IN A MATTER BEFORE THE DESCHUTES COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

Erin and Robin Coats, Kyle Coats, ERMK, LLC and CCCC, LLC, ) APPLICANTS' BURDEN OF PROOF
And ) STATEMENT FOR A
Matt Day/ Rio Lobo Investments LLC, ) COMPREHENSIVE PLAN
) AMENDMENT WITH GOAL
) EXCEPTIONS, ZONING TEXT
) AMENDMENTS, AND ZONE CHANGE
Applicants.

APPLICANTS/ OWNERS: Eric and Robin Coats, Kyle Coats, ERMK, LLC and CCCC, LLC; and Bend La Pine School District (North Property)
Matt Day / Rio Lobo Investments LLC (South Property)

ATTORNEYS:
Coats: Tia M. Lewis
Schwabe, Williamson & Wyatt, PC
360 SW Bond Street, Suite 500
Bend, OR 97702

Day / Rio Lobo: Myles Conway
Marten Law PLLC
404 SW Columbia Street, Suite 212
Bend, OR 97702

ENGINEERS:
Coats: Keith D’Agostino
D’Agostino Parker, LLC
185 Shevlin Hixon Drive, Suite 101
Bend, OR 97702

Day / Rio Lobo: BECON Engineering
549 SW Mill View Way, Suite 105
Bend, OR 97702

REQUEST: Text amendments to the Comprehensive Plan, Chapter 23, and the Bend Urban Growth Boundary Zoning Ordinance, Chapter 19, together with goal exceptions to Statewide Planning Goals 3, 4 and 14, to add a new zone, “Westside Transect Zone,” and a zoning map amendment to change the zoning on the subject properties from Surface Mining and Urban Area Reserve (UAR) to the Westside Transect Zone (WTZ).
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ZONE MAP AMENDMENT: X
FEES: $5,945

PLANN MAP AMENDMENT: X
FEES: $6098.75

TEXT AMENDMENT: X
FEES: $11,787.50

Applicants’ Name (print): Coats/Rio Lobo Investments LLC/Bend La Pine School District
Phone: See Attached

Mailing Address: See attached City/State/Zip: ____________________________

Property Owner’s Name (if different): NA Phone: (____) ____________
Mailing Address: ____________________________ City/State/Zip: ____________________________

Property Description: Township Range Section Tax Lot See attached
Lot of Record? (state reason): NA

Current Zoning: UAR-10, SM, DR Overlay Proposed Zoning: Westside Transect Zone - WTZ


Applicable State Goals: Goals 10, 12, 14 Exception Proposed? Yes X No

Size of Affected Area: 716 Acres

INSTRUCTIONS FOR COMPLETING THIS APPLICATION:

1. Complete this application form including the appropriate signatures. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

2. Include a detailed statement describing the proposal and how it meets all requirements of the appropriate State rules and statutes, and County codes and Comprehensive Plan policies. Text amendment applications must include the proposed language and the basis for the change.

3. If multiple properties are involved in this application, then identify each property on a separate page and follow with the property owners’ signatures.

4. Submit the correct application fee.

5. Submit a copy of the current deed(s) for the property(ies).

A PRE-APPLICATION APPOINTMENT IS REQUIRED FOR ALL AMENDMENTS

Applicant’s Signature: See attached signature pages Date:__________________________

Property Owner’s Signature (if different)*: NA Date:__________________________

Agent’s Name: Coats: Tia Lewis/RioLobo: Myles Conway/School District: Sharon Smith Phone: ____________________________

Mailing Address: See attached City/State/Zip: ____________________________

*If this application is not signed by the property owner, a letter authorizing signature by the applicant must be attached. By signing this application, the applicant understands and agrees that Deschutes County may require a deposit for hearings officers’ fees prior to the application being deemed complete; and if the application is heard by a hearings officer, the applicant will be responsible for the actual costs of the hearings officer.

10/15

Quality Services Performed with Pride
WESTSIDE TRANSECT ZONE
PLAN/ZONE/TEXT AMENDMENTS

Property Description, Owners Signatures and Contact Information

North Property

Coats Property
17-11-24-100, 63155 Skyline Ranch Rd, Bend, Or 97703
17-11-24-102, 63155 Skyline Ranch Rd, Bend, OR 97703
17-11-24-700, 62855 Skyline Ranch Rd, Bend, Or 97703
17-11-24-600, 62955 Skyline Ranch Rd, Bend, Or 97703
17-11-23-500, 19050 Shevlin Park Rd, Bend, Or 97703
17-11-24-403, 63055 Skyline Ranch Rd, Bend, Or 97703
17-11-23-502, No Situs Address
17-11-23-503, No Situs Address
17-11-13-500, 63200 Skyline Ranch Rd, Bend, Or 97703
17-11-13-100, 63285 Skyline Ranch Rd, Bend, Or 97703
17-12-18-100, 63555 Skyline Ranch Rd, Bend, Or 97701

Property Owner's Signature

Eric W. Coats
Date: 12/14, 2017

Robin Coats
Date: 12/14, 2017

Kyle Coats
Date: 12/13, 2017

ERMK, LLC

Eric W. Coats
By: Member
Date: 12/14, 2017

CCCC, LLC

Robin Coats
By: Member
Date: 12/14, 2017
Attorney:

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

Phone: (541) 749-4048
Email: tlewis@schwabe.com

Bend La Pine School District
17-11-23-600, No Situs Address

Property Owner's Signature

Bend La Pine School District

Date: 12-19-17, 2017

Attorney:

Ms. Sharon R Smith
Bend La Pine Schools
520 NW Wall St
Bend OR 97703

Phone: (541) 385-1015
Email: sharon.smith@bend.k12.or.us
South Property

17-11-00000-6000, 62600 McClain Drive, Bend, OR 97703
17-11-26-400, 3225 NW Shevlin Park Rd, Bend, OR 97703 and
3229 NW Shevlin Park Rd, Bend, OR 97703

Property Owner’s Signature

[Signature]

Date: 12-28, 2017

Rio Lobo Investments, LLC
Howard M. Day, Manager

Attorney:

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

Phone: (541) 408-9291
Email: mconway@martenlaw.com
PLAN/ZONE/TEXT AMENDMENT

Applicants’ Name (print): Coats Properties/Rio Lobo Investments LLC/Bend La Pine School District
Phone: See Attached

Mailing Address: See attached
City/State/Zip: __________________________

Property Owner’s Name (if different): NA
Phone: (_____) __________________________

Mailing Address: __________________________
City/State/Zip: __________________________

Property Description: Township______ Range_______ Section______ Tax Lot See attached

Lot of Record? (state reason): NA

Current Zoning: UAR-10, SM, DR Overlay
Proposed Zoning: Westside Transect Zone - WTZ

Current Plan Designation: Urban Reserve Area
Proposed Designation: NA

Applicable State Goals: Goals 3, 4, 14
Exception Proposed? X Yes No

Size of Affected Area: ______ Acres

INSTRUCTIONS FOR COMPLETING THIS APPLICATION:

1. Complete this application form including the appropriate signatures. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.
2. Include a detailed statement describing the proposal and how it meets all requirements of the appropriate State rules and statutes, and County codes and Comprehensive Plan policies. Text amendment applications must include the proposed language and the basis for the change.
3. If multiple properties are involved in this application, then identify each property on a separate page and follow with the property owners’ signatures.
4. Submit the correct application fee.
5. Submit a copy of the current deed(s) for the property(ies).

A PRE-APPLICATION APPOINTMENT IS REQUIRED FOR ALL AMENDMENTS

Applicant’s Signature: See attached signature pages
Date:

Property Owner’s Signature (if different)*: NA
Date:

Agent’s Name: Coats; Tia Lewis/Rio Lobo; Myles Conway/School District; Sharon Smith
Phone: __________________________

Mailing Address: See attached
City/State/Zip: __________________________

*If this application is not signed by the property owner, a letter authorizing signature by the applicant must be attached. By signing this application, the applicant understands and agrees that Deschutes County may require a deposit for hearings officers’ fees prior to the application being deemed complete; and if the application is heard by a hearings officer, the applicant will be responsible for the actual costs of the hearings officer.

10/15
WESTSIDE TRANSECT ZONE

GOAL EXCEPTIONS

Property Description, Owners Signatures and Contact Information

North Property

Coats Property
17-11-24-100, 63155 Skyline Ranch Rd, Bend, Or 97703
17-11-24-102, 63155 Skyline Ranch Rd, Bend, OR 97703
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17-11-13-500, 63200 Skyline Ranch Rd, Bend, Or 97703
17-11-13-100, 63285 Skyline Ranch Rd, Bend, Or 97703
17-12-18-100, 63555 Skyline Ranch Rd, Bend, Or 97701

Property Owner's Signature

Eric Coats
Date: 2-26-18, 2018

Robin Coats
Date: 2-26-18, 2018

Kyle Coats
Date: 02/26/18, 2018

ERMK, LLC

By: Eric W Coats
Date: 2-26-18, 2018
Goal Exceptions Associated with File Nos.
247-17-001015-TA, 247-17-001014-PA,
and 247-17-00-1013

CCCC, LLC

By: [Signature] Date: 2-26-2018

Attorney:

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

Phone: (541) 749-4048
Email: tlewis@schwabe.com

Bend La Pine School District
17-11-23-600, No Situs Address

Property Owner’s Signature

Bend La Pine School District
Date: ______________________, 2018

Attorney:

Ms. Sharon R Smith
Bend La Pine Schools
520 NW Wall St
Bend OR 97703

Phone: (541) 385-1015
Email: sharon.smith@bend.k12.or.us
Goal Exceptions Associated with File Nos. 247-17-001015-TA, 247-17-001014-PA, and 247-17-00-1013

CCCC, LLC

By: ________________________________ Date: ________________, 2018

Attorney:

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

Phone: (541) 749-4048
Email: tlewis@schwabe.com

Bend La Pine School District
17-11-23-600, No Situs Address

Property Owner’s Signature

[Signature]
Bend La Pine School District Date: 2-26-18, 2018

Attorney:

Ms. Sharon R Smith
Bend La Pine Schools
520 NW Wall St
Bend OR 97703

Phone: (541) 385-1015
Email: sharon.smith@bend.k12.or.us
Goal Exceptions Associated with File Nos.
247-17-001015-TA, 247-17-001014-PA,
and 247-17-00-1013

South Property

17-11-00000-6000, 62600 McClain Drive, Bend, OR 97703

17-11-26-400, 3225 NW Shevlin Park Rd, Bend, OR 97703 and
3229 NW Shevlin Park Rd, Bend, OR 97703

Property Owner’s Signature

[Signature]

Rio Lobo Investments LLC

Date: 3/22, 2018

Attorney:

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

Phone: (541) 408-9291
Email: mconway@martenlaw.com
SECTION II

INTRODUCTION, SUMMARY OF PROPOSAL, AND HISTORY AND BACKGROUND
INTRODUCTION, SUMMARY OF PROPOSAL,

AND HISTORY AND BACKGROUND

Introduction

The applicants own approximately 717 acres of land on the western fringe of the Bend City limits, all of which is designated Urban Reserve on the Deschutes County’s Comprehensive Plan Map (Exhibits 1 and 2). These lands have been slated for eventual urbanization since the early 1970’s when the City of Bend and Deschutes County adopted the original Bend Urban Growth Boundary (UGB) in 1972. When the land was designated Urban Area Reserve, exceptions to Statewide Planning Goals 3 (Agriculture Lands) and 4 (Forest Lands) were taken to reserve the properties for eventual urbanization.

In its most recent UGB expansion, the City of Bend considered, but purposefully excluded, the subject property from inclusion into the UGB despite its UAR designation. The reasons for the exclusion are discussed in further detail in the application, but in general, the City found the area difficult to urbanize due to service costs, topography, and the resource management objectives of wildlife habitat protection and wildfire risk mitigation.

For purposes of description, the 717-acre subject property is divided into two properties: the North Property (Coats/School District) and the South Property (Day/Rio Lobo). Below is a summary of the proposal.

Summary of Proposal

The applicants are seeking text amendments to add a new zone called the Westside Transect Zone to the Comprehensive Plan and the Bend Urban Growth Boundary Zoning Ordinance. The Westside Transect Zone is a low-density residential pattern of development that provides a transitional zone between urban development within the City of Bend Urban Growth Boundary and park/resource lands to the west, using a density range of one unit per 2.5 to 10 acres and a minimum lot size of 2.5 acres. In addition, the applicants are seeking a zone change for the North Property (approximately 410 acres) from Urban Area Reserve (UAR) and Surface Mining (SM) to the new Westside Transect Zone and for the South Property (approximately 307 acres) from UAR to the new Westside Transect Zone.

This proposal is designed to recognize the unique environmental and geographical characteristics of the subject property including its location between the City’s urban edge to the east and the vast public lands to the west. The resource values and the wildfire risk of the subject property were identified as primary reasons why it should serve as a transition zone, or transect, between the urban area to the east and the rural and public lands to the west.

Approval of the Westside Transect Zone will allow the owners to develop these lands with residential subdivisions that include dedicated open space and resource management corridors, with funded and enforceable provisions for the management of wildlife habitat and wildfire prevention and mitigation plans. The proposed zoning will be limited to low density residential development, with the exception of public uses such as schools and utility facilities that support the surrounding area. Trails, multi-use paths, and pedestrian ways will be planned to meander through the property,
taking advantage of the resource values in the area. Connections to existing and planned Bend Parks and Recreation property and its trail system along Shevlin Park and Tumalo Creek, and Deschutes River are part of the overall planned development proposal. Designated wildlife corridors will be protected from active recreational uses through CC&Rs. Below is a history and background of the properties that lead to the current request.

**History and Background**

**North Property:** The Coats’ family owns approximately 700 acres in the Urban Reserve on the west side of Bend. The family has held the majority of this property for over 50 years, well before it was designated Urban Area Reserve (UAR) in the early 1970’s. For tax and business purposes, the property is held in several different record owners’ names but all acreage shown on the Coats North Property Zone Change Map, is controlled by Eric and Robin Coats (Exhibit 3). As discussed in further detail herein, the City recently included 68 acres of Coats land in the UGB. The portion of the 700 acres which is the subject of the present application consists of 378 acres (plus 32 owned by the Bend La Pine District) as shown on the proposed Westside Transect Zone map (Exhibit 2). The City purposefully excluded this property from the UGB despite its UAR designation. Hereinafter, this property comprising 410 acres will be referred to as the North Property.

Historically, the portion of the North Property owned by Coats has been actively mined for aggregate, sand, and gravel. Starting around 1964, mining activities, including excavation, blasting, crushing, and screening of aggregate, sand, and gravel have occurred at the property. Truck traffic flows throughout the site from one end to another carrying large quantity of aggregate to be processed and sold. An asphalt batch plant, concrete washing area, an office, shop, and truck and storage shed, and a redi-mix operation standby to support the operations at the pit. Disturbances to the landscape and related mining noise are continuous and on-going to this day. There are active mining operations on approximately 235 acres which are not the subject of the present application. A number of unimproved roads meander throughout the site and some areas of the property have been actively farmed for pasture in the past. Family residences dot the landscape and portions of the property are actively managed for wildfire suppression.

