840 Brightside Animal Center	\$ 5,000
1208 Opportunity Foundation	\$ 5,000
1266 Second Tern Thrift Shop	\$ 500
1833 St Vincent DePaul – La Pine	\$ 3,000
1831 St Vincent DePaul – Redmond	\$ 5,000
1874 Teen Challenge Thrift Store	\$ 5,000
2103 Furnish Hope	\$ 3,000



Director Authorized Fee Waivers

Deschutes County Department of Solid Waste

6/1/23 - 5/31/24 (as of 6/10/24)

Total \$	2024												Total
	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	
<b>SPECIAL REQUEST WAIVERS:</b>													
1868	\$ 27.00	\$ -	\$ 35.00	\$ 42.00	\$ 49.00	\$ 49.00	\$ -	\$ -	\$ 112.00	\$ 119.00	\$ 189.00	\$ 413.00	\$ 1,035.00
<b>Total</b>	<b>\$ 27.00</b>	<b>\$ -</b>	<b>\$ 35.00</b>	<b>\$ 42.00</b>	<b>\$ 49.00</b>	<b>\$ 49.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 112.00</b>	<b>\$ 119.00</b>	<b>\$ 189.00</b>	<b>\$ 413.00</b>	<b>\$ 1,035.00</b>
<b>HOMELESS CAMPS/PUBLIC LANDS CLEAN UP:</b>													
8059												\$ 14.00	\$ 14.00
8188										\$ 252.00	\$ 42.00		\$ 294.00
8258												\$ 156.00	\$ 156.00
8274				\$ 64.00									\$ 64.00
8276			\$ 798.00										\$ 798.00
8277				\$ 28.00									\$ 28.00
8279										\$ 216.00	\$ 42.00	\$ 386.00	\$ 1,570.00
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 798.00</b>	<b>\$ 92.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 252.00</b>	<b>\$ 42.00</b>	<b>\$ 386.00</b>	<b>\$ 1,570.00</b>
<b>CODE ENFORCEMENT PROPERTY CLEAN UP:</b>													
8268	\$ 84.00			\$ 56.00	\$ 14.00	\$ 66.00				\$ 14.00	\$ 28.00	\$ 28.00	\$ 290.00
8271		\$ 44.00											\$ 44.00
8275		\$ 329.00		\$ 259.00									\$ 588.00
<b>Total</b>	<b>\$ 84.00</b>	<b>\$ 373.00</b>	<b>\$ -</b>	<b>\$ 315.00</b>	<b>\$ 14.00</b>	<b>\$ 66.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 14.00</b>	<b>\$ 28.00</b>	<b>\$ 28.00</b>	<b>\$ 922.00</b>
<b>FIREWISE COMMUNITY CLEAN UP (50% DISPOSAL CREDIT):</b>													
9010										\$ 361.20	\$ 694.75	\$ 1,055.95	\$ 1,055.95
9020										\$ 634.85	\$ 634.85	\$ 634.85	\$ 634.85
9030										\$ 176.05	\$ 664.65	\$ 840.70	\$ 840.70
9040										\$ 240.10	\$ 2,234.35	\$ 2,771.60	\$ 2,771.60
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 537.25</b>	<b>\$ 2,234.35</b>	<b>\$ 2,771.60</b>	<b>\$ 2,771.60</b>



**SOLID  
WASTE**

**Board Authorized Fee Waivers  
Non-Profit Thrift Stores**

**Deschutes County Department of Solid Waste**

ACCT #	NON-PROFIT ENTITY	CREDIT FY 16-17	CREDIT FY 17-18	CREDIT FY 18-19	CREDIT FY 19-20	CREDIT FY 20-21	CREDIT FY 21-22	CREDIT FY 22-23	CREDIT FY 23-24	USED THRU 5/31/2024	UNUSED CREDIT	REQUEST FY 24-25	RECOMM FY 24-25
1856	City Care/City Thrift	2,000.00	2,000.00	2,000.00	2,000.00	3,000.00	4,000.00	4,000.00	2,000.00	343.00	1,657.00	3,500.00	2,000.00
2050	Bend-Redmond Habitat for Humanity*	5,500.00	7,000.00	7,500.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	0.00	16,000.00	5,000.00
1117	Sisters Habitat for Humanity	2,500.00	2,500.00	2,500.00	3,000.00	3,000.00	2,500.00	2,500.00	2,500.00	726.00	1,774.00	2,500.00	2,500.00
1140	Humane Society of Central Oregon	4,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	4,774.00	226.00	5,065.22	5,000.00
1840	Brightside Animal Center	5,000.00	5,000.00	5,000.00	3,500.00	4,000.00	5,000.00	5,000.00	5,000.00	4,661.00	339.00	5,000.00	5,000.00
1208	Opportunity Foundation of Central Oregon	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	3,281.00	1,719.00	18,200.00	5,000.00
1266	Second Tern Thrift Shop	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	385.00	115.00	500.00	500.00
1833	St Vincent DePaul LaPine	1,750.00	2,000.00	2,500.00	3,000.00	3,000.00	3,500.00	3,500.00	3,000.00	1,302.00	1,698.00	3,000.00	3,000.00
1831	St Vincent DePaul Redmond	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	0.00	11,000.00	5,000.00
1874	Teen Challenge Thrift Store	3,000.00	3,000.00	3,500.00	3,500.00	3,700.00	4,000.00	5,000.00	5,000.00	2,429.00	2,571.00	5,000.00	5,000.00
2103	Furnish Hope						1,600.00	1,600.00	2,000.00	1,253.00	747.00	5,000.00	3,000.00
	<b>TOTAL</b>	<b>34,250.00</b>	<b>37,000.00</b>	<b>38,500.00</b>	<b>35,500.00</b>	<b>37,200.00</b>	<b>41,100.00</b>	<b>42,100.00</b>	<b>40,000.00</b>	<b>29,154.00</b>	<b>10,846.00</b>	<b>74,765.22</b>	<b>41,000.00</b>

\*FY 19-20: Bend & Redmond Habitat for Humanity combined into one entity

FY 21-22: Opportunity Foundation closed the Bend location in FY 20-21, the FY 21-22 request is for the Redmond location

New non-profit entity request for Furnish Hope who gathers, warehouses, redistributes and delivers donated home essentials to families referred to them



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** July 1, 2024

**SUBJECT:** Preparation for Public Hearing: Psilocybin Service Center at Juniper Preserve

**RECOMMENDED MOTION:**

None—information only in preparation for a public hearing on July 17<sup>th</sup>.

**BACKGROUND AND POLICY IMPLICATIONS:**

Staff will provide background in preparation for a public hearing scheduled for July 17<sup>th</sup> regarding an appeal of a Conditional Use Permit and Site Plan Review to establish a psilocybin service center. The subject property is located within the core area of Juniper Preserve (formerly Pronghorn) destination resort.

**BUDGET IMPACTS:**

None.

**ATTENDANCE:**

Audrey Stuart, Associate Planner





MEMORANDUM

TO: Board of County Commissioners
FROM: Audrey Stuart, Associate Planner
DATE: June 24, 2024
RE: Work session to prepare for a public hearing regarding a psilocybin service center; Land use file nos. 247-23-000614-CU, 247-23-000615-SP.

The Board of County Commissioners ("Board") will conduct a work session on July 3, 2024, in preparation for a public hearing to consider an appeal of a Hearings Officer decision denying a psilocybin service center. The public hearing is tentatively scheduled for July 17, 2024.

I. BACKGROUND

The Applicant requests a Conditional Use Permit and Site Plan Review to establish a psilocybin service center at Juniper Preserve (formerly Pronghorn) destination resort. The subject property is zoned Exclusive Farm Use and Destination Resort Combining Zone and is located in the core area of Juniper Preserve. The applicant proposes to administer psilocybin to clients within an existing structure, under licensing from the Oregon Health Authority.

A public hearing was held before the Deschutes County Hearings Officer on March 12, 2024, and a Hearings Officer decision denying the applications was mailed on April 29, 2024. The applicant appealed the Hearings Officer's decision on May 10, 2024 (appeal file no. 247-24-000292-A).

At a work session on May 29, 2024, the Board voted two-to-one to hear this appeal. The Board also voted to hear this appeal limited de novo, meaning testimony and evidence must address the four criteria that were the basis for the Hearings Officer's denial.

II. PUBLIC COMMENTS

Staff received 153 comments in advance of the March 12th hearing, and these comments included those both in support of and in opposition to the subject applications. Key issues raised by those in opposition included:

- The proposal’s compatibility with existing Resort uses and functions;
- The Resort’s existing access across BLM land;
- The proposal’s compatibility with the Resort’s Final Master Plan;
- The Resort’s distance from emergency services;
- Impact to property values.

Key issues raised in support included:

- Appropriateness of the proposed location;
- Community benefits of psilocybin treatment;
- The proposed use is permitted in the zone and does not require a modification to the Resort’s Final Master Plan.

Nine additional comments were received after the Hearings Officer decision was mailed, and these were primarily questions about process as well as several comments in opposition to the proposal.

**III. HEARINGS OFFICER RECOMMENDATION**

A Hearings Officer decision denying the applications was mailed on April 29, 2024. The Hearings Officer’s denial was based on the Applicant’s failure to demonstrate compliance with four criteria of Deschutes County Code, which were related to the screening of the parking lot, the service drive clear vision area, and transportation access to the proposed site.

