



For Recording Stamp Only

Deschutes County Board of Commissioners
1300 NW Wall St., Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

MINUTES OF BUSINESS MEETING
DESCHUTES COUNTY BOARD OF COMMISSIONERS
WEDNESDAY, DECEMBER 9, 2015

Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

Present were Commissioners Anthony DeBone and Alan Unger; Commissioner Tammy Baney was out of the office. Also present were Tom Anderson, County Administrator; Erik Kropp, Deputy County Administrator; Dave Doyle, County Counsel; Peter Russell, Paul Blikstad and Matt Martin, Community Development; Ken Hales, Community Corrections; Judith Ure, Administration; and four other citizens.

1. CALL TO ORDER

Chair DeBone opened the meeting at 10:00 a.m.

2. PLEDGE OF ALLEGIANCE

3. CITIZEN INPUT

None was offered.

4. Before the Board was Discussion of Geo-Spatial Solutions, Inc. Business Loan Forgiveness and Repayment Plan.

Judith Ure gave an overview of the loan and said that GeoSpatial faced some challenges, and did not fulfill the requirement for new employees. They also transitioned to another accounting system. They were to create ten jobs and received \$20,000, but created five jobs instead. A repayment agreement has already been done and payments have begun.

Geo-Spatial was sold to another company but some of the management remained. The company is now part of FireWhat, Inc.

Robyn Sharp of EDCO, and Rusty Merritt, CEO of FireWhat, came before the Board. Ms. Sharp explained she was not a part of the original due diligence process, but has spent considerable time figuring out the employment aspect. It was fairly clear that there was going to be a pivot point. Five jobs were created and maintained, and when FireWhat came into the picture, there was talk about continuing the process. They have decided they should get the first five positions forgiven and will repay the County for the other five.

Mr. Merritt stated that it was an aggressive business plan at the time. They build and maintain online mapping systems having to do with water and more. They sought outside funding and were engaged with clients, but with the water situation in California, it became a problem. There is some competition locally and they lost a few customers to companies that had more funding in place.

The new company is based in Dunsmuir, California, and works with the Forest Service and FEMA on a variety of projects. Most business development will occur out of the Bend office. He sees additional job creation occurring here next year.

Commissioner Unger is glad the County was supportive, although there were some setbacks. He is thankful they found their way through this. Chair DeBone noted that local competition of all kinds seems to be steadily increasing.

Ms. Sharp said that some people left at the 11-month mark, but the company is only counting those who were with the company a full year.

Mr. Merritt added that when they seek additional investment, it is helpful to demonstrate the County's support and that due diligence was done. It does make a difference and helps with credibility.

UNGER: Move forgiveness of half the loan, and arrange for repayment of the other half as agreed.

DEBONE: Second.

VOTE: UNGER: Yes.

DEBONE: Chair votes yes.

5. Before the Board was a Public Hearing and Consideration of First Reading by Title Only of Ordinances Nos. 2015-013 through 2015-018, Housekeeping Text Amendments.

Chair DeBone opened the public hearing and the opening statement was read.

The Commissioners indicated they have no conflicts of interest. There were no challenges from the audience. Matt Martin provided an overview of the Ordinances, which had been discussed previously in a work session. The Planning Commission hearing generated no public comments.

Commissioner Unger said this will clarify some of the language for the public.

Chair DeBone asked for public testimony. None was offered, so the hearing was closed.

UNGER: Move first reading by title only of Ordinances No. 2015-013 through 2015-018.

DEBONE: Second.

VOTE: UNGER: Yes.

DEBONE: Chair votes yes.

Chair DeBone conducted the first readings by title only on Ordinance No. 2015-013, 2015-014, 2015-015, 2015-016, 2015-017 and 2015-018.

Second readings will occur no sooner than in two weeks.

6. Before the Board was a Public Hearing (*continued from November 23, primarily to set a hearing date at a south County venue*) Amending the Comprehensive Plan to Add an Exception to Statewide Planning Goal 11, to Allow for Sewers in Unincorporated Lands in Southern Deschutes County.

Peter Russell presented dates and venues available for continuing the hearing in south County. There has been no further testimony received since the last hearing. The written record is still open. Chair DeBone hopes the process can be completed where it began, in south County.

Chair DeBone asked if there is any testimony to be given today. None was offered.

UNGER: Move continuation of the hearing to January 6, 2016, in the La Pine High School Auditorium, beginning at 6:00 p.m.

DEBONE: Second.

VOTE: UNGER: Yes.

DEBONE: Chair votes yes.

Before the Board was Consideration of Approval of the Consent Agenda.

Item #7 was removed from the Consent Agenda for discussion. The minutes of the October 28 Goal 11 hearing were also removed to allow more time for Board review.

7. Before the Board was Consideration of Chair Signature of Document No. 2015-736, an Intergovernmental Agreement between the Oregon Department of Corrections and Community Justice for a Pilot Program relating to Offenders with Minor Children.

Ken Hales and Tanner Wark explained that this is a brand new program with the State, as passed in the prior legislative session, with five counties being approved. The focus is for downward departure services for persons who have children in the social service system or are at risk for that. Funds will enable dedicating a half-time officer to work on this project.

Commissioner Unger noted that this looks like a great program and should offer some stability to families.

Mr. Wark said that this will be mixed with another caseload, and will serve fifteen people. The Parole Officers working on this will have a unique field requirement, involving twice monthly meetings in the home to make sure social services are being handled appropriately.

UNGER: Move Board approval.

DEBONE: Second.

VOTE: UNGER: Yes.

DEBONE: Chair votes yes.

Consent Agenda Items

8. **Board Signature** of a Letter Reappointing Frank Mengel to the Newberry Estates Special Road District Board, through December 31, 2018
9. **Board Signature** of a Letter Reappointing NaDynne Lewis to the Board of Deschutes River Recreation Homesites Special Road District #8, through December 31, 2018
10. **Board Signature** of a Letter Reappointing Colleen Horton to the Board of Sun Mountain Ranches Special Road District, through December 31, 2018
11. **Board Signature** of a Letter Appointing Bill Worden to the Board of Pinewood Country Estates Special Road District, through December 31, 2018
12. **Board Signature** of Minutes:
 - Work Sessions of November 23 and 30, 2015
 - Business Meetings of November 23 and 30, and December 2, 2015
 - Public Hearing on Goal 11 Exception Process, October 28, 2015

CONVENE AS THE GOVERNING BODY OF THE 9-1-1 COUNTY SERVICE DISTRICT

13. **Before the Board was Consideration of Approval of Weekly Accounts Payable Vouchers for the 9-1-1 County Service District in the Amount of \$7,877.90.**

UNGER: Move approval, subject to review.

DEBONE: Second.

VOTE: UNGER: Yes.
DEBONE: Chair votes yes.

CONVENED AS THE GOVERNING BODY OF THE EXTENSION/4-H COUNTY SERVICE DISTRICT

14. Before the Board was Consideration of Approval of Weekly Accounts Payable Vouchers for the Extension/4-H County Service District in the Amount of \$577.00.

UNGER: Move approval, subject to review.
DEBONE: Second.

VOTE: UNGER: Yes.
DEBONE: Chair votes yes.

RECONVENED AS THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

15. Before the Board was Consideration of Approval of Weekly Accounts Payable Vouchers for Deschutes County in the Amount of \$936,638.80.

Tom Anderson said that part of this is for the new tracking system for Health Services, so that they can be compliant with the State system and others.

UNGER: Move approval, subject to review.
DEBONE: Second.

VOTE: UNGER: Yes.
DEBONE: Chair votes yes.

16. OTHER ITEMS

Before the Board was Consideration of Board Signature of Document No. 2015-745, a Decision on a Conditional Use Permit Appeal (Clough).

Paul Blikstad explained that the applicant's attorney pointed out a critical error. The decision was not clear as to approval by the Board. David Doyle said that a sentence had included denial language that had to be removed.

UNGER: Move approval.

DEBONE: Second.


VOTE: UNGER: Yes.

DEBONE: Chair votes yes.

17. **ADJOURN**

Being no further discussion, the meeting was adjourned at 10:35 a.m.

DATED this 28th Day of December 2015 for the
Deschutes County Board of Commissioners.


Anthony DeBone, Chair


Alan Unger, Vice Chair

ATTEST:


Recording Secretary

 - absent -
Tammy Baney, Commissioner



Deschutes County Board of Commissioners
1300 NW Wall St., Bend, OR 97703-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

BUSINESS MEETING AGENDA

DESCHUTES COUNTY BOARD OF COMMISSIONERS

10:00 A.M., WEDNESDAY, DECEMBER 9, 2015

Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered or discussed at the meeting. This notice does not limit the ability of the Board to address additional subjects. Meetings are subject to cancellation without notice. This meeting is open to the public and interested citizens are invited to attend. Business Meetings are usually recorded on video and audio, and can be viewed by the public live or at a later date; and written minutes are taken for the record.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. CITIZEN INPUT

This is the time provided for individuals wishing to address the Board, at the Board's discretion, regarding issues that are not already on the agenda. Please complete a sign-up card (provided), and give the card to the Recording Secretary. Use the microphone and clearly state your name when the Board Chair calls on you to speak. PLEASE NOTE: Citizen input regarding matters that are or have been the subject of a public hearing not being conducted as a part of this meeting will NOT be included in the official record of that hearing.

If you offer or display to the Board any written documents, photographs or other printed matter as part of your testimony during a public hearing, please be advised that staff is required to retain those documents as part of the permanent record of that hearing.

4. **DISCUSSION** of GeoSpatial Solutions Business Loan Forgiveness and Repayment Plan – *Judith Ure, Administration*
5. **A PUBLIC HEARING** and Consideration of First Reading by Title Only of Ordinances Nos. 2015-013 through 2015-018, Housekeeping Text Amendments – *Matt Martin, Community Development*

Suggested Actions: Open hearing, take testimony, close hearing, move first reading by title only of the Ordinances. (Second readings and adoption would occur no sooner than in two weeks.)

6. **A PUBLIC HEARING** (*continued from November 23, primarily to set a hearing date at a south County venue*) Amending the Comprehensive Plan to Add an Exception to Statewide Planning Goal 11, to Allow for Sewers in Unincorporated Lands in Southern Deschutes County – *Peter Russell, Community Development*

Suggested Actions: Open hearing, take testimony, and continue hearing to a date and location certain.

CONSENT AGENDA

Information on items listed on the Consent Agenda has been made available in advance to the Commissioners and the public, for review. These items are considered to be routine, and can be approved by one motion of the Board. If separate discussion is desired on a particular item, that item may be removed from the Consent Agenda by any Commissioner and addressed as a regular agenda item.

7. **Chair Signature** of Document No. 2015-736, an Intergovernmental Agreement between the Oregon Department of Corrections and Community Justice for a Pilot Program relating to Offenders with Minor Children
8. **Board Signature** of a Letter Reappointing Frank Mengel to the Newberry Estates Special Road District Board, through December 31, 2018
9. **Board Signature** of a Letter Reappointing NaDyne Lewis to the Board of Deschutes River Recreation Homesites Special Road District #8, through December 31, 2018
10. **Board Signature** of a Letter Reappointing Colleen Horton to the Board of Sun Mountain Ranches Special Road District, through December 31, 2018

11. **Board Signature** of a Letter Appointing Bill Worden to the Board of Pinewood Country Estates Special Road District, through December 31, 2018
12. **Board Signature** of Minutes:
 - Work Sessions of November 23 and 30, 2015
 - Business Meetings of November 23 and 30, and December 2, 2015
 - Public Hearing on Goal 11 Exception Process, October 28, 2015

CONVENE AS THE GOVERNING BODY OF THE 9-1-1 COUNTY SERVICE DISTRICT

13. **CONSIDERATION of Approval** of Weekly Accounts Payable Vouchers for the 9-1-1 County Service District

CONVENE AS THE GOVERNING BODY OF THE EXTENSION/4-H COUNTY SERVICE DISTRICT

14. **CONSIDERATION of Approval** of Weekly Accounts Payable Vouchers for the Extension/4-H County Service District

RECONVENE AS THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

15. **CONSIDERATION of Approval** of Weekly Accounts Payable Vouchers for Deschutes County

16. **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.

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.

17. ADJOURN

To watch this meeting on line, go to:

<http://www.deschutes.org/bcc/page/board-meeting-videos>

Please note that the video will not show up until recording begins.
You can also view past meetings on video by selecting the date shown on the website calendar.



Deschutes County encourages persons with disabilities to participate in all programs and activities. To request this information in an alternate format please call (541) 617-4747, or email ken.harms@deschutes.org.

FUTURE MEETINGS:

(Please note: Meeting dates and times are subject to change. All meetings take place in the Board of Commissioners' meeting rooms at 1300 NW Wall St., Bend, unless otherwise indicated. If you have questions regarding a meeting, please call 388-6572.)

Monday, December 7

- 10:00 a.m. Board of Commissioners' Business Meeting
1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, December 9

- 10:00 a.m. Board of Commissioners' Business Meeting
1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, December 15

- 10:00 a.m. 911 User Board Meeting, at 911
1:30 p.m. Budget Committee Meeting

Wednesday, December 16

- 7:30 a.m. Joint Meeting with Sunriver Service District Board, **at the Great Hall, Sunriver**

Friday, December 18

- 8:00 a.m. Joint Meeting with Sunriver Owners Association, **at the SHARC, Pringle Room**

Monday, December 21

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Friday, December 25

Most County offices will be closed to observe Christmas Day.

Monday, December 28

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, December 30

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Friday, January 1

Most County offices will be closed to observe New Years' Day.

Monday, January 4

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, January 5

3:30 p.m. Regular Meeting of Public Safety Coordinating Council

Wednesday, January 6

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

6:00 p.m. Continued Public Hearing on Goal 11 Options – **La Pine High School**

Thursday, January 7

8:00 a.m. Regular Joint Meeting with the Sisters City Council, **Sisters City Hall**

Wednesday, January 13

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Friday, January 15

7:30 a.m. Joint Meeting with La Pine and Sunriver Chambers of Commerce, **at 1,000 Trails**

Monday, January 18

Most County offices will be closed to observe Martin Luther King, Jr. Day.

Tuesday, January 19

10:00 a.m. 911 User Board Meeting, at 911

Wednesday, January 20

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, January 25

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, January 27

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, February 1

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, February 2

3:30 p.m. Regular Meeting of Public Safety Coordinating Council

Wednesday, February 3

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, February 10

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, February 15

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, January 16

10:00 a.m. 911 User Board Meeting, at 911

Monday, February 22

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, February 24

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, February 29

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, March 1

3:30 p.m. Regular Meeting of Public Safety Coordinating Council

Wednesday, March 2

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

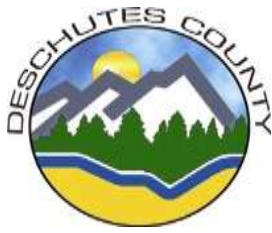
Monday, March 7

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)



Deschutes County encourages persons with disabilities to participate in all programs and activities. To request this information in an alternate format please call (541) 617-4747, or email ken.harms@deschutes.org.



Deschutes County Board of Commissioners
1300 NW Wall St., Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

ADDITION TO BUSINESS MEETING AGENDA

DESCHUTES COUNTY BOARD OF COMMISSIONERS

10:00 A.M., WEDNESDAY, DECEMBER 9, 2015

Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

CONSIDERATION of Board Signature of Document No. 2015-745, a Decision on a Conditional Use Permit Appeal (Clough) – *Paul Blikstad, Community Development*

Suggested Action: Move signature of Document No. 2015-745.



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 9, 2015

DATE: December 9, 2015

FROM: Judith M. Ure Administrative Services 541-330-4627

TITLE OF AGENDA ITEM:

Consideration of converting \$10,000 portion of a business loan made to Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.) to a grant.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Business Development Forgivable Loan Program was initiated to encourage and assist companies seeking to relocate and/or create new jobs within Deschutes County. To receive a loan, companies must agree to create a specific number of jobs within a defined period, then maintain that level of employment for an additional set period of time. Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.) received a business development loan in the amount of \$20,000 on July 22, 2011 with terms that included adding ten (10) full-time employees on or before July 22, 2013 and maintaining a level of fifteen (15) full-time employees through July 22, 2014. As certified by Economic Development for Central Oregon (EDCO), Geo-Spatial Solutions created and maintained five (5) new full-time jobs by the due dates and will repay a portion of the loan in the amount of \$10,000 that corresponds with principle and interest related to the five (5) full-time positions agreed to, but not created. In accordance with the Business Development Forgivable Loan Program, G.L. Solutions is eligible to have the remaining \$10,000 of the loan converted to a grant.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Authorize County Administrator to convert a \$10,000 portion of the business loan made to Geo-Spatial Solutions, Inc. to a grant and execute a repayment agreement for the remaining \$10,000.

ATTENDANCE: Judith Ure, Management Analyst

DISTRIBUTION OF DOCUMENTS:

N/A

DESCHUTES COUNTY
Business Development Forgivable Loan Program

Loan Recipient: Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.)
PO Box 6005
Bend, OR 97708-6005
541-388-6570

Agreement No.: DC-2011-641

Date of Agreement: October 31, 2011

On behalf of Economic Development for Central Oregon, I hereby certify that Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.) has complied with the conditions of the Deschutes County Business Development Forgivable Loan Program as specified in Agreement DC-2011-641 (attached).

I further attest that a representative of Economic Development for Central Oregon has reviewed employment, payroll, and accounting records furnished by Geo-Solutions, Inc. and that such records confirm that Geo-Spatial Solutions, Inc.:

- a) Employed a baseline of five (5) full-time employees on July 22, 2011, and
- b) Agreed to increase the number of full-time employees by ten (10) for a total of fifteen full-time employees on or before July 22, 2013, and
- b) Actually, increased the number of full-time employees by five (5) for a total of ten (10) full-time employees on or before July 22, 2013, and
- c) Maintained a total of ten (10) full-time employees over any 12-month period through July 22, 2014, and
- d) Will repay a portion of the Deschutes County business development forgivable loan in the amount of \$10,000 that corresponds with the principle and interest related to the five (5) full-time positions agreed to, but not created.

I therefore, request that the Deschutes County Board of Commissioners authorize that the remaining portion of the business development loan to Geo-Spatial Solutions, Inc. be converted to a grant in accordance with the terms of the attached agreement.

Economic Development for Central Oregon

By: Robyn R. Sharp

Title: Bend Area Manager - EDCO

Date: December 1, 2015



DESCHUTES COUNTY
Business Development Forgivable Loan Fund

AGREEMENT FOR GEO-SPATIAL SOLUTIONS, INC

This Development Agreement ("Agreement") is entered into:

BETWEEN: Deschutes County (*hereinafter referred to as "County"*)
1300 NW Wall Street, Suite 200
Bend, OR 97701
Facsimile number: (541) 385-3202
Phone: (541) 388-6570

AND: Geo-Spatial Solutions Inc. (GSS) (*hereinafter referred to as "Company"*)
598 NW Hill Street
Bend, OR 97701
Phone: 541-330-0371

RECITALS

WHEREAS, the County finds that the program set forth in this Agreement will promote state and local economic activity by creating new jobs and investment; and

WHEREAS, the Company wishes to expand its existing equipment and business operations within Bend by increasing employment and investing in equipment; and

WHEREAS, the said expansion will create at least 10 new jobs by July 22, 2013, over and above the Company's current employment of five employees as of July 22, 2011 and

WHEREAS, the County desires to promote the expansion of the Company's facility by loaning funds to the Company for equipment purchase and personnel expenses and such loan will later be converted to a grant upon the condition that the Company satisfy certain requirements; and

WHEREAS, the County has engaged Economic Development for Central Oregon ("EDCO") to assist in administering and implementing the loan;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to as follows:

SECTION 1 DEFINITIONS

- Section 1.1** Dollars and \$ shall mean lawful money of the United States of America.
- Section 1.2** Loan shall mean the funds loaned by County to Company as provided under Section 3.
- Section 1.3** Project shall mean expansion of Company employment in Bend, Oregon by hiring at least 10 new employees by July 22, 2013, over and above the Company's current employment of five employees as of July 22, 2011.
- Section 1.4** Full Time Employee shall mean any employee who has been hired with the expectation that the job will last for at least one (1) year and who will work at least forty (40) hours per week or the equivalent of 2,080 hours per year.

SECTION 2 TERM

This agreement shall be effective as of the date of execution by all parties and continue until the Loan is paid in full or the Loan is converted to a grant as provided in Section 3.2 below.

SECTION 3 LOAN

Section 3.1 Loan

The County agrees to loan the Company the sum of \$20,000 no later than 30 days following the signing of this agreement.

Section 3.2 Loan Purpose and Representations of the Company

The purpose of the Loan is to carry out the Project, and for no other purposes. The Company represents and warrants that it will diligently pursue and complete the following:

- 3.2.1** Company will employ a minimum of 10 additional Full Time Employees and maintain this level over any 12 month period through July 22, 2014. Company baseline FTE employment as of July 22, 2011 is five. Total Company employment to be reached and maintained by July 22, 2013 is determined to be 15 Full Time Employees or the equivalent.
- 3.2.2** Company will submit quarterly progress reports to EDCO with documentation for job creation, capital investment relating to new facilities and equipment associated with the Project.
- 3.2.3** Company shall comply with all applicable federal, state, regional and local laws, regulations and ordinances.
- 3.2.4** Company shall timely pay all Deschutes County real and personal property tax when due and shall satisfy all delinquent property tax accounts in full.

Section 3.3 Loan Repayment or Conversion to Grant

3.3.1 Unless the Loan is converted to a grant as provided below, the Company agrees to pay to the order of the County the full amount of the Loan, plus interest at the rate of 8% per annum

starting with the date County releases funds to Company, upon the earlier of: (a) the occurrence of an Event of Default, as defined below, or (b) July 22, 2013.

3.3.2 The County agrees to convert the Loan to a grant that does not need to be repaid, if and when the County determines in its sole discretion that the Company has satisfied all of the obligations in Section 3.3 and its other obligations under this Agreement. Such conversion shall only be effective upon written verification by the County Administrator that the loan has been converted to a grant.

3.3.3 The County may in its sole discretion convert a portion of the Loan to a grant if all of the obligations under Section 3.3 and this Agreement have been satisfied to the reasonable satisfaction of the County, except the obligation under Section 3.2.1 to employ 10 Full Time Employees. In the event of such partial conversion of the Loan, the Loan shall continue to be payable in an amount determined by multiplying \$2,000 by the difference between 10 and the lesser of (a) number of Full Time Employees employed by the Company as of July 22, 2013, or the number of Full Time Employees employed by the Company as of July 22, 2014. For example, if the Company employs 15 Full Time Employees as of July 22, 2014 and 13 Full Time Employees on July 22, 2013, the amount of the Loan payable by the Company would be $\$2,000 \times (15 - 13) = \$4,000$.

SECTION 4 DEFAULT

Section 4.1 Events of Default

The following shall be Events of Default:

- 4.1.1** Company fails to complete, or the County reasonably determines that the Company will not be able complete, the obligations described in Section 3.3 and its other obligations under this Agreement; provided, however, that upon such failure or determination, the County shall first provide to the Company written notice of such failure or determination, and the Company shall have thirty (30) days to correct the matter. If the matter has not been corrected by the Company within such thirty (30) day period, to the reasonable satisfaction of the County, the County shall be entitled to declare the Company in default of its obligations under this Agreement and the Loan, plus accrued interest shall be payable in full.
- 4.1.2** Company effects a change of ownership, a change of control of its business, or relocates its business conducted in Redmond, Oregon on or before August 10, 2014 (the end of the contract) without prior written consent of the County.
- 4.1.3** The occurrence of any event that has or may reasonably be expected to have a material adverse effect on Company's financial condition or Company's ability to make any payment required by this Agreement.
- 4.1.4** Company fails to pay, becomes insolvent or unable to pay, or admits in writing an inability to pay Company's debts as they become due, or makes a general assignment for the benefit of creditors.
- 4.1.5** A proceeding with respect to Company is commenced under any applicable law for the benefit of creditors, including but not limited to any bankruptcy or insolvency law, or an order for the appointment of a receiver, liquidator, trustee, custodian, or other officer having similar powers over Company is entered.

SECTION 5 MISCELLANEOUS

Section 5.1 Right to Inspect

The Company agrees that the County, their agents and employees, shall be entitled, upon reasonable prior notice to the Company, to access and inspect the property and employment records of the Company and its affiliates in order to insure that the Company is complying with the terms of this Agreement and all applicable federal, state and local laws and regulations. The right to inspection shall also include any property or employment records that are in the possession of any affiliate of the Company. The right of inspection shall continue until all of the obligations of the Company under this Agreement have been satisfied.

Section 5.2 Attorney's Fee Provision

In the event suit or action is instituted to enforce any of the terms or conditions of this Agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney fees in such suit or action, in both trial court and appellate courts.

Section 5.3 Indemnification

Company shall defend, indemnify and hold harmless County and EDCO, their officers, agents employees and members from all claims, suits, and causes of action including attorney's fees, of any nature whatsoever relating to claims by third parties resulting from or arising out of the Loan, this Agreement, or funds provided to the Company under this Agreement.

Except as otherwise provided in this Section 5.3, County and EDCO shall defend, indemnify and hold harmless Company, their officers, agents, employees and members from all claims, suits, and causes of action including attorney's fees, relating to claims by third parties as to the validity under public finance law of this Agreement or funds provided to the Company under this Agreement.

Section 5.4 Entire Agreement

This Agreement constitutes the entire agreement between the parties regarding the matters herein.

Section 5.6 Titles and Subtitles

The titles in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

Section 5.7 Notice

All notices, requests demands, and other communications to or upon the parties hereto shall be in writing and shall be deemed to have been duly given or made: upon actual receipt if delivered personally or by fax or an overnight delivery service; and at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested; and to the addresses set forth on page 1 of this Agreement or at such other address of which such party shall have notified in writing the other parties hereto.

Section 5.8 Time is of the Essence

All parties agree that time is of the essence under this Agreement.

Section 5.9 Applicable Law

This agreement is made, and shall be construed and interpreted under the laws of the State of Oregon without regard to the principles of conflicts of law. Venue shall lie in state courts located in Deschutes County, Oregon, provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

Section 5.10 Disclosure

Under Oregon law, most agreements, promises and commitments made by a lender after October 3, 1989 concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by borrower's residence must be in writing, express consideration and be signed by the lender to be enforceable.

Section 5.11 No Waiver

No failure or delay of County in exercising any right, power or remedy under this Agreement shall operate as a waiver of such right, power or remedy of County or of any other right. A waiver of any provision of this Agreement shall not constitute a waiver of or prejudice County's right otherwise to demand strict compliance with that provision or any other provision. Any waiver, permit, consent or approval of any kind or character on the part of County must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 5.12 No Assignment by Company

No obligation or right under this Agreement may be assigned by the Company without the prior consent of the County, which consent may be withheld, conditioned, or delayed in the sole discretion of the County.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.

Deschutes County

By: Erik Kropp
Erik Kropp, Interim County Administrator

Date: 10/31/11

GEO-SPATIAL SOLUTIONS, INC

By: Rusty Merritt
Rusty Merritt, CEO

Date: 10/20/11



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of Dec. 9, 2015

DATE: December 3, 2015

FROM: Peter Russell CDD (541) 383-6718

TITLE OF AGENDA ITEM:

Continuation of November 23, 2015, Board public hearing on Ord. 2015-007, an ordinance amending the Deschutes County Comprehensive Plan to add an Exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow for sewers in unincorporated lands in southern Deschutes County; amend the Newberry Country Plan to not allow for upzoning; and amend the Deschutes County Comprehensive Plan map to indicate the affected tax lots.

PUBLIC HEARING ON THIS DATE? YES.

BACKGROUND AND POLICY IMPLICATIONS:

At the November 23 public hearing the Board continued the hearing until December 9. The Board requested staff to contact various venues in South County regarding their availability to be the site of a continued Goal 11 hearing in late December or January.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Receive the update from staff regarding possible South County venues and accept public testimony then set a date certain to continue the public hearing and/or begin deliberations.

ATTENDANCE: Peter Russell.

DISTRIBUTION OF DOCUMENTS:

Peter Russell



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 9, 2015

DATE: December 4, 2015.

FROM: Deevy Holcomb. Community Justice/Adult Parole & Probation 541-322-7644

TITLE OF AGENDA ITEM:

Review and signature of IGA #5280 between State of Oregon/Department of Corrections and Deschutes County/Community Justice

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

The state of Oregon departments of Human Services and Corrections were authorized by House Bill 3503 during the 2015 session to conduct a 10-year pilot program to combine correctional and dependency approaches to accountability and family preservation/reunification with offenders with minor children. Deschutes County was selected as a pilot county. The county will work with local DHS caseworkers to mutually support family preservation and offender behavior change goals, and reduce the number of parents sent to prison.

