

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code Title 19, the Bend Urban Growth Boundary Zoning Ordinance, Title 23, the Deschutes County Comprehensive Plan, together with goal exceptions to Statewide Planning Goals 3, 4, and 14, to add a new zone, "Westside Transect Zone", and a zoning map amendment to change the zoning designation on the subject properties from Surface Mining and Urban Area Reserve – 10 Acre Minimum to the Westside Transect Zone.

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ORDINANCE NO. 2019-001

WHEREAS, Eric and Robin Coats, Kyle Coats, ERMK, LLC, CCCC, LLC, Bend La Pine School District, Matt Day and Rio Lobo Investments, LLC applied for amendments to the Deschutes County Comprehensive Plan, the Bend Urban Growth Boundary Zoning Ordinance and the Deschutes County Zoning Map, together with goal exceptions to Statewide Planning Goals 3, 4, and 14, to add a new zone, Westside Transect Zone, in addition to a zoning map amendment to change the zoning of the subject properties from Surface Mining ("SM") and Urban Area Reserve – 10 Acre Minimum ("UAR-10") to the Westside Transect Zone ("WTZ"); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on September 11, 2018, before the Deschutes County Hearings Officer and, on November 2, 2018, the Hearings Officer recommended approval of the Comprehensive Plan and Zoning Ordinance amendments, goal exceptions and Zoning Map change; and

WHEREAS, after notice was given in accordance with applicable law, a *de novo* public hearing was held on November 27, 2018, before the Board of County Commissioners ("Board"); and

WHEREAS, the Board, after review conducted in accordance with applicable law, approved as detailed above the Comprehensive Plan and Zoning Ordinance amendments, goal exceptions and Zoning Map change; now, therefore,

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

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

Section 2. AMENDMENT. Deschutes County Comprehensive Plan Chapter 1, Comprehensive Planning, is amended to read as described in Exhibit "B", attached hereto and incorporated by reference herein, with new language underlined and deleted language set forth in strikethrough.

Section 3. AMENDMENT. Deschutes County Comprehensive Plan Chapter 3, Rural Growth, is amended to read as described in Exhibit "C," attached hereto and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 4. AMENDMENT. Deschutes County Comprehensive Plan Chapter 4, is amended to read as described in Exhibit "D," attached hereto and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 5. AMENDMENT. Deschutes County Comprehensive Plan Chapter 5, Supplemental Sections, is amended to read as described in Exhibit "E," attached hereto and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.


Section 6. AMENDMENT. DCC Title 19, Zoning Map, is amended to change the zone designation for certain property described in Exhibit "F" and depicted on the zoning map set forth as Exhibit "G" with both exhibits attached and incorporated by reference herein, from Urban Area Reserve (UAR-10) and Surface Mine (SM) to Westside Transect (WTZ).


Section 7. ADDING. DCC Title 19 Chapter 19.22, Westside Transect Zone, is hereby added to read as described in Exhibit "H" attached hereto and by this reference incorporated herein.


Section 8. FINDINGS. The Board adopts as its findings Exhibit "I," attached and incorporated by reference herein.


Dated this 16 of January, 2019

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
ANTHONY DEBONE, Chair

  
PHILIP G. HENDERSON, Vice Chair

ATTEST:  
  
Recording Secretary

  
TAMMY BANEY, Commissioner \*\*\*

Date of 1<sup>st</sup> Reading: 2 day of January, 2019.

Date of 2<sup>nd</sup> Reading: 16 day of January, 2019.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	X	—	—	—
Philip G. Henderson	X	—	—	—
Tammy Baney	—	—	—	X

Effective date: 16 day of April, 2019.

\*\*\* Commissioner Baney's term of office expires after 1<sup>st</sup> reading and before 2<sup>nd</sup> reading.

## **Chapter 23.01 COMPREHENSIVE PLAN**

### Chapter 23.01 COMPREHENSIVE PLAN

#### 23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
- T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-005, are incorporated by reference herein.
- CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- DD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.

(Ord. 2019-001 §1, 2019; Ord. 2018-008 §1, 2018; Ord. 2018-005 §2, 2018; Ord. 2018-011 §1, 2018; Ord. 2018-006 §1, 2018; Ord. 2018-002 §1, 2018; Ord. 2017-007 §1, 2017; Ord. 2016-029 §1, 2016; Ord. 2016-027 §1, 2016; Ord. 2016-005 §1, 2016; Ord. 2016-022 §1, 2016; Ord. 2016-001 §1, 2016; Ord. 2015-010 §1, 2015; Ord. 2015-018 § 1, 2015; Ord. 2015-029 § 1, 2015; Ord. 2015-021 § 1, 2015; Ord. 2014-027 § 1, 2014; Ord. 2014-021 §1, 2014; Ord. 2014-12 §1, 2014; Ord. 2014-006 §2, 2014; Ord. 2014-005 §2, 2014; Ord. 2013-012 §2, 2013; Ord. 2013-009 §2, 2013; Ord. 2013-007 §1, 2013; Ord. 2013-002 §1, 2013; Ord. 2013-001 §1, 2013; Ord. 2012-016 §1, 2012; Ord. 2012-013 §1, 2012; Ord. 2012-005 §1, 2012; Ord. 2011-027 §1 through 12, 2011; Ord. 2011-017 repealed; Ord.2011-003 §3, 2011)

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

## Section 1.3 Land Use Planning

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### **Background**

This section establishes the overall framework for the development and implementation of plans and policies for land use within the County. Statewide planning guidelines require each county to establish a land use planning process based on current issues and factual information. The policies in this section assure that the County's land use policies are current, fact-based and responsive to change. The policies recognize the need for coordination between the cities and the County and provide full public access to Plan documents and the information upon which land use decisions are based.

As noted throughout this Plan, there are two important things to remember. First, the Oregon land use system draws a bright line between rural and urban lands and promotes new growth and infrastructure in urban areas. Growth on rural lands is limited in order to protect farms, forests, open spaces and natural resources. Deschutes County is required to plan in compliance with the State planning system in order to promote orderly and efficient growth and protect the resources important to Oregonians.

Second, land use is often controversial because ultimately it can intermix community values with private property rights and expectations. A property owner may choose to keep pigs, or start a day care center or build a windmill. For each of those uses there may be impacts on the neighbors in the form of odors, traffic or blocked views. Land use regulations attempt to achieve a balance between giving property owners the freedom to use their property however they choose while maintaining the livability of the neighborhood and wider community. This Plan recognizes those tensions that occur when creating land use policies.

### **Land Use**

Statewide Planning Goal 2 Land Use Planning, requires a fact-based land use planning process and policy framework to guide land use decisions. It requires comprehensive planning that identifies issues and complies with Statewide Planning Goals. Goal 2 also addresses the process to allow exceptions to Statewide Goals (see also Section 5.10).

In 1979 the County complied with the Statewide planning system by writing a Comprehensive Plan. From 1988-2003 the County underwent State mandated Periodic Review to ensure the Plan was still in compliance with changing State regulations. The 2008-2011 update was done outside of Periodic Review, which is no longer required for Oregon counties. Instead, the County recognized that to remain valid the Comprehensive Plan needed to be completely rewritten and updated. For historic reference, a copy of the Comprehensive Plan replaced by this Plan will remain available on the County website. This Plan is a policy document based on existing facts and community values. No specific land use designation changes are included in the 2008-2011 Plan update. Instead, this Plan revisits each Statewide Goal, its existing Goals and Policies, community values and new issues requiring policy direction. It lays out a blueprint for the future and defines what matters to County residents and businesses through updated Goals and Policies.

The Comprehensive Plan is implemented primarily through zoning and the zoning code must be regularly reviewed for compliance with the Plan. However, there are other tools for implementation, such as capital improvement plans, partnerships or incentive programs. To assure this Plan remains useful, an action plan identifying various ideas for implementing Comprehensive Plan policies will be created. The action plan will be annually updated and reviewed to identify and prioritize work plans for the coming year.

### Land Ownership and Jurisdiction

When considering land use in Deschutes County two important factors are the amount of public ownership and which lands are under County jurisdiction. Table 1.3.1 shows nearly 80% of land in the County is publically owned. The implications of the large tracts of public land range from the loss of tax revenue to having vast open lands available for recreation for both tourists and residents.

**Table 1.3.1 – Public Land in Deschutes County 2010**

<b>Ownership</b>	<b>Acres*</b>	<b>Percent</b>
Total County Acres	1,913,482	100%
Federal Government	1,466,067	76.6%
State Government	53,051	2.8%
County Government	10,434	0.6%
<b>Total Public Lands</b>	<b>1,529,552</b>	<b>79.9%</b>

\* Acres of parcels – does not include roads, right-of-ways, lakes, rivers or other publicly-owned parcels such as cities or park districts

Source: County Geographical Information System

Table 1.3.2 shows jurisdictional responsibilities. Note that the federal government, primarily through the Bureau of Land Management and the U.S. Forest Service, owns over 76% of the land in the County. Federal lands are not required to conform to local regulations, such as zoning. They rely on their own resource plans. This means a majority of lands in the County are not under County jurisdiction. However, they remain in this Plan to encourage intergovernmental policy coordination.

**Table 1.3.2 – 2010 Land Jurisdiction in Deschutes County 2010**

<b>Jurisdiction</b>	<b>Acres*</b>	<b>Percent</b>
Total County Acres	1,913,482	100%
Federal Government	1,466,067	76.6%
Bend Urban Growth Boundary	17,534	0.9%
La Pine Urban Growth Boundary	4,008	0.2%
Redmond Urban Growth Boundary	10,733	0.6%
Sisters Urban Growth Boundary	1,023	0.1%
Total Cities	33,298	1.7%
<b>Total Other Jurisdiction</b>	<b>1,499,365</b>	<b>78.4%</b>

\* Acres of parcels – does not includes roads, right-of-ways, lakes and rivers

Source: County Geographical Information System

In addition to Federal lands, four cities have primary jurisdiction over less than 2% of lands in the County. This includes lands outside the incorporated city boundaries, but inside urban growth boundaries. The urban growth boundaries define a municipality's 20-year land supply to accommodate future growth. These lands are managed by the cities through intergovernmental

agreements between the cities and the County. The bottom line is that the County has land use jurisdiction over approximately 22% of the land base.

### **Comprehensive Plan Map Designations**

The Comprehensive Plan Map (Map) illustrates the County's goals and policies. The Map describes land use categories that provide for various types of development and conservation for the rural area during the 20-year planning period.

Each Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses are allowed for each area. The Deschutes County Comprehensive Plan and Zoning Maps exist in official replica form as an electronic map layer within the County Geographic Information System. Other maps illustrating various Comprehensive Plan areas, such as rural commercial properties, are available to the public for informational purposes.

The Comprehensive Plan map designations are defined below.

*Agriculture:* To preserve and maintain agricultural lands for farm use.

*Airport Development:* To allow development compatible with airport use while mitigating impacts on surrounding lands.

*Destination Resort Combining Zone:* To show lands eligible for siting a destination resort.

*Forest:* To conserve forest lands for multiple forest uses.

*Open Space and Conservation:* To protect natural and scenic open spaces, including areas with fragile, unusual or unique qualities.

*Rural Residential Exception Areas:* To provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities, consistent with efficient planning of public services.

*Surface Mining:* To protect surface mining resources from development impacts while protecting development from mining impacts.

*Resort Community:* To define rural areas with existing resort development that are not classified as a destination resort, based on Oregon Administrative Rule 660-22 or its successor.

*Rural Community:* To define rural areas with limited existing urban-style development, based on Oregon Administrative Rule 660-22 or its successor.

*Rural Service Center:* To define rural areas with minimal commercial development as well as some residential uses, based on Oregon Administrative Rule 660-22 or its successor.

*Urban Unincorporated Community:* To define rural areas with existing urban development, based on Oregon Administrative Rule 660-22 or its successor.

*Rural Commercial:* To define existing areas of isolated rural commercial development that do not fit under Oregon Administrative Rule 660-22.

*Rural Industrial:* To define existing areas of isolated rural industrial development that do not fit under Oregon Administrative Rule 660-22.

*Urban Growth Boundaries:* To define land that provides for urban development needs and identifies and separates urban and urbanizable land from rural land.

*Bend Urban Area Reserve:* To define lands outside of Bend’s Urban Growth Boundary that were under the jurisdiction of the Bend Area General Plan. These areas were removed in September 2016 through the 2016 amendment to the Bend Urban Growth Boundary. These areas are now under the jurisdiction of the County’s Comprehensive Plan.

*Redmond Urban Reserve Area:* To define Redmond’s additional 30-year growth boundary for lands expected to be brought into the Urban Growth Boundary.

**Comprehensive Plan Map Designations and Associated Zoning**

Table I.3.3 lists existing Comprehensive Plan designations and related Zoning districts. Some Plan designations apply County-wide and some only apply to designated areas of existing development. The Destination Resort designation is a combining zone that supplements the underlying zoning. Most of the area-specific designations fall under the State rules for Unincorporated Communities and are detailed in Chapter 4 of this Plan. The Rural Commercial and Rural Industrial areas are detailed in Chapter 3 under Rural Economy.

**Table I.3.3 - Comprehensive Plan and Zoning Code Designations**

<b>Comprehensive Plan Designation</b>	<b>Associated Deschutes County Zoning Code</b>
<i>County-wide designations</i>	
Agriculture	Title 18 - All EFU subzones
Airport Development	Title 18 - AD, AS
Destination Resort Combining Zone	Title 18 - DR
Forest	Title 18 - F-1, F-2
Open Space and Conservation	Title 18 - OS&C
Rural Residential Exception Area	Title 18 - RR-10 and MUA-10
Surface Mining	Title 18 - SM
<i>Area specific designations</i>	
Resort Community	Title 18 - All Black Butte Ranch and Inn of the 7 <sup>th</sup> Mountain/Widgi Creek subzones
Rural Community	Title 18 - All Tumalo and Terrebonne subzones
Rural Service Center	Title 18 - All RSC zones
Urban Unincorporated Community	Title 18 - All Sunriver subzones
Rural Commercial	Title 18 - Rural Commercial
Rural Industrial	Title 18 - Rural Industrial
Bend Urban Growth Area	Title 19 - UAR-10, SM, SR 2 ½, RS, IL, FP, <u>WTZ</u>
Redmond Urban Growth Area	Title 20 - UH-10
Sisters Urban Growth Area	Title 21 - UAR-10, OA, FP
Redmond Urban Reserve Area	Title 18 - RURA

Source: County Geographical Information System and Deschutes County Code

**Intergovernmental and Other Coordination**

*Regional Coordination*

Deschutes County is responsible for coordinating all planning activities affecting land uses within the County.

- Coordinating population forecasts



- Coordinating with special districts, including irrigation districts, park districts, school districts, sewer districts, and water districts
- Establishing Cooperation Agreements with special districts that provide an urban service in a UGB
- Coordinating with the U.S. Forest Service and Bureau of Land Management
- Joint Management Agreements with municipalities for managing urban growth areas (areas outside city limits, but inside a UGB)
- Establishing Urban Reserve Areas

The County recognizes the importance of working closely and cooperatively with the cities of Bend, La Pine, Redmond and Sisters, as well as special districts and state and federal agencies, to ensure a coordinated approach to future growth and conservation.

*Cooperative Agreements*

Cities are required to enter into a cooperative agreement with each special district that provides an urban service within a UGB. The appropriate city may also enter into a cooperative agreement with any other special district operating within a UGB.

*Urban Service Agreements*

Deschutes County has the responsibility for negotiating urban service agreements with representatives of all cities and special districts that provide, or declare an interest in providing, urban services inside an Urban Growth Boundary. Urban service means:

- Sanitary sewers;
- Water;
- Fire protection;
- Parks;
- Open space;
- Recreation; and
- Streets, roads and mass transit.
- Special Districts

*Special Districts*

Special districts are defined in ORS 198.010 and are recognized as government bodies. Special districts include the following.

**Table 1.3.4 - Special Districts**

Utility district	Rural fire protection district
Water supply district	Irrigation district
Cemetery maintenance district	Drainage district
Park and recreation district organized	Water improvement district
Mass transit district	Water control district
Metropolitan service district organized	Vector control district
Special road district	9-1-1 communications district
Road assessment district	Geothermal heating district
Highway lighting district	Transportation district
Health district	Library district
Sanitary district	Soil & water conservation district
Sanitary authority, water authority or joint water and sanitary authority	

### *Other Coordination*

Besides intergovernmental coordination, Deschutes County generally supports coordination and partnerships with non-profits and other organizations that are working with residents to improve the quality of life in the County. There are groups working to address issues from affordable housing to clean rivers, from economic development to fire-free neighborhoods. Two examples of community projects that were completed from 2006-2010 are the Bend 2030 Plan and the Deschutes County Greenprint, both created after extensive public outreach. Note that the nature and extent of the County's role will vary based on County priorities at any given time and that coordination on a project does not ensure County support of every action undertaken on that project. Still, partnering is an efficient and effective method of addressing important issues.

### **County-Owned property**

When considering land use it is important to consider County-owned lands, which are managed through Deschutes County Code Title 11. As of 2009 there were nearly 700 individual parcels owned by the County, totaling almost 8,000 acres. Management of these properties consists of defining appropriate uses for different parcels, cleaning up illegal dumpsites, fire hazard reduction and public auction. Many of these properties were acquired through foreclosure for non-payment of property taxes. It is anticipated that the County will continue to acquire lands through foreclosure.

Starting in 1994 the County began to designate certain sensitive properties along rivers, creeks or streams or with wildlife, wetlands or other values, as park lands. The intent was not to develop these lands for park use but rather to preserve lands with valuable resources. The park designation means that the lands would be retained in public ownership unless there was a public hearing and the Board of County Commissioners determined that selling was in the best interest of the public. ORS 275.330 governs the disposal of these lands, stating that if they are sold the proceeds must be dedicated to park or recreation purposes. As of 2009, there were approximately 70 properties designated as park lands under the following Orders.

#### Order #

94-138

96-071

97-147

97-151

98-127

2004-001

2004-037

2006-019

## Section 1.3 Land Use Planning Policies

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### Goals and Policies

- Goal 1**      **Maintain an open and public land use process in which decisions are based on the objective evaluation of facts.**
- Policy 1.3.1    Protect the limited amount of privately-owned land in Deschutes County through consideration of private property rights and economic impacts to property owners and the community when creating and revising land use policies and regulations.
- a. Evaluate tools such as transfer of development rights programs that can be used to protect private property.
- Policy 1.3.2    Consider sustainability and cumulative impacts when creating and revising land use policies and regulations.
- Policy 1.3.3    Involve the public when amending County Code.
- Policy 1.3.4    Maintain public records which support the Comprehensive Plan and other land use decisions.
- Policy 1.3.5    Review the Comprehensive Plan every five years and update as needed, in order to ensure it responds to current conditions, issues and opportunities, as well as amended State Statute, Oregon Administrative Rules and case law.
- Policy 1.3.6    Maintain and enhance web-based property-specific information.
- Policy 1.3.7    The Deschutes County Comprehensive Plan Map will be retained in official replica form as an electronic map layer within the County Geographic Information System and is adopted as part of this Plan.
- Policy 1.3.8    Implement, as appropriate, recommendations in the Final Report from the Oregon Task Force on Land Use Planning dated January 2009.
- Policy 1.3.9    A list of actions to implement this Comprehensive Plan shall be created, maintained and reviewed yearly by the Community Development Department and the Board of County Commissioners.
- Goal 2**      **Promote regional cooperation and partnerships on planning issues.**
- Policy 1.3.10   Regularly review intergovernmental and urban management agreements, and update as needed.
- Policy 1.3.11   Participate in and, where appropriate, coordinate regional planning efforts.
- a. Provide affected agencies, including irrigation districts, an opportunity to comment and coordinate on land use policies or actions that would impact their jurisdictions.
- Policy 1.3.12   Support non-profit or public acquisition of lands determined through an extensive public process to have significant value to the community.
- Policy 1.3.13   Support implementation of the Bend 2030 Plan and incorporate, as appropriate, elements from the Bend 2030 Plan into this Plan.

**Goal 3      Manage County owned lands efficiently, effectively, flexibly and in a manner that balances the needs of County residents.**

- Policy 1.3.14    Where feasible, maintain and manage County owned properties as follows:
- a. Manage designated park lands to preserve the values defined in the park designation;
  - b. Permit public access to County owned lands designated as parks unless posted otherwise;
  - c. Encourage properties located along rivers, streams or creeks or containing significant wildlife, scenic or open space values to be designated as park land.

# Chapter 1 Primary References

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## References<sup>1</sup>

1. Oregon Department of Land Conservation and Development. Goal 1: Citizen Involvement. Oregon's Statewide Planning Goals and Guidelines.
2. Putting the People in Planning: A Primer on Public Participation in Planning, produced by Oregon's Citizen Involvement Advisory Committee – Third Edition – May 2008
3. Oregon. Department of Land Conservation and Development. Goal 2: Land Use Planning. Oregon's Statewide Planning Goals and Guidelines.
4. Oregon Task Force on Land Use Planning, Final Report to the 2009 Oregon Legislature, January 2009
5. Oregon Revised Statute 197, particularly:
  - a. 197.173-197.200 Comprehensive Planning Responsibilities
  - b. 197.201-197.283 Goals Compliance
  - c. 197.610-197-651 Post-Acknowledgement Procedures
6. Oregon Administrative Rules Chapter 660, particularly:
  - a. 660-003 Acknowledgement of Compliance
  - b. 660-004 Goal 2 Exceptions Process
  - c. 660-015 Statewide Planning Goals and Guidelines
  - d. 660-018 Post-Acknowledgement Amendments
7. Bend 2030 at <http://bend2030.org>
8. Oregon's Playground Prepares for the Future: A Greenprint for Deschutes County. The Trust for Public Land. 2010

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<sup>1</sup> The references listed are provided for the convenience of the public and are not legally adopted into this Plan.

## Section 3.3 Rural Housing

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### **Background**

Housing is a basic need that provides not just shelter, but connection to a wider community. A variety of housing types and price points ensures options for people at different life stages and needs. Oregon's statewide planning program directs cities to retain an adequate amount of land to accommodate residential growth. Generally counties are directed to protect farms, forests and other rural resources like wildlife while limiting new rural development. This section of the Plan looks specifically at housing on existing and potential new parcels and how the County can support a diverse and affordable housing supply.

Housing inside urban growth boundaries is addressed in Statewide Planning Goal 10, Housing and OAR 660-008. Statewide Goal 2, Land Use and Goal 14, Urbanization both have sections that address rural housing, supplemented by OAR 660-004 and 660-014. These rules refine how new rural residential lots can be created. The Deschutes County housing policies provide the framework for residential development. The policies further delineate the role of the County in facilitating the availability of an affordable and quality housing stock within both urban and rural communities.

### **Rural Residential Exception Areas**

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.

### **Rural Residential Exception Areas 2009**

*Source: County GIS data*

- 71,000 acres of Rural Residential Exception Area (including right-of-way)
- 64,000 acres of Rural Residential Exception Area (excluding right-of-way)
- 24,750 Rural Residential Exception Area lots
- 18,100 Rural Residential Exception Area lots that are developed

### **Future of Rural Housing in Deschutes County**

In looking at rural housing growth, it is important to find the balance between protecting rural values and protecting property rights. In community meetings some people expressed concern over the level of new development that has been allowed while others highlighted the

restrictions on their property that do not permit it. Too much development can lead to the destruction of the qualities that bring people to Deschutes County, while too many restrictions keep out people who would choose a rural lifestyle.

#### *Housing Legality, Public Health and Safety*

One issue meriting attention is the need to be sure housing is legally developed. A house built without proper land use permits may not meet required setbacks or other regulations, causing legal disputes between neighbors. A house built without proper building permits could be constructed shoddily, causing safety issues. Land use and building permit requirements therefore are intended to safeguard the rights of property owners and neighbors. Historically, there have been problems in the County with substandard housing. Over the years substandard housing has become less of an issue. However, there are still areas where development has occurred without land use or building permits, leading to numerous code complaints. An area of south County, known as Section 36, has been identified as one place that the County could work closely with local residents to address health and safety issues. Another health and safety issue that came up in public meetings is the need to regulate large animals on residential lots. The idea is to control odors and flies that can accumulate and impact neighbors. Research on how large animals are regulated in other counties would provide some direction on this issue.

#### *Housing Diversity*

A challenge for the County given rural housing restrictions is how to support a diversity of housing to meet the needs of the community, while retaining the rural character important to residents. Deschutes County requires a 10 acre minimum lot size for new rural residential lots in order to protect the rural quality of life and its resources. Yet, the 10 acre minimum raises the cost of rural housing and may limit the rural lifestyle to households at the upper end of the income spectrum. Additionally much of the new rural housing being built is located in high-end destination resorts. This slant towards high priced rural housing is mitigated somewhat by the thousands of small lots that were platted before land use laws were enacted. These smaller lots provide an opportunity for less expensive housing.

One way the County can address the need for housing options is to promote the idea of housing alternatives such as co-housing or accessory dwelling units. Currently these alternatives are not permitted by State regulations that protect rural lands. Co-housing involves creating a community through clustered housing. Accessory dwelling units, sometimes known as granny flats, are small units accessory to the main housing. Regulated correctly, housing alternatives could provide flexibility in rural housing. The first step in permitting housing variety is to initiate a discussion with the State on how and where these types of housing would be appropriate. Another way to support a diversity of housing is to work closely with agencies and jurisdictions that promote it. The public corporation responsible for promoting affordable housing initiatives in Deschutes, Jefferson and Crook Counties is the Central Oregon Regional Housing Authority, also known as Housing Works. Organized under the Oregon Housing Authority Law (ORS 456), this agency provides affordable housing services to low income households. They also engage in public/private partnerships to provide and manage affordable housing. Cities are also involved in providing a diversity of housing. Promoting a variety of housing choices and mix of price points can be achieved through cooperating with Housing Works and local cities, the donation of County property, or other means.

### Transect Planning

Transect Planning concepts are frameworks which organize natural, rural and urban landscapes into categories of density, design, complexity and intensity. The concept integrates the natural environment of a particular location into the design, density and planning efforts to enhance and respect the character of a given place with appropriate and specific development patterns.

The City of Bend has utilized the transect concept in its Urban Growth Boundary (“UGB”) planning efforts, identifying two areas (Shevlin and West Area) on the western edge of the city where lower-densities provide buffers between urban densities and Shevlin Park, Tumalo Creek and the forested lands to the west.

In coordination with the city transect planning efforts, Deschutes County has continued the transect concept for the areas in the county bordering Shevlin Park and adjacent to the Shevlin and West Areas (refer to figure/map), creating the Westside Transect Zone. The Westside Transect Zone is intended to provide for a transition area between urban transect areas within the City of Bend (to the east) and Shevlin Park, Tumalo Creek and forest zoned lands within Deschutes County (to the west).

The location of the Westside Transect Zone is unique where the Zone is located between the Bend Urban Growth Boundary to the east and Tumalo Creek and forestlands to the west. Given the location, a unique opportunity is provided to implement intensive fire prevention measures and building standards that will assist in protecting city and county lands from the danger of the spread of wildfire from the west and northwest. The Zone consists of a four-mile virtually contiguous set of lands where consistent landscape management practices and fire-resistant building standards will be applied. By incorporating the transect concepts, the zone provides an initial line of defense to wildland fire for existing development inside the city of Bend while providing a resilient, low-density neighborhood on the city’s western edge.

A key component of the Westside Transect Zone is balancing the protection of wildlife habitat with fire management plans that will help establish wildfire-resilient neighborhoods. The success of the Westside Transect Zone is due to the transitioning residential densities that gradually decrease from the City’s core to the Shevlin and West areas inside the UGB and continuing from the UGB outward to Shevlin Park.

Development within the Westside Transect Zone will include residential subdivisions with dedicated open space and resource management corridors with funded and enforceable provisions for the management of wildlife habitat and wildfire prevention and mitigation plans. The development plans will also address various vegetation management techniques, structural and building design as well as materials selection, and operational issues and standards, such as evacuation routes and communication plans for residents, as well as wildlife habitat conservation and management measures.



## Section 3.3 Rural Housing Policies

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### Goals and Policies

#### **Goal 1 Maintain the rural character and safety of housing in unincorporated Deschutes County.**

Policy 3.3.1 Except for parcels in the Westside Transect one, the minimum parcel size for new rural residential parcels shall be 10 acres.

Policy 3.3.2 Incorporate annual farm and forest housing reports into a wider system for tracking the cumulative impacts of rural housing development.

Policy 3.3.3 Address housing health and safety issues raised by the public, such as:  
a. The number of large animals that should be permitted on rural residential parcels; or  
b. The properties south of La Pine, in Township 22S, Range 10E, Section 36, many of which are not in compliance with planning and building codes.

Policy 3.3.4 Encourage new subdivisions to incorporate alternative development patterns, such as cluster development, that mitigate community and environmental impacts.

Policy 3.3.5 Maintain the rural character of the County while ensuring a diversity of housing opportunities, including initiating discussions to amend State Statute and/or Oregon Administrative Rules to permit accessory dwelling units in Exclusive Farm Use, Forest and Rural Residential zones.

#### **Goal 2 Support agencies and non-profits that provide affordable housing.**

Policy 3.3.6 Support Central Oregon Regional Housing Authority and other stakeholders to meet the housing needs of all Deschutes County residents.  
a. Assist as needed in coordinating and implementing housing assistance programs.  
b. Support efforts to provide affordable and workforce housing in urban growth boundaries and unincorporated communities.

Policy 3.3.7 Utilize block grants and other funding to assist in providing and maintaining low and moderate income housing.

**Policy 3.3.8.** The transect concept provides a range of development patterns from most to least developed. The Westside Transect Zone implements the transect concept by providing a rural, low density range at the western edge of the Bend UGB adjacent to the urban transect typology inside the Bend UGB and extending outward westerly to the public and forested lands. The Westside Transect Policies set forth below and the zoning ordinance provisions implementing those policies are specific to the area located between the Bend UGB and Shevlin Park and do not apply to other areas adjacent to the Bend UGB.

Policy 3.3.9. Westside Transect Policies:

- 3.3.9.1: Protect the sensitive eco-systems and interrelationships of the urban/rural interface on the west side of Bend between the urban area and Shevlin Park and the public and forestlands to the west.
- 3.3.9.2: Protect natural resources and environmentally sensitive areas and provide special setbacks between development and Shevlin Park, Tumalo Creek, and forestlands.
- 3.3.9.3: Development patterns shall reflect the protection of land with environmental significance and fire-wise community design best practices.
- 3.3.9.4: Limit residential development to 200 single-family residential lots.
- 3.3.9.5: Manage all areas outside of the structural building envelopes on residential lots for wildfire mitigation and wildlife habitat in accordance with coordinated plans prepared by professionals, reviewed annually with reports submitted to the County every three years. The wildfire mitigation and wildlife habitat plans shall be funded through homeowner assessments and administered and enforced by a homeowners association established at the time of creation of any residential lots.
- 3.3.9.6: Reduce the impact of construction by using best management practices to minimize site disturbance during construction and construction impacts (i.e., erosion) on Shevlin Park, Tumalo Creek, and forestlands.
- 3.3.9.7: Coordinate with the City of Bend for mitigation of impacts to City infrastructure from development within the Transect.

# Section 4.2 Urbanization

## Background

This section describes the coordination between the County and the cities of Bend, La Pine, Redmond and Sisters on Urban Growth Boundaries (UGBs) and Urban Reserve Areas (URAs). Statewide Planning Goal 2 recognizes the importance of coordinating land use plans.

“City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.”

Oregon Revised Statute 197.015(5) goes further to define comprehensive plan coordination.

“A plan is “coordinated” when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible.”

## Population

An important basis for coordinating with cities is adopted population projections. Having an estimate of anticipated population is the first step to planning for future growth and conservation. ORS 195.025(1) requires counties to coordinate local plans and population forecasts. The County oversees the preparation of a population forecast in close collaboration with cities. This is important because the population of the County has increased significantly in recent decades and a coordinated approach allows cities to ensure managed growth over time.

**Table 4.2.1 – Population Growth in Deschutes County 1980 to 2010**

Sources	1980	1990	2000	2010
Population Research Center July 1 estimates	62,500	75,600	116,600	172,050
US Census Bureau April 1 counts	62,142	74,958	115,367	157,733

Source: As noted above

In 1996 Bend, Redmond, Sisters and the County reviewed recent population forecasts from the Portland State University Center Population and Research Center (PRC) and U.S. Census Bureau, Department of Transportation, Woods and Poole, Bonneville Power Administration and Department of Administrative Services Office of Economic Analysis. After reviewing these projections, all local governments adopted a coordinated population forecast. It was adopted by Deschutes County in 1998 by Ordinance 98-084.

The results of the 2000 decennial census and subsequent population estimates prepared by the PRC revealed that the respective populations of the County and its incorporated cities were growing faster than anticipated under the 1998 coordinated forecast. The cities and the County re-engaged in a coordination process between 2002 and 2004 that culminated with the County adopting a revised population forecast that projected population to the year 2025. It was adopted by Ordinance 2004-012 and upheld by the Land Use Board of Appeals on March 28, 2005.

The following table displays the 2004 coordinated population forecast for Deschutes County and the UGBs of the cities of Bend, Redmond, and Sisters.

**Table 4.2.2 – Coordinated Population Forecast 2000 to 2025**

<b>Year</b>	<b>Bend UGB</b>	<b>Redmond UGB</b>	<b>Sisters UGB</b>	<b>Unincorporated County</b>	<b>Total County</b>
2000	52,800	15,505	975	47,320	116,600
2005	69,004	19,249	1,768	53,032	143,053
2010	81,242	23,897	2,306	59,127	166,572
2015	91,158	29,667	2,694	65,924	189,443
2020	100,646	36,831	3,166	73,502	214,145
2025	109,389	45,724	3,747	81,951	240,811

Source: 2004 Coordinated Population Forecast for Deschutes County

The process through which the County and the cities coordinated to develop the 2000-2025 coordinated forecast is outlined in the report titled "Deschutes County Coordinated Population Forecast 2000-2025: Findings in Support of Forecast."

The fourth city in Deschutes County is the City of La Pine. Incorporated on November 7, 2006, the City of La Pine's 2006 population estimate of 1,590 was certified by PRC on December 15, 2007. As a result of La Pine's incorporation, Deschutes County updated its Coordinated Population Forecast with Ordinance 2009-006.

The purpose of this modification was to adopt a conservative 20 year population forecast for the City of La Pine that could be used by city officials and the Oregon Department of Land Conservation and Development to estimate its future land need and a UGB.

The following table displays the coordinated population forecast for Deschutes County, the UGBs of the cities of Bend, Redmond, and Sisters, and La Pine from 2000 to 2025. By extending the growth rate to the year 2025, La Pine's population will be 2,352. The non-urban unincorporated population decreases by 2,352 from its original projection of 81,951, to 79,599.

**Table 4.2.3 – Coordinated Population Forecast 2000 to 2025, Including La Pine**

<b>Year</b>	<b>Bend UGB</b>	<b>Redmond UGB</b>	<b>Sisters UGB</b>	<b>La Pine UGB</b>	<b>Unincorporated County</b>	<b>Total County</b>
2000	52,800	15,505	975	-	47,320	116,600
2005	69,004	19,249	1,768	-	53,032	143,053
2010	81,242	23,897	2,306	1,697	57,430	166,572
2015	91,158	29,667	2,694	1,892	64,032	189,443
2020	100,646	36,831	3,166	2,110	71,392	214,145
2025	109,389	45,724	3,747	2,352	79,599	240,811

Source: 2004 Coordinated Population Forecast for Deschutes County – updated 2009

**2030 Population Estimate**

This Comprehensive Plan is intended to manage growth and conservation in the unincorporated areas of the County until 2030. Because the official population forecast extends only to 2025, County staff used conservative average annual growth rates from the adopted population forecast to estimate population out to 2030. The following table estimates Deschutes County population by extending the adopted numbers out an additional five years.

**Table 4.2.4 – Deschutes County 2030 Population Forecast**

Year	Bend UGB	Redmond UGB	Sisters UGB	La Pine UGB	Unincorporated County	Total County
2030	119,009	51,733	4,426	2,632	88,748	266,538

Source: County estimates based on the 2004 Coordinated Population Forecast as shown below

Bend's average annual growth rate from 2025 to 2030 is 1.70%

Redmond's average annual growth rate from 2025 to 2030 is 2.50%

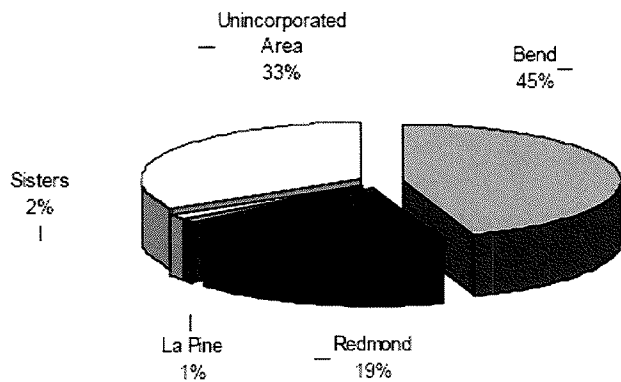
Sisters' based their population on forecasted rates of building growth, residential housing units, and persons per dwelling unit

La Pine's average annual growth rate from 2025 to 2030 is 2.20%

Deschutes County's unincorporated area average annual growth rate from 2025 to 2030 is 2.20%

As the pie chart below indicates, if population occurs as forecasted, 67% of the County's population will reside in urban areas by 2030.

**In 2030**



**Figure 4.1 Deschutes County 2030 Estimated Population**

Such growth will undoubtedly require strategically managing the provision of public services and maintaining adequate amounts of residential, commercial and industrial lands. Growth pressures will also require programmatic approaches to maintain open spaces, natural resources, and functional ecosystems that help define the qualities of Deschutes County.

**Urban Growth Boundary Amendments**

**Bend**

The City of Bend legislatively amended its UGB as part of a periodic review acknowledgment in December 2004. The Bend City Council and the Board of County Commissioners adopted concurrent ordinances that expanded the Bend UGB by 500 acres and satisfied a 20 year demand for industrial land.

In July 2007, the Bend-La Pine School District received approvals to expand the City of Bend UGB to include two properties for the location of two elementary schools, one at the Pine Nursery, the other on Skyliner Road. In 2014, the Bend-La Pine School district received approval to include a 33-acre site within the UGB near Skyliners Road to facilitate the construction of a public middle school.

The Bend City Council and the Board of County Commissioners approved a legislative amendment to the Bend UGB in September 2016. The adopted amendment added 2,380 acres of land intended to satisfy a 20-year land need for needed housing, employment, and public uses

from 2008 to 2028. The adopted UGB amendment also satisfied the terms of a 2010 Remand Order from the Oregon Land Conservation and Development Commission (10-REMAND-PARTIAL ACKNOW-001795).

The City of Bend UGB amendment identified 5 existing neighborhood typologies within the City, with the “Transect” being the defined neighborhood typology which “provides a transitional residential development pattern from urban to rural using a variety of housing types integrated with the surrounding natural landscape to minimize the impact on sensitive eco-systems, wildlife and to reduce the risk of wildfire.” The City applied this Transect concept to specific areas added to the UGB identified as the “Shevlin Area” and the “West Area” and created area-specific policies for those areas to recognize the unique characteristics of the area and create a transition from higher densities within the city to lower densities extending westward to the City of Bend UGB . In coordination with the city, Deschutes County has continued this concept for the areas in the county on the west side of Bend adjacent to the “Shevlin” and “West Area” in its Rural Housing elements and policies found in Chapter 3 of this Comprehensive Plan.

#### *Sisters*

The City of Sisters legislatively amended its UGB in September 2005 when its City Council and the Board of County Commissioners adopted respective ordinances. The Sisters UGB expansion covered 53 acres and satisfied a 20 year demand for residential, commercial, light industrial, and public facility land. In March 2009, Sisters amended their UGB to facilitate the establishment of a 4-acre fire training facility for the Sisters/Camp Sherman Fire District.