The District property comprises 32 acres adjacent to Shevlin Park Road, is vacant and has no permitting history.

**South Property:** Day/Río Lobo are the owners of two parcels of land located within the Urban Reserve on the west side of Bend. The property includes an approximately 40-acre parcel designated as tax lot 400 on County Assessor’s Map 17-11-26 (tax lot 400) and an approximately 335-acre parcel designated as tax lot 6000 on County Assessor’s map 17-11-00 (tax lot 6000) (Exhibit 4). As referenced in further detail below, approximately 69-acres of land within portions of tax lot 400 and tax lot 6000 have been included within the City of Bend UGB. The approximately 307 acres of Day/Río Lobo property remaining within the Urban Reserve is identified as the “South Property” on the proposed Westside Transect Zone map (Exhibit 2).
In 2016, the Bend City Council adopted ordinances to expand the Urban Growth Boundary (UGB) by 2,380 acres. Two of the areas included in the UGB are known as the "Shevlin Area" and the "West Area." The Shevlin Area consists of 68 acres of land located adjacent and south of the North Property (and owned by the Coats') and approximately 69 acres of land owned by Day/Rio Lobo were included in the "West Area." See 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.

**Transect Zone Concept**

The City when it adopted the UGB, recognized the inherent values of the North and South properties but ultimately concluded through an extensive weighing and balancing process to exclude these properties from the UGB in favor of other properties it determined to be more suitable for urbanization. As part of the City’s and community’s discussion however, and particularly its applicability on the west side of Bend, emerged the idea of using a transect concept to provide low density residential development area between urban and rural densities to efficiently utilize City resources for urban infrastructure, to minimize impacts on wildlife, and to reduce wildfire risk. The City recently adopted the transect concept in its Comprehensive Plan as a "neighborhood typology" and applied the concept to its area-specific policies for land added to the

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1 None of the lands included in the UGB expansion are subject to this application.

2 City of Bend, Comprehensive Plan, Chapter 11, Growth Management:

**Neighborhood Typologies**

Neighborhood typologies are based on a range of factors including mix of housing types, permitted density (dwelling units per acre), block layout, connectivity and proximity to amenities such as parks and schools. Bend has a wide variety of neighborhoods. Five existing neighborhood typologies have been identified, and are summarized below. Neighborhoods may include pedestrian-oriented design, and can be transit-supportive where transit is available or planned.

<table>
<thead>
<tr>
<th>Neighborhood Type</th>
<th>Characteristics</th>
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</thead>
<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>
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</table>
UGB, including the “Shevlin Area” and the “West Area.”

The proposed Westside Transect Zone is a continuation of the transect concept, as it will provide a transition between the Bend urban area outward to rural County lands and public forestlands. The goal of the Westside Transect Zone is to achieve a low-density residential development that balances human activity with wildlife habitat conservation and wildfire protection along the urban fringe of Bend.

**Westside Transect Zone**

The applicants propose to amend the texts of the Deschutes County Comprehensive Plan, Chapter 23, and the Bend Urban Growth Boundary Zoning Ordinance, Title 19, by adding a new zone called the “Westside Transect Zone.”

The Westside Transect Zone would apply to approximately 410 acres of the North Property and 307 acres of the South Property that are currently designated Urban Area Reserve. The purpose of the Westside Transect Zone is to:

*To encourage, accommodate and provide standards for an interface or transect area west of the Deschutes River between the 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.*

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3 Area-specific policies in the Bend Comprehensive Plan for the Shevlin Area and the West Area that require application of the transect concept include:

**Shevlin Area:**

11-111 The master plan process shall be used to establish appropriate development regulations to implement the transect concept, measures to make the development and structures fire resistant, and RL plan designation densities within this area while providing for a mix of housing types and clustering developed areas to provide for open space preservation.

**West Area:**

11-101 For the West Area, shown on Figure 11-4, the central planning concepts are to: provide a limited westward expansion that complements the pattern of complete communities that has begun with Northwest Crossing due to the existing concentration of schools, parks, commercial and employment lands; and create a transect from higher densities along Skyline Ranch Road to lower density and open space along the western edge in this area which approaches National Forest land and park open spaces, in order to provide buffers for wildlife and wildfire.

* * *

11-106 The master plan process shall be used to establish appropriate development regulations to implement the transect concept, measures to make the development and structures fire resistant, and RL plan designation densities within this area while providing for a mix of housing types and clustering developed areas to provide for open space preservation.
objectives focusing on wildlife habitat conservation and wildfire prevention.

The density range of the Westside Transect Zone is one unit per 2.5 to 10 acres, with a minimum lot size of 2.5 acres. The concept is to utilize low density residential development as a transition between urban development within the City of Bend and public/resource lands to the west, utilizing open space and resource management corridors, including trails, multi-use paths, and pedestrian ways connecting to existing and proposed Bend Parks and Recreation’s trail system. The areas will be carefully planned with resource protection and fire prevention objectives assessed and funded by the owners within the developments. Wildlife corridors have been identified and studied by certified wildlife biologists, in cooperation with Oregon Department of Fish and Wildlife (ODFW), and will be protected from development and active recreation by including restrictive covenants and provisions in the CC&Rs that limit trail activity in the wildlife corridors. Fire prevention requirements have been developed by a certified forester in coordination with a wildlife biologist which will be implemented with development and will be annually reviewed and incorporated into the annual Home Owners Association’s responsibilities and budget.

Permitted uses within the Westside Transect Zone are limited to single-family dwellings, home occupations, and accessory uses associated with residential dwellings and home occupations. Uses subject to site plan review include schools, park and recreation facilities, fire stations, and utility facilities.

Located on the urban-rural-forestland fringe where wildlife intermingles with human activity in an area known for wildfire, the applicants have developed the Westside Transect Zone with the advice and assistance of resource management professionals, including wildlife and wildfire experts, and it will be governed by Wildlife Habitat and Forest Health Management Plans for both the North and South Properties. The plans are required as a part of all land divisions in the Westside Transect Zone and incorporate comprehensive vegetation management plans to reduce the threat of wildfire spread as well as maintaining the quality of wildlife habitat and movement corridors on the properties. The plans will be enforced and monitored through the authority of a Home Owner’s Association and CC&Rs.

Organization of the Application

This application is organized as follows:

**Section III:** Applicable Standards and Criteria

**Section IV:** Text Amendments to the Comprehensive Plan and Bend Urban Area Zoning Ordinance

**Section V:** Map Amendment to the Bend Urban Area Zoning Map

**Section VI:** Burden of Proof addressing the criteria of the proposed text amendments to the Comprehensive Plan and Bend Urban Area Zoning Ordinance and the map amendment to the Bend Urban Area Zoning map

**Section VII:** Burden of Proof for Goal Exceptions

**Section VIII** Exhibits
SECTION III

APPLICABLE STANDARDS AND CRITERIA
APPLICABLE STANDARDS AND CRITERIA

DESHUTES COUNTY CODE

Title 19, Bend Urban Growth Boundary Zoning Ordinance

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Chapter 19.04, Title, Purpose, Compliance and Definitions
Chapter 19.08, Establishment of Zones and Zoning Maps
Chapter 19.116, Amendments, Appeals and Procedures

Title 23 of the Deschutes County Comprehensive Plan
Chapter 1, Comprehensive Planning
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Chapter 4, Urban Growth Management

Title 22 of the Deschutes County Development Procedures Ordinance

OREGON STATE LAW

Oregon Administrative Rules (OAR) Chapter 660, Land Conservation and Development Commission

Division 4, Interpretation of Goal 2 Exception Process
OAR 660-004-0010, Application of the Goal 2 Exception Process to Certain Goals
OAR 660-004-0018, Planning and Zoning for Goal Exceptions
OAR 660-04-0020, Goal 2, Part II(c) Exception Requirements
OAR 660-004-0040, Application of Goal 14 Rural Residential Areas

Division 11, Public Facilities Planning
OAR 660-011-0065, Water Service to Rural Lands

Division 12, Transportation Planning Rule
OAR 660-012-0060, Plan and Land Use Regulation Amendments

Division 15, Statewide Planning Goals and Guidelines
SECTION IV

TEXT AMENDMENTS
Title 23

Deschutes County Comprehensive Plan
COMPREHENSIVE PLAN TEXT AMENDMENTS

Westside Transect Zone

The applicants propose to amend the following sections of the Deschutes County Comprehensive Plan, Title 23, to add a new Westside Transect Zone to the zoning designations of the County:

Chapter 1, Comprehensive Planning
   Section 1.3, Land Use Planning

Chapter 3, Rural Growth Management
   Section 3.3, Rural Housing
   Section 3.4, Rural Housing Policies

Chapter 4, Urban Growth Management
   Section 4.2, Urbanization

Chapter 5, Supplemental Sections
   Section 5.10, Goal Exception Statements
   Section 5.12, Legislative History
Chapter 1, Comprehensive Planning

Section 1.3, Land Use Planning

* Amend Table 1.3.3 – Comprehensive Plan and Zoning Code Designations to add the Westside Transect Zone – proposed language is underlined and italicized:

Table 1.3.3 - Comprehensive Plan and Zoning Code Designations

<table>
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<th>Comprehensive Plan Designation</th>
<th>Associated Deschutes County Zoning Code</th>
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<td>County-wide designations</td>
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<td>Agriculture</td>
<td>Title 18 - All EFU subzones</td>
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<td>Airport Development</td>
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<td>Destination Resort Combining Zone</td>
<td>Title 18 - DR</td>
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<td>Forest</td>
<td>Title 18 - F-1, F-2</td>
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<tr>
<td>Open Space and Conservation</td>
<td>Title 18 - OS&amp;C</td>
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<td>Rural Residential Exception Area</td>
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<td>Surface Mining</td>
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<td>Rural Community</td>
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Source: County Geographical Information System and Deschutes County Code
Chapter 3, Rural Growth Management

* Amend Section 3.3, Rural Housing to add the following italicized text:

Transect Planning

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

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

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

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

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

Development within the Westside Transect Zone will include residential subdivisions with dedicated open space and resource management corridors with funded and enforceable provisions for the management of wildlife habitat and wildfire prevention and mitigation plans. The development plans will also address various vegetation management techniques, structural and building design as well as materials selection, and operational issues and standards, such as evacuation routes and communication plans for residents, as well as wildlife habitat conservation and management measures.
* Amend Section 3.3, Rural Housing Policies to add the following italicized text:

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

** **

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.
Amend Chapter 4, Urban Growth Management to add the following italicized text:

Section 4.2, Urbanization

Urban Growth Boundary Amendments

* Add to end of existing UGB paragraph:

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

**Section 5.10, Goal Exception Statements**

Additional Exceptions

*Westside Transect Zone – Ordinances 2018-

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

**Section 5.12, Legislative History**

* Amend Table 5.11.1, Comprehensive Plan Ordinance History by adding a new section that reflects the adoption of the Westside Transect Zone.

**Section 5.12 Legislative History**

**Background**

This section contains the legislative history of this Comprehensive Plan.

**Table 5.11.1 Comprehensive Plan Ordinance History**

<table>
<thead>
<tr>
<th>Ordinance</th>
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<td>2018-</td>
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<td>Chapter 1, Section 1.3</td>
<td>Comprehensive Plan amendment to add a new Westside Transect Zone</td>
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Chapter 19.22. WESTSIDE TRANSECT ZONE - WTZ

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

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

The following uses and their accessory uses may be permitted subject to site plan review and a conditional use permit as provided in DCC 19.76, 19.88, and 19.100:
A. Public, parochial and private schools, including nursery schools, kindergartens and day nurseries; but not including business, dancing, trade, technical or similar schools subject to DCC 19.88.160.
B. Parks and recreation facilities, community buildings and fire stations; but not including intensive recreational uses such as golf courses, public or community tennis courts, public or community pools; also not including storage or repair yards, warehouses or similar uses.
C. Utility facility, including wireless telecommunications facilities, subject to DCC 19.88.120.
D. Churches.

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

19.22.050. Lot Requirements.
The following requirements shall be observed:
A. Lot Area. Each lot shall have a minimum of 2.5 acres.
B. Lot Width. Each lot shall be a minimum width of 125 feet.
C. Front Yard. The front yard shall be a minimum of 40 feet.
D. Side Yard. There shall be a minimum side yard of 30 feet.
E. Rear Yard. There shall be a minimum rear yard of 30 feet.
G. Park Setback. The setback from Shevlin Park shall be a minimum of 100 feet.
H. Slope Setback. There shall be a minimum setback of 30 feet from the edge of any slope which exceeds 20%.

19.22.060. Land Divisions.

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

A. Master Development Plan Requirements. In addition to the overall master development plan requirements of DCC 17.16.050, such master development plans in the Westside Transect Zone shall also demonstrate:
   1. The lot configuration, street layout, and any open space or common areas are designed to be compatible with existing or projected uses on adjacent properties;
   2. The adequacy of the transportation access to the site; and
   3. The development contributes to the preservation of natural and physical features of the site, including but not limited to, general topography, natural hazards and natural resource values.

B. Residential lots shall be limited to 100 residential lots for the North Transect and 100 residential lots for the South Transect, as depicted on Figure 1 at the end of this chapter.

C. The subdivision shall be designed in accordance with a Wildlife Habitat Management Plan and a Wildfire Mitigation Plan for the subdivided property as described below and submitted with the master development plan application.

1. A Wildlife Habitat Management Plan prepared by a professional biologist which identifies important wildlife habitat and migration corridors and contains provisions for deed restrictions or restrictive covenants which include but are not limited to the following components:
   a. Dedicated open space and/or resource management corridors with specific enforceable measures to aid in wildlife migration and protect habitat within these areas.
   b. Specific vegetation management standards for areas within the open space and/or resource management corridors to protect wildlife habitat funded through homeowner assessment and performed, monitored and enforced by the homeowners association.
   c. Specific setbacks from wildlife corridors.
   d. Provisions which demonstrate coordination with the Wildfire Mitigation Plan described below to establish joint management objectives and designated areas for wildlife habitat measures which are outside of the defensible space and wildfire mitigation areas.
   e. Requirements for annual review of the plan by a professional biologist and a reporting of those findings and any recommended alterations to the plan to the County once every three years.

