FINDINGS

I. BACKGROUND

Nonprime Resource (NPR) Lands, which are also known under State law, OAR 660-004-005(3) as “Non-Resource” Lands, are areas with an exceedingly low capacity to be managed for commercial agriculture and/or forestry activities. NPR Lands do not meet the definitions of either agricultural land or forest lands found in Statewide Planning Goals 3 and 4 and accompanying Oregon Revised Statutes and Oregon Administrative Rules due to the presence of poor soil conditions, a lack of irrigation, climate conditions and other relevant factors, including but not limited to past use. Based on these circumstances, NPR Lands do not warrant agricultural and forest use zoning and should be made available for other land uses. They differ from Rural Residential Exception Areas and other rural areas not planned and zoned for farm and forest activities. NPR Lands are most often characterized by large tracts without an existing settlement pattern and supporting residential infrastructure. As described below, they also contain platted subdivisions or conveyed parcels that preexisted State enabling planning legislation taking effect in Deschutes County.

Deschutes County 1970s

When farm lands were designated in the late 1970s, Deschutes County was hampered by the limited availability of soil maps. Where soil maps from the Natural Resource Conservation Service (NRCS) existed those were consulted, but the County also included irrigated lands and lands receiving farm deferrals for the previous five years and site visits. In general, non-urban, non-forest, undeveloped and uncommitted lands were determined to be farm and forest lands. This designation by default resulted in some areas being zoned agricultural for forest use based on best available information.

Deschutes County 2000s

Since the mid-2000s, County hearings officers and the Board of County Commissioners have determined that land use planning, implemented through Deschutes County Comprehensive Plan policies and zoning, enables rural property owners with Exclusive Farm Use (EFU) zoning to demonstrate in a quasi-judicial process that a subject property does not constitute “agricultural lands” as defined in Goal 3 and Oregon Administrative Rule (OAR) 660-033-0020(1). The Comprehensive Plan currently provides a general directive to consider “Non-Resource” lands proposals. To date, Deschutes County has approved six quasi-judicial plan amendment, zone change applications from Agricultural to Rural Residential Exception Area and EFU to Multiple Use Agricultural 10. The adopting ordinances are listed below.

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1 Policy 2.2.3 - Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.
DLCD Coordination

Over the past decade, Deschutes County has supported and participated in numerous state legislative processes and coordinated with the Department of Land Conservation and Development (DLCD) to study and legislatively update agricultural and forest land designations. Unfortunately, these efforts have not resulted in a clear path forward to undertake such a land use change.

2019 Comprehensive Plan Amendments

In March 2019, Deschutes County initiated its own process to establish eligibility criteria for designating EFU or Forest Use zoned properties to NPR Lands defined in OAR 660-004-0005(3) as “Non Resource Lands.” Criteria also identify opportunities to redesignate six specific areas committed to residential uses that were platted or conveyed prior to State enabling planning legislation taking effect in Deschutes County. Table 1 summarizes these six areas.

Table 1 – Committed Residential Areas

<table>
<thead>
<tr>
<th>Area</th>
<th>Lawful Establishment</th>
<th>Profile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Haner Park, Township 22S, Range 9E</td>
<td>Conveyed by deed</td>
<td>59 lots. 23 are vacant</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Average Lot Size: 1.19</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No lots are tax deferred</td>
</tr>
<tr>
<td>Section 36, Township 22S, Range 10E</td>
<td>Conveyed by deed or other instrument</td>
<td>54 lots. 44 are vacant</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Average Lot Size: 11.65</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 parcels are tax deferred</td>
</tr>
<tr>
<td>Meadow Crest Acres Subdivision</td>
<td>Platted in 1980</td>
<td>33 lots. 14 are vacant</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Average Lot Size: 1.07</td>
</tr>
<tr>
<td></td>
<td></td>
<td>None are tax deferred</td>
</tr>
<tr>
<td>Skyline Subdivision and 1st Addition</td>
<td>Skyline Subdivision platted in 1960; 1st addition platted in 1964</td>
<td>49 lots. 11 are vacant</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Average Lot Size: 0.73</td>
</tr>
<tr>
<td></td>
<td></td>
<td>None are tax deferred</td>
</tr>
</tbody>
</table>