**Issue Area 1: Screening of Parking Area**

The following two criteria require screening of the proposed parking spaces. The Hearings Officer found the submitted site plan did not show how the parking area would be screened from adjacent residences, located across Nicklaus Drive, and the Applicant failed to show how DCC 18.11.030(F)(1) would be met. Furthermore, the Hearings Officer found the proposed vegetative screening was not sufficient to demonstrate compliance with DCC 18.124.060(G), and that this code provision cannot be satisfied without also addressing DCC 18.116.030(F)(1).

Section 18.116.030, Off-Street Parking And Loading

- F. Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:
  - 1. Except for parking to serve residential uses, an off-street parking area for more than five vehicles shall be effectively screened by a sight obscuring fence when adjacent to residential uses, unless effectively screened or buffered by landscaping or structures.

Section 18.124.060, Approval Criteria

- G. Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.

**Issue Area 2: Clear Vision Area**

The following criteria require there to be a clear vision area at the intersection of the service drive and Nicklaus Drive. The Hearings Officer found there was not sufficient information to show how this would be met, and it was not clear that the Applicant had correctly identified the service drive on the subject property. The Hearings Officer notes there may be a conflict with the visual screening required by DCC 18.116.030(F)(1), but there was not sufficient information to address this question.

Section 18.116.030, Off-Street Parking And Loading

F. Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:

- ...
- 7. Service drives shall have a minimum vision clearance area formed by the intersection of the driveway centerline, the street right of way line and a straight line joining said lines through points 30 feet from their intersection.

**Issue Area 3: Transportation Access**

The following criteria require the Applicant to show that the proposed site is suitable for a service center based on transportation access.

Section 18.128.015, General Standards Governing Conditional Uses

A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:

- ...
- 2. Adequacy of transportation access to the site; and

A significant number of public comments raised concerns about transportation access, and the fact the resort is accessed by a right-of-way grant over federal land. The Hearings Officer found that federal law prohibits transporting psilocybin over federal land, and transporting psilocybin to the subject property would violate the conditions of the right-of-way that the Bureau of Land Management (BLM) has granted to the resort. The Hearings Officer found that transportation access is not suitable because the existing right-of-way cannot be used for the Applicant’s intended purpose.

The Applicant responded to these arguments in the Notice of Intent to Appeal, claiming that DCC 18.128.015(A) does not specify the geographic scope that is subject to review; the arguments regarding revocation of the right-of-way are speculative; and the Hearings Officer incorrectly interpreted the provisions of the BLM right-of-way.

**IV. BOARD CONSIDERATION**

The Board may decide to establish time limits for public testimony at the public hearing. If the Board does choose to establish time limits, staff recommends the following time limits:

- 30 minutes for the Applicant
- 10 minutes for public agency staff
- 3 minutes for general members of the public
- 10 minutes for the Applicant’s rebuttal

**V. NEXT STEPS**

Based on the feedback received from the Board at the Work Session, Staff will prepare for the upcoming public hearing. Staff will mail a Notice of Public Hearing and include the time limits, if any, that the Board chooses to implement for the hearing.

**VI. RECORD**

The record for File Nos. 247-23-000614-CU, 247-23-000615-SP, 247-24-000292-A are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-23-000614-cu-247-23-000615-sp-psilocybin-service-center-juniper-preserve>

Attachments:

1. Hearing’s Officer Decision for file nos. 247-23-00614-CU, 247-23-000615-SP

**DECISION AND FINDINGS OF  
THE DESCHUTES COUNTY HEARINGS OFFICER**

**FILE NUMBERS:** 247-23-000614-CU, 247-23-000615-SP

**HEARING DATE:** March 12, 2024

**HEARING LOCATION:** Videoconference and  
Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**APPLICANT/OWNER:** Applicant: Juniper Institute LLC  
Owners: Pronghorn Intangibles LLC

**SUBJECT PROPERTY:** Map and Tax Lot: 161316D000500  
Account: 251126  
Situs Addresses: 23050 Nicklaus Drive,  
Bend, OR 97701

**REQUEST:** A conditional use and site plan review to establish a psilocybin service center in the Exclusive Farm Use (EFU) Zone, and Destination Resort (DR) Combining Zone.

**HEARINGS OFFICER:** Tommy A. Brooks

**SUMMARY OF DECISION:** This Decision DENIES the Application.

**I. STANDARDS AND CRITERIA**

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Chapter 18.113, Destination Resorts Zone (DR)

Chapter 18.116, Supplementary Provisions

Chapter 18.124, Site Plan Review

Chapter 18.128, Conditional Use

Title 22, Deschutes County Development Procedures Ordinance

Conceptual Master Plan (CMP) for the Pronghorn Destination Resort

Final Master Plan (FMP) for the Pronghorn Destination Resort

**II. BACKGROUND AND PROCEDURAL FINDINGS**

**A. Request and Nature of Proceeding**

This matter comes before the Hearings Officer as a request by the Applicant to approve a psilocybin service center (“Service Center”). The Service Center is proposed to be located at Juniper Preserve, a destination resort approved in the Exclusive Farm Use (EFU) Zone (“EFU Zone”), which was originally referred to as the Pronghorn Destination Resort (“Juniper Preserve”). The relevant areas of the Juniper Preserve are within the EFU Zone, and the Subject Property is also subject to the County’s Destination Resort (DR) combining zone (“DR Zone”). The Applicant seeks two land use approvals – a Conditional Use Permit and a Site Plan Review.

As described by the Applicant, the Service Center will operate under a license from the Oregon Health Authority (“OHA”). OHA regulates the production, processing, and use of psilocybin under the Oregon Psilocybin Services Act. The Applicant proposes to conduct activities related only to the use of psilocybin and would conduct the licensed activities in an existing structure on the Subject Property.

The County reviews conditional uses in accordance with the standards and procedures set forth in Deschutes County Code (“DCC” or “Code”) Chapter 18.128 and Title 22. The proposed use must also satisfy the standards of the underlying EFU Zone – set forth in DCC Chapter 18.16 – which in turn requires compliance with the applicable provisions of DCC Chapter 18.116, Supplementary Provisions, and Chapter 18.124, Site Plan Review. Because the Subject Property is in the DR Zone, provisions in DCC Chapter 18.113 are applicable, as are provisions of the Conceptual Master Plan (“CMP”) and the Final Master Plan (“FMP”) for Juniper Preserve.

**B. Application, Notices, Hearing**

The Applicant submitted the Application on August 8, 2023. On September 7, 2023, staff of the County’s Community Development Department (“Staff”) provided notice to the Applicant that it did not deem the Application to be complete (“Incomplete Letter”). On January 26, 2024, the Applicant submitted supplemental information in response to the Incomplete Letter and requested that the Application be deemed complete at that time.

On February 15, 2024, Staff mailed a Notice of Public Hearing (“Hearing Notice”). The Hearing Notice stated the Hearing would be held on March 12, 2024.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on March 12, 2024, opening the Hearing at 6:00 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County’s jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at 9:05 p.m. Prior to the conclusion of the Hearing, and at the request of the Applicant, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until March 19, 2024 (“Open Record Period”); (2) any participant could submit rebuttal materials (evidence or argument) until March 26, 2024 (“Rebuttal Period”); and (3) the Applicant could submit a final legal argument, but no additional evidence, until March 29, 2024, at which time the record would close. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. No participant objected to the post-Hearing procedures.

C. Review Period

As noted above, the Applicant submitted additional materials in response to the Incomplete Letter on January 26, 2024, requesting that the Application be deemed complete at that time. Using January 26, 2024, as the date of completeness, the original deadline for a final County decision under ORS 215.427 – “the 150-day clock” – was June 24, 2024. As noted above, however, the Applicant requested a 17-day extension of the written record.

Pursuant to DCC 22.24.140(E), a continuance or record extension is subject to the 150-day clock, unless the Applicant requests or otherwise agrees to the extension. Here, the Applicant requested the extension. Under the Code, therefore, the additional 17 days the record was left open do not count toward the 150-day clock. Adding that time period to the original deadline, the new deadline for the County to make a final decision is July 11, 2024.

D. Staff Report

On March 5, 2024, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time (“Staff Report”).

In the report’s conclusion, Staff requests the Hearings Officer to determine if the applicant has met the burden of proof necessary to approve a conditional use permit and site plan review for the Service Center. The Staff Report does not make a specific recommendation, but the Staff Report does make some specific findings and proposes the imposition of several conditions of approval if the Application is approved.<sup>1</sup>

Because some of the information and analysis provided in the Staff Report is not refuted, portions of the findings below refer to the Staff Report and, in some cases, adopt sections of the Staff Report as my findings. In the event of a conflict between the findings in this Decision and the Staff Report, the findings in this Decision control.

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<sup>1</sup> During the Hearing, Staff acknowledged that some the proposed conditions were erroneously included in the Staff Report. Because this Decision denies the application, I do not address all of Staff’s proposed conditions.

E. Record Issues

The Applicant’s final legal argument contains new evidence in the form of an “Exhibit A”, which includes a register page from the Bureau of Land Management and an Assignment of Right of Way. The instructions provided to participants at the end of the Hearing included a statement that the Applicant’s final legal argument should not include new evidence. A footnote in the Applicant’s submittal states that the Hearings Officer “may take judicial notice of the BLM Assignment,” but does not offer any citation to the Code or to state law to explain that statement. Because it is not clear from the Applicant’s submittal that there is a legal basis for taking “judicial notice” of this particular document, and because other participants were not afforded an ability to comment on that document, I am excluding it from the record and will not refer to that particular evidence in this Decision.