2. A Wildfire Mitigation Plan prepared by a professional forester which identifies and includes enforceable measures to prevent the ignition and spread of wildfire, and contains provisions for deed restrictions and/or restrictive covenants which include but are not limited to the following components:
   a. Requirement to develop and maintain all residential lots in compliance with the National Fire Protection Association (NFPA) Zone 1, 2 and 3 standards, containing concentric rings extending outward from the structure implementing the defense in depth approach, with Zone 1: 30 feet adjacent to structures, Zone 2: 30 to 100 feet from structures, and Zone 3: 100 to 200 feet from structures.
   b. Home construction in accordance with firewise structural design and construction standards as set forth in Table 19.22.
   c. Requirements and specific provisions for ongoing vegetation management funded through homeowner assessment and performed, monitored, and enforced by the homeowners association.
   d. Provisions which demonstrate coordination with the Wildlife Habitat Management Plan described above to establish joint management objectives and designated areas for wildlife habitat measures which are outside of the defensible space and wildfire mitigation areas.
e. Requirements for annual review of the plan by a professional forester and a reporting of those findings and any recommended alterations to the plan to the County once every three years.

D. A Stewardship Community Plan which includes provisions designed to educate residents of the unique resource values of the area and the community goals to utilize best management practices in the community development and operation to protect wildlife habitat and to establish and implement firewise community strategies.

E. A draft of the deed restrictions or restrictive covenants to implement provisions of the Wildlife Habitat Management and Wildfire Mitigation Plans.

F. A draft of the document establishing an acceptable homeowners association assuring the enforcement of the deed or covenant restrictions, maintenance of any common property, open space or resource management corridors and private streets, and providing for the assessment and collection of fees to fund the deed or covenant restrictions.

G. If phasing is proposed, a phasing plan for the tentative subdivision plats. Each tentative subdivision application shall include a plat map meeting the subdivision requirements of DCC Title 17, the Subdivision / Partition Ordinance, except as may be specifically modified herein.

19.22.070. Street Improvements.

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

A. Notwithstanding the allowance for private roads, the county may determine that public road(s) are required to meet regional transportation needs and goals, including but not limited to a collector road to provide north-south connectivity through the Westside Transect Zone.


Off-street parking shall be provided as required in DCC 19.80.

19.22.090 Fence Standards.

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

A. New fences shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provided equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:
   1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.
   2. The height of the fence shall not exceed 48 inches above ground level.
   3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.

B. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.
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<td>Chapter 5 Means of Access – The following sections are incorporated by reference herein:</td>
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<td>Section 5.2.6</td>
<td>Covenants, Conditions and Restrictions (CC&amp;R’s) and implementing Design Guidelines</td>
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<td>Chapter 10 Fire Protection During Construction – The following sections are incorporated by reference herein:</td>
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<td>Chapter 4 Assessing Wildland Fire Hazards in the Structure Ignition Zone – The following sections are incorporated by reference herein:</td>
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**Chapter 6 Fuel Modification Area – The following sections are incorporated by reference herein:**

| Section 6.1* | Covenants, Conditions and Restrictions (CC&R’s) and implementing Design Guidelines; Wildfire Mitigation and Forest Health Plan | Owners Association |

**Section 6.2 Fuels Modification and Treatment**

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Chapter 19.08

Section 19.08.030, Zoning Map

The applicants propose to amend the Zoning Map of the Bend Urban Area, by changing the zoning of the subject properties from Urban Area Reserve (UAR-10) and Surface Mining (SM) to the new Westside Transect Zone (WTZ). See attached Exhibits 3, 4, and 7.
SECTION VI

BURDEN OF PROOF STATEMENT FOR TEXT AMENDMENT, PLAN AMENDMENT AND ZONE CHANGE
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BURDEN OF PROOF STATEMENT

I. SUMMARY OF PROPOSAL

The applicants are seeking text amendments to add a new zone called the Westside Transect Zone to the Comprehensive Plan and the Bend Urban Growth Boundary Zoning Ordinance. The Westside Transect Zone is a low-density residential pattern of development that provides a transition area west of the Deschutes River between the City of Bend Urban Growth Boundary and rural/public land areas, using a density range of one unit per 2.5 to 10 acres and a minimum lot size of 2.5 acres. In addition, the applicants are seeking a zone change for the North Property (approximately 410 acres) from Urban Area Reserve (UAR) and Surface Mining (SM) to the new Westside Transect Zone and for the South Property (approximately 307 acres) from UAR to the new Westside Transect Zone.

Approval of the Westside Transect Zone will allow the owners to develop these lands with residential subdivisions that include dedicated open space and resource management corridors, with funded and enforceable provisions for the management of wildlife habitat and wildfire prevention and mitigation plans. The proposed zoning will be limited to low density residential development, with the exception of public uses such as schools and utility facilities that support the surrounding area. Trails, multi-use paths, and pedestrian ways will be planned to meander through the property, taking advantage of the resource values in the area. Connections to existing and planned Bend Parks and Recreation property and its trail system along Shevlin Park and Tumalo Creek, and Deschutes River are part of the overall planned development proposal. Designated wildlife corridors will be protected from active recreational uses through CC&Rs.

II. FINDINGS OF FACT

Location

The property subject to the zone change is located in the Urban Reserve on the west side of Bend. The North Property comprises approximately 410 acres and the South Property comprises approximately 307 acres (Exhibit 3). Applicable Deschutes County Assessor tax lot numbers and addresses include the following:

North Property

Coats Property
17-11-24-100, 63155 Skyline Ranch Rd, Bend, Or 97703
17-11-24-102, 63155 Skyline Ranch Road, Bend, OR 97703
17-11-24-700, 62855 Skyline Ranch Rd, Bend, Or 97703
17-11-24-600, 62955 Skyline Ranch Rd, Bend, Or 97703
17-11-23-500, 19050 Shevlin Park Rd, Bend, Or 97703
17-11-24-403, 63055 Skyline Ranch Rd, Bend, Or 97703
17-11-23-502, No Situs Address
17-11-23-503, No Situs Address
17-11-13-500, 63200 Skyline Ranch Rd, Bend, Or 97703

1 – BURDEN OF PROOF STATEMENT

PDX:\1254571\88345\TML\23563631.1
17-11-13-100, 63285 Skyline Ranch Rd, Bend, Or 97703  
17-12-18-100, 63555 Skyline Ranch Rd, Bend, Or 97701

School District property  
17-11-23-600, No Situs Address

South Property  
17-11-00000-6000, 62600 McClain Drive, Bend, OR 97703.  
17-11-26-400, 3225 NW Shevlin Park Road, Bend, OR 97703  
3229 NW Shevlin Park Road, Bend, OR 97703

Site Description:

North Property: The approximately 378 acres controlled by the Coat’s family is an active surface mine dating back to the 1960s. 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 (09-0018) are shown on the boundary map attached as Exhibit 9. Truck traffic flows throughout the site from one end to another carrying large quantity of aggregate to be processed and sold. An asphalt batch plant, concrete washing area, an office, shop, and truck and storage shed, and a redi-mix operation standby to support the operations at the pit. Disturbances to the landscape and related mining noise are continuous and on-going to this day. A number of unimproved roads meander throughout the site and some areas of the property have been actively farmed for pasture in the past. Family residences dot the landscape and portions of the property are actively managed for wildfire suppression. Topography of the site is gently rolling in the southern portion with steep slopes and rock outcrops in the northeast along the highland portion of the property. Shevlin Park and Tumalo Creek border the property to the west and the Deschutes River borders the property on the northern boundary. The 1990 Awbrey-Hall Fire spread onto the Coats’ property (and adjacent School District property) resulting in a vegetation landscape dominated by bitterbrush, sage brush and rabbit brush with minimal pine tree regeneration. Vegetation includes ponderosa pine, juniper, and shrub and grasses.

The Bend-La Pine School District owns 32 acres in the North Property area adjacent to Shevlin Park Road and shown on the map attached as Exhibit 3. Schools are permitted in the proposed Westside Transect Zone subject to conditional use permit and site plan review.

South Property: The approximately 307 acres South Property borders Shevlin Park and Tumalo Creek to the west. Land to the north and east lies within the City of Bend UGB and is planned for future development at urban densities. The southern end of the South Property borders directly upon the 2-acre residential parcels that have been approved for development in connection with the “Miller Tree Farm” subdivision. The South Property is currently vacant and

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4 See Exhibit 8 for Provisional Operating Permit filed by Robert L. Coats on January 10, 1973 and Exhibit 9 DOGAMI permit issued in 1975.
undeveloped. Nearly the entirety of the property was burned in connection with the Awbrey Hall fire in 1990. 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 eastern boundary of the subject property will border directly upon the planned extension of the Skyline Ranch collector roadway as it is developed to serve development on the west side of Bend.

**Zoning and Plan Designation:**

**North Property:** The 410-acre property is comprised of two zones, the Urban Area Reserve (UAR-10) and the Surface Mining Zone (SM). The Comprehensive Plan designation is Urban Reserve Area.

**South Property:** The entirety of the South Property is zoned UAR-10 with a Destination Resort (DR) overlay. The Comprehensive Plan designation is Urban Reserve Area.

(See Exhibits 7 and 10 for Zoning and Plan Designation maps.)

**Zoning History:**

All of the subject property has been slated for eventual urbanization since 1972. The City of Bend and Deschutes County adopted the original Bend Urban Growth Boundary (UGB) in 1972, which was modified several times through 1978. In 1979, the City and County 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 (reserves). Goal exceptions from Goals 3 and 4 were also taken at that time to establish the property as urban reserve with a plan towards eventual inclusion in the City of Bend UGB (see Exceptions Statement, Exhibit 11). Based on that direction, the subject property was designated Urban Area Reserve (UAR) with its stated purpose at the time to act as a buffer between the urban area and the more rural resource lands outside the reserve area and to be holding areas for future urbanization.

**Surrounding Land Uses:**

The area surrounding the subject property consists of a mix of open space (parks), residential subdivisions, a golf course, surface mining, farm zoned parcels and undeveloped lands. A portion of the surrounding property is located within the city limits of Bend. Surrounding zoning in the vicinity of the subject property is a mixture of Exclusive Farm Use (EFU), Forest Use (F-2), Open Space and Conservation (OS&C), Rural Residential (RR10), Suburban Low Density Residential (SR2-1/2), Surface Mining (SM), Urban Area Reserve (UAR-10), and the City of Bend’s Residential Standard Density Zone (RS). For the North Property, the neighboring residential subdivisions include Awbrey Glen, Awbrey Meadows, Awbrey Ridge, Awbrey View, Awbrey Court, Cooperstone, Fawnview, Klippel Acres (unrecorded subdivision), Marken Heights, Renaissance, Shevlin Estates, and Valhalla Heights. Two other properties zoned Surface Mine (SM) are located to the north. Shevlin Park is located to the west. Oregon State Parks and Recreation manages land to the north that is zoned farm use. Tumalo Creek and
Shevlin Park Road are adjacent to the western and southern property boundaries, respectively. The South Property borders Shevlin Park and Tumalo Creek to the west. Land to the west of the park and creek are zoned for Forest Use (F-2).

The South Property borders the City of Bend UGB to the north and east. This 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. Additional urban development (within the UGB) is planned for the parcels east of the Tree Farm subdivision.

Permitting History:

**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 a DOGAMI permit, 09-0018. 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. More recently, 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 1960’s and 1970’s) 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. TEXT AMENDMENTS

The applicants are proposing to amend the texts of the Deschutes County Comprehensive Plan, Chapter 23, and the Bend Urban Growth Boundary Zoning Ordinance, Chapter 19, by adding a new zone called the "Westside Transect Zone." The proposed language of the zone is contained in Section IV of the application. The purpose of the Westside Transect Zone, (WTZ), is to:
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 density range of the Westside Transect Zone is one unit per 2.5 to 10 acres, with a minimum lot size of 2.5 acres. The concept is to develop the transect area as a transition area between urban development within the City of Bend Urban Growth Boundary and rural/public land areas to the west, utilizing open space and resource management corridors, including trails, multi-use paths, and pedestrian ways connecting to existing and proposed Bend Parks and Recreation’s trail system. The transect area will be carefully planned with resource protection and fire prevention objectives developed by licensed professionals and assessed and funded by the owners within the developments. Wildlife corridors have been identified and studied by certified wildlife biologists, in cooperation with Oregon Department of Fish and Wildlife (ODFW), and will be protected from development and active recreation by including restrictive covenants and provisions in the CC&Rs that limit trail activity in the wildlife corridors. Fire prevention requirements have been developed by a certified forester in coordination with a wildlife biologist which will be implemented with development and will be annually reviewed and incorporated into the annual Home Owners Association’s responsibilities and budget.

Permitted uses within the Westside Transect Zone are limited to single-family dwellings, home occupations, and accessory uses associated with residential dwellings and home occupations. Uses subject to site plan review include schools, park and recreation facilities, fire stations, and utility facilities. Conditional Uses include school, parks and recreation facilities and fire stations, and utility facilities to serve the uses.

Located on the urban-rural-forestland fringe where wildlife intermingles with human activity in an area known for wildfire, the applicants have developed the Westside Transect Zone with the advice and assistance of resource management professionals, including wildlife and wildfire experts, and it will be governed by Wildlife Habitat and Forest Health Management Plans for both the North and South Properties. The plans are required as a part of any land division and incorporate comprehensive vegetation management plans to reduce the threat of wildfire spread as well as maintaining the quality of wildlife habitat and movement corridors on the properties. The plans will be enforced and monitored through the authority of a Home Owner’s Association and CC&Rs.

**BASIS FOR THE CHANGE**

The instructions for completing the County’s application form for a Plan/Zone/Text Amendment require that the “Text amendment applications must include the proposed language and the basis for the change.” The proposed language has been previously discussed and is included again below; and the basis for the text amendment change is addressed below.
The subject property has been slated for eventual urbanization since the early 70’s. The City of Bend and Deschutes County adopted the original Bend Urban Growth Boundary (UGB) in 1972, which was modified several times through 1978. In 1979, the City and County 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 (reserves). Goal exceptions to Goals 3 and 4 were taken to establish the property as Urban Reserve and various zoning districts were placed on the properties at that time under the County’s Title 19 zoning code. Based on that direction, the subject property was designated Urban Area Reserve (UAR) with its stated purpose to act as a buffer between the urban area and the more rural resource lands outside the reserve area and to be holding areas for future urbanization.

In 2016, the Bend City Council adopted ordinances to expand the Urban Growth Boundary (UGB) by 2,380 acres. The expansion area included approximately 68 acres of the 700-acre property of the southern portion of the Coat’s property and approximately 69 of the 376-acres owned by Day/Rio Lobo (Exhibit 5). On September 28, 2016, the Deschutes County Board of Commissioners unanimously adopted the UGB and on November 14, 2016, the State Department of Land Conservation and Development approved the Bend UGB expansion.

