



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/Coastal Fax: (503) 378-6033

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

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

NOTICE OF ADOPTED AMENDMENT



January 30, 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 011-00

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. This adoption was adopted by the City on August 6, 2001, and passed the 21-day appeal period from the date of the adoption.

Appeal Procedures*

DLCD DEADLINE TO APPEAL: Acknowledged under ORS 197.625 and ORS 197.830 (9)

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.625 if no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

Under ORS 197.830 (9) a notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Doug White, DLCD Community Services Specialist
Catharine White, Deschutes County

<paa> ya/

FORM 2

DEPT OF

DLCD NOTICE OF ADOPTION

JAN 23 2006

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

**LAND CONSERVATION
AND DEVELOPMENT**

(See reverse side for submittal requirements)

Jurisdiction: Deschutes County Local File No.: ZC-00-5, TP-00-916, CU-00-112
(If no number, use none)

Date of Adoption: August 6, 2001 Date Mailed: 1-20-06
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 12/22/00

- Comprehensive Plan Text Amendment
 - Comprehensive Plan Map Amendment
 - Land Use Regulation Amendment
 - Zoning Map Amendment
 - New Land Use Regulation
 - Other: _____
- (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write ASee Attached.≡

Zone change from Surface Mining (SM) to Urban Area Reserve (UAR-10).

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write ASame.≡ If you did not give notice for the proposed amendment, write AN/A.≡

Same

Plan Map Changed from : _____ to _____

Zone Map Changed from: SM → UAR10 to _____

Location: Assessor's map 17-11-26-500 Acres Involved: 40 ac.

Specify Density: Previous: one-lot New: 1 Dwelling per 10 acres

Applicable Statewide Planning Goals: _____

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 011-00
(11194)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment FORTY FIVE (45) days prior to the first evidentiary hearing. Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: ODFW, DOGAM,
Water Resources Dept., Oregon Health Division

Local Contact: Catherine White Area Code + Phone Number (541) 383-6719

Address: 117 NW Lafayette City: Bend

Zip Code+4: 97701 Email Address: CathyW@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 ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice 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 Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

Code Review
Committee

REVIEWED
[Signature]
LEGAL COUNSEL

File Copy

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 19, the Bend
Urban Area Zoning Map, Changing the
Zone Designation from SM to UAR-10
On Certain Property in the Bend Urban Area
And Declaring an Emergency. *

ORDINANCE NO. 2001-031

WHEREAS, Shevlin Heights Acquisitions LLC has proposed a Zone Change to Title 19, Bend Urban Area Zoning Map, to rezone certain property from SM, Surface Mining, to UAR-10, Urban Area Reserve; and

WHEREAS, the Deschutes County Hearings Officer, after review conducted in accordance with applicable law, approved the proposed change to the Bend Urban Area Zoning Map; now, therefore,

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

Section 1. AMENDMENT. Pursuant to Chapter 19.08 of Title 19 of the Deschutes County Code, the Bend Urban Area Zoning Map, is hereby amended to change the zone designation for the subject property, described as tax lot 500 in Section 17 of Township 11 South, Range 26 East, Willamette Meridian, and as further described by the legal description attached hereto as Exhibit "A" and the map set forth as Exhibit "B," both of which exhibits are incorporated herein by reference, from Surface Mining (SM) to Urban Area Reserve (UAR-10).

Section 2. FINDINGS. The Board adopts as its findings in support of this decision the Deschutes County Hearings Officer's decision, attached as Exhibit "C" and incorporated herein by this reference, in support of its decision to rezone the subject property.

Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 6th day of August, 2001.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

[Signature]
Tom DeWolf, Chair

[Signature]
Dennis R. Luke, Commissioner

[Signature]
Michael M. Daly, Commissioner

ATTEST:

[Signature]
Bonnie Baker
Recording Secretary

EXHIBIT "A"

LEGAL DESCRIPTION


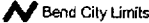
The Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4) of Section Twenty-six (26), Township Seventeen (17) South, Range Eleven (11) East of the Willamette Meridian, Deschutes County, Oregon.

EXHIBIT "B"






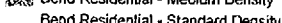
Subject Site: 17-11-26-500
Zone Change from Surface Mine (SM)
to Urban Area Reserve (UAR10)

00600

Exhibit "B" to Ordinance 2001-031

 Taxlots
 Bend City Limits

ZONING

-  Proposed Zone Change
-  Surface Mining
-  Urban Area Reserve - 10 Acre Minimum
-  Bend Residential - High Density
-  Bend Residential - Medium Density
-  Bend Residential - Standard Density



Map Prepared By:
Deschutes County
Community Development
Permissible Information System

DISCLAIMER:
The information on this map was derived from digital databases on Deschutes County's GIS. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the GIS data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, resolution of any errors will be appreciated.

800 0 800

One Inch = 800 Feet

June 26, 2001
N:\CUSTOM\COUNTY\CDD\PLANNING\CATHY\1711280000500\ZONECHANGE.APR

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: ZC-00-5, TP-00-916, CU-00-112

**APPLICANT/
PROPERTY OWNER:** Shevlin Heights Acquisitions LLC
175 N.W. 15th Street
Bend, Oregon 97701

ATTORNEY: Liz Fancher
644 N.W. Broadway Street
Bend, Oregon 97701
Attorney for Applicant

PROPOSAL: The applicant is requesting approval of a zone change from SM to UAR-10, and conditional use and tentative plan approval, to develop the subject property with a four-lot PUD to be called "Anderson Acres."

STAFF REVIEWER: Catharine Tilton, Associate Planner

HEARING DATE: Tuesday, March 6, 2001

RECORD CLOSED: March 27, 2001

I. APPLICABLE STANDARDS & CRITERIA:

A. Title 17 of the Deschutes County Code, the Subdivision/Partition Ordinance

1. Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans

- * Section 17.16.100, Required Findings for Approval
- * Section 17.16.105, Access to Subdivisions

2. Chapter 17.36, Design Standards

- * Section 17.36.020, Streets
- * Section 17.36.040, Existing Streets
- * Section 17.36.050, Continuation of Streets
- * Section 17.36.060, Minimum Right of Way and Roadway Width
- * Section 17.36.080, Future Extension of Streets
- * Section 17.36.120, Street Names
- * Section 17.36.130, Sidewalks
- * Section 17.36.140, Bicycle, Pedestrian and Transit Requirements
- * Section 17.36.160, Easements
- * Section 17.36.180, Frontage
- * Section 17.36.210, Solar Access Performance

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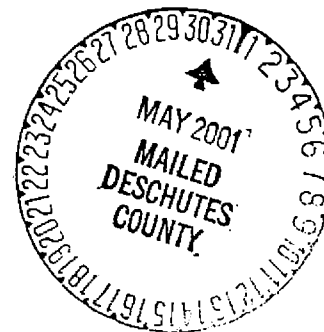


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- * Section 17.36.220, Underground Facilities
- * Section 17.36.250, Lighting
- * Section 17.36.260, Fire Hazards
- * Section 17.36.280, Water and Sewer Lines

3. Chapter 17.44, Park Development

- * Section 17.44.010, Dedication of Land

4. Chapter 17.48, Design and Construction Specifications

- * Section 17.48.090, Intersections
- * Section 17.48.100, Minimum Right of Way Width
- * Section 17.48.130, Road Names
- * Section 17.48.140, Bikeways
- * Section 17.48.160, Road Development Requirements-Standards
- * Section 17.48.180, Private Roads

B. Title 19 of the Deschutes County Code, the Bend Urban Area Zoning Ordinance

1. Chapter 19.04, Title, Purpose, Compliance and Definitions

- * Section 19.04.025, Bend Unincorporated Urban Area
- * Section 19.04.661, Definition – Lot of Record

2. Chapter 19.12, Urban Area Reserve (UAR-10) Zone

- * Section 19.12.010, Purpose
- * Section 19.12.030, Conditional Use
- * Section 19.12.040, Height Regulations
- * Section 19.12.050 Lot Requirements

3. Chapter 19.100, Conditional Use Permits

- * Section 19.100.030, General Conditional Use Criteria

4. Chapter 19.104, Planned Unit Development Approval

- * Section 19.104.010, Purpose
- * Section 19.104.040, Minimum Size for Planned Unit Developments
- * Section 19.104.050, Limitation on Application
- * Section 19.104.060, Plan Required
- * Section 19.104.070, Standards for Approval
- * Section 19.104.080, Standards and Requirements

5. Chapter 19.116, Amendment, Appeals, and Procedures

- * Section 19.116.010, Amendments
- * Section 19.116.020, Standards for Zone Change

D. Title 22 of the Deschutes County Code, the Development Procedures Ordinance

1. Chapter 22.20, Review of Land Use Action Applications

- * Section 22.20.040, Final Action in Land Use Actions

E. Oregon Revised Statutes

1. Chapter 92, Subdivisions and Partitions

- * ORS 92.177, Creation of Lot or Parcel Following Improper Formation

2. Chapter 215, County Planning, Zoning, Housing Codes

- * ORS 215.427, Final Action on Permit or Zone Change Application Required Within 120 or 150 Days; Exceptions; Refund of Application Fees

F. Oregon Administrative Rules, Chapter 660, Division 12, Transportation Planning

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

II. FINDINGS OF FACT:

A. Location: The subject property is located approximately 900 feet southwest of Shevlin Park Road and Mt. Washington Drive and abuts the western Bend city limits. It is further identified as Tax Lot 500 on Deschutes County Assessor's Map 17-11-26.

B. Zoning and Plan Designation: The subject property is zoned Surface Mining (SM) and is designated Urban Area Reserve on the Bend Urban Area General Plan Map.

C. Surrounding Zoning and Land Uses: The subject property is surrounded by seven tax lots. To the east are Tax Lots 502 and 600 on Map 17-11-25. They are located within Bend's city limits and are designated and zoned Urban Standard Density Residential (RS). In December, 2000, the City of Bend (hereafter "city") approved a tentative plan for 94-acre residential subdivision to be called "Shevlin Meadows" on these tax lots (city file 99-316). To the northeast is Tax Lot 500. It also is located within the city limits and is designated and zoned RS. The record indicates an application for tentative subdivision plan approval for the proposed "Westside Meadows" residential subdivision on this tax lot is pending before the city. To the north is Tax Lot 106 on Map 17-11-26. This tax lot is located within the city limits, is designated Urban Reserve, is zoned UAR-10 and is vacant. To the west and south are Tax Lot 400 on Map 17-11-25 and Tax Lot 6000 on Map 17-11. These tax lots are in common ownership, total 330 acres, are located outside the city limits, and are designated Urban Reserve and zoned UAR-10.

D. Site Description: The subject property is approximately 40 acres in size, square in shape and vacant. It abuts the city limits and Urban Growth Boundary (UGB) on its eastern and

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northern property lines. The southeastern portion of the property has been cleared of vegetation, excavated and mined for pumice. The western half of the property slopes upward to the west and has a vegetative cover of pine and juniper trees and native brush.

