



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](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

**For Board Business Meeting of June 15, 2015**

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

**DATE:** June 8, 2015

**FROM:** James Lewis                      Property & Facilities                      541-385-1414

**TITLE OF AGENDA ITEM:**

Consideration of Board signature of Document 2015-386, an Exchange Agreement between Deschutes County and the Oregon Department of State Lands.

**PUBLIC HEARING ON THIS DATE?** No

**BACKGROUND AND POLICY IMPLICATIONS:**

For several years Deschutes County and the Department of State Lands (DSL) have been discussing the exchange of property on the south side of Redmond. The attached Exchange Agreement specifies the land area to be exchanged, the method of appraisal to figure the land value of the exchanged parcels, and the timing and sequence of events necessary to complete the exchange. Upon completion of the exchange, Deschutes County will receive land on the south side of and immediately adjacent to the Deschutes County Fairgrounds. The DSL will receive a parcel of land created from the area within the Redmond City Limits, north of Highway 126. The agreement specifies that the final configuration of both parcels may be adjusted after completion of appraisals in order to create two separate parcels that have equal value. In addition to the trade, the Agreement specifies the infrastructure that will be provided to each parcel (at the expense of the DSL) and the completion of the land use process to expand the Redmond Urban Growth Boundary to include the parcel that the County will receive and to also designate the appropriate zoning. The overall timing for completion of all steps in the agreement and finalization of the land exchange is Fall, 2016.

**FISCAL IMPLICATIONS:**

There are no direct fiscal implications to the County. As part of the exchange agreement, the parties will conduct appraisals of the real property and will craft final boundaries of the land to be exchanged so that value of both parcels (County and DSL) are equal at the time of the exchange as required by State law.

**RECOMMENDATION & ACTION REQUESTED:**

Staff recommends Board signature of Document 2015-386.

**ATTENDANCE:** James Lewis

**DISTRIBUTION OF DOCUMENTS:**

Originals to James Lewis.

## EXCHANGE AGREEMENT

DATED: \_\_\_\_\_, 2015

BETWEEN: DESCHUTES COUNTY,  
a political subdivision of the State of Oregon (“**County**”)

AND: STATE OF OREGON,  
acting by and through the Oregon State Land Board  
on behalf of the Oregon Department of State Lands (“**DSL**”)

The parties agree as follows:

### 1. Acquisition and Transfer of Properties.

**1.1 County Property.** On the terms and conditions set forth in this Agreement, County shall convey to DSL the unimproved real property located in Redmond, Deschutes County, Oregon, referred to as the SB 1544 property – tax Map 15-13-00, Tax Lot 103 (the “**County Property**”), located along the western boundary of the portion of the property located within the Redmond City limits and zoned Light Industrial, and adjacent to Highway 126 (north side). The County Property is shown on Exhibit A.

**1.2 DSL Property.** On the terms and conditions set forth in this Agreement, DSL shall convey to County approximately 140 acres of unimproved real property located in Deschutes County, Oregon, located immediately south of the Deschutes County Fairgrounds (the “**DSL Property**”). The DSL Property is shown on Exhibit B. Adjacent to the southwestern portion of the DSL Property is an approximately 20-acre parcel that DSL is conveying to the Oregon Military Department in a separate transaction (the “**OMD Parcel**”). The OMD Parcel is shown on Exhibit B.

**1.3 Properties.** The County Property and the DSL Property are each a “**Property**” and together the “**Properties**.”

**2. Consideration.** The consideration for this Agreement is the Properties to be exchanged and the expenditure of time and funds by the parties in acquiring appraisals and otherwise conducting due diligence regarding the other party’s Property, pursuant to the provisions of this Agreement.

**3. Equal Exchange.** The intent of this transaction is to provide an equal value exchange between the parties. Accordingly, the parties may agree to adjust the acreage of the County Property, for one party to provide to the other party an “**Equalization Payment**”, or both, in order to equalize the value being exchanged by the parties. Any such acreage adjustment or Equalization Payment shall be agreed to in writing by the parties.

