



Mailing Date:  
Monday, May 2, 2022

## COMMUNITY DEVELOPMENT

### STAFF REPORT

**FILE NUMBERS:** 247-22-000123-PA, 247-22-000124-ZC

**HEARING:** May 10, 2022, 6:00 p.m., Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**SUBJECT PROPERTY/  
OWNER:** Mailing Name: PORTER KELLY BURNS LANDHOLDINGS LLC  
Map and Taxlot: 1712350001500  
Account: 119047  
Situs Address: 21455 HWY 20, BEND, OR 97701

**APPLICANT:** Hayden Homes  
2464 SW Glacier Place, Suite 110  
Redmond, OR 97756

**PROPOSAL:** The Applicant requests an Amendment to the Comprehensive Plan designation and a Zone Change of the subject property from Rural Residential Exception Area (RREA) and Multiple Use Agricultural (MUA10) Zone to Bend Urban Growth Area and Urbanizable Area (UA) District, respectively. The subject proposal is in conjunction with House Bill (HB) 4079, which designates a City of Bend Affordable Housing Pilot Program. The proposal is being pursued in conjunction with a simultaneous proposal for an expansion of the City of Bend's Urban Growth Boundary (UGB).

**STAFF REVIEWER:** Kyle Collins, Associate Planner  
Phone: 541-383-4427  
Email: [Kyle.Collins@deschutes.org](mailto:Kyle.Collins@deschutes.org)

#### **I. APPLICABLE STANDARDS AND CRITERIA:**

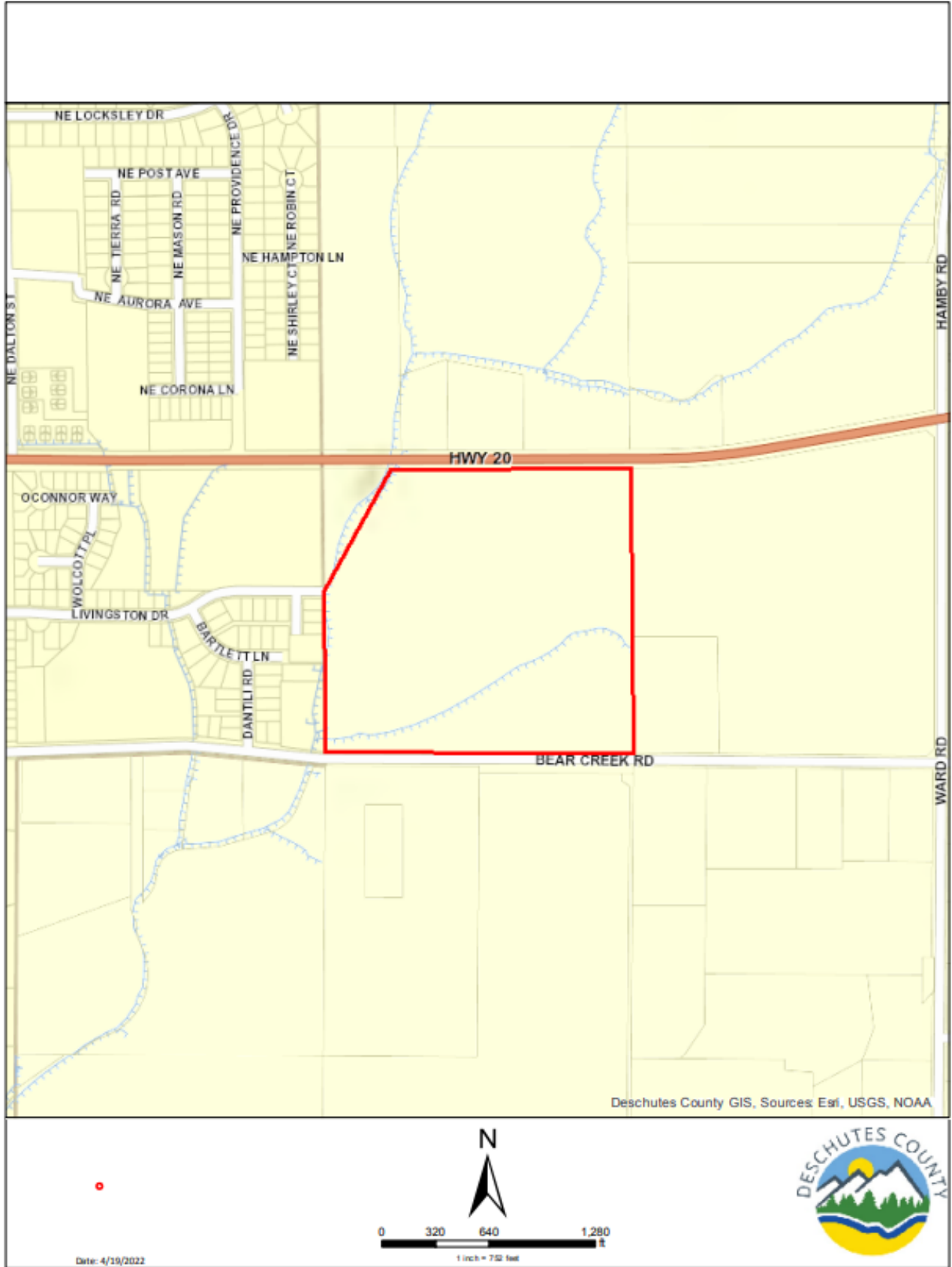
Deschutes County Code, Title 18, County Zoning  
Chapter 18.32, Multiple Use Agricultural Zone (MUA10)  
Chapter 18.84, Landscape Management Combining Zone (LM)

- Chapter 18.136, Amendments
- Deschutes County Code, Title 19A, Bend Urbanizable Area District
- Deschutes County Code, Title 22, Procedures Ordinance
- Deschutes County Code, Title 23, Comprehensive Plan
  - Chapter 1, Comprehensive Planning
  - Chapter 2, Resource Management
  - Chapter 4, Urban Growth Management
  - Chapter 5, Supplemental Sections
  - Appendix C – Transportation System Plan
- Statewide Planning Goals
  - Goal 1: Citizen Involvement
  - Goal 2: Land Use Planning
  - Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces
  - Goal 7: Areas Subject to Natural Hazards
  - Goal 11: Public Facilities and Services
  - Goal 14: Urbanization
- Oregon Revised Statutes (ORS)
  - ORS 197.298, Priority of Land to be Included within Urban Growth Boundary
- Oregon Administrative Rule (OAR)
  - OAR 660-039-0090, Affordable Housing Pilot Project, Subsequent Events
  - OAR 660-024-0070, UGB Adjustments
  - OAR 660-015 - Statewide Planning Goals and Guidelines
  - OAR 660-012 - Transportation Planning

**II. FINDINGS OF FACT:**

**LOCATION:** The subject property has an assigned addresses of 21455 Highway 20, Bend, and is identified on the Deschutes County Assessor’s Map as 17-12-35, Tax Lot 1500. The site is illustrated on the map below:

# Subject Property



**LOT OF RECORD:** The subject property was found to be a legal lot of record pursuant to local land use decisions 247-16-000317-ZC and 247-16-000318-PA.

**PROPOSAL:** The Applicant is proposing to amend the County Comprehensive Plan and Zoning Map to change the designation of the subject property from Rural Residential Exception Area (RREA) and Multiple Use Agricultural (MUA10) Zone to Bend Urban Growth Area and Urbanizable Area (UA) District, respectively. Subsequently, the Applicant proposes to expand the City of Bend UGB to accommodate a future affordable housing development. The subject property was selected by the State of Oregon's pilot project for affordable housing (HB 4079 and OAR 660-039-0090).

**SITE DESCRIPTION:** The subject property is currently within the land use management jurisdiction of Deschutes County. The Deschutes County Comprehensive Plan map designates the subject property as Rural Residential Exception Area (RREA). The subject property is within the Multiple Use Agricultural (MUA10) zone. The subject property is 35.32 acres in size and is irregular in shape. It is adjacent to Highway 20 (a principle arterial) along the northern boundary, and Bear Creek Road (a rural collector) along the southern boundary. The property abuts the Bend City Limits and Urban Growth Boundary (UGB) to the west and is situated approximately 0.25 miles from Ward Road (a rural arterial), to the east. A Central Oregon Irrigation District (COID) canal traverses the property along the western property edge and there are two irrigation water storage ponds on the site, both within the southwestern portion of the parcel. The site has been previously developed with a home and outbuildings, located approximately in the center of the parcel. Vegetation on the property consists primarily of annual grasses, sagebrush, scattered juniper trees, and clusters of coniferous trees surrounding the dwelling and two ponds on the property.

**SURROUNDING LAND USES:** The City of Bend UGB is directly adjacent to the subject property along its western boundary. Properties within the UGB are developed with a mixture of urban residential and commercial uses, with all adjacent parcels located within the Residential Standard Density (RS) Zone. At the northwest corner of the subject property is a triangular parcel that is zoned Residential High Density (RH) that is located within the Bend UGB, but is not annexed into the City of Bend. North of the subject property, across Highway 20 are two Exclusive Farm Use – Tumalo/Redmond/Bend (EFU-TRB) zoned tax lots that are developed with single-family dwellings and one EFU-TRB property which is undeveloped. None of these properties appear to be engaged in farm use and there are no listed water rights for any of the parcels. To the east of the subject property are two Multiple Use Agricultural (MUA-10) zoned tax lots that are developed with single-family dwellings. None of these properties appear to be engaged in farm use and there are no listed water rights for any of the parcels. To the south, across Bear Creek Road, are three EFU-TRB zoned tax lots. All of these properties are developed with single-family dwellings and one parcel (Map and Tax Lot: 18-12-02, 201) is currently engaged in small scale agricultural use.