- E. Procedural History:** The subject application was submitted on October 3, 2000. By letter dated October 31, 2000, staff notified the applicant that the application was incomplete, identified missing information, and allowed the applicant through November 30, 2000, to submit additional information. Most of the missing information was submitted on November 30, 2000, and the county accepted the application as complete on that date. Therefore, the 150-day period for issuance of a final county decision under ORS 215.427 would have expired on April 29, 2001.

A public hearing on the application was held on March 6, 2001. At the hearing, the Hearings Officer received testimony and evidence, left the written evidentiary record open through March 20, 2001, and allowed the applicant through March 27, 2001, to submit final argument pursuant to ORS 197.763. The applicant agreed to toll the running of the 150-day period during the 21 days allowed for submission of post-hearing evidence and argument. Therefore, the 150-day period expired on May 21, 2001.¹

- F. Proposal:** The applicant is requesting a zone change from Surface Mining (SM) to Urban Area Reserve (UAR-10), conditional use approval and subdivision tentative plan approval to develop the subject property with a four-lot residential PUD to be called "Anderson Acres." The four lots, ranging in size from two to nearly four acres and totaling approximately 11 acres, would be clustered together along the western and northern property lines. The remaining approximately 28 acres would be common area and private road. The applicant proposes to incorporate into the open space the part of the subject property that was excavated and mined for pumice. The applicant proposes to provide access to the PUD lots from a private road improved with a 28-foot-wide paved surface, 4-foot striped bike lanes on each side and gravel

¹ The Hearings Officer finds it is unclear whether the 150-day period under ORS 215.427 applies to the subject zone change application. ORS 197.015 defines "land use regulation" to include a zoning ordinance. The applicant requests approval of a zoning map amendment, changing the zoning of the property from SM to UAR-10. Section 19.08.030(B) of Title 19 provides:

The signed copy of said Zoning Map is maintained on file in the office of the County Clerk and hereby made a part of DCC 19. Any revisions or replacement of said map, when duly entered, signed and filed with the County Recorder as authorized by DCC 19.08.030(C), are a part of this title. (Emphasis added.)

Thus, the zoning map is part of the zoning ordinance -- i.e., part of the county's land use regulations -- and consequently an amendment to the zoning map constitutes an amendment to a land use regulation. The record indicates notice of the proposed zone change was sent to the Department of Land Conservation and Development (DLCD). As such, the exception to the 150-day rule in ORS 215.427(6) for amendments to "an acknowledged . . . land use regulation . . . that was forwarded to" DLCD apparently applies. However, Section 22.20.040(D) of the county's procedures ordinance does not exempt zoning ordinance amendments from the 150-day period. Therefore, it could be argued the county's 150-day provision is stricter than state law because it requires a final zone change decision within 150 days, and consequently the county's provision controls over the statute. The Hearings Officer finds I need not resolve this issue in this decision.

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1. By partitioning land as defined in ORS 92.010(8);
2. By a subdivision plat, as defined in ORS 92.010(9), filed with the County Surveyor and recorded with the Deschutes County Clerk;
3. By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots in accordance with a recorded subdivision or town plat;
4. By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or
5. By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder parcel.

FINDINGS: The record indicates that in 1992 the county determined that the subject property – Tax Lot 500 on Map 17-11-26 – was not a separate legal lot of record, but rather was part of a larger legal lot in common ownership that included Tax Lots 500 and 502 on Map 17-11-25 (LR-92-34). The decision also determined that Tax Lot 600 on Map 17-11-25 was a separate legal lot of record. In July, 1999, the city issued a lot-of-record determination for Tax Lots 502 and 600 on Map 17-12-25 that reached the same conclusion as the county's 1992 lot-of-record decision.

As discussed above, in December, 2000, the city issued an administrative decision approving a tentative plan for the Shevlin Meadows Subdivision. Copies of the decision and the tentative plan are included in this record. That decision's Findings of Fact describe the property subject to the subdivision approval as "portions of Tax Lots 500 and 600, Assessor's Map 17-11-25" but do not list the subject property. The tentative subdivision plan also does not show the subject property. Thus, the approved tentative subdivision plan includes two of the three tax lots that the county and city found constitute one legal lot of which the subject property is a part.

Condition 22 of the city's decision approving the Shevlin Meadows tentative plan states:

"Future development areas not assigned lot numbers on the tentative plan shall be platted as separate 'tracts' on the final plat(s). This requirement pertains to all portions of the Applicant's Lot of Record (as determined by letter dated 7/29/99 and adjusted by Lot Line adjustment file 99-244), which the City now recognizes as Tax Lots 502 and 600 on Assessor's Map 17-11-25 and Tax Lot 500 on Assessor's Map 17-11-26. (Emphasis added.)

Under the 1998 Joint Management Agreement between the city and the county governing management of the Bend UGB and surrounding "Urban Reserve Lands," the county retained jurisdiction over the subject property since it is located outside the Bend UGB. Therefore, to the extent the city's decision approving the Shevlin Meadows Subdivision purported to affect the subject property it was not effective.

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The questions presented by the applicant's proposal are: 1) whether the subject property constitutes a separate legal lot of record; and 2) if not, whether the proposed zone change and PUD can be approved. The Hearings Officer finds the subject property is not now a separate legal lot of record. It was not created by a final partition or subdivision approval and is not part of a recorded town plat. The applicant's final argument states, and I concur, that the subject property "was improperly formed when the applicant purchased [it] from the Anderson family" following the effective date of the county's subdivision/partition ordinance. The applicant argues the subject property nevertheless is, or can in this proceeding be declared, a legal lot of record under one of two theories. First, the applicant asserts the subject property is a legal lot because it constitutes a "remainder parcel" since all surrounding parcels legally have been subdivided, partitioned or declared legal lots. I disagree. The record indicates the subject property and Tax Lots 502 and 600 still constitute a *single legal lot* unless and until the city approves a *final plat* for the Shevlin Meadows Subdivision on Tax Lots 502 and 600. The applicant acknowledged as much when it stated at page 5 of its post-hearing memorandum: "The effect of filing the final plat will be to sever the subject property from the part of the lot that is located in the City of Bend."

The applicant's second theory asserts the subject "Anderson Acres" tentative plan application constitutes an application under ORS 92.177 to create a legal lot. The statute provides:

Where application is made to the governing body of a city or county for approval of the creation of lots or parcels which were improperly formed without the approval of the governing body, the governing body of a city or county or its designate shall consider and may approve an application for the creation of lots or parcels notwithstanding that less than all of the owners of the existing legal lot or parcel have applied for approval.

The applicant's final argument includes a statement that the owner of Tax Lots 502 and 600, the rest of the legal lot of record, consents to "the rezoning application and all other pending land use applications now under consideration by the County." The Hearings Officer finds the pending tentative plan application by its terms does not constitute an application to make the subject property a separate legal lot. The application form submitted by the applicant states it is for the purpose of creating a four-lot subdivision on Tax Lot 500 on Map 17-11-26.

In the alternative, the applicant argues legal lot-of-record status is not a prerequisite to approval of a land use action under Title 19. The Hearings Officer finds this argument has merit. Title 17 does not include a legal lot definition. Title 19 defines "lot" as a legal lot.² However, I have found no provision in either Title 17 or Title 19 that expressly limits a zone change, subdivision or PUD approval to legal lots. I am aware that in practice the county generally does not accept land use applications for lots of questionable legal status without first requiring the applicant to apply for and receive a legal lot verification. However, the record indicates the county accepted the subject zone change, subdivision and PUD applications notwithstanding its previous decision that the subject property is *not* a separate legal lot.

The circumstances presented by this application are unusual because of the unique status of the

² Section 19.04.611 defines "lot" as:

... a parcel of land used or capable of being used under the regulations of DCC 19, lawfully created as such in accordance with the subdivision and partition laws or ordinances in effect at the time of its creation. (Emphasis added.)

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7/2/2001
10:10

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subject property. The Hearings Officer agrees with the applicant that actions taken by the county and city -- beginning with establishment of the Bend UGB and zoning district boundaries in the middle of the subject property, and most recently with the city's approval of a tentative subdivision plan for Tax Lots 502 and 600 -- should not prevent the applicant from developing the subject property. I also find it likely that the county would approve the establishment of the subject property as a separate legal lot if the applicant were to submit an application under ORS 92.177. Finally, I find the subject property will be a legal lot once the city grants final plat approval for the Shevlin Meadows Subdivision. For these reasons, I find that under the unique circumstances presented here, the subject property should be considered a legal lot of record for purposes of the subject zone change, conditional use and tentative subdivision plan applications.

ZONE CHANGE

2. Chapter 19.116, Amendments, Appeals and Procedures

a. Section 19.116.020, Standards for Zone Change

The burden of proof is upon the applicant. The applicant shall in all cases establish:

- A. That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the plan's intent to promote an orderly pattern and sequence of growth.

FINDINGS: The Hearings Officer finds this approval criterion includes three separate requirements: 1) conformance with the comprehensive plan map; 2) conformance with the comprehensive plan text; and 3) consistency with the plan's intent to promote "an orderly pattern and sequence of growth." Each of these requirements is discussed below.

1. Conformance With the Comprehensive Plan Map.

The comprehensive plan consists of the plan text and map. The subject property is designated Urban Reserve on the Bend Area General Plan Map and therefore the applicant's proposed zone change from SM to UAR-10 would be consistent with the plan map.

2. Conformance With the Comprehensive Plan Text.

The Bend Area General Plan includes the following language at page P-4:

At the end of each chapter [of the plan] are policies that address issues discussed in the chapter. The policies in the General Plan are statements of public policy, and are used to evaluate any proposed changes to the General Plan. Often these statements are expressed in mandatory fashion using the word "shall." These statements of policy shall be interpreted to recognize that the actual implementation of the policies will be accomplished by land use regulations such as the city's zoning ordinance, subdivision ordinance and the like. The realization of these policies is subject to the practical constraints of the city such as availability of funds and compliance of [sic] all applicable federal and state laws, rules and regulations, and constitutional

limitations. (Emphasis added.)

In previous city zone change decisions (e.g., *Clabaugh*, City file 99-118) the Hearings Officer has held the underscored language signifies comprehensive plan policies are *not* approval criteria for quasi-judicial land use applications. Rather, they provide guidance in interpreting and applying the provisions of the zoning ordinance. I adhere to and apply this holding in this county application because my review is governed by Title 19, the Bend Urban Area Zoning Ordinance, which is the same ordinance applicable in the city. Therefore, I find the applicant is not required to demonstrate the proposed zone change complies with individual plan policies.