#### *Redmond*

The City of Redmond legislatively amended its UGB in August 2006 when its City Council and the Board of County Commissioners adopted respective ordinances. The Redmond UGB expansion covered 2,299 acres and satisfied a 20 year demand for residential and neighborhood commercial land.

#### *La Pine*

In 2012 La Pine adopted its first Comprehensive Plan. La Pine established a UGB that matches the city limits, because the City contains sufficient undeveloped land for future housing, commercial and industrial needs over a 20-year period. The Plan map includes land use designations intended to provide an arrangement of uses to ensure adequate and efficient provision of public infrastructure for all portions of the City and UGB.

### **Urban Reserve Area**

#### *Redmond*

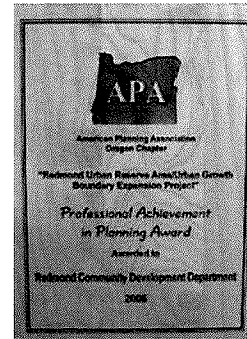
In December 2005, Redmond City Council and the Board of County Commissioners adopted a 5,661 acre URA for the City. It is the first URA in Central Oregon because most cities find planning farther into the future than the 20-year UGB timeframe, challenging.

### **Coordination**

As noted above, Statewide Goal 2 and ORS promote land use planning coordination. The purposes of the urbanization goals and policies in this section are to provide the link between urban and rural areas, and to provide some basic parameters within which the urban areas of Deschutes County can develop, although the specific comprehensive plan for each community

remains the prevailing document for guiding growth in its respective area. These policies permit the County to review each city's comprehensive plan to ensure effective coordination.

*The Redmond and Deschutes County Community Development Departments received the Oregon Chapter of American Planning Association's (OAPA) Professional Achievement in Planning Award in 2006 for the "Redmond Urban Reserve Area / Urban Growth Boundary Expansion Project."*



*The following quote taken from the Oregon Chapter of the American Planning Association's 2006 Awards Program shows why the Redmond Community Development Department was chosen for this award.*

*"An outstanding effort to address Redmond's rapid population growth, including the successful designation of an Urban Reserve and the imminent designation of an Urban Growth Boundary, a "Framework Plan" with a requirement for master planning, and the establishment of "Great Neighborhood Principles."*

### **Central Oregon Large Lot Industrial Land Need Analysis**

During the 1990s, the Central Oregon region experienced a dramatic transformation from an economy concentrated largely in wood products into a service based economy serving a growing and diverse tourism and household base. Accelerated in-migration and tourism growth gave way to rapid economic expansion, escalation in home prices, and a systematic shift in the local economy from goods producing activities to service oriented industries. While initially representing a diversification of the local economy, this shift led to an over-reliance upon these types of industries.

During the recent recession, the regional economy's vulnerabilities became apparent. Suitable land for today's industrial development forms emerged as one of Oregon's most severe development challenges. In 2010, 2011, and 2012, Deschutes, Crook and Jefferson counties and their respective cities, undertook an unprecedented regional evaluation of the economic opportunities and constraints associated with users of large industrial parcels in the Central Oregon region. The purpose of this evaluation was to aid in providing a more diversified economic base for the region that would accommodate industrial uses with a need for larger lots than possibly may be currently available in any of the Central Oregon cities. As part of that evaluation, Deschutes County hired a consultant to draft an analysis of Central Oregon's opportunities, competitiveness, ability, and willingness to attract more basic industries. The analysis focused specifically on industries that require large lots. The result was a document called the Central Oregon Regional Economic Opportunity Analysis, and was the basis for Ordinance 2011-017, dated May 31, 2011.

Ordinance 2011-017 was appealed to the Land Use Board of Appeals by 1,000 Friends of Oregon ("1,000 Friends"). The appeal was stayed in early 2012 to allow Deschutes County, the Governor's Office, and 1,000 Friends to explore a settlement, which was ultimately reached in April, 2012. The settlement consisted of policy concepts focusing entirely on Central Oregon's short-term need for large-lot industrial sites as well as a commitment from the Department of Land Conservation and Development ("DLCD") to initiate rule-making that summer. The three counties, their respective cities, 1,000 Friends, and DLCD staff then engaged in drafting a

proposed rule. In August, the final draft of that rule was then sent to the Oregon Land Conservation and Development Commission (“LCDC”). As a result, in November, the LCDC adopted Oregon Administrative Rule (OAR) 660-024-0040 and 660-024-0045. That rule provides that the large lot industrial land need analysis agreed upon by all of the parties, once adopted by each of the participating governmental entities, would be sufficient to demonstrate a need for up to nine large industrial sites in Central Oregon. Six of the sites will be made available initially. Three more sites may be added under the rule as the original sites are occupied. After the adoption of the new OARs, Deschutes County voluntarily repealed Ordinance 2011-017 and adopted a new ordinance, Ordinance 2013-002, in accordance with the OARs.

Utilizing the new OARs, Ordinance 2013-002 emphasized Central Oregon’s short term need for a critical mass of competitive and diverse vacant, developable industrial sites. An additional necessary component is an intergovernmental agreement (“IGA”) between the region’s jurisdictions and the Central Oregon Intergovernmental Council (“COIC”). Through the IGA, COIC will provide oversight of the short-term land supply of large-lot industrial sites to enable the region to become competitive in industrial recruitment. Once each of the three counties and their respective cities adopt similar ordinances and enter into an IGA with COIC, the large lot sites will enable industrial recruitment opportunities to attract potential industrial users to consider the region that may not have otherwise without the availability of these large lots.

Participating local governments will review the program after all nine sites have been occupied or after ten years, whichever comes first.



## Section 4.2 Urbanization Policies

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### Goals and Policies

**Goal 1**      **Coordinate with cities, special districts and stakeholders to support urban growth boundaries and urban reserve areas that provide an orderly and efficient transition between urban and rural lands.**

Policy 4.2.1    Participate in the processes initiated by cities in Deschutes County to create and/or amend their urban growth boundaries.

Policy 4.2.2    Promote and coordinate the use of urban reserve areas.

Policy 4.2.3    Review the idea of using rural reserves.

**Goal 2**      **Coordinate with cities, special districts and stakeholders on urban growth area zoning for lands inside urban growth boundaries but outside city boundaries.**

Policy 4.2.4    Use urban growth area zoning to coordinate land use decisions inside urban growth boundaries but outside the incorporated cities.

Policy 4.2.5    Negotiate intergovernmental agreements to coordinate with cities on land use inside urban growth boundaries and outside the incorporated cities.

Policy 4.2.6    Develop urban growth area zoning with consideration of the type, timing and location of public facilities and services provision consistent with city plans.

Policy 4.2.7    Adopt by reference the comprehensive plans of Bend, La Pine, Redmond and Sisters, as the policy basis for implementing land use plans and ordinances in each city's urban growth boundary.

**Goal 3**      **Coordinate with cities, special districts and stakeholders on policies and zoning for lands outside urban growth boundaries but inside urban reserve areas.**

Policy 4.2.8    Designate the Redmond Urban Reserve Area on the County Comprehensive Plan Map and regulate it through a Redmond Urban Reserve Area (RURA) Combining Zone in Deschutes County Code, Title 18.

Policy 4.2.9    In cooperation with the City of Redmond adopt a RURA Agreement consistent with their respective comprehensive plans and the requirements of Oregon Administrative Rule 660-021-0050 or its successor.

Policy 4.2.10    The following land use policies guide zoning in the RURA.  
a. Plan and zone RURA lands for rural uses, in a manner that ensures the orderly, economic and efficient provision of urban services as these lands are brought into the urban growth boundary.  
b. New parcels shall be a minimum of ten acres.  
c. Until lands in the RURA are brought into the urban growth boundary, zone changes or plan amendments shall not allow more intensive uses or uses that

generate more traffic, than were allowed prior to the establishment of the RURA.

- d. For Exclusive Farm Use zones, partitions shall be allowed based on state law and the County Zoning Ordinance.
- e. New arterial and collector rights-of-way in the RURA shall meet the right-of-way standards of Deschutes County or the City of Redmond, whichever is greater, but be physically constructed to Deschutes County standards.
- f. Protect from development existing and future arterial and collector rights-of-way, as designated on the County's Transportation System Plan.
- g. A single family dwelling on a legal parcel is permitted if that use was permitted before the RURA designation.

Policy 4.2.11 Collaborate with the City of Redmond to assure that the County-owned 1,800 acres in the RURA is master planned before it is incorporated into Redmond's urban growth boundary.

**Goal 4 To build a strong and thriving regional economy by coordinating public investments, policies and regulations to support regional and state economic development objectives in Central Oregon.**

Policy 4.2.12 Deschutes County supports a multi-jurisdictional cooperative effort to pursue a regional approach to establish a short-term supply of sites particularly designed to address out-of-region industries that may locate in Central Oregon.

Policy 4.2.13 Deschutes County recognizes the importance of maintaining a large-lot industrial land supply that is readily developable in Central Oregon.

Policy 4.2.14 The Central Oregon Regional Large Lot Industrial Land Need Analysis ("Analysis"), adopted by Ordinance 2013-002 is incorporated by reference herein.

Policy 4.2.15 Within 6 months of the adoption of Ordinance 2013-002, in coordination with the participating local governments in Central Oregon, Deschutes County shall, execute an intergovernmental agreement ("IGA") with the Central Oregon Intergovernmental Council ("COIC") that specifies the process of allocation of large lot industrial sites among the participating local governments.

Policy 4.2.16 In accordance with OAR 660-024-004 and 0045, Deschutes County, fulfilling coordination duties specified in ORS 195.025, shall approve and update its comprehensive plan when participating cities within their jurisdiction legislatively or through a quasi-judicial process designate regionally significant sites.

Policy 4.2.17 Deschutes County supports Economic Development of Central Oregon ("EDCO"), a non-profit organization facilitating new job creation and capital investment to monitor and advocate for the region's efforts of maintaining an inventory of appropriate sized and located industrial lots available to the market

Policy 4.2.18 Deschutes County will collaborate with regional public and private representatives to engage the Oregon Legislature and state agencies and their

commissions to address public facility, transportation and urbanization issues that hinder economic development opportunities in Central Oregon.

**Policy 4.2.19** Deschutes County will strengthen long-term confidence in the economy by building innovative public to private sector partnerships.

# Section 5.10 Goal Exception Statements

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## Background

The purpose of this section is to identify the lands where Deschutes County demonstrated an exception to meeting the requirements of the Statewide Planning Goals. The intent of goal exceptions is to allow some flexibility in rural areas under strictly defined circumstances. Goal exceptions are defined and regulated by Statewide Planning Goal 2 and Oregon Administrative Rule 660-004 (excerpt below).

*660-004-0000(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met.*

## Statewide Planning Goals with Deschutes County Exceptions

- Goal 3 Agricultural Lands
- Goal 4 Forest Lands
- Goal 11 Public Facilities and Services
- Goal 14 Urbanization

Three types of exceptions are permitted by Oregon Administrative Rule 660-004

- Irrevocably committed
- Physically developed
- Reasons

The summary below identifies approved goal exceptions and identifies the adopting ordinance for those interested in further information. The ordinances listed are incorporated by reference into this Plan.

## 1979 Exceptions

### *Comprehensive Plan entire County – PL 20 - 1979*

During the preparation of the 1979 Comprehensive Plan it was apparent that many rural lands had already received substantial development and were committed to non-resource uses. Areas were examined and identified where Goal 3 and 4 exceptions were taken. At this time exceptions to Goals 11 and 14 were not required.

The total area excepted was 41,556 acres. These lands were residentially developed, committed to development or needed for rural service centers.

## Additional Exceptions

### *Bend Municipal Airport – Ordinances 80-203, 1980 and 80-222, 1980*

The Bend Municipal Airport received an exception to Goal 3 to allow for the necessary and expected use of airport property.

### *La Pine UUC Boundary – Ordinance 98-001, 1998*

Exceptions to Goals 3, 11 and 14 were taken to allow lands to be included in the La Pine UUC boundary and planned and zoned for commercial use.

*Spring River Rural Service Center – Ordinances 90-009, 1990; 90-010, 1990; 96-022, 1996; 96-045,, 1996*

A reasons exception was taken to Goal 14 to allow the establishment of the Spring River Rural Service Center on residentially designated lands.

*Burgess Road and Highway 97 – Ordinance 97-060, 1997*

An exception was taken to Goal 4 to allow for road improvements.

*Rural Industrial Zone – Ordinances 2010-030, 2010; 2009-007, 2009*

Two separate ordinances for rural industrial uses. The 2009 exception included an irrevocably committed exception to Goal 3 and a reasons exception to Goal 14 with a Limited Use Combining Zone for storage, crushing, processing, sale and distribution of minerals. The 2010 exception took a reasons exception to Goal 14 with a Limited Use Combining Zone for storage, crushing, processing, sale and distribution of minerals.

*Prineville Railway – Ordinance 98-017*

An exception was taken to Goal 3 to accommodate the relocation of the Redmond Railway Depot and the use of the site for an historic structure to be utilized in conjunction with the Crooked River Dinner Train operations.

*Resort Communities – Ordinance 2001-047, 2001*

An exception was taken to Goal 4 for Black Butte Ranch and Inn of the 7<sup>th</sup> Mountain/Widgi Creek during the designation of those communities as Resort Communities under OAR 660-22.

*Barclay Meadows Business Park – Ordinance 2003-11, 2003*

A reasons exception was taken to Goal 3 to include certain property within the Sisters Urban Growth Boundary.

*Sisters School District # 6 – Ordinance 2003-11, 2003*

A reasons exception was taken to Goal 3 to include certain property within the Sisters Urban Growth Boundary.

*Sisters Organization of Activities and Recreation and Sisters School District #6 – Ordinance 2003-017, 2003*

A reasons exception was taken to Goal 4 to include certain property within the Sisters Urban Growth Boundary.

*Oregon Water Wonderland Unit 2 Sewer District – Ordinances 2010-015, 2010; 2003-015, 2003*

A reasons exception was taken to Goals 4 and 11 to allow uses approved by the Board of County Commissioners in PA-02-5 and ZC-02-3 as amended by PA-09-4.

*City of Bend Urban Growth Boundary Amendment (Juniper Ridge) – Ordinance 97-060. 1997*

An exception was taken to Goal 3 to allow an amendment of the Bend Urban Growth Boundary to incorporate 513 acres for industrial uses.

*Joyce Coats Revocable Trust Johnson Road and Tumalo Reservoir Road Properties – Ordinance 2005-015, 2005*

An irrevocably committed exception was taken to Goal 3 to allow a change of comprehensive plan designation from Surface Mining to Rural Residential Exception Area and zoning from Surface Mining to Multiple Use Agriculture for Surface Mine Sites 306 and 307.

*Watson/Generation Development inc – Ordinance 2005-015*

An exception was taken to Goal 3 to include a portion of agricultural property.

*Oregon Department of Transportation – Ordinance 2005-019, 2005*

An exception was taken to Goal 3 to include a portion of agricultural property.

*Conklin/Eady Property – Ordinance 2005-035, 2005*

An exception was taken to Goal 3 to include a portion of agricultural property.

*City of Sisters Property – Ordinance 2005-037, 2005*

An exception was taken to Goal 4 to include a portion of forest property.

*McKenzie Meadows Property – Ordinance 2005-039, 2005*

An exception was taken to Goal 4 to include a portion of forest property.

*Bend Metro Park and Recreation District Properties – Ordinance 2006-025*

A reasons exception was taken to Goal 3 to include a portion of agricultural property.

*Harris and Nancy Kimble Property and Portion of CLR, Inc Property A.K.A. the Klippel Pit Property – Ordinance 2008-001, 2008*

An irrevocably committed exception was taken to Goal 3 to allow reclassification and zoning from Surface Mine to Rural Residential Exception Area and Rural Residential 10 acre for Surface Mine Site 294.

*Sunriver Service District, Sunriver Fire Department – Ordinance 2014-021, 2014*

A reasons exception was taken to Goal 4 to include a portion of forest property. To ensure that the uses in the Sunriver Utility District Zone on the approximate 4.28 acre site of Tax Lot 102 on Deschutes County Assessor's Map 19-11-00 are limited in nature and scope to those justifying the exception to Goal 4 for the site, the Sunriver Forest (SUF) zoning on the subject site shall be subject to a Limited Use Combining Zone, which will limit the uses on the subject site to a fire training facility and access road for the Sunriver Service District and Sunriver Fire Department.

*Frances Ramsey Trust Property – Ordinance 2014-027, 2014*

An "irrevocably committed" exception was taken to Goal 14 to allow for reclassification and rezoning from agricultural property to Rural Industrial for a 2.65 acre portion of a parcel zoned EFU/RI.

*Westside Transect Zone – Ordinances 2019 – 001, 2019*

Reasons exceptions to Goals 3, 4, and 14 were taken to allow the application of the Westside Transect Zone to 717 acres of land on the west side of Bend between the urban area and the park and public lands to the west for the development of stewardship communities where low density residential communities are developed and managed to protect wildlife habitat and establish wildfire mitigation and prevention strategies.

## Section 5.11 Goal 5 Adopted Ordinances

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As noted in Section 2.4 of this Plan, adopted and acknowledged Goal 5 inventories, ESEEs and programs are retained in this Plan. Generally the Goal 5 inventories and ESEEs were adopted into the previous Comprehensive Plan or Resource Element and the Goal 5 programs were adopted into the Zoning Code. The County does not have a complete listing of Goal 5 inventory and ESEE ordinances, but will continue to research those ordinances. The following list is a start in listing all Goal 5 ordinances that are retained in this Plan.

- 80-203 Misc. Goal 5
- 85-001 Geothermal Resources
- 86-019 Deschutes River Corridor
- 90-025 Mining
- 90-028 Mining
- 90-029 Mining
- 92-018 Historic and Cultural
- 92-033 Open Space, LM
- 92-040 Fish and Wildlife
- 92-041 Fish and Wildlife (wetlands and riparian)
- 92-045 Wetlands RE
- 92-051 Misc. including Goal 5
- 92-052 Misc. Goal 5
- 92-067 Mining
- 93-003 Misc. Goal 5
- 94-003 Misc. Goal 5
- 94-006 Historic and Cultural
- 94-007 Wetlands and Riparian areas
- 94-050 Mining
- 95-038 Misc. Goal 5
- 95-041 Mining
- 96-076 Mining
- 99-019 Mining
- 99-028 Mining
- 2001-027 Mining
- 2001-038 Mining
- 2001-047 Mining
- 2001-018 Fish and Wildlife
- 2003-019 Mining
- 2005-025 Historic and Cultural
- 2005-031 Mining
- 2007-013 Mining
- 2008-001 Mining
- 2011-008 South Deschutes County LWI
- 2011-014 Mining

## Section 5.12 Legislative History

### Background

This section contains the legislative history of this Comprehensive Plan.

**Table 5.12.1 Comprehensive Plan Ordinance History**

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



2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.

2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18; 1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

2018-006	7-23-18/7-23-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial
2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
<u>2019 – 001</u>	<u>01-16-19/4/16/19</u>	<u>1.3, 3.3, 4.2, 5.10, 23.01</u>	<u>Comprehensive Plan and text amendment to add a new Westside Transect Zone</u>



**SOUTH TRANSECT**

LAND LOCATED IN THE NORTHEAST 1/4, SOUTHWEST 1/4, AND THE SOUTHEAST 1/4 OF SECTION 26 AND IN THE NORTHEAST 1/4 AND THE NORTHWEST 1/4 OF SECTION 35 OF, TOWNSHIP 17 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 26, 27, 34, AND 35;

THENCE NORTH 00°02'15" WEST 81.16 FEET;

THENCE NORTH 34°46'51" EAST 194.31 FEET;

THENCE NORTH 50°35'28" EAST 371.94 FEET;

THENCE NORTH 47°09'24" EAST 468.45 FEET;

THENCE NORTH 43°14'52" EAST 158.21 FEET;

THENCE NORTH 42°43'12" EAST 275.45 FEET;

THENCE NORTH 39°20'38" EAST 265.91 FEET TO A POINT ON THE NORTH LINE OF THE SW 1/4 OF THE SW 1/4 OF SECTION 26;

THENCE ALONG SAID NORTH LINE, SOUTH 89°43'12" EAST 129.28 FEET TO THE SW 1/16 CORNER OF SECTION 26;

THENCE ALONG THE WEST LINE OF THE NE 1/4 OF THE SW 1/4 OF SECTION 26, NORTH 00°02'48" EAST 168.29 FEET;

THENCE NORTH 36°30'07" EAST 306.86 FEET;

THENCE NORTH 38°57'39" EAST 228.65 FEET;

THENCE NORTH 24°38'33" EAST 166.93 FEET;

THENCE NORTH 50°39'41" EAST 156.65 FEET;

THENCE NORTH 35°12'19" EAST 227.84 FEET;

THENCE NORTH 39°05'47" WEST 373.01 FEET TO A POINT ON THE NORTH LINE OF THE NE 1/4 OF THE SW 1/4 OF SECTION 26;

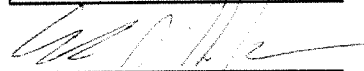
THENCE ALONG SAID NORTH LINE, SOUTH 89°33'40" EAST 921.81 FEET TO THE CENTER 1/4 CORNER OF SECTION 26;

THENCE NORTH 00°02'10" EAST 1316.45 FEET TO THE CENTER-NORTH 1/16 CORNER OF SECTION 26;

THENCE ALONG THE NORTH LINE OF THE SW 1/4 OF THE NE 1/4 OF SECTION 26, SOUTH 89°43'49" EAST 268.01 FEET;

THENCE SOUTH 00°13'59" EAST 1652.37 FEET;  
THENCE NORTH 89°38'01" EAST 1054.01 FEET TO A POINT ON THE EAST LINE OF THE NW 1/4 OF THE SE 1/4 OF SECTION 26;  
THENCE SOUTH 00°13'35" WEST 994.95 FEET TO THE SOUTHEAST 1/16 CORNER OF SECTION 26;  
THENCE SOUTH 00°13'45" WEST 1315.53 FEET TO THE EAST 1/16 CORNER COMMON TO SECTIONS 26 AND 35;  
THENCE ALONG THE NORTH LINE OF SECTION 35, SOUTH 89°54'58" EAST 562.78 FEET;  
THENCE LEAVING SAID NORTH LINE, ALONG THE ARC OF A CURVE HAVING AN ARC LENGTH OF 129.27 FEET, A RADIUS OF 515.00 FEET, A TOTAL ANGLE OF 14°22'55", AND A CHORD WHICH BEARS SOUTH 23°34'46" WEST 128.93 FEET;  
THENCE SOUTH 30°46'13" WEST 120.44 FEET;  
THENCE ALONG THE ARC OF A CURVE HAVING AN ARC LENGTH OF 127.38 FEET, A RADIUS OF 585.00 FEET, A TOTAL ANGLE OF 12°28'33", AND A CHORD WHICH BEARS SOUTH 23°46'51" WEST 375.75 FEET;  
THENCE SOUTH 18°17'40" WEST 187.46 FEET;  
THENCE ALONG THE ARC OF A CURVE HAVING AN ARC LENGTH OF 376.32 FEET, A RADIUS OF 1965.00 FEET, A TOTAL ANGLE OF 10°58'22", AND A CHORD WHICH BEARS SOUTH 24°31'57" WEST 127.13 FEET;  
THENCE SOUTH 29°16'03" WEST 502.13 FEET;  
THENCE ALONG THE ARC OF A CURVE HAVING AN ARC LENGTH OF 19.63 FEET, A RADIUS OF 2447.87 FEET, A TOTAL ANGLE OF 00°27'34", AND A CHORD WHICH BEARS SOUTH 29°29'50" WEST 19.63 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST 1/4 OF SECTION 35;  
THENCE ALONG SAID SOUTH LINE, NORTH 89°57'40" WEST 1262.89 FEET TO THE CENTER-NORTH 1/16 CORNER OF SECTION 35;  
THENCE NORTH 89°54'39" WEST 2663.65 FEET TO THE NORTH 1/16 CORNER COMMON TO SECTIONS 35 AND 34;  
THENCE NORTH 00°13'03" EAST 1320.57 FEET TO THE POINT OF BEGINNING.  
CONTAINS 303.19 ACRES, MORE OR LESS.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
DEC. 16, 2009  
ERIK J. HUFFMAN  
70814

RENEWS: JUN. 30, 2019

**Coats Transect North  
December 10, 2018**

**All those portions of land located in Township 17 South, Range 11 East, Willamette Meridian, Deschutes County Oregon, more particularly described as follows:**

**Parcel 1-**The Northwest Quarter of the Southeast Quarter of Section 23; Excepting therefrom all that land conveyed to Bend Metropolitan Park and Recreation District by Bargain and Sale Deed recorded January 31, 2003 as Document No. 2003-07391, Deschutes County Official Records( Current Tax lot 17-11-23-502);

**Parcel 2-**The East half of the Southeast Quarter of Section 23 (Current Tax lots 17-11-23-500 and -503);

**Parcel 3-**The West half of the Southwest Quarter of Section 24 (Current Tax lots 17-11-24-600 and -700);

**Parcel 4-** All that portion of the Southwest Quarter of the Northwest Quarter of Section 24 described as Lot of Record 30 in Bargain and Sale Deed to CCCC LLC, an Oregon limited liability Company, recorded December 17, 2014 as Document No. 2014-42292, Deschutes County Official Records ( Current Tax lot 17-11-24-403);

**Parcel 5-**All that portion of the East half of the Northwest Quarter of Section 24, and portion of the Northwest Quarter of the Northeast Quarter of Section 24, conveyed to CCCC LLC, an Oregon limited liability Company, and described as Adjusted Coats LR# 28, in Bargain and Sale Deed recorded April 17, 2017 as Document No. 2017-14430, Deschutes County Official Records (Current Tax lot 17-11-24-102);

**Parcel 6-** All that portion of the East half of the Northwest Quarter of Section 24, and portion of the South half of the Southwest Quarter of Section 13, conveyed to KYLE COATS, and described as Adjusted Coats LR# 29, in Bargain and Sale Deed recorded April 17, 2017 as Document No. 2017-14435, Deschutes County Official Records (Current Tax lots 17-11-24-100 and 17-11-13-500);

**Parcel 7-**All that portion of the Southeast Quarter of Section 13, conveyed to EMRK,LLC, and described as Adjusted Coats LR# 13, in Bargain and Sale Deed recorded April 17, 2017 as Document No. 2017-14434, Deschutes County Official Records, **lying Southerly of the following described line;**

Commencing at the South quarter corner of said Section 13;

Thence North 00°05'07" East 797.56 feet along the West line of said Southeast Quarter Section 13 to the centerline of the Bend Feed Canal Pipeline and the **True Point of Beginning;**

Thence South 83°45'26" East 90.00 feet;

Thence North 42°10'15" East 270.13 feet;

Thence North 57°11'05" East 1271.52 feet;

Thence North 86°12'12" East 132.45 feet;

Thence North 55°09'08" East 607.11 feet to the boundary of that certain land described in Warranty Deed from Robert L. and Joyce E. Coats to David and Rebecca Weber, recorded April 29, 1998, as Instrument No. 98-17761, Deed 491-1007, Deschutes County Official Records;

Thence along said boundary of Instrument No. 98-17761 the following five courses;

South 42°53'00" East 206.08 feet;

Thence South 78°08'00" East 232.80 feet;

Thence North 61°22'00" East 129.90 feet;  
Thence North 11°50'30" West 250.00 feet;  
Thence North 34°29'30" West 189.50 feet;  
Thence leaving said boundary North 51°06'08" East 311.84 feet;  
Thence South 45°43'15" East 89.60 feet to the East line of said Southeast Quarter Section 13. (Currently portion of Tax lot 17-11-13-100)

**Parcel 8-** All that portion of the Southwest Quarter of Section 13, conveyed to EMRK,LLC, and described as Adjusted Coats LR# 13, in Bargain and Sale Deed recorded April 17, 2017 as Document No. 2017-14434, Deschutes County Official Records. (Currently portion of Tax lot 17-11-13-100)

**Together with:**

**Parcel 9-** All that portion of the North 1/2 of the Southwest Quarter of Section 18 Township 17 South, Range 12 East, Willamette Meridian, Deschutes County Oregon more particularly described as follows:

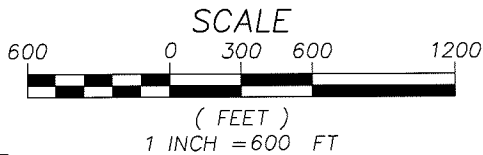
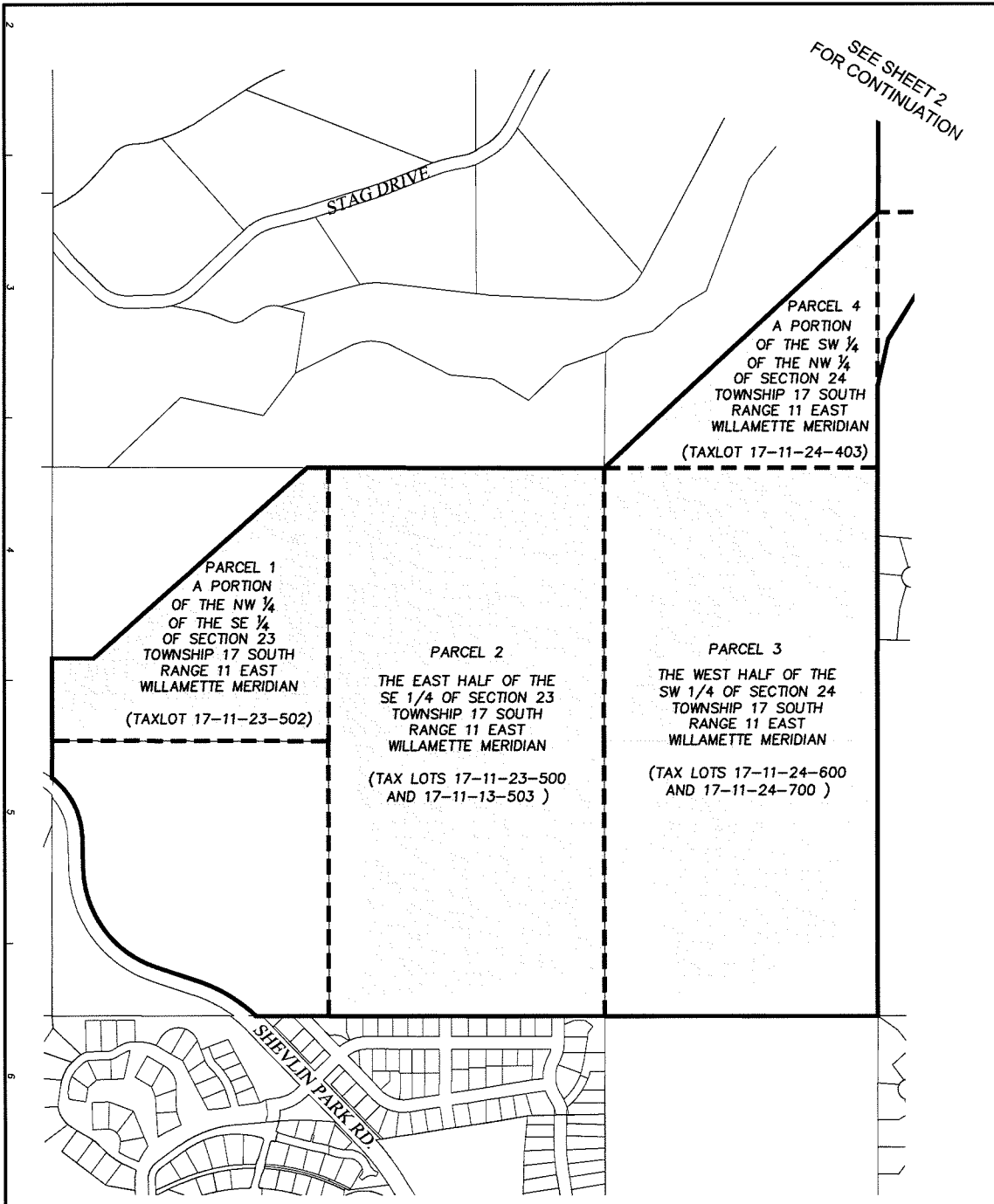
All that land described as Lot of Record 37 in Bargain and Sale Deed, recorded December 17, 2014 as Document No. 2014-42291; **excepting therefrom the following:**

**All that portion of said Lot of Record 37 lying northerly of the following described line, and westerly of that land described in Warranty Deed recorded August 31, 1981 in Volume 346, page 712, Deschutes County Official Records;**

Commencing at the Southwest corner of the Northwest quarter of the Southwest Quarter of said Section 18; Thence North 00°33'05" East 1115.17 feet along the West line of said Northwest Quarter to the **True Point of Beginning**; Thence South 45°43'15" East 109.42 feet to the boundary of said land described in said Warranty Deed, Volume 346, Page 712. (Currently portion of Tax lot 17-12-18-100)



SEE SHEET 2  
FOR CONTINUATION



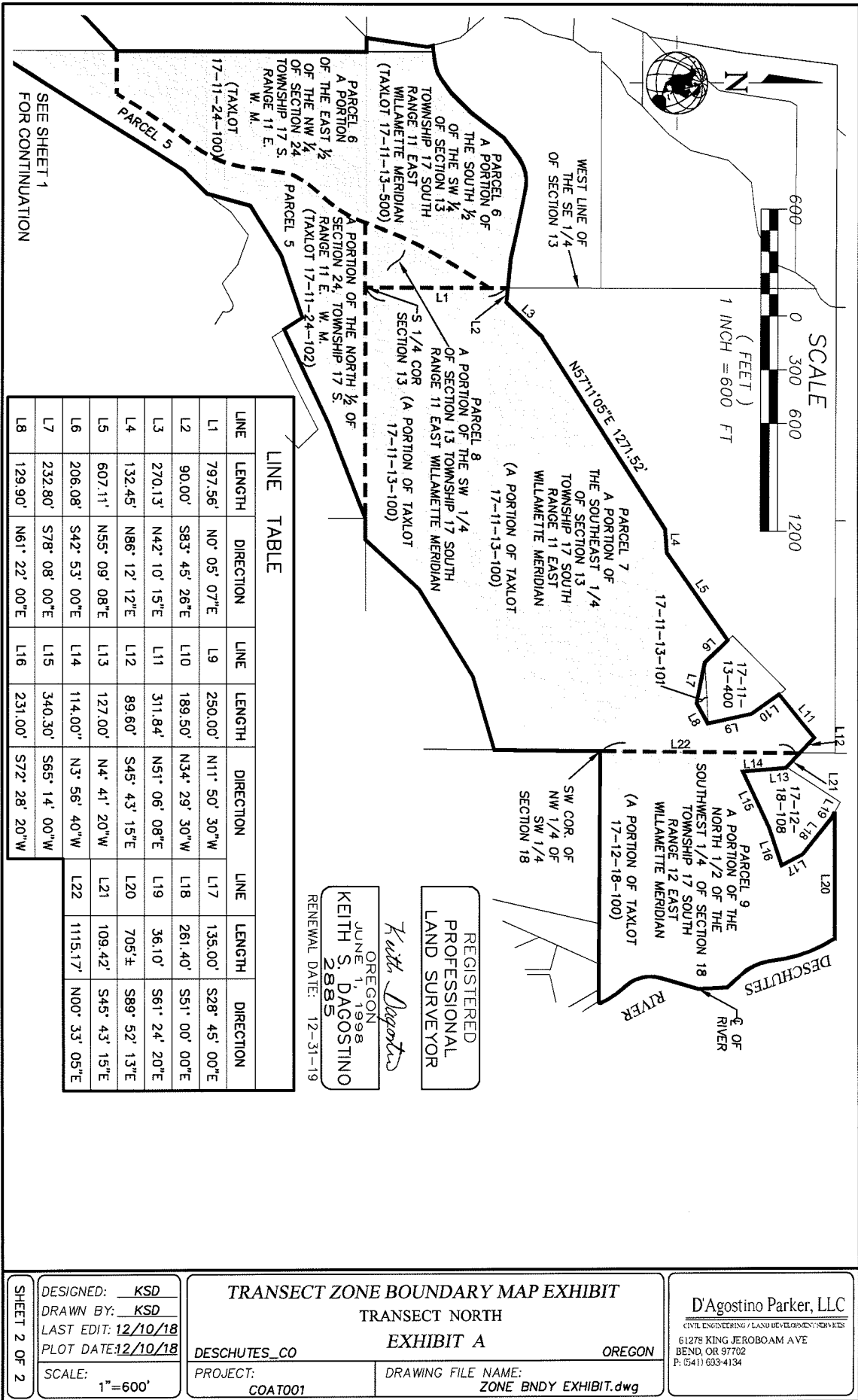
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Keith Dagostino*

OREGON  
JUNE 1, 1998  
KEITH S. DAGOSTINO  
2885  
RENEWAL DATE: 12-31-19

SHEET 1 OF 2	DESIGNED: <u>KSD</u>	<b>TRANSECT ZONE BOUNDARY MAP EXHIBIT</b>		D'Agostino Parker, LLC <small>CIVIL ENGINEERING / LAND DEVELOPMENT SERVICES</small> 61278 KING JEROBOAM AVE BEND, OR 97702 P: (541) 693-4134
	DRAWN BY: <u>KSD</u>	TRANSECT NORTH		
	LAST EDIT: <u>12/10/18</u>	<b>EXHIBIT A</b>		
	PLOT DATE: <u>12/10/18</u>	DESCHUTES_CO	OREGON	
	SCALE: <u>1"=600'</u>	PROJECT: <u>COAT001</u>	DRAWING FILE NAME: <u>ZONE BNDY EXHIBIT.dwg</u>	





LINE	LENGTH	DIRECTION	LINE	LENGTH	DIRECTION	LINE	LENGTH	DIRECTION
L1	797.56'	N0° 05' 07"E	L9	250.00'	N11° 50' 30"W	L17	135.00'	S28° 45' 00"E
L2	90.00'	S83° 45' 26"E	L10	189.50'	N34° 29' 30"W	L18	261.40'	S51° 00' 00"E
L3	270.13'	N42° 10' 15"E	L11	311.84'	N51° 06' 08"E	L19	36.10'	S61° 24' 20"E
L4	132.45'	N86° 12' 12"E	L12	89.60'	S45° 43' 15"E	L20	705.±	S89° 52' 13"E
L5	607.11'	N55° 09' 08"E	L13	127.00'	N4° 41' 20"W	L21	109.42'	S45° 43' 15"E
L6	206.08'	S42° 53' 00"E	L14	114.00'	N3° 56' 40"W	L22	1115.17'	N00° 33' 05"E
L7	232.80'	S78° 08' 00"E	L15	340.30'	S65° 14' 00"W			
L8	129.90'	N61° 22' 00"E	L16	231.00'	S72° 28' 20"W			

REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
*Keith S. Dacostino*  
 OREGON  
 JUNE 1, 1998  
 KEITH S. DACOSTINO  
 2885  
 RENEWAL DATE: 12-31-19

DESIGNED: KSD  
 DRAWN BY: KSD  
 LAST EDIT: 12/10/18  
 PLOT DATE: 12/10/18  
 SCALE: 1"=600'  
 SHEET 2 OF 2

**TRANSECT ZONE BOUNDARY MAP EXHIBIT**  
 TRANSECT NORTH  
**EXHIBIT A**  
 DESCHUTES\_CO OREGON  
 PROJECT: COAT001  
 DRAWING FILE NAME: ZONE BNDY EXHIBIT.dwg

**D'Agostino Parker, LLC**  
 CIVIL ENGINEERING / LAND DEVELOPMENT / SURVEYING  
 61278 KING JEROBOAM AVE  
 BEND, OR 97702  
 P: (541) 633-4134

**Exhibit E**

Administrative School District No. 1, Deschutes County  
Map and Tax lot: 1711230000600

That portion of the Southwest Quarter of the Southeast Quarter (SW1/4SE1/4), Section Twenty-three (23), Township Seventeen (17) South, Range Eleven (11), East of the Willamette Meridian, lying North of the Shevlin Market Road, Deschutes County, Oregon.