**PUBLIC AND PRIVATE AGENCY COMMENTS:** The Planning Division mailed notice on April 7, 2022, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the transmittal materials for file 247-22-000123-PA/124-ZC for a plan amendment and zone change for affordable housing on 35.2 acres to the immediate east of Bend at 21455 Hwy 20, aka County Assessor's Map 17-12-35, Tax Lot 1500. The proposal was selected as part of House Bill 4079 (2018) for affordable housing and currently has a Comprehensive Plan designation of Rural Residential Exception Area (RREA) and is zoned as Multiple Use Agriculture (MUA-10). The proposal would annex the area and change the designation to the City's Urbanizing Area (UA).

Oregon Administrative Rule (OAR) 660-039 implements HB 4079. OAR 660-39-030(1)(c) specifically exempts plan amendments and zone changes for HB 4079 projects from demonstrating compliance with Statewide Planning Goal 12 (Transportation), which is implemented by the Transportation Planning Rule (TPR), aka OAR 660-012-0060. However, local codes still require traffic analysis, specifically Deschutes County Code (DCC) 18.116.310(C)(3) and 18.116.310(E)(4). Staff agrees with the methodology, assumptions, and conclusions of the transportation analysis submitted as part of the burden of proof.

Deschutes County Building Official, Randy Scheid

The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review

Central Oregon Irrigation District (COID)

Please be advised that Central Oregon Irrigation District (COID) has reviewed the application received via email on April 7, 2022 for the above referenced project. The applicant requests an Amendment to the Comprehensive Plan designation and Zone of the subject property from Rural Residential Exception Area (RREA) and Multiple Use Agricultural (MUA10) Zone to Bend Urban Growth Boundary (UGB) Area and Urbanizable Area (UA), respectively. The subject proposal is in conjunction with House Bill (HB) 4079, which designates a City of Bend Affordable Housing Pilot Program. The subject property is located at 21455 HWY 20, BEND, OR 97701; 1712350001500.

The A-Lateral has an easement of 50-feet with a road easement of 20-feet on the west side. The piped A-23 is located on the north end of the properties and will need to be accommodated. In addition, there is an abandoned ditch with an easement of 20-feet that traverses the subject property.

Listed below are COIDs initial comments to the provided preliminary site plan. All development affecting irrigation facilities shall be in accordance with COID's Development Handbook and/or as otherwise approved by the District.

- Central Oregon Irrigation District (COID) and Hayden Homes are coordinating on the location and construction timeline of the proposed piping of the A-lateral. While there are several technical and public safety matters to be addressed, COID has agreed, in principle, to the proposed piping of the canal. It is our understanding the goal is to perform this work winter of 2023.
- Any irrigation conveyance, District or private, which passes through the subject property shall not be encroached upon or crossed without written permission from this office.
- No structures of any kind, including fence, are permitted within COID property/easement/right of way.
- Irrigation infrastructure and rights-of-way are required to be identified on all maps and plans.
- Please note that COID facilities are located within the vicinity of the project. If the project expands to include additional tax lots or areas, please contact COID.
- Comply with Requirements of COID Developer Handbook including restriction on drilling / blasting and excavation within and adjacent to the existing canal embankment. There is no blasting within 100-feet of the canal

COID has discussed the following water rights information for Tax Map 17123500 01500 with Hayden Homes:

- 7.50 acres of appurtenant COID pond maintenance right. Property owner has the option to retain the pond on the property with the understanding no water will be delivered to it during the non-irrigation season.
- 2.25 acres of appurtenant COID pond maintenance right (small southern pond). This pond has not been actively filled and maintained since 2017. This water is subject to cancellation November 1, 2022 due to nonuse. Property owner must contact COID by 4/29/22 to file an instream lease application to protect the water. If an instream lease is not filed by the due date, the only option to retain the 2.25 acre pond is to fill and maintain the pond during the 2022 irrigation season. Failure to lease the water instream or to fill the pond will result in the cancellation of the water right and may subject the property owner to cancellation fees. Contact COID for information.
- 0.25 acres of appurtenant COID irrigation right. This irrigation right should be removed from the property prior to development.

Our comments are based on the information provided, which we understand to be preliminary in nature at this time. Our comments are subject to change and additional requirements may be made. Please provide updated documents to COID for review as they become available. Policies, standards and requirements set forth in the COID Developer Handbook must be complied with. Irrigation infrastructure and right-of-way are required to be identified on all maps and plans.

The following agencies either had no comment or did not respond to the notice at the time of this staff report: Avion Water Company, the Bend-La Pine School District, the Bend Fire Department,

the Bend Metro Parks and Recreation District, the Bend Planning Department, the Bend Public Works Department, the Bend Growth Management Department, the Central Oregon Irrigation District (COID), the Deschutes County Assessor, the Deschutes County Environmental Soils Division, the Deschutes County Road Department, the Oregon Department of Transportation, the Oregon Department of Fish and Wildlife, the Oregon Department of State Lands (DSL), and the District 11 Watermaster.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 250 feet of the subject property on April 7, 2022. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on March 4, 2022. No public comments were received from neighboring property owners.

**NOTICE REQUIREMENT:** The Applicant complied with the posted notice requirements of Section 22.23.030(B) of Deschutes County Code (DCC) Title 22. The Applicant submitted a Land Use Action Sign Affidavit, dated March 4, 2022, indicating the Applicant posted notice of the land use action on the property on March 4, 2022. On April 7, 2022, the Planning Division mailed a Notice of Public Hearing to all property owners within 250 feet of the subject property. A Notice of Public Hearing was published in the Bend Bulletin on Wednesday, April 20, 2022. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on March 29, 2022.

**REVIEW PERIOD:** The application was submitted on February 17, 2022. The application was deemed complete on March 18, 2022. According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change application is not subject to the 150-day review period.

**LAND USE HISTORY:** Previous land use decisions associated with the subject property are listed below:

- **247-16-000317-ZC** and **247-16-000318-PA:** A Plan Amendment changing the designation of the subject property from Agriculture to Rural Residential Exception Area and a Zone Change from Exclusive Farm Use (EFU-TRB) to Multiple Use Agricultural (MUA-10).
- **247-17-000115-LL:** A property line adjustment between the subject property and a neighboring property (Map and Tax Lot: 17-12-35, 1501).

### III. FINDINGS & CONCLUSIONS

#### **Title 22 of the Deschutes County Code, Procedures Ordinance**

##### **Chapter 22.08, General Provisions**

##### Section 22.08.010 Application Requirements

- A. *Property Owner. For the purposes of DCC 22.08.010, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.***
- B. *Applications for development or land use actions shall:***
  - 1. *Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;***
  - 2. *Be completed on a form prescribed by the Planning Director;***
  - 3. *Include supporting information required by the zoning ordinance and that information necessary to demonstrate compliance with applicable criteria; and***
  - 4. *Be accompanied by the appropriate filing fee, unless such fees are waived by the Board of County Commissioners.***
  - 5. *Include an affidavit attesting to the fact that the notice has been posted on the property in accordance with DCC 22.24.030(B).***
- C. *The following applications are not subject to the ownership requirement set forth in DCC 22.08.010(B)(1):***
  - 1. *Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or***
  - 2. *Applications for development proposals sited on lands owned by the state or the federal government.***
- D. *A deposit for hearings officers' fees may be requested at any time prior to the application being deemed complete and, if the application is heard by a hearings officer, the applicant will be responsible for the actual costs of the hearings officer.***

**FINDING:** The Applicant submitted its application pursuant to authority granted by the property owner, Porter Kelly Burns Landholdings LLC. The Applicant paid a hearings officer deposit and will be responsible for the actual costs of the hearings officer.

Section 22.08.020 Acceptance of Application

- A. *Development action and land use action applications shall not be accepted until the planning director has determined that (1) the requirements of DCC 22.08.010 have been met and (2) the application is complete or the application is deemed to be complete under state law.***
- B. *An application is complete when in the judgment of the Planning Director all applicable issues have been adequately addressed in the application.***
- C. *Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria need to be addressed or a later determination that additional information is needed to adequately address applicable criteria.***



**FINDING:** The Applicant's application was accepted by the Deschutes County Community Development Department and has been determined to be complete.

## **Chapter 22.20, Review of Land Use Applications**

### Section 22.20.010 Action on Land Use Action Applications

- A. *Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provision, the Planning Director may decide upon a land use action application administratively either with prior notice, as prescribed under DCC 22.20.020 or without prior notice, as prescribed under DCC 22.20.030 or he may refer the application to the Hearings Body for hearing. The Planning Director shall take such action within 30 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived at the option of the applicant.***

**FINDING:** The Applicant requests a Comprehensive Plan map amendment. Accordingly, a hearing is required. A public hearing before the Deschutes County Hearings Officer is scheduled for May 10, 2022. Following the public hearing, the Hearings Officer will prepare a Decision and Recommendation for consideration by the Board of County Commissioners.

## **Chapter 22.24, Land Use Action Hearings**

### Section 22.24.010 Filing of Staff Report for Hearing

- A. *At the time an application that in the judgment of the Planning director requires a hearing is deemed complete, a hearing date shall be set.***
- B. *A staff report shall be completed seven days prior to hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete. Pursuant to DCC 22.24.140(A)(3), grant of a continuance under these circumstances shall be discretionary.***
- C. *A copy of the staff report shall be mailed to the applicant, shall be made available to such other persons who request a copy and shall be filed with the Hearings Body.***
- D. *Oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.***

**FINDING:** A hearing date is set before the Hearings Officer and a staff report was completed seven days prior to the May 10, 2022 hearing date. A copy of the staff report was mailed to the Applicant, sent to the Hearings Officer, and was made available to the public as part of the record herein.

