



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

AMENDED NOTICE OF ADOPTED AMENDMENT

December 27, 2007

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 007-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: January 10, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

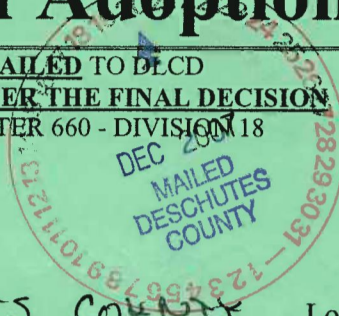
***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Chris Bedsaul, Deschutes County

<paa> y

2 Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: DESCHUTES COUNTY Local file number: PA07-1 / ZC07-1
Date of Adoption: 12-12-07 Date Mailed: 12-20-07
Date original Notice of Proposed Amendment was mailed to DLCD: 4-25-07

- Comprehensive Plan Text Amendment
- Comprehensive Plan Map Amendment
- Land Use Regulation Amendment
- Zoning Map Amendment
- New Land Use Regulation
- Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

COMPREHENSIVE PLAN AND ZONE MAP AMENDMENTS
TO CHANGE AGRICULTURAL DESIGNATION TO RURAL
RESIDENTIAL EXCEPTION AND EXCLUSIVE FARM
USE (EFU) TO MULTIPLE USE AGRICULTURE
(MUA-10) DUE TO NON-RESOURCE SOILS

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME".
If you did not give Notice for the Proposed Amendment, write "N/A".

SAME

Plan Map Changed from: AGRICULTURAL to: RURAL RESIDENTIAL
Zone Map Changed from: EFU-SC to: MUA-10
Location: MAP 15-12-25-0000-400 Acres Involved: 13.65
Specify Density: Previous: 1 New: 1
Applicable Statewide Planning Goals: 3 AND 4
Was an Exception Adopted? YES NO

DLCD File No.: 007-07 (1662)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

DESCHUTES COUNTY, OREGON DEPARTMENT
OF FISH & GAME AND BLM

Local Contact: CHRIS BEDSAUL Phone: (541) 383-6719 Extension: _____

Address: 117 NW LAFAYETTE City: BEND

Zip Code + 4: 97701 - _____ Email Address: _____


ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **maru.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 23, the Deschutes *
County Comprehensive Plan and To Change the Plan * ORDINANCE NO. 2007-025
Designation for Certain Property From Agricultural *
to Rural Residential Exception Area. *

WHEREAS, Albert Pagel and Cynthia Smith-Pagel have proposed a Plan Amendment to Title 23.120 of the Deschutes County Code (DCC) and to change the comprehensive plan designation of certain property from Agricultural to Rural Residential Exception Area; and

WHEREAS, the Board of County Commissioners (Board) after reviewing all the evidence presented at the public hearing, agrees with the findings of the Hearings Officer, and

WHEREAS, the Board, after review conducted in accordance with applicable law, approved the Goal Exception to Goal 3, change the zoning designation from Agricultural to Rural Residential Exception area; and,

WHEREAS, Deschutes County Ordinance 2000-017 ordained the Plan Map to be a component of Title 23 and, therefore, any amendment to the Plan Map is an amendment to Title 23; now therefore,

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

Section 1. AMENDMENT. DCC Title 23, The Deschutes County Comprehensive Plan Map is hereby amended to change the plan designation for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "B," attached and by this reference incorporated herein, from Agricultural to Rural Residential Exception Area.

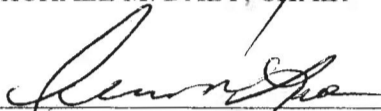
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Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached as Exhibit C and incorporated by reference herein.

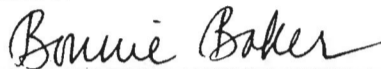
Dated this 12th of December, 2007

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


MICHAEL M. DALY, CHAIR


DENNIS R. LUKE, VICE CHAIR

ATTEST:


Recording Secretary

- absent -
TAMMY BANEY, COMMISSIONER

Date of 1st Reading: 26th day of November, 2007.

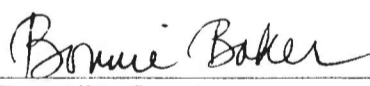
Date of 2nd Reading: 12th day of December, 2007.

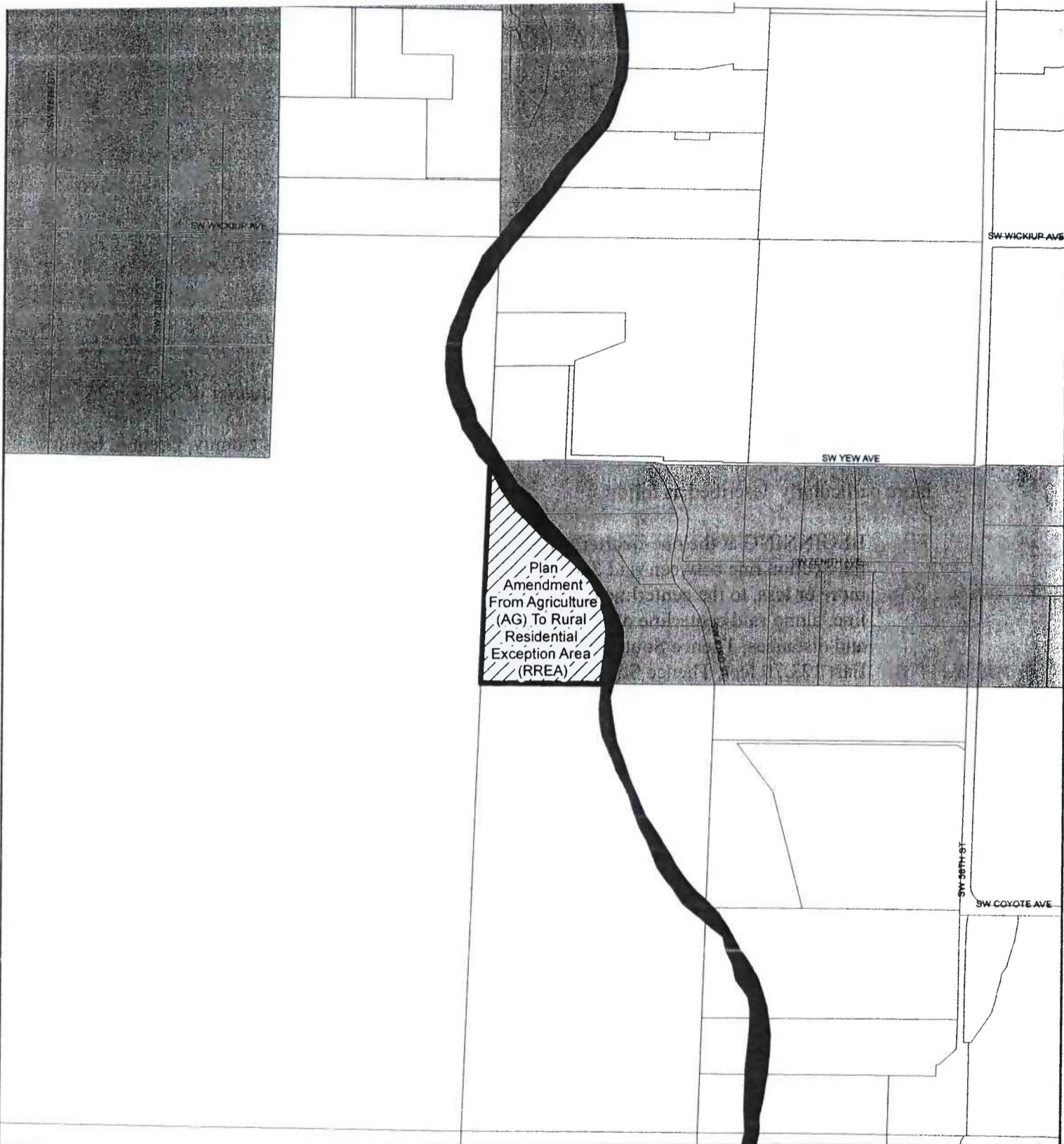
Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>




Effective date: 13th day of March, 2008.

ATTEST:


Recording Secretary



Legend

-  Property Subject to Plan Amendment
-  Agriculture
-  Rural Residential Exception Area

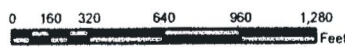


DISCLAIMER
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**COMPREHENSIVE PLAN MAP
File No. PA-07-01**

Exhibit B
to Ordinance 2007-026



October 08, 2007

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Michael M. Daly, Chair

Dennis R. Luke, Vice Chair

Tammy Baney, Commissioner

ATTEST: Recording Secretary

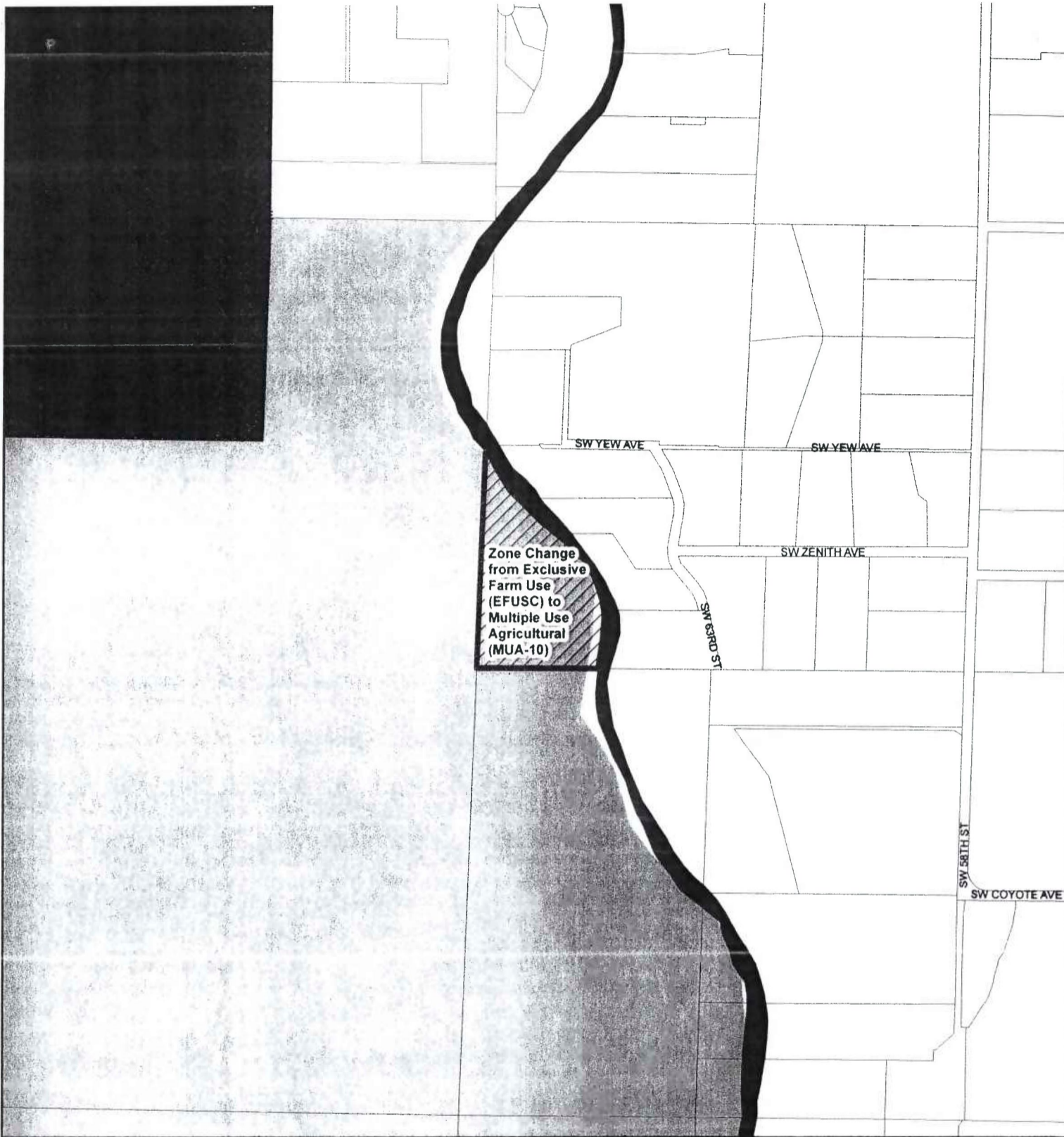
Dated this _____ day of November, 2007
Effective Date: November _____, 2007

