CITY COUNCIL **Agenda**

520 E. Cascade Avenue - PO Box 39 - Sisters, Or 97759 | ph.: (541) 549-6022 | www.ci.sisters.or.us

Wednesday, August 14, 2024

This City Council meeting is accessible to the public in person in the Council Chambers at 520 E. Cascade Avenue, Sisters, OR 97759

This meeting is open to the public and can be accessed and attended in person or remotely. Members of the public may view the meeting via Zoom at the link below:

https://us02web.zoom.us/j/82865923064

Visitor Communication: To offer written comments, send an email to recorder@ci.sisters.or.us no later than 3:00 p.m. on the day of the meeting. If attending the meeting via Zoom and wish to speak, submit your name, address, phone number, and the topic you intend to address to recorder@ci.sisters.or.us by 3:00 p.m. on the meeting day. For those attending the meeting in person, you may complete a request to speak form on-site.

5:00 PM WORKSHOP

1. Wildfire Resiliency Update
2. Urban Growth Boundary Amendment Update
3. Other Business

6:30 PM CITY COUNCIL REGULAR MEETING

1. **CALL TO ORDER/PLEDGE OF ALLEGIANCE**

2. **ROLL CALL**

3. **APPROVAL OF AGENDA**

4. **VISITOR COMMUNICATION**

5. **CONSENT AGENDA**
   A. Minutes
      1. July 10, 2024 – Workshop
      2. July 10, 2024 – Regular Meeting
      3. July 24, 2024 – Special Meeting

   B. Approve an Intergovernmental Agreement with the State of Oregon for the Design and Construction of the Cascade Avenue Electric Vehicle Charging Project and Authorize the City Manager to Execute the Agreement.

This agenda is also available via the Internet at **www.ci.sisters.or.us**

6. **COUNCIL BUSINESS**
   A. Discussion and Consideration of a Motion to Award Community Grant Funds for FY 2024/25.

   B. Continuation of Hearing and Consideration of Ordinance 538: AN ORDINANCE OF CITY OF SISTERS AMENDING SISTERS DEVELOPMENT CODE CHAPTER 2.12, SUN RANCH TOURIST COMMERCIAL DISTRICT, THAT EXPANDS AND CLARIFIES THE TYPES OF ALLOWED USES AND APPLICABLE DEVELOPMENT STANDARDS.

7. **OTHER BUSINESS**
   A. Staff Comments

8. **MAYOR/COUNCILOR BUSINESS**

9. **ADJOURN**

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered at the above-referenced meeting; however, the agenda does not limit the ability of the Council to consider or discuss additional subjects. This meeting is subject to cancellation without notice.

This meeting is open to the public, and interested citizens are invited to attend. This is an open meeting under Oregon Revised Statutes, not a community forum; audience participation is at the discretion of the Council. The meeting may be recorded. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made to the City Recorder at least forty-eighty (48) hours in advance of the meeting.

Executive Sessions are not open to the public; however, members of the press are invited to attend.

CITY COUNCIL

Staff Report

Meeting Date: August 14, 2024 **Staff:** Martin
Type: Work Session **Dept:** Community Development
Subject: Wildfire Resiliency Update – Implementation Senate Bills 762 and 80 and Other Local Opportunities

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Action Requested: Workshop to discuss ongoing wildfire resiliency efforts including updates on implementation of Senate Bills 762 and 80 and local opportunities.

Summary Points:

For the 2024-25 fiscal year, the City Council (Council) adopted several goals to accomplish in the coming year. One of those goals is to "Update defensible space and structural hardening requirements through the Development Code." The Council identified this as a priority to address the risks and mitigate the impacts of wildfire in the city limits of Sisters. This has been an ongoing effort that is commensurate with and in addition to the statewide efforts to improve wildfire preparedness in Oregon as prescribed by the Oregon State Legislature with the adoption of Senate Bill (SB) 762 in 2021 and as updated by SB 80 in 2023.

Staff conducted workshops with the City Council on November 29, 2023[1] and the Planning Commission on January 4, 2024[2] to provide an introduction and overview of defensible space and building hardening as wildfire mitigation measures and receive direction on next steps. Since these workshops, more information has been made available regarding the opportunities and limitations for adopting local standards in conjunction with statewide requirements under SB 762 and 80 and updated timelines. The purpose of this workshop is to provide an update on the implementation of SB 762 and 80 and additional local options regarding:

- Draft Statewide Wildfire Hazard Map
- Building Hardening (ORSC – Oregon Residential Specialty Code - Section R327)
- Defensible Space

[1] 11/29/23 City Council Workshop: https://www.ci.sisters.or.us/bc-citycouncil/page/city-council-workshop-regular-meeting-0
[2] 1/4/24 Planning Commission Workshop: https://www.ci.sisters.or.us/bc-pc/page/planning-commission-72

DRAFT STATEWIDE WILDFIRE HAZARD MAP

Under SB 762 and 80, Oregon Department of Forestry (ODF) and Oregon State University were tasked with developing a statewide wildfire hazard map that identifies the hazard level based on weather, climate, topography and vegetation. As stated by ODF, the wildfire hazard map's purposes are to:

- Educate Oregon residents and property owners about the level of hazard where they live.
- Assist in prioritizing fire adaptation and mitigation resources for the most vulnerable locations.
- Identify where defensible space standards and home hardening codes will apply.

The initial statewide wildfire risk map was made available on June 30, 2022. However, based on input from citizens and interest groups throughout the state that cited significant concern, the ODF withdrew the initial map to provide more time for additional public outreach and refinement of hazard classification methodologies.

On July 18, 2024, new draft statewide wildfire hazard and wildland-urban interface (WUI) maps were released. The maps can be viewed online on the Oregon Explorer[3]. Primary changes from the original maps include:

- The new maps categorize properties according to three hazard classes – low, moderate or high – rather than the five risk classes originally.
- Adjusted the way hazard is calculated in hay and pasturelands, which often won't burn because they're either irrigated or grazed.
- Hazard calculations on irrigated croplands were modified to account for irrigation reducing the likelihood and intensity of wildfires in these areas.

As shown in Figure 1, the City of Sisters is mapped with low (green), moderate (purple), and high (orange) hazard classifications. In addition, nearly the entire city limits is mapped within the WUI, shown with a darker shaded outline of the color of the corresponding hazard classification. The mapping shows classifications that vary from areas of the community and in some instances differ from lot to lot.

[3] Draft Statewide Wildfire Hazard Map: https://oregon-explorer.apps.geocortex.com/webviewer/?app=665fe61be984472da6906d7ebc9a190d

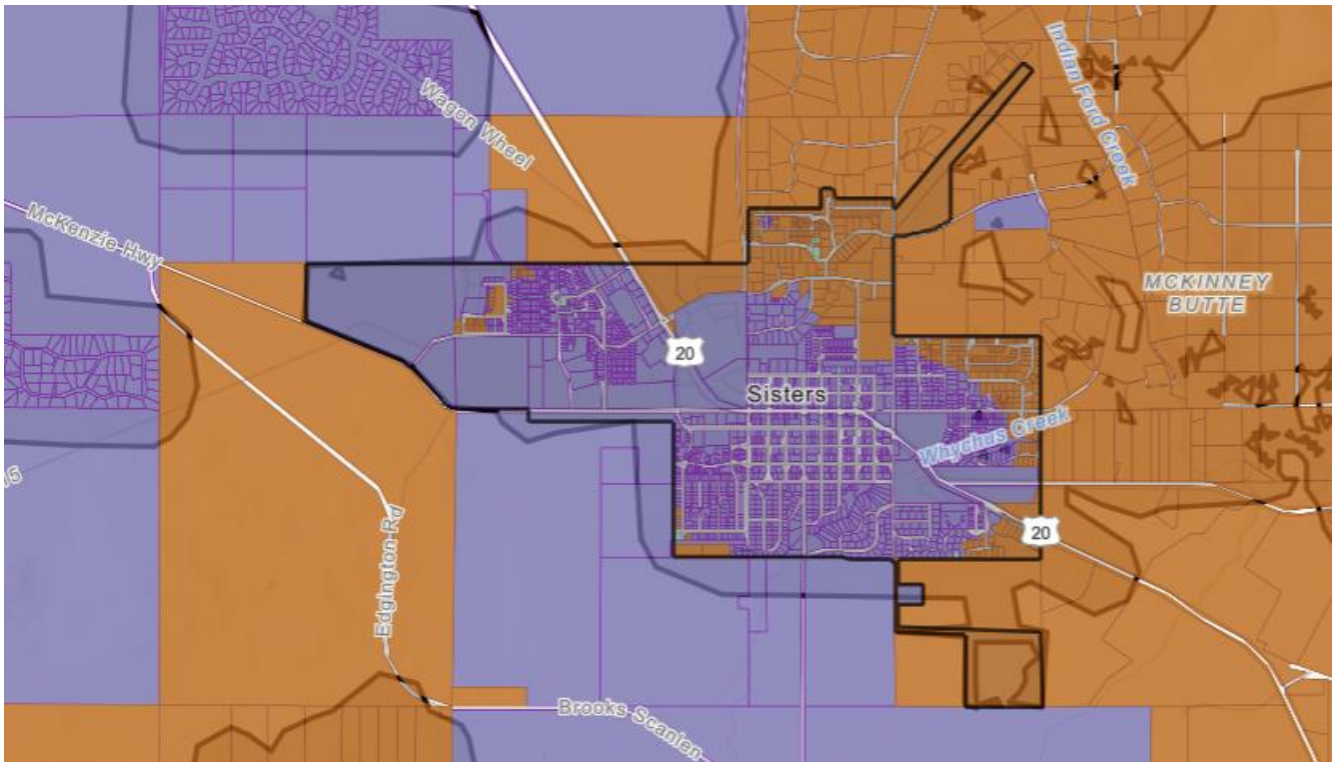


Figure 1. Draft Statewide Wildfire Hazard Map of Sisters (Source: Oregon Explorer)

ODF will be accepting public comment on the draft map through Aug. 18. When the comment period is complete, ODF and OSU will evaluate all public comments to see whether changes to the maps are warranted. Adoption of the map is scheduled for October 1, 2024. Staff seeks Council direction on whether the city should participate and comment during this period.

Kevin Moriarty, Deschutes County Forester, will be joining the workshop to provide additional details on the mapping process and answer questions.

BUILDING HARDENING

Structural hardening (aka – building hardening, fire hardening) are steps that can be taken to make a building more resistant to damage from a wildfire. This includes using materials for siding and/or roofing that resist ignition during a wildfire, installing fire resistant windows to protect openings, or using attic ventilation devices that help reduce ember intrusion.

Under SB 762 and 80, the State Building Codes Division (BCD) is responsible for adopting fire hardening building code standards under Oregon Residential Specialty Code (ORSC) Section R327[4] for new residential development and significant home updates in high wildfire hazard areas in the WUI. The updated R327 code would require dwellings and their accessory structures in the city limits of Sisters to incorporate certain types of materials and requirements for roofing, ventilation, exterior wall coverings, overhanging projections, decking surfaces, and glazing in windows/skylights and doors. The code also

[4] ORSPC R327: https://www.oregon.gov/bcd/codes-stand/pages/wildfire-hazard-mitigation.aspx

outlines a process for local implementation of these building code standards independent of state adoption of the wildfire hazard map and/or applicability to high hazard zones identified on said map.

The Council previously directed staff to pursue the option of local adoption of ORSC Section R327 and have it applicable to the entirety of the city because, at that time, there was no timeline for adoption of the statewide wildfire hazard map and the outcome of the mapping was unknown. As previously noted, the adoption of the map is scheduled for October 1, 2024. Further, it is now understood that once the statewide wildfire hazard map is implemented, it will supersede any map adopted with local adoption of ORSC Section R327. This means any areas of the city not mapped high hazard and WUI on the statewide wildfire hazard map would no longer be subject to Section R327. This differs from the defensible space standards discussed below.

If local adoption of ORSC Section R327 is pursued, such an amendment would be made to the municipal code instead of the development code as is consistent with local building code standards prohibiting treated and untreated wood shingles and shake roofs under Sisters Municipal Code (SMC) 8.35. It is important to consider the timeline for processing an amendment to municipal code. A public hearing before the City Council is required including a notice period not less than seven (7) days before the hearing and 30 days effective date after adoption by the council or on a later day as the ordinance prescribes unless adopted to meet an emergency. Given that the statewide wildfire hazard map is scheduled for adoption on October 1, ,2024, staff is uncertain of the value and effect of completing the local adoption process. The standards would only apply to the limited number of building permits submitted between the effective date of the local ordinance and implementation of the hazard map which raises concern with equity and impacts on customer service. Staff seeks direction on whether the city should pursue local adoption of ORSC Section R327.

Krista Applebee, Deschutes County Assistant Building Official, will be joining the workshop to provide additional details on the building code standards, implementation process, and answer questions.

DEFENSIBLE SPACE

Defensible space is the buffer created between buildings and the vegetated landscape that surrounds them that reduces the likelihood of embers or flames igniting the structure. Examples of managing this defensible space include limbing and spacing trees, use of fire-resistant plants, removing vegetative byproducts such as needles and leaves, and keeping other combustibles separated from the buildings.

Under SB 762 and 80, the Oregon State Fire Marshal (OSFM) is responsible for developing a defensible space code applied to properties in the high hazard class within the WUI. Draft rules have been developed but not yet adopted. The defensible space rules will be adopted following the launch of the hazard map.

Unlike the limitations on the application of ORSC Section R327 previously discussed, the City has the option of adopting the OSFM defensible space standard for the entire city and applying additional standards. The Council previously directed staff to evaluate the draft OSFM defensible space standards and those of other communities to identify strategies and techniques of defensible space best practices

to determine those appropriate for the City of Sisters given the unique location, setting, and needs of the community. This project is tentatively scheduled to be initiated with the Planning Commission in Fall 2024 and completed Winter 2025.

Financial Impact: None at this time.

Attachments: None.

CITY COUNCIL

Staff Report

Meeting Date: August 14, 2024 **Staff:** Woodford
Type: Workshop **Dept:** CDD
Subject: Urban Growth Boundary (UGB) Amendment Update

Action Requested: No action requested at this time. This workshop is intended to provide City Council with an update on the UGB Amendment process to date.

Background: This workshop will focus on the following:

- Overview of the project status and timeline
- The Draft Land Needs Report and Study Area Map
- Update on public engagement efforts

Staff and consultants will provide Council a presentation then leave adequate time for questions and comments. No formal decisions will be made at the workshop.

The UGB Steering Committee has met twice to review information– first on the Land Needs Report on June 27, 2024, and second on the Study Area Map on July 25, 2024 and the Planning Commission reviewed the information on August 1, 2024.

Attachments:

1. ATTACHMENT 1: Presentation Slides
2. ATTACHMENT 2: Draft Land Needs Report
3. ATTACHMENT 3: Draft Study Area Map

Sisters Urban Growth Boundary Amendment

How should our community grow?

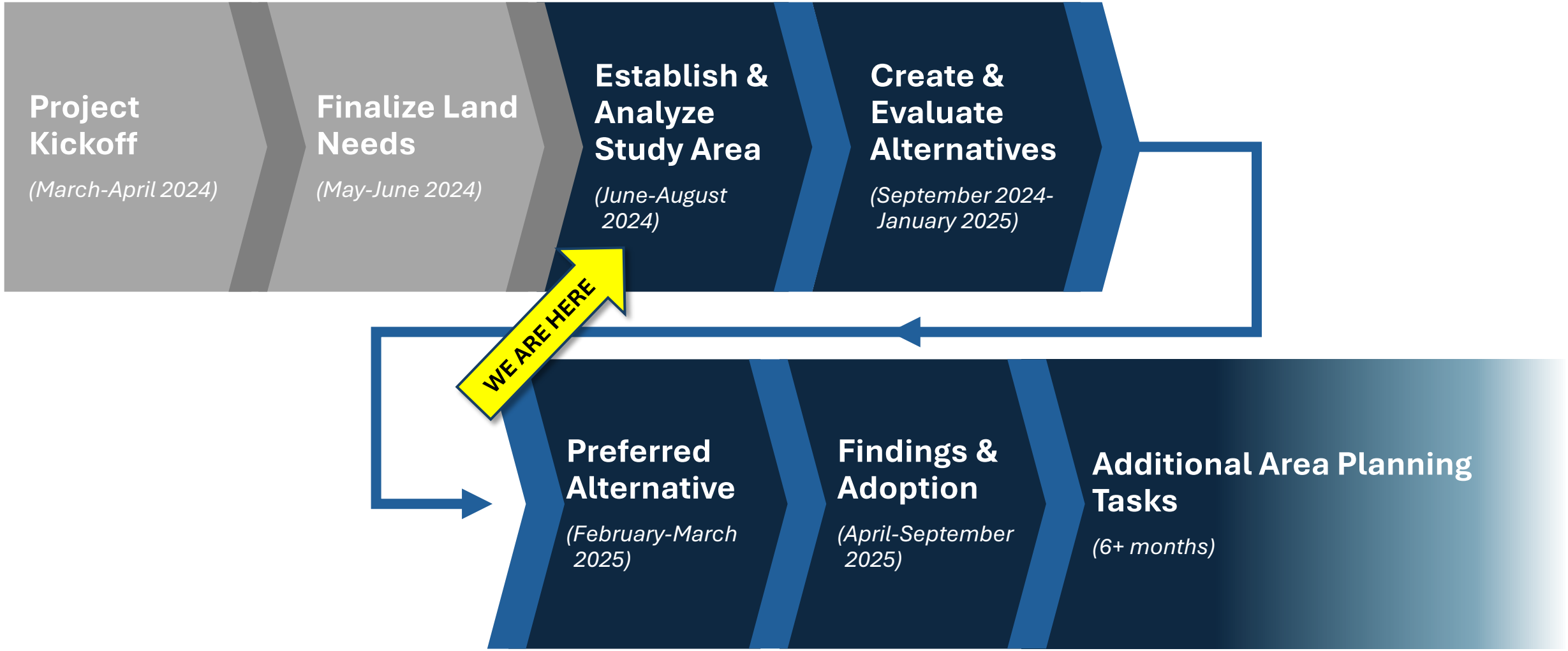
City Council Meeting
August 14, 2024

UGB Process

Steps in the Process

1. **Identify Land Need**
2. **Establish and Analyze the Study Area**
3. Create and Evaluate Alternatives
4. Create a Preferred Alternative
5. Adopt the New UGB
6. Additional Planning for New Growth Areas
7. Annexation and Development

Project Timeline



Population Forecast

Table 4. Population forecast for smaller sub-areas and their shares of county population.

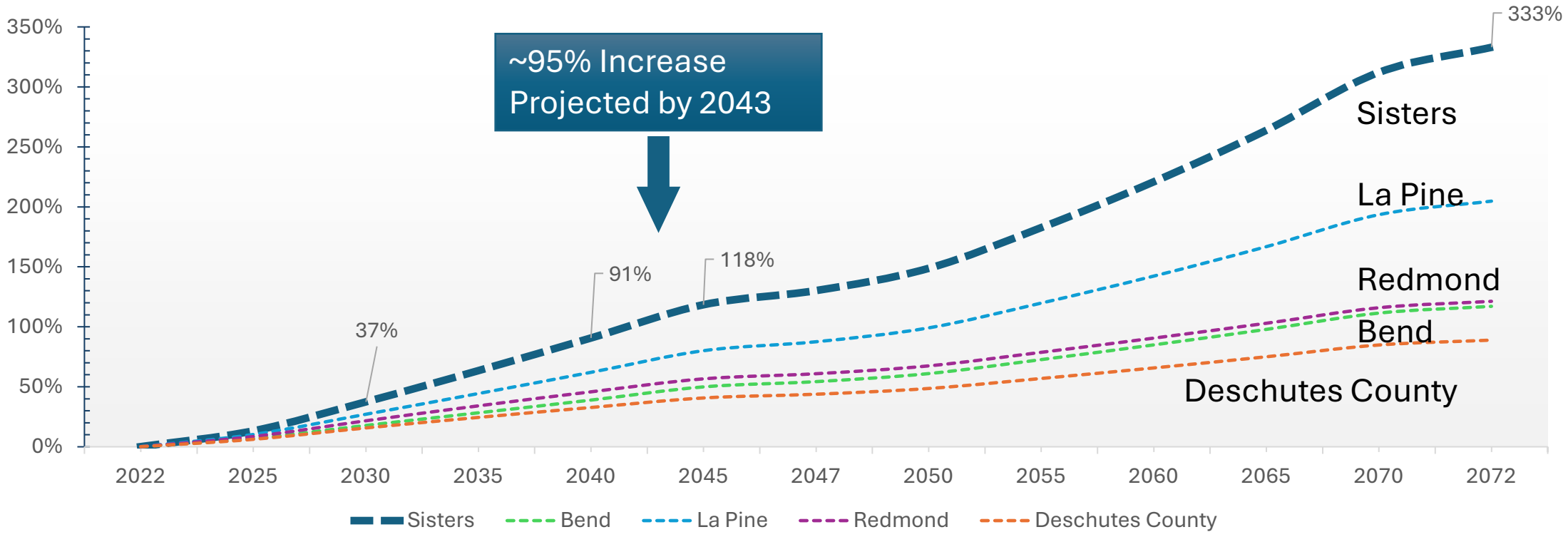
	Population			Share of County Population		
	2022	2047	2072	2022	2047	2072
Deschutes County	207,921	298,937	392,790			
Smaller Sub-Areas						
La Pine	2,736	5,129	8,336	1.3%	1.7%	2.1%
Sisters	3,437	7,911	14,881	1.7%	2.6%	3.8%
Outside UGBs	60,430	65,476	61,352	29.1%	21.9%	15.6%

Note: Smaller sub-areas refer to those with populations under 8,000 in 2020.
Sources: Forecast by Population Research Center (PRC)

ATTACHMENT 1

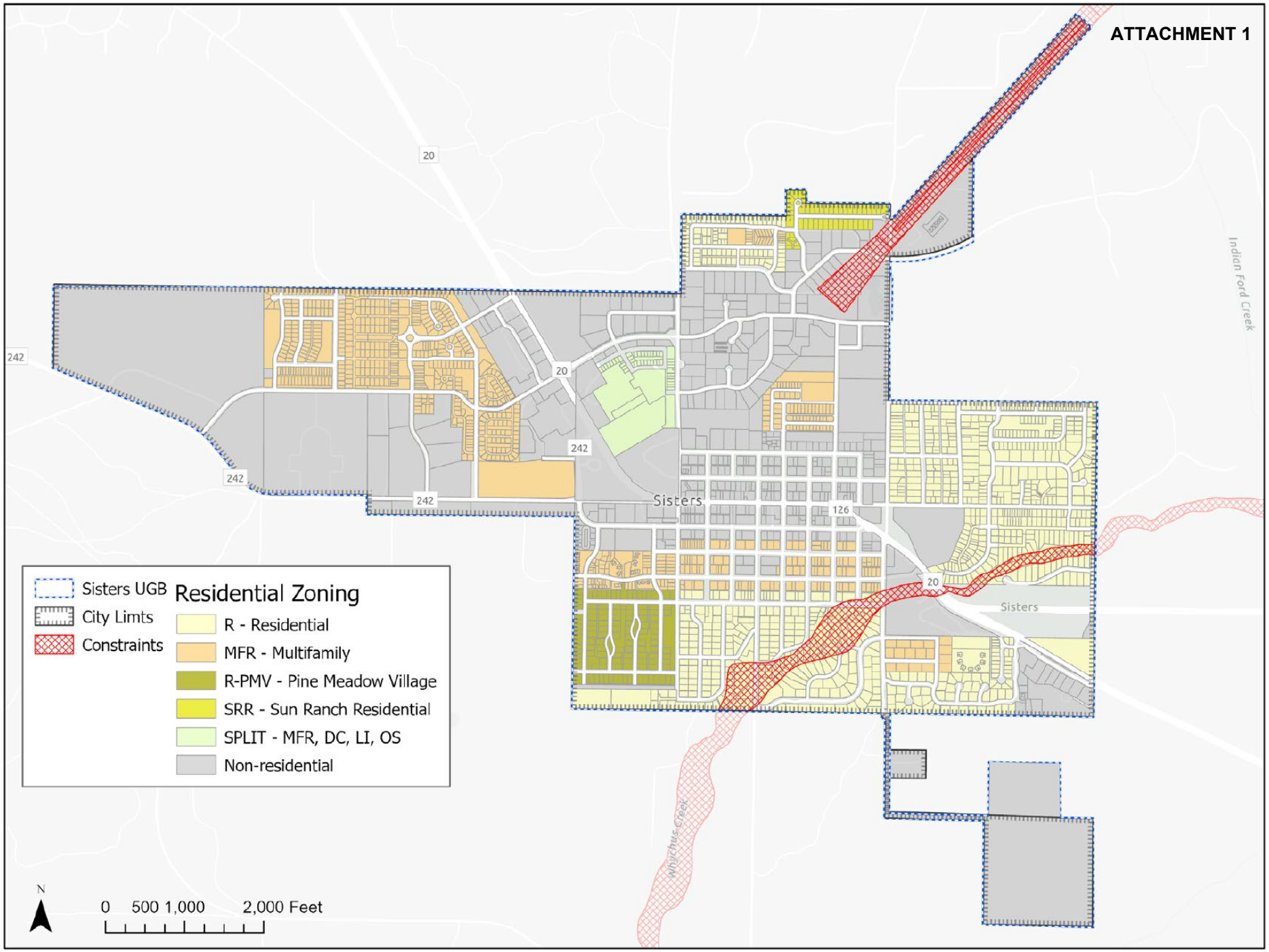
Step 1: Land Need

Projected Population Increase, Deschutes County Communities
(Percentage increase from 2022 estimated population)

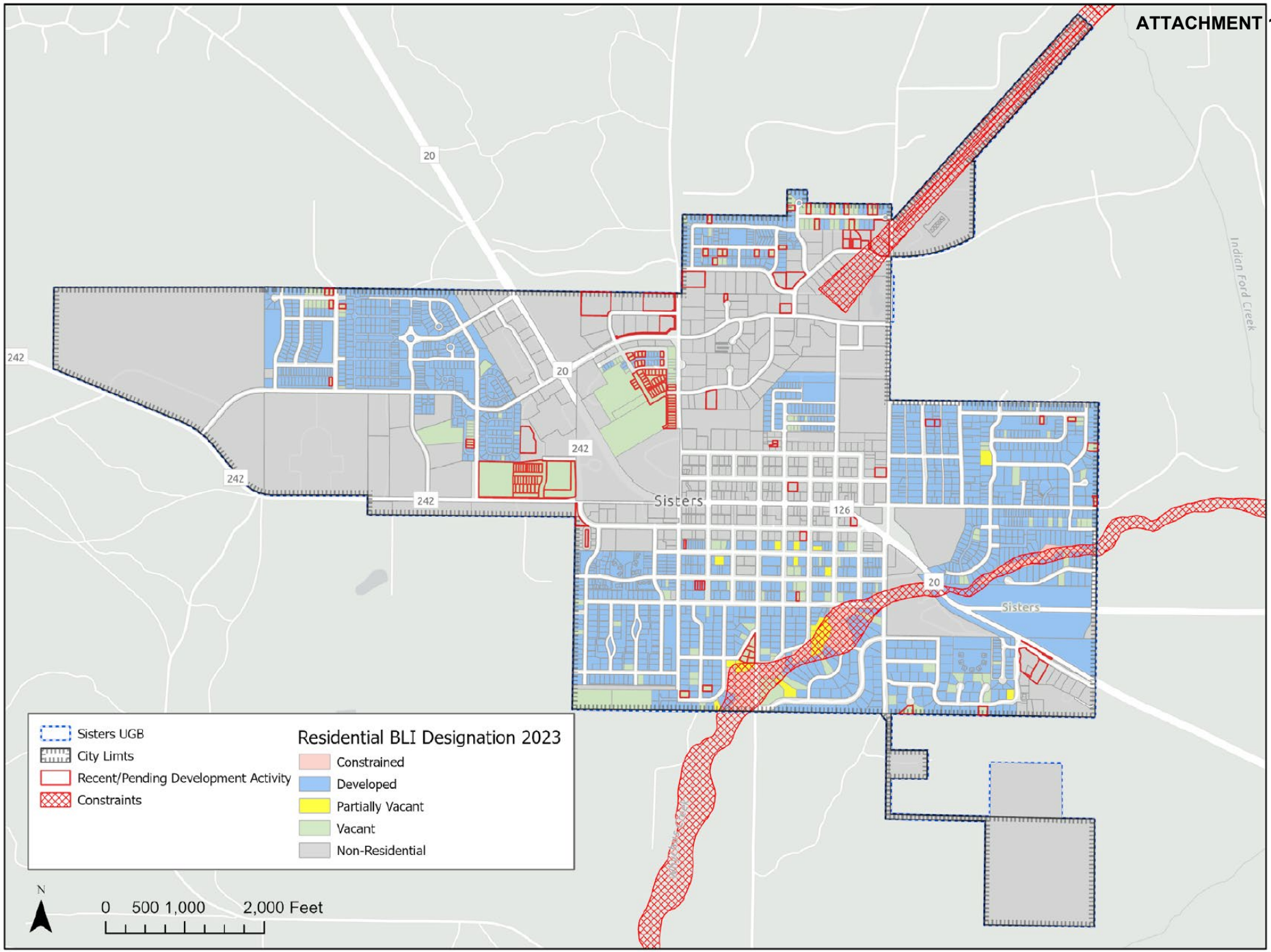


Source: Portland State University Population Research Center

Residential Land Supply



Residential Land Supply

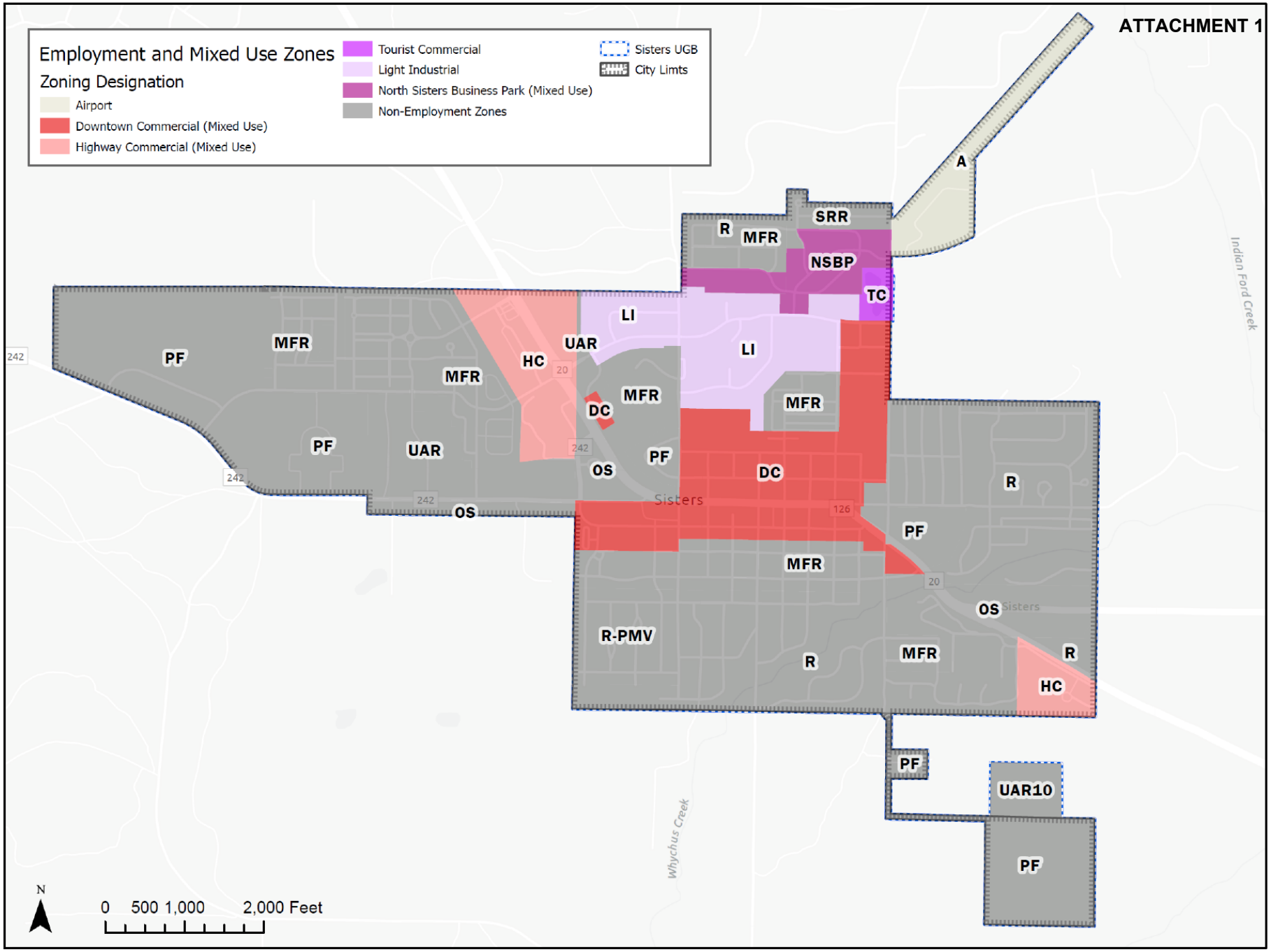


ATTACHMENT 1

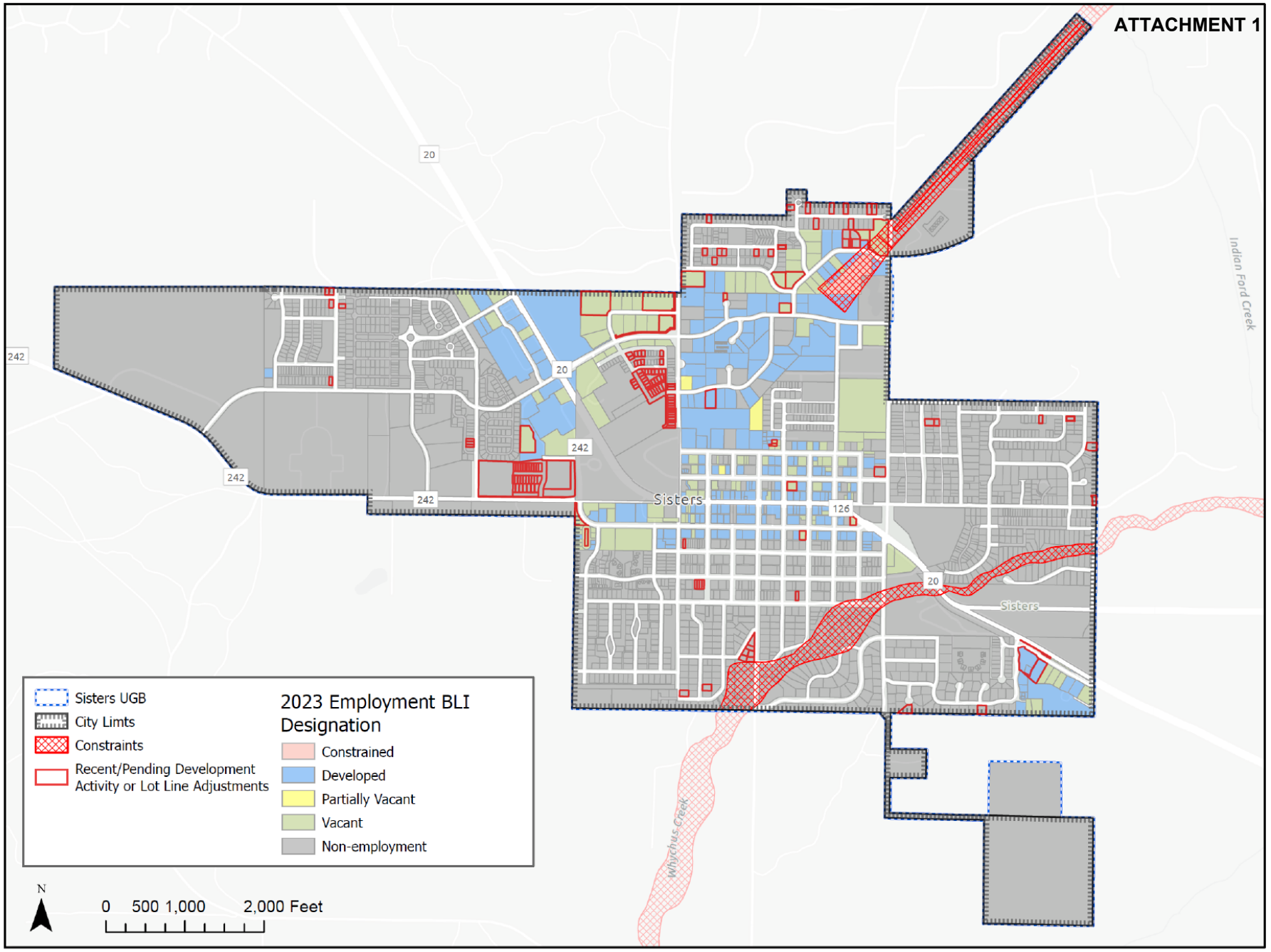
(Draft) **Residential Land Capacity**

Zoning Designation	Net Vacant Acres	Projected Density (for unplatted lots)	Projected Housing Capacity* (includes approved and platted lots)**	Approved /Platted Capacity
Residential Districts				
R – Residential	19.0	8.5 units/acre	148	-
MFR – Multi-Family Residential	33.7	25 units/acre	637	348
SRR – Sun Ranch Residential	3.4	4 units/acre	23	-
R-PMV – Pine Meadow Village	1.0	5 units/acre	8	8
Mixed Use Districts				
DC – Downtown Commercial***	20.5***	25 units/acre***	389	-
Total	**77.6**	**--**	**1,205**	**356**

Employment Land Supply



Employment Land Supply



(Draft) **Employment Land Capacity**

Zoning Designation	Vacant or Partially Vacant Parcels	Unconstrained Acres	Net Vacant Acres
DC - Downtown Commercial	115	22.9	21.6
LI - Light Industrial	29	22.4	14.1
NSBP - North Sisters Business Park	20	14.5	11.7
HC - Highway Commercial	15	13.0	12.3
TC - Tourist Commercial	1	4.6	3.3
Total	**180**	**77.4**	**63.1**

ATTACHMENT 1

Overall Land Need vs Supply

Land Type	Demand (Net Acres)	Supply (Net Acres)	Net Acreage Need*	Gross Acreage Need**
Residential Land*	183.8	77.6	105.3-134.6	131.6-168.2
Low Density Residential	158.9	23.4	134.6	168.2
High Density Residential	24.9	54.2	-29.3	-36.6
Employment Land	106.0	63.1	42.9	53.6
Schools	-	-	15.0	15.0
Parks	-	-	19.0	19.0
Total	**289.8**	**140.7**	**182.2-211.5**	**227.7-264.4**

** The surplus of high density land should not necessarily be considered available to meet low-density residential needs. This potential mismatch between the supply of lands for these types of developments may need to be addressed further as part of a potential UGB expansion process and/or by continuing to monitor the relative supply of each type of land in the future. As a result, the net acreage need is shown as a range for purposes of this report.*

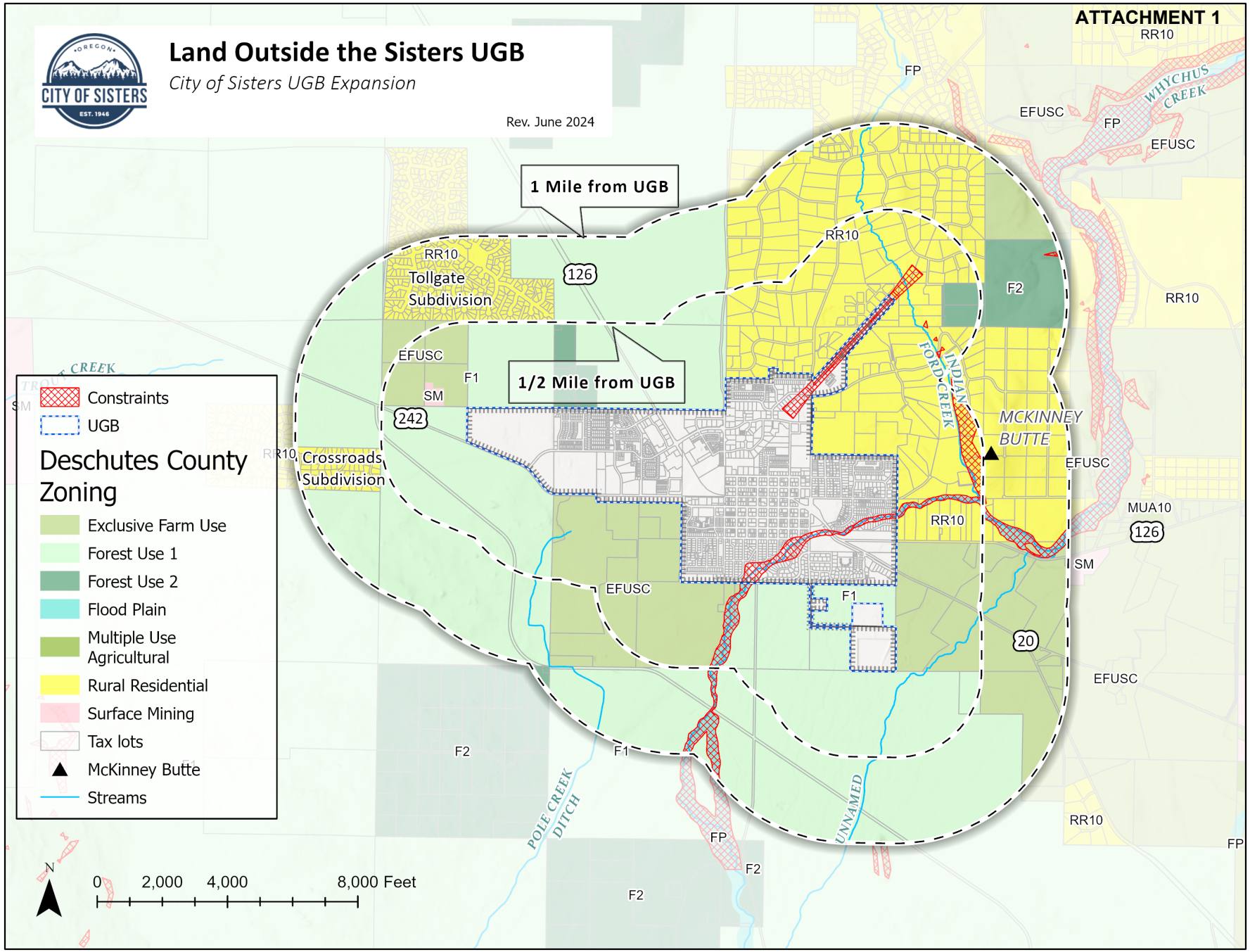
*** Gross acreage includes additional land area in order to account for needed infrastructure. This consists of new rights-of-way (20%) and stormwater/other infrastructure needs (5%).*

Creating the Study Area

State law requires the City to study:

1. All land within ½ mile
2. “Exception Land” within ½ mile and contiguous out to 1 mile
3. Potential Exclusions

Preliminary Study Area



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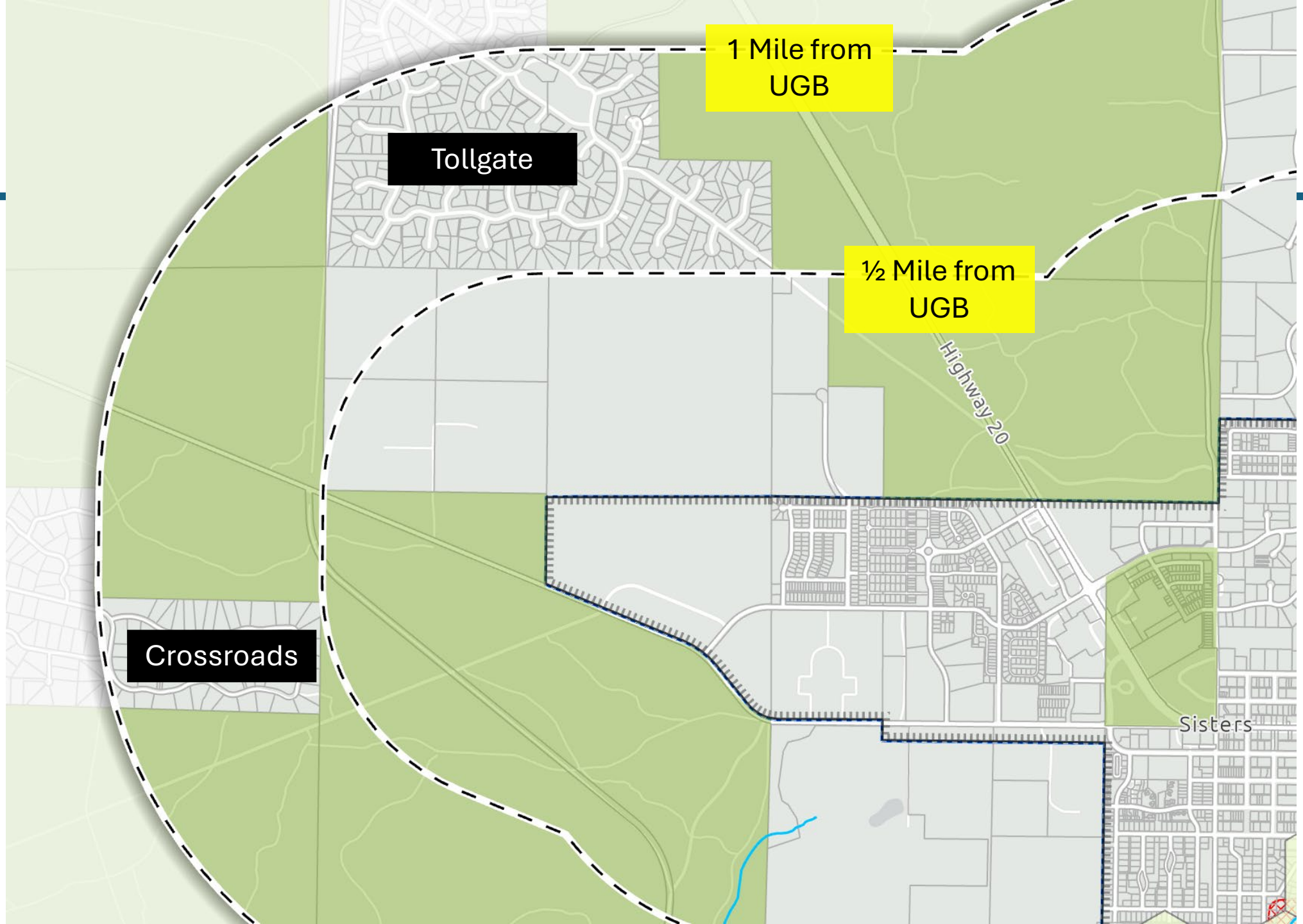

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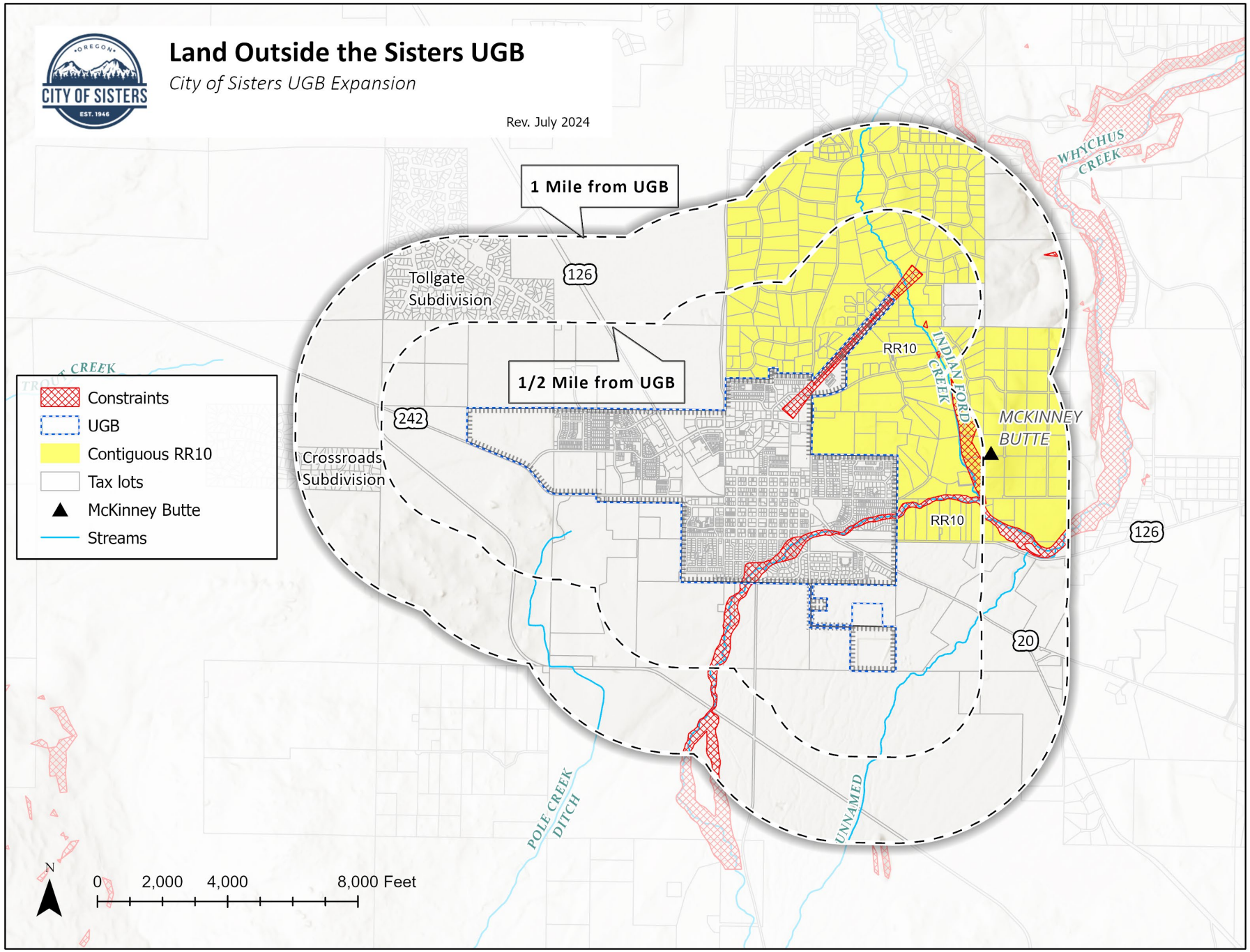

Contiguous Exception Land

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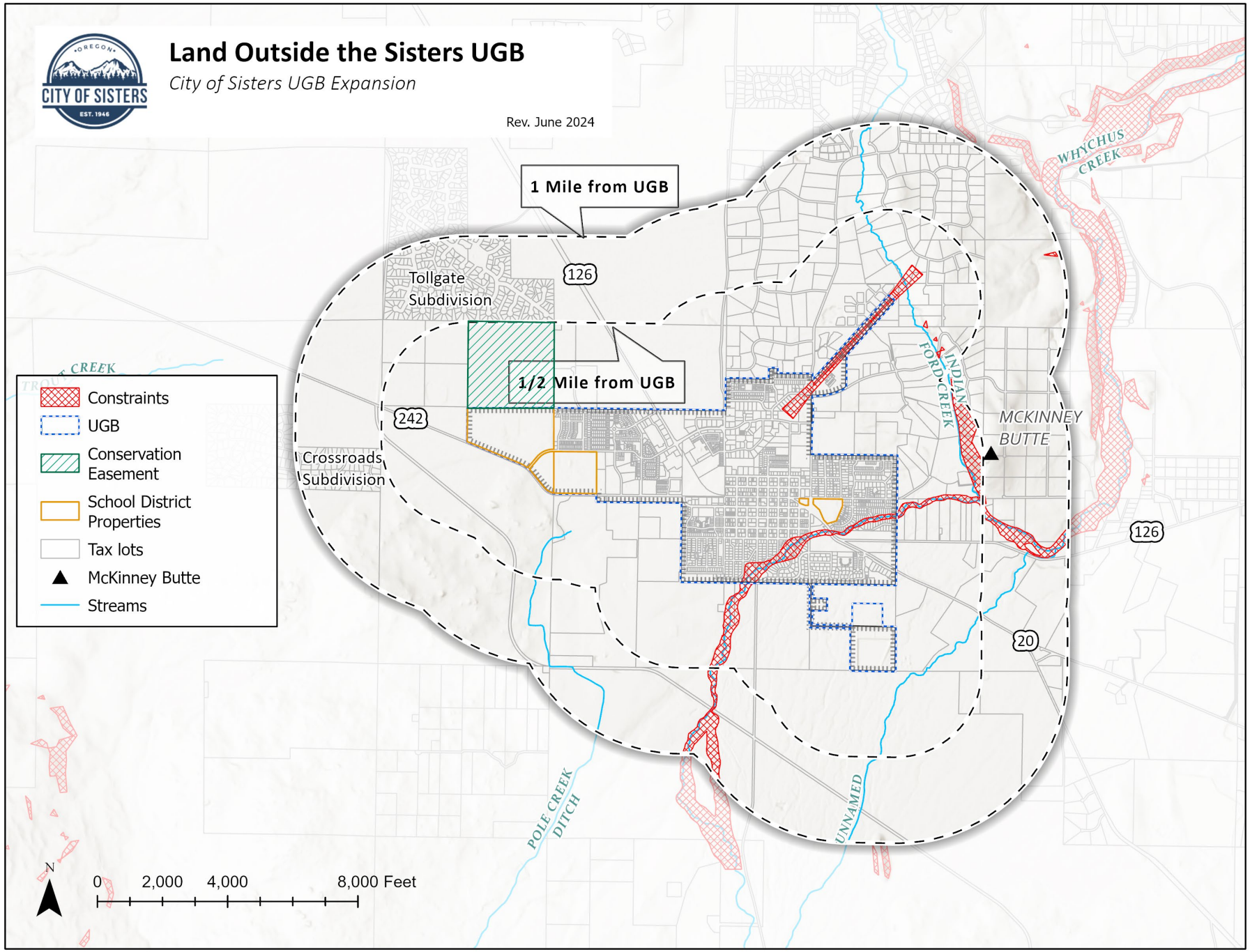