The City’s adoption of the UGB identified the areas subject to this application as difficult or less efficient to urbanize due to service costs, topography and the resource management objectives of wildlife habitat protection and prevention or mitigation of wildfire risk. Community opposition to inclusion of these properties in the UGB focused on the unique location between the public lands to the west, Shevlin Park, and Tumalo Creek. Severe wildfire risk and costly infrastructure, including another bridge across the Deschutes River, were cited as major reasons to exclude these areas from inclusion in the UGB. Both City and County officials have for a long time discussed plans for an urban/rural wildfire interface area along Bend’s western boundary. The present proposal responds to the consultant reports, community testimony and findings in the UGB process to propose the Westside Transect Zone. The ownership of the property within primarily two landowners presents a unique opportunity for the community to receive wildlife migration corridor protections and wildfire prevention benefits along the City’s western boundary which can be implemented with development and funded in perpetuity by assessments, CC&Rs and HOA management.

Based on the community and consultant input during the UGB process and the decision not to include it in the UGB, the applicants have developed the present applications to create a zone that offers low density residential use while embracing the natural resources, wildlife habitat, and varied terrain on the property through the development of a Wildlife Habitat and Forest Health Management Plan, discussed in more detail herein.
TEXT AMENDMENTS TO THE DESCHUTES COUNTY CODE

A. Deschutes County Comprehensive Plan, Title 23

Chapter 1, Comprehensive Planning
Section 1.3, Land Use Planning

The applicants propose to add a new Westside Transect Zone (WTZ) to Table 1.3.3, Comprehensive Plan and Zoning Code Designation.

Table 1.3.3 - Comprehensive Plan and Zoning Code Designations

<table>
<thead>
<tr>
<th>Comprehensive Plan Designation</th>
<th>Associated Deschutes County Zoning Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>Title 18 - All EFU subzones</td>
</tr>
<tr>
<td>Airport Development</td>
<td>Title 18 - AD, AS</td>
</tr>
<tr>
<td>Destination Resort Combining Zone</td>
<td>Title 18 – DR</td>
</tr>
<tr>
<td>Forest</td>
<td>Title 18 - F-1, F-2</td>
</tr>
<tr>
<td>Open Space and Conservation</td>
<td>Title 18 - OS&amp;C</td>
</tr>
<tr>
<td>Rural Residential Exception Area</td>
<td>Title 18 - RR-10 and MUA-10</td>
</tr>
<tr>
<td>Surface Mining</td>
<td>Title 18 – SM</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Area specific designations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Resort Community</td>
<td>Title 18 - All Black Butte Ranch and Inn of the 7th Mountain/Widgi Creek subzones</td>
</tr>
<tr>
<td>Rural Community</td>
<td>Title 18 - All Tumalo and Terrebonne subzones</td>
</tr>
<tr>
<td>Rural Service Center</td>
<td>Title 18 - All RSC zones</td>
</tr>
<tr>
<td>Urban Unincorporated Community</td>
<td>Title 18 - All Sunriver subzones</td>
</tr>
<tr>
<td>Rural Commercial</td>
<td>Title 18 - Rural Commercial</td>
</tr>
<tr>
<td>Rural Industrial</td>
<td>Title 18 - Rural Industrial</td>
</tr>
<tr>
<td>Bend Urban Growth Area</td>
<td>Title 19 - UAR-10, SM, SR 2 ½, PF, FP, WTZ</td>
</tr>
<tr>
<td>Redmond Urban Growth Area</td>
<td>Title 20 - UH-10</td>
</tr>
<tr>
<td>Sisters Urban Growth Area</td>
<td>Title 21 - UAR-10, OA, FP</td>
</tr>
<tr>
<td>Redmond Urban Reserve Area</td>
<td>Title 18 - RURA</td>
</tr>
</tbody>
</table>

Source: County Geographical Information System and Deschutes County Code

If approved, then Table 5.11.1 of Section 5.12 Legislative History, Chapter 5, of the Comprehensive Plan will need to be updated to add a new section reflecting the adoption of the Westside Transect Zone. (See Section IV of the application.)

B. Bend Urban Area Zoning Ordinance, Title 19

Table of Contents, Title 19

The applicants propose to add a new chapter, 19.22, to the Bend Urban Area Zoning Ordinance called the Westside Transact Zone:
Chapter 19.22 Westside Transect Zone - WTZ

Chapter 19.04, Title, Purpose, Compliance and Definitions

Add a definition for “Westside Transect Zone” as follows:

Westside Transect Zone means a low density development pattern west of the Deschutes River between the urban area and the rural / public lands to the west, where residential development with a density range of one unit per 2.5 to 10 acres provides a transect or interface area between the urban area and the rural / public lands and which is designed with community based resource management objectives focusing on wildlife conservation and wildfire prevention.

Chapter 19.08, Establishment of Zones and Zoning Maps

Section 19.08.010, Classification of Zones

The applicants propose to add Westside Transect Zone (WTZ) to the list of zoning designations in the Bend Urban Area Zoning Ordinance. See Section IV of the application for a description of the new Westside Transect Zone.

IV. CONCLUSIONS OF LAW

A. Compliance with the Deschutes County Code

Chapter 19.116, Amendments, Appeals, and Procedures


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.

RESPONSE: The applicants are seeking changes to Title 19 of the Deschutes County Code by changing the text of certain chapters discussed within to add a new “Westside Transect Zone” and changing the map boundaries of the Surface Mining Zone and Urban Area Reserve zones to the new Westside Transect Zone on approximately 717 acres located on the Westside of Bend. The applicants have submitted a fee and application and are a “member of the public.” The provisions of DCC 19.116 are addressed below.
B. Any proposed quasi-judicial map amendment or change shall be handled in accordance with the applicable provisions of DCC Title 22.

RESPONSE: The applicants are seeking a quasi-judicial map amendment in conformance with the applicable provisions of DCC Title 22. Specifically, Chapter 22.12 of the DCC prescribes the process for legislative procedures, such as the request that the applicants are seeking.


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.

RESPONSE:

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:

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 Reserve boundaries or its plan map designation. The applicants are proposing to add the Westside Transect Zone to the zoning code associated with the Comprehensive Plan Designation of the Bend Urban Growth Area and change the zoning within the Bend Urban Reserve boundary to the new Westside Transect Zone.

Specifically, the change is consistent with the plan’s intent to promote an orderly pattern and sequence of growth.

The history of the subject property is that it has been slated for eventual urbanization since the early 70’s. The City of Bend and Deschutes County adopted the original Bend Urban Growth Boundary (UGB) in 1972, which was modified several times through 1978. In 1979, the City and County 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 (reserves). Based on that direction, the subject property was designated Urban Area Reserve (UAR) with its stated purpose at the time to act as a buffer between the urban area and the more rural resource lands outside the reserve area.
and to be a holding areas for future urbanization. The zoning districts under Title 19 within the acknowledged Urban Reserve Area include Surface Mining (SM), Urban Area Reserve - 10 (UAR-10), Residential Suburban Low Density (SR - 2 1/2, Residential Urban Standard Density (RS), Industrial Light (IL) and Flood Plain (FP). The Westside Transect Zone is consistent with the acknowledged densities in Title 19, with a minimum lot size of 2.5 acres.

In 2016, the Bend City Council adopted ordinances to expand the Urban Growth Boundary (UGB) by 2,380 acres. The expansion area included approximately 68 acres of the southern portion of the North Property and approximately 69-acres of the South 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.

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 Westside Transect Zone will allow the property to be developed at a lower density, 2.5 units per acre, accounting for the property’s unique and varied terrain, wildlife and natural resources, and connections to parks and recreational opportunities, and will act as a transitional buffer between the urban development and rural lands.

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.

RESPONSE: The subject properties are within Oregon Department of Fish and Wildlife’s defined mule deer and elk winter range and outside the Deschutes County’s Wildlife Area (WA) combining zone (Exhibit 12). Even though the subject properties are not located in the WA zone, the applicants are working with a professional biologist to voluntarily incorporate design elements and conservation measures into a plan that protect deer and elk populations on the
properties. These conservation measures take into account the specific characteristics of the property and the surrounding landscape and are found in the attached Wildlife Habitat and Forest Health Management Plans, Exhibit 12.

Part of the success of the Plan is the proposed Westside Transect Zone concept that allows a low density pattern wherein the density of development gradually decreases from the Bend Urban Growth Boundary to the rural boundary to respect and protect the natural resources of the property. Standards for individual residential lots include a Vegetation Management Plan that has three management zones specifying the management of on-site vegetation. In addition, conservation measures, such as the dedication of open space and designation of resource management corridors together with residential lot siting standards that protect wildlife movement and patterns and fencing standards adopted from the County’s Wildlife Area Combining Zone (WA) have been added. Also included are post-development measures to protect and enhance the wildlife habitat in the study area. Finally, the report addresses implementation, monitoring and enforcement of the Plan. These include provisions in the CC&Rs that provide authority for the Home Owners Association (HOA) to assess fines or fees to bring property owners into compliance with the rules.

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

RESPONSE: To determine whether the subject properties are designated “Wildland Urban Interface,” the applicants contacted Ed Keith, Deschutes County Forester, who had the following response (see Exhibit 13 for Ed Keith’s email):

“... The wildfire hazard map is linked to development standards (roofing specifically). In checking with CDD there hasn’t been any specific development standard developed for a “designated WUI” beyond the broad policy statement in the Comprehensive Plan. The nearest I could offer would be the areas identified in the various Community Wildfire Protection Plans that have been developed for various areas of the County. These plans aren’t written to be regulatory in nature, but they do define and identify WUI. Essentially the WUI follows almost all lands in the County with development so it tends to be a rather large area. You can find the various plans posted to the Project Wildfire website here: http://www.projectwildfire.org/?page id=26”

There is no evidence that any properties were ever formally designated Wildland Urban Interface. In any event, the applicants are working with wildlife and wildfire consultants to develop a comprehensive plan to reduce the threat of wildfire while maintaining quality wildlife habitats within the subject properties. The integrated management plans, called the “Wildlife Habitat and Forest Health Management Plans” 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. (Exhibit 12)
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.

RESPONSE: The County has not studied, identified or inventoried any significant wildlife and riparian habitat on the subject property for its Goal 5 inventories. However, protection of wildlife and riparian habitats are proposed through the establishment of a Wildlife Habitat and Forest Health Management Plans (Exhibit 12) that protects important on-site wildlife habitat resources and management corridors. In addition, access to wildlife and riparian habitat along Shevlin Park, Tumalo Creek, and the Deschutes River will occur through an on-site trail system, which will be carefully managed for areas of active recreation where appropriate and more passive recreation (no off-leash dogs, no mountain biking, etc.) where necessary to protect wildlife movement and corridors.

Section 2.7, Open Spaces, Scenic Views and Sites

RESPONSE: Section 2.7 of the Comprehensive Plan describes open spaces as:

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

While the subject properties have no open spaces protected through the Open Space and Conservation zoning district or the Landscape Management Combining Zone, the owners of the properties are very aware of the beauty of the varied landscape and the potential to protect wildlife habitat corridors through the voluntary creation of protected open space and resource management corridors in the future development of the property. As part of the Wildlife Habitat and Forest Health Management Plans, wildlife corridors are integral to maintaining the habitat and movement patterns of wildlife.

Goal and Policies

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

RESPONSE: The properties have no identified Goal 5 significant open spaces or scenic view and sites. 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 north-northeast. The comprehensive wildlife and wildfire management plans will be required as a part of all land divisions in the transect area and future development will be governed by CC&R’s that are specifically designed to protect resource values and minimize the threat and spread of wildfire.

Section 2.10, Surface Mining

A portion of the northern section of the North Property is zoned Surface Mine; however, the property is not identified as a Goal 5 resource and is not listed on the County’s inventory of significant natural resources sites, and therefore, not subject to review or protection under Goal 5. In addition, the underlying comprehensive plan designation is Urban Reserve Area and not Surface Mining. That portion of the subject property zoned Surface Mining is slated to be changed to the new Westside Transect Zone.

Future plans for mining include removing the Ready Mix Plant site on the southern end and moving the scales and remaining operations to the pit site to the north, which is not a part of the Westside Transect Zone. Approximately 5-7 years’ worth of resource is left on the 200 acre area that can be economically mined, after which time the property will be reclaimed and available for subsequent use. The remaining 500 acres owned by the Coats family does not have sufficient resource worthy of extraction or is too close to urban uses to mine and is in position for redevelopment by the end of 2018.

Section 2.10 Surface Mining policies has no policies that appear to be applicable to the subject property.

Arterial and Collector Road Plan

Goal 4

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.

4.2. Deschutes County shall not add any miles of new arterials or collectors to the County road system unless the following issues are satisfied:

a. The need for the road can be clearly demonstrated;

b. The County can financially absorb the additional maintenance requirements;

c. The condition of the road proposed for acceptance into the County system must meet County road standards;

d. An accrued benefit can be shown to the County’s economic growth;

e. The Board determines there have been adequate replacement revenues to off the loss of timber payments from the federal program;
f. An overall increase in efficiency in the County road network can be demonstrated.

RESPONSE: No road miles of new arterials or collectors to the County road system are proposed to be added with future development of the property. For the North Property, the City of Bend’s TSP identifies Skyline Ranch Road, a Major Collector Road, to extend northerly from Shevlin Park Road through the Coats UGB property to the City boundary. The County does not identify this section of the road to be added to the County road system as a rural collector as stated below:

County Roads

Based on conversations with County Planning and Road Department staff; conversations with staff from Bend, La Pine, Redmond, Sisters and ODOT; review of current and future traffic volumes; and the distribution of arterials and collectors the County determined several roads are in need of reclassification. The following roads need to be reclassified.

* * *

Rural Collector added to system the following road that was built since 1998 adoption

- Skyline Ranch Road: Skyliners Road to Century Drive

In addition, the City of Bend’s TSP shows another Major Collector road through the North Property that runs east-west crossing the Coat’s property from Putnam Road to Buck Drive and connecting to Johnson Market Road. This road is not shown on the County’s “Bend Area County Roads, Functional Reclassification” Figure F5.3.F13 (Exhibit 14). Furthermore, the traffic study submitted for the North Property does not show a need for this road to serve the subject property under the proposed Transect zoning.

4.3 Deschutes County shall make transportation decisions with consideration of land use impacts, including but not limited to, adjacent land use patterns, both existing and planned, and their designated uses and densities.

4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system.

4.5 Roads in Deschutes County shall be located, designed and constructed to meet their planned function and provide space for motor vehicle travel and bike and pedestrian facilities where required.

4.6 Deschutes County shall manage the development process to obtain adequate street right-of-way and improvements commensurate with the level and impact of development. New development shall provide traffic impact analysis to assess these impacts and to help determine transportation system needs. The guidelines for traffic impact analysis shall be located within
Deschutes County Code ("DCC") Chapter 17.48, Deschutes County Road Design and Specification Standards.

* * *

4.9 Deschutes County shall acquire the necessary right-of-way through the development process to correct street intersections, substandard road geometry or other problems in order to improve the safety of a road alignment, consistent with constitutional limitations.

**RESPONSE:** The majority of the above policies direct the County to implement them and therefore, are not approval criteria for the applicant, nevertheless, the applicants have submitted a Traffic Impact Analysis performed by Lancaster Engineering (Exhibit 16), demonstrating all transportation facilities will continue to operate within acceptable levels of service with the zone change and development of the properties.

