

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

After Recording Return to:
Deschutes County
Community Development Department
147 NW Lafayette Street
Bend, OR 97703

IMPROVEMENT AGREEMENT

This Improvement Agreement (“Agreement”), relating to the construction and installation of certain required improvements (the “Required Improvements,” as defined below in Section 4) on Phase 8, within the Westgate Subdivision, is by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon (“County”) and Empire Westgate LLC (“Developer”).

RECITALS:

- A. Developer filed an application for final subdivision plat approval for the tentative subdivision plan approved under File No. 247-19-000500-MP and 247-19-000501-TP (the “Land Use Approval”) prior to the completion of the Required Improvements.
- B. Deschutes County Code (DCC) Section 17.24.120 provides that a developer may, in lieu of completing improvements specified in tentative plan approval prior to filing a final subdivision plat, enter into an agreement with the County and provide a good and sufficient form of security to provide for the completion of such improvements.
- C. The Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279A.010(1)(cc).
- D. County and Developer desire to enter into this Agreement in order to establish the obligation and to secure completion of the Required Improvements following recording of the final plat for the Land Use Approval.

NOW THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual obligations hereinafter stated, as follows:

1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.

2. Real Property Description. The real property subject to this Agreement (the “Real Property”) is identified as Map and Tax Lot 1711350001200 and more particularly described on the attached Exhibit A. This Agreement shall be recorded against and shall encumber the Real Property and every developable unit of land lawfully created from the Real Property (each, a “Lot”) subject to Section 20 below.

3. Exhibits. The exhibits listed below and attached to the Agreement are hereby incorporated herein by reference:

4.1 Exhibit A & B – Legal description of Real Property.

4.2 Exhibit C – List of Required Improvements.

4.3 Exhibit D – Copy of Land Use Approval.

4.4 Exhibit E – Bond Instrument.

4. Identification of Required Improvements. Developer shall install and complete, or cause to be installed and completed, the improvements listed in Exhibit C and required by the Site Plan set forth in Exhibit B to the extent that same remain to be completed (the “Required Improvements”).

5. Construction of Required Improvements.

5.1 Developer shall install and complete the Required Improvements in accordance with the plans and construction specifications related thereto and to any additional County and/or State of Oregon specifications or applicable regulations. Developer shall cause the Required Improvements to be completed in compliance with the applicable codes, regulations, and laws then in effect.

5.2 Developer shall promptly repair any damage to existing and new roads, water lines, stormwater facilities, and similar facilities within and without the Real Property, which are caused by the installation of the Required Improvements.

5.3 Developer shall schedule final inspections and shall have the Required Improvements in a condition determined by County to be sufficient not later than one year from the date the final plat is recorded (the “Completion Date”).

6. Warranty of Improvements.

6.1 For twelve (12) months following the Completion Date (“Warranty Period”) Developer hereby warrants that (i) the Required Improvements, and any corrective work, shall remain free from defects in materials or workmanship, (ii) the Required Improvements shall continue to meet all plan and construction specifications (iii)

that the Required Improvements shall continue to meet any County and/or State of Oregon specifications or applicable regulations as noted in Section 5.1.

- 6.2 If the warranty obligations set forth in Section 6.1 are not satisfied, County will provide notice to Developer of any required corrective work and a reasonable timeframe in which the corrective work must be initiated and completed. Notwithstanding the foregoing, County may initiate corrective work without notice to Developer in the event of an emergency.
- 6.3 To secure warranty obligations pursuant to DCC 17.24.120(A)(5) and this Section 6, upon completion of the Required Improvements and prior to the Developer scheduling a final inspection pursuant to Section 5.3, Developer shall deposit with the County a one-year warranty bond, or other security acceptable to County, equivalent to ten-percent (10%) of the construction costs of such Required Improvements (“Warranty Security”).
- 6.4 If Developer fails to timely initiate or complete work as provided in Section 6.2, or in the event of an emergency, County may draw upon the Warranty Security during the Warranty Period to perform the corrective work in the same manner as Section 8.4.