**4. Escrow Agent.** Promptly upon execution of this Agreement, the parties shall deposit a copy of this Agreement with AmeriTitle, Downtown Branch, in Bend, Oregon (the “**Escrow Agent**”). The parties shall execute such reasonable additional and

supplementary escrow instructions as may be appropriate to enable the Escrow Agent to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

## 5. Title Report.

**5.1 Generally.** On or before September 1, 2015, each party shall furnish to the other a preliminary title report showing the condition of title to its own Property, together with copies of all exceptions listed in the report (each a "**Title Report**").

**5.2 Objections.** Each party (the "**Notifying Party**") shall have through October 1, 2015 to review the Title Report and to notify the other party (the "**Responding Party**") of the Notifying Party's disapproval of any exceptions shown in the Title Report. If the Notifying Party notifies the Responding Party that it disapproves of any exceptions, the Responding Party shall have through November 1, 2015 to either: (a) remove the exceptions; (b) provide the Notifying Party with reasonable assurances of the manner in which the exceptions will be removed before Closing; or (c) inform the Notifying Party that the exceptions, or one or more of them, will not be removed.

**5.3 Notifying Party's Options.** If the Responding Party does not timely remove the exceptions or provide the Notifying Party with such assurances, or if the Notifying Party is dissatisfied with any exception that the Responding Party has said it will not remove, the Notifying Party may, in its sole discretion, terminate this Agreement on or before December 1, 2015, pursuant to Section 11 below. If the Notifying Party does not so terminate this Agreement, any exceptions that the Responding Party has not agreed to remove shall be "**Permitted Exceptions.**" Zoning ordinances, building restrictions, taxes due and payable for the current tax year, and reservations in federal patents and state deeds are deemed to be Permitted Exceptions.

## 6. Appraisals.

**6.1 Generally.** The respective value of the Properties shall be determined by appraisals of the Properties (each an "**Appraisal**" and together the "**Appraisals**") conducted by an appraiser (the "**Appraiser**") chosen by the parties pursuant to Section 6.2 below.

**6.2 Appraiser.** On or before September 1, 2015, County shall deliver to DSL a list of at least three (3) qualified and independent licensed appraisers experienced in performing appraisals of real property of the same type as the Properties. On or before October 1, 2015, DSL shall notify County of its choice of the Appraiser from the list. Notwithstanding the foregoing, if County fails to timely deliver the list, then DSL's choice of an appraiser shall be deemed the Appraiser; and if DSL fails to timely respond to the list, then County's choice of an appraiser shall be the appraiser.

**6.3 Appraisals of Properties.** The Appraiser shall perform the Appraisals on or before December 1, 2015, and deliver copies of both appraisals to the parties. The Appraiser shall appraise the value of the DSL Property on the assumption that the

work and designations set forth in Section 8.1 below have been performed or obtained, as the case may be. The Appraisal for each Property shall establish a "price per square foot" for the Property. Each party shall pay the Appraiser's costs and fees for the Appraisal of its own Property.

**6.4 Agreement on Value.** The parties shall work in good faith to agree, on or before April 1, 2016, upon an adjustment of the County Property boundaries, an Equalization Payment, or both, as necessary to equalize the value of the exchange to the parties, based on the "price per square foot" value of the Properties established by the Appraisals.

## **7. Environmental Studies; Surveys; Other.**

**7.1 Environmental Studies.** Each party may obtain, at its sole cost and expense, a Phase I or Phase II environmental study of the other party's Property. Neither party shall be obliged to share the results of any such study with the other party.

**7.2 Surveys.** Each party may obtain, at its sole cost and expense, a survey of the other party's Property. A copy of any such survey shall be provided to the other party.

**7.3 Other.** Each party may choose to obtain, at its sole cost and expense, any other report (including, without limitation, wetland determination, historical and cultural resources survey, threatened and endangered species survey) regarding the other party's Property.

**7.4 Objection.** If a party objects to any matter arising from its due diligence under Sections 7.1 through 7.3, then it may, in its sole discretion, terminate this Agreement on or before September 15, 2016, pursuant to Section 11 below.

## **8. DSL's Land Use and Construction Obligations.**

**8.1 DSL's Obligations.** DSL shall perform the following with regard to the DSL Property:

(a) Complete all engineering designs, and constructing all necessary public and private utilities, such that the DSL Property is deemed a fully served parcel under the City of Redmond Code, so the matters set forth in Section 8.1(b) below can be accomplished.