Excepting therefrom that portion conveyed to Deschutes County, a municipal corporation by Deed recorded August 15, 1977, Instrument No. 256-167, Deed Records.

# Administrative School District No. One, Deschutes County

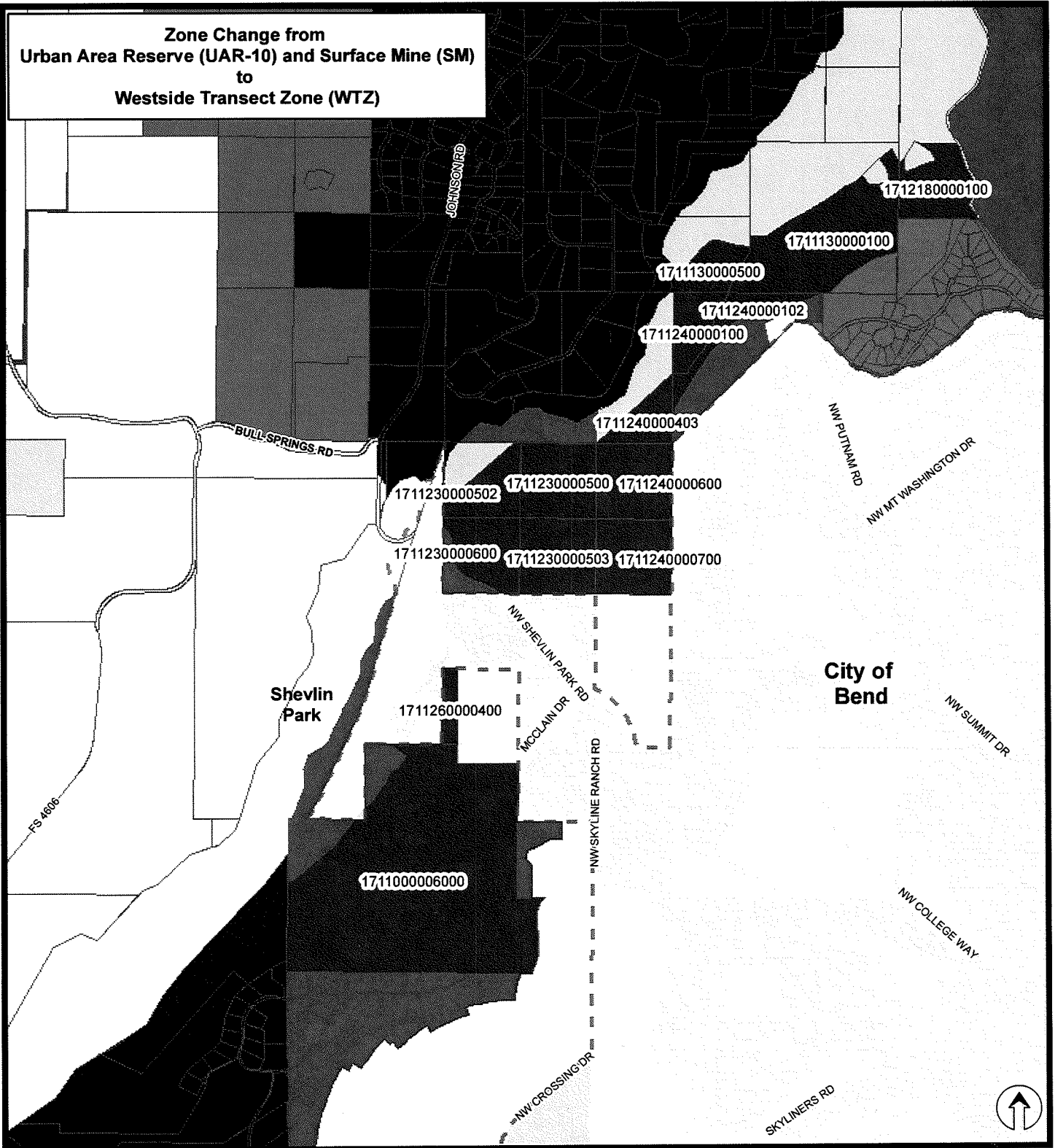
## Shevlin Property














Exhibit E



**Zone Change from  
Urban Area Reserve (UAR-10) and Surface Mine (SM)  
to  
Westside Transect Zone (WTZ)**



**Legend**

-  Bend City Limit
-  Urban Growth Boundary
-  WTZ - Westside Transect Zone
-  RS - Urban Standard Residential Zone
-  F1 - Forest Use 1
-  F2 - Forest Use 2
-  OS&C - Open Space & Conservation
-  RR10 - Rural Residential
-  SM - Surface Mining
-  UAR10 - Urban Area Reserve - 10 Acre Minimum
-  SR 2.5 - Residential 2.5 Acre Minimum

**PROPOSED  
ZONING MAP**

Exhibit "G"  
to Ordinance 2019-001



December 18, 2018

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

*Tony DeBore*  
Tony DeBore, Chair

*Phil Henderson*  
Phil Henderson, Vice Chair

*Tammy Baney*  
Tammy Baney, Commissioner

*Jana Keith*  
Jana Keith, Recording Secretary

ATTEST: Recording Secretary

Dated this 16 day of January 2019  
Effective Date: April 16, 2019

**Chapter 19.22. WESTSIDE TRANSECT ZONE - WTZ**

- 19.22.010. Purpose.**
- 19.22.020. Permitted Uses.**
- 19.22.030. Conditional Uses.**
- 19.22.040. Height Regulations.**
- 19.22.050. Lot Requirements.**
- 19.22.060. Land Divisions.**
- 19.22.070. Street Improvements.**
- 19.22.080. Off-Street Parking.**
- 19.22.090. Fence Standards.**

**19.22.010. Purpose.**

To accommodate and provide standards for land located between urban and rural, forested, park or federal areas that provides a transitional residential development pattern with densities ranging from one unit per 2.5 to 10 acres to guide development of communities which are designed and managed to protect wildlife habitat and establish and maintain wildfire mitigation and prevention strategies.

(Ord. 2019-001 §8, 2019)

**19.22.020. Permitted Uses.**

The following uses and their accessory uses are permitted outright:

- A. Single-family dwelling.
- B. Home occupation subject to DCC 19.88.140.
- C. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.

(Ord. 2019-001 §8, 2019)

**19.22.030. Conditional Uses.**

The following uses and their accessory uses may be permitted subject to site plan review and a conditional use permit as provided in DCC 19.76, 19.88, and 19.100:

- A. Public, parochial and private schools, including nursery schools, kindergartens and day nurseries; but not including business, dancing, trade, technical or similar schools subject to DCC 19.88.160.
- B. Parks and recreation facilities, community buildings and fire stations; but not including storage or repair yards, warehouses or similar uses.
- C. Utility facility, including wireless telecommunications facilities, subject to DCC 19.88.120.
- D. Churches.

(Ord. 2019-001 §8, 2019)

**19.22.040. Height Regulations.**

No building or structure shall be hereafter erected, enlarged or structurally altered to exceed 30 feet in height, except for schools which shall not exceed 45 feet in height.

(Ord. 2019-001 §8, 2019)

**19.22.050. Lot Requirements.**

The following requirements shall be observed:

- A. Lot Area. Each lot shall have a minimum of 2.5 acres.
- B. Lot Width. Each lot shall be a minimum width of 125 feet.
- C. Front Yard. The front yard shall be a minimum of 40 feet.

- D. Side Yard. There shall be a minimum side yard of 30 feet.
  - E. Rear Yard. There shall be a minimum rear yard of 30 feet.
  - F. Solar Setback. The solar setback shall be as prescribed in DCC 19.88.210.
  - G. Park Setback. The setback from Shevlin Park shall be a minimum of 100 feet.
  - H. Slope Setback. There shall be a minimum setback of 30 feet from the edge of any slope which exceeds 20%.
- (Ord. 2019-001 §8, 2019)

**19.22.060. Land Divisions.**

All residential subdivisions shall be master planned under DCC 17.16.050 and shall comply with the following.

- A. Master Development Plan Requirements. In addition to the overall master development plan requirements of DCC 17.16.050, such master development plans in the Westside Transect Zone shall also demonstrate:
  - 1. The lot configuration, street layout, parking lots, trails and any open space, common areas, and public parks are designed to be compatible with existing or projected uses on adjacent properties and provide sufficient public access to and through the subject property;
  - 2. The development contributes to the preservation of natural and physical features of the site; and
  - 3. Compliance with provisions of the Oregon State Scenic Waterway Act and the Deschutes County Landscape Management Combining Zone, as applicable.
- B. Residential lots shall be limited to 100 residential lots for the North Transect and 87 residential lots for the South Transect, as depicted on Figure 1 at the end of this chapter.
- C. The subdivision shall be designed in accordance with a Wildlife Habitat Management Plan and a Wildfire Mitigation Plan for the subdivided property as described below and submitted with the master development plan application.
  - 1. A Wildlife Habitat Management Plan prepared by a professional biologist which identifies important wildlife habitat and migration corridors and contains provisions for deed restrictions or restrictive covenants which include but are not limited to the following components:
    - a. Dedicated open space and/or resource management corridors with specific enforceable measures to aid in wildlife migration and protect habitat within these areas.
    - b. Specific vegetation management standards for areas within the open space and/or resource management corridors to protect wildlife habitat funded through homeowner assessment and performed, monitored and enforced by the homeowners association.
    - c. Specific setbacks from wildlife corridors.
    - d. Provisions which demonstrate coordination with the Wildfire Mitigation Plan described below to establish joint management objectives and designated areas for wildlife habitat measures which are outside of the defensible space and wildfire mitigation areas.
    - e. Requirements for annual review of the plan by a professional biologist and a reporting of those findings and any recommended alterations to the plan to the homeowner association.
  - 2. A Wildfire Mitigation Plan prepared by a professional forester that identifies and includes enforceable measures to prevent the ignition and spread of wildfire, and contains provisions for deed restrictions and/or restrictive covenants, enforced by a homeowners association, which include but are not limited to the following components:
    - a. Requirement to develop and maintain all residential lots in compliance with the most current National Fire Protection Association (NFPA) Zone 1, 2 and 3 standards, containing concentric rings extending outward from the structure implementing the defense in depth approach, with Zone 1: 30 feet adjacent to structures, Zone 2: 30 to 100 feet from structures, and Zone 3: 100 to 200 feet from structures.
    - b. Enhanced construction design and materials to prevent home ignition from external fire sources.

- c. Requirements and specific provisions for ongoing vegetation management funded through homeowner assessment and performed, monitored, and enforced by the homeowners association, as adopted by Deschutes County or as recommended in forest management plan, whichever standard is the most stringent.
  - d. Provisions which demonstrate coordination with the Wildlife Habitat Management Plan described above to establish joint management objectives and designated areas for wildlife habitat measures which are outside of the defensible space and wildfire mitigation areas.
  - e. Requirements for annual review of the plan by a professional forester and annual reporting of those findings and any recommended alterations to the plan to the homeowner association.
- D. A Stewardship Community Plan which includes provisions designed to educate residents of the unique resource values of the area and the community goals to utilize best management practices in the community development and operation to protect wildlife habitat and to establish and implement firewise community strategies.
- E. Mandate deed restrictions and/or restrictive covenants that implement lot-specific and applicable general provisions of the Wildlife Habitat Management and Wildfire Mitigation Plans. The deed restrictions and/or restrictive covenants must run with the land and must be enforceable by the homeowner association.
- F. Mandate that the recorded duties and obligations of the homeowners association compel the homeowners association to provide for enforcement of the deed and/or covenant restrictions, maintenance of any common property, open space or resource management corridors and private streets, and provide for the assessment and collection of fees to fund the deed and/or covenant restrictions.
- G. If phasing is proposed, a phasing plan for the tentative subdivision plats. Each tentative subdivision application shall include a plat map meeting the subdivision requirements of DCC Title 17, the Subdivision / Partition Ordinance, except as may be specifically modified herein.  
(Ord. 2019-001 §8, 2019)

**19.22.070. Street Improvements.**

Subject to applicable provisions of DCC Title 17, streets within the Westside Transect Zone may be private. For proposed private roads, on-street parking is prohibited and the owner shall submit proof of a homeowner's association, deed restriction or the equivalent to assure continued ownership, maintenance and repair of the private streets.

- A. Notwithstanding the allowance for private roads, the county may determine that public road(s) are required to meet public access and/or regional transportation needs and goals, including but not limited to a collector road to provide north-south connectivity through the Westside Transect Zone. The owner and homeowners association shall be jointly liable and responsible for all costs associated with initial construction of any such public road (including the one-year guarantee).  
(Ord. 2019-001 §8, 2019)

**19.22.080. Off-street Parking.**

Off-street parking shall be provided as required in DCC 19.80.  
(Ord. 2019-001 §8, 2019)

**19.22.090 Fence Standards.**

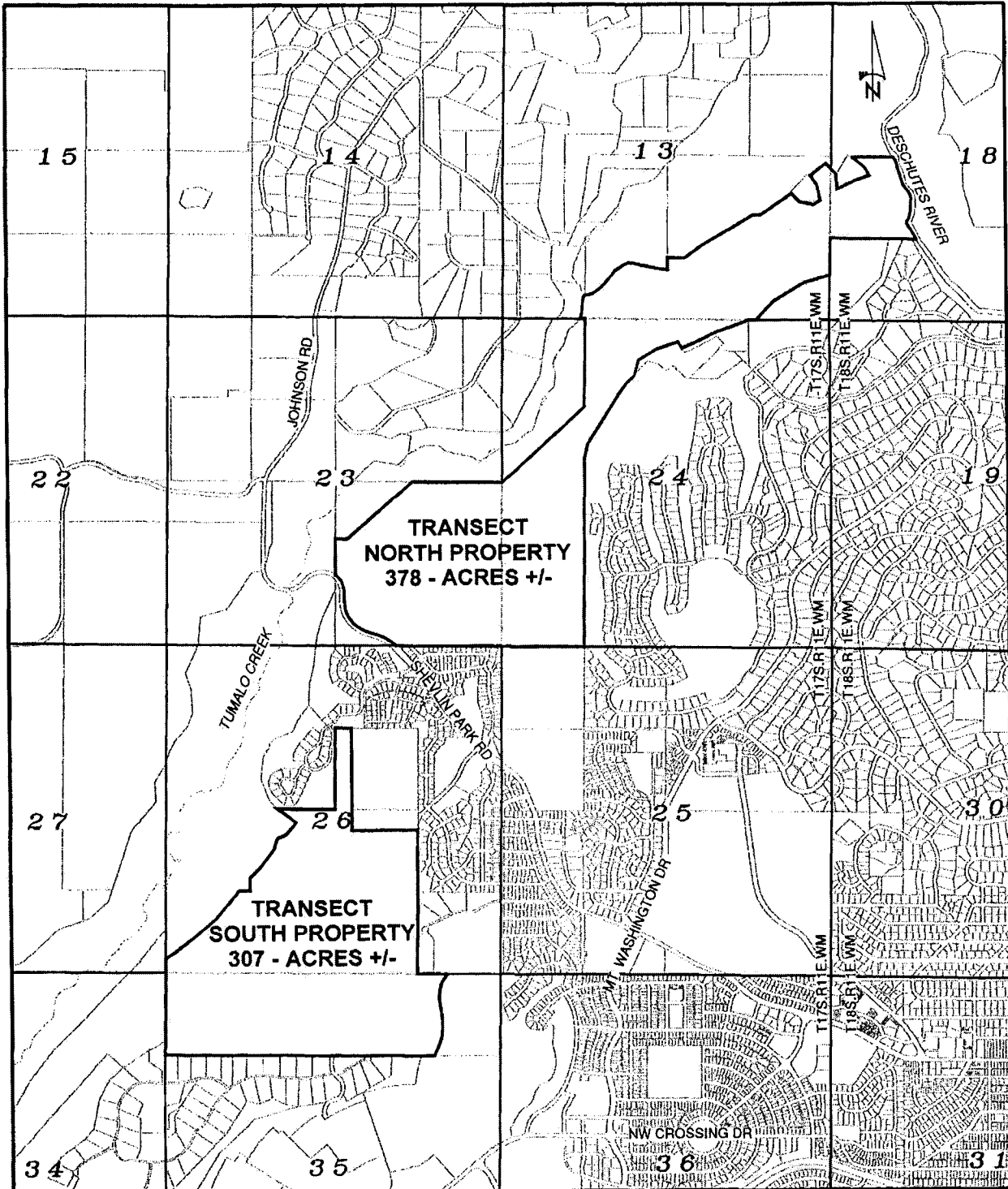
The following fencing provisions shall apply for any fences constructed as a part of residential development:

- A. New fences shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provided equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:

1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.
  2. The height of the fence shall not exceed 48 inches above ground level.
  3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.
- B. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.
- (Ord. 2019-001 §8, 2019)



CHAPTER 19.22 - FIGURE 1

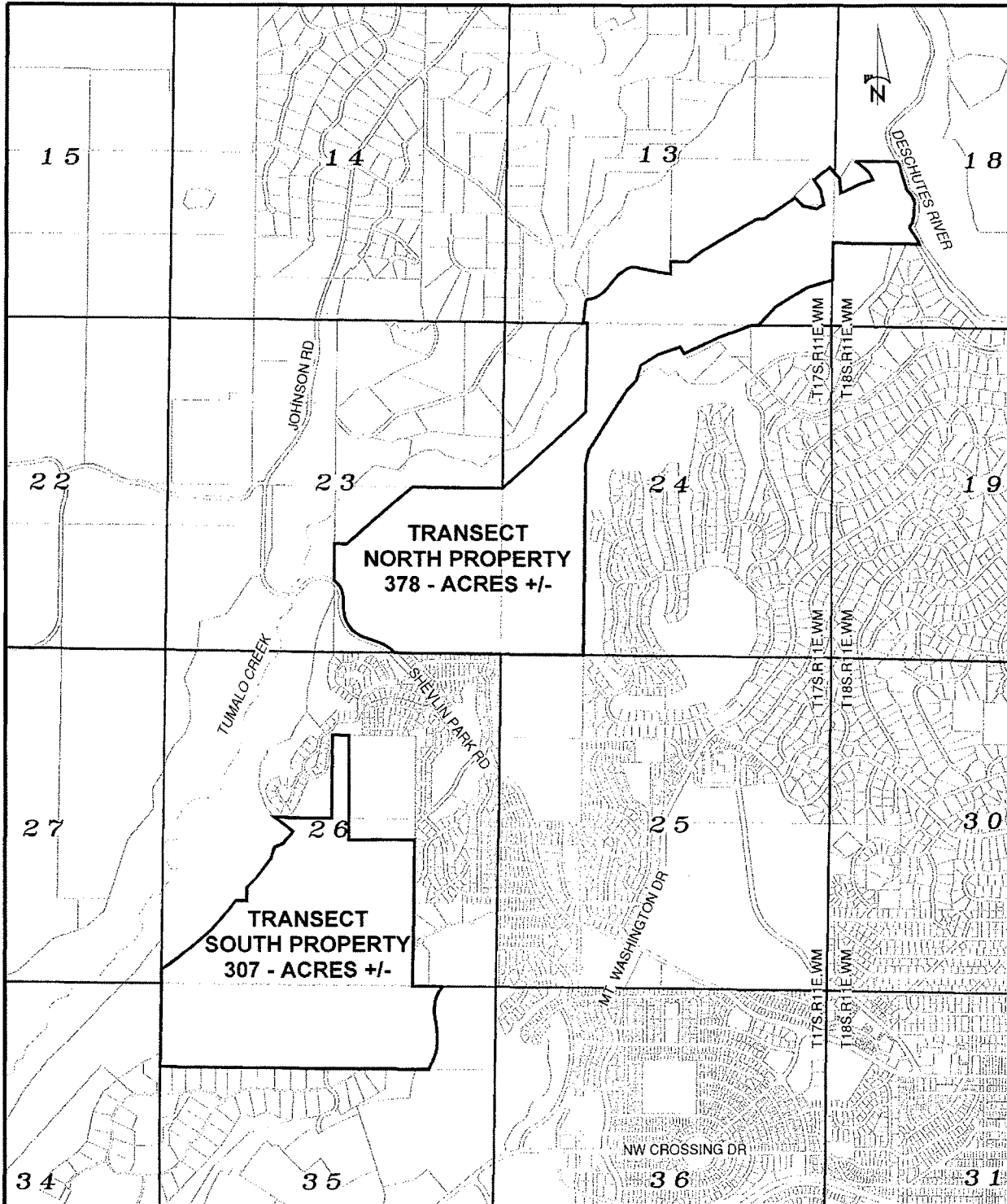


**BECON**  
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FOR:  
 DESCHUTES  
 COUNTY

**TRANSECT AREA**  
 T.17S & T.18S. R.11E. W.M.  
 DESCHUTES COUNTY, OREGON

CHAPTER 19.22 - FIGURE 1



 BECON <small>City, Interstate &amp; Land Services</small>	549 SW MILL VIEW WAY SUITE 105 BEND, OREGON 97702 (541) 633-3140 www.beconeng.com	FOR: DESCHUTES COUNTY
	TRANSECT AREA T.17S & T18S. R11.E. W.M. DESCHUTES COUNTY, OREGON	

REVIEWED  

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LEGAL COUNSEL

For Recording Stamp Only

**DECISION OF DESCHUTES COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**FILE NUMBERS:** 247-18-000612-ZC, 247-18-000613-PA and 247-18-000614-TA

**APPLICANTS/OWNERS:** Eric and Robin Coats; Kyles Coats; ERMK, LLC; CCCC, LLC; Bend La Pine School District; Matt Day; Rio Lobo Investments, LLC.

**AGENTS FOR APPLICANTS:**

Tia M. Lewis  
Schwabe, Williamson and Wyatt, PC  
360 SW Bond Street, Suite 500  
Bend, OR 97702

Myles Conway  
Marten Law PLLC  
404 SW Columbia Street, Suite 212  
Bend, OR 97702

**STAFF REVIEWER:** Zechariah Heck, Associate Planner

**REQUEST:** The applicants request approval of a comprehensive plan and zoning text amendment, as well as a zone change of approximately 717 acres of land from Urban Area Reserve and Surface Mine to the proposed "Westside Transect Zone ("WTZ").

**I. HEARINGS OFFICER'S DECISION:**

The Board adopts the attached Hearings Officer Gregory J. Frank decision as its findings in support of the Board's approval of the plan amendment, text amendment and zone change filed in file nos. 247-18-000612-ZC, 247-18-000613-PA and 247-18-000614-TA with the following clarifications:

- Whereas the Hearings Officer found the applicant adequately addressed the State Scenic Waterway Act, the Board determined that additional standards are necessary to be incorporated into the proposed zoning ordinance to ensure compliance with the State Scenic Waterway Act and the Landscape Management Combining Zone, if one is adopted in Title 19 at some point in the future.
- Whereas the Hearings Officer found the applicants have adequately coordinated with stakeholders like the Bend Park and Recreation District ("BPRD") to ensure access to significant wildlife and riparian habitat through public or non-profit ownership, the Board determined that it was important to include an additional standard into the master development plan requirements for land divisions to show the approximate locations and adequacy of transportation access through and to the subject

property. This requirement will further ensure land divisions within the WTZ will coordinate with BPRD.

- Whereas the Hearings Officer found the proposed requirements of the Wildfire Mitigation Plan for land divisions were adequate and met applicable approval criteria, the Board refined code language pertaining to defensible space.
- Whereas the Hearings Officer found the proposed WTZ code which allows for private streets is appropriate, the Board included a specific provision that allows the county to determine if public roads are required to meet public access and/or regional transportation needs and goals.
- Additionally, the Board also determined that several words within the proposed WTZ code, which the Hearings Officer approved, needed to be revised for better understanding and administration. These revisions are included in EXHIBIT H.

## **II. FINDINGS OF FACT:**

The Board adopts the following findings of fact in support of its decision:

- A. **Procedural History:** On November 2, 2018, Hearings Officer Gregory J. Frank issued a decision recommending that the Board approve the plan amendment, text amendment and zone change requested by the applicants.

On November 27, 2018, the Board held a hearing regarding the plan amendment, text amendment and zone change application.

On December 17, 2018, the Board deliberated on the application and discussed the issues identified above in Section I. The Board directed staff to revise the WTZ code.

On December 19, 2018, the Board continued deliberated on the application and discussed the issues identified above in Section I. The Board directed staff to revise the WTZ code and prepare written findings, including a draft ordinance to reflect its decision.

On January 2, 2019, the Board continued deliberations on the application, and, ultimately voted to approve the first reading of the application for the reasons provided in the Hearings Officer's decision as amended above, with the revised WTZ code as provided in EXHIBIT H.

On January 16, 2019, the Board voted to approve the second reading of the application for the reasons provided in the Hearings Officer's decision as amended above, with the revised WTZ code as provided in EXHIBIT H.

## **III. DECISION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the Deschutes County Board of Commissioners hereby **APPROVES** the plan amendment, text amendment and zone change proposed in file nos. 247-18-000612-ZC, 247-18-000613-PA and 247-18-000614-TA, as amended in Exhibit H of Ordinance No. 2019-001.

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

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

**FILE NUMBERS:** 247-18-000612-ZC, 247-18-000613-PA, 247-18-000614-TA

**HEARING DATE:** September 11, 2018, 6:00 p.m.

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

**APPLICANTS/OWNERS:** Eric and Robin Coats; Kyles Coats; ERMK, LLC; CCCC, LLC; Bend La Pine School District; Matt Day; Rio Lobo Investments, LLC.

**AGENTS FOR APPLICANTS:** Tia M. Lewis  
Schwabe, Williamson and Wyatt, PC  
360 SW Bond Street, Suite 500  
Bend, OR 97702

Myles Conway  
Marten Law PLLC  
404 SW Columbia Street, Suite 212  
Bend, OR 97702

**REQUEST:** Applicants request approval of a comprehensive plan and zoning text amendment as well as a zone change of approximately 717 acres of land from Urban Area Reserve and Surface Mine to the proposed "Westside Transect Zone."

**STAFF CONTACT:** Zechariah Heck, Associate Planner

**HEARINGS OFFICER:** Gregory J. Frank

**SUMMARY OF DECISION:** The Hearings Officer recommends the Deschutes County Board of County Commissioners approve Applicants' proposal to amend the Deschutes County Comprehensive Plan and Zoning Text, approve a zone change and approve Statewide Planning exceptions for Goal 3, Goal 4 and Goal 14, with conditions.

## **I. APPLICABLE STANDARDS AND CRITERIA**

### Deschutes County Code

Bend Urban Growth Boundary Zoning Ordinance: Title 19  
Procedures Ordinance: Title 22  
Comprehensive Plan: Title 23

### Oregon Administrative Rules

OAR 660  
Division 4, Interpretation of Goal 2 Exception Process  
Division 11, Public Facilities Planning  
Division 12, Transportation Planning  
Division 14, Application of Statewide Planning Goals to... Urban Development on Rural Lands  
Division 15, the Statewide Planning Goals and Guidelines

## **II. SYLLABUS**

**Reason for Syllabus:** The Hearings Officer acknowledges the complexity of the application in this case. The Hearings Officer also appreciates that the Hearings Officer's recommendations (the "Recommendations"), in this case, will undergo a de novo review by the Deschutes County Board of County Commissioners (the "Commission"). This Syllabus is not intended to be the Hearings Officer's legal findings; the complete legal findings follow the Syllabus. The Syllabus provides the reader of the Recommendations a summary of the major issues raised in this case and the Hearings Officer's perspective on those issues.

**Summary of Application:** Eric and Robin Coats, Kyles Coats, ERMK LLC, CCCC LLC, Bend La Pine School District, Matt Day, Rio Lobo Investments (the "Applicants") submitted an application with Deschutes County requesting approval of amendments to the Deschutes County Comprehensive Plan ("DCCP"), Bend Urban Growth Boundary Zoning Ordinance ("Title 19") and possible goal exceptions to Oregon Statewide Planning Goals ("Goals") 3, 4 and 14. Applicants proposed to add a new zone (Westside Transect Zone - hereafter the "WTZ"). The property subject to the application ("Subject Property") is approximately, per applicant (See Applicants' Proposed Findings - page 1), 717 acres and is located west of the City of Bend and East of Shevlin Park and Tumalo Creek. The application divided the Subject Property by the ownership of the Coats/EMRK/La Pine School District ("North Property") and Matt Day/Rio Lobo ("South Property").

**Listing of Major Issues Addressed in the Syllabus:** The issues listed below are those that the Hearings Officer believed to be significant and were clearly raised by participants during the hearing process. The Hearings Officer does not represent that the issues highlighted/summarized below include all issues raised during the application or even all issues important to participants.

**Issue #1: Is/Are Statewide Planning Goal Exceptions Required?** By way of background, the term “Goals,” under Oregon planning law, refers to the “mandatory statewide planning standards (“Goals”) adopted by” the Oregon Land Conservation and Development Commission (“LCDC”). The term “exception”, under Oregon planning law, refers to when the literal application of a Goal may not be allowed or possible; similar in concept to a “variance.” Finally, the term “resource lands”, for the purpose of this application, refers land that is considered Agricultural Land (Goal 3) and/or Forest Land (Goal 4).

**Goal 3 and Goal 4:** Applicants, in the Burden of Proof Statement and testimony at the public hearing, asserted that no Goal exceptions were required in this case. Applicants argued that the Subject Property was not and is not currently resource land, as defined and interpreted by courts and LCDC, and therefore Goal exceptions for Agricultural Lands (Goal 3) and Forest Lands (Goal 4) is/are not necessary in this application process.

The City of Bend (the “City”), in a Memorandum dated December 1, 2017, argued that the Hearings Officer should recommend to the Commission that “new” Statewide Planning Goal exceptions for Goals 3 and 4 must be taken. The City’s argument relied heavily upon a 1980 Exceptions Statement (copy attached to Applicant’s Burden Statement – Exhibit D). In summary, the 1980 Exceptions Statement was adopted by Deschutes County in response to LCDC’s direction and included “all lands remaining outside the 1980 Bend Urban Growth Boundary.” The 1980 Exceptions statement stated “the City and County are taking an exception to Goals 3 and 4 as they relate” to the Subject Property (and other property outside the City urban growth boundary). Applicants, Deschutes County Community Development staff (“Staff”) and the City agree that the 1980 Exceptions Statement included the Subject Property.

The City argued that Applicants’ proposed minimum density of one residential lot for every 2.5 acres constitutes an increase in density and/or intensity over what was approved/allowed by the 1980 Exceptions Statement. The City cited Oregon Administrative Rule (“OAR”) 660-004-0018 (1) which states, in part, that “exceptions to one goal or a portion of one goal...do[es] not authorize uses, densities, public facilities and service, or activities other than those recognized or justified by the applicable exception.” The City argued that the 1980 Exceptions Statement designated the Subject Property as an “urban reserve area” with a zoning classification of UAR-10 or “other protective zone.” UAR-10 generally allows a minimum lot size or density of one lot per 10 acres.

The City noted the 1980 Exception Statement also recognized, for areas already physically developed, a more intensive zoning designation of SR 2.5 (one lot per 2.5 acres). The City argued that a minimum density of one lot per 2.5 acres for the entire Subject Property, which was not physically developed (in whole or part), required a “new” or “revised” exception statement. Staff generally agreed with the City Goal 3 and Goal 4 exceptions arguments set forth in this paragraph. Staff, in the Staff Report, requested the Hearings Officer find that “new” Goal 3 and Goal 4 exceptions must be taken as part of any approval of this application.

The Hearings Officer found that the Subject Property was, before and at the time of adoption the 1980 Exception Statement was approved, "marginal resource land." Therefore, the County did approve exceptions to Goals 3 and 4 for the Subject Property. The Hearings Officer found that Applicants' proposed 2.5 acre minimum lot size, for the entire Subject Property, is a change in density (minimum lot size) compared to what was approved in the 1980 Exception Statement. The Hearings Officer found that "new" exceptions must be taken for Goals 3 and 4.

It should be noted that Applicants, in anticipation of the possibility that the Hearings Officer and/or Commission found a "new" or "revised" exception(s) for Goal 3 and/or Goal 4 was/were required, provided proposed findings. The Hearings Officer found that Applicants proposed findings for "new" exceptions for Goal 3 and Goal 4 met relevant laws/rules.

A careful reader of the Recommendations may perceive that the Hearings Officer findings that "new" Goal 3 and Goal 4 exceptions are required is inconsistent with the findings that Applicants' met the requirements for "new" Goal 3 and Goal 4 exceptions. The possible perceived inconsistency relates to evidence provided by Applicants that the Subject Property is not currently agricultural or forest land. The Hearings Officer acknowledged that Applicants proffered evidence that the Subject Property is not currently agricultural or forest land is credible. However, the careful reader will also note that the Hearings Officer's conclusion that "new" Goal 3 and Goal 4 exceptions are required is based upon circumstances existing at the time of the application; Goal 3 and Goal 4 exceptions were taken for the Subject Property because, as of the 1980 Exception Statement, the Subject Property was "marginal resource land" necessitating (at that time) Goal 3 and Goal 4 exceptions. Applicants' provided new information which the Hearings Officer found justified exceptions be taken for Goal 3 and Goal 4.

**Goal 14:** Goal 14, titled Urbanization, is focused on the orderly and efficient transition from rural and restricts the conversion of rural land to urban use. Applicants argued that the proposed WTZ zone minimum lot size of one lot per 2.5 acres is a rural use. The City and County Staff argued that the proposed WTZ zone minimum lot size of 2.5 acres is better characterized as an urban use. If the City and County Staff are correct then a Goal 14 exception is required.

Applicants and the City provided Goal 14 textual analysis and case law references in support of their arguments that the proposed WTZ zone minimum lot size of 2.5 acres per lot should be characterized as rural or urban. Based upon the Hearings Officer's review of the Goal 14 text and relevant Land Use Board of Appeals ("LUBA") and court cases, it is clear that there is no universally accepted formula for determining whether a particular minimum lot size (density) results in an urban or rural use category. The Hearings Officer notes that a 10-acre lot minimum, in most instances, would be considered rural and a 1-acre lot minimum lot size would be considered urban. The proposed 2.5-acre minimum lot size is in a grey area; not definitively rural but also not definitively urban. The Hearings Officer concluded that any recommendation to the Commission, regarding the characterization of the WTZ zone minimum lot size, would be subject to reasonable arguments from both sides. In the end the Hearings Officer found that



the most prudent recommendation to the Commission was that the proposed WTZ zone minimum lot size of 2.5 acres is a change from the minimum lot size provided in the 1980 Exception Statement and existing zoning. Therefore, the Hearings Officer found that a Goal 14 exception is required in this case.

**Applicants' Proposed Findings for Goal 3, Goal 4 and Goal 14:** Applicants provided "proposed findings" for taking of exceptions for Goal 3, Goal 4 and Goal 14. The Hearings Officer found the "proposed findings" for exceptions for Goal 3, Goal 4 and Goal 14 met all relevant requirements.

**Issue #2: How many lots allowed?** During the application process the number of proposed lots varied. Applicants agreed, and it is reflected in the attached proposed WTZ zoning ordinance, that the maximum number of lots for the WTZ Subject Property is 187.

**Issue #3: Does the application meet the requirements of the TPR?** Concerns were expressed that the application did not meet the requirements of the Transportation Planning Rule ("TPR"). Specifically, the City requested Applicants' need to obtain a written statement from the City that the systemwide benefits of mitigation are sufficient to balance the significant effects of the proposal, even though the improvements would not result in consistency for all performance standards. The Hearings Officer found that the Development Agreement attached to Applicants' 9/25/18 letter to the Hearings Officer would suffice as such a written statement. The Hearings Officer conditioned the Recommendations of approval upon the execution of the Development Agreement by Applicants or the City and Applicants agree to an alternative that meets the "written statement" requirement of the TPR.

**Issue #4: Are the Applicants required to provide "public access" to trails and should trail locations be established as part of any approval of the application in this case?** Bend Parks and Recreation, the Oregon Parks and Recreation Department, among others, expressed a desire that trails created in future land divisions on the Subject Property be required to be "public" and also to connect to public trails/accessways. Bend Parks and Recreation requested the Recommendations be conditioned upon (1) annexation of the North Property into the Park District, (2) include additional language in DCC 19.22.060 (add the words "trails" and "including trails"), and (3) clarify the meaning of "parks and recreation facilities." Additionally, comments were received from participants in the process suggesting that trails and trail connections should be made a part of any approval of this application.

The Hearings Officer found that the Deschutes County Comprehensive Plan does not require "public" recreational trails through or within the Subject Property. The Hearings Officer found Applicants' did not object to future annexation, as legally appropriate, into the Parks and Recreation District. Applicants' did not object to adding the "trails" language to the WTZ zoning code. The Hearings Officer found that Applicants proposal had sufficient/adequate built-in standards to ensure future developments within the WTZ boundary would comply with Deschutes County

Comprehensive Plan policies. The Hearings Officer found approval of DCC 19.22, as modified, would meet open space, parks and trail/accessway requirements.

**Issue #5: Did Applicants adequately coordinate with shareholders regarding access to habitat?** Staff, among others, expressed concerns that Applicants may not have adequately coordinated with stakeholders regarding access to wildlife habitat. The Hearings Officer found Applicants did adequately coordinate with stakeholders related to access to wildlife habitat.

**Issue #6: Did Applicants adequately address Scenic River laws/regulations?** Oregon Parks and Recreation Department raised issues related to the proximity of the Subject Property and the Deschutes River. Oregon Parks and Recreation appeared to dispute Applicants' position that there are no legally identified Goal 5 resources on the Subject Property; Oregon Parks noted that the North Property borders the Deschutes River – an Oregon Scenic Waterway. The Hearings Officer agreed with Applicants that no Goal 5 resources have been identified by the County to exist on the Subject Property. The Hearings Officer agreed with Applicants that the actions proposed in this application need not, at this time, demonstrate compliance the Oregon Scenic Waterway laws/rules. However, the Hearings Officer found that future development in areas that may be subject to the Oregon Scenic Waterway laws/rules must comply (at the time development is proposed) with such laws/rules.

### **III. FINDINGS OF FACT**

- A. LOCATION:** The application involves several properties detailed in *Table 1*, below. Note: Applicants divided and labeled the subject properties into the "North Property" and the "South Property" (collectively referred to as the "Subject Property"). Also provided below, *Figure 1* displays the North Property and *Figure 2* displays the South Property.