3. Consistency with the Plan's Intent to Promote An Orderly Pattern and Sequence of Growth.

In previous city zone change decisions the Hearings Officer has held the phrase "orderly pattern and sequence of growth" in this approval criterion contemplates consideration of both the location and timing of development. I have held an orderly *pattern* of growth is one that promotes compatible physical relationships between zoning districts and uses, while an orderly *sequence* of growth promotes development concurrent with the provision of adequate services.³

a. Orderly Pattern of Growth. The proposed zone change would allow the subject property to be developed with the applicant's proposed 4-lot PUD, a use permitted in the UAR-10 Zone. As discussed above, the area surrounding the subject property currently is undeveloped. However, three adjacent tax lots to the east and north within the city limits have received approval for urban-density residential subdivisions. The applicant has proposed a PUD in order to create lots smaller than the 10-acre minimum lot size in the UAR-10 Zone, ranging from approximately 2 to 4 acres. These lots would be more compatible with nearby urban-density residential development than 10-acre lots. The applicant has proposed a large area of open space that could be redeveloped in the future at urban density if and when the subject property is annexed to the Bend UGB. The Hearings Officer finds the subject property's Urban Reserve designation clearly indicates the city's and county's intention that the subject property be developed in such a manner that it can be redeveloped at urban density when needed for future growth. For these reasons, I find the applicant's proposed zone change from SM to UAR-10 will promote compatible physical relationships between zoning districts and uses and therefore will be consistent with the plan's intent to promote an orderly *pattern* of growth.⁴

b. Orderly Sequence of Growth. As discussed above, the Hearings Officer has held an orderly *sequence* of growth is one that promotes development concurrent with the provision of adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities. The subject property is located outside the city limits and any fire

³ E.g., *Steele* (city file 98-309), *Eastridge I* (city file 95-289), *Eastridge II* (city file 97-184), *Clabaugh*, *Ertle* (city file 99-231) and *West Bend* (city file 99-149).

⁴ In its comments on the applicant's proposal, the city recommended that the applicant be required to submit a redevelopment plan for the subject property that would "illustrate that the property can be redeveloped upon inclusion in the UGB at some point in the future." The city did not cite, nor has the Hearings Officer found, any authority in Title 17 or Title 19 that would authorize such a requirement.

protection district boundaries. The applicant has indicated its intention to obtain fire protection either through a contract with the Bend Fire Department or through annexation to the Bend Rural Fire Protection District #2. The applicant proposes to serve the PUD lots with individual wells or a shared well and individual on-site septic systems.

The Bend-La Pine School District submitted comments on the applicant's proposal. In addition to the standard comments the district typically submits addressing school capacity and district policies, the district requested that the Hearings Officer impose several conditions of approval on the applicant's proposal. These include: (1) providing sidewalks on at least one side of the PUD street in order to accommodate student pedestrians; (2) making the PUD street a public road; (3) if the PUD street is private, granting the district a perpetual easement allowing the district's vehicles to travel on the private street, and giving the district a waiver holding the district harmless for any road damage caused by its vehicles; and (4) preserving land for school purposes in conjunction with the School District's facilities plan. The applicant has proposed to provide a two-foot gravel shoulder on each side of the 28-foot-wide private PUD street for pedestrians. As discussed in the findings below, I have found this proposal satisfies the applicable criteria. I find there is no basis to require that the PUD street be public inasmuch as private streets are permitted in PUD's.

The applicant has objected to any requirement of an access easement or damage waiver for the school district, stating it is very unlikely district buses would pick up students within the PUD. The Hearings Officer concurs with the applicant and finds no need for any easement or damage waiver. The applicant also objects to any requirement that land in the PUD be set aside for a future school, citing the presence of two new schools on property to the east and the lack of a nexus between the proposed 4-lot PUD and impacts on the district's facilities. Again, I concur with the applicant and find no legal basis to impose such a condition of approval.

The remaining infrastructure issue is the adequacy of affected transportation facilities. The applicant proposes access to the PUD lots through a private street that would connect to "C" Drive, a public street within the adjacent Shevlin Meadows Subdivision and thereafter to Shevlin Park Road, a designated arterial. As discussed elsewhere in this decision, the Hearings Officer has found the applicant will be required as a condition of approval and prior to the filing of the final subdivision plat for approval to demonstrate it has legal access across the Shevlin Meadows Subdivision property to Shevlin Park Road. I am aware the Institute of Transportation Engineers Trip Generation Manual (ITE Manual) predicts each single-family dwelling will generate approximately 10 average daily vehicle trips (ADT's) of which approximately 10 percent would be p.m. peak hour trips (between 4:00 and 6:00 p.m. weekdays). Therefore, the proposed PUD would generate 40 ADT's and 4 p.m. peak hour trips. I find this level of traffic will not exceed the capacity of any affected transportation facilities.

For the foregoing reasons, the Hearings Officer finds the applicant has met its burden of demonstrating the proposed zone change satisfies this approval criterion.

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

have been reclaimed in a way that enhances the property's value. Therefore, I find the applicant's proposed zone change satisfies this criterion in spite of the loss of the pumice resource.

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

FINDINGS: Section 19.12.010 states the purpose of the UAR-10 Zone is:

To serve as a holding category and to provide opportunity for tax differentials as urban growth takes place elsewhere in the planning area, and to be preserved as long as possible as useful open space until needed for orderly growth.

The Hearings Officer finds the proposed zone change from SM to UAR-10 is consistent with the purpose of the UAR-10 Zone because it will allow the subject property to be developed with a 4-lot PUD with relatively small, clustered lots and a large area of open space. The proposal will allow the majority of the property to be held in reserve for future urban development if and when the property is annexed into the Bend UGB.

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

FINDINGS: As discussed above, the applicant proposes to serve the four PUD lots with individual wells or a shared well and on-site septic systems. Therefore, no public sewer or water services are contemplated. The Hearings Officer finds this proposal is consistent with the county's policy for provision of rural services for Urban Reserve lots until such time as the property is included within the urban growth boundary. I further find the proposed PUD lots will be large enough to accommodate both septic systems and private wells. The record includes well logs for several wells in the area and an analysis of this information by the applicant's engineer (included in the record as Exhibits "C" and "B," respectively, to the applicant's posting hearing evidence) that indicate domestic water will be available to the PUD lots at a depth less than 500 feet, therefore eliminating the need for a community water system.

Because the property lies outside the city limits, police protection will be provided by the Deschutes County Sheriff. The record indicates the subject property also lies outside the boundaries of any fire protection district. The applicant proposes to provide fire protection either through a contract with the Bend Fire Department or through annexation to the Bend Rural Fire Protection District #2.

Finally, the applicant proposes to provide access to the PUD lots from Shevlin Park Road, a designated arterial, by a private PUD street that will connect to "C" Drive, a public street within the adjacent Shevlin Meadows Subdivision. As discussed in detail in the findings below, "C"

FINDINGS: As discussed above, the surrounding tax lots currently are undeveloped, although three adjacent tax lots to the north and east. have received city approval for development of urban-density residential subdivisions. The Hearings Officer finds the applicant's proposed 4-lot residential PUD will not interfere with these subdivisions. The record indicates the tax lots to the north, south and west are designated Urban Reserve and zoned UAR-10. Therefore, they are in the same category of developability as the subject property would be with the proposed zone change. That is, they are being held in reserve for future urban-density development and theoretically could be subdivided or partitioned into 10-acre lots or developed with a PUD similar to the applicant's proposal. I therefore find the proposed zone change will not interfere with the potential development or value of these parcels.

The remaining question under this approval criterion is the effect of the applicant's proposal on the subject property's potential for further surface mining. The record indicates the subject property was mined for pumice off and on for 55 years. The record also indicates the subject property is included in the county's comprehensive plan Goal 5 inventory of mineral and aggregate resources as SM Site 301. Exhibit "A" to Ordinance 90-025, the ordinance by which the county adopted its surface mining inventory, lists Site 301 as a surface mining site within the Bend UGB but does not identify the quantity or quality of the resource.⁵ The ordinance states sites inside the UGB were not intended to be a part of the county's surface mining site inventory. However, the quantities and qualities of material, if any, identified at those sites were to be included in the county's overall calculations of quantities of available mineral resources. Nevertheless, the Hearings Officer concurs with the applicant that because the county's inventory of mineral and aggregate sites did not include quantity and quality for Site 301, it was not considered a "significant" site and therefore it is not necessary for the county to undertake another *Goal 5 analysis* to determine if a "significant" resource remains on the property.

The applicant's application and burden of proof state it does not intend to conduct further mining on the subject property because there is not a market for its pumice material. The record also indicates the largest pumice mining company in the area is not interested in mining the property. The applicant proposes eventually to reclaim the mined areas by moving pumice from elevated areas into the pits. Extraction and processing of mineral and aggregate resources is a conditional use in the UAR-10 Zone under ORS 19.12.030(E). However, it is difficult to imagine how further mining of pumice on the subject property could be found to satisfy the conditional use compatibility standards in light of nearby existing and approved residential subdivisions within the city limits. For that reason, the Hearings Officer finds it highly unlikely this property ever will be mined again. Consequently, I find the proposed zone change will remove from the property the potential value of the pumice resource. Nevertheless, I find this is not a basis to deny the proposed zone change. I am aware that throughout the western portion of the Bend UGB are former pumice mines that like the one on the subject property now abut or are surrounded by urban development. The nearby Broken Top development successfully has incorporated former pumice mines into its golf course and open space areas. Other former mines

⁵ The Hearings Officer understands Site 301 was included in the list of UGB sites because it is located in what was considered the city's "outer" urban growth boundary – essentially what are now called "Urban Reserve Lands."

Drive does not extend to the subject property and therefore the applicant will be required as a condition of approval to demonstrate legal access across the adjacent property to Shevlin Park Road. The record indicates the applicant as a member of the "Westside Consortium" has entered into a development agreement whereby it will fund major city street improvements designed to accommodate traffic generated by the proposed PUD, the adjacent Shevlin Meadows Subdivision and a number of other west side Bend developments. The Hearings Officer finds the applicant's proposed access will be adequate with a condition of approval requiring the applicant to demonstrate legal access to Shevlin Park Road across the adjacent property.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal can satisfy this approval criterion with the imposition of conditions of approval.

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

FINDINGS:

1. **Mistake.** As discussed above, the subject property was included in the county's Goal 5 inventory of significant mineral and aggregate sites even though it was located within the city's "outer" UGB. In addition, the inventory does not indicate the quantity or quality of the resource. For this reason, the Hearings Officer assumes the county zoned the property for surface mining because of its historic use. Therefore, I find there is not sufficient evidence in the record to show that a mistake was made in the property's original SM zoning.

2. **Change of Circumstances.** The applicant asserts the proposed zone change is justified by a change of circumstances consisting of the depletion all valuable pumice on the property. In support of this assertion, the applicant submitted evidence that Richard "Dugan" Pearsall, president of Cascade Pumice, the largest pumice mining company in the area, concluded as follows:

"... [T]here is a small pocket of marketable pumice in the southwest area of the property -- about 20,000 yards. This pumice is known as "Bend Pumice." The rest of the pumice on the property (the open face on the north side of the property) is not Bend Pumice and is not marketable. In this part of Bend, Bend Pumice is found in fingers rather than one solid area. This explains the small quantity of resource on the subject property.

... [T]he cost of mining the subject property and obtaining all required approvals is too high to merit mining the 20,000 yards of Bend pumice. . . [I]t will cost more to do than it is worth. . . [B]ased on current mining practices when County code required setbacks to adjoining properties are provided, only a small part of the pumice would be able to be removed from the property. . . . [T]he applicant would be required to pay to remove overburden and return to top of the property if the property were mined at a commercial scale. . . . County and DOGAMI approval would be needed if the property were mined in the intensive manner used for commercial operations."