**Functional Classification**

**Goal 6**

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

**Policies**

6.1 Deschutes County shall:

a. Coordinate the County Transportation System Plan with the transportation system plans of the cities of Bend, La Pine, Redmond and Sisters. The County shall emphasize continuity in the classification of roads and appropriate design standards for roads that link urban areas with rural areas outside the urban growth boundaries. The County and affected city shall agree on the functional classification and design standards of County roads within the proposed UGB area.

b. Request the transfer, or an agreement to transfer with specific timelines and milestones, jurisdiction of County roadways within the urban growth boundaries to their respective cities at the time of annexation. County policy also directs that any developer of property who proposes annexation and who has frontage on a road that does not meet city standards shall have the primary responsibility for upgrading the road to applicable city specifications. Roads shall be upgraded prior to or at the time of annexation, or the developer shall sign an agreement with the city to upgrade the road, at the time of development. Transfer of road jurisdiction shall require the approval of both the County and affected city in accordance with the provisions in ORS 373.270.
c. Future roads outside of city limits but within Urban Growth Boundaries shall have right-of-way dedications sufficient to meet the relevant city standards, but the road shall be constructed to County standards. The County will support a developer who chooses to build the road to the full urban standards of the relevant city instead of to County standard.

RESPONSE: The property owners of the Transect lands also own properties recently brought into the City of Bend’s UGB and are working with the City to address transportation impacts from both the UGB lands and development under the proposed transect zoning.

Road and Street Standards

Goal 7

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.

Policies

7.1 Any new or reconstructed rural roads shall be built to the standards set forth in DCC Chapter 17.48, Table A. Bicycle and pedestrian facilities shall be built to the standards set forth in DCC Chapter 17.48, Table B.

7.2 Road, pedestrian and bicycle projects occurring in unincorporated areas within urban growth boundaries shall be governed by the respective city’s road and street standards. Those requirements shall be coordinated between the city, the County and the applicant during the land use process according to procedures to be identified in the Deschutes County Road Standards and Specifications document.

RESPONSE: New roads constructed as part of future development of the property will be built to the standards in Table A of DCC 17.48 and interior local planned roads. Specifically, the applicant will coordinate connection to those roads within the adjacent and recently expanded UGB area south of the property and in the City limits. Future bicycle and pedestrians facilities will also be built to the standards set forth in Table B of DCC Chapter 17.48.

Chapter 4, Urban Growth Management

Section 4.2, Urbanization

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

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

RESPONSE: Deschutes County and the City of Bend worked together to adopt an expansion of approximately 2,380 acres into Bend’s Urban Growth Boundary, which was adopted last year in 2016. Approximately 68 acres of Coat’s land located south of the proposed plan amendment and zone change property and 69 acres of the Day/Rio Lobo property were included in the expansion as part of the City and County’s efforts to provide an orderly and efficient transition from the urban reserve area to urban lands. The proposed Westside Transect Zone acts as a buffer and transition from the urban to rural interface.

The remaining portion of the subject property is within the Urban Reserve Area and has been since 1972. The City of Bend and Deschutes County adopted the original Bend Urban Growth Boundary (UGB) in 1972, which was modified several times through 1978. In 1979, the City and County 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 (reserves). Based on that direction, the subject property was designated Urban Area Reserve (UAR) with its stated purpose to act as a buffer between the urban area and the more rural resource lands outside the reserve area and to be a holding area for future urbanization.

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

RESPONSE: In order to respond to the criterion, the terms “vicinity”, “proximity”, “neighborhood”, and “interfere” need to be defined. Merriam-Webster’s defines “vicinity” as follows:

Definition of vicinity
plural
vicinities
1. the quality or state of being near: proximity
2. a surrounding area or district: neighborhood
3. neighborhood 3b

Where “proximity” is defined as:

- The quality, state, or condition of being near in time, place, order, or relation.

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5 Source: https://www.merriam-webster.com/dictionary/vicinity

And where “neighborhood” is defined as:7

1. The immediate vicinity; the area near or next to a specified place. 2. People living in a particular vicinity, usu. forming a community within a larger group and having similar economic statuses and social interests. 3. The condition of being close together.

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 proposed plan amendment and zone change will not interfere with, where “interfere” means:8

Legal Definition of interfere

Interfered interfering

1: to act in a way that impedes or obstructs others
2: to enter into the concerns of others

1. The zone change will not interfere with existing development in the vicinity of the proposed action.

RESPONSE:

North Property: Existing development in the vicinity of the North Property includes the urban residential neighborhoods, including a golf course, abutting the subject property to the east and

7 Ibid.

8 Source: https://www.merriam-webster.com/dictionary/interfere
Development to the west consists of rural residential neighborhoods west of Tumalo Creek and Shevlin Park, a low impact primarily undeveloped park with picnic facilities and Aspen Hall (an event venue that can accommodate about 150 people) to the north and south. Existing development associated with the surface mining activities of the Coat’s property is also present.

The proposed plan amendment and zone change will not interfere with existing development in the vicinity 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.

**South Property:** The South Property borders lands zoned for urban development to the north and east. The Shevlin Commons urban development borders the property to the north. Platted rural residential lots (two-acres in size) abut the property to the south. Shevlin Park and Tumalo Creek border the property to the west, where no development (other than public park uses) is contemplated or authorized.

The proposed plan amendment and zone change will not interfere with existing development in the vicinity 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 the west. Any trail corridors will be designed to minimize wildlife impacts and to facilitate fire protection opportunities. The applicants will coordinate with the Bend Parks and Recreation to integrate trails and multi-use paths within the property that connect to existing and proposed Parks and Recreation properties.

The zone change will not interfere with development in the urban and rural residential neighborhoods and vicinity. Nothing in the zone change impedes or obstructs an orderly and efficient transition between the urban and rural lands.

2. The zone change will not interfere with the development potential in the vicinity of the proposed action:

RESPONSE: The proposed zone change will not interfere with development potential in the vicinity. Most of the area in the vicinity of the property is currently developed to its zoning potential or has been planned to be developed to its potential. The low density residential zoning of the Westside Transect Zone will not interfere with the development potential of the higher density properties in the City limits as the development potential of those properties, whether vacant or built, are already planned through the City’s zoning and Comprehensive Plan designations.

3. The zone change will not interfere with the value of other land in the vicinity of the proposed action:

RESPONSE: The reduced residential densities allowed through the transect development pattern, combined with the resource protections and extensive wildfire prevention measures required within the development will protect adjacent and nearby properties from the risk of wildfire and provide resource management corridors for the movement of wildlife. The provision of open space and wildlife corridors together with increased fire protection measures provide benefits to adjacent properties and increase values through conservation and protection of environmentally sensitive areas. All of the design elements incorporated into the Westside Transect Zone will increase the value of other lands in the vicinity.

C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.
RESPONSE: The proposed zone classification is the Westside Transect Zone (WTZ). The purpose of the Westside Transect Zone 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 location of the subject property is between Bend’s Urban Growth Boundary and the rural boundary of Deschutes County. The proposed zone change to the Westside Transect Zone provides a density transition from the high urban densities located within the City limits, including the RS zone (Standard Density Residential) where the residential density range is 4.0 to 7.3 dwelling units per gross acre, to the County’s rural land use density with a density range of one unit per 2.5 to 10 acres. Further, much of the physical characteristics of the subject property have been altered by surface mining activities over the past 50+ years or so and the Awbrey Hall Fire. Varied terrain and topography create unique residential building sites on larger-sized lots that would be served by individual septic systems and wells, a private water company, or City water. The density transition and unique physical characteristics of the property encourages, accommodates, maintains, and protects large lot size residential development on the urban – rural fringe.

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.

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 Sheriff’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.

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

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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.

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

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


The 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.

(Ord. 95-050 §14, 1995; Ord. 90-038 §1, 1990)

RESPONSE: This criterion is a requirement of the County and not an applicable review criterion.


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.

RESPONSE: While this section is not an approval criterion, the applicant believes it has demonstrated that the public interest is best served by rezoning the property. The proposed rezoning to the Westside Transect Zone is not “spot zoning” and is not creating unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning. The intent of creating the new Westside Transect Zone is to provide a low-density residential buffer and transition zone between the urban uses in the City of Bend and rural lands west of the subject property that protects the important wildlife habitat corridors and vegetation and reduces the threat of wildfire through a comprehensive vegetation management plan.

B. COMPLIANCE WITH OREGON ADMINISTRATIVE RULES, CHAPTER 660

1. Statewide Planning Goals

OAR 660, Division 15, the Statewide Planning Goals

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.

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.

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.

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9 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.

10 See Footnote 9.
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.11

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

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11 In the event it is determined Goal 14 does apply, the applicants have submitted evidence and findings demonstrating why an exception to Goal 14 is warranted in Section VII hereof.
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 Coats’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.

**Goals 15 through 19.**

Goals 15 through 19 do not apply (Goal 15, Willamette River Greenway; Goal 16, Estuarine Resources; Goal 17, Coastal Shorelands; Goal 18, Beaches and Dunes; and Goal 19, Ocean Resources).

2. **Goal 2 Exception Process**

Planning and Zoning for Exception Areas

660-004-0018

(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;

(e) 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, 660-011-0660 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.

**RESPONSE:** 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 time share 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.

12 The administrative rule interpreting the Goal 2 exception process was first adopted in 1982. The 1980 Exception was regulated solely by the provisions of Goal 2.
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.

3. **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)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 “Agricultural Lands”, Goal 4 “Forest Lands”, or both has been taken. Such lands are referred to in this rule as “rural residential areas”.

(b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home 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, the effective date of sections (1) to (8) of this rule.

(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.

(3)(a) 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.

**RESPONSE:** 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.

**Public Facilities Planning**
OAR 660, Division 11, Public Facilities Planning

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.

RESPONSE: The subject properties are designated Urban Reserve land in the County’s acknowledged Comprehensive Plan. The establishment of the Westside Transect Zone is consistent with the above rule as it requires a minimum lot size of 2.5 acres. The low residential density is achievable with or without service from a water system.

Transportation Planning Rule

OAR 660, Division 12, Transportation Planning Rule

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.

RESPONSE: To address the requirements of the Transportation Planning Rule (“TPR”) as set forth above, and in compliance with Deschutes County Code provisions regulating traffic impact studies, the Applicant submitted a Transportation Impact Study prepared by Lancaster Engineering, attached hereto as Exhibit 16. As demonstrated by the data gathered and analyzed in the study, the proposed zone change will not result in the need for changes to the functional classification of existing or planned transportation facilities, will not change any standards implementing the functional classification system and will not result in a significant affect to a transportation facility.
SECTION VII

BURDEN OF PROOF STATEMENT FOR GOAL EXCEPTIONS
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BURDEN OF PROOF STATEMENT

I. INTRODUCTION, HISTORY, AND APPLICABLE STANDARDS AND CRITERIA

INTRODUCTION

The present application involves a proposal to add a new zone called the Westside Transect Zone to the Deschutes County Comprehensive Plan and the Bend Urban Growth Boundary Zoning Ordinance. The Westside Transect Zone is a low-density residential pattern of development that provides a transitional zone between urban development within the City of Bend Urban Growth Boundary and park/resource lands to the west, using a density range of one unit per 2.5 to 10 acres and a minimum lot size of 2.5 acres. In addition, the application involves a zone change for the North Property (approximately 410 acres) from Urban Area Reserve (UAR) and Surface Mining (SM) to the new Westside Transect Zone and for the South Property (approximately 307 acres) from UAR to the new Westside Transect Zone (WTZ).

The WTZ is designed to recognize the unique environmental and geographical characteristics of the subject property including its location between the City’s urban edge to the east and the vast public lands to the west. The resource values and the wildfire risk of the subject property were identified as primary reasons why it should serve as a transition zone, or transect, between the urban area to the east and the rural and public lands to the west.

Approval of the WTZ would allow the owners to develop these lands as residential stewardship communities that include lots (at 2.5 to 10 acres) interspersed with dedicated open space and resource management corridors, with funded and enforceable provisions for the collaborative management of wildlife habitat and wildfire prevention and mitigation plans. The proposed zoning will be limited to low density residential development, with the exception of public uses such as schools and utility facilities that support the surrounding area. Trails, multi-use paths, and pedestrian ways will be planned to meander through the property, taking advantage of the resource values in the area. Connections to existing and planned Bend Parks and Recreation property and its trail system along Shevlin Park and Tumalo Creek, and Deschutes River are part of the overall planned development proposal. Designated wildlife corridors will be protected from active recreational and other uses through such instruments as CC&Rs, conditions of approval and conservation easements.

The development plans within the WTZ will include Wildfire Preparedness / Mitigation and Wildlife Habitat Protection programs.

The Wildfire Preparedness and Mitigation program involves:

- Implementation of long term, sustainably funded wildfire prevention and mitigation strategies designed by certified foresters after careful study specifically for the unique geographic location, topography, vegetation and development within the project area.
Creating disaster resistant communities along wildland/urban interface to meet the unique needs of the City and prevent or reduce the severity of damage to property and the environment from wildfire.

Creating hazardous fuels reduction programs in conjunction with wildlife habitat protection to share resources and work collaboratively with engaged residents.

The Wildlife Habitat Protection program involves:

- Implementation of long term, sustainably funded wildlife habitat protection strategies developed by wildlife biologists after careful study of the unique characteristics and needs within the project areas.
- Creation of resource management corridors, open space and no build areas to provide wildlife migration corridors and to protect sensitive habitat areas in specific geographic locations within the project area.
- Creating wildlife habitat protection programs in conjunction with wildfire mitigation strategies to recognize the unique needs of the area.

**HISTORY**

The subject properties have been within the Bend Urban Area Boundary since at least 1969 (Exhibit 21). The inclusion in the Bend Urban Area Boundary predates the effective dates of the Statewide Goals 3, 4, and 14 by six years or more. The zoning designations on the 1969 Comprehensive Plan map show the North Property zoned “Suburban Residential” and the South Property zoned “Extensive Agricultural-Multiple Use Management.”

In the late 1970s and early 1980s, Deschutes County and the City of Bend established a Comprehensive Plan and Zoning Ordinance for the Bend Urban Growth Boundary area. The resulting Ordinance 80-216 was adopted by the Deschutes County Board of County Commissioners on December 18, 1980. Ordinance 80-216 adopted legislative findings, a Comprehensive Land Use Plan within the Bend Urban Growth Boundary, an Exceptions Statement for the Bend Urban Growth Boundary, and the Bend Area General Plan Map, and repealed PL-10, a prior 1979 ordinance establishing a Comprehensive Plan for the Bend Urban Area. The document included legislative findings and an exceptions statement to Goals 3 and 4 “as they relate to the land between the IUGB and the UGB,” (which includes the subject properties) concluding that these lands are “marginal resource lands” in terms of agricultural and forest resource lands. (Exhibit 22)

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13 The oldest Deschutes County zoning ordinances include a 1963 zoning ordinance (Deschutes County Zoning Ordinance No. 1, Volume 8, Page 600) and a 1966 zoning ordinance, which was repealed later that same year in the November 1966 election (Deschutes County Zoning Ordinance No. 66-1, Volume 10, Page 536); however, the County Clerk’s office has no associated zoning maps filed with either of these two ordinances.

