STAFF REPORT


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

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."

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
II. FINDINGS OF FACT

A. LOCATION: The application involves several properties detailed in Table 1, below. Note: the applicants have divided and labeled the subject properties into the “North Property” and the “South Property”. Also provided below, Figure 1 displays the North Property and Figure 2 displays the South Property.

<table>
<thead>
<tr>
<th>County Assessor Map No.</th>
<th>Situs Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>“North Property”</td>
<td></td>
</tr>
<tr>
<td>1711130000100</td>
<td>63285 Skyline Ranch Road</td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td>1711260000400</td>
<td>3225 NW Shevlin Park Road</td>
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<tr>
<td>1711260000400</td>
<td>3229 NW Shevlin Park Road</td>
</tr>
<tr>
<td>1711000006000</td>
<td>62600 McClain Drive</td>
</tr>
</tbody>
</table>
Figure 1
Figure 2
B. LOT OF RECORD: Pursuant to Hearings Officer’s decision in file ZC-08-4, Belveron, legal lot of record status is not applicable to a rezoning application.

C. PROPOSAL: The applicant requests approval of amendments to the Comprehensive Plan, Deschutes County Code (DCC) Chapter 23, and the Bend Urban Growth Boundary Zoning Ordinance, 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, the applicant requests approval of a zoning map amendment to change the zoning on the subject properties from Surface Mining (SM) and Urban Area Reserve – 10 Acre Minimum (UAR-10) to the proposed Westside Transect Zone (WTZ). Note: The County Comprehensive Plan designation of Urban Area Reserve is not proposed to 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 Surface Mining (SM).

Staff notes that 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 UGB are not part of this application.

E. SITE DESCRIPTION: The South Property is approximately 307 acres and is currently vacant and undeveloped. The property borders Shevlin Park and Tumalo Creek to the west. Land to the north and east lies within the City of Bend Urban Growth Boundary (UGB). The southern end of the South Property borders directly upon the “Miller Tree Farm” subdivision. Most of the 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 an active surface mine. The surface mine is not designated as a Goal 5 resource in the Comprehensive Plan. 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 site and some areas of the property have been actively farmed for pasture in the past. There are some single-family
residences throughout the property. Topography of the site 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 property to the west and the Deschutes River borders the property on the north-eastern boundary.

The 1990 Awbrey-Hall Fire spread onto the Coats’ property (and adjacent School District 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 properties consists of a mix of parks, residential subdivisions, a golf course, surface mining, hobby-farms, and undeveloped lands. A portion of the subject area is adjacent to the city limits of Bend. Zoning in the vicinity of the subject area is a mixture of Exclusive Farm Use (EFU), Forest Use (F-2), Open Space and Conservation (OS&C), Rural Residential (RR-10), Suburban Low Density Residential (SR2-1/2), Surface Mining (SM), Urban Area Reserve (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 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 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: The Planning Division 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

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

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

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, 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 100 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: 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
August 17, 2018
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
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
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.

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).

August 22, 2018
I was asked to provide you with some more information about the scenic waterway program, in case it is useful in your review.

Here are some resources that may help:

OPRD scenic waterway program web-page: bit.ly/scenicwaterways

Direct link to rules for the Middle Deschutes Scenic Waterway (OARs): https://secure.sos.state.or.us/oard/view.action?ruleNumber=736-040-0072
Middle Deschutes Wild and Scenic River Management Plan:
https://www.blm.gov/or/districts/prineville/plans/files/middle_deschutes.pdf (the state section starts on page 43). Sections of rivers are designated (in this case a river recreation area) based on the character of the landscape and amount and type of development at the time of designation (present level of land development/committed land uses) with the goal of maintaining the existing scenic condition.

Kevin Sullivan, Deputy State Fire Marshal
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.

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, Bend Metro Parks and Recreation District, 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, Oregon Department of Fish and Wildlife, Pacific Power and Light, Deschutes County Property Address Coordinator, US Fish and Wildlife Service.
I. **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. Where relevant, the staff report addresses the following concerns, or highlights certain areas related to the public comments the Hearings Officer should make specific findings on.

**Concerns and/or comments in opposition:**
- 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 has 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.