Table 1

<b>County Assessor Map No.</b>	<b>Situs Address</b>
<i>"North Property"</i>	
1711130000100	63285 Skyline Ranch Road
1711130000500	63200 Skyline Ranch Road
1711230000500	19050 Shevlin Park Road
1711230000502	No Situs Address
1711230000503	No Situs Address
1711240000100	63155 Skyline Ranch Road
1711240000102	63156 Skyline Ranch Road
1711240000403	63055 Skyline Ranch Road
1711240000600	62955 Skyline Ranch Road
1711240000700	62855 Skyline Ranch Road
1712180000100	63555 Skyline Ranch Road
1711230000600	No Situs Address
<i>"South Property"</i>	
1711260000400	3225 NW Shevlin Park Road
1711260000400	3229 NW Shevlin Park Road
1711000006000	62600 McClain Drive

Figure 1 - North Property

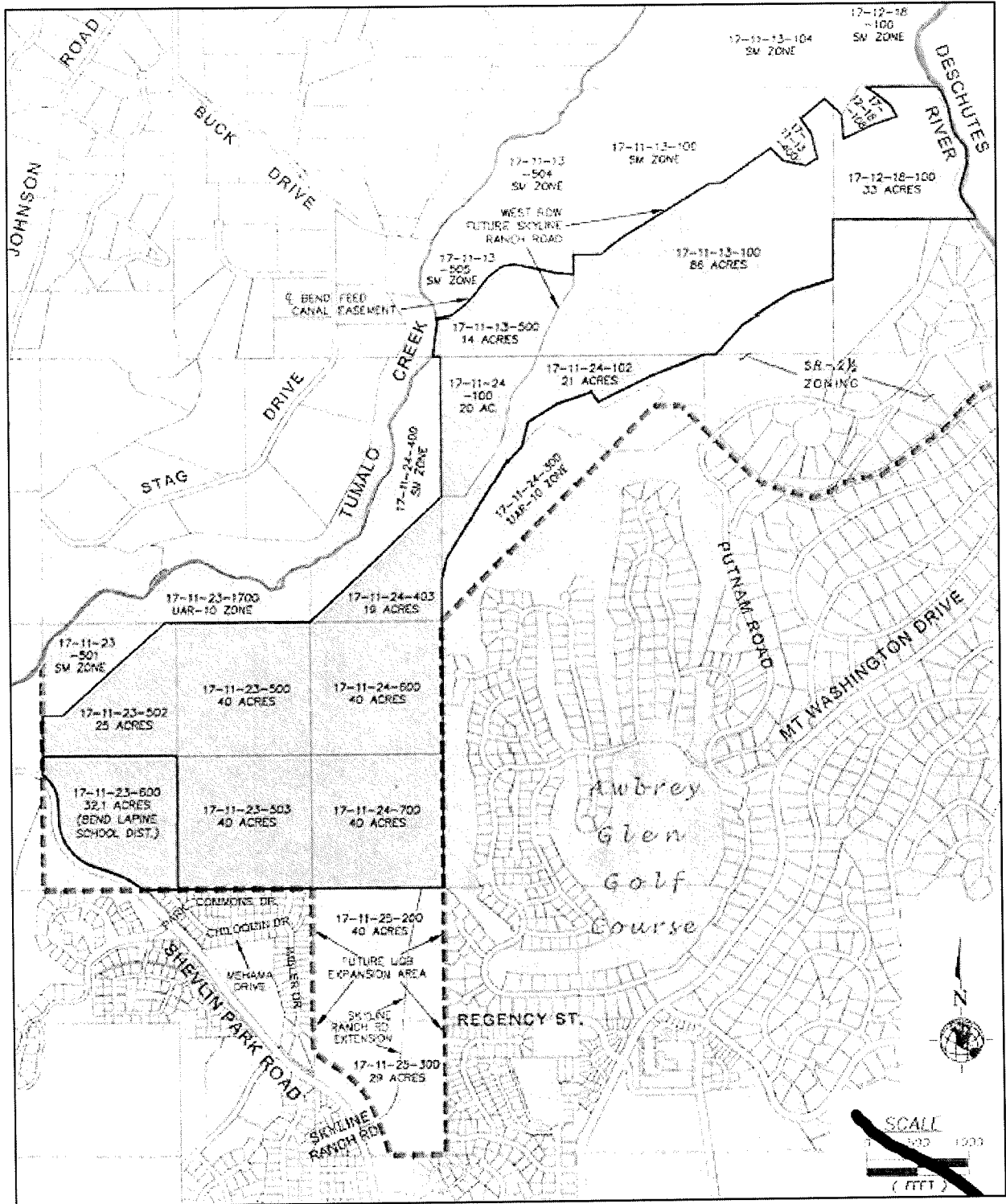
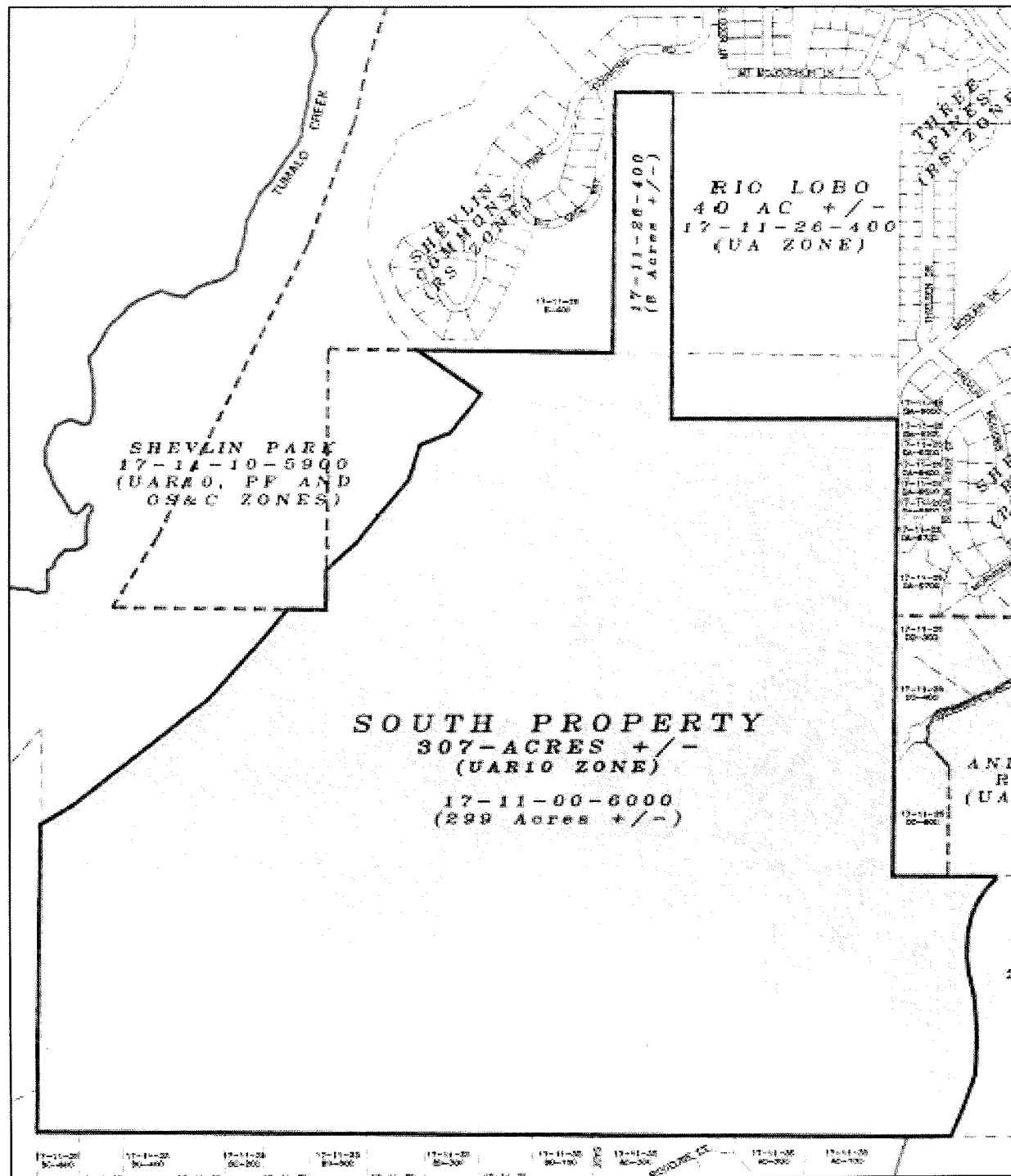


Figure 2 – South Property



**B. LOT OF RECORD:** Consistent with the Hearings Officer's decision in file ZC-08-4, Belveron, the Hearings Officer finds legal lot of record status is not applicable to the present text amendments and rezoning application.

**C. PROPOSAL:** Applicants request approval of amendments to the Comprehensive Plan, Deschutes County Code ("DCC") Chapter 23 and Title 19, together with goal exceptions to Statewide Planning Goals 3, 4 and 14, to add a new zone, the "Westside Transect Zone". In addition, Applicants request approval of a zoning map amendment to change the zoning on the Subject Property from Surface Mining ("SM") and Urban Area Reserve – 10 Acre Minimum ("UAR-10") to the proposed Westside Transect Zone ("WTZ"). Note: The DCCP designation of Urban Area Reserve will not change.

**D. ZONING AND PLAN DESIGNATIONS:** The South Property is designated Urban Area Reserve on the Deschutes County Comprehensive Plan Map and currently zoned UAR-10 with a Destination Resort ("DR") overlay. Similarly, the North Property is designated Urban Area Reserve on the Deschutes County Comprehensive Plan Map. Tax lots 500, 502, 503, and 600 of Assessor's Map 17-11-23 are currently zoned UAR-10. Tax lots 100, 102, 403, 600, and 700 of Assessor's Map 17-11-24 are also zoned UAR-10. Tax lots 100 and 500 of Assessor's Map 17-11-13, in addition to tax lot 100 of Assessor's Map 17-12-18, are all currently zoned SM.

A portion of tax lot 400 of Assessor's Map 17-11-26, tax lot 6000 of Assessor's Map 17-11-00, were included in the 2016 Bend UGB expansion. A property line adjustment, file no. 247-18-000654-LL, has been submitted to the County to amend the tax lots in order to reflect the UGB expansion. The areas brought into the City of Bend Urban Growth Boundary ("UGB") are not part of this application.

**E. SITE DESCRIPTION:** The South Property is approximately 307 acres and is currently vacant and undeveloped. The Subject Property borders Shevlin Park and Tumalo Creek to the west. Land to the north and east lies within the UGB. The southern end of the South Property borders directly upon the "Miller Tree Farm" subdivision. Most of the Subject Property was burned in connection with the Awbrey Hall fire in 1990. According to the application materials, the intensity and high temperatures associated with that wildfire have resulted in a landscape and soils that can no longer support the regeneration of a Ponderosa Pine forest.

The North Property is approximately 378 acres and is adjacent to and supporting an active surface mine. The surface mine is not designated as a Goal 5 resource in the DCCP. According to the application materials, this property has been actively mined for aggregate, sand, and gravel since the 1960s. Starting around 1964, mining activities, including excavation, blasting, crushing, and screening of aggregate, sand, and gravel have occurred at the property. The current boundaries of the DOGAMI operating permit no. 09-0018 are shown on Exhibit 9 of

the application materials. An asphalt batch plant, concrete washing area, an office, shop, and truck and storage shed, and a redi-mix operation standby to support the operations at the pit. A number of unimproved roads meander throughout the North Property and some areas have been actively farmed as pasture in the past. There are some single-family residences throughout the North Property. Topography of the Subject Property is gently rolling in the southern portion with steep slopes and rock outcrops in the northeast section of the property. Shevlin Park and Tumalo Creek border the Subject Property to the west and the Deschutes River borders the property on the north-eastern boundary.

The 1990 Awbrey-Hall Fire spread onto the North Property resulting in a vegetative landscape dominated by bitterbrush, sage brush and rabbit brush with minimal pine tree regeneration. Existing vegetation includes some ponderosa pine, but mainly juniper trees, native shrubs and grasses.

- F. SURROUNDING LAND USES:** The area surrounding the Subject Property consists of a mix of parks, residential subdivisions, a golf course, surface mining, hobby-farms, and undeveloped lands. A portion of the Subject Property is adjacent to the city limits of Bend. Zoning in the vicinity of the Subject Property is a mixture of Exclusive Farm Use ("EFU"), Forest Use ("F-2"), Open Space and Conservation ("OS&C"), Rural Residential ("RR-10"), SR 2.5, SM, UAR-10, and the City of Bend's Residential Standard Density ("RS") Zone.

The neighboring residential subdivisions of the North Property include: Awbrey Glen, Awbrey Meadows, Awbrey Ridge, Awbrey View, Awbrey Court, Cooperstone, Fawnview, Klippel Acres (unrecorded subdivision), Marken Heights, Renaissance, Shevlin Estates, and Valhalla Heights. Two other properties zoned SM are located to the north. Shevlin Park is located to the west. Oregon State Parks and Recreation Department ("OPRD") manages land to the north that is zoned for farm use. Tumalo Creek and Shevlin Park Road are adjacent to the western and southern property boundaries, respectively. The South Property borders Shevlin Park and Tumalo Creek to the west.

The South Property borders the City of Bend UGB to the north and east. This area includes the Shevlin Commons and Three Pines subdivisions, together with several parcels recently incorporated into the UGB. The South Property borders a rural residential subdivision of approximately 2-acre parcels to the south. This development was recently approved by Deschutes County as the "Tree Farm" subdivision.

- G. SOILS:** According to Natural Resources Conservation Service ("NRCS") maps of the area, the subject area, both the North and South Properties, contain eight soil units. The mapped soil units are listed and described below.

61C, Henkle Fryrear-Lava flows complex, 0 to 15 percent slopes: This soil type is comprised of 40 percent Henkle soil and similar inclusions, 35 percent Fryrear soil and similar inclusions,

15 percent lava flows, and 10 percent contrasting inclusions. Henkle soils are somewhat excessively drained with moderately rapid permeability. The available water capacity is about 1.5 inches. Fryrear soils are well drained with moderately rapid permeability. The available water capacity is about 2.5 inches.

62D, Henkle-Lava flows-Fryrear Complex, 15 to 50 percent slopes: This soil complex is composed of 35 percent Henkle soils and similar inclusions, 25 percent Fryrear soils and similar inclusions, and 30 percent lava flows and 10 percent contrasting inclusions. The Henkle soil is somewhat excessively drained with a moderately rapid permeability and an available water capacity of about 1.5 inches. The Fryrear soil is well drained and has a moderately rapid permeability, and an available water capacity of about 2.5 inches. The major use of this soil complex is and livestock grazing and woodland. The NRCS rates this complex as 7E.

72C, Laidlaw sandy loam, 0 to 15 percent slopes: This soil type is comprised of 85 percent Laidlaw soil and similar inclusions and 15 percent contrasting inclusions. Laidlaw soils are well drained with moderately rapid permeability. The available water capacity is about 8 inches. The major use of this soil is woodland and livestock grazing. Laidlaw soils have an agricultural capability rating of 6E, which is not considered a high-value soil.

85A, Lundgren sandy loam, 0 to 3 percent slopes: This soil type is composed of 90 percent Lundgren soil and similar inclusions, and 10 percent contrasting inclusions. The Lundgren soil is well drained with a moderately rapid permeability and an available water capacity of about 5 inches. The major use of this soil type is livestock grazing and woodland. The NRCS rates this soil type as 6S.

101E, Redcliff-Lickskillet-Rock outcrop complex, 30 to 50% slopes: This soil complex is composed of 60% Redcliff soils and similar inclusions, 20% Lickskillet soils and similar inclusions, 15% Rock outcrop, and 5% contrasting inclusions. The Redcliff soil is well drained with a moderate permeability and an available water capacity of about 2 inches. The Lickskillet soil is well drained with a moderate permeability and an available water capacity of about 1 inch. The major use of this soil complex is livestock grazing. The NRCS rates the Redcliff soil as 6E, the Lickskillet soil as 7E and the Rock outcrop as 8S, with no rating for irrigated land.

106D/106E, Redslide-Lickskillet complex: 15 to 30% and 30 to 50% north slopes, respectively. This complex is typically composed of 50 percent Redslide soil and similar inclusions, 30 percent Lickskillet soil and similar inclusions, and 15 percent contrasting inclusions. This complex is found on canyon sides between 2,000 and 4,000 feet in elevation, with native vegetation of western juniper, antelope bitterbrush, mountain big sagebrush, Idaho fescue and grasses. These soils are well drained, with moderately rapid permeability and a water capacity of about 2 inches. Major uses include livestock grazing. The Redslide soil has a soil



capability of 6E, and the Lickskillet soil has a soil capability of 7E, with no rating for irrigated land.

155D Wanoga Sandy Loam 15 to 30% slopes: This soil type is typically found in elevations between 2,800 to 4,000 feet. The mean annual precipitation is 12 to 18 inches and the mean annual air temperature: 42 to 47 degrees Fahrenheit. The soil has a frost-free period: 60 to 90 days and is classified as a farmland of statewide importance. The description of Wanoga Setting is hillslopes, summits, crest, interfluves, linear down slope. The parent material is volcanic ash over tuff or basalt. The NRCS rates the Wanoga Sandy Loam as land capability classification 6e for both irrigated and unirrigated land.

157C, Wanoga-Fremkle-Rock Outcrop Complex, 0 to 15 percent slopes: This soil complex is composed of 35 percent Wanoga soils and similar inclusions; 30 percent Fremkle soils and similar inclusions; 20 percent rock outcrop; and 15 percent contrasting inclusions. The Wanoga and Fremkle soils are well drained, with a moderately rapid permeability and an available water capacity of about two to four inches. The major use of this soil complex is livestock grazing and woodland. The agricultural capability rating for the Wanoga and Fremkle soils is 6e with irrigation and 4e without irrigation. The rock outcrop is rated at 8E, with or without irrigation.

**H. PUBLIC AND PRIVATE AGENCY COMMENTS:** Staff mailed notice of the application and notice of the public hearing to several agencies and the following comments were received.

Cody Smith, P.E. – County Engineer, Deschutes County Road Department (8/24/18 Email) (See Staff Report, packet page 76)

*"I have reviewed the application materials for the above-referenced file numbers, proposing a comprehensive plan and zoning text amendment and a zone change of approximately 737 acres of land from Urban Area Reserve and Surface Mining to a new "Westside Transect Zone."*

*Deschutes County Road Department requests that approval of the zoning text amendment be subject to modification of the proposed language for Deschutes County Code Chapter 19.22 similar to the following:*

*19.22.070 Street Improvements*

*Subject to applicable provisions of DCC Title 17, the following shall apply to streets within the Westside Transect Zone:*

*A. Streets may be private, except the County may require that public roads be dedicated and improved as collector roads to meet regional transportation needs and goals.*

*B. On-street parking is prohibited on private roads.*

*C. Maintenance of all private roads shall be assigned to landowners or home owners associations by recorded legal instrument to assure continued ownership, maintenance and repair of private roads."*

Peter Russell – Senior Transportation Planner, Deschutes County (8/22/18 Email) (See Staff Report, packet page 77)<sup>1</sup>

*"I have reviewed the transmittal materials for 247-18-000612-ZC/613-PA/614-TA for Comprehensive Plan, zoning text amendments, and zones changes on approximately 737 acres on the northwest side of Bend from Urban Area Reserve (UAR-10) and Surface Mining (SM) to the proposed Westside Transect Zone (WTZ).*

*The applicant has submitted a traffic study dated Dec. 19, 2017, as required by Deschutes County Code (DCC) at 18.116.310(C)(3)(c) and 18.116.310(E)(4). Staff notes, however, an inconsistency between the submitted traffic impact analysis (TIA) and the applicant's proposed policy language for the County's Comprehensive Plan. In the burden of proof Section IV (Text Amendments) contains in the proposed Policy 3.3.9.4 "Limit residential development to 200 single-family residential lots." The TIA on page 4 summarizes the number of residences as 164 on the north property and 122 on the south property for a total of 286 residences. Staff recognizes in a complex proposal such as this the land use assumptions can change before final submittal. Nonetheless, the TIA and the burden of proof need to be consistent.*

*Regarding planned roadways on Page 7, TIA does not treat future roads and their construction consistently. As an example, the second line states "It is expected that additional roadways outlined in the City and County Transportation System Plans will be built by the planning horizon year." The TIA then focuses on NW Skyline Ranch Road, Regency Street, and Sage Steppe Drive. Yet, the next paragraph begins "The Tumalo Creek Road Extension shown on the County Transportation maps connecting Buck Road and Putnam Drive through the North Property has no funding plan or development plans outlined." Staff notes the same observation applies to the preceding streets as well.*

*Board Resolution 2013-020 sets a transportation system development charge (SDC) of \$4,240 per p.m. peak hour trip. From an SDC standpoint, the proposed land use will not trigger SDCs, but SDCs will be applied as development occurs. County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is \$3,434 (\$4,240 X 0.81) per residence. The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final."*

Colin Stephens – Planning Manager, City of Bend – Community Development Department (8/31/18 Letter) (See Staff Report, packet pages 78-80)

*"Thank you for the opportunity to comment on the Westside Transect Zone applications (File Numbers: 247-18-000612-ZC-247-18-000613-PA, 247-18-000614-TA). Based on our review,*

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<sup>1</sup> (Russell also emailed Heck on 7/31/18 with comments that are not quoted herein)

*Bend staff have the following comments on the proposed text amendments to the Deschutes County Comprehensive Plan and Development Code:*

*Applicability*

*The evidence submitted by the applicant contains information to support exceptions to Statewide Planning Goals 3, 4 and 14. This has been used to justify the creation of a new higher-density residential Transect zoning district which is limited to a unique geographic area based on the "Reasons" exception provisions of ORS 197 and OAR 660-004-0020 through 0022. These Reasons exceptions are predicated on site-specific factors including wildfire risk and preservation of wildlife habitat that only exist west of Bend's UGB between the urbanized and urbanizable areas and forest and public lands to the west. Therefore, it is reasonable to include an applicability section to the Deschutes County Development Code to specify where the zoning district may be applied. City staff respectfully request that the County add a new section in proposed Chapter 19.22 under "Purpose" that indicates where the zoning district, may be applied. Suggested language:*

*19.22.020: Applicability*

*The Westside Transect Zoning District may be applied on the west side of the Deschutes River and east of Tumalo Creek on lands designated Urban Area Reserve on the Deschutes County Comprehensive Plan map where exceptions to Statewide Planning Goals 3, 4 and 14 have been taken to allow densities below one dwelling unit per ten acres.*

*Exception Findings*

*Regarding the applicants' findings we have the following comments:*

*The applicants' response to Applicable Standards and Criteria I. OAR 660-004-0018 (4) on page 44 of Section VII Burden of Proof Statement for Goal Exceptions indicates that the Transect Zone's one unit per 2.5 to 10 acres is consistent with the density allowed on the subject properties in the 1980 Exceptions Statement. This is not entirely accurate. The 1980 Exceptions Statement allowed densities at one unit per 2.5 acres in already developed areas, which were subsequently zoned SR 2.5, and one unit per 10 acres in areas that were not already parcelized which were zoned UAR-10. New exceptions are needed precisely because the 1980 Exceptions Statement did not allow for a "range of densities", but because it placed different densities in different locations based on lot sizes at that time. The Westside Transect application now seeks to modify the densities for lands assigned one unit per 10 acres in the 1980 Exceptions Statement to denser development than was approved under the 1980 Statement. The 1980 Exceptions were intended to preserve then-undeveloped land for future urbanization, limiting development to 10-acre lots; the 1980 Exceptions did not intend to allow for unrestricted rural parcelization anywhere in the UAR between 10 and 2.5 acres per unit. If the County adopts the new Transect Zone, City staff recommend that this finding be amended to reflect these facts.*

*Also, in regards to the applicants' statement on Page 45, the first complete sentence on the page states that that they "do not believe that the proposed changes in use warrant taking new exceptions." For the reasons stated above, City staff disagree and recommend that any*

*County findings not reflect this sentiment if new exceptions are made.*

*A full analysis of the need for new exceptions is provided in the enclosed Memorandum from the City of Bend to the Department of Land Conservation and Development dated December 1, 2017. The 1980 Exceptions Statement is also enclosed.*

*Density and the TPR*

*As part of the proposed Infrastructure Development Agreement to Support Urban and Rural Development in the West Bend Area (DA) between the applicants, other parties, and the City of Bend, the applicants have provided mitigation for the demonstrated impacts that the rezoning to allow 187 dwelling units in the "Transect Area" will have on the City's transportation infrastructure. The Transportation Technical Memorandum from Lancaster Engineering dated July 31, 2018 concludes that there are three intersections within the City's jurisdiction where there is a significant effect under OAR 660-012-0060 (the Transportation Planning Rule, or TPR). Two of the identified improvements necessary to mitigate the significant effects will not be constructed: a signalized intersection at NW Mt. Washington Drive and Regency Street, and the modification of the existing single-lane roundabout at the intersection of NW Mt. Washington Drive and NW Skyliners Road. For both of these intersections, a proportionate share of the cost of mitigating the impacts of the rezone trips will be accepted by the City as part of the DA. These funds will be used by the City on improvements to facilities other than the significantly affected facilities. Therefore, in order to comply with the TPR, OAR 660-012-0060(2)(e)(A), the applicants must obtain a written statement from the City that the systemwide benefits of mitigation are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards. The DA is expected to be considered by the City Council at a first reading on October 3, 2018.*

*The proportionate share mitigation required by the proposed DA is based on data assuming a maximum of 187 dwelling units in the Transect Area. If the total Transect lots are limited by the County's Comprehensive Plan and Code to 187 lots, the applicants' Development Agreement with the City will serve as the "written statement" under OAR 660-012-0060(2)(e)(A). As such, City staff request that Development Code Section 19.22.060 be changed to read:*

*19-22-060.B Residential lots shall be limited to 100 residential lots for the North Transect and ~~400~~ 87 residential lots for the South Transect, as depicted on Figure 1 at the end of this chapter.*

*We also request that Policy 3.3.9.4 of the Deschutes County Comprehensive Plan be amended as follows:*

*3.3.9.4 Limit residential development to 200 187 single-family residential lots."*

**Staff Comment/Response to City of Bend's Comments Above** (See Staff Report Packet Page 21):

*"As background, the subject properties were under the jurisdiction of the Bend Area General Plan until the 2016 amendment to the Bend Urban Growth Boundary. The 1980 Goal Exception mentioned above applied to the City of Bend's General Plan. The City of Bend clarified the history of the subject area as it relates to Goal 14 Urbanization. Staff concurs with the recommendations to amend the proposed Comprehensive Plan policy statements and zoning code language and asks the Hearings Officer to condition them if the proposal is recommended for approval."*

Maggie Riley, Oregon Parks and Recreation Department (8/17/18) (See Staff Report, packet page 90)

*"We just received the Notice of Application and Public Hearing for 247-18-000612-ZC, 247-18-000613-PA, & 247-18-000614-TA. We appreciate you including OPRD in your notification process."*

*Various properties identified in the locations of the notice sit within a State Scenic Waterway - so all listed landowners that are within ¼ mile of the Deschutes will need to send us a completed Notice of Intent form. The forms should be emailed to Laurel Hillmann at laurel.hillmann@oregon.gov. Please pass on this information to the landowners or other parties."*

Laurel Hillmann, Oregon Parks and Recreation Department (August 21, 2018) (See Staff Report, packet page 91)<sup>2</sup>

*"There are some potential issues I've noticed as part of my initial review of the proposed WTZ application:*

- *Goal 1, Policy 2.7.5: Encourage new development to be sensitive to scenic views and sites (page 60 of the PDF, labeled 12-Burden of Proof Statement)*
- *Response indicates that there are no identified Goal 5 resources. However, the northern parcel appears to be immediately adjacent to the Deschutes River State Scenic Waterway (and Tumalo State Park).*
- *Section 2.10, Surface Mining: "That portion of the subject property zoned Surface Mining is slated to be changed to the new Westside Transect Zone" (page 61 of the PDF, labeled 13-Burden of Proof Statement). However, elsewhere on maps this section of the property is excluded. Is it included or not? If it is, that land is immediately adjacent to property owned by OPRD (Tumalo State Park) and the Scenic Waterway.*

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<sup>2</sup> Comments from 8/22/18 Email not quoted herein.

- *Page 19-Burden of Proof Statement re: Recreational Opportunities & Scenic Views. Question: Will the proposed trails within the property "that connect to existing and proposed Parks and Recreation properties" be open to the recreating public? Re: Scenic Views...does not address potential impact to scenic views relative to the park or the scenic waterway (maybe those aren't relevant if this is specific to existing housing developments?).*
- *Goal 5, Open Spaces, Scenic & Historic Areas and Natural Resources (Page 27-Burden of Proof Statement; PDF page 75): States that there are "no Goal 5 resources" on subject properties. I believe they intersect that Deschutes State Scenic Waterway.*

*OPRD will also be providing official comments prior to the September 11th deadline but clarification on these topics (in the staff report?) will help us do that more effectively. The plans proposed address wildlife/wildlife and other resources to be protected but currently fail to address the scenic and recreational resources of the state designated Deschutes River State Scenic Waterway (and also do not mention the adjacency to Tumalo State Park, at least not that I noticed)."*

Kevin Sullivan, Deputy State Fire Marshal (See Staff Report, packet page 92)

*"RE: FIRE APPARATUS ACCESS & FIRE PROTECTION WATER SUPPLY REQUIREMENTS*

*Deschutes County Applicant(s):*

*With regard to your application to Deschutes County,*

*FILE NUMBER: 247-18-000612-ZC, 247-18-000613-PA, 247-18-000614-TA, COMPREHENSIVE PLAN AND ZONING TEXT AMENDMENT, please be advised of the following:*

*The 2014 Oregon Fire Code establishes minimum requirements for fire apparatus access and fire protection water supply, which applies to both commercial and residential buildings, property, and some operations.*

*The information submitted in your application is insufficient to determine if your proposed use, project or operation meets these requirements. Please furnish proof to this office at the time of building permit which indicates how these requirements are satisfied.*

*AS IT MAY APPLY: Proposed Single-Family Dwellings: For legal lots of record that were created on or after July 2, 2001, additional regulation applies: Oregon Administrative Rule (OAR) 918-480-0125 Uniform Alternate Construction Standards. This additional regulation provides a process for alternate construction methods to be used when a fire code official determines there is inadequate fire apparatus access or fire protection water supply.*

*Thank you for the opportunity to make comment. It is the mission of the Office of State Fire Marshal to protect citizens, their property, and the environment from fire and hazardous materials by providing premier public safety services, and to ensure that facilities are safe for*

*both occupants and emergency responders.”*

Additional agency comments are included in the record, but not quoted above, and include Bend Metro Parks and Recreation District and Oregon Department of Fish and Wildlife.

The following agencies either had no comment or did not respond to the notice: Deschutes County 911, Bend/La Pine School District, Bend City Engineering, Bend Fire Department, Bend Growth Management Department, Cascade Natural Gas Company, Central Electric Co-Op, Department of Geology and Mineral Industries, Department of Land Conservation and Development, DEQ - NW Region, Deschutes County Assessor, Deschutes County Building Safety, Deschutes County Environmental Safety, Deschutes County Forester, Deschutes County Sheriff, Deschutes County Surveyor, Deschutes National Forest, Pacific Power and Light, Deschutes County Property Address Coordinator, US Fish and Wildlife Service.

Public comments referenced related to relevant approval criteria shall be addressed in the Recommendations findings below.

- I. GENERAL PUBLIC COMMENTS:** Written comments were received prior to the hearing from the following individuals: Kirk Schueler – Brooks Resources, Matt Slater, Byron Buck, Roxanne Bercik, Wendy Peterson, Regina and David Willingham, Kit and Liza Clark, Steven Wallaert, Pam Robbins, Michelle and Carson Chambers, and Renee Wilson. Each comment submitted is part of the application record. Comments are summarized in the following bullet points.

At the public hearing, representatives from the Homeowner or Neighborhood Associations of Awbrey Butte, Awbrey Glen, Shevlin Commons and Summit West spoke in support of the proposal citing low density, conservation and wildfire mitigation efforts as the reasons for support. Central Oregon Landwatch also spoke in support and submitted a detailed letter explaining why the proposal provides protection for wildlife and the needed west side fire break.

Comments/testimony in support (partial list – J Spetz [9/18/18 Email], Central Oregon Landwatch [9/7/18 Letter]:

- The WTZ will preclude urban density from being built up to the “natural boundary” of Shevlin Park and US Forest Service lands.
- The proposed zone will help to reduce the risk of catastrophic damage from wildfires.
- The proposed WTZ will result in greater open space and migration corridors for wildlife.
- Impacts to the westside transportation infrastructure will be lessened through development of the WTZ compared to urban-scale development if the subject area is annexed into the city.

- The proposal is consistent with the Oregon land use goals and provides for the orderly transition between urban and rural development.
- Proposal creates needed buffer between urban and rural development.
- Proposal will preserve views from adjacent public land corridors.

Concerns/testimony in opposition (Reagan Desmond [9/18/18 Email], Joe Stevens [9/18/18 Email], Geneese Zinsli [9/12/18 Email], Regina Willingham [9/11/18 Email]):

- How the proposal addresses Goal 14 (4) – open space and recreational needs.
- Adequate enforcement of provisions to minimize wildfire risk and protection of wildlife habitat.
- Confusion on traffic study: the Traffic Impact Analysis states there is a need to upgrade the intersection of NW Skyline Ranch Road and Shevlin Park Road, but the burden of proof claims there are no significant traffic impacts from the proposal. The decision should include a requirement for mitigation of traffic impacts per the recommendation of the study.
- The request seems unwarranted because the purpose of current zoning district is to hold the land as long as possible as open space until needed for orderly growth.
- Insufficient open space to adequately protect wildlife habitat and prevent wildfire.
- The proposal would result in inefficient extension of public services.
- The proposal does not adequately identify or explain how potential development will not interfere with existing development, development potential or value of neighboring land.
- There are no specific plans or designs for future subdivisions.
- The proposal should comply with Site Plan Review in order to identify how proposed development will impact neighboring properties and land values.
- The fencing standards are inadequate to protect wildlife.

Members of the public testified at the public hearing, some in support and others expressing concerns or issues. Several of the public's comments appeared directed towards future development of the property and not necessarily directed towards the approval criteria for these applications. Staff received two additional comments via email submitted after the September 18, 2018 5:00 p.m. deadline by Gladys Biglor and Geneese Zinsli. In addition, Gladys Biglor submitted comments to staff via email on September 25, 2018. Public comments related to applicable approval criteria are addressed in the findings below.



- J. NOTICE REQUIREMENT:** Applicants complied with the posted notice requirements of DCC 22.23.030(B). Applicants submitted a Land Use Action Sign Affidavit, dated August 14, 2018, indicating that Applicants posted notice of the land use action on the property on that same date. On August 7, 2018, the Planning Division mailed a Notice of Application and Public Hearing to all property owners within 250 feet of the affected tax lots. After the mailing was sent, Staff noticed that one affected tax lot was accidentally omitted, tax lot 600 of Assessor's Map 17-11-23, and the notice did not specify a portion of the "North Property" is currently zoned Surface Mine. Subsequently, on August 21, 2018, the Planning Division mailed a *Revised* Notice of Application and Public Hearing, which contained the previously excluded information. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, August 19, 2018. The initial notice of the first evidentiary hearing was submitted to LCDC on August 1, 2018.
- K. REVIEW PERIOD:** Applicants initially submitted a Plan Amendment, Text Amendment, and Zone Change application to establish the WTZ on December 28, 2017 (reference file nos. 247-17-001013-ZC, 1014-PA, and 1015-TA). The original submittal was deemed incomplete and went through several revisions. Applicants ultimately withdrew the original submittal to more easily manage the record and submitted a revised application on August 1, 2018, which was deemed complete on the same day. According to DCC 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change application is not subject to the 150-day review period.
- L. LAND USE HISTORY:** The Subject Property has been slated for eventual urbanization since 1972. The City of Bend and Deschutes County adopted the original UGB in 1972. In 1979, the City submitted the Bend Area General Plan and UGB to LCDC, which directed the preparation of a new boundary that would separate urban lands from future urbanizable lands. Goal exceptions from Goals 3 and 4 were also taken at that time to establish the Subject Property as urban reserve in the Bend Area General Plan with a plan toward eventual inclusion in the City of Bend UGB. Subsequently, the Subject Property were designated Urban Area Reserve.

The 2016 Bend UGB amendment, Ordinance 2016-022, amended Deschutes County's Comprehensive Plan to formally recognize the Bend Urban Area Reserve.

*Excerpt of Ordinance 2016-022*

*"Bend Urban Area Reserve: To define lands outside of Bend's Urban Growth Boundary that were under the jurisdiction of the Bend Area General Plan. These areas were removed in September 2016 through the 2016 amendment to the Bend Urban Growth Boundary. These areas are now under the jurisdiction of the County's Comprehensive Plan."*

North Property – The establishment of the North Property as a surface mine in the 1960s occurred prior to the adoption of zoning regulations in Deschutes County. As previously mentioned the mine is currently operating under an Oregon Department of Geology and

Mineral Industries (“DOGAMI”) permit no. 09-0018 and is not recognized on Deschutes County’s Goal 5 inventory for surface mining sites. At the public hearing, Applicants clarified that the land covered by the DOGAMI permit and currently operated as a surface mine is adjacent to the north of the area proposed for the Transect North, but is not included in the Transect Area. Other land use permits issued on the North Property include a site plan, SP-97-81, for four truck storage sheds; a Special Operating Permit (SOP-99-1) for nighttime asphalt production; a Lot Line Adjustment (LL-05-24); and a Conditional Use permit, CU-00-61, for fill and removal in the bed and banks of Tumalo Creek. In 2016, the County Planning Division approved an Administrative Determination, 247-16-000503-AD, that affirmed that Shevlin Sand and Gravel may relocate uses, buildings, and operating areas from one region of the North Property to another that are within the DOGAMI permit area without seeking Deschutes county land use approval. The School District property is vacant and has no permitting history.

South Property – The South Property is undeveloped and without a substantial permitting history. The South Property received a legal lot of record determination in connection with LR-05-14. The northern portion of the South Property (most of which is now included within the UGB) was previously utilized (beginning in the 1960s and 1970s) for the manufacturing and distribution of motorcycle parts. This portion of the property included a motorcycle test tract. The County authorized the expansion of this non-conforming use of the property in 1977 (County file NCU-77-8). That portion of the South Property was later used for administrative offices for the Hooker Creek companies. The buildings utilized for such uses have now been incorporated within the UGB. A 34-lot planned unit development and tentative subdivision plan was approved by the Board of County Commissioners on the South Property in 2005 (County file A-05-9, CU-05-17, TP-05-958). This tentatively approved development was never platted or developed.

#### **IV. FINDINGS AND CONCLUSIONS**

##### **A. PROCEDURAL ISSUE: The proposed Westside Transect Zone is being processed in the wrong venue.**

**Finding:** Testimony from Regina Willingham (9/11/18 Email) states she believes the proposed WTZ is being processed in the wrong venue citing sections of the County procedural ordinance, Title 22. Ms. Willingham believes the process should go through the County Planning Commission citing the definitions of “Quasi-judicial” and “Legislative changes” and DCC 22.12.010.

The Hearings Officer finds that the procedures ordinance, DCC 22, provides options to process the proposed WTZ comprehensive plan and zoning text amendment and zone change as quasi-judicial or legislative. The Hearings Officer, in this case and process, is making recommendations to the Commission. There will be a separate de novo hearing in front of the Commission, where the public can again weigh in on the proposal. The Hearings Officer is charged with reviewing the legal issues

involved in Applicants' proposal. Policies involved with the Westside Transect Zone will be determined by the Board. The Hearings Officer finds that the quasi-judicial process also allows for greater notice of nearby property owners notified of public hearing. The Hearings Officer finds the quasi-judicial process is authorized by the DCC and finds no prejudice to affected property owners from use of this process.

## **B. TITLE 19 – THE BEND URBAN GROWTH BOUNDARY ZONING ORDINANCE**

### **1. Chapter 19.116. Amendments, Appeals and Procedures**

#### a. Section 19.116.010. Amendments

***DCC Title 19 may be amended by changing the boundaries of zones or by changing any other provisions thereof subject to the provisions of DCC 19.116.***

***A. Text changes and legislative map changes may be proposed by the Board of County Commissioners on its own motion, by the motion of the Planning Commission, upon payment of a fee, by the application of a member of the public. Such changes shall be made pursuant to DCC 22.12 and ORS 215.110 and 215.060.***

**Findings:** Applicants, also the property owners, requested a quasi-judicial plan amendment, text amendment and zone change. Applicants filed the required Planning Division's land use application forms for the proposals. The applications will be reviewed under the applicable procedures contained in DCC 22.

***B. Any proposed quasi-judicial map amendment or change shall be handled in accordance with the applicable provisions of DCC Title 22.***

**Findings:** Applicants are seeking a quasi-judicial zoning map amendment under the applicable provisions of DCC 22.

#### b. Section 19.116.020. Standards for Zone Change

***The burden of proof is upon the applicant. The applicant shall in all cases establish:***  
***A. That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the plan's intent to promote an orderly pattern and sequence of growth.***

**Findings:** The Hearings Officer agrees with Staff's proposed findings (Staff Report – packet page 27) that the provisions of DCCP, as set forth below, are relevant to Applicants' proposal and should be considered in reviewing the proposal to change the zoning from UAR-10 to the proposed WTZ.

Applicants addressed several DCCP goals and policies in their application materials.