(b) Work diligently with the City of Redmond or Deschutes County, as applicable, to:

(i) bring the DSL Property into the Redmond Urban Growth Boundary;

(ii) annex the DSL Property to the City of Redmond;

(iii) obtain a public use zoning designation for the DSL Property; and

(iv) create a legal lot of record which can be legally conveyed to County, by a partition, lot line adjustment, or other means, and to ensure that the DSL Property conforms to all requirements arising therefrom; and,

(v) complete all required actions under Deschutes County Code 11.08 relating to the exchange of real property.

**8.2 County's Objection.** If, by September 15, 2016, the events and work set forth in Section 8.1 above have not occurred, then County, in its sole discretion, may terminate this Agreement on or before September 15, 2016, pursuant to Section 11 below.

## **9. County's Land Use Obligations.**

**9.1 County Property.** In the event that the boundaries of the County Property are adjusted pursuant to Sections 3 and 6.4 above, County shall work diligently with the City of Redmond and the Deschutes County Community Development Department to have the County Property, with such adjusted boundaries, designated as a legal lot of record which can be legally conveyed to DSL, by a partition or other means, and to ensure that the County Property conforms to all requirements arising therefrom.

**9.2 DSL's Objection.** If, by September 15, 2016, the County Property with adjusted boundaries has not been designated as a legal lot of record as set forth in Section 9.1 above, then DSL, in its sole discretion, may terminate this Agreement on or before September 15, 2016 pursuant to Section 11 below.

**10. Cooperation and Access.** The parties shall reasonably cooperate with each other, and coordinate access to the Properties so that the parties may conduct due diligence and perform their obligations pursuant to Sections 5 through 9 above.

**11. Termination.** A party may terminate this Agreement pursuant to Sections 5 through 9 above by giving notice to the other on or before the deadline set forth in the applicable Section. In the event of such termination, neither party shall have further obligation to the other hereunder. Neither party shall be liable to the other for damages arising from such termination. A party's failure to timely terminate pursuant to this Section 11 shall be deemed a waiver or satisfaction of the underlying condition.

## **12. Conditions to Closing.**

**12.1 DSL's Conditions.** DSL's obligation to close is conditioned upon each of the following:

- (a) this Agreement not having already been terminated pursuant to Sections 5 through 9 above;
- (b) County's performance of all of its obligations under this Agreement; and
- (c) approval of the transactions contemplated herein by the Oregon State

Land Board; and

**12.2 County's Conditions.** County's obligation to close is conditioned upon each of the following

- (a) this Agreement not having already been terminated pursuant to Sections 5 through 9 above; and
- (b) DSL's performance of all of its obligations under this Agreement.

**12.3 Generally.** The conditions set forth in Sections 12.1 and 12.2 above are for the benefit of DSL and County, respectively, and may be waived, in whole or in part, only by the party benefited by the condition. Any waiver shall be in writing.

### **13. Closing.**

**13.1 Closing.** The closing of the exchange of the Properties as contemplated in this Agreement (the "**Closing**") shall take place on or before October 15, 2016 (the "**Closing Date**"), at the offices of the Escrow Agent.

**13.2 Closing Costs.** The parties shall equally share the costs of Closing.

**13.3 Recording Fees.** The parties shall each pay their own recording fees.

**13.4 Attorney Fees.** The parties shall pay the fees and costs of their own attorneys.

**13.5 Prorations.** All other costs (real property taxes, utilities, if any, and costs that are due as of Closing) shall be prorated as of the Closing Date.

**13.6 County's Obligations at Closing.** On or before Closing, County shall deliver to Escrow Agent and shall execute as necessary the following documents:

- (a) a bargain and sale deed conveying the County Property to DSL, subject to no interest, defect, restriction, encumbrance, contract, reservation, exception or claim except the Permitted Exceptions;
- (b) a signed and acknowledged acceptance of the conveyance of the DSL Property to County;
- (c) any additional documentation required by the Escrow Agent in order to close;
- (d) if agreed upon by the parties pursuant to Sections 3 and 6.4 above, an Equalization Payment; and
- (e) sufficient funds to close the transaction, pursuant to Sections 13.2 through 13.5 above.