**Comments in support:**
- 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.

J. **NOTICE REQUIREMENT:** The applicant has complied with the posted notice requirements of Section 22.23.030(B) of DCC Title 22. The applicant submitted a Land Use Action Sign
Affidavit, dated August 14, 2018, indicating the applicant 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 accidently 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 the Department of Land Conservation and Development on August 1, 2018.

K. REVIEW PERIOD: The 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. The 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 Deschutes County Code 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 area has been slated for eventual urbanization since 1972, according to the applicants. 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 the Land Conservation and Development Commission, 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 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 properties 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 site 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 DOGAMI permit no. 09-0018 and is not recognized on Deschutes County’s Goal 5 inventory for surface mining sites. Other land use permits issued on the 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 subject 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 property received a legal lot of record determination in connection with LR-05-14. The northern portion of this 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.

III. FINDINGS AND CONCLUSIONS

TITLE 19 – THE BEND URBAN GROWTH BOUNDARY ZONING ORDINANCE


1. 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.

Finding: The aforementioned property owners have requested a quasi-judicial plan amendment, text amendment and zone change. The applicants have filed the required Planning Division's land use application forms for the proposals. The applications will be reviewed under the applicable procedures contained in Title 22 of the Deschutes County Code.

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

Finding: The applicants are seeking a quasi-judicial zoning map amendment under the applicable provisions of DCC Title 22.

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.

Finding: Staff finds the following provisions of Deschutes County’s Comprehensive Plan are relevant to the applicants’ proposal and should be considered in reviewing the proposal to change the zoning from UAR-10 to the proposed WTZ. However, the Land Use Board of Appeals (LUBA) found in Save Our Skyline v City of Bend, 48 Or LUBA 192 (2004), that: “Comprehensive plan statements, goals and policies typically are not intended to, and do not, constitute mandatory approval criteria for quasi-judicial land use permit applications.”

The applicants have addressed several Comprehensive Plan goals and policies in their application materials. Staff has reviewed, made findings to some, and has included additional Comprehensive Plan policies for the Hearings Officer to consider.

Chapter 1 – Comprehensive Planning
Section 1.3 – Land Use Planning

The Comprehensive Plan provides map designations that create the framework for zoning districts. Per the Comprehensive Plan, zoning defines in detail what uses are allowed for each area. The Comprehensive Plan map designation for the Bend Urban Area Reserve is described below. The 2016 Bend UGB amendment, Ordinance 2016-022, amended Deschutes County’s Comprehensive Plan 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.

The applicants are not proposing to change the Bend Urban Area Reserve boundaries or its plan map designation. The applicants are proposing to add the WTZ to the zoning code associated with the Comprehensive Plan Designation of Urban Area Reserve and change the zoning to the new WTZ.

The subject properties have been slated for eventual urbanization since the early 1970s, as previously mentioned. 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 the Land Conservation and Development Commission (LCDC), which directed the preparation of a new boundary that would separate urban lands from future urbanizable lands. Based on that direction, the subject properties were 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 Title 19 within the acknowledged Urban Area Reserve include SM, UAR-10, Residential Suburban Low Density (SR – 2.5), Residential Urban Standard Density (RS), Industrial Light (IL) and Flood Plain (FP). Staff finds the WTZ with a Goal 14 exception will establish a minimum lot size of 2.5 acres.

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 Title 19 and Title 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:

*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 lower density, one unit per 2.5 acres, rather than the existing UAR-10 density of one unit per 10 acres. 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. The applicants contend the allowance for a lesser 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 new zoning designation will act as a transitional buffer between the urban development and rural lands, which compliments the Urban Reserve Area’s purpose,” the applicants suggest.

**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.

Although the subject properties are not designated in the County’s Goal 5 inventory for wildlife habitat and are therefore outside of the Deschutes County’s Wildlife Area Combining Zone, they are within the Oregon Department of Fish and Wildlife’s defined mule deer and elk winter range. The
applicants state 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 properties. 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 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, the applicants suggest the proposed WTZ concept allows for a low-density development pattern to respect and protect the natural resources of the 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.

Staff acknowledges several comments submitted by the public stating concerns about insufficient open space and inadequate fencing standards that would come at the detriment to wildlife. However, staff finds 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, staff finds the applicants’ proposal incentivizes protection of wildlife habitat that is not explicitly recognized in the Comprehensive Plan. Arguably, 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 finds 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.

