



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

September 28, 2006

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 002-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: October 13, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Kevin Harrison, Deschutes County

<paa> ya



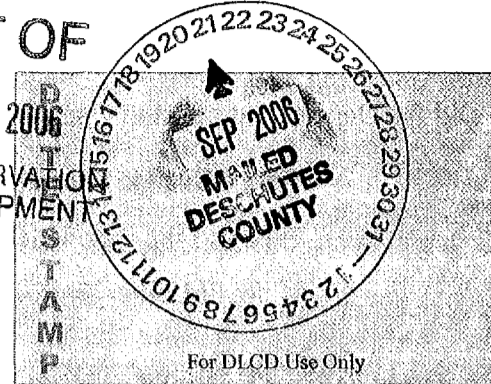
FOR

2 Notice of Adoption

DEPT OF

SEP 25 2006

DEPT OF CONSERVATION AND DEVELOPMENT



THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

Jurisdiction: Deschutes County Local file number: PA-05-8 / ZC-05-3
 Date of Adoption: 9/13/06 Date Mailed: 9/21/06
 Date original Notice of Proposed Amendment was mailed to DLCD: 2/8/06

- | | |
|---|--|
| <input checked="" type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: _____ |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amend comprehensive plan from Agriculture to Rural Residential Exception Area. Amend zone map from EFU-TRB to RR-10.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Same

Plan Map Changed from: Agriculture to: Rural Residential Exception Area

Zone Map Changed from: EFU-TRB to: RR-10

Location: 18-13-17; +1, 2300 Acres Involved: 160 ac.

Specify Density: Previous: 3 d.u. / 160 ac. New: 1 d.u. / 10 ac.

Applicable Statewide Planning Goals: 1, 2, 3

Was an Exception Adopted? YES NO

DLCD File No.: 002-06
(14998)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: Kevin Harrison Phone: (541) 385-1401 Extension: _____
Address: 117 NW Lafayette City: Bend
Zip Code + 4: 97701 - _____ Email Address: kevinh@deschutes.org



ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

REVIEWED  LEGAL COUNSEL
REVIEWED  CODE REVIEW COMMITTEE

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 23, the Deschutes County Comprehensive Plan, to Adopt an Exception to Goal 3 and To Change the Plan Designation for Certain Property From Agricultural to Rural Residential Exception Area.	* * * * *	ORDINANCE NO. 2006-025
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WHEREAS, the Bend Metro Park and Recreation District has proposed a Goal Exception to Goal 3 and a Plan Amendment to Title 23.120 of the Deschutes County Code (DCC), Goal Exception Statement, to change the zoning designation of certain property from Agricultural to Rural Residential Exception Area; and

WHEREAS, the Board of County Commissioners (Board) after reviewing all the evidence presented at the public hearing, agrees with the findings of the Hearings Officer, and

WHEREAS, the Board, after review conducted in accordance with applicable law, approved the Goal Exception to Goal 3, change the zoning designation from Agricultural to Rural Residential Exception area; and,

WHEREAS, Deschutes County Ordinance 2000-017 ordained the Plan Map to be a component of Title 23 and, therefore, any amendment to the Plan Map is an amendment to Title 23; now therefore,

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

Section 1. ADDING. DCC Chapter 23.120.250, Bend Metro Park and Recreation District Properties, is added to read as shown in Exhibit "A" attached to this ordinance and by reference incorporated herein, to adopt an exception statement for certain property as described in Exhibit "B."

Section 2. AMENDMENT. DCC Title 23, The Deschutes County Comprehensive Plan Map is hereby amended to change the plan designation for certain property described in Exhibit "B" and depicted on the map set forth as Exhibit "C," and by this reference incorporated herein, from Agricultural to Rural Residential Exception Area.

///

Section 3. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached hereto as Exhibit "D," and by this reference incorporated herein.

Dated this 13th of Sept., 2006

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, CHAIR


BEV CLARNO, VICE CHAIR

ATTEST:


Recording Secretary


MICHAEL M. DALY, COMMISSIONER

Date of 1st Reading: 28th day of August, 2006.

Date of 2nd Reading: 13th day of Sept., 2006.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bev Clarno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 12th day of Dec., 2006.

ATTEST:

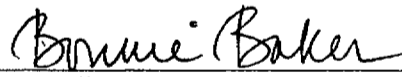

Recording Secretary

EXHIBIT "A"

Chapter 23.120. GOAL EXCEPTION STATEMENT

- 23.120.010. Introduction.
- 23.120.020. Methodology.
- 23.120.030. Agricultural lands.
- 23.120.040. Forest lands.
- 23.120.050. Exceptions analysis.
- 23.120.060. Exception Area Plan.
- 23.120.070. Bend Municipal Airport Exceptions Statement.
- 23.120.080. La Pine UUC Boundary.
- 23.120.090. Spring River Rural Service Center.
- 23.120.100. Burgess Road and Highway 97.
- 23.120.110. Rural Industrial Zone.
- 23.120.120. Prineville Railway.
- 23.120.130. Resort Communities.
- 23.124.140. Barclay Meadows Business Park.
- 23.120.150. Sisters School District #6.
- 23.120.160. Sisters Organization of Activities and Recreation
and Sisters School District #6.
- 23.120.170. Oregon Water Wonderland Unit 2 Sewer District.
- 23.120.180. 2004 City of Bend Urban Growth Boundary Amendment (Juniper Ridge).
- 23.120.190. Joyce Coats Revocable Trust Johnson Road and Tumalo Reservoir Road Properties.
- 23.120.200. Watson/Generations Development Inc.
- 23.120.210. Oregon Department of Transportation.
- 23.120.220. Conklin / Eady Property.
- 23.120.230. City of Sisters Property.
- 23.120.240. McKenize Meadows Property.
- 23.120.250. Bend Metro Park and Recreation District Properties

* * *

23.120.250. Bend Metro Park and Recreation District Properties.

In conjunction with approval of PA-05-8/ZC-05-3, a "reasons" exception to Statewide Planning Goal 3, Agricultural Lands was taken to include a portion of certain property zoned Exclusive Farm Use Tumalo/Redmond/Bend Subzone (EFU-TRB). Reasons justifying why the state policy embodied in Goal 3 should not apply in this situation are set forth in Exhibit "D" to Ordinance 2006-025, which findings are incorporated herein by reference.

(Ord 2006-025 § 1, 2006)

Zone Change Parcel
From: EFU to RR-10

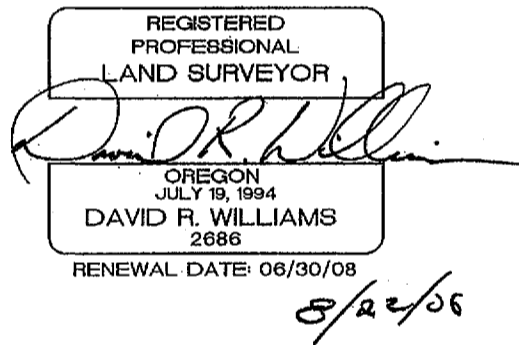
PROPERTY DESCRIPTION

Section 8: The East One-Half of the Southwest One-Quarter (E1/2 SW1/4)

Section 17: The East One-Half of the Northwest One-Quarter (E1/2 NW1/4)

All located in Township 18 South, Range 13 East, Willamette Meridian, Deschutes County,
Oregon

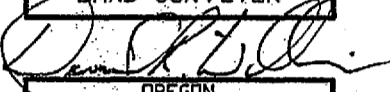
See drawing attached hereto and hereby incorporated by reference.