14 Goals 3, 4, and 14 were originally adopted on December 27, 1974 and became effective on January 25, 1975.
The “IUGB” is the Initial Urban Growth Boundary, part of a “dual boundary” concept adopted by the City and County and LCDC, that is a subset of the larger Urban Growth Boundary as described in the history section of Exhibit A of Ordinance 80-216:

**History -**

The City of Bend and Deschutes County adopted an urban growth boundary in 1972, and revised this boundary in 1974, 1976 and 1978. This boundary was submitted to LCDC in the fall of 1979 with the City's request for acknowledgment. LCDC ruled that the boundary was too large, and the city and county accepted a 120-day continuance to revise the boundary. The alternatives available are: (1) justify the existing boundary; (2) justify a dual boundary - a boundary inside the existing boundary; (3) justify a new boundary.

After review of the seven factors upon which a boundary is evaluated, the development of a dual boundary was selected as the most appropriate. The dual boundary concept would maintain the existing urban growth boundary and draw a new Initial Urban Growth Boundary. The new boundary would encompass needed and committed lands. This concept would also say that if additional lands were needed in the future, the area contained between the two boundaries would be placed in an urban reserve designation. (Emphasis added.)

The Boundary Description of Ord. 80-216 states that the “plan map includes both the IUGB and the UGB” and the associated Bend Area General Plan Map, Exhibit E of Ord. 80-216, designates the North and South Properties as “Open Lands” (with a subset designation of “Agriculture or Open).” According to the 1980 General Plan, Exhibit C, Open Lands mean:

*The open land section of the plan deals with three basic types, forests, urban area reserve, and areas of special interests – private and public open space.*

By 1981 LCDC acknowledged the City of Bend and Deschutes County’s “dual boundary” UGB along with their Comprehensive Plans and Goal exceptions to Goals 3 and 4. The subject properties, located between the IUGB and the outer UGB boundaries, were zoned Urban Area Reserve (UAR-10) and Surface Mining (SM) (Exhibit 23).

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 was submitted in the original application materials as Exhibits 19 and 20. 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).
As acknowledged by the 1980 General Plan, the general plan provides property owners with a certain level of assurance:

These same community policies serve individual property owners and private interest groups as a means of evaluating their individual decisions in light of community objectives. They are able to determine how their individual interests can best be served in a matter which is consistent with the plan. They are assured by the plan that once they commit their investment to the land, there will be a reasonable continuity of land policies which will protect their interests. [Page 1 of Exhibit C of Ord. 80-216]

The inclusion of the subject properties in the Urban Area Reserve remains unchanged and reflects a continuity of land use policies from the prior planning and zoning commitments of the City and County for which the community and the owners of the subject properties have relied on, including the Goal Exceptions to 3 and 4 for over 30 years.

**PROCESS**

Given the history of the zoning in the area, including that the subject properties were apparently never zoned for resource use and designation of the lands preceded adoption of the Statewide Planning Goals, as well as the goal exception decision for the area 30 years ago (see below history), the applicants believe the request does not require goal exceptions. The City of Bend, however, believes that in order to change the zone from UAR-10 and SM to the WTZ, that goal exceptions to Statewide Planning Goals 3, 4, and 14 need to be taken, reasoning that any change to the types of uses or intensity of those uses authorized by the 1980’s goal exceptions for these lands requires a new exception. Its position is that a change from a residential density of 1 unit per 10 acres under the present UAR zoning and no residential use under the Surface Mining zoning to 1 unit per 2.5 under the Westside Transect Zone represents a change in uses (for SM) and intensity (for UAR 10) thereby requiring a new exception.

To answer the City’s concerns, the applicants are submitting a reasons exception to Goals 3 (Agricultural Lands) and 4 (Forest Lands), and Goal 14 (Urbanization). If approved, approximately 717 acres of land on the west side of Bend would be rezoned to the Westside Transect Zone.

**APPLICABLE STANDARDS AND CRITERIA**

I. **OAR 660-004-0018 PLANNING AND ZONING FOR EXCEPTION AREAS**

(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.

**RESPONSE:** The applicants are requesting a “reasons exception” to Goals 3, 4 and 14 to allow the Westside Transect zoning designation to be applied to these properties. The Westside
Transect Zone authorizes low density residential development with a density range of one unit per 2.5 to 10 acres, which is consistent with the density allowed on the subject properties in the 1980 Exceptions Statement. Under the criterion set forth above, a new exception is necessary if the Westside Transect Zone would alter the types or intensities of uses authorized under the prior exception creating the UAR designation.

Within the UAR designated lands, the 1980 Exceptions Statement clearly authorized zoning categories of UAR-10, SR 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, care taker residences, crushing and smelting facilities and the sale of products from the sites. They also included all of the uses listed outright and conditionally in the SR 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 with lot sizes as small as 2 acres, as well as public and private schools, churches, cemeteries, lodge and fraternal organizations, timeshare units and commercial riding stables. In the UAR-10 zone, the uses allowed outright and conditionally are listed at DCC 19.12.020 and 19.12.030 and include single-family dwellings at a density of 1 unit per 10 acres and which would allow clustering of dwelling units down to 2 acre lot sizes (see Tree Farm Decision, 247-14-000244-CU, 247-14-000245-TP); as well as day care facilities, dude or guest ranch, commercial riding stables, commercial livestock feeding yard, public and private schools, churches, cemeteries, community lodge and fraternal organizations, dog kennels, animal hospitals and time share units. The subject properties, as previously discussed, are designated Urban Reserve and zoned UAR-10 and Surface Mining, which include all of the uses described in those zoning categories above.

The Westside Transect Zone contains no commercial, industrial or urban levels of uses requiring public services. It is a low density, rural residential zoning category with limited public uses and zoning provisions supporting resource stewardship communities with a focus on wildlife habitat protection and wildfire prevention, addressed in detail below. While the Urban Reserve plan designation has residential densities ranging from 2.5 to 10, the zoning on the subject properties is UAR-10 and Surface Mining. The Surface Mining zone does not allow any residential uses but it does allow intensive mining and mining support uses. The UAR-10 zone allows residential uses outright but limits density to 1 unit per 10 acres. The UAR-10 zone allows cluster subdivisions with lot sizes as small as 2 acres.

The proposed plan and zone designation will limit the uses, density, public facilities and services, and activities to only those that are justified in the exception. See the below discussion.

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.

RESPONSE: The 1980’s Exception Statement and LCDC orders are not specific as to whether the Goal exceptions that were issued were committed exceptions or reasons exceptions. In this case, the argument for a new reasons exception would be that a change from a residential density of 1 unit per 10 acres under the present UAR zoning (but with cluster subdivision lots as small as 2 acres) and no residential use under the Surface Mining zoning to 1 unit per 2.5 under the Westside Transect Zone represents a change in uses (for SM) and intensity (for UAR 10) thereby
requiring a new exception. Though we do not believe that the proposed changes in use warrant taking new exceptions, we make the case for new exceptions, below.

II. CRITERIA FOR REASONS EXCEPTIONS

A. Oregon Statewide Planning Goal 2, Part II

\textbf{PART II -- EXCEPTIONS} A local government may adopt an exception to a goal when:
(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal; (b) The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or (c) The following standards are met: (1) \textit{Reasons justify why the state policy embodied in the applicable goals should not apply}; (2) \textit{Areas which do not require a new exception cannot reasonably accommodate the use}; (3) \textit{The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site}; and (4) \textit{The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts}.

The above are addressed through the OARs which implement the Goal and which are addressed below.

B. OAR 660-004-020, Goal 2, Part II(c), Exception Requirements

\begin{itemize}
\item [\textit{(1)}] \textit{If a jurisdiction determines there are reasons consistent with OAR 660-04-022 to use resource lands for uses not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.}
\end{itemize}

\textbf{RESPONSE:} The proposal’s consistency with OAR 660-004-0022 is set forth below. The applicants propose the following language to be included in the Comprehensive Plan at Chapter 5, Section 5.10 as discussed in Section IV hereof as justification for the requested exception:

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

\begin{itemize}
\item [\textit{(2)}] \textit{The four factors of Goal 2 Part 11(c) required to be addressed when taking an exception to a Goal are:}
\end{itemize}

\begin{itemize}
\item [\textit{(a)}] "\textit{Reasons justify why the state policy embodied in the applicable goals should not apply}": The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or
situations including the amount of land for the use being planned and why the use requires a location on resource land:

OAR 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

(1) [...] the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

(A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned that require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.

RESPONSE:

The proposed WTZ 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.

1. Basis for Determining State Policy Embodied in the Goals Should Not Apply.

There is no basis for the applications of Goals 3 and 4 protections to either of the subject properties as described below. Historically, the properties have been included in the Bend Urban Area Reserve Boundary since at least 1969 before any of the Statewide Goals became effective. Subsequently, the properties were the subject of exceptions to Goals 3 and 4, which were acknowledged by LCDC in 1980 (and officially noticed by LCDC in the 2010 Remand Order and...
Director’s Report). Further, the historical non-agricultural and non-forestry uses of the subject properties (including surface mining use, non-conforming commercial and industrial uses), as well as varying topography, the lack of irrigation water and delivery systems, poor soils and close proximity to urban development have all remain unchanged since the State’s prior decision to approve Goal Exceptions to 3 and 4.

1980s Exceptions to Goal 3 and 4

When the City and County adopted the 1980s Goal Exceptions Statement, the City and County relied on the best available data at the time and concluded that the lands between the IUIGB and the outer UGB to be “marginal resource lands” as stated below:

*The inventory of soil data indicates that most of the agriculture lands are Class VI and are interspersed between lava ridges of scabland Class VIII. The forest soils are site 6 except for a small area of 4 contained within the Tumalo Creek canyon which is Shevlin Park. The conclusion from this analysis is that these lands are marginal resource lands. Much of the land is surrounded by existing one to five acre subdivisions. These areas have been excepted in the Deschutes County Comprehensive Plan.*

The 1980 Bend Area General Plan map designates the subject properties as Open Lands with a subset of Agriculture or Open (see 1980 General Plan Map, Ord. 80-216, Exhibit 22). The Open Land section of the General Plan identifies “three basic types, forests, urban area reserve, and areas of special interests – private and public open space.”

The zoning for the properties in 1980 were Urban Area Reserve (UAR-10) and Surface Mining (SM). The 1980 General Plan describes most of the Urban Area Reserve lands as having “little or no agricultural value” while some of it “does have deeper soil than found elsewhere in the planning area and does have good future potential for urban development.”

The Forest designated lands in the 1980 Bend Area General Plan map do not include the subject properties. Further, the General Plan recognizes that “many areas of the west side have been mined and no longer have any forest potential.”

Goal 3

The state policy embodied in Goal 3, Agricultural Lands, is to preserve “Agricultural lands” for farm use, consistent with existing and future needs for agricultural products, forest and open space. “Agricultural land” in eastern Oregon is land of predominantly Class I through VI soils as identified in the Soil Capability Classification System of the U.S. Soil Conservation Service (“NRCS”) and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Evidence demonstrates that the North Property and South Property are not suitable for agricultural uses and little historical evidence of such use.
North Property

The majority of the soils at the North Property have been mined and developed for mining purposes since the early 1960s. While not a Goal 5 mining resource, the site nevertheless is a resource akin to agricultural land where the mining resource is site specific. As shown in the table below and Exhibit 24, the North Property has eight soil-mapping units, none of which qualify as high-value farmland as that term is defined by Deschutes County Code, Chapter 18.04.\(^\text{15}\)

Map Unit Legend

<table>
<thead>
<tr>
<th>Map Unit Symbol</th>
<th>Map Unit Name</th>
<th>Acres in AOI</th>
<th>Percent of AOI</th>
</tr>
</thead>
<tbody>
<tr>
<td>61C</td>
<td>Henkle-Fryrear-Lava flows complex, 0 to 15 percent slopes</td>
<td>67.4</td>
<td>16.2%</td>
</tr>
<tr>
<td>62D</td>
<td>Henkle-Lava flows-Fryrear complex, 15 to 50 percent slopes</td>
<td>20.1</td>
<td>4.8%</td>
</tr>
<tr>
<td>72C</td>
<td>Laidlaw sandy loam, 0 to 15 percent slopes</td>
<td>121.7</td>
<td>29.3%</td>
</tr>
<tr>
<td>85A</td>
<td>Lundgren sandy loam, 0 to 3 percent slopes</td>
<td>10.1</td>
<td>2.4%</td>
</tr>
<tr>
<td>101E</td>
<td>Redcliff-Lickskillet-Rock outcrop complex, 30 to 50 percent south slopes</td>
<td>11.3</td>
<td>2.7%</td>
</tr>
<tr>
<td>106E</td>
<td>Redslide-Lickskillet complex, 30 to 50 percent north slopes</td>
<td>15.1</td>
<td>3.6%</td>
</tr>
</tbody>
</table>

\(^{15}\) Deschutes County Code, Chapter 18.04 defines High-value farmland to mean:

"High-value farmland" means land in a tract composed predominantly of the following soils when they are irrigated: Agency loam (2A and 2B), Agency sandy loam (1A), Agency-Madras complex (3B), Buckhart sandy loam (23A), Clinefalls sandy loam (26A), Clovkamp loamy sand (27A and 28A), Deschutes sandy loam (31A, 31B and 32A), Deschutes-Houstake complex (33B), Deskamp loamy sand (36A and 36B), Deskamp sandy loam (37B), Era sandy loam (44B and 45A), Houstake sandy loam (65A, 66A and 67A), Iris silt loam (68A), Lafollette sandy loam (71A and 71B), Madras loam (87A and 87B), Madras sandy loam (86A and 86B), Plainview sandy loam (98A and 98B), Redmond sandy loam (104A), Tetherow sandy loam (150A and 150B) and Tumalo sandy loam (152A and 152B). In addition to the above described land, high-value farmland includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For purposes of this definition, "specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa.
### Soil Capability Classification

The irrigated and non-irrigated capabilities of the soils are provided below. The tables show the majority of the North Property consists of non-irrigated and irrigated capability classes of 6 or lesser quality.