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

The applicants state there is no evidence that any properties were formally designated Wildland Urban Interface (WUI). Nonetheless, the applicants 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). The 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.

Staff 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.

As mentioned previously, the protection of wildlife habitats are proposed through establishment of Wildlife Habitat Plans, as provided in Exhibit 12 of application materials and as required for all future land divisions. The applicants state access to wildlife and riparian habitat along Shevlin Park, Tumalo Creek, and the Deschutes River will occur through an on-site trail system. It is staff’s understanding the property owners will have legal agreements with future developers to ensure adequate management of areas to protect wildlife movement and corridors.
No formal comments were submitted by the Bend Parks and Recreation District (BPRD) at the time this staff report was issued. However, staff does anticipate formal testimony from BPRD at some point during the open record period.

Staff recommends the Hearings Officer to make specific findings on whether the applicant has adequately coordinated with stakeholders to ensure access to significant wildlife riparian habitat.

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.

The application materials state the subject area 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. Oregon Parks and Recreation Department (OPRD) provided comments regarding this situation. Staff also notes 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 subject properties, which border the eastern half of the creek are governed by Title 19 and the Landscape Management Combining Zone does not apply.

Staff Comment: 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 trials 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.

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.

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

Staff concurs with the applicant's burden of proof. As noted earlier, the subject properties were under the jurisdiction of the Bend Area General Plan until the 2016 amendment to the Bend Urban Growth Boundary. The Oregon Department of Land Conservation and Development 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, 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.
The applicants propose to modify Policy 3.3.1 to state: **Except for parcels in the Westside Transect Zone,** the minimum parcel size for new rural residential parcels shall be 10 acres. The subject properties are 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 and allows for no more than 200 residential units.

Staff notes the applicants are applying for a Goal 14 exception for the subject properties to address Policy 3.3.1. A Goal 14 exception is required to establish a 2.5 acre minimum lot size.

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

The applicants have 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 finds 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, the applicants proposed to add eight new policies to Section 3.3, see 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.

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 finds the applicant's proposal is consistent with the comprehensive plan's intent to promote an orderly pattern and sequence of growth because:

- 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 mentioned, the applicants' proposal requires new development in the WTZ to address the threat of wildfire. The applicants' have 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.

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.

The aforementioned TSP Goals are not approval criteria for the applicant 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 of Bend, 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 provided the following comments.

_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.

The County Transportation Planner provided the following comments.

_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.

The City of Bend also provided comments regarding transportation, provided below.

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:** The applicants' TIA (Exhibit 16 of application materials) demonstrates 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 notes, 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 finds if 286 residences will not significantly affect an existing or planning transportation facility, then 200 residences will not necessitate changes to the functional classification of existing or planned transportation facilities. However, staff notes 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.

If the applicants' proposals are approved, staff recommends the Hearings Officer include a condition of final decision requiring the aforementioned comprehensive plan policy and zoning code language reflect 187 residential lots.

Additionally, if approved, staff recommends 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. Although the applicants state no new arterials or collectors are proposed 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 the applicants to include this provision because there is potential for a north-south collector road to be identified in the WTZ area in a forthcoming update to the TSP.

**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.
Staff finds new roads constructed as part of future development of the WTZ are required to be built to the standards in DCC Title 17, this includes bicycle and pedestrian facilities.

**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.*

The Bend Urban Area Reserve Comprehensive Plan designation is not an urban reserve established under OAR Chapter 660, Division 21. Policy 4.2.2 pertains to Urban Reserve Areas established under this administrative rule. Therefore, this policy does not apply.

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

**Finding:** The applicants addressed the criterion by dividing it into three categories: existing development; potential development; and value of land in the vicinity of the proposed action. They also provided a description of the surrounding development of the subject properties, provided below.

*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.*

The applicants contend the proposal will not interfere with existing development in the vicinity of the North Property for the following reasons.
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.

The applicants contend the proposal will not interfere with existing development in the vicinity of the South Property for the following reasons.
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
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.”