Constraints and Conservation Easements

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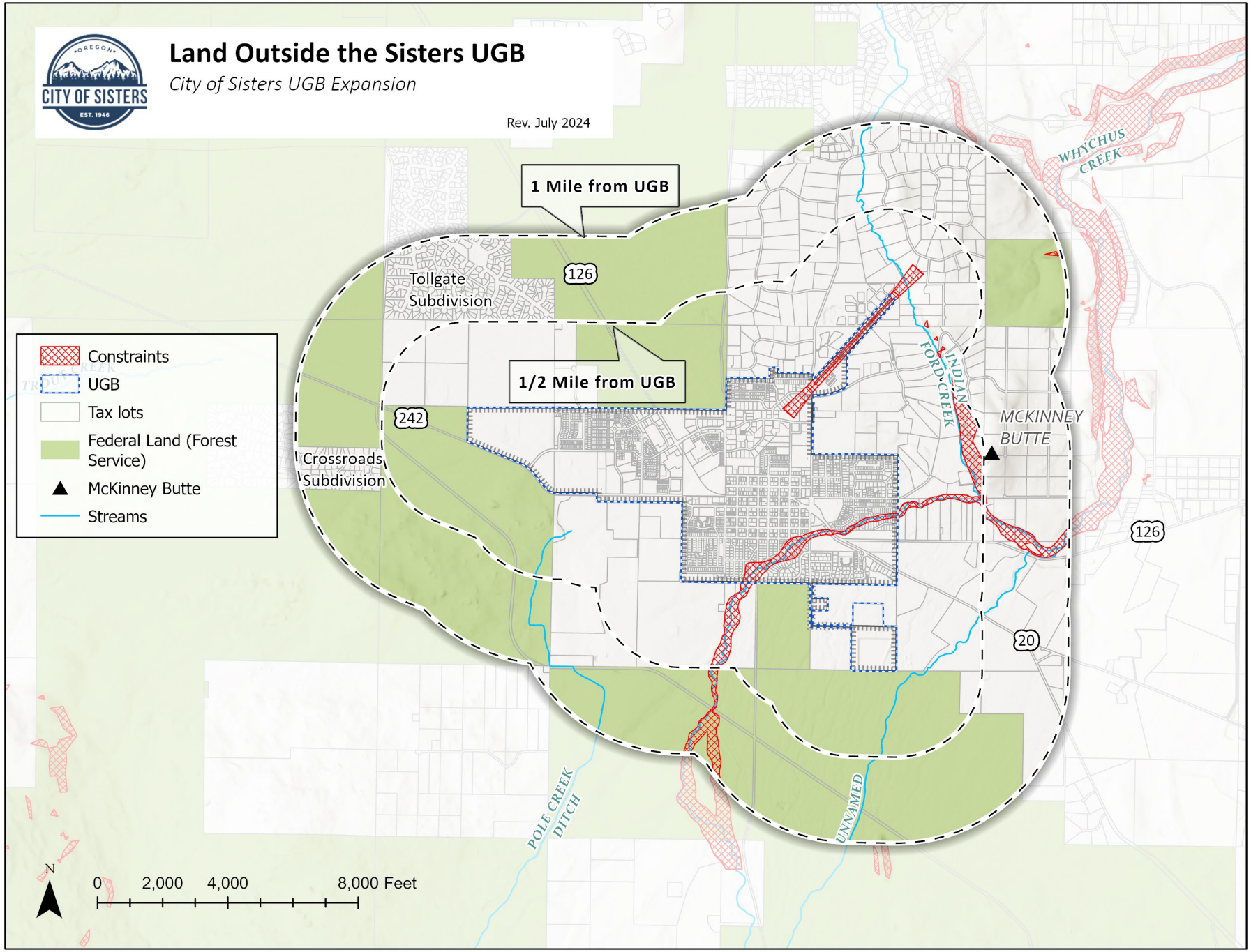

Federal Ownership

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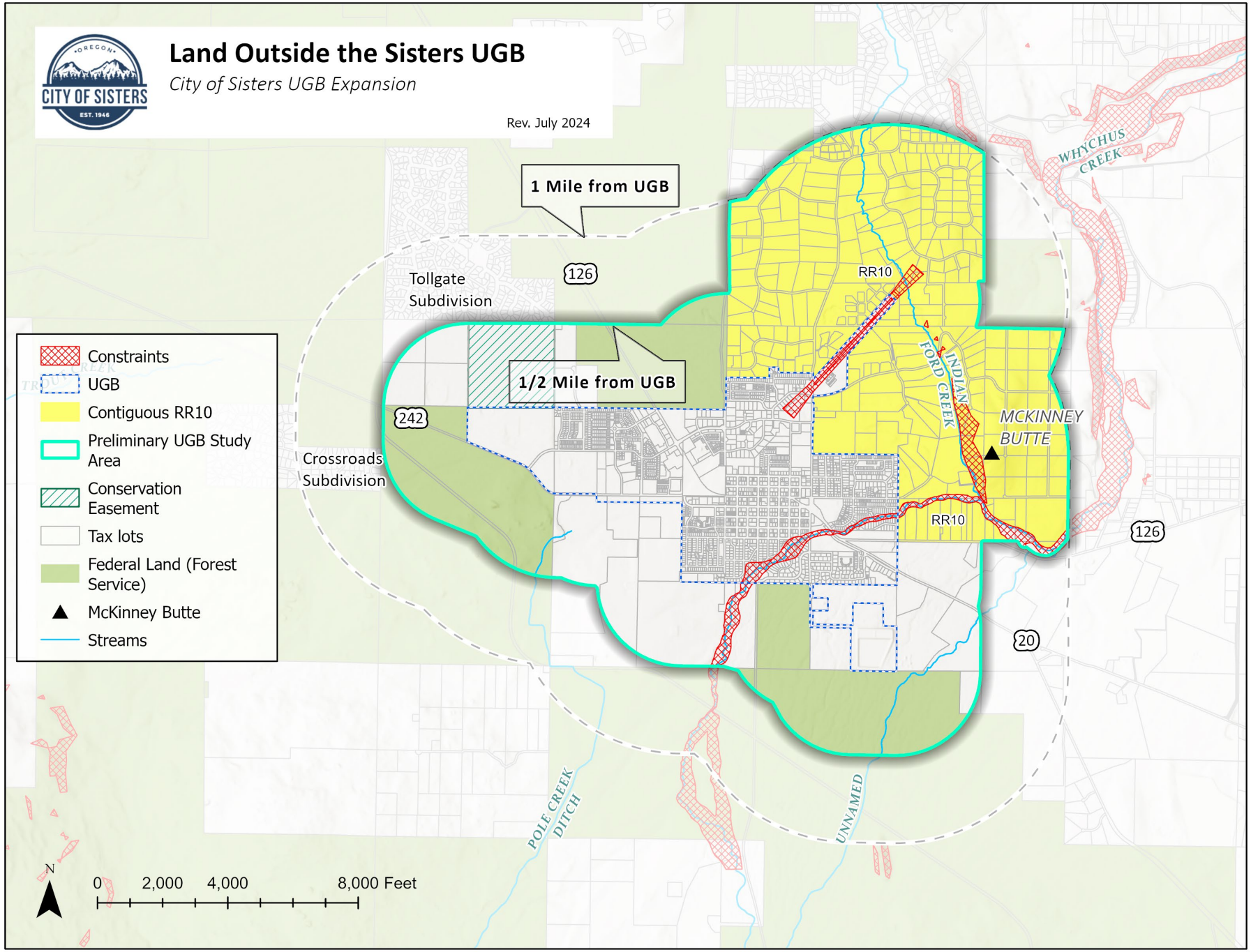

Preliminary Study Area

(No Exclusions)

Overall Size:
4,340 Acres

Exception Area Land:
1,940 Acres

Estimated Land Need:
~250 Acres

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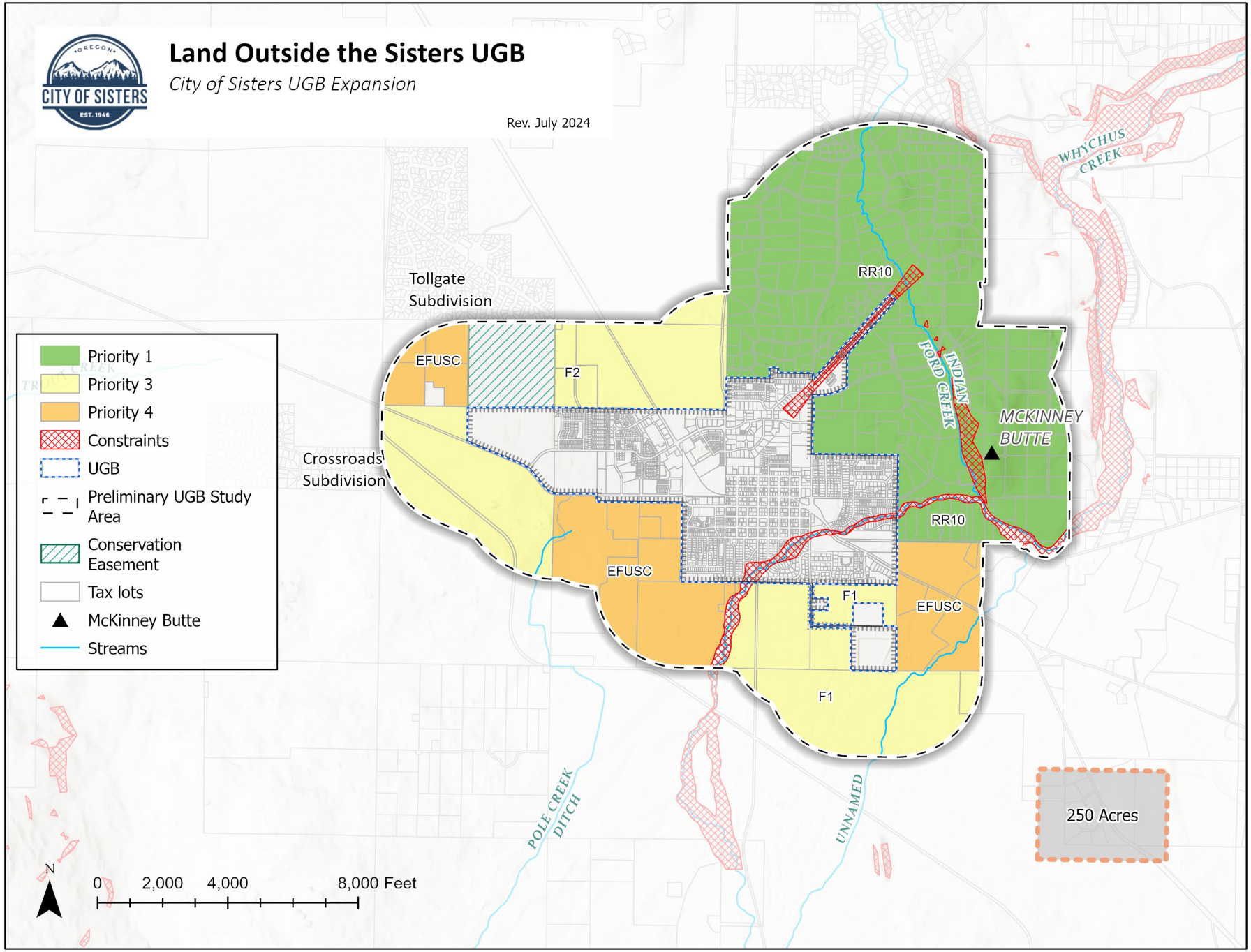


Priority of Land (Draft)

Priority 1:
Exception Land

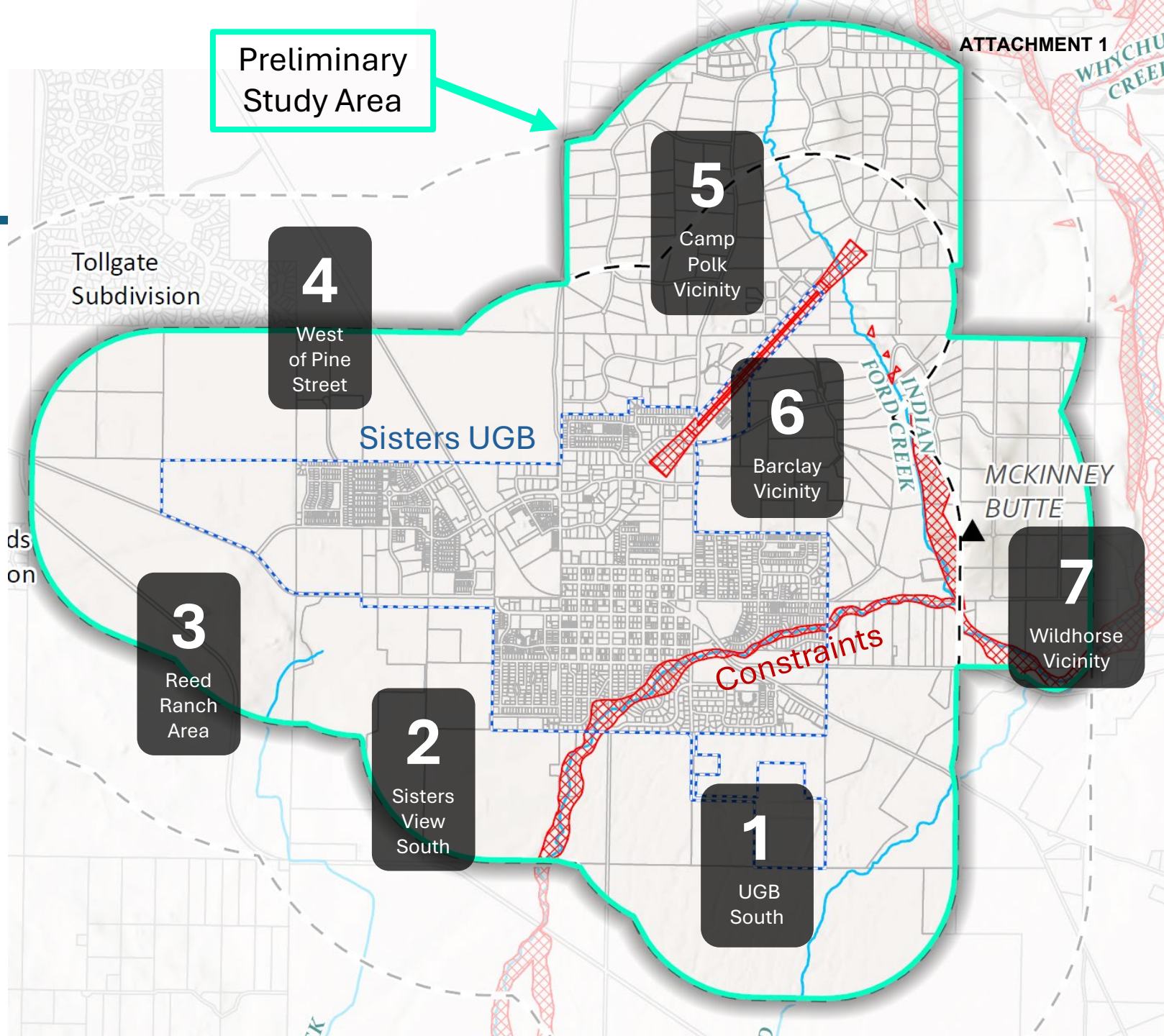
Priority 2:
Marginal Land (N/A)

Priority 3:
Resource land that is not high-quality farmland

Priority 4:
High-quality farmland

Study Area Conditions

1. UGB South
2. Sisters View South
3. Reed Ranch Area
4. West of Pine Street
5. Camp Polk Vicinity
6. Barclay Vicinity
7. Wildhorse Vicinity



memo

to City of Sisters
from Andrew Parish, Matt Hastie, and Brandon Crawford, MIG
re Draft Sisters Urban Growth Boundary Land Need Report
date 6/19/2024

Table of Contents

Appendices (to be added to later drafts):
APPENDIX A: Buildable Lands Inventory Report (Updated 2024)
APPENDIX B: Housing Needs Analysis (2021)
APPENDIX C: Economic Opportunities Analysis (2021)

Introduction

This report aggregates information that will comprise the factual base for the UGB amendment prepared by the City of Sisters through various analyses going back to 2021, including the Housing Needs Analysis (Updated 2022), Economic Opportunities Analysis (Updated 2022), and UGB Sufficiency Report (updated 2023) and Efficiency Measures Analysis (2021). The findings of these reports have been updated as needed to reflect the results of recent development activity, population and employment projections, updates to the City's policies and development code, and other changes since their original preparation.

This Draft Land Need Report will be the subject of meetings with the UGB Steering Committee, Planning Commission, and City Council.

Project Overview

Cities in Oregon are required to include and designate land within their Urban Growth Boundary (UGB) to accommodate a 20-year supply of expected growth for homes, jobs, and other urban needs. After several years of analysis and public engagement, the Sisters City Council directed city staff to pursue an Amendment to the city's Urban Growth Boundary (UGB) to expand it, given findings that there is not sufficient land within the existing boundary to accommodate projected growth within the next 20 years. According to the 2023 UGB Sufficiency Report[1] the approximate needed acreage in a UGB expansion is in the range of 200+ acres. The expansion process will involve review and consideration of approval by the Sisters City Council and the Deschutes County Board of County Commissioners followed by review by the Oregon Department of Land Conservation and Development.

This process is estimated to take roughly two years to complete. During the process, there will be ample opportunities for public comment and City staff will provide educational outreach to the Sisters community on the process.

Prior Planning Efforts

The City regularly updates adopted and City-Council acknowledged long-range planning documents to reflect changing conditions and new regulatory requirements. For the past five years Sisters has been systematically studying the impacts of growth on the City's economy, housing supply, utilities, and community. The findings from this work are found in the following documents (which can be accessed via https://www.ci.sisters.or.us/community-development/page/comprehensive-plan):

[1] 2023 UGB Sufficiency Analysis. https://www.ci.sisters.or.us/sites/default/files/fileattachments/community_development/page/2351/sisters_2023_land_sufficiency_update_-_final_with_attachments.pdf

- 2019 – Sisters Housing Needs Analysis. This analysis was based on the Coordinated Population Forecast for Deschutes County, its Urban Growth Boundaries (UGB), and Area Outside UGBs 2018-2068, prepared by Portland State University and published in 2018.
- 2021 – Sisters 2040 Comprehensive Plan. The City of Sisters conducted a full update of its Comprehensive Plan, building on the prior Sisters Country Vision and including a broad visioning and goal-setting effort, as well as updates to technical analyses (including the Housing Needs analysis and Economic Opportunities analysis).
- 2021 – Updated Housing Needs Analysis. This analysis was prepared in support of the Sisters 2040 Comprehensive Plan. It included an updated baseline population estimate from Portland State University, and other minor changes to the 2019 Housing Needs Analysis.
- 2021 – Economic Opportunities Analysis. This analysis was prepared in support of the Sisters 2040 Comprehensive Plan and identified the number of needed jobs and employment land to accommodate expected growth.
- 2021 – Buildable Lands Inventory. This analysis was prepared in support of the Sisters 2040 Comprehensive Plan and identified buildable residential and employment land in the City of Sisters. This report contributed to the 2021 Urban Growth Boundary Sufficiency Analysis.
- 2021 – Urban Growth Boundary Sufficiency Analysis. This report compared the land need identified for future residential and employment growth with the available land identified in the Buildable Lands Inventory. It also examined potential need for future infrastructure, civic uses, schools, parks, and other land needs.
- 2023 – Land Use Efficiency Measures Report. This report recommended various land use "Efficiency Measures" intended to make better use of land within the existing Sisters UGB. This evaluation is required as part of a UGB expansion, and the City of Sisters adopted several of the recommended measures as a means to reduce the need for land outside its current UGB.
- 2023 – Updated Urban Growth Boundary Sufficiency Analysis. This update to the 2021 Urban Growth Boundary Sufficiency Analysis took stock of development that has occurred in the intervening years, incorporated an updated population forecast from Portland State University's Population Research Center (PSU PRC), and evaluated the effects of recently adopted land use regulations aimed at using land in the City more efficiently.

The current UGB Expansion process is a direct outgrowth of these past planning efforts, and these documents will comprise much of the factual base for an eventual UGB decision.

Regulatory Context

Cities in Oregon must meet requirements included in Oregon Revised Statutes (ORS) and Oregon Administrative Rules (ORS) related to planning for growth and urban growth boundaries. These requirements are summarized below.

- **Land Need.** OAR **660-024-0040** describes the process for determining land need. It states:
  - *(1) The UGB must be based on the appropriate 20-year population forecast for the urban area … and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period…*
  - *(10) As a safe harbor … a local government may estimate that the 20-year land needs for streets and roads, parks and school facilities will together require an additional*

> *amount of land equal to 25 percent of the net buildable acres determined for residential land needs*

For Sisters, this population forecast and the resultant need for land to accommodate needed housing, employment, and other uses are documented in this Land Need Report.

- **Land Inventory in Response to Deficiency.** OAR **660-024-0050** requires cities to inventory buildable land to determine what portion of growth can be accommodated within the existing UGB. The rule notes:

> *(4) If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs … the local government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both ... Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. If the local government determines there is a need to expand the UGB, changes to the UGB must be determined by evaluating alternative boundary locations consistent with Goal 14 and applicable rules …*

- **Efficiency Measures.** Cities proposing to amend their UGBs must first consider measures to utilize land within the existing UGB more efficiently. ORS 197.296 notes the following measures as examples:

  a) Increases in the permitted density on existing residential land;
  b) Financial incentives for higher density housing;
  c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
  d) Removal or easing of approval standards or procedures;
  e) Minimum density ranges;
  f) Redevelopment and infill strategies;
  g) Authorization of housing types not previously allowed by the plan or regulations;
  h) Adoption of an average residential density standard; and
  i) Rezoning or redesignation of nonresidential land to residential designations.

The City of Sisters adopted a Housing Implementation Plan and several efficiency measures in 2023 that meet the requirements of ORS 197.296. The City of Sisters has determined that the use of selected efficiency measures will not be sufficient to eliminate the need for a UGB

expansion. The 2023 Efficiency Measures process and report documents this determination and the associated analysis and findings.[2]

- **UGB Study Area.** OAR **660-024-0065** describes the process for establishing a study area to evaluate land for inclusion in the UGB. For the City of Sisters, the study area must be ½ mile from the current UGB, except for contiguous areas not designated for farm or forest uses (also called "Exception Land") where it must be 1 mile from the UGB. Specific types of land are then removed to create a final study area.

- **Priority of Land**. OAR **660-024-0067** describes the priority of land to be included in the UGB. If there is insufficient land in a higher priority to accommodate the needed growth, land of lower priority may be included. Priorities are as follows.
    a. First Priority: Urban reserve, exception land, and non-resource land
    b. Second Priority: "Marginal land" (an outdated term, not applicable to Sisters).
    c. Third Priority: Forest land or farm land that is not predominantly high-value
    d. Fourth Priority: Agricultural land that is predominantly high-value.

- **Location Factors.** Land among a same priority classification must be evaluated based on the Goal 14 "factors" described below. Findings related to consistency with all factors are required for adoption of the UGB. Goal 14 states that "the location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197A.320 …and with consideration of the following factors:
    (1) Efficient accommodation of identified land needs;
    (2) Orderly and economic provision of public facilities and services;
    (3) Comparative environmental, energy, economic and social consequences; and
    (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB."

1. Growth Projection

Projections for residential and employment land need are based on the consolidated population forecast prepared by the Portland State University Population Research Center (PSU PRC). The most recent population forecast for the City of Sisters is the Coordinated Population Forecast for Deschutes County, its Urban Growth Boundaries (UGB), and Area Outside UGBs, published June 30, 2022.[3]

[2] City of Sisters 2023 Land Use Efficiency Measures Report: https://www.ci.sisters.or.us/sites/default/files/fileattachments/community_development/page/2351/sisters_hip_efficiency_measures_-_final.21.23_1_0.pdf

[3] https://www.pdx.edu/population-research/sites/g/files/znldhr3261/files/2022-06/Deschutes.pdf

This forecast anticipates a near doubling of population of the City of Sisters by 2043, making Sisters the fastest growing community in Deschutes County as shown in Figure 1.

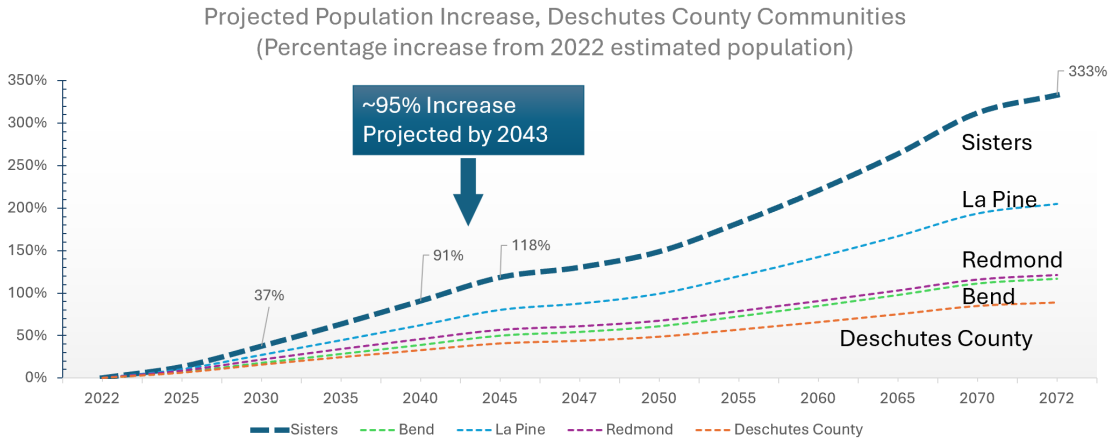
Table 1. Population Forecast for Sisters UGB

Table 4. Population forecast for smaller sub-areas and their shares of county population.

	Population			Share of County Population		
	2022	2047	2072	2022	2047	2072
Deschutes County	207,921	298,937	392,790			
Smaller Sub-Areas						
La Pine	2,736	5,129	8,336	1.3%	1.7%	2.1%
Sisters	3,437	7,911	14,881	1.7%	2.6%	3.8%
Outside UGBs	60,430	65,476	61,352	29.1%	21.9%	15.6%

Note: Smaller sub-areas refer to those with populations under 8,000 in 2020.
Sources: Forecast by Population Research Center (PRC)

Figure 1. Forecast Rate of Population Growth, Central Oregon Communities



Source: Portland State University Population Research Center

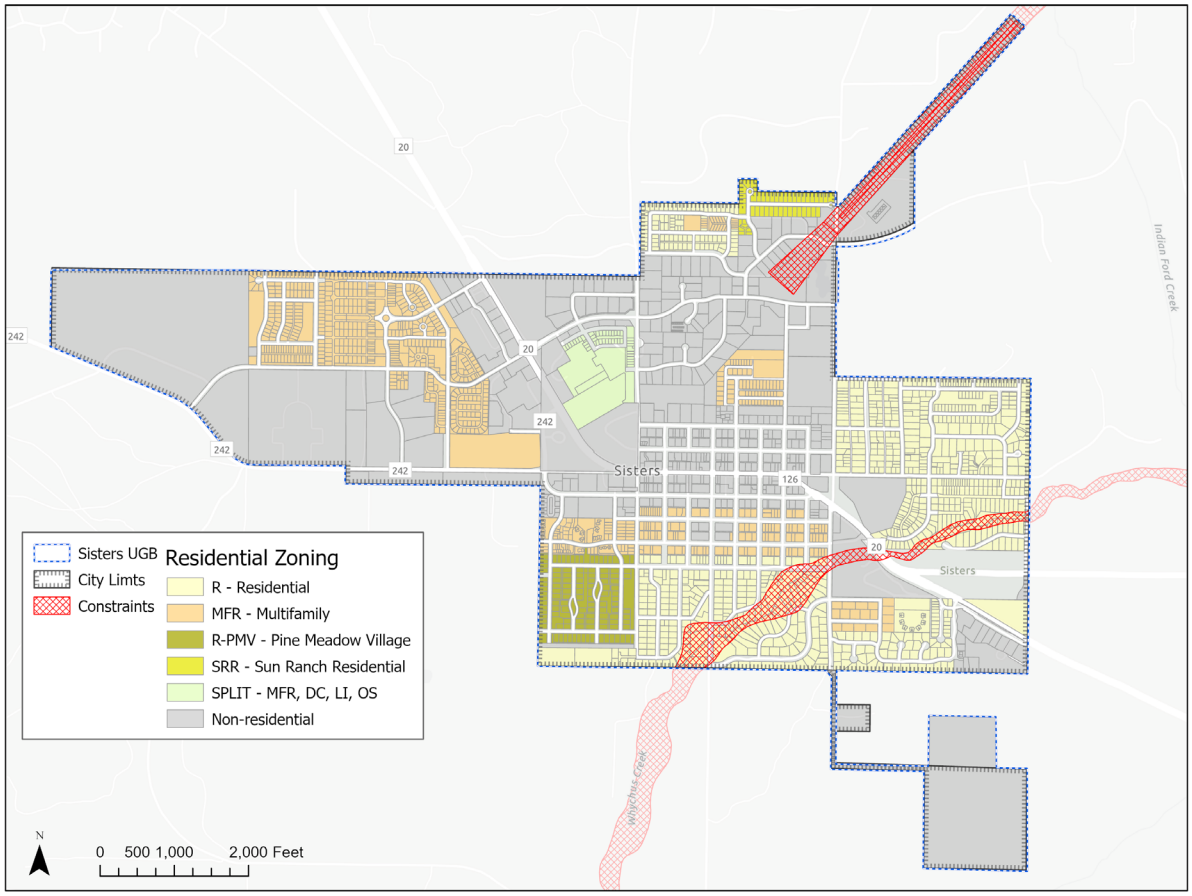
2. Buildable Land Inventory

A Buildable Land Inventory (BLI) was prepared in 2021 and has been updated to account for recent development through July 2023. The detailed inventory is included in **Appendix A** and summarized below.

Residential Land Supply

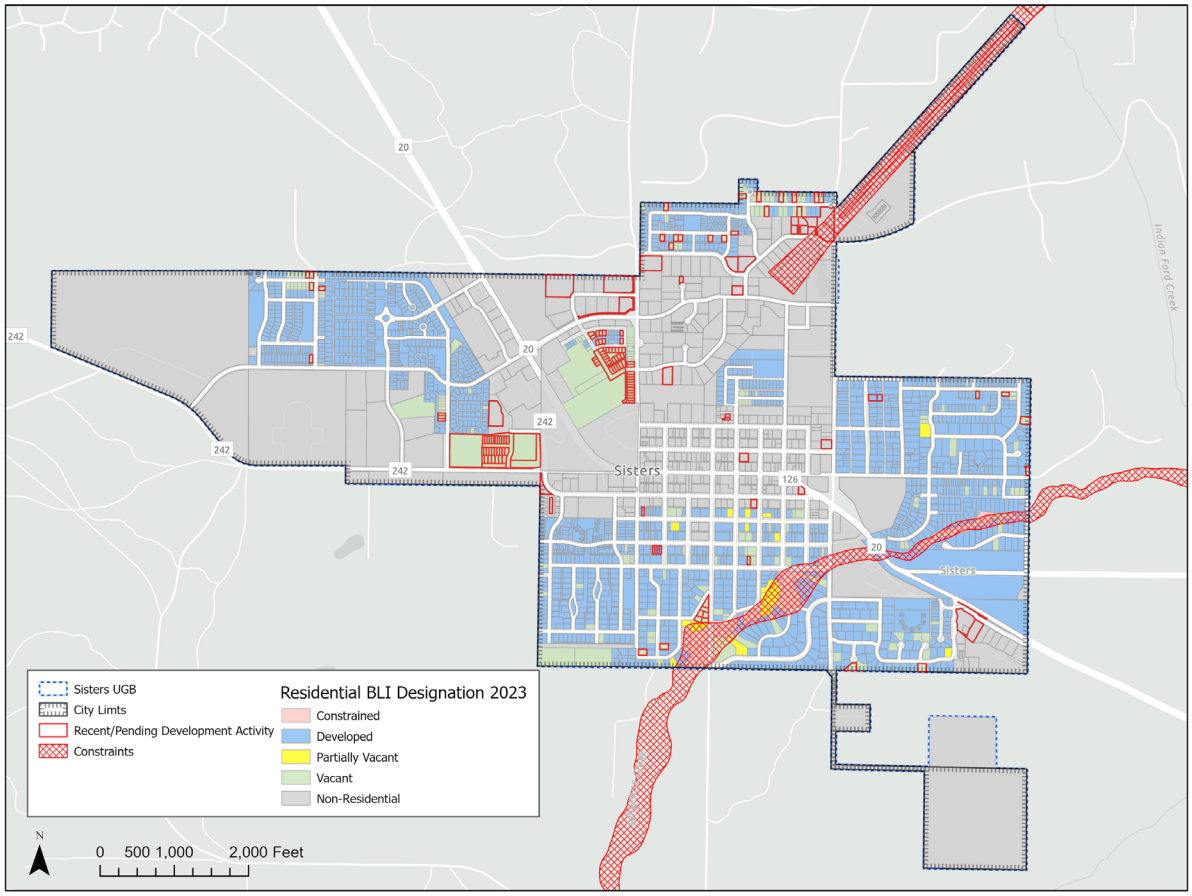
Residential land includes properties zoned Residential (R), Multifamily (MFR), Pine Meadow Village Residential (R-PMV), and Sun Ranch Residential (SRR).[4] Residential land is shown in Figure 2. Development status (Developed, Vacant, or Partially Vacant) of residential land is shown in Figure 3.

Figure 2. Map of Residential Zones



[4] Several other zones, including Downtown Commercial, Highway Commercial, and North Sisters Business park, allow for residential uses but do not require them. Mixed-use land is included as part of the Employment Land inventory.

Figure 3. Development Status of Residential Land



The results of the Residential BLI indicate that there are:

- ~19 net buildable acres of land remaining in the R zone, plus **17 units that have either been approved, are under construction, or have been recently developed**.
- ~34 net buildable acres of land remaining in the MFR zone, plus **10 units that have either been approved, are under construction, or have been recently developed** .
- ~20 net buildable acres of land remain in DC zone, some of which may be used for new homes.
- ~4.5 acres of land remaining in the SRR/R-PMV zones.

Table 2 describes the density assumptions for Sisters' residential zones and the resulting projected housing capacity available on developable land remaining within the current UGB. Based on these assumptions, there is capacity for roughly 1,200 units on the 77 developable acres of residential land in Sisters.

Table 2. Residential Capacity

Zoning Designation	Net Vacant Acres	Projected Density (for unplatted lots)	Projected Housing Capacity* (includes approved and platted lots)**	Approved /Platted Capacity
Residential Districts				
R – Residential	19.0	8.5 units/acre	148	-
MFR – Multi-Family Residential	33.7	25 units/acre	637	348
SRR – Sun Ranch Residential	3.4	4 units/acre	23	-
R-PMV – Pine Meadow Village	1.0	5 units/acre	8	8
Mixed Use Districts				
DC – Downtown Commercial***	20.5***	25 units/acre***	389	-
Total	**77.6**	**--**	**1,205**	**356**

Employment Land Supply

Employment land includes land zoned Downtown Commercial (DC), Highway Commercial (HC), Light Industrial (LI), Tourist Commercial (TC), North Sisters Business Park (NSBP), and Public Facilities (PF), as shown on Figure 4. Figure 5 depicts the development status (vacant, partially vacant, or developed) of employment land. The results of the Employment BLI indicate there is the following remaining supply of employment land within the existing city boundaries:

- ~22 net buildable acres of land in DC zone
- ~14 net buildable acres of land in LI zone
- ~12 net buildable acres of land in NSBP zone
- ~12 net buildable acres of land in HC zone
- ~3 acres in TC zone

Figure 4. Employment and Mixed-Use Zoning Designations

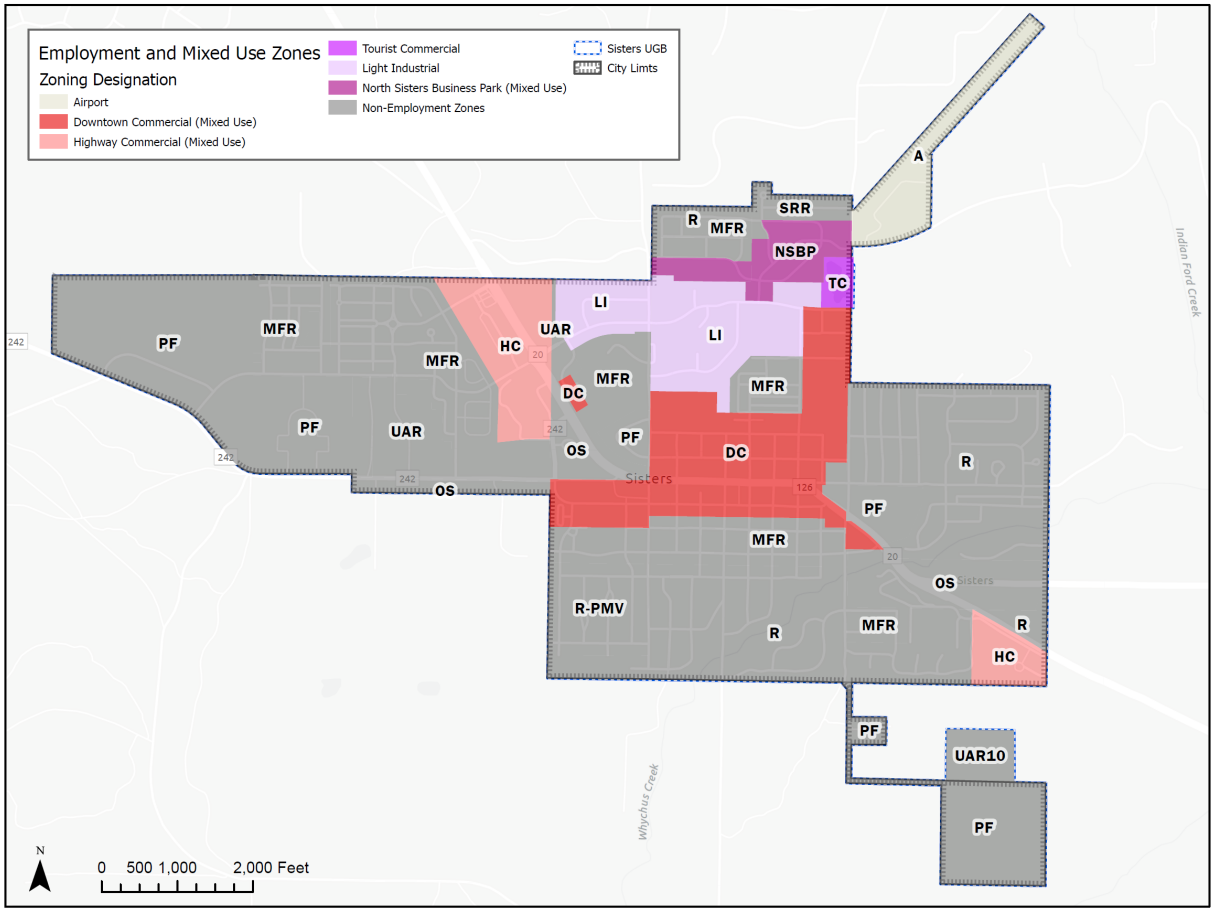


Figure 5. Development Status of Employment Land

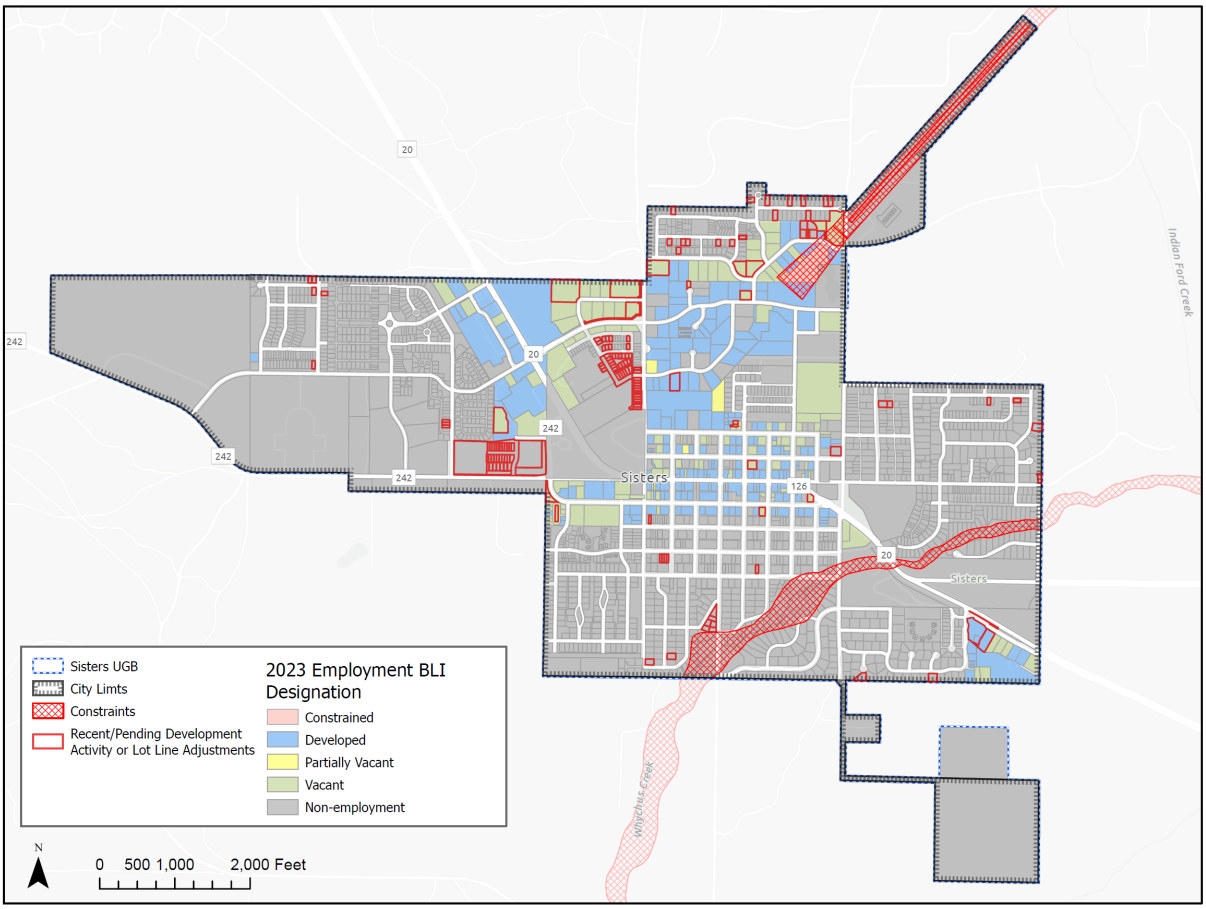


Table 3 describes the amount of vacant land in each of the City's zoning designations. There is a total of 64 acres of net buildable employment land remaining in the UGB.

Table 3. Developable Employment Acreage

Zoning Designation	Vacant or Partially Vacant Parcels	Unconstrained Acres	Net Vacant Acres
DC - Downtown Commercial	115	22.9	21.6
LI - Light Industrial	29	22.4	14.1
NSBP - North Sisters Business Park	20	14.5	11.7
HC - Highway Commercial	15	13.0	12.3
TC - Tourist Commercial	1	4.6	3.3
Total	**180**	**77.4**	**63.1**

3. Residential Land Need

Table 4 describes the latest population projection for the City of Sisters from PSU Population Research Center (PRC) and translates that projection into needed households and housing units to accommodate the anticipated population growth. Note that the number of housing units needed is significantly higher than the number of households due to the large vacancy rate in Sisters, which is the result of the number of second homes in the City, coupled with a standard healthy housing market vacant rate of 5%.

As noted in Section 2, the City's population is projected to nearly double by 2043, which corresponds to an estimated need for an additional 1,973 housing units. About one-third of those units are expected to be multi-family or other attached units (e.g., townhomes, "plexes" or similar housing types), while the remaining two-thirds are expected to be single-family units – the mix of which is based on past demographic information and analysis in the HNA. This vacancy rate is estimated at 20% based on Census data of number of owner-occupied housing units and the PSU PRC population estimate.

Table 4. Updated Population and Housing Needs Projections (2023)

	2023	2043	Growth	% Growth
Population:	3,649	7,108	3,459	95%
Households:	1,624	3,163	1,539	95%
Housing Units	2,081	4,054	1,973	95%

Land Use Category**	Unit Need	Avg. Net Density	Net Acreage Need	Projected Housing Capacity	Net Vacant Acres	Unit Surplus/ Deficit	Net Acres Surplus/ Deficit**
Low Density Residential (LDR)	1,351	8.5	158.9	179	23.4	-1,172	-135.5
High Density Residential (HDR)	622	25	24.9	1,026	54.2	404	29.3
Total:	**1,973**	**10.7**	**183.8**	**1,205**	**77.6**	**-768**	**-106.2 to -135.5**

Source: Johnson Economics

** For the purposes of estimating housing need projections, unit need is distinguished between "low density" (LDR) and "high density" (HDR) residential needs. For this exercise, we assume low density residential needs are served by the City's R, SRR, and R-PMV, and the high-density residential needs are served by the MFR and DC zones.*

***This analysis shows that the City has a shortage of land for low density residential uses and a modest surplus of land for high density residential. A key outcome of recent work on Residential Efficiency Measures in the City of Sisters was ensuring that higher density zones are not used for low density development – therefore a surplus of high density land should not necessarily be considered available to meet low-density residential needs. However, some portion of this area could be converted to capacity for low density land in the future if warranted.*

Comparison of Residential Need and Supply

As described in Section 3, the City has capacity for an additional 1,205 units on about 77 acres of residential land within the existing UGB. Based on this analysis, the City's UGB contains a deficit of about 110 acres and 750 units over the next 20 years. Per the 2021 Housing Needs Analysis, most of the City's deficit is for low-density residential (LDR), which represents a shortage of an estimated 1,172 units and 135 acres. Conversely, the City has a surplus of high density residential (HDR) capacity, with a surplus of roughly 400 units totaling 29 acres.

4. Employment Land Need

As shown in Table 4, the City's employment is expected to grow by an estimated 1,752 additional jobs by 2043, and the 2023 EOA estimates a need for 106 net acres to accommodate this employment growth. As discussed in Section 2, the City has about 63 acres available for employment growth within the existing UGB. According to this analysis, the City's UGB has a deficit of about 43 acres of employment land over the next 20 years. Over 2/3rds of need is for commercial land, while the remainder is for industrial.

Table 5. Employment Growth and Needs Forecast (7/25/23)

	2023	2043	Growth	% Growth
Employment:	2,099	3,850	1,752	83%

	Net Acreage Need	Gross Acreage Need*	Percent	Net Vacant Acres	Net Acres Surplus/ Deficit
Commercial	73.2	91.5	70%	37.3	-35.9
Industrial	32.8	38.5	30%	25.8	-7
Total:	**106.0**	**130.0**		**63.1**	**-42.9**

Source: Johnson Economics, Oregon Employment Department

5. Additional Land Needs

Complete and vibrant communities require land for uses other than jobs and housing, including land for infrastructure, open space, schools, etc. The following land needs have been quantified in this analysis and are described in this section.

- Schools
- Public facilities
- Roads and basic utilities (power and telecommunications)
- Parks and recreation facilities
- Faith-based and fraternal organizations

The following is a summary of estimated land needs for these facilities. Details and information sources are provided thereafter.

Summary of Additional Land Need

Additional land needed for purposes other than accommodating forecasted residential and employment growth are shown in **Table 6**. Detail about each of these land need categories is provided in this section.

Table 6. Summary of Additional Land Need

Land Need Category	Acres Needed	Notes
Schools	~15 acres	Need based on discussion with Sisters School District and average size of new school site
Public Facilities	N/A	No additional land need identified
Roads and Basic Utilities	N/A	Land for roads and basic utilities encompassed in the Net to Gross acres conversion
Parks and Recreation Facilities	Up to 19.0 acres	Sisters City Council recently adopted a level of service for parks of 5 acres/1,000 residents, which will increase the land need for future parks. There is opportunity for the re-use of some sites within the current UGB to meet this need.
Faith-based and Fraternal Organizations	N/A	Religious and fraternal institutions can generally develop property in residential zones by right, using land that would otherwise accommodate additional housing units. The need for this land is generally accommodated within the 25% net to gross conversion for residential land.

Schools

City staff and the consultant team met with the Sisters School District Superintendent in September 2023 to discuss expected growth in Sisters and surrounding areas served by the District.

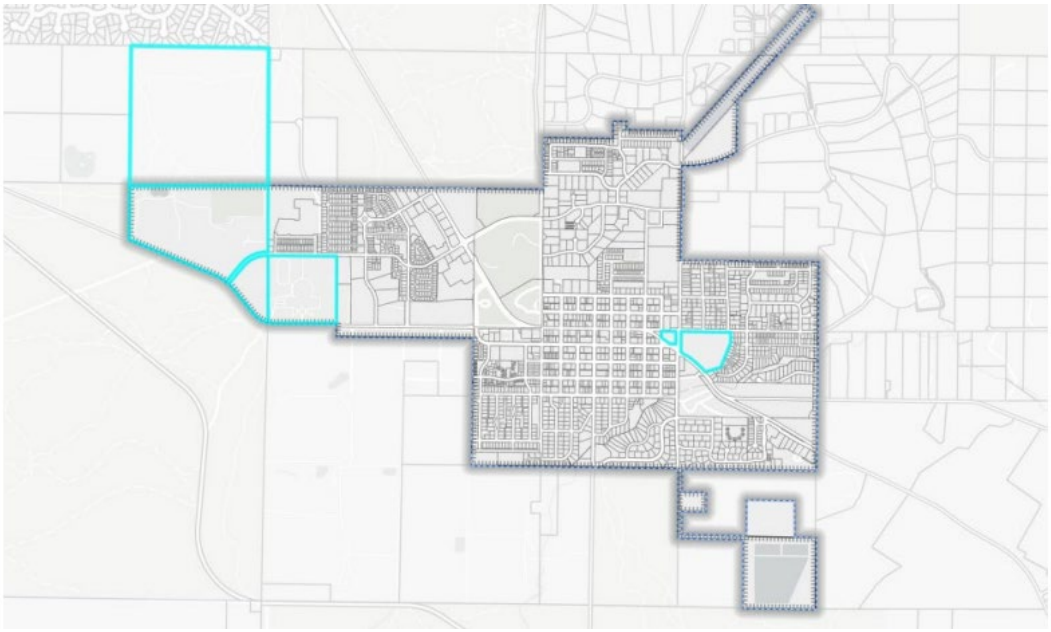
Based on initial estimates of the future population, percentage of school aged children in the District, and the capacity of existing school facilities and sites to accommodate additional students, the District expects to require an additional elementary school to serve a significantly higher population in Sisters. The location of this school is currently unknown, though a location central to new neighborhoods would be appropriate.

The school district owns other property, such as the Frisbee Golf area, that could be used to accommodate further growth if needed, and discussions about workforce housing have been taking place in recent years. The potential for us of this land for residential or other development can be considered further as part of this study.

The map below shows land owned by the Sisters School District, highlighted in turquoise. A significant piece of this land lies outside the existing UGB and is encumbered by a conservation easement.

Per Superintendent Scholl and typical school planning needs assessments, the typical acreage for a new elementary school is roughly 15 acres. This includes land for buildings, playgrounds, playing fields, parking, and other ancillary uses.