2 Haner Park was originally owned by the Benevolent and Protective Order of Elks. Joseph Haner acquired 80 acres split by the Upper Deschutes in the 1940s and donated it to the Elks Lodge. Cabins were subsequently established. While the land was owned by the Elks Lodge, cabins could be owned by members of the Lodge. Ultimately, the Elks could not afford the property and sold it to a corporation, Haner Park LLC, formed by cabin owners. After receiving lot of record decisions, lots were conveyed through deeds. As a condition of approval of the lot of record decisions, the subject property was resurveyed in 2006.

3 Section 36 was a “school section,” meaning it was patented to the State of Oregon on statehood, February 14, 1859. On the Clerk’s direct/indirect deed index, it shows that by 1908 all of the section had been conveyed, piecemeal, by the State to private parties.

4 Meadow Crest Acres Subdivision received preliminary plat approval in 1978. Zoning at the time of the preliminary plat was Rural Recreation (RR-1).
These areas are subject to strict resource zoning requirements dictated by State law that affect the siting of new dwellings, remodels, additions and accessory structures. Upon acknowledgment of the NPR Lands policies, Deschutes County will propose two zones: a NPR-10 zone that will apply solely to the six areas committed to residential uses, and a NPR-20 zone for all other eligible lands subject to a quasi-judicial application.

II. PROPOSED PLAN AMENDMENT

The proposed amendments to Deschutes County’s Comprehensive Plan are described in Ordinance 2019-007, Exhibits A, B, C, D, and E. Added language is underlined and deleted shown as strikethrough. Table 2 provides an overview of Exhibits B, C, and D.

### Table 2 – Comprehensive Plan Amendments

<table>
<thead>
<tr>
<th>Comprehensive Plan</th>
<th>Overview</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 1.3 Land Use Planning</strong> <em>(Exhibit B)</em></td>
<td>Adds Nonprime Resource Lands to list of comprehensive plan map designations and Nonprime Resource Lands-10 and – 20 zones to list of zoning codes</td>
</tr>
<tr>
<td><strong>Section 2.2 Agricultural Lands</strong> <em>(Exhibit C)</em></td>
<td>Amends Policy 2.2.3, allowing comprehensive plan and zoning map amendments for those that qualify as Nonprime Resource Lands defined in OAR 660-004-005(3)</td>
</tr>
<tr>
<td><strong>Section 2.3 Forest Lands</strong> <em>(Exhibit C)</em></td>
<td>Adds Policy 2.3.13, allowing comprehensive plan and zoning map amendments for those that qualify as Nonprime Resource Lands defined in OAR 660-004-005(3)</td>
</tr>
<tr>
<td><strong>Section 3.1 Introduction</strong> <em>(Exhibit D)</em></td>
<td>Adds Section 3.11 Nonprime Resource Lands to the list of sections associated with Chapter 3 - Rural Growth Management</td>
</tr>
<tr>
<td><strong>Section 3.2 Rural Development</strong> <em>(Exhibit D)</em></td>
<td>Adds a bullet to a paragraph discussing Deschutes County growth potential, recognizing that some farm and forest lands meeting the definition of OAR 660-004-005(3) can be redesignated and rezoned to Nonprime Resource Lands for low density rural development</td>
</tr>
<tr>
<td><strong>Section 3.3 Rural Housing</strong> <em>(Exhibit D)</em></td>
<td>Adds a paragraph describing Nonprime Resource Lands Amends Policy 3.3.1, clarifying that new rural residential parcels in Rural Residential Exception Areas are 10 acres Adds Policy 3.3.2 which describes the minimum parcel size for new rural residential parcels in the Nonprime Resource Lands-10 zone Adds Policy 3.3.3 which describes the minimum parcel size for new rural residential parcels in the Nonprime Resource Lands-20 zone</td>
</tr>
</tbody>
</table>