PROPERTY DESCRIPTION
ALBERT & CINDY PAGEL
TAX LOT 400




A tract of land located in the Southwest one-quarter of the Northwest one-quarter of Section 25, Township 15 South, Range 12 East, of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

BEGINNING at the one-quarter corner common to Sections 25 and 26; Thence along the Section line between said Sections 25 and 26 North $00^{\circ}09'57''$ East 1234.43 feet, more or less, to the centerline of the Deschutes River; Thence leaving said Section line, along said centerline of the Deschutes River the following Fourteen (14) courses and distances; Thence South $34^{\circ}22'48''$ East 36.01 feet; Thence South $42^{\circ}22'39''$ East 123.70 feet; Thence South $47^{\circ}33'05''$ East 133.87 feet; Thence South $50^{\circ}30'27''$ East 121.96 feet; Thence South $43^{\circ}06'45''$ East 100.64 feet; Thence South $49^{\circ}51'54''$ East 65.11 feet; Thence South $38^{\circ}05'42''$ East 152.39 feet; Thence South $33^{\circ}47'54''$ East 228.63 feet; Thence South $30^{\circ}01'21''$ East 101.55 feet; Thence South $18^{\circ}27'38''$ East 55.81 feet; Thence South $00^{\circ}59'25''$ East 37.83 feet; Thence South $08^{\circ}36'35''$ West 156.51 feet; Thence South $25^{\circ}07'38''$ West 126.94 feet; Thence South $21^{\circ}53'58''$ West 76.83 feet to a point on the South line of the Southwest one-quarter of the Northwest one-quarter of said Section 25; Thence along said South line South $89^{\circ}57'39''$ West 603.09 feet to the BEGINNING.

Containing 13.65 acres, more or less.



Legend

-  Property Subject to Plan Amendment
-  EFUSC - Sisters/Cloverdale Subzone
-  RR10 - Rural Residential

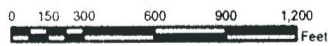


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**ZONE CHANGE
ZC-07-01**

Exhibit "B"
to Ordinance 2007-026



October 09, 2007

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Michael M. Daly, Chair

Dennis R. Luke, Vice Chair

Tammy Baney, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of November, 2007
Effective Date: November _____, 2007

REVIEWED
[Signature]
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18, the Deschutes *
County Zoning Map, to Change the Zone * ORDINANCE NO. 2007-026
Designation on Certain Property from Exclusive *
Farm Use to Multiple Use Agricultural (MUA-10). *

WHEREAS, Albert Pagel and Cynthia Smith-Pagel have proposed a zone change to Title 18, Deschutes County Zoning Map, to rezone certain property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10) Zone; and

WHEREAS, notice was given and hearing conducted on November 26, 2007, before the Board of County Commissioners ("Board") in accordance with applicable law; and

WHEREAS, the Board after reviewing all the evidence presented at the public hearing, agrees with the findings of the Hearings Officer, and

WHEREAS, the applicants have provided that required legal description; and

WHEREAS, the Deschutes County Board of Commissioners, after review conducted in accordance with applicable law, approved the proposed change to the County Zoning Map; now therefore,

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

Section 1. AMENDMENT. DCC Title 18, Zoning Map, is hereby amended to change the zone designation of the subject property, as described as tax lot 400 in Section 25, Township 15 South, Range 12 East, Willamette Meridian, and further described by the legal description attached as Exhibit "A" and depicted on the map set forth as Exhibit "B", and by this reference incorporated herein, from Exclusive Farm Use Sisters-Cloverdale (EFU-SC) Subzone to Multiple Use Agricultural (MUA-10) Zone.

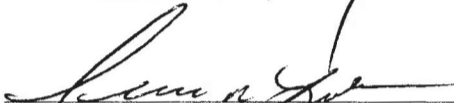
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Section 3. FINDINGS. The Board adopt as its findings in support of this decision, the Decision of the Hearings Officer, dated September 10, 2007, attached as Exhibit "C", and by this reference incorporated herein.

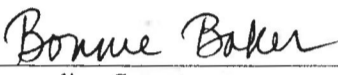
Dated this 12th of December, 2007

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


MICHAEL M. DALY, CHAIR


DENNIS R. LUKE, VICE CHAIR

ATTEST:


Recording Secretary

- absent -
TAMMY BANEY, COMMISSIONER

Date of 1st Reading: 26th day of November 2007.

Date of 2nd Reading: 12th day of December, 2007.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Effective date: 13th day of March, 2008, 2007.

ATTEST:


Recording Secretary

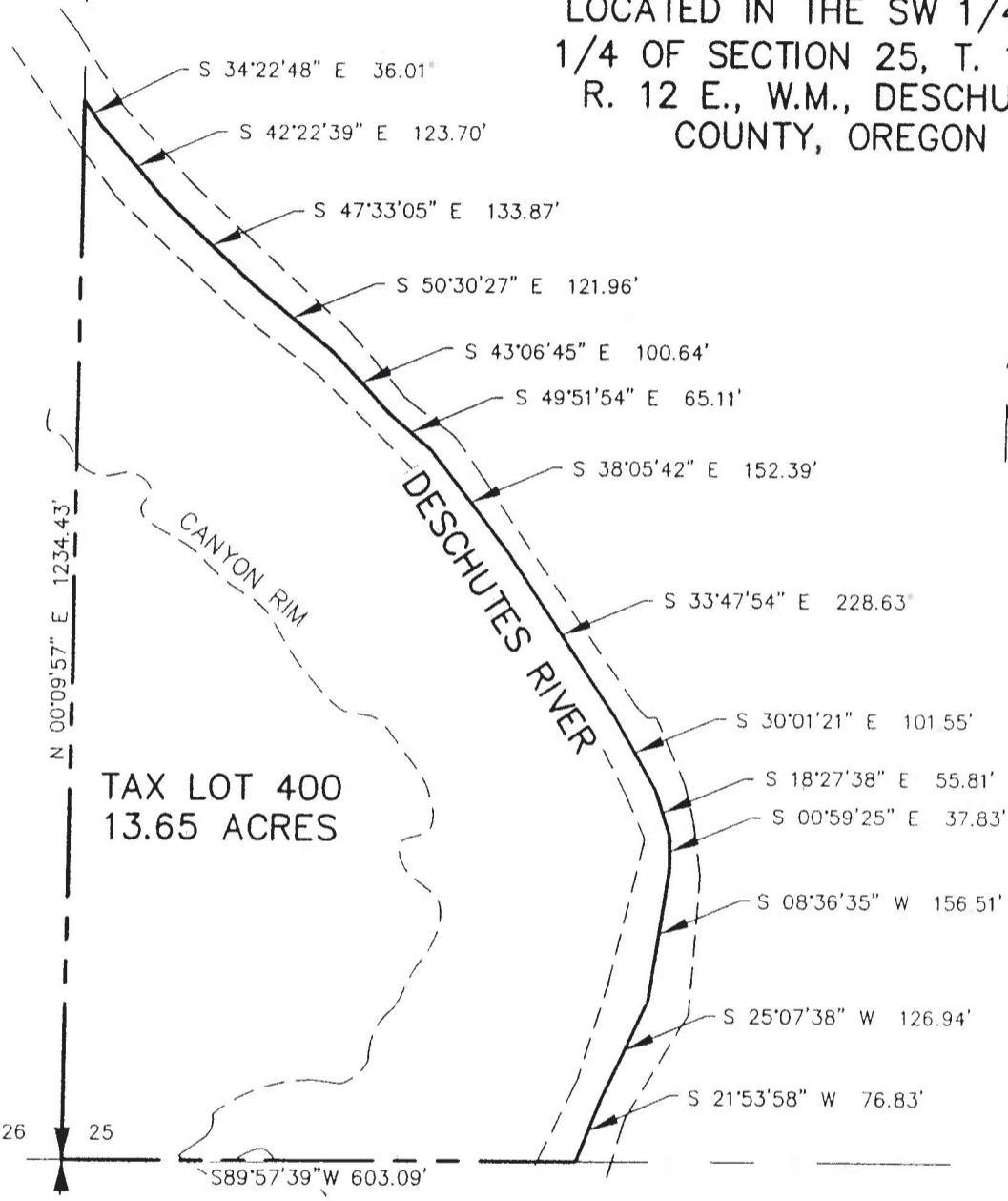
PROPERTY DESCRIPTION
ALBERT & CINDY PAGEL
TAX LOT 400

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BEGINNING at the one-quarter corner common to Sections 25 and 26; Thence along the Section line between said Sections 25 and 26 North $00^{\circ}09'57''$ East 1234.43 feet, more or less, to the centerline of the Deschutes River; Thence leaving said Section line, along said centerline of the Deschutes River the following Fourteen (14) courses and distances; Thence South $34^{\circ}22'48''$ East 36.01 feet; Thence South $42^{\circ}22'39''$ East 123.70 feet; Thence South $47^{\circ}33'05''$ East 133.87 feet; Thence South $50^{\circ}30'27''$ East 121.96 feet; Thence South $43^{\circ}06'45''$ East 100.64 feet; Thence South $49^{\circ}51'54''$ East 65.11 feet; Thence South $38^{\circ}05'42''$ East 152.39 feet; Thence South $33^{\circ}47'54''$ East 228.63 feet; Thence South $30^{\circ}01'21''$ East 101.55 feet; Thence South $18^{\circ}27'38''$ East 55.81 feet; Thence South $00^{\circ}59'25''$ East 37.83 feet; Thence South $08^{\circ}36'35''$ West 156.51 feet; Thence South $25^{\circ}07'38''$ West 126.94 feet; Thence South $21^{\circ}53'58''$ West 76.83 feet to a point on the South line of the Southwest one-quarter of the Northwest one-quarter of said Section 25; Thence along said South line South $89^{\circ}57'39''$ West 603.09 feet to the BEGINNING.

Containing 13.65 acres, more or less.