**III. SUBSTANTIVE FINDINGS AND CONCLUSIONS**

The Hearing Notice and Staff Report identified the Code sections listed in Section I above as the applicable standards and criteria governing the Application. Participants in this proceeding were invited to identify other criteria and to explain why those criteria must apply. The findings in this section address the relevant criteria listed in the Staff Report and, where appropriate, additional criteria identified by participants. The Applicant submitted an updated Site Plan as Exhibit A to its submittal dated March 19, 2024. The findings below refer to that document whenever they make a reference to the Site Plan.

**A. DCC Chapter 18.16, Exclusive Farm Use Zones (EFU)**

The EFU Zone is the base zone for the Subject Property. DCC 18.16.035 expressly states that destination resorts are allowed as a conditional use in the EFU Zone, subject to all applicable standards of the DR Zone, which are set forth in DCC Chapter 18.113. Pursuant to DCC 18.113.020(B), when the DR Zone provisions are applicable, “they shall supersede all other provisions of the underlying zone.” Because the Subject Property is within an approved destination resort and the DR Zone provisions apply, those provisions supersede the provisions in the EFU Zone. I therefore find it is not necessary to address any of the dimensional or other standards in the EFU Zone as part of the consideration of this Application.

**B. DCC Chapter 18.113, Destination Resorts Zone – DR**

1. DCC 18.113.020, Applicability

This Code provision applies DCC Chapter 18.113 to proposals relating to the development of destination resorts. The Subject Property is part of a larger area that has been approved as a destination resort as defined in DCC Title 18. The provisions of DCC Chapter 18.113 therefore apply, and, as noted above, these provisions supersede all other provisions in the underlying EFU Zone.

2. DCC 18.113.025, Application to Existing Resorts

This Code provision states that “[e]xpansion proposals of existing developments approved as destination resorts” must meet certain criteria. The Applicant does not propose an expansion of the Juniper Preserve destination resort and, instead, proposes a specific development within an area already contemplated for



future commercial development as part of Juniper Preserve’s approval. One participant opposed to the Application identified DCC 18.113.025 as being applicable. However, that participant did not explain why this Code provision applies to the Application, much less explain why this Code provision is not satisfied. Based on the foregoing, I find that DCC 18.113.025 is not applicable to the proposal in the Application.

3. DCC 18.113.030, Uses in Destination Resorts

This Code provision lists several uses that are allowed in a destination resort, provided that the use is intended to serve persons at the destination resort and is approved in a final master plan. Section (D) of this provision lists various commercial services and specialty shops designed for visitors to the resort, including psilocybin service centers licensed by the OHA, as set forth in DCC 18.113.030(D)(7)(a). Of note, that more specific Code provision provides an exception and states that “[f]or a lawfully established destination resort, the establishment of a psilocybin service center in any area approved for commercial services or specialty shops pursuant to an approved final master plan does not require modification of an approved conceptual master plan or final master plan.”

The Applicant states that the Service Center will be licensed by the OHA. Because the record does not contain evidence that OHA has already issued such a license, I find that this standard can be met only by a condition of approval requiring the Applicant to obtain the OHA license prior to initiation of the use.<sup>2</sup>

The FMP for Juniper Preserve establishes various “areas” of the approved destination resort. The Subject Property is in “Area 1.” The County’s decision approving the destination resort (File No. M-02-1) expressly states that Areas 1-4 may include commercial uses. One participant in this proceeding objected to the Application based, in part, on their assertion that the Service Center cannot be integrated into the “core” commercial facilities of the destination resort, which include a spa, pool, and restaurants. However, the Code does not require new commercial uses to be “integrated with” existing commercial uses and, instead, requires only that the Service Center be in an “area approved for commercial service or specialty shops.” I therefore agree with the conclusion in the Staff Report that the Service Center is in an area approved for commercial services, which is permitted without the need to modify Juniper Preserve’s CMP or FMP, pursuant to DCC 18.113.030(D)(7)(a).

4. DCC 18.113.040, Application Submission

This Code provision lists the application submittal requirements for a destination resort. Sections (A) and (B) of this Code provision relate to the initial conceptual master plan and the final master plan. Juniper Preserve has already received approval of its CMP and FMP, and these Code provisions are no longer applicable. Instead, specific development in the approved destination resort must comply with the FMP, which is addressed in more detail below. DCC 18.113.040(C) also states that a specific development must satisfy site plan criteria. The Application seeks approval of the Applicant’s proposed Site Plan, and the standards for site plan review are also addressed in more detail below. Based on the foregoing, I find that

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<sup>2</sup> Although this Decision ultimately denies the Application, these findings identify various conditions of approval that would be necessary to meet specific criteria.

this criterion is met as long as the proposal is consistent with the FMP and as long as the site plan review criteria are satisfied.

Compliance with FMP

Pages 7-9 of the Staff Report addresses Juniper Preserve’s FMP and whether the Application is in compliance with the FMP (and its associated conditions of approval). I find that the Staff Report’s summary of compliance with the FMP is accurate, and I adopt that portion of the Staff Report as my findings, as modified by the following findings, which also address issues raised by other participants in this proceeding.

The County initially approved the FMP for the destination resort as part of File No. M-02-1 (“Resort Approval”). The Staff Report incorrectly quotes Condition G of the Resort Approval as addressing commercial uses, whereas Condition G actually addresses solar standards, and that condition required the applicant to “document compliance with the applicable solar access standards at the time of site plan review...”. DCC 18.113.060(G)(1) states that any standards in the underlying zone relating to solar access “shall not apply within a destination resort”. Thus, at the time of this Site Plan Review, there are no applicable solar standards to apply as part of Condition G, and the Application remains in compliance with that portion of the FMP.

Condition H of the Resort Approval states that the applicant must “limit commercial uses within the resort to those permitted in the DR Combining Zone and those listed in CMP Exhibit 15.” Some participants in this proceeding objected to the Application on the basis that a psilocybin service center is not listed as one of the contemplated uses in Exhibit 15 of the CMP. I find this objection does not warrant denial of the Application. It is not surprising that the CMP did not list a psilocybin service center as a commercial use, because such uses did not become lawful under Oregon law until the enactment of the Oregon Psilocybin Services Act. Even so, the FMP allows commercial uses listed in Exhibit 15 of the CMP and the uses allowed in the DR Zone. The Applicant does not rely on Exhibit 15 of the CMP and, instead, proposes the Service Center because it is an allowed commercial use in the DR Zone by virtue of DCC 18.113.030(D)(7), and allowed expressly without the need to modify the CMP or the FMP. Based on the foregoing, the Application is consistent with Condition H of the Resort Approval.

5. DCC 18.113.050, Requirements for Conditional Use Permit and Conceptual Master Plan Applications

The provisions in this Code section relate to the application for a conceptual master plan for a destination resort. The County has already issued a CMP and FMP for Juniper Preserve. Further, DCC 18.113.030(D)(7) allows the approval of a psilocybin service center without the need to modify the CMP or FMP.

One participant opposed to the Application identified DCC 18.113.050, and specifically subsections (B)(5)(a-d), (B)(6), (B)(12), and (B)(18), as being applicable. However, that participant did not explain why those Code provisions apply to the Application, much less explain why those Code provisions were not satisfied.

Because DCC 18.113.050 relates specifically to the application for a CMP, and because this Application does not require a new or modified CMP, I find that these provisions are not applicable.

6. DCC 18.113.060, Standards for Destination Resorts

DCC 18.113.060 establishes various minimum standards for the initial approval and phasing of a destination resort. The only portion of this Code section identified in the record as being applicable is DCC 18.113.060(G), and specifically subsections (G)(1) and (G)(2)(a)(1) of that section. Subsection (G)(1) simply states that most dimensional standards of the underlying zone do not apply and, instead, such standards are to be established as part of the CMP approval process. However, that provision does state that, at a minimum, a 100-foot setback must be maintained from all streams and rivers, and that rimrock setbacks must be as provided by other Code provisions. This criterion is satisfied because no streams, rivers, or rimrock are present within the vicinity of the proposal.

Subsection (G)(2)(a)(1) requires an exterior setback of 350 feet from commercial development to the exterior property lines. According to the portion of the Staff Report addressing this standard, which is not refuted by other participants, the Service Center is located more than 350 feet from all exterior property lines.

One participant opposed to the Application identified DCC 18.113.060(L)(2)(F) as being applicable. However, that participant did not explain why that Code provision – which requires a destination resort to maintain records documenting its rental program related to overnight lodging – applies to the proposal in the Application, much less explain why those Code provisions were not satisfied.

Based on the foregoing, I find that the applicable provisions of DCC 18.113.060 are satisfied.<sup>3</sup>

C. DCC Chapter 18.116, Supplementary Provisions

1. DCC 18.116.020, Clear Vision Areas

This Code provision requires a clear area (i.e. an absence of visual obstructions) at the intersection of two streets at a property corner. According to the Staff Report, there is a clear vision area for the property located at Nicklaus Drive, a private road that fronts the property. However, the Staff Report does not identify which intersection of two streets is applicable, and the record materials indicate only a single street in the area. Instead, the referenced “intersection” appears to be the area where the parking lot connects to Nicklaus Drive. In that area, the Applicant’s Site Plan shows a clear vision area, based on a 40-foot triangle as allowed by DCC 18.116.020(B), in which there will be only low landscaping. No participant objects to this design or otherwise asserts this Code provision is not satisfied. The Staff Report

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<sup>3</sup> Neither the Applicant, the Staff Report, nor any other participant has asserted that the remaining provisions of this DCC Chapter – DCC 18.113.070 through DCC 18.113.120 – are applicable to the proposal in the Application.

recommends, and the Applicant does not object to, a condition of approval requiring this clear vision area to be maintained.