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

**Finding:** The applicants have proposed amending the Comprehensive Plan and the Bend Urban Growth Boundary Zoning Ordinance to establish the new Westside Transect Zone. The stated purpose of the WTZ is:

To encourage, accommodate and provide standards for an interface or transect area west of the Deschutes River between urban and rural areas where residential densities range from one unit per 2.5 to 10 acres to provide a transition area between urban development and the rural or public lands boundary with community based resource management objectives focusing on wildlife habitat conservation and wildfire prevention.

The area to be rezoned totals approximately 717 acres. The subject area, 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. This situation is unique in that the applicants are proposed a zone change to a zone of which they have created themselves. Staff finds the proposed change in classification is consistent with the purpose and intent of the proposed zone classification.

**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.**

**Finding:** The surrounding areas of the subject properties, outside of the UGB, contain many properties 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.

**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 Sheriff’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 finds compliance with this criterion is demonstrated, 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. The property owners acknowledge 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 adds 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.

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

Finding: The applicant addressed this criterion in their burden of proof, stating the following.

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 UGB. These areas shall be considered first for inclusion in the UGB 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 UGB 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.
Staff agrees with the applicant’s findings that there has been a change in circumstance since the subject properties were initially zoned UAR-10 and SM, most notably the fact the area was not included in the latest 2016 UGB expansion. Staff finds the applicant has demonstrated compliance with this criterion.


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.

Finding: If the applicants' proposal is approved, this should be made a condition of approval.


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.

Finding: This criterion is not applicable at this time. The Board of County Commissioners can revisit this criterion after conducting a public hearing and deliberations.

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

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

1. 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.

Finding: The applicants' provided the following response in the burden of proof.

In 1981, LCDC acknowledged the City of Bend and Deschutes County's UGB along with their Comprehensive Plans and Goal exceptions to Goals 3 and 4. The adopted UGB boundary was a “dual boundary” which included lands in the “initial” UGB (IUGB) and the “outer” UGB. The subject properties were located between the IUGB and the Outer UGB boundaries and were designated UAR and placed in various zoning districts ranging from UAR-10, SR 2½ and SM. The 1980 Exceptions Statement is included herewith as Exhibit 11.

During the recent Bend UGB process, LCDC's 1981 Acknowledgment Order was the subject of “official notice” by the Commission in its Remand Order of November 3, 2010 and the Director's Report of January 8, 2010, each of which is submitted as Exhibits 19 and 20 hereto respectively. Both the Director and the Commission concluded that Goal 3 and 4 exceptions were taken for the UAR designated lands and that these lands are acknowledged exception lands though not statutory urban reserves designated under ORS
195.145 (which was not adopted until 12 years later, after acknowledgment of the Goal exceptions for the UAR designated parcels)

The 1980’s Exceptions Statement and the subsequent LCDC orders do not specifically describe the Goal 3 and 4 exceptions as either irrevocably committed exceptions or reasons exceptions as specified in Statewide Planning Goal 2, OAR 660-015-000(2). However, the Exception Statement refers to agricultural and forest data showing poor soils for agriculture or forest use and describing the lands as of marginal resource value and surrounded by the City limits and rural residential subdivisions. The Exceptions Statement describes “most” of the SR 2½ properties as parcelized but does not contain descriptive language of the development on the lands as intensive or otherwise undertake the ESEE analysis for a reasons exception. The Exceptions Statement clearly authorized zoning designations of UAR-10, SR 2½ 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, caretaker 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 2½ 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; as well as 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, churches, cemeteries, community lodge and fraternal organizations, dog kennels, animal hospitals and timeshare units.

If the 1980 Exception was a “Reasons” exception, then planning and zoning for the area is regulated by OAR 660-004-0018(4)(b), which provides that when a local government takes a reasons exception for a plan and zone designation and then later changes the types of intensity of uses within an area approved for a reasons exception, it must take a new exception. The present application to change the zoning on the subject properties from UAR-10 and SM to Transect does not change the types or intensities of uses authorized by the exception, instead, if anything, the uses are merely a subset of those uses authorized in the Exceptions Statement. The present proposal is consistent with the exceptions taken in 1979 as it proposes a minimum lot size of 2.5 acres, and does not allow any intensification of uses in the exception area. In fact, the uses allowed under the present proposal are more restrictive in scope and intensity than those allowed under the existing zoning designations allowed through the Goal 3 and 4 exceptions process.