#### Non-irrigated Capability Class

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<tr>
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<tr>
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<td>Lundgren sandy loam, 0 to 3 percent slopes</td>
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</tr>
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<td>Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes</td>
<td>6</td>
<td>166.8</td>
<td>40.1%</td>
</tr>
<tr>
<td>W</td>
<td>Water</td>
<td>0.6</td>
<td></td>
<td>0.1%</td>
</tr>
<tr>
<td>Totals for Area of Interest</td>
<td></td>
<td><strong>415.5</strong></td>
<td></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

The percentage of non-irrigated capability class 6 on the North Property is 78.7% and the percentage of soils with a capability rating of 7 is 21.3%.
## Irrigated Capability Class

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<td></td>
<td></td>
<td><strong>415.5</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

The percentage of irrigated capability class 6 or lesser quality on the North Property is 70% and the percentage of soils with a capability rating of 7 is 30%.

**Soil fertility and suitability for grazing**

While the NRCS soil maps indicate the subject property has about 79% non-irrigated capability Class 6 soils, the maps do not reflect the disturbances in the soils due to the mining activities and the Awbrey-Hall fire. Historically, the portion of the North Property owned by Coats has been actively mined for aggregate, sand, and gravel. Starting around 1964, mining activities, including excavation, blasting, crushing, and screening of aggregate, sand, and gravel have occurred at the property. Truck traffic flows throughout the site from one end to another carrying large quantity of aggregate to be processed and sold. An asphalt batch plant, concrete washing area, an office, shop, and truck and storage shed, and a redi-mix operation standby to support the operations at the pit. Disturbances to the landscape and related mining noise are continuous and on-going to this day. A number of unimproved roads meander throughout the site and some areas of the property have been hobby farmed for pasture in the past. Family residences dot the landscape and portions of the property are actively managed for wildfire suppression. These activities have been historically documented in County land use files including file no. 247-16-000503-AD. The Awbrey-Hall fire swept through a portion of the property clearing the ground from natural vegetation and burned hot enough that natural regeneration has not occurred.
Topography of the site varies and with areas of steep slopes with rock outcrops as well as the mining walls created by the surface mining extraction.

Denuded soil fertility and suitability for grazing is not possible without significant costs and artificial means to improve the property to levels of fertile agricultural soil and grazing purposes.

Existing and future availability of water for farm irrigation purposes

The property is not served by an irrigation district is not within an irrigation district boundary, and no irrigation canals, laterals or other water delivery systems are available to provide irrigation water.

Existing land-use patterns

Existing land use patterns in the North Property include urban development to the east and south and rural development to the north and west as described below.

The area surrounding the North property consists of a mix of open space (parks), residential subdivisions, a golf course, surface mining, farm zoned parcels and undeveloped lands. A portion of the surrounding property is located within the city limits of Bend. Surrounding zoning in the vicinity of the subject property is a mixture of Exclusive Farm Use (EFU), Forest Use (F-2), Open Space and Conservation (OS&C), Rural Residential (RR10), Suburban Low Density Residential (SR2-1/2), Surface Mining (SM), Urban Area Reserve (UAR-10), and the City of Bend’s Residential Standard Density Zone (RS). For the North Property, the neighboring residential subdivisions include Awbrey Glen, Awbrey Meadows, Awbrey Ridge, Awbrey View, Awbrey Court, Cooperstone, Fawnview, Klippel Acres (unrecorded subdivision), Marken Heights, Renaissance, Shevlin Estates, and Valhalla Heights. Two other properties zoned Surface Mine (SM) are located to the north. Shevlin Park is located to the west. Oregon State Parks and Recreation manages land to the north that is zoned farm use. Tumalo Creek and Shevlin Park Road are adjacent to the western and southern property boundaries, respectively. The North Property borders Shevlin Park and Tumalo Creek to the west. Land to the west of the park and creek are zoned for Forest Use (F-2).

Technological and energy inputs required

Given the historical mining use of the property and the lack of irrigation water for farm purposes, technological and energy inputs would be impractical and cost prohibitive to reach a level of productive fertile farm land.

Accepted farming practices

Nearby farmland zoned EFU is located north of the subject property. Portions of these EFU zoned lands, however, are properties not dedicated to farm uses and activities, including State-owned parkland and privately owned parcels that have received nonfarm partition and/or dwelling approvals. Across from Tumalo Creek and north of the property are EFU zoned parcels that are partially irrigated. Between these farm properties are lands zoned Surface Mining as well as State-owned parkland. In addition, steep canyon walls and Tumalo Creek intervene between the Coats property and the farmlands to the north.
Conclusion

Based on the above description, the North Property is not suitable for agricultural uses and has little historical evidence of such use.

South Property

The South Property is comprised of poor quality soils, has no access to irrigation water, is not in an irrigation district, and has no past history of agricultural use. The property has no water rights or past history of irrigation. The property is not served by an irrigation district and no irrigation canals, laterals or other water delivery systems are available to provide irrigation water. The property borders urban development within the City of Bend UGB to the north and east. The property borders Tumalo Creek and Shevlin Park to the west and the Tree Farm rural residential development, within Deschutes County, to the south. There are no agricultural uses or areas of EFU zoning occurring within the vicinity of the South Property. The closest EFU zoned parcel is located approximately 2.5 miles to the north of the South Property. As shown in the table below and Exhibit 25, the South Property has four soil-mapping units, none of which qualify as high-value farmland as that term is defined by the Deschutes County Code, Chapter 18.04:

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<td>157C</td>
<td>Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes</td>
<td>256.6</td>
<td>86.5%</td>
</tr>
<tr>
<td><strong>Totals for Area of Interest</strong></td>
<td></td>
<td><strong>307.2</strong></td>
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</tbody>
</table>

Soil Capability Classification

The irrigated and non-irrigated capabilities of the soils are provided below. The tables show the majority of the South Property consists of non-irrigated and irrigated capability classes of 6 or lesser quality.
**Non-irrigated Capability Class**

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<td>256.6</td>
<td>86.5%</td>
</tr>
</tbody>
</table>

**Totals for Area of Interest**

|                  |                                                  |        | 307.2        | 100.0%         |

The percentage of non-irrigated capability class 6 on the South Property is 98.2% and the percentage of soils with a capability rating of 7 is 1.8%.

**Irrigated Capability Class**

<table>
<thead>
<tr>
<th>Map unit symbol</th>
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</tr>
</tbody>
</table>

**Totals for Area of Interest**

|                  |                                                  |        | 307.2        | 100.0%         |

The percentage of irrigated capability class 6 or less on the South Property is 98.2% and the percentage of soils with a capability rating of 7 is 1.8%.

**Soil fertility and suitability for grazing**

While the NRCS soil maps indicate the subject property has about 98.2% non-irrigated capability Class 6 soils, the maps do not reflect the disturbances in the soils due to the Awbrey-Hall fire. The Awbrey-Hall fire swept through a portion of the property clearing the ground from natural vegetation, resulting in denuded soil fertility. Suitability for grazing is not possible without significant costs and artificial means to improve the property to levels of fertile agricultural soil and grazing purposes. Historically, the South Property has been utilized for non-conforming industrial uses, with no past history of agricultural use. A number of unimproved roads meander...
throughout the site. Topography of the site varies and with areas of steep slopes with rock outcrops.

Existing and future availability of water for farm irrigation purposes

The property is not served by an irrigation district, is not within an irrigation district boundary, and no irrigation canals, laterals or other water delivery systems area available to provide irrigation water.

Existing land-use patterns

Existing land use patterns in the South Property include urban development to the east and north, rural development to the south and public park use to the west as described below.

The area surrounding the subject property consists of a mix of open space (parks), residential subdivisions and undeveloped lands. A portion of the surrounding property is located within the city limits of Bend. The South Property borders Shevlin Park and Tumalo Creek to the west. Areas of F-2 Forest Use zoning lie beyond Shevlin Park and Tumalo Creek to the west. Land to the north and east lies within the City of Bend UGB and is either developed or planned for future development at urban densities. The South Property borders the “Shevlin Commons” and “Three Pines” subdivisions, together with several parcels recently incorporated into the UGB. The eastern boundary of the subject property will border directly upon the planned extension of the Skyline Ranch collector roadway as it is developed to serve development on the west side of Bend. The southern end of the South Property borders directly upon the 2-acre residential parcels that have been approved for development in connection with the “Miller Tree Farm” subdivision. The South Property is currently vacant and undeveloped.

Technological and energy inputs required

Given the poor soils and the lack of irrigation water for farm purposes, technological and energy inputs would be impractical and cost prohibitive to reach a level of productive fertile farm land.

Accepted farming practices

The closest EFU zoned parcels lie 2.5 miles north of the South Property. Portions of these EFU zoned lands, however, are properties not dedicated to farm uses and activities, including state-owned parkland and privately owned parcels that have received nonfarm partition and/or dwelling approvals. Tumalo Creek, Shevlin Park, Johnson Road, surface mining uses on the North Property and a number of rural residential subdivisions separate the South Property from any ongoing agricultural uses in the area.

Conclusion

The South Property is comprised of poor quality soils, has no access to irrigation water and has no past history of agricultural use. The property has no water rights or past history of irrigation. The property is not served by an irrigation district and no irrigation canals, laterals or other water delivery systems are available to provide irrigation water. Based on the above description, the South Property is not suitable for agricultural uses and has never been utilized for such purposes.

54 – BURDEN OF PROOF STATEMENT
Goal 4

The state policy embodied in Goal 4, Forest Lands, is to preserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture. OAR 660-015-0000(4). Forest lands are those lands acknowledged as forest lands as of the date of the adoption of Goal 4. Where a plan amendment involving forest lands is proposed, forest land includes lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

Soil Forest Productivity for the North and South Properties include:

North Property

The NRCS Forest Productivity data in the table below shows the majority of the North Property consists of soils with a forest productivity rating of 50 cubic ft./acre/year. According to the NRCS Description for Forest productivity, “Forest productivity is the volume of wood fiber that is the yield likely to be produced by the most important tree species. This number, expressed as cubic feet per acre per year and calculated at the age of culmination of the mean annual increment (CMAI), indicates the amount of fiber produced in a fully stocked, even-aged, unmanaged stand.”

Forest Productivity (Cubic Feet per Acre per Year): ponderosa pine (Meyer 1961 (600))

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<tr>
<td>85A</td>
<td>Lundgren sandy loam, 0 to 3 percent slopes</td>
<td>46.00</td>
<td>10.1</td>
<td>2.4%</td>
</tr>
<tr>
<td>101E</td>
<td>Redcliff-Lickskillet-Rock outcrop complex, 30 to 50 percent south slopes</td>
<td>11.3</td>
<td>2.3</td>
<td>0.6%</td>
</tr>
</tbody>
</table>

55 – BURDEN OF PROOF STATEMENT
South Property

The NRCS Forest Productivity data in the table below shows the majority of the South Property consists of soils with a forest productivity rating of 50 cubic ft./acre/year. According to the NRCS Description for Forest productivity, “Forest productivity is the volume of wood fiber that is the yield likely to be produced by the most important tree species. This number, expressed as cubic feet per acre per year and calculated at the age of culmination of the mean annual increment (CMAI), indicates the amount of fiber produced in a fully stocked, even-aged, unmanaged stand.”

Forest Productivity (Cubic Feet per Acre per Year): ponderosa pine (Meyer 1961 (600))

<table>
<thead>
<tr>
<th>Map unit symbol</th>
<th>Map unit name</th>
<th>Rating</th>
<th>Acres in AOI</th>
<th>Percent of AOI</th>
</tr>
</thead>
<tbody>
<tr>
<td>62D</td>
<td>Henkle-Lava flows- Fryrear complex, 15 to 50 percent slopes</td>
<td>50.00</td>
<td>5.6</td>
<td>1.8%</td>
</tr>
<tr>
<td>72C</td>
<td>Laidlaw sandy loam, 0 to 15 percent slopes</td>
<td>53.00</td>
<td>23.5</td>
<td>7.6%</td>
</tr>
<tr>
<td>155D</td>
<td>Wanoga sandy loam, 15 to 30 percent slopes</td>
<td>50.00</td>
<td>12.5</td>
<td>4.1%</td>
</tr>
<tr>
<td>157C</td>
<td>Wanoga-Fremkle-Rock outcrop complex, 0 to 15 percent slopes</td>
<td>50.00</td>
<td>265.6</td>
<td>86.5%</td>
</tr>
<tr>
<td>Totals for Area of Interest</td>
<td></td>
<td></td>
<td>307.2</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Discussion:

As noted above, the subject properties have not previously been zoned for forestry purposes. Historical mapping indicates the properties have been planned for the eventual inclusion within the Bend urban area since before the adoption of Goal 4 in 1974. There is no past history of forestry uses on either of the subject properties. The North Property has been previously utilized for surface mining and related uses. Portions of the South Property were previously utilized for non-conforming commercial and industrial uses (motorcycle track and testing, Hooker Creek administrative offices). The South Property burned extensively in the Awbrey Hall fire in 1990. The fire destroyed much of the existing tree cover from the South Property. The high temperatures associated with the Awbrey Hall fire adversely impacted soils in a manner that has prohibited the regeneration of Ponderosa Pine. See report from Singletree Enterprises dated December 19, 2017, attached as Exhibit 12 to the Applicant’s initial Burden of Proof Statement. The proximity of the subject properties to Shevlin Park and the Tumalo Creek riparian corridor.
make them unsuitable for commercial forestry operations. In addition, the subject properties abut existing and planned areas of urban development, making them incompatible with accepted forest practices.

A prior exception to Goal 4 was taken in 1980 in connection with the acknowledgement of the City of Bend’s dual UGB boundary. Based upon an inventory of soil data and forest productivity, an Exception Statement determined that forest soils were primarily site class 6, with the exception of a small area of more productive soils found within the boundary of Shevlin Park. The subject properties were characterized as “marginal resource lands” and were specifically exempted from the protections of Goal 4. As such, there is no basis for the application of Goal 4 protections to the subject properties.

Goal 14

The state policy embodied in Goal 14, Urbanization, is to “provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.” Land needed for urbanization must be based on the demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast and demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of these need categories. Goal 14 prohibits the conversion of rural land to urban uses without a goal exception.

The present proposal to create the Westside Transect Zone would authorize limited, single family residential uses at a density range of 2.5 to 10 acres as a part of stewardship communities which are dedicated to developing and implementing long term, sustainable, funded programs for wildfire mitigation and wildlife habitat protection. There are no commercial or industrial uses authorized in the Westside Transect Zone. Any nonresidential uses are limited to public uses such as schools, and fire or utility stations to serve the area. The uses authorized in the Westside Transect Zone do not require the extension of or the provision of public, urban services.

The proposed zone is intended to create a transition zone in the urban/wildland interface which recognizes the unique geographic and physical characteristics of the area and utilizes the expertise of collaborating foresters and wildlife biologists to develop disaster resistant communities with resource management corridors for migrating wildlife. The zone has been carefully crafted to provide the orderly transition from urban to rural use and to respect the unique character of the area.

The meaning of “rural use” or “urban use” in the context of Goal 14 and individual land use applications has been the subject of much case law discussion over the years. See, Jackson County Citizens League v. Jackson County, 38 Or LUBA 37, 48 (2000) (fn 12 for citations to over nineteen LUBA, Ct of Appeals and S.Ct cases interpreting Goal 14). The key case, 1000 Friends v. 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>
</tr>
</thead>
<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.