**13.7 DSL's Obligations.** On or before Closing, DSL shall deliver to the Escrow Agent and shall execute as necessary the following documents:

- (a) a bargain and sale deed conveying the DSL Property to County, subject to no interest, defect, restriction, encumbrance, contract, reservation, exception or claim except the Permitted Exceptions. Such deed shall contain a reservation of an ingress and egress easement, 30 feet in width, along the length of the southern property boundary of the DSL Property in favor of the OMD Parcel, in the approximate location as shown on Exhibit B;
- (b) a signed and acknowledged acceptance of the conveyance of the County Property to DSL;
- (c) any additional documentation required by the Escrow Agent in order to close;
- (d) if agreed upon by the parties pursuant to Sections 3 and 6.4 above, an Equalization Payment; and
- (e) sufficient funds to close the transaction, pursuant to Sections 13.2 through 13.5 above.

**14. Status of Mineral Rights.** The conveyance of the County Property to DSL shall include all mineral and geothermal rights. The conveyance of the DSL Property to County shall include all mineral and geothermal rights.

**15. Possession.** Possession of each Property shall pass to the other party upon Closing.

**16. Acknowledgment of Condition of Property.**

**16.1 DSL's Acknowledgment.** DSL represents and acknowledges that it has executed this Agreement on the basis of its own examination and personal knowledge of the County Property; that County has made no representations, warranties or agreements concerning matters relating to the County Property other than as set forth herein; that County has made no agreement or promise to alter, repair or improve the County Property; and that DSL takes the County Property in the condition, known or unknown, existing at the time of this Agreement except as set forth herein. DSL further represents and acknowledges that DSL is purchasing the County Property "AS IS" and that County is making no warranties (except as reflected herein and in the deed to be delivered by County at Closing) regarding the condition of the County Property.

**16.2 County's Acknowledgment.** County represents and acknowledges that it has executed this Agreement on the basis of his own examination and personal knowledge of the DSL Property; that DSL has made no representations, warranties or agreements concerning matters relating to the DSL Property other than as set forth herein; that DSL has made no agreement or promise to alter, repair or improve the DSL Property; and that County takes the DSL Property in the condition, known or

unknown, existing at the time of this Agreement except as set forth herein. County further represents and acknowledges that County is purchasing the DSL Property "AS IS" and that DSL is making no warranties (except as reflected herein and in the deed to be delivered by DSL at Closing) regarding the condition of the DSL Property.

**17. Default Remedies.** If either party fails to perform as required by this Agreement, the other party may: (a) bring an action for damages for breach of contract; (b) file and maintain a suit against the defaulting party for specific performance of this Agreement; or (c) pursue any other legal remedy against the defaulting party as may be allowed at law or in equity.

**18. Instruments of Further Assurance; Good Faith.** Each of the parties shall, at its own expense, execute and deliver to the other at or after Closing any further instruments and documents as either may reasonably request in order to carry out any of the provisions of this Agreement. The parties shall act in good faith in all respects relative to the transactions contemplated by this Agreement.

**19. Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed delivered: (1) upon delivery, if personally delivered to an address set forth below; (2) five (5) business days after being sent by United States first class mail, postage prepaid, to an address set forth below; or (3) the day sent (unless sent after 5:00 p.m., P.T., in which case the email shall be deemed sent the following business day), if sent by email to an email address set forth below:

County:

*Personally Deliver to:*

Deschutes County  
Attn: Susan Ross, Director  
Property and Facilities Department  
14 NW Kearney St.  
Bend OR 97701

*Mail or Email to:*

Deschutes County  
Attn: Susan Ross, Director  
Property and Facilities Department  
P.O. Box 6005  
Bend OR 97708-6005  
Email: \_\_\_\_\_

DSL:

Oregon Department of State Lands  
Attn: John Russell, Principal Real Property Planner  
775 Summer St NE  
Salem OR 97301  
Email: john.russell@state.or.us

Notices may be addressed to any other person and address as may be specified from time to time by any party by written notice to the other party.

**20. Brokerage.** Each party represents that it has not employed any real estate broker or licensee in negotiating this Agreement, and that no broker or licensee is entitled to receive a fee or commission from it as a result of the subject matter of this Agreement.