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The Hearings Officer understands Mr. Pearsall to believe that it is no longer economically feasible to mine the small amount of marketable pumice remaining on the subject property, considering its location so close to the Bend urban area. Based on this evidence, I find the applicant has met its burden of demonstrating a change of circumstance justifying the proposed zone change from SM to UAR-10.

B. Oregon Administrative Rules

1. OAR 660, Division 12, Transportation Planning Rule

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

- (1) 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 [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;**
 - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.**
- (2) A plan or land use regulation amendment significantly affects a transportation facility if it:**
 - (a) Changes the functional classification of an existing or planned transportation facility;**
 - (b) Changes standards implementing a functional classification system;**
 - (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or**
 - (d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.**

FINDINGS: The Staff Report states this rule is not applicable because the applicant's proposed

zone change is not an amendment to an acknowledged plan or land use regulation. The Hearings Officer disagrees. In my previous city decisions in *Ertle* and *Clabaugh*, I held the Transportation Planning Rule (TPR) is applicable to zone change applications because the zoning map is a part of the zoning ordinance and therefore is a "land use regulation." I adhere to that holding here. The question presented is whether the applicant's proposal will "significantly affect" a transportation facility. With respect to paragraphs (2)(a) and (b), I find the proposal will not change the functional classification of or standards applicable to the affected streets – Shevlin Park Road, a designated minor arterial, and the public street within the Shevlin Meadows Subdivision, presumably to be classified as a local street. Both streets will function as classified with the addition of the 40 ADT's expected to be generated by the proposed 4-lot PUD. The record does not indicate whether the county's TSP identifies levels of service. However, I find the addition of only 40 ADT's to either the local subdivision street or Shevlin Park Road will be so minimal as not to affect the streets' levels of service.

Paragraph (2)(c) provides that an amendment to a land use regulation "significantly affects" a transportation facility if it would allow development that would "result in" levels of traffic inconsistent with a facility's functional classification. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the addition of the minimal traffic that would be generated by the applicant's proposal will not exceed the capacity of these facilities. Therefore, I find the applicant's proposed zone change will not "significantly affect" a transportation facility.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal can with conditions of approval satisfy all applicable zone change criteria.

PLANNED UNIT DEVELOPMENT

3. Chapter 19.12, Urban Reserve Zone (UAR-10)

a. Section 19.12.030, Conditional Uses

The following conditional uses may be permitted subject to a conditional use permit and the provisions of DCC 19.76 and 19.100.

...

N. Planned unit development subject to Chapter 19.104.

FINDINGS: The applicant is seeking conditional use approval to establish a 4-lot residential PUD on the subject property, a use permitted conditionally in the UAR-10 Zone. Compliance with the provisions of Chapter 19.100 is addressed in the findings below.

b. Section 19.12.040, Height Regulations.

No building or structure shall be hereafter erected, enlarged or structurally altered to exceed 30 feet in height.

FINDINGS: The applicant is not proposing buildings or structures exceeding 30 feet in height.

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c. **Section 19.12.050, Lot Requirements**

The following requirements shall be observed:

A. **Lot Area. Each lot shall have a minimum area of ten acres.**

FINDINGS: The applicant is requesting approval of a PUD in part to allow the creation of lots smaller than the 10-acre minimum lot size in the UAR-10 Zone by clustering them and providing a large area of open space. The proposed lots range in size from 2.17-acres to 3.8 acres with open space consisting of 27.93 acres. Section 19.04.806 defines Planned Unit Development as:

... the development of an area of land as a single entity for a number of units or a number of uses, according to a plan which does not necessarily correspond in lot size, bulk or type of dwelling, density, lot coverage or required open space to the standard regulations otherwise required by DCC Title 19. (Emphasis added.)

In addition, Section 19.104.060 provides in pertinent part:

... Such other pertinent information shall be included [in the PUD application] as may be considered necessary by the Hearings Body or Planning Director to make a determination that the contemplated arrangement or use makes it necessary and desirable to apply regulations and requirements differing from those ordinarily applicable under DCC 19 and the subdivision ordinance. (Emphasis added.)

Based upon these provisions, the Hearings Officer finds the applicant's proposal need not comply with the minimum lot size in the UAR-10 Zone.

B. **Lot Width. Each lot shall have a minimum average width of 300 feet with a minimum street frontage of 150 feet.**

FINDINGS: The submitted tentative plan shows the lot widths vary from about 75 feet (near the cul-de-sac of Lot 3) to about 1062 feet (along the southern property line of the common open space lot. Lots 2 and 3 and the common open space lots all have a minimum street frontage exceeding 150 feet. Lot 1 has a street frontage of approximately 139 feet and Lot 4 has a street frontage of approximately 65 feet. As discussed in the findings immediately above, PUD's are not required to meet the minimum width and street frontage requirements in the UAR-10 Zone.

C. **Front Yard. The front yard shall be a minimum of 50 feet from the existing street right-of-way line or the ultimate street right of way as adopted on the Comprehensive Plan or Official Map, except that any lot of record less than one acre in size lawfully created prior to (effect date of this title) shall have a minimum front yard of 30 feet.**

FINDINGS: The applicant is requesting approval of a minimum front yard setback of 20 feet, arguing that since the PUD lots will have access from a private road there will be no "street right-of-way line" or "ultimate street right-of-way" as contemplated in this standard. The applicant also notes its proposal is for the same front yard setback as is applicable to dwellings in the adjacent RS Zone in the city limits.

The Staff Report states the PUD provisions in Title 19 do not allow exceptions to the front yard setback and therefore the applicant should be required to apply for a variance under Section 19.108. As discussed above, the PUD definition in Section 19.04.806 specifically refers to variations to "lot size, bulk or type of dwelling, density, lot coverage or required open space." The applicant responds that no variance is required for an exception to the front yard setback because of the language in Section 19.104.060 quoted in the above findings. The applicant argues reducing the front yard setback meets the "necessary and desirable" PUD standard because the proposed setback will be more compatible with future urban-density development of the subject property after it is annexed to the Bend UGB. The applicant also argues a small front yard setback will allow lot owners to place their homes in a location that does not utilize a large part of the lot, preserving the rest of the lot for future redevelopment.

The Hearings Officer concurs with the applicant. I find that reading the PUD purpose statement together with Section 19.104.060 compels the conclusion that the applicant for PUD approval need not apply for a variance to each development standard, otherwise applicable to the proposed development, that the applicant proposes to modify as part of the PUD plan. Therefore, I find the applicant's proposal need not satisfy this setback standard.

D. Side Yard. There shall be a minimum side yard of 10 feet.

FINDINGS: The applicant's burden of proof and application state no dwellings will be constructed within the minimum 10-foot side yard.

E. Rear Yard. There shall be a minimum rear yard of 50 feet.

FINDINGS: The applicant also is proposing a reduced rear yard setback, from 50 to 20 feet. The provisions of Title 19 do not specifically exempt PUD's from the minimum setbacks in the UAR-10 Zone. However, as discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant need not obtain a variance to the yard standards in the UAR-10 Zone if it can demonstrate a smaller setback is "necessary and desirable" under the PUD standards in Chapter 19.104. I concur with the applicant that a reduced rear yard standard is appropriate to allow development of the proposed PUD lots utilizing less land, and making possible potential redevelopment in the future when the subject property is annexed into the Bend UGB.

F. Solar Setback. The solar setback shall be as prescribed in Section 19.88.210.

FINDINGS: The Staff Report states, and the Hearings Officer concurs, that solar setbacks will be verified at the time of building permit applications for individual lots. However, I find the proposed PUD lots will be of sufficient size to allow any dwellings constructed thereon to

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comply with the solar setback requirements of Title 19.

4. Chapter 19.100, Conditional Use Permits

a. Section 19.100.030, General Conditional Use Criteria

A conditional use permit may be granted only upon findings by the Planning Director or Hearings Body that the proposal meets all of the criteria in this section, as well as all other applicable criteria contained in this title. The general criteria are:

- A. That the location, size, design and operating characteristics of the proposed use are such that it will have minimal adverse impact on the property value, livability and permissible development of the surrounding area. Consideration shall be given to compatibility in terms of scale, coverage and density with the alteration of traffic patterns and the capacity of surrounding streets and to any other relevant impact of the proposed use.**

FINDINGS: The subject property abuts the city limits and UGB on the north and east. The city has granted tentative plan approval for a 94-lot residential subdivision on two tax lots to the east, and a tentative subdivision plan for another tax lot to the north is pending city approval. The remainder of the surrounding area is undeveloped and zoned UAR-10. The proposed PUD would have 4 lots ranging in size from approximately 2 to 4 acres with approximately 28 acres of open space. The lots would be clustered near the northern and western property boundaries and the open space would abut the adjacent tax lots approved for subdivisions and incorporate former mining areas. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the proposal will have no adverse impacts on surrounding parcels. The overall proposed PUD density will be the same as surrounding UAR-10-zoned parcels (one dwelling unit per ten acres) and considerably lower than in the adjacent urban-density subdivisions. Development of the four proposed lots will create minimal traffic impacts on affected streets, including the public street to be developed in the adjacent Shevlin Meadows Subdivision and Shevlin Park Road. For these reasons, I find the applicant's proposal satisfies this criterion.

- B. That the site planning of the proposed use will, as far as reasonably possible, provide an aesthetically pleasing and functional environment to the highest degree consistent with the nature of the use and the given setting.**

FINDINGS: The applicant proposes to cluster the four lots on the northern and western property boundaries where the subject property retains its natural topography and vegetation. The remainder of the property would be retained in open space, incorporating the excavated areas where pumice previously was mined. The Hearings Officer finds this site design will create attractive residential lots in areas with very buildable topography while creating no further disturbance to the previously-mined portions of the property. The applicant's burden of proof and application state this area eventually will be reclaimed by moving pumice from elevated areas into excavated pits. For these reasons, I find the proposed site design will result in an aesthetically pleasing and functional environment satisfying this approval criterion.

- C. That if the use is permitted outright in another zone, there is**

substantial reason for locating the use in an area where it is only conditionally allowed, as opposed to an area where it is permitted outright.

FINDINGS: The Hearings Officer finds this criterion does not apply because PUD's are not a use permitted outright in any zone.

- D. That the proposed use will be consistent with the purposes of this Ordinance, the Comprehensive Plan, Statewide Goals and any other applicable statutes, ordinances or policies.

FINDINGS: As discussed above, the Hearings Officer has found the applicant's proposal is consistent with the purpose of the UAR-10 Zone and with the statutes and provisions of Title 19 governing legal lots. I also have found the Bend Urban Area Plan does not establish approval criteria for the applicant's quasi-judicial land use applications, and that its policies are implemented through Title 19. I further find I need not evaluate the applicant's proposal against the statewide planning goals because the Bend Area General Plan has been acknowledged. For these reasons, I find the applicant's proposal satisfies this criterion.

5. Chapter 19.104, Planned Unit Development Approval

a. Section 19.104.040, Minimum Size for Planned Unit Developments

No application shall be accepted for an area of less than five acres in any R zone, or for an area of less than four acres in any other zone.