## **Chapter 1 – Comprehensive Planning**

### **Section 1.3 – Land Use Planning**

**Findings:** The DCCP provides map designations that create the framework for zoning districts. Per the DCCP, zoning defines in detail what uses are allowed for each area. The DCCP map designation for the Bend Urban Area Reserve is described below. The 2016 Bend UGB amendment, Ordinance 2016-022, amended DCCP to formally recognize the Bend Urban Area Reserve.

*Bend Urban Area Reserve: To define lands outside of Bend's Urban Growth Boundary that were under the jurisdiction of the Bend Area General Plan. These areas were removed in September 2016 through the 2016 amendment to the Bend Urban Growth Boundary. These areas are now under the jurisdiction of the County's Comprehensive Plan.*

Applicants are not proposing to change the Bend Urban Area Reserve boundaries or its plan map designation. Applicants are proposing, however, to add the WTZ to the zoning code associated with the DCCP designation of Urban Area Reserve and change the zoning to the new WTZ.

The Subject Property has been slated for eventual urbanization since the early 1970s. The City of Bend and Deschutes County adopted the original Bend UGB in 1972. In 1979, the City submitted the Bend Area General Plan and UGB to LCDC, which directed the preparation of a new boundary that would separate urban lands from future urbanizable lands. Based on that direction, the Subject Property was designated Urban Area Reserve with its stated purpose, at the time, to act as a buffer between the urban area and the rural resource lands outside the reserve area, in addition to function as a holding areas for future urbanization.

The zoning districts under DCC 19, within the acknowledged Urban Area Reserve, include SM, UAR-10, SR 2.5, RS, Industrial Light (IL) and Flood Plain (FP).

The Bend City Council adopted ordinances in 2016 to expand the UGB by 2,380 acres. The application materials indicate the UGB expansion included approximately 68 acres of the southern portion of the North Property and approximately 69 acres of the South Property. In order to effectuate the expansion, the County amended DCC 19 and DCC 23, which was adopted on September 28, 2016 (reference ordinance no. 2016-020 and Exhibit 6 in application materials). LCDC approved the Bend UGB expansion on November 14, 2016.

The application materials state the following (Applicants' Burden of Proof Statement – page 10):

*"The city's adoption of the UGB declined to include the subject properties for urbanization based on costs to serve, resource values, and wildfire risk. While the city found value in these*

*properties, it determined through an extensive process to weigh and balance the attributes of the properties with those of other properties vying for inclusion into the UGB and ultimately found other properties more suitable for urbanization.”*

The proposed zone change to the new WTZ will allow the property to be developed at a higher density, one unit per 2.5 acres, rather than the existing UAR-10 density of one unit per 10 acres, but significantly lower than if it were eventually urbanized as contemplated by the existing zoning. Residential development opportunities of one unit per 2.5 acres will also apply to the areas included in the WTZ area that are currently zoned SM. Applicants contend the allowance for a different density under the WTZ is to account for the area’s unique and varied terrain, wildlife and natural resources, and connections to parks and recreational opportunities. The Hearings Officer finds that the new zoning designation will act as a transitional buffer between the urban development and rural lands, which compliments the Urban Reserve Area’s purpose.

## **Chapter 2 – Resource Management**

### **Section 2.6 – Wildlife**

#### **Goal 1 Maintain and enhance a diversity of wildlife and habitats.**

**Policy 2.6.2 Promote stewardship of wildlife habitats and corridors, particularly those with significant biological, ecological, aesthetic and recreational value.**

**Policy 2.6.4 Support incentives for restoring and/or preserving significant wildlife habitat by traditional means such as zoning or innovative means, including land swaps, conservation easements, transfer of development rights, tax incentives or purchase by public or non-profit agencies.**

**Policy 2.6.7 Use a combination of incentives, regulations and education to promote stewardship of wildlife habitat and address the impacts of development.**

**Findings:** The Hearings Officer finds that although the Subject Property is not designated in the County’s Goal 5 inventory for wildlife habitat and, therefore is outside of the Deschutes County’s Wildlife Area Combining Zone, the Subject Property is within the Oregon Department of Fish and Wildlife’s defined mule deer and elk winter range. Applicants stated they are working with a professional biologist to voluntarily incorporate design elements and conservation measures into a plan to protect deer and elk populations on the Subject Property. These conservation measures are found in the “Wildlife Habitat and Forest Health Management Plans”, Exhibit 12 of the application materials.

The application materials indicate the following standards have been included in the proposed zoning ordinance and/or will be incorporated as part of development agreements between the current property owners and future developers of the area.

- Standards for individual residential lots to include a “Vegetation Management Plan”.
- Dedication of open space and designation of resource management corridors.

- Specific residential lot siting standards that protect wildlife movement and patterns.
- Fencing standards adopted from the County's Wildlife Area Combining Zone.
- Post-development measures to protect and enhance the wildlife habitat in the study area.
- Provisions in the Covenants, Codes and Restrictions ("CC&Rs") that provide authority for Home Owner Associations ("HOAs") to assess fines to bring property owners into compliance with the rules.

Additionally, Applicants represented that the proposed WTZ concept allows for a low-density development pattern to respect and protect the natural resources of the Subject Property.

The policies of the WTZ relevant to wildlife protections are listed below and are proposed to amend Section 3.3, Rural Housing Policies of the Comprehensive Plan.

*3.3.9.1: Protect the sensitive eco-systems and interrelationships of the urban/rural interface on the west side of Bend between the urban area and Shevlin Park and the public and forestlands to the west.*

*3.3.9.2: Protect natural resources and environmentally sensitive areas and provide special setbacks between development and Shevlin Park, Tumalo Creek, and forestlands.*

*3.3.9.3: Development patterns shall reflect the protection of land with environmental significance and fire-wise community design best practices.*

*3.3.9.5: Manage all areas outside of the structural building envelopes on residential lots for wildfire mitigation and wildlife habitat in accordance with coordinated plans prepared by professionals, reviewed annually with reports submitted to the County every three years. The wildfire mitigation and wildlife habitat plans shall be funded through homeowner assessments and administered and enforced by a homeowners association established at the time of creation of any residential lots.*

*3.3.9.6: Reduce the impact of construction by using best management practices to minimize site disturbance during construction and construction impacts (i.e., erosion) on Shevlin Park, Tumalo Creek, and forestlands.*

Comments from the Oregon Department of Fish and Wildlife ("ODFW") dated September 10, 2018 express concern about the pace of residential development in and around Bend resulting in rapidly modifying and fragmenting native habitat for many species. ODFW recognizes the proposed increase in density standards from one unit per 10 acres to one per 2.5 acres will be mitigated by requiring the subdivisions to be designed in accordance with Wildlife Habitat Management Plans with accompanying deed restrictions or restrictive covenants. ODFW acknowledged that further ODFW review will be necessary during the master plan process to determine the potential impacts

to wildlife resources and adherence to Section 19.22.060. ODFW recommended that the Community Development Department “proactively track adherence to the requirements under DCC 19.22.060 to ensure homeowner associations are following their respective plans with adequate monitoring and enforcement and timely reporting.”

Oregon Parks and Recreation Department (“OPRD”) submitted comments , dated August 21, 2018, that Applicants’ burden of proof indicated there are no identified Goal 5 resources and failed to address the scenic and recreational resources of the designated Deschutes River State Scenic Waterway and speculated that changing the amount and type of development could change the character of that stretch of the water way and the classification category “recreation river area” which she again speculates would have likely been different during the management planning and rule development processes for that section of the Deschutes River. Applicants’ responded (9/25/18 Letter) to the OPRD comments, in part (footnotes included), as follows:

*“The County’s Comprehensive Plan (2011) Chapter 2, Resource Management Section 2.5 Water Resources identifies that area of the Upper Deschutes River from Robert Sawyer Park to Tumalo State Park as being within the Oregon Scenic Waterway. This section of the river runs along a portion of the north part of the North Property (along tax lot 100). While the State Scenic Waterway is a Goal 5 resource within the Comprehensive Plan, Deschutes County did not specifically identify and inventory any resources, including the river sections within the Title 19, Bend Urban Reserve Area and did not apply a protected overlay such as the Landscape Management Zone found in Title 18.<sup>3</sup> The Comprehensive Plan states that “Landowners wishing to pursue a new activity within a quarter mile of a Scenic Waterway may need to notify the Park and Recreation Commission” of their activities.*

*For those land use activities that fall within the County’s Deschutes River corridor as defined in Title 19,<sup>4</sup> Chapter 22.22, Deschutes River Corridor Design Review Procedures applies and sets forth design review procedures. In addition to the County’s procedures, a landowner would need to contact the Oregon Parks and Recreation Department for activities within a ¼ mile of the Scenic Waterway along the Deschutes River. The present request would not change the regulatory framework or requirements of the Deschutes River Corridor or State Scenic Waterway program.*

*As discussed at the public hearing, that portion of the subject property along the north rim of tax lot 100 that is within the State Scenic Waterway is steep and unlikely to be developed in the future.*

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<sup>3</sup> The Landscape Management zone is an overlay zone in Title 18, Chapter 18.84. The zone applies to those designated areas within Deschutes County, but do not include those lands within the boundaries of the Urban Reserve Area.

<sup>4</sup> Chapter 19.04 of the Deschutes County Code, defines “Deschutes River corridor” to mean “all property within 100 feet of the ordinary high water mark of the Deschutes River. The ordinary high water mark shall be as defined in DCC 19.04.040.”

Nevertheless, the applicant agrees to obtain any necessary State and County approvals in the future for land use activities which occur within the State Scenic Waterway or the Deschutes River corridor.

c. River Recreation Category

The section of the Middle Deschutes bordering the subject property is classified as "Recreation River Area" which OAR 736-040-0072(4) describes the "Recreational River Area" as follows<sup>5</sup>:

(4) Recreational River Area:

(a) From the northern Urban Growth Boundary of the City of Bend at approximately river mile 161 downstream to Tumalo State Park at approximately river mile 158, the river is classified Recreational River Area;

Shown on Exhibit 29 submitted on September 18, 2016 is a portion of the Recreational River Area extending from the UGB to the applicant's surface mining property. This section of the river contains land zoned and developed to the SR 2 ½ density range, including a residential subdivision called "Awbrey Meadows" abutting the subject property. Further, the uses allowed on either side of the Deschutes River within the Comprehensive Plan Urban Area Reserve boundaries include those permitted in the SR 2 ½, UAR-10, and Surface Mine (SM) and include for example: surface mining, churches, schools, landfills, fire stations, kennels, planned unit development, destination resorts, among others. The WTZ zone proposes a subset of these uses, not more intensive uses, and therefore should have no impact on the river classification.

The applicant is sensitive to the scenic values for that portion of the property along the Deschutes River. The topography along the rim of the property to the river is steep and future development will be planned in accordance with the Wildlife Plan submitted as Exhibit 12 to the application and in compliance with all applicable County and Oregon Scenic Waterway rules."

In addition, Staff acknowledged several comments submitted by the public stating concerns about insufficient open space and inadequate fencing standards that would come at the detriment to wildlife. Staff concluded, and the Hearings Officer agrees, the proposed policies above, in addition to the Wildlife Habitat and Forest Health Management Plans' findings and suggestions, will adequately promote stewardship of wildlife habitats. Because the proposed zoning ordinance requires a Wildlife Habitat and Forest Health Management Plan with defined resource management corridors and open space for each new land division, the Hearings Officer agrees with Staff and

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<sup>5</sup> According to the County's Comprehensive Plan, Chapter 2 Resource Management Section, in the 1970s Oregon voters passed an initiative that created the Scenic Waterways Act, which initiated the Scenic Waterways program. OAR 736-040-0072 was later adopted in 1993. The effective date of OAR 736-040-0072 in 1993 comes well after the existing zoning of the subject lands which were always slated for eventual urbanization since the 1960s.



finds the Applicants' proposal incentivizes protection of wildlife habitat that is not explicitly recognized in the DCC. The Hearings Officer finds that the proposed WTZ better protects wildlife habitat and encourages stewardship of the land than the existing UAR-10 and SM zoning because there are no regulations or standards to protect habitat areas in these existing zoning districts. Lastly, if followed, Staff concluded, and the Hearings Officer agrees, the suggestion of the Wildlife Habitat Plan to incorporate compliance requirements within a future subdivision's CC&Rs will effectively incentivize promotion and stewardship of wildlife habitat vis-à-vis impacts of development.

The Hearings Officer finds the proposed WTZ meets these policies and goals to maintain and will effectively enhance a diversity of wildlife and habitats. The Hearings Officer finds the proposal promotes the stewardship of wildlife habitats and corridors through innovative zoning using a combination of incentives and regulations and educational means, including the submission of a master plan that includes a Wildlife Habitat Management Plan in conjunction with a Wildfire Mitigation Plan, a Stewardship Community Plan, deed restrictions or restrictive covenants and homeowners' association(s) assuring both funding and enforcement.

***Policy 2.6.8 Balance protection of wildlife with wildland fire mitigation on private lands in the designated Wildland Urban Interface.***

**Findings:** Applicants state there is no evidence that any properties were formally designated Wildland Urban Interface ("WUI"). Nonetheless, Applicants indicated that they are working with wildlife and wildfire professionals to develop a detailed plan to reduce the threat of wildfire while maintaining quality wildlife habitats within the subject properties (see Exhibit 12 of application materials). Applicants' Wildlife Habitat and Forest Health Management Plans will address vegetation management techniques, structural and building design as well as materials selection, and operational issues and standards, such as evacuation routes and communication plans for residents. This standard is provided in the proposed WUI policy, 3.3.9.5, listed above.

The Hearings Officer finds the Wildlife Habitat and Forest Health Management Plans adequately address Policy 2.6.8 because of the prescriptive suggestions provided in the plans and the fact the zoning ordinance requires any land divisions to submit a master plan and tentative plan design in accordance with said plans.

***Goal 2: Promote the economic and recreational benefits of wildlife and habitat.***

***Policy 2.6.10 Coordinate with stakeholders to ensure access to significant wildlife and riparian habitat through public or non-profit ownership.***

**Findings:** As mentioned previously, Applicants' proposed to protect wildlife habitats through the establishment of Wildlife Habitat Plans, as provided in Exhibit 12 of application materials, and will be further refined with development proposals as required for all future land divisions. Applicants' proposed to provide access to wildlife and riparian habitat along Shevlin Park, Tumalo Creek, and

the Deschutes River through an on-site trail system. In addition, the Applicants proposed to have legal agreements with future developers to ensure adequate management of areas to protect wildlife movement and corridors.

Comments submitted by the Bend Parks and Recreation District ("Bend Parks"), dated September 11, 2018, acknowledged Applicants' efforts and willingness to collaborate with Bend Parks over the past several years to meet the community's needs for parks and trails in the WTZ. Applicants expressed a desire to remain flexible in the exact design and location of parks and trails during this application process. Applicants and Bend Parks have been able to draft maps that show the approximate locations of parks and trails in the WTZ. Bend Parks requested the Hearings Officer add a condition of approval requiring a letter from Applicants affirming Applicants' intention to provide public parks and trails within close proximity to those shown on map attachments C and D of the District's testimony. In addition, the District requested:

- \* Annexation of the North Property into the Bend Park and Recreation District
- \* Add Language: The District has requested the applicant to add language to Section 19.22.060, Land Division by adding "trails" to (A)(1) and "including trails" to (A)(2).
- \* Clarification of the definitions of "parks and recreation facilities" and "intensive uses."

Applicants, in their September 25, 2018 rebuttal letter, agreed to continue coordinating development plans with Bend Parks to further refine the parks and trail locations in future development applications and plan to locate them within close proximity to those maps in Attachment C and D of its September 11, 2018 testimony to Deschutes County. In addition, Applicants agreed to annex those portions of the North Property that are located outside the boundaries of the Bend Parks' boundaries. Applicants also added the requested language of the District of adding "trails" to Section 19.22.060(A)(1) and (A)(2) and have removed reference to intensive recreational uses (see Applicants' Exhibit 33).

The Hearings Officer addressed Bend Parks' request regarding the 100-foot setback from Shevlin Park under the appropriate section of the Recommendations.

Staff recommended the Hearings Officer make specific findings on whether Applicants adequately coordinated with stakeholders to ensure access to significant wildlife and riparian habitat. The Hearings Officer finds this policy requires the County to coordinate with stakeholders to ensure access to significant wildlife and riparian habitat through public or non-profit ownership. In this case, Applicants voluntarily reached out to Bend Parks to coordinate access through the property along Shevlin Park and Tumalo Creek. In the event that the Commission disagrees with the Hearings Officer's finding that this policy is directed to the County to coordinate with stakeholders the Hearings Officer alternatively finds that Applicants have adequately coordinated with stakeholders. For example, Applicants have coordinated with ODF&W and Bend Parks and neighboring properties by seeking input related to wildlife corridors through the Subject Property.

Additionally, the proposed WTZ code, requires a master plan that includes a wildlife habitat management plan that will identify resource management corridors within the Subject Property. Applicants have indicated a willingness to continue efforts to collaborate with the Bend Parks. The Hearings Officer finds, if required by this policy, that Applicants have engaged in adequate coordination with stakeholders to ensure access to wildlife and riparian habitat has occurred and that there is additional opportunity for coordination will occur when development applications are made through the master planning process required by the WTZ.

**Section 2.7 – Open Spaces, Scenic Views and Sites**

**Goal 1 Coordinate with property owners to ensure protection of significant open spaces and scenic views and sites.**

**Policy 2.7.2 Cooperate with stakeholders to establish a comprehensive system of connected open spaces.**

...

**Policy 2.7.4 Encourage a variety of approaches that protect significant open spaces and scenic view and sites.**

**Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.**

**Findings:** The application materials state the Subject Property has no identified Goal 5 significant natural resources. However, portions of tax lot 100, Assessor’s Map 17-11-13, and tax lot 100, Assessor’s Map 17-12-18, are near the Deschutes River and are part of the Oregon Scenic Waterway. Oregon Scenic Waterways located in Deschutes County are recognized in the Comprehensive Plan (Table 2.5.2) as Goal 5 resources. OPRD provided comments regarding this situation. Staff also noted that several subject properties are adjacent to Tumalo Creek, which, in lands governed by Title 18 (western half of the creek), is a Goal 5 resource under the Landscape Management Combining Zone. However, the Hearings Officer finds that the Subject Property, which borders the eastern half of Tumalo Creek, are governed by DCC 19 and the Landscape Management Combining Zone does not apply.

Staff commented that although no specific uses are proposed at this time, all future development in the WTZ will be required to coordinate with OPRD to comply with the Land Management rules as described in OAR 736, Division 40: Oregon Scenic Waterways. As discussed at the public hearing, Applicants explained that portion of the Subject Property along the north rim of tax lot 100 that is within the State Scenic Waterway is steep and unlikely to be developed in the future. Nevertheless, Applicants agreed to obtain any necessary State and County approvals in the future for land use activities which occur within the State Scenic Waterway or the Deschutes River corridor.

Staff found, and the Hearings Officer agrees, that compliance with the Oregon Scenic Waterways program will encourage development to be sensitive to scenic views and sites (Policy 2.7.5).

Applicants proposed to provide wildlife resource corridors, trails and paths that connect with existing and proposed parks and recreational opportunities, such as Shevlin Park to the west and Riley Ranch Natural Reserve to the northeast. Wildlife and wildfire management plans are a key component of all land divisions in the WTZ. To ensure compliance with said plans, the proposed WTZ ordinance requires all future developments to be governed by CC&R's that are specifically designed to protect resource values, such as open space and scenic views, while minimizing the threat and spread of wildfire. And, as noted above, any development within an Oregon Scenic Waterway will be required to comply with the State requirements.

OPRD asked, at the public hearing, if the proposed trails will be open to the recreating public. Staff asked the Hearings Officer, in the Staff Report, to make specific findings on whether recreation trails are required to be open to the public to comply with DCC policies and to determine if the Applicants' proposal has adequate built-in standards that will ensure all future developments within the WTZ will protect significant open spaces while establishing a comprehensive system of connected open spaces.

The Hearings Officer finds these policies, of the DCC, address open spaces, scenic views and sites. The Hearings Officer finds these policies require the County to coordinate with property owners to ensure protection of significant open spaces and scenic views and sites. The Hearings Officer finds that this policy does not require an owner to provide public trails, for example, unless the trail is associated with the protection of identified significant open space, scenic views or sites. An example of not creating a public trail to a significant resource would be to Goal 5 protected sites, such as bald eagle nests.

Goal 1 of Section 2.7 Open Spaces, Scenic Views and Sites Policies of the DCC requires the County to coordinate with property owners to ensure protection of "significant" open spaces and scenic views and sites. The Hearings Officer finds that the term "significant," while not defined in this context, likely includes Goal 5 open spaces, scenic views and sites inventories, ESEEs and programs (see Policy 2.7.1). In addition, Section 2.7 of the DCC describes open spaces as:

*"Open spaces are generally undeveloped areas that are being maintained for some other purpose, such as farms, parks, forests or wildlife habitat. Besides the value that stems from the primary use of the land, open spaces provide aesthetically pleasing undeveloped landscapes. Because these areas are undeveloped they also provide additional benefits such as water recharge and safety zones from natural hazards like flooding."*

The Subject Property is not an undeveloped area that is being maintained for some other purpose, such as farms, parks, forests or wildlife habitat or considered "aesthetically pleasing undeveloped landscapes." The North Property's primary use is surface mining and the South Property, while currently vacant, has been used in the past for manufacturing and distribution of motorcycle parts, administrative offices of a surface mining company, and approval for a 34-lot planned unit development that was never built.

As stated in the Staff Report (packet page 31) a small portion of the North Property along Deschutes River falls within the Oregon Scenic Waterway. According to the Staff Report "Oregon Scenic Waterways located in Deschutes County are recognized in the Comprehensive Plan (Table 2.5.2) as Goal 5 resources. In addition, the Staff Report states:

*"Although no specific uses are proposed at this time, all future development in the WTZ will be required to coordinate with OPRD to comply with the Land Management rules as described in OAR 736, Division 40: Oregon Scenic Waterways. Staff finds that compliance with the Oregon Scenic Waterways program will encourage development to be sensitive to scenic views and sites (Policy 2.7.5).*

*Moreover, the applicants are proposing to provide wildlife resource corridors, trails and paths that connect with existing and proposed parks and recreational opportunities, such as Shevlin Park to the west and Riley Ranch Park to the northeast. Note: staff from OPRD asked if the proposed trails will be open to the recreating public. Are recreation trails required to be open to the public to comply with Comprehensive Plan policies? Staff asks the Hearings Officer to make specific findings on this issue raised by OPRD.*

*As previously mentioned, wildlife and wildfire management plans will be required and are a key component of all land divisions in the WTZ. To ensure compliance with said plans, the proposed WTZ ordinance requires all future developments to be governed by CC&R's that are specifically designed to protect resource values, such as open space and scenic views, while minimizing the threat and spread of wildfire. And, as noted above, any development within an Oregon Scenic Waterway will be required to comply with the State requirements.*

*Because several comments from the public have raised questions about open space provisions in the application materials, staff asks the Hearings Officer to determine if the applicants' proposal has adequate built-in standards that will ensure all future developments within the WTZ will protect significant open spaces while establishing a comprehensive system of connected open spaces.*

The Hearings Officer finds that this section of the DCC does not require the County to provide public recreational trails through the property in order to comply with these DCCP policies. The Hearings Officer finds that Applicants' proposal has adequate built-in standards that will ensure future developments within the WTZ will protect significant open spaces while establishing a comprehensive system of connected open spaces. The Hearings Officer finds that such standards include the proposed WTZ rules, the requirements to comply with the Oregon State Scenic Waterway and the County's Deschutes River Corridor rules, the rigorous review following submission of future development, and continued coordination with the Bend Parks, which provide more than sufficient standards to show compliance with these policies; substantially more protection than that of the existing code. Further, as noted in Applicants' Burden of Proof Statement and mentioned by the Bend Parks, topography plays a big part in siting future developments on the

properties. The South Property, for example, as testified by Mr. Conway, will likely have a "Conservation Area" and a "No Build Area" that sets back development at least 400 feet from its western boundary, the closest boundary to Shevlin Park (see Attachment D to the District's September 11, 2018 testimony). In addition, Applicants testified they will continue to include the Bend Parks in discussions as they move forward with future development plans.

The Hearings Officer finds Applicants have met the DCC policies set forth in DCC Section 2.7 - Open Spaces, Scenic Views and Sites.

**Section 2.10 – Surface Mining Policies**

**Goal 1 – Protect and utilize mineral and aggregate resources while minimizing adverse impacts of extraction, processing and transporting the resource.**

...

**Policy 2.10.3 Balance protection of mineral and aggregate resources with conflicting resources and uses.**

**Findings:** A portion of the northern section of the North Property is currently zoned SM. Staff noted the underlying DCC designation is Urban Area Reserve, not Surface Mining. The Subject Property is not identified as a Goal 5 resource and not listed on the County's inventory of surface mining sites. Thus, the Hearings Officer finds that review or protection under Goal 5 is not applicable. Moreover, Applicants approximate there is five to seven years' worth of resources left within the Coats' surface mine. Applicants contend there are no Section 2.10 Surface Mining policies that are relevant to the proposal. The Hearings Officer agrees.

As noted earlier, the Subject Property was under the jurisdiction of the Bend Area General Plan until the 2016 amendment to the Bend Urban Growth Boundary. LCDC never required the City of Bend, during periodic review, to inventory the SM zoned properties consistent with Statewide Goal 5. Every inventoried surface mine in Deschutes County contains a Surface Mining Impact Area Combining Zone ("SMIA"). The purpose is to:

*"Protect surface mining resources of Deschutes County from new development which conflicts with the removal and processing of a mineral and aggregate resource while allowing owners of property near a surface mining site reasonable use of their property." (DCC 18.56.010)*

The SM zoned properties are not recognized by the County as a surface mining resource and are not within a SMIA. Therefore, the Hearings Officer finds Policy 2.10.3 is not applicable.

**Chapter 3 – Rural Growth Management**

**Section 3.3 – Rural Housing Policies**

**Goal 1 – Maintain the rural character and safety of housing in unincorporated Deschutes County.**

**Policy 3.3.1 The minimum parcel size for new rural residential parcels shall be 10 acres.**

**Findings:** Applicants argued that the Subject Property, with DCC and zoning designations of Urban Reserve, is not rural land as that term is used in the County comprehensive plan and defined in the Statewide Planning Goals. However, because the proposed WTZ, the zone which Applicants propose to apply to the Subject Property, is a rural zoning designation the Hearings Officer believes the above policy is applicable and addresses it herein.

Applicants proposed to modify Policy 3.3.1 to add the underlining language "Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." The Subject Property is currently zoned UAR-10 and SM. The minimum lot size for the UAR-10 Zone is 10 acres. The minimum lot size of the SM Zone is, "as determined by the Planning Director to be necessary for the protection of public health, safety and welfare." The WTZ is proposed to have a 2.5-acre minimum lot size with the stated purpose of the WTZ (19.22.010) of providing a transitional residential development pattern with densities ranging from one unit per 2.5 to 10 acres. The WTZ allows for no more than 187 residential units to ensure the rural character of the area will be maintained.

Applicants supplied proposed findings for a Goal 14 exception for the Subject Property to address Policy 3.3.1. and Staff concluded that a Goal 14 exception is required to establish a 2.5 minimum lot size. As discussed below, the Hearings Officer adopts Applicants' recommended findings for a Goal 14 exception.

***Policy 3.3.4 Encourage new subdivisions to incorporate alternative development patterns, such as cluster development, that mitigate community and environmental impacts.***

**Findings:** Applicants proposed a new zone, the WTZ, which provides for rural development that is required to protect wildlife habitat and incorporate fire management plans into subdivision designs. The proposed zoning ordinance requires all land divisions to have a wildlife habitat management and wildfire mitigation plan. These documents are required to be part of an application for a land division and must be accompanied with a document establishing a homeowners' association that will enforce said plans. Staff recommended, and the Hearings Officer agreed, that new subdivisions within the proposed WTZ will adequately mitigate environmental impacts. Community impacts are addressed in the previous and forthcoming review of comprehensive plan policies and State Planning Goals.

Moreover, Applicants proposed to add eight new policies to Section 3.3, as set forth below:

*"Policy 3.3.8. The transect concept provides a range of development patterns from most to least developed. The Westside Transect Zone implements the transect concept by providing a rural, low density range at the western edge of the Bend UGB adjacent to the urban transect typology inside the Bend UGB and extending outward westerly to the public and forested lands. The Westside*

*Transect Policies set forth below and the zoning ordinance provisions implementing those policies are specific to the area located between the Bend UGB and Shevlin Park and do not apply to other areas adjacent to the Bend UGB.*

*Policy 3.3.9. Westside Transect Policies:*

*3.3.9.1: Protect the sensitive eco-systems and interrelationships of the urban/rural interface on the west side of Bend between the urban area and Shevlin Park and the public and forestlands to the west.*

*3.3.9.2: Protect natural resources and environmentally sensitive areas and provide special setbacks between development and Shevlin Park, Tumalo Creek, and forestlands.*

*3.3.9.3: Development patterns shall reflect the protection of land with environmental significance and fire-wise community design best practices.*

*3.3.9.4: Limit residential development to 200 single-family residential lots.<sup>6</sup>*

*3.3.9.5: Manage all areas outside of the structural building envelopes on residential lots for wildfire mitigation and wildlife habitat in accordance with coordinated plans prepared by professionals, reviewed annually with reports submitted to the County every three years. The wildfire mitigation and wildlife habitat plans shall be funded through homeowner assessments and administered and enforced by a homeowners association established at the time of creation of any residential lots.*

*3.3.9.6: Reduce the impact of construction by using best management practices to minimize site disturbance during construction and construction impacts (i.e., erosion) on Shevlin Park, Tumalo Creek, and forestlands.*

*3.3.9.7: Coordinate with the City of Bend for mitigation of impacts to City infrastructure from development within the Transect.”*

By way of incorporating the aforementioned policies into Section 3.3, Staff recommended, and the Hearings Officer agreed, that Applicants’ proposal is consistent with the intent of the DCC to promote an orderly pattern and sequence of growth because:

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<sup>6</sup> The Hearings Officer notes that Applicants agreed to limit the number of residential development to 187 single-family residential lots. This will require revisions of 3.3.9.4 which have been added as a requirement to the recommendation section of the decision.



- The WTZ concept is prescribed only to a specific area of the county, i.e., located between the Bend UGB and Shevlin Park, and do not apply to other areas;
- The proposal provides protection for wildlife habitat and the threat of wildfire; and
- A master plan process with compatibility criteria are required for all land divisions.

**Section 3.5 – Natural Hazards Policies**

**Goal 1 Protect people, property, infrastructure, the economy and the environment from natural hazards.**

As previously noted in the findings above, Applicants’ proposal requires new development in the WTZ to address the threat of wildfire. Applicants’ included National Fire Protection Association (NFPA) standards into the proposed zoning ordinance. NFPA standards are recognized as the best practices for preventing property loss to wildfires. In addition, the WTZ code, 19.22.060(C)(2) requires a Wildfire Mitigation Plan that includes enforceable measures to prevent the ignition and spread of wildfire. The Hearings Officer finds this policy is met.

**Section 3.7 – Transportation**

**The Transportation System was adopted in Ordinance 2012-005 and is hereby incorporated into this Plan as Appendix C.**

**Appendix C – Transportation System Plan: Chapter 5**

**Section 5.3 – Arterial and Collector Road Plan**

**Goal 4: Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.**

...

**Goal 6: Designate access and land uses appropriate to the function of a given road.**

**Findings:** As noted previously in the findings, the Hearings Officer determined that the TSP Goals are not approval criteria for Applicants to meet. The County is charged with implementing the policies and goals provided in the TSP. Additionally, the County is responsible to coordinate with cities, such as the City, to ensure transportation development in the County is compatible with a city’s transportation network. Staff sent a request for comment to the County Road Department, County Transportation Planner and the City of Bend Public Works Department.

The County Road Department and County Transportation Planner provided comments related to this policy (See Section H. Public and Private Agency Comments earlier in the Recommendations).

The Hearings Officer finds that Applicants’ Transportation Impact Assessment (“TIA” - Exhibit 16 of Applicants’ application materials) demonstrated that all transportation facilities, within the county, will continue to operate at acceptable levels of service under the proposed zone change and development of the properties. Staff noted, as highlighted by the County Transportation Planner,

the TIA numbers assume 286 residences, which is 86 more than what the comprehensive plan and WTZ ordinance prescribe. Staff noted that if 286 residences would not significantly affect an existing or planning transportation facility, then 200 residences would not necessitate changes to the functional classification of existing or planned transportation facilities. The Hearings Officer agrees.

However, Staff also noted the discrepancies of the proposed comprehensive plan policy and zoning code language limiting the WTZ to 200 residential lots, the TIA calculations based on 286 residences, and the development agreement with the city apparently limiting the area to 187 residential lots. Applicants representative testified at the public hearing and provided additional comments in its September 25, 2018 rebuttal letter as follows:

*"Mr. Russell's [County Transportation Planner] comments note discrepancies in the applicant's burden of proof and related Traffic Impact Analysis reports with regard to the total number of units proposed for the WTZ. As clarified by the applicant's attorneys at the public hearing, the total number of units proposed for the WTZ is 187 units (100 units located in the North Property and 87 units located in the South Property). The changes in the density numbers reflect the applicant's coordination of its plans over time with those of the City and associated Infrastructure Development Agreement submitted into the record. As explained at the hearing, the Traffic Impact Analysis report's calculations used residential numbers exceeding 187 units (the TIA estimated 227 residential units) as a worse-case scenario analysis under the Transportation Planning Rule. Studying more units than proposed provides a cushion to ensure the traffic impacts are fully addressed.*

Staff recommended that the Hearings Officer include a condition of final decision requiring the aforementioned DCC policy and zoning code language reflect 187 residential lots. The Hearings Officer finds that a condition of final decision limiting the residential lots to 187 lots is not necessary as Applicants revised the proposed WTZ zoning code to reflect limiting the residential units to 187 residential lots with 100 residential lots for the North Transect and 87 residential lots for the South Transect (see Applicants' Exhibit 33). The Hearings Officer finds that due to a likely oversight, Applicants will need to revise the language of DCC section 3.3.9.4., to limit residential development to 187 single-family residential lots (rather than the 200 residential lots that is currently listed), which has been included in the Recommendations.

Additionally, Staff recommended that the Hearings Officer condition the final decision to incorporate the proposed language of DCC 19.22.070 – Street Improvements, as requested by the County Road Department. Applicants proposed no new arterials or collectors within the WTZ. Section 19.22.070(A) of the proposed zoning ordinance provides for the possibility of a public road, such as a collector, to be constructed through the subject properties if regional transportation needs and goals determine such a road to be necessary. Staff worked with Applicants to include a provision because of the potential for a north-south collector road to be identified in the WTZ area in a forthcoming update to the TSP. The Hearings Officer finds that a condition of final decision adding language to Section 19.22.070, Street Improvements, is not necessary as Applicants revised

the proposed WTZ zoning code to include language that allows the County to determine whether public roads are required to meet regional transportation needs and goals, including a collector road to provide north-south connectivity through the WTZ (see Applicants' Letter dated 9/25/18 - Exhibit 33). The Hearings Officer finds that with the revisions referenced above these policies can be met.

***Goal 7: Update as needed DCC Chapter 17.48, Design and Construction Specifications, to ensure all aspects of construction related to roads, pedestrian walkways and bicycle facilities occurring outside designated urban growth boundaries in Deschutes County are adequate to meet the needs of the traveling public.***

**Findings:** Staff recommended, and the Hearings Officer agrees, that new roads, including bicycle and pedestrian facilities, constructed as part of future development of the WTZ are required to be built to the standards in DCC Title 17. The Hearings Officer finds this policy can be met by Applicants' proposal.