Figure 6. Property owned by Sisters School District (highlighted in blue)



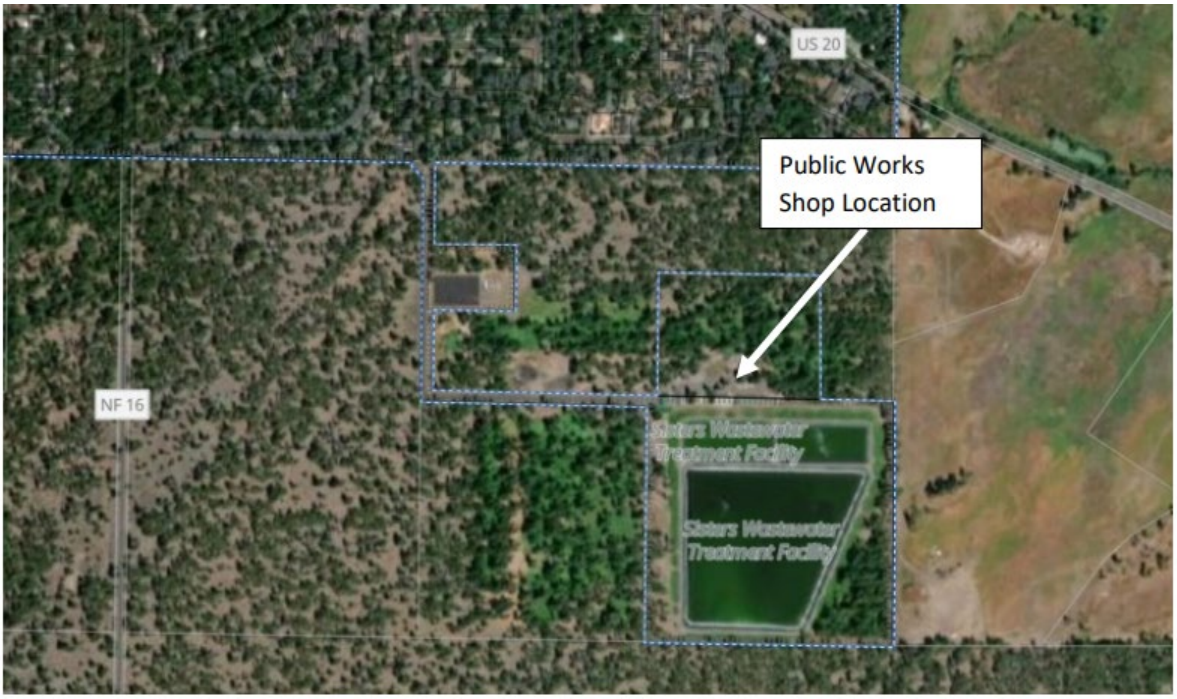
Public Facilities

Based on consultation and coordination with the City of Sisters Public Works department, there is limited need for additional land for these types of facilities. Facility master plans for water and wastewater facilities which were updated in 2023 using current population forecasts did not identify the need for additional land for the expansion of water or wastewater treatment facilities at the City's existing sites. The current site of the Public Works Shop (see Figure 5) was added to the Sisters UGB in 2006[5] after the previous Public Works headquarters was sold to the Sisters Camp Sherman Rural Fire Protection District. The current location is part of a larger 160-acre site owned by the city and used for on-site sprinkler application of treated wastewater; the updated facility master indicate that this site is adequate for any needed expansion of these facilities within the planning horizon. Similarly, the plans did not indicate the need for additional water storage facilities (e.g., reservoirs) within the existing UGB.

5 https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/16471/COUNTY_2006_Deschutes%20County_006-05_.pdf?sequence=1

Some land will be needed for pump stations or similar water or wastewater facilities in future growth areas outside the UGB and those needs should be factored into estimated land needs for a future expansion. This need is addressed in the 25% conversion factor used when identifying gross residential and employment land need.

Figure 7. Public Works Shop Location



Roads and basic utilities (power and telecommunications)

Land for utilities and future rights of way is addressed through the net to gross conversion of 25% in this analysis.

Parks and Recreation Facilities

The City recently completed an update to the Sisters Parks Master Plan (SPMP The City currently owns 4.55 acres of vacant property that may be developed and maintained as parks or open space (not including Future Northwest Park, which is planned to become a special use park).

The City recently recently increased its park Level of Service (LOS) to 5.0 park acres per 1,000 residents, meaning that the City will require about 26 acres of additional park land over the next 20 years. Subtracting the existing 4.55 acres of undeveloped park land, the City will need to acquire and develop roughly 19 acres of additional park land to meet the target. The recommendations section of the SPMP directs the City to identify future park land acquisition opportunities in potential urban growth boundary (UGB) expansion zones, including land for future park facility development (active recreation) and for conservation of natural resources and trail development (passive recreation).

Faith-based and fraternal organizations

Religious and fraternal institutions can generally develop property in residential zones by right, using land that would otherwise accommodate additional housing units. The need for this land is generally accommodated within the 25% net to gross conversion for residential land.

6. Conclusion and Next Steps

The following table provides an overview of the 20-year land need and available supply based on the City of Sisters' population forecast (Section 2), inventory of buildable land (Section 3) adopted Housing Needs Analysis (HNA) and Economic Opportunities Analysis (EOA) (Sections 4 and 5), and additional land needs (Section 6).

Summary:

- As shown in Table 7, the City of Sisters faces a shortage of land for low-density residential uses, employment land, schools, and parks.
- There is a modest surplus (about 30 gross acres) of land for high density residential uses. This is in part due to recent development code amendments adopted by the City that are intended to use the supply of land zoned for high density uses more efficiently and prohibit the development of low-density housing in multifamily zones. However, even with such a surplus, protecting land zoned for high density residential is an important goal of the City and allowing low density residential uses in these areas may not be an advisable option.

Table 7. Overview of Land Needs and Supply (2023-2043)

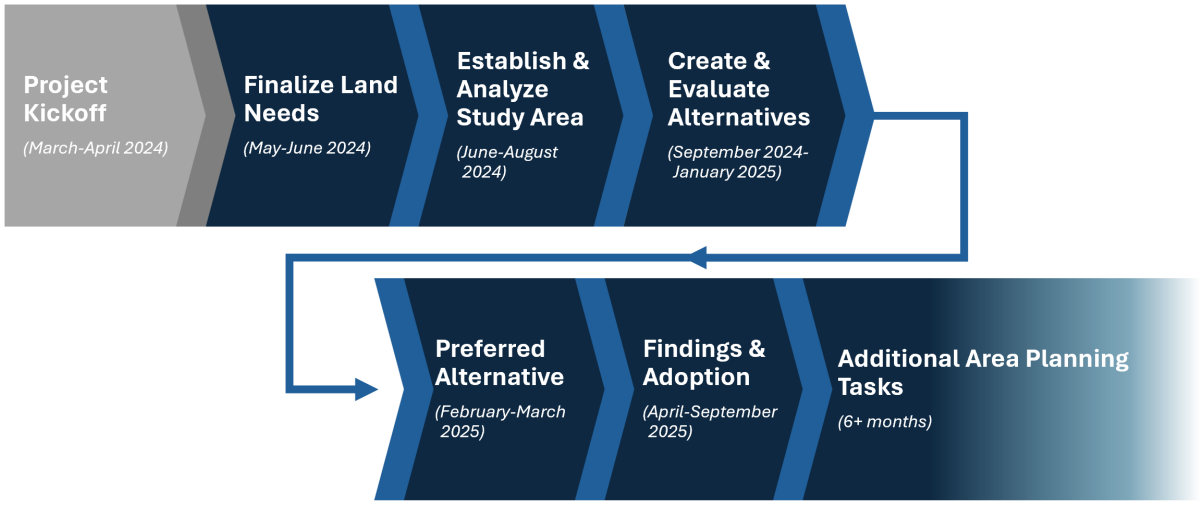
Land Type	Demand (Net Acres)	Supply (Net Acres)	Net Acreage Need*	Gross Acreage Need**
Residential Land*	183.8	77.6	105.3-134.6	131.6-168.2
Low Density Residential	158.9	23.4	134.6	168.2
High Density Residential	24.9	54.2	-29.3	-36.6
Employment Land	106.0	63.1	42.9	53.6
Schools	-	-	15.0	15.0
Parks	-	-	19.0	19.0
Total	**289.8**	**140.7**	**182.2-211.5**	**227.7-264.4**

** The surplus of high density land should not necessarily be considered available to meet low-density residential needs. This potential mismatch between the supply of lands for these types of developments may need to be addressed further as part of a potential UGB expansion process and/or by continuing to monitor the relative supply of each type of land in the future. As a result, the net acreage need is shown as a range for purposes of this report.*

*** Gross acreage includes additional land area in order to account for needed infrastructure. This consists of new rights-of-way (20%) and stormwater/other infrastructure needs (5%).*

In response to this overall deficit, the City is undertaking the UGB Amendment process. The following figure describes the steps and expected timing of this process. More information is available at the City's website: https://www.ci.sisters.or.us/community-development/page/growth-management

Figure 8. Sisters UGB Amendment Process Diagram



Appendix A: Buildable Lands Inventory

This is a placeholder at this time. Additional detail about the updated Buildable Lands Inventory will be provided as this document is finalized.

Appendix B: Housing Needs Analysis

This is a placeholder at this time. Additional detail about the updated Housing Needs Analysis will be provided as this document is finalized.

Appendix C: Employment Opportunities Analysis

This is a placeholder at this time. Additional detail about the updated Economic Opportunities Analysis will be provided as this document is finalized.

memo

to City of Sisters
from Andrew Parish, Matt Hastie, Emma-Quin Smith, and Brandon Crawford, MIG
re Draft Sisters Urban Growth Boundary Study Area Report
date 7/12/2024

Introduction

The purpose of this document is to identify an initial study area to evaluate land for inclusion in the Sisters Urban Growth Boundary (UGB), and to describe existing conditions of land within the study area. The creation of this study area is governed by State of Oregon Administrative Rule (OAR) 660-024-0065, which identifies the types and locations of land that must be included in the Preliminary Study Area.

Project Overview

Cities in Oregon are required to include and designate land within their Urban Growth Boundary (UGB) to accommodate a 20-year supply of expected growth for homes, jobs, and other urban needs. After several years of analysis and public engagement, the Sisters City Council directed city staff to pursue an Amendment to the city's Urban Growth Boundary (UGB) to expand it, given findings that there is not sufficient land within the existing boundary to accommodate projected growth within the next 20 years. According to the Draft Land Need Report[1] the approximate needed acreage in a UGB expansion is in the range of 250 acres. The expansion process will involve review and consideration of approval by the Sisters City Council and the Deschutes County Board of County Commissioners followed by review by the Oregon Department of Land Conservation and Development.

This process is estimated to take roughly two years to complete. During the process, there will be ample opportunities for public comment and City staff will provide educational outreach to the Sisters community on the process.

[1] As of this writing, draft report is available as part of the UGB Steering Committee #1 Meeting Packet: https://www.ci.sisters.or.us/sites/default/files/fileattachments/community_development/page/23146/6.27.24_sc_meeting_packet.pdf

Additional information about the project can be found at the City's Website: https://www.ci.sisters.or.us/community-development/page/2024-urban-growth-boundary-amendment

Regulatory Requirements: UGB Study Area

As documented in the draft Land Need Report, the City of Sisters has determined that it does not have sufficient land within its current UGB to meet identified land needs. The City must therefore evaluate the land outside its UGB by creating a study area, identifying the priority of land to be included in the UGB, and assessing those potential alternative expansion areas by balancing the Goal 14 "factors" that apply to UGB expansions.

OAR 660-024-0065 describes the process for establishing a study area for land to include in the UGB. The process is as follows:

1. **Create a "preliminary study area" that includes:**
    a. All lands in an urban reserve (if applicable);
    b. All land within ½ mile of the existing UGB (for cities under 10,000, such as Sisters); and
    c. All exception areas[2] contiguous to land within the ½ mile buffer of (b) that are within 1 mile of the UGB.
2. **The City <u>may</u> exclude land from the "preliminary study area" if:**
    a. It is impracticable to provide necessary public facilities or services to the land.
    b. The land is subject to significant development hazards due to landslides, flooding, or tsunamis.
    c. The land consists of a significant scenic, natural, cultural, or recreational resource (restrictions apply).
    d. The land is owned by the federal government and managed primarily for rural uses.
3. **The resulting study area must contain at least twice the amount of land needed to accommodate growth.**

The remainder of this document describes the preliminary study area and the character of land within it, as well as potential exclusion areas. It also describes the next steps in the process for evaluating land within the study area. City of Sisters staff, the project Steering Committee, and members of the Sisters Planning Commission and City Council will review and discuss this initial work and agree on the

[2] "Exception Areas" are lands that have an approved "exception" to Statewide Planning Goals 3 (Agricultural Lands) or 4 (forest Lands). Generally, these are rural residential/commercial lands that have been physically developed or irrevocably committed to non-farm and non-forest uses.

preliminary and revised study area prior to additional analysis of potential expansion areas. This memo will be updated to reflect the results of those conversations.

Preliminary Study Area

Per OAR 660-024-0065, there are three steps to the creation of a Preliminary Study Area.

Step 1: Draw Preliminary Study Area.

The preliminary study area must include the following.

a. **All lands in an urban reserve.** Urban reserves are a tool in Oregon intended to provide a 30- to 50-year area to plan for long-term city growth. Urban reserves provide guidance for a city's long-term future and protect the urban reserve area from rural development which would make future city expansion more difficult. The City of Sisters does not have urban reserves, so this is not applicable.
b. **All land within ½ mile of the existing Urban Growth boundary.** Land within ½ mile of the current Sisters UGB is zoned Exclusive Farm Use Sisters-Cloverdale (EFUSC), Forest Use 1 (F1), Forest Use 2 (F2), Flood Plain (FP), Surface Mining (SM), and Rural Residential (RR10). Together this totals nearly 3,400 acres of land within ½ mile of the Sisters UGB.
c. **Exception areas contiguous to land within the ½ mile buffer of (b) that are within 1 mile of the UGB.** For the City of Sisters, this includes RR10-zoned land northeast of the City, but not he Tollgate and Crossroads neighborhoods, which are greater than ½ mile from the current UGB and are therefore not required to be included in the Preliminary Study Area.

The land in the vicinity of the Sisters UGB is described in Table 1 and shown in Figure 1 and Figure 2. and.

Table 1. Deschutes County Zoning Designations within ½ mile and 1 mile of the Current Sisters UGB

Zone	Acres within ½ Mile	Acres within 1 Mile
Exclusive Farm Use; Sisters -Cloverdale (EFUSC)	790.1	1,367.7
Forest Use 1 (F1)	1,415.7	3,432.6
Forest Use 2 (F2)	95.3	256.0
Floodplain (FP)	32.6	81.5
Rural Residential 10 (RR10)	1,052.1	2,351.3
Surface Mining (SM)	8.8	8.9
Total	**3,394.7**	**7,497.9**

Figure 1. Land Outside the Sisters UGB

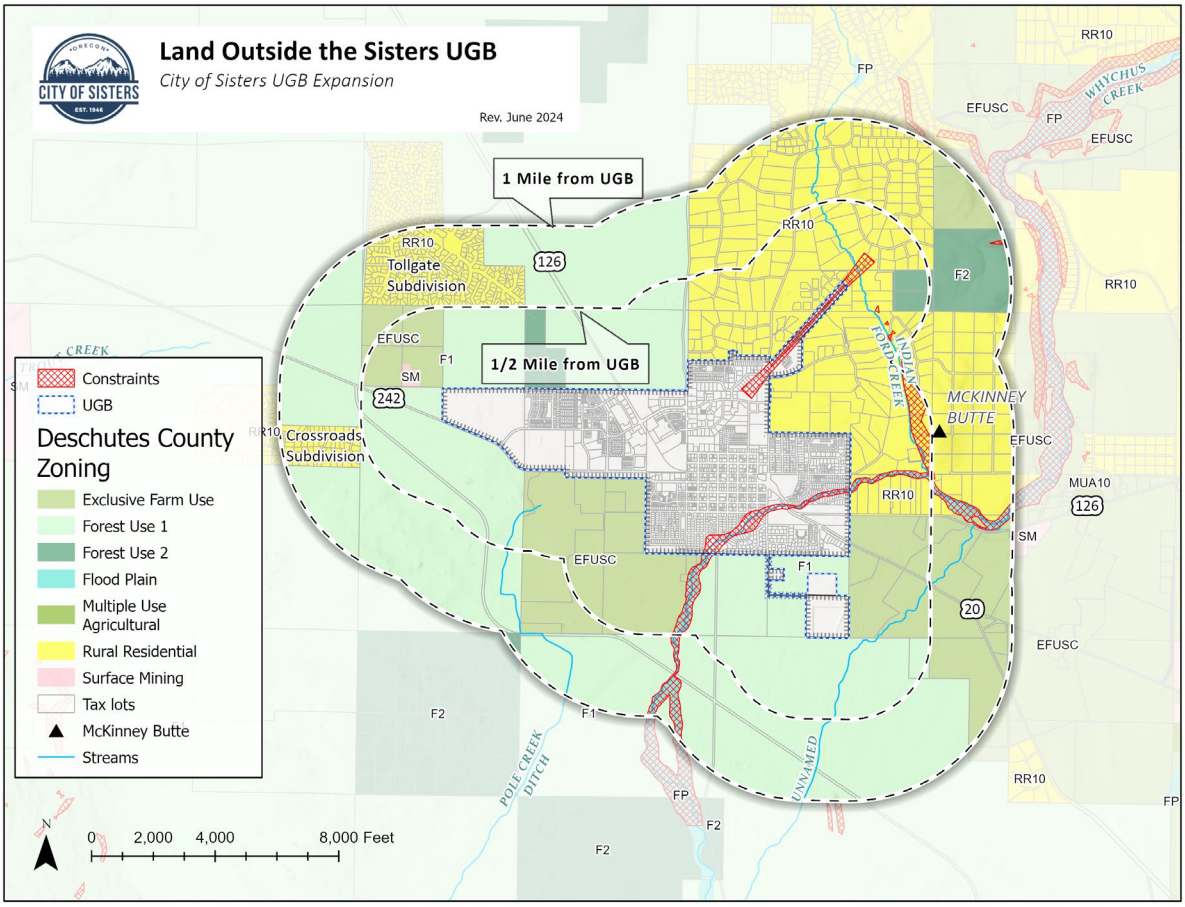
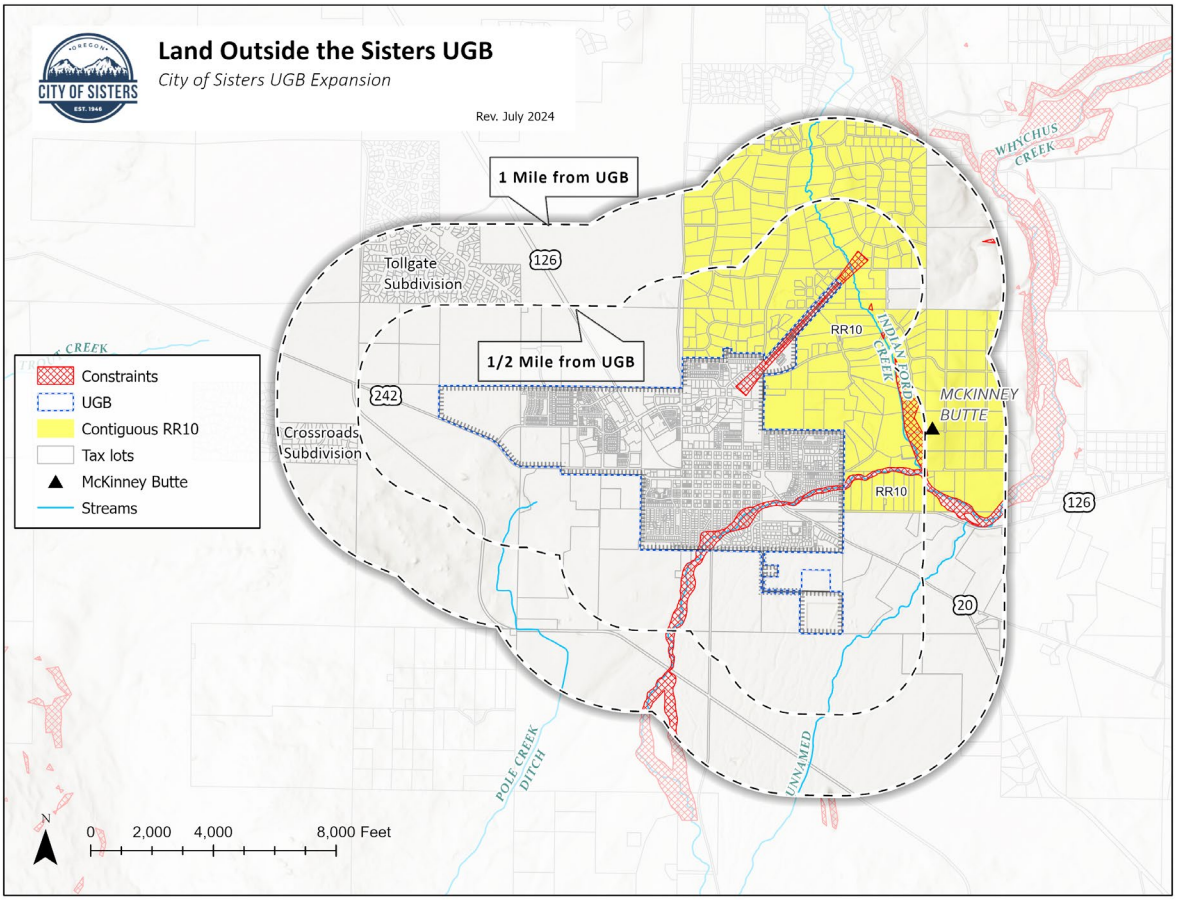


Figure 2. Contiguous Exception Land within UGB Vicinity



Step 2. Potential Exclusions

The City may exclude land from the study area for the following reasons, meaning that land would not be part of further evaluation for potential inclusion in the amended UGB. Note that even if land is not excluded as part of this step, constrained portions of properties (such as steep slopes or floodplains), will be discounted from buildable acreage at a later point in the process. The following criteria may be used to exclude land, criteria for exclusion with a short explanation of the initial analysis of the study area:

a. ***It is impracticable to provide necessary public facilities or services to the land*.** This could potentially include land that is impracticable to serve due to slopes or natural features.[3] Further discussions with City staff, Steering Committee members and decision-makers may result in further exclusion of areas that are impracticable to serve.

b. ***The land is subject to significant development hazards due to landslides, flooding, or tsunamis*.** Within the Preliminary Study Area, this includes land with a floodplain designation and land along the western slope of McKinney Butte that has a slope greater than 25%. However, these are relatively small areas within the context of larger properties and may be better addressed through later steps rather than exclusion at this point in the process.

c. ***The land consists of a significant scenic, natural, cultural, or recreational resource (restrictions apply).*** Land with a Surface Mining designation may be excluded from the analysis as part of this or later steps. School-district owned land encumbered by a conservation easement (shown in Figure 3) may also be excluded as part of this category but has been included for purposes of further analysis and discussion. Similarly, land within the Deschutes County Mule Deer Wildlife Area Combining Zone, which skirts the eastern boundary of the study area, is eligible for exclusion. These areas are proposed to

[3] OAR 660-024-0065 (7) lists the following cases where a City may consider land impracticable to serve:

a) Contiguous areas of at least 5 acres where 75% or more of the land has a slope of 25% or greater, provided that contiguous areas 20 acres or more that are less than 25% slope may not be excluded.
b) Land that is isolated from existing service networks and likely will not be connected within the planning period due to impediments to service provision, expected amount of development, likely cost of facilities, etc.
c) Impediments to service provision:
    1. Water bodies that would require new bridge crossings
    2. Topographic features with slopes exceeding 40 percent and vertical relief of greater than 80 feet;
    3. Freeways, rail lines, or other restricted access corridors that would require new grade separated crossings
    4. Significant scenic, natural, cultural or recreational resources

be included at this time but may be removed at a later date, pending further analysis and discussion.

d. ***The land is owned by the federal government and managed primarily for rural uses.*** This includes much of the land with forest designations in the vicinity of the City, depicted in Figure 4. Whether this land should be removed at this stage or further evaluated through conversations with the US Forest Service and others is a key question for the Steering Committee.

Acreages of the land in these categories are listed in Table 2. If the City decides to exclude any of these areas as part of the process of creating a revised or final study area, findings supporting their exclusion will be required as part of the overall UGB proposal.

Figure 3. School District Ownership and Conservation Easement

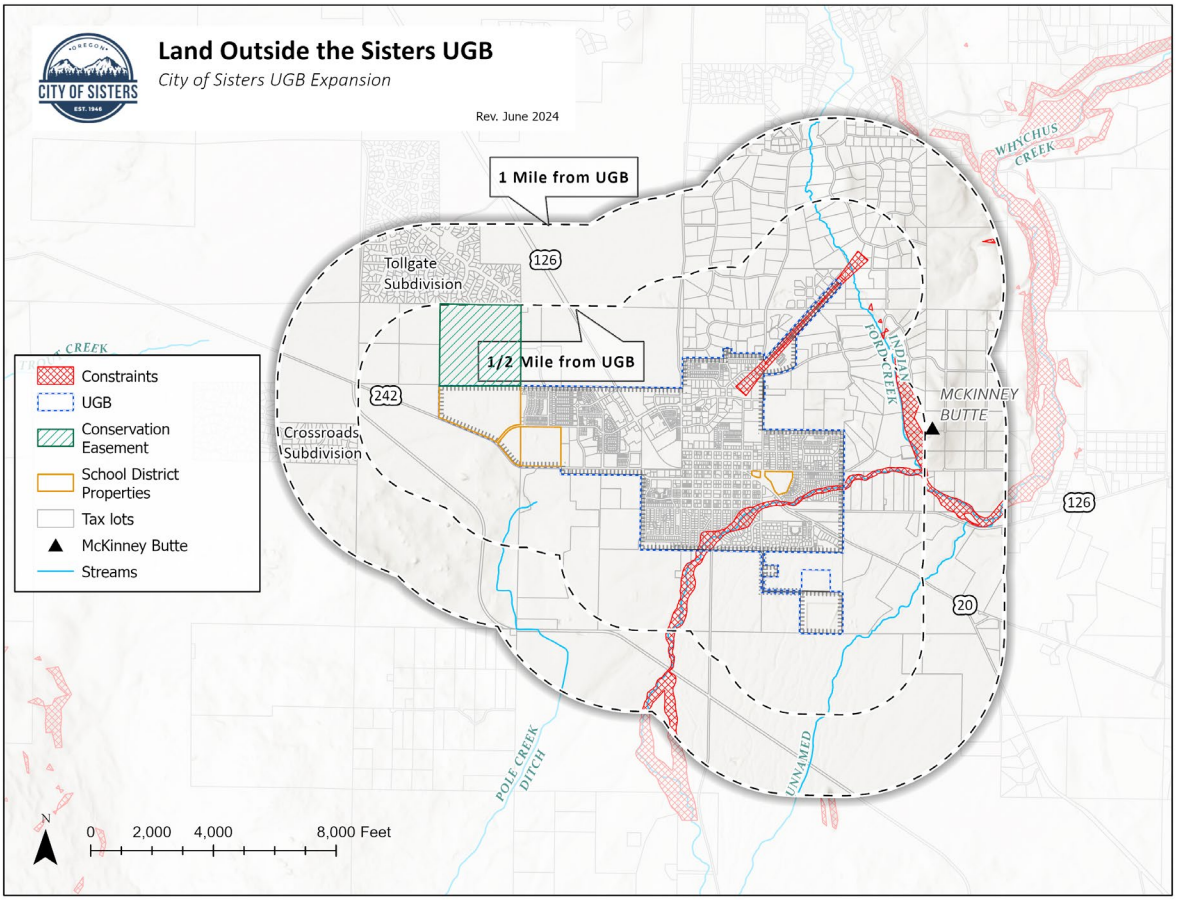


Figure 4. Federally Owned Land in the Sisters UGB Vicinity

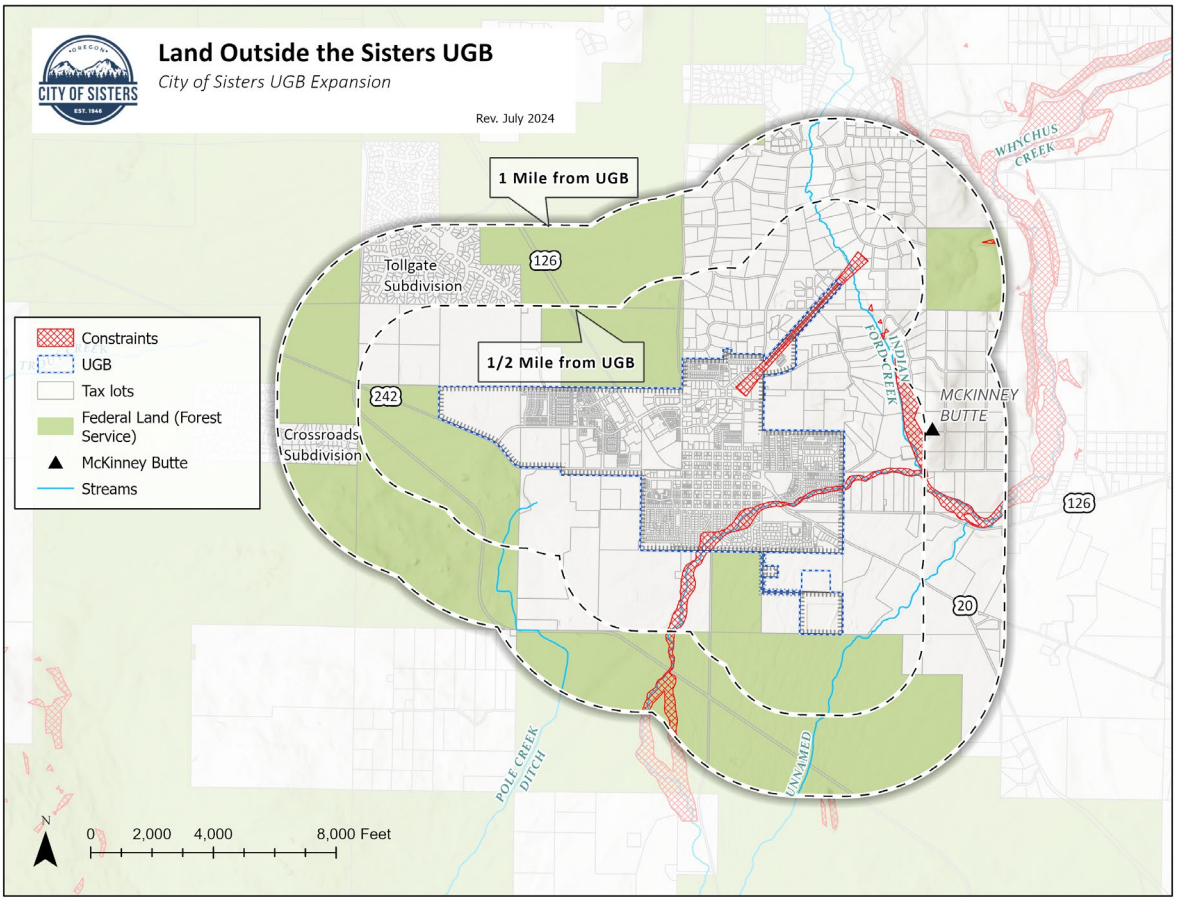
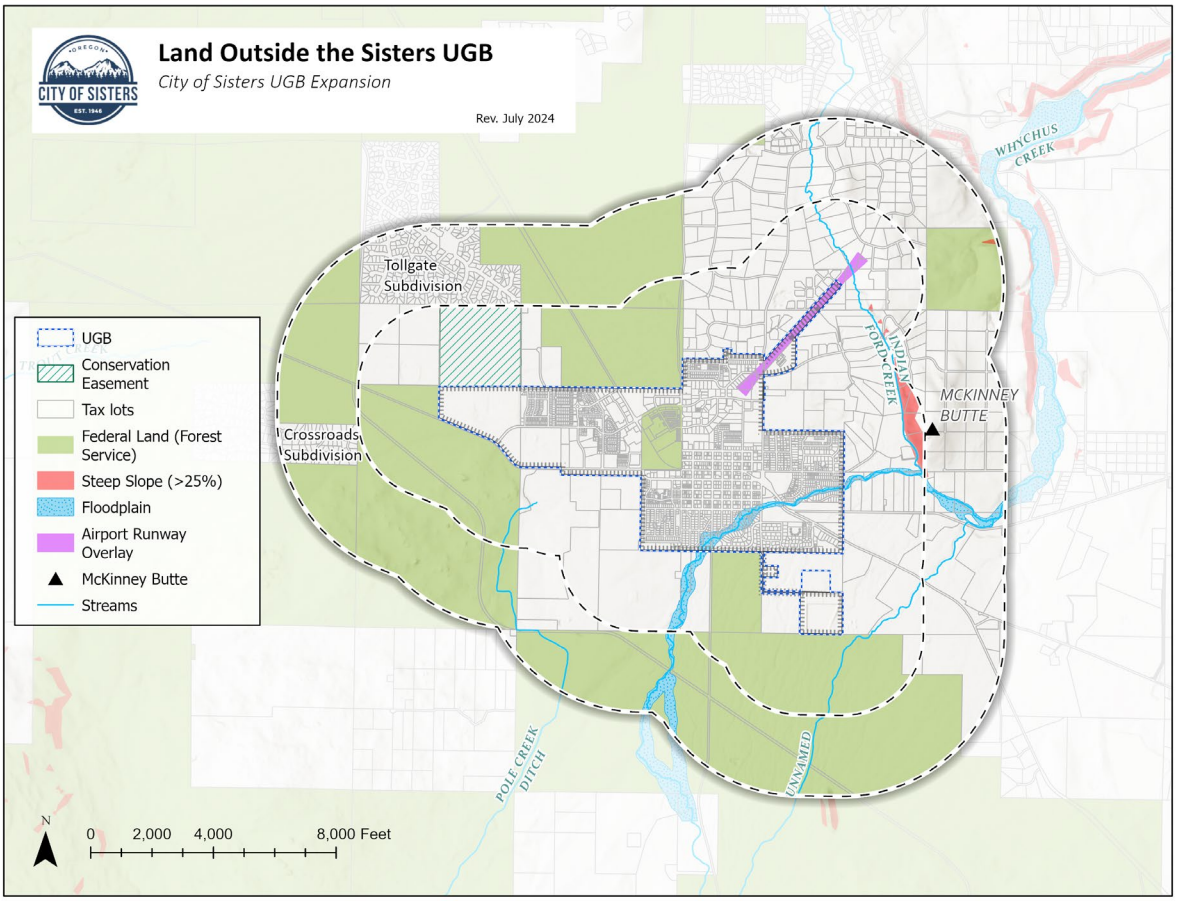


Table 2 summarizes areas that may be excluded from the study area and they are shown in Figure 5. As noted above, these areas have not yet been excluded and may or may not be recommended for exclusion, pending further discussion with City staff and the Steering Committee. The following section describes the potential impact of excluding these areas on the size of the study area.

Table 2. Potential Exclusion Areas

Potential Exclusion Areas	½ Mile from UGB	1 Mile from UGB
Conservation Easement	161 acres	161 acres
Federal Land (Forest Service)	1,103 acres	3,289 acres
Floodplain	33 acres	82 acres
Steep Slopes (>25%)	30 acres	33 acres
Airport Easement	9 acres	9 acres
Total	**1,336 acres**	**3,574 acres**

Figure 5. Potential Exclusion Lands within 1 Mile of the UGB

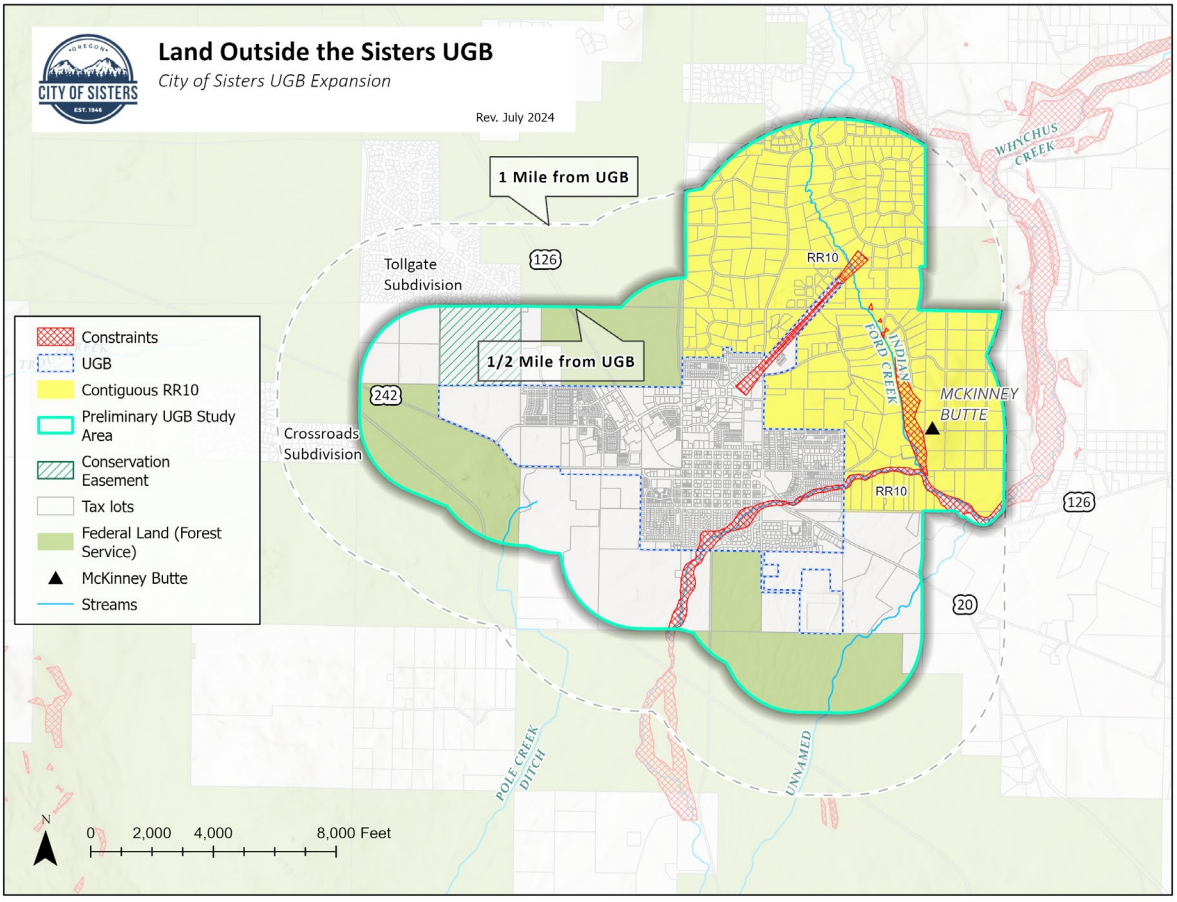


Step 3: Study Area Size

The draft Preliminary Study Area shown in Figure 6 (which has no exclusions per Step 2) and contains roughly 4,340 acres (after removing the 1,240 acres within the existing UGB). Roughly 1,940 acres of this land is in the RR-10 designation, and the remainder in other zones. This study area is substantially more than twice the ~250 acres of identified land need and meets the requirements of this step.

Lands within the potential exclusion areas described in Step 2 make up about 1,300 than 1300 acres of land within the Preliminary Study Area. If these lands were to be excluded from the study area, the total size of the area would be approximately 3,000 acres. This is still significantly more land than is required to be included.

Figure 6. Draft Preliminary Study Area

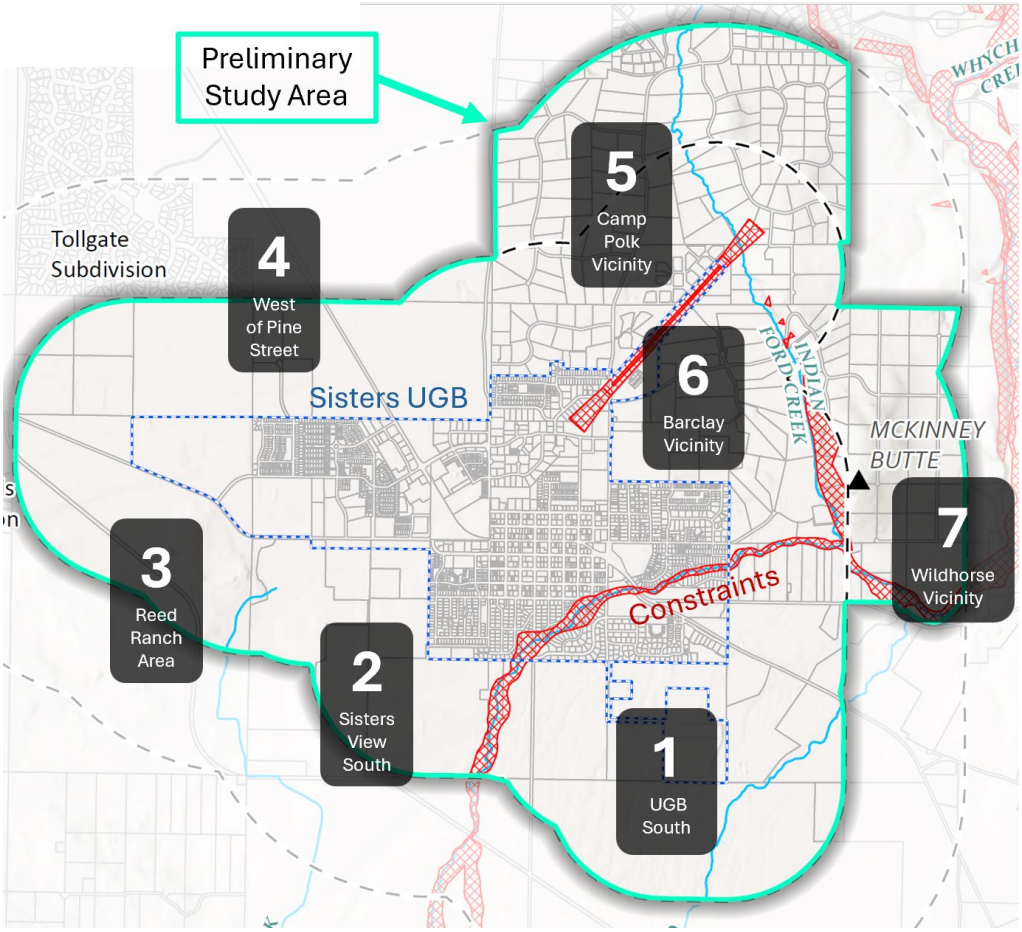


Additional Information about the Preliminary Study Area

Study Area Conditions

Figure 7 identifies seven general locations within the Preliminary Study Area. General conditions, photographs, and aerial imagery are provided to help facilitate this discussion. Following is a brief description of each sub-area, including the general character of the land and how it is being used, as well as accompanying photos. This section also describes the relative size of individual properties in each area.

Figure 7. Study Area Conditions Key Map



1. **UGB South.** This forested area is located south of the City and is made up of land managed by the US Forest Service and privately owned land. There is a popular mountain biking trail system through the Forest Service land in this area. There is also a creek and a large private ranch located in the western portion of this area. Parcels in this area are large, generally in the 50-150 acre range.

2. **Sisters View South.** This area located southwest of the core of the City is primarily agricultural land. There are several large agricultural parcels west and south of medium density single-unit residential development within the City Limits. This area is zoned for Exclusive Farm Use and boasts sweeping views of the mountains. This area is bordered to the south and west by US Forest Service managed land. Parcels in this area are about 10 to 100 acres in size.



3. **Reed Ranch Area.** This area to the west of the City and south of McKenzie Highway contains a single large (800+ acre) parcel zoned for forest use and federally owned. As with most US Forest Service land, it is managed for multiple resource and recreational uses.


4. **West of Pine Street.** This forested area located northwest of Sisters High School (and other school district property) and directly south of the Tollgate neighborhood is comprised of land zoned Exclusive Farm Use and a large portion of this land includes conservation easement. The EFU parcels in this area are about 40 acres, and the school district-owned parcel with conservation easement is 160 acres in size.


5. **Camp Polk Vicinity.** This area is located north of the City and is comprised of large lot residential uses ranging from 1-2 acres in size to about 12 acres. The area is currently zoned Rural Residential. The Indian Ford Meadow Preserve and Camp Polk Meadow Preserves are located on the northeast edge of this area. Additionally, Indian Ford Creek runs through the eastern portion of this area.



6. **Barclay Vicinity.** This area is located southeast of the Sisters Eagle Airport, north and east of the City. The area is currently zoned Rural Residential. Lot sizes are somewhat larger than in Area 5, with some lots in the 20-30+ acre range. There are some natural constraints in the area, including a steep slope created by McKinney Butte on the eastern side and Indian Ford Creek. The area is currently used primarily for large lot residential and some agricultural uses closer to the City.



7. **Wildhorse Vicinity.** This area is located east of the eastern portion of the City, east of the steep slope of McKinney Butte. The area is zoned Rural Residential and is currently comprised of 5-10-acre residential lots and some agricultural uses. There are several natural constraints in the area including McKinney Butte, Indian Ford Creek, and Whycus Creek.

This information will be reviewed with the project Steering Committee and will help inform the subsequent analysis of potential expansion areas.

Next Steps

Next steps in the process include the following:

- Review and discuss the Preliminary Study Area and possible Exclusion Areas with the project Steering Committee, Planning Commission, and City Council to identify any potential needed adjustments to the Preliminary Study Area.
- Further describe lands within the Study Area using the sub-areas shown in the previous section of the memo.
- Evaluate the study area in more detail using the state's UGB priorities framework and Goal 14 factors which are described in more detail below and bring results back to the Steering Committee, Planning Commission, and City Council at the next round of meetings.

In addition to this technical analysis and meetings with the Steering Committee and decision-makers, the project team will continue to provide information about the process to the broader community and seek their input on the evaluation process and issues described in this memo.

Priorities for Evaluating Land Within the Study Area

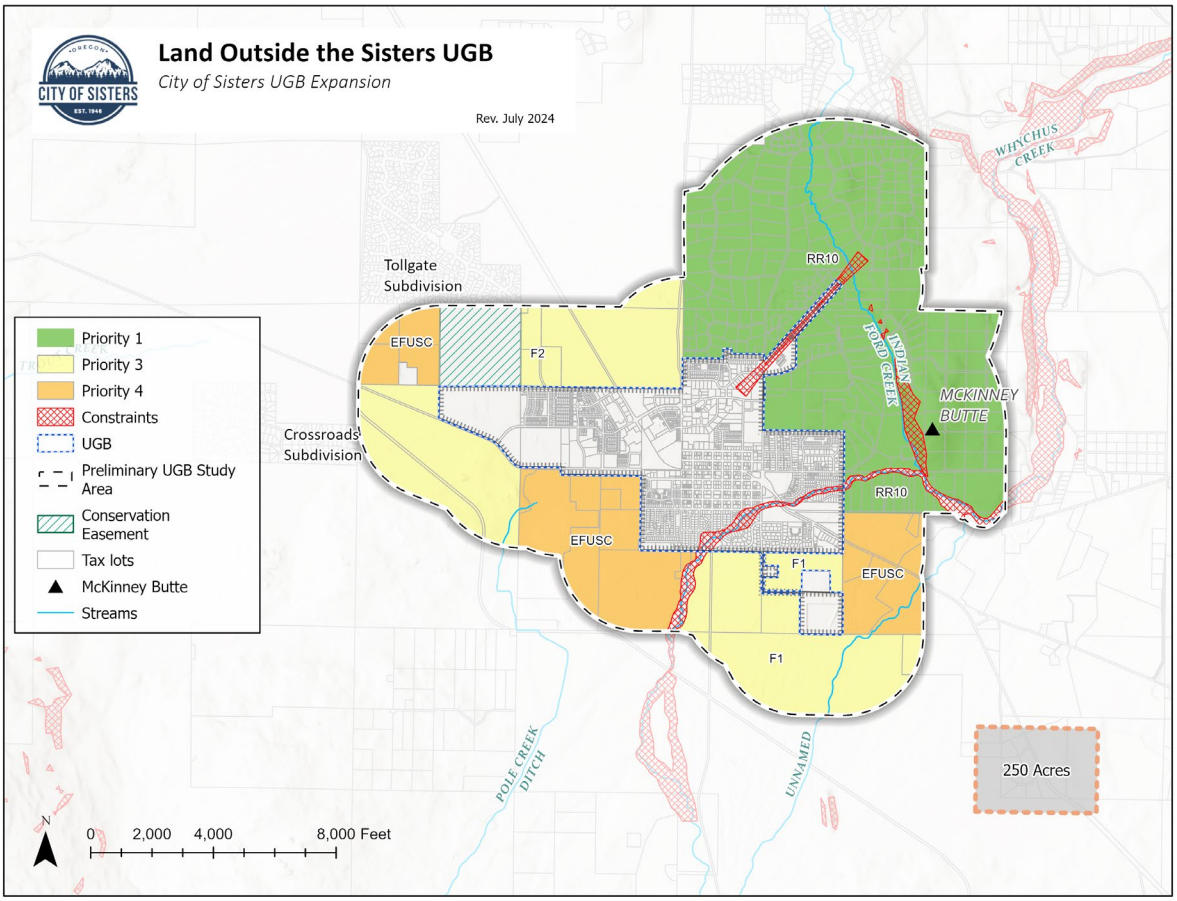
OAR (Oregon Administrative Rules) 660-024-0067 describes the process for evaluating the land within the UGB study area. Land is categorized into several "priority" categories. If there is insufficient land in the "First Priority" category to meet the needs of future growth, the evaluation can move on to "Second Priority," and so on.

a) **First Priority:** Urban reserve, exception land, and non-resource land
b) **Second Priority:** "Marginal land" (an outdated term, not applicable to Sisters).
c) **Third Priority:** Forest land or farmland that is not predominantly high-value[4].
d) **Fourth Priority:** Agricultural land that is predominantly high-value.

Figure 8 shows the draft priority levels of land within the Preliminary Study Area. Land that is designated "Rural Residential 10 (RR10)" is exception land and is the first priority for inclusion in a UGB amendment. Other land in the Preliminary Study Area falls into either the Third or Fourth priority, depending on whether it is high-value agricultural land (as defined by the State). Due to the size of the City's identified deficit for residential uses, the use of first priority land will likely be sufficient to accommodate growth. However, the next steps in the analysis will need to be undertaken to confirm this. A rectangle of roughly 250 acres is shown on this map as an indication of the net acreage need identified in the draft Land Need Report.

[4] "High-Value" Farmland is defined in OAR 660-033-0020 and is based on soil classification and other factors.

Figure 8. Draft Priority of Land in Preliminary Study Area



Evaluation per Oregon Statewide Planning Goal 14 Factors

Land in the priorities described above will be evaluated using the state's Goal 14 factors, which are:

1. Efficient accommodation of identified land needs;
2. Orderly and economic provision of public facilities and services;
3. Comparative environmental, energy, economic, and social (ESEE) consequences; and
4. Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

These factors often lie in tension with one another, and the values of the Sisters community should guide the ultimate decision about how best to balance them and determine the most appropriate location for an expansion of the UGB. This evaluation will be informed by technical analysis, stakeholder interviews, input from various groups, and discussion with the broader public. An initial list of the types of information that will inform each Statewide Planning Goal 14 factor is provided below.

- **Efficient Accommodation of Land Needs**
    - Buildable Land Inventory (BLI) for property within the study area (utilizing Deschutes County assessor data, and aerial photograph review)
    - Analysis of Parcel Size/Parcelization
    - Suitability assessment of needed land types
    - Identification of Restrictive CC&Rs (Covenants, Conditions and Restrictions)
- **Orderly and Economic Provision of Public Facilities and Services**
    - City of Sisters Public Works input
    - Sisters School District input
    - Sisters Parks & Recreation District Input
- **Comparative ESEE (environmental, energy, economic, and social) Consequences**
    - Staff Input
    - Stakeholder Input
- **Compatibility of Proposed Urban Uses with Nearby Agricultural and Forest Activities**
    - Inventory of Agricultural and Forest Activities (informed by discussions with US Forest Service, property owners)

CITY COUNCIL

Staff Report

Meeting Date: August 14, 2024
Type: City Council Meeting
Subject: City Council Meeting Minutes

Staff: R. Green
Dept: Administration

Consent Agenda: Approve the minutes from the July 10, 2024 City Council Workshop, the July 10, 2024 Regular City Council meeting, and the July 24, 2024 Special Meeting.

Summary Points:

- Approve the minutes from the July 10, 2024 City Council Workshop, the July 10, 2024 Regular City Council meeting, and the July 24, 2024 Special Meeting.

Financial Impact: None.

Attachments:

1- ATTACHMENT 1: July 10, 2024, City Council Workshop
2- ATTACHMENT 2: July 10, 2024, Regular City Council meeting
3- ATTACHMENT 3: July 24, 2024 Special Meeting

WORKSHOP MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
JULY 10, 2024

MEMBERS PRESENT:		**STAFF PRESENT:**	
Michael Preedin	Mayor	Jordan Wheeler	City Manager
Andrea Blum	Council President	Kerry Prosser	Assistant City Manager
Jennifer Letz	Councilor	Paul Bertagna	PW Director
Gary Ross	Councilor	Matt Martin	Principal Planner
Susan Cobb	Councilor	Rebecca Green	Deputy Recorder

The meeting recording is available here:
https://www.youtube.com/watch?v=4ZfqAmIdISY

Mayor Preedin called the workshop to order at 5:30 p.m.

1. Update on Emergency Management & Preparedness

Deschutes County Emergency Services Manager Sgt. Nathan Garibay made the presentation. Deschutes.org/emergency is an emergency management website still under development but will increasingly become a central hub of information for emergency information. There was discussion on the prospective CORE 3 (Central Oregon Ready Responsive Resilient: https://core3center.org/) multi-agency coordination center and training facility for large-scale emergency incidents. The proposed site for the center is in Redmond, Oregon.