ZONE CHANGE EXCHANGE AREAS

LOCATED IN: SECTIONS 7, 8, 17 & 18, T18S, R13E, W.M.,
DESCHUTES COUNTY, OREGON

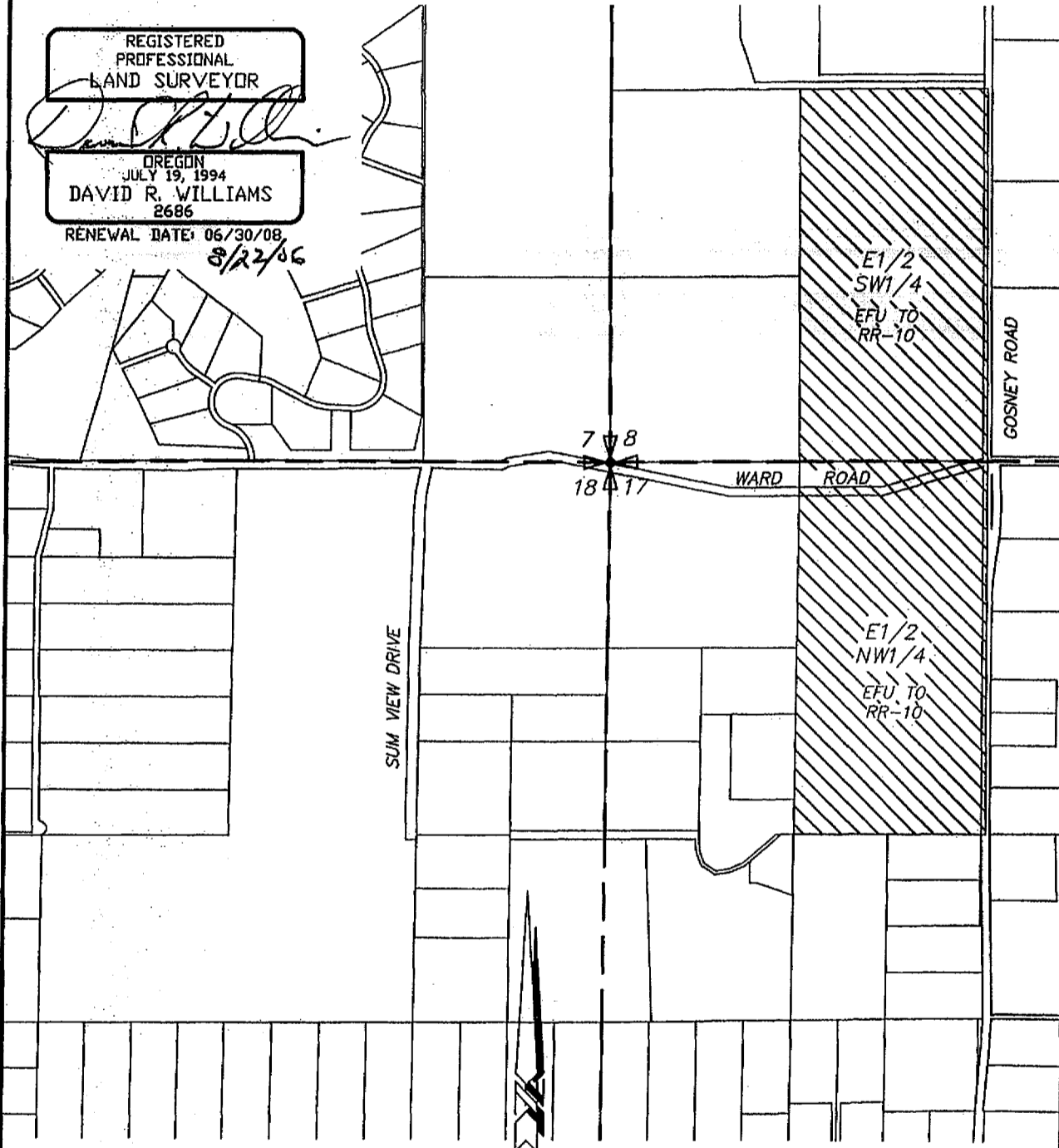
REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
JULY 19, 1994
DAVID R. WILLIAMS
2686

RENEWAL DATE: 06/30/08

8/22/06



1" = 1000'

060202ZSWAP

HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC.
805 SW INDUSTRIAL WAY, SUITE 10, BEND, OREGON 97702
PHONE: (541) 389-9331 FAX: (541) 389-5418

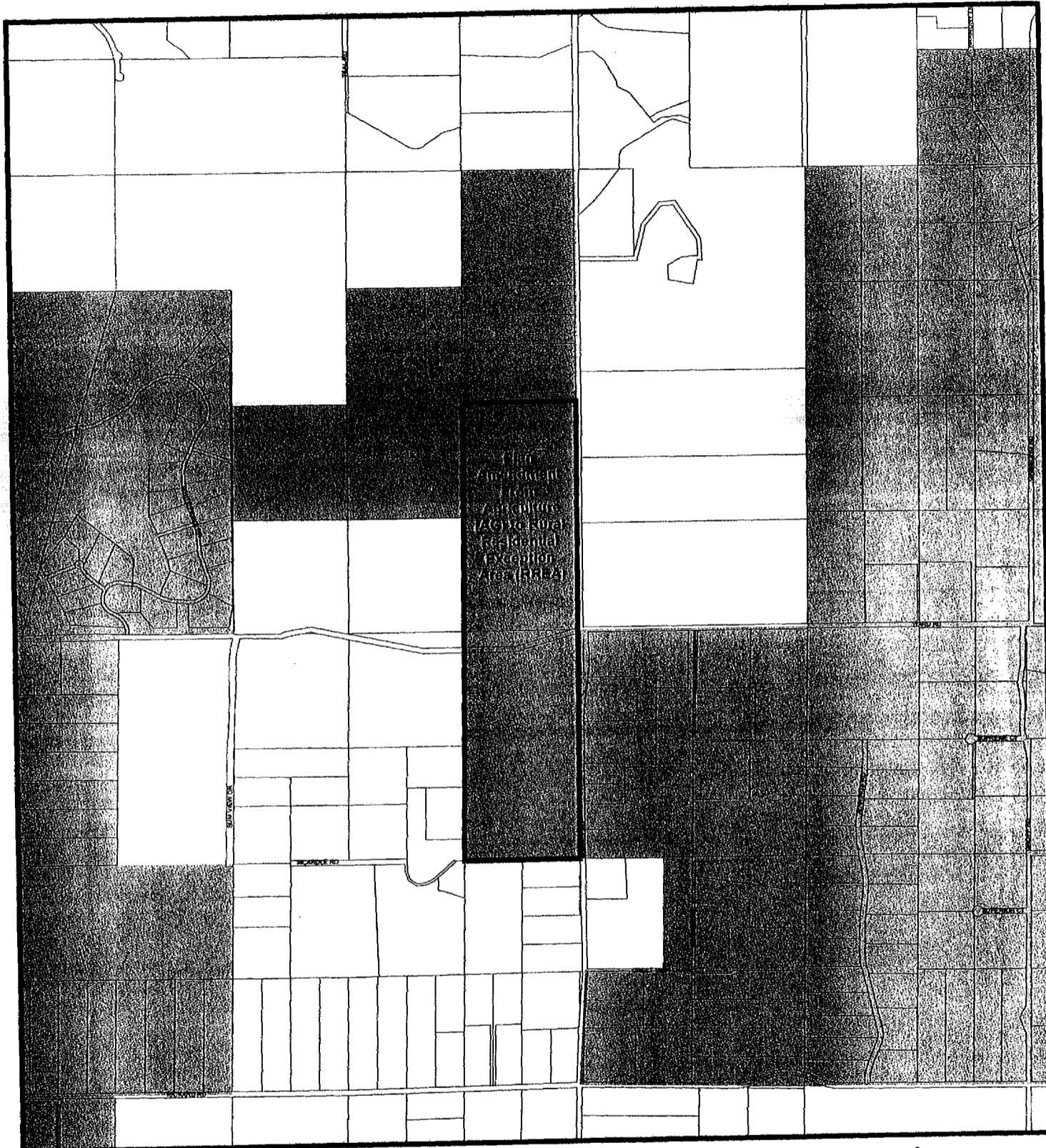
EFU TO RR-10

FOR: BEND METRO PARK & RECREATION DISTRICT

SCALE: 1" = 1000' DRAWN BY: DRW DATE: 08/22/06

SHEET
1/1

Exhibit B
Page 2 of 2
Ordinance 2006-025



Comprehensive Plan Designations
 Agriculture (AG)
 Rural Residential Exception Area (RREA)
 Property Subject to Plan Amendment

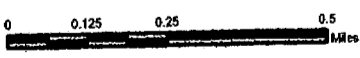


DISCLAIMER:
 The information on this map was derived from digital data from Deschutes County's GIS. Care was taken in the creation of this map, but the provider "as is". Deschutes County does not accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, in whole or in part, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.
 H:\Custom\County\COOA\Planning\City\1\000020\0602006_025\025_025.mxd

COMPREHENSIVE PLAN MAP

File No. PA-05-08

Exhibit "C"
 to Ordinance 2006-025



July 25, 2006

BOARD OF COUNTY COMMISSIONERS
 OF DESCHUTES COUNTY, OREGON

Dan Luke
 Dan Luke, Chair

Ray Clarno
 Ray Clarno, Vice-Chair

Michael M. Daly
 Michael M. Daly, Commissioner

Bonnie Baker
 ATTEST: Recording Secretary

Dated this 13 day of September, 2006
 Effective Date: December 12, 2006

**RECOMMENDATION OF THE DESCHUTES COUNTY
HEARINGS OFFICER**

FILE NUMBERS: PA-05-8, ZC-05-3

HEARING DATE: Tuesday, March 28, 2006 at 6:30 P.M. in the Barnes and Sawyer rooms of the Deschutes Services Building located at 1300 NW Wall Street in Bend.