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5 Squaw Creek Canyon Recreational Estates 1st Addition received preliminary plat approval in 1976. Zoning at the time of the preliminary plat was Exclusive Agriculture (A-1).
<table>
<thead>
<tr>
<th>Comprehensive Plan</th>
<th>Overview</th>
</tr>
</thead>
</table>
| **New Section 3.11 Nonprime Resource Lands (Exhibit D)** | Creates a new section, Section 3.11 for Nonprime Resource Lands. Adds two goals and sixteen policies  
1. Allows for the designation of Nonprime Resource Lands in the county  
2. Resolves resource zoning restrictions applied to four subdivisions, Haner Park, and Section 36 that preexisted State enabling planning legislation taking effect in Deschutes County  
   - **General Policies**  
     - NPR-20 zone pertains to eligible properties except the four subdivisions, Haner Park, and Section 36  
     - Single family dwelling or manufactured home and accessory uses allowed outright  
     - Minimum parcel size is 20 acres  
     - Until NPR-20 zone is adopted, property owners can continue as before and apply for a rezone from Exclusive Farm Use to Multiple Use Agriculture  
   - **Committed Residential Use Policies**  
     - NPR-10 zone relates to four subdivisions, Haner Park and Section 36  
     - Single family dwelling or manufactured home and accessory uses allowed outright  
     - Minimum parcel size is 10 acres  
     - NPR-10 zone is available only for four subdivisions, Haner Park and Section 36 committed to residential uses because they are platted, parcelized, or partially developed  
     - Lists additional eligibility criteria for these specific areas  
     - Until NPR-10 zone is adopted, property owners can continue as before and apply for a rezone from Exclusive Farm Use to Multiple Use Agriculture |

### III. REVIEW CRITERIA

Ordinance 2019-007 formally recognizes a NPR Lands Comprehensive Plan designation. The amendments include new text, goals and policies as noted above in Table 2. Deschutes County lacks specific criteria in Deschutes County Code (DCC) Titles 18, 22, or 23 for reviewing a legislative plan amendment. Nonetheless, since Deschutes County is initiating one, the County bears the responsibility for justifying that the amendments are consistent with the Statewide Planning Goals, Oregon Revised Statutes, Oregon Administrative Rules and its existing Comprehensive Plan.
IV. FINDINGS

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

*Hearing Required*

**FINDING:** The Planning Commission held a public hearing on May 23 and June 13. The Board of County Commissioners will hold a hearing following a Planning Commission recommendation. This criterion is met.

2. Section 22.12.020, Notice

*Notice*

**A. Published Notice**

1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

**FINDING:** This criterion is met as notice was published in the Bend *Bulletin* newspaper on March 23, 2019.6

**B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.**

**FINDING:** This criterion is met as notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend as well as on the Planning Division website.

**C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.**

**FINDING:** Courtesy notices were sent to property owners in Haner Park, Section 36, Skyliner Subdivision, Skyliner 1st Addition, Squaw Creek Canyon Recreational Estates 1st Addition and Meadow Crest Acres Subdivision.

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6 Public notices were published in the *Bulletin* on March 23, 2019.
D. **Media notice.** Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

**FINDING:** Notice was provided to the County public information official for wider media distribution. This criterion is met.

3. **Section 22.12.030 Initiation of Legislative Changes.**

   *A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.*

**FINDING:** The application was initiated by the Deschutes County Planning Division at the direction of the Board. This criterion is met.

4. **Section 22.12.040. Hearings Body**

   **A.** The following shall serve as hearings or review body for legislative changes in this order:
   1. The Planning Commission.
   2. The Board of County Commissioners.

**FINDING:** This criterion is met as the Planning Commission held public hearings on May 23 and June 13, 2019 followed by deliberations. The Board of County Commissioners will hold a hearing following a Planning Commission recommendation.