Based on the language used and the analysis undertaken, it appears the 1980 Exception was a committed exception. As described in the Director’s Report and Remand Order attached hereto, the City of Bend and Deschutes County originally adopted an urban growth boundary in 1972 and revised this boundary in 1974, 1976 and 1978. It was
submitted to LCDC in the fall of 1979 for acknowledgment. LCDC ruled the boundary was too large but gave the City and County the option of a dual boundary with the new boundary being called the Initial Urban Growth Boundary (IUGB) and the outer area (which includes the subject properties) being held as urban reserves.

The 1980s Exception Statement was developed to support this dual boundary option and describes primarily the IUGB lands as committed to urbanization based on existing development patterns, proximity of city limits and the extension of urban services. Likewise, the Director Report and Remand Order for the most recent UGB amendment process describes the 1980's exception more like a committed exception. If so, then planning and zoning for the exception area is regulated by OAR 660-004-0010(2) which requires residential zones to contain a single numeric minimum lot size and to limit density and public facilities and services to those that are either the same as those existing on the exception site or that are rural as defined by the rules and will not commit adjacent or nearby land to nonresource uses. See Landwatch Lane County v. Lane County, 56 Or LUBA 408 (2008) (changes to zoning of land already subject to physically developed or irrevocably committed exceptions do not require new exceptions where the new zone satisfies the requirements of OAR 660-004-0018(2); Friends of Yamhill County v. Yamhill County, 41 Or LUBA 247, 254 (2002). The Westside Transect Zone contains a single numeric minimum lot size, does not allow planned or cluster developments, does not allow any commercial, industrial or otherwise urban uses and does not authorize any density or uses requiring public infrastructure or urban services. Moreover, the property owners have conducted extensive wildlife and forest management obligations and wildlife habitat objectives funded by the individual lots and administered by a homeowners association or similar entity. The limited uses allowed under the zoning and the planned development restrictions will ensure the uses in the Westside Transect Zone will be compatible with and will not commit nearby resource land to nonresource use.

The City of Bend provided the following comments relating to the 1980 Exception Statement.

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 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.

**Staff Comment:** The subject properties were under the jurisdiction of the Bend Area General Plan until the 2016 amendment to the Bend Urban Growth Boundary. The City's comments state the applicants' argument that the 1980 Exceptions Statement provides for a minimum lot size of 2.5 acres in the WTZ, similar to the SR 2.5 Zone, is inaccurate. The 1980 Exceptions Statement allowed densities at one unit per 2.5 acres in already developed areas and one unit per 10 acres in areas that were not already parcelized. The Exceptions Statement designated different densities in different locations based on existing lot sizes. The City contends the Exception Statement, “did not intend to allow for unrestricted rural parcelization anywhere in the URA”. Staff finds that a Goal 14 Exception is necessary to establish a density below a 10-acre minimum parcel size. Staff concurs with the City of Bend staff: the interpretation of the new WTZ warrants a new exception.

Staff asks the Hearings Officer to make specific findings on whether the goal exceptions submitted with the application are adequate (page 43 of the burden of proof). Additionally, if the Goal 14 exception is required and approved, staff recommends the Hearings Officer, as a condition of approval, require the applicability statement as proposed by the City.
2. **Section OAR 660-004-0040 -- Application of Goal 14 to Rural Residential Areas**

(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:

... 

(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.

**Finding:** The applicants’ provided the following response in the burden of proof.

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.

Staff Comment: Staff asks the Hearings Officer to determine if the above provisions of Division 4 are applicable or not. If they are, staff asks the Hearings Officer to determine if the applicants have adequately addressed the application of Goal 14 to Rural Residential Areas and if their exception statement is justified.

B. OAR 660-011, Division 11, Public Facilities Planning

1. 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.

Finding: Staff agrees with the applicants that complying with the proposed density of one unit per 2.5 acres is achievable with or without service from a water system.

C. OAR 660-011, Division 12, Transportation Planning

1. **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.

Finding: The applicant, as mentioned above, submitted a Transportation Impact Study (TIS)\textsuperscript{1} from Lancaster Engineering dated December 19, 2017. An addendum was submitted by the same firm on July 31, 2018. The TIS, including the addendum, provides potential impacts for the proposed zone change such as total daily trip generation and p.m. peak hour trips, as well as an extension of the traffic analysis to the year 2040. In response to the Transportation Planning Rule (TPR), the applicants provide the following response in Exhibit 16A of the application materials.