Section 22.24.020 Hearings Body

- A. The following shall serve as the hearings body:**
  - 1. Hearings Officer.**
  - 2. Planning Commission, as specified by DCC 22.24.020(C).**
  - 3. Board of County Commissioners, except where an applicable joint management agreement within an acknowledged urban growth boundary specifies a city governing body as the final appeals body.**
- B. The Hearings Body order shall be as set forth in DCC 22.24.020(A), except that the Board may call up an administrative decision for review without the necessity of an application going before the Hearings Officer.**
- C. Where the Hearings Officer declines to hear a matter on the grounds of a conflict of interest, the Planning Commission shall substitute for the hearings officer. In the Redmond Urban Area, the initial Hearings Body for a quasi-judicial plan amendment or zone change may at the discretion of the Planning Director be either the Planning Commission or the Hearings Officer. Additionally, in the Redmond Urban Area, the initial Hearings Body for Declaratory Rulings and revocations of land use approvals may, at the discretion of the Planning Director, be the Hearings Officer, the Redmond Urban Area Planning Commission or the Redmond City Council.**

**FINDING:** The Deschutes County Hearings Officer will serve as the initial hearings body for the application for a quasi-judicial plan amendment. These requirements are met.

Section 22.24.030 Notice of Hearing or Administrative Action

- A. Individual Mailed Notice.**
  - 1. Except as otherwise provided for herein, notice of a land use application shall be mailed at least 20 days prior to the hearing for those matters set for hearing, or within 10 days after receipt of an application for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:**
    - a. The applicant.**
    - b. Owners of record of property as shown on the most recent property tax assessment roll of property located:**
      - 1. Within 100 feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;**
      - 2. Within 250 feet of the property that is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4) for structures proposed to exceed 30 feet in height; or**
      - 3. Within 750 feet of the property that is the subject of the notice where the subject property is within a farm or forest zone, except**

*where greater notice is required under DCC 22.24.030(A)(4) for structures proposed to exceed 30 feet in height.*

- c. For a solar access or solar shade exception application, only those owners of record identified in the application as being burdened by the approval of such an application.*
  - d. The owner of a public use airport if the airport is located within 10,000 feet of the subject property.*
  - e. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.*
  - f. The Planning Commission.*
  - g. Any neighborhood or community organization formally recognized by the board under criteria established by the Board whose boundaries include the site.*
  - h. At the discretion of the applicant, the County also shall provide notice to the Department of Land Conservation and Development.*
- 2. Notwithstanding DCC 22.24.030(A)(1) (b)(1), all owners of property within 250 feet of property that is the subject of a plan amendment application or zone change application shall receive notice.*
  - 3. The failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Division can show by affidavit that such notice was given.*
  - 4. For structures proposed to exceed 30 feet in height that are located outside of an urban growth boundary, the area for describing persons entitled to notice under DCC 22.24.030(A)(1)(b) shall expand outward by a distance equal to the distance of the initial notice area boundary for every 30 foot height increment or portion thereof.*
- B. Posted Notice.**
- 1. Notice of a land use action application for which prior notice procedures are chosen shall be posted on the subject property for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way.*
  - 2. Posted notice of an application for a utility facility line approval shall be by posting the proposed route at intervals of not less than one-half mile. The notice shall be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route.*
  - 3. Notice of a solar access application shall be posted as near as practicable to each lot identified in the application.*
- C. Published Notice.** *In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 20 days prior to the hearing.*
- D. Media Notice.** *Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.*

**FINDING:** Individual mailed notice, posted notice, published notice and media notice of the application and the initial public hearing before the Hearings Officer were provided consistent with

these requirements. Specifically, notice was provided to owners of record of property as shown on the most recent property tax assessment roll of property located within 250 feet of the subject property.

Section 22.24.040 Contents of Notice

- A. All mailed notices of a land use action hearing shall:**
- 1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.**
  - 2. List the criteria from the zoning ordinance and the plan applicable to the application at issue.**
  - 3. Set forth the street address or easily understood geographical reference to the subject property.**
  - 4. State the date, time and location of any hearing or date by which written comments must be received.**
  - 5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.**
  - 6. If a hearing is to be held, state that any interested person may appear.**
  - 7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.**
  - 8. State the name of a county representative to contact and the telephone number where additional information may be obtained.**
  - 9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.**
  - 10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.**
  - 11. All mailed notices shall contain the following statement: NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.**
- B. All mailed and published notices for hearings shall contain a statement that recipients may request a copy of the staff report.**
- C. All mailed and published notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.**

**FINDING:** Mailed notices of the initial hearing before the Hearings Officer on the application contain all required information set forth above. The application does not necessitate an exception to any of the statewide land use planning goals.

## **Chapter 22.28, Land Use Action Decisions**

### Section 22.28.030 Decision on Plan Amendments and Zone Changes.

- A. *Except as set forth herein, the Hearings Officer or the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the Board of County Commissioners.***
- B. *In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.***
- C. *Plan amendments and zone changes requiring an exception to the goals or concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board under DCC Title 22.***
- D. *Notwithstanding DCC 22.28.030(C), when a plan amendment subject to a DCC 22.28.030(C) hearing before the Board of County Commissioners has been consolidated for hearing before the hearings Officer with a zone change or other permit application not requiring a hearing before the board under DCC 22.28.030(C), any party wishing to obtain review of the Hearings Officer's decision on any of those other applications shall file an appeal. The plan amendment shall be heard by the Board consolidated with the appeal of those other applications***

**FINDING:** The Deschutes County Hearings Officer has authority to make a decision on the quasi-judicial plan amendment application. Prior to becoming effective, the quasi-judicial plan amendment decision shall be adopted by the Board of County Commissioners.

## **Title 19A of the Deschutes County Code, Bend Urbanizable Area District**

### Section 19A.01.010. Purpose, Applicability and Definitions

- A. *Purpose. The Urbanizable Area (UA) District is intended to preserve large areas of undeveloped or rural land for future urban development prior to annexation. The UA District promotes the livability, stability, safety and improvement of the City of Bend by allowing orderly development consistent with the Bend Comprehensive***

**Plan.**

- B. Applicability.** *The provisions of the UA District apply to all land inside the Urban Growth Boundary but outside the city limits, except for the land withdrawn from the City of Bend by the County by City Resolution 2459. The City of Bend is responsible for administering Title 19A using the Bend Development Code (BDC). The UA District will automatically be removed upon annexation to the City, and the zoning that implements the Bend Comprehensive Plan designation for the property will apply.*

**FINDING:** As set forth above, the Applicant requests a quasi-judicial plan amendment to change the County Comprehensive Plan map designation of the subject property from Rural Residential Exception Area to Bend Urban Growth Area, and to expand the City of Bend UGB. The subject property is within the Multiple Use Agricultural Zone. The subsequent steps to be taken by the City of Bend for the affordable housing pilot project include annexation of the subject property, and adoption of plan and zone designations for the property.

Staff finds that DCC 19A.01.010 is a purpose statement, which sets forth a general expression of a goal or objective to maintain large areas of undeveloped or rural land for future urban development prior to annexation. *See Beck v. City of Tillamook*, 20 Or LUBA 178, 185-86 (1990). Staff finds that DCC 19A.01.010 is not an approval criterion for the subject application.

## **Title 18 of the Deschutes County Code, County Zoning**

### **Chapter 18.32, Multiple Use Agricultural Zone**

#### Section 18.32.010. Purpose

***The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.***

**FINDING:** The Applicant requests a quasi-judicial plan amendment to change the County Comprehensive Plan map designation of the subject property from Rural Residential Exception Area to Bend Urban Growth Area to expand the City of Bend UGB. The subject property is within the Multiple Use Agricultural Zone. The subsequent steps to be taken by the City of Bend for the affordable housing pilot project include annexation of the subject property, and adoption of plan and zone designations for the property.

Staff finds that DCC 18.32.010 is a purpose statement, which sets forth a general expression of a goal or objective to preserve rural residential and agricultural lands. *See Beck v. City of Tillamook*, 20 Or LUBA 178, 185-86 (1990). Staff finds that DCC 18.32.010 is not an approval criterion for the subject application.

## **Chapter 18.84, Landscape Management Combining Zone**

### Section 18.84.010. Purpose

***The purposes of the Landscape Management Combining Zone are to maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams.***

**FINDING:** Staff finds that DCC 18.84.010 is a purpose statement, which sets forth a general expression of a goal or objective to maintain scenic and natural resources of certain designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams. *See Beck v. City of Tillamook*, 20 Or LUBA 178, 185-86 (1990). Staff finds that DCC 18.84.010 is not an approval criterion for the subject application.

### Section 18.84.020. Application Of Provisions

***The provisions of DCC 18.84 shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of DCC 18.84 shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified as landscape management corridors in the comprehensive plan and the County Zoning Map. The distance specified above shall be measured horizontally from the center line of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitations in DCC 18.84.20 shall not unduly restrict accepted agricultural practices.***

**FINDING:** The Applicant requests a quasi-judicial plan amendment to change the County Comprehensive Plan map designation of the subject property from Rural Residential Exception Area to Bend Urban Growth Area to expand the City of Bend UGB. The subject property is also currently within the Landscape Management (LM) Combining Zone. The subsequent steps to be taken by the City of Bend for the affordable housing pilot project include annexation of the subject property, and adoption of plan and zone designations for the property.

Staff notes that the current proposal will change the zoning of the subject property from Multiple Use Agricultural (MUA10), which is administered by Title 18 of the Deschutes County Code, to the new zoning designation of Urbanizable Area (UA), which is administered by Title 19A of the Deschutes County Code. Staff finds that Title 19A does not contain a Landscape Management Combining Zone or similar proportional zoning designation which would apply to the subject property. Staff finds that once the property's zoning designation is changed to Urbanizable Area,

the overlying LM Zone applying to the subject property will be removed as the County Code governing the LM Zone does not apply within Title 19A areas.