#### **Chapter 4 – Urban Growth Management**

##### **Section 4.2 – Urbanization**

***Goal 1 - Coordinate with cities, special districts and stakeholders to support urban growth boundaries and urban reserve areas that provide an orderly and efficient transition between urban and rural lands.***

***Policy 4.2.2 Promote and coordinate the use of urban reserve areas.***

**Findings:** Applicants asserted that the Bend Urban Area Reserve Comprehensive Plan (Title 19) designation is not an urban reserve established under OAR Chapter 660, Division 21. The Hearings Officer finds Policy 4.2.2 pertains to Urban Reserve Areas established under this administrative rule. Therefore, the Hearings Officer finds, this policy does not apply.

b. Section 19.116.020. Standards for Zone Change (continued)

***B. That the change will not interfere with existing development, development potential or value of other land in the vicinity of the proposed action.***

**Findings:** Applicants addressed this criterion by dividing it into three categories: existing development; potential development; and value of land in the vicinity of the proposed action. Applicants also provided a description of the surrounding development of the subject properties, provided below (Applicants' Burden of Proof page 18):

*"The North Property abuts the City of Bend's Urban Growth Boundary to the east and south where the nearby land is developed at urban residential densities with residential neighborhoods, including a golf course, future school, mixed housing and neighborhood-scale commercial*

*services. To the north and west, the nearby property is within the County's jurisdiction and includes rural development consisting of parks, Tumalo Creek, the Deschutes River, and areas zoned Rural Residential (RR-10), Exclusive Farm Use (EFU), and Surface Mining (SM).*

*The South Property abuts the City of Bend Urban Growth Boundary to the north and east where nearby land is either developed or planned for residential development at urban density levels. Property to the south has been approved for the development of the recently platted, "Tree Farm" rural cluster development. Two-acre residential lots within the Tree Farm project border directly on the South Property. Shevlin Park and Tumalo Creek lies immediately to the west of the South Property.*

*Taking into account the various nearby lands and development, "other land in the vicinity of the proposed action" consists of the urban neighborhoods abutting the subject property to the east and south and rural residential lands, parks, Deschutes River and Tumalo Creek, surface mining activities to the north and west."*

Applicants contend the proposal will not interfere with existing development, development potential and value in the vicinity of the North Property for the following reasons (Applicants' Burden of Proof pages 19 and 20):

*"Topography: The varied topography of the Coat's property geographically isolates the property from neighboring development.*

*Wildlife Corridors: The plan amendment and zone change application includes a Wildlife Management and Forest Health Management Plan that has wildlife corridors through the property and along the western edge of the property (Exhibit 12). The corridors will ensure continued wildlife movement patterns across the Coat's property to development within Shevlin Park. The Forest Health Management plan identifies specific management objectives for this property that will be implemented with development to integrate wildlife habitat protection with forest fuels management to protect against the ignition and spread of wildfire.*

*Public Facilities and Services: Public facilities and services, such as water and sewer, will be provided by municipal or well water, or private water company and the use of individual septic systems and will not interfere with existing development in the vicinity.*

*Transportation: The proposed plan amendment and zone change will not interfere with existing development in the vicinity. The transportation layout includes an extension of Skyline Ranch Road, to be built to rural County standards and interior local planned roads. The traffic impact study performed by Lancaster Engineering shows all County transportation facilities will continue to operate at acceptable levels of service with the rezone and future development on the properties considering a maximum, worse case development scenario.*

*Scenic views and livability: The proposed plan amendment and zone change will not interfere with existing scenic views from development within the vicinity of the project area. Varied and sloping topography, low residential density, and minimum lot size of 2.5 acres, as well as provisions in the CC&Rs will ensure any future development will minimize interference with neighboring views and livability.*

*Recreational opportunities: The proposed plan amendment and zone change will enhance existing, and create new connections to existing developed recreational opportunities to the east and west and will not interfere with existing recreational development. The applicants are coordinating with the Bend Parks and Recreation to integrate trails and multi-use paths within the property that connect to existing and proposed Parks and Recreation properties.*

*Surface Mining: The proposed plan amendment and zone change anticipates the continuation of surface mining activities to the north-northwest on the Coat's property. The low density residential lot size of a minimum of 2.5 and shared access along the interior road will ensure the plan amendment and zone change will not interfere with the operations of the surface mine."*

Applicants contend the proposal will not interfere with existing development, development potential and value in the vicinity of the South Property for the following reasons (Applicants' Burden of Proof pages 20 and 21):

*"Topography: The topography of the South Property gradually slopes downhill to the west, towards Shevlin Park and Tumalo Creek. Future residential lots located on the western edge of the South Property will also be subject to planned conservation areas that will be managed for wildlife purposes and fire protection. The applicant's planned management corridors (wildlife and fire purposes) will provide a substantial buffer between Shevlin Park and future residential development. The topography of the site will work to minimize the visual impacts of residential development on Shevlin Park. A steep ridgeline on the eastern edge of the property will work to buffer planned home sites from urban development to the east. Residential development within the transect zone will be compatible with the neighboring Tree Farm development to the south. As noted above, applicants' planned management corridors (for fire and wildlife) will provide a buffer between the South Property and the developed Shevlin Commons neighborhood.*

*Wildlife Corridors: The plan amendment and zone change application includes a designated wildlife management and migration corridor that abuts existing natural areas in Shevlin Park. This area will be managed to facilitate the movement of wildlife within the Tumalo Creek corridor. The applicant has developed a Wildlife Management and Forest Health Management Plan that identifies specific management prescriptions that will be implemented within the South Property to protect wildlife habitat and to provide additional protections against the ignition and spread of wildfire (Exhibit 12).*

*Public Facilities and Services: Public facilities and services, such as water and sewer, will be provided by municipal or well water and the use of individual septic systems and will not interfere with existing development in the vicinity.*

*Transportation: The proposed plan amendment and zone change will not interfere with existing development in the vicinity. The transportation layout includes an extension of NW McClain Drive, to be built to rural County standards and interior local planned roads. The traffic impact study performed by Lancaster Engineering shows all County transportation facilities will continue to operate at acceptable levels of service with the zone change and development of the properties.*

*Scenic views and livability: The proposed plan amendment and zone change will not interfere with existing scenic views from development within the vicinity of the project area. As noted above, a wildlife management corridor and no-build area will be imposed along the western edge of the South Property. These corridors will be managed as a wildlife corridor and for fire protection purposes. No buildings or structures will be developed in these areas. The applicants' conceptual development plan has been designed to minimize any visual impacts of the property on the adjacent Shevlin Park Area. Varied and sloping topography, low residential density, and minimum lot size of 2.5 acres, as well as provisions in the CC&Rs will ensure any future development will minimize interference with neighboring views and livability.*

*Recreational opportunities: The proposed plan amendment and zone change will enhance existing, and create new connections to existing developed recreational opportunities to the west. Any trail corridors will be designed to minimize wildlife impacts and to facilitate fire protection opportunities. The applicants will coordinate with the Bend Parks and Recreation to integrate trails and multi-use paths within the property that connect to existing and proposed Parks and Recreation properties."*

**Staff Comment:**

*"Several property owners of an adjacent residential subdivision listed concerns about the lack of designs for potential development. They listed concerns of inadequate open space and devaluation of their property because of potential roads being developed adjacent to their homes. The commenters want a definitive plan for future development in the WTZ and suggested the proposal should show compliance with DCC 19.76, Site Plan Review.*

*Staff requests the Hearings Officer to determine if the applicants' burden of proof is sufficient to comply with the criterion that "the change will not interfere with existing development, development potential or value of other land in the vicinity of the proposed action."*

Applicants' rebuttal letter, dated September 25, 2018, addressed the public's concerns regarding setbacks, wildlife habitat conservation and participation in the public process as stated below:

**1. "Shevlin Ridge Residents (Letter dated 9-13-18)**

*The issues raised by some residents in the Shevlin Ridge neighborhood, adjacent to the South Transect area, include rear setbacks, wildlife habitat conservation and participation in public process. Each of these issues is addressed below.*

**a. Rear Setbacks**

*The proposed WTZ code contains the minimum setbacks proposed for the zoning code. When a development plan for the properties is prepared and submitted, it will show lot and street layout, open space and migration corridors. At that time, the setbacks necessary to protect surrounding properties can be analyzed in relation to the proposed lots and overall development and can be increased if needed to address compatibility with surrounding properties, which is an approval criterion for any development proposal in the WTZ. See 19.22.060A.*

**b. Wildlife Habitat Conservation**

*The Shevlin Ridge neighbors reference their personal observations of deer and elk utilizing portions of the South Property. They contend any future development plans should retain a migratory path for wildlife directly adjacent to their properties and the City's urban growth boundary. This contention is pre-mature in the context of the requested zone change and is contradicted by the evidence contained in the hearing record.*

*The specific location of dedicated open space and resource management corridors will be determined at the time of future land divisions in accordance with a Wildlife Habitat Management Plan prepared by a professional biologist. See DCC 19.22.060(C). The Wildlife Report submitted as Exhibit 19 with the application materials was prepared by a professional biologist in conjunction with ODF&W to identify significant migration corridors and habitat. This report will be used as a framework for the additional reports which must be prepared and submitted as a part of any future development application in the WTZ. The Wildlife Report for the South Property identifies the need to protect a permanent travel corridor for deer and elk along the western border of the South Property where it abuts Shevlin Park and the Tumalo Creek riparian area. This area provides for the north-south movement of wildlife in a corridor that adjoins dedicated and permanently protected areas of open space to the north (in Shevlin Commons) and to the south (in the Miller Tree Farm development). In contrast, the migration area referenced by the Shevlin Ridge homeowners directly abuts land within the urban growth boundary to the north and east. The 40-acre parcel immediately north of this area was added to the urban growth boundary in 2016 and is zoned for the development of 116 residential homesites.*

*An email response to the Shevlin Ridge letter from wildlife biologist, Wendy Wentz of Mason, Bruce & Girard is attached to this letter as Exhibit 31. Based on her analysis of the property and ongoing coordination with the Oregon Department of Fish and Wildlife, Dr. Wentz notes the importance of preserving a dedicated wildlife migration corridor along the western edge of the South Property.*

Dr. Wente further notes that the preservation of a migration corridor to the east (as requested by the Shevlin Ridge homeowners) would have “no protected connection to undeveloped areas” and that conflicts with the urban growth boundary would make it less likely to be utilized by deer and elk as urban development within the City progresses over time.

## **2. Coats Family, LLC**

The Coats Family, LLC incorrectly claims its property is within the WTZ. As shown on the maps submitted with the application materials and identified in the application materials, the property owned by the Coats Family, LLC, identified as 17-12-18-108 is outside of the WTZ boundary. It is the notched area on the northern boundary of the North Transect and was specifically excluded from the zone boundary.

The Coats Family’s concerns that the identification of wildlife habitat near their property could negatively impact its value is not responsive to any approval criteria for the present zone change. The wildlife biologist identified migration corridors and habitat where they exist on site. The proposed WTZ code provisions require additional reports based on the submitted framework plan when lots, streets and developments are proposed to ensure identified wildlife habitat will be protected with any development proposal within the zone. It is difficult to understand how the proposed code provisions will negatively impact the development potential of the Coats Family property, which is located outside of the WTZ zone.

## **3. Gladys Biglor**

Ms. Biglor identifies three areas of objection, which include:

- a. Inadequate public notice
- b. The proposal fails to meet the intent of the existing zone: this zone is “meant to serve as a buffer between the city and forest”
- c. Failure of the proponents to adequately assess fire danger both to Bend & Deschutes County as well as reciprocal fire danger to adjacent public lands to the north and west; especially lands managed by the United States Forest Service.

a. The ‘inadequate public notice’ to which she refers is an article written in The Bend Bulletin, which improperly described the proposal as development in a ‘Forest buffer zone. The Bulletin has since printed a correction, a copy of which is attached as Exhibit 32. The County mailed and published notice in the record meets the law and demonstrates adequate public notice was given. Moreover, the County Board will hold a de novo hearing which will address Ms. Biglor’s concerns about missing the first one.

b. The existing zoning is Urban Area Reserve, with the intent to serve as a holding category for future urbanization. However, the proposal is for a zone change, not for development under the existing zone.



*c. Ms. Biglor clearly did not attend the public hearing or review the extensive record on the measures to address fire danger to surrounding lands. The present zoning contains no provisions for the prevention or mitigation of wildfire risk. The record contains ample evidence of the measures to which the applicant has studied the fire danger and the proposed code requirements, DCC 19.22.060A-C, ensure fire mitigation measures will be implemented, monitored and maintained prior to and in perpetuity for any development in the WTZ."*

The Hearings Officer first addresses the Shevlin Ridge comments. In their September 13, 2018 letter to the Hearings Officer, residents of the Shevlin Ridge community expressed concerns with the proposed 30-foot rear lot line setback in the proposed WTZ zoning ordinance (Deschutes County Code Chapter 19.22. – specifically, DCC 19.22.050 E). The Shevlin Ridge letter goes on to say that the 30-foot rear setback "is inadequate and will adversely affect our home values" and "will be detrimental to the Elk and Mule Deer populations if all current migratory paths within the proposed WTZ are not identified..."

The Hearings Officer finds no persuasive evidence in the record to support the Shevlin Ridge residents' contention that the proposed DCC 19.22.050 E rear setback (30 feet) will adversely impact the property value of Shevlin Ridge properties. The Hearings Officer finds that the proposed language in 19.22.060 A.1 provides a process whereby the residents of Shevlin Ridge can object/comment about proposed setbacks during any proposed land division. The Hearings Officer finds there is no evidence in the record that the application in this case, if approved, will "interfere with existing development potential." The Hearings Officer finds there is no evidence in the record demonstrating that the application in this case, if approved, will interfere with the "value of other land in the vicinity." The Hearings Officer finds, for the purposes of this review, that the proposed language of DCC 19.22.060 meets the requirements of this approval criterion ("the change will not interfere with existing development potential or value of other land in the vicinity of the proposed action").

The Hearings Officer finds the WTZ proposed ordinance (DCC 19.22.060.C.1) requires, as part of any future land division, a Wildlife Habitat Management Plan to be prepared by a professional biologist. The required Wildlife Habitat Management Plan, per DCC 19.22.060.C.1, must identify wildlife migration corridors for the purpose of protecting the identified wildlife. The Hearings Officer finds that if Elk and Deer migration corridors are identified adjacent to Shevlin Ridge properties such corridors must be considered in establishing setbacks. The Hearings Officer finds DCC 19.22.060 directly addresses the Shevlin Ridge "wildlife migration corridor" concerns.

Finally, the Hearings Officer agrees with Applicants' comments (9/25/18 letter) that the uses permitted within the WTZ zone are more restrictive/limited than those permitted under the current zoning. The Hearings Officer finds the WTZ uses are likely to cause fewer negative impacts for Shevlin Ridge residents than uses that are currently allowed.

The Hearings Officer agrees with Applicants' statement, quoted above, that the Coats Family, LLC property, referenced in its letter, is not within the proposed WTZ boundary. The Hearings Officer finds that the Coats Family, LLC concerns about wildlife habitat and potential impacts to value of the Coats Family, LLC property are not responsive to any relevant approval criteria. The Hearings Officer reiterates that as part of any future proposed land division additional reports related to wildlife habitat and corridors will be required. At that time the Coats Family, LLC will have an opportunity to review the wildlife reports and provide comments to the County.

The Hearings Officer has previously found that public notice for the Hearings Officer public hearing was adequate. The Hearings Officer agrees with Applicants that Gladys Biglor's concern that the "proposal fails to meet the intent of the existing zone" is not relevant to this application. Applicants', in this case, are proposing a new zone (WTZ). The Hearings Officer also agrees with Applicants' statement that "the record contains ample evidence of the measures to which the applicant has studied the fire danger and the proposed code requirements, DC 19.22.060A-C, ensure fire mitigation measures will be implemented, monitored and maintained prior to and in perpetuity for any development in the WTZ."

For these reasons stated above, the Hearings Officer finds Applicants provided sufficient evidence to demonstrate the proposed zone change will not interfere with the existing development, development potential or value of other land in the vicinity of the proposed action.

b. Section 19.116.020. Standards for Zone Change (continued)

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

**Findings:** Applicants proposed amending DCC 19 to establish the new Westside Transect Zone. The stated purpose of the WTZ (19.22.010) is:

*"To accommodate and provide standards for land located between the urban and rural areas that provide a transitional residential development pattern with densities ranging from one unit per 2.5 to 10 acres. To guide development of stewardship communities which are designed and managed to protect wildlife habitat, and establish wildfire mitigation and prevention strategies."*

The area to be rezoned totals approximately 717 acres. The Subject Property, located between Bend's UGB and Shevlin Park, Tumalo Creek, and forest-use zoned lands, provides an opportunity to accommodate developments that transition from 2.5-acre lots to large, open space properties and resource management corridors. The proposed zoning ordinance requires standards and specific plans for all land divisions that focus on wildlife habitat conservation and wildfire prevention. The Hearings Officer finds the proposed change in classification is consistent with the purpose and intent of the proposed zone classification.

b. Section 19.116.020. Standards for Zone Change (continued)

- D. That the change will result in the orderly and efficient extension or provision of public services. Also, that the change is consistent with the County's policy for provision of public facilities.**

**Findings:** There are several properties surrounding the Subject Property that are outside of the UGB that are residentially developed and have water service from a quasi-municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. There are no known deficiencies or complications in extending public services to the area.

The application materials provide the following response (Applicants Burden of Proof Statement, pages 22-24):

*"North Property: Extension of public services to the property to accommodate a low-density residential development will be limited to an extension of Skyline Ranch Road. This extension of Skyline Ranch Road as a collector road is shown on the City's TSP. Since Skyline Ranch Road is shown on the City's TSP plan, extending the road onto the Coat's property results in an orderly and efficient extension of the City's transportation systems plan. Other public services, such as water and sewer, will be provided either by water service from the City of Bend or individual wells, or private water company, and individual septic systems. Electricity will be provided by Pacific Power. A portion of the property is already within the City's firefighting limits and the remaining portions are either within or will be annexed into the Rural Fire Protection District #2. Police services are and will be provided by the Deschutes County Sherriff's office.*

*South Property: Access to the South Property can be provided through an extension of Sage Steppe Drive (a local County roadway) and McClain Drive (a City of Bend local roadway). Access to individual lots can be provided through local county roads and no other transportation infrastructure is required. Other public services, such as water and sewer, will be provided either by water service from the City of Bend or individual wells and individual septic systems. Electricity will be provided by Pacific Power. The South Property will be annexed into the Deschutes County Rural Fire Protection District #2. Police services are and will be provided by the Deschutes County Sherriff's office.*

*The zone change to the Westside Transect Zone is also consistent with the County's policy for provision of public facilities as found in Section 3.5 Public Facilities and Services of the Comprehensive Plan and reiterated below:*

*Section 3.6, Public Facilities and Services*

*This section addresses public facilities and services for rural areas, including water and sewer, police and fire protection, health and social services, schools, and libraries. The location of the*

*subject property adjacent to the Bend City limits which are served with public facilities and services makes for an efficient and cost-effective orderly pattern of growth of services by connecting to existing or planned City services. Services for future development of the property may include:*

*Water: Water for future development will be provided either through individual wells and/or the extension of City water services or a private water company. See attached well logs from the area, Exhibit 17. City of Bend water services have previously been extended and stubbed to the southern boundary of the South Property in connection with the approved Tree Farm development. The applicants plan to work with the City of Bend to obtain authorization for the extension of City water to the subject properties. In the event the application is approved by the City, the additional water will be used for both residential purposes and as an additional tool for fire suppression. In the event City water is not extended to the site, water to the properties will be provided by individual exempt domestic wells, or a private water company.*

*Sewer: Sewer will be provided by individual septic systems. The County will require a septic feasibility evaluation for each lot to confirm the use of an on-site septic system.*

*Police: Deschutes County Sherriff's office.*

*Fire Protection: A portion of the north end of the North Property is located in Rural Fire Protection District #2 and the rest lies outside the rural fire protection district boundaries. The South Property lies outside of the boundaries of the rural fire protection district. (Exhibit 18) Both properties will be annexed prior to any residential development. Fire protection will be enhanced by the implementation of the Wildlife Habitat and Forest Health Management Plan implemented by the CC&Rs and enforced by the HOA.*

*Schools: Bend-La Pine School District owns 32 acres in the North Property. Schools are conditional use in the Westside Transect Zone subject to site plan review."*

Staff recommended, and the Hearings Officer agrees, that compliance with this criterion is demonstrated. The Hearings Officer finds that the change will result in the orderly and efficient extension or provision of public services and the change is consistent with the County's policy for provision of public facilities. Applicants have coordinated their plans consistent with both the County and City TSPs and are agreeable to improvements on their land in order to achieve an orderly and efficient extension of the City's transportation systems plan. All other public facilities can reasonably be accommodated for developments within the proposed WTZ. Moreover, the proposal does not inhibit extension of public facilities through the subject properties in any foreseeable way. Finally, Staff added that development in the WTZ will need to comply with applicable requirements of the DCC, including land use permits, building permits, and sewage disposal permit processes. Through these development review processes assurance of adequate public services and facilities will be verified. The Hearings Officer finds this criterion is met.

b. Section 19.116.020. Standards for Zone Change (continued)

**E. That there is proof of a change of circumstance or a mistake in the original zoning.**

**Findings:** Applicants addressed this criterion in their burden of proof, stating the following (Applicants' Burden of Proof Statement, pages 24-25):

*"The original zoning is UAR-10, Urban Area Reserve with a 10-acre minimum lot size. In 1980, at the direction of the Land Conservation and Development Commission (LCDC), the City and County agreed to a new "Initial Urban Growth County" that resulted in establishing the boundaries of the current Urban Reserve Area. The 1980 Exceptions Statement (Exhibit 11) states, in part:*

*The urban reserve area acts as a buffer to the more rural and resource lands beyond the UGB. The use of the urban reserve will promote more orderly and efficient development, and still retain the 1972 planning commitments which have resulted in financial commitments from both the public and private sectors. The minimum lot sizes of 2 ½ to 10 acres will be compatible with the adjacent land uses, and in most cases are the same as the adjacent MUA-10 and RR-10 zoning outside the UGB.*

*The Exceptions Statement described the "Urban reserve" as follows:*

*Urban reserve - Areas within the urban growth boundary but outside of the IUGB. These areas shall be considered first for inclusion in the IUGB area when need for additional urbanizable land occurs. The density shall be low - one dwelling per 2 1/2 to 10 acres or larger.*

*1. Mistake: Based on the above 1980s Exception Statement, the original zoning of the subject property of UAR-10 does not appear to have been a mistake at the time of its original designation.*

*2. Change in Circumstances: The following circumstances have changed with respect to the subject property and other property in the vicinity since the property was originally zoned UAR-10:*

- Encroaching development in the City of Bend located west of the subject property has brought higher intensity residential and commercial uses to the area along with associated supportive public services as well as an increase in traffic.*
- Recent adoption of the City's UGB studied and considered, but purposefully excluded, the subject property even though as stated above, the Urban Reserve area "shall be considered first for inclusion in the IUGB area when need for additional urbanizable land occurs."*
- The increased threat of wildfire to the City of Bend arising on the public lands to the west and spreading to the City limits has become an area of concern for the City and*

*its residents. The 1990 Awbrey Hall Fire burned much of the area of the subject properties and changed the vegetation pattern of the area. In the years since the Awbrey Hall fire, minimal pine regeneration has occurred and the area is dominated by highly flammable bitterbrush, sagebrush and rabbit brush. The community has long recognized the threat to the City of Bend of wildfire coming from the west and has been working to establish a Wildland Urban Interface.*

*The traffic congestion on the west side of Bend and the lack of the ability to widen many of the west side roads was a major factor contributing to the decisions not to urbanize the subject properties. The consultant reports and findings in the City's recent UGB process provide the basis for the change in circumstances since this property was planned for urbanization in the 1970's.*

*The Westside Transect Zone represents a recognition that the subject properties are uniquely situated to provide a needed transition between the urban uses in the City of Bend and the park and public lands to the west of the subject property."*

The Hearings Officer finds Applicants' proposed findings demonstrate that there has been a change in circumstance since the Subject Property was initially zoned UAR-10 and SM, most notably the fact the area was not included in the latest 2016 UGB expansion. The Hearings Officer finds Applicants have demonstrated compliance with this criterion.

c. Section 19.116.030. Record of Amendments.

***The signed copy of each amendment to the text of Title 19, including the legal description of all lands rezoned legislatively or quasi judicially, shall be maintained on file in the office of the County Clerk. A record of such amendments shall be maintained in a form convenient for the use of the public by the Planning Director, including a map showing the area and date of all amendments hereto. The County Clerk shall keep the map of DCC Title 19 as originally enacted. Every five years after the enactment hereof, a map showing the cumulative amendments hereto for that period shall be filed with the County Clerk. In case of inconsistencies, the controlling record shall be first the original map filed with the County Clerk, and its five-year updates, if any. The Planning Director's map shall control as to map amendments not shown on the original for changes less than five years old.***

**Findings:** Staff stated that if this proposal is approved, that this approval criterion should be made a condition of approval. The Hearings Officer finds that this criterion is a requirement of the County and not an applicable review criterion.

d. Section 19.116.040. Resolution of Intent to Rezone.

*If, from the facts presented and findings and the report and recommendations of the Hearings Officer, as required by DCC 19.116.040, the County Commission determines that the public health, safety, welfare and convenience will be best served by a proposed change of zone, the County Commission may indicate its general approval in principal of the proposed rezoning by the adoption of a "resolution of intent to rezone." This resolution shall include any conditions, stipulations or limitations which the County Commission may feel necessary to require in the public interest as a prerequisite to final action, including those provisions which the County Commission may feel necessary to prevent speculative holding of property after rezoning. The fulfillment of all conditions, stipulations and limitations contained in said resolution, on the part of the applicant, shall make such a resolution a binding commitment on the County Commission. Such a resolution shall not be used to justify spot zoning or create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning. Upon completion of compliance action by the applicant, the County Commission shall, by ordinance, effect such rezoning. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including the time limit placed in the resolution, shall render said resolution null and void automatically and without notice, unless an extension is granted by the County Commission upon recommendation of the Hearings Officer.*

- A. Content of Site Plan. Where a site plan is required pursuant to DCC 19.92, it shall include location of existing and proposed buildings, structures, accesses, off street parking and loading spaces and landscaping; existing and proposed topography; mechanical roof facilities, if subject property is so oriented as to become part of the view from adjacent properties; architectural perspective, layout and all elevations drawn without exaggerations, except where noted, including locations, area and design of signs and all landscaping.*
- B. Resolution on Intent Binding. The fulfillment of all conditions, stipulations and limitations contained in the resolutions of intent on the part of the applicant shall make the resolution binding on the County Commission. Upon compliance with the resolution by the applicant, the County Commission shall, by ordinance, effect such reclassification.*

**Findings:** The Hearings Officer agrees with Staff that this criterion is not applicable at this time. The Commissioners can revisit this criterion after conducting a public hearing and deliberations.

**C. OREGON ADMINISTRATIVE RULES (OAR) – CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**1. OAR 660-004, Division 4, Interpretation of Goal 2 Exception Process**

a. Section OAR 660-004-0018 – Planning and Zoning for Exception Areas

- (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.**
- (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):**
- (a) That are the same as the existing land uses on the exception site;**
- (b) That meet the following requirements:**
- (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;**
- (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and**
- (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;**
- (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;**
- (d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.**



- (3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.**
- (4) "Reasons" Exceptions:**
- (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.**
- (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.**
- (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.**

**Findings:** The Oregon Statewide Goals and Guidelines exception process becomes relevant if a proposal does not meet one or more of the Oregon Statewide Goals ("Goals"). In this case the Applicant asserts that no Goal exceptions are necessary. On the other hand, the City and Staff argue that exceptions are necessary for Goal 3, Goal 4 and Goal 14.

Applicants, in their written submissions (Applicants' Burden of Proof and Proposed Findings), argued that the Subject Property has been slated for urbanization since the 1960s; a time prior to the adoption of the Oregon Statewide Planning Goals and Guidelines. Applicants also asserted that there is no evidence in the record to suggest that any resource inventory, related to agricultural or forest land uses, has been performed for the Subject Property and no resource zoning classifications have been applied to the Subject Property. Applicants assert that there is scant history of farm or forest use(s) on the Subject Property. Applicants', based on the above, concluded that exceptions to Goal 3 and Goal 4 were not required. Applicants did acknowledge that the Subject Property was included within the geographical boundary covered by the 1980 Exception Statement (Applicants' Application Materials – Exhibit 11).

The City, in a letter dated August 31, 2018 (Staff report, packet page 81) and a Memorandum dated December 1, 2017 (Staff report, packet page 78), disagreed with Applicants conclusion that exceptions were not required for Goal 3 and Goal 4. The City noted that the 1980 Exception Statement (Applicants' Burden of Proof Statement, Exhibit 11) concluded by saying that "based on

these considerations, the City and County are taking an exception to Goals 3 and 4 as they relate to the land between the IUGB and the UGB.” The City and Applicants’ agree that the Subject Property was included in the geographical boundary covered by the 1980 Exception Statement. The 1980 Exception Statement also, in a general manner, reviewed soil data and stated “the conclusion from this analysis is that these lands are marginal resource lands.”

The Hearings Officer finds that Applicants did not provide persuasive evidence, in the record, to dispute the conclusions reached in the 1980 Exception Statement. Restated, the Hearings Officer finds Applicants did not contest the validity of the 1980 Exception Statement. Therefore, the Hearings Officer finds the Subject Property, land which was included in the geographical boundary covered by the 1980 Exception Statement, was “marginal resource land” and that the County did take exceptions to Goal 3 and Goal 4 for the Subject Property.

The City, in its December 31, 2017 Memorandum (Staff Report, packet pg. 83), referenced the regulatory language contained above in OAR 660-004-0018(1) OAR 660-004-0018 (1), which states in part that “Exceptions ...do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception.” The City and Staff contend that the proposed WTZ minimum lot size provision represents a change in use and/or density compared to the use and/or density allowed in the 1980 Exception Statement. The City and Staff requested the Hearings Officer find that “new” exceptions must be taken for Goal 3 and Goal 4 (and, also Goal 14 which is discussed below).

The City noted that that the Subject Property was designated as:

*“urban reserve and surface mining, and zoned SR-2 ½, UAR-10, and SM. The majority of the SR-2 ½ acres are currently developed with lots sizes of that size or smaller.” (December 31, 2017 Memorandum – Staff Report, packet pg. 83).*

The Hearings Officer finds Applicants’ provided no persuasive evidence in the record that the Subject Property was developed, on or before 1980, with lot sizes of 2.5 acres (the Hearings Officer used, in the Recommendations, 2.5 rather than 2 ½) or smaller. The Hearings Officer finds Applicants’ provided no persuasive evidence that the 1980 Exception Statement reference to 2.5 acres, or smaller lots, applied to the Subject Property. The Hearings Officer finds the Subject Property is zoned UAR -10 (10-acre minimum lot size). The Hearings Officer finds the WTZ proposed minimum lot size is 2.5 acres. The Hearings Officer finds the proposed WTZ minimum lot size of 2.5 acres is a change in density from the current UAR-10 (10-acres minimum).

Based upon the above, the Hearings Officer finds that a “new” exception is required (must be taken) for Goal 3 and Goal 4.<sup>7</sup>

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<sup>7</sup> As this recommendation will be considered de novo by the Commission it may be possible for the Applicant to provide persuasive and substantial evidence in the record to demonstrate that the

Arguments raised by the Applicants, City and Staff regarding the necessity of a Goal 14 exception will be addressed in the next section of the Recommendations. As will be seen in those findings the Hearings Officer determined that a Goal 14 exception is required.

Finally, the City requested the following language be included in the WTZ (Chapter 19.22) as a "Purpose" section indicating where the zoning district may be applied:

*"19.22.020 Applicability*

*The Westside Transect Zoning District may be applied on the west side of the Deschutes River and east of Tumalo Creek on lands designated Urban Area Reserve on the Deschutes County Comprehensive Plan map where exceptions to Statewide Planning Goals 3, 4 and 14 have been taken to allow densities below one dwelling unit per ten acres."*

Applicants' representative, at the Hearings Officer public hearing, indicated that Applicants did not object to the addition of the City proposed "applicability" language. The Hearings Officer finds the City's requested language, adding an "applicability" section, as quoted above, is reasonable and appropriate.

b. Section OAR 660-004-0040 -- Application of Goal 14 to Rural Residential Areas

Staff requested the Hearings Officer to determine if the provisions of OAR 660-004-0040 apply to this case. Staff also requested, in the event the Hearings Officer determined OAR 660-004-0040 are applicable to this case, to determine if Applicants adequately addressed the application of Goal 14 to Rural Residential Areas and if Applicants' proposed findings for a Goal 14 exception are adequate.

OAR 660-004-0040 states, in part, the following:

- "(1) The purpose of this rule is to specify how Goal 14 "Urbanization" applies to rural lands in acknowledged exception areas planned for residential uses.***
- (2) For purposes of this rule, the definitions in ORS 197.015, the Statewide Planning Goals and OAR 660-004-0005 shall apply. In addition, the following definitions shall apply:***
  - (a) 'Accessory dwelling unit' means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling.***
  - (b) 'Habitable dwelling' means a dwelling that meets the criteria set forth in ORS 215.213(1)(q)(A)-(D) or ORS 215.283(1)(p)(A)-(D), whichever is applicable.***
  - (c) 'Historic home' means a single-family dwelling constructed between 1850 and 1945.***

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Subject Property was not agricultural or forest land (resource land) as defined in Statewide Goals 3 & 4 at the time of the 1980 Exception Statement was approved by the Commission.

- (d) 'Minimum lot size' means the minimum area for any new lot or parcel that is to be created in a rural residential area.*
- (e) 'New single-family dwelling' means that the dwelling being constructed did not previously exist in residential or nonresidential form. New single-family dwelling does not include the acquisition, alteration, renovation or remodeling of an existing structure.*
- (f) 'Rural residential areas' means lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 "Agricultural Lands", Goal 4 "Forest Lands", or both has been taken.*
- (g) 'Rural residential zone currently in effect' means a zone applied to a rural residential area that was in effect on October 4, 2000, and acknowledged to comply with the statewide planning goals.*
- (h) 'Single-family dwelling' means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.*
- (3)(a) This rule applies to rural residential areas.*
  - (b) Sections (1) to (9) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family dwelling on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before October 4, 2000.*
  - (c) This rule does not apply to types of land listed in (A) through (H) of this subsection:*
    - (A) Land inside an acknowledged urban growth boundary;*
    - (B) Land inside an acknowledged unincorporated community boundary established pursuant to OAR chapter 660, division 22;*
    - (C) Land in an acknowledged urban reserve area established pursuant to OAR chapter 660, divisions 21 or 27;*
    - (D) Land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;*
    - (E) Resource land, as defined in OAR 660-004-0005(2);*
    - (F) Nonresource land, as defined in OAR 660-004-0005(3);*
    - (G) Marginal land, as defined in former ORS 197.247 (1991 Edition); or*
    - (H) Land planned and zoned primarily for rural industrial, commercial, or public use.*
- (4)(a) Sections 1, 3-9 and 13 of this rule took effect on October 4, 2000.*
- (b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in 1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County), and before October 4, 2000.*

***Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule."***

Applicants provided the following statements related to OAR 660-004-0040 in the Burden of Proof (Burden of Proof Statement pages 35 and 36).

*"The subject properties were the subject of goal exceptions to Statewide Planning Goals 3 and 4 at the time they were designated Urban Reserve. However, because they are designated for urban use, they do not meet the definition of "Rural Land" contained in the Definitions Section of the Statewide Planning Goals, which provides as follows:*

*RURAL LAND. Land outside urban growth boundaries that is:*

- (a) Non-urban agricultural, forest or open space;*
- (b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or*
- (c) In an unincorporated community.*

*The acknowledged Exceptions Statement makes it clear the subject properties were not considered "rural" land as it refers to all lands outside the UGB as being designated "natural resources," "rural" or "urban reserve." See Exhibit 11. The acknowledged Exceptions Statement repeatedly refers to "rural" and "resource lands" separately from the urban reserve lands.*

*The Oregon Supreme Court has suggested the definition of "Rural Land" in the Statewide Planning Goals does not necessarily include all lands outside a UGB and that there are some lands outside a UGB which do not meet the definition of rural. See, 1000 Friends of Oregon v. LCDC, 301 Or. 447, \_\_\_, 724 P. 2d 268 (1986). The subject properties do not meet the Goal definition of "rural land" and do not fall within the lands to which the above rule itself describes as applicable under subsection 2 (a) because they are neither rural nor planned and zoned primarily for residential use. Thus, the above provisions of Division 4 are inapplicable to the present application. The inapplicability of the above provisions does not relieve the applicant of the burden to show compliance with Goal 14, which is addressed above."*

The first step in determining whether OAR 660-004-0040 applies in this case is to decide if there is one or more definition(s) in ORS 197.005 or OAR 660-004-0005 that are relevant. The Hearings Officer reviewed ORS 197.005 and OAR 660-004-0005 and found no defined terms that would assist in the interpretation of OAR 660.004-0040. The Hearings Officer finds OAR 660-004-0040 (2)(f) is relevant to these findings. OAR 660-004-0040 (2)(f) defines "rural residential areas" to include lands that are not within an UGB, that are planned and zoned primarily for residential uses and for which

an exception to Goal 3 and/or Goal 4 have been taken. The Hearings Officer finds the Subject Property is **not** within the Bend UBG, **is** zoned primarily for residential uses (UAR-10) and an **exception to both Goals 3 and 4 were taken** (1980 Exception Statement). The Hearings Officer finds the Subject Property is a “rural residential use” as that phrase is defined in OAR 660-004-0040 (2)(f).

OAR 660-004-040 (5) states, in part, that “the rural residential areas described in subsection (2)(f) of this rule are ‘rural lands.’” Division(3)(a) says that “this rule applies to “rural residential areas.”

OAR 660-004-0040 (3)(b) sets forth instances where the OAR 660-004-040 rules do not apply. The Hearings Officer finds Applicants did not argue that OAR 660-004-040 does not apply because the Subject Property falls within one of the (3)(b) exceptions. The Hearings Officer finds the Applicants’ argument/statement, as quoted above, is not persuasive. The Hearings Officer finds that when a local government, such as the County, amends its Comprehensive Plan or other land use regulations (i.e. zoning ordinance) the jurisdiction must comply with OAR 660-0004-0040. The Hearings Officer finds Applicants are clearly requesting the County Comprehensive Plan and zoning ordinance to be amended. The Hearings Officer finds OAR 660-004-0040 applies to this case.

Applicants also argued that a minimum lot size of 2.5 lots/dwellings per acre is not necessarily an urban use (Applicants’ Burden of Proof Statement, pages to 35). Applicants cited numerous cases indicating that a minimum lot size, such as 2.5 lots/dwelling per acre, is not singularly determinative of whether a density and/or use is urban or rural. The City also cited cases that indicated that a minimum lot size of 10 acres was likely to be considered as a rural use and a minimum lot size of 1 acre would likely be considered an urban use.

The Hearings Officer found no single case, cited by Applicants or the City, that could definitively support a finding that a minimum lot size of 2.5 acres, even if the lots were not served by public sewer, would be an urban or a rural use. The Hearings Officer finds that a conclusion that the WTZ proposed 2.5-acre minimum lot size, along with a finding that no public sewer will be provided to the WTZ zone lots, is urban or rural is equally defensible and supportable. The Hearings Officer finds that the 2.5-acre minimum lot size is closer to the “clearly urban” (1-acre lot size) than it is to the “clearly rural” (10-acre minimum lot size). For the purposes of the Recommendations, the Hearings Officer finds that the WTZ 2.5-acre minimum lot size, even without public sewer service, is an urban use.

The Hearings Officer finds an exception must be taken for Goal 14.

## **2. OAR 660-011, Division 11, Public Facilities Planning**

### **a. Section 660-011-0065 -- Water Service to Rural Lands**

***(1) As used in this rule, unless the context requires otherwise:***

**(a) "Establishment" means the creation of a new water system and all associated physical components, including systems provided by public or private entities;**

**(b) "Extension of a water system" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing water system in order to provide service to a use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider.**

**(c) "Water system" shall have the same meaning as provided in Goal 11, and includes all pipe, conduit, pipeline, mains, or other physical components of such a system.**

**(2) Consistent with Goal 11, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:**

**(a) Allow an increase in a base density in a residential zone due to the availability of service from a water system;**

**(b) Allow a higher density for residential development served by a water system than would be authorized without such service; or**

**(c) Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.**

**(3) Applicable provisions of this rule, rather than conflicting provisions of local acknowledged zoning ordinances, shall immediately apply to local land use decisions filed subsequent to the effective date of this rule.**

**Findings:** The Hearings Officer agrees with Staff and Applicants that complying with the proposed density of one unit per 2.5 acres is achievable with or without service from a water system.

### **3. OAR 660-011, Division 12, Transportation Planning**

#### **a. Section 660-012-0060 -- Plan and Land Use Regulation Amendments**

**(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:**

**(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**

**(b) Change standards implementing a functional classification system; or**

**(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions,**

***the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.***

***(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;***

***(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or***

***(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.***

***(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.***

***(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.***

***(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.***

***(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.***

***(d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.***



**(e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if:**

**(A) The provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards;**

**(B) The providers of facilities being improved at other locations provide written statements of approval; and**

**(C) The local jurisdictions where facilities are being improved provide written statements of approval.**

**(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:**

**(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;**

**(b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;**

**(c) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and**

**(d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.**

**(4) Determinations under sections (1)–(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.**

**Findings:** Applicants submitted a transportation impact study (“TIA” - [also referred as the TIS in Applicants’ Burden of Proof Statement and later responsive submissions]) from Lancaster Engineering dated December 19, 2017 and a technical memorandum dated July 31, 2018

(collectively the TIA and technical memorandum are referred to as the "Transportation Study"). The Hearings Officer finds that the Transportation Study evaluated potential transportation impacts associated with Applicant's proposal in this case through a 2040 horizon year.

***(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:***

***(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);***

**Findings:** Applicants provided the following responsive comments:

*"The evidence in the original Transect TIS, the WIG analysis, and this addendum demonstrates there is no need for any future changes to the functional classification of existing or planned transportation facilities. Accordingly, this section is not triggered."*

The Hearings Officer finds, based upon the information contained in the Transportation Study, that there is no need for any future changes to the functional classification of existing or planned transportation facilities.

***(b) Change standards implementing a functional classification system; or***

**Findings:** The Transportation Study, provided the following responsive comments:

*"The evidence in the original Transect TIS, the WIG analysis, and this addendum demonstrates there is no need for any future changes to the standards implementing the functional classification system of either City of Bend or Deschutes County transportation facilities. Accordingly, this section is not triggered."*

The Hearings Officer finds, based upon the information contained in the Transportation Study, that there is no need for any future changes to the functional classification of existing or planned transportation facilities.