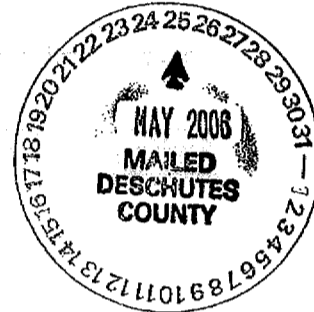
**APPLICANT/
OWNER:** Bend Metro Park and Recreation District
200 NW Pacific Park Lane
Bend, Oregon 97701

ATTORNEY: Sharon Smith
Bryant, Lovlien & Jarvis P.C.
P.O. Box 1151
Bend, Oregon 97709-1151

REQUEST: The applicant is requesting approval of a plan amendment from Agricultural to Rural Residential Exception Area, including a goal exception to Statewide Planning Goal 3, Agricultural Lands, and a zone change from Exclusive Farm Use (EFU) to Rural Residential (RR-10) on 160 acres located east of Bend along Gosney Road.

STAFF CONTACT: Catharine White, Associate Planner

**RECORD CLOSING
DATE:** April 18, 2006--Deadline for written testimony and evidence
April 25, 2006--Deadline for rebuttal comments from applicant
May 2, 2006--Deadline for final written legal argument from applicant in accordance with ORS 197.763(6)(e)



I. APPLICABLE STANDARDS AND CRITERIA:

- A. Oregon Administrative Rules**
Chapter 660, Division 4, Interpretation of Goal 2 Exception Process:
OAR 660-004-005, 0010, 0018, 0020, 0022
- Chapter 660, Division 12, Transportation Planning**
OAR 660-12-060, Plan & Land Use Regulation Amendments
- Chapter 660-15, Statewide Planning Goals and Guidelines**
Goal 1, Citizen Involvement
Goal 2, Land Use Planning – Part II, Exceptions
Goal 3, Agricultural Lands
- B. Title 23, the Deschutes County Comprehensive Plan.**
Chapters 23.24, 23.52, 23.60, 23.68, 23.80, 23.88, 23.96

Exhibit D
Page 1 of 23
Ordinance 2006-025

- C. **Title 18 of the Deschutes County Zoning Ordinance:**
Chapter 18.16, Exclusive Farm Use zones.
Chapter 18.60, RR-10, Rural Residential zone.
Chapter 18.136, Amendments

II. **FINDINGS OF FACT:**

- A. **Location:** The property is identified on the County Assessor's tax map as a part of 18-13-08-800 (E1/2, NE1/4 of Sec. 8) and 18-13-17-2300 (E1/2, NW1/4 of Section 17) [Located west of Gosney Road and north and south of Ward Road.]
- B. **Lot of Record:** The subject tax lots are separate legal lots of record as determined by Lot of Record Verifications LR-03-15 and LR-03-18.
- C. **Zoning and Plan Designation:** The property subject to the zone change is zoned Exclusive Farm Use—Tumalo/Redmond/Bend subzone (EFU-TRB). The Comprehensive Plan designates the property as Agriculture.
- D. **Site Description:** The property subject to the zone change includes 160 acres, is rectangular in shape, and unirrigated. The area is bisected by Ward Road and fronts Gosney Road along its eastern border. Topography of the property varies—it is relatively level in some areas, gently undulating in others, or mildly slopes. Vegetation is juniper woodland, grasses, and brush. The property, while vacant and undeveloped for any particular use, provides open space and limited recreational uses in the form of hiking and equestrian trails.
- E. **Soils:** The applicant submitted a soils map that shows the subject property consists of the following two soil mapping units as classified by the Natural Resources Conservation Service (NRCS):

38B – Deskamp-Gosney Complex 0 to 8% slopes

This soil type is comprised of 50% Deskamp soils and similar inclusions and 35% Gosney soil and similar inclusions and 15% contrasting inclusions. Deskamp soils are somewhat excessively drained with rapid permeability. The available water capacity is about 3 inches. Gosney soils are somewhat excessively drained with rapid permeability and available water capacity of about one inch. Major uses for this soil type are livestock grazing and irrigated cropland. The land capability classes when irrigated is III for the Deskamp soils and IV for the Gosney soils and nonirrigated is VI for the Deskamp soils and VII for the Gosney soils. The majority of the subject property consists of 38B soil type, except for a small pocket of 58C located in the northwest corner of the subject property. This soil type is not considered a high-value soil when irrigated.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15% slopes.

This soil type is comprised of 50% Gosney soil and similar inclusions, 25% rock outcrop, 20% Deskamp soil and similar inclusions, and 5% contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity

is about 3 inches. Major use for this soil type is livestock grazing. The land capability classes when nonirrigated (there is no land capability for irrigated) ranges from VI (Deskamp) to VIII (rock outcrop). A small pocket in the northwest corner is comprised of 58C. This soil type is not considered a high-value soil when irrigated.

- F. Surrounding Land Use:** Surrounding land uses are a mixture of farm and rural residential uses and include both Rural Residential (RR-10) and EFU zones. Specifically, the adjacent lands to the north and northwest of the subject property are zoned RR-10, range from 15 to 30 acres in size, and are either vacant (tax lot 603) or developed with a dwelling. East of the subject property is Gosney Road and east of Gosney Road and north of Ward Road are three large-sized (44 to 72-acres) EFU-zoned parcels owned by the same owner (Baney) and are part of a larger tract of land engaged in irrigated hay or alfalfa farm use and receiving farm tax deferral. One of the three parcels, tax lot 900 is developed with a dwelling and several outbuildings. Those properties east of Gosney Road and south of Ward Road are zoned RR-10 and most are developed with residences. South and west of the subject property, the surrounding properties are zoned EFU. The abutting parcels to the south and southwest are privately owned properties that range in size from 2.15 acres to 20 acres and are developed with a dwelling and several are partially irrigated and receiving farm tax deferral. Abutting land to the west is unirrigated vacant land owned by the applicant.
- G. Proposal:** The applicant is requesting approval of a goal exception to the Statewide Planning Goal 3, Agricultural Lands, a plan amendment from Agriculture to Rural Residential Exception Area, and a zone change from Exclusive Farm Use (EFU) to Rural Residential (RR-10) on the 160-acre property. The applicant has filed the plan amendment and zone change in conjunction with another plan amendment and zone change (file numbers PA-05-9, ZC-05-4) to change the zoning of 160-acres of property also owned by the applicant within the same tract from RR-10 to EFU.

While no use of the property is proposed in conjunction with the zone change, according to the Burden of Proof, the proposal would allow the applicant to divide and sell the land for development pursuant to the RR-10 zone and use the proceeds from that sale to purchase and develop additional park land for the benefit of the community, including the Pine Nursery property.

Background: The Burden of Proof includes the following background statement regarding the proposed plan amendments and zone changes:

"Bend Metropolitan Parks and Recreation Department (the "Park District") is the owner of several connected properties in this area totaling 760 acres known as the Eastgate Property. The Eastgate Property is primarily zoned Exclusive Farm Use Tumalo/Redmond/Bend (EFU-TRB), but there are two portions within the Eastgate Property zoned RR-10 which total about 160 acres.

"The Eastgate Property is located beyond the current boundaries of the Park District. It does provide open space and limited recreational uses in the form of hiking and equestrian trails. However, the lands are not currently in the Park District master plan for development. Initially, the Park District wanted to sell all or a portion of the Eastgate Property in order to fund park development goals. Many of the neighbors objected to the sale and raised concerns about the impact

on their open space and recreational opportunities. The Park District met with the neighbors to develop a plan that would accommodate both the neighborhood goals of preservation of open space and the Park District's goals of funding other park development. As part of that settlement proposal, a Memorandum of Understanding (the "MOU") was developed, a copy of which is included in this application. That MOU contemplated the proposed actions herein.

"Additionally, in order to facilitate the release and transfer of the existing reversionary interests held by the County, an Intergovernmental Agreement (the "IGA") was entered into between the County and the Park District a copy of which is also attached hereto. That IGA does not bind the County's actions with respect to approval or disapproval of this land use application. It does provide for a mechanism for the release and exchange of the reversionary interest to the remaining block of EFU property if this application is successful."

H. Public/Private Agency Comments: The Planning Division mailed notice to several agencies and as of the date of this Staff Report has received the following comments:

Deschutes County Environmental Health: Will require a site evaluation approval for each residential lot proposed.