   **B.** Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

**FINDING:** This criterion is met as the Planning Commission public hearing preceded the Board public hearing.

5. **Section 22.12.050 Final Decision**

   *All legislative changes shall be adopted by ordinance*

**FINDING:** Land use application file no. 247-19-000265-PA are implemented by Ordinance Nos. 2019-007. This criterion is met.

B. **STATEWIDE PLANNING GOALS**

The parameters for evaluating these specific amendments are based on an adequate factual base and supportive evidence demonstrating consistency with Statewide Planning Goals. The following findings demonstrate that Ordinance 2019-007 complies with applicable statewide planning goals and state law.
• **Goal 1, Citizen Involvement** is met through this adoption process because these amendments received public hearings before the Planning Commission and the Board of County Commissioners.

• **Goal 2, Land Use Planning** is met because ORS 197.610 allows local governments to initiate post acknowledgment plan amendments (PAPAs). A Department of Land Conservation and Development (DLCD) 35-day notice was initiated on March 20, 2019. This FINDINGS document provides the adequate factual basis and documented analysis for this plan update.

Additionally, Oregon Administrative Rules (OAR) Division 4 interprets the requirements of Goal 2 (Land Use Planning) and ORS 197.732 regarding exceptions. The definition for Non-Resource lands is described in OAR 660-004-0005(3):

- “Land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).”

If a subject property does not qualify as “agricultural or forest land,” then no exception to Statewide Planning Goal 3, Agricultural Land or Goal 4, Forest Land is required because the subject property is not agricultural or forest land. Lastly, *Sommer v. Josephine County*, 49 Or LUBA 134 (2005) states that, “Lands that are planned and zoned for resource use under Goals 3 and 4 may be redesignated for a nonresource use by applying an acknowledged comprehensive plan policy that establishes standards for such designations. Where such a specific policy and local standards have been acknowledged, they apply in place of more general statewide planning goals standards that would otherwise apply to such a redesignation.” Deschutes County is now proposing specific policies and local standards to replace its current policy.

• **Goal 3, Agricultural Lands and Goal 4, Forest Lands** are not applicable because NPR Lands defined in OAR 660-004-005(3) are not subject to Goal 3, Agricultural Land and Goal 4, Forest Land. A “NPR Lands” designation honors Non-Resource

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7 Deschutes County completed periodic review on January 23, 2003. The Comprehensive Plan Update was adopted on November 9, 2011.

8 OAR 660-004-0010(1)(a) through (g) includes Goal 3 Agricultural Lands and Goal 4 Forest Lands.

9 OAR 660-004-0010:

(1) The exceptions process is not applicable to Statewide Goal 1 “Citizen Involvement” and Goal 2 “Land Use Planning.” The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 “Agricultural Lands”; however, an exception to Goal 3 “Agricultural Lands” is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, “Agricultural Lands”, except as provided under OAR 660-004-0022 regarding a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

(b) Goal 4 “Forest Lands”; however, an exception to Goal 4 “Forest Lands” is not required for any of the forest or nonforest uses allowed in a forest or mixed farm/forest zone under OAR chapter 660, division 6, “Forest Lands”;

…

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_004.html

10 See note 1.
Lands quasi-judicial plan amendment and zone changes dating back to 2007. The Comprehensive Plan amendments recognize opportunities to designate NPR Lands for eligible properties including four subdivisions, Haner Park and Section 36 in EFU and Forest Use zones platted prior to State enabling planning legislation taking effect in Deschutes County. The Comprehensive Plan amendments include eligibility criteria for NPR Lands that establishes standards for such designations consistent with *Sommer v. Josephine County*, 49 Or LUBA 134 (2005). After acknowledgement, Deschutes County will adopt two zones: a NPR-10 zone that will apply solely to the six areas committed to residential uses, and a NPR-20 zone for all other eligible lands subject to quasi-judicial applications.