***(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated***

***within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.***

***(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;***

***(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or***

***(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.***

**Findings:** The Transportation Study, provided the following responsive comments:

*"The data, planning-horizon analysis, and mitigation measures contained in the WIG analysis and outlined in this addendum are sufficient to address the impacts to the transportation system that will result from the development of the Transect properties following the proposed change in zoning. The mitigation measures for each of the development areas considered in the WIG, including all Transect properties that are the subject of this proposed change in zoning, will be documented in a binding Development Agreement between the WIG property owners and the City of Bend, which will ensure acceptable operation through the planning horizon in 2040.*

*Similarly, the data and analysis contained in the original TIS, together with this addendum, address the impacts to the transportation system in Deschutes County from the development of the Transect properties following the proposed change in zoning.*

*The original Transect TIS, the WIG analysis and Development Agreement, and this addendum identify the impacts, mitigation measures, and funding sources necessary to satisfy the TPR for the proposed change in zoning of the Transect lands.*

#### **Conclusion**

*The operational analysis from the original TIS showed that during background year 2030 conditions with site trips from the proposed rezone included, all intersections were anticipated to operate within jurisdictional guidelines. This addendum addresses operational analysis for background year 2040 conditions with site trips from the proposed rezone included. In this scenario, there are three intersections in the City of Bend that are anticipated to operate beyond operational standards with the proposed rezone. No County intersections or roadways are anticipated to be impacted significantly with the rezone.*

*Of the intersections that are being impacted with the rezone, two have identified mitigations that are planned as part of this development and the surrounding proposed developments. The WIG Development Agreement lists the mitigation measures, which include:*

- Modification of the existing single lane roundabout at the intersection of NW Mount Washington Drive at NW Skyliners Road (jointly funded by WIG and the City of Bend)*
- Construction of a traffic signal at the intersection of NW Mount Washington Drive at Regency Street (jointly funded by WIG and the City of Bend)*
- Construction of a single lane roundabout at the intersection of NW Shevlin Park Road at NW Skyline Ranch Road (funded and constructed entirely by WIG) Underline added"*

The City provided the following comments in response to Applicants' proposed findings of TPR compliance, noting that the Transportation Study identified three intersections within the City that "are anticipated to operate beyond operational standards" by the end of the 2040 horizon year:

*"Two of the identified improvements necessary to mitigate the significant effects will not be constructed: a signalized intersection at NW Mt. Washington Drive and Regency Street, and the modification of the existing single-lane roundabout at the intersection of NW Mt. Washington Drive and NW Skyliners Road. For both of these intersections, a proportionate share of the cost of mitigating the impacts of the rezone trips will be accepted by the City as part of the DA. These funds will be used by the City on improvements to facilities other than the significantly affected facilities. Therefore, in order to comply with the TPR, OAR 660-012-0060(2)(e)(A), the applicants must obtain a written statement from the City that the systemwide benefits of mitigation are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards."*

Based on the evidence contained in the record, the Hearings Officer finds that Applicants' proposal will not have a "significant effect" on any existing or planned Deschutes County transportation facilities. However, the Hearings Officer notes that the Transportation Study does indicate the proposed zone change and comprehensive plan amendments would have a significant effect on three City intersections by the end of the 2040 horizon year if the impacts of such development are studied and evaluated collectively with all of the land added to the City UGB through its 2016 expansion effort. The Hearings Officer finds that the record demonstrates that Applicants' have worked cooperatively with the City and a group of developers (called the "West side Infrastructure Group" or "WIG") to evaluate and address the collective impacts of both the recently added UGB lands and the transect lands on City transportation infrastructure through the year 2040 planning horizon. That process resulted in a detailed Development Agreement ("DA" – See attachment to Applicants email to Staff dated September 7, 2018), under which Applicants agreed to fund and construct certain improvements to City transportation infrastructure and to make proportionate share monetary contributions towards other planned City transportation facilities. Section 5.4 of the Development Agreement specifically provides that:

*"The City agrees that the mitigation measures described in this Agreement fully address off-site impacts to City transportation and water facilities for development of 100 single-family residential units in Transect North and 87 single-family residential units in Transect South and that this Agreement can be submitted to the County as part of the Transect Application to demonstrate full mitigation of off-site transportation and water impacts consistent with the terms of this Agreement."*

Through its comment letter dated August 31, 2018, the City indicated that it does not intend to make improvements to two of the intersections that are significantly impacted by development of the transect proposal (a signalized intersection at NW Mt. Washington Drive and Regency Street and the modification of the existing single-lane roundabout at the intersection of NW Mt. Washington Drive and NW Skyliners Road). In lieu of making such identified improvements, the City communicated its intent to utilize monetary contributions from Applicants, as a result of approval of this application, to make other improvements to City transportation facilities. As a result, OAR 660-012-0060(2)(e)(A) requires a written statement from the City that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.

The Hearings Officer finds that the City's execution of the DA will provide the "written statement" required under OAR 660-012-0060(2)(e)(A). The Hearings Officer recommended a condition of approval that required the DA to be executed by the City and Applicants in substantially the same form as contained in the hearing record (attachment to Applicants email to Staff dated September 7, 2018). The Hearings Officer finds that in the event the DA is not fully executed by all parties, Applicants should be required to show an alternative means for compliance with the requirements of the TPR.

Comments provided by the County transportation planner (email dated 9/07/18 from Peter Russell to Staff) and the City (Letter, dated August 31, 2018 from Stephens to Staff) noted inconsistencies between the number of residential units authorized in the text of the West Side Transect Zone (200 +/- total units), the units evaluated by Applicants in their initial TIA (286 total units) and the final number of units evaluated through the DA (187 units). At the public hearing, Applicants indicated that they were prepared to accept a condition of approval that would limit residential development on the Subject Property, within the transect zone, to 187 total units consistent with the transportation assumptions contained in the DA. In their September 25 letter, the Applicants submitted revised language for the WTZ code limiting development to 187 lots. The proposed Comprehensive Plan text also contains a density limit and therefore the Hearings Officer recommends a condition of approval that the proposed Comprehensive Plan text also be revised to 187-total units, with 100 residential units allocated to the North Property and 87 residential units allocated to the South Property.

The Hearings Officer finds that Applicants satisfied the requirements of the Transportation Planning Rule subject to the conditions of approval specified herein.

#### **4. OAR 660-015, Division 15, Statewide Planning Goals and Guidelines**

- a. Sections 660-015-0000 -- Statewide Planning Goals and Guidelines #1 through #14

**Finding:** The Statewide Planning Goals are outlined in the Applicants' Burden of Proof Statement and provided below.

*"Goal 1, Citizen Involvement.*

*Deschutes County Planning Division will provide notice of the application to the public through individual notice to affected property owners, posting of the subject property with a notice of proposed land use action sign, and notice of the public hearing in the "Bend Bulletin" newspaper. In addition, a public hearing will be held on the proposed text amendment, plan amendment, and zone change.*

*Goal 2, Land Use Planning.*

*Goals, policies and processes related to zone change applications are included in the Deschutes County Comprehensive Plan, Title 23, and Deschutes County Code, Title 19. The application of the processes and policies and regulations are documented within this application.*

*Goal 3, Agricultural Lands.*

*No agricultural lands are involved in the proposed plan amendment and zone change. Therefore Goal 3 does not apply. In addition, the 1980 Exception Statement (Exhibit 11) took exception to Goal 3 which includes the land in the Urban Reserve.<sup>8</sup> In the event it is determined Goal 3 does apply, the applicants have submitted evidence and findings demonstrating why an exception to Goal 3 is warranted in Section VII hereof.*

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<sup>8</sup> According to Applicants, Deschutes County has historically and consistently treated the Urban Reserve lands as exception lands for purposes of Goals 3 and 4, which do not require a new exception for any zone changes to zoning designations within the Urban Reserve. See Plan and Zone Change from Industrial Reserve and Surface Mining to Urban Area Reserve for Miller Tree Farm (PA-04-9 / ZC-04-7) where the Hearings Officer concluded and the Board agreed the property was the subject of prior Goal 3 and 4 exceptions, was not farm or forest land and no new goal exceptions were required to change the zoning designations within the Urban Reserve from one zoning designation to another. See also Ordinance 91.030 when the Board adopted a plan amendment and zone change to reconfigure the Cascade Highlands land straddling the IUGB and re-designate land from Urban Reserve to Residential-Standard and vice versa, without new goal exceptions.

*Goal 4, Forest Lands.*

*No forest lands are involved in the proposed plan amendment and zone change. Therefore Goal 4 does not apply. In addition, the 1980 Exception Statement (Exhibit 11) took exception to Goal 4 which includes the land in the Urban Reserve. In the event it is determined Goal 4 does apply, the applicants have submitted evidence and findings demonstrating why an exception to Goal 4 is warranted in Section VII hereof.*

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

*No Goal 5 resources are located on the subject properties. There are no identified or inventoried Goal 5 open spaces, scenic spaces (such as Landscape Management Area Combining Zone), historic areas, natural resources, or surface mines on the properties. Nevertheless, the applicants recognize the resource values of the properties and do propose significant protections for wildlife and natural resources through the establishment of resource management corridors and CC&Rs for implementation and enforcement."*

**Finding:** Gladys Biglor (emails dated 9/18/18 and 9/25/18) suggested that the legally mandated public notice was inadequate because of an error in a Bend Bulletin article. Applicants, in a 9/25/18 open record submission, noted that the Bend Bulletin printed a correction. Further, Applicants noted in the 9/25/18 submission that the County mailed and published legally required notices and that the Commission will hold a de novo hearing allowing Biglor another opportunity to present her concerns. The Hearings Officer finds the County notice of the Hearings Officer's hearing was adequate and met the requirements of Goal 1 and all other relevant notice requirements.

The Hearings Officer addressed, earlier in the Recommendations, Applicants' arguments with respect to the need for "new" exceptions for Goal 3 and Goal 4. The Hearings Officer incorporates the findings for OAR 660-004-0018 as additional findings for this section of the Recommendations. In summary, the Hearings Officer found the 1980 Exception Statement included the Subject Property, the Subject Property was designated "marginal resource land," and exceptions to Goals 3 and 4 were taken. The Hearings Officer found that the application, in this case, would change the minimum lot size from 10-acres to 2.5-acres thereby necessitating an "new" exception for Goals 3 and 4. The Hearings Officer left the door open for Applicants' to present new evidence to the Commission relating to the applicability of Goals 3 and 4 to the Subject Property and whether or not one or more "new" Goal exception is/are required.

Portions of tax lot 100, Assessor's Map 17-11-13, and tax lot 100, Assessor's Map 17-12-18, are near the Deschutes River and therefore part of the Oregon Scenic Waterway. Staff, from the Oregon Parks and Recreation Department ("OPRD"), provided comments regarding this situation. Applicants' responded as follows (Applicant letter, 9/25/18, pages 1 and 2):

*"Oregon Parks and Recreation Department submitted comments indicating a portion of the area within the North Property is in the State Scenic Waterway, specifically the Middle Deschutes Scenic Waterway, as is, therefore, subject to scenic waterway program rules. Laurel*

*Hillmann's August 21, 2018 email to County Planner, Zechariah Heck, notes that the applicant's burden of proof indicates there are no identified Goal 5 resources and failed to address the scenic and recreational resources of the designated Deschutes River State Scenic Waterway. In addition, Ms. Hillmann sought clarity whether the proposal includes land adjacent to Tumalo State park. In testimony dated September 11, 2018, Ms. Hillmann speculates that changing the amount and type of development could change the character of that stretch of the water way and the classification category 'recreation river area' which she again speculates would have likely been different during the management planning and rule development processes for that section of the Deschutes River.*

- a. Tumalo State Park. The subject property does not include land adjacent to Tumalo State Park. This misunderstanding may be due to the County's initial notice of public hearing which contained a map that incorrectly showed the entire tax lot of 17-12-18, tax lot 100 as part of the proposed WTZ. Tax lot 100 does abut property owned by Oregon Parks and Recreation, however, the land subject to the proposed zone change does not extend to the Park's property. The split of Tax Lot 100 can be cleaned up with a roll change at the Assessor's office if the present proposal is approved.*
- b. Goal 5, State Scenic Waterway. The County's Comprehensive Plan (2011) Chapter 2, Resource Management Section 2.5 Water Resources identifies that area of the upper Deschutes River from Robert Sawyer Park to Tumalo State park as being within the Oregon Scenic Waterway. This section of the river runs along a portion of the north part of the North Property (along tax lot 100). While the State Scenic Waterway is a Goal 5 resource within the Comprehensive Plan, Deschutes County did not specifically identify and inventory any resources, including the river sections within the Title 19, Bend Urban Reserve Area and did not apply a protected overlay such as the Landscape Management Zone found in Title 18 [footnote omitted]. The Comprehensive Plan states that 'Landowners wishing to pursue a new activity within a quarter mile of a Scenic Waterway may need to notify the Park and Recreation Commission' of their activities.*

*For those land use activities that fall within the County's Deschutes River corridor as defined in Title 19 [footnote omitted], Chapter 22.22, Deschutes River Corridor Design Review Procedures applies and sets forth design review procedures. In addition to the County's procedures, a landowner would need to contact the Oregon Parks and Recreation Department for activities within ¼ of a mile of the Scenic Waterway along the Deschutes River. The present request would not change the regulatory framework or requirements of the Deschutes River Corridor or State Scenic Waterway program.*

*As discussed at the public hearing, that portion of the subject property along the north rim of tax lot 100 that is within the State Scenic Waterway is steep and unlikely to be developed in the future. Nevertheless, the applicant agrees to obtain any necessary State and County approvals in the future for land use activities which occur within the State Scenic Waterway or the Deschutes River corridor.*



- c. *River Recreation Category. The section of the Middle Deschutes bordering the subject property is classified as 'Recreation River Area' which OAR 736-040-0072(4) describes the 'Recreational River Area' as follows [footnote omitted]:*

*'(4) Recreational River Area:*

- (a) From the norther Urban Growth Boundary of the City of Bend at approximately river mile 161 downstream to Tumalo State Park at approximately river mile 158, the river is classified as Recreational River Area;'*

*Shown on Exhibit 29 submitted on September 18, 2016 is a portion of the Recreational River Area extending from the UGB to the applicant's surface mining property. This section of the river contains land zoned and developed to the SR 2 ½ density range, including a residential subdivision called 'Awbrey Meadows' abutting the subject property. Further, the uses allowed on either side of the Deschutes River within the Comprehensive Plan Urban Area Reserve boundaries include those permitted in the SR 2 ½, UAR-10, and Surface Mine (SM) and include for example; surface mining, churches, schools, landfills, fire stations, kennels, planned unit development, destination resorts, among others. The WTZ zone proposes a subset of these uses, not for more intensive uses, and therefore should have no impact on the river classification.*

*The applicant is sensitive to the scenic values for that portion of the property along the Deschutes River. The topography along the rim of the property to the river is steep and future development will be planned in accordance with the Wildlife Plan submitted as Exhibit 12 to the application and in compliance with all applicable County and Oregon Scenic Waterway rules."*

The Hearings Officer finds Applicants' statement above is credible. The Hearings Officer finds that the County, in the DCC, did not identify or inventory any specific resources on the Subject Property. The Hearings Officer finds that the Subject Property is not adjacent to Tumalo State Park. The Hearings Officer finds that, if the application in this case were to be approved, the Deschutes River Corridor and/or State Scenic Waterway regulatory provisions would continue to apply to any actual development of the Subject Property. The Hearings Officer finds that Applicants' adequately addressed scenic and recreational resources related to the Deschutes River State Scenic Waterway. Applicants' Burden of Proof Statement also contained the following statements:

*"Goal 6, Air, Water and Land Resources Quality.*

*No development is proposed with the plan and zone text amendment and zone change. Rezoning the property will not impact the quality of the air, water, and land resources. Future development will dispose of sewage waste via individual septic systems approved by Deschutes County.*

*Goal 7, Areas Subject to Natural Disasters and Hazards.*

*The subject property is located in a known wildfire hazard area.*

*Goal 8, Recreational Needs.*

*The proposed text amendments and zone change do not directly impact the recreational needs of Deschutes County. In coordination with the Bend Parks and Recreation District, future development of the property will be planned to include trails, multi-use paths and pedestrian ways that connect to existing and proposed Bend Parks and Recreation property along its trail system, Tumalo Creek, and the Deschutes River.*

*Goal 9, Economy of the State.*

*This goal does not apply as the subject properties are not designated as Goal 9 economic development land and do not include a major industrial or commercial development. Future development of the properties, though, is likely to provide economic development opportunities related to the development and improvement of the properties.*

*Goal 10, Housing.*

*Rezoning the properties to Westside Transect Zone will offer a low density housing opportunity on the edge of the City, with resource and wildfire management responsibilities. Housing types within the City limits are built to urban standards. Housing types west of the subject property are built to rural standards. The zone change offers a transitional type of housing from the urban to rural areas, with decreasing density outward toward the park and public lands to the west.*

*Goal 11, Public Facilities and Services.*

*The first sentence of Goal 11 requires planning for a "timely, orderly and efficient arrangement of public facilities and services." The proposed text amendments and zone change will have no adverse effect on the provision of public facilities and services. As demonstrated by the submitted evidence, future development of the site will have adequate provisions to serve the low density residential development allowed by the Westside Transect Zone.*

*The second sentence provides that "urban and rural development shall be guided by the types and levels of urban and rural public facilities appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served." The subject properties will be served by on-site septic systems and can be served by individual wells, municipal water service, or private water company. Water service by the City of Bend is desired to facilitate the wildfire prevention/protection plans for the property. However, the proposed density range is achievable with or without a community or municipal water system. The proposal is consistent with Goal 11 as it limits development within the Transect to low density which does not require urban public facility service.*

*Goal 12, Transportation.*

*The findings of the transportation impact analysis demonstrate that rezoning the properties to Westside Transect Zone will not adversely impact transportation facilities. Since the proposed zone change and plan amendment comply with the Transportation System Planning rule, OAR-660-012-0060, the rule that implements Goal 12; compliance with that rule also demonstrates compliance with Goal 12.*

*Goal 13, Energy Conservation.*

*No development is proposed with the text amendments and zone change and, therefore, the proposal will not have an effect on energy conservation. Future development of the properties adjacent to the Bend City limits will afford orderly connections to existing streets and other utilities adjacent to the subject properties and conserve energy needed for residents to travel to work, shopping and other services.*

*Goal 14, Urbanization.*

*Goal 14 requires there be an “orderly and efficient transition from rural to urban land use” and prohibits the conversion of rural land to urban use. The Statewide Planning Goals contain no definition of urban or rural uses. They do contain the following definitions of rural and urban land:*

*RURAL LAND. Rural lands are those which are outside the urban growth boundary and are:*

*(a) Non-urban agricultural, forest or open space lands or,*

*(b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use,*

*URBAN LAND. Land inside an urban growth boundary.*

*The meaning of these terms in the context of individual applications has been the subject of much case law discussion over the years. See, Jackson County Citizens League v. Jackson County, 38 Or LUBA 37, 48 (2000) (fn 12 for citations to over nineteen LUBA, Ct of Appeals and S.Ct cases interpreting Goal 14). The key case, 1000 Friends v. LCDC (Curry Co.), 301 Or. at 505 and those cases since Curry Co. make it clear that residential parcel sizes at either extreme are either clearly urban (half acre lots are urban) or clearly rural (10 acre lots are rural) but contain no bright line for anything in between. Id. According to the Courts, these decisions must be made on a case-by-case basis and LCDC clearly is not prepared to draw a line between urban and rural use based on parcel size alone. Additional considerations in the analysis include the necessity for the extension of public services such as sewer and water, the size, extent and intensity of any allowed commercial or industrial uses and whether the uses are appropriate for and limited to the needs and requirements of the local area to be served or whether it is likely to become a magnet for people outside the area. Id. (see cases cited in fn 35);*

*Kayne/DLCD v. Marion County, 23 Or LUBA 452, 462-64 (1992) (85 units dwelling units clustered on 72.5 acres with community septic system and water service district is urban); Hammock and Associates, Inc. v. Washington County, 16 Or LUBA 75, 80, aff'd 89 Or App 40, 747 P.2d 373 (1989); Grindstaff v. Curry Co., 15 Or LUBA 100 (1986) (declining to rule 1 acre lots are urban or rural as a matter of law); Schaffer v. Jackson Co., 16 Or LUBA 871 (1988) (declining to rule asphalt batch plant is urban or rural as a matter of law); 1000 Friends of Oregon v. Yamhill Co., 27 Or LUBA 508 (1994) (10 acre lots are rural but County must consider whether zoning allows urban level of development on smaller parcels); Metropolitan Service District v. Clackamas County, 2 Or LUBA 300, 307 (1981) (declining to find 2 acre lot is urban or rural as a matter of law).*

*In the present case, the subject properties do not constitute "Rural Land" within the meaning of Goal 14 as they do not meet the definition in the Statewide Planning Goals. However, the limited types and intensity of uses allowed within the proposed Transect Zone do not constitute urban levels of use. The residential density range is one unit per 2.5 to 10 acres, with a minimum lot size of 2.5 acres. This level of development does not require public sewer or water service as the parcel sizes are large enough to accommodate septic drain fields, reserve areas and on-site wells. The zone is designed to allow for low-density residential development with resource management corridors, vegetation management and wildfire prevention measures to protect the wildfire migration corridors and prevent the risk of wildfire spreading into the City from the public lands to the west. These objectives are not urban in nature but instead are a recognition of the unique resource values of the area. There are no commercial or industrial uses allowed in the zone, further establishing the lack of urban use. The only public uses allowed are those necessary to serve the surrounding community such as schools, park and utility facilities. Land divisions within the zone are subject to wildlife and wildfire mitigation plans developed specifically to recognize and protect the unique and specific resource and community values of these properties.*

*Regardless of whether the subject properties are considered "rural" or something else, the proposal does not authorize urban uses and, in fact, implements Goal 14 by providing an appropriate transition from the urban uses to the east inside the UGB and the rural and public lands to the west.*

*The Bend City Council adopted ordinances to expand the Urban Growth Boundary (UGB) by 2,380 acres in 2016. The expansion area included approximately 68 acres of the southern portion of the Coat's property and 69 acres of the Rio Lobo property (Exhibit 5). In order to effectuate the expansion, the County had to amend their Comprehensive Plan (Title 23) and the Bend Urban Growth Area Zoning (Title 19), which the Deschutes County Board of Commissioners unanimously adopted on September 28, 2016 (Exhibit 6). The State Department of Land Conservation and Development approved the Bend UGB expansion on November 14, 2016, which was not appealed. As a part of that process, the City specifically considered and chose to exclude the subject properties from the UGB expansion based on the*

*inefficiency of extending public services, capacity of transportation systems, the unique wildlife resource values and significant wildfire risk. The present proposal utilizes the findings adopted in the UGB process to provide a transition zone which protects the valuable resources, mitigates wildfire risk and limits uses to a type and intensity which do not significantly impact or require urban public services. The proposal protects the UGB boundary and allows the City to allocate scarce and costly public resources to those lands most efficiently and effectively urbanized.*

*The proposed zone change will provide an orderly efficient transition between the urban uses in the City of Bend and County rural lands west of the subject properties. The properties are not in the UGB and the proposal, at a density range of one unit per 2.5 to 10 acres do not promote the urbanization of rural land. The proposed density range is consistent with the acknowledged Comprehensive Plan designation of the Urban Area Reserve and retains a rural level of development. The underlying Comprehensive Plan designation for the subject properties will remain Urban Reserve Area.”*

Staff, in the Staff Report, stated the following:

*“The very basis of requiring a Goal 14 Exception is that the applicants need to justify the reason for minimum lot sizes to be less than 10 acres. Since this area is undeveloped, the 10-acre density should apply unless a Goal 14 Exception is approved. Allowing any urban reserve land to be re-designated to a 2.5-acre density without a Goal 14 Exception severely compromises future urbanization. County staff agrees with the City of Bend and requests the Hearings Officer make specific findings for a Goal 14 Exception and to determine if the applicants have adequately met the standards for one.”*

The Hearings Officer incorporates, as additional findings for this section, the findings for Section OAR 660-004-0040 – Application of Goal 14 for Rural Residential Areas. The Hearings Officer finds that a Goal 14 exception must be taken as part of this approval process.

#### **D. OREGON ADMINISTRATIVE RULES (OAR) – CHAPTER 660, LCDC – EXCEPTIONS FOR GOAL 3, 4 AND 14**

**HEARINGS OFFICER'S NOTE:** Applicants' provided proposed findings for exceptions to Goal 3, Goal 4 and Goal 14 (Applicants' Burden of Proof Statement pages 43-67). The Hearings Officer reviewed Applicants' proposed findings and includes them, in their entirety, below. The Hearings Officer finds the Applicants' proposed findings are adequate to meet the cited laws/rules for the taking of exceptions for Goal 3, Goal 4 and Goal 14. The Hearings Officer's only disagreement with Applicants' proposed findings is Applicants' assertion that exceptions are not required to be taken for Goal 3, Goal 4 or Goal 14. The Hearings Officer adopts Applicants' proposed findings, excepting for all references to that an exception is not required for Goal 3, Goal 4 or Goal 14 as additional findings for the Recommendations.

*(Applicants' proposed exception findings follow)*

**"APPLICABLE STANDARDS AND CRITERIA**

**I. OAR 660-004-0018 PLANNING AND ZONING FOR EXCEPTION AREAS**

***(4) "Reasons" Exceptions:***

***(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.***

**RESPONSE:** The applicants are requesting a "reasons exception" to Goals 3, 4 and 14 to allow the Westside Transect zoning designation to be applied to these properties. The Westside Transect Zone authorizes low density residential development with a density range of one unit per 2.5 to 10 acres, which is consistent with the density allowed on the subject properties in the 1980 Exceptions Statement. Under the criterion set forth above, a new exception is necessary if the Westside Transect Zone would alter the types or intensities of uses authorized under the prior exception creating the UAR designation.

Within the UAR designated lands, the 1980 Exceptions Statement clearly authorized zoning categories of UAR-10, SR 2.5 and SM. The types and intensity of uses allowed in those zones include all of those Surface Mining uses listed under DCC 19.16.020 and 19.16.030 including mineral extraction, care taker residences, crushing and smelting facilities and the sale of products from the sites. They also included all of the uses listed outright and conditionally in the SR 2.5 Zone at DCC 19.20.020 and 19.20.030 including single family dwellings at a density of 1 unit per 2.5 acres and planned unit developments which would allow clustering of dwelling units with lot sizes as small as 2 acres, as well as public and private schools, churches, cemeteries, lodge and fraternal organizations, timeshare units and commercial riding stables. In the UAR-10 Zone, the uses allowed outright and conditionally are listed at DCC 19.12.020 and 19.12.030 and include single-family dwellings at a density of 1 unit per 10 acres and which would allow clustering of dwelling units down to 2 acre lot sizes (see Tree Farm Decision, 247-14-000244-CU, 247-14-000245-TP); as well as day care facilities, dude or guest ranch, commercial riding stables, commercial livestock feeding yard, public and private schools, churches, cemeteries, community lodge and fraternal organizations, dog kennels, animal hospitals and time share units. The subject properties, as previously discussed, are designated Urban Reserve and zoned UAR-10 and SM, which include all of the uses described in those zoning categories above.

The WTZ contains no commercial, industrial or urban levels of uses requiring public services. It is a low density, rural residential zoning category with limited public uses and zoning provisions supporting resource stewardship communities with a focus on wildlife

habitat protection and wildfire prevention, addressed in detail below. While the Urban Reserve plan designation has residential densities ranging from 2.5 to 10, the zoning on the subject properties is UAR-10 and SM. The SM Zone does not allow any residential uses but it does allow intensive mining and mining support uses. The UAR-10 Zone allows residential uses outright but limits density to 1 unit per 10 acres. The UAR-10 Zone allows cluster subdivisions with lot sizes as small as 2 acres.

The proposed plan and zone designation will limit the uses, density, public facilities and services, and activities to only those that are justified in the exception. See the below discussion.

***(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.***

**RESPONSE:** The 1980s Exception Statement and LCDC orders are not specific as to whether the Goal exceptions that were issued were committed exceptions or reasons exceptions. In this case, the argument for a new reasons exception would be that a change from a residential density of 1 unit per 10 acres under the present UAR zoning (but with cluster subdivision lots as small as 2 acres) and no residential use under the SM zoning to 1 unit per 2.5 under the WTZ represents a change in uses (for SM) and intensity (for UAR-10) thereby requiring a new exception. Though we do not believe that the proposed changes in use warrant taking new exceptions, we make the case for new exceptions, below.

## **II. CRITERIA FOR REASONS EXCEPTIONS**

### **A. Oregon Statewide Planning Goal 2, Part II**

***PART II -- EXCEPTIONS A local government may adopt an exception to a goal when: (a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal; (b) The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or (c) The following standards are met: (1) Reasons justify why the state policy embodied in the applicable goals should not apply; (2) Areas which do not require a new exception cannot reasonably accommodate the use; (3) The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and (4) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.***

The above are addressed through the OARs which implement the Goal and which are addressed below.

**B. OAR 660-004-020, Goal 2, Part II(c), Exception Requirements**

**(1) If a jurisdiction determines there are reasons consistent with OAR 660-04-022 to use resource lands for uses not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.**

**RESPONSE:** The proposal's consistency with OAR 660-004-0022 is set forth below. The applicants propose the following language to be included in the Comprehensive Plan at Chapter 5, Section 5.10 as discussed in Section IV hereof as justification for the requested exception:

*Reasons exceptions to Goals 3, 4 and 14 are being taken to allow the application of the Westside Transect Zone to 717 acres of land on the west side of Bend between the urban area and the park and public lands to the west for the development of stewardship communities where low density residential communities are developed and managed to protect wildlife habitat and establish wildfire mitigation and prevention strategies.*

**(2) The four factors of Goal 2 Part 11(c) required to be addressed when taking an exception to a Goal are:**

- (a) Reasons justify why the state policy embodied in the applicable goals should not apply":** The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land:

**OAR 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)**

**(1) [...] the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:**

***(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either***

***(A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one***



***within that market area at which the resource depended upon can reasonably be obtained; or***

***(B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.***

***(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned that require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.***

**RESPONSE:**

The proposed WTZ is intended to create a transition zone in the urban/wildland interface which recognizes the unique geographic and physical characteristics of the area and utilizes the expertise of collaborating foresters and wildlife biologists to develop disaster resistant communities with resource management corridors for migrating wildlife. The zone has been carefully crafted to provide the orderly transition from urban to rural use and to respect the unique character of the area.

**1. Basis for Determining State Policy Embodied in the Goals Should Not Apply.**

There is no basis for the applications of Goals 3 and 4 protections to either of the subject properties as described below. Historically, the properties have been included in the Bend Urban Area Reserve Boundary since at least 1969 before any of the Statewide Goals became effective. Subsequently, the properties were the subject of exceptions to Goals 3 and 4, which were acknowledged by LCDC in 1980 (and officially noticed by LCDC in the 2010 Remand Order and Director's Report). Further, the historical non-agricultural and non-forestry uses of the subject properties (including surface mining use, non-conforming commercial and industrial uses), as well as varying topography, the lack of irrigation water and delivery systems, poor soils and close proximity to urban development have all remain unchanged since the State's prior decision to approve Goal Exceptions to 3 and 4.

1980s Exceptions to Goal 3 and 4

When the City and County adopted the 1980s Goal Exceptions Statement, the City and County relied on the best available data at the time and concluded that the lands between the IUGB and the outer UGB to be “marginal resource lands” as stated below:

*The inventory of soil data indicates that most of the agriculture lands are Class VI and are interspersed between lava ridges of scabland Class VIII. The forest soils are site 6 except for a small area of 4 contained within the Tumalo Creek canyon which is Shevlin Park. The conclusion from this analysis is that these lands are marginal resource lands. Much of the land is surrounded by existing one to five acre subdivisions. These areas have been excepted in the Deschutes County Comprehensive Plan.*

The 1980 Bend Area General Plan map designates the subject properties as Open Lands with a subset of Agriculture or Open (see 1980 General Plan Map, Ord. 80-216, Exhibit 22). The Open Land section of the General Plan identifies ‘three basic types, forests, urban area reserve, and areas of special interests – private and public open space.’

The zoning for the properties in 1980 were Urban Area Reserve (UAR-10) and Surface Mining (SM). The 1980 General Plan describes most of the Urban Area Reserve lands as having “little or no agricultural value” while some of it “does have deeper soil than found elsewhere in the planning area and does have good future potential for urban development.”

The Forest designated lands in the 1980 Bend Area General Plan map do not include the subject properties. Further, the General Plan recognizes that “many areas of the west side have been mined and no longer have any forest potential.”

### **Goal 3**

The state policy embodied in Goal 3, Agricultural Lands, is to preserve “Agricultural lands” for farm use, consistent with existing and future needs for agricultural products, forest and open space. “Agricultural land” in eastern Oregon is land of predominantly Class I through VI soils as identified in the Soil Capability Classification System of the U.S. Soil Conservation Service (“NRCS”) and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Evidence demonstrates that the North Property and South Property are not suitable for agricultural uses and little historical evidence of such use.

### **North Property**

The majority of the soils at the North Property have been mined and developed for mining purposes since the early 1960s. While not a Goal 5 mining resource, the site

nevertheless is a resource akin to agricultural land where the mining resource is site specific. As shown in the table below and Exhibit 24, the North Property has eight soil-mapping units, none of which qualify as high-value farmland as that term is defined by Deschutes County Code, Chapter 18.04:<sup>9</sup>

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<sup>9</sup> Deschutes County Code, Chapter 18.04 defines High-value farmland to mean:

*"High-value farmland" means land in a tract composed predominantly of the following soils when they are irrigated: Agency loam (2A and 2B), Agency sandy loam (1A), Agency-Madras complex (3B), Buckbert sandy loam (23A), Clinefalls sandy loam (26A), Clovkamp loamy sand (27A and 28A), Deschutes sandy loam (3 1A, 31B and 32A), Deschutes-Houstake complex (33B), Deskamp loamy sand (36A and 36B), Deskamp sandy loam (37B), Era sandy loam (44B and 45A), Houstake sandy loam (65A, 66A and 67A), Iris silt loam (68A), Lafollette sandy loam (71A and 71B), Madras loam (87A and 87B), Madras sandy loam (86A and 86B), Plainview sandy loam (98A and 98B), Redmond sandy loam (104A), Tetherow sandy loam (150A and 150B) and Tumalo sandy loam (152A and 152B). In addition to the above described land, high-value farmland includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For purposes of this definition, "specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa.*

**Map Unit Legend**

<b>Map Unit Symbol</b>	<b>Map Unit Name</b>	<b>Acres in AOI</b>	<b>Percent of AOI</b>
61C	Henkle-Fryrear-Lava flows complex, 0 to 15 percent slopes	67.4	16.2%
62D	Henkle-Lava flows-Fryrear complex, 15 to 50 percent slopes	20.1	4.8%
72C	Laidlaw sandy loam, 0 to 15 percent slopes	121.7	29.3%
85A	Lundgren sandy loam, 0 to 3 percent slopes	10.1	2.4%
101E	Redcliff-Lickskillet-Rock outcrop complex, 30 to 50 percent south slopes	11.3	2.7%
106E	Redslide-Lickskillet complex, 30 to 50 percent north slopes	15.1	3.6%
155D	Wanoga sandy loam, 15 to 30 percent slopes	2.3	0.6%
157C	Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes	166.8	40.1%
W	Water	0.6	0.1%
<b>Totals for Area of Interest</b>		<b>415.5</b>	<b>100.0%</b>

**Soil Capability Classification**

The irrigated and non-irrigated capabilities of the soils are provided below. The tables show the majority of the North Property consists of non-irrigated and irrigated capability classes of 6 or lesser quality.

**Non-irrigated Capability Class**

<b>Map unit symbol</b>	<b>Map unit name</b>	<b>Rating</b>	<b>Acres in AOI</b>	<b>Percent of AOI</b>
61C	Henkle-Fryrear-Lava flows complex, 0 to 15	7	67.4	16.2%
62D	Henkle-Lava flows-Fryrear complex, 15 to	7	20.1	4.8%
72C	Laidlaw sandy loam, 0 to 15 percent slopes	6	121.7	29.3%
85A	Lundgren sandy loam, 0 to 3 percent slopes	6	10.1	2.4%
101E	Redcliff-Lickskillet-Rock outcrop complex, 30 to 50 percent south slopes	6	11.3	2.7%
106E	Redslide-Lickskillet complex, 30 to 50 percent north slopes	6	15.1	3.6%
155D	Wanoga sandy loam, 15 to 30 percent slopes	6	2.3	0.6%
157C	Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes	6	166.8	40.1%
W	Water		0.6	0.1%
<b>Totals for Area of Interest</b>			<b>415.5</b>	<b>100.0%</b>

The percentage of non-irrigated capability class 6 on the North Property is 78.7% and the percentage of soils with a capability rating of 7 is 21.3%.

**Irrigated Capability Class**

<b>Map unit symbol</b>	<b>Map unit name</b>	<b>Rating</b>	<b>Acres in AOI</b>	<b>Percent of AOI</b>
61C	Henkle-Fryrear-Lava flows complex, 0 to 15 percent slopes	7	67.4	16.2%
62D	Henkle-Lava flows-Fryrear complex, 15 to 50 percent slopes	7	20.1	4.8%
72C	Laidlaw sandy loam, 0 to 15 percent slopes	4	121.7	29.3%
85A	Lundgren sandy loam, 0 to 3 percent slopes		10.1	2.4%
101E	Redcliff-Lickskillet-Rock outcrop complex, 30 to 50 percent south slopes	7	11.3	2.7%
106E	Redslide-Lickskillet complex, 30 to 50	7	15.1	3.6%
155D	Wanoga sandy loam, 15 to 30 percent slopes	6	2.3	0.6%
157C	Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes	4	166.8	40.1%
W	Water		0.6	0.1%
<b>Totals for Area of Interest</b>			<b>415.5</b>	<b>100.0%</b>

The percentage of irrigated capability class 6 or lesser quality on the North Property is 70% and the percentage of soils with a capability rating of 7 is 30%.

**Soil fertility and suitability for grazing**

While the NRCS soil maps indicate the subject property has about 79% non-irrigated capability Class 6 soils, the maps do not reflect the disturbances in the soils due to the

mining activities and the Awbrey-Hall fire. Historically, the portion of the North Property owned by Coats has been actively mined for aggregate, sand, and gravel. Starting around 1964, mining activities, including excavation, blasting, crushing, and screening of aggregate, sand, and gravel have occurred at the property. Truck traffic flows throughout the site from one end to another carrying large quantity of aggregate to be processed and sold. An asphalt batch plant, concrete washing area, an office, shop, and truck and storage shed, and a redi-mix operation standby to support the operations at the pit. Disturbances to the landscape and related mining noise are continuous and on-going to this day. A number of unimproved roads meander throughout the site and some areas of the property have been hobby farmed for pasture in the past. Family residences dot the landscape and portions of the property are actively managed for wildfire suppression. These activities have been historically documented in County land use files including file no. 247-16-000503-AD. The Awbrey-Hall fire swept through a portion of the property clearing the ground from natural vegetation and burned hot enough that natural regeneration has not occurred.

Topography of the site varies and with areas of steep slopes with rock outcrops as well as the mining walls created by the surface mining extraction.

Denuded soil fertility and suitability for grazing is not possible without significant costs and artificial means to improve the property to levels of fertile agricultural soil and grazing purposes.

#### Existing and future availability of water for farm irrigation purposes

The property is not served by an irrigation district is not within an irrigation district boundary, and no irrigation canals, laterals or other water delivery systems area available to provide irrigation water.

#### Existing land-use patterns

Existing land use patterns in the North Property include urban development to the east and south and rural development to the north and west as described below.

The area surrounding the North property consists of a mix of open space (parks), residential subdivisions, a golf course, surface mining, farm zoned parcels and undeveloped lands. A portion of the surrounding property is located within the city limits of Bend. Surrounding zoning in the vicinity of the subject property is a mixture of Exclusive Farm Use (EFU), Forest Use (F-2), Open Space and Conservation (OS&C), Rural Residential (RR10), Suburban Low Density Residential (SR2-1/2), Surface Mining (SM), Urban Area Reserve (UAR-10), and the City of Bend's Residential Standard Density Zone (RS). For the North Property, the neighboring residential subdivisions include Awbrey Glen, Awbrey Meadows, Awbrey Ridge, Awbrey View, Awbrey Court, Cooperstone,

Fawnview, Klippel Acres (unrecorded subdivision), Marken Heights, Renaissance, Shevlin Estates, and Valhalla Heights. Two other properties zoned Surface Mine (SM) are located to the north. Shevlin Park is located to the west. Oregon State Parks and Recreation manages land to the north that is zoned farm use. Tumalo Creek and Shevlin Park Road are adjacent to the western and southern property boundaries, respectively. The North Property borders Shevlin Park and Tumalo Creek to the west. Land to the west of the park and creek are zoned for Forest Use (F-2).

#### Technological and energy inputs required

Given the historical mining use of the property and the lack of irrigation water for farm purposes, technological and energy inputs would be impractical and cost prohibitive to reach a level of productive fertile farm land.

#### Accepted farming practices

Nearby farmland zoned EFU is located north of the subject property. Portions of these EFU zoned lands, however, are properties not dedicated to farm uses and activities, including State-owned parkland and privately owned parcels that have received nonfarm partition and/or dwelling approvals. Across from Tumalo Creek and north of the property are EFU zoned parcels that are partially irrigated. Between these farm properties are lands zoned Surface Mining as well as State-owned parkland. In addition, steep canyon walls and Tumalo Creek intervene between the Coats property and the farmlands to the north.