2. East Portal 90% Design Review

Public Works Director Paul Bertagna made the presentation. Bertagna provided background on the design stages and outlined the site plan, including 2 full-sized transit stops, 1 drop-off zone, and 55 parking stalls which includes 39 standard, 6 compact, 4 ADA, 5 EV, and 1 ADA EV stalls. There was discussion about money-saving measures, parking, crosswalks, and tree preservation. The Woodlands development is required to construct an enhanced crosswalk at the Hood Avenue intersection just north of the Hwy 20 bus pull-out; this is scheduled to coincide with Phase 3 of the East Portal project. The cost estimate is $1.2 million, down approximately $800,000 from the original concept. Construction will begin in January 2025, with an expected opening of summer 2025.

3. Central Oregon Civic Action Project - Civic Assembly

Josh Burgess from the Central Oregon Civic Action Project (http://cocap.us/) made the presentation on the Civic Assembly on Youth Homelessness Deschutes County 2024. The objectives of civic assemblies are to enhance the ability of local governments to increase relevant outcomes and rebuild the public's faith in public institutions. In Deschutes County, 30 people will be selected by lottery to participate in a four-day program in September and October. During these days, they will explore youth homelessness in depth, work together to develop potential solutions, and present their findings to local

governments and organizations for action. There was discussion on funding and efforts to be unbiased.

4. **Other Business –** None.

The meeting was adjourned at 6:43 p.m.

_____ _____

Rebecca Green, Deputy Recorder Michael Preedin, Mayor

REGULAR MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
JULY 10, 2024

MEMBERS PRESENT:		**STAFF PRESENT:**	
Michael Preedin	Mayor	Jordan Wheeler	City Manager
Andrea Blum	Council President	Kerry Prosser	Assistant City Manager
Jennifer Letz	Councilor	Paul Bertagna	PW Director
Gary Ross	Councilor	Matt Martin	Principal Planner
Susan Cobb	Councilor	Rebecca Green	Deputy Recorder

The meeting recording is available here: https://www.youtube.com/watch?v=4ZfqAmIdISY

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

The meeting was called to order by Mayor Preedin at 6:50 pm.

2. ROLL CALL

A roll call was taken, and a quorum was established.

3. APPROVAL OF AGENDA

The agenda was amended to remove Item 6B.

Council President Blum made a motion to approve the agenda as amended. Councilor Letz seconded the motion. Preedin, Blum, Letz, Ross, and Cobb voted aye; the motion carried 5-0.

4. VISITOR COMMUNICATION

- Rodney Cooper: Proclamation for Patriot Month and low voter turn-out.
- Josh Smith: Update on the efforts of the Sisters Small Business Association.

5. CONSENT AGENDA

A. Minutes
   1. June 26, 2024 Workshop
   2. June 26, 2024 Regular Meeting

B. Approve an Affordable Housing Grant Letter for Sisters Habitat for Humanity

Councilor Cobb made a motion to approve the Consent Agenda. Councilor Letz seconded the motion. Preedin, Blum, Letz, Ross, and Cobb voted aye; the motion carried 5-0.

6. COUNCIL BUSINESS

A. Public Hearing and Consideration of Ordinance 538: AN ORDINANCE OF CITY OF SISTERS AMENDING SISTERS DEVELOPMENT CODE CHAPTER 2.12, SUN RANCH TOURIST COMMERCIAL DISTRICT, THAT EXPANDS AND CLARIFIES THE TYPES OF ALLOWED USES AND APPLICABLE DEVELOPMENT STANDARDS.

Mayor Preedin opened the public hearing and read the conduct of the hearing.

Mayor Preedin asked Councilors to disclose any conflicts of interest. There were none. No one in attendance challenged the participation of a Councilor.

Principal Planner Martin made the presentation and submitted an updated section of Exhibit B. These two items are included in the Supplemental Report. Attorney Garret Chrostek was available for questions. The purpose of the amendment to Development Code Chapter 2.12 is to expand and clarify the types and uses allowed in the Sun Ranch Tourist Commercial District, and to amend development standards for particular uses.

There were questions of clarity on zoning in the area, the proposed setbacks, the size of the neighborhood market, amenities, and multi-use trails and paths. Substantial discussion was conducted on the proposed change to 2.12.1000 on the maximum stay in an RV space, as State of Oregon Administrative Rules indicate in ORS 197.493 that a local government may not impose any limit on the length of occupancy of an RV, under specific conditions.

Mayor Preedin asked if there were any new correspondence submitted after the agenda packet was published. Martin indicated there were two letters, one from Ronni Duff of the Three Sisters Historical Society and the other from Charlie Stevens of Better Living in Sisters (BLIS).

Mayor Preedin asked if there were any further questions of staff. Council President Blum asked about the distinction between conditional vs permitted use for this property. Martin indicated that the uses outlined in this Tourist Commercial zone requires developers to design to specific standards, precluding the need for the conditional use permitting process.

Mayor Preedin invited the applicants, Jon Skidmore, land-use consultant, on behalf of Ernie Larrabee of Lakehouse Inn, and Adam Smith, land-use attorney to make their presentation.

Skidmore provided background on the zoning and vision of the Sun Ranch Tourist Commercial District. He spoke to the considerations the applicants made to a number of city plans, reports, and economic analyses. Skidmore spoke to amenities, including the multi-use trail concept.

Attorney Smith addressed ORS 197.493 by proposing the removal of stay limitation references from the City's Development Code. He argued that the district's designation as a tourist commercial district would effectively address concerns. Moreover, Attorney Smith suggested that a direct statement of intention could be added that lodging facilities be made for temporary housing for tourism and not permanent residences. The same direct statement approach was suggested for the use of amenities by the general public.

Mayor Preedin asked for public comment.

1. Steven King of Sisters spoke in support of the text amendment and also in support of protecting the Conklin House located on the property.

2. David Bachtel of Sisters spoke in opposition to the text amendment. He also submitted a letter for the record.

3. Ronni Duff and Diane Prescott of Sisters spoke in opposition to the text amendment due solely to the need to protect the Conklin House. They also submitted a letter for the record.

4. Charlie Stevens of Sisters spoke in opposition to the text amendment. He also submitted a letter for the record.

Communications submitted at the Council meeting are included in the Supplemental Report.

Mayor Preedin invited the applicants for further discussion.
Attorney Smith and Skidmore clarified the following points:

- The Planning Commission's deliberations on the text amendment are valuable to watch to understand how they reached their support;
- Preserving the Conklin House is not relevant to the discussion of the text amendment. Efforts to preserve the house may occur regardless;
- The Development Code addresses RV Park standards in 2.15.1700.

Councilor Letz expressed concern about possible loopholes in legislating temporary vs permanent RV use. Mayor Preedin asked for clarification regarding the specific language proposed to include "temporary" in lieu of specific time limits (30-90 days). Attorney Smith clarified that the term "temporary" was added to the proposed definition of "lodging facility" use only. Attorney Smith further clarified that "lodging facility" and "RV park" are considered separate uses in the proposed amendment because RV park is already a separate use identified in the development code (2.15.1700).

Attorney Smith proposed adding "temporary" to the proposed RV park standards (2.12.1000(C1)), stating that the applicant is concerned that including specific time periods limits flexibility, whereas "temporary" allows for the opportunity for someone to stay seasonally; that is, longer than 30 days. Smith noted that if length of stay in an RV or hotel is lengthy then landlord-tenant laws would be invoked, and the applicant is not seeking provision for permanent housing.

Council President Blum confirmed that the applicant would not have objection to a local group working toward preserving the Conklin House whether that be on the property or moved elsewhere.

Councilor Ross expressed concern that the RV park may become permanent at a later date, given the language of ORS 197.493. Attorney Chrostek acknowledged the ambiguity and stated, with reservation that including direct statements for temporary use could mitigate future challenges. He indicated that the housing issues in Oregon could have impact on the strength of the state statute. Attorney Smith responded that the applicant has no intent for permanent housing and is open to creative solutions to allay potential ramifications. Attorney Smith made a recommended update to 2.12.1000 (C1) to say: "Except for a caretaker's unit that is allowed as part of an RV park, no RV shall be used as a residential dwelling for a non-temporary occupancy." Smith explained that ORS 197.493 applies when an RV is used as a residential dwelling. Therefore, explicitly prohibiting residential use makes the statute irrelevant. Attorney Chrostek expressed caution.

Councilor Cobb queried about the current popularity of RV travel, given the expense of vehicles, gas, and storage. Skidmore stated he could provide information of its popularity to Council. Attorney Smith spoke to the support for RV parks from Deschutes County and indicated they could look further into state legislative history to denote intent for state regulations.

Council discussed next steps.

Mayor Preedin closed the oral testimony portion of the hearing but left the public hearing open for written comments to July 31.

Mayor Preedin stated deliberations would continue at the Regular City Council meeting on August 14, 6:30pm in City Council Chambers.

7. **OTHER BUSINESS –** None.

8. **MAYOR/COUNCILOR BUSINESS –** None.

9. **ADJOURN:** 9:44 p.m.

_____ _____

Rebecca Green, Deputy Recorder Michael Preedin, Mayor

SPECIAL MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
JULY 24, 2024

MEMBERS PRESENT:		**STAFF PRESENT:**	
Michael Preedin	Mayor	Jordan Wheeler	City Manager
Andrea Blum	Council President	Kerry Prosser	Assistant City Manager
Jennifer Letz	Councilor	Joe O'Neill	Finance Director
Gary Ross	Councilor	Rebecca Green	Deputy Recorder
Susan Cobb	Councilor		

The meeting recording is available here: https://www.youtube.com/watch?v=NSS-qQdLsTM

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

The meeting was called to order by Mayor Preedin at 4:00 pm.

2. ROLL CALL

A roll call was taken, and a quorum was established.

3. Discussion and Consideration of a Motion to award a Public Improvement Contract for the Construction of Two Raised Cross Walks as Part of the McKinney Butte Road Safety Improvement Project and Authorize the City Manager to Execute the Contract.

Councilor Letz made a motion to award the contract. Councilor Ross seconded the motion. Preedin, Blum, Letz, and Ross, voted aye; Cobb voted nay; the motion carried 4-1.

4. ADJOURN: 4:07 p.m.

_____ _____

Rebecca Green, Deputy Recorder Michael Preedin, Mayor

CITY COUNCIL

Staff Report

Meeting Date: August 14, 2024 **Staff:** J. Dumanch
Type: Regular Meeting **Dept:** Public Works
Subject: Cascade Avenue Electric Vehicle Charging Project Intergovernmental Agreement

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Action Requested: Consideration of a motion to approve an intergovernmental agreement with the State of Oregon for the design and construction of the Cascade Avenue Electric Vehicle Charging Project and authorize the City Manager to execute the agreement.

Summary Points:

- Project funded through the Carbon Reduction Program; a federal program created by the 2021 Bipartisan Infrastructure Law requiring the Oregon Department of Transportation (ODOT) to develop a Carbon Reduction Strategy for reducing emissions in the transportation sector.
- This is a federal project delivered by ODOT on behalf of the City of Sisters.
- Staff submitted a grant application in May of 2023.
- An award letter was received in September of that year.
- The attached agreement was received in late July of 2024 and has been reviewed by City attorney.
- Project will construct EV infrastructure at East Portal site.
    - Includes six level 2 EV charging ports with covered solar carport along Cascade Ave on site.
- Total cost estimate is $254,403.00 with a 10.27% local match.
- Project has been programmed into the ODOT Statewide Transportation Improvement Program (STIP).

Financial Impact: $26,128.00 – local match from Street Fund

Attachments:

1. ATTACHMENT 1: ODOT Agreement

Misc. Contracts and Agreements
No. 73000-00024403

A156-G092921

ODOT Delivered Federal Project
On Behalf of City of Sisters
Project Name: Cascade Avenue Electric Vehicle Charging Project
Key Number: 23538

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

RECITALS

1. By the authority granted in Oregon Revised Statute ("ORS") 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.
2. The Cascade Avenue Electric Vehicle Charging Project, located in the City of Sisters (see Exhibit A), is under the jurisdiction and control of Agency.
3. Agency has agreed that State will deliver this project on behalf of the Agency.
4. The Project was selected as a part of the Carbon Reduction Program ("CRP") and may include a combination of federal and state funds. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement.
5. The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.
6. The Bipartisan Infrastructure Law, created the Carbon Reduction Program at 23 United States Code ("USC") 175, which provides federal aid funds for projects designed to reduce transportation emissions from on-road highway sources. ODOT administers the Small Urban and Rural portion of the Carbon Reduction Program and selects projects through a competitive process for areas of the state with less than 200,000 residents.

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

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering the Cascade Avenue Electric Vehicle Charging Project on behalf of Agency, hereinafter referred to as "Project." The Project includes installation of 6 public parking spaces with level 2 electric vehicle ("EV") charging equipment and covered solar carports. The location of the Project is approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.

3. Project Costs and Funding.
   a. The total Project cost is estimated at $254,403.00 which is subject to change. Federal funds for this Project shall be limited to $228,275.00. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.

   b. With the exception of Americans with Disabilities Act of 1990-related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency's concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget. However, State may award a construction contract up to ten (10) percent (%) over engineer's estimate without prior approval of Agency.

   c. Federal funds under this Agreement are provided under Title 23, United States Code.

   d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Catalog of Federal Domestic Assistance ("CFDA") number for this Project is 20.205, title Highway Planning and Construction. Agency is not eligible to be reimbursed for work performed under this Agreement.

   e. State will submit the requests for federal funding to the Federal Highway Administration ("FHWA"). The federal funding for this Project is contingent upon approval of each funding

request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.

f. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.

4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

5. Termination.
   a. This Agreement may be terminated by mutual written consent of both Parties.

   b. State may terminate this Agreement upon 30 days' written notice to Agency.

   c. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

      i. If Agency fails to provide services to operate and maintain EV charging equipment called for by this Agreement within the time specified herein or any extension thereof.

      ii. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

      iii. If Agency fails to provide payment of its share of the cost of the Project.

      iv. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

      v. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.

   d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. **Americans with Disabilities Act Compliance**:
   a. **When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:**

i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;

ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;

iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx**; and**

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

i. Pedestrian access is maintained as required by the ADA,

ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,

iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,

iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and

v. Applicable permitting and regulatory actions are consistent with ADA requirements.

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

7. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 Code of Federal Regulations ("CFR") Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is

required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.

8. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.

9. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.

10. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are incorporated by this reference and made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.

11. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement.

12. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

13. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

14. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 3.e (Funding), 5.d (Termination), 6.b (ADA maintenance), 9-14, 17 (Integration, Merger; Waiver); and Attachment 2, paragraphs 1 (Project Administration), 7, 9, 11, 13 (Finance), and 37-41 (Maintenance and Contribution).

15. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

16. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

17. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.

18. State's Contract Administrator for this Agreement is Paul Singer, Transportation Project Manager 2, 63055 N Highway 97, Bldg M, Bend OR 97703, (541) 410-2993, paul.singer@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

19. Agency's Contract Administrator for this Agreement is Jackson Dumanch, Public Works Project Coordinator, 520 E Cascade Ave, Sisters OR 97759, (541) 323-5220, jdumanch@ci.sisters.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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

This Project is in the 2024-2027 Statewide Transportation Improvement Program ("STIP"), (Key #23538) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

Agency/State
Agreement No. 73000-00024403

CITY OF SISTERS, by and through its Governing Body

By _____

Title _____

Date _____

By _____

Title _____

Date _____

LEGAL REVIEW APPROVAL (If required in Agency's process)

By _____
Agency Counsel

Date _____

Agency Contact:
Jackson Dumanch, Public Works Project Coordinator
520 E Cascade Ave, Sisters OR 97759
(541) 323-5220
jdumanch@ci.sisters.or.us

State Contact:
Paul Singer, Transportation Project Manager 2
63055 N Highway 97, Bldg M
Bend OR 97703
(541) 410-2993
Paul.singer@odot.oregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Policy, Data, and Analysis Division Administrator

Name _____
(printed)

Date _____

APPROVAL RECOMMENDED

By _____
Carbon Reduction Program, Program Manager

Name _____
(printed)

Date _____

By _____
Region Area Manager

Name _____
(printed)

Date _____

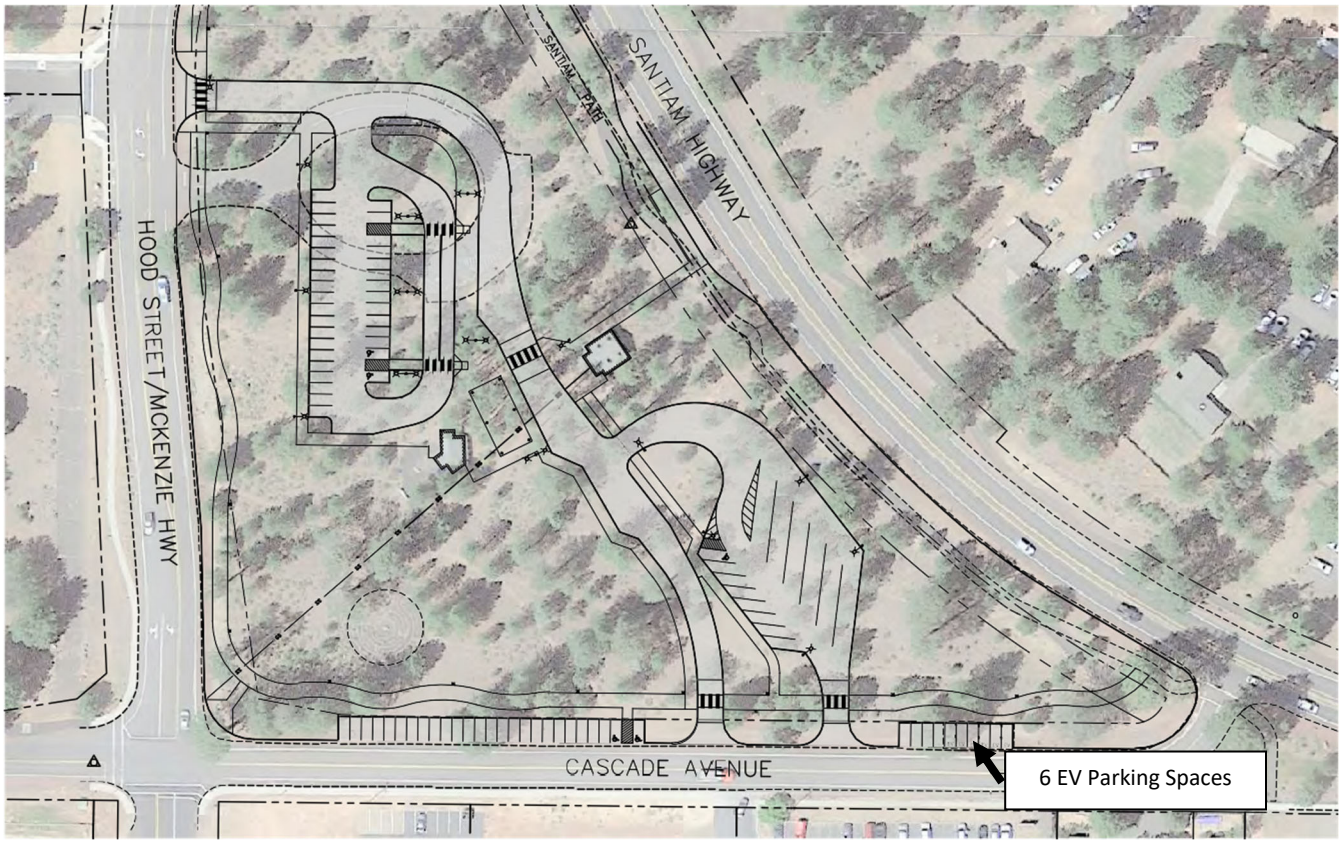
APPROVED AS TO LEGAL SUFFICIENCY

By Jennifer O'Brien _____
Assistant Attorney General (If Over $250,000)

Date July 12, 2024 _____

Agency/State
Agreement No. 73000-00024403

EXHIBIT A – Project Location Map



Agency/State
Agreement No. 73000-00024403

ATTACHMENT NO. 1 to AGREEMENT NO. 73000-00024403
SPECIAL PROVISIONS

1. State or its consultant shall conduct all work components necessary to complete the Project, except for those responsibilities specifically assigned to Agency in this Agreement.

    a. State or its consultant shall conduct preliminary engineering and design work required to produce final plans, specifications, and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; acquire necessary right of way and easements; and arrange for all utility relocations and adjustments, if any.

    b. State will advertise, bid, and award the construction contract. Upon State's award of the construction contract, a consultant hired and overseen by the State shall be responsible for contract administration and construction engineering & inspection, including all required materials testing and quality documentation. State shall make all contractor payments.

    c. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.

2. State and Agency agree that the useful life of this Project is defined as 10 years.

3. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

Right of Way

4. State will purchase right of way in State's name. Upon completion of the Project, State and Agency agree that any right of way purchased outside of State Jurisdiction will be transferred to Agency. Agency agrees to take title of the property and shall maintain it pursuant to this Agreement. Agency shall use the property for public road purposes. If the property is no longer used for public road purposes, it shall revert to State.

Maintenance Responsibilities

5. Agency shall, at its own expense, ensure that the electric vehicle ("EV") charging equipment is maintained and operated in full compliance with 23 CFR 680 for the useful life of the Project, including, but not limited to, provisions pertaining to customer service, availability, data privacy, and technology standards.
6. Any contracts entered into by Agency for the maintenance and operations of the EV charging equipment by Agency must conform to the requirements set out in 23 CFR 680. Agency shall maintain and operate the EV charging equipment for the useful life of the Project. For public facing EV charging equipment, Agency shall ensure that maintenance is performed by a "qualified technician" as defined in 23 CFR 680.106(j). Any contract entered into by Agency with an Electric Vehicle Supply Equipment ("EVSE") provider for operations and maintenance

of the EV charging equipment for public facing charging must include the requirements of 23 CFR 680.

7. Agency shall be responsible for 100 percent of power costs associated with the EV charging equipment installed as a part of this Project. Agency shall require the power company to send invoices directly to Agency.

Revenue From Charging Equipment

8. Agency must use revenue generated during the useful life of the Project to maintain the EV charging equipment. Any revenue generated beyond what is needed for maintenance purposes at the end of the EV charging equipment's useful life must be used to fund Title 23 eligible projects. Agency's use of the revenue generated by public EV charging equipment funded by the CRP must be for specific purposes consistent with 23 CFR 680.106(m) as follows:

   (1) Any net income from revenue from the sale, use, lease, or lease renewal of real property acquired shall be used for Title 23, United States Code, eligible projects.

   (2) For purposes of program income or revenue earned from the operation of an EV charging station, the Agency shall ensure that all revenues received from operation of the EV charging equipment are used only for:

      (i) Debt service with respect to the Project, including funding of reasonable reserves and debt service on refinancing;

      (ii) A reasonable return on investment of any private person financing the Project, as determined by the State;

      (iii) Any costs necessary for the improvement and proper operation and maintenance of the EV charging equipment, including reconstruction, resurfacing, restoration, and rehabilitation;

      (iv) If the EV charging equipment is subject to a public-private partnership agreement, payments that the party holding the right to the revenues owes to the other party under the public-private partnership agreement; and

      (v) Any other purpose for which Federal funds may be obligated under Title 23, United States Code.

9. Agency shall not lease EV charging equipment funded through the Carbon Reduction Program under this Agreement for any reason.

10. If Agency sells the EV charging equipment at any point within the useful life of the Project, Agency shall return all funds generated by the sale of the equipment to ODOT to be incorporated into future rounds of CRP funding.

11. Any contract entered into by Agency with an EVSE provider for operations and maintenance of the EV charging equipment for public facing charging must include provisions on how revenue above a reasonable rate of return will be used in accordance with 23 CFR 680.106 (m).

12. Agency shall ensure that any maintenance and operations agreement for the EV charging equipment will comply with all requirements for public charging stations included in 23 CFR 680.

REPORTING

13. Agency shall submit regular data for all public facing EV charging equipment as required in 23 CFR 680.112 to both FHWA and State. Unless otherwise approved by State, Agency shall use the EVChART tool for reporting.

ATTACHMENT NO. 2
FEDERAL STANDARD PROVISIONS

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.

2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

3. State will provide or secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.

4. Agency may perform only those elements of the Project identified in the special provisions.

PROJECT FUNDING REQUEST

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

FINANCE

6. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or contractor, using the criteria in 2 CFR 200.331.

7. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.

8. Agency's estimated share and advance deposit.

   a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

   b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid, must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.

   c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash or check submitted to the Oregon Department of Transportation.

9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

10. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.

11. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if the following event occurs:

    a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

12. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.

13. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the final total cost of the Project has been computed, State shall furnish Agency with an itemized statement. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total cost of the Project. Any portion of deposits made in excess of the final total cost of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the final total cost of the Project.

DESIGN STANDARDS

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

15. Agency agrees that if the Project is on the Oregon State Highway System or a State-owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current Contract Plans Development Guide.

16. State and Agency agree that for all projects on the Oregon State Highway System or a State-owned facility, any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. State and Agency further agree that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retain authority for said approval. FHWA shall review any design exceptions for projects subject to Project of Division Interest and retains authority for their approval.

17. ODOT agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. State or its consultant shall, on behalf of Agency, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

PRELIMINARY & CONSTRUCTION ENGINEERING

18. Preliminary engineering and construction engineering may be performed by either a) State, or b) a State-approved consultant. Engineering work will be monitored by State to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, or b) a State-approved consultant. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State shall offer Agency the opportunity to review the documents prior to advertising for bids.

19. Architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects must follow the State's processes to ensure federal reimbursement. State will award, execute, and administer the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 731-148-0130, OAR 731-148-0220(3), OAR 731-148-0260 and State Personal Services Contracting Procedures, as applicable and as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the state approved consultant prior to receiving authorization from State to proceed.

20. The State or its consultant responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.

21. State shall prepare construction contract and bidding documents, advertise for bid proposals, award all construction contracts, and administer the construction contracts.

22. Upon State's award of a construction contract, State shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.

23. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

Disadvantaged Business Enterprises (DBE) Obligations

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

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

25. State and Agency agree to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

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

RIGHT OF WAY

27. Right of Way activities shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24.

28. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. State or its consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way office.

29. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be entirely responsible for project acquisition and coordination of the right of way certification.

30. State or its consultant shall ensure that all project right of way monumentation will be conducted in conformance with ORS 209.155.

31. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

RAILROADS

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

UTILITIES

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

GRADE CHANGE LIABILITY

34. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

35. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

36. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, in connection with or arising out of the Project covered by the Project Agreement.

MAINTENANCE RESPONSIBILITIES

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

CONTRIBUTION

38. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

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

40. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such

expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

ALTERNATIVE DISPUTE RESOLUTION

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

WORKERS' COMPENSATION COVERAGE

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

LOBBYING RESTRICTIONS

43. Agency certifies by signing the Agreement that:

a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative

agreements) which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.

e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than one hundred thousand dollars ($100,000) for each such failure.

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

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

CITY COUNCIL

Staff Report

Meeting Date: August 14, 2024
Type: Regular Meeting
Subject: Community Grants

Staff: R. Green
Dept: Administration

Action Requested/Motion: Award community grant funds for FY 2024/25.

Summary Points:
The City of Sisters has budgeted $30,000 for community grant funds to be used by non-profits and other entities that provide projects or programs in the Sisters area. Grant applications were accepted between July 1st – 31st and this year $61,490 in funding is requested from 27 organizations.

Grants are awarded for the purpose of meeting essential needs, educational enrichment, recreational opportunities and other miscellaneous community needs. Over the past two decades, the City has awarded over $321,000 in grants to 68 local organizations with an average grant award of $1,500.

In evaluating requests, the City Council considers the following:

- The requesting organization's history of success.
- The organizational and financial stability of the requesting organization.
- The number and types of community members served by the request.
- The ability to measure and track the effectiveness of a project or service.
- Funds will not be used for travel, budget deficits, or routine operating expenses.

Organizations that serve the Sisters community, but are not designated non-profits, need to meet at least one of the following criteria to be eligible for a grant:

- Provides assistance for essential utilities, food, medical needs, clothing, or shelter.
- Provides educational or recreational opportunities for children or seniors.
- Generates/supports economic activity in Sisters.

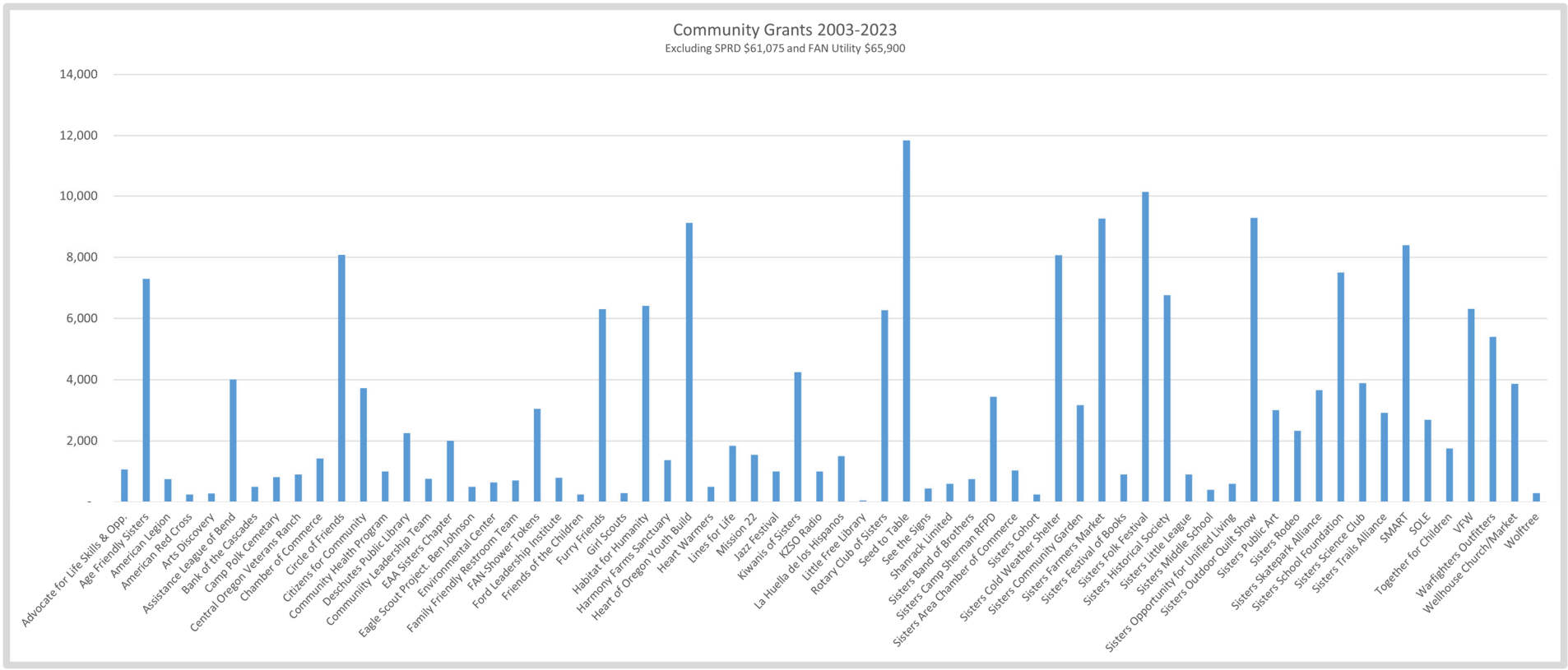
As part of the Community Grant award process, those organizations and entities receiving a grant are asked to provide a written account of exactly how the funds were used.

Financial Impact: The FY 2024/25 adopted budget includes $30,000 for community grants.

Attachments:
1. ATTACHMENT 1: FY 2024/25 Grant Requests
2. ATTACHMENT 2: Community Grant Historical Funding Graph
3. ATTACHMENT 3: Community Grant Policy

2024-25 Community Grant Requests		
ORGANIZATION	**PURPOSE**	**REQUESTED AMT.**
Age Friendly Sisters Country	2 events - "Sing Your Heart Out" & "What Do You DO With an Idea?"	$ 750.00
Camp Polk Pioneer Cemetary Preservation Committee	State licensing fees & insurance	$ 2,500.00
Citizens4Community	Community engagement databases and resources	$ 3,000.00
Commonplace Homeschool Cooperative	Keyboards for music education	$ 2,500.00
Family Kitchen	Executive Director search	$ 3,500.00
Furry Friends Foundation	Seniors - pet food and pet-related services	$ 1,200.00
Habitat for Humanity	Camping fees for visiting volunteers	$ 770.00
Heart of Oregon Corp	Leadership Wednesdays Luncheons	$ 2,000.00
Living Well with Dementia	Cyber Safety Seminar for Seniors/Vulnerable Adults	$ 1,500.00
Romeo's Joy (Age Friendly)	Animatronic pets to improve quality of life for residents	$ 2,500.00
Rotary Club	Books for Kids Project	$ 1,000.00
Sisters-Camp Sherman Fire District/Fire Corps	32 Evenflo Convertible Car Seats	$ 1,500.00
Sisters Community Leadership Initiative (SCLI)	Extraction/disposal of abandoned vehicles in DNF	$ 2,200.00
Sisters Cold Weather Shelter	Food and supplies	$ 2,500.00
Sisters Farm Stand	Art Installation	$ 1,500.00
Sisters Farmers Market	Mornings at the Market (Community Connections)	$ 3,500.00
Sisters Festival of Books	Annual Book Festival - September 2024	$ 3,000.00
Sisters Makers	Launch Young Makers - Youth Business Education Program	$ 7,000.00
Sisters Outdoor Quilt Show	Equipment and safety signage for citywide event	$ 2,770.00
SPRD	Bike Park 242 new front entrance pavillion	$ 2,500.00
Sisters School District - High School AV Club	Purchase professional-grade camera	$ 3,400.00
Sisters Science Club	Frontiers in Science Lecture Series	$ 2,000.00
Sisters VFW Post 8138	Replacement of US flags citywide	$ 1,000.00
SMART Reading	SMART Reading in Sisters	$ 500.00
SOLE - Sisters Outdoor Leadership Experience	Outdoor education and recreation for middle school students	$ 1,500.00
STARS	Volunteer driver mileage reimbursement	$ 3,000.00
Three Sisters Historical Society	Videographer services for Fireside Chat presentations	$ 2,400.00

ATTACHMENT 2



CITY OF SISTERS	
POLICY: COMMUNITY GRANT CRITERIA	NUMBER: CMO 102
EFFECTIVE DATE: 04/11/2018	APPROVAL: CITY COUNCIL

I. POLICY: It is the policy of the City of Sisters to provide assistance to non-profits and for profit entities and organizations, who serve the Sisters community.

Community entities and organizations that serve the Sisters community, <u>but are not designated non-profits</u>, will need to meet at least one of the following criteria to be eligible for a grant:

- Provides assistance for essential utilities, food, medical needs, clothing or shelter.
- Provides educational or recreational opportunities for children or seniors.
- Generates/supports economic activity in Sisters.

In evaluating requests from non-profits and for-profit entities and organizations the City will consider the following:

- The requesting organization's history of success.
- The organizational and financial stability of the requesting organization.
- The number and types of community members served by the request.
- The ability to measure and track the effectiveness of the project or service.
- Community grant funds will not be used for travel, budget deficits or for routine operating expenses.

II. PURPOSE: To set forth the procedures, terms and conditions under which the City will consider making grant awards to community entities & organizations as budgeted funds allow.

III. PROCEDURES:

<u>City of Sisters</u>

- ❖ In reviewing the annual budget, the City Budget Committee will set an amount targeted for community assistance grants.
- ❖ Publish an announcement in the Nugget Newspaper announcing the City will be accepting Community Grant applications. The announcement will continue to run until the application due date.
- ❖ Collect date stamped applications until the deadline.
- ❖ Create a spreadsheet of all the community grant requests received.

- Schedule a workshop for the City Council to discuss and determine who the grant recipients will be and the dollar amount of the grant. The City Council approves the grant recipients and amounts at a regular meeting.

- The City Council approves the City Budget. The grant award is contingent on the Council's approval of the budget and appropriation of funds for community grants for the upcoming fiscal year.

- Send a letter to entities confirming grant amount received.

- Send a letter of regret to entities that were not chosen to receive grants.

Community Grant Applicant

- Submit a Community Grant application prior to the deadline along with a letter supporting the request. The letter should include how the funds will be used, including the benefit to citizens, number and types (children, seniors etc.) of community members served, positive impacts to the community and any other information relevant to the request.

- Provide a letter to the City of Sisters upon completion of the project/or fiscal year end detailing how the funds were used.

CITY COUNCIL

Staff Report

Meeting Date: August 14, 2024
Type: Regular

Staff: Matthew Martin
Dept: CDD

Subject: Deliberations for Ordinance No. 538 (City File No: TA 24-01), amendments to Sisters Development Code Chapter 2.12 - Sun Ranch Tourist Commercial (TC) District.

Action Requested: Deliberations for the adoption of Ordinance No. 538 - AN ORDINANCE OF CITY OF SISTERS AMENDING SISTERS DEVELOPMENT CODE CHAPTER 2.12, SUN RANCH TOURIST COMMERCIAL DISTRICT, THAT EXPAND AND CLARIFY THE TYPES OF ALLOWED USES AND APPLICABLE DEVELOPMENT STANDARDS.

BACKGROUND:
The Applicant, Skidmore Consulting, LLC (Jon Skidmore), on behalf of property owner Lake House Inn, LLC (Ernie Larrabee), has proposed Text Amendments to Sisters Development Code (SDC) Chapter 2.12 - Sun Ranch Tourist Commercial (TC) District. The purpose is to expand and clarify the types of uses allowed and applicable development standards in the TC District to, as stated by the applicant, "reflect changes in the community and tourism industry."

The City Council ("Council") and Planning Commission ("Commission") have reviewed the proposal at the following public meetings:

- **March 21, 2024**[1] Planning Commission Workshop
- **April 18, 2024**[2] Planning Commission Public Hearing
- **May 16, 2024**[3] Planning Commission Public Hearing
  The Commission recommended approval of the amendments as proposed by a 4-2 vote via adoption of PC Resolution 2024-01.
- **June 26, 2024**[4] City Council Workshop
- **July 10, 2024**[5] City Council Public Hearing

At the conclusion of testimony at public hearing on July 10, 2024, the Council closed the record for oral testimony and left the written record open through July 31, 2024. No additional public testimony is permissible unless the record is reopened by the Council.

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[1] 3/21/24 Planning Commission Meeting: https://www.ci.sisters.or.us/bc-pc/page/planning-commission-74
[2] 4/18/24 Planning Commission Meeting: https://www.ci.sisters.or.us/bc-pc/page/planning-commission-85
[3] 5/16/24 Planning Commission Meeting: https://www.ci.sisters.or.us/bc-pc/page/planning-commission-76
[4] 6/26/24 City Council Meeting: https://www.ci.sisters.or.us/bc-citycouncil/page/city-council-workshop-meeting-9
[5] 7/10/24 City Council Meeting: https://www.ci.sisters.or.us/bc-citycouncil/page/city-council-workshop-meeting-10

Attached is Ordinance No. 538 (Attachment 1). Exhibit B to the ordinance identifies the specific amendments proposed with text removed identified by ~~strikethrough~~ and text added identified by underline. The ordinance is reflective of the changes to SDC 2.12.1000(C) and (D) that were presented at the City Council ("Council") public hearing on July 10, 2024 as they relate to length of occupancy limits for, and the temporary nature of RV Park and Lodging Facilities uses in the TC District.

During the public hearing on July 10, 2024, the Council discussed potential modification to several of the proposed amendments but did not come to consensus. Staff requests specific confirmation from the Council the regarding the following proposed amendments:

- **RV Park as permitted or conditional use (SDC 2.12.300)**
  The Council discussed whether an RV Park should be a permitted or conditional use in the TC District if allowed. Staff notes that in either instance, the RV Park use will be subject to Site Plan Review and all other applicable standards and criteria.

- **Setbacks from Barclay Drive and Camp Polk Road (SDC 2.12.600)**
  The Council discussed the proposed reduction in setback from 20 to 10 feet from Camp Polk Road and Barclay Drive.

- **Neighborhood Market/Retail Sales Establishment size limit (SDC 2.12.1000(A) and (B))**
  The Council discussed the proposed 1,000 square foot size limit for these uses and how it is measured relative to other potential neighborhood market/retail sales establishments in the TC District.

- **RV Park Length of Occupancy (SDC 12.1000(C))**
  The Council discussed requiring a maximum length of occupancy and whether that would be in compliance with ORS 197.493. This item is discussed in additional detail later in this report.

An updated Amendment Summary Matrix is attached (Attachment 2) that describes each of the proposed amendments to assist in the decision-making process.

PROJECT RECORD:
The official record for the project is available at Sisters City Hall. Electronic and printed copies are available upon request. In addition, the record is available via the City of Sisters project webpage[6] under the project record link. The record includes all application materials, notices, agency comments, public comments, and staff reports.

Since the public hearing on July 10 and the close of the written record on July 31, the following record submittals were received and are attached to this report (Attachment 3):

- 7-15-24 Beson (Sisters Eagle Airport) Email
- 7-30-24 Russel Email
- 7-31-24 Smith (Applicant) Submittal
- 7-31-24 Skidmore (Applicant) Submittal

ADDITIONAL ISSUES RAISED:
At and since the public hearing on July 10, two prominent issues have been raised including: 1.) compliance with ORS 197.493 limits on regulating length of occupancy in an RV park; and 2.) RV Park compatibility with the Sisters Eagle Airport. Below, staff provides additional information on each.

- **Compliance with ORS 197.493 Limits on Regulating Length of Occupancy in an RV Park**
  Pursuant to Oregon Revised Statute (ORS) 197.493[7], the city may not impose any limit on the length of occupancy of an RV as a residential dwelling if the RV is located in an RV Park and lawfully connected to water, electrical supply systems, and a sewage disposal system. The provisions of ORS 197.493 do not preclude a property owner from choosing to limit the duration of stay for any RV. At the July 10 public hearing, the applicability of ORS 197.493 and options for the city to limit length of occupancy were discussed. Staff acknowledges that the legislative history and limited case law pertinent to ORS 197.4493 do not expressly identify what constitutes use of an RV as a "residential dwelling" resulting in ambiguity and uncertainty about its application in this instance. What is clear is the TC District is not a residential zone intended for long term residential development and the intent of allowing an RV Park is for temporary vacation occupancy of an RV.

  The applicant has submitted additional information regarding this issue (See 7-31-24 Smith (Applicant) Submittal) providing a detailed summary of the history and intent of

[6] TA 24-01 Project Webpage: https://www.ci.sisters.or.us/community-development/page/text-amendments-sun-ranch-tourist-commercial-district-%C2%A0
[7] ORS 197.493: https://www.oregonlegislature.gov/bills_laws/ors/ors197.html

the law. Based on this analysis, Mr. Smith proposes three options to address compliance with ORS 197.493:

1. Adopt SDC 2.12.1000(C)(1) as proposed by City staff, including the additional "Except as provided in ORS 197.493 ... " language.
2. Adopt SDC 2.12.l000(C)(1) as proposed by the Planning Commission without the additional "Except as provided in ORS 197.493 ... " language.
3. Replace SDC 2.12.l000(C)(1) with a new provision more directly prohibiting the use of RVs as dwelling units providing permanent housing.

Staff notes the attached Ordinance No. 538 reflects proposed modifications discussed at the July 10 public hearing that removed the reference to ORS 197.493, and a specified length of stay that Mr. Smith notes in Options 1 and 2 above. With that said, those Options remain available to the Council along with alternatives such as Option 3 or utilizing the prohibited use section of SDC 2.12.300 to prohibit the use of RVs as dwelling units providing permanent housing. Staff and City Legal counsel have concluded each option is viable for restricting the residential use of an RV or length of occupancy based on known legislative intent and case law. City legal counsel will attend the meeting for questions and further discussion.

- **RV Park Compatibility with the Sisters Eagle Airport**
  The TC District is located in the Transitional Surface and Runway Protection Zone of the Airport Overlay (AO) District associated with the Sisters Eagle Airport. Comments received from Julie Benson (See 7-15-24 Benson (Sisters Eagle Airport) Email) express opposition to allowing an RV Park in the TC District and the Transitional Surface of the AO District based on concerns with safety, noise, and use compatibility. The applicant provide a response to this opposition (See 7-31-24 Skidmore (Applicant) Submittal).

  Staff notes the arguments in opposition do not present reference to any law that expressly prohibits an RV Park use in the Transitional Surface of the AO District associated with the Sisters Eagle Airport. Instead, it is staff's understanding the Oregon Department of Aviation (ODAV) provides guidelines for compatibility, allowance or prohibition, of a variety of uses. Staff notes that many "incompatible uses" identified in State of Oregon's Airport Land Use Compatibility Guidebook[8] are currently allowed and existing in the Transitional Surface of the AO District including schools, churches, transient lodging, residential, and parks. Comments received from ODAV did not specify the proposed allowance of an RV Park in the TC District is prohibited but, instead, advised that the applicant contact ODAV to discuss potential aviation-related concerns or limitations with the property. Staff also notes that any proposed development located in the AO District

[8] ODAV Land Use Compatibility Guidebook: https://www.oregon.gov/aviation/plans-and-programs/pages/airport%20land%20use%20compatibility%20guidebook.aspx

is subject to the applicable provisions of SDC Chapter 2.11 (AO Distritct) and will be addressed at the time of land use review along with all other applicable standards and criteria.

APPLICABLE CRITERIA:
The proposed legislative amendments are regulated by Chapter 4.7 (Land Use District Map and Text Amendments). Section 4.7.200 states that legislative amendments are policy decisions made by the Council and shall be reviewed using the Type IV procedure found in SDC Section 4.1.600 and shall conform to SDC section 4.7.600 Transportation Planning Rule compliance.

Pursuant to the SDC Section 4.1.600, the City may approve, approve with modifications, approve with conditions, deny the proposed changes, or recommend an alternative to the code text amendments based on the criteria in SDC 4.1.600.E (Decision-Making Considerations) that require the decision by the Council shall be based on consideration of the following factors:

1. Consistency with the Statewide Planning Goals
2. Consistency with the Comprehensive Plan
3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.
4. Compliance Transportation Planning Rule (TPR) requirements of Oregon Administrative Rule (OAR) 660-012-0060

As detailed in the findings in Exhibit A to Ordinance No. 538 and Planning Commission Resolution No. 2024-01, the Commission and staff have determined the proposal complies with the applicable criteria.

NEXT STEPS:
At the conclusion of testimony at public hearing on July 10, 2024, the Council closed the record for oral testimony and left the written record open through July 31, 2024. No additional public testimony is permissible unless the record is reopened by the Council. The Council will conduct deliberations on August 14, 2024. The Council will make a final decision via adoption of Ordinance No. 538. Decision options include:

1. Approve
2. Approve with Modifications
3. Approve with Conditions
4. Deny

Financial Impact: N/A

Attachments:

ATTACHMENT 1 - Ordinance No. 538 with Exhibits
ATTACHMENT 2 - Amendment Summary Matrix
ATTACHMENT 3 – Record Submittals Since 7/10/24

- 7-15-24 Beson (Sisters Eagle Airport) Email
- 7-30-24 Russel Email
- 7-31-24 Smith (Applicant) Submittal
- 7-31-24 Skidmore (Applicant) Submittal

ORDINANCE NO. 538

AN ORDINANCE OF CITY OF SISTERS AMENDING SISTERS DEVELOPMENT CODE CHAPTER 2.12, SUN RANCH TOURIST COMMERCIAL DISTRICT, THAT EXPANDS AND CLARIFIES THE TYPES OF ALLOWED USES AND APPLICABLE DEVELOPMENT STANDARDS

WHEREAS, Jon Skidmore of Skidmore Consulting, LLC, on behalf of property owner Lake House Inn, LLC ("Applicant") sought approval of a legislative amendment to the text of the Sisters Development Code (the "Code") under Planning File No. TA 24-01 (the "Application");

WHEREAS, after due notice, a public hearing on the Application was held by the Sisters Planning Commission ("Planning Commission") on April 18 and May 16, 2024, testimony was accepted, and the Planning Commission voted to close the hearing and deliberate the matter;

WHEREAS, the Planning Commission, after reviewing the record and fully deliberating the matter, voted to recommended that the Sisters City Council ("City Council") approve the Application;

WHEREAS, the Code requires a second hearing before the City Council for legislative text amendments;

WHEREAS, after due notice, a public hearing on the Application was held by the City Council on July 10, 2024, testimony was accepted, and the City Council voted to close the oral record, leave the written record open through July 31, 2024, and schedule deliberations for August 14, 2024;

WHEREAS, the City Council, after reviewing the record and fully deliberating the matter, voted to approve the Application;

NOW, THEREFORE, THE CITY OF SISTERS ORDAINS AS FOLLOWS:

1. Findings. The findings contained in the recitals and those found in the staff report attached hereto as Exhibit A are hereby adopted in support of the land use decision made by this Ordinance No. 538 (this "Ordinance").

2. Approved Text Amendments. The amendments to the Code contained in the attached Exhibit B are hereby approved and adopted. Those provisions of the Code that are not amended or modified by this Ordinance remain unchanged and in full force and effect. This Ordinance does not relieve any person of any obligations that may have accrued under SDC Chapter 2.15 prior to the effective date of this Ordinance. City may continue the enforcement, prosecution, conviction, and/or punishment of any person who has or will violate SDC Chapter 2.15 prior to the effective date of this Ordinance.

3. Authorization. The City Manager, or designee, is authorized to execute any

documents and to take such actions as are necessary to further the purposes and objectives of this Ordinance including, without limitation, integrating the adopted text amendments into the Code.

4. Miscellaneous. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the City Council to cure editorial and/or clerical errors.

This Ordinance was PASSED and ADOPTED by the Sisters City Council by a vote of ___ for and ___ against and APPROVED by the mayor on this 14th day of August, 2024.

_____
Michael Preedin, Mayor

ATTEST:

_____
Rebecca Green, Deputy Recorder

STAFF REPORT
Community Development Department

FILE #: TA 24-01

APPLICANT: Jon Skidmore – Skidmore Consulting, LLC
Ernie Larrabee - Lake House Inn, LLC

LOCATION: All of Sun Ranch Tourist Commercial District Including the Following Properties:
Address: 69013 Camp Polk Road / Tax Map and Lot: 15-10-4 1101
Address: 575 E. Sun Ranch Drive / Tax Map and Lot: 15-10-4BD 1900
Address: Unaddressed / Tax Map and Lot: 15-10-4BD 1901

REQUEST: Text Amendments to the Sisters Development Code Chapter 2.12 - Sun Ranch Tourist Commercial District. The purpose is to expand and clarify the types of uses allowed in the Sun Ranch Tourist Commercial District and other edits for consistency with the Sisters Development Code.

APPLICABLE CRITERIA: Sisters Development Code:
Chapter 1.3 – Definitions
Chapter 2.12 – Sun Ranch Tourist Commercial District
Chapter 4.1 – Types of Applications and Review Procedures
Chapter 4.7 – Land Use District Map and Text Amendments
City of Sisters Urban Area Comprehensive Plan
Oregon Statewide Land Use Goals

PLANNING COMMISSION HEARING DATES: April 18, 2024
May 16, 2024

CITY COUNCIL HEARING DATE: July 10, 2024
August 14, 2024

STAFF: Matthew Martin, Principal Planner

I. PROPOSAL:

The City of Sisters received an application that originally included text amendments to Sisters Development Code Chapter 1.3 (Definitions) and Chapter 2.12 (Sun Ranch Tourist Commercial (TC) District). The applicant, Ernie Larrabee of Lake House, LLC, indicates the purpose of the amendments is

to expand and clarify the types of uses allowed in the TC District to reflect changes in the community and tourism industry.

During the review process of the Planning Commission, the applicant coordinated with staff to revise the proposal to address issues raised and reduce the number of formatting changes proposed. In summary, the revised proposal includes the following substantive changes to Chapter 2.12:

- **Additional New Uses:**
  - Retail Sales Establishment
  - Hostel
  - RV Park including Caretaker's Quarters

- **Changes to Standards and Other Provisions:**
  - Amend the purpose statement to reflect removal of early 1900s Rural Farm/Ranch House design standards for the district.
  - Change "Restaurant, bar, and food services" to "Eating and drinking establishments" for consistency with the remainder of the SDC.
  - Add requirements for Hostel use that match standards for Hostels in the Highway Commercial District.
  - Reduce front and side yard setbacks from 20 to 10 feet.
  - Add Special Use Standard requiring maximum 1,000 square feet for Neighborhood Market and Retail Sales Establishment uses.
  - Add Special Use standard for RV Park use including:
    - Maximum of 65% of the gross area of property for use.
    - Required amenities to complement the use.
  - Add definition for existing Lodging Facility use.
  - Remove the early 1900s Rural Farm/Ranch House design standards for the district.

The originally proposed amendment to Chapter 1.3 was withdrawn for the proposal.