ALBERT & CINDY PAGEL
 TAX LOT 400
 LOCATED IN THE SW 1/4 NW
 1/4 OF SECTION 25, T. 15 S.,
 R. 12 E., W.M., DESCHUTES
 COUNTY, OREGON



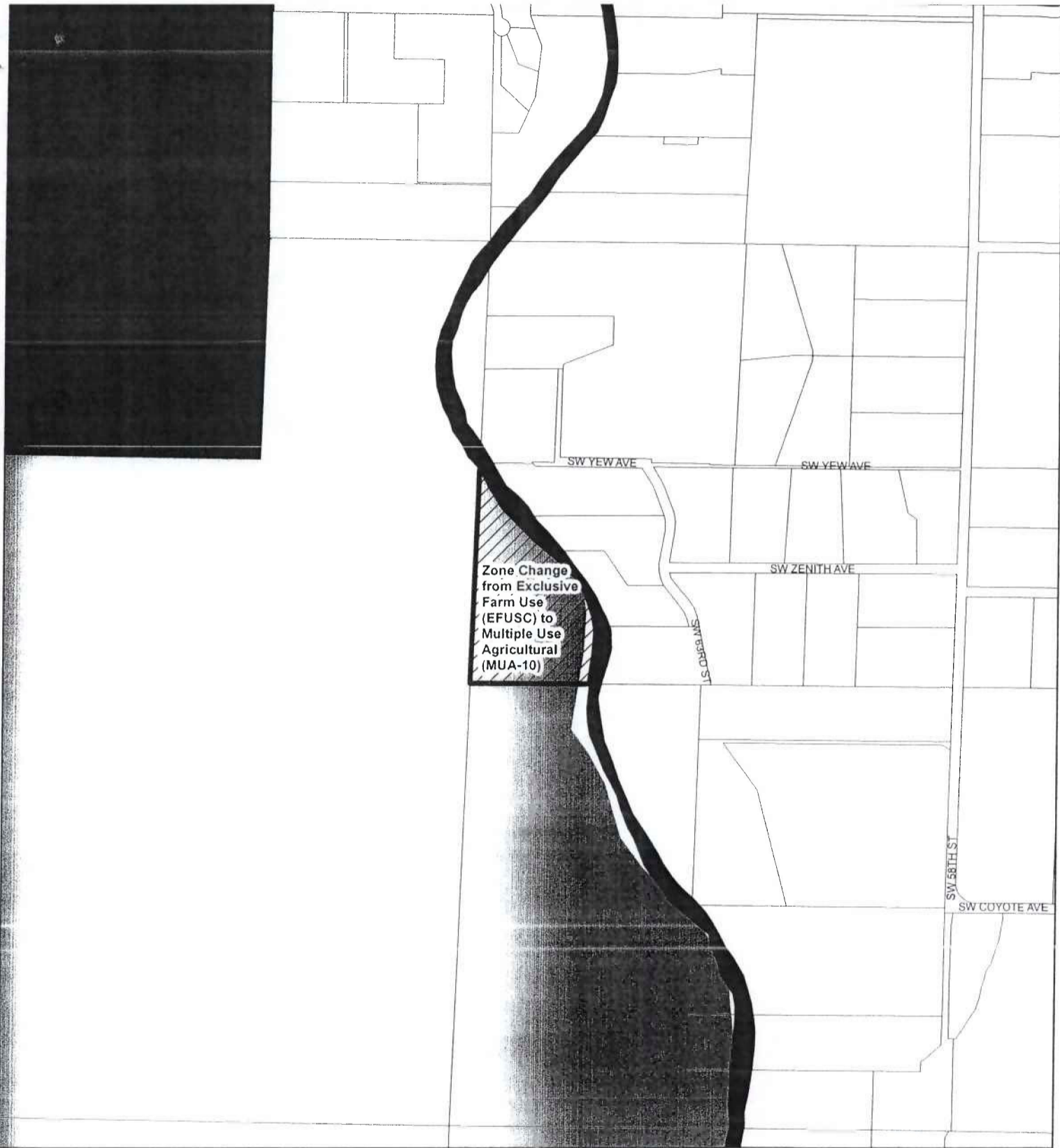
TAX LOT 400
 13.65 ACRES

TYE ENGINEERING, INC.




725 NW HILL, BEND, OREGON 97701 (541) 389-6959

DATE: OCT. 15, 2007	SCALE: 1"=200'	DRAWN BY: P.A.T.	DWG: 1643-EXHIBIT/CO
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EXHIBIT "A-1"



Legend

-  Property Subject to Plan Amendment
-  EFUSC - Sisters/Cloverdale Subzone
-  RR 10 - Rural Residential



DISCLAIMER
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**ZONE CHANGE
ZC-07-01**

**Exhibit "B"
to Ordinance 2007-026**



October 09, 2007

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Michael M. Daly, Chair

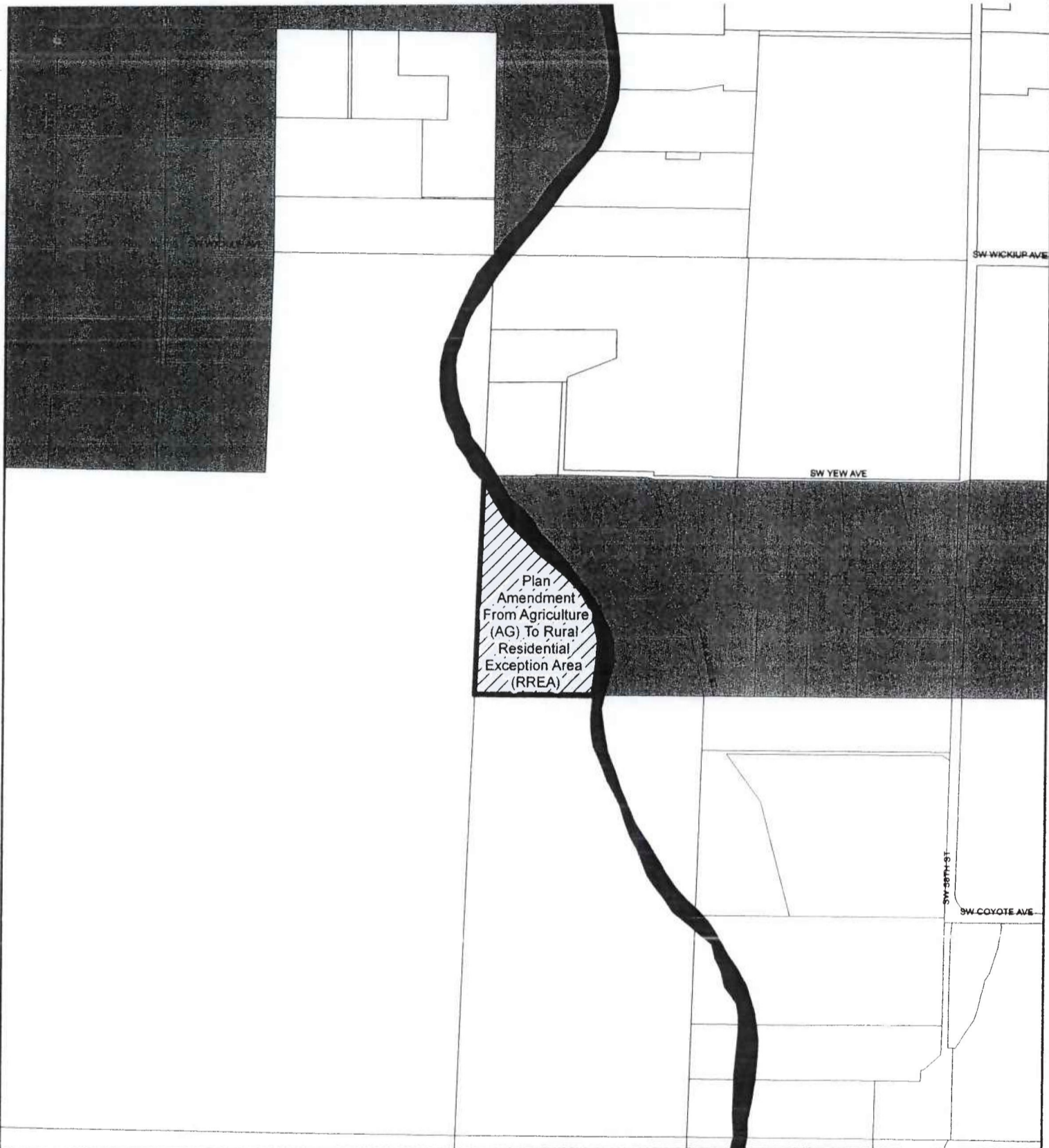
Dennis R. Luke, Vice Chair




Tammy Baney, Commissioner

ATTEST: Recording Secretary

Dated this ____ day of November, 2007

Effective Date: November ____, 2007



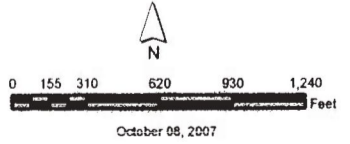
- Legend**
-  Property Subject to Plan Amendment
 -  Agriculture
 -  Rural Residential Exception Area



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**COMPREHENSIVE PLAN MAP
File No. PA-07-01**

Exhibit B
to Ordinance 2007-026



BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Michael M. Daly, Chair

Dennis R. Luke, Vice Chair

Tammy Baney, Commissioner

ATTEST: Recording Secretary

Dated this ____ day of November, 2007
Effective Date: November ____, 2007

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: PA-07-1, ZC-07-1

APPLICANTS/

PROPERTY OWNERS: Albert Pagel and Cynthia Smith-Pagel
67406 Cline Falls Road
Redmond, Oregon 97756

APPLICANTS'
ATTORNEY:

Kristen Udvari
Ball Janik, LLP
101 S.W. Main Street, Suite 1100
Portland Oregon 97204

REQUEST:

The applicants request approval of a plan amendment from Agriculture to Rural Residential Exception Area and a zone change from EFU to MUA-10, for a 17-acre parcel located west of Redmond and east of Cline Falls Road.¹

STAFF REVIEWER: Chris Bedsaul, Associate Planner

HEARING DATE: June 26, 2007

RECORD CLOSED: July 10, 2007

I. APPLICABLE STANDARDS AND CRITERIA:

A. Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance

1. Chapter 18.32, Multiple Use Agricultural

- * Section 18.32.010, Purpose
- * Section 18.32.030, Conditional Uses Permitted
- * Section 18.32.040, Dimension Standards

2. Chapter 18.136, Amendments

- * Section 18.136.010, Amendments
- * Section 18.136.020, Rezoning Standards

B. Title 23 of the Deschutes County Code, the Deschutes County Comprehensive Plan

¹ The staff report states in the caption that the applicants also request approval of an exception to Goal 3, Agricultural Lands. However, the application, notices of application and hearing, and the notice to the Department of Land Conservation and Development do not state the request includes a goal exception.



1. **Chapter 23.24, Rural Development**
 - * Section 23.24.020, Policies
2. **Chapter 23.60, Transportation**
 - * Section 23.60.010, Transportation
3. **Chapter 23.68, Public Facilities**
 - * Section 23.60.020, Policies
4. **Chapter 23.96, Open Space, Areas of Special Concern, and Environmental Quality**

C. Oregon Administrative Rules, Chapter 660

1. **Division 3, Agricultural Land**
2. **Division 6, Forest Land**
3. **Division 12, Transportation Planning**
 - * Oregon Administrative Rules (OAR) 660-012-0060, Plan and Land Use Regulation Amendments
4. **Division 15, Statewide Planning Goals and Guidelines**

II. FINDINGS OF FACT:

- A. **Location:** The subject property is located at 67406 Cline Falls Road, and is further identified as Tax Lot 400 on Deschutes County Assessor's Map 15-12-25.
- B. **Zoning and Plan Designation:** The subject property is zoned Exclusive Farm Use-Sisters/Cloverdale Subzone (EFU-SC, Landscape Management (LM), Flood Plain (FP), and Airport Safety (AS), and is designated Agriculture on the comprehensive plan map.
- C. **Site Description:** The subject property is 17 acres in size, irregular in shape, and is developed with an existing single-family dwelling. The property is bounded on the north and east by the Deschutes River and is bounded on the west and south by a large tract of public land managed by the United States Bureau of Land Management (BLM). The property includes on its eastern half steep slopes, rock outcrops and a narrow riparian zone near the river and on its western half an upland plateau covered with vegetation including scattered juniper trees and native brush and grasses. The subject property is not irrigated and is receiving tax deferral under the Wildlife Habitat Conservation and Management Special Assessment and the Riparian Management Plan – Open Space

Special Assessment. Portions of the subject property adjacent to the river are located within the Flood Plain Zone and the abutting stretch of the Deschutes River is a designated State Scenic Waterway. The southeastern portion of the property is located inside the western transitional surface of the Redmond Airport. Access to the subject property is over a 1.75-mile long cinder-surfaced road from Cline Falls Road across BLM lands provided by a BLM right-of-way grant.