#### Conclusion

Based on the above description, the North Property is not suitable for agricultural uses and has little historical evidence of such use.

#### **South Property**

The South Property is comprised of poor quality soils, has no access to irrigation water, is not in an irrigation district, and has no past history of agricultural use. The property has no water rights or past history of irrigation. The property is not served by an irrigation district and no irrigation canals, laterals or other water delivery systems are available to provide irrigation water. The property borders urban development within the City of Bend UGB to the north and east. The property borders Tumalo Creek and Shevlin Park to the west and the Tree Farm rural residential development, within Deschutes County, to the south. There are no agricultural uses or areas of EFU zoning occurring within the vicinity of the South Property. The closest EFU zoned parcel is located approximately 2.5 miles to the north of the South Property. As shown in the table below and Exhibit 25, the South Property has four soil-mapping units, none of which



qualify as high-value farmland as that term is defined by the Deschutes County Code, Chapter 18.04:

**Map Unit Legend**

<b>Map Unit Symbol</b>	<b>Map Unit Name</b>	<b>Acres in AOI</b>	<b>Percent of AOI</b>
62D	Henkle-Lava flows-Fryrear complex, 15 to 50 percent slopes	5.6	1.8%
72C	Laidlaw sandy loam, 0 to 15 percent slopes	23.5	7.6%
155D	Wanoga sandy loam, 15 to 30 percent slopes	12.5	4.1%
157C	Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes	256.6	86.5%
<b>Totals for Area of Interest</b>		<b>307.2</b>	<b>100.0%</b>

**Soil Capability Classification**

The irrigated and non-irrigated capabilities of the soils are provided below. The tables show the majority of the South Property consists of non-irrigated and irrigated capability classes of 6 or lesser quality.

**Non-irrigated Capability Class**

<b>Map unit symbol</b>	<b>Map unit name</b>	<b>Rating</b>	<b>Acres in AOI</b>	<b>Percent of AOI</b>
62D	Henkle-Lava flows-Fryrear complex, 15 to 50 percent slopes	7	5.6	1.8%
72C	Laidlaw sandy loam, 0 to 15 percent slopes	6	23.5	7.6%
155D	Wanoga sandy loam, 15 to 30 percent slopes	6	12.5	4.1%
157C	Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes	6	256.6	86.5%
<b>Totals for Area of Interest</b>			<b>307.2</b>	<b>100.0%</b>

The percentage of non-irrigated capability class 6 on the South Property is 98.2% and the percentage of soils with a capability rating of 7 is 1.8%.

**Irrigated Capability Class**

<b>Map unit symbol</b>	<b>Map unit name</b>	<b>Rating</b>	<b>Acres in AOI</b>	<b>Percent of AOI</b>
62D	Henkle-Lava flows-Fryrear complex, 15 to 50 percent slopes	7	5.6	1.8%
72C	Laidlaw sandy loam, 0 to 15 percent slopes	4	23.5	7.6%
155D	Wanoga sandy loam, 15 to 30 percent slopes	6	12.5	4.1%
157C	Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes	4	256.6	86.5%
<b>Totals for Area of Interest</b>			<b>307.2</b>	<b>100.0%</b>

The percentage of irrigated capability class 6 or less on the South Property is 98.2% and the percentage of soils with a capability rating of 7 is 1.8%.

#### Soil fertility and suitability for grazing

While the NRCS soil maps indicate the subject property has about 98.2% non-irrigated capability Class 6 soils, the maps do not reflect the disturbances in the soils due to the Awbrey-Hall fire. The Awbrey-Hall fire swept through a portion of the property clearing the ground from natural vegetation, resulting in denuded soil fertility. Suitability for grazing is not possible without significant costs and artificial means to improve the property to levels of fertile agricultural soil and grazing purposes. Historically, the South Property has been utilized for non-conforming industrial uses, with no past history of agricultural use. A number of unimproved roads meander throughout the site. Topography of the site varies and with areas of steep slopes with rock outcrops.

#### Existing and future availability of water for farm irrigation purposes

The property is not served by an irrigation district, is not within an irrigation district boundary, and no irrigation canals, laterals or other water delivery systems area available to provide irrigation water.

#### Existing land-use patterns

Existing land use patterns in the South Property include urban development to the east and north, rural development to the south and public park use to the west as described below.

The area surrounding the subject property consists of a mix of open space (parks), residential subdivisions and undeveloped lands. A portion of the surrounding property is located within the city limits of Bend. The South Property borders Shevlin Park and Tumalo Creek to the west. Areas of F-2 Forest Use zoning lie beyond Shevlin Park and Tumalo Creek to the west. Land to the north and east lies within the City of Bend UGB and is either developed or planned for future development at urban densities. The South Property borders the "Shevlin Commons" and "Three Pines" subdivisions, together with several parcels recently incorporated into the UGB. The eastern boundary of the subject property will border directly upon the planned extension of the Skyline Ranch collector roadway as it is developed to serve development on the west side of Bend. The southern end of the South Property borders directly upon the 2-acre residential parcels that have been approved for development in connection with the "Miller Tree Farm" subdivision. The South Property is currently vacant and undeveloped.

#### Technological and energy inputs required

Given the poor soils and the lack of irrigation water for farm purposes, technological and energy inputs would be impractical and cost prohibitive to reach a level of productive fertile farm land.

#### Accepted farming practices

The closest EFU zoned parcels lie 2.5 miles north of the South Property. Portions of these EFU zoned lands, however, are properties not dedicated to farm uses and activities, including state-owned parkland and privately owned parcels that have received nonfarm partition and/or dwelling approvals. Tumalo Creek, Shevlin Park, Johnson Road, surface mining uses on the North Property and a number of rural residential subdivisions separate the South Property from any ongoing agricultural uses in the area.

#### Conclusion

The South Property is comprised of poor quality soils, has no access to irrigation water and has no past history of agricultural use. The property has no water rights or past history of irrigation. The property is not served by an irrigation district and no irrigation canals, laterals or other water delivery systems are available to provide irrigation water. Based on the above description, the South Property is not suitable for agricultural uses and has never been utilized for such purposes.

#### **Goal 4**

The state policy embodied in Goal 4, Forest Lands, is to preserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture. OAR 660-015-0000(4). Forest lands are those lands acknowledged as forest lands as of the date of the adoption of Goal 4. Where a plan amendment involving forest lands is proposed, forest land includes lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

Soil Forest Productivity for the North and South Properties include:

#### North Property

The NRCS Forest Productivity data in the table below shows the majority of the North Property consists of soils with a forest productivity rating of 50 cubic ft./acre/year. According to the NRCS Description for Forest productivity, *'Forest productivity is the volume of wood fiber that is the yield likely to be produced by the most important tree species. This*

number, expressed as cubic feet per acre per year and calculated at the age of culmination of the mean annual increment (CMAI), indicates the amount of fiber produced in a fully stocked, even-aged, unmanaged stand.'

**Forest Productivity (Cubic Feet per Acre per Year): ponderosa pine (Meyer 1961 (600))**

Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
61C	Henkle-Fryrear-Lava flows complex, 0 to 15 percent slopes	50.00	67.4	16.2%
62D	Henkle-Lava flows- Fryrear complex, 15 to 50 percent slopes	50.00	20.1	4.8%
72C	Laidlaw sandy loam, 0 to 15 percent slopes	53.00	121.7	29.3%
85A	Lundgren sandy loam, 0 to 3 percent slopes	46.00	10.1	2.4%
101E	Redcliff-Lickskillet-Rock outcrop complex, 30 to 50 percent south slopes		11.3	2.7%
106E	Redslide-Lickskillet complex, 30 to 50 percent north slopes		15.1	3.6%
155D	Wanoga sandy loam, 15 to 30 percent slopes	50.00	2.3	0.6%
157C	Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes	50.00	166.8	40.1%
	Water		0.6	0.1%
<b>Totals for Area of Interest</b>			<b>415.5</b>	<b>100.0%</b>

South Property

The NRCS Forest Productivity data in the table below shows the majority of the South Property consists of soils with a forest productivity rating of 50 cubic ft./acre/year. According to the NRCS Description for Forest productivity, 'Forest productivity is the volume of wood fiber that is the yield likely to be produced by the most important tree species. This

number, expressed as cubic feet per acre per year and calculated at the age of culmination of the mean annual increment (CMAI), indicates the amount of fiber produced in a fully stocked, even-aged, unmanaged stand.'

**Forest Productivity (Cubic Feet per Acre per Year): ponderosa pine (Meyer 1961 (600))**

<b>Map unit symbol</b>	<b>Map unit name</b>	<b>Rating</b>	<b>Acres in AOI</b>	<b>Percent of AOI</b>
62D	Henkle-Lava flows- Fryrear complex, 15 to 50 percent slopes	50.00	5.6	1.8%
72C	Laidlaw sandy loam, 0 to 15 percent slopes	53.00	23.5	7.6%
155D	Wanoga sandy loam, 15 to 30 percent slopes	50.00	12.5	4.1%
157C	Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes	50.00	265.6	86.5%
<b>Totals for Area of Interest</b>			<b>307.2</b>	<b>100.0%</b>

Discussion:

As noted above, the subject properties have not previously been zoned for forestry purposes. Historical mapping indicates the properties have been planned for the eventual inclusion within the Bend urban area since before the adoption of Goal 4 in 1974. There is no past history of forestry uses on either of the subject properties. The North Property has been previously utilized for surface mining and related uses. Portions of the South Property were previously utilized for non-conforming commercial and industrial uses (motorcycle track and testing, Hooker Creek administrative offices). The South Property burned extensively in the Awbrey Hall fire in 1990. The fire destroyed much of the existing tree cover from the South Property. The high temperatures associated with the Awbrey Hall fire adversely impacted soils in a manner that has prohibited the regeneration of Ponderosa Pine. *See report from Singletree Enterprises dated December 19, 2017, attached as Exhibit 12 to the Applicant's initial Burden of Proof Statement.* The proximity of the subject properties to Shevlin Park and the Tumalo Creek riparian corridor make them unsuitable for commercial forestry operations. In addition, the subject properties abut existing and planned areas of urban development, making them incompatible with accepted forest practices.

A prior exception to Goal 4 was taken in 1980 in connection with the acknowledgement of the City of Bend's dual UGB boundary. Based upon an inventory of soil data and forest productivity, an Exception Statement determined that forest soils were primarily site class 6, with the exception of a small area of more productive soils found within the boundary of Shevlin Park. The subject properties were characterized as "marginal resource lands" and were specifically exempted from the protections of Goal 4. As such, there is no basis for the application of Goal 4 protections to the subject properties.

#### **Goal 14**

The state policy embodied in Goal 14, Urbanization, is to "provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities." Land needed for urbanization must be based on the demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast and demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of these need categories. Goal 14 prohibits the conversion of rural land to urban uses without a goal exception.

The present proposal to create the Westside Transect Zone would authorize limited, single family residential uses at a density range of 2.5 to 10 acres as a part of stewardship communities which are dedicated to developing and implementing long term, sustainable, funded programs for wildfire mitigation and wildlife habitat protection. There are no commercial or industrial uses authorized in the Westside Transect Zone. Any nonresidential uses are limited to public uses such as schools, and fire or utility stations to serve the area. The uses authorized in the Westside Transect Zone do not require the extension of or the provision of public, urban services.

The proposed zone is intended to create a transition zone in the urban/wildland interface which recognizes the unique geographic and physical characteristics of the area and utilizes the expertise of collaborating foresters and wildlife biologists to develop disaster resistant communities with resource management corridors for migrating wildlife. The zone has been carefully crafted to provide the orderly transition from urban to rural use and to respect the unique character of the area.

The meaning of "rural use" or "urban use" in the context of Goal 14 and individual land use applications has been the subject of much case law discussion over the years. See, *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 37, 48 (2000) (fn 12 for citations to over nineteen LUBA, Ct of Appeals and S.Ct cases interpreting Goal 14). The key case, *1000 Friends v. LCDL (Curry Co.)*, 301 Or. at 505 and those cases since Curry Co. make it clear that residential parcel sizes at either extreme are either clearly urban (half acre lots are urban) or clearly rural (10 acre lots are rural) but contain no bright line for

anything in between. *Id.* According to the Courts, these decisions must be made on a case-by-case basis and LCDC clearly is not prepared to draw a line between urban and rural use based on parcel size alone. Additional considerations in the analysis include the necessity for the extension of public services such as sewer and water, the size, extent and intensity of any allowed commercial or industrial uses and whether the uses are appropriate for and limited to the needs and requirements of the local area to be served or whether it is likely to become a magnet for people outside the area. *Id.* (see cases cited in fn 35); *Kayne/DLCD v. Marion County*, 23 Or LUBA 452, 462-64 (1992) (85 units dwelling units clustered on 72.5 acres with community septic system and water service district is urban); *Hammock and Associates, Inc. v. Washington County*, 16 Or LUBA 75, 80, aff'd 89 Or App 40, 747 P.2d 373 (1989); *Grindstaff v. Curry Co.*, 15 Or LUBA 100 (1986) (declining to rule 1 acre lots are urban or rural as a matter of law); *Schaffer v. Jackson Co.*, 16 Or LUBA 871 (1988) (declining to rule asphalt batch plant is urban or rural as a matter of law); *1000 Friends of Oregon v. Yamhill Co.*, 27 Or LUBA 508 (1994) (10 acre lots are rural but County must consider whether zoning allows urban level of development on smaller parcels); *Metropolitan Service District v. Clackamas County*, 2 Or LUBA 300, 307 (1981) (declining to find 2 acre lot is urban or rural as a matter of law).

In the present case, the subject properties have been slated for urban development for over 30 years. The present proposal to apply the Westside Transect Zone to these lands would result in them being developed at a much lower density (2.5 acre minimum) than if they were urbanized (RS zone at 7-11 units per acre) but at a higher density than currently zoned (UAR-10 at one unit per 10 acres). The limited types and intensity of uses allowed within the proposed Westside Transect Zone do not constitute urban levels of use. The residential density range of one unit per 2.5 to 10 acres, does not require public sewer or water service as the parcel sizes are large enough to accommodate septic drain fields, reserve areas and on-site wells. The zone is designed to allow for low-density residential development with resource management corridors, vegetation management and wildfire prevention measures to protect the wildfire migration corridors and prevent the risk of wildfire spreading into the City from the public lands to the west. These objectives are not urban in nature but instead are a recognition of the unique resource values of the area. There are no commercial or industrial uses allowed in the zone, further establishing the lack of urban use. The only public uses allowed are those necessary to serve the surrounding community such as schools, park and utility facilities. Land divisions within the zone are subject to wildlife and wildfire mitigation plans developed specifically to recognize and protect the unique and specific resource and community values of these properties.

The proposal complies with Goal 14 by providing an appropriate transition from the urban uses to the east inside the UGB and the rural and public lands to the west. The present proposal respects the findings adopted in the City's most recent UGB process:



Neighborhood Type	Characteristics
Transect	This typology provides a transitional residential development pattern from urban to rural using a variety of housing types integrated with the surrounding natural landscape to minimize the impact on sensitive eco-systems, wildlife and to reduce the risk of wildfire.

It utilizes the evidence gathered during that process to provide a transition zone which protects the valuable resources, mitigates wildfire risk and limits uses to a type and intensity which do not significantly impact or require urban public services. The proposal helps protect the UGB boundary from fire and allows the City to allocate scarce and costly public resources to those lands most efficiently and effectively urbanized.

The proposed zone change will provide an orderly efficient transition between the urban uses in the City of Bend and County rural lands west of the subject properties. The properties are not in the UGB and the proposal, at a density range of one unit per 2.5 to 10 acres do not promote the urbanization of rural land. The proposed density range is consistent with the acknowledged Comprehensive Plan designation of the Urban Area Reserve and retains a rural level of development. The underlying Comprehensive Plan designation for the subject properties will remain Urban Reserve Area.

**2. The Amount of Land Required for the Use Being Planned.**

The North and South properties combined total 717 acres and consist of the remaining UAR designated properties located on the west side of Bend between the urban area and the vast public and park lands to the west. The amount of land is determined by the geographical boundaries of the Tumalo Creek, Shevlin Park, the historical zoning designations and the surrounding development patterns.

**3. Why the Use Requires a Location on Resource Land.**

As discussed, it is not clear the subject properties were ever zoned for resource use as they have been slated for eventual urban development since prior to the adoption of the Statewide Planning Goals. However, the use planned is site specific as it is designed specifically for the geographic characteristics and physical location of these properties as the wildlife and wildfire interface between the City's urban edge and the park and public lands to the west.

**(b) Areas which do not require a new exception cannot reasonably accommodate the use;**

**(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;**

**RESPONSE:** If areas designated UAR and SM, like the subject properties, require a new exception under the theories set forth herein, then the only lands which would not require a new exception would be lands zoned SR 2.5 or lands within Bend's UGB.

**1. SR 2.5 Land.**

As shown on the County zoning map, the only lands zoned SR 2.5 are a 30 acre area adjacent to the Awbrey Glen subdivision and golf course and several smaller heavily parcelized areas scattered along the eastern and southern edge of the UGB. These areas are not physically or geographically located in the urban/wildfire/wildlife interface area on the west side of Bend – between its urban area and the public lands to the west. The proposed use is to create a zone which will allow for the development of residential stewardship communities designed to develop and implement long term, sustainable programs to protect wildlife habitat and prevent or reduce the severity of damage from the spread of wildfire. The need for the urban/wildland interface area is well documented in Bend and Deschutes County's historical documents and efforts to protect the deer winter migration corridors and to prevent the spread of wildfire arising from the west and spreading with the prevailing winds into Bend. The subject properties are uniquely located to meet this need and the Westside Transect Zone has been developed in coordination with foresters and wildlife biologists after careful study of the specific areas.

**2. Property Within Urban Growth Boundary.**

The property located within Bend's UGB is the only other land not requiring an exception. This land cannot reasonably accommodate the use as it is slated for urban development and is the land providing the urban edge between which the subject properties are sandwiched with the public lands to the west.

**(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:**

**(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?**

**RESPONSE:** The only non-resource land not requiring an exception would be land zoned SR 2.5. The small areas of SR 2.5 lands are not geographically or physically located along the western edge of the City and the public land to the west, which is the urban/wildland interface area proposed for the stewardship communities containing wildfire prevention and wildlife habitat protection programs.

**(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?**

**RESPONSE:** The use is geographically and physically specific to the location of the subject properties between the west edge of the City and the public lands further west. There are no resource or other lands which are in this location and can provide the wildland urban interface for Bend's west side.

**(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?**

**RESPONSE:** The proposed use is an interface area between the urban area and the public lands to the west, designated as a stewardship community to provide long term, sustainable wildfire mitigation and wildlife habitat protection programs. Lands inside the UGB which are planned, zoned and needed for urban development cannot accommodate this use. Their density of development does not work as a wildland fire interface.

**(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?**

**RESPONSE:** No public facilities or services are necessary to accommodate the use. This criterion is not applicable.

**(C) The alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.**

**RESPONSE:** The alternative areas analysis set forth above demonstrates there are no other non-resource, resource or exception areas appropriate for the proposed use. This use is site specific to the west side of Bend to address long standing and historically documented community concerns about wildfire risk and deer winter range migration corridors in this urban/wildland interface area.

**c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the Jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;**

**RESPONSE:** The above criteria contemplates a comparison of the long-term environmental, economic, social and energy ("ESEE") consequences of the applicants' proposed use with alternative locations that would also require a goal exception. The rule requires a determination that the ESEE consequences of the proposed use "are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception." In this case, the applicants' proposal is based entirely upon the specific location and characteristics of the subject properties. As demonstrated above, there are no alternative locations that could serve the needs and objectives of the WTZ. The WTZ authorizes low density residential housing in specific locations that lie between urban development (to the east) and Shevlin Park and the Tumalo Creek corridor (to the west). The applicants seek to develop stewardship communities that will preserve important areas of wildlife habitat, minimize impacts on surrounding park property and natural areas and provide additional forest fire protections for the subject and surrounding properties.

The following provides an analysis of the ESEE consequences associated with the applicants' proposal. This analysis provides a comparison of the ESEE consequences of the proposed WTZ with the specific land uses authorized under current zoning and the potential for future inclusion of such properties into the City of Bend, UGB. The subject properties are currently zoned as Urban Area Reserve (UAR-10) and are planned for eventual incorporation into the UGB. UAR-10 zoning rules authorize the development of single family residences with a density of one-unit per ten acres. County planned and cluster development and state administrative rules (DCC 19.12.030N, 19.100 and OAR 660-004-0040) would authorize the clustering of two-acre residential lots, with areas of open space retained until such future time as incorporated into the UGB. Development under this scenario would result in the clustering of two-acre residential lots immediately adjacent to the Shevlin Park boundary, with areas of dedicated open space adjacent to the urban area retained for future urban development. Development activities adjacent to the park boundary would not be subject to the extensive wildlife and fire protections contemplated in the WTZ, creating more significant ESEE consequences as outlined in detail below.

**1. Environmental.** Adoption of the WTZ and its associated wildlife protection and fire suppression standards will provide a significant overall net environmental benefit. Proposed WTZ development standards will maintain critical areas of wildlife habitat and preserve existing deer and elk migration corridors along the Tumalo Creek corridor. Future residential landowners will be required to maintain their individual lots in a manner that is compatible with both the protection of existing wildlife habitat and the suppression of fire. Individual structures erected within the WTZ must comply with national fire protection standards, with lot owners required to maintain fire protection buffers around all buildings and home sites. The fire management prescriptions of the WTZ are expected to significantly reduce the threat of a wildfire spreading from the forested lands to the west into the City of Bend. Adoption of the WTZ significantly reduces or ameliorates the overall environmental impacts of developing the subject properties and substantially benefits environmental qualities on adjoining lands.

In contrast, development of the subject properties under existing UAR-10 zoning rules would not provide the environmental benefits associated with the WTZ. Smaller residential lots could be clustered along the Shevlin Park boundary, without any protection provided for existing wildlife habitat and migration corridors. The subject properties are not governed by the Deschutes County, Wildlife Area (WA) combining zone and the code provides minimal protections to important areas of wildlife habitat. Development would not be governed by the fire fuels management and structural building standards outlined under the WTZ. This would significantly increase the risk of the spread of wildfire to the detriment of surrounding properties and the City of Bend.

**2. Economic.** Development of the subject properties would provide more favorable economic consequences under the proposed WTZ standards. The WTZ would authorize additional single family residential units with areas of wildlife habitat preserved in perpetuity. The property would be subject to stringent wildfire management and fire code building standards that provide a continued economic benefit to surrounding properties, Deschutes County and the City of Bend. The creation of an intensively managed fire protection barrier in this area of Deschutes County will provide an additional safeguard against the growing threat of wildfire originating on heavily forested lands located to the west. The escalating costs of wildfire suppression have a significant and detrimental economic impact on Deschutes County and the Central Oregon region. The WTZ is strategically located in an area that can be effectively managed to help prevent the spread of wildfire into more heavily populated urban areas within the City of Bend.

**3. Social.** Adoption of the WTZ and its associated wildlife and fire protection standards will provide an overall net social benefit for area residents. The wildlife protections of the WTZ will preserve important areas of wildlife habitat and associated migration corridors for the benefit of current and future county residents. WTZ development standards will minimize the impacts of future residential development on public use areas within Shevlin Park. Future residential development will be buffered from the park, preserving the natural values of this important public resource. Extensive fire management activity within the WTZ will work to prevent the spread of wildfire.

**4. Energy.** The fire management standards of the WTZ will provide an energy benefit to Deschutes County and the Central Oregon region. Extensive and ongoing fire management activity on the subject properties will provide additional protections from the spread of wildfire from heavily forested areas to the west. The long term implementation of fire fuels reduction activities within the WTZ will reduce energy costs for the benefit of Deschutes County and the region.

**(d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resource and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.**

**RESPONSE:** The proposed use has been designed in a manner that is entirely compatible with adjacent land uses. The low density residential development authorized in the WTZ will minimize the potential for conflicts with both urban uses within the City of Bend and the natural resource values of Shevlin Park and Tumalo Creek to the west. Individual residential home sites within the WTZ will be buffered from the park boundary and

Shevlin Park. The WTZ will be managed under stringent wildlife habitat protection standards that are designed to facilitate the movement and migration of deer and elk through the Tumalo Creek corridor. The property will also be governed by rigorous hazardous fuel reduction standards that have been formulated to protect the subject and surrounding properties from the risk and spread of wildfire. Any development and construction within the WTZ will be subject to national fire protection standards. Implementation of the WTZ on the subject properties is compatible with adjacent land uses as described in further detail below:

North Property. Existing development in the vicinity of the North Property includes urban residential neighborhoods (including a golf course) that abut the property to the east and south. Development to the west consists of rural residential neighborhoods to the west of Tumalo Creek and Shevlin Park. The varied topography of the North Property provides geographic isolation of the parcel from the surrounding properties. The low density residential development and wildlife and wildfire corridors contemplated by the WTZ will provide a significant buffer between developed home sites and any surrounding properties. Any future development of the property will be governed by the Wildlife Habitat and Forest Health Management Plan attached as Exhibit 12 to the applicant's initial Burden of Proof Statement. The plans identified herein will insure the property is developed in a manner that is compatible with surrounding natural resources.

#### South Property

The South Property borders lands zoned for urban development to the north and east. The existing Shevlin Commons development borders the property directly to the north. Platted rural residential lots (2-acres in size) abut the property to the south. Shevlin Park and Tumalo Creek border the property to the west, where no development (other than public park uses) is contemplated or authorized. As a condition of development approval, the applicant is prepared to dedicate a 50-acre "Conservation Area" immediately adjacent to its boundary with Shevlin Park. The Conservation Area will be managed under the terms of a conservation easement that will protect and preserve areas of wildlife habitat. In addition, the applicant intends to create an additional 30-acre "No-Build Area" immediately east of the Conservation Area. The "No-Build Area" will be part of individual lots but no structures will be permitted and the area will be managed primarily for fire protection purposes. The protection of these two areas (located along the western boundary of the South Property) will insure that management of the WTZ is compatible with Shevlin Park. The planned Conservation Area and No Build Area will work to insure that residential development within the WTZ is not visible from Tumalo Creek. The joint management of such areas will provide additional protections for the natural resource and public values of Shevlin Park.

Fire management standards within the WTZ will provide a benefit to the residential development to the north, south and east. A portion of the planned No-Build Area will

provide an additional fire protection buffer between the Shevlin Commons development and the South Property. The low density residential development standards within the WTZ will be entirely compatible with the size and configuration of lots within the adjacent Tree Farm residential development. Substantial topography (rock outcroppings and a steep ridge line) will separate the South Property from planned urban development to the east.

### **III. ADDITIONAL CRITERIA FOR A REASONS EXCEPTION TO GOAL 14**

#### **OAR 660-014-0040 Establishment of New Urban Development on Undeveloped Rural Lands**

**(1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.**

**(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.**

**(3) To approve an exception under section (2) of this rule, a county must also show:**

**(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;**

**(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:**

**(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and**

**(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.**



**(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:**

**(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and**

**(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.**

**(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and**

**(e) That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.**

**RESPONSE:** As discussed more fully herein, the proposed use is locationally dependent as it involves the establishment of stewardship communities to provide long term, stable funding and management of the sensitive lands located on the west side of Bend between the urban area and the park and public forested lands to the west. It would be impractical to expand the UGB to accommodate the use, as it is low density and focused on management of a residential community with wildlife habitat protection and wildfire mitigation programs. The uses are rural in nature and do not require the extension of urban services or infrastructure.

Furthermore, the subject properties do not meet the definition of "Rural Land"<sup>10</sup> in the definitions section of the Statewide Planning Goals because they have been planned and zoned for urban use for more than 30 years. The uses allowed in the WTZ do not require the extension of urban services or involve urban levels of density. As discussed, the WTZ proposal is site specific to the properties' geographic location on the west side of Bend between the urban area and the public and park lands to the west. The proposal to develop these lands with low density residential stewardship communities is consistent with the urbanization policies for the City and with the rural development and resource management policies of the County. The proposal furthers the City's most recent UGB decision not to include the subject properties in the UGB as the use of scarce public dollars to extend urban infrastructure can be more efficiently accomplished with lands

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<sup>10</sup> **RURAL LAND.** Land outside urban growth boundaries that is:

- (a) Non-urban agricultural, forest or open space;
- (b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or
- (c) In an unincorporated community.

located south and east of the City. The proposal is also consistent with County density ranges and resource management policies for deer winter range and wildfire prevention, mitigation strategies.

The applicants are coordinating with the County and the City of Bend to insure adequate services are available for the proposal and will continue to work on transportation studies and development agreements with the affected jurisdictions to insure impacts from the proposal are adequately addressed and mitigated."

***Hearings Officer Note: This concludes the Applicants' proposed findings for Goal 3, Goal 4 and Goal 14 exceptions. What follows are the Hearings Officer's findings related to the adequacy of Applicants' proposed findings for Goal 3, Goal 4 and Goal 14 exceptions.***

**Findings.** The Hearings Officer reviewed Applicants' proposed findings for Goal 3, Goal 4 and Goal 14. In summary, the Hearings Officer agreed generally with Applicants proposed findings in support of exceptions to Goal 3, Goal 4 and Goal 14. The single area that the Hearings Officer does not agree with Applicants' proposed findings are those attempting to justify that a Goal 14 exception is not required. The Hearings Officer, therefore, found it appropriate to adopt Applicants' proposed findings (not including Applicants proposed findings related to its contention that a Goal 14 exception is not required) in support of exceptions to Goal 3, Goal 4 and Goal 14.

The Hearings Officer sets forth additional findings, below, related to the Goal exception process.

The Hearings Officer finds the Applicants must demonstrate or explain: (1) the basis for determining that state policy embodied in the applicable goals should not apply; (2) the amount of land that is required for the use being planned; and (3) why the use requires a location on resource land. Each of these factors is addressed separately in the findings below.

1. **Basis for Determining State Policy Embodied in the Goals Should Not Apply:** The Subject Property was under the jurisdiction of the Bend Area General Plan until the 2016 amendment to the Bend Urban Growth Boundary. Staff acknowledged and the Hearings Officer agreed the evidence shows that the area has been slated for eventual urbanization for decades. The City and Staff agreed that the Subject Property was not zoned SR 2.5 (2.5-acre minimum lot size) because the Subject Property was not parcelized at the time of taking the 1980 Exception Statement.

The Hearings Officer, as noted in findings earlier in the Recommendations, finds that the 1980 Exception Statement applied to the Subject Property. The Hearings Officer finds that evidence in the record indicated that the Subject Property (based upon the 1980 Exception Statement) was considered "marginal resource land." The Hearings Officer finds that the proposed minimum lot size of 2.5 acres represents a change from the 10-acre minimum lot size set forth in the 1980 Exception Statement (and currently zoned). Staff agreed with the

City and requested that the Hearings Officer make specific findings for a Goal 3, 4 and 14 Exception and to determine if Applicants adequately met the standards for exceptions to Goal 3, 4 and 14. The Hearings Officer determined, based upon the evidence in the record, that a “new” exception was required for Goals 3 and 4 and an exception is also required for Goal 14.

The Hearings Officer adopts Applicants evidence and argument related to the basis for determining the state policies Goals 3, 4 and 14 should not apply.

2. The Amount of Land Required for the Use Being Planned: Applicants did not submit a proposal for a specific use of the Subject Property and did not provide a potential subdivision design. If the application in this case is approved all uses allowed in the WTZ zone will be available on the Subject Property. Applicants proposed the following findings:

*“The North and South properties combined total 717 acres and consist of the remaining UAR designated properties located on the west side of Bend between the urban area and the vast public and park lands to the west. The amount of land is determined by the geographical boundaries of the Tumalo Creek, Shevlin Park, the historical zoning designations and the surrounding development patterns.”*

Staff expressed uncertainty as to how to determine the appropriate amount of area to be rezoned when there is no specific proposed use and requests that the Hearings Officer make specific findings on this issue. Applicants argued, and the Hearings Officer agrees, the amount of land is dictated by the geographic location of these properties between the edge of the City and the forested and public lands to the west. The proposed “use” is the rezoning to the WTZ, which allows low density residential uses and supporting public uses such as parks, utility facilities and churches. There are no commercial, industrial or intensive recreational uses allowed. Based on the evidence in the record, the Hearings Officer finds the amount of land is geographically distinct and appropriate for the proposal.

3. Why the Use Requires a Location on Resource Land: Applicants proposed the following findings:

*“The evidence in the record shows the subject properties are not, and have never been, designated as resource land. Staff finds and the Hearings Officer agrees the applicants have provided sufficient evidence the subject properties have been slated for eventual urban development since prior to the adoption of the Statewide Planning Goals. Thus, the subject properties are not considered ‘resource land’.”*

The Hearings Officer finds the Subject Property was described as “marginal resource land” in the 1980 Exception Statement. However, with that said, the Hearings Officer believes that for the purposes of seeking an exception to Goals 3 (agricultural) and 4 (forest) that

Applicants' have provided substantial evidence that the Subject Property is not *currently* resource land. The Hearings Officer finds there is evidence in the record that the Subject Property is not, and has not for an extended time, been used for agricultural or forest purposes. The Hearings Officer finds there is evidence in the record that the geography and soils at the Subject Property are not conducive to the conduct of agricultural or forest uses. The Hearings Officer finds there is no evidence in the record that the Subject Property was ever designated as a natural resource site (Goal 5).

Staff recognized the unique and important location of the Subject Property but asked, "why can't the properties be developed under their current zoning, i.e., UAR-10 and SM, with developer-initiated requirements for uses that address wildlife habitat protection and wildfire mitigation?" Staff asked the Hearings Officer to make findings on whether the Applicants' responses to this question were adequate.

Applicants argued, and the Hearings Officer agreed, that the only areas which do not require a new exception are those already zoned SR 2.5 or lands within Bend's UGB. The lands within the UGB are not eligible for such low density as they are needed for urbanization to meet the City's housing obligations under the Statewide Planning Goals. As shown on the maps in the record, the only vacant SR 2.5 lands in this general area are the 30 acres to the south of the North Transect area. These lands are not in the specific geographic location which could be developed to provide the necessary wildlife corridors and fire break needed on the west side between the City and the forested lands to the west.

The Hearings Officer finds the need for the urban/wildland interface area is well documented in Bend and Deschutes County's historical documents. The Hearings Officer finds the proposed WTZ zone has, as a primary goal, the protection of deer winter migration corridors and the prevention of the spread of wildfire arising from the west and spreading with the prevailing winds into Bend. The Subject Property is uniquely located to meet this need and the Westside Transect Zone has been developed in coordination with foresters and wildlife biologists after careful study of the specific areas. The Hearings Officer finds Applicants adequately demonstrated why the particular site is justified.

As mentioned above, Applicants argued that the proposed use of the Subject Property was tailored to the west side of Bend to address concerns of wildfire and protection of wildlife habitat. Applicants conducted a broad review of the alternative areas to demonstrate there are no other non-resource, resource or exception areas appropriate for the proposed use. This use is site specific to the west side of Bend and addresses long standing and historically documented community concerns about wildfire risk and deer winter range migration corridors in this urban/wildland interface area. The Hearings Officer finds that Applicants' evidence and arguments sufficiently demonstrated why there are no alternative areas which could reasonably accommodate the proposal.

Applicant provided evidence and argument related to the long-term environmental, economic, social and energy (ESEE) consequences of the proposal as compared with alternative locations that would also require a goal exception. The Hearings Officer finds the Subject Property, and this proposal, is unique in that Applicants have created a proposed zoning district that takes into account the characteristics of the Subject Property, the urban area to the east, the rural area to the west and the existence of the adjacent park and creek. Essentially, Applicants created a zone that is similar to the SR 2.5 Zone but tailored to the Subject Property and environs. The Hearings Officer finds the proposed zone is specific to the characteristics of the Subject Property and there are no other alternative locations that could serve the purpose of the WTZ.

Staff asked the Hearings Officer to determine if Applicants have adequately addressed the requirements related to ESEE. Based on the analysis set forth above, the Hearings Officer finds the long term environmental, economic, social and energy consequences of the proposal will not be significantly more adverse than would typically result from the proposal being located in areas requiring a goal exception other than the proposed site. In fact, the Hearings Officer finds the long term environmental, energy, social and economic consequences of the proposal will be positive and will result in a better, more sustainable and more environmentally protective than locating this proposal in another area which does not have the documented history of a wildlife corridor which needs consistent, collaborative wildfire mitigation treatments.

## **V. RECOMMENDATIONS**

### **A. TEXT AMENDMENTS TO THE COMPREHENSIVE PLAN AND BEND URBAN GROWTH BOUNDARY ZONING ORDINANCE AND ZONE CHANGE**

Based on the foregoing Findings of Fact and Conclusions of Law the Hearings Officer recommends the Deschutes County Board of County Commissioners approve Applicants' request for text amendments to the Comprehensive Plan (Chapter 23) and the Bend Urban Growth Boundary Zoning Ordinance (Chapter 19), to add a new zone ("Westside Transect Zone") and a zoning map amendment to change the zoning on the Subject Property from Surface Mining and Urban Area Reserve ("UAR-10") to the Westside Transect Zone ("WTZ") upon the conditions that:

- Adoption of Applicants' revised text for the WTZ zoning code submitted in Exhibit 33 and revising the Deschutes County Comprehensive Plan language of 3.3.9.4 limiting the residential development to 187 single-family residential lots; and

- Addition of the following language to the WTZ zoning code:

**"19.22.020 Applicability**

The Westside Transect Zoning District may be applied on the west side of the Deschutes River and east of Tumalo Creek on lands designated Urban Area Reserve on the Deschutes County Comprehensive Plan map where exceptions to Statewide Planning Goals 3, 4 and 14 have been taken to allow densities below one dwelling unit per ten acres."; and

- Execution of the Development Agreement ("DA") by the City and Applicants in substantially the same form as contained in the hearing record (attachment to Applicants' email to Staff dated September 7, 2018) or, in the alternative, prior to approval of any development on the Subject Property the Applicants, City and County Counsel must agree to a substitute document that assures satisfaction of the TRP written statement requirements.

**B. GOAL EXCEPTIONS**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer recommends the Deschutes County Board of County Commissioners find that exceptions to Statewide Planning Goal 3, Goal 4 and Goal 14 are required and that Applicants' proposed findings (quoted in the Recommendations) are adequate to meet relevant laws/rules (excepting for Applicants' evidence/argument related its position that exceptions need not be taken for Goal 3, Goal 4 and Goal 14) and that exceptions to Goal 3, Goal 4 and Goal 14 should be approved.

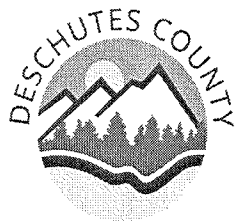
Dated this 2<sup>nd</sup> day of November, 2018



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Gregory J Frank  
Deschutes County Hearings Officer

Attachment: Proposed Title 19.22



Deschutes County Board of Commissioners  
1300 NW Wall St, Bend, OR 97703  
(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

**AGENDA REQUEST & STAFF REPORT**

**For Board of Commissioners Business Meeting of January 16, 2019**

**DATE:** January 7, 2019

**FROM:** Zechariah Heck, Community Development, 541-385-1704

**TITLE OF AGENDA ITEM:**

SECOND READING: Ordinance No. 2019-001, Westside Transect Zone

**BACKGROUND:**

The Board conducted a public hearing on November 27, 2018 to consider a Plan Amendment, Text Amendment and Zone Change of approximately 717 acres of land from the Urban Area Reserve and Surface Mine to the new Westside Transect Zone.

On December 17, 19 and January 2, the Board deliberated on this matter. After several revisions to the proposed zoning code, the Board ultimately approved the applications under first reading on January 2, 2019.

The decision and associated ordinance (2019-001) is now presented to the Board for consideration of second reading. The original file numbers are 247-18-000612-ZC, 247-18-000613-PA, 247-18-000614-TA.