Deschutes County Address Coordinator: No address has been assigned to this property. If this application is approved the applicants shall contact Property Address Coordinator for a new address.

Arnold Irrigation District: In response to the above request, Arnold Irrigation District does not have any facilities or water rights at this location.¹

Bend Fire Department:

X Water Supply - 2004 Oregon IFC Section 508

An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. See the City of Bend Fire Marshal for approval of firefighting water supply.

X Premises Identification - 2004 Oregon IFC 505.1

Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background and visible at night. Dwellings and Foster Homes that are located off of street frontage shall post a visible approved reflective address sign at the entrance to their driveway. (Signs are available at local Fire Stations)

X Street or Road Signs - 2004 Oregon IFC 505.2

¹ Staff notes the zoning map submitted by the applicant that has an aerial photograph shows an irrigation canal that bisects the lower southeast corner of the property. Evidence and testimony submitted during the public hearing process shows that the irrigation canal is under the control of the Arnold Irrigation District and is located within an irrigation easement.

Streets and roads shall be identified with approved signs. Signs shall be of an approved size and weather resistive construction.

X Key Boxes - 2004 Oregon IFC Section 506

Key Box (Knox Box) for Fire Department access is required to be installed at any gates. An application for the Knox Box is available by calling the Fire Prevention office at (541) 322-6309.

X Additional Comments: No further comments on request for plan amendment and zone change.

The following agencies had no comments or did not respond to the request for comments: Deschutes County Assessor, Deschutes County Road Department, Deschutes County Transportation Planner, PG&E Gas Transmission, DLCD, Watermaster – District 11, Central Electric Coop., Pacific Power and Light, Qwest, Dept. of Fish and Wildlife, Oregon Department of Transportation.

- J. **Public Notice and Comments:** The Planning Division mailed written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 750 feet of the subject property. In addition, notice of the public hearing was published in the "Bend Bulletin" newspaper on February 26, 2006, and the subject property was posted with a notice of proposed land use action sign on February 10, 2006 on Gosney Road. As of the date of the Staff Report, the Planning Division received no written public comments on the subject application.

At the public hearing, the applicant's representatives and two other persons spoke in favor of the applications. Elaine Fulkerson submitted a letter in favor of the proposal. Vern Bishop noted that the proposed zone change would need to address the Arnold Irrigation District's lateral line, and that the proposal may change the traffic patterns in the area. Isa Taylor, writing on behalf of John True, commented that the proposal would shift residential development to the west side of Gosney Road, and that additional driveways along Gosney Road would result in additional traffic hazards. Ms. Taylor suggested that a condition of approval be imposed to limit potential new curb cuts. Ms. Taylor also stated that she did not believe that the applicant had adequately demonstrated that the proposed zone change qualifies for a reasons exception. Elaine Green and Robin Brown submitted a letter in opposition, stating that they had purchased their property on Gosney Road in part because of its proximity to a future park area, and that additional residential development would undermine their property values.

- K. **Review Period:** The applicant submitted the application on December 15, 2005. In a January 24, 2006 letter, the applicant extended the processing time by 7 days to allow the public hearing to be scheduled on March 28, 2006 instead of March 21, 2006. Because the application is for a plan amendment, goal exception and related zone change, the 150-day period for issuance of a final decision under ORS 215.427 does not apply to this application.

The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit dated

February 10, 2006 that indicates that the applicant posted notice of the land use action on February 10, 2006.

At the request of the applicant, the Hearings Officer held the record open for written comments until April 18, 2006. The Hearings Officer has considered all testimony and evidence presented prior to the close of the record on May 2, 2006.

III. **CONCLUSIONS OF LAW:**

GOAL EXCEPTION

1. **Conformance with Oregon Administrative Rule 660-004-0020.**

Goal 2, Part II(c), Exception Requirements

(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.

(2) The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

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

FINDINGS: The applicant is requesting a "reasons" exception to Goal 3. The Burden of Proof sets forth the facts and assumptions used in its argument to justify why the state policy embodied in Goal 3 should not apply to the subject property. The applicant believes the County has acknowledged that RR-10 lands comply with statewide planning goals, "considering the County included RR-10 zoned property in this area in the Comprehensive Plan. After noting that the County determined that having RR-10 lands in this area is justified, Applicant believes that the goals of the county and state would be better served by granting the proposed zone trade." The applicant further adds:

- Consolidating the RR-10 lands would decrease the need for new roads through EFU land and would require no expansion of roads and minimal expansion of utilities.
- Increase in the market value of the RR-10 lands facilitating the purchase and development of park property, which the applicant claims is a benefit for the whole community, and decrease costs and maximize the value for the applicant, while preserving the EFU land in a large block providing better protection and preservation of the land for potential agriculture or other allowable uses.
- Consolidation of the EFU lands will result in several benefits including: benefiting wildlife by reducing the impact of construction and development, preserving the scenic value of the land allowing for an interrupted view of the property, and allowing uninterrupted

public access to the EFU property (rather than requiring access through developments to get to the three separate EFU areas).

Uses in the RR-10 zone include various permitted uses, such as a single-family dwelling, utility facilities, and even agricultural use; and conditional uses, such as public parks, golf courses, planned and cluster developments, landfills, and churches (reference DCC 18.60). The dimensional standards also change and result in an increase in density in the RR-10 zone: in the EFU zone, the minimum lot size for a nonirrigated land division is 80 acres and in the RR-10 zone, the minimum lot size is 10 acres. The proposal does not include a proposed use of the property. However, the Terms of Agreement in the MOU between the applicant and the neighbors identifies the 160-acre property would likely be subdivided in the future into 16 lots (two 8-lot subdivisions). Approval of the zone change would allow the applicant to sell a portion of land for development and use the proceeds from the sale to purchase and develop additional park land.

(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;

FINDINGS: The applicant provided a map that depicts the two 80 acre parcels proposed to be rezoned from RR-10 to EFU and alternative areas in a nine-mile area that includes RR-10 zoned land that is not owned by the District. The nine sections include properties south of Bear Creek Road, north of Rickard Road, east of Ward Road. This nine square mile area includes the following sections: 18-13-06, 18-13-05, 18-13-04, 18-13-07, 18-13-08, 18-13-09, 18-13-18, 18-13-17, and 18-3-16.

This standard is satisfied.

(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?

FINDINGS: In response to this criterion the applicant provided the following reasons justifying the current RR-10 property could not reasonably accommodate the proposed use:

- Developing the RR-10 property described in PA-05-9, ZC-05-4, would have greater adverse impacts (impacts identified include wildlife, scenic values, rural character of the land, as well as increased development costs) to the surrounding EFU land because it would require more roads, utilities and traffic, both due to

one of the parcels' distance from a main road and the separation of the parcels currently zoned RR-10.

- The other RR-10 zoned property within the surrounding area is not owned by the Park District, and would defeat the main purpose of the proposal, which is to allow the sale of the proposed exception area to generate money for the acquisition and development of parks, including the Pine Nursery Property.
- The RR-10 properties in the surrounding area have already been parcelized and developed with rural residences with a few exceptions. The vast majority of the surrounding area parcels are already at or below the minimum lot size in the RR-10 zone and have been developed with rural residences.

The location of the proposed RR-10 lands is more conducive to the division of the property to allow a higher density than the District property proposed to be zoned EFU. Road frontage is available along Gosney Road and Ward Road and minimal expansion of utilities would be required. The existing RR-10 lands described in PA-05-9, ZC-05-4 could reasonably accommodate residential use and possibly a partition or an eight lot subdivision (for each 80-acre part) if a partition or subdivision were pursued in the future. However, economic factors can be considered in this criterion and staff agrees with the applicant, that the proposed RR-10 property would be more attractive to a developer as the proposed 160-acre RR-10 property could be sold as one large tract and is more conducive for development due to its proximity to public roads (Gosney and Ward Roads), services, and utilities. Since the applicant owns the property and the main intent of the zone change is to sell the property and generate funds for the acquisition and development of parks, including the Bend Pine Nursery Property, staff believes the economic factor supports the applicant's argument that the non-resource land (i.e. the applicant's existing RR-10 land) cannot reasonably accommodate the proposed residential use.

The Hearings Officer agrees with the applicant's and staff analysis. In addition, the Hearings Officer finds that the proposed RR-10 zoned property is better suited for rural residential uses than the District property that is the subject of PA 05-9/ZC 05-4 in that less resource land will be used to support the rural residential development.

The Hearings Officer concludes that this criterion is satisfied.

(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?