FISCAL IMPLICATIONS:

The IGA provides approximately \$74,000 per year to the Community Justice / Adult Parole & Probation department for the duration of the pilot program. Funding will be used to support .5 F T E of Parole/Probation Officer, training and offender treatment and other services.

RECOMMENDATION & ACTION REQUESTED:

Review by the Board and Board Chair signature approving the IGA

ATTENDANCE: Ken Hales and/or Tanner Wark.

DISTRIBUTION OF DOCUMENTS:

Telephone Deevy Holcomb (x7644) for pickup.

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections above the Official Review line.

Date: December 4, 2015 **Department:** Community Justice/Adult Parole & Probation

Contractor/Supplier/Consultant Name: State of Oregon/Dept. of Corrections

Contractor Contact: Denise Sitrler **Contractor Phone #:** 503-378-5876

Type of Document: IGA # 5280 (Deschutes Doc # 2015-736)

Goods and/or Services: Specialized probation supervision and services by an Adult Parole & Probation Officer (PPO) in collaboration with the regional Department of Human Services (DHS) for offenders who are selected by the District Attorney's office for a downward departure sentence (diversion from prison to probation for a conviction that would otherwise have included a prison or jail sentence) who have physical custody of a minor child.

Background & History: The state of Oregon departments of Human Services and Corrections were authorized by House Bill 3503 during the 2015 session to conduct a 10-year pilot program to combine correctional and dependency approaches to accountability and family preservation/reunification with offenders with minor children. Deschutes County was selected as a pilot county. The county is submitting its formal program plan to DOC by December 15, 2015 which will be attached to this IGA as Exhibit A once the plan and this IGA are signed and agreed to by county and state.

Agreement Starting Date: January 1, 2016 **Ending Date:** June 30, 2017

Annual Value or Total Payment: \$221,594.83

☐ Insurance Certificate Received (check box)

Insurance Expiration Date: N/A

Check all that apply: N/A

☐ RFP, Solicitation or Bid Process

☐ Informal quotes (<\$150K)

☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? ☐ Yes ☒ No

If **No**, has budget amendment been submitted? ☐ Yes ☒ No **In progress.**

Is this a Grant Agreement providing revenue to the County? ☒ Yes ☐ No

Special conditions attached to this grant: Incorporate principles into plan identified in this IGA section V, utilize an identified offender "flag" in the Department of Corrections' offender database, and provide data upon request to the Department of Correction. Additionally county must provide by December 15th the insurance certifications of any contracted provider conducting activities in support of this grant.

Deadlines for reporting to the grantor: Upon request.

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: ☐ Yes ☐ No

Contact information for the person responsible for grant compliance:

Name: Denise Sitler

Phone #: (503) 378-5867

Departmental Contact and Title: Deevy Holcomb, Management Analyst
Phone #: 541-322-7644

Department Director Approval:

J. Terry Stiles
Signature

12.5.15
Date

Distribution of Document: Who gets the original document and/or copies after it has been signed? Include complete information if the document is to be mailed.

Official Review:

County Signature Required (check one): ☐ BOCC ☐ Department Director (if <\$25K)

☐ Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. _____)

Legal Review _____

Date _____

Document Number _____

INTERGOVERNMENTAL AGREEMENT #5280
BETWEEN THE STATE OF OREGON AND DESCHUTES COUNTY
("Agreement")

TABLE OF CONTENTS

I	DEFINITIONS	2
II	AUTHORITY AND DURATION	3
III	PLAN; PLAN MODIFICATIONS	3
IV	AMENDMENTS GENERALLY	3
V	DUTIES AND RESPONSIBILITIES OF COUNTY	3
VI	DEPARTMENT RESPONSIBILITIES	5
VII	PERFORMANCE GOALS	6
VIII	FUNDS.....	6
IX	NONCOMPLIANCE	7
X	INDEMNIFICATION. See Exhibit B.	7
XI	TERMINATION	7
XII	COMPLIANCE WITH APPLICABLE LAW	7
XIII	ACCESS TO RECORDS	8
XIV	SURVIVAL	8
XV	GOVERNING LAW; JURISDICTION; VENUE	8
XVI	WAIVER.....	8
XVII	EXECUTION AND COUNTERPARTS	8
XVIII	NOTICE	8
XIX	MERGER; INTEGRATION	9
	EXHIBIT A FAMILY SENTENCING ALTERNATIVE PILOT PLAN and BUDGET SUMMARY	10
	EXHIBIT B INDEMNIFICATION	11

This Agreement is between the State of Oregon acting by and through its Department of Corrections, hereafter called DEPARTMENT, and Deshutes County, hereafter called COUNTY.

Whereas, DEPARTMENT is an agency of the State of Oregon and COUNTY is a unit of local government of the State of Oregon and both parties desire to cooperate by agreement to provide correctional services in COUNTY within the requirements as authorized by ORS 423.475 to 423.565;

Whereas, the Legislative Assembly of Oregon enacted legislation establishing shared responsibility between county corrections programs and the DEPARTMENT on a continuing basis (ORS 423.475 to 423.565);

Whereas, ORS 144.106 provides "the supervisory authority shall use a continuum of administrative Sanctions for violations of post-prison supervision";

Whereas, section 1, Chapter 830, Oregon Laws 2015, was passed by the 2015 Legislature to implement a program designed to divert qualified offenders who have primary custody of a minor child at the time of the offense from prison to probation for the purposes of promoting reunification of families, preventing children from entering the foster care system, holding offenders accountable, and authorizing DEPARTMENT to make grants to counties to provide funding;

Whereas, the DEPARTMENT will administer distribution of grants to counties;

Now, therefore, THE PARTIES HERETO, in consideration of the mutual promises, terms and conditions hereinafter provided, agree to the following:

I DEFINITIONS

- A. Amendment: Any change to this Agreement that alters the terms and conditions of the Agreement, excluding the Duration of the Agreement. Plan Modifications are NOT Amendments.
- B. Case Management Application (CMA) Case Plan: A dynamic document created collaboratively with an offender that specifically identifies the offender's evidence-based assessed risk and needs, accompanied by risk reduction strategies and plans of action, with timelines.
- C. Corrections Information System (CIS): A DEPARTMENT software program containing a data base of information about inmates in prison and on probation, parole and post-prison supervision;
- D. County Corrections: All COUNTY agencies and officials who carry out the responsibilities in ORS 423.478(2)(a)-(f).
- E. Family Sentencing Alternative Program (FSAP) Grant: Grant(s) made by DEPARTMENT to assist COUNTY in the implementation and operation of the Plan.
- F. Family Sentencing Alternative Program Plan (Plan): A document developed by the COUNTY in collaboration with the DEPARTMENT which describes COUNTY's approach to providing effective interventions designed to promote reunification of families, prevent children from entering the foster care system, and hold offenders accountable for program participants under COUNTY supervision. The Family Sentencing Alternative Program Plan (FSAP) Plan is described in Exhibit A, County Plan and Budget Summary.
- G. FSAP Plan Budget Summary: A budget submitted by COUNTY and approved by DEPARTMENT which identifies personnel, materials, services and funding COUNTY will use to implement the Plan. COUNTY's Budget Summary is described in Exhibit A.
- H. FSAP Participant Flag: CIS Code for which COUNTY must use to identify the Participants with their program.

- I. Participant: An offender, under supervision of the COUNTY and enrolled in the program.
- J. Plan Modification: A written change or alteration to the Plan promulgated by COUNTY modifying the Plan; or the Duration of the Agreement.
- K. Sanctions: A response to Participant violations of conditions of the program.
- L. Supervisory Authority: The local corrections official or officials designated by COUNTY's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

II AUTHORITY AND DURATION

A. Authority

This Agreement is entered into pursuant to the provisions of ORS 423.520.

B. Duration

This Agreement will become effective on **January 1, 2016** and will remain in effect until **June 30, 2017** or until terminated according to Section XI (*Termination*).

III PLAN; PLAN MODIFICATIONS

- A. The Plan must be received and approved by DEPARTMENT before disbursements of funds described in Section VIII can be made to COUNTY.
- B. Plan Modifications: COUNTY and DEPARTMENT agree that the Plan must remain a flexible instrument capable of responding to unforeseen needs and requirements. A copy of all Plan Modifications will be marked in sequence beginning with the designation "Plan Modification 1" and attached to the above-mentioned Plan. DEPARTMENT will notify COUNTY of any concerns about the modification or the need for an amendment within a 30 calendar day period after DEPARTMENT receives the Plan Modification.
- C. Notice of Modification: No Plan Modifications shall take effect until COUNTY gives written notice to DEPARTMENT, in a form approved by DEPARTMENT. DEPARTMENT shall provide to COUNTY an approved form for modifications as soon as practicable after execution of this Agreement.
- D. Plan Modifications shall become effective upon the date the Plan Modification is approved in writing by the DEPARTMENT.

IV AMENDMENTS GENERALLY

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written Amendment signed by the parties. An Amendment shall become effective only after all parties have signed and all approvals have been obtained.

V DUTIES AND RESPONSIBILITIES OF COUNTY

- A. COUNTY shall assume administrative responsibility to provide services as outlined in the Plan.
- B. COUNTY shall incorporate the principles described below into the Plan:

1. Work collaboratively with the Oregon Department of Human Services (ODHS) in a multi-disciplinary team process to promote the reunification of families, prevent children from entering the foster care system, and hold offenders accountable.
2. Consult with ODHS to determine appropriateness for entry into the FSAP program.
3. Treatment programs shall be evidence-based and gender specific to the gender being served. Evidence-based programs are delivered consistent with the findings in research about what works best to reduce recidivism.
4. Assessment which is standardized, objective, and comprehensive shall be used to prioritize programming and interventions, as well as, determine criminal risk factors. Assessments of risk shall be based on actuarial risk assessment tools.
5. Rules, requirements and expectations for Participants, including consequences for success and for failure are made formal and clear by an authority figure.
6. An individual Case Management Plan shall be developed for each Participant including the most relevant evidence based case management which may include additional conditions including but not limited to geographic restrictions, vocational training, parenting classes, alcohol and drug and/or mental health treatment, life skills, etc.
7. Supervision will be conducted using the most relevant evidenced based case management including but not limited to: Gender specific and general risk/need assessment, case planning, Parole/Probation officer (PO) led cognitive behavioral interventions (i.e., EPICS, Carey Guides), evidenced based parenting, mental health, alcohol/drug and cognitive programming, all programming should be evidenced based and include gender specific components.
8. Treatment shall be based on cognitive and behavioral interventions and social learning approaches. Treatment programs shall be of sufficient length and intensity to produce stable behavior changes based on replacing old patterns of thinking and behaving and learning and practicing new skills for avoiding drug use and criminal behavior.
9. Contact standards will be at a higher rate than that of typical offenders and will involve a minimum of two PO contacts a month with the offender and their children in the home. As the primary case manager, the PO will be responsible to coordinate additional contacts made by a ODHS worker, and/or any other program service provider such as mentors, health care provider, or in-home service provider. Frequency of contact may decrease as Participant progresses in achieving CMA case plan goals. In addition, offenders will be required to submit logs outlining daily routines, family time, and activities such as playtime, reading with children a minimum of twenty minutes per day, homework assistance, and pro-social events. Collateral contacts will include local multi-disciplinary teams focused on the FSAP including community corrections, local department of human services, and other service providers.
10. The Plan shall utilize a system of graduated Sanctions and incentives which are swift and sure and which encourage program goals while holding Participants accountable for non-compliance behaviors.
11. Weekly random drug testing shall occur, however frequency may decrease as Participant progresses in achieving CMA case plan goals. There shall be a consequence for this or any other rule violation, but that consequence shall not

automatically result in withdrawal from the program. Sanctions shall be administered in a manner that is mindful of the impact on the children and families.

12. Programs shall include relapse prevention planning and comprehensive transition planning so that participants are more likely to adjust to changes in living situations.
 13. Addictions treatment programs must be licensed by the State of Oregon to provide addictions treatment.
- C. COUNTY shall incorporate the following data requirements in the Plan:
1. COUNTY will utilize the FSAP Participant Flag.
 2. The start and stop date of any treatment programming relevant to participation in the FSAP, as well as program exit code, will be entered into the CIS Treatment Module.
 3. Numbers of hours in treatment programming designed to promote family reunification and/or reduce recidivism.
- D. COUNTY will prepare and furnish such data, descriptive information and reports as may be requested by DEPARTMENT as needed to comply with ORS 423.520, which states in part, "The department shall require recipients of the grants to cooperate in the collection and sharing of data necessary to evaluate the effect of community corrections programs on future criminal conduct." COUNTY will enter data into CIS in a complete, accurate, and timely manner. COUNTY acknowledges and agrees that DEPARTMENT has the right to reproduce, use and disclose all or any part of such reports, data and technical information furnished under this Agreement.
- E. COUNTY will permit authorized representatives of DEPARTMENT to make such review of records of COUNTY as may be necessary to satisfy audit and/or program review purposes. A copy of any audit or monitoring report will be made available to COUNTY.
- F. COUNTY will follow DEPARTMENT's prescribed allotment and expenditure reporting system in accordance with Exhibit A. This system will be used for controlling County Corrections FSAP Grant funds by DEPARTMENT and to provide suitable records for an audit.
- G. If funding from DEPARTMENT is reduced or discontinued by legislative action, COUNTY will not be required to increase use of COUNTY revenue for continuing or maintaining corrections services as set out in this Agreement.

VI DEPARTMENT RESPONSIBILITIES

- A. Participate according to this Agreement.
- B. Provide funding as described in Section VIII of this Agreement.
- C. Furnish or make available to COUNTY, in a timely manner, those rules, administrative directives and procedures required for COUNTY to meet its obligations described herein.
- D. Subject to system capacity and data processing capabilities, DEPARTMENT will furnish data, descriptive information and reports, available to DEPARTMENT and requested by COUNTY that will assist COUNTY in complying with DEPARTMENT requirements. DEPARTMENT hereby grants to COUNTY the right to reproduce, use, and disclose all or part of such reports, data, and technical information furnished under this Agreement.

- E. If by legislative action, funding from DEPARTMENT is reduced to COUNTY, DEPARTMENT agrees to provide reasonable notice and transition opportunity to COUNTY of changes that may significantly alter approved appropriations and programs.
- F. DEPARTMENT will provide technical assistance to COUNTY in implementing and evaluating COUNTY's Plan.
- G. DEPARTMENT will work collaboratively with COUNTY and ODHS to implement a Plan, which may include data transfers for purposes of preparing the statutorily required legislative report and collaborative case management.
- H. DEPARTMENT will automate the FSAP Participant Flag.

VII PERFORMANCE GOALS

Plans funded under this Agreement will be evaluated by the DEPARTMENT for program effectiveness. Goals for the evaluation are to determine if:

- A. Children are successfully diverted from entering the foster care system and/or families are reunified.
- B. Prison bed usage is reduced.
- C. Recidivism is reduced.
- D. Participants show evidence of improved community functioning: Improved community functioning will be measured by successful completion of the program and through the existing community corrections performance measures outlined in other intergovernmental agreements that COUNTY is party to (i.e., successful completion of supervision, employment, payment of restitution and/or community service work).
- E. Treatment programs are evidence-based. Those designed to reduce recidivism will be evaluated using the Corrections Program Checklist.
- F. Any other identified program goals.

VIII FUNDS

- A. Exhibit A identifies the FSAP Grant Funds authorized under this Agreement for the implementation of the Plan during the term of this Agreement.
- B. Payment to COUNTY of the entire amount of Grant funds will be made within 15 days after execution of this Agreement, subject to the conditions set forth in subsection G of this Section.
- C. Both parties agree that all reallocations of funds within programs shall require a Plan Modification.
- D. Unexpended Funds: Fund balances remaining after the budget year or expiration of the Agreement may be retained by the COUNTY, upon approval by DEPARTMENT, for the provision of on-going supervision, correctional services, and Sanctions in accordance with the Plan.
- E. Unauthorized Expenditures: Any Grant Funds (defined below) disbursed to COUNTY that are expended for unauthorized purposes, or any unexpended Funds not retained by COUNTY under Section VIII.D, will be deducted by DEPARTMENT from payment or refunded to DEPARTMENT promptly upon DEPARTMENT's written request, which is in no case later than 15 days after DEPARTMENT's written request.

- F. **Maximum Grant Amount.** Grant funds are based upon COUNTY's Application for FSAP Funds. Unless amended, the maximum, not-to-exceed FSAP Grant payable to COUNTY under this Agreement is **\$221,594.83** (the "Grant Funds"). The maximum grant amount may be increased only by written amendment of this Agreement which is signed by all parties and with all required State approvals.
- G. Disbursement of Grant Funds under this Agreement is contingent on DEPARTMENT receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow DEPARTMENT, in the exercise of its reasonable administrative discretion, to make the disbursement.

IX NONCOMPLIANCE

- A. The Assistant Director of Community Corrections or the Assistant Director's designee of the Community Corrections Division shall review COUNTY's compliance with this Agreement. COUNTY must substantially comply with the provisions of the Plan received by DEPARTMENT and this Agreement.

If, upon review, DEPARTMENT determines that there are reasonable grounds to believe that COUNTY is not in substantial compliance with the Agreement or Plan, the Department may pursue all remedies available to it at law or equity, including without limitation suspending COUNTY's participation in the FSAP program or, to the extent allowed by law, withholding the amount of any misexpended Grant Funds under this Agreement from moneys payable by the DEPARTMENT to COUNTY under other grant programs. Substantial compliance will include but is not limited to oversight of case management interventions and strategies, collaborative relationships, maintenance of contact standards, and/or standards of evidence-based treatment programs as required in Section V.B., as well as OAR Chapter 291-031.

X INDEMNIFICATION. See Exhibit B.

XI TERMINATION

- A. **Parties Right to Terminate at its Discretion.** At its sole discretion, any party to this Agreement may terminate this Agreement for its convenience upon 30 days' prior written notice.
- B. Parties may terminate this Agreement immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that DEPARTMENT or COUNTY cannot lawfully perform its obligations under this Agreement.
- C. It is understood and agreed by the parties hereto that this Agreement will remain in force only during its term and will not continue in force after its term. There will be no automatic extension, but this Agreement may be extended only by written consent of the parties hereto.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this agreement, including any part, term or provision of any appended material, is held by a court to be illegal or in conflict with any law of the State of Oregon or applicable administrative rule, that element of the Agreement including relevant appended materials will be void and without effect and will be treated by the parties as having been terminated as of the date of determination of the voidness.
- E. It is understood and agreed by the parties hereto that this Agreement will automatically terminate if the State of Oregon provides no funding. If there is reduced state funding, COUNTY may terminate the Agreement as described herein.

XII COMPLIANCE WITH APPLICABLE LAW

Both Parties shall comply with all federal, state and local laws, regulations, executive orders, and ordinances to which each is subject and which is applicable to this Agreement. Without limiting the generality of the foregoing, the parties expressly agree to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to those laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. All employers, including COUNTY, that employ subject workers who work under this 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. COUNTY shall ensure that each of its subcontractors complies with these requirements.

Nothing in this Agreement shall require COUNTY or DEPARTMENT to act in violation of state or federal law or the Constitution of the State of Oregon.

XIII ACCESS TO RECORDS

For not less than six (6) years after Agreement expiration, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of COUNTY which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcripts. COUNTY shall retain all pertinent records until the later of (i) the date that is not less than six years following the Agreement expiration date or (ii) the date on which all litigation regarding this Agreement is resolved. COUNTY agrees full access to DEPARTMENT will be provided in preparation for and during litigation. Copies of applicable records shall be made available upon request. DEPARTMENT shall reimburse COUNTY for the cost of copies DEPARTMENT requests.

XIV SURVIVAL

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections IV, X, XI, XII, XIII, XIV, and XV.

XV GOVERNING LAW; JURISDICTION; VENUE

The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

XVI WAIVER

The failure of either party to enforce any provision of this Agreement will not constitute a waiver by that party of that or any other provision.

XVII EXECUTION AND COUNTERPARTS

This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

XVIII NOTICE

Except as otherwise expressly provided in this Agreement, any notices between the parties to be given hereunder shall be given in writing by personal delivery, facsimile, electronic mail, or mailing the same, postage prepaid to COUNTY or DEPARTMENT at the address or number set forth below, or to such other addresses or numbers as any party may indicate pursuant to this section. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Any notice delivered by electronic mail shall be effective on the day of notification of delivery receipt, if delivery was during normal business hours of the recipient, or on the next business day, if delivery was outside normal business hours of the recipient. Any notice given by personal delivery shall be effective when actually delivered to the Authorized Representatives listed below:

To DEPARTMENT: Jeremiah Stromberg, Assistant Director
 Community Corrections Division
 Department of Corrections
 2575 Center St. NE
 Salem, OR 97301
 Telephone: 503-945-8876; Fax: 503-373-7810
 E-Mail: Jeremiah.P.Stromberg@doc.state.or.us

To COUNTY: Ken Hales, Director
 Deschutes County Community Corrections
 63360 Britta Street, Building 2
 Bend, OR 97701
 Telephone: 541-385-3246; Fax: 541-385-1804
 Email: ken.hales@co.deschutes.or.us

The parties may change the persons named in this section by notice to the other party as provided herein. No amendment to this Agreement is required to make such change.

XIX MERGER; INTEGRATION

This instrument contains the entire agreement between the parties and no statement made by any party hereto, or agent thereof, not contained or attached with reference thereto in this written Agreement will be valid or binding. This Agreement will supersede all previous communications, representations, wither verbal or written, between the parties hereto. This Agreement may not be enlarged, modified or altered except in writing, signed by the parties, and attached.

STATE OF OREGON
DEPT. OF CORRECTIONS

DESCHUTES COUNTY APPROVALS

Jeremiah Stromberg, Assistant Director

Signature

Date

Title

Date

Reviewed by the
Oregon Attorney General's Office:

/s/ Cynthia Byrnes per email dated 12/08/15
Assistant Attorney General

EXHIBIT A
FSAP PLAN and BUDGET SUMMARY
DESCHUTES COUNTY
(To be attached upon signature and return of Agreement by County)

**EXHIBIT B
INDEMNIFICATION
DESCHUTES COUNTY**

Contribution

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 a party (the "Notified Party") with respect to which the other party ("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. Either 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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the 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 the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County 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 the State on the one hand and of the County 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. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County 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 the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the 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 the County on the one hand and of the 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. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Alternative Dispute Resolution

The parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.

Indemnification by Subcontractors

County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

Subcontractor Insurance Requirements

GENERAL.

County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to the Department. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS.

PROFESSIONAL LIABILITY

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than \$2,000,000, as determined by the Agency:

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and County's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and Department may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If Department approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 9, 2015

Please see directions for completing this document on the next page.

DATE: December 7, 2015

FROM: Paul Blikstad Department CDD Phone # 6554

TITLE OF AGENDA ITEM:

Board consideration of the written decision on the Clough conditional use permit appeal.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

The Board voted to approve the Conditional Use Permit application for the Clough's property on Erickson Road. The decision clarifies that the generally unsuitable standard for nonfarm dwellings is the controlling criterion, and that meeting the generally unsuitable test assures compliance with the least suitable criterion. This was before the Board last week, however staff inadvertently issued a draft decision for the Board approval and signature that was inconsistent and in error

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Board approval and signature of the corrected written decision prepared by staff.

ATTENDANCE: Paul Blikstad

DISTRIBUTION OF DOCUMENTS:

Planning Division staff will distribute the Board's written decision on this application.

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

**DECISION OF THE BOARD OF COUNTY COMMISSIONERS
FOR DESCHUTES COUNTY**

FILE NUMBERS: 247-15-000035-CU/247-15-000403-A

APPLICANT/OWNER: Dana and Karen Clough
63080 Stenkamp Road
Bend, Oregon 97701

APPLICATION: Conditional Use Permit for a Nonfarm Dwelling

PROPERTY: 22075 Erickson Road, Bend, Oregon

I. APPLICABLE STANDARDS AND CRITERIA

Title 18, Deschutes County Code

- A. Chapter 18.16, Exclusive Farm Use Zones**
 - 1. Section 18.16.030, Conditional Uses Permitted**
 - 2. Section 18.16.040, Limitations on Conditional Uses**
 - 3. Section 18.16.050, Standards for Dwellings in the EFU Zones**
 - 4. Section 18.16.060, Dimensional Standards**
 - 5. Section 18.16.070, Yards**
- B. Chapter 18.80, Airport Safety Combining (AS) Zone**
 - 1. Section 18.80.020, Application of Provisions**
 - 2. Section 18.80.028, Height Limitations**
 - 3. Section 18.80.044, Land Use Compatibility Requirements**
 - 4. Section 18.80.054, Conditional Uses**

II. FINDINGS OF FACT

- A. LOCATION:** The property is located at 22075 Erickson Road, Bend, Oregon. It is Tax Lot 200 on Assessor's Map 17-13-30.
- B. LOT OF RECORD:** The subject property is a legal lot of record. It is Parcel 1 of Partition MP-82-14.

- C. **ZONING:** The subject property is zoned EFU-TRB (Exclusive Farm Use – Tumalo/Redmond Bend subzone). The AS (Airport Safety) overlay zoning district also applies.
- D. **PROPOSAL:** The Board adopts the Hearings Officer’s findings under Section II, D of her decision, said findings being incorporated by reference herein. A copy of that decision is **Exhibit A** of the Board’s decision. Only those parts of the decision specifically incorporated by reference herein are a part of the County’s final decision in this matter.
- E. **SITE DESCRIPTION:** The subject property is 18.08 acres in size and has a little over 16 acres of irrigation water rights. On June 2, 2014, the applicants quitclaimed .58 acres of water right to the Central Oregon Irrigation District in the northeast part of their property. The property has been used to grow grass hay. It produces a commercial yield of hay in the western part of the property and a low yield of hay in the eastern part of the property. The property is generally level and has an existing storage shed and small fence area. The property also contains an irrigation pond, wheel line and pivot. A driveway runs along the east part of the property and provides access for the property to Erickson Road. An underground gas pipeline and 100’-wide easement crosses the eastern part of the property at an angle moving from southwest to northeast across the eastern quarter of the property. The soils and rocks in the area of the pipeline were disturbed by the work required to place the line below ground with the result of making the area relatively level.
- The northeast part of the property where the nonfarm dwelling is proposed is the part of the pasture that contains Class VII soils that grow weeds and short grass hay that is not marketable. Soils analysis indicates that the home site area was once a part of the lava rock ledge formation found north and south of the area but was cleared when the pipeline was constructed. The result is that a rock shelf exists a short distance below shallow soils. This substantially impairs the ability of this part of the property to produce crops or to support a pasture.
- F. **SURROUNDING ZONING AND LAND USE:** The Board adopts the Hearings Officer’s findings under Section II, F of her decision, said findings being incorporated by reference herein with the exception that the last name of the owner of Tax Lot 206 is Carroll, not Grant.
- G. **SOILS:** The Board adopts the Hearings Officer’s findings under Section II, G of her decision, said findings being incorporated by reference herein and makes the following additional findings. The applicant provided the County with a copy of an addendum to the October 17, 2014 soils analysis conducted by soil scientist Roger Borine dated September 10, 2015 as **Exhibit C** of the burden of proof. Mr. Borine is a Certified Professional Soils Classifier and Certified Professional Soils Scientist as designated by the Soil Science Society of American Soils Certification Board. Mr. Borine also has a B.S. degree in Soil Science from Oregon State University, Corvallis and attended the Soil Science Institute at Iowa State University. He worked for many years as a soils scientist

and soil survey project leader for the USDA-Natural Resources Conservation Service (NRCS), assisting in preparing some of the NRCS soils maps used by the State in land use matters. Mr. Borine is one of only four persons in the State currently qualified to perform a soils assessment of agricultural lands by the Department of Land Conservation and Development. The 2015 addendum provides the results of detailed soils testing in the eastern one third of the subject property and also reports testing results contained in the October 17, 2014 analysis. The supplemental testing occurred in the southeast part of the subject property, including the southeast area of the property opponents claim is the least suitable for the production of farm crops and livestock. The results of the additional soils work showed that the entire area identified as Class VII soil by Mr. Borine's October 17, 2014 analysis was correctly identified as an area of Class VII. This area is predominantly comprised of Class VII Gosney soils and was properly rated Class VII by Mr. Borine and by the NRCS. The results of the study also show that the area south of the proposed home site is essentially the same as the 1.2-acre area identified as the site of the proposed nonfarm dwelling shown on Figure 3 of the October 17, 2014 soils analysis and this fact was confirmed by Mr. Borine in his September 10, 2015 addendum.