II. BACKGROUND:

The applicant provided the following background of the subject properties and TC District:

> *The subject property enjoys a long history in the Sisters community. The site once had a schoolhouse on it. The old residential structure onsite was originally constructed in 1947. That house was used as the home of the Hitchcock family and then the Conklin family. The house was used as a bed and breakfast from the 1980s through the early 2000s.*
>
> *In 2004/2005, the previous owner of the subject property purchased this property and the 35+/- acres adjacent to the north and west. That owner worked with the City to create the Sun Ranch Industrial Park, Sun Ranch Residential District, and the Sun Ranch Tourist Commercial zone. These zoning districts were planned cohesively to leverage uses within the various districts for the benefit of residents and workers within those districts. For instance, the industrial district was planned to provide jobs for people who may live in the residential district. The Tourist Commercial district was planned to provide amenities such as eating and drinking establishments or overnight accommodations for the benefit of the residents of the residential zone or workers in the industrial park. That interplay is still very much a goal for the subject property. The zone was also planned to invite tourists as well as other Sisters community members. The proposed text amendments seek to expand and clarify the permissible uses on site with those objectives in mind.*

The SRTC district was created around a specific vision for the property. The uses permissible were tightly tailored to that vision. From 2004 through 2007, the previous owner worked with the city to create the entirety of the Sun Ranch concept. The bed and breakfast structure was meant to be a centerpiece of the SRTC zone. Remodeling of the bed and breakfast commenced to house a high-end restaurant about 2006/2007. The restaurateur that was heading the effort abandoned the project. The structure that was mid-renovation has sat unfinished since that time and is boarded up for safety reasons.

The vision for the SRTC zone in the mid-2000s is outdated at this point. Sisters was a different place at the time that the TC zoning district was created. For instance, Five Pine was still in initial phases of development. The housing stock in Sisters was extremely limited. There were fewer eating and drinking establishments in Sisters.

In 2007, the population of Sisters was 1,825 per the Portland State University Population Research Center statistics. PSU's Population Research Center estimates that the population of Sisters in 2025 will be 3,890. Since the economic recovery following the Great Recession, the Sun Ranch area has developed with a variety of businesses and residential units. This reality creates an opportunity to create a set of regulations that permit various uses in keeping with the intent of attracting tourists and locals alike. The vision for the property still includes overnight accommodations and food & beverage establishments but in different forms. This new vision includes higher end RV spaces that cater to the "vanlife" market and things like food carts, a tap house, corn hole, pickleball, small concert stage and other items that attract local and tourist visitors.

Currently, the purpose of the TC zone, as stated in SDC 2.12.100 is:

> *The purpose of the Sun Ranch Tourist Commercial district is to establish landmark lodging, dining, and recreation destinations and gathering places for business travelers, tourists and the residents of the area. The district is for commercial properties in transition areas between residential, light industrial and commercial areas. This district establishes commercial uses to complement adjacent mixed-use light industrial and residential districts. Special design standards apply to create a rural ranch setting separate from, but compatible with, the 1880s Western Frontier Architectural Design Theme. Another purpose of this district is to provide flexibility for expansion of lodging facilities and improve accessory components of the commercial lodging establishment such as meeting facilities, restaurant, bar, neighborhood market, etc.*

The proposed, new language still aims to provide various tourism related uses to attract locals and tourists and to provide community gathering spaces.

"The purpose of the Sun Ranch Tourist Commercial district is to establish a variety of uses associated with tourism such as options for overnight accommodations, dining, entertainment, and recreation and to provide gathering space and uses that attract business travelers, tourists and members of the Sisters community alike."

Uses such as cabins for overnight rental are not as high in demand as other types of overnight accommodation. Food carts, tap rooms and recreational opportunities create places where people gather. The proposed text amendments seek to expand and clarify the types of uses on site but still honor the purpose of the district in its relationship to the community and the traveling public. Further,

based on feedback from City staff, the proposed text amendments will put the SRTC zoning district into a format that is more consistent with the rest of the Sisters Development Code.

III. CONCLUSIONARY FINDINGS:

Sisters Development Code (SDC) Chapter 4, Table 4.1.200 lists a code amendment as a Type IV decision, regulated by Chapter 4.7 (Land Use District Map and Text Amendments). Section 4.7.200 states that legislative amendments are policy decisions made by the City Council and shall be reviewed using the Type IV procedure found in SDC Section 4.1.600 and shall conform to SDC section 4.7.600 Transportation Planning Rule compliance.

Pursuant to the SDC Section 4.1.600, the City may approve, approve with modifications, approve with conditions, deny the proposed change or recommend an alternative to the code text amendments based on the criteria in SDC 4.1.600.E. Decision-Making Considerations. The following are staff's conclusionary findings for each of the applicable criteria:

CHAPTER 4.1 – TYPES OF APPLICATION AND REVIEW PROCEDURES

4.1.100 Purpose

The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way.

Staff Finding: Staff finds that this provision is advisory.

4.1.200 Description of Permit/Decision-Making Procedures

All land use and development permit applications, except building permits, shall be decided by using the procedures contained in this Chapter. General provisions for all permits are contained in Section 4.1.700. Specific procedures for certain types of permits are contained in Section 4.1.200 through 4.1.600. The procedure "type" assigned to each permit governs the decision-making process for that permit. There are four types of permit/decision-making procedures: Type I, II, III, and IV. These procedures are described in subsections A-D below. In addition, Table 4.1.200 lists all of the City's land use and development applications and their required permit procedure(s).

…

D. Type IV Procedure (Legislative). Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments which apply to entire districts). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council and appeals possible to the Oregon Land Use Board of Appeals.

Staff Finding: The applicant is proposing text amendments to the Sisters Development Code. The amendments propose a revision to adopted land use regulations, thereby requiring compliance with Type IV procedure.

A. Notice of all Type III and IV hearings will be sent to public agencies and local jurisdictions (including those providing transportation facilities and services) that may be affected by the proposed action. Affected jurisdictions could include ODOT, the Department of Environmental Quality, the Oregon Department of Aviation, and neighboring jurisdictions.

Staff Finding: Partner organizations and agencies staff identified as having a particular interest in the proposal were notified of the proposal and invited to participate.

4.1.600 Type IV Procedure (Legislative)

A. Application requirements. See 4.1.700.

B. Notice of Hearing.

1. Required hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications, except annexations where only a hearing by the City Council is required.

2. Notification requirements. Notice of public hearings for the request shall be given by the Community Development Director or designee in the following manner:

…

Staff Finding: Staff provided notice in accordance with 4.1.600(B) at least 14 days prior to the public hearings before the Planning Commission and City Council.

…

E. Decision-Making Considerations. The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:

1. Approval of the request is consistent with the Statewide Planning Goals;

Staff Finding: Staff has outlined review of compliance with the Statewide Planning Goals below.

Goal 1 – Citizen Involvement.

***Staff Finding*:** During the text amendment process, public notice of the proposal was provided through published notice in The Nugget newspaper, mailed to owners of property in the TC District, mailed to participants of record, and posted at City Hall. The City held public hearings before the Planning Commission and City Council. In addition, the applicant voluntarily held a public meeting prior to submittal of the application. These opportunities for public involvement satisfy Goal 1.

Goal 2 – Land Use Planning.

Staff Finding: Staff is following the prescribed procedure for a text amendment to ensure adequate review of the proposed text amendment. Staff finds Goal 2 is met.

Goals 3 and 4, Agricultural and Forest Lands

Staff Finding: These Goals are not applicable as the proposed text amendments will not have any known impact on either Agricultural or Forest Lands.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces.

Staff Finding: Staff finds Goal 5 is not applicable because the proposed text amendments will not have any known impact on inventoried natural resources, scenic and historic areas, and open spaces. While the house on the property may be older and associated with significant past Sisters residents, it does not have any specific historic status or protections.

Goal 6 – Air, Water and Land Resources Quality.

Staff Finding: Staff finds Goal 6 is not applicable because the proposed text amendments, including the new uses, are not associated with the types of pollution, contaminants, or industrial byproducts that this goal addressed.

Goal 7 – Areas Subject to Natural Hazards.
Staff Finding: Staff finds Goal 7 is not applicable because the subject properties do not contain and are uniquely susceptible to any natural hazards.

Goal 8 – Recreational Needs.
Staff Finding: The applicant proposes RV Park as a permitted use. In conjunction with an RV Park, at least two recreational amenities shall be required including fishing pond, decks, docks and other areas to enjoy the pond, sport courts, dog park, multi-use trails and paths, playground, small stage, and fire pits. Staff finds these amenities will enhance and add to recreational opportunities in the community. Based on this information, staff finds Goal 8 is satisfied.

Goal 9 – Economic Development.
Staff Finding: The City has adopted an Economic Opportunities Analysis (EOA) that identifies economic land needs, target industries, and other local policies aimed at assuring economic opportunities within Sisters. The City has identified a continued focus on tourism related industries and expansion of those types of uses to attract tourism activity in the shoulder season. The proposed text amendments will expand the types of uses permissible within the TC District that will specifically or indirectly attract tourists year-round. Staff finds Goal 9 is met.

Goal 10 – Housing.
Staff Finding: Staff finds Goal 10 is not applicable because the proposed text amendments do not address the housing needs of the city. Staff would note that the currently allowed uses in the TC District, as well as the proposed added uses, such as RV park, are intended to be temporary living accommodations and not intended to provide long term housing.

Goal 11 – Public Facilities and Services
Staff Finding: Agency comments received did not express concern with the adequacy of public facilities and services to accommodate the uses and standards as proposed. Further, review of development for adequacy of public facilities and services remains unchanged with the proposed amendments. Staff finds that the amendments comply with Goal 11.

Goal 12 – Transportation
Staff Finding: The City adopted an updated Transportation System Plan (TSP) in December 2021. The TC District is bound on E. Barclay Avenue and Camp Polk Road, both classified as collector streets in the TSP. Improvements to Barclay Avenue are planned and improvements to Camp Polk Road will be contemplated as part of future any development proposals.

The applicant submitted a Trip Generation and Transportation Planning Rule (TPR) Analysis memo from Melissa Webb, PE with Lancaster Mobley Engineers (Application Exhibit F). The study reviewed the morning peak hour, evening peak hour, and average daily trip generation potential of the site under both the existing allowable land uses and the proposed additional allowable land uses. The study concluded that the proposed text amendments would not degrade the performance of any existing or planned transportation facility. Accordingly, the TPR is satisfied, and no mitigation is necessary or recommended in conjunction with the proposed text amendment. Comments received from the City Transportation Engineer express agreement with the assessment presented by Lancaster Mobley and the opinion that, as outlined, the proposed text amendments remain compliant with the TPR and noted the types of uses allowed with the amendments are lower in intensity than those already permitted within the zoning. Any

future development on the property may be required to submit an updated traffic study to look at specific traffic impacts and necessary mitigation measures.

Based on this information, staff finds the proposal complies with Goal 12.

Goal 13 – Energy Conservation
Staff Finding: No impact on energy conservation is anticipated. Therefore, This provision does not apply.

Goal 14 – Urbanization
Staff Finding: The proposed text amendments apply only to properties located within the current city limits. Therefore, staff finds Goal 14 is not applicable.

Goals 15 through 19.
Staff Finding: Goals 15, 16, 17, 18 and 19 are not applicable because they only pertain to areas outside of Central Oregon.

2. Approval of the request is consistent with the Comprehensive Plan; and

Staff Finding: The Comprehensive Plan contains Goals and Policies for land use and development within the City. In turn, the Development Code implements the Goals and Policies of the Comprehensive Plan. Any amendments to the Development Code must be consistent with the applicable Goals and Policies of the Comprehensive Plan. Findings specific to applicable Goals and Policies are provided below:

Sisters Comprehensive Plan Section 1: Public Involvement
Goal 1
Offer a wide variety of traditional and contemporary tools and opportunities that enable and empower a diverse population of residents, business owners, private organizations, and partner agencies located inside and outside City limits to participate in all land use processes.

Objective 1.1
To maintain an effective Citizen Involvement Program and recognize an official body; a Committee for Citizen Involvement (CCI) will be responsible for overseeing and regularly reviewing the effectiveness of the program in order to grow public awareness and participation.

Policies:
1.1.1 The Citizen Involvement Program will be directed by the City's Planning Commission, sitting as the Committee for Citizen Involvement. The Planning Commission shall seek multiple methods to support and cultivate additional, new, and ever-expanding citizen involvement opportunities including working directly with private organizations to amplify opportunities for involvement.

Staff Finding: The proposed amendments were reviewed at Planning Commission and City Council meetings via public hearings, which are open to the public with opportunities for public involvement. The amendment proposal has followed the notice requirements in Chapter 4.1, including mailed and published notice of the public hearing. Staff finds the review process for the proposed text amendments complies with the policy.

Objective 1.2
To recognize the need to use a variety of traditional and contemporary communication tools and channels in the Citizen Involvement Program, including communication methods that will reach diverse audiences and drive greater awareness and participation in all phases of planning processes.

Policies:

…

1.2.2 The City shall ensure that information about planning activities and notices of upcoming meetings are maintained on the City's website and distributed via a variety of outlets and methods, including non-traditional methods that might be more successful at reaching underrepresented or less frequently involved members of the public such as greater use of social media pages, email list servs, or partnerships with local community organizations.

***Staff Finding*:** Notice of the public hearings was published in The Nugget newspaper, emailed to the subscriber list of the City's Planning Commission listserv, mailed to owners of property in the TC District and participants of record, and posted at City Hall. Staff finds the review process for the proposed text amendments complies with this policy.

1.2.3 The City shall provide information about planning activities and notices of upcoming meetings in clear, understandable language and will include information about relevant City processes and procedures. This will include brief descriptions of items that City Council and Planning Commission will be discussing.

***Staff Finding*:** Notice of the public hearing includes information about relevant City processes and procedures in clear, understandable language, with a listed contact person in the event an individual needs additional information. Staff finds the review process for the proposed text amendments complies with this policy.

…

1.2.6. The City shall provide options for community members to view and participate in all official City meetings remotely in order to reduce barriers to participation.

***Staff Finding*:** The public meetings will include use of the Zoom online meeting app to provide opportunity for remote participation. A contact person is listed on the notice of public hearing for individuals that may need to request special accommodations prior to the hearing in order to reduce barriers to participation. Staff finds the review process for the proposed text amendments complies with this policy.

…

1.3.1 The City shall provide information necessary to reach policy decisions at City Hall, on the City's website, and via other avenues as appropriate.

Staff Finding: The project record is available at City Hall for inspection. In addition, a project specific page of the City of Sisters website has been created to provide information relevant to this project[1].

Sisters Comprehensive Plan Section 2: Land Use

[1] Project webpage: https://www.ci.sisters.or.us/community-development/page/text-amendments-sun-ranch-tourist-commercial-district-%C2%A0

Goal 2
Continue to implement a Land Use Planning process and policy framework as a basis for all decisions and actions related to the use of land; ensure an adequate factual base for such decisions and actions are consistent with the policy framework, other Comprehensive Plan policies, and the implementing planning documents.

Policies:
…
2.1.2 The City of Sisters shall continue to maintain, enhance, and administer land use codes and ordinances that are based on an adequate factual basis, the goals and policies of this Comprehensive Plan, and applicable local, state, and federal regulations.

***Staff Finding*:** The applicant addressed this policy with the following:

> *The proposed text amendments are geared towards updating and clarifying the permissible uses within the Tourist Commercial zone. Comprehensive Plans and Development Codes are living documents that require routine updates based on changes in federal and state law, local policy direction, and response to changing market conditions. In this instance, the applicant is proposing text amendments to the Tourist Commercial zone that will contribute to many of the goals and policies of the Comprehensive Plan and supporting documents as discussed below. Identifying the applicable Comprehensive Plan policies and explaining how the amendments are consistent with and will contribute to various policy ambitions provides the factual basis needed to support the changes. Changes that have occurred since the SRTC zone was adopted on the subject property, within the Sisters community and amongst travel behavior of tourists that also support these proposed amendments.*

The applicant also notes the changes in the community, the district, and travel behavior that warrant consideration of the proposed amendments.

As detailed in the application narrative, the applicant contends, "As documented in the City's Comprehensive Plan, the City's EOA and the Sisters Country Vision, tourism has been and will continue to be an economic driver for the community. The EOA explains that uses that attract tourists provide desirable amenities for locals as well." Staff agrees with this opinion.

Based on this information, and as discussed throughout this report, staff finds the proposed amendments are based on factual information, the goals and policies of this Comprehensive Plan, and applicable local, state, and federal regulations and the proposed text amendments complies with this policy.

…
2.1.4 The City shall notify and engage partner organizations, residents, property owners, and businesses as part of processes to update and amend the City's Comprehensive Plan and Development Code.

***Staff Finding*:** Notice of the public hearings was provided consistent with the City Development Code and Oregon State Law. Partner organizations and agencies staff identified as having a particular interest in the proposal were notified of the proposal and invited to participate. Owners of property in the TC District were identified to be affected by the proposed amendments, so Measure 56 notice was provided to these owners. Notice of the public hearings was posted in a variety of methods as previously listed. Staff finds the review process for the proposed text amendments complies with this policy.

2.1.7 The City shall continue to explore opportunities to incorporate new regulatory approaches and other best practices to implement the Comprehensive Plan in a manner that can be administered effectively and efficiently.

Staff Finding: The applicant argues the text amendments allow property owners within the TC District to respond to changing market conditions and travel behavior is an effective way to adjust the city's development code to deliver on the tourism economic development policy ambitions in the City's Comprehensive Plan, EOA, and the Sisters Country Vision. Staff finds the amendments represent an evolution in the regulatory approach for uses and development standards in the TC District. Further, staff finds the proposed amendments that incorporate basic formatting and development standards similar to other commercial district chapters of the Sisters Development Code provide consistency and ease of use and implementation. Based on this information, staff finds this policy is met.

…

Sisters Comprehensive Plan Section 4: Livability

Goal 4
Maintain and enhance the livability of Sisters as a welcoming community with a high quality of life and a strong community identity.

Objective 4.1: Community Identity
To promote projects, programs, and initiatives that strengthen the community's identity, including historic resources, scenic views, trees, artisanal activities, and inclusive attitude towards all community members.

Policies:

4.1.1 The City shall recognize and conserve the environment and natural resources that enhance the community's identity, including open spaces, natural landscapes, outdoor recreation areas, historic structures, architectural styles, and public art.

***Staff Finding*:** The proposed amendments remove the TC District specific 1900s Rural Farm/Ranch House Design Theme standards. This results in the 1880s Western Frontier Design Theme being applicable to the TC District along with all other commercial districts. The proposed amendments do not have a greater impact on conservation of the environment and natural resources than those uses already allowed in the TC District. Based on this information, staff finds the proposed text amendments comply with this policy.

Objective 4.2: Neighborhood Design
To facilitate development and redevelopment of neighborhoods to support community members' economic, social, and cultural needs, and promote health, well-being, universal access, and innovative design.

Policies:

…

4.2.3 The City shall encourage transitions between residential and nonresidential areas through the use of buffers, screening, or other methods to improve compatibility and reduce impacts to residential neighborhoods.

Staff Finding: The TC District is located adjacent to the North Sisters Business Park District and Airport District to the north, the North Sisters Business Park and Light Industrial Districts to the west, the Downtown Commercial District to the south. These zones are primarily intended to provide for commercial and industrial uses with limited opportunities for residential uses in the North Sisters Business Park and Downtown Commercial District resulting in a mixed-use environment. The properties to the east are located outside the city limits, zoned Rural Residential, and comprised of primarily larger acreage with limited residential development. Based on this information, staff does find these districts and existing development do not constitute a residential neighborhood.

Comments received expressed concern with noise, light, and other negatives associated with an RV Park use may have on adjacent residential use. Staff notes the special use standards applicable to RV Parks in SDC 2.15.1700(G) state, "Screening. The recreational vehicle park shall be enclosed by a fence, wall, landscape screening, berms, or by other designs approved by the Hearings Body which will complement the landscape and assure compatibility with the adjacent environment." This standard provides the opportunity to require project specific screening at the time of development review to address such impacts.

Based on this information, staff finds the proposal complies with this policy. With that said, if the Commission finds this area constitutes an area of transition between residential and nonresidential areas, the Commission may consider additional development or design requirements to improvement compatibility and reduce impacts on residential neighborhoods.

…

Sisters Comprehensive Plan Section 7: Parks, Recreation, And Open Space

Staff Finding: Staff has reviewed this section and did not identify any policies that are applicable to this proposal. With that said, the proposed RV Park use requires at least two recreational amenities including fishing pond, decks, docks and other areas to enjoy the pond, sport courts, dog park, multi-use trails and paths, playground, small stage, and fire pits. Staff finds these amenities will enhance and add to recreational opportunities in the community.

Sisters Comprehensive Plan Section 8: Economy

Goal 8
Provide adequate opportunities for a variety of economic activities vital to the health, welfare, and prosperity of the City's community.

Policies:

8.1 The City shall maintain and enhance the appearance and function of the Commercial Districts by providing a safe and aesthetically pleasing pedestrian environment, encouraging mixed use development and unique design using the City's Western Frontier Architectural Design Theme.

***Staff Finding*:** The proposed text amendments will remove the TC District specific 1900s Rural Farm/Ranch House Design Theme thereby applying the City's 1880s Western Frontier Architectural Design that is applicable in all commercial districts. Staff finds the proposed text amendments comply with this policy.

…

8.3 The City shall promote pedestrian scale developments in the commercial zones. Auto-oriented developments such as restaurants with drive-up windows will be discouraged, limited or prohibited in the Downtown area; in other areas, they shall be limited and managed to minimize their impacts.

***Staff Finding*:** Auto-oriented developments is not a defined term in the Sisters Development Code or the Merriam-Webster Dictionary. With that said, Staff acknowledges the definitions section of SDC 1.3.300 includes a definition for "Auto-dependent use"[2] and uses this definition in addressing this policy. Currently, The TC District prohibits "auto-oriented uses and drive-through facilities." The applicant proposes to change the terminology used from "auto-oriented" to "auto-dependent" to match the defined term. Staff notes such a use will continue to be prohibited in the district.

The applicant is proposing RV Park as a new use in the TC District, a commercial zone. RVs by design require the use of a vehicle. However, based on the definition of "auto-dependent use," staff finds RV Park is no such use because the use does not service motor vehicles. Instead, staff finds the relationship of an RV Park to vehicles is similar to that of a hotel in that hotels typically serve the traveling public that arrive by motor vehicle.

Based on this information, staff finds this policy is met.

8.4 The City shall assure development contiguous to commercial and residential zones is designed and built in a manner that is consistent and integrates with the character and quality of those zones, including minimizing potential adverse impacts related to noise, odor, or light from commercial or industrial uses. Building shall be constructed in an attractive and inviting manner, without disrupting operations.

Staff Finding: The definition section of SDC 1.3.300 includes a definition for "Abutting."[3] Based on the definition, the TC District is not contiguous to any residential zones and is contiguous to the Downtown Commercial District. In addition, while the North Sisters Business Park District is not by name a commercial zone, staff finds it is commercial in nature and compliance with this policy is applicable.

This policy is directed at the designed and built environment. The applicant is proposing new uses and reduced setbacks. The proposed setbacks are generally consistent with the setback standards of the other commercial districts in the city. In addition, the applicant is proposing to remove the district specific 1900s Rural Farm/Ranch House Design Theme resulting in implementing the City's 1880s Western Frontier Architectural Design Theme that is applicable in all commercial districts.

In addition to the design standards and the development standards of the district, new development will be subject to the applicable site plan review criteria of SDC 4.2, design standards of SDC Chapter 3, and special use standards of SDC 2.15.

As previously discussed, comments received expressed concern for the impacts created by RV Park use in the district.

[2] SCD 1.3.300 "Auto-dependent use – The use services motor vehicles and would not exist without them, such as vehicle repair, gas station, quick lube/service facilities, car wash, auto and truck sales."
[3] SDC 1.3.300 "Abutting – Two or more lots or features (such as buildings) joined by a common boundary line or point. It shall include the terms adjacent, adjoining and contiguous."

Based on this information, staff finds the proposal complies with this policy. With that said, if the Commission finds additional development or design standards are warranted, the Commission may consider additional requirements to address this policy.

…

8.7 The City shall implement development standards such as buffers, setbacks, landscaping, sign regulation and building height restrictions, to minimize the impacts of commercial and industrial uses on adjacent residential areas, including those related to noise, odor, or excessive lighting. Such standards will be applied in light-industrial parks and other transition areas.

Staff Finding: As previously discussed, Staff finds the TC District is not adjacent to residential areas based the definition of "Abutting" as specified in the Sisters Development Code. Based on this information, staff finds this policy is not applicable to this proposal.

3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property. The applicant must demonstrate that the property and affected area shall be served with adequate public facilities, services and transportation networks to support maximum anticipated levels and densities of use allowed by the District without adversely impacting current levels of service provided to existing users; or applicant's proposal to provide concurrently with the development of the property such facilities, services and transportation networks needed to support maximum anticipated level and density of use allowed by the District without adversely impacting current levels of service provided to existing users.

RESPONSE: The TC District currently has adequate public facilities, services, and transportation networks to support the proposed uses and is anticipated to continue to provide adequate service with the maximum anticipated levels and uses allowed by the amendments. They are not anticipated to have a significant impact on existing or planned transportation and public facilities for the following reasons.

SEWER:

The city adopted the Wastewater System Capital Facilities Plan in 2016. The plan analyzed the ability to provide necessary sewer service based on development that could occur within the existing zoning districts and forecasted population growth. The sewer system was found to be sized appropriately to accommodate commercial level flows from the property. The proposed text amendments do not include new uses that are anticipated to exceed sewer capacity needs of the uses currently allowed in the TC District. No comments were submitted by Public Works or the City Engineer that expressed concern with serving the new uses proposed. Staff notes actual impacts on the system will be evaluated at the time land use review of future development.

WATER:

The city adopted the Water Capital Facilities Plan Update in 2018. The plan analyzed the ability to serve the community with water based on the existing zoning districts and forecasted population growth. This analysis included the SRTC zoning for the property. While the plan identifies maintenance and capital projects to meet the needs of to accommodate future growth, the plan identified adequate capacity to serve the TC District. No comments were submitted by Public Works or the City Engineer that expressed

concern with serving the new uses proposed. Staff notes actual impacts on the system will be evaluated at the time land use review of future development.

TRANSPORTATION:

The City adopted an updated Transportation System Plan (TSP) in 2021. Figure 4-3 from the TSP shows that the subject property has frontage on two collector roads, E. Barclay Drive to the south and Camp Polk Road to the east. Per figure 3-3 from the TSP, Camp Polk Road contains a bicycle lane. Planned improvements to E. Barclay Drive, including bicycle and pedestrian facilities, along with existing street connectively will accommodate multiple modes of transportation and trip distribution.

The transportation impacts resulting from the proposed text amendments are analyzed in the submitted Trip Generation & Transportation Planning Rule Analysis by Melissa Webb, PE with Lancaster Mobley transportation engineers (Application Exhibit F). Based on the trip generation analysis, the proposed new and clarified uses will not generate more trips than can be developed under the current zoning. As previously noted, comments received from the City Transportation Engineer express agreement with the assessment presented by Lancaster Mobley and the opinion that, as outlined, the types of uses allowed with the amendments are lower in intensity than those already permitted within the zoning.

Comments received expressed concern with traffic impacts associated with RV Park use of the property. However, these comments were anecdotal in nature and did not provide fact-based analysis to rebut the findings of the information provided by the applicant and affirmed by the City Transportation Engineer.

Based on this information, staff finds this policy is met.

4. Compliance with 4.7.600, Transportation Planning Rule (TPR) Compliance

Staff Finding: Compliance with SDC 4.7.600 is addressed below.

CHAPTER 4.7 – LAND USE DISTRICT MAP AND TEXT AMENDMENTS

4.7.100 Purpose
The purpose of this Chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code and the Land Use District map. These amendments will be referred to as "map and text amendments." Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

Staff Finding: Staff finds that this provision is advisory.

4.7.200 Legislative Amendments
Legislative amendments are policy decisions made by City Council. They are reviewed using the Type IV procedure in Chapter 4.1, Section 600 and shall conform to Section 4.7.600, as applicable.

Staff Finding: The proposal is for legislative changes to the Development Code through a text amendment application. Accordingly, this review is using the Type IV procedure in Chapter 4.1.600 and is required to conform to Section 4.7.600 (as applicable). Discussion regarding Chapter 4.1.600 is reviewed above.

…
4.7.600 Transportation Planning Rule Compliance

A. When a development application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed by the City to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060. Significant means the proposal would:

1. **Change the functional classification of an existing or planned transportation facility. This would occur, for example, when a proposal is projected to cause future traffic to exceed the capacity of "collector" street classification, requiring a change in the classification to an "arterial" street, as identified by the Transportation System Plan; or**
2. **Change the standards implementing a functional classification system; or**
3. **Allow types or levels of land use that would result in levels of travel or access what are inconsistent with the functional classification of a transportation facility; or**
4. **The effect of the proposal would reduce the performance standards of a public utility or facility below the minimum acceptable level identified in the Transportation System Plan.**

B. Amendments to the Comprehensive Plan and land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:

1. **Limiting allowed land uses to be consistent with the planned function of the transportation facility; or**
2. **Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,**
3. **Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation.**

Staff Finding: The Trip Generation and Transportation Planning Rule Analysis provided by Melissa Webb, PE with Lancaster Mobley Engineers found that the trip generation potential from the existing zoning district language would produce a much higher volume of trips than the trips produced if the site were developed exclusively with the proposed new uses. Therefore, the analysis concluded the proposal will not "degrade the performance of any planned or existing transportation facility. Accordingly, the TPR is satisfied, and no mitigation is necessary or recommended in conjunction with the proposed text amendment." Comments received from the City Transportation Engineer express agreement with the assessment presented by Lancaster Mobley and the opinion that, as outlined, the proposed text amendment remains compliant with the Transportation Planning Rule.

As previously noted, comments received expressed concern with traffic impacts associated with RV Park use of the property but did not provide fact-based analysis to rebut the findings of the information provided by the applicant and affirmed by the City Transportation Engineer.

Based on this information, staff finds this criterion is met.

Ordinance No. 538 – Exhibit B

DEVELOPMENT CODE AMENDMENTS
CITY OF SISTERS DEVELOPMENT CODE
CHAPTER 2.12 – SUN RANCH TOURIST COMMERCIAL DISTRICT

New text shown in underline
Removed text shown in ~~strikethrough~~

Chapter 2.15 – Special Provisions

Sections:

2.12.100 Purpose

The purpose of the Sun Ranch Tourist Commercial district is to establish landmark lodging, dining, and recreation destinations and gathering places for business travelers, tourists and the residents of the area. The district is for commercial properties in transition areas between residential, light industrial and commercial areas. This district establishes commercial uses to complement adjacent mixed-use light industrial and residential districts. ~~Special design standards apply to create a rural ranch setting separate from, but compatible with, the 1880s Western Frontier Architectural Design Theme.~~ Another purpose of this district is to provide flexibility for expansion of lodging facilities and improve accessory components of the commercial lodging establishment such as meeting facilities, restaurant, bar, neighborhood market, etc.

2.12.200 Applicability

The standards of the Sun Ranch Tourist Commercial district, as provided for in this section, shall apply to those areas designated Sun Ranch Tourist Commercial district on the City's

Zoning Map. All structures within the Sun Ranch Tourist Commercial district shall meet the design requirements contained in the Special/Limited Use Standards in this chapter.

2.12.300 Permitted Uses

A. Permitted uses. Uses permitted in the TC District are listed in Table 2.12.300 with a "P." These uses are allowed if they comply with the development standards and other regulations of this Code. Being listed as a permitted use does not mean that the proposed use will be granted an exception or variance to other regulations of this Code.

B. Special Provisions. Uses that are allowed in the TC District subject to special provisions are listed in Table 2.12.300 with an "SP." These uses are allowed if they comply with the special provisions in Chapter 2.15.

C. Conditional uses. Uses that are allowed in the TC District with approval of a conditional use permit are listed in Table 2.12.300 with either a Minor Conditional Use "MCU" or a Conditional Use "CU." These uses must comply with the criteria and procedures for approval of a conditional use set forth in Chapter 4.4 of this Code.

D. Similar uses. Similar use determinations shall be made in conformance with the procedures in Chapter 4.8 – Code Interpretations.

Table 2.12.300 Use Table for the Sun Ranch Tourist Commercial District

Land Use Category	Permitted/Special Provisions/Conditional Uses	Special Use References
Commercial		
~~Cottages. The types of cottages are:~~ ~~1. Studio, one, and two bedroom detached cottage units.~~ ~~2. Studio, one, and two bedroom attached cottage units (max. 3 units per building).~~	~~P~~	~~See Section 2.12.1000~~
Lodging facilities.	P	
Office	P	

Table 2.12.300 Use Table for the Sun Ranch Tourist Commercial District		
Land Use Category	**Permitted/Special Provisions/Conditional Uses**	**Special Use References**
~~Restaurant, bar and food services.~~ Eating and drinking establishments.	P	
Saunas, steam rooms, hot tubs, exercise equipment facilities and other spa-related uses.	P	
Amusement Uses (e.g. game rooms and other entertainment) oriented uses primarily for enjoyment by guests staying in the cottages or lodging facilities within the Sun Ranch Tourist Commercial district including, but not limited to, bicycle rentals, canoe rentals and movie rentals, etc.	P	
Neighborhood Market	P	See Section 2.12.1000
Retail sales establishment	P	See Section 2.12.1000
~~Laundry Establishment focusing on providing for needs of guests staying in the cottages or lodging facilities within the Sun Ranch Tourist Commercial district.~~	P	~~See Section 2.12.1000~~
~~Multi-use trails and paths.~~	P	
Small chapels, ceremonial pavilions and outdoor seating areas. Such uses designed to accommodate occupancies of 300 persons or more shall require a Conditional Use Review.	P/CU	
~~Decks, docks and other areas to provide enjoyment of the ponds.~~	P	

Table 2.12.300 Use Table for the Sun Ranch Tourist Commercial District		
Land Use Category	**Permitted/Special Provisions/Conditional Uses**	**Special Use References**
Special events/meeting facility, reception hall or community center. Such uses designed to accommodate occupancies of 300 persons or more shall require a Conditional Use Review.	P/CU	
Cideries, Distilleries, Wineries and Breweries	P	
Hostel	P	Accessory use to primary permitted use; 25 guest occupancy limit plus staff, and 14 day stay limit for each 30 day period.
RV Park including caretaker's quarters	P	See Section 2.12.1000 and subject to Chapter 2.15.1700 of the Sisters Development Code.
Similar uses.	P	
Accessory uses.	P	
Utility service lines.	P	
Prohibited Uses		
Auto-~~oriented~~ dependent uses and drive-through uses.	P	
Telecommunications equipment, other than telecommunication service lines and cell towers.	P	

Table 2.12.300 Use Table for the Sun Ranch Tourist Commercial District		
Land Use Category	**Permitted/Special Provisions/Conditional Uses**	**Special Use References**
Industrial, residential, and public and institutional uses except as allowed in Table 2.12.300	P	

Key: P = Permitted SP = Special Provisions
MCU = Minor Conditional Use Permit CU = Conditional Use Permit

E. Formula Food Establishments. The City of Sisters has developed a unique community character in its commercial districts. The City desires to maintain this unique character and protect the community's economic vitality by ensuring a diversity of businesses with sufficient opportunities for independent entrepreneurs. To meet these objectives, the City does not permit Formula Food Establishments within this zone.

2.12.400 Lot Requirements

Lot requirements for the Sun Ranch Tourist Commercial district will be determined by the spatial requirements for that use, associated landscape areas, and off-street parking requirements.

2.12.500 Height Regulations

No building or structure shall be hereafter erected, enlarged or structurally altered to exceed a height of 30 feet.

2.12.600 Setbacks and Buffering

All building setbacks within the Sun Ranch Tourist Commercial district shall be measured from the property line to the building wall or foundation, whichever is less.

Decks and/or porches greater than 30" in height that require a building permit are not exempt from setback standards. Setbacks for decks and porches are measured from the edge of the deck or porch to the property line. The setback standards listed below apply to primary structures as well as accessory structures. A Variance is required in accordance with Chapter 5.1 to modify any setback standard.

A. Front Yard Setback

New buildings shall be at least ten feet from ~~the front property line except buildings and structures adjacent to Camp Polk Road or Barclay Drive shall have a minimum of a 20 foot setback from~~ the edge of the right of way.

B. Side Yard Setback

There is no minimum side yard setback required except where clear vision standards apply. A 10-foot setback is required for side yards that are adjacent to a street. ~~However, structures adjacent to Camp Polk Road or Barclay Drive shall have a minimum of a 20 foot setback from the edge of the right of way.~~ Buildings shall conform to applicable fire and building codes.

C. Rear Yard Setback

There is no minimum rear yard setback required except where clear vision standards apply. ~~However, structures adjacent to Camp Polk Road or Barclay Drive shall have a minimum of a 20 foot setback from the edge of the right of way.~~ Buildings shall conform to applicable fire and building codes.

D. Buffering

Any outside storage area (including trash/recycling receptacles) associated with a use on any site shall be buffered by masonry wall, site obscuring fencing or other measures using materials that are compatible with the color and materials of the primary buildings on site.

2.12.700 Lot Coverage

There is no maximum lot coverage requirement, except that complying with other sections of this code (landscape and pedestrian circulation, parking, etc.) may preclude full lot coverage for some land uses.

2.12.800 Off-Street Parking

The off-street parking requirements for uses in the Sun Ranch Tourist Commercial district may be satisfied by off-site parking lots or garages per Chapter 3.3. Parking Location and Shared Parking. Parking requirements for uses are established by Chapter 3.3 – Vehicle and Bicycle Parking, of the Sisters Development Code.

2.12.900 Landscape Area Standards

A minimum of 10 percent of the gross site area of proposed developments shall be landscaped according to Chapter 3.2 of the Sisters Development Code.

2.12.1000 Special Standards for Certain Uses

A. Neighborhood Market ~~and Laundry Establishment~~

A neighborhood market ~~and self-serve laundry establishment~~ shall:

1. Be focused on meeting the needs of the Sun Ranch Mixed Use Community residents, workers and guests.

2. Such uses shall not operate past 10:00 p.m.

~~3. Structures housing such uses shall be setback from Camp Polk Road and Barclay Drive by at least 50 feet.~~

4. ~~Structures housing s~~Such uses shall not exceed 1000 square feet, excluding storerooms.

B. Retail Sales Establishment

1. Such uses shall not exceed 1000 square feet per lot, excluding storerooms.

~~B. Cottages~~

~~1. A maximum of 30 cottage units are permitted in the Sun Ranch Tourist Commercial Zone.~~

C. RV Parks. In addition to the standards of SDC 2.15.1700, the following are applicable to RV Parks in the TC District:

1. No more than 65% of the area of the lot or tract on which an RV park is proposed may contain the improvements associated with the use. Improvements shared with other uses of the property or tract (e.g. drive aisles, parking, amenities) shall not be included in the measurement. The area shall be measured along the outermost perimeter of the improvements associated with the RV Park use.
2. At least two amenities below or similar amenities must be provided prior to opening an RV Park (amenities shall occupy at least 10,000 square feet combined):
    a. Fishing pond.
    b. Decks, docks and other areas to enjoy the pond.
    c. Sport court(s), such as pickleball, bocci ball, basketball, or similar.
    d. Fenced dog park.
    e. Multi-use trails and paths.

f. Playground.

g. Small stage.

h. Fire pits.

D. For purposes of the Sun Ranch Tourist Commercial zone, Lodging Facilities means any building, structure, or improvement used to provide temporary sleeping accommodations to the public for charge. For the purposes of this definition, improvement includes, but is not limited to, permanently installed recreational vehicles, cabins, and similar facilities for temporary occupancy.

~~**2.12.1100 Design Theme**~~

~~A. All structures proposed within the Sun Ranch Tourist Commercial district shall be consistent with the early 1900's Rural Farm/Ranch House design standards outlined below. Figures 2.12.1100 A and B provide illustrations of examples of architectural styles that are consistent with the theme.~~

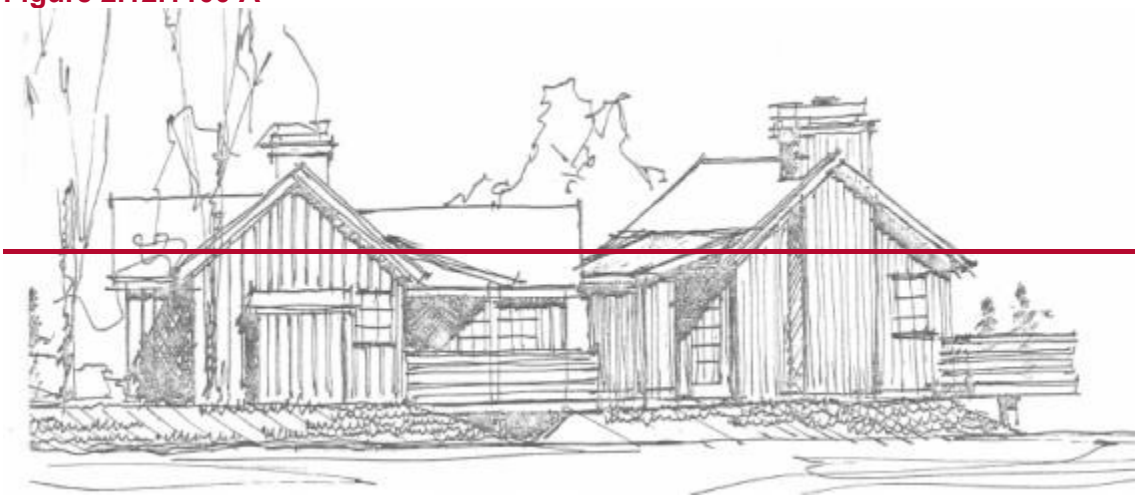
~~1. Era. Rural farm and ranches of the early 1900s.~~

~~2. Architecture. Buildings shall be designed to emulate rural farm and ranch outbuildings of the era. Such buildings typically have simple gable and shed roof forms, small pane wood windows and wooden doors.~~

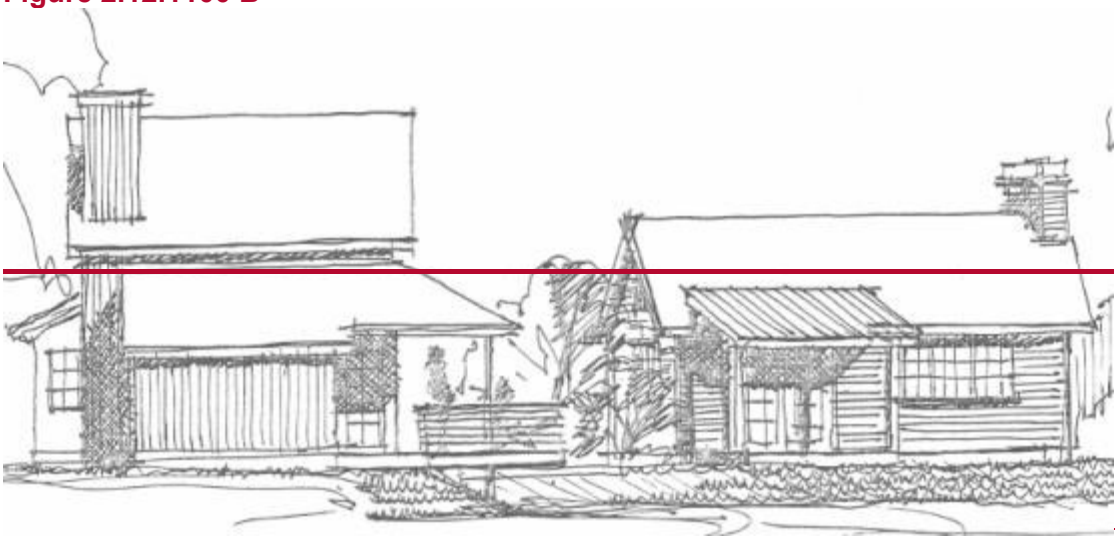
~~3. Exterior Materials. Rough sawn boards and/or board and batten walls, rough stone and brick. Dimensional composition shingle roofs.~~

~~4. Roof Pitches. A majority of 8:12 pitched main roof forms, with 6:12 and 4:12 sheds.~~

~~**Figure 2.12.1100 A**~~



~~**Figure 2.12.1100 B**~~



STAFF REPORT – ATTACHMENT 2
Amendment Summary Matrix

Code Section	Proposed Amendment	Explanation for Amendment	Staff Comment
2.12.100 Purpose	Remove reference to “Special design standards apply to create a rural ranch setting separate from, but compatible with, the 1880s Western Frontier Architectural Design Theme.”	The reference to the early 1900s Rural Farm/Ranch House special design standards is removed as the applicant is seeking to revert back to the 1880s Western Design Theme for any built structures.	Staff finds the changes to the purpose statement are **SUBSTANTIVE**. The amendment is warranted to reflect the removal of Section 2.12.1100, the 1900’s Rural Farm/Ranch House design theme standards. As a commercial district, the Western Frontier Architectural Design Theme standards of Section 2.15.2600 will be applicable to all development in TC District.
Table 2.12.300 **Use Table for the Sun Ranch Tourist Commercial District**	**Cottages** Remove “Cottages” as permitted use.	When the district was initially proposed, the cottages were meant to be units of overnight accommodation. The City now has a specific definition for cottages that refers to small houses used as accessory dwelling units or in master planned cottage developments.	Staff finds this amendment is **SUBSTANTIVE**. As discussed below, the applicant proposes a definition for the existing “Lodging Facilities” use that is currently undefined. The definition encompasses a variety of overnight accommodations thereby making “cottages” as a permitted use unnecessary.
	Lodging Facilities Add reference to Section 2.12.1000, Special Use Standards for Certain Uses.	A definition of “Lodging Facilities” is proposed to be added to Section 2.12.1000, Special Standards for Certain Uses. This provides reference to the definition.	Staff finds this amendment is **NOT SUBSTANTIVE**. This only provides reference to other applicable sections.
	Restaurant, bar and food services “Change Restaurant, bar and food services” to “Eating and Drinking Establishments.”	The new language is proposed to provide language that is consistent with other sections of the Sisters Development Code. The City has interpreted the "Eating and Drinking Establishments" term to include a wide array of food service and drinking establishments including food carts, food cart lots, and more traditional "brick and mortar" food and beverage establishments.	Staff finds this amendment is **NOT SUBSTANTIVE**. This change provides consistency with the formatting of the use description used throughout the development code.
	Retail sales establishment Add “Retail sales establishment” as a permitted use. Add reference to Section 2.12.1000, special use standards for certain uses, that include size limits for this use.	The retail sales establishment use was proposed to permit a retail use, limited to 1,000 square feet per lot, that would appeal to visitors and would allow for rental and sales of recreational or other items.	Staff finds the addition of this use category is **SUBSTANTIVE**. This additional use will complement other uses within the district. The size limit will prevent a larger retail development that is out of character and intent of the TC District.
	Laundry Establishment… Remove “Laundry Establishment…” as a permitted use.	The use is a usual and customary accessory use associated with Lodging Facilities, Hostels, and RV Parks.	Staff finds this amendment is **NOT SUBSTANTIVE.** This is consistent with how such accessory uses are accommodated in other zone districts in the city.
	Multi-use trails and paths. Remove “Multi-use trails and paths” as a permitted use.	Trails, paths, and walkways are customary and accessory to uses and not a standalone permitted use.	Staff finds this amendment is **NOT SUBSTANTIVE**. This is consistent with how such accessory uses are accommodated in other zone districts in the city.
	Decks, docks…” Remove “Decks, docks…” as a permitted use.	These uses are accessory uses customary to properties that contain water features.	Staff finds this amendment is **NOT SUBSTANTIVE**. This is consistent with how such accessory uses are accommodated in other zone districts in the city.
	Hostel Add “Hostel” as permitted use. Add special use reference that specifies the accessory use to the primary permitted use, limits occupancy to 25 guest occupancy plus staff, and establishes 14 day stay limit for each 30-day period.	Hostel use is proposed as it is consistent with the purpose statement of the TC District and would be covered by the Lodging Facilities use. However, "Hostel" is a defined use in the Sisters Development Code and is therefore added as a separate use.	Staff finds the addition of this use category is **SUBSTANTIVE**. The inclusion expands the allowed overnight accommodation uses and is consistent with the intent of the TC District. Hostels are permitted in the Highway and Downtown Commercial Districts including the special use reference that is being added.

STAFF REPORT – ATTACHMENT 2
Amendment Summary Matrix

Code Section	Proposed Amendment	Explanation for Amendment	Staff Comment
	RV Park, including caretaker's quarters Add "RV Park, including caretaker's quarters" as permitted use. Add reference to Section 2.12.1000, special standards for RV Parks in the TC District Add reference to Section 2.15.1700, special use standards for all RV Parks in the city.	According to the applicant, an RV Park would offer a more affordable form of overnight accommodations that cater to that growing segment of the tourism market and has the potential for providing a year-facility. Special use standards for RV Parks in the TC District are proposed that are in addition to the standards that are applicable to all RV Parks in the city.	Staff finds the addition of this use category is **SUBSTANTIVE**. SDC 2.15.1700 includes standards specific to RV Parks. The additional special use standards specific to the TC District ensure the size of the RV parking area is limited and amenities are provided in conjunction with the use. The inclusion of "caretaker's quarters" allows for flexibility in how caretakers housing is provided, including a dwelling unit or use of an RV. The Council previously discussed if RV Park should be a permitted or conditional use. Staff requests specific confirmation of the approved use type, permitted or conditional use. Staff notes that in either instance, the RV Park use will be subject to Site Plan Review and all other applicable standards and criteria.
Table 2.12.300 **Prohibited Uses**	**Auto-oriented uses and drive-through uses** Replace "Auto-oriented uses" with "auto-dependent uses."	The term "auto-oriented uses" is not defined in the Sisters Development Code. However, a similar term "auto-dependent use" is defined in the Sisters Development Code. The proposal incorporates this defined term.	Staff finds this amendment is **NOT SUBSTANTIVE**. Provides consistency with the formatting of the majority of the development code and use of the defined "auto-dependent use". Ordinance 533 adopted staff-initiated text amendments (file no. TA 23-01) that included the change to "auto-dependent use" to several other sections of the development code. This proposed change would have been included if it had been identified at that time.
2.12.600 Setbacks and Buffering	**A. Front Yard Setback.** Remove 20-foot setback from Camp Polk Road or Barclay Drive.	The additional setback of 20-foot from Camp Polk Road or Barclay Drive are proposed to be removed and replaced with a minimum 10-foot setback, consistent with the Highway and Downtown Commercial Districts.	Staff finds the addition of this use category is **SUBSTANTIVE**. While the proposed standards are consistent with similar standards on the Downtown Commercial and Highway Commercial District, the proposed amendment removes the increased setback requirements currently applicable in the TC District. It is noteworthy that at the time the current setback standards were adopted in 2007, the setback standards in other commercial districts were zero minimum and 10-foot maximum. The Council previously discussed the proposed setbacks from Camp Polk Road and Barclay Drive. Staff requests specific confirmation of the approved setback.
	B. Side Yard Setback. Add 10-foot setback for side yards adjacent to a street. Remove 20-foot setback from Camp Polk Road or Barclay Drive.	The additional setback of 20-foot from Camp Polk Road or Barclay Drive are proposed to be removed. A 10-foot setback is proposed to be added to provide building setback from exterior side property lines.	Staff finds this amendment is **SUBSTANTIVE**. See staff comment above regarding setbacks. The Council previously discussed the proposed setbacks from Camp Polk Road and Barclay Drive. Staff requests specific confirmation of the approved setback.
	C. Rear Yard Setback. Remove 20-foot setback from Camp Polk Road or Barclay Drive.	The additional setback of 20-foot from Camp Polk Road or Barclay Drive are proposed to be replaced with no minimum setback allowed.	Staff finds this amendment is **NOT SUBSTANTIVE**. See staff comment above regarding setbacks. The Council previously discussed the proposed setbacks from Camp Polk Road and Barclay Drive. Staff requests specific confirmation of the approved setback.
2.12.1000 Special	**A. Neighborhood Market and Laundry Establishment** Remove reference to Laundry Establishment.	Reference to laundry establishment use is not needed because the use has been proposed to be removed.	Staff finds this amendment is **SUBSTANTIVE**. The removal of the 50-foot setback provides more flexibility with

STAFF REPORT – ATTACHMENT 2
Amendment Summary Matrix

Code Section	Proposed Amendment	Explanation for Amendment	Staff Comment
Standards for Certain Uses	Remove 50-foot setback from Camp Polk Road and Barclay Drive. Apply 1,000 square foot limit to use, not structures.	The removal of the 50-foot setback allows a neighborhood market to be closer to and oriented toward the streets.	location of building on site. The resulting setbacks will be consistent with t other commercial districts in the city. Applying the 1,000 square foot limit to the use, not structures, will prevent the development of multiple neighborhood markets in separate structures on a property. The Council previously discussed the proposed size limit and how it is measures relative to other potential neighborhood markets in the TC District. Staff requests specific confirmation of the approved square footage requirement and measurement.
	B. Retail Sales Establishment New special standards section added and includes 1,000 square foot limit to such uses.	The 1,000 square foot size will limit the scale of retail uses on the site.	Staff finds this amendment is **SUBSTANTIVE**. Applying the 1,000 square foot limit to the use will prevent the development of multiple retail sales establishments in separate structures on a property. The Council previously discussed the proposed size limit and how it is measures relative to other potential retail sales establishments in the TC District. Staff requests specific confirmation of the approved square footage requirement and measurement.
	B. Cottages Remove special use standards for Cottages.	Section removed because cottages use has been proposed to be removed.	Staff finds this amendment is **NOT SUBSTANTIVE**. The special use standards are no longer necessary.
	C. RV Park New special standards section added including several standards.	The special use standards address overall size and other development and operating standards including: 1. A maximum of 65% of the gross area of any property in the TC zone shall be developed for an RV Park use. 2. At least two amenities shall be provided and occupy at least 10,000 square feet combined. Examples provide a variety of passive and active recreational opportunities.	Staff finds this amendment is **SUBSTANTIVE**. The proposed special use standards will prevent long-term, residential occupancy of an RV, except for that of a caretaker. The maximum area will limit the overall development footprint on the property. The requirement of amenities will ensure variety use and visual aesthetic within the development beyond just RV pads and minimum development standards. The Council previously discussed requiring a maximum length of occupancy and compliance with ORS 197.493. Staff requests specific confirmation of the approved length of occupancy requirement, if any.
	D. Lodging Facility Definition New special standards section added and includes definition of “Lodging Facility.”	The initial text amendment application contained a proposed “Hotel and lodging establishment” use to replace the undefined “Lodging Facility” use. However, as evidenced through the process to date, that proposed addition has complicated this process. Therefore, the proposed “Hotel and lodging establishment” use and term are no longer proposed. In its place, a definition of the original and existing “Lodging Facility” term is proposed to be used only in the TC zone. The definition provides for various types of overnight accommodations to be provided on site – from traditional hotel structures, to cabins, to permanently sited RVs.	Staff finds this amendment is **SUBSTANTIVE**. This definition is only applicable to the TC District and is intended to provide for variety and flexibility of overnight accommodation options. This definition is only applicable to development in the TC District.
2.12.1100 Design Theme	Remove section for 1900s Rural Farm/Ranch House design theme standards.	The applicant did not provide specific explanation for removing the requirements of this section but noted the intent is to instead implement the 1880s Western Design Theme for commercial structures on the property.	Staff finds this amendment is **SUBSTANTIVE**. The existing 1900s Rural Farm/Ranch House Design Theme is only applicable to the TC District. If removed, the Western Frontier Architectural Design Theme of SDC 2.15.2600 will be applicable to all new, reconstructed, or remodeled uses in the TC District. This is consistent with all other commercial districts. Staff notes that if this amendment is approved a corresponding

STAFF REPORT – ATTACHMENT 2
Amendment Summary Matrix

Code Section	Proposed Amendment	Explanation for Amendment	Staff Comment
			amendment to SDC 2.15.2600(B) is required to remove reference to the exception for the TC District.