- **Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces** is met. The definition for NPR (Non-Resource) lands in OAR 660-004-0005(3) recognizes the obligation to address Goal 5:
  - “Land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land.”

Draft Policies 3.11.3c. and 3.11.10 recognize this obligation by stating:

*Policy 3.11.3*  To qualify for a Nonprime Resource Lands comprehensive plan designation and Nonprime Resource Lands zoning, a property must demonstrate:

- c. *It does not contain Goal 5 natural resources;*

*Policy 3.11.15*  Notwithstanding Policy 3.11.3.c, lands committed to residential uses with significant Goal 5 natural resources are eligible for a Nonprime Resource Lands-10 zone subject to an ESEE analysis.

- **Goal 6, Air, Water and Land Resources Quality and Goal 7, Natural Hazards** are not applicable because the County is adopting goals and policies to formally recognize “NPR Lands,” which are also known under State law, OAR 660-004-005(3) as “Non-Resource” Lands. No development or land use changes are being proposed that impact air, water and land resource qualities or natural hazards. Besides identifying eligibility criteria, the Comprehensive plan amendments recognize opportunities to designate NPR Lands for eligible properties including four subdivisions, Haner Park and Section 36 in EFU and Forest Use zones platted prior to State enabling planning legislation taking effect. In a subsequent phase, Deschutes County will initiate legislative amendments to establish NPR-10 and NPR-20 zones into Title 18, County Zoning. Uses identified in those zones will be subject to code provisions that are designed to protect air, water and land resources quality and assure that they are not approved in areas subject to natural hazards.

- **Goal 8, Recreational Needs** is not applicable because the County is adopting goals and policies to formally recognize “NPR Lands,” which are also known under State
law, OAR 660-004-005(3) as “Non-Resource” Lands. No development or land use changes are being proposed that impact lands designated with recreational resources. In a subsequent phase, Deschutes County will initiate legislative amendments to establish NPR-10 and NPR-20 zones into Title 18, County Zoning. Uses identified in the NPR-20 zone will identify whether to exclude recreational uses. The NPR-10 zone will strictly address rural residential development.

- **Goal 9, Economic Development** is applicable because the County is adopting goals and policies to formally recognize “NPR Lands,” which are also known under State law, OAR 660-004-005(3) as “Non-Resource” Lands. Besides identifying eligibility criteria, the Comprehensive plan amendments recognize opportunities to designate NPR Lands for eligible properties including four subdivisions, Haner Park and Section 36 in EFU and Forest Use zones platted prior to State enabling planning legislation taking effect. These areas are subject to strict resource zoning requirements dictated by State law that affect the siting of new dwellings, remodels, additions and accessory structures. The establishment of a NPR Lands-10 zone, which will be initiated legislatively after the acknowledgment of these Comprehensive Plan amendments, can incorporate rural residential zoning standards to permit these uses outright at a tremendous savings for property owners.

Residential development in these six residential areas will continue to occur albeit without onerous land use regulations. Section 3.11, Goal 2, and Policies 3.11.9, 3.11.10, 3.11.11, 3.11.12 provide the legal policy framework:

**Goal 2** Resolve resource zoning restrictions applied to subdivisions platted prior to Statewide planning legislation taking effect in Deschutes County, Haner Park, and Section 36 in Township 22S, Range 10E.

**Policy 3.11.9** Nonprime Resource Lands-10 zone provides procedures and standards for rural residential living environments and development that balance the public’s interest in the management of community growth with the protection of individual property rights.