FINDINGS: The subject property is approximately 40 acres in size, thus satisfying this criterion.

b. Section 19.104.050, Limitation on Application

No application shall be accepted for a use which will require a change of zone unless accompanied by an application for a zoning amendment as set forth in DCC 19.116.

FINDINGS: The PUD application was accompanied by an application for a zone change as required by this criterion.

c. Section 19.104.060, Plan Required

All applications shall be accompanied by a general development plan drawn to scale showing the use or uses, dimensions and locations of proposed structures and of areas to be reserved for vehicular and pedestrian circulation, parking, public uses, landscaping and other open spaces and drawings and sketches demonstrating the design and character of the proposed uses and the physical relationships of the uses. Such other pertinent information shall be included as may be considered necessary by the Hearings Body or Planning Director to make a determination that the contemplated arrangement or use makes it necessary and desirable to apply regulations and requirements differing from those ordinarily applicable under this title and the subdivision ordinance.

FINDINGS: The applicant submitted a tentative subdivision plan drawn to scale that shows topography, lot size, dimensions, vehicular access, and the proposed common open space area. The plan shows that the topography of the southeast quadrant of the subject property has been modified dramatically as a result of previous mining for pumice, creating pits and headwalls that make this area unsuitable for the siting of dwellings or roads. As a result of this topography, the applicant proposes to reduce the size of the four proposed lots from 10 to between 2 and 4 acres, and to cluster these smaller lots and the private access road on the undisturbed land on the northern and western part of the property. The Hearings Officer finds the applicant's tentative plan demonstrates that due to the property's topography and location adjacent to the city limits, it is necessary and desirable to develop the subject property as a PUD rather than with four 10-acre lots in a more ordinary configuration. PUD development will allow the reclamation of formerly mined areas and future redevelopment at urban density when the subject property is annexed into the Bend UGB. Therefore, I find the applicant's proposal satisfies this criterion.

d. Section 19.104.070, Standards for Approval

In granting approval for planned unit development, the Hearings Body or Planning Director shall be guided by the following:

- A. Whether applicant has, through investigation, planning, and programming, demonstrated the soundness of the proposal and an ability to carry out the project as proposed, and whether the construction shall begin within six months of the conclusion of any necessary action by the county, or within such longer period of time as may be established by the Hearings Body or Planning Director.**

FINDINGS: The applicant's application includes the following information to demonstrate the soundness of its proposal and its ability to carry out the project:

1. a letter dated November 30, 2000, from Roger L. Christensen, Chief Operating Officer of Columbia Bancorp, stating that the applicant's principal has the financial capability to develop the proposed PUD; and
2. a letter dated November 30, 2000, from the applicant's principal stating two realtors in Bend concluded there is a market for the proposed PUD lots, and that he intends to reside on one of the proposed PUD lots.

The burden of proof and application state the applicant intends to complete development of the project within the two-year period during which the approval is valid under Section 22.36.010(B)(1) of the county's procedures ordinance, and any extensions authorized by that section. The Staff Report notes Section 19.104.090 provides with respect to PUD's:

Any approval of a planned unit development granted hereunder shall lapse and become void within two years after the final granting of approval or within such other period of time as may be stipulated by the Hearings Body or Planning Director as a condition of such approval, construction of the buildings or structure involved in the development has begun and been diligently pursued. The Planning Director or Hearings Body may further impose other conditions limiting the time within which the development of portions thereof must be completed. (Emphasis added.)

The applicant has requested that the Hearings Officer specify in this decision that the two-year period during which this approval is valid can be extended pursuant to Section 19.104.090. I find this request is reasonable and such language will be included in the decision.

B. Whether the proposal conforms with the general plans of the county in terms of location and general development standards.

FINDINGS: As discussed above, the subject property is designated Urban Reserve, indicating the county's and city's intent that it be developed at urban density when it is annexed in to the Bend UGB in the future. The property abuts land within the city limits that has been approved for urban-density residential subdivisions. The proposal's compliance with the applicable development standards is discussed throughout this decision.

C. Whether the project will accrue benefits to the county and the general public in terms of need, convenience, service, and appearance sufficient to justify any necessary exceptions to the regulations of the zoning and subdivision ordinances.

FINDINGS: As discussed above, the subject property has been mined for pumice and its topography has been altered to the point where a significant portion of the property cannot be developed with residential uses. The applicant's proposed PUD would cluster four lots on the developable portion of the property and incorporate the formerly mined area into common area. The burden of proof and application state the applicant intends to reclaim the former mining sites, providing a public benefit through improving the appearance of the pits and headwalls created by previous mining, and holding the proposed common area for future urban development. The Hearings Officer concurs and finds these benefits justify the reduction in lot size proposed for the PUD.

D. Whether the project will satisfactorily take care of the traffic it generates by means of adequate off-street parking, access points, additional street right of way and improvements and any other traffic facilities required.

FINDINGS: As discussed above, dwellings on the four proposed PUD lots would generate a total of 40 ADT's of which 4 would occur during the p.m. peak hour. The Hearings Officer finds the size of the proposed lots -- approximately 2 to 4 acres -- will be adequate to accommodate off-street parking. I also find the minimal traffic that will be generated by the PUD will have adequate access to Shevlin Park Road, a designated minor arterial, through a private PUD street that will connect to "C" Drive, a public street within the adjacent Shevlin Meadows Subdivision. The Hearings Officer finds both the local subdivision street and Shevlin Park Road will handle the minimal traffic that will be generated by the proposed PUD. Therefore, I find the applicant's proposal satisfies this criterion.

E. Whether the project will be compatible with adjacent developments and will not adversely affect the character of the area.

FINDINGS: As discussed in the conditional use findings above, incorporated by reference herein, the Hearings Officer has found the proposed PUD will be compatible with both the

adjacent urban-density residential subdivisions approved by or pending before the city, and the adjacent parcels zoned UAR-10. In addition, the applicant proposes to reclaim the portion of the property formerly mined for pumice, making this area more attractive and compatible with residential development. Therefore, I find the applicant's proposal satisfies this criterion.

- F. Whether the project will satisfactorily take care of sewer and water needs consistent with the Bend Area General Plan.**

FINDINGS: The applicant proposes to provide sewage treatment for the four PUD lots through individual on-site septic systems. The Hearings Officer finds the proposed lots will be large enough to accommodate such systems. The applicant will be required as a condition of approval to obtain a septic site evaluation and construction permit for each lot's system. The applicant proposes to provide domestic water through individual wells or a shared well rather than a public water system. The record includes copies of well logs indicating water is available in the area at relatively shallow depth. Therefore, I find the applicant's proposal satisfies this criterion.

- G. A planned unit development shall not be approved in any R zone if the housing density of the proposed development will result in an intensity of land use greater than permitted by the Comprehensive Plan.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the UAR-10 Zone is not an "R" – or residential – zone. In any case, the proposed PUD density would be one dwelling per ten acres, the maximum allowed in the zone. Therefore, I find the applicant's proposal satisfies this criterion.

- e. Section 19.104.080, Standards and Requirements**

Approval of a request for a planned unit development is dependent upon the submission of an acceptable plan and satisfactory assurance that it will be carried out. The following minimum standards shall apply:

- A. A dwelling use permitted in any zone may be permitted in a planned unit development.**

FINDINGS: The Hearings Officer finds the applicant's proposal meets this criterion because the PUD would allow a single-family dwelling on each lot – a use permitted outright in the UAR-10 Zone.

- B. A manufactured home may be permitted in a planned unit development. However, manufactured home parks shall not be allowed in any commercial or industrial zone.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose to site manufactured homes in the PUD.

- C. Developments which either provide for or contemplate private streets and ways and common areas which will be or are proposed to be maintained by the owners of units or lots within a development must organize and maintain an owner's association. The owner's association shall consist of all the**

owners of units or lots within the development and membership in the association must be required of all owners; adopt and record bylaws as provided by Oregon Revised Statutes 91.555; adopt bylaws that contain the provisions required by Oregon Revised Statutes 91.560; and have the power to create such a lien upon the unit or lot for services, labor or material lawfully chargeable as common expenses as provided in Oregon Revised Statutes 91.580. The association's power to create such a lien shall exist whether or not the property is subject to the Oregon Unit Ownership Law (Oregon Revised Statutes 91.505-91.675).

- D. If the property is not subject to the Unit Ownership Law, the association shall also create, by contract, the right to claim a lien upon any unit or lot for services, labor or material chargeable as common expenses. This lien may be created by covenants between the association and the property owners and shall supplement the lien created by (C) above and require all owners of units or lots within the development to consent to and pay the reasonable value of services, labor, or material expended by the county for common expenses where such county expenditures are made because the owners or the owner's association does not provide the necessary services, labor or material for common expenses.

FINDINGS: The applicant's burden of proof and application state the applicant will retain ownership of the open space and therefore this criterion does not apply to that portion of the property. The applicant proposes to form an owner's association, complying with the requirements of this section, to maintain the private road within the PUD and any private access across the adjacent Shevlin Meadows Subdivision of such is needed prior to the filing of the final subdivision plat including the dedication of the subdivision streets to the public. The applicant will be required as a condition of approval to satisfy the requirements of this criterion.

- E. Streets and roads in planned unit development designated developments shall be public roads and ways developed to county standards or be private roads of a minimum 14 feet wide paved surface for one-way traffic, minimum 20 feet wide paved surface for two-way traffic, and parallel parking as permitted shall require minimum additional eight feet of width for each side of parking. If pedestrian walkways or bikeways are included in the road, an additional five feet of pavement width on each side of the roadway shall be provided and striped to separate such use from motor vehicle traffic and parking. In addition to these requirements, the Planning Director or Hearings Body may specify other requirements including, but not limited to, increased or decreased pavement width.

FINDINGS: As discussed above, the applicant proposes to build a 28-foot-wide, paved private PUD street with 4-foot striped bike lanes and 2-foot gravel shoulders on each side, consistent with the private street standards found in Section 17.48.180 of the subdivision ordinance. The

applicant notes the PUD street standards in Section 19.104.080(E) -- which require a minimum pavement width of 30 feet if bicycle and pedestrian paths are included on the roadway -- conflict with the private street standards in Title 17 which require a minimum pavement width of 28 feet with gravel shoulders. The applicant argues the private street standards in the subdivision ordinance should control because: 1) they apply throughout the county; 2) they were enacted more recently than the PUD street standards in Section 19.104.080(E); and 3) Section 19.104.060 authorizes the Hearings Officer to allow the narrower 28-foot-wide private street width as part of PUD approval.

The Hearings Officer cannot determine which of these two street standards is more recent. Both appear to have been enacted in 1993 based upon the legislative history recited at the end of each section in the codified county code. Nevertheless, I find I need not resolve the apparent conflict between these two standards because the last sentence of Section 19.104.080(E) expressly authorizes me to "specify . . . decreased pavement width." I further find the applicant's proposed street width and construction is appropriate for a 4-lot PUD that will have minimal vehicular, bicycle and pedestrian traffic. The proposed private street will connect to "C" Drive, a public street in the adjacent Shevlin Meadows Subdivision, providing access to Shevlin Park Road, a designated arterial. For these reasons, I find the proposal satisfies this criterion.