7. License to Enter and Remain on Property.

- 7.1 During the term of this Agreement, Developer hereby grants County and County’s employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the Required Improvements.
- 7.2 After the Default Grace Period specified in Section 8.2 or to correct an issue during the Warranty Period specified in Section 6.2, and after providing notice to Developer, County or its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the Real Property and may cause the Required Improvements to be completed.

8. Right to Draw on Security.

- 8.1 Upon failure of the Developer to complete the Required Improvements as required under Section 5.3 above by the Completion Date, County shall notify Developer in writing of such failure (the “Default Notice”).
- 8.2 Upon receipt of the Default Notice, Developer shall have thirty (30) days to complete the Required Improvements to the condition required under Section 5 (the “Default Grace Period”).
- 8.3 Should Developer fail to complete the Required Improvements within the Default Grace Period, County may, at its sole discretion, cause incomplete or unsatisfactory Required Improvements to be completed.

- 8.4** If County causes the Required Improvements to be completed, County may draw upon the Security for any and all costs and expenses incurred by County including, but not limited to, attorneys and engineering fees, and costs and expenses reasonably anticipated or projected by the County to be incurred by the County, in construction and/or completion of the Required Improvements.
- 8.5** If County affirmatively elects (with written documentation of same signed by the Chair of the Board of County Commissioners) not to cause the Required Improvements to be completed, County shall within 180 days cause the Security to be released to Developer.
- 8.6** For the purposes of this Agreement and access to any security offered and accepted to secure Developer's performance, Developer's failure to complete the Required Improvements shall include failure to install or have installed any portion of the Required Improvements to the standards required under Section 5 above.
- 9. No County Guarantee.** County does not warrant or guarantee that any of the Required Improvements referred to in this Agreement will be constructed, maintained or operated.
- 10. License to Use Permits, Specifications and Plans.**
- 10.1** If County determines that any portion of the Required Improvements have not been completed as required by Section 5 above or remain free of defects during the Warranty Period as required by Section 6, Developer shall, upon request of the County, license and assign to County all of Developer's, applicable permits, plans, specifications, shop drawings, instruments, permits and approvals, and other documents necessary or useful in the completion or repair of or related in any manner to the applicable Required Improvements.
- 10.2** Developer shall ensure that any contracts for supply of labor and materials used in connection with constructing Required Improvements are assignable to the County.
- 10.3** Upon such request, Developer shall deliver or shall cause to be delivered, physical possession of such permits, plans, specifications, shop drawings, instruments, permits, approvals, and other documents to the County.
- 10.4** County may sub-assign or license the rights referred to in this Section 10 for any purpose without further approval from Developer.
- 11. No Third-Party Beneficiaries.**
- 11.1** County and Developer are the only parties to this Agreement and are the only parties entitled to enforce its terms.

- 11.2 Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.
12. **Restoration of Monuments.** Developer shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land that is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Developer or Developer’s agents, employees, independent contractors, or persons or entities other than County.
13. **Costs of Inspection.** Developer shall pay to County the actual costs incurred by County in the inspection of the completed Required Improvements plus any fees, such as legal review fees, plan review fees and structural, electrical, plumbing and other specialty codes inspection fees normally associated with the review and inspection of any improvements on the Real Property.
14. **Security for Required Improvements.**
- 14.1 Attached as Exhibit D is a copy of a performance bond in the amount of One Hundred Sixty Thousand, Seventy-Four Dollars (\$160,074.00), (the “Security”).
- 14.2 As used herein, the issuer of the Security is referred to as “Surety.”
- 14.4 Cost Notice Update
- 14.4.1 County, in reasonable intervals, may require the Developer to provide an updated construction cost estimate for the then remaining Required Improvements (the “Cost Update Notice”).
- 14.4.2 Upon receipt of the Cost Update Notice, the Developer shall have thirty (30) days to provide the updated construction cost estimate (the “Developer’s Response”).
- 14.4.3 Upon receipt of the Developer’s Response, or if no Response is received within the thirty (30) day period, if the County reasonably determines that the Developer’s obligations under this Agreement together with the Security do not provide adequate financial assurance for completion of the Required Improvements, the County shall have the option to require Developer to increase the amount of the Security and to memorialize such increase in an amendment to this Agreement (the “Security Amendment”).
- 14.4.4 If the County requires Developer to increase the amount of the Security, Developer shall also file the application fees and materials to amend this Agreement to memorialize the Security Amendment within thirty (30) days of receipt of the County’s notice to increase the Security.