- D. Surrounding Zoning and Land Uses:** Abutting property to the west and south are public lands managed by the BLM and zoned EFU. Land to the north and to the east across the Deschutes River is zoned MUA-10 and developed with rural residential uses including dwellings on 15 five-acre lots within the Christie Acres Subdivision directly across the river.
- E. Property History:** The subject property was shown on the plat for the Christie Acres Subdivision approved in 1980. However, the subject property was labeled "not a part" of the subdivision and was not given a lot number. At the time the subdivision plat was approved the subject property was zoned A-1, the zoning district applied to the property in 1971. Subsequently, the platted lots in Christie Acres, all of which are located on the east side of the Deschutes River, were rezoned to Multiple Use Agriculture (MUA-10), and the subject property was zoned Exclusive Farm Use. In 1988 the county found the subject property is a legal lot of record having been created as a "remainder lot" resulting from the platting of the Christie Acres Subdivision (LR-88-29). The subject property became an isolated 17-acre, privately-owned parcel on the west side of the Deschutes River surrounded by BLM lands. In August of 1991 the applicants received conditional use approval to establish a non-farm dwelling on the subject property (CU-91-106). A dwelling subsequently was constructed on the property.
- F. Procedural History:** These plan amendment and zone change applications were submitted on April 18, 2007 and were accepted by the county as complete on April 23, 2007. Because the applications include a request for a plan amendment, the 150-day period under ORS 215.427 does not apply. A public hearing on the applications was held on June 26, 2007. At the hearing, the Hearings Officer received testimony and evidence, left the written evidentiary record open through July 3, 2007, and allowed the applicant through July 10, 2007 to submit final argument under ORS 197.763. The record closed on July 10, 2007.
- G. Proposal:** The applicants are requesting approval of plan amendment from Agriculture to Rural Residential Exception Area and a zone change from Exclusive Farm Use – Sisters Cloverdale Subzone (EFU-SC) to MUA-10. No development proposal is included with these applications.
- H. Public Agency Comments:** The Planning Division sent notice of the applicants' proposal to a number of public and private agencies and received responses from: the Deschutes county Assessor and Transportation Planner. These comments are set forth at pages 2-3 of the staff report. The following agencies had no comments or did not respond to the request for comments: the Deschutes County Address Coordinator, Building

Division, Environmental Health Division, Road Department, and Forester; the Bend Fire Department; the Oregon Departments of Land Conservation and Development (DLCD), Fish and Wildlife (ODFW), and Parks; and the Oregon Department of Water Resources, Watermaster – District 11.

- I. Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 750 feet of the subject property. In addition, notice of the public hearing was published in the "Bend Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action. As of the date the record in this matter closed the county had received four letters in response to these notices. In addition, three members of the public testified at the public hearing. Public comments are discussed in the findings below.
- J. Lot of Record:** The county recognizes the subject property as a legal lot of record having been created as a remainder lot following the recording of the Christie Acres Subdivision (LR-88-29).

III. CONCLUSIONS OF LAW:

PLAN AMENDMENT

FINDINGS: The applicants have requested approval of a plan amendment from Agricultural to Rural Residential Exception Area for the subject property. At the outset, the applicants have raised the question of whether it is necessary to change the property's plan designation inasmuch as they also have requested a zone change from EFU to MUA-10 which is an agricultural zoning district. As discussed in detail in the findings below, the Hearings Officer has found the subject property does not constitute "agricultural land" as defined in Goal 3. For this reason, I find it is necessary and appropriate to remove the property's "agricultural" plan designation.

In *Wetherell v. Douglas County*, __ LUBA __ (LUBA No. 2006-122, October 9, 2006), LUBA stated:

"As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988) there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the property. Caine v. Tillamook county, 25 Or LUBA 209, 218 (1993); DCLD v. Josephine county, 18 Or LUBA 798, 802 (1990)."

The applicants elected to follow the latter approach – i.e. asking the county to adopt findings demonstrating the subject property does not qualify either as agricultural land or forest land.

Agricultural Lands

Goal 3 defines "agricultural land" as follows:

Agricultural land in western Oregon is land of predominantly Class I, II, III and IV soils * * * as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

OAR 660-033-0020 defines "agricultural lands" in essentially the same manner as they are defined in Goal 3. Each component of that definition is addressed in the following findings:

For purposes of this division, the definitions in ORS 197.015, the statewide planning goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply.

(1)(a) "Agricultural Land" as defined in Goal 3 includes:

- (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;**

FINDINGS: The record indicates the National Resource Conservation Service (NRCS) soil maps indicate the subject property is composed of two soil units: Soil Unit 34C, Deschutes-Stukel Complex, which includes Class VI soils and Soil Unit 81F, Licksillet-Rock Outcrop which contains Class VII and VIII soils. In support of their application the applicants submitted a soil survey dated April 2007 and prepared by Steve Wert of Wert & Associates Consulting Soil Scientist. This study is included in the record as Exhibit G to the applicants' burden of proof. Mr. Wert conducted a site-specific soil survey including digging 38 test pits throughout the 17-acre subject property and analyzing soil in each test pit. Based on his analysis, Mr. Wert concluded that 57 percent of the soils on the subject property consist of Soil Unit 81F which is predominantly Class VII and VIII, and the remainder of the property consists of Soil Unit 34C. However, Mr. Wert's detailed soil mapping based on the test pit data showed that only 6.5 percent of the property actually consists of Class VI soils (1.1 acres) and 93.5 percent of the property consists of Class VII and VIII (15.9 acres). The staff report notes, and the Hearings Officer agrees, that the NRCS soil data for the subject property is based on general indicators over a broad area and may not be accurate on individual parcels, and therefore a site-specific analysis such as that conducted by Mr. Wert represents more precise and accurate soils information. Based on Mr. Wert's study, I find the subject property consists of predominantly Class VII and VIII soils, and therefore does not qualify as agricultural land under this part of the definition.

- (B) **Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and**

FINDINGS: The record indicates the subject property never has been irrigated nor employed in farm use. Mr. Wert's soil study shows the vast majority of the subject property's soils are of very poor quality and capability. The 1.1 acres of the subject property identified as Class VI soil is located in the center of the property near the existing dwelling and is completely surrounded by the Class VII and VIII soils. The applicant argues, and the Hearings Officer agrees, that the small area of Class VI soils could not produce enough forage to sustain an agriculture operation. In addition, as discussed in the Findings of Fact above, in 1991 the county approved a conditional use permit to allow the applicants to establish a non-farm dwelling on the subject property, concluding the subject property was "generally unsuitable" for the production of farm products and livestock. As a result, the subject property was disqualified from farm deferral, although it is receiving special tax assessments based on wildlife habitat and riparian area conservation plans. These plans, copies of which are included in the record as Exhibits H and I, respectively, to the applicants' burden of proof, prohibit grazing. For these reasons, I find the soil classes that predominate on the subject property are not suitable for farm use considering the factors listed in this paragraph.

- (C) **Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.**

FINDINGS: The record indicates the subject property never been farmed in conjunction with adjacent BLM lands to the west. The record further indicates these BLM lands are not irrigated and are managed for multiple uses including non-motorized recreation, wildlife habitat, visual resources and grazing. The applicants' burden of proof notes that most if not all BLM lands in Deschutes County are included within a grazing allotment, regardless of their suitability or productivity for supporting livestock. The applicant's burden of proof also indicates that in 1988, prior to development of the subject property with the existing dwelling, the BLM investigated and rejected the purchase of the subject property due to its small size. The applicants argue, and the Hearings Officer concurs, that the subject property is even less attractive or suitable for blocking up as part of the grazing allotment on adjacent BLM lands because it is now developed with a dwelling. Finally, the applicant argues, and I agree, that the presence of the Deschutes River and its steep canyon separating the subject property from MUA-10-zoned lands on the east side of the river in the Christie Acres Subdivision, coupled with the general unsuitability of the subject property for agriculture, would make it unlikely the subject property would be farmed in conjunction with farm practices on adjacent or nearby lands. For these reasons, I find the subject property does not constitute "agricultural land" because it is necessary to permit farm practices on adjacent or nearby agricultural lands.

- (b) **Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit,**

shall be inventoried as agricultural lands even though this land may not be cropped or grazed.

FINDINGS: The record indicates the subject property is not part of an existing farm unit and is not contiguous to any private parcels engaged in farm use. The record also indicates the subject property has never been considered part of the grazing allotment on the adjacent BLM land, apparently because of its size, poor soils and large area consisting of steep slopes and rock outcrops leading down to the river. The record indicates the adjacent BLM lands are being managed for a variety of non-agricultural uses as well as for grazing. For this reason the Hearings Officer finds such lands cannot reasonably be considered a "farm unit" as contemplated in this paragraph.

(c) **"Agricultural land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goals 3 and 4.**

FINDINGS: The subject property is not located within a UGB or acknowledged exception area.

For the foregoing reasons, the Hearings Officer finds the subject property does not constitute "agricultural land" as defined in Goal 3 and its implementing administrative rules.

Forest Lands

FINDINGS: Goal 4 defines "forest lands" as follows:

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

The subject property is not and never has been zoned for forest use. As discussed in the findings above, in support of their applications the applicants submitted a detailed soil study prepared by Steve Wert. That study included an analysis of the subject property's soils for production of merchantable tree species, and shows the soil units identified on the subject property are not listed in the NRCS' Woodland Productivity soils table, and therefore are not considered suitable for the production of wood crops by the NRCS. Finally, the record indicates the existing tree species on the property are juniper trees which historically have not had commercial value and have not been harvested commercial either on the subject property or on the adjacent BLM lands. For these reasons, the Hearings Officer finds the subject property does not constitute "forest land" as defined in Goal 4.

For the foregoing reasons, the Hearings Officer finds the subject property does not constitute either "agricultural land" or "forest land" as defined in Goals 3 and 4 and their implementing administrative rules.

Other Statewide Planning Goals

GOAL 11

FINDINGS: Goal 11 provides as follows:

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Goal 11 has been held to generally prohibit the extension of urban services such as water and sewer to rural lands outside urban growth boundaries. The applicants' burden of proof states, and the Hearings Officer agrees, that the proposed plan amendment from Agriculture to Rural Residential Exception Area will not result in the extension of urban services outside of the Redmond UGB because the uses permitted in the MUA-10 Zone do not require urban services, the existing dwelling is served by an on-site well and septic system, and any additional residential development of the subject property under MUA-10 zoning can be accomplished without the extension of urban services. Therefore, I find the proposed plan amendment is consistent with Goal 11.