**21. No Third-Party Benefits.** This Agreement is not intended, and may not be deemed or construed, to confer any rights, power or privileges on any person, firm, partnership, corporation or other entity that is not named as a party to the Agreement.

**22. Time of the Essence.** Time is specifically declared to be of the essence of this Agreement, and of acts required to be done and performed by the parties.

**23. Governing Law; Consent to Jurisdiction.** This Agreement is executed and delivered and is to be performed in, and governed by and construed in accordance with the laws of the State of Oregon. Any claim, suit, action or proceeding ("**Claim**") between DSL (or any other agency or department of the State of Oregon) and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. In no event shall this Section 23 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. 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.

**24. Entire Agreement.** This Agreement constitutes and contains the entire agreement between the parties and supersedes any and all prior negotiations, correspondence, understandings, and agreements between the parties respecting the subject matter contained in the Agreement.

**25. Amendment.** This Agreement may be amended only by a writing signed by the parties.

**26. Survival.** Sections 16, 18 and 20 shall survive Closing.

**27. Counterparts.** This Agreement may be executed in two counterparts, which together constitute one document.

**28. Statutory Disclaimer.** The following disclaimer applies to both Properties:

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS

INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

**29. Exhibits.** The Exhibits listed below are incorporated as part of this Agreement:

Exhibit A: Map Showing County Property

Exhibit B: Map Showing DSL Property

*[remainder of page intentionally left blank]*

The parties have signed this Agreement effective as of the date first written above.

**County:**

DESCHUTES COUNTY,  
a political subdivision of the State of Oregon

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DEBONE, Chair

ATTEST:

\_\_\_\_\_  
ALAN UNGER, Vice Chair

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

\_\_\_\_\_  
TAMMY BANEY, Commissioner

**DSL:**

STATE OF OREGON,  
acting by and through the Oregon State Land Board  
on behalf of the Oregon Department of State Lands

By: \_\_\_\_\_  
Mary M. Abrams, Ph.D.  
Its: Director

#6395810v6

# State of Oregon Department of State Lands



11

DESCHUTES  
CO.

15S 13E 14

Redmond City Limits

1,550'

Approximate dimensions  
these may be adjusted

Deschutes County  
To  
Dept. of State Lands

2,100'

2,100'

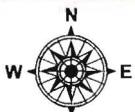
1,550'

Redmond

15S 13E 22

15S 13E 23

National Agriculture Imagery Program (NAIP) under contract for the United States Department of Agriculture (USDA) for the Farm Service Agency's (FSA) Oregon Imagery Framework Implementation Team. Sources: Esri, DeLorme, USGS, NPS, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS user community