2. DCC 18.116.030, Off street Parking and Loading

DCC 18.116.030 requires the Applicant to demonstrate how required off-street parking and loading will be accommodated. Sections (A) and (C) of that provision simply require compliance with this Code provision as part of the permitting process. These findings address the remaining subsections in detail, and they conclude that the Applicant has not met its burden with respect to DCC 18.116.030(F)(1) or DCC 18.116.030(F)(7).

DCC 18.116.030(B) addresses off-street loading requirements. That Code provision, however, requires off-street loading berths for commercial uses only where the proposed floor area is 5,000 square feet or more. The Service Center is proposed in a building that is 2,940 square feet. No loading berths are therefore required. Subsection (B)(5) of this Code provision does prohibit the use of required parking spaces for loading or unloading activities unless done at a time of day when parking is not required. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with that prohibition.

DCC 18.116.030(D) addresses off-street parking requirements. The Applicant originally stated that it would rely in part on existing parking developed for Juniper Preserve to meet any parking requirements. The Applicant then submitted a transportation analysis indicating that 11 parking spaces would be required, but the Applicant still intended to provide some of those spaces by using existing parking. In subsequent submittals, however, the Applicant provided an update to its transportation analysis, prepared by a transportation engineer, confirming that 14 parking spaces are required. The Applicant’s Site Plan shows that all 14 parking spaces will be located on site in a parking area to the east of the primary structure and that the Applicant is not relying on off-site or existing parking to meet that requirement.

The County’s Senior Transportation Planner reviewed the Applicant’s transportation analysis, including its updates and the parking analysis, and agreed with its assumptions and methodologies. The Senior Transportation Planner also recommended that all 14 parking spaces be included as new stalls on the Subject Property.

One participant to this proceeding disagreed with the Applicant’s transportation analysis, specifically objecting to the “discount” to traffic counts based on the engineer’s assumption that there would be a high overlap of trips related to the Service Center and trips that are already generated as a result of guests traveling to and from Juniper Preserve. That objection was based on the fact that the transportation engineer based that discount on traffic counts at other destination resorts, which the objecting participant asserted are not relevant because they predate more recent, but unidentified, requirements of Statewide Planning Goal 8. That participant did not attempt to quantify an appropriate amount of trips that should be considered or otherwise identify the number of parking spaces that must be provided.

Having reviewed the expert analysis of the Applicant’s transportation engineer, the response of the County’s Senior Transportation Planner, and the opposing comments in the record, I find that the Applicant’s transportation analysis, as supplemented during the course of this proceeding, sufficiently

establishes the trip generation rates and required parking that must be considered as part of this Decision. Specifically, the Applicant is required to provide 14 new parking spaces. The Applicant’s Site Plan demonstrates how those off-street parking spaces will be provided on the Subject Property.

DCC 18.116.030(E) contains several general provisions relating to off-street parking. Subsections (E)(1) through (E)(3) of this Code provision relate to parking when there is more than one use on a parcel, when an applicant proposes to have joint parking facilities, or when an applicant proposes to rely on off-site parking. Because the Applicant proposes to have dedicated parking for the Service Center, and to locate that parking on the same site as the Service Center, these provisions are either not applicable or are satisfied. Subsection (E)(4) of this Code provision prohibits the use of parking facilities for storage or for truck parking. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with that prohibition. Subsection (E)(5) of this Code provision prohibits locating parking spaces in a required front yard setback. The Applicant’s Site Plan reflects that its proposal is consistent with that prohibition.<sup>4</sup> Finally, subsection (E)(6) of this Code provision is not applicable, as it relates to parking credits in certain areas where on-street parking may be provided.

DCC 18.116.030(F) contains several provisions relating to the development and maintenance of off-street parking areas. Of note, DCC 18.116.030(F)(1) requires that a non-residential parking area for more than five vehicles must be effectively screened by a fence or landscaping if adjacent to a residential use. The record identifies residential uses adjacent to the proposed parking area (across Nicklaus Drive). The Site Plan does not depict any fence or screening vegetation. To the contrary, the proposed landscaping on the south side of the parking lot is expressly identified as being low and non-obscuring in order to maintain a clear vision area. The Applicant states that this landscaping can achieve both purposes – i.e. that it can be non-obscuring for purpose of the clear vision area but still screen the parking lot from adjacent properties. In the absence of more detailed information or argument from the Applicant with respect to this criterion, I find that the Applicant has not met its burden of proof to demonstrate compliance with this Code provision.<sup>5</sup>

DCC 18.116.030(F)(2) requires lighting for off-street parking to be arranged in a manner that will prevent light from shining directly on adjoining residential properties “in a residential zone.” The record indicates that the Subject Property, and other properties in the Juniper Preserve development, are in the EFU Zone, which is not a residential zone. However, the FMP for the destination resort also indicates that one of the

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<sup>4</sup> See also the findings below relating to DCC 18.124.070(D) concluding that the Subject Property is not subject to any yard requirements.

<sup>5</sup> The Staff Report suggests that this criterion could be satisfied by a condition of approval requiring the Applicant to either show landscaping or a sight-obscuring fence on a revised site plan. However, as noted above, the Applicant and the Staff Report appear to identify this area as needing to remain visually clear to meet the requirements of DCC 18.116.020. While it may be debatable that DCC 18.116.020 applies to the intersection of the parking lot and Nicklaus Drive, the materials in the record do not allow me to resolve these competing proposals in the Application – one that would keep the area clear of visual obstructions and one that would allow the same area to be visually screened. While it may be possible to resolve that discrepancy with a different Site Plan, that burden lies with the Applicant, and the Applicant has not met that burden based on the materials in the current record.

tax lots in Juniper Preserve is in the Multiple Use Agriculture (MUA-10) zone, which it describes as “rural residential.” The Application materials do not state whether the adjoining residential developments are in a residential zone or in a non-residential zone. However, the Site Plan shows the location of a new light for the parking lot, which appears to be distant enough from adjoining residential properties to prevent direct light from shining on those properties, regardless of what those properties are zoned. Even so, the record is not clear that no direct light on adjoining residential properties is possible, and I find that this criterion can be met only through a condition of approval requiring the Applicant to prevent light from projecting directly upon the adjoining residential properties in a residential zone.

DCC 18.116.030(F)(3) requires groups of more than two parking spaces to be designed in a manner that prevents the need to back vehicles into a street or right-of-way. The Site Plan shows all 14 parking stalls using a common parking area, without the need to back vehicles into a street or right-of-way. DCC 18.116.030(F)(4) requires the area of a parking lot used by vehicles to be paved and drained for all weather use. The Site Plan depicts the parking lot area as being paved and drained in compliance with this Code provision. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with the paving and drainage requirements.

DCC 18.116.030(F)(5) governs access aisles. As proposed on the Site Plan, the access aisle for the parking lot is 39 feet wide. Other provisions in the Code indicate that the minimum width of a two-way access aisle should be 24 feet. No participant to this proceeding has asserted that the 39-foot access aisle, which exceeds the minimum provided in the Code, is not sufficient. I therefore find that this Code provision is satisfied based on the Applicant’s proposal.

DCC 18.116.030(F)(6) and (7) govern service drives, which the record indicates are any vehicle maneuvering surfaces that connect to a road or street but that are not immediately adjacent to a parking space. Based on the figures in the record, the portion of Nicklaus Drive between the parking lot and the southwest corner of the Subject Property qualifies as a service drive and, therefore, is subject to this Code provision. The Staff Report does not fully describe the extent of the service drive, but does conclude that a service drive exists in this area. Neither the Applicant nor any other participant disputes that conclusion.

Under DCC 18.116.030(F)(6), the number of service drives must be limited to the minimum number of drives needed to accommodate anticipated traffic. Further, any service drive must be designed to facilitate the flow of traffic and provide maximum safety for vehicles and pedestrians. The Site Plan indicates that Nicklaus Drive, which already exists, is 21 feet wide, sufficient to accommodate traffic. Further, the Applicant has proposed new paths to augment existing paths that will be used for ingress and egress by pedestrians. While some participants in this proceeding questioned the overall safety of the proposal, no participant asserted that this criterion had not been, or could not be, satisfied by the final Site Plan the Applicant proposed. Based on the foregoing, I find that the Applicant has met its burden to show compliance with DCC 18.116.030(F)(6).

I do not arrive at the same conclusion for DCC 18.116.030(F)(7). That Code provision requires service drives to have a minimum vision clearance area as specified in that provision. The Site Plan does not appear to identify that clearance area at all, much less provide any calculations to show that the vision

clearance is adequate and consistent with the language of the Code. I therefore find the Applicant has not met its burden of demonstrating compliance with this Code provision.<sup>6</sup>

DCC 18.116.030(F)(8) requires a parking lot to be designed to prevent a parked motor vehicle from extending over an adjacent property line or a street right of way. As proposed on the Site Plan, no parking stalls would be oriented toward an adjacent property line or street right of way. I therefore find that this Code provision is satisfied.