ATTACHMENT 3

Matt Martin

From: Julie Benson <julie@sistersairport.com>
Sent: Monday, July 15, 2024 4:09 PM
To: Matt Martin
Subject: Comment on Proposed RV Park TA 24-01
Attachments: Aircraft Departure Path.pdf; Airport Noise Impact Map.pdf; Airport Surrounding Space Map.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Matt –

As the owners of the Sisters Eagle Airport, we submit our opposition to the proposed RV park located to the southwest of the Airport. We have two major concerns with the location of an RV park on this property: 1) Safety; and 2) Noise.

As stated in the letter from Brandon Pike dated 2/29/24 from the Oregon Department of Aviation, the proposed RV park is an incompatible use being located within the Transitional Surface of the Airport. Please see attached map, Airport Surrounding Space Map. We wish to clarify the incompatibility issues relating to safety and noise.

The proposed RV park property is situated just off the end of Runway 20. Sisters Eagle Airport follows standard FAA flight traffic patterns, which dictates departing aircraft perform a left turn at the end of the runway, putting low-flying aircraft directly over the proposed RV park property. Please see attached map, Aircraft Departure Path.

In the event of an engine failure or loss of power during the departure climb, pilots are taught to return to the airport if possible. Some attempts to return to the runway have resulted in an off-airport accidental landing (crash) while in the left turn. This has happened several times in the 90-year history of the Sisters Eagle Airport, resulting in an **airplane crash directly on the proposed RV site property**. The most recent event of this nature was 3 years ago, as demonstrated in this photo:

RV's do not offer adequate structural protection able to keep RV occupants safe in the event of another plane crash on this site.

Secondly is the issue of noise. The proposed RV park location lies directly inside the Airport Noise Contour, as shown in the attached map "Airport Noise Impact Map". The purple line shows a designated distance from the runway which is likely to be impacted by loud noise from aircraft. The Airport Noise ordinance states that buyers and owners of properties within this area acknowledge these impacts prior to purchase, thereby making complaints about aircraft noise mute. While it is a requirement for property buyers, it is unlikely that RV site occupants will adhere to these regulations, and will complain about the noise from low-flying full-throttle aircraft directly overhead. RV's have inadequate noise insulation for this close proximity to the airport. Noise complaints are referred to the City of Sisters staff. Is the City providing adequate resources to respond to the inevitable increase in noise complaints?

Due to the safety and noise hazards from departing aircraft, we believe it would not be advisable to allow people in RV's to reside at this particular location, directly in the departure path and in close proximity to the Sisters Eagle Airport. RV's have very little structural protection against crashing airplanes, and very poor insulation from aircraft noise. If Sisters needs another RV park, it should be in a more suitable location.

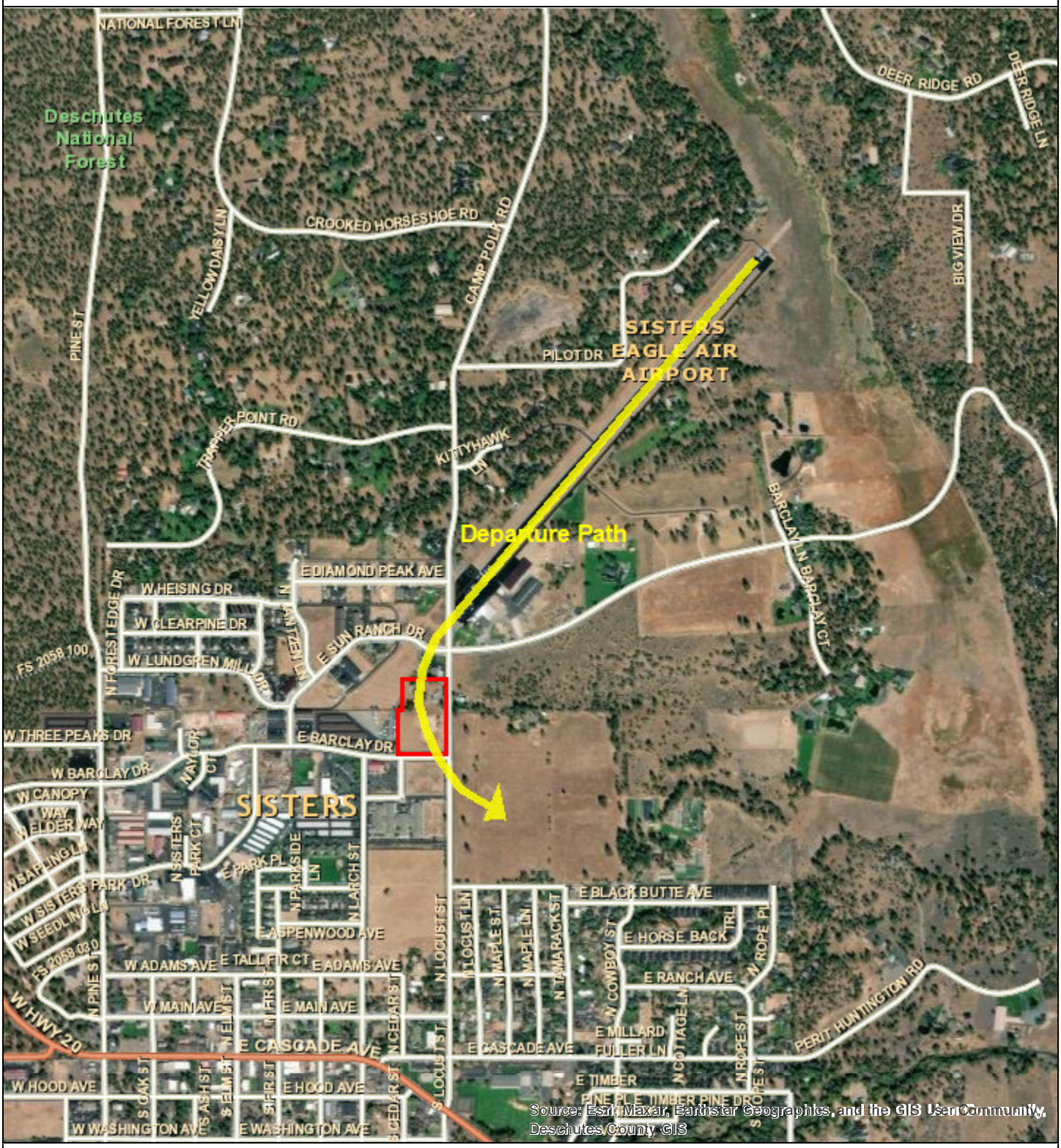
Thank you,

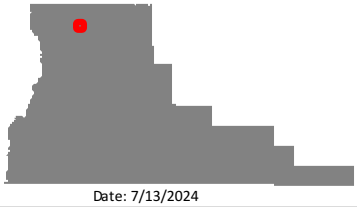
Julie Benson | Owner

Sisters Airport Property, LLC
Mobile: 541.390.7407
15820 Barclay Dr, Sisters, OR 97759
www.SistersAirport.com

ATTACHMENT 3

Aircraft Departure Path





Date: 7/13/2024

N

0 625 1,250 2,500 ft

1 inch = 1,505 feet

DESCHUTES COUNTY

ATTACHMENT 3

Noise Impact Area

Date: 7/15/2024

N

0 320 640 1,280 ft

1 inch = 752 feet

DESCHUTES COUNTY

ATTACHMENT 3

Airport Surrounding Space

Date: 7/13/2024

N

0 320 640 1,280 ft

1 inch = 752 feet

DESCHUTES COUNTY

Matt Martin

From: Kerry Prosser
Sent: Tuesday, July 30, 2024 4:00 PM
To: Matt Martin
Subject: FW: TA24-01

In case you did not get this.

Kerry Prosser
Assistant City Manager
City of Sisters | City Managers Office
PO Box 39 | 520 E. Cascade Ave., Sisters, OR 97759
Direct: 541-323-5213 | City Hall: 541-549-6022
kprosser@ci.sisters.or.us | www.ci.sisters.or.us

From: Cathy Russell <cpruss52@gmail.com>
Sent: Tuesday, July 30, 2024 2:46 PM
To: City Council <citycouncil@ci.sisters.or.us>
Subject: TA24-01

Before any development code is changed the Council should ask themselves the following questions:

How will the proposed code changes:

1. Support and promote Sisters' Vision and Comprehensive Plan?
2. Benefit the citizens of Sisters, not just the tourists?
3. Be compatible with the future growth of Sisters?

I believe the answer to all three is that TA24-01 will not or does not. I do not believe these proposed changes are in the best interests of the community. I strongly feel this code change will NOT be compatible with the most likely direction of the future UGB. The current code is working. There is no need to change it.

If you really believe the proposed code changes are in our best interests, then at a minimum, you should send back TA 24-01 and ask the Planning Commission to add more regulations addressing RV Park. Current regulations are too broad with little to no city control over density, amenities, landscaping, and infrastructure. Conversation has included terms like “boutique” or “upscale” RV park. But current codes do not ensure these concepts. I refer you to the letter submitted by Charlie Stevens on Monday, July 8th for specific details.

Cathy Russell

1006 W Collier Glacier Dr

Sisters

ATTACHMENT 3

Schwabe

July 31, 2024

D. Adam Smith
Admitted in Oregon and Colorado
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VIA E-MAIL

City Council, City of Sisters
c/o Matt Martin, Principal Planner
520 E. Cascade Avenue
PO Box 39
Sisters, OR 97759
mmartin@ci.sisters.or.us

RE: Ordinance No 538; City File No TA 24-01
Our File No.: 142657-285117

Dear Mayor Preedin and City Councilors:

As you know, our firm represents Amy and Ernie Larrabee. In that capacity, we are working directly with Skidmore Consulting, LLC, the Larrabee's planning agent and the applicant seeking approval of Ordinance No 538 (File No TA 24-01) updating Sisters Development Code ("SDC") Chapter 2.12 governing the Sun Ranch Tourist Commercial ("TC") District.

This letter provides additional testimony regarding Oregon Revised Statute ("ORS") 197.493 as discussed during your July 10, 2024 public hearing.

I. INTRODUCTION

Prior to the City Council's public hearing, City staff suggested that addition of new verbiage to the version of SDC 2.12.1000(C)(1) which had previously been reviewed by the City's Planning Commission. To ensure that any RV Park developed in the TC District remains oriented towards temporary recreational visitor lodging rather than permanent housing, the Planning Commission's proposed SDC 2.12.1000(C)(1) limited RV stays to no more than 30 consecutive days in a 90 day period. Although the Larrabees do not feel that such a limitation is necessary given the stated intent of the TC District, they nevertheless consented to the addition of SDC 2.12.1000(C)(1) because they recognized that the Planning Commission was attempting to appease several project opponents who expressed their fears that an RV Park in the TC District would turn into something akin to a dilapidated mobile home park. Although those fears are clearly unwarranted, the Larrabees remain committed to being good neighbors and likewise are committed to continuing to collaborate with the City on this project. In that regard, the Larrabees consented to several reasonable limitations suggested by the City and project opponents, with the addition of SDC 2.12.1000(C)(1) being just one such example.

Following the Planning Commission's proceeding (and as previously noted), City staff expressed concern that ORS 197.493 precludes the City from mandating occupancy limits in RV Parks as recommended by the Planning Commission. To address that concern, City staff recommended further amendments to SDC 2.12.1000(C)(1), specifically conditioning that provision on compliance with ORS 197.493. For clarity, ORS 197.493 appears below (emphasis added):

> **"(1) A state agency or local government may not prohibit the placement or occupancy of a recreational vehicle, or impose any limit on the length of occupancy of a recreational vehicle as a residential dwelling, solely on the grounds that the occupancy is in a recreational vehicle, if the recreational vehicle is:**
>
> **(a) Allowed under ORS 215.490;**
>
> **(b)(A) Located in a manufactured dwelling park, mobile home park or recreational vehicle park;**
>
> **(B) Occupied as a residential dwelling; and**
>
> **(C) Lawfully connected to water and electrical supply systems and a sewage disposal system; or**
>
> **(c) On a lot or parcel with a manufactured dwelling or single-family dwelling that is uninhabitable due to damages from a natural disaster, including wildfires, earthquakes, flooding or storms, until no later than the date:**
>
> **(A) The dwelling has been repaired or replaced and an occupancy permit has been issued;**
>
> **(B) The local government makes a determination that the owner of the dwelling is unreasonably delaying in completing repairs or replacing the dwelling; or**
>
> **(C) Five years after the date the dwelling first became uninhabitable.**
>
> **(2) Subsection (1) of this section does not limit the authority of a state agency or local government to impose other special conditions on the placement or occupancy of a recreational vehicle."**

During the July 10, 2024 public hearing before the City Council, we testified that the Larrabees have no objection to either the Planning Commission's proposed SDC 2.12.1000(C)(1) or City staff's proposed amendments to SDC 2.12.1000(C)(1) specifically adding a reference to ORS 197.493. However, we also suggested that a simpler approach would instead be to simply delete SDC 2.12.1000(C)(1), especially if the City was concerned that ORS 197.493 effectively nullified the 30-day occupancy limit imposed by the Planning Commission. In response to the

City Council's questions and comments, during the hearing we alternatively also suggested more substantively amending SDC 2.12.1000(C)(1). Rather than focusing on an occupancy duration, the City could achieve the same policy goal – i.e. ensuring that the TC District provides lodging for tourists - by utilizing SDC 2.12.1000(C)(1) to more directly prohibiting use of RVs as "residential dwelling" with that term directly borrowed from ORS 197.493 quoted above.

At the conclusion of the public hearing, we committed to further researching ORS 197.493's legislative history and then providing a written work product to the City Council summarizing our recommendations on how best to amend SDC 2.12.1000(C)(1).

II. ORS 197.493's LEGISLATIVE HISTORY

ORS 197.493 was first adopted in 2005 as Section 12 of HB 2247. *See* Exhibit A. As indicated by the introductory remarks and as further confirmed by examining the context of the numerous remaining sections, HB 2247 was intended to simplify numerous statutory provisions governing Oregon's landlord-tenant law. The fact that Section 12 of HB 2247 minimally touched on RV parks was only because landlord-tenant issues at times arise when RVs are used as permanent housing similar to manufactured homes.

Nothing in HB 2247 was intended to apply to or otherwise regulate RVs in campgrounds utilized for temporary, recreational lodging. The definitions included in Section 11 of HB 2247, now codified as ORS 197.492, make that intent clear (emphasis added):

> **"SECTION 11. As used in this section and section 12 of this 2005 Act:**
>
> **(1) "Manufactured dwelling park," "mobile home park" and "recreational vehicle" have the meaning given those terms in ORS 446.003.**
>
> **(2) "Recreational vehicle park":**
>
> > **(a) Means a place where two or more recreational vehicles are located within 500 feet of one another on a lot, tract or parcel of land under common ownership and having as its primary purpose:**
> >
> > > **(A) The renting of space and related facilities for a charge or fee; or**
> > >
> > > **(B) The provision of space for free in connection with securing the patronage of a person.**
> >
> > **(b) Does not mean:**
> >
> > > **(A) An area designated only for picnicking or overnight camping; or**
> > >
> > > **(B) A manufactured dwelling park or mobile home park."**

The clear legislative intent of HB 2247 was to prohibit local governments from imposing occupancy limits on Recreational Vehicle Parks when such parks house RVs "occupied as residential dwellings" on par with manufactured homes. From a land use context, the use described and regulate by HB 2247 is separate and apart from tourist oriented "overnight camping." Importantly, the same limitation now codified as ORS 197.492(3)(B)(a) clarifying that "Recreational Vehicle Parks" as governed by ORS 197.493 do not include "an area designated only for picnicking or overnight camping" remains unchanged.

The Oregon Legislature again amended ORS 197.493 in 2021 as part of a group of bills intended to address the impacts from recent extreme wildland fires. In that regard, HB 2809 added subsection (b) to ORS 197.493(1) such that local governments were also then precluded from imposing occupancy limits on RVs utilized as housing while their occupants repaired or rebuilt more traditional stick-built homes or manufactured homes damaged or destroyed by natural disasters. *See* Exhibit B. What is even more notable, however, is that HB 2809 added language to the introductory Section (1) clarifying that ORS 197.493 is intended to apply only to RV uses "as a residential dwelling" rather than for temporary recreational visitor lodging in a campground.

ORS 197.493 was further amended three times in 2023 by SB 316, SB 1013, and HB 2898. However, none of those bills are germane to the present conversation or otherwise alter the conclusion that ORS 197.493's applicability is relatively narrow and limits only local governments' authority to impose occupancy limits on the use of RVs when used as dwelling units.

III. RECOMMENDATION

Based on the foregoing analysis, we are confident that ORS 197.493 functionally has no impact on the subject Ordinance No 538 because the TC District's stated purpose is to allow uses which cater to tourists while secondarily providing amenities that can equally be enjoyed by Sisters residents. The TC District's codified purpose statement set forth in SDC 2.12.100 should discourage any proffered interpretation from a would-be applicant asserting that the City should allow RVs to be permanently occupied as dwelling units in the TC District. Nevertheless, if so desired by the City Council, the Larrabees have no objection to the City utilizing a belt-and-suspenders approach and adding additional language to SDC Chapter 2.12 to clarify that RV Parks are only allowed in the TC District to provide temporary recreational visitor lodging.

Accordingly, the Larrabees propose one of the three following options to address the City Council's concerns regarding ORS 197.493 as raised during the July 10, 2024 public hearing:

- **Option 1: Adopt SDC 2.12.1000(C)(1) as proposed by City staff, including the additional "Except as provided in ORS 197.493…" language.**

As noted above, our position is that ORS 197.493 does not preclude the City from imposing occupancy limits in RV Parks which provide only temporary recreational visitor lodging. Accordingly, City staff's proposed qualifier added to SDC 2.12.1000(C)(1) will not preclude the City from imposing the 30-day occupancy limit as originally recommended by the Planning Commission.

- **Option 2: Adopt SDC 2.12.1000(C)(1) as proposed by the Planning Commission without the additional "Except as provided in ORS 197.493…" language.**

  Because ORS 197.493 is inapplicable to RV Parks providing only temporary recreational visitor lodging, the City can adopt SDC 2.12.1000(C)(1) without any superfluous statutory qualifiers. To further memorialize the City's intended interpretation, the City Council can instead include findings in Ordinance No 538 clarifying that RV Parks are only allowed in the TC District if providing temporary recreational visitor lodging such that ORS 197.493 does not preclude the City from imposing a 30-day occupancy limit.

- **Option 3: Replace SDC 2.12.1000(C)(1) with a new provision more directly prohibiting the use of RVs as dwelling units providing permanent housing.**

  The Planning Commission recommend the inclusion of occupancy limits in SDC 2.12.1000(C)(1) as a proxy to prevent any RV Park built in the TC District from evolving into something on par with a manufactured home park. Instead of an occupancy limit, the City can instead more directly address the issue by prohibiting the specific conduct that is incompatible with TC District's stated purpose. For example, SDC 2.12.1000(C)(1) as recommended by the Planning Commission can be replaced with the following:

  SDC 2.12.100(C)(1): RV Parks in the Sun Ranch Tourist Commercial District shall only provide temporary recreational visitor lodging to ensure that such RV Parks are "areas designated only for picnicking or overnight camping" pursuant to ORS 197.492(3)(b)(A). Except for a caretaker unit, no RV in an RV Park developed in the TC District shall be utilized as a "residential dwelling" as that term is used in ORS 197.493.

IV. CONCLUSION

As noted, the Larrabees have no objection to the City Council electing any one of the three options outlined above. However, the Larrabees' preference is for Option 3 because that option more directly addresses the issue that the Planning Commission was intending to resolve. Option 3 is also desirable because it clarifies the City's intent and further references both ORS 197.492 and ORS 197.493, thereby removing any ambiguity that stems from those statutory provisions. In short, Option 3 arguably invokes the City's authority to "impose other special conditions on the placement or occupancy of a recreational vehicle" as authorized and directly contemplated by ORS 197.493(2) quoted above.

ATTACHMENT 3

As a final matter, the Larrabees would like to thank the Mayor, City Councilors, and City staff for continuing to coordinate and collaborate on this project.

Sincerely,

D. Adam Smith

DASM

ATTACHMENT 3

73rd OREGON LEGISLATIVE ASSEMBLY--2005 Regular Session

Enrolled
House Bill 2247

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Joint Interim Committee on Judiciary for Office of Legislative Counsel)

CHAPTER .....

AN ACT

Relating to landlord-tenant law; creating new provisions; amending ORS 90.100, 90.140, 90.425, 90.510, 90.630, 90.675, 90.725 and 446.515; and appropriating money.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2, 3 and 5 to 10 of this 2005 Act are added to and made a part of ORS 90.505 to 90.840.

SECTION 2. (1) Every landlord of a facility shall register in writing with the Housing and Community Services Department. The registration shall consist of the following information:

(a) The name and business mailing address of the landlord and of any person authorized to manage the premises.

(b) The name of the facility.

(c) The physical address of the facility or, if different from the physical address, the mailing address.

(d) A telephone number of the facility.

(e) The total number of spaces in the facility.

(2) A landlord shall notify the department in writing of any change in the required registration information no later than 60 days after the change.

(3) The department shall confirm receipt of a registration or a change in registration information.

(4) Notwithstanding subsections (1) to (3) of this section, the department may provide for registration, registration changes and confirmation of registration to be accomplished by electronic means instead of in writing.

SECTION 3. (1) At least one person for each facility who has authority to manage the premises shall, every two years, complete six hours of continuing education relating to the management of facilities. The following apply for a person whose continuing education is required:

(a) If there is any manager or owner who lives in the facility, the person completing the continuing education must be a manager or owner who lives in the facility.

(b) If no manager or owner lives in the facility, the person completing the continuing education must be a manager who lives outside the facility or, if there is no manager, an owner of the facility.

(c) An owner may satisfy the continuing education requirement for more than one facility, if those facilities do not have a manager or owner who lives in the facility or a manager who lives outside the facility.

(2) If a person becomes the facility manager or owner who is responsible for completing continuing education, and the person does not have a current certificate of completion issued under subsection (3) of this section, the person shall complete the continuing education requirement by taking the next regularly scheduled continuing education class or by taking a continuing education class held within 75 days.

(3) The Housing and Community Services Department shall ensure that continuing education classes:

(a) Are offered at least once every six months;

(b) Are taught by persons approved by the department and affiliated with a statewide nonprofit trade association that represents manufactured housing interests;

(c) Have at least one-half of the class instruction on the provisions of ORS chapter 90 and ORS 105.105 to 105.168 and related law, including but not limited to fair housing law; and

(d) Provide a certificate of completion to all attendees and a record of that completion to the department.

(4) The department, a trade association or instructor is not responsible for the conduct of a landlord, manager, owner or other person attending a continuing education class under this section. This section does not create a cause of action against the department, a trade association or instructor related to the continuing education class.

(5) The landlord of a facility is responsible for ensuring compliance with the continuing education requirements in this section.

SECTION 4. (1) The Housing and Community Services Department may assess a civil penalty against a landlord if the department finds that the landlord has not made a good faith effort to comply with section 2 or 3 of this 2005 Act. The civil penalty may not exceed $500.

(2) A civil penalty assessed under this section shall be deposited to the Mobile Home Parks Account and continuously appropriated to the department for use in carrying out the policies described in ORS 446.515.

SECTION 5. As used in sections 5 to 10 of this 2005 Act:

(1) "Submeter" means a device owned or under the control of a landlord and used to measure a utility or service actually provided to a tenant at the tenant's space.

(2) "Utility or service" has the meaning given that term in ORS 90.315.

SECTION 6. (1) Subject to the policies of the utility or service provider, a landlord may provide for utilities or services to tenants by one or more of the following billing methods:

(a) A relationship between the tenant and the utility or service provider in which:

(A) The provider provides the utility or service directly to the tenant's space, including any utility or service line, and bills the tenant directly; and

(B) The landlord does not act as a provider.

(b) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space or to a common area available to the tenant as part of the tenancy; and

(C) The landlord includes the cost of the utility or service in the tenant's rent or bills the tenant for a utility or service charge separately from the rent in an amount determined by apportioning the provider's charge to the landlord as measured by a master meter.

(c) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space; and

(C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided.

(2) To assess a tenant for a utility or service charge for any billing period, the landlord shall give the tenant a written notice stating the amount of the utility or service charge that

the tenant is to pay the landlord, and the due date for making the payment. The due date may not be less than 14 days from the date of service of the notice.

(3) A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.400, but is grounds for termination of a rental agreement for cause under ORS 90.630.

(4) The landlord is responsible for maintaining the utility or service system, including any submeter, consistent with ORS 90.730. After any installation or maintenance of the system on a tenant's space, the landlord shall restore the space to a condition that is the same as or better than the condition of the space before the installation or maintenance.

(5) A landlord may not assess a utility or service charge for water unless the water is provided to the landlord by a:

(a) Public utility as defined in ORS 757.005;

(b) Municipal utility operating under ORS chapter 225;

(c) People's utility district organized under ORS chapter 261;

(d) Cooperative organized under ORS chapter 62;

(e) Domestic water supply district organized under ORS chapter 264; or

(f) Water improvement district organized under ORS chapter 552.

(6) A landlord who provides utilities or services only to tenants of the landlord in compliance with this section and sections 7 and 8 of this 2005 Act is not a public utility for purposes of ORS chapter 757.

SECTION 7. (1) If a written rental agreement so provides, a landlord using the billing method described in section 6 (1)(b) of this 2005 Act may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for a utility or service provided directly to the tenant's space or to a common area available to the tenant as part of the tenancy.

(2) A utility or service charge that is assessed to tenants for the tenants' spaces under this section must be allocated among the tenants by a method that reasonably apportions the cost among the affected tenants and that is described in the rental agreement. Methods that reasonably apportion the cost among the tenants include, but are not limited to, methods that divide the cost based on the number of occupied spaces in the facility or on the square footage in each dwelling, home or space.

(3) A utility or service charge to be assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from the utility or service charge for the tenant's space.

(4) A landlord may not increase the utility or service charge to the tenant by adding any costs of the landlord, such as a handling or administrative charge, other than those costs billed to the landlord by the provider for utilities or services.

SECTION 8. (1) If a written rental agreement so provides, a landlord using the billing method described in section 6 (1)(c) of this 2005 Act may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's space as measured by a submeter.

(2) A utility or service charge to be assessed to a tenant under this section may consist of:

(a) The cost of the utility or service provided to the tenant's space and under the tenant's control, as measured by the submeter, at a rate no greater than the average rate billed to the landlord by the utility or service provider, not including any base or service charge;

(b) The cost of any sewer service for stormwater or wastewater as a percentage of the tenant's water charge as measured by a submeter, if the utility or service provider charges the landlord for sewer service as a percentage of water provided; and

(c) A pro rata portion of any base or service charge billed to the landlord by the utility or service provider, including but not limited to any tax passed through by the provider.

(3) A utility or service charge to be assessed to a tenant under this section may not include:

(a) Any additional charge, including any costs of the landlord, for the installation, maintenance or operation of the utility or service system or any profit for the landlord; or

(b) Any costs to provide a utility or service to common areas of the facility.

SECTION 9. (1) A landlord may unilaterally amend a rental agreement to convert a tenant's existing utility or service billing method from a method described in section 6 (1)(b) of this 2005 Act to a submeter billing method described in section 6 (1)(c) of this 2005 Act. The landlord must give the tenant not less than 180 days' written notice before converting to a submeter billing method.

(2) A landlord must give notice as provided in ORS 90.725 before entering a tenant's space to install or maintain a utility or service line or a submeter that measures the amount of a provided utility or service.

(3) If the cost of the tenant's utility or service was included in the rent before the conversion to submeters, the landlord shall reduce the tenant's rent upon the landlord's first billing of the tenant using the submeter method. The rent reduction may not be less than an amount reasonably comparable to the amount of the rent previously allocated to the utility or service cost averaged over at least the preceding six months. Before the landlord first bills the tenant using the submeter method, the landlord shall provide the tenant with written documentation from the utility or service provider showing the landlord's cost for the utility or service provided to the facility during at least the six preceding months.

(4) During the six months following a conversion to submeters, the landlord may not raise the rent to recover the costs of installing, maintaining or operating the utility or service system or of new lines or submeters. Except as part of the rent, a landlord may not charge the tenant for the cost of installation or for any capital expenses related to the conversion to submeters or for the cost of maintenance or operation of the utility or service system. As used in this subsection, "operation" includes, but is not limited to, reading the submeter.

(5) A rental agreement amended under this section shall include language that fairly describes the provisions of this section.

(6) If a landlord installs a submeter on an existing utility or service line to a space or common area that is already served by that line, unless the installation causes a system upgrade, a local government may not assess a system development charge as defined in ORS 223.299 as a result of the installation.

SECTION 10. In addition to any other right of entry granted under ORS 90.725, a landlord or the landlord's agent may enter a tenant's space without consent of the tenant and without notice to the tenant for the purpose of reading a submeter. An entry made under authority of this section is subject to the following restrictions:

(1) The landlord or landlord's agent may not remain on the space for a purpose other than reading the submeter.

(2) The landlord or a landlord's agent may not enter the space more than once per month.

(3) The landlord or landlord's agent may enter the space only at reasonable times between 8 a.m. and 6 p.m.

SECTION 11. As used in this section and section 12 of this 2005 Act:

(1) "Manufactured dwelling park," "mobile home park" and "recreational vehicle" have the meaning given those terms in ORS 446.003.

(2) "Recreational vehicle park":

(a) Means a place where two or more recreational vehicles are located within 500 feet of one another on a lot, tract or parcel of land under common ownership and having as its primary purpose:

(A) The renting of space and related facilities for a charge or fee; or

(B) The provision of space for free in connection with securing the patronage of a person.

(b) Does not mean:

(A) An area designated only for picnicking or overnight camping; or

(B) A manufactured dwelling park or mobile home park.

SECTION 12. (1) A state agency or local government may not prohibit the placement or occupancy of a recreational vehicle, or impose any limit on the length of occupancy of a recreational vehicle, solely on the grounds that the occupancy is in a recreational vehicle, if the recreational vehicle is:

(a) Located in a manufactured dwelling park, mobile home park or recreational vehicle park;

(b) Occupied as a residential dwelling; and

(c) Lawfully connected to water and electrical supply systems and a sewage disposal system.

(2) Subsection (1) of this section does not limit the authority of a state agency or local government to impose other special conditions on the placement or occupancy of a recreational vehicle.

SECTION 13. Section 14 of this 2005 Act is added to and made a part of ORS 90.100 to 90.459.

SECTION 14. (1) If a tenancy is for the occupancy of a recreational vehicle in a manufactured dwelling park, mobile home park or recreational vehicle park, all as defined in section 11 of this 2005 Act, the landlord shall provide a written rental agreement for a month-to-month, week-to-week or fixed-term tenancy. The rental agreement must state:

(a) If applicable, that the tenancy may be terminated by the landlord under ORS 90.427 without cause upon 30 days' written notice for a month-to-month tenancy or upon 10 days' written notice for a week-to-week tenancy.

(b) That any accessory building or structure paid for or provided by the tenant belongs to the tenant and is subject to a demand by the landlord that the tenant remove the building or structure upon termination of the tenancy.

(c) That the tenancy is subject to the requirements of section 12 (1) of this 2005 Act for exemption from placement and occupancy restrictions.

(2) If a tenant described in subsection (1) of this section moves following termination of the tenancy by the landlord under ORS 90.427, and the landlord failed to provide the required written rental agreement before the beginning of the tenancy, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater.

(3) If the occupancy fails at any time to comply with the requirements of section 12 (1) of this 2005 Act for exemption from placement and occupancy restrictions, and a state agency or local government requires the tenant to move as a result of the noncompliance, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater. This subsection does not apply if the noncompliance was caused by the tenant.

(4) This section does not apply to a vacation occupancy.

SECTION 15. ORS 90.100 is amended to read:

90.100. Subject to additional definitions contained in this chapter that apply to specific sections or parts thereof, and unless the context otherwise requires, in this chapter:

(1) "Accessory building or structure" means any portable, demountable or permanent structure, including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks, steps, ramps, piers and pilings, that is:

(a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or

(b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a tenant of a manufactured dwelling or floating home.

(2) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

ATTACHMENT 3

(3) "Applicant screening charge" means any payment of money required by a landlord of an applicant prior to entering into a rental agreement with that applicant for a residential dwelling unit, the purpose of which is to pay the cost of processing an application for a rental agreement for a residential dwelling unit.

(4) "Building and housing codes" include any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(5) "Conduct" means the commission of an act or the failure to act.

(6) "Dealer" means any person in the business of selling, leasing or distributing new or used manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling or floating home for use as a residence.

(7) "Domestic violence" has the meaning given that term in ORS 135.230.

(8) "Drug and alcohol free housing" means a dwelling unit described in ORS 90.243.

(9) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit" regarding a person who rents a space for a manufactured dwelling or recreational vehicle or regarding a person who rents moorage space for a floating home as defined in ORS 830.700, but does not rent the home, means the space rented and not the manufactured dwelling, recreational vehicle or floating home itself.

(10) "Essential service" means:

(a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.840:

(A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows and any cooking appliance or refrigerator supplied or required to be supplied by the landlord; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320, the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the dwelling unit unfit for occupancy.

(b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.840:

(A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any drainage system; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730, the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the rented space unfit for occupancy.

(11) "Facility" means:

(a) A place where four or more manufactured dwellings are located, the primary purpose of which is to rent space or keep space for rent to any person for a fee; or

(b) A moorage of contiguous dwelling units that may be legally transferred as a single unit and are owned by one person where four or more floating homes are secured, the primary purpose of which is to rent space or keep space for rent to any person for a fee.

(12) "Facility purchase association" means a group of three or more tenants who reside in a facility and have organized for the purpose of eventual purchase of the facility.

(13) "Fee" means a nonrefundable payment of money.

(14) "First class mail" does not include certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient.

(15) "Fixed term tenancy" means a tenancy that has a fixed term of existence, continuing to a specific ending date and terminating on that date without requiring further notice to effect the termination.

(16) "Floating home" has the meaning given that term in ORS 830.700. As used in this chapter, "floating home" includes an accessory building or structure.

(17) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(18) "Hotel or motel" means "hotel" as that term is defined in ORS 699.005.

(19) "Informal dispute resolution" means, but is not limited to, consultation between the landlord or landlord's agent and one or more tenants, or mediation utilizing the services of a third party.

(20) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.

(21) "Landlord's agent" means a person who has oral or written authority, either express or implied, to act for or on behalf of a landlord.

(22) "Last month's rent deposit" means a type of security deposit, however designated, the primary function of which is to secure the payment of rent for the last month of the tenancy.

(23) "Manufactured dwelling" means a residential trailer, a mobile home or a manufactured home as those terms are defined in ORS 446.003 (26). "Manufactured dwelling" includes an accessory building or structure. "Manufactured dwelling" does not include a recreational vehicle.

(24) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(25) "Month-to-month tenancy" means a tenancy that automatically renews and continues for successive monthly periods on the same terms and conditions originally agreed to, or as revised by the parties, until terminated by one or both of the parties.

(26) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(27) "Owner" includes a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to property; or

(b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

(28) "Person" includes an individual or organization.

(29) "Premises" means:

(a) A dwelling unit and the structure of which it is a part and facilities and appurtenances therein [*and*]**;**

(b) Grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant**; and**

(c) A facility for manufactured dwellings or floating homes.

(30) "Prepaid rent" means any payment of money to the landlord for a rent obligation not yet due. In addition, "prepaid rent" means rent paid for a period extending beyond a termination date.

(31) "Recreational vehicle" has the meaning given that term in ORS 446.003.

(32) "Rent" means any payment to be made to the landlord under the rental agreement, periodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit to the exclusion of others. "Rent" does not include security deposits, fees or utility or service charges as described in ORS 90.315 (4) and [*90.510 (8)*] **section 6 of this 2005 Act.**

(33) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under ORS 90.262 or 90.510 (6) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises. "Rental agreement" includes a lease. A rental agreement shall be either a week-to-week tenancy, month-to-month tenancy or fixed term tenancy.

(34) "Roomer" means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure.

(35) "Screening or admission criteria" means a written statement of any factors a landlord considers in deciding whether to accept or reject an applicant and any qualifications required for acceptance. "Screening or admission criteria" includes, but is not limited to, the rental history, character references, public records, criminal records, credit reports, credit references and incomes or resources of the applicant.

(36) "Security deposit" means any refundable payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement, but does not mean a fee.

(37) "Sexual assault" has the meaning given that term in ORS 147.450.

(38) "Squatter" means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. "Squatter" does not include a tenant who holds over as described in ORS 90.427 (4).

(39) "Stalking" means the behavior described in ORS 163.732.

(40) "Statement of policy" means the summary explanation of information and facility policies to be provided to prospective and existing tenants under ORS 90.510.

(41) "Surrender" means an agreement, express or implied, as described in ORS 90.148 between a landlord and tenant to terminate a rental agreement that gave the tenant the right to occupy a dwelling unit.

(42) "Tenant" means a person, including a roomer, entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority. "Tenant" also includes a minor, as defined and provided for in ORS 109.697. As used in ORS 90.505 to 90.840, "tenant" includes only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

(43) "Transient lodging" means a room or a suite of rooms.

(44) "Transient occupancy" means occupancy in transient lodging that has all of the following characteristics:

(a) Occupancy is charged on a daily basis and is not collected more than six days in advance;

(b) The lodging operator provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy; and

(c) The period of occupancy does not exceed 30 days.

(45) "Vacation occupancy" means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

(a) The occupant rents the unit for vacation purposes only, not as a principal residence;

(b) The occupant has a principal residence other than at the unit; and

(c) The period of authorized occupancy does not exceed 45 days.

(46) "Victim" means a person who is the subject of domestic violence, sexual assault or stalking. "Victim" includes a parent or guardian of a minor who is the subject of domestic violence, sexual assault or stalking.

(47) "Week-to-week tenancy" means a tenancy that has all of the following characteristics:

(a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven days;

(b) There is a written rental agreement that defines the landlord's and the tenant's rights and responsibilities under this chapter; and

(c) There are no fees or security deposits, although the landlord may require the payment of an applicant screening charge, as provided in ORS 90.295.

SECTION 16. ORS 90.140 is amended to read:

90.140. (1) A landlord may require or accept the following types of payments:

(a) Applicant screening charges, pursuant to ORS 90.295;

(b) Deposits to secure the execution of a rental agreement, pursuant to ORS 90.297;

(c) Security deposits, pursuant to ORS 90.300;

(d) Fees, pursuant to ORS 90.302;

(e) Rent, as defined in ORS 90.100;

(f) Prepaid rent, as defined in ORS 90.100;

(g) Utility or service charges, pursuant to ORS 90.315 (4) or [*90.510 (8)*] **section 7 or 8 of this 2005 Act**;

(h) Late charges or fees, pursuant to ORS 90.260; and

(i) Damages, for noncompliance with a rental agreement or ORS 90.325, pursuant to ORS 90.400 (11) or as provided elsewhere in this chapter.

(2) A tenant who requests a writing that evidences the tenant's payment is entitled to receive that writing from the landlord as a condition for making the payment. The writing may be a receipt, statement of the tenant's account or other acknowledgment of the tenant's payment. The writing must include the amount paid, the date of payment and information identifying the landlord or the rental property. If the tenant makes the payment by mail, deposit or a method other than in person and requests the writing, the landlord shall within a reasonable time provide the tenant with the writing in a manner consistent with ORS 90.150.

SECTION 17. ORS 90.425 is amended to read:

90.425. (1) As used in this section:

(a) "Current market value" means the amount in cash, as determined by the county assessor, that could reasonably be expected to be paid for a manufactured dwelling or floating home by an informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

(b) "Dispose of the personal property" means that, if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a nonprofit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit.

(c) "Goods" includes those goods left inside a recreational vehicle, manufactured dwelling or floating home or left upon the rental space outside a recreational vehicle, manufactured dwelling or floating home, whether the recreational vehicle, dwelling or home is located inside or outside of a facility.

(d) "Lienholder" means any lienholder of an abandoned recreational vehicle, manufactured dwelling or floating home, if the lien is of record or the lienholder is actually known to the landlord.

(e) "Of record" means:

(A) For a manufactured dwelling or recreational vehicle, that a security interest has been properly recorded with the Department of Transportation pursuant to ORS 802.200 (1)(a)(A) and 803.097 for a dwelling or vehicle registered and titled by the department pursuant to ORS 820.500.

(B) For a floating home, that a security interest has been properly recorded with the State Marine Board pursuant to ORS 830.740 to 830.755 for a home registered and titled with the board pursuant to ORS 830.715.

(f) "Owner" means any owner of an abandoned recreational vehicle, manufactured dwelling or floating home, if different from the tenant and either of record or actually known to the landlord.

(g) "Personal property" means goods, vehicles and recreational vehicles and includes manufactured dwellings and floating homes not located in a facility. "Personal property" does not include manufactured dwellings and floating homes located in a facility and therefore subject to being stored, sold or disposed of as provided under ORS 90.675.

(2) A landlord may not store, sell or dispose of abandoned personal property except as provided by this section. This section governs the rights and obligations of landlords, tenants and any lienholders or owners in any personal property abandoned or left upon the premises by the tenant or any lienholder or owner in the following circumstances:

(a) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal property;

(b) The tenant has been absent from the premises continuously for seven days after termination of a tenancy by a court order that has not been executed; or

(c) The landlord receives possession of the premises from the sheriff following restitution pursuant to ORS 105.161.

(3) Prior to selling or disposing of the tenant's personal property under this section, the landlord must give a written notice to the tenant that shall be:

(a) Personally delivered to the tenant; or

(b) Sent by first class mail addressed and mailed to the tenant at:

(A) The premises;

(B) Any post-office box held by the tenant and actually known to the landlord; and

(C) The most recent forwarding address if provided by the tenant or actually known to the landlord.

(4)(a) In addition to the notice required by subsection (3) of this section, in the case of an abandoned recreational vehicle, manufactured dwelling or floating home, a landlord shall also give a copy of the notice described in subsection (3) of this section to:

(A) Any lienholder of the recreational vehicle, manufactured dwelling or floating home;

(B) Any owner of the recreational vehicle, manufactured dwelling or floating home;

(C) The tax collector of the county where the manufactured dwelling or floating home is located; and

(D) The assessor of the county where the manufactured dwelling or floating home is located.

(b) The landlord shall give the notice copy required by this subsection by personal delivery or first class mail, except that for any lienholder, mail service shall be both by first class mail and by certified mail with return receipt requested.

(c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each lienholder at each address:

(A) Actually known to the landlord;

(B) Of record; and

(C) Provided to the landlord by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the landlord by certified mail with return receipt requested within the preceding five years. The notice must identify the personal property by describing the physical address of the property.

(5) The notice required under subsection (3) of this section shall state that:

(a) The personal property left upon the premises is considered abandoned;

(b) The tenant or any lienholder or owner must contact the landlord by a specified date, as provided in subsection (6) of this section, to arrange for the removal of the abandoned personal property;

(c) The personal property is stored at a place of safekeeping, except that if the property includes a manufactured dwelling or floating home, the dwelling or home shall be stored on the rented space;

(d) The tenant or any lienholder or owner, except as provided by subsection (18) of this section, may arrange for removal of the personal property by contacting the landlord at a described telephone number or address on or before the specified date;

(e) The landlord shall make the personal property available for removal by the tenant or any lienholder or owner, except as provided by subsection (18) of this section, by appointment at reasonable times;

(f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, the landlord may require payment of removal and storage charges, as provided by subsection (7)(d) of this section, prior to releasing the personal property to the tenant or any lienholder or owner;

(g) If the personal property is considered to be abandoned pursuant to subsection (2)(c) of this section, the landlord may not require payment of storage charges prior to releasing the personal property;

(h) If the tenant or any lienholder or owner fails to contact the landlord by the specified date, or after that contact, fails to remove the personal property within 30 days for recreational vehicles, manufactured dwellings and floating homes or 15 days for all other personal property, the landlord may sell or dispose of the personal property. If the landlord reasonably believes that the personal property will be eligible for disposal pursuant to subsection (10)(b) of this section and the landlord

intends to dispose of the property if it is not claimed, the notice shall state that belief and intent; and

(i) If the personal property includes a recreational vehicle, manufactured dwelling or floating home and if applicable, there is a lienholder or owner that has a right to claim the recreational vehicle, dwelling or home, except as provided by subsection (18) of this section.

(6) For purposes of subsection (5) of this section, the specified date by which a tenant, lienholder or owner must contact a landlord to arrange for the disposition of abandoned personal property shall be:

(a) For abandoned recreational vehicles, manufactured dwellings or floating homes, not less than 45 days after personal delivery or mailing of the notice; or

(b) For all other abandoned personal property, not less than five days after personal delivery or eight days after mailing of the notice.

(7) After notifying the tenant as required by subsection (3) of this section, the landlord:

(a) Shall store any abandoned manufactured dwelling or floating home on the rented space and shall exercise reasonable care for the dwelling or home;

(b) Shall store all other abandoned personal property of the tenant, including goods left inside a recreational vehicle, manufactured dwelling or floating home or left upon the rented space outside a recreational vehicle, dwelling or home, in a place of safekeeping and shall exercise reasonable care for the personal property, except that the landlord may:

(A) Promptly dispose of rotting food; and

(B) Allow an animal control agency to remove any abandoned pets or livestock. If an animal control agency will not remove the abandoned pets or livestock, the landlord shall exercise reasonable care for the animals given all the circumstances, including the type and condition of the animals, and may give the animals to an agency that is willing and able to care for the animals, such as a humane society or similar organization;

(c) Except for manufactured dwellings and floating homes, may store the abandoned personal property at the dwelling unit, move and store it elsewhere on the premises or move and store it at a commercial storage company or other place of safekeeping; and

(d) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal, including any cost of removal to a place of storage. In the case of an abandoned manufactured dwelling or floating home, the storage charge shall be no greater than the monthly space rent last payable by the tenant.

(8) If a tenant, lienholder or owner, upon the receipt of the notice provided by subsection (3) or (4) of this section or otherwise, responds by actual notice to the landlord on or before the specified date in the landlord's notice that the tenant, lienholder or owner intends to remove the personal property from the premises or from the place of safekeeping, the landlord must make that personal property available for removal by the tenant, lienholder or owner by appointment at reasonable times during the 15 days or, in the case of a recreational vehicle, manufactured dwelling or floating home, 30 days following the date of the response, subject to subsection (18) of this section. If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of removal and storage charges, as provided in subsection (7)(d) of this section, prior to allowing the tenant, lienholder or owner to remove the personal property. Acceptance by a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS 90.415.

(9) Except as provided in subsections (18) to (20) of this section, if the tenant, lienholder or owner of a recreational vehicle, manufactured dwelling or floating home does not respond within the time provided by the landlord's notice, or the tenant, lienholder or owner does not remove the personal property within the time required by subsection (8) of this section or by any date agreed to with the landlord, whichever is later, the tenant's, lienholder's or owner's personal property is conclusively presumed to be abandoned. The tenant and any lienholder or owner that have been given notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution

of sale proceeds pursuant to subsection (13) of this section, have no further right, title or interest to the personal property and may not claim or sell the property.

(10) If the personal property is presumed to be abandoned under subsection (9) of this section, the landlord then may:

(a) Sell the personal property at a public or private sale, provided that prior to the sale of a recreational vehicle, manufactured dwelling or floating home:

(A) The landlord may seek to transfer the certificate of title and registration to the personal property by complying with the requirements of the appropriate state agency; and

(B) The landlord shall:

(i) Place a notice in a newspaper of general circulation in the county in which the recreational vehicle, manufactured dwelling or floating home is located. The notice shall state:

(I) That the recreational vehicle, manufactured dwelling or floating home is abandoned;

(II) The tenant's and owner's name, if of record or actually known to the landlord;

(III) The address and any space number where the recreational vehicle, manufactured dwelling or floating home is located, and if actually known to the landlord, the plate, registration or other identification number as noted on the certificate of title;

(IV) Whether the sale is by private bidding or public auction;

(V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be accepted; and

(VI) The name and telephone number of the person to contact to inspect the recreational vehicle, manufactured dwelling or floating home;

(ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (i) of this subparagraph to the tenant and to any lienholder and owner, by personal delivery or first class mail, except that for any lienholder, mail service shall be by first class mail with certificate of mailing;

(iii) Obtain an affidavit of publication from the newspaper to show that the notice required under sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(iv) Obtain written proof from the county that all property taxes on the manufactured dwelling or floating home have been paid or, if not paid, that the county has authorized the sale, with the sale proceeds to be distributed pursuant to subsection (13) of this section;

(b) Destroy or otherwise dispose of the personal property if the landlord determines that:

(A) For a manufactured dwelling or floating home, the current market value of the property is $8,000 or less as determined by the county assessor; or

(B) For all other personal property, the reasonable current fair market value is $500 or less or so low that the cost of storage and conducting a public sale probably exceeds the amount that would be realized from the sale; or

(c) Consistent with paragraphs (a) and (b) of this subsection, sell certain items and destroy or otherwise dispose of the remaining personal property.

(11)(a) A public or private sale authorized by this section shall:

(A) For a recreational vehicle, manufactured dwelling or floating home, be conducted consistent with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable; or

(B) For all other personal property, be conducted under the provisions of ORS 79.0610.

(b) If there is no buyer at a sale of a manufactured dwelling or floating home, the personal property is considered to be worth $8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property.

(12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the condition of a manufactured dwelling or floating home, the landlord is not liable for the condition of the dwelling or home to:

(a) A buyer of the dwelling or home at a sale pursuant to subsection (10)(a) of this section, with or without consideration; or

(b) A person or nonprofit organization to whom the landlord gives the dwelling or home pursuant to subsection (1)(b), (10)(b) or (11)(b) of this section.

(13)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable or actual cost of notice, storage and sale; and

(B) Unpaid rent.

(b) If the sale was of a manufactured dwelling or floating home, after deducting the amounts listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid property taxes owed on the dwelling or home.

(c) If the sale was of a recreational vehicle, manufactured dwelling or floating home, after deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the landlord shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance owed on the lien on the recreational vehicle, dwelling or home.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if applicable, the landlord shall remit to the tenant or owner the remaining proceeds, if any, together with an itemized accounting.

(e) If the tenant or owner cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred, and if not claimed within three years shall revert to the general fund of the county available for general purposes.

(14) The county tax collector shall cancel all unpaid property taxes owed on a manufactured dwelling or floating home, as provided under ORS 311.790, only under circumstances described in paragraph (a), (b), (c) or (d) of this subsection:

(a) The landlord disposes of the manufactured dwelling or floating home after a determination described in subsection (10)(b) of this section.

(b) There is no buyer of the manufactured dwelling or floating home at a sale described under subsection (11) of this section.

(c)(A) There is a buyer of the manufactured dwelling or floating home at a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating home is $8,000 or less; and

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes owed on the dwelling or home after distribution of the proceeds pursuant to subsection (13) of this section.

(d)(A) The landlord buys the manufactured dwelling or floating home at a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating home is more than $8,000;

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes owed on the manufactured dwelling or floating home after distribution of the proceeds pursuant to subsection (13) of this section; and

(D) The landlord disposes of the manufactured dwelling or floating home.