## **Chapter 18.136, Amendments**

### Section 18.136.010, Amendments

***DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.***

**FINDING:** The Applicant, with authorization from current landowner Porter Kelly Burns Landholdings LLC, has requested a quasi-judicial plan amendment and zone change. The Applicant has filed the required Planning Division's land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

### Section 18.136.020, Rezoning Standards

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

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

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement:

A review of the Deschutes County Comprehensive Plan was included above. As detailed in that section, the proposal is consistent with the applicable goals and policies of the Deschutes County Comprehensive Plan, along with the introductory statement. Based upon the findings and conclusions detailed in section VI.A above, the proposal complies with this approval criterion.

The Applicant utilizes this analysis to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed in the Comprehensive Plan section of this staff report in further detail. Staff agrees with the Applicant's analysis and finds the above provision to be met based on Comprehensive Plan conformance as demonstrated in subsequent findings.

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

**FINDING:** The Applicant provided the following response in the submitted burden of proof statement:



As detailed in DCC 19A.01.010 Purpose, Applicability and Definitions of the UA Zone.

- A. Purpose. The Urbanizable Area (UA) District is intended to preserve large areas of undeveloped or rural land for future urban development prior to annexation. The UA District promotes the livability, stability, safety and improvement of the City of Bend by allowing orderly development consistent with the Bend Comprehensive Plan.
- B. Applicability. The provisions of the UA District apply to all land inside the Urban Growth Boundary but outside the city limits, except for the land withdrawn from the City of Bend by the County by City Resolution 2459. The City of Bend is responsible for administering Title 19A using the Bend Development Code (BDC). The UA District will automatically be removed upon annexation to the City, and the zoning that implements the Bend Comprehensive Plan designation for the property will apply.
- C. Area and Master Planning. The City has the authority to process Area Plans under BDC Chapter 4.1, Development Review and Procedures and BDC Chapter 4.6, Land Use District Map and Text Amendments (Type IV process) and Master Plans under BDC Chapter 4.5, Master Planning and Alternative Developments and BDC Chapter 4.6, Land Use District Map and Text Amendments (Type III process) in the UA District prior to annexation. However, development of the property with the uses authorized by the Area or Master Plan may only occur after annexation.
- D. Definitions. The following definitions apply to DCC Title 19A in addition to the definitions in the BDC.
  - “Urban Growth Boundary (UGB)” means the urban growth boundary as adopted by the City and County and acknowledged by the State, as set forth in the Bend Comprehensive Plan and as shown on the Bend Comprehensive Plan map.
  - “Urbanizable Area (UA) District” means the unincorporated area inside the Urban Growth Boundary (UGB) but outside the city limits, except for the land withdrawn from the City of Bend by the County by City Resolution 2459.

The proposal will change the zone from MUA10 to UA, as it will be situated in the Bend UGB. The proposed zone change allows efficient development which can utilize the planning program that has been established between the City and Deschutes County for lands that are situated within the UGB, but outside of the City Limits. The overall development process will require Master Plan Approval and Annexation, prior to development. The property, location, and overall intent of the application is consistent with the purpose and intent of the UA Zone; thus in conformance with this approval criterion.

Staff finds the Applicant has demonstrated the change in classification is consistent with the purpose and intent of the UA Zone, as the current proposal is being reviewed concurrently with another request to expand the Bend UGB to include the subject property. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

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

**4. *The availability and efficiency of providing necessary public services and facilities.***

**FINDING:** Although there are no plans to develop the property in its current state, the above criterion specifically asks if the proposed zone exchange will *presently* serve public health, safety, and welfare. The Applicant provides the following response in the submitted burden of proof statement:

Given the allowed uses in the UA Zone, changing the zone from MUA10 to UA will not result in any new impacts or necessitate any new public services or facilities. Nonetheless, changing the zone from MUA10 to UA will allow for the larger development process to begin, it will provide a path for Master Planning, Annexation and ultimately for development of the property in the City of Bend, consistent with the Concept Plan. Through the overall development process, public facilities plans need to provide for the “timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” This requirement is primarily implemented by the City of Bend, which has adopted public facilities plans and standards.

As documented in Section IV - Findings of Fact of this narrative, the HB 4079 Application Submittal (Exhibit I), the Avion Water Will Serve Letter (Exhibit K), the City of Bend Sewer Analysis (Exhibit L) and the Transportation Report, prepared by Transight Consulting (Exhibit M), the subject property is able to be served by public water, sanitary sewer, and transportation systems, and the Applicant is committed to making the extensions needed to provide/extend the noted facilities and services. Once the property brought into the UGB, the applicant will undertake all required steps to update the TSP, along with the necessary planning, designing and extending services (as required through the Master Plan, Annexation, Land Division and Site Plan processes), to accommodate the Concept Plan (Exhibit G) and the ultimate development of the site. The proposal is consistent with the current public facilities master plans and it has been shown that the property can be provided public facilities and services, concurrent with development. The proposal is therefore consistent with this approval criterion

Neighboring properties to the west are all located inside the Bend UGB and contain a mixture of single-family residential uses and scattered commercial operations such as plant nurseries. Neighboring properties to the east predominately contain single-family residences and small scale, hobby farm and agricultural uses. These parcels have water service primarily from Avion Water Company and some private wells, on-site sewage disposal systems, electrical service, telephone services, etc.

The subject property is currently adjacent to two major public rights of way: Highway 20 to the north, which is maintained by the Oregon Department of Transportation, and Bear Creek Road to the south, which is maintained by the Deschutes County Road Department. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the properties, the Applicant would be required to comply with the applicable requirements of the City of Bend Development Code, including possible land use

permitting, building permitting, and sewage disposal permitting processes. Through these development review processes, assurance of adequate public services and facilities will be verified. Staff finds this provision is met.

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

**FINDING:** The Applicant provides the following response in the submitted burden of proof statement:

Changing the zoning from MUA 10 to UA will not change the use of the land or generate any new impacts that may be experience by surrounding lands. Furthermore, if and when development occurs on the property (after Master Planning, Annexation, Land Division and Site Plan, as needed) the project’s impacts on surrounding properties will be consistent with the goals and policies of the Deschutes County Comprehensive Plan and the City of Bend Comprehensive Plan. All applicable Deschutes County Comprehensive Plan Goals and Policies were address in section VI.A above and as detailed therein the application complies with the applicable Comprehensive Plan elements. Therefore the proposal complies with this approval criterion.

In addition to these comments, the Applicant has provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. Staff finds the Applicant has demonstrated the impacts on surrounding land uses will be consistent with the specific goals and policies contained within the Comprehensive Plan, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

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

**FINDING:** The Applicant is proposing to rezone the properties from MUA10 to Urbanizable Area (UA) and re-designate the properties from Rural Residential Exception Area to Bend Urban Growth Area. The Applicant has provided the following response in the submitted burden of proof statement:

Throughout the adoption and roll-out of the HB 4079 project, the state documented that a high number of Oregonians, particularly low income Oregonians, were paying more than 30% of their income on housing. Amongst the challenging housing environment, Oregon State Legislators passed 4 housing bills in 2016:

- HB 4079 Affordable Housing Pilot Project
- HB 4143 Tenant protections
- SB 1533 Inclusionary zoning and construction excise tax
- SB 1573 Limit voter approval of city annexations

The premise of the HB 4079 Affordable Housing Pilot Project is to understand potential impacts, if UGB rules are relaxed, and if relaxing the rules will bring in land (to the UGB) that would not otherwise be urbanized, and if the lower cost of such land will allow a set-aside for affordable housing to become feasible.

The passing of HB 4079, the adoption of the implementing rules in OAR 660-039, and the selection of the City of Bend (and the subject property) all constitute changes that have occurred since the property was last zoned MUA10. The noted changes justify the zone change from MUA10 to UA.

Considering the Applicant's above response, staff notes that the passage of HB 4079 and the selection of the subject property for an affordable housing pilot project constitutes a notable change in circumstances since the property was last zoned. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

## **Title 23 of the Deschutes County Code, Comprehensive Plan**

### **Chapter 1, Comprehensive Planning**

#### **Section 1.3, Land Use Planning**

***Goal 1. Maintain an open and public land use process in which decisions are based on the objective evaluation of facts.***

**FINDING:** This proposal was developed specifically in response to the State of Oregon's request for affordable housing pilot projects to address this critical Central Oregon issue. The 2016 House Bill 4079 (HB 4079) and the 2019 HB 2336 allowed two selected cities to add new housing units outside of their current UGBs. The resulting statute and implementing administrative rule (OAR 660-039) were themselves created via a public process. The review of Bend's proposal and subsequent approval by the Land Conservation and Development Commission (LCDC) was based on an objective review of the facts pertaining to state goals and administrative rules. The subsequent land use application to the County for the plan amendment includes public notice as required by County code to property owners, private and public agencies, and culminates in two public hearings. The Applicant's burden of proof addresses the factual base of state and local requirements for decisions related to plan amendments. The burden of proof also addresses City of Bend requirements for the next steps regarding the future application of Bend's development code, and development of the site to accommodate 347 residential units. As presently proposed, approximately 30% of the units will be affordable housing (households making 80% or less of the County's Area Median Income (AMI) of \$68,973<sup>1</sup>). In summary, at every step at the state and the local level the proposed development of the subject property was the result of an open and public process.

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<sup>1</sup> <https://www.census.gov/quickfacts/fact/table/deschutescountyoregon/PST045221>

***Goal 2. Promote regional cooperation and partnerships on planning issues.***

**FINDING:** As noted above, this proposal for a Plan Amendment, Zone Change, and UGB amendment was developed as a specific response to the state’s request for pilot projects for affordable housing. The City of Bend and Deschutes County have extensively coordinated on the resulting land use application for the subject property. The subject application for a County Plan Amendment and Zone Change is being processed concurrently with a City of Bend proposal for a UGB expansion to encompass the parcel. Staff finds that the proposal promotes regional cooperation and partnerships between Deschutes County and the City of Bend.

**Chapter 2, Resource Management**

**Section 2.2, Agricultural Lands Policies**

**FINDING:** The subject property is currently designated Rural Residential Exception Area and thus the proposal does not impact any designated agricultural land. Staff finds the provisions of this section are not applicable.