14.4.5 If Developer fails or refuses to increase the amount of Security as directed by the County, such failure or refusal shall be considered failure of the Developer to complete the Required Improvements as required under Section 5 and the County may draw upon the Security pursuant to Section 8.

15. Developer's Obligation for Costs.

15.1 Developer expressly acknowledges, understands, and agrees that this Agreement shall not relieve Developer from the obligation to complete and fully pay for the Required Improvements, to warranty those Required Improvements, and other costs and fees set forth in this Agreement.

15.2 Should Developer default in its obligation to complete the Required Improvements as required by Section 5 or warranty those Required Improvements as required by Section 6, Developer agrees to compensate County for all costs, fees, charges and incurred expenses related to Developer's default.

16. Release of Security or Obligation.

16.1 County shall release the Security less any Warranty Security within thirty (30) calendar days of Developer requesting in writing that the Security be released following the final inspection and approval of the Required Improvements. County shall release the Warranty Security within thirty (30) calendar days of the Developer requesting in writing that the Warranty Security be released following the Warranty Period.

16.2 County may, at the County's discretion and consistent with applicable law, release Developer from any of Developer's obligations under the terms and conditions of this Agreement.

16.3 County's release of any of Developer's obligations shall not be construed as a waiver of County's right to require full compliance with the remainder of this Agreement and Developer's obligation to satisfy any costs, fees, charges and expenses incurred in completion or repair of the Required Improvements.

17. Shortfall in Security.

17.1 If the amount available to be drawn from the Security or Warranty Security is less than the costs and expenses anticipated to be incurred, or actually incurred, by County, including, but not limited to, attorneys and engineering fees, County may apply the proceeds of the Security or Warranty Security to the anticipated or actual costs and expenses of completion or repair of the Required Improvements.

17.2 Developer shall be responsible and liable for any shortfall between the actual costs and expenses of completion or repair of the Required Improvements, including, but

not limited to, attorneys and engineering fees, and the amount of the Security or Warranty Security available to fund such costs and expenses.

18. Incidental Costs. Without limiting the generality of Section 17, if the proceeds of the Security or Warranty Security are not remitted to County within the timeframe set forth in the Security or Warranty Security after County provides written notice to Surety in the form prescribed by the Surety, or the Required Improvements are not installed within a reasonable time period determined and specifically identified by County after County provides notice to Developer and/or Surety, then County's costs of completing and/or repairing the Required Improvements, the costs of obtaining the proceeds of the Security, Warranty Security, or other security, all incidental costs to the extent not covered by the Security, Warranty Security, or other security, and liquidated damages calculated at the rate of \$500 per day shall be added to the amount due to County from Developer, and shall be paid to County by Developer, in addition to and with all other amounts due hereunder.

19. Successors in Interest.

19.1 The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the Real Property including any lots created from the Real Property (each a "Lot").

19.2 It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties to this Agreement, and subject to the terms contained in Section 20, their respective successors, heirs, executors, administrators, and assigns, and any other party deriving any right, title or interest in or to the Real Property or any Lot, including any person who holds such interest as security for the payment of any obligation, including a mortgagee or other secured party in actual possession of said Real Property by foreclosure or otherwise or any person taking title from such security holder.

20. Lot Purchasers.

20.1 Notwithstanding the terms of Section 19, the terms of this Section 20 shall apply to each Lot lawfully created from the Real Property in accordance with the Land Use Approval.