- F. Pedestrian walkways and bike lanes shall be provided for adequate pedestrian and bicycle traffic, and shall connect to any adjacent existing or planned sidewalks, bike lanes, access corridors, or public trails. Off-street pedestrian walkways and bike lanes shall be at least 10 feet in width to accommodate two-way traffic and shall be constructed with portland cement or asphaltic concrete to county standards, except as varied by provisions of this section or by the Planning Director or Hearings Body.**

FINDINGS: As discussed above, the applicant proposes a 28-foot wide private street with 4-foot striped bike paths and 2-foot gravel shoulders on both sides. Therefore, the Hearings Officer finds the requirement of a 10-foot *off-street* pedestrian and bike path is not applicable. As discussed in the findings immediately above, I have found the proposed street width and construction is consistent with the standards for private streets in Section 17.48.180, is authorized under Subsection (E) of this section, and is appropriate for the proposed 4-lot PUD. I also find the proposed bicycle and pedestrian pathways will be connected to the sidewalks and bike lands within the Shevlin Meadows Subdivision because the private PUD street will align with "C" Drive within the adjacent subdivision. For these reasons, I find the applicant's proposed PUD street width and construction can be approved.

- G. All utility facilities shall be installed underground and in accordance with county standards.**

FINDINGS: The applicant's burden of proof and application state all utility facilities will be installed underground, thus satisfying this criterion.

- H. The design of all planned unit development projects shall provide direct access for all units and lots to open space areas**

and facilities. Open space areas and facilities include such things as landscaped areas, natural areas, golf courses, and other recreational facilities, but do not include streets, sidewalks, bikeways, access corridors, or trails.

FINDINGS: The submitted tentative Plan shows each of the four proposed lots adjoin the common open space area. The proposed open space area would consist primarily of the previously-mined areas in the southeast quadrant of the property, which the applicant propose to reclaim. The applicant's burden of proof and application state all lot owners will be required to consent to an application for a modification to this approval to allow the applicant to reduce or remove the proposed open space area at the time the property is needed for future urbanization and annexed into the Bend UGB. The Hearings Officer finds the proposed open space is a significant component of the applicant's proposed PUD and a justification for reducing the size of and clustering the proposed lots. However, I find the applicant's proposal to eliminate the open space at the time the subject property becomes available for urban development will be consistent with the Bend Area General Plan. For these reasons, I find the applicant's proposal satisfies this criterion.

L. A statement must be submitted relative to the solar access to be provided by the planned unit development.

FINDINGS: The applicant states, and the Hearings Officer concurs, that the proposed PUD lots will be of sufficient size to assure that each lot will have as much solar access as is feasible. Therefore, I find the applicant's proposal satisfies this criterion.

f. Section 19.104.090, Hearings Body Action

In taking action, the Planning Director or Hearings Body may approve, approve with conditions or deny an application as submitted. Any planned unit development as authorized shall be subject to all conditions imposed and shall be excepted from other provisions of DCC 19 only to the extent specified in said authorization. Any approval of a planned unit development granted hereunder shall lapse and become void within two years after the final granting of approval or within such other period of time as may be stipulated by the Hearings Body or Planning Director as a condition of such approval, construction of the buildings or structure involved in the development has begun and been diligently pursued. The Planning Director or Hearings Body may further impose other conditions limiting the time within which the development of portions thereof must be completed. The decision of the Planning Director or Hearings Body shall be final unless appealed in accordance with the procedures set forth in the land use procedures ordinance.

FINDINGS: As discussed above, the applicant has proposed to develop the PUD within the two-year period during which this approval is valid under Section 22.36.010 of the procedures ordinance and any extensions allowed in that section. The applicant has requested that the Hearings Officer include language in the decision reflecting these time frames. I have found this request is reasonable and will include appropriate language in this decision.

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TENTATIVE SUBDIVISION PLAN

- B. Title 17 of the Deschutes County Code, the Subdivision and Partition Ordinance**
- 1. Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans**
- a. Section 17.16.100, Required Findings for Approval**
- A. The subdivision contributes to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, agricultural and forest lands and other natural resources.**

FINDINGS: As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the proposed four-lot residential PUD will contribute to the orderly development and land use patterns in the area by including density consistent with the UAR-10 Zone but smaller lot sizes providing a transition between the adjacent urban-density residential development to the east and undeveloped UAR-10-zoned land to the north, west and south. In addition, the proposed open space will incorporate the previously mined areas which the applicant intends to reclaim. I find the "special terrain features" required to be preserved under this criterion do not include man-made pits and headwalls such as those on the subject property. The applicant proposes to preserve the *natural* topography and vegetation on the undisturbed part of the property to the extent practical. The record indicates the subject property has no streams, lakes, or agricultural or forest lands. In addition, the Bend Urban Area General Plan does not identify the property as containing any Areas of Special Interest. For these reasons, I find the applicant's proposal satisfies this criterion.

- B. The subdivision will not create excessive demand on public facilities and services, and utilities required to serve the development.**

FINDINGS: As discussed above, sewer and water service will be provided to PUD lots through individual on-site septic systems and individual or shared water wells. The record includes well logs from surrounding parcels indicating groundwater is available at relatively shallow depth. The record also includes "willing-to-serve" letters from Pacific Power and QWEST for electric and telephone service. As also discussed above, the proposed PUD will add very little traffic to affected streets. The record indicates the subject property is outside any fire district. However, the applicant has indicated its intent to provide fire protection service either through a contract with the Bend Fire Department or through annexation to the Bend Rural Fire Protection District #2. The Hearings Officer finds it likely either method could be used given the subject property's location adjacent to the city limits. For these reasons, I find applicant's proposal will not create "excessive" demand on public facilities and services.

- C. The tentative plan for the proposed subdivision meets the requirements of Oregon Revised Statutes Section 92.090.**

FINDINGS: The Hearings Officer finds the requirements of ORS 92.090 are implemented by the provisions of Title 17. Therefore, if the applicant's proposal satisfies the applicable criteria in Title 17, the requirements of the statute also are satisfied.

- D. For subdivisions or portions thereof proposed within a Surface Mining Impact Area (SMIA) Combining Zone under Title 18 of the Deschutes County Code, the subdivision creates lots on which noise or dust sensitive uses can be sited consistent with the requirements of Chapter 18.56 of Title 18, as amended, as demonstrated by the site plan and accompanying information required under Section 17.16.030 of this chapter.

FINDINGS: The Hearings Officer has found the applicant's proposed zone change from SM to UAR-10 complies with the zone change approval criteria. Therefore, the subject property no longer will be zoned SM. The record indicates no SMIA Zone was created around the subject property, and therefore this criterion is not applicable.

- E. The subdivision name has been approved by the County Surveyor.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to obtain the County Surveyor's approval of the proposed subdivision name "Anderson Acres."

b. Section 17.16.105, Access to Subdivisions

No proposed subdivision shall be approved unless it would be accessed by roads constructed to county standards and by roads accepted for maintenance responsibility by a unit of local or state government. This standard is met if the subdivision would have direct access to an improved collector or arterial, or in cases where the subdivision has no direct access to such a collector or arterial, by demonstrating that the road accessing the subdivision from a collector or arterial meets relevant county standards and has been accepted for maintenance purposes.

FINDINGS: The applicant proposes access for the PUD lots from Shevlin Park Road, a designated minor arterial street maintained by the city and county. A private PUD street would connect to "C" Drive, a public street within the adjacent Shevlin Meadows Subdivision that has received tentative plan approval from the city. The tentative subdivision plan for Shevlin Meadows shows "C" Drive intersects with an unnamed public street that runs along the western property boundary of the Shevlin Meadows Subdivision.

In order to provide a functional connection between the private PUD street and "C" Drive, the applicant will need to demonstrate legal access across the Shevlin Meadows property. If the final PUD plat is filed before the final subdivision plat for the Shevlin Meadows Subdivision is approved, the applicant must obtain an access easement across the Shevlin Meadows property to Shevlin Park Road. If the final Shevlin Meadows Subdivision plat is approved before the applicant submits the final PUD plat, access would be available along public street rights-of-way in the adjacent subdivision. As noted above, the applicant's principal is one of the principals of the company that is developing the Shevlin Meadows Subdivision. Therefore, the Hearings Officer finds it is feasible for the applicant to obtain the necessary access easement across the adjacent property if one is needed. The applicant proposes to improve the private PUD street to 28 feet of pavement width, meeting the county's standards for private roads and consistent with the county's standards for PUD streets. For these reasons, I find the applicant's proposal will satisfy this approval criterion with imposition of the condition of approval requiring an access easement.

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2. Chapter 17.36, Design Standards

a. Section 17.36.020, Streets

- A. The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including pedestrians, bicycles, and automobiles with intersection angles, grades, tangents, and curves appropriate for traffic to be carried, considering the terrain. The subdivision or partition shall provide for the continuation of the principal streets existing in the adjoining subdivision or partition or of their property projection when adjoining property which is not subdivided, and such streets shall be of a width not less than the minimum requirement for streets set forth in this chapter.

FINDINGS: As discussed above, the applicant proposes access to the PUD lots from a private street to be improved to the county's private street standards. This private street would connect with public streets in the adjacent Shevlin Meadows Subdivision that has received tentative plan approval from the city. These subdivision streets in turn will connect with Shevlin Park Road, a designated minor arterial. As discussed above, the applicant will be required as a condition of approval to demonstrate legal access for the PUD across the adjacent Shevlin Meadows property, either through an access easement or proof that the streets within the subdivision have been dedicated to the public with the city's approval of the final subdivision plat. The proposed private street would be located near the northern and western property boundaries to avoid the southeastern portion of the property that has been mined. The revised tentative subdivision plan shows the private PUD street would be "stubbed" at the western property boundary just beyond the proposed cul-de-sac. The applicant proposes to accommodate bicycles and pedestrians on the private street. As discussed in the findings above, the Hearings Officer has found the proposed facilities for bicycles and pedestrians are appropriate for the proposed 4-lot PUD. Therefore, I find the applicant's proposal satisfies this criterion.

- B. Streets in subdivisions shall be dedicated to the public, unless located in a destination resort, planned community or planned or cluster development, where roads can be privately owned. Planned developments shall include public streets where necessary to accommodate present and future through traffic.

FINDINGS: The applicant is proposing a PUD. Therefore, the Hearings Officer finds the applicant is not required to dedicate to the public the PUD street.

b. Section 17.36.040, Existing Streets

Whenever existing streets adjacent to or within a tract are of inadequate width to accommodate the increase in traffic expected from the subdivision or partition or by the county roadway network plan, additional rights of way shall be provided at the time of the land division by the applicant. During consideration of the tentative plan for the subdivision or partition, the Planning Director or Hearings Body, together with the Public Works Director, shall determine whether improvements to existing streets adjacent to or within the tract, are required. If so determined, such improvements shall be required as condition of approval for the tentative plan. Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition.