**Section 2.3 Forests**

**FINDING:** Staff finds the provisions of this section do not apply as the subject property is not located in a forest zone or on land designated as Forest on the Comprehensive Plan map.

**Section 2.4, Goal 5 Overview Policies**

***Goal 1. Protect Goal 5 resources***

**FINDING:** The Applicant has provided the following response in the submitted burden of proof statement:

This section provides background information of Goal 5 resources in Deschutes County and establishes methods for preservation and protection of such resources. As noted in the City of Bend Resolution 3271 (Exhibit H), the subject property contains 2 water storage ponds that may be Goal 5 resources and/or potential wetlands.

- N. The Council continues to find the Bend Pilot Project Site satisfies Statewide Land Use Planning Goal 5. The Bend Pilot Project Site contains two ponds identified on the National Wetlands Inventory, which is the inventory of wetland habitat for Deschutes County, pursuant to Deschutes County Ordinance 92-045 and Deschutes County Development Code 23.112.040.3. When the Bend Pilot Project Site containing the ponds is annexed into the City, and before development is approved, the Developer must engage in the required analysis to determine whether the ponds are considered significant under Goal 5. BDC 4.6.300.B.1 or 4.5.200.D.3.c.i. The Central Oregon Irrigation District has turned off the water supply to the ponds and it may be unlikely that there are jurisdictional wetlands on the site, but that remains to be finally determined. If found to be a significant Goal 5 resource, they must be preserved.

The Revised Concept Plan proposes 4 acres of Park space to be dedicated to the Bend Park and Recreation District. Based on the provision of open space and parks, and trail connections, and the requirement that further analysis be done to determine whether the ponds are a significant resource, the City finds that the Revised Concept Plan complies with Goal 5.

The current submittal is for UGB Expansion, a RM Bend Comprehensive Plan designation, and a Zone Change from MUA 10 to UA, that will ultimately accommodate the Concept Plan (Exhibit G). The Concept Plan provides a park in the areas of the potential Goals 5 Resource (wherein the resource could be preserved, if needed) and the City has found that the forthcoming City of Bend review procedures will ensure compliance with Goal 5, thus the proposal and subsequent review process will provide consistency with intent of this section.

Staff notes that based on the National, Local, and State Wetland maps, the subject property contains several areas of jurisdictional wetlands, primarily in the western and southern portions of the property that are associated with irrigation lines and storage ponds. As part of the current proposal, Deschutes County has notified the Oregon Department of State Lands (DSL) concerning the proposed Plan Amendment and Zone Change. At the time of this staff report, DSL has not provided any comments on the Applicant's proposal.

Ultimately, staff finds that no specific physical development of the property is being proposed as part of the Plan Amendment and Zone Change and thus no impacts to designated wetland areas or other Goal 5 resources are expected under the current proposal. Additionally, staff finds that any physical development of the subject property will be undertaken after the parcel has been annexed into the City of Bend. All development proposals will be reviewed under City of Bend codes and procedures, in addition to coordination with relevant state agencies such as DSL. Staff agrees with the Applicant's contention that any future City of Bend review procedures will ensure protection of any Goal 5 resources located onsite. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

## **Section 2.5, Water Resources Policies**

**FINDING:** The Applicant has provided the following response in the submitted burden of proof statement:

This section provide background information of Goal 5 Water Resources in Deschutes County and establishes methods for preservation and protection. As noted above and in the City of Bend Resolution 3721 (Exhibit H), the subject property contains 2 water storage ponds that may be Goal 5 Water Resources and/or potential wetlands.

- N. The Council continues to find the Bend Pilot Project Site satisfies Statewide Land Use Planning Goal 5. The Bend Pilot Project Site contains two ponds identified on the National Wetlands Inventory, which is the inventory of wetland habitat for Deschutes County, pursuant to Deschutes County Ordinance 92-045 and Deschutes County Development Code 23.112.040.3. When the Bend Pilot Project Site containing the ponds is annexed into the City, and before development is approved, the Developer must engage in the required analysis to determine whether the ponds are considered significant under Goal 5. BDC 4.6.300.B.1 or 4.5.200.D.3.c.i. The Central Oregon Irrigation District has turned off the water supply to the ponds and it may be unlikely that there are jurisdictional wetlands on the site, but that remains to be finally determined. If found to be a significant Goal 5 resource, they must be preserved.

The Revised Concept Plan proposes 4 acres of Park space to be dedicated to the Bend Park and Recreation District. Based on the provision of open space and parks, and trail connections, and the requirement that further analysis be done to determine whether the ponds are a significant resource, the City finds that the Revised Concept Plan complies with Goal 5.

The current submittal is for UGB Expansion, a RM Bend Comprehensive Plan designation, and a Zone Change from MUA 10 to UA, that will ultimately accommodate the Concept Plan (Exhibit G). The Concept Plan provides a park in the areas of the potential Goals 5 Resource (wherein the resource could be preserved, if needed) and the City has found that the forthcoming City of Bend review procedures will ensure compliance with Goal 5, thus the proposal and subsequent review process will provide consistency with intent of this section.

Staff notes no sensitive riparian areas or major water resources are located in the immediate area. However, based on the National, Local, and State Wetland maps, the subject property contains several areas of jurisdictional wetlands, primarily in the western and southern portions of the property that are associated with irrigation lines and storage ponds. As noted above, Deschutes County has notified the Oregon Department of State Lands (DSL) concerning the proposed Plan Amendment and Zone Change. At the time of this staff report, DSL has not provided any comments on the Applicant's proposal.

Ultimately, staff finds that no specific physical development of the property is being proposed as part of the Plan Amendment and Zone Change and thus no impacts to water resources are expected under the current proposal. Additionally, staff finds that any physical development of the subject property will be undertaken after the parcel has been annexed into the City of Bend. All

development proposals will be reviewed under City of Bend codes and procedures, in addition to coordination with relevant state agencies such as DSL. Staff agrees with the Applicant's contention that any future City of Bend review procedures will ensure protection of any water resources located onsite. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

### **Section 2.6, Wildlife**

**FINDING:** There are no Goal 5-listed wildlife species present on the subject property, based on the Goal 5 inventory nor threatened or endangered species. There is no identified wildlife habitat on the subject property.

### **Section 2.7, Open Spaces, Scenic Views and Sites**

#### ***Goal 1. Coordinate with property owners to ensure protection of significant open spaces and scenic views and sites.***

**FINDING:** The site is not zoned Open Space and Conservation (OS&C). However, staff notes that the subject property is located within a designated Landscape Management Combining Zone associated with Highway 20. Pursuant to DCC 18.84, the purpose of the Landscape Management Combining Zone is to "maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams." However, staff finds that this policy does not apply as at the time of development the property will be under the City of Bend's land use authority and subject to the City's relevant open space and scenic view development criteria. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

#### ***Policy 2.7.1 Goal 5 open spaces, scenic views and sites inventories, ESEEs and programs are retained and not repealed.***

**FINDING:** As stated above, the site is not zoned OS&C. However, staff notes that the subject property is located within a designated Landscape Management Combining Zone associated with Highway 20. Pursuant to DCC 18.84, the purpose of the Landscape Management Combining Zone is to "maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams." However, staff finds that this policy does not apply as at the time of development the property will be under the City of Bend's land use authority and subject to the City's relevant open space and scenic view development criteria. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

#### ***Policy 2.7.2 Cooperate with stakeholders to establish a comprehensive system of connected open spaces.***

**FINDING:** As stated above, the site is not zoned OS&C. Staff also notes that there are no OS&C zoned properties or other open space resources in the immediate vicinity of the subject property.



Despite the lack of adjacent open space resources in the area, within the Concept Plan submitted as part of the application materials, the Applicant has identified a dedicated park in certain areas of the subject property, predominately in the southwestern quadrant. However, staff finds that this policy does not apply as at the time of development the property will be under the City of Bend's land use authority and subject to the City's relevant open space development criteria. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

***Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.***

**FINDING:** As stated above, the site is not zoned OS&C. However, staff notes that the subject property is located within a designated Landscape Management Combining Zone associated with Highway 20. Pursuant to DCC 18.84, the purpose of the Landscape Management Combining Zone is to "maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams." Nonetheless, neither the applicant nor staff is aware of any significant open spaces or visually prominent areas on the subject parcel. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

***Policy 2.7.4 Encourage a variety of approaches that protect significant open spaces and scenic views and sites.***

**FINDING:** As noted above, the subject property does not contain significant open or scenic views and sites. Nevertheless, through specific development of the site the City of Bend can protect open spaces as well as scenic views and sites. The City's Comprehensive Plan requires identification and preservation of significant open space areas and natural features where possible. Staff finds that the proposal meets these policies. Nonetheless, neither the Applicant nor staff is aware of any significant open spaces or visually prominent areas on the subject parcel. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

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

**FINDING:** The plan amendment does not approve any development at this time. Staff finds the policy does not apply to the subject proposal. However, when the City annexes the land into the UGB and applies residential zoning to the subject parcel, the City's code will address sites for consistency with local code requirements. Staff finds Policy 2.7.5 does not apply as it pertains to a review of County code, which is not the topic of this application. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

## **Section 2.8 Energy Policies**

### ***Goal 1. Promote energy conservation.***

***Goal 2. Promote affordable, efficient, reliable and environmentally sound energy systems for individual home and business consumers.***

***Goal 3. Promote affordable, efficient, reliable and environmentally sound commercial energy facilities.***

**FINDING:** The Applicant has provided the following response in the submitted burden of proof statement:

While none of the Goals or Policies of this section are relevant to the current review, the Background of this section notes:

*A prime method of managing land for energy conservation is to design communities to be compact and walkable, so as to limit the need for automobiles and conserve fossil fuel. For a rural county, these types of transportation related energy savings are limited. Instead the County can focus on other conservation measures.*

The proposal provides 35.52 acres of land that are intended for urban residential development. The proposed UGB Expansion, associated Comprehensive Plan Map Amendment and Zone Change will locate much needed urban land for residential development in a location that has been vetted by the State (LCDC – Exhibit J) and the City of Bend (Exhibit I). As detailed in the HB 4079 Application, factors that were considered when selecting the HB 4079 site included ability to extend water, sewer, and transportation systems to the area, along with transit availability. The site abuts the Bend UGB, and the Concept Plan includes a park, pedestrian facilities, multi-use paths and a transit stop. Through subsequent review processes (Master Plan, Annexation, Land Division and Site Plan) the proposed project will facilitate a compact development design and manage land for energy conservation, which is consistent with this section.