FINDINGS: The Burden of Proof states there is no resource land that is already irrevocably committed in the surrounding area. Staff agrees with the applicant that the immediate surrounding EFU land is either being farmed or in rural residential use with some hobby farming. The nearest existing rural service center is the Alfalfa Rural Service Center which is about 10 miles northeast in Alfalfa. The applicant neither owns property in the Alfalfa Rural Service Center nor is the rural service area conducive to a large development of rural residential uses as rural service centers typically provide services, such as commercial services (grocery store, post office, etc.) to serve and support the local communities. The applicant did not address whether it owns other EFU zoned property in the surrounding that may qualify as being "irrevocably committed," such as the Big Sky Park located on Hamby and Neff Roads (tax lot

17-12-25-200), which is already developed for park purposes and would unlikely be available to create a large residential development. Further, both the Alfalfa Rural Service Center and the Big Sky Park are outside the applicant's "Surrounding Area" identified by the applicant in the prior criterion.

The Hearings Officer concludes that existing RR-10 property in the area is either developed or would require use of EFU zoned land for access. Therefore, the Hearings Officer concludes that the applicant has adequately demonstrated that the proposed uses cannot be reasonably accommodated on land that is already irrevocably committed to nonresource use.

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

FINDINGS: The applicant provided the following response to the criterion:

One of the reasons that the proposed use cannot be accommodated inside the urban growth boundary is that doing so would not allow for the purchase and development of additional park property. Also, by its definition, rural residential development cannot be accommodated inside an Urban Growth Boundary. The demand for rural housing is partially due to a desire to live outside the urban growth boundary, where one can live on a larger parcel of land farther from the city and closer to natural lands.

Assuming residential use of the proposed RR-10 property, staff believes residential use can be reasonably accommodated inside an urban growth boundary (UGB). The question is, can *rural residential* use be reasonably accommodated inside the urban growth boundary? The applicant states above "by its definition, rural residential development cannot be accommodated inside an Urban Growth Boundary," but did not provide a definition for rural residential development. The County zoning ordinance also does not define rural residential development. OAR 660-004-0040(2) and (5)(a) describes a rural residential zone as being outside of a UGB with a lot or parcel size of at least two acres. However, if rural residential development assumes a 10-acre minimum lot size outside the UGB "where one can live on a larger parcel of land farther from the city and closer to natural lands" then staff agrees with the applicant, that rural residential development cannot be accommodated inside the UGB.

Goal 10 provides that a local government must accommodate a range of housing types and price ranges to address a population's needs. Cities tend to provide for most housing needs, as cities have a greater range of urban services to accommodate residents. However, the statewide planning goals have recognized that rural residential housing, such as dwellings on large lots, serve a need and are a legitimate use when they are appropriately located. The Hearings Officer concludes that while it is possible to accommodate large lot sizes within UGBs, most cities discourage them, as they result in higher costs of services overall. For example, the Bend Zoning Ordinance provides that in the Low Density Residential Zone, the maximum lot size is 40,000 square feet. The minimum density for Standard Density Residential lots is 2.0 units per gross acre.

The applicant has demonstrated that rural residential development at the levels allowed in the RR-10 zone, are not accommodated within the Bend UGB. Therefore, this standard is met.

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

FINDINGS: The applicant does not propose a public facility or service as part of the proposed application. Public facilities and services are currently provided in the nearby area as evidenced by existing rural residential development in the nearby and adjacent areas. Lane Knolls Estates subdivision to the west and other nearby rural residential development, for example, are presently served by power, telephone, and septic, fire and police protection. The applicant provided "willing to serve" letters from the Deschutes County Rural Fire Protection District #2, Central Electric Co-op, and Avion Water Company.

The Hearings Officer concludes that the applicant has demonstrated that the proposed uses can be reasonably accommodated by existing service providers..

(C) This 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.

(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;

FINDINGS: The applicant provided the following response to this criterion:

"The long term environmental, economic, social, and energy consequences have been addressed in the response to Goal 2, Part II. The primary alternative area is the land currently owned by the Applicant zoned EFU. As explained above, one of the primary goals in the proposed zone [change] is to consolidate the EFU properties. By proposing the RR-10 zone trade for other properties owned by the District that are zoned EFU, this goal would not be achieved. The other EFU lands that could be proposed for the land zone trade are not served by public facilities. The negative environmental effects of

proposing a zone trade on any of these EFU lands would include unnecessary expansion of public facilities such as roads and utilities onto EFU land and various negative impacts on the wildlife in the area.

"The other EFU lands owned by the District would cost more to develop than the proposed area. The sale or development of these lands would result in substantially less net revenue for the Applicant to purchase and develop park property.

"The social consequences of developing the other EFU property would include making the land less desirable for many social activities, such as hiking and mountain biking, because it would allow rural residential development in the middle of a block of EFU property.

"The energy consequences would be greater because the RR-10 parcels would be farther away from existing utilities. The extension of utilities and roads would be required."

Staff believes the proposed use, assuming a 16-lot subdivision on 160 acres on the proposed RR-10 zone land where each lot would be 10 acres, would not be significantly more adverse than if the residential development occurred on the two separate 80-acre properties currently zoned RR-10. Staff agrees with the applicant, the proximity of the proposed RR-10 zoned property along Gosney and Ward Roads are better served by existing public roads and electrical services as the proposed RR-10 zoned property would have frontage along Gosney and Ward Roads and electrical services are available as observed on a site visit. Economically and socially, approval of the zone change would allow the applicant to sell the property and use the proceeds to purchase additional park land, including the Pine Nursery project, for the future benefit of the community. In addition, the MOU with the neighbors suggest that social impacts are less on the proposed property than the existing RR-10 property. Staff is unaware of any environmental resources on the property—the property is not in the County's Wildlife Area (WA) Combining zone and the 10-acre lot sizes and one dwelling per legal lot restriction in the RR-10 zone, in staff's opinion, would aid in preserving open space for wildlife passage.

Both the current RR-10 land and proposed RR-10 land are unirrigated (no water rights are allocated to the Park District's property), consist of the same non-high value soil types (38B and 58C), are not currently engaged in farm use and, based on the dense juniper vegetation, appear to never have been farmed. Further, since the applicant concurrently applied for a plan amendment and zone change (PA-5-9 and ZC-05-4) to change the zone of 160 acres of RR-10 land to EFU, staff believes there will be no irreversible removal of EFU land.

During the public hearing process, two parties testified that the existing RR-10 zoned Eastgate parcels are more suitable for rural residential uses. Their arguments are based on three premises: (1) that the proposed areas for rural residential zoning would result in numerous driveway accesses onto Gosney Road, resulting in additional traffic and traffic safety hazards; (2) that the proposed areas for residential development include land that is transversed by an irrigation ditch, and owners who are not engaged in agricultural activities may interfere with the conveyance of irrigation water through the ditch; and (3) the proposed zone change would result in residential development in area where the property owners assumed park development would occur.

While the question is a close one, the Hearings Officer concludes that the subject parcels are better suited for rural residential development than the internal parcels currently zoned for rural residential uses. The existing RR-10 zoned parcels are interior parcels, and while they would not expand RR-10 development to the east as the proposed parcels would, development of the RR-10 parcels would require new roads and service lines, some of which would have to cross EFU zoned lands. If the proposed parcels are redesignated for rural residential uses, roads could be constructed on the RR-10 zoned land that would connect to existing collector roads, thus preserving resource land. Second, the proposed land swap would not result in more traffic impact, as the net effect of the swap is to have the same number of resource acres in the area as there are RR-10 zoned acres. Thus, overall, the greater benefit results from consolidated the resource uses along the interior or the Eastgate property, and developing along the exterior, as is proposed.

No other property was identified as an alternative, and for the above reasons, the Hearings Officer concludes these criteria are satisfied.

(d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. Compatible is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

FINDINGS: Assuming residential use of the proposed RR-10 zone property, staff agrees with the applicant's response below, that the residential use would be compatible with the adjacent mixed farm and rural residential uses and character of the area:

The County has already determined that the surrounding EFU zoning on the Eastgate Property is compatible with RR-10 in its County Comprehensive Plan. The EFU land owned by the District [will be] retained and could be used for open space and limited recreational uses.

The proposed area to be redesignated RR-10 will be surrounded by a mix of EFU and RR-10 zoned property. Similarly, the currently zoned RR-10 property will be surrounding by a mix of EFU and RR-10 zoned property. The current surrounding area combinations would not be significantly different under the proposed zone trade. There would be new areas for RR-10 land and EFU land abutting one another. However, because of the 10 acre minimum in the RR-10 zones there is adequate room for setbacks to provide buffering and reduce any potential adverse impacts of rural residential development and any surrounding agricultural uses.

No detailed evaluation of specific alternative sites is currently necessary because no sites have been specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts.