FINDINGS: There are no existing streets on or adjacent to the subject property. The record indicates the city's and county's transportation plans show the location of a planned collector street, "H-1," along the eastern boundary of the subject property. Both city and county staff have recommended that applicant be required to dedicate right-of-way for this planned collector. In response, the applicant argues such a dedication requirement cannot be justified under Dolan v. City of Tigard, 512 US 374, 114 S Ct 2309, 129 LEd 2d 304 (1994), and its progeny. These cases hold that exactions such as right-of-way dedication must have a rational nexus with and be roughly proportional to the anticipated traffic impacts from the proposed development. The Hearings Officer finds there is no nexus between the traffic impacts from the applicant's proposed four-lot PUD and the dedication of right-of-way for a planned collector street not needed for access to the PUD lots. Therefore, I find the applicant will not be required to dedicate right-of-way for this planned collector.

In their comments on the applicant's proposal, the city and the county's transportation planner recommended the applicant be required to pay systems development charges (SDC's). In response, the applicant notes that it and the owner of the adjacent Shevlin Meadows Subdivision entered into a development agreement with the city through which they will contribute to system-wide transportation improvements on the west side of Bend as members of the "Westside Consortium."⁶ Their contribution consists of constructing a roundabout at the intersection of Shevlin Park Road and N.W. 14th Street. The Hearings Officer understands the cost of this facility far exceeds the amount the applicant would be required to pay in SDC's.⁷ The development agreement does not expressly include the subject property since it lies outside the city limits. Therefore, under the development agreement the applicant's proposal could be considered a "non-consortium development" that has an independent obligation to mitigate its traffic impacts. Nevertheless, I find that under the circumstances presented here the applicant should not be required to provide additional mitigation through the payment of SDC's. That is

⁶ The development agreement is included in the record as Exhibit "X" to the applicant's post-hearing submission.

⁷ The county's transportation planner calculated the SDC's for the proposed PUD would be approximately \$2,300.

because the proposed PUD access to Shevlin Park Road will be through the adjacent Shevlin Meadows Subdivision. In addition, the PUD will add only a small fraction of the total vehicle trips generated by the subdivisions covered by the development agreement to which the applicant is a party.

c. Section 17.36.050, Continuation of Streets

Subdivision or partition streets which constitute the continuation of streets in contiguous territory shall be aligned so that their centerlines coincide.

FINDINGS: As discussed above, the applicant proposes to connect the private PUD street to, and to align with the centerline of, "C" Drive, public street approved as part of the city's tentative subdivision plan approval for the adjacent Shevlin Meadows Subdivision. However, as also discussed above, if the final subdivision plat for Shevlin Meadows has not received approval from the city when the applicant submits the final PUD plat for county approval, the applicant will be required to demonstrate legal access across the Shevlin Meadows property to Shevlin Park Road through an access easement. In either case, because the private PUD street ultimately will be connected to "C" Drive, the Hearings Officer finds the applicant will be required as a condition of approval to align the centerlines of the private street and "C" Drive.

d. Section 17.36.060, Minimum Right of Way and Roadway Width

The street right of way and roadway surfacing widths shall be in conformance with standards and specifications set forth in Chapter 17.48 of this title.

FINDINGS: The applicant proposes a private roadway width of 28 feet which the Hearings Officer has found is consistent with both the county's private street design standards in the subdivision ordinance and the PUD street standards in Chapter 19.104. The applicant will be required as a condition of approval to construct the private PUD street in conformance with the county's private street standards.

e. Section 17.36.080, Future Extension of Streets

When necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision or partition.

FINDINGS: As discussed above, in response to comments from the road department, the applicant has agreed to extend the private PUD street to the western property boundary in order to facilitate future extension of this street to adjacent parcels designated Urban Reserve and zoned UAR-10.

f. Section 17.36.120, Street Names

Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern of the County.

FINDINGS: The applicant will be required as a condition of approval to obtain approval from the county for the name of the private PUD street.

g. Section 17.36.130, Sidewalks

- A. Within an urban growth boundary, sidewalks shall be installed on both sides of a public road or street any in any special pedestrian way within the subdivision or partition, and along any collectors and arterials improved in accordance with the subdivision or partition.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is located outside the Bend UGB.

h. Section 17.36.140, Bicycle, Pedestrian and Transit Requirements

A. Pedestrian and Bicycle Circulation within Subdivision

- 1. The tentative plan for a proposed subdivision shall provide for bicycle and pedestrian routes, facilities and improvements within the subdivision and to nearby existing or planned neighborhood activity centers, such as schools, shopping areas and parks in a manner that will (a) minimize such interference from automobile traffic that would discourage pedestrian or cycle travel for short trips, (b) provide a direct route of travel between destinations within the subdivision and existing or planned neighborhood activity centers, and (c) otherwise meet the needs of cyclists and pedestrians, considering the destination and length of trip.**

FINDINGS: The applicant has proposed to improve the private PUD street with a pavement width of 28 feet with 4-foot striped bike paths and 2-foot gravel shoulders on both sides as contemplated by the county's minimum private road standards in the subdivision ordinance. The record indicates there are no nearby activity centers, shopping areas, schools or parks. Therefore, the Hearings Officer finds the applicant will not be required to extend bicycle or pedestrian paths outside the PUD. In their comments on the applicant's proposal, the county's transportation planner and the city recommended that the applicant be required to dedicate a public access trail to facilitate bicycle and pedestrian access from Shevlin Park Road to Skyliners Road. However, the map submitted with the county transportation planner's comments indicates the "planned trail" is not located on the subject property. In any case, planning staff and the applicant state,

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and I concur, that there is no rational nexus between the impacts from the proposed PUD and the need for a trail, as required under Dolan v. City of Tigard, cited above. Therefore, I find the applicant's proposal satisfies this criterion.

2. Subdivision Layout

- a. Cul-de-sacs or dead-end streets shall be allowed only where, due to topographical or environmental constraints, the size and shape of the parcel, or a lack of through street connections in the area, a street connection is determined by the Planning Director or Hearings Body to be infeasible or inappropriate. In such instances, where applicable and feasible, there shall be a bicycle and pedestrian connection connecting the ends of cul-de-sacs to streets or neighborhood activity centers on the opposite sides of the block.

FINDINGS: The applicant's revised tentative plan shows the private PUD road "stubbed" at the western property boundary just west of a cul-de-sac. The Hearings Officer concurs with staff that given the lack of through street connections to the parcels to the west, a cul-de-sac is warranted under this criterion.

- (b) Bicycle and pedestrian connections between streets shall be provided at mid-block where the addition of a connection would reduce the walking or cycling distance to an existing or planned neighborhood activity center by 400 feet and by at least 50% over other available routes.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant is proposing one private street within the PUD, and because the PUD will not include a planned neighborhood activity center and there is no evidence such a center exists in the surrounding neighborhood.

- (c) Local roads shall align and connect with themselves across collectors and arterials. Connections to existing or planned streets and undeveloped properties shall be provided at no greater than 400 foot intervals.
- (d) Connections shall not be more than 400 feet long and shall be as straight as possible.

FINDINGS: The Hearings Officer finds these criteria are not applicable because the applicant

proposes to serve the PUD lots with a private street and not a public "local road."

3. Facilities and Improvements

- (a) Bikeways may be provided by either a separate paved path or an on-street bike lane, consistent with the requirements of this title.
- (b) Pedestrian access may be provided by sidewalks or a separate paved path, consistent with the requirements of this title.
- (c) Connections shall have a 20-foot right of way with at least a 10-foot usable surface.

FINDINGS: As discussed above, the applicant proposes a 28-foot-wide private street with 4-foot striped bike paths and 2-foot gravel shoulders on each side that will accommodate bicycles and pedestrians. The Hearings Officer finds Subsection (c) is not applicable because the applicant's proposal does not include bike or pedestrian path connections.

i. Section 17.36.160, Easements

- A. Utility easements.** Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines, or drainage. Such easements shall be labeled "Public Utility Easements" on the tentative and final plat.
- B. Drainage.** If a tract is traversed by a watercourse such as a drainage way, channel or stream there shall be provide a storm water easement or drainage right of way conforming substantially with the lines of the watercourse, or in such further width as will be adequate for the purpose. Streets or parkways parallel to major watercourses or drainageways may be required.

FINDINGS: The Hearings Officer finds the applicant will be required to show all required utility easements on the final subdivision plat and to label them "public utility easements" as a condition of approval. I find Subsection (B) is not applicable because the site is not traversed by a watercourse.

j. Section 17.36.180, Frontage

- A. Each lot or parcel shall abut upon a public road for at least 50**

feet, except for lots or parcels fronting on the bulb of a cul-de-sac, then the minimum frontage shall be 30 feet, and except for partitions off of U.S. Forest Service or Bureau of Land Management roads.

- B. All side lot lines shall be at right angles to street lines or radial to curved streets wherever practical.

FINDINGS: The applicant's proposal satisfies these criteria because all four lots will have at least 50 feet of frontage on the proposed private street and all side lot lines are at right angles to the street lines or radial to the cul-de-sac bulb.

k. Section 17.36.210, Solar Access Performance

- A. As much solar access as feasible shall be provided each lot or parcel in every new subdivision or partition, considering topography, development pattern and existing vegetation. The lot lines of lots or parcels, as far as feasible, shall be oriented to provide solar access at ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st. If it is not feasible to provide solar access to the southern building line, then solar access, if feasible shall be provided at 10 feet above ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st, and three hours before and after the solar zenith from March 22nd to September 21st.
- B. This solar access shall be protected by solar height restrictions on burdened properties for the benefit of lots or parcels receiving the solar access.
- C. If the solar access for any lot or parcel, either at the southern building line or at 10 feet above the southern building line, required by this performance standard is not feasible, supporting information must be filed with the application.

FINDINGS: The Hearings Officer finds the large size of the proposed PUD lots – 2 to 4 acres – will be adequate to maximize solar access for all dwellings.

l. Section 17.36.220, Underground Facilities

Within an urban growth boundary, all permanent utility services to lots or parcels in a subdivision or partition shall be provided from underground facilities; provided, however, the Hearings Body may allow overhead utilities if the surrounding area is already served by

overhead utilities and the proposed subdivision or partition would create less than ten lots. The subdivision or partition shall be responsible for complying with requirements of this section and shall:

- A. Obtain a permit from the Department of Public Works for placement of all underground utilities.
- B. Make all necessary arrangements with the utility companies and other persons or corporations affected by the installation of such underground utilities in accordance with the rules and regulations of the State Public Utility Commission.
- C. All underground utilities, sanitary sewers and storm drains installed in streets shall be constructed prior to the surfacing of such streets to the extent practicable, and sanitary sewers shall be placed to such length as will obviate the necessity for disturbing the street improvements when service connections are made.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is located outside the Bend UGB.

m. Section 17.36.250, Lighting

Within an urban growth boundary, the subdivider shall provide underground wiring to the county standards, and a base for any proposed ornamental street lights at locations approved by the affected utility company.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is located outside the Bend UGB.

n. Section 17.36.260, Fire Hazards

Whenever possible, a minimum of two points of access to the subdivision or partition shall be provided to provide assured access for emergency vehicles and ease resident evacuation.