(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);

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.

\textsuperscript{1} The TIS is also referred to as a Transportation Impact Analysis (TIA) elsewhere in this report.
(b) Change standards implementing a functional classification system; or

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.

(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.

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)

Staff Comment: Several property owners of an adjacent residential subdivision provided comments for the record stating concern about impacts to local streets, specifically in the City of Bend. In addition, the City of Bend provided comments, below, that respond to the TIS conclusion there are three intersections in the city that “are anticipated to operate beyond operational standards”.

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.

Although the applicants’ TIS states no County intersections or roadways will be significantly impacted, staff asks the Hearings Officer to make specific findings on whether the application is in compliance with the TPR because of the impacts to transportation infrastructure in the City of Bend.
D. OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

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

**Finding:** The Statewide Planning Goals are outlined in the applicant's burden of proof 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. 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.*

*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.*

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2 According to the 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 redesignate land from Urban Reserve to Residential–Standard and vice versa, without new goal exceptions.
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.

Staff Comment: 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.

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.

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Staff Comment: Staff finds 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.

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

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

1. Section OAR 660-004-0020 – Goal 2, Part II(c), Exception Requirements
(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.

Finding: 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, Chapter 5.

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 standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

(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;

Excerpt from 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.

Finding: In order to demonstrate compliance with this administrative rule, staff 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 applicants argue there is no basis for the applications of Goals 3 and 4 to the subject properties. The applicant provides the following findings.

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.

Further findings are provided by the applicant that address soil fertility, suitability for grazing, existing and future availability of water for farm irrigation purposes, existing land uses, accepted farming practices, etc.

To address Goal 14, the applicants provide the following arguments.

3 To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

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

<table>
<thead>
<tr>
<th>Neighborhood Type</th>
<th>Characteristics</th>
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<tbody>
<tr>
<td>Transect</td>
<td>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.</td>
</tr>
</tbody>
</table>

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.

**Staff Comment:** The subject properties were under the jurisdiction of the Bend Area General Plan until the 2016 amendment to the Bend Urban Growth Boundary. Staff acknowledges the area has been slated for eventual urbanization for decades. Staff understands the reason the subject properties were not zoned SR 2.5 originally is because the properties were not parcelized and thus better suited for the UAR-10 and SM designation. Nevertheless, an increase in density from one unit per 10 acres (UAR-10) to one unit per 2.5 acres (WTZ) is significant because it severely compromises future urbanization. Without proposed subdivision designs, it is unclear how the properties will be developed. Staff finds the very basis of requiring a Goal 14 Exception is that the applicant's need to justify the reason for minimum lot sizes to be less than 10 acres. Since this area is undeveloped, the 10-acre density applies unless a Goal 14 Exception is approved. 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.

2. **The Amount of Land Required for the Use Being Planned.**

The applicants have not proposed a specific use of the property, nor provided a potential subdivision design. As proposed, the full suite of uses allowed in the WTZ could be allowed, subject to subsequent site plan and/or conditional use review, on the 717-acre area proposed to be rezoned. The applicant has stated:

*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 Comment:** Staff is uncertain how to determine the appropriate amount of area to be rezoned when there is no specific proposed use. Staff requests that the Hearings Officer make specific findings on this issue.

3. **Why the Use Requires a Location on Resource Land.**

It is unclear if the subject properties were ever zoned for resource use. Staff finds the applicant has 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.”
(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements:

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

Staff Comment: Each of the requirements under OAR 660-04 and many of the requirements under 660-14 make reference to a "use". The applicants have not proposed a specific use of the property. The full suite of uses allowed in the new WTZ could be allowed, subject to subsequent site plan and/or conditional use review.