**Policy 3.11.10** A single family dwelling or a manufactured home and their accessory uses shall be permitted outright.

**Policy 3.11.11** The minimum parcel size for the Nonprime Resource Lands-10 zone shall be 10 acres.

**Policy 3.11.12** The Nonprime Resource Lands-10 zone is available only for the following properties committed to residential uses because they are platted, parcelized, or partially developed:

- Meadow Crest Acres Subdivision
- Skyliner Subdivision
- Skyliner Subdivision 1st Addition
d. Squaw Creek Canyon Recreational Estates 1st Addition  
e. Haner Park  
f. Section 36, Township 22S, Range 10E

Regarding other eligible properties, Section 3.11, Goal 1 and Policies 3.11.4, 3.11.5, 3.11.6, 3.11.7, and 3.11.8 provide the legal policy framework for establishing a NPR-20 zone.

**Goal 1** Allow the designation of Nonprime Resource Lands in Deschutes County

**Policy 3.11.4** A Nonprime Resource Lands-20 zone provides procedures and standards for low density rural development that balances the public’s interest in the management of community growth with the protection of individual property rights.

**Policy 3.11.5** The Nonprime Resource Lands-20 zone applies to eligible properties excluding those identified in Policy 3.11.12.

**Policy 3.11.6** The minimum parcel size for the Nonprime Resource Lands-20 zone shall be 20 acres.

**Policy 3.11.7** A single family dwelling or a manufactured home and their accessory uses shall be permitted outright.

**Policy 3.11.8** Until a Nonprime Resource Lands-20 zone is adopted, property owners can continue as before and apply for a rezone from Exclusive Farm Use to Multiple Use Agriculture.

Allowing low density rural land uses while maintaining large parcels for future urbanization will have notable economic benefits. Once a NPR Lands designation is applied, eligible EFU and Forest Use properties will no longer be subject to strict resource zoning requirements. Development in these areas can occur albeit without onerous land use regulations.

- **Goal 10, Housing** is not applicable because, unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

- **Goal 11, Public Facilities** is not applicable because the County is adopting goals and policies to formally recognize “NPR Lands,” which are also known under State law, OAR 660-004-005(3) as “Non-Resource” Lands. No development or land use changes are being proposed that impact public facilities. In a subsequent phase, Deschutes County will initiate legislative amendments to establish NPR-10 and NPR-20 zones into Title 18, County Zoning. Rural uses allowed in those proposed zones will rely on domestic wells and onsite wastewater treatment systems.

- **Goal 12, Transportation** is met because as demonstrated below, draft Policy 3.11.3e addresses transportation facilities:
Policy 3.11.3  To qualify for a Nonprime Resource Lands comprehensive plan designation and Nonprime Resource Lands zoning, a property must demonstrate:

e. It does not significantly affect a County or State transportation system consistent with Statewide Planning Goal 12;

Additionally, no development or land use changes are being proposed that impact local or state transportation facilities.

- **Goal 13, Energy Conservation** is not applicable because the County is adopting goals and policies to formally recognize “NPR Lands,” which are also known under State law, OAR 660-004-005(3) as “Non-Resource” Lands. No development or land use changes are being proposed that warrant energy conservation. In a subsequent phase, Deschutes County will initiate legislative amendments to establish NPR-10 and NPR-20 zones into Title 18, County Zoning. Any use allowed in those zones will be subject to Deschutes County’s Solar Height Restrictions, DCC 18.116.170. and the Uniform Building Code

- **Goal 14, Urbanization** is not applicable because no expansion of an urban area is proposed with these amendments.

- **Goals 15 through 19** are not applicable to any amendments to the County’s comprehensive plan because the county has none of those types of lands.

B. **OAR 660-004, INTERPRETATION OF GOAL 2 EXCEPTIONS PROCESS**

**FINDING:**

Oregon Administrative Rules (OAR) Division 4 interprets the requirements of Goal 2 (Land Use Planning) and ORS 197.732 regarding exceptions. The definition for Non-Resource lands is described in OAR 660-004-0005(3):

- “Land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).”

If a subject property does not qualify as “agricultural or forest land,” then no exception to Statewide Planning Goal 3, Agricultural Land or Goal 4, Forest Land is required because the subject property is not agricultural or forest land.