DCC 18.116.030(G) establishes the specific design of parking stalls. As proposed on the Site Plan, all parking stalls will be 9 feet wide and 20 feet in length, consistent with the requirements of this Code section.

Based on the foregoing, most of the requirements of DCC 18.116.030 are satisfied, or can be satisfied with the imposition of conditions of approval described above. However, because I have concluded that the Applicant has not met its burden with respect to DCC 18.116.030(F)(1) or DCC 18.116.030(F)(7), I find that DCC 18.116.030 is not fully satisfied.

3. DCC 18.116.031, Bicycle Parking

DCC 18.116.031 imposes certain bicycle parking requirements for any alteration of a use that requires a site plan review. These Code provisions therefore apply to the proposal in the Application.

DCC 18.116.031(A)(1) and (2), together, impose a minimum requirement of one bicycle parking space for every five required motor vehicle parking spaces for a commercial use like that proposed in the Application. Further, such bicycle parking must include at least two sheltered parking spaces. For purposes of this Application, which requires 14 motor vehicle parking spaces, the Applicant must have a minimum of three bicycle parking spaces, two of which are sheltered. The Applicant proposes five sheltered bicycle parking spaces, which exceeds the required minimum. I therefore find that this criterion is satisfied.

DCC 18.116.031(B) governs the design requirements of a bicycle parking facility. Under subsection (B)(1), sheltered bicycle parking can be provided by racks inside a building, which is what the Applicant proposes. Further, under subsection (B)(2), bicycle parking must be sufficiently separated from motor vehicle parking, and directional signs must be used where bicycle parking is not directly visible or obvious from a public right-of-way. While the Applicant’s proposal adequately separates bicycle and motor vehicle parking, the Applicant does not address the signage requirement. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with that portion of the

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<sup>6</sup> It is possible that either the Applicant or Staff intended that the “driveway” from the parking lot to Nicklaus Drive is the service drive, and the Applicant has identified a vision clearance area there. However, Nicklaus Drive is not a private street, on the Subject Property, and appears to function as a service drive. This is consistent with the observation in the Staff Report that a service drive exists on the southwest side of the Subject Property. Without a better explanation from the Applicant regarding the absence or presence of service drives, these findings are based on the information provide in the Staff Report and on the Site Plan.

Code. Under subsection (B)(3), a bicycle parking space must be at least two feet by six feet in dimension, with a vertical clearance of seven feet. While the Site Plan depicts the lateral dimensions of the bicycle parking spaces, it does not address the vertical dimensions. I therefore find that this portion of the Code can be met only with the addition of a condition of approval requiring the Applicant to maintain the required vertical clearance. Finally, under subsection (B)(5), the Applicant must provide certain security measures, for example by providing racks to which a bike can be locked, and in a manner that accommodates cables and U-shaped locks. The Applicant does not describe the specifics of the proposed racks it will use. I therefore find that this criterion is satisfied only with the addition of a condition of approval that describes the required security measures of the proposed bicycle racks.<sup>7</sup>

4. DCC 18.116.380, Psilocybin Manufacturing, Service Centers, and Testing Laboratories

DCC 18.116.380 imposes additional requirements on psilocybin uses. Pursuant to DCC 18.116.380, these requirements apply to psilocybin service centers in the EFU Zone and, therefore, are applicable to the Application. Of the remaining provisions in this section, only those in DCC 18.116.380 apply to the Service Center, as the others address psilocybin manufacturing and processing, which are not part of the Applicant’s proposal.

DCC 18.116.380(D)(1) and (2) are not relevant to the Application, as they address co-location of a psilocybin crop and uses outside of the EFU Zone, respectively, neither of which the Applicant proposes.

DCC 18.116.380(D)(3) and (4) impose certain distance requirements, and the Service Center must be at least 1,000 feet from a school and comply with the setback requirements of the underlying zone. According to the Applicant, there is no school within 1,000 feet of the Service Center, and no evidence in the record indicates otherwise. As relevant to this Application, the underlying zone is the EFU Zone, but also the DR Zone. As noted above, the dimensional standards in the DR Zone supersede similar provisions in the EFU Zone, and those provisions are addressed in more detail in other findings.

DCC 18.116.380(D)(5) limits the hours of operation of a psilocybin service center to between 6:00 a.m. and 11:59 p.m. on the same day, unless a facilitator determines, in accordance with state administrative rules, that a session should go longer. The Applicant has proposed hours of operation consistent with this requirement, specifically limiting hours of operation between 8:00 a.m. and 5:00 p.m. during summer months and between 9:00 a.m. and 5:00 p.m. during winter months, subject to the same caveat that a facilitator acting in accordance with state law may need to extend a session.

Based on the foregoing, I find that the applicable provisions in DCC 18.116.380 are satisfied.

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<sup>7</sup> The Staff Report addresses DCC 18.116.035, which imposes bicycle commuter facility requirements on certain developments, but concludes that these requirements are not applicable to the proposal. I agree, and no other participant has asserted otherwise. I therefore find it is not necessary to address those requirements.



**D. DCC Chapter 18.124, Site Plan Review**

1. DCC 18.124.030, Approval Required.

DCC Chapter 18.124 sets forth the standards and criteria for a Site Plan Review. Pursuant to DCC 18.124.030, Site Plan Review is required for, among other uses, commercial uses that require parking facilities. As discussed in earlier findings, the Applicant’s proposed commercial use requires parking and, therefore, this Site Plan Review is required.

2. DCC 18.124.060, Approval Criteria.

DCC 18.124.060 sets forth the specific approval criteria that must be satisfied for a site plan to be approved. The findings below address the relevant sections of this Code provision and, in general, find that the criteria are satisfied. The findings do, however, conclude that DCC 18.124.060(G) is not satisfied.

DCC 18.124.060(A) requires that a proposed development “relate harmoniously” to both the natural environment and existing development. As the Staff Report notes, prior interpretations of the County’s Board conclude that this Code provision requires an applicant to demonstrate that the site plan arranges the development in a way that evaluates the natural environment and existing development in the area, and that by doing so, requires the Applicant to demonstrate that it has minimized visual impacts and reasonably preserved natural features including views and topographic features. In making that interpretation, the County’s Board expressly drew a distinction between the analysis of the site plan required by this Code provision and the consideration of the compatibility of the proposed use required by other Code sections. Only the Site Plan is relevant to this Code provision.

To demonstrate compliance with DCC 18.124.060(A), the Applicant relies in part on the fact that it will use an existing building for the Service Center and that no new buildings are proposed. The Application initially proposed accessory uses like a yurt, but those accessory features no longer appear on the Site Plan. The Applicant asserts that the existing building (which is being treated as a new building for purposes of this Application) uses colors that are similar to nearby buildings and the natural environment. The record contains photographs and other information showing the building. The Applicant also asserts that neither the existing building nor the new plantings adversely affect natural features. The Applicant notes that the Subject Property was chosen for the Service Center specifically because of its desire to find a place where patrons of the Service Center would be surrounded by the natural environment in a harmonious way.

Some participants in this proceeding addressed the manner in which the Service Center relates to the surrounding environment. Comments from those participants, however, largely questioned the Applicant’s desire or “need” to locate the Service Center in a natural environment, or disputed that the surrounding area actually provides a natural or serene environment (e.g. because of surrounding homes and events that might occur nearby). Other comments in the record object to the approval of the Service Center based on incompatibility with surrounding uses, but not based on an asserted lack of harmonious relation with the natural environment or existing development. The Staff Report states that the existing development and new vegetation are likely to maintain and enhance the natural features of the Subject Property. Having reviewed the arguments of the participants, the Staff Report, the Site Plan, and photos

of the building, I find that the Applicant has met its burden of demonstrating compliance with DCC 18.124.060(A).

DCC 18.124.060(B) requires the Applicant to demonstrate that the landscape and existing topography will be preserved to the greatest extent possible. This Code provision also requires preserved trees and shrubs to be protected. The Applicant proposes additions and augmentations to the existing landscaping, and the only changes to topography are for minor grading relating to stormwater management. This is possible because the Applicant will use an existing building, and the only changes in landscaping will result from new plantings, especially around the new parking area. Based on the foregoing, I find that this Code provision is satisfied. The Staff Report recommends a related condition of approval requiring the Applicant to protect all trees and shrubs not required to be removed by the development. The Applicant does not oppose such a condition.

DCC 18.124.060(C) requires the Applicant to demonstrate that the site plan provides a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces. The Applicant asserts that the site is designed to promote safety because it is bordered on three sides by open space uses (presumably reducing potential conflicts) and that it will have a perimeter fence and be “self-contained” with its own parking. The Site Plan also proposes walking paths to allow entry and exit by pedestrians away from areas used by motor vehicles. The fence and landscaping will help with the transition from private to public spaces. With respect to the psilocybin component of the Service Center, the Applicant notes that its patrons will be required to stay on site and have a transportation plan to and from the site, both of which are required by state law and help maintain the safety of the Service Center use.

Multiple participants provided comments relating to safety. Those comments largely address a concern that a patron of the Service Center will somehow impact the safety of neighbors once they leave the Service Center. Those comments, however, do not tie that concern to any specific part of the Site Plan. One comment that is potentially relevant, however, is a concern that the site could be unsafe if there are conflicts with other users of nearby foot and cart paths. The Applicant responds that the location of the Service Center is separated from the main lodge and the recreational Trailhead Center, and even farther from a playground area, where such conflicts might occur.