In addition, staff also believes the MOU between the neighbors and the applicant support the applicant's assertion that the proposed zone change and future residential use of the proposed RR-10 property would be compatible with the existing residential uses.

With respect to the potential adverse impact on the irrigation easement the Hearings Officer concludes that the irrigation ditch is adequately protected by the existing easement. The easement provides that no development occur within 25 feet of the ditch, and that no interference with the conveyance of water be allowed. Further development on the property will be subject to that easement.

With respect to additional driveway entrances onto Gosney Road, the Hearings Officer concludes that development standards for subdivisions will adequately address those concerns. The applicant has submitted evidence that the additional traffic that is likely to be generated by the proposed zoning will not exceed road capacity and, indeed, the net effect of the proposal will result in approximately the same number of trips being generated as would be allowed under the existing zoning pattern.

OAR 660-004-0022

Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

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 which 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.

FINDINGS: Assuming the "plan" referenced in the above criterion refers to the County's Comprehensive Plan, staff believes the following sections of the Comprehensive Plan apply:

Chapter 23.56, Housing:

23.56.020. Goals.

1. *To provide adequate number of housing units at price ranges and rent levels commensurate with the financial capabilities of local households.*
2. *To allow flexibility of housing location, type and density in Deschutes County.*

The applicant did not address the housing chapter of the Comprehensive Plan. Staff believes the applicant's proposed use, assuming a 16-lot subdivision would add to the number of housing units in the County (the plan does not define what an "adequate number of housing units" would be, but does state that "that except for mobile homes serious housing shortages exist locally."). However, there is no evidence in the record demonstrating price ranges of the homes and whether they would be commensurate with the "financial capabilities of local

households." In addition, staff believes the 10-acre sized lots would provide flexibility in housing location, type, and density by providing a rural lifestyle on large lots outside an urban growth boundary.

The applicant addresses Chapter 23.52, Economy, of the Comprehensive Plan as stated below:

Chapter 23.52 of the County Comprehensive Plan addresses the County's economy, and states the county's economic goals include:

1. *"To diversify and improve the economy of the area.*
2. *To enhance and maintain the existing natural resource, commercial and industrial segments of the local economy."*

"In the discussion of these goals, a significant portion of the focus is on tourism, recreation and loss of scenic attractiveness due to development, while also noting the importance of the construction industry to the local economy. Approving this zone trade will enhance recreational opportunities for the community. First, because it will consolidate the remaining EFU properties in a large block as described above. Second, it will enable the District to acquire and develop additional park properties. At the same time it will enable the development of already existing rural residential properties, positively impacting the local economy and satisfying the demand for rural housing.

"This zone trade would ensure that no development would occur in the middle of the Eastgate Property, thereby consolidating the EFU lands and protecting against loss of scenic attractiveness due to development. These sorts of safeguards are necessary to shield the attractions that drive the tourism industry in Central Oregon. Granting the proposal would also stimulate the local economy because the building of new homes on the proposed lots would require construction, and these new homes would satisfy a portion of the market demand for rural housing."

Residential development of the property would contribute to enhancing and maintaining the economy by stimulating construction-related employment, the sale and purchase of real estate, and commercial businesses that support local commercial segments of the economy. Staff believes the potential residential use of the property will have minimal affect on the natural resources and industrial segments of the economy. The proposed zone change does maintain the status quo in this area in terms of land zoned EFU and land zoned RR-10, since it provides no new or additional housing density and results in no net loss of resource land.

OAR 660-004-0018(1) and (4) Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. * * * 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.

(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;

FINDING: The proposed zoning is consistent with the purpose of the exception requested--rural residential development. It permits land that is currently zoned EFU to be rezoned to RR-10, a rural residential designation that is common in the area, and will allow only the types of densities and uses that are typical in a rural area. The applicant does not anticipate that rezoning the subject property to RR-10 will result in a need for additional or special facilities and services for the subject property.

B. Oregon Administrative Rules

1. OAR 660, Division 12, Transportation Planning Rule²

a. OAR 660-012-060, Plan and Land Use Regulation Amendments.

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

² The version of the Transportation Planning Rule cited in the Staff Report has been superseded. The current version is set out above.

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

(2) Amendments to functional plan, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:

(a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;

(b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

FINDING: If approved, the proposed RR-10 land may be developed as a 16-lot residential subdivision, where each lot would consist of 10 acres, with frontage along both Gosney and Ward Roads. According to evidence provided by Steve Jorgensen, Deschutes County Senior Transportation Planner, the trip generation for a 16-lot subdivision would range from 154 to 192 new trips per day. Mr. Jorgensen concluded that there is existing capacity on Gosney and Ward Roads to support the additional traffic load.

The Hearings Officer concludes that the proposed zoning will not "significantly affect" a transportation facility" within the meaning of OAR 660-012-0060(1).

CONCLUSION: The Hearings Officer concludes that the applicant has demonstrated that a reasons exception to Goal 3 is appropriate in this case, where the net result would be the designation of the same number and quality of acres for resource uses, and substitutes the proposed area for an area that is less suitable for rural residential uses.

PLAN AMENDMENT

2. Conformance with the Deschutes County Comprehensive Plan

A Plan Amendment to the Comprehensive Plan is required for the proposed zone change of the EFU property to change the plan from Agriculture to Rural Residential Exception Area (RREA). Staff believes the following Sections and Goals and Policies within those sections apply to the proposed plan amendment:

File: PA-05-8, ZC-05-3 (Bend Metro Park and Recreation District)
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Ordinance 2006-025

1. Chapter 23.24, Rural Development

a. Section 23.24.020, Goals

A. To preserve and enhance the open spaces, rural character, scenic values and natural resources of the County.

B. To guide the location and design of rural development so as to minimize the public costs of facilities and services, to avoid unnecessary expansion of service boundaries and to preserve and enhance the safety and viability of rural land uses.

Findings: The applicant proposes a Plan Amendment from Agriculture to Rural Residential Exception Area (RREA) for the 160-acre subject property. The application is submitted in conjunction with another plan amendment and zone change (PA-05-9 and ZC-05-4) to change 160-acres on the same tract owned by the applicant from RR-10 to EFU. Staff agrees with the applicant's statement below:

"Natural resources, open spaces and scenic values are all protected by this zone trade, resulting in preservation of the rural character of the land. Overall, the land would change very little, and the changes that are made help to protect the rural character of the land. The consolidation of the EFU lands ensures that development would not occur in the middle of the Eastgate Property, which would have adverse impacts on rural character of the land. The development potential of the zone trade is the same, 16 lots. It would just be in a more suitable location."

In addition, staff believes the proposed plan amendment from Agriculture to RREA would not adversely affect open space, rural character, scenic values or natural resources of the County. Approval of the Plan Amendment would potentially allow the property to be developed in a 16-lot subdivision with each lot at 10 acres in size consistent with the RR-10 zone. The 10-acre size of each lot would preserve the open space, rural character, and natural resources of the County. Scenic values will be preserved and possibly enhanced as the proposed RR-10 zone property will be relocated along collector roads and not in the current locations in the north and southwest areas of the property. Because the property is near and adjacent to other residential development in the area that is currently served with power, telephone, on-site sewage disposal and fire and emergency services, and because the subject property would abut and have access from two paved and County-maintained rural collector roads, Gosney Road and Ward Road, staff believes the proposed re-designation from Agriculture to RREA would minimize public costs for facilities and services.

2. Chapter 23.52, Economy

a. Section 23.52.030, Policies

6. The County shall protect agricultural land to assure continued agricultural production and the benefits to tourism.

Findings: Approval of the proposed plan amendment affecting 160 acres of Agriculture land to RREA is being sought in conjunction with another plan amendment affecting 160 acres of the land owned by the applicant on the same tract from RREA to Agriculture. The Hearings Officer agrees with the applicant's statement below that the proposal will protect agricultural land:

"This goal would be furthered because the proposal for rezoning/plan amendment/goal exception would preserve the same amount of EFU land as currently exists. Currently, the proposed zone trade areas are very similar with regard to soil quality and agricultural potential, so there would be no net loss of this type of agricultural land. Additionally, granting the proposal would keep all of the potential development land together, as opposed to the way the RR-10 land currently exists, which is important because the proposal would mean that there would not need to be roads or utilities on the agricultural land as a development in the currently zoned RR-10 land would require. The absence of roads and utilities on the agricultural land is an important factor to consider when analyzing the requirements for proper maintenance of agricultural land."

3. Chapter 23.68, Public Facilities

a. Section 23.68.020, Policies [as applicable.]