GOAL 12

FINDINGS: Goal 12 provides in pertinent part:

To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Goal 12 is implemented by the Transportation Planning Rule found in OAR Chapter 660 Division 12. OAR 66-012-060, Plan and Land Use Regulation Amendments, provides as follows:

- (1) **Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance**

standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system; or
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Amendments to functional plan, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:
- (a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;
 - (b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or
 - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

The Hearings Officer finds the applicants' proposed plan amendment from Agriculture to Rural

Residential Exception Area and proposed zone change from EFU to MUA-10, by themselves, will not result in impacts on affected transportation facilities. However, because the proposed plan amendment and zone change have the potential to allow development with uses not permitted in the EFU Zone, I find it is appropriate to evaluate the potential traffic impacts from such development. In his comments on the applicants' proposal, the county's senior transportation planner Peter Russell stated that in analyzing traffic impacts the applicants should compare the traffic-generating potential of the uses permitted outright in the EFU and MUA-10 Zones.

In response, the applicants submitted a letter dated April 30, 2007 from their attorney Kristin Udvari including a chart identifying and comparing the uses permitted outright in both the EFU and MUA-10 Zones and uses permitted outright exclusively in each of these zones. Ms. Udvari noted that there are only two uses permitted outright in the MUA-10 Zone that are not permitted outright in the EFU Zone – Type 1 home occupation and single-family dwelling not in conjunction with farm use. The applicants also submitted a letter dated May 24, 2007 Julia Kuhn of Kittelson & Associates, Inc. In her letter Ms. Kuhn concluded that because the subject property is only 17 acres in size, an additional dwelling would not be permitted, and therefore the only potential change in use from the proposed plan amendment and zone change would be a home occupation, which under Section 18.116.280 cannot generate more than five vehicle trips per day. Ms. Kuhn concluded that the addition of five daily trips would have a negligible impact on affected transportation facilities, and therefore the applicants' proposal would not significantly affect a transportation facility. In addition, because the proposed plan amendment and zone change would result in fewer than 50 vehicle trips per day, no traffic impact analysis is required.

Opponents argue the applicants' proposed plan amendment and zone change will generate unacceptable amounts of additional traffic on the existing access road and Cline Falls Road. Their argument is based on the notion that a change to MUA-10 Zoning would allow the subject property to be further divided and developed with multiple dwellings. The Hearings Officer finds no merit to opponents' argument. The applicants note that it may be possible for the subject property to be developed with *one* additional dwelling with a conditional use permit for a cluster development that permits a maximum density of one dwelling per 7.5 acres. I am aware the Institute of Transportation Engineers Trip Generation Manual (ITE Manual) predicts each single-family dwelling will generate approximately 10 average daily vehicle trips (ADTs). I find the addition of this minimal number of additional trips will not significantly affect a transportation facility.

For the foregoing reasons, the Hearings Officer finds the applicants have demonstrated their proposed plan amendment and zone change satisfy the TPR.

C. Division 15, Statewide Planning Goals and Guidelines

FINDINGS:

Goal 1, Citizen Involvement. The Hearings Officer finds the applicants' proposal satisfies this goal because the record indicates the Planning Division provided notice of the proposed plan

amendment and zone change to the public through individual notice to affected property owners, posting of the subject property with a notice of proposed land use action sign, and publishing notice of the public hearing in the "Bend Bulletin" newspaper. In addition, at least two public hearings will be held on the proposed plan amendment before it can be approved – one before the Hearings Officer and one before the Deschutes County Board of Commissioners.

Goal 2, Land Use Planning. The Hearings Officer finds the applicants' proposal satisfies this goal because their applications were handled pursuant to the procedures applicable to plan amendments and zone changes in the county's comprehensive plan and zoning ordinance.

Goal 3, Agricultural Lands. The applicants have elected not to take an exception to Goal 3 for the subject property, but rather to provide evidence supporting findings that the subject property does not constitute "agricultural land" as defined in Goal 3. As discussed in detail in the findings above, the Hearings Officer has found the applicants have demonstrated the subject property does not constitute "agricultural land" and therefore the proposed plan amendment and zone change to MUA-10 is consistent with Goal 3.

Goal 4, Forest Lands. The Hearings Officer finds the applicants' proposal is consistent with Goal 4 because the subject property is not zoned for forest use and the applicant's soil survey shows the subject property does not contain any forest soils.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. The Hearings Officer finds the applicants' proposal is consistent with Goal 5 because, as discussed in the findings below, the proposed plan amendment and zone change will have not effect on any designated Goal 5 resources, including the abutting segment of the Deschutes River which is a stated designated wild and scenic river.

Goal 6, Air, Water and Land Resources Quality. The Hearings Officer finds the applicants' proposal is consistent with Goal 6 because it will not result in any impact on air or water quality and land resources.

Goal 7, Areas Subject to Natural Disasters and Hazards. The Hearings Officer finds Goal 7 is not applicable to the applicants' proposal because the subject property is not located in a known natural disaster or hazard area.

Goal 8, Recreational Needs. The Hearings Officer finds Goal 8 is not applicable to the applicants' proposal because it will not affect property zoned for recreation or impact recreational needs.

Goal 9, Economy of the State. The Hearings Officer finds the applicants' proposal is consistent with Goal 9 because it will not adversely impact economic activities in the state.

Goal 10, Housing. The Hearings Officer finds Goal 10 is not applicable to the applicants' proposal because it does not include development of additional housing, and does not remove any land from the county's supply of land for needed housing.

Goal 11, Public Facilities and Services. The Hearings Officer finds applicants' proposal is consistent with Goal 11 because the proposed plan amendment and zone change will have effect on the provision of public facilities and services to the subject site.

Goal 12, Transportation. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the applicants' proposal is consistent with the TPR, and therefore I find it also is consistent with Goal 12.

Goal 13, Energy Conservation. The Hearings Officer finds the applicants' proposal is consistent with this goal because it will have no impact on energy use or conservation.

Goal 14, Urbanization. The Hearings Officer finds Goal 14 is not applicable to the applicants' proposal because it does not affect property within an urban growth boundary and does not promote the urbanization of rural land.

Goals 15 through 19. The Hearings Officer finds these goals, which address river, ocean, and estuarine resources, are not applicable to the applicants' proposal because the subject property is not located in or adjacent to any such areas or resources.

For the foregoing reasons, the Hearings Officer finds the applicants' proposal plan amendment is consistent with the applicable statewide planning goals.

D. Deschutes County Comprehensive Plan

FINDINGS: The county's comprehensive plan does not establish approval criteria for plan amendments. However, the staff report states, and the Hearings Officer agrees, that the applicants must demonstrate their proposal is consistent with applicable plan goals and policies, discussed in the findings below.

1. Chapter 23.24, Rural Development

FINDINGS: As discussed in the findings above, the applicants propose a plan amendment from Agriculture to Rural Residential Exception Area for the subject property. The applicants have not requested an exception to Goal 3 but rather have demonstrated that the subject property does not constitute "agricultural lands" as defined in the goal based on a site-specific soil study performed on the subject property by Steve Wert and included in the record. For this reason, the staff report states, and the Hearings Officer agrees, that the applicants' proposal satisfies the goals and policies for rural development because the subject property has been determined to be non-resource land appropriate for rural residential development.

2. Chapter 23.60, Transportation

a. Section 23.60.010, Transportation

*** * * The purpose of DCC 23.60 is to develop a transportation system that meets the needs of Deschutes**

County residents while also considering regional and state needs at the same time. This plan addresses a balanced transportation system that includes automobile, bicycle, rail, transit, air, pedestrian and pipelines. It reflects existing land use plans, policies and regulations that affect the transportation system.

FINDINGS: As discussed in the Findings of Fact above, the subject property has access via an existing cinder-surfaced road approximately 1.75 miles long that connects to Cline Falls Road and was created pursuant to a BLM right-of-way grant. As also discussed above, the applicants' proposed plan amendment and zone change could make possible development of one additional dwelling on the subject property through approval of a cluster development, and that dwelling would generate approximately 10 new ADTs. The Hearings Officer has found the addition of these minimal additional trips will not significantly affect a transportation facility. Opponents question whether the existing dwelling on the subject property should have been approved on the basis of a BLM right-of-way, and whether any future dwellings should be approved with such access. I find the question of adequacy of access for an additional dwelling will be addressed if and when approval for an additional dwelling is sought.

3. Chapter 23.68, Public Facilities

a. Section 23.68.020, Policies

- 1. Public facilities and services shall be provided at levels and in areas appropriate for such uses based upon the carrying capacity of the land, air and water, as well as the important distinction that must be made between urban and rural services. In this way public services may guide development while remaining in concert with the public's needs.**
- 2. Future development shall depend on the availability of adequate local services in close proximity to the proposed site. Higher densities may permit the construction of more adequate services than might otherwise be true. Cluster and planned development shall be encouraged.**
- 3. New development shall not be located so as to overload existing or planned facilities, and developers or purchasers should be made aware of potentially inadequate power facilities in rural areas.**

FINDINGS: The record indicates the existing dwelling on the subject property is served by an

on-site domestic well and an on-site septic system. For this reason, the Hearings Officer finds similar services would be available for any additional dwelling that could be approved on the subject property following approval of the applicants' proposed plan amendment and zone change. In addition, the record indicates the subject property is located within the Redmond Rural Fire Protection District and would receive police protection from the Deschutes County Sheriff's Office. And as discussed above the subject property has access from an existing road pursuant to a BLM right-of-way grant that connects with Cline Falls Road, a county-maintained road. For these reasons, I find the applicants' proposal is consistent with these policies.

4. Chapter 23.96, Open Space, Areas of Special Concern, and Environmental Quality

a. Section 23.96.030, Policies

* * *

10. As part of subdivision or other development review, the County shall consider the impact of the proposal on the air, water, scenic and natural resources of the County. Specific criteria for such review should be developed. Compatibility of the development with those resources shall be required as deemed appropriate at the time given the importance of those resources to the County while considering the public need for the proposed development.

FINDINGS: The staff report states, and the Hearings Officer concurs, that this policy is not applicable to the applicants' proposal because they are not proposing any particular development. However, as the staff report notes, because the subject property is located within an LM Zone due to its proximity to the Deschutes River, and therefore any new structure requiring a building permit would be subject to LM review.

For the foregoing reasons, the Hearings Officer finds the applicants' proposed plan amendment from Agriculture to Rural Residential Exception Area satisfies all applicable statutes, administrative rules, statewide planning goals and comprehensive plan policies, and therefore can be approved.

ZONE CHANGE

B. Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance

1. Chapter 18.136, Amendments

a. Section 18.136.020, Rezoning Standards

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

- A. That the change conforms with the Comprehensive Plan, and the change is consistent with the Plan's introductory statement and goals.**

FINDINGS: As discussed in detail in the findings above, incorporated by reference herein, the Hearings Officer has found the applicants have demonstrated the subject property does not contain soils that are classified as agricultural or forest lands, and therefore the proposed plan amendment to Rural Residential Exception Area and zone change to MUA-10 are consistent with Goal 3. I also have found the applicants' proposal is consistent with the applicable policies in the county's comprehensive plan. For these reasons, I find the applicants' proposed zone change satisfies this criterion.

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

FINDINGS: Section 18.32.010 establishes the purpose of the MUA-10 Zone as follows:

The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.

Opponents object to the applicants' proposed zone change on a number of "livability" grounds that the Hearings Officer finds generally address the various purposes of the MUA-10 Zone. Each of these objections is addressed in the findings below.