Having reviewed and weighed the arguments and evidence of the participants and the Site Plan, I find that DCC 18.124.060(C) is satisfied.

DCC 18.124.060(D) requires the Applicant to demonstrate that, when appropriate, the site plan shall provide for the special needs of disabled persons. The Application states that the Applicant will meet this criterion through the building permit process, which requires compliance with the Americans with Disabilities Act (“ADA”). The Staff Report similarly states that other considerations for disabled persons are determined as part of the issuance of building permits. No participant disputes that statement or otherwise asserts that the Site Plan does not comply with this Code provision. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(E) requires the Applicant to demonstrate that the location and number of points of access, the interior circulation patterns, the separation of pedestrians from vehicles, and the overall parking

arrangement is harmonious with buildings and structures. The Applicant relies on the location of the driveway and parking areas as evidence that this criterion is met, because any conflicts with bicycles, pedestrians, and motor vehicles should be minimal. The proposed parking and circulation are distant from neighboring buildings and structures, which supports the Applicant’s position. The size of the parking lot and availability of paths for pedestrians allow for adequate circulation patterns. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(F) requires the Applicant to demonstrate that surface drainage systems are designed to prevent adverse impacts on neighboring properties, streets, and water quality. The Applicant relies on a report from an engineer to demonstrate the adequacy of the drainage system, and no participant disputes the information in that report. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(G) requires the Applicant to demonstrate that areas and facilities for storage, machinery, and equipment, and loading and parking are buffered or screened to minimize adverse impacts on the site and on neighboring properties. The Applicant relies on existing screening and vegetation around the existing building to minimize the impact of all on site uses on neighboring properties, as well as the additional vegetation that will be planted. The Staff Report agrees that the barrier fence is adequate to screen the one piece of equipment proposed (an electrical panel). This screening criterion, however, also applies to parking areas. As explained in earlier findings, the Applicant has not met its burden of demonstrating the vegetation screening the parking area is adequate. Based on the foregoing, I find that this Code provision is not satisfied unless and until the Applicant also demonstrates compliance with DCC 18.116.030(F).

DCC 18.124.060(H) requires the Applicant to demonstrate that above ground utility installations will be located to minimize visual impacts. The only above-ground utility installation proposed is an electric panel. As noted above, that panel, which already exists, is screened with existing vegetation and will be further screened by a barrier fence. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(I) does not impose any additional criteria and, instead, incorporates any specific criteria imposed by the underlying zone, such as setbacks. Those criteria are addressed in other findings in this Decision.

DCC 18.124.060(J) requires exterior lighting to be shielded so that it does not directly project off site. The Applicant states that any exterior lighting will be fully shielded to prevent glare or light leakage and that specific fixtures will be “dark sky” compliant. Staff recommends, and the Applicant does not object to, a condition of approval requiring the Applicant to implement that proposal. Based on the foregoing, I find that this Code provision is satisfied with that condition.

DCC 18.124.060(K) requires the Applicant to show adequate transportation access to the site. If necessary, the Applicant must implement mitigation measures for transportation impacts. The Applicant asserts that the existing transportation system provides adequate access to the site, and notes that access is from Pronghorn Club Drive to Nicklaus Drive, both of which are paved to the standard required in the FMP. The Applicant also submitted a transportation study, prepared by a transportation engineer, documenting the adequacy of transportation access. The County’s Senior Transportation Planner reviewed and provided comments on the transportation analysis. Neither the Applicant’s engineer nor the County’s Senior

Transportation Planner identified a need for specific improvements to the transportation system. As noted above, one participant did object to the methodology in the transportation analysis, but did not offer an alternative methodology, and that participant did not suggest that any mitigation measures are required. Based on the foregoing, I find that this Code provision is satisfied.<sup>8</sup>

3. DCC 18.124.070, Required Minimum Standards

DCC 18.124.070 contains additional minimum standards applicable in various scenarios, many of which are not relevant to the Application. I adopt the findings in the Staff Report as my findings relating to DCC 18.124.070, except for the specific subsections of this Code provision discussed in this section, which replace the findings relating to those same subsections in the Staff Report.

DCC 18.124.070(B)(1)(a) requires that commercial uses subject to site plan approval must have a minimum of 15 percent of the lot area landscaped. The record indicates the Subject Property is approximately 8.4 acres in size. The Site Plan provides the dimensions of the various new landscaping and also states that the total landscape coverage is 29% of the lot, in excess of the minimum in the Code. No participant addresses the Applicant’s calculation. Based on the foregoing, I find that DCC 18.124.070(B)(1)(a) is satisfied.

DCC 18.124.070(B)(2) imposes landscaping requirements specific to parking areas. Under Subsection (B)(2)(a), the parking area must have defined landscaping totaling no less than 25 square feet per parking space. For this Application, the Applicant is therefore required to have at least 350 square feet of defined landscaping in the parking lot area. The Site Plan identifies more than 1,000 square feet of defined landscaping around the parking lot area. Subsections (B)(2)(b) through (B)(2)(e) require the parking area to be separated from a lot line adjacent to a roadway by a landscaped strip at least 10 feet in width (with appropriately spaced trees, low shrubs, or vegetative ground cover), and from any other lot line by a landscaped strip at least 5 feet in width, with all landscaping being at least 5 feet in width and in defined, uniformly distributed areas. The Site Plan shows that the parking area has 10-foot wide landscaped beds on the side adjacent to Nicklaus Drive (with low shrubs), and 5-foot wide landscaped strips on all other sides. The landscaping is in defined areas and uniformly distributed. No participant has asserted that these landscape configurations are inadequate. Based on the foregoing, I find that DCC 18.124.070(B)(2) is satisfied.

DCC 18.124.070(C)(2)(c) imposes certain requirements relating to pedestrian access and circulation. Under that Code provision, walkways must be paved and at least 5 feet wide. The Applicant’s proposed paved walkways are at least 10 feet wide. This Code provision also requires walkways bordering parking spaces to be at least 7 feet wide, with some exceptions. The Site Plan does not include any walkways that border a parking space. Finally, this Code provision requires walkways to be as direct as possible. The

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<sup>8</sup> Multiple other participants provided comments arguing that the transportation system is not adequate based on an assertion that the Applicant is not authorized to use the portion of the transportation system that crosses BLM property to the extent that uses involves the transport of psilocybin, which is a federally controlled substance. Those arguments are addressed below in separate findings.

walkways on the Site Plan do include some curves, but those curves match grades that accommodate drainage swales. Based on the foregoing, I find that DCC 18.124.070(C)(2)(c) is satisfied.

DCC 18.124.070(D) imposes additional site plan standards on commercial development. The primary requirement in that Code section is subsection (D)(1), which requires that a commercial development be sited at the front yard setback line where the lot has one frontage. Subsection (D)(3) provides a process for increasing the front yard setback. The Applicant initially asserted that this Code provision does not apply because the building is an existing building. The Applicant later asserted that this Code provision does not apply because no setback requirements of the underlying zone are applicable where the DR Zone applies. The Staff Report, however, asserted that the building is being treated as a new building (because it was originally approved to be a temporary structure), that the setback requirement applies, and that the building is not at the front yard setback. The Applicant responded by requesting an increase in the front yard setback. I find that one of the Applicant’s initial assertions is the correct one. Under DCC 18.113.060(G), yard requirements in the underlying zone do not apply to structures in the DR Zone. Thus, the front yard requirement of DCC 18.16.070(A) does not apply and, unless a front yard setback is identified in the CMP or FMP, there are no front yard setbacks to consider for purposes of applying DCC 18.124.070(D)(1). Neither the CMP nor the FMP appears to establish a specific front yard setback, and no participant has identified the source of a specific front yard setback. Based on the foregoing, I find that DCC 18.124.070(D)(1) is not applicable to the specific proposal in this Application because there is no front yard setback to consider.

**E. DCC Chapter 18.128, Conditional Use**

1. DCC 18.128.010, Operation

DCC 18.128.010 confirms the applicability of the County’s conditional use criteria, noting that a conditional use listed in DCC Title 18 shall be permitted, altered, or denied in accordance with the standards and procedures of DCC Title 18, DCC Title 22, the Uniform Development Procedures Ordinance, and the County’s Comprehensive Plan (“Plan”). Pursuant to 18.113.030(D)(7), a psilocybin service center is allowed in the DR Zone subject to the conditional use criteria in DCC 18.128.015. The Application is therefore being reviewed in accordance with the procedures of DCC Title 18, DCC Title 22, the Uniform Development Procedures Ordinance, and the Plan.

Although no participant identified other specific procedures that apply to the consideration of the Service Center as a conditional use, or disputed the applicability of the procedures in DCC Titles 18 and 22 identified in the Staff Report, one participant did provide comments indicating that the County should invoke its Code enforcement provisions. The basis of that comment relates to the existing building on the Subject Property, which was originally permitted as a temporary structure that was to be removed after 18 months. I find that it is not necessary to address the Code’s enforcement process as part of my consideration of the Application. As noted in the Staff Report, the existing building can be permitted as a new building as part of this process. That is, the Application is being reviewed as if the building did not exist and, as a result, is being considered under current regulations. If the Application is ultimately approved, the building will conform to the Code and any current Code violation is essentially cured. If the Application is not approved, the County still has the ability to initiate Code enforcement proceedings.