- H. PUBLIC AGENCY COMMENTS:** The Board adopts the Hearings Officer's findings under Section II, H of her decision, said findings being incorporated by reference herein.
- I. PUBLIC COMMENTS:** The Board adopts the Hearings Officer's findings under Section II, I of her decision. Additionally, additional public comments were filed in the record after this matter was appealed by the applicant and prior to the close of the record for new evidence on October 14, 2015. Final argument was filed by the applicant's attorney on October 21, 2014.
- J. REVIEW PERIOD:** The Board adopts the Hearings Officer's findings under Section II, J of her decision. The Hearings Officer's decision was signed July 20, 2015 and mailed on July 21, 2015. The decision was appealed by the applicants on August 3, 2015 within the appeal period set by DCC 22.32.015(B), as computed using the rule set out in DCC 22.08.070. The appeal requested that the appeal be limited to the issues contained in the Notice of Appeal only. Those issues related to the "least suitable for the production of farm crops or livestock" criterion of DCC 18.16.040, Limitations on Conditional Uses. On August 17, 2015 the Board agreed to hear the appeal "limited de novo only on the issue of least suitable land." A hearing was held by the Board on October 7, 2015. The record remained open after the hearing until October 14, 2015 for comments from any party. The applicant was given until October 21, 2015 to file final legal argument. On November 23, 2015 the Board deliberated and unanimously approved the Clough's nonfarm dwelling application.
- K. LAND USE HISTORY:** The Board adopts the Hearings Officer's findings under Section II, K of her decision.
- L. RECORD:** The scope of review on appeal was limited to the issue of compliance with the "least suitable" for the production of farm crops and livestock approval criterion. The Board received a great deal of information and argument that was only tangentially related to that issue. None of the other approval criterion were open for consideration on appeal.

As a result, the evidence is not accepted as relevant to any other approval criterion. Furthermore, the Board specifically rejects any and all evidence filed after July 17, 2015 (the date that the record of this matter was closed by the Hearings Officer) for any purpose other than to determine whether the nonfarm dwelling development area is the “least suitable” for the production of farm crops and livestock and any evidence related to issues other than the “least suitable” issue. Any arguments that the home site area is suitable for farm use or is not generally unsuitable for farm use filed after that date are rejected by the Board. That issue was settled at the local level by the decision of the Hearings Officer and should be reviewed on appeal, if any, on the record before the Hearings Officer, not the record presented to the Board.

III. CONCLUSIONS OF LAW

The Board adopts the following as conclusions of law and findings of fact to support its approval of the Cloughs’ nonfarm dwelling application:

A. LEAST SUITABLE CRITERION

CODE INTERPRETATION

DCC 18.16.040(3) requires that the site of a conditional use in an EFU zone be the least suitable for the production of farm crops or livestock. This requirement is a requirement of the County’s code, not of State law. This decision is intended to provide guidance to County hearings officers and staff regarding the proper application of the least suitable criterion. The Board’s interpretation is also due deference by appellate bodies, if appealed.

The County code also requires that all nonfarm dwellings be located on a parcel or part of a parcel that is generally unsuitable for farm use considering terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. DCC 18.16.050(G)(1)(iii). This requirement is also imposed by State law. Parcels that are unsuitable solely due to size or location are not unsuitable if they can reasonably be put to farm use with other land. The “generally unsuitable” standard, like the “least suitable” standard of the County’s code, looks to the suitability of agricultural land. It prohibits development on the property unless the parcel or a portion of the parcel is generally unsuitable for farm use.

DCC 18.16.040(3) requires:

- 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.**

“Least Suitable”

The “least suitable” standard is a County standard that applies to all conditional uses allowed in the exclusive farm use zones. It is applied to uses that are not required to be located on land that is generally unsuitable for farm use and are allowed on agricultural land that merits Goal 3 protections because they contain soils that are predominantly Class I through VI soils or are

otherwise suitable for farm use. The County applies the “least suitable” standard to minimize the impact of conditional uses on farm uses occurring elsewhere on the property by limiting development to areas that are the least suitable for the production of farm crops and livestock. These areas may either be: (a) areas that are generally unsuitable for the production of farm crops or livestock; or (b) areas that are suitable for the production of farm crops and livestock that are less productive than other areas of the property. If the site of the conditional use meets either requirement, it meets the least suitable approval criterion.

When a conditional use is sited on land that is generally unsuitable for the production of farm crops, livestock and merchantable tree species, the area is clearly less suitable for the production of farm crops or livestock than any other part of the property that is suitable for the production of farm crops and livestock. When the site selected is generally unsuitable for farm use, it is unclear whether this fact, alone, is sufficient to demonstrate that the area is the least suitable for the production of farm crops and livestock. The Board finds that it is – that the generally unsuitable standard is the lowest level of suitability that must be searched for and identified on a property when applying the “least suitable” test. At this level, the area selected is not of sufficient value for farm use to merit distinguishing between areas that are generally unsuitable. All areas of generally unsuitable land on a property are the “least suitable” for the production of farm crops and livestock.

The Board rejects the argument of Central Oregon Land Watch that the “least suitable” means the “most unsuitable.” The “least suitable” test applies to lands that are suitable or to lands that are unsuitable. Nothing limits the test to lands that are all unsuitable. If this had been the Board’s intent, the law would use the term “most unsuitable” rather than the term “least suitable.”

Legislative History

Until 2009, the “least suitable” standard applied to conditional uses with the exception of nonfarm dwellings. In 2009, the “least suitable requirement” was inadvertently applied to nonfarm dwellings during a code update project. The purpose of the 2009 update was to bring the County code into compliance with changes State law, not to create a new criterion that would regulate nonfarm dwellings more stringently than required by State law.

“Least Suitable” Compared to “Generally Unsuitable”

The generally unsuitable standard requires the County to find that a proposed nonfarm dwelling home site on an EFU-zone parcel is on poor soils that are not generally suitable for the production of farm crops, livestock or merchantable tree species. This standard is stringent and it protects productive land for farm use as intended by Goal 3.

The least suitable standard has not been clearly defined. In prior conditional use permit decisions issued by County staff, however, the two criteria are treated as being essentially the same requirement and this practice is consistent with Goal 3 and its implementing regulations by meeting the stringent “generally unsuitable” State standard. This approach is consistent with the Board’s interpretation of the term, above.

As a matter of basic semantics, "least suitable" assumes some level of suitability for farming and may include some level of unsuitability for farming relative to other lands on the property. "Generally unsuitable" assumes some level of unsuitability for farming and may include some level of suitability for farming. Additionally, the least suitable area may be suitable for farming but be suitable than other areas of the property for that purpose. In operation in the context of a nonfarm dwelling application, these two standards are virtually indistinguishable.

As a matter of basic code interpretation, whenever there is a conflict or inconsistency, the specific controls over the general. In this instance the "least suitable" criterion is associated with general limitations on conditional uses whereas the "generally unsuitable" criterion is associated with specific standards for dwellings in EFU zones. Accordingly, the "generally unsuitable" criterion controls and is an appropriate floor for the County's analysis of its "least suitable" code criterion.

Summary

All areas of a property that are "generally unsuitable" are the least suitable part of a farm property for purposes of the least suitable criterion of DCC 18.16.040(C). The development of any part of that generally unsuitable area meets the "least suitable" approval criterion. It is not necessary for an applicant seeking approval of a nonfarm dwelling to show that an area that is generally unsuitable for the production of farm crops, livestock or merchantable tree species is comprised of the "worst of the worst" soils. This interpretation protects all land that is suitable for the production of farm crops and livestock for those purposes and does not violate state law, Goal 3 or the Goal 3 administrative rules.

APPLICATION OF LEAST SUITABLE TO THE CLOUGHS' APPLICATION

The applicant has established by expert evidence that the eastern area of the property depicted on Figure 2 of the Agricultural Soils Suitability Analysis for Nonfarm Dwelling report prepared by Roger Borine dated October 17, 2014 is a unit of Class VII land with or without irrigation water rights. NRCS soils surveys and publications report that land rated Class VII "have very severe limitations that make them unsuitable for cultivation." There is no other competent evidence in the record to the contrary. If the applicant had proposed to develop this entire area of Class VII soils with a nonfarm dwelling and its related outbuildings and septic system, the entire area would qualify as the least suitable for farm use as all other land on the property is comprised of Class III soils. The applicants have, however, proposed to limit nonfarm development to the north part of the Class VII soils area where it close to MUA-10 exceptions land and farther away from EFU-zoned land to the south.

The applicant presented credible expert evidence from soil scientist and Central Oregon farmer Roger Borine that the Class VII soils on the property are all the same in terms of their suitability for farm use. Mr. Borine explained that these soils lack the ability to hold a sufficient quantity of water to support sustained plant growth. Sparse grass will grow in any part of this area to a low height when irrigated. The area appears green in aerial photographs but the area grows short hay that is hard or impossible to market.

The Hearings Officer found that the northeast part of the subject property is generally unsuitable for farm use due to adverse soil or land conditions and poor crop growth. As this area was determined to be generally unsuitable for farm use, it and other similarly poor areas of the property are the least suitable for the production of farm crops, livestock and merchantable tree species. Developing this area with a nonfarm dwelling and related structures and improvements meets the least suitable test. The Board disagrees with and rejects the Hearings Officer's finding that the applicants failed to show that the area chosen for the nonfarm dwelling was the least suitable for farm use because their soils report did not analyze the soils found in the south part of the Class VII soils area of the property at the same level of detail applied to the north part.

The applicants provided the detailed soils testing required by the Hearings Officer. It, and other evidence in the record, showed that the south part of the Class VII area: (a) was in fact properly identified by Mr. Borine as Class VII soil in his 2014 soils analysis; and (b) that the soils in this part of the property are no more unsuitable for farm use than those found in the north part of the Class VII soils map unit.

Project opponents have claimed that the south part of the Class VII area is less suitable than the north part of that area identified as the site of the proposed nonfarm dwelling on Figure 3 of the October 17, 2014 soils analysis and that the nonfarm dwelling should be located there. They argued that a small area of the soils in the south half of the area are not currently irrigated and that crops are not grown here. The fact that one area is irrigated and another is not does not, however, in this case, change the area's soils classification or its inherent suitability for producing farm crops and livestock. In both cases, the soil has very severe limitations that make them unsuitable for cultivation. Irrigating such poor soils is wasteful as well as unproductive. Furthermore, much of the south part of the Class VII soils area is irrigated and aerial photographs show that green grass grows in irrigated and non-irrigated areas alike. These differences, therefore, are not meaningful in terms of suitability for the production of farm crops and livestock.

Furthermore, the applicant presented credible expert evidence from soil scientist and Central Oregon farmer Roger Borine to rebut the neighbor's claims. Mr. Borine advised that all areas of land mapped as Class VII are the same in terms of their suitability for the production of farm crops and livestock – they are all generally unsuitable. Mr. Borine explained that these soils all lack the ability to hold a sufficient quantity of water and nutrients to support sustained plant growth. Mr. Borine explained that fertilizing the soil will not materially improve the crop yield or make the land more suitable for farm use. Sparse grass will grow in any part of this Class VII area but will only grow to a low height and will be of poor quality. The quality of the hay in the northern part of this area is so poor that an area goat farmer rejected it as feed for his goats and so poor that when this hay from the property was given away in return for harvesting it, it was left in the field.

Project opponents, all whom lack training and certification in soils sciences, attacked Mr. Borine's soils report in a number of ways. The Board finds that Mr. Borine's evidence is credible and is not undermined by these attacks. In particular:

Carol MacBeth/COLW

Ms. MacBeth made the argument that Mr. Borine's report is not related to the NRCS land capability classification system based on OAR 660-033-0030(5)(a). This claim is incorrect for three reasons: (1) OAR 660-033-0030(5)(a) is not applicable to soils reports prepared for nonfarm dwelling applications because a nonfarm dwelling application does not seek to change the designation of land as "agricultural land"; and (2) Mr. Borine's report is based on the Soil Conservation Service's *Guide for Placing Soils in Capability Classes in Oregon*, revised 1977 and the NRCS land capability classification system as stated on page two of the 2014 soils assessment; and (3) Mr. Borine's classification of the Gosney soils found on the property as NRCS Class VII is the same classification applied by the NRCS to Gosney soils.

Ms. MacBeth makes claims that the Gosney soil must be Class III soil, not Class VII soil, because it grows green grass and because some opponents claim that the area that contains Class VII soils is productive. This argument is not accepted because the NRCS classifies the Gosney soil found in the eastern area of the Cloughs' property as Class VII, not as Class III soil. No higher classification is applied to this property if it is irrigated. Mr. Borine has explained that the nonfarm dwelling area is a part of a blister ridge that has been partially removed due to the construction of an underground natural gas pipeline on the property. The visible areas of the blister ridge are rated 58C by the NRCS. The predominant soil found in mapping unit 58C is Class VII Gosney soil. This explains why the soil found here is Gosney soil, why the depth of soil to bedrock is so shallow and why the area is generally unsuitable for the production of farm crops and livestock as borne out by the Cloughs's stated unsuccessful efforts to farm this part of their property.

Ms. MacBeth claims that Mr. Borine's report should be disregarded because it studied the Class VII soils "in their current unwatered and unfertilized state." This statement implies that water and fertilizer would change the soils classification of the Gosney soils. This claim, however, is contradicted by the NRCS soils survey that classifies Gosney soils Class VII and does not provide an improved rating when irrigated.

Ms. MacBeth's lay effort to classify soils and attack the Class VII rating applied by the NRCS and Mr. Borine based on the NRCS Handbook fails as, she failed to consult the proper reference – the *Guide for Placing Soils in Capability Classes* – and her lay claims are at odds with the NRCS, the agency that prepared the guides and used them to classify Gosney soil Class VII.

Kurt and Jennifer Bomke

The Bomkes attempted to cast doubt on Mr. Borine's professional opinion regarding the Class VII rating of soils in the home site area by submitting a page from the NRCS Capability Classification Handbook 210. The Bomkes read the text as saying that soil that is 10 to 20 inches deep is Class III soil. The Handbook says that where other unfavorable factors occur in combination with depth (e.g. those present in Central Oregon), the capability decreases. The Handbook notes that "[i]n arid and semiarid areas, irrigated soils in Class I are more than 60 inches in depth" as opposed to 36 inches. This does not contradict Mr. Borine's professional evidence about soils depth and water holding capacity of Class VII soils in Central Oregon. The *Guide for Placing Soils in*

Capability Classes in Oregon; SCS, Portland, OR revised June 1977 that is referenced on pages 4 and 8 of Mr. Borine's October 17, 2014 soils report provides more detailed information that supports Mr. Borine's LCC 7 soils classification. Furthermore, the NRCS agrees with Mr. Borine that Gosney soil in mapping unit 58C is properly classified LCC VII.

The Cloughs applied appropriate agricultural management to the NE part of their property in the past. Their testimony and evidence bears that out. With such efforts, the applicant's testified to have lost a significant sum of money and produced hay that was not marketable – a goat farmer would not feed the hay grown in the NE part of the property to his goats. This could be a predictable outcome given the very poor and shallow LCC VII Gosney soils found there.

The Bomkes' claims that Gosney soil that the NRCS rates as Class VII is a good agricultural soil that could be made productive by the Cloughs does not appear to be correct. The NRCS says that such soils are not suitable for the production of crops. Mr. Borine agrees with that assessment and soils classification. The Cloughs' experience is consistent with the scientific evidence.

The Bomkes argue that Mr. Borine should have elevated the soils capability classification of the Cloughs' property because crops have been grown there. The Gosney soil found on the property, however, is properly rated Class VII soil and, therefore, is not suitable for the production of crops according to the NRCS. The fact that someone attempted and failed to grow a saleable hay crop on such poor soils does not mean that the NRCS and Mr. Borine are wrong.

B. ADOPTION OF CONCLUSIONS OF LAW OF HEARINGS OFFICER

The Board hereby adopts the findings contained in the Conclusions of Law section of the Hearings Officer's decision with the exception of the following findings related to compliance with DCC 18.16.040(3)'s least suitable criterion that begin on page 7 and end on page 10 of that decision: (a) paragraph one of this section, page 7; and (b) the last full paragraph on page 8 is adopted but corrected to change "Weinman" to "Wyman" and to change "SE corner" to "NW corner" and to find that the NE corner of the property that was fill is rated Class III soil when irrigated by the NRCS and Mr. Borine; and (c) the paragraph that begins at the bottom of page 9 and continues on the top of page 10 with the exception of the first sentence; and (d) the two full paragraphs on page 10.

The Board also notes that the Hearings Officer indicated, on page 24 of her decision, that a condition of approval could be imposed to prohibit the return of COID water to any part of the nonfarm dwelling area. The sale of water is not, however, needed to achieve compliance with any approval criterion as the suitability of the soil has been assessed with irrigation water rights. As a result, the condition will not be imposed.

IV. CONDITIONS OF APPROVAL

Based on the foregoing, the Board of Commissioners APPROVES the applicants' conditional use permit application and authorizes them to establish a nonfarm dwelling on the part of the subject property identified in the application, SUBJECT TO COMPLIANCE WITH THE FOLLOWING CONDITIONS OF APPROVAL:

1. The approval is based on the applicants' submitted burden of proof. Any substantial change to the approved proposal will require a new land use application.

PRIOR TO THE ISSUANCE OF A BUILDING PERMIT:

2. The applicant/owner shall sign and record with the Deschutes County Clerk a document binding the landowner and future owners that prohibits them from pursuing a claim for relief or cause of action alleging injury from farming or forestry practices for which no action or claim is allowed by ORS 30.936 to 90.937.
3. The applicant/owner shall provide to the Planning Division written documentation from the Deschutes County Assessor's Office that the property has been disqualified from special assessment for farm use under ORS 308A.113 or ORS 308A.116 and that any additional tax or penalty imposed by the Assessor as a result of disqualification has been paid.

WITH BUILDING PERMIT ISSUANCE AND/OR CONSTRUCTION

4. The applicant/owner shall assure that the approved nonfarm dwelling does not exceed thirty feet in height except as allowed by DCC 18.120.040.
5. The nonfarm dwelling shall be setback 60 feet from Erickson Road and 100 feet from the east and south boundaries of the property.
6. Nonfarm dwelling and related development may not occur on lands mapped Class III soils by Mr. Borine's October 17, 2014 soils analysis.

DURATION OF APPROVAL:

7. The applicant/owner shall apply for a building permit for the approved nonfarm dwelling within four years of the date this decision becomes final, or shall obtain an extension from the Planning Division, or this approval shall be void.

V. DECISION:

Based on the findings of fact and conclusions of law set out above, the Board concludes that the applicant has demonstrated that all applicable approval criteria have been met. The Board reverses the Hearings Officer's decision and approves the conditional use permit application.

DATED this ____ day of December, 2015.

MAILED this ____ day of December, 2015.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, CHAIR

ALAN UNGER, VICE CHAIR

ATTEST:

Recording Secretary

TAMMY BANEY, COMMISSIONER

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



Deschutes County Board of Commissioners
1300 NW Wall St., Bend, OR 97703-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

BUSINESS MEETING AGENDA

DESCHUTES COUNTY BOARD OF COMMISSIONERS

10:00 A.M., WEDNESDAY, DECEMBER 9, 2015

Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered or discussed at the meeting. This notice does not limit the ability of the Board to address additional subjects. Meetings are subject to cancellation without notice. This meeting is open to the public and interested citizens are invited to attend. Business Meetings are usually recorded on video and audio, and can be viewed by the public live or at a later date; and written minutes are taken for the record.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. CITIZEN INPUT

This is the time provided for individuals wishing to address the Board, at the Board's discretion, regarding issues that are not already on the agenda. Please complete a sign-up card (provided), and give the card to the Recording Secretary. Use the microphone and clearly state your name when the Board Chair calls on you to speak. PLEASE NOTE: Citizen input regarding matters that are or have been the subject of a public hearing not being conducted as a part of this meeting will NOT be included in the official record of that hearing.

If you offer or display to the Board any written documents, photographs or other printed matter as part of your testimony during a public hearing, please be advised that staff is required to retain those documents as part of the permanent record of that hearing.

4. **DISCUSSION** of GeoSpatial Solutions Business Loan Forgiveness and Repayment Plan – *Judith Ure, Administration*
5. **A PUBLIC HEARING** and Consideration of First Reading by Title Only of Ordinances Nos. 2015-013 through 2015-018, Housekeeping Text Amendments – *Matt Martin, Community Development*

Suggested Actions: Open hearing, take testimony, close hearing, move first reading by title only of the Ordinances. (Second readings and adoption would occur no sooner than in two weeks.)

6. **A PUBLIC HEARING** (*continued from November 23, primarily to set a hearing date at a south County venue*) Amending the Comprehensive Plan to Add an Exception to Statewide Planning Goal 11, to Allow for Sewers in Unincorporated Lands in Southern Deschutes County – *Peter Russell, Community Development*

Suggested Actions: Open hearing, take testimony, and continue hearing to a date and location certain.

CONSENT AGENDA

Information on items listed on the Consent Agenda has been made available in advance to the Commissioners and the public, for review. These items are considered to be routine, and can be approved by one motion of the Board. If separate discussion is desired on a particular item, that item may be removed from the Consent Agenda by any Commissioner and addressed as a regular agenda item.

7. **Chair Signature** of Document No. 2015-736, an Intergovernmental Agreement between the Oregon Department of Corrections and Community Justice for a Pilot Program relating to Offenders with Minor Children
8. **Board Signature** of a Letter Reappointing Frank Mengel to the Newberry Estates Special Road District Board, through December 31, 2018
9. **Board Signature** of a Letter Reappointing NaDyne Lewis to the Board of Deschutes River Recreation Homesites Special Road District #8, through December 31, 2018
10. **Board Signature** of a Letter Reappointing Colleen Horton to the Board of Sun Mountain Ranches Special Road District, through December 31, 2018

11. **Board Signature** of a Letter Appointing Bill Worden to the Board of Pinewood Country Estates Special Road District, through December 31, 2018
12. **Board Signature** of Minutes:
 - Work Sessions of November 23 and 30, 2015
 - Business Meetings of November 23 and 30, and December 2, 2015
 - Public Hearing on Goal 11 Exception Process, October 28, 2015

CONVENE AS THE GOVERNING BODY OF THE 9-1-1 COUNTY SERVICE DISTRICT

13. **CONSIDERATION of Approval** of Weekly Accounts Payable Vouchers for the 9-1-1 County Service District

CONVENE AS THE GOVERNING BODY OF THE EXTENSION/4-H COUNTY SERVICE DISTRICT

14. **CONSIDERATION of Approval** of Weekly Accounts Payable Vouchers for the Extension/4-H County Service District

RECONVENE AS THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

15. **CONSIDERATION of Approval** of Weekly Accounts Payable Vouchers for Deschutes County

16. **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.

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.

17. ADJOURN

To watch this meeting on line, go to:

<http://www.deschutes.org/bcc/page/board-meeting-videos>

Please note that the video will not show up until recording begins.
You can also view past meetings on video by selecting the date shown on the website calendar.



Deschutes County encourages persons with disabilities to participate in all programs and activities. To request this information in an alternate format please call (541) 617-4747, or email ken.harms@deschutes.org.

FUTURE MEETINGS:

(Please note: Meeting dates and times are subject to change. All meetings take place in the Board of Commissioners' meeting rooms at 1300 NW Wall St., Bend, unless otherwise indicated. If you have questions regarding a meeting, please call 388-6572.)

Monday, December 7

- 10:00 a.m. Board of Commissioners' Business Meeting
- 1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, December 9

- 10:00 a.m. Board of Commissioners' Business Meeting
- 1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, December 15

- 10:00 a.m. 911 User Board Meeting, at 911
- 1:30 p.m. Budget Committee Meeting

Wednesday, December 16

- 7:30 a.m. Joint Meeting with Sunriver Service District Board, **at the Great Hall, Sunriver**

Friday, December 18

- 8:00 a.m. Joint Meeting with Sunriver Owners Association, **at the SHARC, Pringle Room**

Monday, December 21

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Friday, December 25

Most County offices will be closed to observe Christmas Day.

Monday, December 28

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, December 30

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Friday, January 1

Most County offices will be closed to observe New Years' Day.

Monday, January 4

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, January 5

3:30 p.m. Regular Meeting of Public Safety Coordinating Council

Wednesday, January 6

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

6:00 p.m. Continued Public Hearing on Goal 11 Options – **La Pine High School**

Thursday, January 7

8:00 a.m. Regular Joint Meeting with the Sisters City Council, **Sisters City Hall**

Wednesday, January 13

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Friday, January 15

7:30 a.m. Joint Meeting with La Pine and Sunriver Chambers of Commerce, **at 1,000 Trails**

Monday, January 18

Most County offices will be closed to observe Martin Luther King, Jr. Day.

Tuesday, January 19

10:00 a.m. 911 User Board Meeting, at 911

Wednesday, January 20

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, January 25

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, January 27

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, February 1

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, February 2

3:30 p.m. Regular Meeting of Public Safety Coordinating Council

Wednesday, February 3

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, February 10

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, February 15

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, January 16

10:00 a.m. 911 User Board Meeting, at 911

Monday, February 22

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, February 24

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, February 29

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, March 1

3:30 p.m. Regular Meeting of Public Safety Coordinating Council

Wednesday, March 2

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, March 7

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)



Deschutes County encourages persons with disabilities to participate in all programs and activities. To request this information in an alternate format please call (541) 617-4747, or email ken.harms@deschutes.org.



Deschutes County Board of Commissioners
1300 NW Wall St., Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

ADDITION TO BUSINESS MEETING AGENDA

DESCHUTES COUNTY BOARD OF COMMISSIONERS

10:00 A.M., WEDNESDAY, DECEMBER 9, 2015

Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

CONSIDERATION of Board Signature of Document No. 2015-745, a Decision on a Conditional Use Permit Appeal (Clough) – *Paul Blikstad, Community Development*

Suggested Action: Move signature of Document No. 2015-745.



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 9, 2015

DATE: December 9, 2015

FROM: Judith M. Ure Administrative Services 541-330-4627

TITLE OF AGENDA ITEM:

Consideration of converting \$10,000 portion of a business loan made to Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.) to a grant.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Business Development Forgivable Loan Program was initiated to encourage and assist companies seeking to relocate and/or create new jobs within Deschutes County. To receive a loan, companies must agree to create a specific number of jobs within a defined period, then maintain that level of employment for an additional set period of time. Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.) received a business development loan in the amount of \$20,000 on July 22, 2011 with terms that included adding ten (10) full-time employees on or before July 22, 2013 and maintaining a level of fifteen (15) full-time employees through July 22, 2014. As certified by Economic Development for Central Oregon (EDCO), Geo-Spatial Solutions created and maintained five (5) new full-time jobs by the due dates and will repay a portion of the loan in the amount of \$10,000 that corresponds with principle and interest related to the five (5) full-time positions agreed to, but not created. In accordance with the Business Development Forgivable Loan Program, G.L. Solutions is eligible to have the remaining \$10,000 of the loan converted to a grant.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Authorize County Administrator to convert a \$10,000 portion of the business loan made to Geo-Spatial Solutions, Inc. to a grant and execute a repayment agreement for the remaining \$10,000.

ATTENDANCE: Judith Ure, Management Analyst

DISTRIBUTION OF DOCUMENTS:

N/A

DESCHUTES COUNTY
Business Development Forgivable Loan Program

Loan Recipient: Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.)
PO Box 6005
Bend, OR 97708-6005
541-388-6570

Agreement No.: DC-2011-641

Date of Agreement: October 31, 2011

On behalf of Economic Development for Central Oregon, I hereby certify that Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.) has complied with the conditions of the Deschutes County Business Development Forgivable Loan Program as specified in Agreement DC-2011-641 (attached).

I further attest that a representative of Economic Development for Central Oregon has reviewed employment, payroll, and accounting records furnished by Geo-Solutions, Inc. and that such records confirm that Geo-Spatial Solutions, Inc.:

- a) Employed a baseline of five (5) full-time employees on July 22, 2011, and
- b) Agreed to increase the number of full-time employees by ten (10) for a total of fifteen full-time employees on or before July 22, 2013, and
- b) Actually, increased the number of full-time employees by five (5) for a total of ten (10) full-time employees on or before July 22, 2013, and
- c) Maintained a total of ten (10) full-time employees over any 12-month period through July 22, 2014, and
- d) Will repay a portion of the Deschutes County business development forgivable loan in the amount of \$10,000 that corresponds with the principle and interest related to the five (5) full-time positions agreed to, but not created.