20.2 Each Lot shall be conveyed free of any obligation to pay money or complete any obligation arising from or related to this Agreement.

20.3 The owner of a Lot, other than Developer, is under no obligation or burden to complete the terms and conditions of this Agreement.

20.4 The purpose for the recordation of this Agreement is to place owners and prospective purchasers on notice of the Agreement's terms, that the County has no obligation to construct the Required Improvements or any portion of the Required

Improvements, and the Agreement does not in any way guarantee that any of the Required Improvements will be constructed.

- 20.5** The Agreement conveys no right or right of action by a Lot owner, other than Developer, against the County for any act or omission of the County including, but not limited to, County decisions or acts that required or authorized the Required Improvements, or any part of the Required Improvements, not being constructed.
- 21. Binding Authorization.** By signing this Agreement, each signatory signing in a representative capacity, certifies that the signer is authorized to sign the Agreement on behalf of and bind the signer's principal.
- 22. Expiration.**
- 22.1** This Agreement shall expire after the conclusion of the Warranty Period, or by the County's express written release of Developer from this Agreement.
- 22.2** Upon expiration, County shall provide Developer with a document in recordable form, formally evidencing such expiration within thirty (30) days of such a request from Developer.
- 23. Survival.** County's rights under this Agreement, including County's right to draw upon the Security or Warranty Security in whole or in part, and Developer's obligation to pay the full costs and expenses of completing the Required Improvements and repairs or replacements required herein along with any licenses granted in this Agreement and any costs of enforcement of this Agreement, shall survive the expiration of this Agreement.
- 24. No Agency.**
- 24.1** It is agreed by and between the parties that Developer is not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Developer completes performance under this Agreement nor does County have a right to exercise any control over Developer's activities.
- 24.2** Developer is not an officer, employee or agent of County as those terms are used in ORS 30.265.
- 25. No Joint Venture or Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer with Developer in connection with the Site Plan, the Required Improvements, the Real Property, or any Lot and shall have no obligation with respect to Developer's debts, obligations or other liabilities of each and every nature.
- 26. Liens.**

- 26.1 Developer shall pay as due all claims for work done on and for services rendered or materials furnished to the Real Property and shall keep the Real Property free from liens.
- 26.2 If Developer fails to pay any such claims or to discharge any lien, County may do so and collect the cost plus ten percent (10%) from the Developer or Surety; provided, however, County may not pay such claims or discharge any lien while Developer is timely disputing the validity of such claims or liens.
- 26.3 Such action by County shall not constitute a waiver of any right or remedy that County may have on account of Developer's failure to complete the Required Improvements or failure to observe the terms of this Agreement.
27. **Indemnification.** The County shall not be responsible for any injury to any and all persons or damage to property caused directly or indirectly by reason of any and all activities (including inaction) of Developer under this Agreement and on the Real Property; Developer further agrees to defend, indemnify and save harmless County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury or damage.
28. **Limitation of Liability.** County's liability, if any, pursuant to this Agreement is subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300.
29. **Attorney Fees and Costs.** In the event an action or suit or proceeding, including appeal therefrom, is brought by any party arising directly and/or indirectly out of the provisions of this Agreement or the interpretation thereof, for Developer's failure to complete the Required Improvements or to observe any of the terms of this Agreement or the interpretation thereof, County shall be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney's fees and costs as the court may adjudge in said action, suit, proceeding or appeal.
30. **Waiver.**
- 30.1 Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.
- 30.2 No waiver may be enforced against the County unless such waiver is in writing and signed by the County.
31. **Compliance with provisions, requirements of Federal and State laws, statutes, rules, regulations, executive orders and policies. Debt Limitation.**
- 31.1 This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution.