Either way, resolution of any alleged Code violation is not necessary as part of considering the proposal in the Application.

2. DCC 18.128.015, General Standards Governing Conditional Uses

This Code provision sets forth specific standards for uses other than single family dwellings that apply in addition to the standards of the underlying zone. The applicable provisions of this Code section are set forth below in *italics*.

- A. *The site under consideration shall be determined to be suitable for the proposed use based on the following factors:*
  - 1. *Site, design and operating characteristics of the use;*
  - 2. *Adequacy of transportation access to the site; and*
  - 3. *The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.*

This Code provision requires an analysis of the suitability of the site for the proposed use based on the listed factors. The Applicant asserts that the site is suitable for the Service Center. In support of that assertion, the Applicant notes that the site allows it to implement the safety and other operating measures required by OHA for a psilocybin service center, and that the physical features of the site already accommodate the type of building it wishes to permit. For example, the site can accommodate a perimeter fence that helps control access, a building where facilitated sessions can occur, and landscaping that employs materials, foliage, and colors that blend with the surrounding and contribute to a natural setting the Applicant wishes to market to its patrons.

With the exception of the adequacy of transportation access to the site, which is addressed in more detailed findings below, no participant asserts that the site itself is not suitable for the proposed use, or otherwise specifically asserts that this Code provision is not satisfied. One participant, however, did imply that the site is not as suitable as the Applicant states because of the potential for loud noises from residents and nearby events that are likely to occur. The Applicant, however, does not assert that the use requires a complete absence of noise and, rather, juxtaposes the level of activity at the resort (with some noise) relative to what is experienced in an urban area (with more noise). Having weighed the arguments of the participants, and based on the foregoing, I find that the site is suitable for the proposed use based on factors relating to the site, design, operating characteristics, and natural and physical features. However, as discussed below, I do not find that the site is suitable based on the adequacy of transportation access and, therefore, DCC 18.128.015(A) is not satisfied.

- B. *The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).*

This Code provision is similar to DCC 18.128.015(A) but focuses on the proposed use’s compatibility with surrounding properties rather than on the suitability of the site itself.

The Applicant provides an analysis of this Code provision largely by focusing on the operational characteristics of the site, which is subject to the regulatory controls applicable to the Service Center and the patrons of the Service Center, by virtue of OHA regulations. The Applicant’s analysis essentially concludes that there are no offsite impacts from its proposed use because “psilocybin clients cannot simply drop into a service center, consume psilocybin, and then leave the licensed premises, while under the effects of psilocybin.” Instead, a facilitated session at the Service Center will require a patron to first meet with a licensed facilitator to determine if a psilocybin treatment will be administered. If a session does occur, OHA regulations require the patron to remain on site until the facilitator determines the patron is no longer under the effects of psilocybin. Because the psilocybin component of the use is required to be contained, and the site is designed to accommodate that requirement, the Applicant asserts the site design is compatible with surrounding uses.

The vast majority of comments in the record opposing the Service Center address general concerns about the use of psilocybin, or even the efficacy of psilocybin. I agree with the Applicant that these comments are largely irrelevant to the approval criteria unless, for example, they identify something unique about the psilocybin use that relates to the design of the site. Having weighed the arguments and information provided by all participants, I find that the proposed use is compatible with surrounding properties when considering: (1) the site itself, which is in a commercially-designated area; (2) the operating characteristics described above; (3) transportation access (based on the findings below); and (4) the natural and physical features of the site, which will largely remain unchanged except for the addition of landscaping, and which will enhance compatibility with surrounding uses. DCC 18.128.015(B) is therefore satisfied.

Adequacy of Transportation Access to the Site

One area where the opposing comments do directly tie psilocybin to the approval criteria relates to the adequacy of transportation access to the site. This factor is relevant to both DCC 18.128.015(A) and (B). The former requires consideration of this factor for assessing the suitability of the site to accommodate the use, and the latter requires consideration of this factor for assessing compatibility of the use with surrounding uses.

Multiple participants commented that access to the site is not adequate because it relies, in part, on the use of a road over BLM property. Specifically, access to Juniper Preserve occurs over the BLM property, and BLM has issued a “Right of Way Grant” for that purpose (“BLM ROW”). The Applicant notes, as supported by its transportation analysis, that the BLM ROW is sufficient based on its size, structure, and design, and that no improvements to the BLM ROW are required. The opposing comments do not dispute the physical adequacy of the BLM ROW and, instead, assert that the Applicant is prohibited from using the BLM ROW because it intends to transport psilocybin over the BLM ROW, which those comments claim would be a violation of federal law and in violation of BLM’s approval for use of the BLM ROW.

These Code provisions expressly require consideration of the “adequacy of transportation access to the site.” The record does not indicate that the County’s Board of Commissioners has interpreted this Code provision with respect to its geographic scope, or with respect to the interplay of each of the factors in DCC 18.128.015(A)(1) through (3). That is, this Code provision could be interpreted narrowly to apply only to the access to the site from other areas of Juniper Preserve, or it could be interpreted more broadly to apply to any access to the site, the use of which could affect the site or surrounding properties. Similarly,

the Code could be interpreted such that suitability based on one of the factors in DCC 18.128.015(A)(1) through (3) is sufficient, or it could be interpreted such that suitability must be based on all three factors. In the absence of such interpretations, and because the Applicant and other participants appear to agree that the Applicant must rely on the BLM ROW in some manner (indeed, it was included in the Applicant's transportation analysis), I conclude that the BLM ROW is part of the access to the site that must be considered. Because all parties address the adequacy of transportation and assume it is necessary to consider, I also conclude it is necessary to consider transportation access even though I have already found the site is suitable based on other factors in DCC 18.128.015(A)(1) through (3).

With one exception, the opposing comments in the record do not claim that the Applicant's use of the BLM ROW would have any impact on other uses. Instead, most comments are better characterized as addressing DCC 18.128.015(A) and whether the site itself is suitable if the BLM ROW cannot be used for the Applicant's intended purpose. The exception is a comment in the record that if the Applicant violates the terms of the BLM ROW, BLM could revoke the BLM ROW altogether, thereby preventing anyone from accessing Juniper Preserve, which would therefore be incompatible with all other uses at this destination resort.

Turning to DCC 18.128.015(A) first, it is undisputed that some of the transportation access to the site the Applicant contemplates is acceptable under the BLM ROW approval. For example, there is no dispute in the record that guests of the resort can use the BLM ROW to access the resort and, therefore, get to the Service Center. The question therefore arises whether a particular component of transportation access the Applicant contemplates (transporting psilocybin across the BLM ROW) renders the entirety of the transportation access to the site inadequate if the BLM ROW cannot be used for that purpose. I find, based on this record, that it does.

The Applicant argues that the opposing comments require the Hearings Officer to resolve a private dispute under the BLM ROW. Specifically, the Applicant asserts that the BLM may or may not enforce the precise terms of the BLM ROW; essentially that it is speculative to determine now whether the Applicant will or will not be allowed to transport psilocybin across the BLM ROW. The Applicant characterizes this issue as a dispute between the various parties to the BLM ROW instrument, and argues that such disputes are not appropriate for resolution as part of the land use process.

I agree with the Applicant that a land use approval is typically not the correct venue for resolving the rights of parties to a specific agreement. But such an exercise is not necessary here. Instead, the Hearings Officer must look to the evidence in the record and make findings based on the preponderance of the evidence in the record to determine if a criterion is satisfied. The evidence in this record is that: (1) use of the BLM ROW requires compliance with federal law; (2) federal law prohibits transportation of psilocybin across federal lands; and (3) the Applicant intends to use transportation access to the site across federal land to transport psilocybin. The Applicant acknowledges that its proposed use is not allowed by the express terms of the BLM ROW. Whether or not BLM ultimately enforces the requirements of the BLM ROW is therefore not relevant; on the face of the documents alone, the Applicant has not established that it can do what it proposes to do. I do not agree with the Applicant's assessment that denial of the Application on this basis amounts to enforcing federal law or somehow jeopardizes psilocybin use across the state. My analysis looks only to the evidence in the record. A different record may result in a different



conclusion, for example where transportation access does not rely solely on crossing federal lands, or where the transportation of psilocybin is not required because it is grown on site.

Based on the foregoing, I find that the Applicant has not met its burden of demonstrating that the site is suitable for the proposed use pursuant to the transportation access factor of DCC 18.128.015(A)(2). I conclude the opposite, however, with respect to DCC 18.128.015(B). That Code provision more directly addresses the extent to which the proposed use could impact surrounding uses in terms of transportation access. I have already concluded that the Applicant’s transportation analysis adequately demonstrates that the transportation system is adequate and that no physical upgrades to the system are required for its use, meaning that surrounding uses will also be able to rely on that same transportation system without being impacted by the Service Center. The sole risk to surrounding users identified in the comments is the potential that BLM could somehow revoke the BLM ROW approval if the Applicant’s use is unlawful. Here, the Applicant’s argument is relevant, and this opposing comment invokes a potential dispute between BLM and those granted access to use the BLM ROW. Whether BLM chooses to pursue such a remedy under the BLM ROW, and the rights other users may be able to retain or lose in that situation, is speculative. Further, the Applicant has also proposed a condition of approval that would require it to suspend operations if BLM determines the Applicant’s use violates the BLM ROW. Such a condition would reduce the potential for conflicts with other uses, thereby rendering the Applicant’s use compatible.