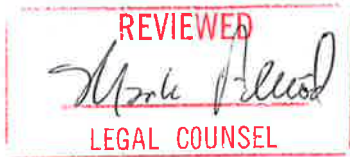
I therefore, request that the Deschutes County Board of Commissioners authorize that the remaining portion of the business development loan to Geo-Spatial Solutions, Inc. be converted to a grant in accordance with the terms of the attached agreement.

Economic Development for Central Oregon

By: Robyn R. Sharp

Title: Bend Area Manager - EDCO

Date: December 1, 2015



DESCHUTES COUNTY
Business Development Forgivable Loan Fund

AGREEMENT FOR GEO-SPATIAL SOLUTIONS, INC

This Development Agreement ("Agreement") is entered into:

BETWEEN: Deschutes County (*hereinafter referred to as "County"*)
1300 NW Wall Street, Suite 200
Bend, OR 97701
Facsimile number: (541) 385-3202
Phone: (541) 388-6570

AND: Geo-Spatial Solutions Inc. (GSS) (*hereinafter referred to as "Company"*)
598 NW Hill Street
Bend, OR 97701
Phone: 541-330-0371

RECITALS

WHEREAS, the County finds that the program set forth in this Agreement will promote state and local economic activity by creating new jobs and investment; and

WHEREAS, the Company wishes to expand its existing equipment and business operations within Bend by increasing employment and investing in equipment; and

WHEREAS, the said expansion will create at least 10 new jobs by July 22, 2013, over and above the Company's current employment of five employees as of July 22, 2011 and

WHEREAS, the County desires to promote the expansion of the Company's facility by loaning funds to the Company for equipment purchase and personnel expenses and such loan will later be converted to a grant upon the condition that the Company satisfy certain requirements; and

WHEREAS, the County has engaged Economic Development for Central Oregon ("EDCO") to assist in administering and implementing the loan;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to as follows:

SECTION 1 DEFINITIONS

- Section 1.1** Dollars and \$ shall mean lawful money of the United States of America.
- Section 1.2** Loan shall mean the funds loaned by County to Company as provided under Section 3.
- Section 1.3** Project shall mean expansion of Company employment in Bend, Oregon by hiring at least 10 new employees by July 22, 2013, over and above the Company's current employment of five employees as of July 22, 2011.
- Section 1.4** Full Time Employee shall mean any employee who has been hired with the expectation that the job will last for at least one (1) year and who will work at least forty (40) hours per week or the equivalent of 2,080 hours per year.

SECTION 2 TERM

This agreement shall be effective as of the date of execution by all parties and continue until the Loan is paid in full or the Loan is converted to a grant as provided in Section 3.2 below.

SECTION 3 LOAN

Section 3.1 Loan

The County agrees to loan the Company the sum of \$20,000 no later than 30 days following the signing of this agreement.

Section 3.2 Loan Purpose and Representations of the Company

The purpose of the Loan is to carry out the Project, and for no other purposes. The Company represents and warrants that it will diligently pursue and complete the following:

- 3.2.1** Company will employ a minimum of 10 additional Full Time Employees and maintain this level over any 12 month period through July 22, 2014. Company baseline FTE employment as of July 22, 2011 is five. Total Company employment to be reached and maintained by July 22, 2013 is determined to be 15 Full Time Employees or the equivalent.
- 3.2.2** Company will submit quarterly progress reports to EDCO with documentation for job creation, capital investment relating to new facilities and equipment associated with the Project.
- 3.2.3** Company shall comply with all applicable federal, state, regional and local laws, regulations and ordinances.
- 3.2.4** Company shall timely pay all Deschutes County real and personal property tax when due and shall satisfy all delinquent property tax accounts in full.

Section 3.3 Loan Repayment or Conversion to Grant

3.3.1 Unless the Loan is converted to a grant as provided below, the Company agrees to pay to the order of the County the full amount of the Loan, plus interest at the rate of 8% per annum

starting with the date County releases funds to Company, upon the earlier of: (a) the occurrence of an Event of Default, as defined below, or (b) July 22, 2013.

3.3.2 The County agrees to convert the Loan to a grant that does not need to be repaid, if and when the County determines in its sole discretion that the Company has satisfied all of the obligations in Section 3.3 and its other obligations under this Agreement. Such conversion shall only be effective upon written verification by the County Administrator that the loan has been converted to a grant.

3.3.3 The County may in its sole discretion convert a portion of the Loan to a grant if all of the obligations under Section 3.3 and this Agreement have been satisfied to the reasonable satisfaction of the County, except the obligation under Section 3.2.1 to employ 10 Full Time Employees. In the event of such partial conversion of the Loan, the Loan shall continue to be payable in an amount determined by multiplying \$2,000 by the difference between 10 and the lesser of (a) number of Full Time Employees employed by the Company as of July 22, 2013, or the number of Full Time Employees employed by the Company as of July 22, 2014. For example, if the Company employs 15 Full Time Employees as of July 22, 2014 and 13 Full Time Employees on July 22, 2013, the amount of the Loan payable by the Company would be $\$2,000 \times (15 - 13) = \$4,000$.

SECTION 4 DEFAULT

Section 4.1 Events of Default

The following shall be Events of Default:

- 4.1.1** Company fails to complete, or the County reasonably determines that the Company will not be able complete, the obligations described in Section 3.3 and its other obligations under this Agreement; provided, however, that upon such failure or determination, the County shall first provide to the Company written notice of such failure or determination, and the Company shall have thirty (30) days to correct the matter. If the matter has not been corrected by the Company within such thirty (30) day period, to the reasonable satisfaction of the County, the County shall be entitled to declare the Company in default of its obligations under this Agreement and the Loan, plus accrued interest shall be payable in full.
- 4.1.2** Company effects a change of ownership, a change of control of its business, or relocates its business conducted in Redmond, Oregon on or before August 10, 2014 (the end of the contract) without prior written consent of the County.
- 4.1.3** The occurrence of any event that has or may reasonably be expected to have a material adverse effect on Company's financial condition or Company's ability to make any payment required by this Agreement.
- 4.1.4** Company fails to pay, becomes insolvent or unable to pay, or admits in writing an inability to pay Company's debts as they become due, or makes a general assignment for the benefit of creditors.
- 4.1.5** A proceeding with respect to Company is commenced under any applicable law for the benefit of creditors, including but not limited to any bankruptcy or insolvency law, or an order for the appointment of a receiver, liquidator, trustee, custodian, or other officer having similar powers over Company is entered.

SECTION 5 MISCELLANEOUS

Section 5.1 Right to Inspect

The Company agrees that the County, their agents and employees, shall be entitled, upon reasonable prior notice to the Company, to access and inspect the property and employment records of the Company and its affiliates in order to insure that the Company is complying with the terms of this Agreement and all applicable federal, state and local laws and regulations. The right to inspection shall also include any property or employment records that are in the possession of any affiliate of the Company. The right of inspection shall continue until all of the obligations of the Company under this Agreement have been satisfied.

Section 5.2 Attorney's Fee Provision

In the event suit or action is instituted to enforce any of the terms or conditions of this Agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney fees in such suit or action, in both trial court and appellate courts.

Section 5.3 Indemnification

Company shall defend, indemnify and hold harmless County and EDCO, their officers, agents employees and members from all claims, suits, and causes of action including attorney's fees, of any nature whatsoever relating to claims by third parties resulting from or arising out of the Loan, this Agreement, or funds provided to the Company under this Agreement.

Except as otherwise provided in this Section 5.3, County and EDCO shall defend, indemnify and hold harmless Company, their officers, agents, employees and members from all claims, suits, and causes of action including attorney's fees, relating to claims by third parties as to the validity under public finance law of this Agreement or funds provided to the Company under this Agreement.

Section 5.4 Entire Agreement

This Agreement constitutes the entire agreement between the parties regarding the matters herein.

Section 5.6 Titles and Subtitles

The titles in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

Section 5.7 Notice

All notices, requests demands, and other communications to or upon the parties hereto shall be in writing and shall be deemed to have been duly given or made: upon actual receipt if delivered personally or by fax or an overnight delivery service; and at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested; and to the addresses set forth on page 1 of this Agreement or at such other address of which such party shall have notified in writing the other parties hereto.

Section 5.8 Time is of the Essence

All parties agree that time is of the essence under this Agreement.

Section 5.9 Applicable Law

This agreement is made, and shall be construed and interpreted under the laws of the State of Oregon without regard to the principles of conflicts of law. Venue shall lie in state courts located in Deschutes County, Oregon, provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

Section 5.10 Disclosure

Under Oregon law, most agreements, promises and commitments made by a lender after October 3, 1989 concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by borrower's residence must be in writing, express consideration and be signed by the lender to be enforceable.

Section 5.11 No Waiver

No failure or delay of County in exercising any right, power or remedy under this Agreement shall operate as a waiver of such right, power or remedy of County or of any other right. A waiver of any provision of this Agreement shall not constitute a waiver of or prejudice County's right otherwise to demand strict compliance with that provision or any other provision. Any waiver, permit, consent or approval of any kind or character on the part of County must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 5.12 No Assignment by Company

No obligation or right under this Agreement may be assigned by the Company without the prior consent of the County, which consent may be withheld, conditioned, or delayed in the sole discretion of the County.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.

Deschutes County

By: Erik Kropp
Erik Kropp, Interim County Administrator

Date: 10/31/11

GEO-SPATIAL SOLUTIONS, INC

By: Rusty Merritt
Rusty Merritt, CEO

Date: 10/20/11



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 9, 2015

DATE: December 2, 2015

FROM: Matthew Martin CDD 541-330-4620

TITLE OF AGENDA ITEM:

A public hearing on Ordinance Nos. 2015-013 through -018 Amending Deschutes County Code (DCC) Titles 9, 11, 17, 18, 22, and 23 to incorporate "housekeeping" changes that correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies.

PUBLIC HEARING ON THIS DATE? Yes

BACKGROUND AND POLICY IMPLICATIONS:

The Planning Division has compiled "housekeeping" text amendments based on our experiences with current code language. The amendments are an effort to correct noted errors, incorporate changes to state law, and provide clarification to existing land use regulations, procedures, and policies. These housekeeping amendments do not alter the permitted uses or use standards of the code. Additionally, no state statutes, rules, or land use goals apply to these changes. Six ordinances are required to make changes to DCC Titles 9, 11, 17, 18, 22, and 23.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Hold the public hearing.

Motion: First reading by Title only of Ordinance Nos. 2015-013, 2015-014, 2015-015, 2015-016, 2015-017, and 2015-018.

ATTENDANCE: Matthew Martin and Legal Counsel

DISTRIBUTION OF DOCUMENTS:

Matt Martin, CDD



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

TO: Deschutes County Board of County Commissioners
FROM: Matthew Martin, Associate Planner
DATE: December 2, 2015
SUBJECT: Public Hearing on County Land Use File No. 247-15-000256-TA - text amendments to make "housekeeping" changes to the Deschutes County code.

I. SUMMARY

The Planning Division is bringing a package of text amendments to the Board of Commissioners (Board) for a public hearing on December 9, 2015. These amendments are necessary to correct errors, incorporate changes to state law, and provide clarification to existing provisions of the county code. Staff and the Planning Commission recommend approval.

II. BACKGROUND

The Planning Division has compiled "housekeeping" text amendments based on our experiences with the current code language. The amendments are an effort to correct noted errors and provide clarification to existing land use regulations and policies. These housekeeping amendments do not alter the permitted uses or use standards of the code. In addition, no state statutes, rules, or land use goals apply to these changes.

The County Planning Commission held a public hearing on July 9, 2015 to review the proposed amendments. Then, on August 13th, the Planning Commission voted unanimously to recommend approval of the proposed amendments to the Board. The Planning Commission also formally recommended the Board consider adding the provisions of HB 2830, legislation related to review of remands, to the proposed amendments. It was not included in the amendments considered by the Planning Commission because this new legislation was identified after the initial public hearing and inclusion would have required restarting the process with new notice and another public hearing.

III. SCHEDULE

The public hearing before the Board is scheduled for December 9, 2015. Staff recommends the Board:

- *Open the public hearing and take oral and written testimony; then*
- *Close the hearing, commence deliberations, and consider first reading of the ordinances.*

Attachments: Staff Report
Ordinance 2015-013
Ordinance 2015-014
Ordinance 2015-015
Ordinance 2015-016
Ordinance 2015-017
Ordinance 2015-018

Quality Services Performed with Pride



Community Development Department

Planning Division Building Safety Division Environmental Health Division

117 NW Lafayette Avenue Bend Oregon 97701-1925
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

Staff Report

FILE NUMBER: 247-15-000256-TA

APPLICANT: Deschutes County Community Development
117 NW Lafayette Avenue
Bend, Oregon 97701

PROPERTY OWNER: N/A

REQUEST: Text Amendments to clarify existing standards and procedural requirements, incorporate changes to state law, and to correct errors found in various sections of the Deschutes County Code.

STAFF CONTACT: Matthew Martin, AICP, Associate Planner

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

- A. **PROPOSAL:** The Planning Division determined minor changes were necessary to clarify existing standards and procedural requirements, incorporate changes to state law, and correct errors found in various sections of the Deschutes County Code (DCC). Staff initiated the proposed changes and notified the Oregon Department of Land Conservation and Development. The Deschutes County Board of County Commissioners will review the proposed changes at a public hearing on December 9, 2015.

III. CONCLUSIONARY FINDINGS:

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

Hearing Required

FINDING: This criterion will be met because a public hearing will be held before the Deschutes County Board of County Commissioners on December 9, 2015.

2. Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.**
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.**

FINDING: Notice of the public hearing before the Board of County Commissioners reviewing the proposed legislative changes was published in the Bend Bulletin newspaper on November 29, 2015. This criterion has been met.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: Notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend. This criterion has been met.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice will be provided to the County public information official for wider media distribution. This criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division, which received a fee waiver. This criterion has been met.

4. Section 22.12.040. Hearings Body

- A. The following shall serve as hearings or review body for legislative changes in this order:**
- 1. The Planning Commission.**
 - 2. The Board of County Commissioners.**

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Planning Commission held a public hearing on July 9, 2015, to review the proposed amendments. Then, on August 13, 2015, the Planning Commission voted unanimously to recommend approval of the proposed amendments as amended. These criteria have been met.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-15-000256-TA will be implemented by ordinances upon approval and adoption by the Board. This criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the referenced ordinance attached hereto with additional text identified by underline and deleted text by ~~strike through~~. Below are explanations of the proposed changes.

A. Title 9 of the Deschutes County Code:

Chapter 9.04. DRUG PARAPHERNALIA

In March of 2014, the Board of County Commissioners adopted an ordinance establishing a moratorium on the operation of any marijuana dispensary in any area subject to the jurisdiction of Deschutes County. This ordinance included a sunset May 1, 2015, repealing the moratorium. The proposed amendment removes the moratorium from the County code. **(Ord. 2015-013 Exhibit A)**

B. Title 11, County Owned Land and Property:

Chapter 11.12. TRANSFERABLE DEVELOPMENT CREDIT PROGRAM

Section 11.12.020. TDC Transactions.

DCC 11.12.020(B)(3)(c) includes a typo incorrectly referring to DCC 11.12.010, Definitions, and not the appropriate section of DCC 11.12.020, TDC Transactions. The proposed amendment corrects the reference. **(Ord. 2015-014 Exhibit A)**

C. Title 17, Subdivisions:

Table A Minimum Design Standards

Note #20 of the table references zones and standards for the La Pine Urban Unincorporated Community that are now within the city limits of La Pine and no longer under the jurisdiction of Deschutes County. The proposed amendments remove these references. **(Ord. 2015-015 Exhibit A)**

D. Title 18, County Zoning:

Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS

Section 18.04.030. Definitions.

DCC 18.04.030 includes several definitions that are associated solely with the La Pine Neighborhood Planning Area that is now located entirely within the city limits of La Pine and no longer under the jurisdiction of Deschutes County. The proposed amendments delete these definitions from the code. **(Ord. 2015-016 Exhibit A)**

Chapter 18.18 EXCLUSIVE FARM USE ZONE

Section 18.16.040. Limitations on Conditional Uses.

DCC 18.16.040 currently only references conditional uses permitted in DCC 18.16.030. However, the conditional uses permitted under sections 18.16.031 and 18.16.033 are allowed either under Oregon Revised Statute (ORS) 215.283(2) or Oregon Administrative Rule (OAR) 660-033-0120 and also subject to ORS 215.296. The proposed amendment adds reference to DCC 18.16.031 and 18.16.033 for clarification. **(Ord. 2015-016 Exhibit B)**

Chapter 18.60 RURAL RESIDENTIAL ZONE – RR-10

Section 18.60.090. Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

The County Comprehensive Plan was updated and reformatted in 2011. The proposed amendment corrects this reference to reflect the format change and identifies the new section number. **(Ord. 2015-016 Exhibit C)**

Chapter 18.67. TUMALO RURAL COMMUNITY ZONING DISTRICTS

Section 18.67.080. Standards for All Districts.

DCC 18.67.080(G), river setback, currently only refers to structures located within 100-feet of the river and the requirement that a setback exception to the 100-foot setback shall be approved. Instead, this section should state the required setback is a minimum of 100-feet while also noting there is opportunity for an exception. The proposed amendment clarifies the standard. **(Ord. 2015-016 Exhibit D)**

Chapter 18.84. LANDSCAPE MANAGEMENT COMBINING - LM ZONE

Section 18.84.050. Use limitations.

As currently worded, this section requires that all substantial alterations, interior or exterior, requiring a building permit receive LM site plan approval. The regulation and review of interior alterations is not related to the purpose of the LM zone which is "...to maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams." Staff believes this is an oversight from previous amendments that were not related to the interior alterations.

In Ordinance 91-20, Section 18.84.050, Use limitations, previously stated:

No structure, including agricultural buildings, shall be erected or substantially altered externally within one-quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the ordinary [mean] high water mark of any identified landscape management corridor along a river) without first obtaining the approval of the Planning Director or Hearings Body. (emphasis added)

Then, Ordinance 92-034 amended 18.84.050 to its current wording which omitted the reference to exterior alterations. Exhibit “C” of Ordinance 92-034 summarizes the amendments noting, “Section 18.84.050 requires site plan review for structures within the LM zone, clarifies the amount of alteration allowed without site plan review and exempts structures which will not be and will remain invisible from a designated roadway, river, or stream from the provision of site plan review.” Staff concludes the omission of reference to exterior alterations was done in error.

This section also included a reference to DCC 18.124, Site Plan Review. However, DCC 18.124 is not applicable to the LM zone. The site plan review requirements and standards that are applicable to the LM zone are outlined in the Chapter 18.84. The proposed amendment removes this reference.

Section 18.84.080. Design Review

DCC 18.84.080(D) includes a typo in the reference to DCC18.84.090(E). The proposed amendment removes this error.

DCC 18.84.080(E) as currently worded erroneously exempts agricultural structures located at least 50 feet from a rimrock for the standards of DCC18.84.080, instead of the height limit of the section as intended. The proposed amendment corrects this error.

DCC 18.84.080(J) currently refers to Squaw Creek, the previous name of Whychus Creek. The proposed amendment corrects the name.

(Ord. 2015-016 Exhibit E)

Chapter 18.108. URBAN UNINCORPORATED COMMUNITY ZONE - SUNRIVER

Section 18.108.055 Town Center – TC District

The County Comprehensive Plan was updated and reformatted in 2011. The proposed amendments correct this reference to reflect the format change and identify the new section number. ***(Ord. 2015-016 Exhibit F)***

Chapter 18.113. DESTINATION RESORTS ZONES - DR

Section 18.113.060. Standards for Destination Resorts.

Ordinance 2013-008 approved a ratio of 2.5:1 for residential units to overnight available in destination resorts. Section 18.113.060(A)(1)(b)(iv) was not previously updated to reflect this new standard. The proposed amendment makes the approved change to this section. ***(Ord. 2015-016 Exhibit G)***

Chapter 18.128. CONDITIONAL USE

Section 18.128.200. Cluster Development (Single-Family Residential Uses Only).

The County Comprehensive Plan was updated and reformatted in 2011. The proposed amendment corrects this reference to reflect the format change. *(Ord. 2015-016 Exhibit H)*

E. Title 22, Deschutes county Development Procedures Ordinances:

Chapter 22.08. GENERAL PROVISIONS

Section 22.08.010. Application Requirements.

The review of select land applications requires a hearings officer deposit for cost of services to be submitted as part of an application. Currently there is no reference to this deposit in the application requirements. The proposed amendment specifies that a hearings officer deposit shall be submitted or requested prior to deeming the application complete. *(Ord. 2015-017 Exhibit A)*

Chapter 22.28. LAND USE ACTION DECISIONS

Section 22.28.020. Notice of decision.

This section currently requires hearings body decisions be mailed to all parties. This can be and has been a considerable expense and may not be necessary given the availability of decisions online or upon request. Instead, the proposed amendment indicates notice of the decision will be sent to all parties. Decisions will continue to be available online or upon request. *(Ord. 2015-017 Exhibit B)*

Chapter 22.32. APPEALS

Section 22.32.015. Filing appeals.

DCC 22.32.015(D) specifies that appeal fees shall be paid by cash, check, money order, or purchase order for government agencies. This standard was added by Ord. 98-019 (TA98-6) to explicitly allow governmental agencies to pay for an appeal with a purchase order in addition to cash, check, or money order. Since the adoption of Ord. 98-019, the Community Development Department is now able to accept payments via credit card. Instead of adding credit cards to the list of payment options, the terminology is simplified to acknowledge all acceptable forms of payment.

Section 22.32.024. Transcript requirement.

DCC 22.32.024 currently requires an appellant to provide a complete transcript of for the appeal hearing. However, with the availability of audio and video recordings of hearings, such a transcript is not always necessary. Therefore, this change provides opportunity for the appeal hearings body to waive the requirement of providing a complete transcript.

(Ord. 2015-017 Exhibit C)

Chapter 22.34. PROCEEDINGS ON REMAND

Section 22.34.030. Notice and hearings requirements.

DCC 22.34.030 as written restricts the time period for a final decision for the Board on remand to within 90 days of the date the remand order becomes effective. This provides no

flexibility for the applicant to respond or extend this time period. The originally proposed amendment clarified this procedural requirement providing flexibility for an applicant.

After the public hearing before the Planning Commission reviewing the proposal, Staff became aware that the Oregon Legislature recently enacted House Bill (HB) 2830 amending the LUBA remand procedures. In summary, the amendment extends the 90-day review time period to 120-days upon request from the applicant that the county proceed with review. The amendment also provides opportunity for this time period to be extended an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. If the county does not receive the request to proceed from the applicant within 180 days of the effective date of the final order or the final resolution of the judicial review or if not resolved through mediation prior to the expiration of the 365-day extension, the county shall deem the application terminated.

Because this new information was provided after the public hearing, the Planning Commission did not include it in the recommended package of amendments. Instead, the Planning Commission recommended to Board of County Commissioners consider replacing the proposed amendment with the new language of HB 2830. The proposed amendment now reflects this legislation. **(Ord. 2015-017 Exhibit D)**

Chapter 22.36. LIMITATIONS ON APPROVALS

Section 22.36.010. Expiration of approval.

DCC 22.36.010(B)(4)(a) indicates the approval period for replacement dwellings in the EFU zone is for 4 years. However, recent amendments to ORS 215.417 removed replacement dwellings from the list of uses with 4 year approval periods. Instead, replacement dwellings are subject to the general 2 year approval period. The proposed amendment corrects this error. **(Ord. 2015-017 Exhibit E)**

F Title 23, Deschutes County Comprehensive Plan:

Chapter 4. URBAN GROWTH MANAGEMENT

Section 4.3 Unincorporated Communities/

Table 4.3.1 – Deschutes County Unincorporated Communities 2010

The narrative after the table notes the Community Plans for Tumalo and Terrebonne are in Sections 4.5 and 4.6, respectively. However, text amendments previously approved renumbered these Sections to 4.6 and 4.7. The proposed amendment corrects error. **(Ord. 2015-018 Exhibit B)**

APPENDIX C – TRANSPORTATION SYSTEM PLAN

Section 2.2 Existing Transportation System and Current Needs

The County TSP does not currently include a description of SE 27th Street, which forms portions of the southeast boundary of the city limits and urban growth boundary the City of Bend. Because portions of the road and property adjacent are located in areas under County jurisdiction, inclusion of the road on the TSP is warranted. The County Road Department road inventory identifies this segment of road as a rural arterial and the most recent traffic count in 2008 found 7,656 average daily trips (ADT). The proposed amendment adds SE 27th Street to the existing description of Baker Road and Knott Road because it is natural extension of the same corridor. **(Ord. 2015-018 Exhibit C)**

V. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments that make minor changes necessary to clarify existing standards and procedural requirements, incorporate changes to state law, and to correct errors.

Attachments: Ordinance 2015-013
Ordinance 2015-014
Ordinance 2015-015
Ordinance 2015-016
Ordinance 2015-017
Ordinance 2015-018

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance repealing Ordinance 2014-008.

*
*
*
*

ORDINANCE NO. 2015-013

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 9, Chapter 9.04, Drug Paraphernalia to incorporate “housekeeping” changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners (“Board”), a recommendation to repeal Ordinance No. 2014-008; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code (“DCC”) Title 9; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. REPEALED. DCC 9.04.040, Controlled Substances, is hereby repealed in its entirety.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit “E” and incorporated by reference herein.

Dated this _____ of _____, 2015 BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Tammy Baney	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____
Alan Unger	_____	_____	_____	_____

Effective date: _____ day of _____, 2015.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code
Title 11 to Incorporate "Housekeeping" Changes that
Correct Errors, Incorporate Changes to State Law,
and Provide Clarification of Existing Regulations,
Procedures, and Policies.

*
*
*
*

ORDINANCE NO. 2015-014

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 11, Chapter 11.12, Transfer Development Credit Program to incorporate "housekeeping" changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 11; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS
as follows:

Section 1. AMENDMENT. DCC 11.12.020, TDC Transactions, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit “E” and incorporated by reference herein.

Dated this _____ of _____, 2015 BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Tammy Baney	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____
Alan Unger	_____	_____	_____	_____

Effective date: _____ day of _____, 2015.

Chapter 11.12. TRANSFERABLE DEVELOPMENT CREDIT PROGRAM

11.12.020. TDC Transactions.

- A. Sale of TDCs from the Sending Area. Either Section B or C shall be followed for the creation of TDCs,
- B. Restrictive Covenant
 - 1. The property owner or any other interested person shall request verification from the County that the subject property is eligible for a TDC.
 - 2. The Department shall send the property owner or interested person written verification confirming the number of TDCs the subject property is eligible for based on the criteria in DCC 11.12.030.
 - 3. Upon mutual agreement of a sale between the property owner and TDC purchaser, the following transactions shall occur:
 - a. The property owner shall provide a TDC Report to the Department.
 - b. If the TDC purchaser is other than the County then the property owner and TDC purchaser shall sign a TDC Contract form provided by the County.
 - c. Upon Department review and approval of the TDC Report and receipt of payment of the consideration in accordance with the County's agreement with the property owner or the TDC Contract pursuant to DCC 11.12.020(AB)(3)(b), the County shall prepare a Restrictive Covenant that restricts development on the subject property. This Restrictive Covenant shall be signed by the County and the property owner. The County shall record the Restrictive Covenant.
 - d. Contemporaneously with the recording of the Restrictive Covenant, County shall provide the TDC purchaser with documentation of the TDC purchase.
- C. PRC.
 - 1. The property owner or any other interested person shall request verification from the County that the subject property is eligible for a PRC.
 - 2. The Department shall provide the property owner or interested person written verification confirming the subject property is eligible for a PRC based on the criteria in DCC 11.12.030.
 - 3. The County shall grant a PRC to a developer in the Receiving Area if the developer provides one of the following:
 - a. A Retrofit, in cooperation with the property owner of a property eligible for a PRC, Existing Wastewater Treatment System and documentation submitted to the County that includes proof of ownership of the subject property, proof of consent of the property owner for the Retrofit, and final County inspection of the Retrofit; or
 - b. Payment into the County's Financial Assistance Fund the proportional cost established by Board of County Commissioner Resolution for a Retrofit. The County's fund shall be used to aid property owners in reducing the overall discharge of nitrogen into the basin groundwater of in south Deschutes County.
- D. Assignment of TDCs to the Receiving Area.
 - 1. The total number of required TDCs, including PRCs, applicable to a subdivision in the Receiving Area shall be established and made a condition of approval at the time of tentative plan approval.
 - 2. The tract or lot shall be located within the La Pine Neighborhood Planning Area in the La Pine Urban Unincorporated Community and be zoned Residential General or Residential Center. The Receiving Area is identified on a map prepared and maintained by the Department.
 - 3. TDCs shall be assigned to a lot or tract based on the Net Developable Acres at a rate approved by Board of County Commissioner resolution.
 - 4. PRCs shall be assigned to a tract at a rate established by Board of County Commissioner resolution.
 - 5. The Board may, by resolution, adjust the number of TDCs required per acre or alter the factors for which TDCs are required in the Receiving Area.
 - 6. At the time of final plat approval, any remaining required PRCs for the partition or subdivision shall be divided by the number of residential lots approved for the partition or subdivision.