- 1. Public facilities and services shall be provided at levels and in areas appropriate for such uses based upon the carrying capacity of the land, air and water, as well as the important distinction that must be made between urban and rural services. In this way public services may guide development while remaining in concert with the public's needs.**
- 3. Future development shall depend on the availability of adequate local services in close proximity to the proposed site. Higher densities may permit the construction of more adequate services than might otherwise be true. Cluster and planned development shall be encouraged.**
- 9. New development shall not be located so as to overload existing or planned facilities, and developers or purchasers should be made aware of potentially inadequate power facilities in rural areas.**

FINDINGS: Public facilities and services are currently provided in the nearby area as evidenced by existing rural residential development in the nearby and adjacent areas. Lane Knolls Estates subdivision to the west and other nearby rural residential development are presently served by power, telephone, and septic, fire and police protection. The property adjoins County-maintained rural collector roads, Gosney Road and Ward Road. The applicant has provided "willing to serve" letters from service providers, and testimony from a county transportation planner supports the applicant's assertion that there are adequate road facilities in place to serve residential development on the subject properties. The evidence supports a conclusion that the proposed map amendment will not result in development that exceeds the carrying capacity of the land, water or air.

5. Chapter 23.88, Agricultural Lands

a. Section 23.88.030, Zoning Policies

- 1. All lands meeting the definition of agricultural lands shall be zoned Exclusive Farm Use, unless an exception to Statewide Goal 3 is obtained so that the zoning may be Multiple Use Agriculture or Rural Residential.**

FINDINGS: Staff believes the issue regarding this plan amendment criterion is whether the proposed EFU property qualifies as agricultural land as that term is defined in the Oregon's Statewide Planning Goals & Guidelines, Goal 3: Agricultural Lands. Goal 3 defines Agricultural Lands as follows:

Agricultural Land – in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, 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. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 and 4.

As previously discussed, the soils map submitted by the applicant shows the subject 160-acre property consisting predominantly of soil mapping unit, 38B – Deskamp-Gosney Complex (a small pocket in the northwest corner is comprised of 58C). The land capability classes for 38B when irrigated is III for the Deskamp soils and IV for the Gosney soils and nonirrigated is VI for the Deskamp soils and VII for the Gosney soils. Since the property is unirrigated, the property consists predominantly of class VI or class VII soils, according to the NRCS soils classification data. Since the applicant did not provide a specific on-site soils analysis of the property to demonstrate that the predominant soil classification is Class VII, the soils on the property are presumed to be agricultural soils, albeit marginal ones. Therefore, an exception to Goal 3 must be approved before the property may be rezoned for rural residential use.

CONCLUSION: Based on the evidence in the record and conclusions of law set forth above, the Hearings Officer concludes that the applicant has demonstrated that the proposed plan map amendment satisfies applicable criteria.

ZONE CHANGE

TITLE 18, DESCHUTES COUNTY ZONING ORDINANCE

A. Chapter 18.136, Amendments

Section 18.136.020, Rezoning standards.

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

A. That the change conforms with the Comprehensive Plan, and the change is consistent with the Plan's introductory statement and goals.

FINDING: As discussed in the findings above, the subject property currently is designated Agriculture on the County's Comprehensive Plan Map. Rezoning the property to RR-10 would be consistent with the findings above, which conclude that the proposal satisfies reasons exception and plan amendment criteria.

In addition, in a prior Hearings Officer's decision involving a plan amendment and goal exception to Goal 3 ("committed" exception) and zone change from Surface Mining to Multiple Use Agricultural (MUA-10, file numbers PA-04-4, ZC-04-2), the Hearings Officer made the following finding relative to the subject criterion:

I further find the plans goals and policies do not constitute mandatory approval criteria for the proposed zone change, but rather are implemented through the zoning ordinance. Therefore, if the proposed zone change is consistent with the applicable provisions of the zoning ordinance it also will be consistent with the plan.

Even if the goals and policies of the Comprehensive Plan provide applicable approval criteria, the Hearings Officer concludes that the applicant has demonstrated that the proposal, including the land swap, is consistent with Comprehensive Plan policies and goals.

Staff has addressed the proposed zone change criteria below.

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

FINDING: The applicant is proposing a zone change from Exclusive Farm Use (EFU-TRB) to Rural Residential (RR-10). The purpose of the RR-10 zone is stated below:

18.60.010. Purposes.

The purposes of the Rural Residential Zone are to provide rural residential living environments; to provide standards for rural land use and development consistent with desired rural character and the capability of the land and natural resources; to manage the extension of public services; to provide for public review of nonresidential uses; and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and standards.

In response to this criterion, the applicant's Burden of Proof states:

"The proposed zone trade will maintain the previously established inventory of RR-10 lands on the Eastgate Property by rezoning the land currently RR-10 to EFU. The subject property is ideally located in the proposed area because it consolidates all of the EFU land into one contiguous region, rather than having it divided into three separate areas as it currently exists. This will help to preserve land resources and will create more physical isolation, which will help to protect the rural character of the area."

Staff agrees with the applicant, that taken in conjunction with the other plan amendment and zone change proposed, PA-05-9, ZC-05-4, the proposed zone change will provide rural residential living environments (assuming a 16-lot subdivision where each lot is 10 acres in size). The standards for the RR-10 are developed within the RR-10 zoning language and provide for rural land use and development consistent with desired rural character and the capability of the land and natural resources; to manage the extension of public services; to provide for public review of nonresidential uses; and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and standards. The use of the property, assuming a 16-lot residential subdivision where each lot would consist of 10 acres, would be consistent with the purpose and intent of the proposed RR-10 zoning.

Based on the above findings, the Hearings Officer concludes that this standard has been satisfied.

C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:

1. The availability and efficiency of providing necessary public services and facilities.

FINDING: The availability of necessary public services and facilities was previously addressed under the Goal Exception criteria. The Hearings Officer concludes that the evidence supports a finding that adequate public facilities are available to serve the subject property. In addition, while the applicant has not provided septic evaluations for each potential lot, the Hearings Officer concludes that the soils are similar to other soils in the area where rural residential development has occurred, and that no dwellings will be permitted unless adequate subsurface sewage facilities can be installed. Therefore, this standard is met.

2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

FINDING: Surrounding land uses were addressed in the Goal Exception criteria and include a mixture of uses, including rural residential, farm, and open space and recreation. Rezoning the property to RR-10 will not adversely impact surrounding property because residential use is consistent the surrounding area. Relocating the RR-10 property along public roads will also provide direct access and public services of the property onto a public road thereby, minimizing impacts to existing farm uses and preserving open space and recreational uses.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDING: Staff believes the subject property's original EFU zoning was not a mistake. The applicant argues the zone change from EFU to RR-10 is justified by a change in circumstances since the property was last zoned as stated below:

"There has been a change in circumstances justifying the proposed zone trade. The District acquired a large portion of the Eastgate Property from the County. When the property was owned by the County it was likely not an issue as to how the property was designated or zoned. Since acquiring the property from the County, the Park District has updated its comprehensive park plan and has acquired the Pine Nursery Property from the federal government. In the current

park plan, the Eastgate Property is not scheduled for park development. This is so, in part, because the properties are located beyond the Park District's boundaries. Also, there is no identified need for a park development in this rural area. The best utilization of the Eastgate Property is through maximization of the value so as to fund other park acquisition and development, including the Pine Nursery Property. In addition, under the proposed plan, 600 acres of the property will be retained for open space and recreational uses by the surrounding area neighbors as well as Park District residents.

Moreover, since the property was originally zoned, there has been substantial residential development in the surrounding area. Much of that development has taken access off of Ward Road, which has now become developed with public services, including water and power, as well as road infrastructure. This development pattern has not occurred in the Current RR-10 Property. Therefore, re-locating the RR-10 zoned property as proposed is more consistent with the Comprehensive Plan policies for rural residential development that it was when originally zoned.

The phrase "a change in circumstances since the property was last zoned" can be broadly interpreted. The above criterion does not define the parameters as to what constitutes "a change in circumstances." The property has been zoned EFU since the County adopted PL-15 in 1979. The change in circumstances identified in the applicant's Burden of Proof includes the Park District's update of their comprehensive park plan to include the Pine Nursery Property and exclude the proposed RR-10 property. While the Burden of Proof does not state when the applicant acquired the property, the acquisition of the Pine Nursery Property and its incorporation of the proposed park development into the Park District's comprehensive park plan appear to have occurred after the subject property was acquired by the Park District. The proposal to rezone the property from EFU to RR-10 would allow the applicant to sell the property and generate funds for the Pine Nursery property, which once improved for park purposes, would serve the public health, safety and welfare by providing a community asset in the form of a public park. In addition, the types of residential development that has occurred in the area has resulted in the RR-10 zoned Eastgate parcels being separated from county roads and, consequently, less suitable for residential development than when they were originally included in the RR-10 exception areas. Based on this information, the Hearings Officer concludes the applicant has demonstrated the proposed zone change is justified by a change of circumstance.