C. *These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to ensure that the standard will be met.*

As explained in prior findings, I find it appropriate to identify several conditions of approval that could be imposed if the Applicant’s request were granted. I identify those solely to determine whether or how the Applicant can meet a criterion. Because this Decision ultimately denies the Applicant’s request and there is not approval of the proposal, however, the conditions of approval are not actually being imposed.

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**IV. CONCLUSION**

Based on the foregoing findings, I find the Application does not meet the applicable standards for a Conditional Use Permit and Site Plan Review. Specifically, I find that the Applicant has not met its burden with respect to the following Code provisions:

- DCC 18.116.030(F)(1), relating to the screening of the parking lot
- DCC 18.116.030(F)(7), relating to clearance areas for service drives
- DCC 18.124.060(G), relating to the screening of the parking lot
- DCC 18.128.015(A)(2), relating to the suitability of the site based on the adequacy of transportation access

The Application is therefore DENIED.

Dated this 26th day of April 2024.



Tommy A. Brooks  
Deschutes County Hearings Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 1, 2024

SUBJECT: Plan Amendment and Zone Change of approximately 65 acres at 19975 Destiny Court from Agricultural/Exclusive Farm Use to Rural Residential Exception Area/ Multiple-Use Agricultural (MUA-10)

RECOMMENDED MOTION: None-information only in advance of a public hearing.

BACKGROUND AND POLICY IMPLICATIONS: The Board of County Commissioners will conduct a work session on July 3, 2024, in preparation for a public hearing on July 24th to consider a Plan Amendment and Zone Change at 19975 Desitny Court. The applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of approximately 65 acres from Agricultural to Rural Residential Exception Area. The applicant also requests approval of a corresponding Zoning Map Amendment (Zone Change) to change the zoning of the subject property from Exclusive Farm Use to Multiple Use Agricultural (MUA-10). The hearing on July 24th will be the second of two required public hearings.

BUDGET IMPACTS: None.

ATTENDANCE: Anthony Raguine, Principal Planner



**STAFF MEMORANDUM**

**TO:** Board of County Commissioners ("BOCC")

**FROM:** Anthony Raguine, Principal Planner

**DATE:** June 7, 2024

**RE:** Preparation for an Upcoming BOCC Public Hearing for a Comprehensive Plan Amendment and Zone Change Request (ref. File Nos. 247-23-000436-ZC, 247-23-000443-PA, 247-24-000651-MA)

On July 3, 2024, staff will be available to provide background information for an upcoming BOCC public hearing scheduled for July 24, 2024, to review a Comprehensive Plan Amendment and Zone Change request.

**I. PROPOSAL**

The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural (AG) to Multiple Use Agricultural (MUA10) and a corresponding Zone Change to rezone the subject properties from Exclusive Farm Use (EFU) to Rural Residential Exception Area (RREA). No exceptions to the Statewide Planning Goals are requested. The subject property is +/-65.1 acres in size and irregularly shaped (see attached location map).

**II. BACKGROUND**

The applicant requests that Deschutes County change the zoning and the plan designation because the subject property does not qualify as "agricultural land" under Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) definitions. In this case, an Agricultural Soils Capability Assessment (Order 1 Soil Survey) was conducted by Brian T. Rabe, CPSS, WWS, for most of the subject property. The Soil Survey found that approximately 65.8 percent of the subject property does not meet the definition of agricultural soils. For this reason, the applicant proposes that no exception to Statewide Planning Goal 3, Agricultural Land, is necessary.

The BOCC public hearing scheduled for July 24, 2024, will be the second of two (2) required hearings for this proposal. The first hearing was held on February 27, 2023, before a Deschutes County Hearings Officer and the Hearings Officer found the applicant demonstrated compliance with all applicable standards. For this reason, the Hearings Officer recommended the BOCC approve the applicant's request.

Staff notes the original proposal included a Conditional Use Permit (CUP) and Tentative Plan (TP) application for a 14-lot subdivision. Because that subdivision application would be dependent on the successful outcome of the subject plan amendment and zone change, the CUP/TP applications have been placed “on hold” and decoupled from the current applications. Several documents and materials submitted by the applicant include information directed towards the approval of a subdivision but are not applicable to the plan amendment and zone change. Similarly, a number of comments from the public were submitted to the record and most of these comments were directed to the CUP/TP application.

Staff also notes the original plan amendment and zone change applications included two (2) properties. The applicant filed for a modification and property line adjustment to remove the Flood Plain portion from the property. For this reason, the current plan amendment and zone change application consists of one (1) property that is entirely zoned EFU.

**III. TIMELINE**

This proposal is not subject to the statutory 150-day review timeline.

**IV. BOARD CONSIDERATION**

As the subject properties include lands designated for agricultural use, Deschutes County Code 22.28.030(C) requires the applications to be heard *de novo* before the BOCC, regardless of the Hearings Officer’s recommendation.

At the hearing, the BOCC will be asked to consider the materials in the record, evidence and testimony presented by the applicant, and evidence and testimony from other interested parties.

**V. RECORD**

The record is presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000436-zc-247-22-000443-pa-destiny-court-properties-llc-comprehensive-plan-amendment>

Scan the QR code below using a smartphone camera app and a direct link to the website listed above will load.

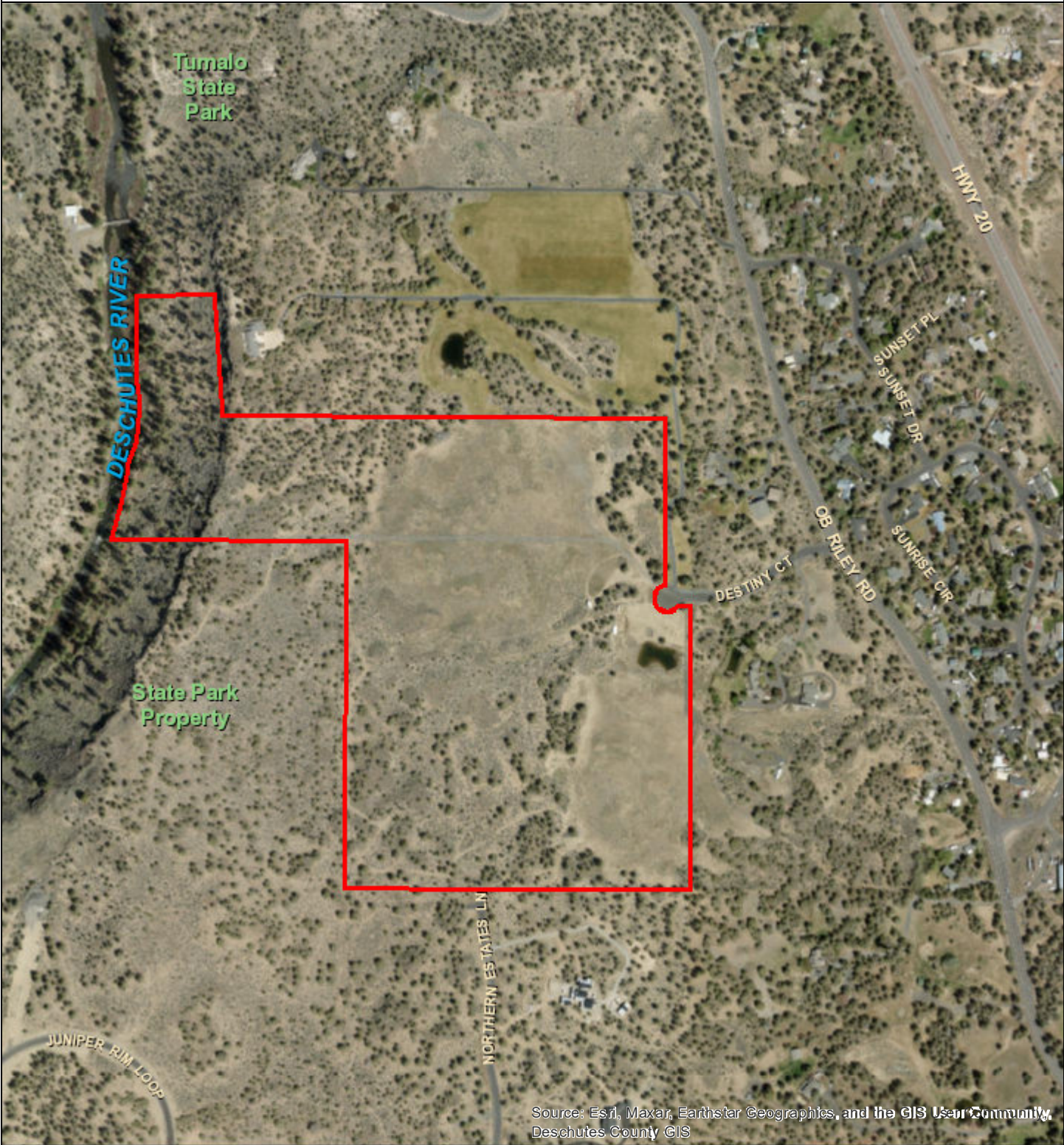


Attachment: Location Map  
247-23-000436-ZC & 443-PA, 247-24-000651-MA



# Land Use File Nos. 247-23-000436-ZC & 443-PA, 24-000651-MA

19975 Destiny Court



Date: 6/7/2024