7. The required PRCs and their cost for each lot shall be shown on the final plat.
8. Prior to issuance of a building permit for a residential lot in the Receiving Area, the Department must have payment of the required number of PRCs for that lot.

E. Non-Residential Districts. Where permitted under DCC 18.61.050, uses in non-residential districts in the Receiving Area do not require TDCs.

F. Right to Develop. If an owner of a lot or parcel of land eligible for a TDC chooses not to participate in the TDC program, the owner shall not be restricted from developing said lot or parcel in accordance with the applicable zoning standards in DCC Title 18, and any other applicable regulations, rules or standards.

| (Ord. 2015-014 § 1, 2015; Ord. 2009-003 § 1, 2008; Ord. 2006-016 §1, 2006; Ord. 2004-007 §1, 2004; Ord. 2002-010 §1, 2002)

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code
Title 17 to Incorporate "Housekeeping" Changes that
Correct Errors, Incorporate Changes to State Law,
and Provide Clarification of Existing Regulations,
Procedures, and Policies.

*
*
*
*

ORDINANCE NO. 2015-015

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 17, Chapter 17.48, Design and Construction Specifications to incorporate "housekeeping" changes correct errors and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 17; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS
as follows:

Section 1. AMENDMENT. DCC 17.48 Table A, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit “E” and incorporated by reference herein.

Dated this _____ of _____, 2015 BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Tammy Baney	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____
Alan Unger	_____	_____	_____	_____

Effective date: _____ day of _____, 2015.

“****” Denotes portions of this Section not amended by Ordinance 2015-015.

Chapter 17.48. DESIGN AND CONSTRUCTION SPECIFICATIONS

Table A MINIMUM DESIGN STANDARDS

Notes:

- (1) Design shall be in accordance with Oregon Department of Transportation Design Standards.
- (2) Design shall be in accordance with AASHTO standards.
- (3) Pavement widths are variable, depending on such factors as anticipated traffic volumes, and whether the road section involves turn lanes, bike lanes, and whether frontage roads border an arterial or collector, etc.
- (4) The required base depth may be increased when a C.B.R., or R-value is required by the Road Department.
- (5) Cul-de-sac bulb to be constructed with a 45-foot minimum radius.
- (6) Increase in grade of 2 percent may be allowed in unusually steep areas.
- (7) No curb for rural frontage roads.
- (8) 20' allowed for cul-de-sac's and roads with low anticipated traffic volumes as long as separate multiple use paths are provided. 28' width required (including the required 4' striped shoulder bikeway in each direction) for circulator and primary subdivision access roads and other roads when separate multiple use paths are not provided.
- (9) The larger of the two widths is necessary if a shoulder bikeway is required (4' for collector and 5' for arterial).
- (10) 20' allowed for cul-de-sac's and roads with low anticipated traffic volumes. 24' width required for circulator and primary subdivision access roads.
- (11) Sidewalks required for new subdivisions and partitions, within Unincorporated Communities, that result in an average lot size of 11,000 square feet or less.
- (12) Widths are variable, but in no case shall a swale be less than 6 feet in width. Swales shall conform as much as practicable to DEQ best management practices for non-underground injection control (UIC) systems such as grassy or vegetated bioswales designed (sized) to mitigate anticipated storm water runoff.
- (13) Where drainage swales are not required, the standards for drainage in Title 17, Chapter 17.48 shall still apply.
- (14) 6-foot sidewalks required on both sides of Highway 97 between South 11th Avenue and Central Avenue intersections. Includes pedestrian crossing improvement at B Avenue and C Avenue intersection (see Terrebonne Comprehensive Plan Map D-3).
- (15) 5-foot curbless sidewalks with a drainage swale required on both sides of the road.
- (16) 5-foot curbless sidewalks with drainage swales required in Terrebonne from West 19th Street to 15th Street on the south side of C Avenue (see Terrebonne Comprehensive Plan Map D-3), or those roads in Tumalo designated for sidewalks (see Tumalo Comprehensive Plan Map D2).
- (17) 5-foot curbless sidewalks with drainage swales required along school frontage on B Avenue and 5th Street (see Terrebonne Comprehensive Plan Map D-3).
- (18) Where allowed, parking must be off pavement.
- (19) 40 feet immediately adjacent to arterial road, or 60 feet when frontage road is separated from arterial by private land.
- (20) In the ~~Neighborhood Commercial, Community Facility, Community Facility Limited and Residential Center~~ Districts, ~~where a paved multi-use path is not required in Figure 16 (Non-Motorized Plan) of Title 23,~~ sidewalks at least five feet wide shall be installed at the time of development. The sidewalks shall be property line tight and meet ADA accessibility requirements. ~~The sidewalks shall be connected to the required paths identified on Figure 16, the Non-Motorized Plan.~~
- (21) 10-foot sidewalks required on both sides of US Highway 97 between First/Reed and 6th Street intersections.
- (22) Rather than a continuous paved parking shoulder, parking in designated pullout areas can be provided along the collectors for access to open space, parks and residential lots.
- (23) The minimum width is 8 ft. However, 8 ft. wide multiuse paths are not recommended in most situations because they may become over-crowded. They should only be constructed as short connectors, or where long term usage is expected to be low, and with proper horizontal and vertical alignment to assure good sight distances. 10 ft is the standard width for a two-way multi-use path but they should be 12 ft wide in areas with high mixed-use. Optimum width should be based on the relative use by cyclists and pedestrians. High use by skaters may also require greater width.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18 to Incorporate "Housekeeping" Changes that * ORDINANCE NO. 2015-016
Correct Errors, Incorporate Changes to State Law, *
and Provide Clarification of Existing Regulations, *
Procedures, and Policies.

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.04, Title, Purpose and Definitions; Chapter 18.16, Exclusive Farm Use Zones; Chapter 18.60, Rural Residential Zone; Chapter 18.67, Tumalo Rural Community Zoning Districts; Chapter 18.84, Landscape Management Combining; Chapter 18.108, Urban Unincorporated Community Zone; Chapter 18.113, Destination Resorts Zone; and Chapter 18.128, Conditional Use to incorporate "housekeeping" changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 18; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 18.04.030, Definitions, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. DCC 18.16.040, Limitations on Conditional Uses, is amended to read as described in Exhibit "B," attached hereto and by this referenced incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. DCC 18.60.090, Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, is amended to read as described in Exhibit "C," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDMENT. DCC 18.67.080, Standards for All Districts, is amended to read as described in Exhibit "D," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

///

Section 5. AMENDMENT. DCC 18.84.050, Use limitations, and DCC 18.84.080, Design review standards, are amended to read as described in Exhibit “E,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 6. AMENDMENT. DCC 18.108.055, Town Center, is amended to read as described in Exhibit “F,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 7. AMENDMENT. DCC 18.113.060, Standards for Destination Resorts, is amended to read as described in Exhibit “G,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 8. AMENDMENT. DCC 18.128.200, Cluster Development (Single-Family Residential Uses Only), is amended to read as described in Exhibit “H,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 9. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit “E” and incorporated by reference herein.

Dated this _____ of _____, 2015 BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Record of Adoption Vote:				
Commissioner	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	___
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___

Effective date: _____ day of _____, 2015.

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS

18.04.030. Definitions.

~~“Accessory dwelling” as applied in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area, means a complete dwelling unit either attached to or separate from the primary dwelling unit. An accessory dwelling may be no larger than 33 percent of the living area, excluding the garage, of the primary dwelling, or 800 square feet, whichever is less. Maximum height for a detached accessory dwelling is 24 feet.~~

~~“La Pine Collector Street” means a collector street in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area as depicted on the Neighborhood Planning Area Street Plan, Figure 15, in DCC 23.36.052, the Deschutes County Comprehensive Plan.~~

~~“La Pine central collector” means the collector street running north and south through the center of the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area. The generalized corridor location for the Central Collector is depicted on the Neighborhood Planning Area Street Plan, Figure 15, in DCC 23.36.052.~~

~~“Live/work dwelling” is a use permitted in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area, and Residential Center District in which a business may be operated on the ground floor. The ground floor commercial or office space has visibility, signage and access from the primary street. To preserve the pedestrian orientation of the commercial or office space, alley access is required for parking. The location of lots where live/work dwellings may be sited shall be specified on the subdivision plat. The live/work housing types are defined below:~~

- ~~A. Live/work house: A single family detached house with no more than 50 percent of the first story of the building available as commercial or office space.~~
- ~~B. Live/work town home: A residential, fee simple town home unit in which a business may be operated. The commercial or office portion of the building shall be limited to the ground floor and may not exceed 50 percent of the square footage of the entire building, excluding the garage.~~

~~“Neighborhood” means one of four areas in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area, as depicted on the Neighborhood Planning Area Neighborhood and Quadrant Plan, Figure 11, in DCC 23.36.052, the Deschutes County Comprehensive Plan. Each Neighborhood has a Residential Center District including a Neighborhood Park and is divided into Quadrants by neighborhood collector streets.~~

~~“Neighborhood commercial building” means a building located in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area, Residential Center District that does not exceed a total of 4,000 square feet of gross floor area and may contain retail, service, office, or food service establishment, excluding drive through. A neighborhood commercial building is a stand-alone~~

~~commercial use to serve neighborhood needs. It is not intended to draw large numbers of patrons from outside of the neighborhood. The design of the building shall be residential in scale and character. Off-street parking is limited to a maximum of one space per 500 square feet of building. Off-street parking must be located at the side or rear of the building. The public entrance to the building shall be from the primary street frontage.~~

~~“Neighborhood park” means a public park located in the central area of each Neighborhood in the La Pine Neighborhood Planning Area. Neighborhood Park size ranges from two to five acres.~~

~~“Neighborhood quadrant” means one of the four sub-areas in each of the four neighborhoods in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area. The Quadrants are depicted on the Quadrant Plan, Figure 11, in DCC 23.36.052, the Deschutes County Comprehensive Plan.~~

~~“Open space buffer” means the open space designated on the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area Parks and Open Space Plan, Figure 17 in DCC 23.36.052, the Deschutes County Comprehensive Plan. The open space buffer provides space between the Neighborhoods and Highway 97, Huntington Road, Burgess Road and the existing subdivision adjacent to the La Pine Neighborhood Planning Area.~~

~~“Open space corridor” means the corridors designated on the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area Parks and Open Space Plan, Figure 17 in DCC 23.36.052, the Deschutes County Comprehensive Plan. The open space corridors define the boundaries between the Neighborhoods and are the locations for paths in the non-motorized circulation network.~~

~~“Quadrant plan” means a development plan for a Neighborhood Quadrant in the La Pine Neighborhood Planning Area.~~

~~(Ord. 2015-016 §1, 2015; Ord. 2015-004 §1, 2015; Ord. 2014-009 §1, 2014; Ord. 2013-008 §1, 2013; Ord. 2012-007 §1, 2012; Ord. 2012-004 §1, 2012; Ord. 2011-009 §1, 2011; Ord. 2010-022 §1, 2010; Ord. 2010-018 §3, 2010; Ord. 2008-007 §1, 2008; Ord. 2008-015 §1, 2008; Ord. 2007-005 §1, 2007; Ord. 2007-020 §1, 2007; Ord. 2007-019 §1, 2007; Ord. 2006-008 §1, 2006; Ord. 2005-041 §1, 2005; Ord. Chapter 18.04 35 (04/2015) 2004-024 §1, 2004; Ord. 2004-001 §1, 2004; Ord. 2003-028 §1, 2003; Ord. 2001-048 §1, 2001; Ord. 2001-044 §2, 2001; Ord. 2001-037 §1, 2001; Ord. 2001-033 §2, 2001; Ord. 97-078 §5, 1997; Ord. 97-017 §1, 1997; Ord. 97-003 §1, 1997; Ord. 96-082 §1, 1996; Ord. 96-003 §2, 1996; Ord. 95-077 §2, 1995; Ord. 95-075 §1, 1975; Ord. 95-007 §1, 1995; Ord. 95-001 §1, 1995; Ord. 94-053 §1, 1994; Ord. 94-041 §§2 and 3, 1994; Ord. 94-038 §3, 1994; Ord. 94-008 §§1, 2, 3, 4, 5, 6, 7 and 8, 1994; Ord. 94-001 §§1, 2, and 3, 1994; Ord. 93-043 §§1, 1A and 1B, 1993; Ord. 93-038 §1, 1993; Ord. 93-005 §§1 and 2, 1993; Ord. 93-002 §§1, 2 and 3, 1993; Ord. 92-066 §1, 1992; Ord. 92-065 §§1 and 2, 1992; Ord. 92-034 §1, 1992; Ord. 92-025 §1, 1992; Ord. 92-004 1 and 2, 1992; Ord. 91-038 §§3 and 4, 1991; Ord. 91-020 §1, 1991; Ord. 91-005 §1, 1991; Ord. 91-002 §11, 1991; Ord. 90-014 §2, 1990; Ord. 89-009 §2, 1989; Ord. 89-004 §1, 1989; Ord. 88-050 §3, 1988; Ord. 88-030 §3, 1988; Ord. 88-009 §1, 1988; Ord. 87-015 §1, 1987; Ord. 86-056 2, 1986; Ord. 86-054 §1, 1986; Ord. 86-032 §1, 1986; Ord. 86-018 §1, 1986; Ord. 85-002 §2, 1985; Ord. 84-023 §1, 1984; Ord. 83-037 §2, 1983; Ord. 83-033 §1, 1983; Ord. 82-013 §1, 1982)~~

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.16. EXCLUSIVE FARM USE ZONES

18.16.040. Limitations on Conditional Uses.

- A. Conditional uses permitted by DCC 18.16.030, 18.16.031, and 18.16.033 may be established subject to ORS 215.296 ~~and~~, applicable provisions in DCC 18.128, and upon a finding by the Planning Director or Hearings Body that the proposed use:
1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and
 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.

(Ord. 2015-016 §2, 2015; Ord. 2014-010 §1, 2014; Ord. 2012-007 §2, 2012; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2006-008 §3, 2006; Ord. 2004-001 §2, 2004; Ord. 98-030 §1, 1998; Ord. 95-075 §1, 1995; Ord. 95-007 §14, 1995; Ord. 92-065 §3, 1992; Ord. 91-038 §1 and 2, 1991; Ord. 91-020 §1, 1991; Ord. 91-011 §1, 1991)

Chapter 18.60. RURAL RESIDENTIAL ZONE - RR-10

18.60.090. Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

- A. Uses Permitted Outright. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, uses shall be permitted as follows, the following uses and their accessory uses are allowed outright:
 - a. Agricultural use as defined in DCC Title 18.
 - b. Propagation or harvesting of a forest product.
 - c. Ground application of treated effluent.
- B. Uses Permitted Subject to Site Plan Review. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, uses shall be permitted as follows, the following uses and their accessory uses are permitted subject to applicable provisions of DCC 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review:
 - a. Sewage Treatment Facility.
 - b. Treated Effluent Ponds.
- C. Uses Permitted Conditionally. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B), and their accessory uses are permitted conditionally subject to the applicable provisions of DCC 18.128, Conditional Uses.
- D. Definitions. For the purpose of this section, the use Sewage Treatment Facility includes any buildings or structures associated with the operations of a sewer treatment plant including, but not limited to, treatment station or pump station.
- E. Special Conditions. Pursuant to ~~DCC-Deschutes County Comprehensive Plan~~ Section ~~23.120.170~~ 5.10, an application for site plan review to establish a sewage treatment facility must include a conservation easement and a plan of implementing the conservation easement that provides standards and implementation methods for managing the conservation easement, along with a recorded road maintenance agreement between Oregon Water Wonderland Unit 2 Sewer District and the Beaver Special Road District, with the site plan review application. The road maintenance agreement between the applicant and the Beaver Special Road District shall include Oregon Water Wonderland Unit 2 Sewer District's pro rata share for the maintenance cost of Foster Road through Section 25.

| (Ord. 2015-016 §3, 2015; Ord. 2010-016§1, 2010; Ord. 2003-012 §1, 2003).

Chapter 18.67. TUMALO RURAL COMMUNITY ZONING DISTRICTS

18.67.080. Standards for All Districts.

- A. Solar Setback. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.
- B. Building Code Setbacks. In addition to the setbacks set forth herein, any greater setbacks required by the applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
- C. Off-Street Parking and Loading. Off-street parking and loading shall be provided subject to the applicable provisions of DCC 18.116.
- D. Lot Coverage. Except where otherwise noted, the primary and accessory buildings located on any lot or parcel shall not cover more than 30 percent of the total lot or parcel.
- E. Building Height. Except where otherwise indicated, no building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.
- F. Rimrock Setback. Setbacks from the rimrock are subject to the applicable provisions of DCC 18.116.160.
- G. River setback. All new structures or additions to existing structures ~~within shall be set back a minimum of 100 feet from the ordinary high water mark of designated streams and rivers are subject to the applicable provisions of~~ within shall be set back a minimum of 100 feet from the ordinary high water mark of designated streams and rivers are subject to the applicable provisions of ~~for obtain a setback exception in accordance~~ DCC 18.120.030. For the purpose of DCC 18.67.070, decks are considered part of a structure.

(Ord. 2015-016 §4, 2015; Ord. 97-033 §2, 1997)

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.84. LANDSCAPE MANAGEMENT COMBINING - LM ZONE

18.84.050. Use limitations.

- A. Any new structure or substantial exterior alteration of a structure requiring a building permit, an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with ~~the~~ DCC 18.84 and DCC 18.124, Site Plan Review, prior to construction. As used in DCC 18.84 substantial exterior alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.
- B. Structures which are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography or existing development are exempt from the provisions of DCC 18.84.080 (Design Review Standards) and DCC 18.84.090 (Setbacks). An applicant for site plan review in the LM Zone shall conform with the provisions of DCC 18.84, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone.
(Ord. 2015-016, §5, 2015; Ord. 2001-016, §2, 2001; Ord. 95-075 §3, 1995; Ord. 92-034 §2, 1992; Ord. 91-020 §1, 1991; Ord. 90-020 §1 1990; PL-15 1979)

18.84.080. Design review standards.

The following standards will be used to evaluate the proposed site plan:

- A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river, or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act, or agricultural use of the land.
- B. It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.
- C. No large areas, including roofs, shall be finished with white, bright or reflective materials. Roofing, including metal roofing, shall be nonreflective and of a color which blends with the surrounding vegetation and landscape. DCC 18.84.080 shall not apply to attached additions to structures lawfully in existence on April 8, 1992, unless substantial improvement to the roof of the existing structure occurs.
- D. Subject to applicable rimrock setback requirements or rimrock setback exception standards in DCC 18.84.090(E), all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream. When more than one nonagricultural structure is to exist and no vegetation, trees or topographic features exist which can reduce visual impact of the subject structure, such structure shall be clustered in a manner which reduces their visual impact as seen from the designated road, river, or stream.
- E. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM Zone along a state scenic waterway or federal wild and scenic river, the height of a structure shall include chimneys, antennas, flag poles or other projections from the roof of the structure. DCC 18.84.080(E) shall not apply to agricultural structures located at least 50 feet from a rimrock.
- F. New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.

- G. New exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river or stream.
 - H. The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points, or views of mountains, forests and other open and scenic areas as seen from the designated landscape management road, river or stream. Use of native species shall be encouraged. (Formerly section 18.84.080 (C))
 - I. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (No Trespassing, No Hunting, etc.) are permitted.
 - J. A conservation easement as defined in DCC 18.04.280 "Conservation Easement" and specified in DCC 18.116.220 shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, ~~Squaw~~Whychus Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.
- (Ord. 2015-016, §5, 2015; Ord. 2001-016, §2, 2001; Ord. 97-068 §1, 1997; Ord. 95-075 §3, 1995; Ord. 93-043 §12A and 12B, 1993; Ord. 92-034 §2, 1992; Ord. 91-020 §1, 1991; Ord. 90-020 §1 1990; PL-15 1979)

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.108. URBAN UNINCORPORATED COMMUNITY ZONE – SUNRIVER

18.108.055 Town Center – TC District

K. Conceptual Site Plan.

5. A Conceptual Site Plan shall be approved if it demonstrates that future development is located on the subject property so that, in addition to the requirements of DCC 18.108.055, the following standards can be met at the time of site plan review:

- a. ~~DCC 23.40.025~~ Deschutes County Comprehensive Plan Section 4.5; and

- b. DCC 18.124.060 (A) - (E) and (I); interpreted as described in ~~DCC 23.40.025(E)(1)(d)(3)~~ Deschutes County Comprehensive Plan Policy 4.5.14.

(Ord. 2015-016 §6, 2015; Ord. 2015-004 §9, 2015; Ord. 2008-015 §2, 2008)

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.113. DESTINATION RESORTS ZONE - DR

18.113.060. Standards for Destination Resorts.

The following standards shall govern consideration of destination resorts:

- A. The destination resort shall, in the first phase, provide for and include as part of the CMP the following minimum requirements:
 - 1. At least 150 separate rentable units for visitor-oriented overnight lodging as follows:
 - a. The first 50 overnight lodging units must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.
 - b. The resort may elect to phase in the remaining 100 overnight lodging units as follows:
 - i. At least 50 of the remaining 100 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 5 years of the closure of sale of individual lots or units, and;
 - ii. The remaining 50 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 10 years of the closure of sale of individual lots or units.
 - iii. If the developer of a resort guarantees a portion of the overnight lodging units required under subsection 18.113.060(A)(1)(b) through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within 4 years of the date of execution of the surety bond or other equivalent financial assurance.
 - iv. The 2.5:1 accommodation ratio required by DCC 18.113.060(D)(2) must be maintained at all times.
 - c. If a resort does not chose to phase the overnight lodging units as described in 18.113.060(A)(1)(b), then the required 150 units of overnight lodging must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.

| (Ord. 2015-016 §7, 2015; Ord. 2013-008 §2, 2013; Ord. 2007-05 §2, 2007; Ord. 92-004 §13, 1992)

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.128. CONDITIONAL USE

18.128.200. Cluster Development (Single-Family Residential Uses Only).

B. The conditional use shall not be granted unless the following findings are made:

3. In the Wildlife Area Combining Zone, in addition to compliance with the WA zone development restrictions, uses and activities must be consistent with the required Wildlife Management Plan. The Plan shall be approved if it proposes all of the following in the required open space area:
 - a. Preserves, protects and enhances wildlife habitat for WA zone protected species as specified in the Deschutes County Comprehensive Plan-~~(DCC Title 23)~~; and

| (Ord. 2015-016 §8, 2015; Ord. 2004-024 §2, 2004; Ord. 95-075 §1, 1995; Ord. 93-005 §11, 1993; Ord. 91-020 §1, 1991)

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 22 to Incorporate "Housekeeping" Changes that *
Correct Errors, Incorporate Changes to State Law, *
and Provide Clarification of Existing Regulations, *
Procedures, and Policies.

ORDINANCE NO. 2015-017

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 22, Chapter 22.08, General Provisions; Chapter 22.28, Land Use Action Decisions; Chapter 22.32, Appeals; Chapter 22.34, Proceedings on Remand; and Chapter 22.36, Limitations on Approvals to incorporate "housekeeping" changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 22; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 22.08.010, Application Requirements, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. DCC 22.28.020, Notice of Decision, is amended to read as described in Exhibit "B," attached hereto and by this referenced incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. DCC 22.32.015, Filing appeals, and DCC 22.32.024, Transcript Requirement, are amended to read as described in Exhibit "C," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDMENT. DCC 22.34.030, Notice and Hearings Requirements, is amended to read as described in Exhibit "D," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

///

Section 5. AMENDMENT. DCC 22.36.010, Expiration of Approval, is amended to read as described in Exhibit “E,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 6. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit “E” and incorporated by reference herein.

Dated this _____ of _____, 2015 BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	___
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___

Effective date: _____ day of _____, 2015.

Chapter 22.08. GENERAL PROVISIONS

22.08.010. Application Requirements.

- A. Property Owner. For the purposes of DCC 22.08.010, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.
- B. Applications for development or land use actions shall:
 - 1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
 - 2. Be completed on a form prescribed by the Planning Director;
 - 3. Include supporting information required by the zoning ordinance and that information necessary to demonstrate compliance with applicable criteria; and
 - 4. Be accompanied by the appropriate filing fee, unless such fees are waived by the Board of County Commissioners.
 - 5. Include an affidavit attesting to the fact that the notice has been posted on the property in accordance with DCC 22.24.030(B).
- C. The following applications are not subject to the ownership requirement set forth in DCC 22.08.010(B)(1):
 - 1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or
 - 2. Applications for development proposals sited on lands owned by the state or the federal government.
- D. A deposit for hearings officers' fees may be requested at any time prior to the application being deemed complete and, if the application is heard by a hearings officer, the applicant will be responsible for the actual costs of the hearings officer.
(Ord. 2015-017 §1, 2015; Ord. 96-071 §1B, 1996; Ord. 95-045 §3, 1995; Ord. 90-077 §1, 1990)

Chapter 22.28. LAND USE ACTION DECISIONS

22.28.020. Notice of Decision.

~~A-Notice of a~~ Hearings Body's decision shall be in writing and mailed to all parties; however, one person may be designated by the Hearings Body to be the recipient of the notice of decision for a group, organization, group of petitioners or similar collection of individual participants.

~~(Ord. 2015-017 §2, 2015;~~ Ord. 90-007 §1, 1990)

“****” Denotes portions of this Section not amended by Ordinance 2015-017.

Chapter 22.32. APPEALS

22.32.015. Filing appeals.

- A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and an appeal fee.
- B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than 5:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.
- C. If the Board of County Commissioners is the Hearings Body and the Board declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the County in reviewing the appeal. When the Board declines review and the decision is subsequently appealed to LUBA, the appeal fee may be applied toward the cost of preparing a transcript of the lower Hearings Body’s decision.
- D. The appeal fee shall be paid by method that is acceptable to Deschutes County~~by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.~~

(Ord. 2015-017 §3, 2015; Ord. 99-031 §15, 1999; Ord. 98-019 §2, 1998; Ord. 96-071 §1G, 1996; Ord. 95-045 §32, 1995; Ord. 94-042 §2, 1994; Ord. 91-013 §11, 1991; Ord 90-007 §1, 1990)

22.32.024. Transcript Requirement.

- A. Except as otherwise provided in DCC 22.32.024, appellants shall provide a complete transcript of any hearing appealed from, from recorded magnetic tapes provided by the Planning Division.
- B. Appellants shall submit to the Planning Division the transcript no later than the close of the day five days prior to the date set for a de novo appeal hearing or, in on-the-record appeals, the date set for receipt of written arguments. Unless excused under DCC 22.32.024, an appellant's failure to provide a transcript shall cause the Board to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.
- C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Division to supply appellant with a magnetic tape or tapes of the prior proceeding; or (2) defects on the magnetic tape or tapes of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.
- D. Notwithstanding any other provisions in DCC 22.32, the appeal hearings body may, at any time, waive the requirement that the appellant provide a complete transcript for the appeal hearing.

(Ord. 2015-017 §3, 2015; Ord. 96-071 §1G, 1996)

Chapter 22.34. PROCEEDINGS ON REMAND

22.34.030. Notice and Hearings Requirements.

- A. The County shall conduct a hearing on any remanded or withdrawn decision, the scope of which shall be determined in accordance with the applicable provisions of DCC 22.34 and state law. Unless state law requires otherwise, only those persons who were parties to the proceedings before the County shall be entitled to notice and be entitled to participate in any hearing on remand.
 - B. The hearing procedures shall comply with the minimum requirements of state law and due process for hearings on remand and need comply with the requirements of DCC 22.24 only to the extent that such procedures are applicable to remand proceedings under state law.
 - C. A final decision shall be made within ~~90-120~~ days of the date the ~~remand order becomes effective~~ applicant initiates the remand in accordance with state law.
 - D. In addition to the requirements of subsection (C) of this section, the 120-day period established under subsection (C) of this section shall not begin until the applicant requests in writing that the county proceed with the application on remand, but if the county does not receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the county shall deem the application terminated.
 - E. The 120-day period established under subsection (C) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The county shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.
- (Ord. 2015-017 §4, 2015; Ord. 99-031 §17, 1999; Ord. 95-045 §§39 and 41A, 1995)

“****” Denotes portions of this Section not amended by Ordinance 2015-017.