FINDINGS: The applicant argues, and the Hearings Officer agrees, that because of the location and topography of the subject parcel two access points are not practical. As discussed above, I have found the cul-de-sac proposed near the terminus of the private PUD street appears of adequate size to allow a fire truck to turn around. However, to assure emergency vehicle access and emergency ingress and egress for PUD residents, I have found the applicant will be required as a condition of approval and prior to submitting a final PUD plat for approval to provide to the Planning Division written documentation that the Bend Fire Department finds this cul-de-sac of adequate size. As also discussed above, the applicant has stated its intention to provide fire

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protection either through a contract with the fire department or through annexation to the Bend Rural Fire Protection District #2. I find either method is likely to be successful given the subject property's location adjacent to the city limits. The Staff Report recommends that I require as a condition of approval that the applicant either annex the subject property into a fire district or obtain a fire service contract with the Bend Fire Department. I find I lack authority to condition this approval on either requirement inasmuch as there are no provisions in Title 17 that establish fire protection as a condition of subdivision approval.

o. Section 17.36.280, Water and Sewer Lines

Where required by the applicable zoning ordinance, water and sewer lines shall be constructed to county and city standards and specifications. Required water mains and service lines shall be installed prior to the curbing and paving of new streets in all new subdivision or partitions.

FINDINGS: The Hearings Officer finds this criterion is not applicable because Title 19 does not require water and sewer lines in the UAR-10 Zone.

3. Chapter 17.44, Park Development

a. Section 17.44.010, Dedication of Land

D. DCC 17.44.010 shall not apply to the subdivision or partition of lands located within the boundaries of the Bend Metro Park and Recreation District or the Central Oregon Park and Recreation District.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the record indicates the subject property is located within the boundaries of the Bend Metro Park and Recreation District.

4. Chapter 17.48, Design and Construction Specifications

a. Section 17.48.090, Intersections

A. All intersections shall be planned for through traffic on the street with the greatest projected average daily traffic (ADT). The side street shall be at right angles to the main street. Horizontal and vertical alignment for an intersection shall be as shown in Drawing No. D-6.

B. Intersecting streets, including driveways to commercial and industrial properties, shall be separated by at least the following distances when the through road is:

...

3. Local, 100 feet. . . .

To be measured between the intersecting centerlines of the streets or driveways.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the proposed PUD does not include intersecting streets or driveways to commercial or industrial properties.

- b. **Section 17.48.100, Minimum Right of Way Width**
The minimum right of way width is 60 feet unless specified otherwise in Table A (on in any right of way specifications set forth for a particular zone in a zoning ordinance).

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant proposes to serve the PUD with a private street and this standard applies to right-of-way for public streets.

- c. **Section 17.48.130, Road Names**

All roads shall be named in conformance with the provisions of the Deschutes County uniform road naming system set forth in Deschutes County Code Title 16.

FINDINGS: As discussed above, the Hearings Officer has found that as a condition of approval the applicant will be required to obtain county approval of the name for the PUD street before submitting the final subdivision plat for approval.

- d. **Section 17.48.140, Bikeways**

FINDINGS: The applicant proposes to provide for bicycles on the private street rather than through separate bikeways. Therefore, the Hearings Officer finds this section is not applicable.

- e. **Section 17.48.160, Road Development Requirements-Standards**

- A. **Subdivision Standards.** All roads in new subdivisions shall either be constructed to a standard acceptable for inclusion in the county maintained system or the subdivision shall be part of a special road district or a homeowners association in a planned unit development.

- B. **Improvements of Public Rights of Way.**

- 1. The developer of a subdivision or partition will be required to improve all public ways that are adjacent or within the land development.
- 2. All improvements within public rights of way shall conform to the improvement standards designated in this title for the applicable road classification, except where a zoning ordinance sets forth different standards for a particular zone.

FINDINGS: The applicant proposes that the PUD lots be served by a two-lane private street.

The applicant has proposed to construct this private street to the county's minimum standards for private roads in Table A to the subdivision ordinance. The applicant proposes that the private street be maintained by an owner's association until such time as the subject property is annexed into the Bend UGB and the street is dedicated to the city. Because the applicant is proposing a private street and not a public right-of-way, I find Subsection (B) of this section is not applicable.

- C. **Primary Access Roads.** The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A (or the applicable standard set forth in a zoning ordinance). The applicable standard shall be determined with reference to the road's classification under the relevant transportation plan. For the purposes of DCC 17.48.160 a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.

FINDINGS: The applicant proposes that the primary access road to the PUD be a two-lane private street constructed to the county's standards for private streets with a pavement width of 28 feet and a maximum grade of 12 percent. The Hearings Officer finds the applicant will be required as a condition of approval to improve the private street in accordance with these standards.

- E. **Stubbed Roads.** Any proposed road that terminates at a development boundary shall be constructed with a paved cul-de-sac bulb.
- F. **Cul-de-sacs.** Cul-de-sacs shall have a length of less than 600 feet, unless a longer length is approved by the applicable fire protection district, and more than 100 feet from the center of the bulb to the intersection with the main road. The maximum grade on the bulb shall be four percent.

FINDING: The applicant's revised tentative subdivision plan shows the private PUD street "stubbed" at the western property boundary just beyond a cul-de-sac. The length of the cul-de-sac exceeds 600 feet. Staff states the applicant should be required to apply for a variance to this standard. As discussed above, the Hearings Officer has found I have authority to approve the proposed PUD with a cul-de-sac length exceeding 600 feet. The fire department commented on this application only to state the property is outside its jurisdiction. Therefore, there is no evidence in the record as to whether the fire department would approve the proposed cul-de-sac. It is my understanding that a cul-de-sac exceeding 600 feet in length can receive fire department approval if an adequate turnaround for emergency vehicles is provided. The revised tentative plan shows a large-radius cul-de-sac that appears large enough to allow a fire truck to turn around. However, I find the applicant will be required as a condition of approval and prior to submission of the final subdivision plat to provide to the Planning Division written documentation from the fire department that the length and terminus of the proposed cul-de-sac are adequate to allow emergency vehicle access.

f. **Section 17.48.180, Private Roads**

The following minimum road standards shall apply for private roads:

- A. **The minimum paved roadway width shall be 24 feet in planned unit developments and cluster developments containing 20 or more residential units when separate paved bicycle/pedestrian ways are provided in the development. Where separate paved bicycle/pedestrian ways are not provided in such developments, the minimum paved roadway width shall be 28 feet, including four-foot wide bike lanes, and two-foot wide gravel shoulders;**
- B. **Minimum radius of curvature, 50 feet;**
- C. **Maximum grade, 12 percent;**
- D. **At least one road name sign will be provided at each intersection for each road;**
- E. **A method for continuing road maintenance acceptable to the County;**
- F. **Private road systems shall include provisions for bicycle and pedestrian traffic. Shoulder bike lanes shall be a minimum of four feet wide, paved and striped, with no on-street parking allowed within the bikeway. When private roads are developed to a width of less than 28 feet, bike paths constructed to County standards shall be required.**

FINDINGS: As discussed above, the applicant proposes access to the PUD lots by a private street improved to 28 feet with pavement width with 4-foot striped bike paths and 2-foot gravel shoulders, with a grade of less than 10 percent. The Hearings Officer has found this pavement width will be adequate to accommodate both vehicles and bicycles on the street. Therefore, I find the applicant's proposal satisfies these standards.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicant's proposed zone change from SM to UAR-10, and conditional use permit and tentative subdivision plan, to establish a 4-lot PUD on the subject property, **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

- 1. This approval is based upon the revised tentative subdivision plan dated February 12, 2100, and the applicant's application, burden of proof, post-hearing evidentiary submittal and final arguments. Any substantial change to the approved tentative plan will require

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additional land use applications, review and approval.

2. The applicant/owner shall prepare the final subdivision plat in accordance with the requirements of Chapter 17.24 of Title 17 of the Deschutes County Code and ORS Chapter 92. The final plat shall be prepared by a licensed land surveyor and shall show all property corners and public rights-of-way and the exact size for each lot.
3. The applicant/owner shall show all existing easements of record and all required public utility easements on the final subdivision plat. Utility easements shall be labeled "public utility easements" on the plat.
4. Prior to submitting the final subdivision plat for approval, the applicant/owner shall provide to the Planning Division written documentation that there is legal access from the subject property to Shevlin Park Road across the adjacent Shevlin Meadows Subdivision property. This access shall be documented either with a recorded access easement across the property, or with a copy of the city's decision approving the final subdivision plat for Shevlin Meadows Subdivision showing the dedication to the public of all Shevlin Meadows Subdivision streets.
5. Prior to the filing of the final subdivision plat for approval, the applicant/owner shall demonstrate that each lot has received an approved septic site evaluation.
6. The applicant/owner shall pay all ad valorem taxes, fees, and other charges that have become a lien upon the entire parcel prior to final subdivision plat approval. The final plat shall be signed by the County Assessor and the County Treasurer.
7. The applicant/owner shall improve the private road providing access to the PUD in accordance with the county's standards for private roads set forth in Section 17.48.180 of the Deschutes County Code. Specifically, the road shall be improved with 28 feet of 0-9 or 2 inches of AC pavement over a 6 inch aggregate base with a maximum grade not to exceed 12%. The private road also shall have 4-foot striped bike lanes and 2-foot gravel shoulders on each side.
8. The applicant/owner shall align the centerline of the private PUD street with the centerline of "C" Drive shown on the approved tentative subdivision plan for the adjacent Shevlin Meadows Subdivision.
9. The applicant/owner shall obtain county approval of the name of the private PUD street prior to submitting the final subdivision plat for approval.
10. The applicant/owner shall form an owners association to maintain the private road within the PUD and any private access across the adjacent Shevlin Meadows Subdivision prior to the filing of the final subdivision plat. Prior to filing the final subdivision plat, the applicant/owner shall submit to Deschutes County Legal Counsel a copy of the proposed owners association.
11. The applicant/owner shall obtain approval from the County Surveyor for the subdivision

name "Anderson Acres" prior to submitted the final subdivision plat for approval.

12. The applicant/owners shall submit a Title Report with the final plat.
13. The applicant/owner shall install all required utilities underground and to the specifications of the utility providers prior to final approval of the plat.
14. The applicant/owner shall provide to the Planning Division written documentation from the Bend Fire Department that the proposed cul-de-sac will provide adequate access for fire apparatus and adequate emergency ingress and egress for PUD residents. This documentation shall be provided prior to final plat approval.

V. DURATION OF APPROVAL:

15. The applicant/owner shall submit a final subdivision plat in conformance with the approved tentative plan within two (2) years of the date this decision becomes final, or shall obtain an extension of time pursuant to Section 22.36.010(C) of the Deschutes County Code, or this approval shall be void.

Dated this 30th day of May, 2001.

Mailed this 31st day of May, 2001.



Karen H. Green, Hearings Officer

**THIS DECISION BECOMES FINAL TWELVE DAYS AFTER MAILING UNLESS
TIMELY APPEALED.**