1. Too Dense. Opponents argue the proposed zone change would allow the subject property to be developed with residential density that is out of character with the surrounding area. As discussed in the findings above, because the subject property is 17 acres in size it cannot be further divided because each lot would be less than the 10-acre minimum established for the MUA-10 Zone. However, the applicants could apply for conditional use approval to establish a cluster development that would allow a density of one dwelling per 7.5 acres, or a total of two dwellings on the subject property. The Hearings Officer finds the addition of a dwelling on the subject property would not be out of character with the surrounding area which includes a number of rural residences on 5-acre lots in the Christie Acres Subdivision.

2. Property Devaluation. Opponents argue the potential addition of a second dwelling would devalue their nearby properties, but offer only their own lay opinions to support this assertion. Given the rural residential character of the surrounding area the Hearings Officer finds there is no basis for this claim.

3. Impact on Wildlife. Opponents argue the potential addition of a second dwelling on the subject property would have adverse impacts on resident wildlife. The Hearings Officer disagrees. As discussed in the Findings of Fact above, the subject property currently is under two special tax assessments – one for wildlife habitat conservation and maintenance and one for riparian and open space conservation. These special assessments are based on plans approved by ODFW that are designed to conserve habitat and wildlife. The proposed zone change would not affect these plans or their requirements.

4. No Legal Access. As discussed in the findings above, the subject property has access via a cinder-surfaced road across BLM land pursuant to a BLM right-of-way grant. Opponents argue this access is not sufficient for the existing dwelling, let alone for an additional dwelling. The Hearings Officer finds that in the even the applicants seek conditional use approval for a cluster development to site an additional house on the subject property the adequacy of the existing access will be reviewed.

5. View Impacts. Opponents who own property on the east side of the Deschutes River argue an additional dwelling would have negative impacts on their mountain views. The Hearings Officer finds that in the absence of a deed restriction or other similar restriction on the subject property opponents have no right to a particular view across the subject property.

6. Neighbors' Reliance on Current Zoning. Opponents argue the applicants' proposed zone change should be denied because when they purchased their properties on the east side of the Deschutes River from the subject property they relied on the fact that the subject property was zoned EFU and therefore could be developed with only one dwelling. The Hearings Officer finds opponents' reliance is not a basis to deny the proposed zone change inasmuch as any property owner may apply to change the zoning of his/her property and there is no guarantee that any property will retain its original zoning in perpetuity as circumstances change.

For the foregoing reasons, the Hearings Officer finds the applicants' proposed zone change is consistent with the purpose of the MUA-10 Zone.

C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:

- 1. The availability and efficiency of providing necessary public services and facilities.**

FINDINGS: The applicants' burden of proof states, and the Hearings Officer agrees, that the proposed zone change in and of itself will not require the extension of new public facilities and services. The subject property already is served by a private well and septic system, there is electricity and telephone service in the surrounding area, and the subject property has fire and

police protection. Similar facilities and services would be available for any new dwelling that might be approved on the subject property in the future. The property has access from an existing BLM right-of-way grant. For these reasons, I find the applicants' proposal satisfies this criterion.

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

FINDINGS: As discussed in the findings above, the Hearings Officer has found the applicants' proposed plan amendment and zone change will not have adverse impacts on surrounding properties and are consistent with the applicable comprehensive plan goals and policies. For the reasons set forth in those findings, incorporated by reference herein, I find the applicants' proposal satisfies this criterion.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDINGS: The applicants argue the proposed zone change is justified both by a change of circumstances since the property was first zoned for agriculture and because of a mistake in the original zoning. In particular, the applicants argue that when the subject property was zoned A-1 such zoning was not based on site-specific soils and irrigation data and a history of farm use, but rather on the fact that it was consistent with the EFU zoning applied to thousands of surrounding acres, most of which were in public ownership and managed by the BLM. The applicants argue that the changes of circumstance justifying the proposed rezoning consist of the site-specific soil survey conducted by Steve Wert that shows the subject property does not constitute agricultural land and the isolation of the subject property from other private lands by the recording of the Christie Acres Subdivision located across the Deschutes River which left the subject property as a remainder parcel not included in the subdivision plat.

The Hearings Officer is not persuaded that the original A-1 zoning of the subject property, followed by its EFU zoning, was not a mistake inasmuch as the property on the west side of the Deschutes River appeared at that time to be resource land. However, I concur with the applicants that the collection of site-specific soil data as well as the subject property's isolation between the river and the large BLM tract constitute changes of circumstances since the property was zoned for farm use that justify the proposed rezoning to MUA-10 for rural residential use.

For the foregoing reasons, the Hearings Officer finds the applicants' proposal satisfies all applicable zone change approval criteria.

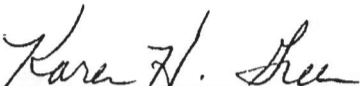
IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicants' request for a plan amendment from Agriculture to Rural Residential Exception Area and a zone change from EFU-SC to RR-10 for the subject property, **SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL:**

1. Prior to the hearing before the Deschutes County Board of Commissioners to consider approval of the proposed plan amendment and zone change, the applicants/owners shall submit to the Planning Division a metes and bounds description of, and surveyed acreage calculation for, the property subject to the plan amendment and zone change.

Dated this 10th day of September, 2007.

Mailed this 11th day of September, 2007.


Karen H. Green, Hearings Officer



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 NUMBERS: PA-07-1 and ZC-07-1

HEARING DATE: Tuesday, June 26, 2007 at 6:30 P.M. in the Barnes and Sawyer rooms of the Deschutes Services Building located at 1300 NW Wall Street in Bend.

APPLICANT/ OWNER: Albert Pagel and Cynthia Smith-Pagel
67406 Cline Falls Road
Redmond, Oregon 97756

ATTORNEY: Kristen Udvari
Ball Janik, LLP
101 SW Main Street, Suite 1100
Portland OR 97204

REQUEST: The applicant is requesting approval of a plan amendment from Agricultural to Rural Residential Exception Area, including a goal exception to Statewide Planning Goal 3, Agricultural Lands, and a zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10) on 17.00 acres located west of Redmond and east of Cline Falls Road.

STAFF CONTACT: Chris Bedsaul, Associate Planner

I. APPLICABLE STANDARDS AND CRITERIA:

Statewide Planning Goals 3 and 4

Oregon Administrative Rules, Chapter 660:
Division 3, Agricultural Land
Division 6, Forest Land
Division 12, Transportation Planning
Division 15, Statewide Planning Goals and Guidelines

Title 18 of the Deschutes County Zoning Ordinance:
Chapter 18.32, Multiple Use Agricultural
Chapter 18.136, Amendments
Section 18.136.020

Quality Services Performed with Pride

**Title 23, the Deschutes County Comprehensive Plan:
Chapter 23.88**

II. FINDINGS OF FACT:

- A. Location:** The subject property is located at 67406 Cline Falls Road, and is further described as Tax Lot 400 in Township 15 South, Range 12 East, Section 25.
- B. Lot of Record:** The subject property has been determined to be a legal lot of record by LR88-29.
- C. Zoning and Plan Designation:** As discussed in the findings below, the subject property is designated as Exclusive Farm Use (EFU-SC) Zone, Landscape Management (LM), Flood Plain (FP) and Airport Safety (AS) Combining Zones.
- D. Site Description:** The property was created as a remainder of the parent parcel by recording of the Christie Acres subdivision (CS06373). Staff notes that the subject property was not a designated lot within the Christie Acres subdivision. Although the thirteen (13) lots within Christie Acres subdivision were later zoned to Multiple Use Agricultural (MUA-10), the subject property remained EFU-SC (Exclusive Farm Use-Sisters Cloverdale subzone). The subject property is not engaged in any farm use activities. The property has scattered, slow growing juniper and sagebrush. There are grasses in the under-story, although very little livestock forage may be produced naturally. There is no irrigation water rights associated with the subject property. There is a narrow riparian zone adjacent to the Deschutes River. The eastern boundary of the property is formed by the centerline of the Deschutes River and includes steep rock outcrops and talus sloped canyon walls extending to the upland plateau where the existing dwelling and improvements are located. Portions of the property are within a flood plain zone of the Deschutes River that has been designated as a State Scenic Waterway. The southeastern portion of the property is located inside the western transitional surface of the Redmond Airport.
- The property contains an existing single-family non-farm dwelling and improvements. Access to the subject property is via a red cinder surfaced road crossing Bureau of Land Management (BLM) public lands and intersecting the Cline Falls Road approximately 1.75 miles west of the subject property boundary.
- F. Surrounding Land Use:** The property is surrounded by public land managed by the BLM to the west and south, and by rural residential uses to the north and east across the Deschutes River. The BLM lands west of the subject property are also bordered by residential uses to the north and west.
- G. Proposal:** The applicant is requesting approval of a Comprehensive Plan amendment to change the designation from Agricultural to Rural Residential Exception Area and a zone change from Exclusive Farm Use (EFU-SC) to Multiple Use Agricultural (MUA-10) zone.
- H. Public Agency Comments:** The Planning Division mailed notice to several agencies and as of the date of this Staff Report has received the following comments:

Deschutes County Transportation Planner: The submitted materials do not appear to comply with Title 17 of the Deschutes County Code. Specifically, DCC 17.16.115(C)(1) calls for a traffic study to be done under the supervision of a professional traffic engineer and 17.16.115(C)(2) calls for the report to be stamped by a registered professional traffic engineer.

Also the Transportation Planning Rule at OAR 660-012-0060(2) requires the applicant to demonstrate the land use will not significantly affect the transportation system and that the plan amendment/zone change will be consistent with the "identified function, capacity, and performance standard of the facility." The analysis timeframe is typically 20 years.

The applicant needs to compare and contrast the traffic generating potential of the outright permitted uses **only** for EFU vs. those for MUA-10 and then assess the impacts to the affected County roads. Essentially, we are looking for an apples to apples comparison of the highest traffic generators in both zones; conditional uses are not considered in this for their very natures makes them discretionary.

Staff note: The applicant has responded to the comments note above and provided an addendum prepared by Kittelson & Associates, Inc. and referenced below in this report.

Deschutes County Assessor: Currently under deferral

The following agencies had no comments or did not respond to the request for comments: Deschutes County Address Coordinator, Bend Fire Department, Deschutes County Building Division, Deschutes County Environmental Health Division, Deschutes County Road Department, DLCD, Watermaster – District 11, Oregon Dept. of Fish and Wildlife, Oregon State Parks and Deschutes County Forester

- I. **Public Notice and Comments:** The Planning Division mailed written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 750 feet of the subject property. In addition, notice of the public hearing was published in the "Bend Bulletin" newspaper on June 3, 2007.

The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicants have submitted a Land Use Action Sign Affidavit, dated May 1, 2007, that indicates that the applicant posted notice of the land use action on April 27, 2007 that was clearly visible to vehicle traffic from Cline Falls Road.

One written comment, dated June 8, 2007 was received from Norma Crocker citing opposition to the application. No other written comments have been received at the writing of this staff report.

- J. **Review Period:** The application was deemed complete and accepted for review on April 23, 2007.

III. CONCLUSIONS OF LAW:

A. PLAN AMENDMENT

1. Statewide Planning Goal 3

Statewide Planning Goal 3 defines "agricultural land" as follows:

"Agricultural Land.....In eastern Oregon is land of predominantly Class I, II, III,IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event. More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal. Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4."