TITLE 22, DEVELOPMENT PROCEDURES ORDINANCE

Section 22.28.030. Decision on plan amendments and zone changes.

- A. Except as set forth herein, the Hearings Officer or the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the Board of County Commissioners.**
- B. In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board,**

adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.

- C. *Plan amendments and zone changes requiring an exception to the goals or concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board under DCC Title 22.*

FINDING: The County's Procedure's Ordinance, Chapter 22, establishes the procedures for decisions on plan amendments and zone changes. The subject proposal involves a plan amendment, goal exception, and zone change, which requires a *de novo* hearing before the Board.

IV. CONCLUSION AND RECOMMENDATION:

The Hearings Officer concludes that the District has demonstrated that all applicable criteria have been satisfied. Accordingly, the Hearings Officer recommends that the Board of County Commissioners take an exception to Goal 3 pursuant to OAR 660-004-0020 and 0022 to allow the proposed re-designation. Further, the Hearings Officer recommends that the Deschutes County Board of County Commissioners APPROVE the District's application to amend the county comprehensive plan map for the subject property from EFU-TRB to RREA and to rezone the property from EFU to RR-10.



Dated this 23rd day of May, 2006.

Mailed this 25th day of May, 2006.



Anne Corcoran Briggs
Hearings Officer

ZONE CHANGE
ORDINANCE 2006-026

REVIEWED  <hr/> LEGAL COUNSEL
REVIEWED  <hr/> CODE REVIEW COMMITTEE

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18, the Deschutes	*	
County Zoning Map, to Change the Zone	*	ORDINANCE NO. 2006-026
Designation on Certain Property from Exclusive	*	
Farm Use to Rural Residential.	*	

WHEREAS, the Bend Metro Park and Recreation District has proposed a zone change to Title 18, Deschutes County Zoning Map, to rezone certain property from Exclusive Farm Use (EFU) to Rural Residential (RR-10) Zone; and

WHEREAS, notice was given and hearing conducted on June 26, 2006, before the Board of County Commissioners ("Board") in accordance with applicable law; and

WHEREAS, the Board after reviewing all the evidence presented at the public hearing, agrees with the findings of the Hearings Officer, and

WHEREAS, on this same date, the Board adopted Ordinance 2006-025 amending Title 23 of the Deschutes County Code by adopting an exception to Goal 3, changing the plan designation of the property from Agricultural to Rural Residential Exception Area; and

WHEREAS, the Deschutes County Board of Commissioners, after review conducted in accordance with applicable law, approved the proposed change to the County Zoning Map; now therefore,

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

Section 1. AMENDMENT. DCC Title 18, Zoning Map, is hereby amended to change the zone designation of the subject property, described by the legal description attached as Exhibit "B" to Ordinance 2006-025, and depicted on Exhibit "A," and by this reference incorporated herein, from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Residential (RR-10) Zone.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached to Ordinance 2006-025 as Exhibit "D," and by this reference incorporated herein.

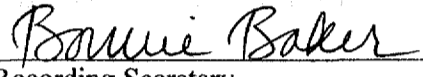
Dated this 13th of Sept., 2006

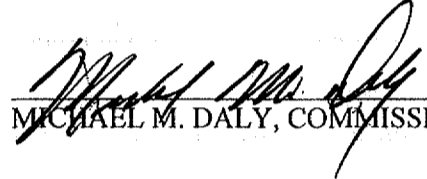
BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, CHAIR


BEV CLARNO, VICE CHAIR

ATTEST:


Recording Secretary


MICHAEL M. DALY, COMMISSIONER

Date of 1st Reading: 28th day of August, 2006.

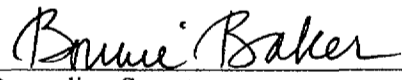
Date of 2nd Reading: 13th day of Sept., 2006.

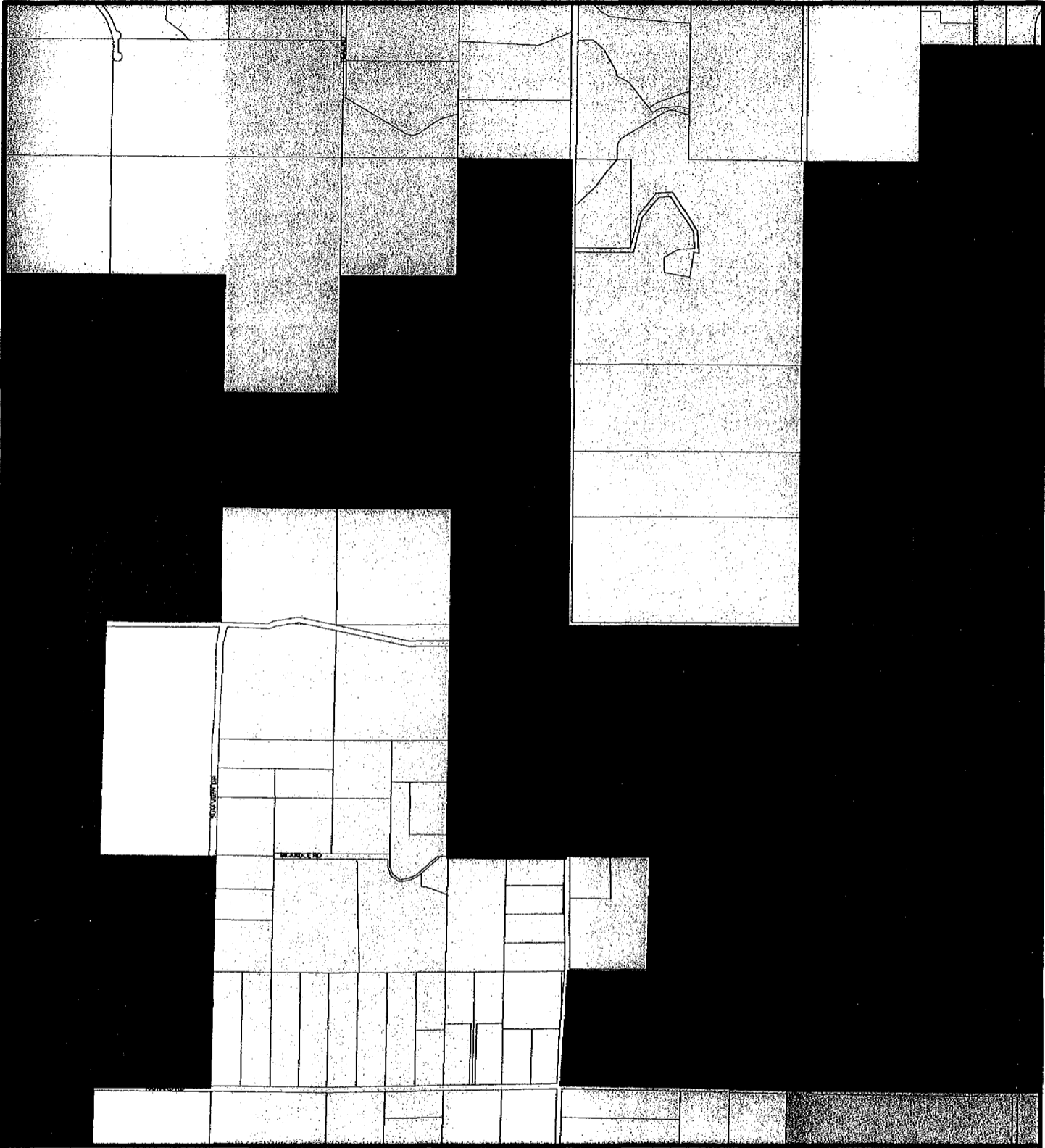
Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bev Clarno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 12th day of Dec., 2006.

ATTEST:


Recording Secretary



Zoning Designations

	EFU - Tumalo/Redmond/Bend Subzone (EFUTRB)
	EFU - Altamira Subzone (EFUAL)
	Rural Residential (RR10)
	Property Subject to Zone Change

ZONING MAP

File No. ZC-05-03

Exhibit "A"
to Ordinance 2006-026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Dennis R. Luke, Chair

Bev Clarno, Vice-Chair

Michael M. Daly, Commissioner

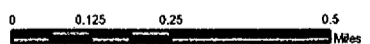
Bonnie Baker
ATTEST: Recording Secretary

Dated this 13 day of September, 2006

Effective Date: December 12, 2006



DISCLAIMER
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July 25, 2006

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