The application does not result in any immediate development, so staff finds these goals and their policies do not apply to the proposed Plan Amendment and Zone Change request. However, the Concept Plan submitted as part of the application materials includes a variety of residential densities, which staff notes are likely result in increased energy conservation. Additionally, Bend's Affordable Housing Pilot Project submittal to the state included emphasis on pedestrian facilities and transit, measures which will result in energy conservation by reduced use of single-occupant vehicles. The City of Bend's development code addresses many of these issues, which will be the applicable code when the site develops.

## **Section 2.9 Environmental Quality**

***Goal 1. Maintain and improve the quality of the air, water and land.***

***Goal 2. Promote sustainable building practices that minimize the impacts on the natural environment.***

### ***Goal 3. Encourage and increase recycling***

**FINDING:** The application will not result in immediate development. Staff finds these goals and their policies do not apply to the proposed Plan Amendment and Zone Change request. The City of Bend development code will provide the review criteria when the subject property develops.

### **Section 2.10 Surface Mining**

**FINDING:** Staff finds this goal does not apply as the land is not designated SM for either the Comprehensive Plan map or the zoning code. The subject property contains no Goal 5 aggregate or mineral resources based on a staff review of Section 5.8 of the Comprehensive Plan. The plan amendment does not seek to modify or amend the County's Goal 5 Aggregate and Mineral inventory list or the Goal 5 program.

### **Section 2.11 Cultural and Historic Resources**

**Finding:** Staff finds this goal does not apply as the subject property does not contain any sites listed in the Goal 5 inventory of cultural and historic resources based on a review of Section 5.9 of the Comprehensive Plan. The plan amendment does not seek to modify or amend the County's Goal 5 Cultural and Historic Resources Inventory nor does it seek to amend the County's Goal 5 program.

## **Chapter 3, Rural Growth Management**

### **Section 3.3, Rural Housing Policies**

#### ***Goal 1. Maintain the rural character and safety of housing in unincorporated Deschutes County.***

**FINDING:** The Applicant has provided the following response in the submitted burden of proof statement:

The property is currently designated Rural Residential Exception Area and zoned MUA10. The text of this section and the resultant policies focus on the important balance between protecting rural values and protecting property rights; establishing that too much development can lead to the destruction of the qualities that bring people to Deschutes County, while too many restrictions keep out people who would choose a rural lifestyle.

The current proposal impacts 35.52 acres of land in a Rural Residential Exception Area, it will place the property in the Bend UGB, with a UGB County Comprehensive Plan designation, and a RM Bend Comprehensive Plan designation, and rezone it from MUA10 to UA; the proposal will ultimately allow for urban residential development. The current Bend UGB lies on the west side of the subject property and, with this proposal, the line will move east approximately 1,300 feet. Given that the proposal will change the zone from MUA10 to UA, it will maintain a rural residential nature until the property is annexed into the City; therefore

the majority of the policies of this section do not apply to the current proposal. The relevant policies are noted below:

**Goal 2 Support agencies and non-profits that provide affordable housing.**

**Policy 3.3.6 Support Central Oregon Regional Housing Authority and other stakeholders to meet the housing needs of all Deschutes County residents.**

- a. Assist as needed in coordinating and implementing housing assistance programs.**
- b. Support efforts to provide affordable and workforce housing in urban growth boundaries and unincorporated communities.**

**Response:** The current proposal is an effort that was directed by the City of Bend, it was supported by Deschutes County (attachment to the HB 4079 Application – Exhibit I), and it has been authorized by LCDC (Exhibit J). The developer, City, County and DLCD are all stakeholders with an interest in meeting housing needs for Deschutes County residents. The HB 4079 Affordable Housing Pilot Project is intended to address affordable housing and it will provide affordable housing opportunities in the Bend UGB. Pursuant to the text of these policies, the proposal should be supported by Deschutes County.

Staff finds this application will not adversely impact the rural character and safety of housing in unincorporated Deschutes County, as the proposal is to change the Comprehensive Plan designation from RREA to Bend Urban Growth Area. There are County-zoned lands on three sides of the subject parcel. To the east and southeast are MUA10 zoned parcels containing single-family homes on parcels ranging from 1.7 to 34.5 acres. Portions of land to the north, south, and southwest are EFU zoned parcels predominately developed with single-family dwellings and minor hobby farming operations. The proposal will maintain a similar urban-rural buffer as what presently exists on site, but will move the City's UGB approximately 1,300 feet further east. Finally, staff finds this goal is ultimately not applicable as no specific development is proposed at this point, but if it were the requirements of Bend's development code will protect the rural character and safety of existing adjacent rural housing.

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

**FINDING:** The application will not create any new rural residential parcels. Any subsequent land division will occur under City of Bend development code. Staff finds this policy does not apply.

***Policy 3.3.2 Incorporate farm and forest housing reports into a wider system for tracking the cumulative effects of rural housing development.***

**FINDING:** The application will not result in any new rural housing developments. Any housing development will occur based on City of Bend development code. Staff finds this policy does not apply.

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

**FINDING:** The plan amendment will not result in any new subdivisions under County code. Instead, development will occur under City of Bend development code once annexation occurs. However, the Urban Area zoning designation and the corresponding City of Bend development code standards will result in a denser urban development pattern, which complements greater pedestrian travel and use of transit, both of which mitigate community and environmental impacts. Ultimately however, staff finds this policy does not apply to the proposed Plan Amendment and Zone Change request.

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

**FINDING:** The plan amendment is a required step under OAR 660-039 to allow qualifying cities to develop affordable housing on lands without having to go through the UGB expansion process of OAR 660-024. The resulting development, once annexed, will be reviewed under the City of Bend development code. However, Bend's Affordable Housing Pilot Project submittal to the state contains a diversity of housing opportunities. Staff finds this policy does not apply to the proposed Plan Amendment and Zone Change request, but the pilot project for affordable housing is consistent with the policy.

***Goal 2. Support agencies and non-profits that provide affordable housing.***

**FINDING:** The Board of County Commissioners provided Resolution of Support 2018-029 on June 18, 2018, to the City of Bend's application to the State's request for pilot projects for affordable housing. Staff finds this goal is met.

***Policy 3.3.6 Support Central Oregon Regional Housing Authority and other stakeholders to meet the housing needs of all Deschutes County residents.***

- a. Assist as needed in coordinating and implementing housing assistance programs.***
- b. Support efforts to provide affordable and workforce housing in urban growth boundaries and unincorporated communities.***

**FINDING:** The City of Bend is a stakeholder to meet the needs of all Deschutes County residents as those living in cities are still County residents. The Board's passing of Resolution 2018-029 ("A Resolution of Support for the City of Bend's Application for a Pilot Program for Urban Growth Boundary expansion for Affordable Housing under HB 4079") supports efforts to provide affordable housing for County residents. Staff finds this policy is met.

***Policy 3.3.7 Utilize block grants and other funding to assist in providing and maintaining low and moderate income housing.***

**FINDING:** The pilot project requires that 30% of the housing units be affordable. Based on the submitted application materials, the Applicant states that upon completion the project will result in 347 total dwelling units, with 108 slated for affordable housing. After completion, approximately 31% of the proposed dwelling units will be utilized for affordable housing. Staff finds the intent of this policy has been met.

The remaining policies (3.3.8 through 3.3.9.7) concern the Westside Transect on the west side of Bend and are not applicable.

### **Section 3.4, Rural Economy Policies**

***Goal 1. Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.***

**FINDING:** The plan amendment will change the Comprehensive Plan designation from Rural Residential Exception Area (RREA) to a Bend Urban Growth Area. By definition the subject parcel will no longer be intended for rural uses. The subject parcel adjoins rural parcels zoned EFU-TRB and MUA10. The County zones allow rural economic activities and these will still be allowed on surrounding properties after the plan amendment. The Bend development code's requirements for screening, buffering, and landscaping will ensure development of the subject property will be compatible with the surrounding rural parcels. In fact, development of 347 residential units could provide a market of potential customers within close proximity to the rural economic uses allowed in the County-zoned lands. For example, EFU zoning allows for wineries and agri-tourism in certain locations, while MUA10 zoning allows for home occupations and certain commercial agricultural uses.

The remaining policies (3.4.1 through 3.4.35) concern either uses not occurring on the subject parcel currently or are inapplicable as the parcel is zoned MUA10 and not Rural Commercial (RC) or Rural Industrial (RI).

### **Section 3.5, Natural Hazards**

***Goal 1. Protect people, property, infrastructure, the economy, and the environment from natural hazards.***

**FINDING:** The Comprehensive Plan lists the three-highest priorities for natural hazards as wildfire, severe winter storms, and flooding. The subject parcel is currently developed with a single-family dwelling and scattered residential accessory structures. Post-annexation, the subject parcel will be in the City of Bend, which will provide fire protection through its Fire and Rescue Department and snow removal through its Streets and Operations Division. Additional road maintenance will continue to be provided along Highway 20 by the Oregon Department of Transportation. The subject parcel does not contain any lands designated floodplain or floodway. Drainage and storm water will be addressed as part of the master plan development. Staff finds this goal is met.