FINDING: The applicant has pointed out that the agricultural land definition in DCC 18.04.030 generally duplicates the statewide planning Goal 3 definition noted above as well as OAR 660-033-0020(1). Staff agrees with the applicant's citation regarding this definition similarity. The applicant has chosen to address the several elements of a definition as listed in this cited OAR. The applicant asserts the property does not qualify as agricultural land under the local and state definition based on the following reasons:

(1)(a) "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

According to the applicant, the subject property is not composed predominantly of Class I-VI soils. The NRCS soil maps identify that the subject property contains 57% Unit 81F, and therefore predominantly Class VII and VIII (see Exhibit G: Soil Report, p.7, Figure 4). This cited percentage of soil type on the subject property generally indicates that the site is not suitable for agriculture purposes. Staff notes, however, that the NRCS soil data is based upon general indicators and characteristics over a broad area and may not be accurate on small sized isolated areas within the soil type designation. Staff agrees with the applicant's reasoning regarding the NRCS soil types that the predominant area of the subject property is Class VII and VIII. Staff also believes that a more site specific soils analysis should be verified to substantiate the actual soils within the subject property boundary.

The applicant has submitted "Soil Survey of Pagel Land", dated April 2007, that has been prepared by Mr. Steve Wert, Certified Soil Scientist, with Wert and Associates, Inc. Mr. Wert has performed a soils analysis of the subject property 17-acre area. The applicant has noted that Mr. Wert has provided a site-specific soil survey to confirm the actual nature of the soils on the 17-acre parcel. Mr. Wert conducted a scientific site investigation by use of 38 test pits dug to evaluate the soils revealed in each pit. Soils identified in the pits were given a Land Capability Class in accordance with approved scientific criteria based upon Mr. Wert's expertise.

Mr. Wert's findings are found in Exhibit G: Soil Report, pg 9, Appendix A. The study found that the soils conditions within the parcel consist mostly of a steep canyon wall with shallow gravelly soils, bedrock outcrops, and soils with less than 2 inches of available water holding capacity. The detailed soil map produced from the survey shows the site consists of only 6.5% Class VI (1.1 acre) and 93.5% Class VII and VIII (15.9 acres). The applicant asserts and staff concurs that based upon on the soil classes, the parcel does not qualify as agricultural land.

B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

The applicant, relying on historic use of the subject property and the soil study produced by Mr. Wert, concludes that the parcel has never been irrigated, contains steep slopes adjacent to the Deschutes River, is not used for the production of crops or grazing livestock and is currently used for a non-farm dwelling. Mr. Wert notes that the 1.1-acre portion of the site qualifies as Class VI that can sometimes be used for very limited spring grazing, however, the unirrigated 1.1-acre area is centrally located on the subject property adjacent to the existing dwelling and in close proximity at the top of the Deschutes River canyon rim rock. The Class VI soil is completely surrounded by the Class VII and VIII soils that are not suitable for grazing. The applicant asserts and staff agrees that the small area of 1.1-acres of Class VI soil could not produce enough forage to sustain an agriculture operation and also would not be desirable for use by an adjacent land owner for grazing purposes. The Deschutes River canyon forms a significant barrier for any potential incorporation of the subject property into any farming activity to the east in Christie Acres subdivision that is a mixture of residential and small hobby farming activities. Staff agrees with the applicant's conclusion that the Christie Acres subdivision Lots 1-4, Block 3 could not be farmed in conjunction the subject property.

The applicant has stated that the subject property has never been farmed in conjunction with adjacent BLM lands to the west. Based upon the soils analysis by Mr. Wert, the very small 1.1-acre area of Class VI soil of the subject property for use by the BLM would not provide any agricultural benefit to the BLM. The applicant has also indicated that in 1988, the BLM investigated the potential for acquisition of the subject property. The BLM investigation indicated that grazing was not listed as a desirable use of the subject property, therefore, ultimately the BLM chose not to acquire the subject property. The recent construction of an existing non-farm dwelling has increased the unsuitability for it to be incorporated into adjacent BLM lands.

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

The applicant notes that the subject property is not part of a farm unit. The subject property is not contiguous to any other private parcels in farm use. The subject property has never been considered part of the BLM unit for grazing purposes because it contains poor soil with minimal capability for forage production. A predominant area of the subject property is composed of

steep slopes and rock outcrops leading down to the river canyon. The ground slope and soil conditions are not considered safe or desirable for livestock grazing and cannot produce sufficient forage.

The applicants executed a Wildlife Management Plan and Riparian Management Plan in March 2006. These ODF&W approved plans authorize the designation and related tax assessment benefits for wildlife and riparian area protection. Grazing of livestock, however, is prohibited in both Plans; therefore the subject property cannot be "intermingled with lands designated as Class I-IV within a farm unit".

(c) "Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.

The subject property is not within a UGB or acknowledged exception area.

2. Statewide Planning Goal 4

Goal 4 and DCC 18.04.030 define "Forest lands" as lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

FINDING: Staff believes that in order to declare that subject property qualifies as a non-resource site, an analysis of the site regarding soils and woodland productivity is required. The applicant has included a detailed soils analysis of the site prepared by Mr. Steve Wert. The existing tree species on the subject property consists of slow-growing Juniper with associated sagebrush vegetation. The surrounding BLM property or the subject property have not been historically engaged in any commercial harvesting of the existing tree species found in the area. Timber in Deschutes County typically utilized in commercial harvesting consists of Ponderosa Pine and Lodgepole Pine tree species. None of these conifer tree species are established on the subject property or nearby area. The soil units identified on the subject property by Mr. Wert are not listed in Table 8, Woodland Productivity, of the NRCS "Soil Study for Upper Deschutes River Area", therefore, not considered to be suitable for wood crops by the NRCS.

3. Statewide Planning Goal 12

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

FINDING: The applicant has provided a traffic analysis by Kittelson & Associates, Inc. to comply with this Goal 12 and OAR 660-12-060, noted below. The County Senior Transportation Planner concurs with the applicant's traffic analysis that this land use will not have a significant

impact as defined by the TPR. Further, given the site will generate less than 50 trips a day, DCC 17.16.115(4)(a) states no further traffic work is needed.

4. Oregon Administrative Rules, Chapter 660

A. Division 6, Forest Land

- (1) The purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700.**
- (2) To accomplish the purpose of conserving forest lands, the governing body shall:**
 - (a) Designate forest lands on the comprehensive plan map as forest lands consistent with Goal 4 and OAR Chapter 660, Division 6;**
 - (b) Zone forest lands for uses allowed pursuant to OAR Chapter 660, Division 6 on designated forest lands; and**
 - (c) Adopt plan policies consistent with OAR Chapter 660, Division 6.**
- (3) This rule provides for a balance between the application of Goal 3 "Agricultural Lands" and Goal 4 "Forest Lands," because of the extent of lands that may be designated as either agricultural or forest land.**

FINDING: The subject property is designated as Agriculture on the County Comprehensive Plan. Staff has noted above in findings for compliance with Statewide Goal 4 that the subject property does not fall under the definition of forest lands. The existing tree species on the subject property consists of slow-growing Juniper with associated sagebrush vegetation. The surrounding BLM property or the subject property have not been historically engaged in any commercial harvesting of the existing tree species found in the area. Timber in Deschutes County typically utilized in commercial harvesting consists of Ponderosa Pine and Lodgepole Pine tree species. None of these conifer tree species are established on the subject property or nearby area. The soil units identified on the subject property by Mr. Wert are not listed in Table 8, Woodland Productivity, of the NRCS "Soil Study for Upper Deschutes River Area", therefore, not considered to be suitable for wood crops by the NRCS or should be classified as forest land by the County.

B. Division 12, Transportation Planning Rule

OAR 660-012-060, Plan and Land Use Regulation Amendments.

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as**

provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system; or
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Amendments to functional plan, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:
- (a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;
 - (b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or

(c) **Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.**

FINDING: The County Senior Transportation Planner has commented that the applicant needs to compare and contrast the traffic generating potential of the outright permitted uses **only** for EFU vs. those for MUA-10 and then assess the impacts to the affected County roads. This rule is applicable to the applicant's proposal because it involves an amendment to an acknowledged plan. The applicant has provided a traffic report prepared by Kittelson & Associates, Inc. that is included in the record.

The current zoning for this property is Exclusive Farm Use (EFU). According to the Deschutes County Code, an EFU designation aims to preserve agricultural lands and maintain land suitable for farm uses. The requested zone change would alter the designation to Multiple Use Agricultural (MUA-10). The purposes of the MUA-10 zone include maintaining the rural character of the land, allowing development within that character, and preserving agricultural lands for part-time agricultural uses.

The Oregon Administrative Rule (OAR) Section 660-012-0060 of the Oregon Transportation Planning Rule (TPR) details provisions about plan and land use regulation amendments. The TPR states that an amendment to a land use plan cannot significantly affect an existing transportation facility. This effect can be measured by the levels of travel and the performance of a transportation facility as a result of the zoning change. The levels of travel generated by each zone can be determined by comparing the transportation impacts associated with the land uses permitted outright in the existing and proposed zones.

The TPR states that a change to a land use plan cannot have a significant impact on the transportation facility. The uses permitted outright exclusively in the EFU zone could actually generate more trips than the uses permitted outright in only the MUA zone. Because of the limitations on the trips generated by a Type 1 Home Occupation, the zone change would result in at most an additional five trips each day. As a result, the zoning for the Pagel Property could be changed to MUA without having a significant impact on the transportation facility.

The County Senior Transportation Planner concurs with the applicant's traffic analysis that this land use will not have a significant impact as defined by the TPR. Further, given the site will generate less than 50 trips a day, DCC 17.16.115(4)(a) states no further traffic work is needed. Therefore, Staff believes rezoning the property to MUA-10 would not significantly affect a transportation facility.

C. Division 15, Statewide Planning Goals and Guidelines

FINDING: Findings regarding the Statewide Planning Goals and Guidelines are provided below:

Goal 1, Citizen Involvement. The Planning Division provided notice of the proposed plan amendment and zone change to the public through individual notice to affected property owners, posting of the subject property with a notice of proposed land use action sign, and notice of the public hearing in the "Bend Bulletin" newspaper. In addition, a public hearing will be held on the proposed plan amendment.

Goal 2, Land Use Planning. Goals, policies and processes related to this type of application is included in the Deschutes County Comprehensive Plan, Title 18 of the Deschutes County Code, and OAR 660-033. The application of the processes and policies/regulations are documented within this staff report.

Goal 3, Agricultural Lands. An exception to Goal 3 has been requested for the subject property.

Goal 4, Forest Lands. The proposed zone change area does not include any lands that are zoned for or that support forest uses.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. If approved, the applicant's proposal would not impact any open spaces, scenic and historic areas or natural resources.

Goal 6, Air, Water and Land Resources Quality. Rezoning the property to MUA-10 will not impact the quality of the air, water, and land resources.

Goal 7, Areas Subject to Natural Disasters and Hazards. This goal is not applicable because the subject property is not located in a known natural disaster or hazard area.

Goal 8, Recreational Needs. The proposed plan amendment and zone change do not affect recreational needs. The property is privately owned and the applicant does not propose a use for the property at this time.

Goal 9, Economy of the State. This goal is to provide adequate opportunities throughout the state for a variety of economic activities. Staff believes the proposal will not adversely impact economic activities.

Goal 10, Housing. Since the applicant is not proposing a housing development at this time, this goal is not applicable and the applicant's zone and plan changes will not affect the supply of needed housing. The change will, however, allow potential for development of the property with one additional dwelling.

Goal 11, Public Facilities and Services. The applicant's proposal will have no adverse effect on the provision of public facilities and services to the subject site.

Goal 12, Transportation. Rezoning the property to MUA-10 will not adversely impact transportation facilities as shown in a traffic analysis provided by the applicant.

Goal 13, Energy Conservation. The future impact of one potential dwelling on the site should not have any effect on energy use or conservation.