Possible alternative areas, which would not require a new exception are lands zoned SR 2.5. The applicants contend the existing areas zoned SR 2.5 are heavily parcelized and are not located in the WUI on the west side of Bend. The purpose of the WTZ is to create a zone that recognizes the sensitive nature of development in the WUI and therefore allows residential developments designed to implement plans that protect wildlife habitat and help mitigate loss to and spread of wildfires. Although the proposed WTZ is similar to the SR 2.5 Zone, the WTZ requires a Goal 14 exception and incorporates stringent standards not found in the SR 2.5 Zone. Staff agrees with the applicants the subject properties are indeed within the WUI area and there exists a need for sensitive development that acknowledges wildlife habitats and the threat of wildfire. The subject properties could be rezoned to SR 2.5 with a Goal 14 Exception, but unlike the WTZ, the allowed uses under the SR 2.5 Zone would not necessarily incorporate provisions to protect wildlife habitat and mitigate losses associated with wildfire.

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test 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?
(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 unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?
(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?
(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

Staff Comment: The applicants rely heavily on the subject properties' location adjacent to the western city limits of Bend and a need for responsible development in the WUI in their response to the above criteria. While staff recognizes the unique and important location of the subject
properties, questions remain such as: 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 asks the Hearings Officer to make findings on whether the applicants' responses are adequate.

(C) The “alternative areas” standard in paragraph B may 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 describes 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 the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

Staff Comment: As mentioned above, the applicants speak to the proposed use being tailored to the west side of Bend to address concerns of wildfire and protection of wildlife habitat. Staff asks the Hearings Officer to make findings on whether the applicants' responses are adequate.

(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 areas requiring a goal exception other than the proposed site.” The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in 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 a description of: 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 to be addressed 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;

Finding: The above criteria requires a comparison of the long-term environmental, economic, social and energy (ESEE) consequences of the proposal with alternative locations that would also require a goal exception. Staff finds the proposal is unique in that the applicants have created a
proposed zoning district that takes into account the characteristics of the subject properties. Essentially, the applicants have created a zone that is similar to the SR 2.5 Zone but tailored to the subject area located adjacent to the western city limits of Bend and Shevlin Park, Tumalo Creek, and forest zoned lands to the east. The applicants argue that because the zone is specific to the characteristics of the subject properties, there are no other alternative locations that could serve the purpose of the WTZ.

The applicants provide the following analysis of the ESEE consequences.

_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.

Staff Comment: Staff asks the Hearings Officer to determine if the applicants have adequately
addressed this criterion.

(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 resources 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.

Staff Comment: Several public comments have been submitted questioning whether the proposal
is compatible with adjacent uses. Specifically, concerns were raised regarding the application’s lack
of specific designs for future subdivisions and other potential uses. As mentioned in a previous Staff Comment, the commenters want a definitive plan for future development in the WTZ and even 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 meet this criterion and ensure the proposed uses will be compatible with other adjacent uses.

(3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.

Finding: The applicants' proposal involves two areas as previously described: the North Property and the South Property. Staff finds the applicants have satisfied the requirement of this criterion to provide a map of the areas, Exhibits 3 and 4 of application materials, in addition to analyzing each property against the appropriate findings within the submitted burden of proof.

B. OAR 660-014, Division 14, Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands

1. Section 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.

Staff Comment: Staff finds the following points made by the applicants are the most relevant to justify urban level development on the subject properties.

- The proposed use involves the establishment of “stewardship communities” to address the sensitive characteristics of the subject properties.

- Expanding the UGB to incorporate the subject areas is impractical because the proposed use is mainly 2.5-acre lot subdivisions that have HOAs actively managing open space and resource corridors to prevent wildfire and protect wildlife habitat. Such residential subdivisions in an urban setting are not likely.

- The proposed uses do not require the extension of urban services or infrastructure.

- The subject properties do not meet the definition of Rural Land because they have been indexed for eventual urbanization for several decades.

Nonetheless, staff asks the Hearings Officer determine if the applicants have adequately addressed the standards set forth above.

IV. CONCLUSION

Staff finds there are several criteria and issues necessitating specific findings and interpretations by the Hearings Officer in order to determine if the applicants have demonstrated compliance with the applicable criteria of Deschutes County Zoning Ordinance, Deschutes County Comprehensive Plan, and applicable sections of OAR.

The Board of County Commissioners (Board) are the final local review body for this proposal. The Hearings Officer's decision will help the Board determine if the burden of proof has been met to
establish the WTZ and to justify changing the zoning designation of the subject properties from UAR-10 and SM to the new WTZ.

DE SCHUTES COUNTY PLANNING DIVISION

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