The remaining policies (3.5.1 through 3.5.11) are specific to rural properties, which the subject property will no longer be should the plan amendment be approved. Staff finds the remaining policies are inapplicable.

### **Section 3.6, Public Facilities and Services**

***Goal 1. Support the orderly, efficient and cost-effective siting of rural public facilities and services.***

**FINDING:** The Applicant notes the site will be annexed into the City of Bend and provided with municipal facilities and services which are operated and maintained by the City as well as Avion Water Company. Staff agrees and finds this Goal is inapplicable as there will be no rural public facilities and services if annexation to the City of Bend is approved.

### **Section 3.7, Transportation**

**FINDING:** The Applicant notes the site will be annexed into the City of Bend and provided with City transportation facilities and services, with some transportation access provided via Highway 20 by the Oregon Department of Transportation. Under the Joint Area Management Agreement between City of Bend and Deschutes County, jurisdictional transfer of roads are accomplished as part of annexation. The site is currently served by Bear Creek Road (a County designated rural collector right of way) to the south and Highway 20 to the north (a state designated primary highway). Adequacy of current and future transportation facilities will be reviewed per the Bend development code as the land is proposed to develop. Finally, OAR 660-039-0030(1)(c) exempts affordable housing pilot projects from the OAR 660-012, the Transportation Planning Rule (TPR). Staff finds this goal is met.

### **Section 3.8, Rural Recreation**

***Goal 1. Promote a variety of passive and active park and recreation opportunities through a regional system that includes federal and state parks and local park districts.***

**FINDING:** The Bend Park and Recreation District, which includes the subject property, has a Comprehensive Plan adopted as of July 2018 which identifies various parks and/or public spaces throughout the district. Additionally, the subject parcel will remain in relatively close proximity to the Big Sky Park located approximately 0.85 miles northeast of the subject property within the rural County. The subject property will also be located in close proximity to scattered, smaller recreation sites identified by the Bend Park and Recreation District just west of the property within the City of Bend UGB.

***Policy 3.8.1 Cooperate with public agencies and local park districts to provide park and recreation lands, facilities, and opportunities.***

- a. The Statewide Comprehensive Outdoor Recreation Plan and State Park Master Plans shall serve as a basis for coordination on County-wide park and recreation issues.***
- b. Support exceptions to Statewide Planning Goals for urban fringe areas owned or***

***acquired by and operated by park and recreation districts.***

**FINDING:** Staff notes OAR 660-039-030 exempts the approved affordable housing pilot project from obtaining a goal exception for several Statewide Planning Goals, including Goal 3 (Agriculture). Staff finds this policy is met.

The remaining policies (3.8.2 through 3.8.10) pertain to rural County lands, which the subject property will no longer be should the plan amendment be approved. Staff finds the policies are inapplicable.

### **Section 3.9, Destination Resorts**

**FINDING:** These goals and policies do not apply as the subject property does not have a Destination Resort Overlay zone on it nor is the plan amendment at hand for a destination resort.

### **Section 3.10, Area Specific Plans and Policies**

**FINDING:** Three areas have been identified for area specific plans or policies: South County, Deschutes Junction, and the Oregon Military site. There are no specific area plans that apply to the subject property.

## **Chapter 4, Urban Growth Management**

### **Section 4.2, Urbanization Policies**

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

**FINDING:** The Applicant's proposal is uniquely applicable to Urban Growth Management Goal 1 in that it is the direct outcome of the State's pilot program for affordable housing. As the Applicant states, HB 4079, which established the pilot program, was a result of cooperation between cities, counties, stakeholders and affordable housing advocates, and the Legislature. As acknowledged by County Resolution 2018-029, the City of Bend and Deschutes County coordinated on choosing the subject parcel for the future affordable housing project as well as the application to the State to be considered for the selection to the pilot program.

The Applicant summarizes the coordination process as follows:

The City and the County have established a process and agreements to effectively administer lands that are within the Bend UGB, but outside of the City limits. The proposal to expand the Bend UGB, designate the property RM on the Bend Comprehensive Plan, and rezone it to UA, will allow for an efficient review and coordination of this and future land use application, because with the UA Zone it will use the same process that has been established for all lands in



the recently approved Bend expansion areas. The proposed plan and design is consistent with these policies.

Staff finds the application is consistent with this policy.

***Policy 4.2.1. Participate in the processes initiated by cities in Deschutes County to create and/or amend their urban growth boundaries.***

**FINDING:** Deschutes County has participated in each phase of the Affordable Housing Pilot program at both the Board and the staff levels. Participation has included, but is not limited to, identifying the appropriate site, passing Board Resolution 2018-029 supporting the City's application to the pilot program, reviewing subsequent materials related to adjusting the City's UGB and amending the County's Comprehensive Plan. Staff finds the application is consistent with this policy.

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

**FINDING:** Staff finds the subject parcel is not identified as a Bend Urban Reserve Area. However, the property is directly adjacent to the City of Bend's UGB as well as several other parcels to the north and south which are located within a Bend Urban Reserve Area. While not specifically designated as an Urban Reserve Area, staff finds this property serves a similar purpose given its proximity to existing infrastructure and urban development patterns along its western boundary. The Comprehensive Plan amendment to Bend Urban Growth Area and subsequent development would be the result of promotion of the site as a candidate for HB 4079 and coordination between the City of Bend and Deschutes County. Staff finds the application is consistent with this policy.

***Goal 2. Coordinate with cities, special districts and stakeholders on urban growth area zoning for lands inside urban growth boundaries but outside city boundaries.***

***Goal 3. Coordinate with cities, special districts and stakeholders on policies and zoning for lands outside urban growth boundaries but inside urban reserve areas.***

**FINDING:** The above goals will not be applicable to the subject property if the application is approved. The proposal seeks to bring the subject property into the Bend UGB as well as annex the property into the City of Bend. Therefore, staff finds that Goals 2 and 3 are not applicable to properties within city boundaries.

***Goal 4. To build a strong and thriving regional economy by coordinating public investments, policies and regulations to support regional and state economic development objectives in Central Oregon.***

**FINDING:** The Applicant states this Comprehensive Plan amendment and UGB annexation will enable a thriving regional economy. The City of Bend and Deschutes County have coordinated on policies to implement the Affordable Housing Pilot project on the subject parcel. The building of the 347 units, of which the state mandates at least 30 percent must be affordable, will contribute to

economic development in the region. The presence of affordable housing is a foundation of economic growth in the region. Staff finds that the proposal is consistent with this Goal.

Staff finds the remaining policies (4.2.12 through 4.2.19) pertain to large-lot industrial development and are not applicable to this proposal.

**OREGON ADMINISTRATIVE RULES CHAPTER 660  
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**OAR 660-015, Division 15, Statewide Planning Goals and Guidelines**

**Goal 1, Citizen Involvement. *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.***

**FINDING:** The proposed Comprehensive Plan amendment and Zone Change complies with the actions required by the Deschutes County Development Code, including two public hearings—first with a Hearings Officer, then with the Board of County Commissioners—and notice of the hearing published in a newspaper (the *Bend Bulletin*) at least ten days in advance. Public agencies affected by this amendment were involved throughout the development of the proposal. In accordance with the Deschutes County Code, property owners potentially affected by the amendment (in this case, within 250 feet of the subject property) were provided notice of the proposed amendment and hearing. The published and mailed notices all complied with DCC 22.12.020 requirements.

**Goal 2, Land Use Planning. *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.***

**FINDING:** This proposal satisfies this goal because the applications were handled pursuant to the procedures applicable to plan amendments in the County's Comprehensive Plan and zoning ordinance. In addition, the proposal is supported by a factual base consisting of the region's economy and the need for affordable housing.

**Goal 3, Agricultural Lands. *To preserve and maintain agricultural lands.***

**FINDING:** OAR 660-039-0030(1)(c) does not require an approved affordable housing pilot project to comply with Goal 3.

**Goal 4, Forest Lands. *To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.***

**FINDING:** The subject property does not contain any forest lands and therefore this goal is not applicable.

**Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. *To protect natural resources and conserve scenic and historic areas and open spaces.***

**FINDING:** The Applicant’s burden of proof states the following regarding subject property and Goal 5 resources:

The City of Bend conducted an assessment of Goal 5 when selecting the property for the HB 4079 submittal. As established in City of Bend Resolution 3271:

- N. The Council continues to find the Bend Pilot Project Site satisfies Statewide Land Use Planning Goal 5. The Bend Pilot Project Site contains two ponds identified on the National Wetlands Inventory, which is the inventory of wetland habitat for Deschutes County, pursuant to Deschutes County Ordinance 92-045 and Deschutes County Development Code 23.112.040.3. When the Bend Pilot Project Site containing the ponds is annexed into the City, and before development is approved, the Developer must engage in the required analysis to determine whether the ponds are considered significant under Goal 5. BDC 4.6.300.B.1 or 4.5.200.D.3.c.i. The Central Oregon Irrigation District has turned off the water supply to the ponds and it may be unlikely that there are jurisdictional wetlands on the site, but that remains to be finally determined. If found to be a significant Goal 5 resource, they must be preserved.

The Revised Concept Plan proposes 4 acres of Park space to be dedicated to the Bend Park and Recreation District. Based on the provision of open space and parks, and trail connections, and the requirement that further analysis be done to determine whether the ponds are a significant resource, the City finds that the Revised Concept Plan complies with Goal 5.

The current submittal is for UGB Expansion, a RM Bend Comprehensive Plan designation, and a Zone Change from MUA 10 to UA, that will ultimately accommodate the Concept Plan (Exhibit G). The City has found that the Concept Plan and forthcoming City of Bend review procedures will ensure compliance with Goal 5, thus the proposal is also consistent with Goal 5

As stated previously, staff notes that based on the National, Local, and State Wetland maps, the subject property contains several areas of jurisdictional wetlands, primarily in the western and southern portions of the property that are associated with irrigation lines and storage ponds. As part of the current proposal, Deschutes County has notified the Oregon Department of State Lands (DSL) concerning the proposed Plan Amendment and Zone Change. At the time of this staff report, DSL has not provided any comments on the Applicant’s proposal.