Goal 14, Urbanization. This goal is not applicable because the applicant's proposal does not affect property within an urban growth boundary and does not promote the urbanization of rural land.

Goals 15 through 19. These goals, which address river, ocean, and estuarine resources, are not applicable because the subject property is not located in or adjacent to any such areas or resources.

D. Division 33, Agricultural Land

- (1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.

FINDING: The applicant has submitted "Soil Survey of Pagel Land", dated April 2007, that has been prepared by Mr. Steve Wert, Certified Soil Scientist, with Wert and Associates, Inc. Mr. Wert's findings are found in Exhibit G: Soil Report, pg 9, Appendix A. The study found that the soils conditions within the parcel consist mostly of a steep canyon wall with shallow gravelly soils, bedrock outcrops, and soils with less than 2 inches of available water holding capacity. The detailed soil map produced from the survey shows the site consists of only 6.5% Class VI (1.1 acre) and 93.5% Class VII and VIII (15.9 acres). The applicant asserts and staff concurs that based upon on the soil classes, the parcel does not qualify as agricultural land.

- (2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in OAR 660-033-0020(1).

FINDING: The staff finding related to Statewide Goal 3 noted above also applies to this section. The applicant asserts and staff agrees that the small area of 1 1-acres of Class VI soil could not produce enough forage to sustain an agriculture operation and also would not be desirable for use by an adjacent land owner for grazing purposes. The Deschutes River canyon forms a significant barrier for any potential incorporation of the subject property into any farming activity to the east in Christie Acres subdivision that is a mixture of residential and small hobby farming activities. Staff agrees with the applicant's conclusion that the Christie Acres lots to the east or BLM public lands to the west could not be farmed in conjunction the subject property.

- (3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.

FINDING: The applicant notes that the subject property is not part of a farm unit. The subject property is not contiguous to any other private parcels in farm use. The subject property has never been considered part of the BLM farm unit for grazing purposes because it contains poor soil with minimal capability for forage production. A predominant area of the subject property is

composed of steep slopes and rim rock outcrops leading down to the river canyon. The ground slope and soil conditions are not considered safe or desirable for livestock grazing and cannot produce sufficient forage.

The property owners executed a Wildlife Management Plan and Riparian Management Plan in March 2006. These ODF&W approved plans authorize the designation and related tax assessment benefits for wildlife and riparian area protection. Grazing of livestock is prohibited in both Plans; therefore the subject property is cannot be "intermingled with lands designated as Class I-IV within a farm unit".

- (4) **When inventoried land satisfies the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.**

FINDING: The soil types identified on the subject property do not satisfy the definition of agricultural or forest lands.

- (5) **Notwithstanding the definition of "farm use" in ORS 215.203(2)(a), profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3, "Agricultural Land," is applicable.**

FINDING: The subject property has been designated as a non-farm parcel and farm tax deferral has been removed prior to the siting of the existing non-farm dwelling. There are no farm use activities occurring on the site, currently or historically, and no farm income has been produced. As noted above, the subject property does not qualify for agricultural land.

- (6) **More detailed data on soil capability than is contained in the U.S. Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the U.S. Natural Resources Conservation Service (NRCS) land capability classification system.**

FINDING: Staff has noted in the findings above that the applicant has submitted a detailed soils data analysis as noted in the "Soil Survey of Pagel Land", dated April 2007, that has been prepared by Mr. Steve Wert, Certified Soil Scientist, with Wert and Associates, Inc. Mr. Wert's findings are found in Exhibit G: Soil Report, pg 9, Appendix A. The study found that the soils conditions within the parcel consist mostly of a steep canyon wall with shallow gravelly soils, bedrock outcrops, and soils with less than 2 inches of available water holding capacity. The detailed soil map produced from the survey shows the site consists of only 6.5% Class VI (1.1 acre) and 93.5% Class VII and VIII (15.9 acres). The applicant asserts and staff concurs that based upon on the soil classes, the parcel does not qualify as agricultural land.

5. **Conformance with the Deschutes County Comprehensive Plan**

The Comprehensive Plan does not set forth specific criteria to govern a Comprehensive Plan map amendment. The applicant is required to show the proposed map amendment is consistent with the proposed zoning, and with any applicable goals and policies. Staff believes the applicant has substantially shown why the subject property does not qualify as agricultural land under Goal 3 or forest land under Goal 4. Staff finds the following DCC Sections and Goals and Policies within those sections applicable to the proposed plan amendment:

A. Chapter 23.24, Rural Development

FINDING: The applicant proposes a Plan map Amendment from Agriculture (AG) to Rural Residential Exception Area (RREA) for the subject property. No exception to Goal 3, agricultural lands is required because the subject contains cited reasons regarding soil data that permit the property to be declared non-resource and eligible for a Rural Residential Exception Area. Staff believes the goals and policies of the rural development are satisfied by prior County decisions for changing non-resource property to rural residential exception areas.

B. Chapter 23.60, Transportation

a. Section 23.60.010, Transportation

*** * * The purpose of DCC 23.60 is to develop a transportation system that meets the needs of Deschutes County residents while also considering regional and state needs at the same time. This plan addresses a balanced transportation system that includes automobile, bicycle, rail, transit, air, pedestrian and pipelines. It reflects existing land use plans, policies and regulations that affect the transportation system.**

FINDING: Access to the subject properties is via an existing cinder surfaced road approximately 1.75 miles in length crossing Bureau of Land Management land and intersecting Cline Falls Road west of the subject property. If approved, rezoning the property to MUA-10 would permit the potential establishment of one (1) additional single dwelling. The potential new dwelling would generate approximately 10 trips per day and that Cline Falls Road is capable of serving potential future residential development of the subject parcel.

C. Chapter 23.68, Public Facilities

a. Section 23.68.020, Policies

- 1. Public facilities and services shall be provided at levels and in areas appropriate for such uses based upon the carrying capacity of the land, air and water, as well as the important distinction that must be made between urban and rural services. In this way public services may guide development while remaining in concert with the public's needs.**
- 2. Future development shall depend on the availability of adequate local services in close proximity to the**

proposed site. Higher densities may permit the construction of more adequate services than might otherwise be true. Cluster and planned development shall be encouraged.

3. New development shall not be located so as to overload existing or planned facilities, and developers or purchasers should be made aware of potentially inadequate power facilities in rural areas.

FINDING: By evidence of existing residential development on the adjacent properties, staff believes public facilities and services are currently provided in the nearby area. In addition, the subject property is located in the Bend Rural Fire Protection District and police services are provided by the Deschutes County Sheriff's Office. The property can be served by an existing or new drilled well and on-site septic disposal system. Existing access is via an existing road extending to Cline Falls Road, which has the capacity to handle the low volume of traffic that would occur if the property were developed with residential uses as contemplated by the applicant.

D. Chapter 23.96, Open Space, Areas of Special Concern, and Environmental Quality

a. Section 23.96.030, Policies

10. As part of subdivision or other development review, the County shall consider the impact of the proposal on the air, water, scenic and natural resources of the County. Specific criteria for such review should be developed. Compatibility of the development with those resources shall be required as deemed appropriate at the time given the importance of those resources to the County while considering the public need for the proposed development.

FINDING: Staff believes this policy is not applicable as the applicant is not seeking subdivision or development review at this time. However, the subject property is within the Landscape Management Combining (LM) zone of the Deschutes River. Any new structure requiring a building permit would be subject to LM review.

CONCLUSION: Based on the above, staff believes the proposed plan amendment is consistent with the applicable plan policies.

B. ZONE CHANGE

TITLE 18, DESCHUTES COUNTY ZONING ORDINANCE

1. Chapter 18.32, Multiple Use Agricultural Zone (MUA-10)

The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of

the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.

FINDING: Upon approval of this zone change request, the subject property will be subject to all the criterion of the Multiple Use Agricultural (MUA-10) zone. The change in classification for the property from EFU to MUA-10 zone is consistent with the purpose and intent of the MUA-10 zone classification. The findings of this application have sufficiently shown that the subject property should receive a goal exception allowing the MUA-10 zoning. Staff believes approval of the goal exception recognizes the property is consistent with the purpose and intent of the MUA-10 zone classification.

2. Chapter 18.136, Amendments

Section 18.136.020, Rezoning standards.

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

- A. That the change conforms with the Comprehensive Plan, and the change is consistent with the Plan's introductory statement and goals.

FINDING: If the Hearings Officer finds that the applicant has significantly shown that; (1) the subject property does not contain soils that are classified as agricultural or forest lands; (2) the small area of 1.1-acres of Class VI soil could not produce enough forage to sustain an agriculture operation; and (3) the subject property would not be desirable for use by an adjacent land owner for grazing purposes. then staff believes the proposed zone change would be consistent with the comprehensive plan to be eligible for a zone change from Agricultural (EFU) to Rural Residential Exception Area (MUA-10).

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

FINDING: The applicant is proposing a zone change from Exclusive Farm Use (EFU-SC) to Multiple Use Agricultural (MUA-10). The purpose of the MUA-10 zone is stated above and staff believes that this request is in accordance with the purpose of the MUA-10 zone.

- C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:

1. The availability and efficiency of providing necessary public services and facilities.

FINDING: In response to this criterion, the burden of proof states:

"The change from EFU to MUA-10 will not require the extension of new public services to the subject property. The site is already served by a private well and septic system. If another dwelling were to be sited, similar facilities would be installed on-site to serve the dwelling, and no public water or sewer would be necessary. Similarly, the electrical and phone services already provided the existing dwelling could be efficiently extended within the property to serve any new dwelling or other use."

Staff agrees with the applicant that the zone designation on the subject property from EFU to MUA-10 will not impact the availability and efficiency of providing necessary public services and facilities.

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

FINDING: Rezoning the property will not adversely impact surrounding properties because residential use is consistent with nearby designated rural residential exception land. As previously discussed, residential use is also consistent with the proposed MUA-10 zoning of the property and consistent with the Comprehensive Plan if the Hearings Officer determines that a goal exception has been complied with, therefore, allowing rural residential exception area uses on the property.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDING: The applicant asserts and staff agrees that circumstances have changed since the zoning of the property. When the property was first given an agricultural zoning designation, it was simply consistent with thousands of surrounding acres, without any detailed consideration given to its specific soil and topographical characteristics. Now that a detailed soils and topographical information has been collected by the applicant/owners, it has become apparent that the property does not qualify as agricultural farmland. The subject property was designated as a remainder of the parent parcel to Christie Acres subdivision and separated by the Deschutes River canyon and adjacent to BLM lands. The County applied an EFU designation to all federal lands in agricultural areas, regardless of use. Since the subject property was directly adjacent to the federal lands and not contiguous with other residential developed properties that EFU designation was also applied. The applicant notes that irrigation water rights were transferred with the Christie Acres subdivision lots, however, the subject property west of the Deschutes River did not have any water rights assigned. The EFU zoning designation for the subject property was not carefully examined until a conditional use (CU91-06) for a non-farm dwelling was approved. The applicant has provided a detailed soils analysis report that clearly establishes that the predominant area for the subject property is not agricultural land. Staff believes that the subject property should be rezoned to MUA-10, therefore, consistent with the remainder of the Christie Acres subdivision.

IV. **CONCLUSION AND RECOMMENDATION:**

Based upon the findings noted above, the Statewide Planning Goals, County Comprehensive Plan and Zoning Ordinance criteria have been fully complied with, therefore, Staff recommends the proposed Plan Amendment from Agriculture to Rural Residential Exception Area, and zone change from Exclusive Farm Use (EFU-SC) to Multiple Use Agricultural (MUA-10) be approved.

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