(15) The landlord is not responsible for any loss to the tenant, lienholder or owner resulting from storage of personal property in compliance with this section unless the loss was caused by the landlord's deliberate or negligent act. In the event of a deliberate and malicious violation, the landlord is liable for twice the actual damages sustained by the tenant, lienholder or owner.

(16) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant, lienholder or owner against a landlord for loss or damage to such personal property disposed of pursuant to this section.

(17) If a landlord does not comply with this section:

(a) The tenant is relieved of any liability for damage to the premises caused by conduct that was not deliberate, intentional or grossly negligent and for unpaid rent and may recover from the landlord up to twice the actual damages sustained by the tenant;

(b) A lienholder or owner aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the lienholder or owner. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph; and

(c) A county tax collector aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the tax collector, if the noncompliance is part of an effort by the landlord to defraud the tax collector. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph.

(18) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home, the provisions of this section regarding the rights and responsibilities of a tenant to the abandoned vehicle, dwelling or home shall also apply to any lienholder except that the lienholder may not sell or remove the vehicle, dwelling or home unless:

(a) The lienholder has foreclosed its lien on the recreational vehicle, manufactured dwelling or floating home;

(b) The tenant or a personal representative or designated person described in subsection (20) of this section has waived all rights under this section pursuant to subsection (24) of this section; or

(c) The notice and response periods provided by subsections (6) and (8) of this section have expired.

(19)(a) In the case of an abandoned manufactured dwelling or floating home but not including a dwelling or home abandoned following a termination pursuant to ORS 90.429 and except as provided by subsection (20)(d) and (e) of this section, if a lienholder makes a timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests, a landlord shall enter into a written storage agreement with the lienholder providing that the dwelling or home may not be sold or disposed of by the landlord for up to 12 months. A storage agreement entitles the lienholder to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property.

(b) The lienholder's right to a storage agreement arises upon the failure of the tenant, owner or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee to remove or sell the dwelling or home within the allotted time.

(c) To exercise the right to a storage agreement under this subsection, in addition to contacting the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder must enter into the proposed storage agreement within 60 days after the landlord gives a copy of the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement to the lienholder in the same manner as provided by subsection (4)(b) of this section. The landlord may include a copy of the proposed storage agreement with the notice of abandoned property required by subsection (4) of this section. A lienholder enters into a storage agreement by signing a copy of the agreement provided by the landlord and personally delivering or mailing the signed copy to the landlord within the 60-day period.

(d) The storage agreement may require, in addition to other provisions agreed to by the landlord and the lienholder, that:

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(d) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described in [*ORS 90.510 (8)*] **section 6 of this 2005 Act**, if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

(B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date required in the agreement, if the amount of the late charge is no greater than for late charges described in the rental agreement between the landlord and the tenant; and

(C) The lienholder maintain the personal property and the space on which the personal property is stored in a manner consistent with the rights and obligations described in the rental agreement between the landlord and the tenant.

(e) During the term of an agreement described under this subsection, the lienholder shall have the right to remove or sell the property, subject to the provisions of its lien. Selling the property includes a sale to a purchaser who wishes to leave the dwelling or home on the rented space and become a tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the landlord's approval of a purchaser or, if there was no such agreement, any reasonable conditions by the landlord regarding approval of any purchaser who wishes to leave the dwelling or home on the rented space and become a tenant. The landlord also may condition approval for occupancy of any purchaser of the property upon payment of all unpaid storage charges and maintenance costs.

(f)(A) If the lienholder violates the storage agreement, the landlord may terminate the agreement by giving at least 90 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the dwelling or home without further notice to the lienholder.

(B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the landlord may terminate the agreement by giving at least 30 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(C) A lienholder may terminate a storage agreement at any time upon at least 14 days' written notice to the landlord and may remove the property from the rented space if the lienholder has paid all storage charges and other charges as provided in the agreement.

(g) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the lienholder has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose of the property pursuant to this section without further notice to the lienholder.

(20) If the personal property consists of an abandoned manufactured dwelling or floating home and is considered abandoned as a result of the death of a tenant who was the only tenant and who owned the dwelling or home, this section applies, except as follows:

(a) Any personal representative named in a will or appointed by a court to act for the deceased tenant or any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant's death has the same rights and responsibilities regarding the abandoned dwelling or home as a tenant.

(b) The notice required by subsection (3) of this section shall be:

(A) Sent by first class mail to the deceased tenant at the premises; and

(B) Personally delivered or sent by first class mail to any personal representative or designated person if actually known to the landlord.

(c) The notice described in subsection (5) of this section shall refer to any personal representative or designated person, instead of the deceased tenant, and shall incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the dwelling or home may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the agreement with the personal representative or designated person ends.

(e) If a personal representative or other person requests that a landlord enter into a storage agreement, subsection (19)(c), (d) and (f)(C) of this section applies, with the representative or person having the rights and responsibilities of a lienholder with regard to the storage agreement.

(f) During the term of an agreement described under paragraph (d) of this subsection, the representative or person shall have the right to remove or sell the dwelling or home, including a sale to a purchaser or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave the dwelling or home on the rented space and become a tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the landlord's approval for occupancy of a purchaser, heir or devisee or, if there was no such agreement, any reasonable conditions by the landlord regarding approval for occupancy of any purchaser, heir or devisee who wishes to leave the dwelling or home on the rented space and become a tenant. The landlord also may condition approval for occupancy of any purchaser, heir or devisee of the dwelling or home upon payment of all unpaid storage charges and maintenance costs.

(g) If the representative or person violates the storage agreement, the landlord may terminate the agreement by giving at least 30 days' written notice to the representative or person stating facts sufficient to notify the representative or person of the reason for the termination. Unless the representative or person corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the dwelling or home without further notice to the representative or person.

(h) Upon the failure of a representative or person to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the representative or person has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose of the property pursuant to this section without further notice to the representative or person.

(21) If a governmental agency determines that the condition of a manufactured dwelling, floating home or recreational vehicle abandoned under this section constitutes an extreme health or safety hazard under state or local law and the agency determines that the hazard endangers others in the immediate vicinity and requires quick removal of the property, the landlord may sell or dispose of the property pursuant to this subsection. The landlord shall comply with all provisions of this section, except as follows:

(a) The date provided in subsection (6) of this section by which a tenant, lienholder, owner, personal representative or designated person must contact a landlord to arrange for the disposition of the property shall be not less than 15 days after personal delivery or mailing of the notice required by subsection (3) of this section.

(b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder, owner, personal representative or designated person must remove the property shall be not less than seven days after the tenant, lienholder, owner, personal representative or designated person contacts the landlord.

(c) The notice required by subsection (3) of this section shall be as provided in subsection (5) of this section, except that:

(A) The dates and deadlines in the notice for contacting the landlord and removing the property shall be consistent with this subsection;

(B) The notice shall state that a governmental agency has determined that the property constitutes an extreme health or safety hazard and must be removed quickly; and

(C) The landlord shall attach a copy of the agency's determination to the notice.

(d) If the tenant, a lienholder, owner, personal representative or designated person does not remove the property within the time allowed, the landlord or a buyer at a sale by the landlord under subsection (11) of this section shall promptly remove the property from the facility.

(e) A landlord is not required to enter into a storage agreement with a lienholder, owner, personal representative or designated person pursuant to subsection (19) of this section.

(22) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home that is owned by someone other than the tenant, the provisions of this section regarding the rights

and responsibilities of a tenant to the abandoned vehicle, dwelling or home shall also apply to that owner, with regard only to the vehicle, dwelling or home, and not to any goods left inside or outside the vehicle, dwelling or home.

(23) In the case of an abandoned motor vehicle, the procedure authorized by ORS 98.830 and 98.835 for removal of abandoned motor vehicles from private property may be used by a landlord as an alternative to the procedures required in this section.

(24)(a) A landlord may sell or dispose of a tenant's abandoned personal property without complying with the provisions of this section if, after termination of the tenancy or no more than seven days prior to the termination of the tenancy, the following parties so agree in a writing entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a tenant who was the only tenant, the personal representative, designated person or other person entitled to possession of the personal property, such as an heir or devisee, as described in subsection (20) of this section; and

(C) In the case of a manufactured dwelling, floating home or recreational vehicle, any owner and any lienholder.

(b) A landlord may not, as part of a rental agreement, require a tenant, a personal representative, a designated person or any lienholder or owner to waive any right provided by this section.

(25) Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal property.

SECTION 18. ORS 90.425, as amended by section 57, chapter 655, Oregon Laws 2003, is amended to read:

90.425. (1) As used in this section:

(a) "Current market value" means the amount in cash, as determined by the county assessor, that could reasonably be expected to be paid for a manufactured dwelling or floating home by an informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

(b) "Dispose of the personal property" means that, if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a nonprofit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit.

(c) "Goods" includes those goods left inside a recreational vehicle, manufactured dwelling or floating home or left upon the rental space outside a recreational vehicle, manufactured dwelling or floating home, whether the recreational vehicle, dwelling or home is located inside or outside of a facility.

(d) "Lienholder" means any lienholder of an abandoned recreational vehicle, manufactured dwelling or floating home, if the lien is of record or the lienholder is actually known to the landlord.

(e) "Of record" means:

(A) For a recreational vehicle that is not a manufactured structure as defined in ORS 446.561, that a security interest has been properly recorded with the Department of Transportation pursuant to ORS 802.200 (1)(a)(A) and 803.097.

(B) For a manufactured dwelling or recreational vehicle that is a manufactured structure as defined in ORS 446.561, that a security interest has been properly recorded for the manufactured dwelling or recreational vehicle in the records of the Department of Consumer and Business Services pursuant to ORS 446.611 or on a certificate of title issued by the Department of Transportation prior to July 1, 2004.

(C) For a floating home, that a security interest has been properly recorded with the State Marine Board pursuant to ORS 830.740 to 830.755 for a home registered and titled with the board pursuant to ORS 830.715.

(f) "Owner" means any owner of an abandoned recreational vehicle, manufactured dwelling or floating home, if different from the tenant and either of record or actually known to the landlord.

(g) "Personal property" means goods, vehicles and recreational vehicles and includes manufactured dwellings and floating homes not located in a facility. "Personal property" does not include manufactured dwellings and floating homes located in a facility and therefore subject to being stored, sold or disposed of as provided under ORS 90.675.

(2) A landlord may not store, sell or dispose of abandoned personal property except as provided by this section. This section governs the rights and obligations of landlords, tenants and any lienholders or owners in any personal property abandoned or left upon the premises by the tenant or any lienholder or owner in the following circumstances:

(a) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal property;

(b) The tenant has been absent from the premises continuously for seven days after termination of a tenancy by a court order that has not been executed; or

(c) The landlord receives possession of the premises from the sheriff following restitution pursuant to ORS 105.161.

(3) Prior to selling or disposing of the tenant's personal property under this section, the landlord must give a written notice to the tenant that must be:

(a) Personally delivered to the tenant; or

(b) Sent by first class mail addressed and mailed to the tenant at:

(A) The premises;

(B) Any post-office box held by the tenant and actually known to the landlord; and

(C) The most recent forwarding address if provided by the tenant or actually known to the landlord.

(4)(a) In addition to the notice required by subsection (3) of this section, in the case of an abandoned recreational vehicle, manufactured dwelling or floating home, a landlord shall also give a copy of the notice described in subsection (3) of this section to:

(A) Any lienholder of the recreational vehicle, manufactured dwelling or floating home;

(B) Any owner of the recreational vehicle, manufactured dwelling or floating home;

(C) The tax collector of the county where the manufactured dwelling or floating home is located; and

(D) The assessor of the county where the manufactured dwelling or floating home is located.

(b) The landlord shall give the notice copy required by this subsection by personal delivery or first class mail, except that for any lienholder, mail service must be both by first class mail and by certified mail with return receipt requested.

(c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each lienholder at each address:

(A) Actually known to the landlord;

(B) Of record; and

(C) Provided to the landlord by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the landlord by certified mail with return receipt requested within the preceding five years. The notice must identify the personal property by describing the physical address of the property.

(5) The notice required under subsection (3) of this section must state that:

(a) The personal property left upon the premises is considered abandoned;

(b) The tenant or any lienholder or owner must contact the landlord by a specified date, as provided in subsection (6) of this section, to arrange for the removal of the abandoned personal property;

(c) The personal property is stored at a place of safekeeping, except that if the property includes a manufactured dwelling or floating home, the dwelling or home must be stored on the rented space;

(d) The tenant or any lienholder or owner, except as provided by subsection (18) of this section, may arrange for removal of the personal property by contacting the landlord at a described telephone number or address on or before the specified date;

(e) The landlord shall make the personal property available for removal by the tenant or any lienholder or owner, except as provided by subsection (18) of this section, by appointment at reasonable times;

(f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, the landlord may require payment of removal and storage charges, as provided by subsection (7)(d) of this section, prior to releasing the personal property to the tenant or any lienholder or owner;

(g) If the personal property is considered to be abandoned pursuant to subsection (2)(c) of this section, the landlord may not require payment of storage charges prior to releasing the personal property;

(h) If the tenant or any lienholder or owner fails to contact the landlord by the specified date, or after that contact, fails to remove the personal property within 30 days for recreational vehicles, manufactured dwellings and floating homes or 15 days for all other personal property, the landlord may sell or dispose of the personal property. If the landlord reasonably believes that the personal property will be eligible for disposal pursuant to subsection (10)(b) of this section and the landlord intends to dispose of the property if the property is not claimed, the notice shall state that belief and intent; and

(i) If the personal property includes a recreational vehicle, manufactured dwelling or floating home and if applicable, there is a lienholder or owner that has a right to claim the recreational vehicle, dwelling or home, except as provided by subsection (18) of this section.

(6) For purposes of subsection (5) of this section, the specified date by which a tenant, lienholder or owner must contact a landlord to arrange for the disposition of abandoned personal property is:

(a) For abandoned recreational vehicles, manufactured dwellings or floating homes, not less than 45 days after personal delivery or mailing of the notice; or

(b) For all other abandoned personal property, not less than five days after personal delivery or eight days after mailing of the notice.

(7) After notifying the tenant as required by subsection (3) of this section, the landlord:

(a) Shall store any abandoned manufactured dwelling or floating home on the rented space and shall exercise reasonable care for the dwelling or home;

(b) Shall store all other abandoned personal property of the tenant, including goods left inside a recreational vehicle, manufactured dwelling or floating home or left upon the rented space outside a recreational vehicle, dwelling or home, in a place of safekeeping and shall exercise reasonable care for the personal property, except that the landlord may:

(A) Promptly dispose of rotting food; and

(B) Allow an animal control agency to remove any abandoned pets or livestock. If an animal control agency will not remove the abandoned pets or livestock, the landlord shall exercise reasonable care for the animals given all the circumstances, including the type and condition of the animals, and may give the animals to an agency that is willing and able to care for the animals, such as a humane society or similar organization;

(c) Except for manufactured dwellings and floating homes, may store the abandoned personal property at the dwelling unit, move and store it elsewhere on the premises or move and store it at a commercial storage company or other place of safekeeping; and

(d) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal, including any cost of removal to a place of storage. In the case of an abandoned manufactured dwelling or floating home, the storage charge may be no greater than the monthly space rent last payable by the tenant.

(8) If a tenant, lienholder or owner, upon the receipt of the notice provided by subsection (3) or (4) of this section or otherwise, responds by actual notice to the landlord on or before the specified date in the landlord's notice that the tenant, lienholder or owner intends to remove the per-

sonal property from the premises or from the place of safekeeping, the landlord must make that personal property available for removal by the tenant, lienholder or owner by appointment at reasonable times during the 15 days or, in the case of a recreational vehicle, manufactured dwelling or floating home, 30 days following the date of the response, subject to subsection (18) of this section. If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of removal and storage charges, as provided in subsection (7)(d) of this section, prior to allowing the tenant, lienholder or owner to remove the personal property. Acceptance by a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS 90.415.

(9) Except as provided in subsections (18) to (20) of this section, if the tenant, lienholder or owner of a recreational vehicle, manufactured dwelling or floating home does not respond within the time provided by the landlord's notice, or the tenant, lienholder or owner does not remove the personal property within the time required by subsection (8) of this section or by any date agreed to with the landlord, whichever is later, the tenant's, lienholder's or owner's personal property is conclusively presumed to be abandoned. The tenant and any lienholder or owner that have been given notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution of sale proceeds pursuant to subsection (13) of this section, have no further right, title or interest to the personal property and may not claim or sell the property.

(10) If the personal property is presumed to be abandoned under subsection (9) of this section, the landlord then may:

(a) Sell the personal property at a public or private sale, provided that prior to the sale of a recreational vehicle, manufactured dwelling or floating home:

(A) The landlord may seek to transfer ownership of record of the personal property by complying with the requirements of the appropriate state agency; and

(B) The landlord shall:

(i) Place a notice in a newspaper of general circulation in the county in which the recreational vehicle, manufactured dwelling or floating home is located. The notice shall state:

(I) That the recreational vehicle, manufactured dwelling or floating home is abandoned;

(II) The tenant's and owner's name, if of record or actually known to the landlord;

(III) The address and any space number where the recreational vehicle, manufactured dwelling or floating home is located, and any plate, registration or other identification number for a recreational vehicle or floating home noted on the certificate of title, if actually known to the landlord;

(IV) Whether the sale is by private bidding or public auction;

(V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be accepted; and

(VI) The name and telephone number of the person to contact to inspect the recreational vehicle, manufactured dwelling or floating home;

(ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (i) of this subparagraph to the tenant and to any lienholder and owner, by personal delivery or first class mail, except that for any lienholder, mail service must be by first class mail with certificate of mailing;

(iii) Obtain an affidavit of publication from the newspaper to show that the notice required under sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(iv) Obtain written proof from the county that all property taxes and assessments on the manufactured dwelling or floating home have been paid or, if not paid, that the county has authorized the sale, with the sale proceeds to be distributed pursuant to subsection (13) of this section;

(b) Destroy or otherwise dispose of the personal property if the landlord determines that:

(A) For a manufactured dwelling or floating home, the current market value of the property is $8,000 or less as determined by the county assessor; or

(B) For all other personal property, the reasonable current fair market value is $500 or less or so low that the cost of storage and conducting a public sale probably exceeds the amount that would be realized from the sale; or

(c) Consistent with paragraphs (a) and (b) of this subsection, sell certain items and destroy or otherwise dispose of the remaining personal property.

(11)(a) A public or private sale authorized by this section must:

(A) For a recreational vehicle, manufactured dwelling or floating home, be conducted consistent with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable; or

(B) For all other personal property, be conducted under the provisions of ORS 79.0610.

(b) If there is no buyer at a sale of a manufactured dwelling or floating home, the personal property is considered to be worth $8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property.

(12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the condition of a manufactured dwelling or floating home, the landlord is not liable for the condition of the dwelling or home to:

(a) A buyer of the dwelling or home at a sale pursuant to subsection (10)(a) of this section, with or without consideration; or

(b) A person or nonprofit organization to whom the landlord gives the dwelling or home pursuant to subsection (1)(b), (10)(b) or (11)(b) of this section.

(13)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable or actual cost of notice, storage and sale; and

(B) Unpaid rent.

(b) If the sale was of a manufactured dwelling or floating home, after deducting the amounts listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid property taxes and assessments owed on the dwelling or home.

(c) If the sale was of a recreational vehicle, manufactured dwelling or floating home, after deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the landlord shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance owed on the lien on the recreational vehicle, dwelling or home.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if applicable, the landlord shall remit to the tenant or owner the remaining proceeds, if any, together with an itemized accounting.

(e) If the tenant or owner cannot after due diligence be found, the landlord shall deposit the remaining proceeds with the county treasurer of the county in which the sale occurred. If not claimed within three years, the deposited proceeds revert to the general fund of the county and are available for general purposes.

(14) The county tax collector shall cancel all unpaid property taxes and assessments owed on a manufactured dwelling or floating home, as provided under ORS 311.790, only under one of the following circumstances:

(a) The landlord disposes of the manufactured dwelling or floating home after a determination described in subsection (10)(b) of this section.

(b) There is no buyer of the manufactured dwelling or floating home at a sale described under subsection (11) of this section.

(c)(A) There is a buyer of the manufactured dwelling or floating home at a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating home is $8,000 or less; and

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the dwelling or home after distribution of the proceeds pursuant to subsection (13) of this section.

(d)(A) The landlord buys the manufactured dwelling or floating home at a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating home is more than $8,000;

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the manufactured dwelling or floating home after distribution of the proceeds pursuant to subsection (13) of this section; and

(D) The landlord disposes of the manufactured dwelling or floating home.

(15) The landlord is not responsible for any loss to the tenant, lienholder or owner resulting from storage of personal property in compliance with this section unless the loss was caused by the landlord's deliberate or negligent act. In the event of a deliberate and malicious violation, the landlord is liable for twice the actual damages sustained by the tenant, lienholder or owner.

(16) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant, lienholder or owner against a landlord for loss or damage to such personal property disposed of pursuant to this section.

(17) If a landlord does not comply with this section:

(a) The tenant is relieved of any liability for damage to the premises caused by conduct that was not deliberate, intentional or grossly negligent and for unpaid rent and may recover from the landlord up to twice the actual damages sustained by the tenant;

(b) A lienholder or owner aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the lienholder or owner. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph; and

(c) A county tax collector aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the tax collector, if the noncompliance is part of an effort by the landlord to defraud the tax collector. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph.

(18) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home, the provisions of this section regarding the rights and responsibilities of a tenant to the abandoned vehicle, dwelling or home also apply to any lienholder except that the lienholder may not sell or remove the vehicle, dwelling or home unless:

(a) The lienholder has foreclosed its lien on the recreational vehicle, manufactured dwelling or floating home;

(b) The tenant or a personal representative or designated person described in subsection (20) of this section has waived all rights under this section pursuant to subsection (24) of this section; or

(c) The notice and response periods provided by subsections (6) and (8) of this section have expired.

(19)(a) In the case of an abandoned manufactured dwelling or floating home but not including a dwelling or home abandoned following a termination pursuant to ORS 90.429 and except as provided by subsection (20)(d) and (e) of this section, if a lienholder makes a timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests, a landlord shall enter into a written storage agreement with the lienholder providing that the dwelling or home may not be sold or disposed of by the landlord for up to 12 months. A storage agreement entitles the lienholder to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property.

(b) The lienholder's right to a storage agreement arises upon the failure of the tenant, owner or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee to remove or sell the dwelling or home within the allotted time.

(c) To exercise the right to a storage agreement under this subsection, in addition to contacting the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder must enter into the proposed storage agreement within 60 days after the landlord gives a copy of the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement to the lienholder in the same manner as provided by subsection (4)(b) of this section. The landlord

may include a copy of the proposed storage agreement with the notice of abandoned property required by subsection (4) of this section. A lienholder enters into a storage agreement by signing a copy of the agreement provided by the landlord and personally delivering or mailing the signed copy to the landlord within the 60-day period.

(d) The storage agreement may require, in addition to other provisions agreed to by the landlord and the lienholder, that:

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(d) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described in [*ORS 90.510 (8)*] **section 6 of this 2005 Act**, if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

(B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date required in the agreement, if the amount of the late charge is no greater than for late charges described in the rental agreement between the landlord and the tenant; and

(C) The lienholder maintain the personal property and the space on which the personal property is stored in a manner consistent with the rights and obligations described in the rental agreement between the landlord and the tenant.

(e) During the term of an agreement described under this subsection, the lienholder has the right to remove or sell the property, subject to the provisions of the lien. Selling the property includes a sale to a purchaser who wishes to leave the dwelling or home on the rented space and become a tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the landlord's approval of a purchaser or, if there was no such agreement, any reasonable conditions by the landlord regarding approval of any purchaser who wishes to leave the dwelling or home on the rented space and become a tenant. The landlord also may condition approval for occupancy of any purchaser of the property upon payment of all unpaid storage charges and maintenance costs.

(f)(A) If the lienholder violates the storage agreement, the landlord may terminate the agreement by giving at least 90 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the dwelling or home without further notice to the lienholder.

(B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the landlord may terminate the agreement by giving at least 30 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(C) A lienholder may terminate a storage agreement at any time upon at least 14 days' written notice to the landlord and may remove the property from the rented space if the lienholder has paid all storage charges and other charges as provided in the agreement.

(g) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the lienholder has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose of the property pursuant to this section without further notice to the lienholder.

(20) If the personal property consists of an abandoned manufactured dwelling or floating home and is considered abandoned as a result of the death of a tenant who was the only tenant and who owned the dwelling or home, this section applies, except as follows:

(a) Any personal representative named in a will or appointed by a court to act for the deceased tenant or any person designated in writing by the tenant to be contacted by the landlord in the

event of the tenant's death has the same rights and responsibilities regarding the abandoned dwelling or home as a tenant.

(b) The notice required by subsection (3) of this section must be:

(A) Sent by first class mail to the deceased tenant at the premises; and

(B) Personally delivered or sent by first class mail to any personal representative or designated person if actually known to the landlord.

(c) The notice described in subsection (5) of this section must refer to any personal representative or designated person, instead of the deceased tenant, and must incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the dwelling or home may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the agreement with the personal representative or designated person ends.

(e) If a personal representative or other person requests that a landlord enter into a storage agreement, subsection (19)(c), (d) and (f)(C) of this section applies, with the representative or person having the rights and responsibilities of a lienholder with regard to the storage agreement.

(f) During the term of an agreement described under paragraph (d) of this subsection, the representative or person has the right to remove or sell the dwelling or home, including a sale to a purchaser or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave the dwelling or home on the rented space and become a tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the landlord's approval for occupancy of a purchaser, heir or devisee or, if there was no such agreement, any reasonable conditions by the landlord regarding approval for occupancy of any purchaser, heir or devisee who wishes to leave the dwelling or home on the rented space and become a tenant. The landlord also may condition approval for occupancy of any purchaser, heir or devisee of the dwelling or home upon payment of all unpaid storage charges and maintenance costs.

(g) If the representative or person violates the storage agreement, the landlord may terminate the agreement by giving at least 30 days' written notice to the representative or person stating facts sufficient to notify the representative or person of the reason for the termination. Unless the representative or person corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the dwelling or home without further notice to the representative or person.

(h) Upon the failure of a representative or person to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the representative or person has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose of the property pursuant to this section without further notice to the representative or person.

(21) If a governmental agency determines that the condition of a manufactured dwelling, floating home or recreational vehicle abandoned under this section constitutes an extreme health or safety hazard under state or local law and the agency determines that the hazard endangers others in the immediate vicinity and requires quick removal of the property, the landlord may sell or dispose of the property pursuant to this subsection. The landlord shall comply with all provisions of this section, except as follows:

(a) The date provided in subsection (6) of this section by which a tenant, lienholder, owner, personal representative or designated person must contact a landlord to arrange for the disposition

of the property must be not less than 15 days after personal delivery or mailing of the notice required by subsection (3) of this section.

(b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder, owner, personal representative or designated person must remove the property must be not less than seven days after the tenant, lienholder, owner, personal representative or designated person contacts the landlord.

(c) The notice required by subsection (3) of this section must be as provided in subsection (5) of this section, except that:

(A) The dates and deadlines in the notice for contacting the landlord and removing the property must be consistent with this subsection;

(B) The notice must state that a governmental agency has determined that the property constitutes an extreme health or safety hazard and must be removed quickly; and

(C) The landlord shall attach a copy of the agency's determination to the notice.

(d) If the tenant, a lienholder, owner, personal representative or designated person does not remove the property within the time allowed, the landlord or a buyer at a sale by the landlord under subsection (11) of this section shall promptly remove the property from the facility.

(e) A landlord is not required to enter into a storage agreement with a lienholder, owner, personal representative or designated person pursuant to subsection (19) of this section.

(22) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home that is owned by someone other than the tenant, the provisions of this section regarding the rights and responsibilities of a tenant to the abandoned vehicle, dwelling or home also apply to that owner, with regard only to the vehicle, dwelling or home, and not to any goods left inside or outside the vehicle, dwelling or home.

(23) In the case of an abandoned motor vehicle, the procedure authorized by ORS 98.830 and 98.835 for removal of abandoned motor vehicles from private property may be used by a landlord as an alternative to the procedures required in this section.

(24)(a) A landlord may sell or dispose of a tenant's abandoned personal property without complying with the provisions of this section if, after termination of the tenancy or no more than seven days prior to the termination of the tenancy, the following parties so agree in a writing entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a tenant who was the only tenant, the personal representative, designated person or other person entitled to possession of the personal property, such as an heir or devisee, as described in subsection (20) of this section; and

(C) In the case of a manufactured dwelling, floating home or recreational vehicle, any owner and any lienholder.

(b) A landlord may not, as part of a rental agreement, require a tenant, a personal representative, a designated person or any lienholder or owner to waive any right provided by this section.

(25) Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal property.

SECTION 19. ORS 90.510 is amended to read:

90.510. (1) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written statement of policy to prospective and existing tenants. The purpose of the statement of policy is to provide disclosure of the landlord's policies to prospective tenants and to existing tenants who have not previously received a statement of policy. The statement of policy is not a part of the rental agreement. The statement of policy shall provide all of the following information in summary form:

(a) The location and approximate size of the space to be rented.

(b) The federal fair-housing age classification and present zoning that affect the use of the rented space.

(c) The facility policy regarding rent adjustment and a rent history for the space to be rented. The rent history must, at a minimum, show the rent amounts on January 1 of each of the five preceding calendar years or during the length of the landlord's ownership, leasing or subleasing of the facility, whichever period is shorter.

(d) All personal property, services and facilities to be provided by the landlord.

(e) All installation charges imposed by the landlord and installation fees imposed by government agencies.

(f) The facility policy regarding rental agreement termination including, but not limited to, closure of the facility.

(g) The facility policy regarding facility sale.

(h) The facility policy regarding informal dispute resolution.

(i) Utilities and services available, the person furnishing them and the person responsible for payment.

(j) If a tenants' association exists for the facility, a one-page summary about the tenants' association that shall be provided to the landlord by the tenants' association.

(k) Any facility policy regarding the removal of a manufactured dwelling, including a statement that removal requirements may impact the market value of a dwelling.

(2) The rental agreement and the facility rules and regulations shall be attached as an exhibit to the statement of policy. If the recipient of the statement of policy is a tenant, the rental agreement attached to the statement of policy shall be a copy of the agreement entered by the landlord and tenant.

(3)(a) Prospective tenants shall receive a copy of the statement of policy before signing a rental agreement;

(b) Existing tenants who have not previously received a copy of the statement of policy and who are on month-to-month rental agreements shall receive a copy of the statement of policy at the time a 90-day notice of a rent increase is issued; and

(c) All other existing tenants who have not previously received a copy of the statement of policy shall receive a copy of the statement of policy upon the expiration of their rental agreement and before signing a new agreement.

(4) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written rental agreement, except as provided by ORS 90.710 (2)(d), that shall be signed by the landlord and tenant and that cannot be unilaterally amended by one of the parties to the contract except by:

(a) Mutual agreement of the parties;

(b) Actions pursuant to ORS 90.530 or 90.600 **or section 9 of this 2005 Act**; or

(c) Those provisions required by changes in statute or ordinance.

(5) The agreement required by subsection (4) of this section shall specify:

(a) The location and approximate size of the rented space;

(b) The federal fair-housing age classification;

(c) The rent per month;

(d) All personal property, services and facilities to be provided by the landlord;

(e) All security deposits, fees and installation charges imposed by the landlord;

(f) Improvements that the tenant may or must make to the rental space, including plant materials and landscaping;

(g) Provisions for dealing with improvements to the rental space at the termination of the tenancy;

(h) Any conditions the landlord applies in approving a purchaser of a manufactured dwelling or floating home as a tenant in the event the tenant elects to sell the home. Those conditions shall be in conformance with state and federal law and may include, but are not limited to, conditions as to pets, number of occupants and screening or admission criteria;

(i) That the tenant may not sell the tenant's manufactured dwelling or floating home to a person who intends to leave the manufactured dwelling or floating home on the rental space until the landlord has accepted the person as a tenant;

(j) The term of the tenancy;

(k) The process by which the rental agreement or rules and regulations may be changed, which shall identify that the rules and regulations may be changed with 60 days' notice unless tenants of at least 51 percent of the eligible spaces file an objection within 30 days; and

(L) The process by which notices shall be given by either landlord or tenant.

(6) Every landlord who rents a space for a manufactured dwelling or floating home shall provide rules and regulations concerning the tenant's use and occupancy of the premises. A violation of the rules and regulations may be cause for termination of a rental agreement. However, this subsection does not create a presumption that all rules and regulations are identical for all tenants at all times. A rule or regulation shall be enforceable against the tenant only if:

(a) The rule or regulation:

(A) Promotes the convenience, safety or welfare of the tenants;

(B) Preserves the landlord's property from abusive use; or

(C) Makes a fair distribution of services and facilities held out for the general use of the tenants.

(b) The rule or regulation:

(A) Is reasonably related to the purpose for which it is adopted and is reasonably applied;

(B) Is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall or shall not do to comply; and

(C) Is not for the purpose of evading the obligations of the landlord.

(7)(a) A landlord who rents a space for a manufactured dwelling or floating home may adopt a rule or regulation regarding occupancy guidelines. If adopted, an occupancy guideline in a facility shall be based on reasonable factors and shall not be more restrictive than limiting occupancy to two people per bedroom.

(b) As used in this subsection:

(A) "Reasonable factors" may include but are not limited to:

(i) The size of the dwelling.

(ii) The size of the rented space.

(iii) Any discriminatory impact for reasons identified in ORS 659A.421.

(iv) Limitations placed on utility services governed by a permit for water or sewage disposal.

(B) "Bedroom" means a room that is intended to be used primarily for sleeping purposes and does not include bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas.

[*(8)(a) If a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility or service charge that shall be assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from such a charge for the tenant's dwelling unit. A landlord may not increase the utility or service charge to the tenant by adding any costs of the landlord, such as a handling or administrative charge, other than those costs billed to the landlord by the provider for utilities or services as provided by this subsection.*]

[*(b) A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge shall not constitute grounds for termination of a rental agreement for nonpayment of rent pursuant to ORS 90.400 (2), but shall constitute grounds for termination of a rental agreement for cause pursuant to ORS 90.630.*]

[*(c) As used in this section, "utility or service" has the meaning given that term in ORS 90.315 (1).*]

[*(9)*] **(8)** Intentional and deliberate failure of the landlord to comply with subsections (1) to (3) of this section is cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

[*(10)*] **(9)** A receipt signed by the potential tenant or tenants for documents required to be delivered by the landlord pursuant to subsections (1) to (3) of this section is a defense for the landlord in an action against the landlord for nondelivery of the documents.

[*(11)*] **(10)** A suit or action arising under subsection [*(9)*] **(8)** of this section must be commenced within one year after the discovery or identification of the alleged violation.

[*(12)*] **(11)** Every landlord who publishes a directory of tenants and tenant services must include a one-page summary regarding any tenants' association. The tenants' association shall provide the summary to the landlord.

SECTION 19a. If House Bill 2261 becomes law and House Bill 2524 does not become law, section 19 of this 2005 Act (amending ORS 90.510) is repealed and ORS 90.510, as amended by section 63, chapter 22, Oregon Laws 2005 (Enrolled House Bill 2261), is amended to read:

90.510. (1) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written statement of policy to prospective and existing tenants. The purpose of the statement of policy is to provide disclosure of the landlord's policies to prospective tenants and to existing tenants who have not previously received a statement of policy. The statement of policy is not a part of the rental agreement. The statement of policy shall provide all of the following information in summary form:

(a) The location and approximate size of the space to be rented.

(b) The federal fair-housing age classification and present zoning that affect the use of the rented space.

(c) The facility policy regarding rent adjustment and a rent history for the space to be rented. The rent history must, at a minimum, show the rent amounts on January 1 of each of the five preceding calendar years or during the length of the landlord's ownership, leasing or subleasing of the facility, whichever period is shorter.

(d) The personal property, services and facilities that are provided by the landlord.

(e) The installation charges that are imposed by the landlord and the installation fees that are imposed by government agencies.

(f) The facility policy regarding rental agreement termination including, but not limited to, closure of the facility.

(g) The facility policy regarding facility sale.

(h) The facility policy regarding informal dispute resolution.

(i) The utilities and services that are available, the name of the person furnishing them and the name of the person responsible for payment.

(j) If a tenants' association exists for the facility, a one-page summary about the tenants' association. The tenants' association shall provide the summary to the landlord.

(k) Any facility policy regarding the removal of a manufactured dwelling, including a statement that removal requirements may impact the market value of a dwelling.

(2) The rental agreement and the facility rules and regulations shall be attached as an exhibit to the statement of policy. If the recipient of the statement of policy is a tenant, the rental agreement attached to the statement of policy must be a copy of the agreement entered by the landlord and tenant.

(3) The landlord shall give:

(a) Prospective tenants a copy of the statement of policy before the prospective tenants sign rental agreements;

(b) Existing tenants who have not previously received a copy of the statement of policy and who are on month-to-month rental agreements a copy of the statement of policy at the time a 90-day notice of a rent increase is issued; and

(c) All other existing tenants who have not previously received a copy of the statement of policy a copy of the statement of policy upon the expiration of their rental agreements and before the tenants sign new agreements.

(4) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written rental agreement, except as provided by ORS 90.710 (2)(d). The agreement must be signed by the landlord and tenant and may not be unilaterally amended by one of the parties to the contract except by:

(a) Mutual agreement of the parties;

(b) Actions pursuant to ORS 90.530 or 90.600 **or section 9 of this 2005 Act**; or

(c) Those provisions required by changes in statute or ordinance.

(5) The agreement required by subsection (4) of this section must specify:

(a) The location and approximate size of the rented space;

(b) The federal fair-housing age classification;

(c) The rent per month;

(d) All personal property, services and facilities to be provided by the landlord;

(e) All security deposits, fees and installation charges imposed by the landlord;

(f) Improvements that the tenant may or must make to the rental space, including plant materials and landscaping;

(g) Provisions for dealing with improvements to the rental space at the termination of the tenancy;

(h) Any conditions the landlord applies in approving a purchaser of a manufactured dwelling or floating home as a tenant in the event the tenant elects to sell the home. Those conditions must be in conformance with state and federal law and may include, but are not limited to, conditions as to pets, number of occupants and screening or admission criteria;

(i) That the tenant may not sell the tenant's manufactured dwelling or floating home to a person who intends to leave the manufactured dwelling or floating home on the rental space until the landlord has accepted the person as a tenant;

(j) The term of the tenancy;

(k) The process by which the rental agreement or rules and regulations may be changed, which shall identify that the rules and regulations may be changed with 60 days' notice unless tenants of at least 51 percent of the eligible spaces file an objection within 30 days; and

(L) The process by which the landlord or tenant shall give notices.

(6) Every landlord who rents a space for a manufactured dwelling or floating home shall provide rules and regulations concerning the tenant's use and occupancy of the premises. A violation of the rules and regulations may be cause for termination of a rental agreement. However, this subsection does not create a presumption that all rules and regulations are identical for all tenants at all times. A rule or regulation shall be enforceable against the tenant only if:

(a) The rule or regulation:

(A) Promotes the convenience, safety or welfare of the tenants;

(B) Preserves the landlord's property from abusive use; or

(C) Makes a fair distribution of services and facilities held out for the general use of the tenants.

(b) The rule or regulation:

(A) Is reasonably related to the purpose for which it is adopted and is reasonably applied;

(B) Is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall do or may not do to comply; and

(C) Is not for the purpose of evading the obligations of the landlord.

(7)(a) A landlord who rents a space for a manufactured dwelling or floating home may adopt a rule or regulation regarding occupancy guidelines. If adopted, an occupancy guideline in a facility must be based on reasonable factors and not be more restrictive than limiting occupancy to two people per bedroom.

(b) As used in this subsection:

(A) Reasonable factors may include but are not limited to:

(i) The size of the dwelling.

(ii) The size of the rented space.

(iii) Any discriminatory impact for reasons identified in ORS 659A.421.

(iv) Limitations placed on utility services governed by a permit for water or sewage disposal.

(B) "Bedroom" means a room that is intended to be used primarily for sleeping purposes and does not include bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas.

[*(8)(a) If a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility or service charge that is assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from such a charge for the tenant's dwelling unit. A landlord may not increase the utility or service charge to the tenant by adding any costs of the landlord, such as a handling or administrative charge, other than those costs billed to the landlord by the provider for utilities or services as provided by this subsection.*]

[*(b) A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent pursuant to ORS 90.400 (2), but is grounds for termination of a rental agreement for cause pursuant to ORS 90.630.*]

[*(c) As used in this subsection, "utility or service" has the meaning given that term in ORS 90.315 (1).*]

[*(9)*] **(8)** Intentional and deliberate failure of the landlord to comply with subsections (1) to (3) of this section is cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

[*(10)*] **(9)** A receipt signed by the potential tenant or tenants for documents required to be delivered by the landlord pursuant to subsections (1) to (3) of this section is a defense for the landlord in an action against the landlord for nondelivery of the documents.

[*(11)*] **(10)** A suit or action arising under subsection [*(9)*] **(8)** of this section must be commenced within one year after the discovery or identification of the alleged violation.

[*(12)*] **(11)** Every landlord who publishes a directory of tenants and tenant services must include a one-page summary regarding any tenants' association. The tenants' association shall provide the summary to the landlord.

SECTION 19b. If both House Bill 2261 and House Bill 2524 become law, section 19 of this 2005 Act (amending ORS 90.510) is repealed and ORS 90.510, as amended by section 63, chapter 22, Oregon Laws 2005 (Enrolled House Bill 2261), and section 23, chapter 391, Oregon Laws 2005 (Enrolled House Bill 2524), is amended to read:

90.510. (1) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written statement of policy to prospective and existing tenants. The purpose of the statement of policy is to provide disclosure of the landlord's policies to prospective tenants and to existing tenants who have not previously received a statement of policy. The statement of policy is not a part of the rental agreement. The statement of policy shall provide all of the following information in summary form:

(a) The location and approximate size of the space to be rented.

(b) The federal fair-housing age classification and present zoning that affect the use of the rented space.

(c) The facility policy regarding rent adjustment and a rent history for the space to be rented. The rent history must, at a minimum, show the rent amounts on January 1 of each of the five preceding calendar years or during the length of the landlord's ownership, leasing or subleasing of the facility, whichever period is shorter.

(d) The personal property, services and facilities that are provided by the landlord.

(e) The installation charges that are imposed by the landlord and the installation fees that are imposed by government agencies.

(f) The facility policy regarding rental agreement termination including, but not limited to, closure of the facility.

(g) The facility policy regarding facility sale.

(h) The facility policy regarding informal dispute resolution.

(i) The utilities and services that are available, the name of the person furnishing them and the name of the person responsible for payment.

(j) If a tenants' association exists for the facility, a one-page summary about the tenants' association. The tenants' association shall provide the summary to the landlord.

(k) Any facility policy regarding the removal of a manufactured dwelling, including a statement that removal requirements may impact the market value of a dwelling.

(2) The rental agreement and the facility rules and regulations shall be attached as an exhibit to the statement of policy. If the recipient of the statement of policy is a tenant, the rental agreement attached to the statement of policy must be a copy of the agreement entered by the landlord and tenant.

(3) The landlord shall give:

(a) Prospective tenants a copy of the statement of policy before the prospective tenants sign rental agreements;

(b) Existing tenants who have not previously received a copy of the statement of policy and who are on month-to-month rental agreements a copy of the statement of policy at the time a 90-day notice of a rent increase is issued; and

(c) All other existing tenants who have not previously received a copy of the statement of policy a copy of the statement of policy upon the expiration of their rental agreements and before the tenants sign new agreements.

(4) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written rental agreement, except as provided by ORS 90.710 (2)(d). The agreement must be signed by the landlord and tenant and may not be unilaterally amended by one of the parties to the contract except by:

(a) Mutual agreement of the parties;

(b) Actions pursuant to ORS 90.530 or 90.600 **or section 9 of this 2005 Act**; or

(c) Those provisions required by changes in statute or ordinance.

(5) The agreement required by subsection (4) of this section must specify:

(a) The location and approximate size of the rented space;

(b) The federal fair-housing age classification;

(c) The rent per month;

(d) All personal property, services and facilities to be provided by the landlord;

(e) All security deposits, fees and installation charges imposed by the landlord;

(f) Improvements that the tenant may or must make to the rental space, including plant materials and landscaping;

(g) Provisions for dealing with improvements to the rental space at the termination of the tenancy;

(h) Any conditions the landlord applies in approving a purchaser of a manufactured dwelling or floating home as a tenant in the event the tenant elects to sell the home. Those conditions must be in conformance with state and federal law and may include, but are not limited to, conditions as to pets, number of occupants and screening or admission criteria;

(i) That the tenant may not sell the tenant's manufactured dwelling or floating home to a person who intends to leave the manufactured dwelling or floating home on the rental space until the landlord has accepted the person as a tenant;

(j) The term of the tenancy;

(k) The process by which the rental agreement or rules and regulations may be changed, which shall identify that the rules and regulations may be changed with 60 days' notice unless tenants of at least 51 percent of the eligible spaces file an objection within 30 days; and

(L) The process by which the landlord or tenant shall give notices.

(6) Every landlord who rents a space for a manufactured dwelling or floating home shall provide rules and regulations concerning the tenant's use and occupancy of the premises. A violation of the rules and regulations may be cause for termination of a rental agreement. However, this subsection does not create a presumption that all rules and regulations are identical for all tenants at all times. A rule or regulation shall be enforceable against the tenant only if:

(a) The rule or regulation:

(A) Promotes the convenience, safety or welfare of the tenants;

(B) Preserves the landlord's property from abusive use; or

(C) Makes a fair distribution of services and facilities held out for the general use of the tenants.

(b) The rule or regulation:

(A) Is reasonably related to the purpose for which it is adopted and is reasonably applied;

(B) Is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall do or may not do to comply; and

(C) Is not for the purpose of evading the obligations of the landlord.

(7)(a) A landlord who rents a space for a manufactured dwelling or floating home may adopt a rule or regulation regarding occupancy guidelines. If adopted, an occupancy guideline in a facility must be based on reasonable factors and not be more restrictive than limiting occupancy to two people per bedroom.

(b) As used in this subsection:

(A) Reasonable factors may include but are not limited to:

(i) The size of the dwelling.

(ii) The size of the rented space.

(iii) Any discriminatory impact for reasons identified in ORS 659A.421.

(iv) Limitations placed on utility services governed by a permit for water or sewage disposal.

(B) "Bedroom" means a room that is intended to be used primarily for sleeping purposes and does not include bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas.

[*(8)(a) If a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility or service charge that is assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from such a charge for the tenant's dwelling unit. A landlord may not increase the utility or service charge to the tenant by adding any costs of the landlord, such as a handling or administrative charge, other than those costs billed to the landlord by the provider for utilities or services as provided by this subsection.*]

[*(b) A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent under section 8, chapter 391, Oregon Laws 2005 (Enrolled House Bill 2524), but is grounds for termination of a rental agreement for cause pursuant to ORS 90.630.*]

[*(c) As used in this subsection, "utility or service" has the meaning given that term in ORS 90.315 (1).*]

[*(9)*] **(8)** Intentional and deliberate failure of the landlord to comply with subsections (1) to (3) of this section is cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

[*(10)*] **(9)** A receipt signed by the potential tenant or tenants for documents required to be delivered by the landlord pursuant to subsections (1) to (3) of this section is a defense for the landlord in an action against the landlord for nondelivery of the documents.

[*(11)*] **(10)** A suit or action arising under subsection [*(9)*] **(8)** of this section must be commenced within one year after the discovery or identification of the alleged violation.

[*(12)*] **(11)** Every landlord who publishes a directory of tenants and tenant services must include a one-page summary regarding any tenants' association. The tenants' association shall provide the summary to the landlord.

SECTION 20. ORS 90.630 is amended to read:

90.630. (1) Except as provided in subsection (4) of this section, the landlord may terminate a rental agreement that is a month-to-month or fixed term tenancy for space for a manufactured dwelling or floating home by giving to the tenant not less than 30 days' notice in writing before the date designated in the notice for termination if the tenant:

(a) Violates a law or ordinance related to the tenant's conduct as a tenant, including but not limited to a material noncompliance with ORS 90.740;

(b) Violates a rule or rental agreement provision related to the tenant's conduct as a tenant and imposed as a condition of occupancy, including but not limited to a material noncompliance with a rental agreement regarding a program of recovery in drug and alcohol free housing; or

(c) Fails to pay a:

(A) Late charge pursuant to ORS 90.260;

(B) Fee pursuant to ORS 90.302; or

(C) Utility or service charge pursuant to [*ORS 90.510 (8)*] **section 7 or 8 of this 2005 Act.**

(2) A violation making a tenant subject to termination under subsection (1) of this section includes a tenant's failure to maintain the space as required by law, ordinance, rental agreement or rule, but does not include the physical condition of the dwelling or home. Termination of a rental agreement based upon the physical condition of a dwelling or home shall only be as provided in ORS 90.632.

(3) The notice required by subsection (1) of this section shall state facts sufficient to notify the tenant of the reasons for termination of the tenancy **and state that the tenant may avoid termination by correcting the violation as provided in subsection (4) of this section.**

(4) The tenant may avoid termination of the tenancy by correcting the violation within the 30-day period specified in subsection (1) of this section. However, if substantially the same act or omission which constituted a prior violation of which notice was given recurs within six months after the date of the notice, the landlord may terminate the tenancy upon at least 20 days' written notice specifying the violation and the date of termination of the tenancy.

(5) The landlord of a facility may terminate a rental agreement that is a month-to-month or fixed term tenancy for a facility space if the facility or a portion of it that includes the space is to be closed and the land or leasehold converted to a different use, which is not required by the exercise of eminent domain or by order of state or local agencies, by:

(a) Not less than 365 days' notice in writing before the date designated in the notice for termination; or

(b) Not less than 180 days' notice in writing before the date designated in the notice for termination, if the landlord finds space acceptable to the tenant to which the tenant can move the manufactured dwelling or floating home and the landlord pays the cost of moving and set-up expenses or $3,500, whichever is less.

(6) The landlord may:

(a) Provide greater financial incentive to encourage the tenant to accept an earlier termination date than that provided in subsection (5) of this section; or

(b) Contract with the tenant for a mutually acceptable arrangement to assist the tenant's move.

(7) The Housing and Community Services Department shall adopt rules to implement the provisions of subsection (5) of this section.

(8)(a) A landlord may not increase the rent for the purpose of offsetting the payments required under this section.

(b) There shall be no increase in the rent after a notice of termination is given pursuant to this section.

(9) This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent pursuant to ORS 90.400 (2) or for other cause pursuant to ORS 90.380 (5)(b), 90.400 (3) or (9) or 90.632 by complying with ORS 105.105 to 105.168.

(10) A tenancy shall terminate on the date designated in the notice and without regard to the expiration of the period for which, by the terms of the rental agreement, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(11) Nothing in subsection (5) of this section shall prevent a landlord from relocating a floating home to another comparable space in the same facility or another facility owned by the same owner in the same city if the landlord desires or is required to make repairs, to remodel or to modify the tenant's original space.

(12)(a) Notwithstanding any other provision of this section or ORS 90.400, the landlord may terminate the rental agreement for space for a manufactured dwelling or floating home because of repeated late payment of rent by giving the tenant not less than 30 days' notice in writing before the date designated in that notice for termination and may take possession in the manner provided in ORS 105.105 to 105.168 if:

(A) The tenant has not paid the monthly rent prior to the eighth day of the rental period as described in ORS 90.400 (2)(b)(A) or the fifth day of the rental period as described in ORS 90.400 (2)(b)(B) in at least three of the preceding 12 months and the landlord has given the tenant a notice for nonpayment of rent pursuant to ORS 90.400 (2)(b) during each of those three instances of nonpayment;

(B) The landlord warns the tenant of the risk of a 30-day notice for termination with no right to correct the cause, upon the occurrence of a third notice for nonpayment of rent within a 12-month period. The warning must be contained in at least two notices for nonpayment of rent that precede the third notice within a 12-month period or in separate written notices that are given concurrent with, or a reasonable time after, each of the two notices for nonpayment of rent; and

(C) The 30-day notice of termination states facts sufficient to notify the tenant of the cause for termination of the tenancy and is given to the tenant concurrent with or after the third or a subsequent notice for nonpayment of rent.

(b) Notwithstanding subsection (2) of this section, a tenant who receives a 30-day notice of termination pursuant to this subsection shall have no right to correct the cause for the notice.

(c) The landlord may give a copy of the notice required by paragraph (a) of this subsection to any lienholder of the manufactured dwelling or floating home by first class mail with certificate of mailing or by any other method allowed by ORS 90.150 (2) and (3). A landlord is not liable to a tenant for any damages incurred by the tenant as a result of the landlord giving a copy of the notice in good faith to a lienholder. A lienholder's rights and obligations regarding an abandoned manufactured dwelling or floating home shall be as provided under ORS 90.675.

SECTION 21. ORS 90.675 is amended to read:

90.675. (1) As used in this section:

(a) "Current market value" means the amount in cash, as determined by the county assessor, that could reasonably be expected to be paid for personal property by an informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

(b) "Dispose of the personal property" means that, if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a nonprofit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit.

(c) "Lienholder" means any lienholder of abandoned personal property, if the lien is of record or the lienholder is actually known to the landlord.