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

The North and South properties combined total 717 acres and consist of the remaining UAR designated properties located on the west side of Bend between the urban area and the vast public and park lands to the west. The amount of land is determined by the geographical boundaries of the Tumalo Creek, Shevlin Park, the historical zoning designations and the surrounding development patterns.

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

As discussed, it is not clear the subject properties were ever zoned for resource use as they have been slated for eventual urban development since prior to the adoption of the Statewide Planning Goals. However, the use planned is site specific as it is designed specifically for the geographic characteristics and physical location of these properties as the wildfire and wildfire interface between the City’s urban edge and the park and public lands to the west.

(b) Areas which do not require a new exception cannot reasonably accommodate the use;

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

RESPONSE: If areas designated UAR and SM, like the subject properties, require a new exception under the theories set forth herein, then the only lands which would not require a new exception would be lands zoned SR 2.5 or lands within Bend’s UGB.

1. SR 2.5 Land.

As shown on the County zoning map, the only lands zoned SR 2.5 are a 30 acre area adjacent to the Awbrey Glen subdivision and golf course and several smaller heavily parcelized areas scattered along the eastern and southern edge of the UGB. These areas are not physically or geographically located in the urban/wildfire/wildlife interface area on the west side of Bend –
between its urban area and the public lands to the west. The proposed use is to create a zone which will allow for the development of residential stewardship communities designed to develop and implement long term, sustainable programs to protect wildlife habitat and prevent or reduce the severity of damage from the spread of wildfire. The need for the urban/wildland interface area is well documented in Bend and Deschutes County’s historical documents and efforts to protect the deer winter migration corridors and to prevent the spread of wildfire arising from the west and spreading with the prevailing winds into Bend. The subject properties are uniquely located to meet this need and the Westside Transect Zone has been developed in coordination with foresters and wildlife biologists after careful study of the specific areas.

2. Property Within Urban Growth Boundary.

The property located within Bend’s UGB is the only other land not requiring an exception. This land cannot reasonably accommodate the use as it is slated for urban development and is the land providing the urban edge between which the subject properties are sandwiched with the public lands to the west.

(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

RESPONSE: The only non-resource land not requiring an exception would be land zoned SR 2.5. The small areas of SR 2.5 lands are not geographically or physically located along the western edge of the City and the public land to the west, which is the urban/wildland interface area proposed for the stewardship communities containing wildfire prevention and wildlife habitat protection programs.

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

RESPONSE: The use is geographically and physically specific to the location of the subject properties between the west edge of the City and the public lands further west. There are no resource or other lands which are in this location and can provide the wildland urban interface for Bend’s west side.
(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

RESPONSE: The proposed use is an interface area between the urban area and the public lands to the west, designated as a stewardship community to provide long term, sustainable wildfire mitigation and wildlife habitat protection programs. Lands inside the UGB which are planned, zoned and needed for urban development cannot accommodate this use. Their density of development does not work as a wildland fire interface.

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

RESPONSE: No public facilities or services are necessary to accommodate the use. This criterion is not applicable.

(C) The alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

RESPONSE: The alternative areas analysis set forth above demonstrates there are no other non-resource, resource or exception areas appropriate for the proposed use. This use is site specific to the west side of Bend to address long standing and historically documented community concerns about wildfire risk and deer winter range migration corridors in this urban/wildland interface area.

c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the Jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative
sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

RESPONSE: The above criteria contemplates a comparison of the long-term environmental, economic, social and energy (“ESEE”) consequences of the applicants’ proposed use with alternative locations that would also require a goal exception. The rule requires a determination that the ESEE consequences of the proposed use “are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.” In this case, the applicants’ proposal is based entirely upon the specific location and characteristics of the subject properties. As demonstrated above, there are no alternative locations that could serve the needs and objectives of the WTZ. The WTZ authorizes low density residential housing in specific locations that lie between urban development (to the east) and Shevlin Park and the Tumalo Creek corridor (to the west). The applicants seek to develop stewardship communities that will preserve important areas of wildlife habitat, minimize impacts on surrounding park property and natural areas and provide additional forest fire protections for the subject and surrounding properties.

The following provides an analysis of the ESEE consequences associated with the applicants’ proposal. This analysis provides a comparison of the ESEE consequences of the proposed WTZ with the specific land uses authorized under current zoning and the potential for future inclusion of such properties into the City of Bend, UGB. The subject properties are currently zoned as Urban Area Reserve (UAR-10) and are planned for eventual incorporation into the UGB. UAR-10 zoning rules authorize the development of single family residences with a density of one-unit per ten acres. County planned and cluster development and state administrative rules (DCC 19.12.030N, 19.100 and OAR 660-004-0040) would authorize the clustering of two-acre residential lots, with areas of open space retained until such future time as incorporated into the UGB. Development under this scenario would result in the clustering of two-acre residential lots immediately adjacent to the Shevlin Park boundary, with areas of dedicated open space adjacent to the urban area retained for future urban development. Development activities adjacent to the park boundary would not be subject to the extensive wildlife and fire protections contemplated in the WTZ, creating more significant ESEE consequences as outlined in detail below.

1. Environmental. Adoption of the WTZ and its associated wildlife protection and fire suppression standards will provide a significant overall net environmental benefit. Proposed WTZ development standards will maintain critical areas of wildlife habitat and preserve existing
deer and elk migration corridors along the Tumalo Creek corridor. Future residential landowners will be required to maintain their individual lots in a manner that is compatible with both the protection of existing wildlife habitat and the suppression of fire. Individual structures erected within the WTZ must comply with national fire protection standards, with lot owners required to maintain fire protection buffers around all buildings and home sites. The fire management prescriptions of the WTZ are expected to significantly reduce the threat of a wildfire spreading from the forested lands to the west into the City of Bend. Adoption of the WTZ significantly reduces or ameliorates the overall environmental impacts of developing the subject properties and substantially benefits environmental qualities on adjoining lands.

In contrast, development of the subject properties under existing UAR-10 zoning rules would not provide the environmental benefits associated with the WTZ. Smaller residential lots could be clustered along the Shevlin Park boundary, without any protection provided for existing wildlife habitat and migration corridors. The subject properties are not governed by the Deschutes County, Wildlife Area (WA) combining zone and the code provides minimal protections to important areas of wildlife habitat. Development would not be governed by the fire fuels management and structural building standards outlined under the WTZ. This would significantly increase the risk of the spread of wildfire to the detriment of surrounding properties and the City of Bend.

2. Economic. Development of the subject properties would provide more favorable economic consequences under the proposed WTZ standards. The WTZ would authorize additional single family residential units with areas of wildlife habitat preserved in perpetuity. The property would be subject to stringent wildfire management and fire code building standards that provide a continued economic benefit to surrounding properties, Deschutes County and the City of Bend. The creation of an intensively managed fire protection barrier in this area of Deschutes County will provide an additional safeguard against the growing threat of wildfire originating on heavily forested lands located to the west. The escalating costs of wildfire suppression have a significant and detrimental economic impact on Deschutes County and the Central Oregon region. The WTZ is strategically located in an area that can be effectively managed to help prevent the spread of wildfire into more heavily populated urban areas within the City of Bend.

3. Social. Adoption of the WTZ and its associated wildlife and fire protection standards will provide an overall net social benefit for area residents. The wildlife protections of the WTZ will preserve important areas of wildlife habitat and associated migration corridors for the benefit of current and future county residents. WTZ development standards will minimize the impacts of future residential development on public use areas within Shevlin Park. Future residential development will be buffered from the park, preserving the natural values of this important public resource. Extensive fire management activity within the WTZ will work to prevent the spread of wildfire.

4. Energy. The fire management standards of the WTZ will provide an energy benefit to Deschutes County and the Central Oregon region. Extensive and ongoing fire management activity on the subject properties will provide additional protections from the spread of wildfire from heavily forested areas to the west. The long term implementation of fire fuels reduction activities within the WTZ will reduce energy costs for the benefit of Deschutes County and the region.
The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resource and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

**RESPONSE:** The proposed use has been designed in a manner that is entirely compatible with adjacent land uses. The low density residential development authorized in the WTZ will minimize the potential for conflicts with both urban uses within the City of Bend and the natural resource values of Shevlin Park and Tumalo Creek to the west. Individual residential home sites within the WTZ will be buffered from the park boundary and Shevlin Park. The WTZ will be managed under stringent wildlife habitat protection standards that are designed to facilitate the movement and migration of deer and elk through the Tumalo Creek corridor. The property will also be governed by rigorous hazardous fuel reduction standards that have been formulated to protect the subject and surrounding properties from the risk and spread of wildfire. Any development and construction within the WTZ will be subject to national fire protection standards. Implementation of the WTZ on the subject properties is compatible with adjacent land uses as described in further detail below:

**North Property.** Existing development in the vicinity of the North Property includes urban residential neighborhoods (including a golf course) that abut the property to the east and south. Development to the west consists of rural residential neighborhoods to the west of Tumalo Creek and Shevlin Park. The varied topography of the North Property provides geographic isolation of the parcel from the surrounding properties. The low density residential development and wildlife and wildfire corridors contemplated by the WTZ will provide a significant buffer between developed home sites and any surrounding properties. Any future development of the property will be governed by the Wildlife Habitat and Forest Health Management Plan attached as Exhibit 12 to the applicant’s initial Burden of Proof Statement. The plans identified herein will insure the property is developed in a manner that is compatible with surrounding natural resources.

**South Property**

The South Property borders lands zoned for urban development to the north and east. The existing Shevlin Commons development borders the property directly to the north. Platted rural residential lots (2-acres in size) abut the property to the south. Shevlin Park and Tumalo Creek border the property to the west, where no development (other than public park uses) is contemplated or authorized. As a condition of development approval, the applicant is prepared to dedicate a 50-acre “Conservation Area” immediately adjacent to its boundary with Shevlin Park. The Conservation Area will be managed under the terms of a conservation easement that will protect and preserve areas of wildlife habitat. In addition, the applicant intends to create an additional 30-acre “No-Build Area” immediately east of the Conservation Area. The “No-Build Area” will be part of individual lots but no structures will be permitted and the area will be managed primarily for fire protection purposes. The protection of these two areas (located along
the western boundary of the South Property) will insure that management of the WTZ is compatible with Shevlin Park. The planned Conservation Area and No Build Area will work to insure that residential development within the WTZ is not visible from Tumalo Creek. The joint management of such areas will provide additional protections for the natural resource and public values of Shevlin Park.

Fire management standards within the WTZ will provide a benefit to the residential development to the north, south and east. A portion of the planned No-Build Area will provide an additional fire protection buffer between the Shevlin Commons development and the South Property. The low density residential development standards within the WTZ will be entirely compatible with the size and configuration of lots within the adjacent Tree Farm residential development. Substantial topography (rock outcroppings and a steep ridge line) will separate the South Property from planned urban development to the east.

III. ADDITIONAL CRITERIA FOR A REASONS EXCEPTION TO GOAL 14

OAR 660-014-0040 Establishment of New Urban Development on Undeveloped Rural Lands

(1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:
(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and

(e) That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.

RESPONSE: As discussed more fully herein, the proposed use is locationally dependent as it involves the establishment of stewardship communities to provide long term, stable funding and management of the sensitive lands located on the west side of Bend between the urban area and the park and public forested lands to the west. It would be impractical to expand the UGB to accommodate the use, as it is low density and focused on management of a residential community with wildlife habitat protection and wildfire mitigation programs. The uses are rural in nature and do not require the extension of urban services or infrastructure.

Furthermore, the subject properties do not meet the definition of “Rural Land”\(^{16}\) in the definitions section of the Statewide Planning Goals because they have been planned and zoned for urban use for more than 30 years. The uses allowed in the WTZ do not require the extension of urban services or involve urban levels of density. As discussed, the WTZ proposal is site specific to the properties’ geographic location on the west side of Bend between the urban area and the public and park lands to the west. The proposal to develop these lands with low density residential stewardship communities is consistent with the urbanization policies for the City and

\(^{16}\) 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.
with the rural development and resource management policies of the County. The proposal furthers the City’s most recent UGB decision not to include the subject properties in the UGB as the use of scarce public dollars to extend urban infrastructure can be more efficiently accomplished with lands located south and east of the City. The proposal is also consistent with County density ranges and resource management policies for deer winter range and wildfire prevention, mitigation strategies.

The applicants are coordinating with the County and the City of Bend to insure adequate services are available for the proposal and will continue to work on transportation studies and development agreements with the affected jurisdictions to insure impacts from the proposal are adequately addressed and mitigated.

IV. CONCLUSION

The submitted Burden of Proof, application materials and exhibits demonstrate the proposed text amendments, goal exceptions, and zone change application meet the applicable criteria for the requested approval. The applicants request the County amend its Comprehensive Plan and zoning text to add the Westside Transect Zone and rezone the subject properties.

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EXHIBITS

1. Bend Urban Area Reserve
2. Transect Area Map
3. North Property Zone Change Map
4. South Property Zone Change Map
5. Figure 11-4: UGB Expansion Subareas and Area Planning Requirements from the Bend Comprehensive Plan (2016)
6. Board of County Commissioners of Deschutes County, Ordinance Numbers 2016-020, 2016-021, 2016-022, and 2016-023 (regarding the UGB Expansion Adoption)
7. Deschutes County Zoning Map
8. 1973 State Department of Geology and Mineral Industries (DOGAMI), Provisional Operating Permit for Surface Mining
9. 1975 DOGAMI Permit
10. Deschutes County Comprehensive Plan
11. City / County Exceptions Statement for UAR lands dated September 24, 1980
12. Wildlife Habitat and Forest Health Management Plans
13. Email from Ed Keith, Deschutes County Forester, to Cathy White dated March 20, 2017
14. Deschutes County Transportation System Plan (TSP) 2010-2030, Bend Area County Roads, Functional Reclassification, Figure F5.3.F13
15. Deschutes County TSP, Bend Area Roads, Existing Classifications, Figure F2.2.F4
16A. Addendum #1 to Traffic Impact Study by Lancaster Engineering, dated July 31, 2018
17. Well Logs
18. Fire Protection District Map
20. Department of Land Conservation & Development, “Report on Bend and Deschutes County’s Amendment to the Bend Urban Growth Boundary,” DLCD Order 001775, dated January 8, 2010 (Bound separately)

21. Deschutes County Comprehensive Plan to 1990, Bend Area Map

22. Ordinance No. 80-216

23. Zoning Map, Bend Area

24. NRCS Soil Maps for the North Property

25. NRCS Soil Maps for the South Property

26. Article from Deschutes County web page, “Project Wildfire receives national honor for wildfire mitigation efforts” dated 2018 and map showing “Deschutes County Large Fire History, 1900 – 2017

27. Ordinance No. 91-030

28. Ordinance No. 2005-033