Chapter 22.36. LIMITATIONS ON APPROVALS

22.36.010. Expiration of Approval.

A. Scope.

1. Except as otherwise provided herein, DCC 22.36.010 shall apply to and describe the duration of all approvals of land use permits provided for under the Deschutes County Land Use Procedures Ordinance, the various zoning ordinances administered by Deschutes County and the subdivision/partition ordinance.
2. DCC 22.36.010 does not apply to:
 - a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, lot of record determinations and expiration determinations, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or landowner, shall be final, unless appealed, and shall not be subject to any time limits.
 - b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits.
 - c. Quasi-judicial map changes.

B. Duration of Approvals.

1. Except as otherwise provided under DCC 22.36.010 or under applicable zoning ordinance provisions, a land use permit is void two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.
2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after two years from the date of preliminary approval, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under DCC 22.36.010 or the preliminary plat or master plan approval has been initiated as defined herein.
3. In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within the time specified in the approval, or initiated within two years of completion of the prior phase if no timetable is specified.
4. The approval period for the following dwellings in the Exclusive Farm Use and Forest Use Zones is for 4 years:

- ~~a. Replacement dwelling~~
- ~~ba.~~ Nonfarm dwelling
- ~~eb.~~ Lot of record dwelling
- ~~dc.~~ Large tract dwelling
- ~~ed.~~ Template dwelling.

(Ord. 2015-017 §5, 2015; Ord. 2011-016, 2011; Ord. 2004-001 §4, 2004; Ord. 95-045 §43A, 1995; Ord. 95-018 §1, 1995; Ord. 90-007 §1, 1990)

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code
Title 23 and the Deschutes County Comprehensive
Plan to Incorporate "Housekeeping" Changes that
Correct Errors, Incorporate Changes to State Law,
and Provide Clarification of Existing Regulations,
Procedures, and Policies.

*
*
*
*

ORDINANCE NO. 2015-018

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Comprehensive Plan Chapter 4, Urban Growth Management, and Appendix "C," Transportation System Plan to incorporate "housekeeping" changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to the Deschutes County Comprehensive Plan and Deschutes County Code ("DCC") Title 23; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS
as follows:

Section 1. AMENDMENT. DCC 23.01.010, Introduction, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. Deschutes County Comprehensive Plan Chapter 4, Urban Growth Management, is amended to read as described in Exhibit "B," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT Deschutes County Comprehensive Plan Appendix "C," Transportation System Plan, is amended to read as described in Exhibit "C," attached hereto and by this referenced incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDMENT. Deschutes County Comprehensive Plan Chapter 5, Supplementary Sections, is amended to read as described in Exhibit "D," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

///

Section 5. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit “E” and incorporated by reference herein.

Dated this _____ of _____, 2015 BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	___
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___

Effective date: _____ day of _____, 2015.

Chapter 23.01 COMPREHENSIVE PLAN

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
(Ord. 2015-018 § 1, 2015; Ord. 2015-021 § 1, 2015; Ord. 2014-027 § 1, 2014; Ord. 2014-021 § 1, 2014; Ord. 2014-12 § 1, 2014; Ord. 2014-006 § 2, 2014; Ord. 2014-005 § 2, 2014; Ord. 2013-012 § 2, 2013; Ord. 2013-009 § 2, 2013; Ord. 2013-007 § 1, 2013; Ord. 2013-002 § 1, 2013; Ord. 2013-001 § 1, 2013; Ord. 2012-016 § 1, 2012; Ord. 2012-013 § 1, 2012; Ord. 2012-005 § 1, 2012; Ord. 2011-027 § 1 through 12, 2011; Ord. 2011-017 repealed; Ord. 2011-003 § 3, 2011)

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

“***” Denotes portions of this Section not amended by Ordinance 2015-018.

Deschutes County Comprehensive Plan

Section 4.3 Unincorporated Communities

Table 4.3.1 – Deschutes County Unincorporated Communities 2010

Community	Type	Approval Date
Sunriver	Urban Unincorporated Community	1997
Terrebonne	Rural Community	1997
Tumalo	Rural Community	1997
Black Butte Ranch	Resort Community	2001
Inn of the 7 th Mountain/ Widgi Creek	Resort Community	2001
Alfalfa	Rural Service Center	2002
Brothers	Rural Service Center	2002
Hampton	Rural Service Center	2002
Millican	Rural Service Center	2002
Whistlestop	Rural Service Center	2002
Wildhunt	Rural Service Center	2002

Source: Deschutes County Planning Division

The policies for unincorporated communities are based on extensive, relatively recent public input and are for the most part still relevant as of 2010. Consequently, only minor changes have been made to those sections of this Plan. The exceptions are the Community Plans for Tumalo and Terrebonne which are being adopted separately. These have been incorporated into this plan as Sections 4.56 and 4.67.

“****” Denotes portions of this Section not amended by Ordinance 2015-018.

2.2 Existing Transportation System and Current Needs

Rural Arterials

Baker Road/Knott Road/ SE 27th Street

These roads connect to the US 97 Baker Road interchange at the far south end of Bend. Baker Road provides access to the Deschutes River Woods neighborhoods just south of Bend and then connects to Brookwood Boulevard, Bend’s west side ring road. Knott Road provides access to the Deschutes County Landfill before turning north and becoming SE 27th Street. The Knott/27th combination is the ring road for Bend’s east side. SE 27th Street continues north into the City of Bend, where this County arterial becomes a City arterial north of Diamond Back Lane. Some travelers use a routing of Knott and Rickard Road to reach US 20 to avoid the congestion of 27th Street, which also intersect US 20 in east-central Bend

Baker Road

2009 traffic volumes

- 0.10 miles west of Cinder Butte Road 6,174 ADT
- 0.10 miles west of US 97 8,404 ADT

Knott Road

2009 traffic volumes

- 0.10 miles east of US 97 6,269 ADT
- 0.20 miles east of 15th St. (Bend) 6,508 ADT

2008 traffic volumes

- 0.25 miles west of 27th St. (Bend) 6,039 ADT

SE 27th Street

2008 traffic volumes

- 0.10 miles south of Diamond Back Ln 7,656 ADT

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.11.1 Comprehensive Plan Ordinance History

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

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

FINDINGS

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

- A. **PROPOSAL:** The Planning Division determined minor changes were necessary to clarify existing standards and procedural requirements, incorporated changes to state law, and correct errors found in various sections of the Deschutes County Code (DCC). Staff initiated the proposed changes and notified the Oregon Department of Land Conservation and Development. The Deschutes County Board of County Commissioners will review the proposed changes on December 9, 2015.

III. CONCLUSIONARY FINDINGS:

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

Hearing Required

FINDING: The applicant meets this criterion because a public hearing will be held before the Deschutes County Board of County Commissioners on December 9, 2015.

2. Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: Notice of proposed legislative changes was published in the Bend Bulletin newspaper on November 29, 2015. This criterion has been met.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: Notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend. This criterion has been met.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent. This criterion has been met.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice will be provided to the County public information official for wider media distribution. This criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division, which received a fee waiver. This criterion has been met.

4. Section 22.12.040. Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:

1. The Planning Commission.

2. The Board of County Commissioners.

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Planning Commission held a public hearing on July 9, 2015, to review the proposed amendments. Then, on August 13, 2015, the Planning Commission voted unanimously to recommend approval of the proposed amendments as amended. These criteria have been met.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-15-000256-TA will be implemented by ordinances upon approval and adoption by the Board; this criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The text amendments are detailed in the corresponding and referenced ordinance attached hereto with additional text identified by underline and deleted text by ~~strikethrough~~. Below are explanations of the changes.

A. Title 9 of the Deschutes County Code:

Chapter 9.04. DRUG PARAPHERNALIA

In March of 2014, the Board adopted an ordinance establishing a moratorium on the operation of any marijuana dispensary in any area subject to the jurisdiction of Deschutes

County. This ordinance included a sunset May 1, 2015, repealing the moratorium. The amendment removes the moratorium from the County code. **(Ord. 2015-013 Exhibit A)**

B. Title 11, County Owned Land and Property:

Chapter 11.12. TRANSFERABLE DEVELOPMENT CREDIT PROGRAM

Section 11.12.020. TDC Transactions.

DCC 11.12.020(B)(3)(c) includes a typo incorrectly referring to DCC 11.12.010, Definitions, and not the appropriate section of DCC 11.12.020, TDC Transactions. The amendment corrects the reference. **(Ord. 2015-014 Exhibit A)**

C. Title 17, Subdivisions:

Table A Minimum Design Standards

Note #20 of the table references zones and standards for the La Pine Urban Unincorporated Community that are now within the city limits of La Pine and no longer under the jurisdiction of Deschutes County. The amendments remove these references. **(Ord. 2015-015 Exhibit A)**

D. Title 18, County Zoning:

Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS

Section 18.04.030. Definitions.

DCC 18.04.030 includes several definitions that are associated solely with the La Pine Neighborhood Planning Area that is now located entirely within the city limits of La Pine and no longer under the jurisdiction of Deschutes County. The amendments delete these definitions from the code. **(Ord. 2015-016 Exhibit A)**

Chapter 18.18 EXCLUSIVE FARM USE ZONE

Section 18.16.040. Limitations on Conditional Uses.

DCC 18.16.040 currently only references conditional uses permitted in DCC 18.16.030. However, the conditional uses permitted under sections 18.16.031 and 18.16.033 are allowed either under Oregon Revised Statute (ORS) 215.283(2) or Oregon Administrative Rule (OAR) 660-033-0120 and also subject to ORS 215.296. The amendment adds reference to DCC 18.16.031 and 18.16.033 for clarification. **(Ord. 2015-016 Exhibit B)**

Chapter 18.60 RURAL RESIDENTIAL ZONE – RR-10

Section 18.60.090. Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

The County Comprehensive Plan was updated and reformatted in 2011. The amendment corrects this reference to reflect the format change and identifies the new section number. **(Ord. 2015-016 Exhibit C)**

Chapter 18.67. TUMALO RURAL COMMUNITY ZONING DISTRICTS

Section 18.67.080. Standards for All Districts.

DCC 18.67.080(G), river setback, currently only refers to structures located within 100-feet of the river and the requirement that a setback exception to the 100-foot setback shall be approved. Instead, this section should state the required setback is a minimum of 100-feet while also noting there is opportunity for an exception. The amendment clarifies the standard. **(Ord. 2015-016 Exhibit D)**

Chapter 18.84. LANDSCAPE MANAGEMENT COMBINING - LM ZONE

Section 18.84.050. Use limitations.

As currently worded, this section requires that all substantial alterations, interior or exterior, requiring a building permit receive LM site plan approval. The regulation and review of interior alterations is not related to the purpose of the LM zone which is "...to maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams." Staff believes this is an oversight from previous amendments that were not related to the interior alterations.

In Ordinance 91-20, Section 18.84.050, Use limitations, previously stated:

No structure, including agricultural buildings, shall be erected or substantially altered externally within one-quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the ordinary [mean] high water mark of any identified landscape management corridor along a river) without first obtaining the approval of the Planning Director or Hearings Body. (emphasis added)

Then, Ordinance 92-034 amended 18.84.050 to its current wording which omitted the reference to exterior alterations. Exhibit "C" of Ordinance 92-034 summarizes the amendments noting, "Section 18.84.050 requires site plan review for structures within the LM zone, clarifies the amount of alteration allowed without site plan review and exempts structures which will not be and will remain invisible from a designated roadway, river, or stream from the provision of site plan review." Staff concludes the omission of reference to exterior alterations was done in error.

This section also included a reference to DCC 18.124, Site Plan Review. However, DCC 18.124 is not applicable to the LM zone. The site plan review requirements and standards that are applicable to the LM zone are outlined in the Chapter 18.84. The amendment removes this reference.

Section 18.84.080. Design Review

DCC 18.84.080(D) includes a typo in the reference to DCC18.84.090(E). The amendment removes this error.

DCC 18.84.080(E) as currently worded erroneously exempts agricultural structures located at least 50 feet from a rimrock for the standards of DCC18.84.080, instead of the height limit of the section as intended. The amendment corrects this error.

DCC 18.84.080(J) currently refers to Squaw Creek, the previous name of Whychus Creek. The amendment corrects the name.

(Ord. 2015-016 Exhibit E)

Chapter 18.108. URBAN UNINCORPORATED COMMUNITY ZONE - SUNRIVER
Section 18.108.055 Town Center – TC District

The County Comprehensive Plan was updated and reformatted in 2011. The amendments correct this reference to reflect the format change and identify the new section number.
(Ord. 2015-016 Exhibit F)

Chapter 18.113. DESTINATION RESORTS ZONES - DR
Section 18.113.060. Standards for Destination Resorts.

Ordinance 2013-008 approved a ratio of 2.5:1 for residential units to overnight available in destination resorts. Section 18.113.060(A)(1)(b)(iv) was not previously updated to reflect this new standard. The amendment makes the approved change to this section. ***(Ord. 2015-016 Exhibit G)***

Chapter 18.128. CONDITIONAL USE
Section 18.128.200. Cluster Development (Single-Family Residential Uses Only).

The County Comprehensive Plan was updated and reformatted in 2011. The amendment corrects this reference to reflect the format change. ***(Ord. 2015-016 Exhibit H)***

E. Title 22, Deschutes county Development Procedures Ordinances:

Chapter 22.08. GENERAL PROVISIONS
Section 22.08.010. Application Requirements.

The review of select land applications requires a hearings officer deposit for cost of services to be submitted as part of an application. Currently there is no reference to this deposit in the application requirements. The amendment specifies that a hearings officer deposit shall be submitted or requested prior to deeming the application complete. ***(Ord. 2015-017 Exhibit A)***

Chapter 22.28. LAND USE ACTION DECISIONS
Section 22.28.020. Notice of decision.

This section currently requires hearings body decisions be mailed to all parties. This can be and has been a considerable expense and may not be necessary given the availability of decisions online or upon request. Instead, the amendment indicates notice of the decision will be sent to all parties. Decisions will continue to be available online or upon request.
(Ord. 2015-017 Exhibit B)

Chapter 22.32. APPEALS
Section 22.32.015. Filing appeals.

DCC 22.32.015(D) specifies that appeal fees shall be paid by cash, check, money order, or purchase order for government agencies. This standard was added by Ord. 98-019 (TA98-

6) to explicitly allow governmental agencies to pay for an appeal with a purchase order in addition to cash, check, or money order. Since the adoption of Ord. 98-019, the Community Development Department is now able to accept payments via credit card. Instead of adding credit cards to the list of payment options, the terminology is simplified to acknowledge all acceptable forms of payment.

Section 22.32.024. Transcript requirement.

DCC 22.32.024 currently requires an appellant to provide a complete transcript of for the appeal hearing. However, with the availability of audio and video recordings of hearings, such a transcript is not always necessary. Therefore, this change provides opportunity for the appeal hearings body to waive the requirement of providing a complete transcript.

(Ord. 2015-017 Exhibit C)

Chapter 22.34. PROCEEDINGS ON REMAND

Section 22.34.030. Notice and hearings requirements.

Oregon Legislature enacted House Bill (HB) 2830 amending the LUBA remand procedures. In summary, the amendment extends the 90-day review time period to 120-days upon request from the applicant that the county proceed with review. The amendment also provides opportunity for this time period to be extended an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. If the county does not receive the request to proceed from the applicant within 180 days of the effective date of the final order or the final resolution of the judicial review or if not resolved through mediation prior to the expiration of the 365-day extension, the county shall deem the application terminated. The amendment reflects this legislation. *(Ord. 2015-017 Exhibit D)*

Chapter 22.36. LIMITATIONS ON APPROVALS

Section 22.36.010. Expiration of approval.

DCC 22.36.010(B)(4)(a) indicates the approval period for replacement dwellings in the EFU zone is for 4 years. However, recent amendments to ORS 215.417 removed replacement dwellings from the list of uses with 4 year approval periods. Instead, replacement dwellings are subject to the general 2 year approval period. The amendment corrects this error. *(Ord. 2015-017 Exhibit E)*

F. Title 23, Deschutes County Comprehensive Plan:

Chapter 4. URBAN GROWTH MANAGEMENT

Section 4.3 Unincorporated Communities/

Table 4.3.1 – Deschutes County Unincorporated Communities 2010

The narrative after the table notes the Community Plans for Tumalo and Terrebonne are in Sections 4.5 and 4.6, respectively. However, text amendments previously approved renumbered these Sections to 4.6 and 4.7. The amendment corrects error. *(Ord. 2015-018 Exhibit B)*

APPENDIX C – TRANSPORTATION SYSTEM PLAN

Section 2.2 Existing Transportation System and Current Needs

The County TSP does not currently include a description of SE 27th Street, which forms portions of the southeast boundary of the city limits and urban growth boundary the City of Bend. Because portions of the road and property adjacent are located in areas under County jurisdiction, inclusion of the road on the TSP is warranted. The County Road Department road inventory identifies this segment of road as a rural arterial and the most recent traffic count in 2008 found 7,656 average daily trips (ADT). The amendment adds SE 27th Street to the existing description of Baker Road and Knott Road because it is natural extension of the same corridor. **(Ord. 2015-018 Exhibit C)**

V. CONCLUSION:

Based on the information provided herein, the Board of County Commissioners APPROVE the proposed text amendments that make minor changes necessary to clarify existing standards and procedural requirements, incorporate changes to state law, and to correct errors.



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of Dec. 9, 2015

DATE: December 3, 2015

FROM: Peter Russell CDD (541) 383-6718

TITLE OF AGENDA ITEM:

Continuation of November 23, 2015, Board public hearing on Ord. 2015-007, an ordinance amending the Deschutes County Comprehensive Plan to add an Exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow for sewers in unincorporated lands in southern Deschutes County; amend the Newberry Country Plan to not allow for upzoning; and amend the Deschutes County Comprehensive Plan map to indicate the affected tax lots.

PUBLIC HEARING ON THIS DATE? YES.

BACKGROUND AND POLICY IMPLICATIONS:

At the November 23 public hearing the Board continued the hearing until December 9. The Board requested staff to contact various venues in South County regarding their availability to be the site of a continued Goal 11 hearing in late December or January.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Receive the update from staff regarding possible South County venues and accept public testimony then set a date certain to continue the public hearing and/or begin deliberations.

ATTENDANCE: Peter Russell.

DISTRIBUTION OF DOCUMENTS:

Peter Russell



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 9, 2015

DATE: December 4, 2015.

FROM: Deevy Holcomb. Community Justice/Adult Parole & Probation 541-322-7644

TITLE OF AGENDA ITEM:

Review and signature of IGA #5280 between State of Oregon/Department of Corrections and Deschutes County/Community Justice

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

The state of Oregon departments of Human Services and Corrections were authorized by House Bill 3503 during the 2015 session to conduct a 10-year pilot program to combine correctional and dependency approaches to accountability and family preservation/reunification with offenders with minor children. Deschutes County was selected as a pilot county. The county will work with local DHS caseworkers to mutually support family preservation and offender behavior change goals, and reduce the number of parents sent to prison.

FISCAL IMPLICATIONS:

The IGA provides approximately \$74,000 per year to the Community Justice / Adult Parole & Probation department for the duration of the pilot program. Funding will be used to support .5 F T E of Parole/Probation Officer, training and offender treatment and other services.

RECOMMENDATION & ACTION REQUESTED:

Review by the Board and Board Chair signature approving the IGA

ATTENDANCE: Ken Hales and/or Tanner Wark.

DISTRIBUTION OF DOCUMENTS:

Telephone Deevy Holcomb (x7644) for pickup.

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections above the Official Review line.

Date: December 4, 2015 **Department:** Community Justice/Adult Parole & Probation

Contractor/Supplier/Consultant Name: State of Oregon/Dept. of Corrections

Contractor Contact: Denise Sitrler **Contractor Phone #:** 503-378-5876

Type of Document: IGA # 5280 (Deschutes Doc # 2015-736)

Goods and/or Services: Specialized probation supervision and services by an Adult Parole & Probation Officer (PPO) in collaboration with the regional Department of Human Services (DHS) for offenders who are selected by the District Attorney's office for a downward departure sentence (diversion from prison to probation for a conviction that would otherwise have included a prison or jail sentence) who have physical custody of a minor child.

Background & History: The state of Oregon departments of Human Services and Corrections were authorized by House Bill 3503 during the 2015 session to conduct a 10-year pilot program to combine correctional and dependency approaches to accountability and family preservation/reunification with offenders with minor children. Deschutes County was selected as a pilot county. The county is submitting its formal program plan to DOC by December 15, 2015 which will be attached to this IGA as Exhibit A once the plan and this IGA are signed and agreed to by county and state.

Agreement Starting Date: January 1, 2016

Ending Date: June 30, 2017

Annual Value or Total Payment: \$221,594.83

☐ Insurance Certificate Received (check box)

Insurance Expiration Date: N/A

Check all that apply: N/A

☐ RFP, Solicitation or Bid Process

☐ Informal quotes (<\$150K)

☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? ☐ Yes ☒ No)

If **No**, has budget amendment been submitted? ☐ Yes ☒ No **In progress.**

Is this a Grant Agreement providing revenue to the County? ☒ Yes ☐ No

Special conditions attached to this grant: Incorporate principles into plan identified in this IGA section V, utilize an identified offender "flag" in the Department of Corrections' offender database, and provide data upon request to the Department of Correction. Additionally county must provide by December 15th the insurance certifications of any contracted provider conducting activities in support of this grant.

Deadlines for reporting to the grantor: Upon request.

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: ☐ Yes ☐ No

Contact information for the person responsible for grant compliance:

Name: Denise Sitler

Phone #: (503) 378-5867

Departmental Contact and Title: Deevy Holcomb, Management Analyst
Phone #: 541-322-7644

Department Director Approval:

J. Terry Stiles
Signature

12.5.15
Date

Distribution of Document: Who gets the original document and/or copies after it has been signed? Include complete information if the document is to be mailed.

Official Review:

County Signature Required (check one): ☐ BOCC ☐ Department Director (if <\$25K)

☐ Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. _____)

Legal Review _____

Date _____

Document Number _____

INTERGOVERNMENTAL AGREEMENT #5280
BETWEEN THE STATE OF OREGON AND DESCHUTES COUNTY
("Agreement")

TABLE OF CONTENTS

I	DEFINITIONS	2
II	AUTHORITY AND DURATION	3
III	PLAN; PLAN MODIFICATIONS	3
IV	AMENDMENTS GENERALLY	3
V	DUTIES AND RESPONSIBILITIES OF COUNTY	3
VI	DEPARTMENT RESPONSIBILITIES	5
VII	PERFORMANCE GOALS	6
VIII	FUNDS.....	6
IX	NONCOMPLIANCE	7
X	INDEMNIFICATION. See Exhibit B.	7
XI	TERMINATION	7
XII	COMPLIANCE WITH APPLICABLE LAW	7
XIII	ACCESS TO RECORDS	8
XIV	SURVIVAL	8
XV	GOVERNING LAW; JURISDICTION; VENUE	8
XVI	WAIVER.....	8
XVII	EXECUTION AND COUNTERPARTS	8
XVIII	NOTICE	8
XIX	MERGER; INTEGRATION	9
	EXHIBIT A FAMILY SENTENCING ALTERNATIVE PILOT PLAN and BUDGET SUMMARY	10
	EXHIBIT B INDEMNIFICATION	11

This Agreement is between the State of Oregon acting by and through its Department of Corrections, hereafter called DEPARTMENT, and Deshutes County, hereafter called COUNTY.

Whereas, DEPARTMENT is an agency of the State of Oregon and COUNTY is a unit of local government of the State of Oregon and both parties desire to cooperate by agreement to provide correctional services in COUNTY within the requirements as authorized by ORS 423.475 to 423.565;

Whereas, the Legislative Assembly of Oregon enacted legislation establishing shared responsibility between county corrections programs and the DEPARTMENT on a continuing basis (ORS 423.475 to 423.565);

Whereas, ORS 144.106 provides "the supervisory authority shall use a continuum of administrative Sanctions for violations of post-prison supervision";

Whereas, section 1, Chapter 830, Oregon Laws 2015, was passed by the 2015 Legislature to implement a program designed to divert qualified offenders who have primary custody of a minor child at the time of the offense from prison to probation for the purposes of promoting reunification of families, preventing children from entering the foster care system, holding offenders accountable, and authorizing DEPARTMENT to make grants to counties to provide funding;

Whereas, the DEPARTMENT will administer distribution of grants to counties;

Now, therefore, THE PARTIES HERETO, in consideration of the mutual promises, terms and conditions hereinafter provided, agree to the following:

I DEFINITIONS

- A. Amendment: Any change to this Agreement that alters the terms and conditions of the Agreement, excluding the Duration of the Agreement. Plan Modifications are NOT Amendments.
- B. Case Management Application (CMA) Case Plan: A dynamic document created collaboratively with an offender that specifically identifies the offender's evidence-based assessed risk and needs, accompanied by risk reduction strategies and plans of action, with timelines.
- C. Corrections Information System (CIS): A DEPARTMENT software program containing a data base of information about inmates in prison and on probation, parole and post-prison supervision;
- D. County Corrections: All COUNTY agencies and officials who carry out the responsibilities in ORS 423.478(2)(a)-(f).
- E. Family Sentencing Alternative Program (FSAP) Grant: Grant(s) made by DEPARTMENT to assist COUNTY in the implementation and operation of the Plan.
- F. Family Sentencing Alternative Program Plan (Plan): A document developed by the COUNTY in collaboration with the DEPARTMENT which describes COUNTY's approach to providing effective interventions designed to promote reunification of families, prevent children from entering the foster care system, and hold offenders accountable for program participants under COUNTY supervision. The Family Sentencing Alternative Program Plan (FSAP) Plan is described in Exhibit A, County Plan and Budget Summary.
- G. FSAP Plan Budget Summary: A budget submitted by COUNTY and approved by DEPARTMENT which identifies personnel, materials, services and funding COUNTY will use to implement the Plan. COUNTY's Budget Summary is described in Exhibit A.
- H. FSAP Participant Flag: CIS Code for which COUNTY must use to identify the Participants with their program.

- I. Participant: An offender, under supervision of the COUNTY and enrolled in the program.
- J. Plan Modification: A written change or alteration to the Plan promulgated by COUNTY modifying the Plan; or the Duration of the Agreement.
- K. Sanctions: A response to Participant violations of conditions of the program.
- L. Supervisory Authority: The local corrections official or officials designated by COUNTY's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

II AUTHORITY AND DURATION

A. Authority

This Agreement is entered into pursuant to the provisions of ORS 423.520.

B. Duration

This Agreement will become effective on **January 1, 2016** and will remain in effect until **June 30, 2017** or until terminated according to Section XI (*Termination*).

III PLAN; PLAN MODIFICATIONS

- A. The Plan must be received and approved by DEPARTMENT before disbursements of funds described in Section VIII can be made to COUNTY.
- B. Plan Modifications: COUNTY and DEPARTMENT agree that the Plan must remain a flexible instrument capable of responding to unforeseen needs and requirements. A copy of all Plan Modifications will be marked in sequence beginning with the designation "Plan Modification 1" and attached to the above-mentioned Plan. DEPARTMENT will notify COUNTY of any concerns about the modification or the need for an amendment within a 30 calendar day period after DEPARTMENT receives the Plan Modification.
- C. Notice of Modification: No Plan Modifications shall take effect until COUNTY gives written notice to DEPARTMENT, in a form approved by DEPARTMENT. DEPARTMENT shall provide to COUNTY an approved form for modifications as soon as practicable after execution of this Agreement.
- D. Plan Modifications shall become effective upon the date the Plan Modification is approved in writing by the DEPARTMENT.

IV AMENDMENTS GENERALLY

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written Amendment signed by the parties. An Amendment shall become effective only after all parties have signed and all approvals have been obtained.