0 500 1,000

Feet

1 inch = 1,000 feet

Map Projection:  
Oregon Statewide Lambert  
Datum NAD83  
International Feet



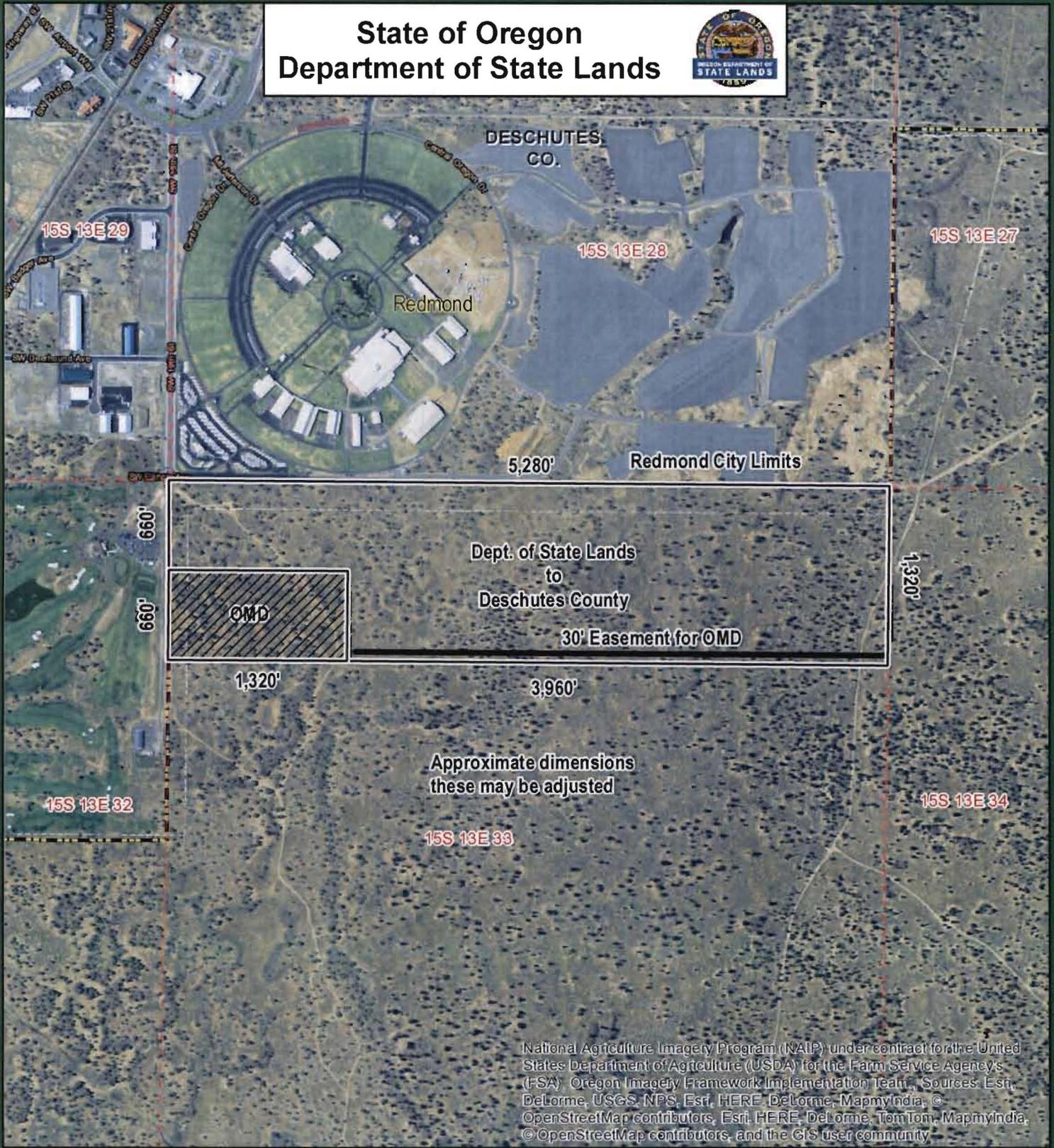
## Exhibit A

2009 Oregon Explorer Imagery

State of Oregon  
Department of State Lands  
775 Summer St, NE, Suite 100  
Salem, OR 97301  
503-986-5200  
[www.oregon.gov/DSL](http://www.oregon.gov/DSL)

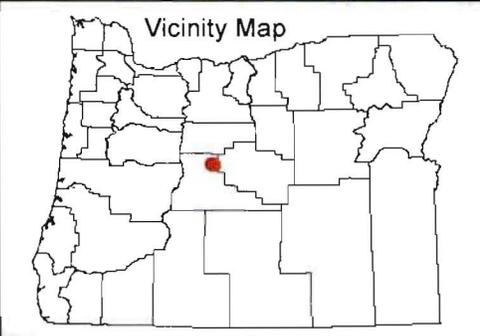
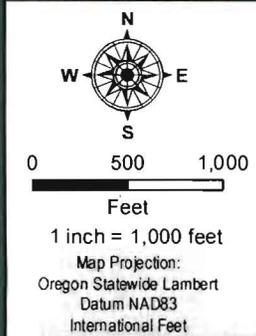
Date: 5/26/2015

State of Oregon  
Department of State Lands



Approximate dimensions  
these may be adjusted

National Agriculture Imagery Program (NAIP) under contract for the United States Department of Agriculture (USDA) for the Farm Service Agency's (FSA) Oregon Imagery Framework Implementation Team. Sources: Esri, DeLorme, USGS, NPS, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS user community



**Exhibit A**  
2009 Oregon Explorer Imagery  
State of Oregon  
Department of State Lands  
775 Summer St, NE, Suite 100  
Salem, OR 97301  
503-986-5200  
[www.oregon.gov/DSL](http://www.oregon.gov/DSL)  
Date: 5/26/2015

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