Ultimately, staff finds that no specific physical development of the property is being proposed as part of the Plan Amendment and Zone Change and thus no impacts to designated wetland areas or

other Goal 5 resources are expected under the current proposal. Additionally, staff finds that any physical development of the subject property will be undertaken after the parcel has been annexed into the City of Bend. All development proposals will be reviewed under City of Bend codes and procedures, in addition to coordination with relevant state agencies such as DSL. Staff agrees with the Applicant's contention that any future City of Bend review procedures will ensure protection of any Goal 5 resources located onsite. However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

**Goal 6, Air, Water and Land Resources Quality. *To maintain and improve the quality of the air, water, and land resources of the state.***

**FINDING:** OAR 660-039-0030(1)(c) does not require an approved affordable housing pilot project to comply with Goal 6.

**Goal 7, Areas Subject to Natural Disasters and Hazards. *To protect people and property from natural hazards.***

**FINDING:** The applicant's burden of proof provides the following:

The City of Bend conducted an assessment of Goal 7 when selecting the property for the HB 4079 submittal. As established in City of Bend Resolution 3271:

O. The Council continues to find that the proposal satisfies Goal 7 because the City has considered the risks of the natural hazard wildfire in the evaluation of the Bend Pilot Project Site. There are other natural hazards such as floods and landslides that are not addressed here because the Bend Pilot Project Site is not a location where such hazards might occur. The Bend Comprehensive Plan Policy 11-5 requires the City to adopt strategies to reduce wildfire hazard on lands inside the City and included in the Urban Growth Boundary. These strategies may include the application of the International Wildland-Urban Interface Code or equivalent with modifications to allow buffers of aggregated defensible space, or similar tools, as appropriate. Prior to approval of development on the Bend Pilot Project Site, the proposal must demonstrate compliance with Statewide Planning Goals including Goal 7, as designated by the Planning Director, under BDC 4.6.300.B.1 or 4.5.200.D.3.c.i. Based on the Concept Plan and the requirements in the Bend Development Code for compliance with the Statewide Planning Goals, the City finds that the Revised Concept Plan complies with Goal 7.

The current proposal is for UGB Expansion, a RM Bend Comprehensive Plan designation, and a Zone Change from MUA 10 to UA, that will ultimately accommodate the Concept Plan (Exhibit G). The City has found that the Concept Plan and forthcoming City of Bend review procedures will ensure compliance with Goal 7, thus the proposal is also consistent with Goal 7.

Additionally, staff notes that based on County and FEMA resources, it does not appear any areas on the site are subject to flooding or landslide activity. Wildfire hazards are not substantially different from other areas within or adjacent to the Bend UGB, and development of the site could potentially improve fire protection by providing greater access and water infrastructure. Staff agrees with the Applicant's assessment that the inclusion of this site within the UGB is consistent with Goal 7.

**Goal 8, Recreational Needs.** *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

**FINDING:** OAR 660-039-0030(1)(c) does not require an approved affordable housing pilot project to comply with Goal 8.

**Goal 9, Economy of the State.** *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

**FINDING:** OAR 660-039-0030(1)(c) does not require an approved affordable housing pilot project to comply with Goal 9.

**Goal 10, Housing.** *To provide for the housing needs of citizens of the state.*

**FINDING:** OAR 660-039-0030(1)(c) does not require an approved affordable housing pilot project to comply with Goal 10.

**Goal 11, Public Facilities and Services.** *To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

**FINDING:** The Applicant's burden of proof notes under OAR 660-039-0030(1)(d), qualifying cities in the Affordable Housing Pilot Project are exempt from this goal, except that portion detailing the impact of the project to existing and planned public facilities within the qualifying city's UGB. The Applicant has submitted the following documents demonstrating the subject property can reasonably be served.

- Avion Water Company Will Serve Letter
- City of Bend Sewer Analysis
- Traffic Study, prepared by Transight Consulting LLC

The referenced traffic study was reviewed by the Senior County Transportation Planner who agreed with the methodology, assumptions, and conclusions of the transportation analysis. Based on the submitted documents above, staff finds there is adequate current and future capacity for water, sewer, and the road network. Staff finds the application is consistent with this goal.

**Goal 12, Transportation. To provide and encourage a safe, convenient and economic transportation program.**

**FINDING:** OAR 660-039-0030(1)(c) does not require an approved affordable housing pilot project to comply with Goal 12.

**Goal 13, Energy Conservation. To conserve energy.**

**FINDING:** OAR 660-039-0030(1)(c) does not require an approved affordable housing pilot project to comply with Goal 13.

**Goal 14, Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.**

**FINDING:** The Applicant notes that OAR 660-039-0030(1)(b) qualifying cities under the Affordable Housing Pilot Project are exempt from complying with the Land Need and Boundary Location provisions of this goal. Still, the proposal has taken into account the concepts of Goal 14 by acknowledging the subject parcel is directly adjacent to the existing Bend UGB, can be served by a direct extension of public facilities (or private facilities in the case of Avion Water), and the proposed use of the land is compatible with adjacent uses. Staff finds the proposal is consistent with this goal.

**Goals 15 through 19.** Staff finds these goals, which address the Willamette Greenway, estuarine, coastal, beaches and dunes, and ocean resources, are not applicable to the proposal because the subject property is not located in or adjacent to any such areas or resources.

## **OREGON REVISED STATUTES (ORS)**

### **ORS 197.298, Priority of Land to be Included within Urban Growth Boundary**

**(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary of Metro except under the following priorities:**

**(a) First priority is land that is designated urban reserve land under ORS 195.145 (Urban reserves), rule or metropolitan service district action plan.**

**(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710 (High-value farmland description for ORS 215.705).**

**(c) if land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).**

***(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.***

**FINDING:** Staff notes OAR 660-039-0030(1)(a) does not require compliance with this statute. Staff finds the application is consistent with this statute.

#### **660-039-0090**

##### **Subsequent Events**

***(1) Upon selection by the commission as provided in OAR 660-039-0080(4), the qualifying city shall:***

***(a) In concert with the county in which the urban growth boundary is located, amend the urban growth boundary to include the pilot project site, and identify the provisions of law and rules pursuant to OAR 660-039-0030 relating to urban growth boundary amendments that are not applied to allow the pilot project site to be included within the urban growth boundary;***

***(b) Annex the pilot project site to the qualifying city within two years of the acknowledged urban growth boundary amendment;***

***(c) Adopt plan and zone designations for the pilot project site that authorize development of the concept plan included in the application;***

***(d) Adopt measures ensuring that affordable housing developed on the pilot project site remains affordable for a period of at least 50 years after the selection of the pilot project site; and***

***(e) Issue permits for development on the pilot project site only after annexation of the site to the qualifying city and adoption of measures ensuring that housing developed on the pilot project site will continue to be used to provide affordable housing for a period of at least 50 years after the selection of the pilot project site.***

**FINDING:** The City has submitted the appropriate land use application to the County to change the Comprehensive Plan and Zoning designations for the subject property, as well as an expansion to the Bend UGB boundary. The City will then initiate a land use application to apply the City of Bend development codes to develop land uses on the subject parcel consistent with the City's Affordable Housing Pilot Program application. Staff finds the application meets the requirements of this administrative rule.

***(2) For a post-acknowledgement plan amendment or land use regulation change under OAR chapter 660, division 18 that proposes amendments with any effect upon existing comprehensive plan designations or provisions that impact residential development, or land use regulations that impact residential development, the qualifying city may not, for a period of 50 years after approval of the pilot project by the commission, consider the existence of housing units existing or approved on the pilot project site when making findings regarding the proposed amendment.***

**FINDING:** The plan amendment is not being processed under OAR 660-018 so staff finds this administrative rule is not applicable. Staff notes the City is aware of this implication for subsequent post-acknowledgement plan amendments.

***(3) The qualifying city for the pilot project site selected by the commission may not plan or zone the site to allow a use or mix of uses not authorized by the commission unless the qualifying city, in concert with the county, withdraws the pilot project site from the urban growth boundary and rezones the site pursuant to law, statewide land use planning goals and land use regulations implementing the goals that regulate allowable uses of land outside urban growth boundaries.***

**FINDING:** The land use application at hand:

- 1) Changes the Comprehensive Plan designation from the County’s designation of Rural Residential Exception Area to the Bend Urban Growth Area and;
- 2) Amends the Bend UGB boundary to include the subject parcel.

The City will then annex and apply its development code to the subject parcel to implement the Affordable Housing Pilot Project. Staff finds this administrative rule is met.

**IV. CONCLUSION & RECOMMENDATION:**

Staff finds that the Applicant has met the burden of proof necessary to justify changing the Plan Designation of the subject property from Rural Residential Exception Area to Bend Urban Growth Area, to change the zoning of the subject property from Multiple Use Agricultural (MUA10) to Urbanizable Area (UA), and to expand the Urban Growth Boundary through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (Deschutes County Zoning Ordinance), DCC Title 19A (Bend Urbanizable Area District), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

**DESCHUTES COUNTY PLANNING DIVISION**



Written by: Kyle Collins, Associate Planner



Reviewed by: Will Groves, Planning Manager



Owner	Agent	InCareOf	Address	CityStZip	Type	cdd id
Blackmore Planning and Development Services, LLC			19454 Sunshine Way	Bend, OR 97702	Staff Report	22-123-PA, 22-124-ZC
Hayden Homes			2464 SW Glacier Place, Suite 110	Redmond, OR 97756	Staff Report	22-123-PA, 22-124-ZC
PORTER KELLY BURNS LANDHOLDINGS LLC			5691 MIRAMAR DR	FRISCO, TX 75034	Staff Report	22-123-PA, 22-124-ZC