V DUTIES AND RESPONSIBILITIES OF COUNTY

- A. COUNTY shall assume administrative responsibility to provide services as outlined in the Plan.
- B. COUNTY shall incorporate the principles described below into the Plan:

1. Work collaboratively with the Oregon Department of Human Services (ODHS) in a multi-disciplinary team process to promote the reunification of families, prevent children from entering the foster care system, and hold offenders accountable.
2. Consult with ODHS to determine appropriateness for entry into the FSAP program.
3. Treatment programs shall be evidence-based and gender specific to the gender being served. Evidence-based programs are delivered consistent with the findings in research about what works best to reduce recidivism.
4. Assessment which is standardized, objective, and comprehensive shall be used to prioritize programming and interventions, as well as, determine criminal risk factors. Assessments of risk shall be based on actuarial risk assessment tools.
5. Rules, requirements and expectations for Participants, including consequences for success and for failure are made formal and clear by an authority figure.
6. An individual Case Management Plan shall be developed for each Participant including the most relevant evidence based case management which may include additional conditions including but not limited to geographic restrictions, vocational training, parenting classes, alcohol and drug and/or mental health treatment, life skills, etc.
7. Supervision will be conducted using the most relevant evidenced based case management including but not limited to: Gender specific and general risk/need assessment, case planning, Parole/Probation officer (PO) led cognitive behavioral interventions (i.e., EPICS, Carey Guides), evidenced based parenting, mental health, alcohol/drug and cognitive programming, all programming should be evidenced based and include gender specific components.
8. Treatment shall be based on cognitive and behavioral interventions and social learning approaches. Treatment programs shall be of sufficient length and intensity to produce stable behavior changes based on replacing old patterns of thinking and behaving and learning and practicing new skills for avoiding drug use and criminal behavior.
9. Contact standards will be at a higher rate than that of typical offenders and will involve a minimum of two PO contacts a month with the offender and their children in the home. As the primary case manager, the PO will be responsible to coordinate additional contacts made by a ODHS worker, and/or any other program service provider such as mentors, health care provider, or in-home service provider. Frequency of contact may decrease as Participant progresses in achieving CMA case plan goals. In addition, offenders will be required to submit logs outlining daily routines, family time, and activities such as playtime, reading with children a minimum of twenty minutes per day, homework assistance, and pro-social events. Collateral contacts will include local multi-disciplinary teams focused on the FSAP including community corrections, local department of human services, and other service providers.
10. The Plan shall utilize a system of graduated Sanctions and incentives which are swift and sure and which encourage program goals while holding Participants accountable for non-compliance behaviors.
11. Weekly random drug testing shall occur, however frequency may decrease as Participant progresses in achieving CMA case plan goals. There shall be a consequence for this or any other rule violation, but that consequence shall not

automatically result in withdrawal from the program. Sanctions shall be administered in a manner that is mindful of the impact on the children and families.

12. Programs shall include relapse prevention planning and comprehensive transition planning so that participants are more likely to adjust to changes in living situations.
 13. Addictions treatment programs must be licensed by the State of Oregon to provide addictions treatment.
- C. COUNTY shall incorporate the following data requirements in the Plan:
1. COUNTY will utilize the FSAP Participant Flag.
 2. The start and stop date of any treatment programming relevant to participation in the FSAP, as well as program exit code, will be entered into the CIS Treatment Module.
 3. Numbers of hours in treatment programming designed to promote family reunification and/or reduce recidivism.
- D. COUNTY will prepare and furnish such data, descriptive information and reports as may be requested by DEPARTMENT as needed to comply with ORS 423.520, which states in part, "The department shall require recipients of the grants to cooperate in the collection and sharing of data necessary to evaluate the effect of community corrections programs on future criminal conduct." COUNTY will enter data into CIS in a complete, accurate, and timely manner. COUNTY acknowledges and agrees that DEPARTMENT has the right to reproduce, use and disclose all or any part of such reports, data and technical information furnished under this Agreement.
- E. COUNTY will permit authorized representatives of DEPARTMENT to make such review of records of COUNTY as may be necessary to satisfy audit and/or program review purposes. A copy of any audit or monitoring report will be made available to COUNTY.
- F. COUNTY will follow DEPARTMENT's prescribed allotment and expenditure reporting system in accordance with Exhibit A. This system will be used for controlling County Corrections FSAP Grant funds by DEPARTMENT and to provide suitable records for an audit.
- G. If funding from DEPARTMENT is reduced or discontinued by legislative action, COUNTY will not be required to increase use of COUNTY revenue for continuing or maintaining corrections services as set out in this Agreement.

VI DEPARTMENT RESPONSIBILITIES

- A. Participate according to this Agreement.
- B. Provide funding as described in Section VIII of this Agreement.
- C. Furnish or make available to COUNTY, in a timely manner, those rules, administrative directives and procedures required for COUNTY to meet its obligations described herein.
- D. Subject to system capacity and data processing capabilities, DEPARTMENT will furnish data, descriptive information and reports, available to DEPARTMENT and requested by COUNTY that will assist COUNTY in complying with DEPARTMENT requirements. DEPARTMENT hereby grants to COUNTY the right to reproduce, use, and disclose all or part of such reports, data, and technical information furnished under this Agreement.

- E. If by legislative action, funding from DEPARTMENT is reduced to COUNTY, DEPARTMENT agrees to provide reasonable notice and transition opportunity to COUNTY of changes that may significantly alter approved appropriations and programs.
- F. DEPARTMENT will provide technical assistance to COUNTY in implementing and evaluating COUNTY's Plan.
- G. DEPARTMENT will work collaboratively with COUNTY and ODHS to implement a Plan, which may include data transfers for purposes of preparing the statutorily required legislative report and collaborative case management.
- H. DEPARTMENT will automate the FSAP Participant Flag.

VII PERFORMANCE GOALS

Plans funded under this Agreement will be evaluated by the DEPARTMENT for program effectiveness. Goals for the evaluation are to determine if:

- A. Children are successfully diverted from entering the foster care system and/or families are reunified.
- B. Prison bed usage is reduced.
- C. Recidivism is reduced.
- D. Participants show evidence of improved community functioning: Improved community functioning will be measured by successful completion of the program and through the existing community corrections performance measures outlined in other intergovernmental agreements that COUNTY is party to (i.e., successful completion of supervision, employment, payment of restitution and/or community service work).
- E. Treatment programs are evidence-based. Those designed to reduce recidivism will be evaluated using the Corrections Program Checklist.
- F. Any other identified program goals.

VIII FUNDS

- A. Exhibit A identifies the FSAP Grant Funds authorized under this Agreement for the implementation of the Plan during the term of this Agreement.
- B. Payment to COUNTY of the entire amount of Grant funds will be made within 15 days after execution of this Agreement, subject to the conditions set forth in subsection G of this Section.
- C. Both parties agree that all reallocations of funds within programs shall require a Plan Modification.
- D. Unexpended Funds: Fund balances remaining after the budget year or expiration of the Agreement may be retained by the COUNTY, upon approval by DEPARTMENT, for the provision of on-going supervision, correctional services, and Sanctions in accordance with the Plan.
- E. Unauthorized Expenditures: Any Grant Funds (defined below) disbursed to COUNTY that are expended for unauthorized purposes, or any unexpended Funds not retained by COUNTY under Section VIII.D, will be deducted by DEPARTMENT from payment or refunded to DEPARTMENT promptly upon DEPARTMENT's written request, which is in no case later than 15 days after DEPARTMENT's written request.

- F. **Maximum Grant Amount.** Grant funds are based upon COUNTY's Application for FSAP Funds. Unless amended, the maximum, not-to-exceed FSAP Grant payable to COUNTY under this Agreement is **\$221,594.83** (the "Grant Funds"). The maximum grant amount may be increased only by written amendment of this Agreement which is signed by all parties and with all required State approvals.
- G. Disbursement of Grant Funds under this Agreement is contingent on DEPARTMENT receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow DEPARTMENT, in the exercise of its reasonable administrative discretion, to make the disbursement.

IX NONCOMPLIANCE

- A. The Assistant Director of Community Corrections or the Assistant Director's designee of the Community Corrections Division shall review COUNTY's compliance with this Agreement. COUNTY must substantially comply with the provisions of the Plan received by DEPARTMENT and this Agreement.

If, upon review, DEPARTMENT determines that there are reasonable grounds to believe that COUNTY is not in substantial compliance with the Agreement or Plan, the Department may pursue all remedies available to it at law or equity, including without limitation suspending COUNTY's participation in the FSAP program or, to the extent allowed by law, withholding the amount of any misexpended Grant Funds under this Agreement from moneys payable by the DEPARTMENT to COUNTY under other grant programs. Substantial compliance will include but is not limited to oversight of case management interventions and strategies, collaborative relationships, maintenance of contact standards, and/or standards of evidence-based treatment programs as required in Section V.B., as well as OAR Chapter 291-031.

X INDEMNIFICATION. See Exhibit B.

XI TERMINATION

- A. **Parties Right to Terminate at its Discretion.** At its sole discretion, any party to this Agreement may terminate this Agreement for its convenience upon 30 days' prior written notice.
- B. Parties may terminate this Agreement immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that DEPARTMENT or COUNTY cannot lawfully perform its obligations under this Agreement.
- C. It is understood and agreed by the parties hereto that this Agreement will remain in force only during its term and will not continue in force after its term. There will be no automatic extension, but this Agreement may be extended only by written consent of the parties hereto.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this agreement, including any part, term or provision of any appended material, is held by a court to be illegal or in conflict with any law of the State of Oregon or applicable administrative rule, that element of the Agreement including relevant appended materials will be void and without effect and will be treated by the parties as having been terminated as of the date of determination of the voidness.
- E. It is understood and agreed by the parties hereto that this Agreement will automatically terminate if the State of Oregon provides no funding. If there is reduced state funding, COUNTY may terminate the Agreement as described herein.

XII COMPLIANCE WITH APPLICABLE LAW

Both Parties shall comply with all federal, state and local laws, regulations, executive orders, and ordinances to which each is subject and which is applicable to this Agreement. Without limiting the generality of the foregoing, the parties expressly agree to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to those laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. All employers, including COUNTY, that employ subject workers who work under this 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. COUNTY shall ensure that each of its subcontractors complies with these requirements.

Nothing in this Agreement shall require COUNTY or DEPARTMENT to act in violation of state or federal law or the Constitution of the State of Oregon.

XIII ACCESS TO RECORDS

For not less than six (6) years after Agreement expiration, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of COUNTY which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcripts. COUNTY shall retain all pertinent records until the later of (i) the date that is not less than six years following the Agreement expiration date or (ii) the date on which all litigation regarding this Agreement is resolved. COUNTY agrees full access to DEPARTMENT will be provided in preparation for and during litigation. Copies of applicable records shall be made available upon request. DEPARTMENT shall reimburse COUNTY for the cost of copies DEPARTMENT requests.

XIV SURVIVAL

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections IV, X, XI, XII, XIII, XIV, and XV.

XV GOVERNING LAW; JURISDICTION; VENUE

The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

XVI WAIVER

The failure of either party to enforce any provision of this Agreement will not constitute a waiver by that party of that or any other provision.

XVII EXECUTION AND COUNTERPARTS

This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

XVIII NOTICE

Except as otherwise expressly provided in this Agreement, any notices between the parties to be given hereunder shall be given in writing by personal delivery, facsimile, electronic mail, or mailing the same, postage prepaid to COUNTY or DEPARTMENT at the address or number set forth below, or to such other addresses or numbers as any party may indicate pursuant to this section. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Any notice delivered by electronic mail shall be effective on the day of notification of delivery receipt, if delivery was during normal business hours of the recipient, or on the next business day, if delivery was outside normal business hours of the recipient. Any notice given by personal delivery shall be effective when actually delivered to the Authorized Representatives listed below:

To DEPARTMENT: Jeremiah Stromberg, Assistant Director
 Community Corrections Division
 Department of Corrections
 2575 Center St. NE
 Salem, OR 97301
 Telephone: 503-945-8876; Fax: 503-373-7810
 E-Mail: Jeremiah.P.Stromberg@doc.state.or.us

To COUNTY: Ken Hales, Director
 Deschutes County Community Corrections
 63360 Britta Street, Building 2
 Bend, OR 97701
 Telephone: 541-385-3246; Fax: 541-385-1804
 Email: ken.hales@co.deschutes.or.us

The parties may change the persons named in this section by notice to the other party as provided herein. No amendment to this Agreement is required to make such change.

XIX MERGER; INTEGRATION

This instrument contains the entire agreement between the parties and no statement made by any party hereto, or agent thereof, not contained or attached with reference thereto in this written Agreement will be valid or binding. This Agreement will supersede all previous communications, representations, wither verbal or written, between the parties hereto. This Agreement may not be enlarged, modified or altered except in writing, signed by the parties, and attached.

STATE OF OREGON
DEPT. OF CORRECTIONS

DESCHUTES COUNTY APPROVALS

Jeremiah Stromberg, Assistant Director

Signature

Date

Title

Date

Reviewed by the
Oregon Attorney General's Office:

/s/ Cynthia Byrnes per email dated 12/08/15
Assistant Attorney General

EXHIBIT A
FSAP PLAN and BUDGET SUMMARY
DESCHUTES COUNTY
(To be attached upon signature and return of Agreement by County)

**EXHIBIT B
INDEMNIFICATION
DESCHUTES COUNTY**

Contribution

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 a party (the "Notified Party") with respect to which the other party ("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. Either 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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the 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 the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County 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 the State on the one hand and of the County 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. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County 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 the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the 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 the County on the one hand and of the 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. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Alternative Dispute Resolution

The parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.

Indemnification by Subcontractors

County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

Subcontractor Insurance Requirements

GENERAL.

County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to the Department. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS.

PROFESSIONAL LIABILITY

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than \$2,000,000, as determined by the Agency:

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and County's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and Department may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If Department approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

INTERGOVERNMENTAL AGREEMENT #5280
BETWEEN THE STATE OF OREGON AND DESCHUTES COUNTY
("Agreement")

TABLE OF CONTENTS

I	DEFINITIONS	2
II	AUTHORITY AND DURATION	3
III	PLAN; PLAN MODIFICATIONS	3
IV	AMENDMENTS GENERALLY	3
V	DUTIES AND RESPONSIBILITIES OF COUNTY	3
VI	DEPARTMENT RESPONSIBILITIES	5
VII	PERFORMANCE GOALS	6
VIII	FUNDS.....	6
IX	NONCOMPLIANCE	7
X	INDEMNIFICATION. See Exhibit B.	7
XI	TERMINATION	7
XII	COMPLIANCE WITH APPLICABLE LAW	7
XIII	ACCESS TO RECORDS	8
XIV	SURVIVAL	8
XV	GOVERNING LAW; JURISDICTION; VENUE	8
XVI	WAIVER.....	8
XVII	EXECUTION AND COUNTERPARTS	8
XVIII	NOTICE	8
XIX	MERGER; INTEGRATION	9
	EXHIBIT A FAMILY SENTENCING ALTERNATIVE PILOT PLAN and BUDGET SUMMARY	10
	EXHIBIT B INDEMNIFICATION	11

This Agreement is between the State of Oregon acting by and through its Department of Corrections, hereafter called DEPARTMENT, and Deshutes County, hereafter called COUNTY.

Whereas, DEPARTMENT is an agency of the State of Oregon and COUNTY is a unit of local government of the State of Oregon and both parties desire to cooperate by agreement to provide correctional services in COUNTY within the requirements as authorized by ORS 423.475 to 423.565;

Whereas, the Legislative Assembly of Oregon enacted legislation establishing shared responsibility between county corrections programs and the DEPARTMENT on a continuing basis (ORS 423.475 to 423.565);

Whereas, ORS 144.106 provides "the supervisory authority shall use a continuum of administrative Sanctions for violations of post-prison supervision";

Whereas, section 1, Chapter 830, Oregon Laws 2015, was passed by the 2015 Legislature to implement a program designed to divert qualified offenders who have primary custody of a minor child at the time of the offense from prison to probation for the purposes of promoting reunification of families, preventing children from entering the foster care system, holding offenders accountable, and authorizing DEPARTMENT to make grants to counties to provide funding;

Whereas, the DEPARTMENT will administer distribution of grants to counties;

Now, therefore, THE PARTIES HERETO, in consideration of the mutual promises, terms and conditions hereinafter provided, agree to the following:

I DEFINITIONS

- A. Amendment: Any change to this Agreement that alters the terms and conditions of the Agreement, excluding the Duration of the Agreement. Plan Modifications are NOT Amendments.
- B. Case Management Application (CMA) Case Plan: A dynamic document created collaboratively with an offender that specifically identifies the offender's evidence-based assessed risk and needs, accompanied by risk reduction strategies and plans of action, with timelines.
- C. Corrections Information System (CIS): A DEPARTMENT software program containing a data base of information about inmates in prison and on probation, parole and post-prison supervision;
- D. County Corrections: All COUNTY agencies and officials who carry out the responsibilities in ORS 423.478(2)(a)-(f).
- E. Family Sentencing Alternative Program (FSAP) Grant: Grant(s) made by DEPARTMENT to assist COUNTY in the implementation and operation of the Plan.
- F. Family Sentencing Alternative Program Plan (Plan): A document developed by the COUNTY in collaboration with the DEPARTMENT which describes COUNTY's approach to providing effective interventions designed to promote reunification of families, prevent children from entering the foster care system, and hold offenders accountable for program participants under COUNTY supervision. The Family Sentencing Alternative Program Plan (FSAP) Plan is described in Exhibit A, County Plan and Budget Summary.
- G. FSAP Plan Budget Summary: A budget submitted by COUNTY and approved by DEPARTMENT which identifies personnel, materials, services and funding COUNTY will use to implement the Plan. COUNTY's Budget Summary is described in Exhibit A.
- H. FSAP Participant Flag: CIS Code for which COUNTY must use to identify the Participants with their program.

- I. Participant: An offender, under supervision of the COUNTY and enrolled in the program.
- J. Plan Modification: A written change or alteration to the Plan promulgated by COUNTY modifying the Plan; or the Duration of the Agreement.
- K. Sanctions: A response to Participant violations of conditions of the program.
- L. Supervisory Authority: The local corrections official or officials designated by COUNTY's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

II **AUTHORITY AND DURATION**

A. **Authority**

This Agreement is entered into pursuant to the provisions of ORS 423.520.

B. **Duration**

This Agreement will become effective on **January 1, 2016** and will remain in effect until **June 30, 2017** or until terminated according to Section XI (*Termination*).

III **PLAN; PLAN MODIFICATIONS**

- A. The Plan must be received and approved by DEPARTMENT before disbursements of funds described in Section VIII can be made to COUNTY.
- B. Plan Modifications: COUNTY and DEPARTMENT agree that the Plan must remain a flexible instrument capable of responding to unforeseen needs and requirements. A copy of all Plan Modifications will be marked in sequence beginning with the designation "Plan Modification 1" and attached to the above-mentioned Plan. DEPARTMENT will notify COUNTY of any concerns about the modification or the need for an amendment within a 30 calendar day period after DEPARTMENT receives the Plan Modification.
- C. Notice of Modification: No Plan Modifications shall take effect until COUNTY gives written notice to DEPARTMENT, in a form approved by DEPARTMENT. DEPARTMENT shall provide to COUNTY an approved form for modifications as soon as practicable after execution of this Agreement.
- D. Plan Modifications shall become effective upon the date the Plan Modification is approved in writing by the DEPARTMENT.

IV **AMENDMENTS GENERALLY**

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written Amendment signed by the parties. An Amendment shall become effective only after all parties have signed and all approvals have been obtained.

V **DUTIES AND RESPONSIBILITIES OF COUNTY**

- A. COUNTY shall assume administrative responsibility to provide services as outlined in the Plan.
- B. COUNTY shall incorporate the principles described below into the Plan:

1. Work collaboratively with the Oregon Department of Human Services (ODHS) in a multi-disciplinary team process to promote the reunification of families, prevent children from entering the foster care system, and hold offenders accountable.
2. Consult with ODHS to determine appropriateness for entry into the FSAP program.
3. Treatment programs shall be evidence-based and gender specific to the gender being served. Evidence-based programs are delivered consistent with the findings in research about what works best to reduce recidivism.
4. Assessment which is standardized, objective, and comprehensive shall be used to prioritize programming and interventions, as well as, determine criminal risk factors. Assessments of risk shall be based on actuarial risk assessment tools.
5. Rules, requirements and expectations for Participants, including consequences for success and for failure are made formal and clear by an authority figure.
6. An individual Case Management Plan shall be developed for each Participant including the most relevant evidence based case management which may include additional conditions including but not limited to geographic restrictions, vocational training, parenting classes, alcohol and drug and/or mental health treatment, life skills, etc.
7. Supervision will be conducted using the most relevant evidenced based case management including but not limited to: Gender specific and general risk/need assessment, case planning, Parole/Probation officer (PO) led cognitive behavioral interventions (i.e., EPICS, Carey Guides), evidenced based parenting, mental health, alcohol/drug and cognitive programming, all programming should be evidenced based and include gender specific components.
8. Treatment shall be based on cognitive and behavioral interventions and social learning approaches. Treatment programs shall be of sufficient length and intensity to produce stable behavior changes based on replacing old patterns of thinking and behaving and learning and practicing new skills for avoiding drug use and criminal behavior.
9. Contact standards will be at a higher rate than that of typical offenders and will involve a minimum of two PO contacts a month with the offender and their children in the home. As the primary case manager, the PO will be responsible to coordinate additional contacts made by a ODHS worker, and/or any other program service provider such as mentors, health care provider, or in-home service provider. Frequency of contact may decrease as Participant progresses in achieving CMA case plan goals. In addition, offenders will be required to submit logs outlining daily routines, family time, and activities such as playtime, reading with children a minimum of twenty minutes per day, homework assistance, and pro-social events. Collateral contacts will include local multi-disciplinary teams focused on the FSAP including community corrections, local department of human services, and other service providers.
10. The Plan shall utilize a system of graduated Sanctions and incentives which are swift and sure and which encourage program goals while holding Participants accountable for non-compliance behaviors.
11. Weekly random drug testing shall occur, however frequency may decrease as Participant progresses in achieving CMA case plan goals. There shall be a consequence for this or any other rule violation, but that consequence shall not

automatically result in withdrawal from the program. Sanctions shall be administered in a manner that is mindful of the impact on the children and families.

12. Programs shall include relapse prevention planning and comprehensive transition planning so that participants are more likely to adjust to changes in living situations.
 13. Addictions treatment programs must be licensed by the State of Oregon to provide addictions treatment.
- C. COUNTY shall incorporate the following data requirements in the Plan:
1. COUNTY will utilize the FSAP Participant Flag.
 2. The start and stop date of any treatment programming relevant to participation in the FSAP, as well as program exit code, will be entered into the CIS Treatment Module.
 3. Numbers of hours in treatment programming designed to promote family reunification and/or reduce recidivism.
- D. COUNTY will prepare and furnish such data, descriptive information and reports as may be requested by DEPARTMENT as needed to comply with ORS 423.520, which states in part, "The department shall require recipients of the grants to cooperate in the collection and sharing of data necessary to evaluate the effect of community corrections programs on future criminal conduct." COUNTY will enter data into CIS in a complete, accurate, and timely manner. COUNTY acknowledges and agrees that DEPARTMENT has the right to reproduce, use and disclose all or any part of such reports, data and technical information furnished under this Agreement.
- E. COUNTY will permit authorized representatives of DEPARTMENT to make such review of records of COUNTY as may be necessary to satisfy audit and/or program review purposes. A copy of any audit or monitoring report will be made available to COUNTY.
- F. COUNTY will follow DEPARTMENT's prescribed allotment and expenditure reporting system in accordance with Exhibit A. This system will be used for controlling County Corrections FSAP Grant funds by DEPARTMENT and to provide suitable records for an audit.
- G. If funding from DEPARTMENT is reduced or discontinued by legislative action, COUNTY will not be required to increase use of COUNTY revenue for continuing or maintaining corrections services as set out in this Agreement.

VI DEPARTMENT RESPONSIBILITIES

- A. Participate according to this Agreement.
- B. Provide funding as described in Section VIII of this Agreement.
- C. Furnish or make available to COUNTY, in a timely manner, those rules, administrative directives and procedures required for COUNTY to meet its obligations described herein.
- D. Subject to system capacity and data processing capabilities, DEPARTMENT will furnish data, descriptive information and reports, available to DEPARTMENT and requested by COUNTY that will assist COUNTY in complying with DEPARTMENT requirements. DEPARTMENT hereby grants to COUNTY the right to reproduce, use, and disclose all or part of such reports, data, and technical information furnished under this Agreement.

- E. If by legislative action, funding from DEPARTMENT is reduced to COUNTY, DEPARTMENT agrees to provide reasonable notice and transition opportunity to COUNTY of changes that may significantly alter approved appropriations and programs.
- F. DEPARTMENT will provide technical assistance to COUNTY in implementing and evaluating COUNTY's Plan.
- G. DEPARTMENT will work collaboratively with COUNTY and ODHS to implement a Plan, which may include data transfers for purposes of preparing the statutorily required legislative report and collaborative case management.
- H. DEPARTMENT will automate the FSAP Participant Flag.

VII PERFORMANCE GOALS

Plans funded under this Agreement will be evaluated by the DEPARTMENT for program effectiveness. Goals for the evaluation are to determine if:

- A. Children are successfully diverted from entering the foster care system and/or families are reunified.
- B. Prison bed usage is reduced.
- C. Recidivism is reduced.
- D. Participants show evidence of improved community functioning: Improved community functioning will be measured by successful completion of the program and through the existing community corrections performance measures outlined in other intergovernmental agreements that COUNTY is party to (i.e., successful completion of supervision, employment, payment of restitution and/or community service work).
- E. Treatment programs are evidence-based. Those designed to reduce recidivism will be evaluated using the Corrections Program Checklist.
- F. Any other identified program goals.

VIII FUNDS

- A. Exhibit A identifies the FSAP Grant Funds authorized under this Agreement for the implementation of the Plan during the term of this Agreement.
- B. Payment to COUNTY of the entire amount of Grant funds will be made within 15 days after execution of this Agreement, subject to the conditions set forth in subsection G of this Section.
- C. Both parties agree that all reallocations of funds within programs shall require a Plan Modification.
- D. Unexpended Funds: Fund balances remaining after the budget year or expiration of the Agreement may be retained by the COUNTY, upon approval by DEPARTMENT, for the provision of on-going supervision, correctional services, and Sanctions in accordance with the Plan.
- E. Unauthorized Expenditures: Any Grant Funds (defined below) disbursed to COUNTY that are expended for unauthorized purposes, or any unexpended Funds not retained by COUNTY under Section VIII.D, will be deducted by DEPARTMENT from payment or refunded to DEPARTMENT promptly upon DEPARTMENT's written request, which is in no case later than 15 days after DEPARTMENT's written request.

- F. **Maximum Grant Amount.** Grant funds are based upon COUNTY's Application for FSAP Funds. Unless amended, the maximum, not-to-exceed FSAP Grant payable to COUNTY under this Agreement is **\$221,594.83** (the "Grant Funds"). The maximum grant amount may be increased only by written amendment of this Agreement which is signed by all parties and with all required State approvals.
- G. Disbursement of Grant Funds under this Agreement is contingent on DEPARTMENT receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow DEPARTMENT, in the exercise of its reasonable administrative discretion, to make the disbursement.

IX NONCOMPLIANCE

- A. The Assistant Director of Community Corrections or the Assistant Director's designee of the Community Corrections Division shall review COUNTY's compliance with this Agreement. COUNTY must substantially comply with the provisions of the Plan received by DEPARTMENT and this Agreement.

If, upon review, DEPARTMENT determines that there are reasonable grounds to believe that COUNTY is not in substantial compliance with the Agreement or Plan, the Department may pursue all remedies available to it at law or equity, including without limitation suspending COUNTY's participation in the FSAP program or, to the extent allowed by law, withholding the amount of any misexpended Grant Funds under this Agreement from moneys payable by the DEPARTMENT to COUNTY under other grant programs. Substantial compliance will include but is not limited to oversight of case management interventions and strategies, collaborative relationships, maintenance of contact standards, and/or standards of evidence-based treatment programs as required in Section V.B., as well as OAR Chapter 291-031.

X INDEMNIFICATION. See Exhibit B.

XI TERMINATION

- A. **Parties Right to Terminate at its Discretion.** At its sole discretion, any party to this Agreement may terminate this Agreement for its convenience upon 30 days' prior written notice.
- B. Parties may terminate this Agreement immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that DEPARTMENT or COUNTY cannot lawfully perform its obligations under this Agreement.
- C. It is understood and agreed by the parties hereto that this Agreement will remain in force only during its term and will not continue in force after its term. There will be no automatic extension, but this Agreement may be extended only by written consent of the parties hereto.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this agreement, including any part, term or provision of any appended material, is held by a court to be illegal or in conflict with any law of the State of Oregon or applicable administrative rule, that element of the Agreement including relevant appended materials will be void and without effect and will be treated by the parties as having been terminated as of the date of determination of the voidness.
- E. It is understood and agreed by the parties hereto that this Agreement will automatically terminate if the State of Oregon provides no funding. If there is reduced state funding, COUNTY may terminate the Agreement as described herein.

XII COMPLIANCE WITH APPLICABLE LAW

Both Parties shall comply with all federal, state and local laws, regulations, executive orders, and ordinances to which each is subject and which is applicable to this Agreement. Without limiting the generality of the foregoing, the parties expressly agree to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to those laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. All employers, including COUNTY, that employ subject workers who work under this 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. COUNTY shall ensure that each of its subcontractors complies with these requirements.