(d) "Of record" means:

(A) For a manufactured dwelling, that a security interest has been properly recorded with the Department of Transportation pursuant to ORS 802.200 (1)(a)(A) and 803.097 for a dwelling registered and titled by the department pursuant to ORS 820.500.

(B) For a floating home, that a security interest has been properly recorded with the State Marine Board pursuant to ORS 830.740 to 830.755 for a home registered and titled with the board pursuant to ORS 830.715.

(e) "Personal property" means only a manufactured dwelling or floating home located in a facility and subject to ORS 90.505 to 90.840. "Personal property" does not include goods left inside a manufactured dwelling or floating home or left upon a rented space and subject to disposition under ORS 90.425.

(2) A landlord may not store, sell or dispose of abandoned personal property except as provided by this section. This section governs the rights and obligations of landlords, tenants and any lienholders in any personal property abandoned or left upon the premises by the tenant or any lienholder in the following circumstances:

(a) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal property;

(b) The tenant has been absent from the premises continuously for seven days after termination of a tenancy by a court order that has not been executed; or

(c) The landlord receives possession of the premises from the sheriff following restitution pursuant to ORS 105.161.

(3) Prior to selling or disposing of the tenant's personal property under this section, the landlord must give a written notice to the tenant that shall be:

(a) Personally delivered to the tenant; or

(b) Sent by first class mail addressed and mailed to the tenant at:

(A) The premises;

(B) Any post-office box held by the tenant and actually known to the landlord; and

(C) The most recent forwarding address if provided by the tenant or actually known to the landlord.

(4)(a) A landlord shall also give a copy of the notice described in subsection (3) of this section to:

(A) Any lienholder of the personal property;

(B) The tax collector of the county where the personal property is located; and

(C) The assessor of the county where the personal property is located.

(b) The landlord shall give the notice copy required by this subsection by personal delivery or first class mail, except that for any lienholder, mail service shall be both by first class mail and by certified mail with return receipt requested.

(c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each lienholder at each address:

(A) Actually known to the landlord;

(B) Of record; and

(C) Provided to the landlord by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the landlord by certified mail with return receipt requested within the preceding five years. The notice must identify the personal property by describing the physical address of the property.

(5) The notice required under subsection (3) of this section shall state that:

(a) The personal property left upon the premises is considered abandoned;

(b) The tenant or any lienholder must contact the landlord by a specified date, as provided in subsection (6) of this section, to arrange for the removal of the abandoned personal property;

(c) The personal property is stored on the rented space;

(d) The tenant or any lienholder, except as provided by subsection (18) of this section, may arrange for removal of the personal property by contacting the landlord at a described telephone number or address on or before the specified date;

(e) The landlord shall make the personal property available for removal by the tenant or any lienholder, except as provided by subsection (18) of this section, by appointment at reasonable times;

(f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, the landlord may require payment of storage charges, as provided by subsection (7)(b) of this section, prior to releasing the personal property to the tenant or any lienholder;

(g) If the personal property is considered to be abandoned pursuant to subsection (2)(c) of this section, the landlord may not require payment of storage charges prior to releasing the personal property;

(h) If the tenant or any lienholder fails to contact the landlord by the specified date or fails to remove the personal property within 30 days after that contact, the landlord may sell or dispose of the personal property. If the landlord reasonably believes the county assessor will determine that the current market value of the personal property is $8,000 or less, and the landlord intends to dispose of the property if it is not claimed, the notice shall state that belief and intent; and

(i) If applicable, there is a lienholder that has a right to claim the personal property, except as provided by subsection (18) of this section.

(6) For purposes of subsection (5) of this section, the specified date by which a tenant or lienholder must contact a landlord to arrange for the disposition of abandoned personal property shall be not less than 45 days after personal delivery or mailing of the notice.

(7) After notifying the tenant as required by subsection (3) of this section, the landlord:

(a) Shall store the abandoned personal property of the tenant on the rented space and shall exercise reasonable care for the personal property; and

(b) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal. The storage charge shall be no greater than the monthly space rent last payable by the tenant.

(8) If a tenant or lienholder, upon the receipt of the notice provided by subsection (3) or (4) of this section or otherwise, responds by actual notice to the landlord on or before the specified date in the landlord's notice that the tenant or lienholder intends to remove the personal property from the premises, the landlord must make that personal property available for removal by the tenant or lienholder by appointment at reasonable times during the 30 days following the date of the response, subject to subsection (18) of this section. If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of storage charges, as provided in subsection (7)(b) of this section, prior to allowing the tenant or lienholder to remove the personal property. Acceptance by a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS 90.415.

(9) Except as provided in subsections (18) to (20) of this section, if the tenant or lienholder does not respond within the time provided by the landlord's notice, or the tenant or lienholder does not remove the personal property within 30 days after responding to the landlord or by any date agreed to with the landlord, whichever is later, the personal property is conclusively presumed to be abandoned. The tenant and any lienholder that have been given notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution of sale proceeds pursuant to subsection (13) of this section, have no further right, title or interest to the personal property and may not claim or sell the property.

(10) If the personal property is presumed to be abandoned under subsection (9) of this section, the landlord then may:

(a) Sell the personal property at a public or private sale, provided that prior to the sale:

(A) The landlord may seek to transfer the certificate of title and registration to the personal property by complying with the requirements of the appropriate state agency; and

(B) The landlord shall:

(i) Place a notice in a newspaper of general circulation in the county in which the personal property is located. The notice shall state:

(I) That the personal property is abandoned;

(II) The tenant's name;

(III) The address and any space number where the personal property is located, and if actually known to the landlord, the plate, registration or other identification number as noted on the title;

(IV) Whether the sale is by private bidding or public auction;

(V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be accepted; and

(VI) The name and telephone number of the person to contact to inspect the personal property;

(ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (i) of this subparagraph to the tenant and to any lienholder, by personal delivery or first class mail, except that for any lienholder, mail service shall be by first class mail with certificate of mailing;

(iii) Obtain an affidavit of publication from the newspaper to show that the notice required under sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(iv) Obtain written proof from the county that all property taxes on the personal property have been paid or, if not paid, that the county has authorized the sale, with the sale proceeds to be distributed pursuant to subsection (13) of this section; or

(b) Destroy or otherwise dispose of the personal property if the landlord determines from the county assessor that the current market value of the property is $8,000 or less.

(11)(a) A public or private sale authorized by this section shall be conducted consistent with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable.

(b) If there is no buyer at a sale described under paragraph (a) of this subsection, the personal property is considered to be worth $8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property.

(12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the condition of personal property, the landlord is not liable for the condition of the personal property to:

(a) A buyer of the personal property at a sale pursuant to subsection (10)(a) of this section, with or without consideration; or

(b) A person or nonprofit organization to whom the landlord gives the personal property pursuant to subsection (1)(b), (10)(b) or (11)(b) of this section.

(13)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable or actual cost of notice, storage and sale; and

(B) Unpaid rent.

(b) After deducting the amounts listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid property taxes owed on the dwelling or home.

(c) After deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the landlord shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance owed on the lien on the personal property.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if applicable, the landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting.

(e) If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred, and if not claimed within three years shall revert to the general fund of the county available for general purposes.

(14) The county tax collector shall cancel all unpaid property taxes as provided under ORS 311.790 only under circumstances described in paragraph (a), (b), (c) or (d) of this subsection:

(a) The landlord disposes of the personal property after a determination described in subsection (10)(b) of this section.

(b) There is no buyer of the personal property at a sale described under subsection (11) of this section.

(c)(A) There is a buyer of the personal property at a sale described under subsection (11) of this section;

(B) The current market value of the personal property is $8,000 or less; and

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes owed on the personal property after distribution of the proceeds pursuant to subsection (13) of this section.

(d)(A) The landlord buys the personal property at a sale described under subsection (11) of this section;

(B) The current market value of the personal property is more than $8,000;

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes owed on the personal property after distribution of the proceeds pursuant to subsection (13) of this section; and

(D) The landlord disposes of the personal property.

(15) The landlord is not responsible for any loss to the tenant or lienholder resulting from storage of personal property in compliance with this section unless the loss was caused by the landlord's deliberate or negligent act. In the event of a deliberate and malicious violation, the landlord is liable for twice the actual damages sustained by the tenant or lienholder.

(16) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant or lienholder against a landlord for loss or damage to such personal property disposed of pursuant to this section.

(17) If a landlord does not comply with this section:

(a) The tenant is relieved of any liability for damage to the premises caused by conduct that was not deliberate, intentional or grossly negligent and for unpaid rent and may recover from the landlord up to twice the actual damages sustained by the tenant;

(b) A lienholder aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the lienholder. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph; and

(c) A county tax collector aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the tax collector, if the noncompliance is part of an effort by the landlord to defraud the tax collector. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph.

(18) The provisions of this section regarding the rights and responsibilities of a tenant to the abandoned personal property shall also apply to any lienholder, except that the lienholder may not sell or remove the dwelling or home unless:

(a) The lienholder has foreclosed its lien on the manufactured dwelling or floating home;

(b) The tenant or a personal representative or designated person described in subsection (20) of this section has waived all rights under this section pursuant to subsection (22) of this section; or

(c) The notice and response periods provided by subsections (6) and (8) of this section have expired.

(19)(a) Except as provided by subsection (20)(d) and (e) of this section, if a lienholder makes a timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests, a landlord shall enter into a written storage agreement with the lienholder providing that the personal property may not be sold or disposed of by the landlord for up to 12 months. A storage agreement entitles the lienholder to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property.

(b) The lienholder's right to a storage agreement arises upon the failure of the tenant or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee to remove or sell the dwelling or home within the allotted time.

(c) To exercise the right to a storage agreement under this subsection, in addition to contacting the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder

must enter into the proposed storage agreement within 60 days after the landlord gives a copy of the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement to the lienholder in the same manner as provided by subsection (4)(b) of this section. The landlord may include a copy of the proposed storage agreement with the notice of abandoned property required by subsection (4) of this section. A lienholder enters into a storage agreement by signing a copy of the agreement provided by the landlord and personally delivering or mailing the signed copy to the landlord within the 60-day period.

(d) The storage agreement may require, in addition to other provisions agreed to by the landlord and the lienholder, that:

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(b) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described in [*ORS 90.510 (8)*] **section 6 of this 2005 Act**, if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

(B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date required in the agreement, if the amount of the late charge is no greater than for late charges imposed on facility tenants;

(C) The lienholder maintain the personal property and the space on which the personal property is stored in a manner consistent with the rights and obligations described in the rental agreement that the landlord currently provides to tenants as required by ORS 90.510 (4); and

(D) The lienholder repair any defects in the physical condition of the personal property that existed prior to the lienholder entering into the storage agreement, if the defects and necessary repairs are reasonably described in the storage agreement and, for homes that were first placed on the space within the previous 24 months, the repairs are reasonably consistent with facility standards in effect at the time of placement. The lienholder shall have 90 days after entering into the storage agreement to make the repairs. Failure to make the repairs within the allotted time constitutes a violation of the storage agreement and the landlord may terminate the agreement by giving at least 14 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(e) Notwithstanding subsection (7)(b) of this section, a landlord may increase the storage charge if the increase is part of a facility-wide rent increase for all facility tenants, the increase is no greater than the increase for other tenants and the landlord gives the lienholder written notice consistent with the requirements of ORS 90.600 (1).

(f) During the term of an agreement described under this subsection, the lienholder shall have the right to remove or sell the property, subject to the provisions of its lien. Selling the property includes a sale to a purchaser who wishes to leave the property on the rented space and become a tenant, subject to the provisions of ORS 90.680. The landlord may condition approval for occupancy of any purchaser of the property upon payment of all unpaid storage charges and maintenance costs.

(g)(A) Except as provided in paragraph (d)(D) of this subsection, if the lienholder violates the storage agreement, the landlord may terminate the agreement by giving at least 90 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the landlord may terminate the agreement by giving at least 30 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder

corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(C) A lienholder may terminate a storage agreement at any time upon at least 14 days' written notice to the landlord and may remove the property from the facility if the lienholder has paid all storage charges and other charges as provided in the agreement.

(h) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the lienholder has sold or removed the property, the landlord may sell or dispose of the property pursuant to this section without further notice to the lienholder.

(20) If the personal property is considered abandoned as a result of the death of a tenant who was the only tenant, this section applies, except as follows:

(a) The provisions of this section regarding the rights and responsibilities of a tenant to the abandoned personal property shall apply to any personal representative named in a will or appointed by a court to act for the deceased tenant or any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant's death.

(b) The notice required by subsection (3) of this section shall be:

(A) Sent by first class mail to the deceased tenant at the premises; and

(B) Personally delivered or sent by first class mail to any personal representative or designated person if actually known to the landlord.

(c) The notice described in subsection (5) of this section shall refer to any personal representative or designated person, instead of the deceased tenant, and shall incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the personal property may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the agreement with the personal representative or designated person ends.

(e) If a personal representative or other person requests that a landlord enter into a storage agreement, subsection (19)(c) to (e) and (g)(C) of this section applies, with the representative or person having the rights and responsibilities of a lienholder with regard to the storage agreement.

(f) During the term of an agreement described under paragraph (d) of this subsection, the representative or person shall have the right to remove or sell the property, including a sale to a purchaser or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave the property on the rented space and become a tenant, subject to the provisions of ORS 90.680. The landlord also may condition approval for occupancy of any purchaser, heir or devisee of the property upon payment of all unpaid storage charges and maintenance costs.

(g) If the representative or person violates the storage agreement, the landlord may terminate the agreement by giving at least 30 days' written notice to the representative or person stating facts sufficient to notify the representative or person of the reason for the termination. Unless the representative or person corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the representative or person.

(h) Upon the failure of a representative or person to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the representative or person has sold or removed the property, the landlord may sell or dispose of the property pursuant to this section without further notice to the representative or person.

(21) If a governmental agency determines that the condition of personal property abandoned under this section constitutes an extreme health or safety hazard under state or local law and the agency determines that the hazard endangers others in the facility and requires quick removal of the property, the landlord may sell or dispose of the property pursuant to this subsection. The landlord shall comply with all provisions of this section, except as follows:

(a) The date provided in subsection (6) of this section by which a tenant, lienholder, personal representative or designated person must contact a landlord to arrange for the disposition of the property shall be not less than 15 days after personal delivery or mailing of the notice required by subsection (3) of this section.

(b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder, personal representative or designated person must remove the property shall be not less than seven days after the tenant, lienholder, personal representative or designated person contacts the landlord.

(c) The notice required by subsection (3) of this section shall be as provided in subsection (5) of this section, except that:

(A) The dates and deadlines in the notice for contacting the landlord and removing the property shall be consistent with this subsection;

(B) The notice shall state that a governmental agency has determined that the property constitutes an extreme health or safety hazard and must be removed quickly; and

(C) The landlord shall attach a copy of the agency's determination to the notice.

(d) If the tenant, a lienholder or a personal representative or designated person does not remove the property within the time allowed, the landlord or a buyer at a sale by the landlord under subsection (11) of this section shall promptly remove the property from the facility.

(e) A landlord is not required to enter into a storage agreement with a lienholder, personal representative or designated person pursuant to subsection (19) of this section.

(22)(a) A landlord may sell or dispose of a tenant's abandoned personal property without complying with the provisions of this section if, after termination of the tenancy or no more than seven days prior to the termination of the tenancy, the following parties so agree in a writing entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a tenant who was the only tenant, the personal representative, designated person or other person entitled to possession of the personal property, such as an heir or devisee, as described in subsection (20) of this section; and

(C) Any lienholder.

(b) A landlord may not, as part of a rental agreement, as a condition to approving a sale of property on rented space under ORS 90.680 or in any other manner, require a tenant, a personal representative, a designated person or any lienholder to waive any right provided by this section.

(23) Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal property.

SECTION 22. ORS 90.675, as amended by section 58, chapter 655, Oregon Laws 2003, is amended to read:

90.675. (1) As used in this section:

(a) "Current market value" means the amount in cash, as determined by the county assessor, that could reasonably be expected to be paid for personal property by an informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

(b) "Dispose of the personal property" means that, if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a nonprofit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit.

(c) "Lienholder" means any lienholder of abandoned personal property, if the lien is of record or the lienholder is actually known to the landlord.

(d) "Of record" means:

(A) For a manufactured dwelling, that a security interest has been properly recorded in the records of the Department of Consumer and Business Services pursuant to ORS 446.611 or on a certificate of title issued by the Department of Transportation prior to July 1, 2004.

(B) For a floating home, that a security interest has been properly recorded with the State Marine Board pursuant to ORS 830.740 to 830.755 for a home registered and titled with the board pursuant to ORS 830.715.

(e) "Personal property" means only a manufactured dwelling or floating home located in a facility and subject to ORS 90.505 to 90.840. "Personal property" does not include goods left inside a manufactured dwelling or floating home or left upon a rented space and subject to disposition under ORS 90.425.

(2) A landlord may not store, sell or dispose of abandoned personal property except as provided by this section. This section governs the rights and obligations of landlords, tenants and any lienholders in any personal property abandoned or left upon the premises by the tenant or any lienholder in the following circumstances:

(a) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal property;

(b) The tenant has been absent from the premises continuously for seven days after termination of a tenancy by a court order that has not been executed; or

(c) The landlord receives possession of the premises from the sheriff following restitution pursuant to ORS 105.161.

(3) Prior to selling or disposing of the tenant's personal property under this section, the landlord must give a written notice to the tenant that must be:

(a) Personally delivered to the tenant; or

(b) Sent by first class mail addressed and mailed to the tenant at:

(A) The premises;

(B) Any post-office box held by the tenant and actually known to the landlord; and

(C) The most recent forwarding address if provided by the tenant or actually known to the landlord.

(4)(a) A landlord shall also give a copy of the notice described in subsection (3) of this section to:

(A) Any lienholder of the personal property;

(B) The tax collector of the county where the personal property is located; and

(C) The assessor of the county where the personal property is located.

(b) The landlord shall give the notice copy required by this subsection by personal delivery or first class mail, except that for any lienholder, mail service must be both by first class mail and by certified mail with return receipt requested.

(c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each lienholder at each address:

(A) Actually known to the landlord;

(B) Of record; and

(C) Provided to the landlord by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the landlord by certified mail with return receipt requested within the preceding five years. The notice must identify the personal property by describing the physical address of the property.

(5) The notice required under subsection (3) of this section must state that:

(a) The personal property left upon the premises is considered abandoned;

(b) The tenant or any lienholder must contact the landlord by a specified date, as provided in subsection (6) of this section, to arrange for the removal of the abandoned personal property;

(c) The personal property is stored on the rented space;

(d) The tenant or any lienholder, except as provided by subsection (18) of this section, may arrange for removal of the personal property by contacting the landlord at a described telephone number or address on or before the specified date;

(e) The landlord shall make the personal property available for removal by the tenant or any lienholder, except as provided by subsection (18) of this section, by appointment at reasonable times;

(f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, the landlord may require payment of storage charges, as provided by subsection (7)(b) of this section, prior to releasing the personal property to the tenant or any lienholder;

(g) If the personal property is considered to be abandoned pursuant to subsection (2)(c) of this section, the landlord may not require payment of storage charges prior to releasing the personal property;

(h) If the tenant or any lienholder fails to contact the landlord by the specified date or fails to remove the personal property within 30 days after that contact, the landlord may sell or dispose of the personal property. If the landlord reasonably believes the county assessor will determine that the current market value of the personal property is $8,000 or less, and the landlord intends to dispose of the property if the property is not claimed, the notice shall state that belief and intent; and

(i) If applicable, there is a lienholder that has a right to claim the personal property, except as provided by subsection (18) of this section.

(6) For purposes of subsection (5) of this section, the specified date by which a tenant or lienholder must contact a landlord to arrange for the disposition of abandoned personal property must be not less than 45 days after personal delivery or mailing of the notice.

(7) After notifying the tenant as required by subsection (3) of this section, the landlord:

(a) Shall store the abandoned personal property of the tenant on the rented space and shall exercise reasonable care for the personal property; and

(b) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal. The storage charge may be no greater than the monthly space rent last payable by the tenant.

(8) If a tenant or lienholder, upon the receipt of the notice provided by subsection (3) or (4) of this section or otherwise, responds by actual notice to the landlord on or before the specified date in the landlord's notice that the tenant or lienholder intends to remove the personal property from the premises, the landlord must make that personal property available for removal by the tenant or lienholder by appointment at reasonable times during the 30 days following the date of the response, subject to subsection (18) of this section. If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of storage charges, as provided in subsection (7)(b) of this section, prior to allowing the tenant or lienholder to remove the personal property. Acceptance by a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS 90.415.

(9) Except as provided in subsections (18) to (20) of this section, if the tenant or lienholder does not respond within the time provided by the landlord's notice, or the tenant or lienholder does not remove the personal property within 30 days after responding to the landlord or by any date agreed to with the landlord, whichever is later, the personal property is conclusively presumed to be abandoned. The tenant and any lienholder that have been given notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution of sale proceeds pursuant to subsection (13) of this section, have no further right, title or interest to the personal property and may not claim or sell the property.

(10) If the personal property is presumed to be abandoned under subsection (9) of this section, the landlord then may:

(a) Sell the personal property at a public or private sale, provided that prior to the sale:

(A) The landlord may seek to transfer ownership of record of the personal property by complying with the requirements of the appropriate state agency; and

(B) The landlord shall:

(i) Place a notice in a newspaper of general circulation in the county in which the personal property is located. The notice shall state:

(I) That the personal property is abandoned;

(II) The tenant's name;

(III) The address and any space number where the personal property is located, and any plate, registration or other identification number for a floating home noted on the title, if actually known to the landlord;

(IV) Whether the sale is by private bidding or public auction;

(V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be accepted; and

(VI) The name and telephone number of the person to contact to inspect the personal property;

(ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (i) of this subparagraph to the tenant and to any lienholder, by personal delivery or first class mail, except that for any lienholder, mail service must be by first class mail with certificate of mailing;

(iii) Obtain an affidavit of publication from the newspaper to show that the notice required under sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(iv) Obtain written proof from the county that all property taxes and assessments on the personal property have been paid or, if not paid, that the county has authorized the sale, with the sale proceeds to be distributed pursuant to subsection (13) of this section; or

(b) Destroy or otherwise dispose of the personal property if the landlord determines from the county assessor that the current market value of the property is $8,000 or less.

(11)(a) A public or private sale authorized by this section must be conducted consistent with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable.

(b) If there is no buyer at a sale described under paragraph (a) of this subsection, the personal property is considered to be worth $8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property.

(12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the condition of personal property, the landlord is not liable for the condition of the personal property to:

(a) A buyer of the personal property at a sale pursuant to subsection (10)(a) of this section, with or without consideration; or

(b) A person or nonprofit organization to whom the landlord gives the personal property pursuant to subsection (1)(b), (10)(b) or (11)(b) of this section.

(13)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable or actual cost of notice, storage and sale; and

(B) Unpaid rent.

(b) After deducting the amounts listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid property taxes and assessments owed on the dwelling or home.

(c) After deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the landlord shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance owed on the lien on the personal property.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if applicable, the landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting.

(e) If the tenant cannot after due diligence be found, the landlord shall deposit the remaining proceeds with the county treasurer of the county in which the sale occurred. If not claimed within

three years, the deposited proceeds revert to the general fund of the county and are available for general purposes.

(14) The county tax collector shall cancel all unpaid property taxes and assessments as provided under ORS 311.790 only under one of the following circumstances:

(a) The landlord disposes of the personal property after a determination described in subsection (10)(b) of this section.

(b) There is no buyer of the personal property at a sale described under subsection (11) of this section.

(c)(A) There is a buyer of the personal property at a sale described under subsection (11) of this section;

(B) The current market value of the personal property is $8,000 or less; and

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the personal property after distribution of the proceeds pursuant to subsection (13) of this section.

(d)(A) The landlord buys the personal property at a sale described under subsection (11) of this section;

(B) The current market value of the personal property is more than $8,000;

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the personal property after distribution of the proceeds pursuant to subsection (13) of this section; and

(D) The landlord disposes of the personal property.

(15) The landlord is not responsible for any loss to the tenant or lienholder resulting from storage of personal property in compliance with this section unless the loss was caused by the landlord's deliberate or negligent act. In the event of a deliberate and malicious violation, the landlord is liable for twice the actual damages sustained by the tenant or lienholder.

(16) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant or lienholder against a landlord for loss or damage to such personal property disposed of pursuant to this section.

(17) If a landlord does not comply with this section:

(a) The tenant is relieved of any liability for damage to the premises caused by conduct that was not deliberate, intentional or grossly negligent and for unpaid rent and may recover from the landlord up to twice the actual damages sustained by the tenant;

(b) A lienholder aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the lienholder. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph; and

(c) A county tax collector aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the tax collector, if the noncompliance is part of an effort by the landlord to defraud the tax collector. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph.

(18) The provisions of this section regarding the rights and responsibilities of a tenant to the abandoned personal property also apply to any lienholder, except that the lienholder may not sell or remove the dwelling or home unless:

(a) The lienholder has foreclosed the lien on the manufactured dwelling or floating home;

(b) The tenant or a personal representative or designated person described in subsection (20) of this section has waived all rights under this section pursuant to subsection (22) of this section; or

(c) The notice and response periods provided by subsections (6) and (8) of this section have expired.

(19)(a) Except as provided by subsection (20)(d) and (e) of this section, if a lienholder makes a timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests, a landlord shall enter into a written storage agreement with the lienholder providing that the personal property may not be sold or disposed of by the landlord for

up to 12 months. A storage agreement entitles the lienholder to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property.

(b) The lienholder's right to a storage agreement arises upon the failure of the tenant or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee to remove or sell the dwelling or home within the allotted time.

(c) To exercise the right to a storage agreement under this subsection, in addition to contacting the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder must enter into the proposed storage agreement within 60 days after the landlord gives a copy of the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement to the lienholder in the same manner as provided by subsection (4)(b) of this section. The landlord may include a copy of the proposed storage agreement with the notice of abandoned property required by subsection (4) of this section. A lienholder enters into a storage agreement by signing a copy of the agreement provided by the landlord and personally delivering or mailing the signed copy to the landlord within the 60-day period.

(d) The storage agreement may require, in addition to other provisions agreed to by the landlord and the lienholder, that:

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(b) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described in [*ORS 90.510 (8)*] **section 6 of this 2005 Act**, if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

(B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date required in the agreement, if the amount of the late charge is no greater than for late charges imposed on facility tenants;

(C) The lienholder maintain the personal property and the space on which the personal property is stored in a manner consistent with the rights and obligations described in the rental agreement that the landlord currently provides to tenants as required by ORS 90.510 (4); and

(D) The lienholder repair any defects in the physical condition of the personal property that existed prior to the lienholder entering into the storage agreement, if the defects and necessary repairs are reasonably described in the storage agreement and, for homes that were first placed on the space within the previous 24 months, the repairs are reasonably consistent with facility standards in effect at the time of placement. The lienholder shall have 90 days after entering into the storage agreement to make the repairs. Failure to make the repairs within the allotted time constitutes a violation of the storage agreement and the landlord may terminate the agreement by giving at least 14 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(e) Notwithstanding subsection (7)(b) of this section, a landlord may increase the storage charge if the increase is part of a facility-wide rent increase for all facility tenants, the increase is no greater than the increase for other tenants and the landlord gives the lienholder written notice consistent with the requirements of ORS 90.600 (1).

(f) During the term of an agreement described under this subsection, the lienholder has the right to remove or sell the property, subject to the provisions of the lien. Selling the property includes a sale to a purchaser who wishes to leave the property on the rented space and become a tenant, subject to the provisions of ORS 90.680. The landlord may condition approval for occupancy of any purchaser of the property upon payment of all unpaid storage charges and maintenance costs.

(g)(A) Except as provided in paragraph (d)(D) of this subsection, if the lienholder violates the storage agreement, the landlord may terminate the agreement by giving at least 90 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termi-

nation. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the landlord may terminate the agreement by giving at least 30 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(C) A lienholder may terminate a storage agreement at any time upon at least 14 days' written notice to the landlord and may remove the property from the facility if the lienholder has paid all storage charges and other charges as provided in the agreement.

(h) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the lienholder has sold or removed the property, the landlord may sell or dispose of the property pursuant to this section without further notice to the lienholder.

(20) If the personal property is considered abandoned as a result of the death of a tenant who was the only tenant, this section applies, except as follows:

(a) The provisions of this section regarding the rights and responsibilities of a tenant to the abandoned personal property shall apply to any personal representative named in a will or appointed by a court to act for the deceased tenant or any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant's death.

(b) The notice required by subsection (3) of this section must be:

(A) Sent by first class mail to the deceased tenant at the premises; and

(B) Personally delivered or sent by first class mail to any personal representative or designated person if actually known to the landlord.

(c) The notice described in subsection (5) of this section must refer to any personal representative or designated person, instead of the deceased tenant, and must incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the personal property may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the agreement with the personal representative or designated person ends.

(e) If a personal representative or other person requests that a landlord enter into a storage agreement, subsection (19)(c) to (e) and (g)(C) of this section applies, with the representative or person having the rights and responsibilities of a lienholder with regard to the storage agreement.

(f) During the term of an agreement described under paragraph (d) of this subsection, the representative or person has the right to remove or sell the property, including a sale to a purchaser or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave the property on the rented space and become a tenant, subject to the provisions of ORS 90.680. The landlord also may condition approval for occupancy of any purchaser, heir or devisee of the property upon payment of all unpaid storage charges and maintenance costs.

(g) If the representative or person violates the storage agreement, the landlord may terminate the agreement by giving at least 30 days' written notice to the representative or person stating facts sufficient to notify the representative or person of the reason for the termination. Unless the rep-

resentative or person corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the representative or person.

(h) Upon the failure of a representative or person to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the representative or person has sold or removed the property, the landlord may sell or dispose of the property pursuant to this section without further notice to the representative or person.

(21) If a governmental agency determines that the condition of personal property abandoned under this section constitutes an extreme health or safety hazard under state or local law and the agency determines that the hazard endangers others in the facility and requires quick removal of the property, the landlord may sell or dispose of the property pursuant to this subsection. The landlord shall comply with all provisions of this section, except as follows:

(a) The date provided in subsection (6) of this section by which a tenant, lienholder, personal representative or designated person must contact a landlord to arrange for the disposition of the property must be not less than 15 days after personal delivery or mailing of the notice required by subsection (3) of this section.

(b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder, personal representative or designated person must remove the property must be not less than seven days after the tenant, lienholder, personal representative or designated person contacts the landlord.

(c) The notice required by subsection (3) of this section must be as provided in subsection (5) of this section, except that:

(A) The dates and deadlines in the notice for contacting the landlord and removing the property must be consistent with this subsection;

(B) The notice must state that a governmental agency has determined that the property constitutes an extreme health or safety hazard and must be removed quickly; and

(C) The landlord shall attach a copy of the agency's determination to the notice.

(d) If the tenant, a lienholder or a personal representative or designated person does not remove the property within the time allowed, the landlord or a buyer at a sale by the landlord under subsection (11) of this section shall promptly remove the property from the facility.

(e) A landlord is not required to enter into a storage agreement with a lienholder, personal representative or designated person pursuant to subsection (19) of this section.

(22)(a) A landlord may sell or dispose of a tenant's abandoned personal property without complying with the provisions of this section if, after termination of the tenancy or no more than seven days prior to the termination of the tenancy, the following parties so agree in a writing entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a tenant who was the only tenant, the personal representative, designated person or other person entitled to possession of the personal property, such as an heir or devisee, as described in subsection (20) of this section; and

(C) Any lienholder.

(b) A landlord may not, as part of a rental agreement, as a condition to approving a sale of property on rented space under ORS 90.680 or in any other manner, require a tenant, a personal representative, a designated person or any lienholder to waive any right provided by this section.

(23) Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal property.

SECTION 23. ORS 90.725 is amended to read:

90.725. (1) A landlord or a landlord's agent may enter onto a rented space, not including the tenant's manufactured dwelling or floating home or an accessory building or structure, in order to inspect the space, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, perform agreed yard maintenance, equipment servicing or grounds

keeping or exhibit the space to prospective or actual purchasers of the facility, mortgagees, tenants, workers or contractors. The right of access of the landlord or landlord's agent is limited as follows:

(a) A landlord or landlord's agent may enter upon the rented space without consent of the tenant and without notice to the tenant for the purpose of serving notices required or permitted under this chapter, the rental agreement or any provision of applicable law.

(b) In case of an emergency, a landlord or landlord's agent may enter the rented space without consent of the tenant, without notice to the tenant and at any time. "Emergency" includes but is not limited to a repair problem that, unless remedied immediately, is likely to cause serious damage to the premises. If a landlord or landlord's agent makes an emergency entry in the tenant's absence, the landlord shall give the tenant actual notice within 24 hours after the entry, and the notice shall include the fact of the entry, the date and time of the entry, the nature of the emergency and the names of the persons who entered.

(c) If the tenant requests repairs or maintenance in writing, the landlord or landlord's agent, without further notice, may enter upon demand, in the tenant's absence or without consent of the tenant, for the purpose of making the requested repairs until the repairs are completed. The tenant's written request may specify allowable times. Otherwise, the entry must be at a reasonable time. The authorization to enter provided by the tenant's written request expires after seven days, unless the repairs are in progress and the landlord or landlord's agent is making a reasonable effort to complete the repairs in a timely manner. If the person entering to do the repairs is not the landlord, upon request of the tenant, the person must show the tenant written evidence from the landlord authorizing that person to act for the landlord in making the repairs.

(d)(A) If a written agreement requires the landlord to perform yard maintenance, equipment servicing or grounds keeping for the space:

(i) A landlord and tenant may agree that the landlord or landlord's agent may enter for that purpose upon the space, without notice to the tenant, at reasonable times and with reasonable frequency. The terms of the right of entry must be described in the rental agreement or in a separate written agreement.

(ii) A tenant may deny consent for a landlord or landlord's agent to enter upon the space pursuant to this paragraph if the entry is at an unreasonable time or with unreasonable frequency. The tenant must assert the denial by giving actual notice of the denial to the landlord or landlord's agent prior to, or at the time of, the attempted entry.

(B) As used in this paragraph:

(i) "Yard maintenance, equipment servicing or grounds keeping" includes, but is not limited to, servicing individual septic tank systems or water pumps, weeding, mowing grass and pruning trees and shrubs.

(ii) "Unreasonable time" refers to a time of day, day of the week or particular time that conflicts with the tenant's reasonable and specific plans to use the space.

(e) In all other cases, unless there is an agreement between the landlord and the tenant to the contrary regarding a specific entry, the landlord shall give the tenant at least 24 hours' actual notice of the intent of the landlord to enter and the landlord or landlord's agent may enter only at reasonable times. The landlord or landlord's agent may not enter if the tenant, after receiving the landlord's notice, denies consent to enter. The tenant must assert this denial of consent by giving actual notice of the denial to the landlord or the landlord's agent prior to, or at the time of, the attempt by the landlord or landlord's agent to enter.

(2) A landlord shall not abuse the right of access or use it to harass the tenant. A tenant shall not unreasonably withhold consent from the landlord to enter.

(3) A landlord has no other right of access except:

(a) Pursuant to court order;

(b) As permitted by ORS 90.410 (2); [*or*]

(c) As permitted under section 10 of this 2005 Act; or

[*(c)*] **(d)** When the tenant has abandoned or relinquished the premises.

(4) If a landlord is required by a governmental agency to enter a rented space, but the landlord fails to gain entry after a good faith effort in compliance with this section, the landlord shall not be found in violation of any state statute or local ordinance due to the failure.

(5) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or may terminate the rental agreement pursuant to ORS 90.630 (1) and take possession in the manner provided in ORS 105.105 to 105.168. In addition, the landlord may recover actual damages.

(6) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but that have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the reoccurrence of the conduct or may terminate the rental agreement pursuant to ORS 90.620 (1). In addition, the tenant may recover actual damages not less than an amount equal to one month's rent.

SECTION 24. ORS 446.515 is amended to read:

446.515. (1) It is the policy of the State of Oregon:

(a) To encourage mobile home and manufactured dwelling park residents and mobile home and manufactured dwelling park owners and managers to settle disputes among themselves without recourse, if possible, to either the court system or intervention by a state agency. [*It is the policy of the State of Oregon*]

(b) To assist mobile home and manufactured dwelling park residents and mobile home and manufactured dwelling park owners and managers to develop alternative dispute resolution techniques including, but not limited to, providing technical advice in the area of mediation.

(c) To educate mobile home and manufactured dwelling park residents, owners and managers about issues and laws that affect mobile home and manufactured dwelling park tenancies for the purpose of assisting those persons in resolving disputes.

(2) The Legislative Assembly recognizes that a significant percentage of its citizens are mobile home and manufactured dwelling park residents, owners or managers and that a proposal which reduces the necessity of court resolution of certain disputes between these residents, owners and managers may help these citizens avoid the expense of going to court.

(3) All citizens of this state benefit when the courts are reserved for the resolution of the types of disputes for which no alternative dispute resolution exists.

SECTION 25. (1) The Housing and Community Services Department may not assess a civil penalty under section 4 of this 2005 Act for a violation of section 2 of this 2005 Act that occurs before 30 days after the effective date of this 2005 Act.

(2) The Housing and Community Services Department may not impose a civil penalty under section 4 of this 2005 Act for a violation of section 3 of this 2005 Act that occurs before the completion date of the first continuing education class offered under section 3 of this 2005 Act.

(3) Section 14 of this 2005 Act applies to tenancies that commence on or after the effective date of this 2005 Act.

SECTION 26. Sections 2 to 4 of this 2005 Act are repealed January 2, 2012.

ATTACHMENT 3

Passed by House June 23, 2005

Repassed by House July 10, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate July 6, 2005

.....
President of Senate

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

.....
Secretary of State

ATTACHMENT 3

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

Enrolled
House Bill 2809

Sponsored by Representatives SMITH DB, GOMBERG; Representatives CATE, HAYDEN, LEIF, MOORE-GREEN, MORGAN, RESCHKE, WILDE, WRIGHT, ZIKA, Senator KENNEMER (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to temporary siting of recreational vehicles on properties with dwellings destroyed by natural disasters; amending ORS 197.493.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.493 is amended to read:

197.493. (1) A state agency or local government may not prohibit the placement or occupancy of a recreational vehicle, or impose any limit on the length of occupancy of a recreational vehicle **as a residential dwelling**, solely on the grounds that the occupancy is in a recreational vehicle, if the recreational vehicle is:

(a)**(A)** Located in a manufactured dwelling park, mobile home park or recreational vehicle park;

[*(b)*] **(B)** Occupied as a residential dwelling; and

[*(c)*] **(C)** Lawfully connected to water and electrical supply systems and a sewage disposal system[.]**; or**

(b) Is on a lot or parcel with a manufactured dwelling or single-family dwelling that is uninhabitable due to damages from a natural disasters, including wildfires, earthquakes, flooding or storms, until no later than the date:

(A) The dwelling has been repaired or replaced and an occupancy permit has been issued;

(B) The local government makes a determination that the owner of the dwelling is unreasonably delaying in completing repairs or replacing the dwelling; or

(C) Twenty-four months after the date the dwelling first became uninhabitable.

(2) Subsection (1) of this section does not limit the authority of a state agency or local government to impose other special conditions on the placement or occupancy of a recreational vehicle.

ATTACHMENT 3

Passed by House April 15, 2021

.....
Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 28, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

ATTACHMENT 3

Skidmore Consulting, LLC

To:	Matthew Martin, AICP, Principal Planner Members of the Sisters City Council
From:	Jon Skidmore, Skidmore Consulting, LLC
Date:	July 31, 2024
Subject:	Response to 07/15/24 Email from Julie Benson

This submittal to the record for file TA24-01 responds to concerns raised by Julie Benson in her 07/15/24 email to Matt Martin. Ms. Benson opposes the text amendment for the Sun Ranch Tourist Commercial Text Amendment (file TA24-01) due to issues related to airport safety and noise. Ms. Benson is the owner of the Sisters Eagle Airport.

Ms. Benson opposes uses proposed for the Sun Ranch Tourist Commercial (SRTC) zone as she feels they are incompatible with the uses associated with the airport to northeast of the SRTC zone. She explains that because the SRTC is in the transitional surface associated with the Sisters Eagle Airport it is inappropriate to permit the text amendments. She states that RVs do not provide adequate structural protection in the event of a plane crash on the SRTC zoned property. She is also concerned that RVers on the site will complain about noise to city staff.

Compatibility and Transition Zone Concern:

Ms. Benson notes that the Oregon Department of Aviation submitted comments and states that the proposed RV Park is an incompatible use in the transitional surface. Although subtle, Ms. Benson slightly misrepresented the Oregon Department of Aviation's comments. The Department first noted that "future development at the site" would require an "aeronautical evaluation" conducted by the Department pursuant to OAR 738-070-0060 and FAR Part 77.9. Further review of the cited state and federal rules clarifies, however, that the intent is to provide notice of new development to the Oregon Department of Aviation so that the Department, in turn, can adjust operational procedures, provide notice to pilots, etc. Based on our understanding of the cited state and federal rule, the Oregon Department of Aviation does not have any regulatory authority to approve or deny the proposed development.

Second, the Oregon Department of Aviation also referenced the State of Oregon Airport Land Use Compatibility Handbook in its comment letter. It is important to note that the northeast area of Sisters has developed around this airport within its associated transition surface. The City of Sisters has implemented a growth management strategy within its urban growth boundary that plans for growth around the airport. In short, the City has already considered the guidelines provided by the Oregon Department of Aviation and chosen to allow residential, light industrial, commercial, recreational, and other development within the transitional surface subject to the development regulations that accompany that area. Stated simply, the city has already determined that these

types of uses are compatible so long as the transition surface standards are implemented during site specific development applications.

As demonstrated by the map provided by Ms. Benson (attached as Exhibit A), a lot of the development in the northeast area of Sisters is within the transitional surface associated with the Sisters Eagle Airport. This includes almost the entirety of the North Sisters Business Park. It includes the Sun Ranch residential area. It includes the post office, the Lodge in Sisters and Clemens Park. Interestingly, the transitional surface also covers all of the development on the Sisters Eagle Airport. This includes the residential dwellings that front the runway and taxiway associated with the airport. It includes the businesses within the Eagle Airport Business District. As evidenced with these examples, the transition surface isn't a tool to prevent development, rather it is a tool to regulate development proposals to ensure their compatibility with the airport. As is the case with all of these other uses, any future development within the SRTC zone will be required to comply with the transitional surface standards.

Ms. Benson then explains that because RVs aren't built to residential or commercial building standards, they don't offer adequate structural protection against a plane crash. Frankly, very few human-made structures can withstand a plane crash for obvious reasons. Yet despite Ms. Benson's noted safety concerns, according to the airport's own website, the Sisters Eagle Airport offers tent camping spaces for rent that are within the transition surface area (attached as Exhibit B). Interestingly, as the owner of the Sisters Eagle Airport, Ms. Benson operates a campground for tents on the airport grounds within the very transition surface she cites as a safety concern for a potential RV park. The tent spaces are closer to the runway than the SRTC and there is a history of accidents on the runway.

In fact, Benjamin Benson, another owner of the airport, was involved in a plane accident on the airport in 2018 per the attached article (attached as Exhibit C). Fortunately, no one was injured in that accident. However, if RVs are less safe compared to traditional stick-built structures, then tent camping on the Sisters Eagle Airport is clearly even less safe compared to RV camping on an adjacent property. Although we appreciate Ms. Benson's concern for the safety of uses in the SRTC zone, the City's implementation of the transition surface is a tool that has clearly allowed development and the airport to coexist safely.

Based on the foregoing arguments, any decision in this matter to prohibit RV Parks from being established in the SRTC zone because of the zone's proximity to the Sisters Eagle Airport would be a clear departure from the City's numerous past planning decisions for the areas surrounding the Airport. Accordingly, we recommend that the City Council not provide such new planning direction for such a crucial economic development area of the city in isolation and without more thoroughly examining the pros and cons of substantially limiting development in and around the Sisters Eagle Airport.

Skidmore Consulting, LLC

Noise Concern:

Ms. Benson explains that there is a noise impact area associated with the airport. Further, she explains that landowners must sign an acknowledgment of airport noise prior to purchase of property in the noise impact area. She is concerned that if an RV park was developed, such RV park users would flood the city with noise complaints from the airport's activities. She is concerned that the city doesn't have the resources to respond to such complaints.

Realistically, any noise complaints would likely be made to the RV Park operator instead of to the city. Ms. Benson references a noise acknowledgement statement that must be signed by properties within the Noise Impact Area. Although the current owners are not familiar with that document, they are willing to work with the city to address the concern of complaints from RV Park users. A simple way to address this issue assuming an RV park is developed in the future as part of the mixed used vision for the property, is to include verbiage in the registration that informs campers of the noise impact area. That notice would functionally serve the same purpose as a waiver of remonstrance against such noise complaints. If airplane noise is a deterrent for certain campers, neither a potential RV Park in the SRTC zone nor the camping spots at the Sisters Eagle Airport would be a good choice for staying in Sisters.

Again, the northeast area of Sisters has developed in a compatible manner with the Sisters Eagle Airport due to the implementation of the surface area standards. Any development in the SRTC zone will also be held to those same standards.

I appreciate the City Council's and City staff's continued interest and questions regarding the proposed amendments to the Sun Ranch Tourist Commercial zone. The proposed amendments are consistent with the city's approval criteria and allow for economic development opportunities that benefit will visitors and Sisters residents alike.

Exhibit A – Transition Surface Map

Exhibit B – Sisters Eagle Airport Website Advertising Camping Onsite

Exhibit C – News Channel 21 Report about Plane Crash at Sisters Eagle Airport

ATTACHMENT 3

Exhibit A

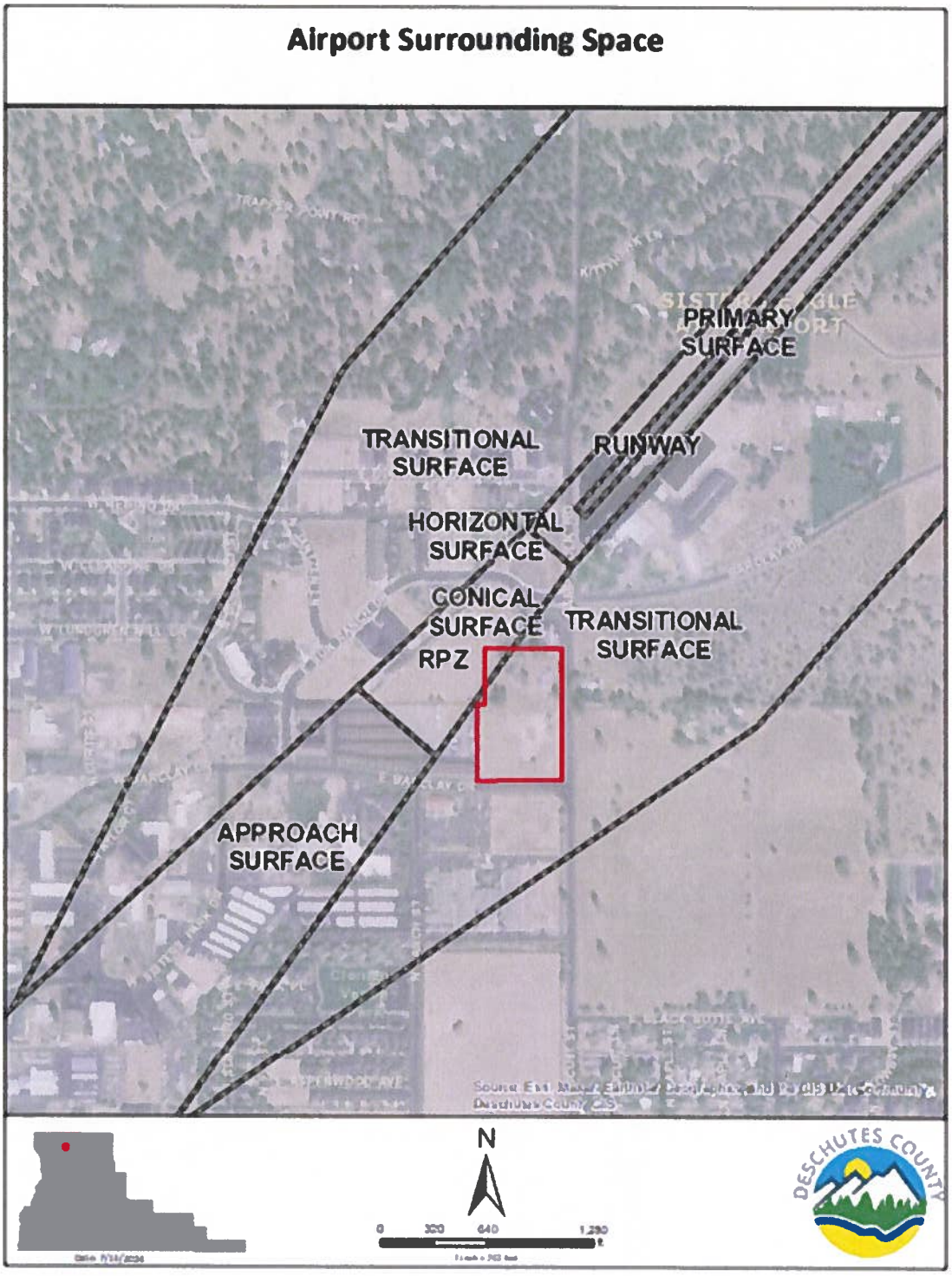

Exhibit B

SISTERS EAGLE AIRPORT

Airport / Pilot Info ▾ Flight Science Program Visit Sisters Business Park

About ▾ Contact Us

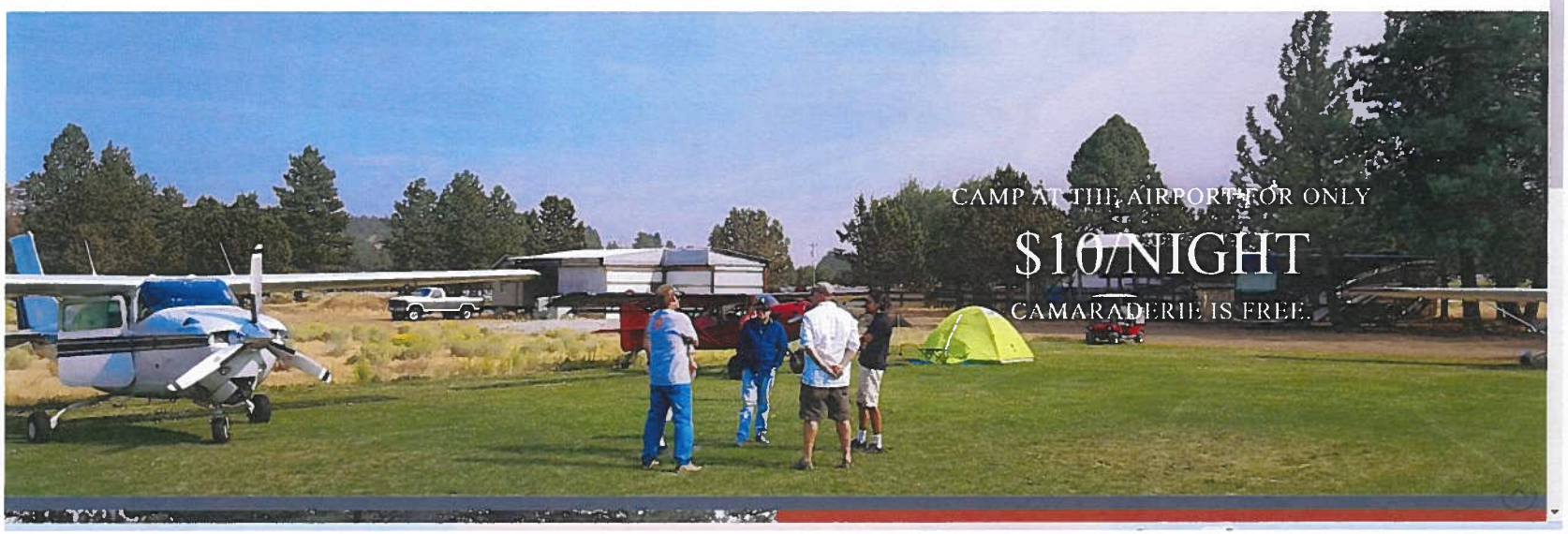

EXHIBIT C

KTVZ

By KTVZ News Team

Published May 5, 2018 2:03 AM

Three people, including the owner of the Sisters Eagle Airport, escaped injury when their twin-engine plane hit a downdraft, dropped about 30 feet and crashed just short of the runway Friday evening while landing on a flight from Northern California, authorities said.

Deschutes County sheriff's deputies and Sisters-Camp Sherman medics responded shortly before 6 p.m. to the crash at the private airport on Barclay Drive, sheriff's Sgt. Shawn Heierman said.

While Benjamin Benson and the other two occupants were uninjured, the 36-year-old Beechcraft 58P sustained extensive damage to a wing, the landing gear and propeller, Herman said.

"On final approach, it hit a downdraft, lost lift, and he set it down pretty hard on approach to the runway," Heierman said. One landing gear folded as the plane "skidded to a stop at the very end of the runway" on a flight from Napa, California.

The plane appears to be a total loss, the sergeant added.

The Federal Aviation Administration and National Transportation Safety Board will investigate the crash. Heierman said an FAA investigator is expected on scene Saturday.