C. **OAR 660-006, FOREST LAND**

OAR 660-006-0005(7)(a) and (b) provide the definition of “forest land”:

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11 OAR 660-004-0010(1)(a) through (g) includes Goal 3 Agricultural Lands and Goal 4 Forest Lands.
7. “Forest lands” as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:

a. Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and

b. Other forested lands that maintain soil, air, water and fish and wildlife resources.

In Deschutes County land that grows 20 or more cubic feet of basal area per year is considered forestland.

FINDING:

OAR 660-006-0005

Draft Policy 3.11.14 states,

Notwithstanding Policy 3.11.3b., lots in Haner Park, Section 36, Skyline Subdivision and Skyline Subdivision 1st Addition committed to residential uses that entirely possess a potential productivity of 20 or more cubic feet per acre per year, at culmination of mean annual increment, for one or more tree species native to Deschutes County remain eligible upon demonstration that the property is unsuitable for forestry use based on its land use history and whether a reasonable forester or farmer would put the land to forestry or agricultural use.

Given the fact that Haner Park, Section 36, Skyline Subdivision, and Skyline Subdivision 1st Addition are already parcelized and owned by multiple parties, it is impractical to expect that a “reasonable” forester or farmer would put the land to forestry or agricultural use. Lots average 11.65 acres in Section 36, 1.19 acres in Haner Park, and 0.73 acres in Skyliner subdivision and 1st addition. For the same reason, none of the properties can be used in conjunction with adjoining or nearby agricultural or forestry operations because they are committed to residential uses.

D. OAR 660-033, AGRICULTURAL LAND

OAR 660-033-0020(1)(a) provides the definition of “agricultural land” which includes the following three categories:

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

B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and
C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

OAR 660-033-002(1)(a)(B) states:

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

OAR 660-033-002(1)(a)(C) states:

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

FINDING:

OAR 660-033-002(1)(a)(A), (B), (C)

Draft Policy 3.11.13 states,

_Notwithstanding Policies 3.11.3.a.i. and 3.11.3.a.ii.4., 3.11.3.a.i. and 3.11.3.a.ii.4., lots in Meadow Crest Acres Subdivision and Squaw Creek Canyon Recreational Estates 1st Addition with 51% or more Class I-VI soils or intermingled with Class I-VI soils remain eligible upon demonstration that the property is unsuitable for farm use based on its land use history and whether a reasonable farmer would put the land to agricultural use._

_Wetherell v. Douglas County, __Or LUBA__, LUBA No. 2010-052 allows a local government to consider whether a “reasonable” farmer would be motivated to put the land to agricultural use. Given the fact that Meadow Crest Acres Subdivision and Squaw Creek Canyon Recreational Estates 1st Addition are platted subdivisions owned by multiple parties with lots averaging between 1.07 and 2.5 acres, it is impractical to expect that a “reasonable” farmer would put the land to agricultural use. For the same reason, none of the properties can be used in conjunction with adjoining or nearby agricultural or grazing operations because they are all residential uses._

E. CONSISTENCY WITH DESCHUTES COUNTY COMPREHENSIVE PLAN

Deschutes County updated its Comprehensive Plan on August 10, 2011.

Chapter 2, Resource Management

Section 2.2, Agricultural Lands

Goal 1 Preserve and maintain agricultural lands and the agricultural industry

Policy 2.2.1 Retain agricultural lands through Exclusive Farm Use zoning.
FINDING: Deschutes County’s Comprehensive Plan amendments are consistent with Policy 2.2.1. New goals and policies establish eligibility criteria for designating Exclusive Farm Use or Forest Use zoned properties to Nonprime Resource Lands defined in OAR 660-004-0005(3) as “Non Resource Lands.” Criteria also identify opportunities to redesignate six specific areas committed to residential uses that were platted or conveyed prior to State enabling planning legislation taking effect in Deschutes County. Upon acknowledgment of the NPR Lands policies, Deschutes County will adopt two zones: a NPR-10 zone that will apply solely to the six areas committed to residential uses, and a NPR-20 zone for all other eligible lands subject to a quasi-judicial application.

Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.

FINDING: Deschutes County’s Comprehensive Plan amendments are consistent with Policy 2.2.4. New goals and policies establish eligibility criteria for designating Exclusive Farm Use or Forest Use zoned properties to Nonprime Resource Lands defined in OAR 660-004-0005(3) as “Non Resource Lands.” Criteria also identify opportunities to redesignate six specific areas committed to residential uses that were platted or conveyed prior to State enabling planning legislation taking effect in Deschutes County. Upon acknowledgment of the NPR Lands policies, Deschutes County will adopt two zones: a NPR-10 zone that will apply solely to the six areas committed to residential uses, and a NPR-20 zone for all other eligible lands subject to a quasi-judicial application.

Goal 3 Ensure Exclusive Farm Use policies, classifications and codes are consistent with local and emerging agricultural conditions and markets.

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: Deschutes County’s Comprehensive Plan amendments are consistent with Policy 2.2.1. New goals and policies establish eligibility criteria for designating Exclusive Farm Use or Forest Use zoned properties to Nonprime Resource Lands defined in OAR
660-004-0005(3) as “Non Resource Lands.” Criteria also identify opportunities to redesignate six specific areas committed to residential uses that were platted or conveyed prior to State enabling planning legislation taking effect in Deschutes County. Upon acknowledgment, a property owner or Deschutes County can initiate amendments to redesignate and rezone EFU properties to Nonprime Resource Lands. Both will be obligated to demonstrate the lands in question do not qualify as agricultural lands.

**Policy 2.2.14 Explore new methods of identifying and classifying agricultural lands.**

a. **Apply for grants to review and, if needed, update farmland designations.**

b. **Study County agricultural designations considering elements such as water availability, farm viability and economics, climatic conditions, land use patterns, accepted farm practices, and impacts on public services.**

c. **Lobby for changes to State Statute regarding agricultural definitions specific to Deschutes County that would allow some reclassification of agricultural lands.**

**FINDING:** Over the past decade, Deschutes County has supported and participated in numerous state legislative processes and coordinated with DLCD to study and legislatively update agricultural and forest land designations. Unfortunately, these efforts did not result in a clear path forward to undertake such a land use change. The Comprehensive Plan provides a general directive to consider “Non-Resource” lands proposals (Policy 2.2.3). To date, Deschutes County has approved six applicant-initiated requests to amend Exclusive Farm Use zoning.

In March 2019, Deschutes County initiated its own process to establish eligibility criteria for designating Exclusive Farm Use or Forest Use zoned properties to Nonprime Resource Lands defined in OAR 660-004-0005(3) as “Non Resource Lands.” Criteria also identify opportunities to redesignate six specific areas committed to residential uses that were platted or conveyed prior to State enabling planning legislation taking effect in Deschutes County. These areas are subject to strict resource zoning requirements dictated by State law that affect the siting of new dwellings, remodels, additions and accessory structures. Upon acknowledgment of the Nonprime Resource Lands policies, Deschutes County will adopt two zones: a Nonprime Resource Lands-10 zone that will apply solely to the six areas committed to residential uses, and a Nonprime Resources Land-20 zone for all other eligible lands subject to a quasi-judicial application.

**Chapter 3, Rural Growth Management**

**Section 3.3 Rural Housing**

**Goal 1** *Maintain the rural character and safety of housing in unincorporated Deschutes County.*
Policy 3.3.5  Maintain the rural character of the County while ensuring a diversity of housing opportunities, including initiating discussions to amend State Statute and/or Oregon Administrative Rules to permit accessory dwelling units in Exclusive Farm Use, Forest and Rural Residential zones.

FINDING: Deschutes County is proposing two policies, Policy 3.11.7 and Policy 3.11.10 that will provide the policy framework for NPR-10 and NPR zones to outright permit a single family dwelling or a manufactured home on an eligible property.