Nothing in this Agreement shall require COUNTY or DEPARTMENT to act in violation of state or federal law or the Constitution of the State of Oregon.

XIII ACCESS TO RECORDS

For not less than six (6) years after Agreement expiration, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of COUNTY which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcripts. COUNTY shall retain all pertinent records until the later of (i) the date that is not less than six years following the Agreement expiration date or (ii) the date on which all litigation regarding this Agreement is resolved. COUNTY agrees full access to DEPARTMENT will be provided in preparation for and during litigation. Copies of applicable records shall be made available upon request. DEPARTMENT shall reimburse COUNTY for the cost of copies DEPARTMENT requests.

XIV SURVIVAL

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections IV, X, XI, XII, XIII, XIV, and XV.

XV GOVERNING LAW; JURISDICTION; VENUE

The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

XVI WAIVER

The failure of either party to enforce any provision of this Agreement will not constitute a waiver by that party of that or any other provision.

XVII EXECUTION AND COUNTERPARTS

This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

XVIII NOTICE

Except as otherwise expressly provided in this Agreement, any notices between the parties to be given hereunder shall be given in writing by personal delivery, facsimile, electronic mail, or mailing the same, postage prepaid to COUNTY or DEPARTMENT at the address or number set forth below, or to such other addresses or numbers as any party may indicate pursuant to this section. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Any notice delivered by electronic mail shall be effective on the day of notification of delivery receipt, if delivery was during normal business hours of the recipient, or on the next business day, if delivery was outside normal business hours of the recipient. Any notice given by personal delivery shall be effective when actually delivered to the Authorized Representatives listed below:

To DEPARTMENT: Jeremiah Stromberg, Assistant Director
 Community Corrections Division
 Department of Corrections
 2575 Center St. NE
 Salem, OR 97301
 Telephone: 503-945-8876; Fax: 503-373-7810
 E-Mail: Jeremiah.P.Stromberg@doc.state.or.us

To COUNTY: Ken Hales, Director
 Deschutes County Community Corrections
 63360 Britta Street, Building 2
 Bend, OR 97701
 Telephone: 541-385-3246; Fax: 541-385-1804
 Email: ken.hales@co.deschutes.or.us

The parties may change the persons named in this section by notice to the other party as provided herein. No amendment to this Agreement is required to make such change.

XIX MERGER; INTEGRATION

This instrument contains the entire agreement between the parties and no statement made by any party hereto, or agent thereof, not contained or attached with reference thereto in this written Agreement will be valid or binding. This Agreement will supersede all previous communications, representations, wither verbal or written, between the parties hereto. This Agreement may not be enlarged, modified or altered except in writing, signed by the parties, and attached.

STATE OF OREGON
DEPT. OF CORRECTIONS

DESCHUTES COUNTY APPROVALS

Jeremiah Stromberg, Assistant Director

Signature

Date

Title

Date

Reviewed by the
Oregon Attorney General's Office:

/s/ Cynthia Byrnes per email dated 12/08/15
Assistant Attorney General

EXHIBIT A
FSAP PLAN and BUDGET SUMMARY
DESCHUTES COUNTY
(To be attached upon signature and return of Agreement by County)

**EXHIBIT B
INDEMNIFICATION
DESCHUTES COUNTY**

Contribution

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 a party (the "Notified Party") with respect to which the other party ("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. Either 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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the 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 the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County 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 the State on the one hand and of the County 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. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County 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 the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the 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 the County on the one hand and of the 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. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Alternative Dispute Resolution

The parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.

Indemnification by Subcontractors

County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

Subcontractor Insurance Requirements

GENERAL.

County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to the Department. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS.

PROFESSIONAL LIABILITY

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than \$2,000,000, as determined by the Agency:

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and County's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and Department may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If Department approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 9, 2015

Please see directions for completing this document on the next page.

DATE: December 7, 2015

FROM: Paul Blikstad Department CDD Phone # 6554

TITLE OF AGENDA ITEM:

Board consideration of the written decision on the Clough conditional use permit appeal.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

The Board voted to approve the Conditional Use Permit application for the Clough's property on Erickson Road. The decision clarifies that the generally unsuitable standard for nonfarm dwellings is the controlling criterion, and that meeting the generally unsuitable test assures compliance with the least suitable criterion. This was before the Board last week, however staff inadvertently issued a draft decision for the Board approval and signature that was inconsistent and in error

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Board approval and signature of the corrected written decision prepared by staff.

ATTENDANCE: Paul Blikstad

DISTRIBUTION OF DOCUMENTS:

Planning Division staff will distribute the Board's written decision on this application.

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

**DECISION OF THE BOARD OF COUNTY COMMISSIONERS
FOR DESCHUTES COUNTY**

FILE NUMBERS: 247-15-000035-CU/247-15-000403-A

APPLICANT/OWNER: Dana and Karen Clough
63080 Stenkamp Road
Bend, Oregon 97701

APPLICATION: Conditional Use Permit for a Nonfarm Dwelling

PROPERTY: 22075 Erickson Road, Bend, Oregon

I. APPLICABLE STANDARDS AND CRITERIA

Title 18, Deschutes County Code

- A. Chapter 18.16, Exclusive Farm Use Zones**
 - 1. Section 18.16.030, Conditional Uses Permitted**
 - 2. Section 18.16.040, Limitations on Conditional Uses**
 - 3. Section 18.16.050, Standards for Dwellings in the EFU Zones**
 - 4. Section 18.16.060, Dimensional Standards**
 - 5. Section 18.16.070, Yards**
- B. Chapter 18.80, Airport Safety Combining (AS) Zone**
 - 1. Section 18.80.020, Application of Provisions**
 - 2. Section 18.80.028, Height Limitations**
 - 3. Section 18.80.044, Land Use Compatibility Requirements**
 - 4. Section 18.80.054, Conditional Uses**

II. FINDINGS OF FACT

- A. LOCATION:** The property is located at 22075 Erickson Road, Bend, Oregon. It is Tax Lot 200 on Assessor's Map 17-13-30.
- B. LOT OF RECORD:** The subject property is a legal lot of record. It is Parcel 1 of Partition MP-82-14.

- C. **ZONING:** The subject property is zoned EFU-TRB (Exclusive Farm Use – Tumalo/Redmond Bend subzone). The AS (Airport Safety) overlay zoning district also applies.
- D. **PROPOSAL:** The Board adopts the Hearings Officer’s findings under Section II, D of her decision, said findings being incorporated by reference herein. A copy of that decision is **Exhibit A** of the Board’s decision. Only those parts of the decision specifically incorporated by reference herein are a part of the County’s final decision in this matter.
- E. **SITE DESCRIPTION:** The subject property is 18.08 acres in size and has a little over 16 acres of irrigation water rights. On June 2, 2014, the applicants quitclaimed .58 acres of water right to the Central Oregon Irrigation District in the northeast part of their property. The property has been used to grow grass hay. It produces a commercial yield of hay in the western part of the property and a low yield of hay in the eastern part of the property. The property is generally level and has an existing storage shed and small fence area. The property also contains an irrigation pond, wheel line and pivot. A driveway runs along the east part of the property and provides access for the property to Erickson Road. An underground gas pipeline and 100’-wide easement crosses the eastern part of the property at an angle moving from southwest to northeast across the eastern quarter of the property. The soils and rocks in the area of the pipeline were disturbed by the work required to place the line below ground with the result of making the area relatively level.
- The northeast part of the property where the nonfarm dwelling is proposed is the part of the pasture that contains Class VII soils that grow weeds and short grass hay that is not marketable. Soils analysis indicates that the home site area was once a part of the lava rock ledge formation found north and south of the area but was cleared when the pipeline was constructed. The result is that a rock shelf exists a short distance below shallow soils. This substantially impairs the ability of this part of the property to produce crops or to support a pasture.
- F. **SURROUNDING ZONING AND LAND USE:** The Board adopts the Hearings Officer’s findings under Section II, F of her decision, said findings being incorporated by reference herein with the exception that the last name of the owner of Tax Lot 206 is Carroll, not Grant.
- G. **SOILS:** The Board adopts the Hearings Officer’s findings under Section II, G of her decision, said findings being incorporated by reference herein and makes the following additional findings. The applicant provided the County with a copy of an addendum to the October 17, 2014 soils analysis conducted by soil scientist Roger Borine dated September 10, 2015 as **Exhibit C** of the burden of proof. Mr. Borine is a Certified Professional Soils Classifier and Certified Professional Soils Scientist as designated by the Soil Science Society of American Soils Certification Board. Mr. Borine also has a B.S. degree in Soil Science from Oregon State University, Corvallis and attended the Soil Science Institute at Iowa State University. He worked for many years as a soils scientist

and soil survey project leader for the USDA-Natural Resources Conservation Service (NRCS), assisting in preparing some of the NRCS soils maps used by the State in land use matters. Mr. Borine is one of only four persons in the State currently qualified to perform a soils assessment of agricultural lands by the Department of Land Conservation and Development. The 2015 addendum provides the results of detailed soils testing in the eastern one third of the subject property and also reports testing results contained in the October 17, 2014 analysis. The supplemental testing occurred in the southeast part of the subject property, including the southeast area of the property opponents claim is the least suitable for the production of farm crops and livestock. The results of the additional soils work showed that the entire area identified as Class VII soil by Mr. Borine's October 17, 2014 analysis was correctly identified as an area of Class VII. This area is predominantly comprised of Class VII Gosney soils and was properly rated Class VII by Mr. Borine and by the NRCS. The results of the study also show that the area south of the proposed home site is essentially the same as the 1.2-acre area identified as the site of the proposed nonfarm dwelling shown on Figure 3 of the October 17, 2014 soils analysis and this fact was confirmed by Mr. Borine in his September 10, 2015 addendum.

- H. PUBLIC AGENCY COMMENTS:** The Board adopts the Hearings Officer's findings under Section II, H of her decision, said findings being incorporated by reference herein.
- I. PUBLIC COMMENTS:** The Board adopts the Hearings Officer's findings under Section II, I of her decision. Additionally, additional public comments were filed in the record after this matter was appealed by the applicant and prior to the close of the record for new evidence on October 14, 2015. Final argument was filed by the applicant's attorney on October 21, 2014.
- J. REVIEW PERIOD:** The Board adopts the Hearings Officer's findings under Section II, J of her decision. The Hearings Officer's decision was signed July 20, 2015 and mailed on July 21, 2015. The decision was appealed by the applicants on August 3, 2015 within the appeal period set by DCC 22.32.015(B), as computed using the rule set out in DCC 22.08.070. The appeal requested that the appeal be limited to the issues contained in the Notice of Appeal only. Those issues related to the "least suitable for the production of farm crops or livestock" criterion of DCC 18.16.040, Limitations on Conditional Uses. On August 17, 2015 the Board agreed to hear the appeal "limited de novo only on the issue of least suitable land." A hearing was held by the Board on October 7, 2015. The record remained open after the hearing until October 14, 2015 for comments from any party. The applicant was given until October 21, 2015 to file final legal argument. On November 23, 2015 the Board deliberated and unanimously approved the Clough's nonfarm dwelling application.
- K. LAND USE HISTORY:** The Board adopts the Hearings Officer's findings under Section II, K of her decision.
- L. RECORD:** The scope of review on appeal was limited to the issue of compliance with the "least suitable" for the production of farm crops and livestock approval criterion. The Board received a great deal of information and argument that was only tangentially related to that issue. None of the other approval criterion were open for consideration on appeal.

As a result, the evidence is not accepted as relevant to any other approval criterion. Furthermore, the Board specifically rejects any and all evidence filed after July 17, 2015 (the date that the record of this matter was closed by the Hearings Officer) for any purpose other than to determine whether the nonfarm dwelling development area is the “least suitable” for the production of farm crops and livestock and any evidence related to issues other than the “least suitable” issue. Any arguments that the home site area is suitable for farm use or is not generally unsuitable for farm use filed after that date are rejected by the Board. That issue was settled at the local level by the decision of the Hearings Officer and should be reviewed on appeal, if any, on the record before the Hearings Officer, not the record presented to the Board.

III. CONCLUSIONS OF LAW

The Board adopts the following as conclusions of law and findings of fact to support its approval of the Cloughs’ nonfarm dwelling application:

A. LEAST SUITABLE CRITERION

CODE INTERPRETATION

DCC 18.16.040(3) requires that the site of a conditional use in an EFU zone be the least suitable for the production of farm crops or livestock. This requirement is a requirement of the County’s code, not of State law. This decision is intended to provide guidance to County hearings officers and staff regarding the proper application of the least suitable criterion. The Board’s interpretation is also due deference by appellate bodies, if appealed.

The County code also requires that all nonfarm dwellings be located on a parcel or part of a parcel that is generally unsuitable for farm use considering terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. DCC 18.16.050(G)(1)(iii). This requirement is also imposed by State law. Parcels that are unsuitable solely due to size or location are not unsuitable if they can reasonably be put to farm use with other land. The “generally unsuitable” standard, like the “least suitable” standard of the County’s code, looks to the suitability of agricultural land. It prohibits development on the property unless the parcel or a portion of the parcel is generally unsuitable for farm use.

DCC 18.16.040(3) requires:

- 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.**

“Least Suitable”

The “least suitable” standard is a County standard that applies to all conditional uses allowed in the exclusive farm use zones. It is applied to uses that are not required to be located on land that is generally unsuitable for farm use and are allowed on agricultural land that merits Goal 3 protections because they contain soils that are predominantly Class I through VI soils or are

otherwise suitable for farm use. The County applies the “least suitable” standard to minimize the impact of conditional uses on farm uses occurring elsewhere on the property by limiting development to areas that are the least suitable for the production of farm crops and livestock. These areas may either be: (a) areas that are generally unsuitable for the production of farm crops or livestock; or (b) areas that are suitable for the production of farm crops and livestock that are less productive than other areas of the property. If the site of the conditional use meets either requirement, it meets the least suitable approval criterion.

When a conditional use is sited on land that is generally unsuitable for the production of farm crops, livestock and merchantable tree species, the area is clearly less suitable for the production of farm crops or livestock than any other part of the property that is suitable for the production of farm crops and livestock. When the site selected is generally unsuitable for farm use, it is unclear whether this fact, alone, is sufficient to demonstrate that the area is the least suitable for the production of farm crops and livestock. The Board finds that it is – that the generally unsuitable standard is the lowest level of suitability that must be searched for and identified on a property when applying the “least suitable” test. At this level, the area selected is not of sufficient value for farm use to merit distinguishing between areas that are generally unsuitable. All areas of generally unsuitable land on a property are the “least suitable” for the production of farm crops and livestock.

The Board rejects the argument of Central Oregon Land Watch that the “least suitable” means the “most unsuitable.” The “least suitable” test applies to lands that are suitable or to lands that are unsuitable. Nothing limits the test to lands that are all unsuitable. If this had been the Board’s intent, the law would use the term “most unsuitable” rather than the term “least suitable.”

Legislative History

Until 2009, the “least suitable” standard applied to conditional uses with the exception of nonfarm dwellings. In 2009, the “least suitable requirement” was inadvertently applied to nonfarm dwellings during a code update project. The purpose of the 2009 update was to bring the County code into compliance with changes State law, not to create a new criterion that would regulate nonfarm dwellings more stringently than required by State law.

“Least Suitable” Compared to “Generally Unsuitable”

The generally unsuitable standard requires the County to find that a proposed nonfarm dwelling home site on an EFU-zone parcel is on poor soils that are not generally suitable for the production of farm crops, livestock or merchantable tree species. This standard is stringent and it protects productive land for farm use as intended by Goal 3.

The least suitable standard has not been clearly defined. In prior conditional use permit decisions issued by County staff, however, the two criteria are treated as being essentially the same requirement and this practice is consistent with Goal 3 and its implementing regulations by meeting the stringent “generally unsuitable” State standard. This approach is consistent with the Board’s interpretation of the term, above.

As a matter of basic semantics, "least suitable" assumes some level of suitability for farming and may include some level of unsuitability for farming relative to other lands on the property. "Generally unsuitable" assumes some level of unsuitability for farming and may include some level of suitability for farming. Additionally, the least suitable area may be suitable for farming but be suitable than other areas of the property for that purpose. In operation in the context of a nonfarm dwelling application, these two standards are virtually indistinguishable.

As a matter of basic code interpretation, whenever there is a conflict or inconsistency, the specific controls over the general. In this instance the "least suitable" criterion is associated with general limitations on conditional uses whereas the "generally unsuitable" criterion is associated with specific standards for dwellings in EFU zones. Accordingly, the "generally unsuitable" criterion controls and is an appropriate floor for the County's analysis of its "least suitable" code criterion.

Summary

All areas of a property that are "generally unsuitable" are the least suitable part of a farm property for purposes of the least suitable criterion of DCC 18.16.040(C). The development of any part of that generally unsuitable area meets the "least suitable" approval criterion. It is not necessary for an applicant seeking approval of a nonfarm dwelling to show that an area that is generally unsuitable for the production of farm crops, livestock or merchantable tree species is comprised of the "worst of the worst" soils. This interpretation protects all land that is suitable for the production of farm crops and livestock for those purposes and does not violate state law, Goal 3 or the Goal 3 administrative rules.

APPLICATION OF LEAST SUITABLE TO THE CLOUGHS' APPLICATION

The applicant has established by expert evidence that the eastern area of the property depicted on Figure 2 of the Agricultural Soils Suitability Analysis for Nonfarm Dwelling report prepared by Roger Borine dated October 17, 2014 is a unit of Class VII land with or without irrigation water rights. NRCS soils surveys and publications report that land rated Class VII "have very severe limitations that make them unsuitable for cultivation." There is no other competent evidence in the record to the contrary. If the applicant had proposed to develop this entire area of Class VII soils with a nonfarm dwelling and its related outbuildings and septic system, the entire area would qualify as the least suitable for farm use as all other land on the property is comprised of Class III soils. The applicants have, however, proposed to limit nonfarm development to the north part of the Class VII soils area where it close to MUA-10 exceptions land and farther away from EFU-zoned land to the south.

The applicant presented credible expert evidence from soil scientist and Central Oregon farmer Roger Borine that the Class VII soils on the property are all the same in terms of their suitability for farm use. Mr. Borine explained that these soils lack the ability to hold a sufficient quantity of water to support sustained plant growth. Sparse grass will grow in any part of this area to a low height when irrigated. The area appears green in aerial photographs but the area grows short hay that is hard or impossible to market.

The Hearings Officer found that the northeast part of the subject property is generally unsuitable for farm use due to adverse soil or land conditions and poor crop growth. As this area was determined to be generally unsuitable for farm use, it and other similarly poor areas of the property are the least suitable for the production of farm crops, livestock and merchantable tree species. Developing this area with a nonfarm dwelling and related structures and improvements meets the least suitable test. The Board disagrees with and rejects the Hearings Officer's finding that the applicants failed to show that the area chosen for the nonfarm dwelling was the least suitable for farm use because their soils report did not analyze the soils found in the south part of the Class VII soils area of the property at the same level of detail applied to the north part.

The applicants provided the detailed soils testing required by the Hearings Officer. It, and other evidence in the record, showed that the south part of the Class VII area: (a) was in fact properly identified by Mr. Borine as Class VII soil in his 2014 soils analysis; and (b) that the soils in this part of the property are no more unsuitable for farm use than those found in the north part of the Class VII soils map unit.

Project opponents have claimed that the south part of the Class VII area is less suitable than the north part of that area identified as the site of the proposed nonfarm dwelling on Figure 3 of the October 17, 2014 soils analysis and that the nonfarm dwelling should be located there. They argued that a small area of the soils in the south half of the area are not currently irrigated and that crops are not grown here. The fact that one area is irrigated and another is not does not, however, in this case, change the area's soils classification or its inherent suitability for producing farm crops and livestock. In both cases, the soil has very severe limitations that make them unsuitable for cultivation. Irrigating such poor soils is wasteful as well as unproductive. Furthermore, much of the south part of the Class VII soils area is irrigated and aerial photographs show that green grass grows in irrigated and non-irrigated areas alike. These differences, therefore, are not meaningful in terms of suitability for the production of farm crops and livestock.

Furthermore, the applicant presented credible expert evidence from soil scientist and Central Oregon farmer Roger Borine to rebut the neighbor's claims. Mr. Borine advised that all areas of land mapped as Class VII are the same in terms of their suitability for the production of farm crops and livestock – they are all generally unsuitable. Mr. Borine explained that these soils all lack the ability to hold a sufficient quantity of water and nutrients to support sustained plant growth. Mr. Borine explained that fertilizing the soil will not materially improve the crop yield or make the land more suitable for farm use. Sparse grass will grow in any part of this Class VII area but will only grow to a low height and will be of poor quality. The quality of the hay in the northern part of this area is so poor that an area goat farmer rejected it as feed for his goats and so poor that when this hay from the property was given away in return for harvesting it, it was left in the field.

Project opponents, all whom lack training and certification in soils sciences, attacked Mr. Borine's soils report in a number of ways. The Board finds that Mr. Borine's evidence is credible and is not undermined by these attacks. In particular:

Carol MacBeth/COLW

Ms. MacBeth made the argument that Mr. Borine's report is not related to the NRCS land capability classification system based on OAR 660-033-0030(5)(a). This claim is incorrect for three reasons: (1) OAR 660-033-0030(5)(a) is not applicable to soils reports prepared for nonfarm dwelling applications because a nonfarm dwelling application does not seek to change the designation of land as "agricultural land"; and (2) Mr. Borine's report is based on the Soil Conservation Service's *Guide for Placing Soils in Capability Classes in Oregon*, revised 1977 and the NRCS land capability classification system as stated on page two of the 2014 soils assessment; and (3) Mr. Borine's classification of the Gosney soils found on the property as NRCS Class VII is the same classification applied by the NRCS to Gosney soils.

Ms. MacBeth makes claims that the Gosney soil must be Class III soil, not Class VII soil, because it grows green grass and because some opponents claim that the area that contains Class VII soils is productive. This argument is not accepted because the NRCS classifies the Gosney soil found in the eastern area of the Cloughs' property as Class VII, not as Class III soil. No higher classification is applied to this property if it is irrigated. Mr. Borine has explained that the nonfarm dwelling area is a part of a blister ridge that has been partially removed due to the construction of an underground natural gas pipeline on the property. The visible areas of the blister ridge are rated 58C by the NRCS. The predominant soil found in mapping unit 58C is Class VII Gosney soil. This explains why the soil found here is Gosney soil, why the depth of soil to bedrock is so shallow and why the area is generally unsuitable for the production of farm crops and livestock as borne out by the Cloughs's stated unsuccessful efforts to farm this part of their property.

Ms. MacBeth claims that Mr. Borine's report should be disregarded because it studied the Class VII soils "in their current unwatered and unfertilized state." This statement implies that water and fertilizer would change the soils classification of the Gosney soils. This claim, however, is contradicted by the NRCS soils survey that classifies Gosney soils Class VII and does not provide an improved rating when irrigated.

Ms. MacBeth's lay effort to classify soils and attack the Class VII rating applied by the NRCS and Mr. Borine based on the NRCS Handbook fails as, she failed to consult the proper reference – the *Guide for Placing Soils in Capability Classes* – and her lay claims are at odds with the NRCS, the agency that prepared the guides and used them to classify Gosney soil Class VII.

Kurt and Jennifer Bomke

The Bomkes attempted to cast doubt on Mr. Borine's professional opinion regarding the Class VII rating of soils in the home site area by submitting a page from the NRCS Capability Classification Handbook 210. The Bomkes read the text as saying that soil that is 10 to 20 inches deep is Class III soil. The Handbook says that where other unfavorable factors occur in combination with depth (e.g. those present in Central Oregon), the capability decreases. The Handbook notes that "[i]n arid and semiarid areas, irrigated soils in Class I are more than 60 inches in depth" as opposed to 36 inches. This does not contradict Mr. Borine's professional evidence about soils depth and water holding capacity of Class VII soils in Central Oregon. The *Guide for Placing Soils in*

Capability Classes in Oregon; SCS, Portland, OR revised June 1977 that is referenced on pages 4 and 8 of Mr. Borine's October 17, 2014 soils report provides more detailed information that supports Mr. Borine's LCC 7 soils classification. Furthermore, the NRCS agrees with Mr. Borine that Gosney soil in mapping unit 58C is properly classified LCC VII.

The Cloughs applied appropriate agricultural management to the NE part of their property in the past. Their testimony and evidence bears that out. With such efforts, the applicant's testified to have lost a significant sum of money and produced hay that was not marketable – a goat farmer would not feed the hay grown in the NE part of the property to his goats. This could be a predictable outcome given the very poor and shallow LCC VII Gosney soils found there.

The Bomkes' claims that Gosney soil that the NRCS rates as Class VII is a good agricultural soil that could be made productive by the Cloughs does not appear to be correct. The NRCS says that such soils are not suitable for the production of crops. Mr. Borine agrees with that assessment and soils classification. The Cloughs' experience is consistent with the scientific evidence.

The Bomkes argue that Mr. Borine should have elevated the soils capability classification of the Cloughs' property because crops have been grown there. The Gosney soil found on the property, however, is properly rated Class VII soil and, therefore, is not suitable for the production of crops according to the NRCS. The fact that someone attempted and failed to grow a saleable hay crop on such poor soils does not mean that the NRCS and Mr. Borine are wrong.

B. ADOPTION OF CONCLUSIONS OF LAW OF HEARINGS OFFICER

The Board hereby adopts the findings contained in the Conclusions of Law section of the Hearings Officer's decision with the exception of the following findings related to compliance with DCC 18.16.040(3)'s least suitable criterion that begin on page 7 and end on page 10 of that decision: (a) paragraph one of this section, page 7; and (b) the last full paragraph on page 8 is adopted but corrected to change "Weinman" to "Wyman" and to change "SE corner" to "NW corner" and to find that the NE corner of the property that was fill is rated Class III soil when irrigated by the NRCS and Mr. Borine; and (c) the paragraph that begins at the bottom of page 9 and continues on the top of page 10 with the exception of the first sentence; and (d) the two full paragraphs on page 10.

The Board also notes that the Hearings Officer indicated, on page 24 of her decision, that a condition of approval could be imposed to prohibit the return of COID water to any part of the nonfarm dwelling area. The sale of water is not, however, needed to achieve compliance with any approval criterion as the suitability of the soil has been assessed with irrigation water rights. As a result, the condition will not be imposed.

IV. CONDITIONS OF APPROVAL

Based on the foregoing, the Board of Commissioners APPROVES the applicants' conditional use permit application and authorizes them to establish a nonfarm dwelling on the part of the subject property identified in the application, SUBJECT TO COMPLIANCE WITH THE FOLLOWING CONDITIONS OF APPROVAL:

1. The approval is based on the applicants' submitted burden of proof. Any substantial change to the approved proposal will require a new land use application.

PRIOR TO THE ISSUANCE OF A BUILDING PERMIT:

2. The applicant/owner shall sign and record with the Deschutes County Clerk a document binding the landowner and future owners that prohibits them from pursuing a claim for relief or cause of action alleging injury from farming or forestry practices for which no action or claim is allowed by ORS 30.936 to 90.937.
3. The applicant/owner shall provide to the Planning Division written documentation from the Deschutes County Assessor's Office that the property has been disqualified from special assessment for farm use under ORS 308A.113 or ORS 308A.116 and that any additional tax or penalty imposed by the Assessor as a result of disqualification has been paid.

WITH BUILDING PERMIT ISSUANCE AND/OR CONSTRUCTION

4. The applicant/owner shall assure that the approved nonfarm dwelling does not exceed thirty feet in height except as allowed by DCC 18.120.040.
5. The nonfarm dwelling shall be setback 60 feet from Erickson Road and 100 feet from the east and south boundaries of the property.
6. Nonfarm dwelling and related development may not occur on lands mapped Class III soils by Mr. Borine's October 17, 2014 soils analysis.

DURATION OF APPROVAL:

7. The applicant/owner shall apply for a building permit for the approved nonfarm dwelling within four years of the date this decision becomes final, or shall obtain an extension from the Planning Division, or this approval shall be void.

V. DECISION:

Based on the findings of fact and conclusions of law set out above, the Board concludes that the applicant has demonstrated that all applicable approval criteria have been met. The Board reverses the Hearings Officer's decision and approves the conditional use permit application.

DATED this ____ day of December, 2015.

MAILED this ____ day of December, 2015.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, CHAIR

ALAN UNGER, VICE CHAIR

ATTEST:

Recording Secretary

TAMMY BANEY, COMMISSIONER

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