- 31.2 Any provisions herein that conflict with applicable law, including but not limited to DCC 17.24.120 and 17.24.130, are deemed inoperative to that extent.
- 31.3 Additionally, Developer shall comply with any requirements, conditions or limitations arising under any Federal or State law, statute, rule, regulation, executive order and policy applicable to the Required Improvements.
- 31.4 If this Agreement is in any manner construed to constitute the lending of the County's credit or constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution, this Agreement shall be void.
32. **No Inducement.** No representations, statements, or warranties have induced the making and execution of this Agreement other than those herein expressed.
33. **Governing Law.**
- 33.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.
- 33.2 Any claim, action, suit or proceeding (each a "Claim") between County and Developer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon in Eugene, Oregon.
- 33.3 By signing below, Developer hereby consents to the *in personam* jurisdiction of the courts identified in Section 33.2.
- 33.4 The parties agree that the UN Convention on International Sales of Goods shall not apply.
34. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable in one respect, the validity of the term or provision in any other respect and that of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced to the extent possible.
35. **Counterparts.**
- 35.1 This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
- 35.2 Each copy of this Agreement so executed shall constitute on original.

35.3. If this Agreement is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Agreement.

36. Notice.

36.1 Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Developer or County at the address or fax number set forth below or to such other addresses or fax numbers as either party may hereafter indicate in writing.

36.2 Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.

36.2.1 Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

36.2.2 Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission.

36.2.3 To be effective against County, such facsimile transmission shall be confirmed by telephone notice to County's Director of Administrative Services.

36.2.4 Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class mail or delivered as follows:

To Developer:

Empire Westgate LLC
Kevin Spencer
63026 NE Lower Meadow Drive
Suite 200
Bend, OR 97701

To County:

Deschutes County Administration
County Administration
1300 NW Wall Street, Ste 200
Bend, Oregon 97703
Fax No. 541-388-4752

37. Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

38. Captions.

38.1 The captions contained in this Agreement were inserted for the convenience of reference only.

38.2 Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

39. Amendment.

39.1 The Agreement may only be amended by written instrument signed by both parties and recorded, except that an amendment shall not be recorded against any Lot other than Lots then owned by Developer.

39.2 For purposes of Section 39.1, the signatures of the County shall be the signatures of the Board of Commissioners, Board Chair, or County Administrator.

39.3 Developer shall make application and pay the applicable fee to bring a proposed amendment before the County.

40. **Merger Clause.** This Agreement and the attached exhibits constitute the entire agreement between the parties and supersedes any and all prior or contemporaneous negotiations and/or agreements among the parties, whether written or oral.

41. **Effective Date.** Notwithstanding mutual execution of this Agreement, this Agreement shall not become effective until recorded.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice-Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared PATTI ADAIR, ANTHONY DEBONE, PHIL CHANG, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this ___ day of _____, 2022

Notary Public, State of Oregon

DATED this 22nd day of March, 2022 **DEVELOPER:**



EMPIRE WESTGATE LLC
BY: KEVIN SPENCER
ITS: MANAGER

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared Kevin Spencer, and acknowledged the foregoing instrument as the Manager on behalf of Empire Westgate LLC.

DATED this 22nd day of March, 2022



Notary Public, State of Oregon

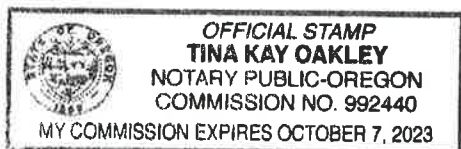


EXHIBIT "A"

LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP 17 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 83, WESTGATE PHASES 5, 6, & 7, DESCHUTES COUNTY, OREGON;

THENCE NORTH 26°14'04" WEST 466.45 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 665.00 FEET, AN ARC LENGTH OF 38.47 FEET, A TOTAL ANGLE OF 03°18'51", AND A CHORD WHICH BEARS NORTH 62°06'30" EAST 38.46 FEET;

THENCE NORTH 29°32'55" WEST 30.00 FEET;

THENCE NORTH 28°32'00" WEST 421.62 FEET;

THENCE NORTH 39°30'10" EAST 483.54 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET, AN ARC LENGTH OF 264.84 FEET, A TOTAL ANGLE OF 50°34'52", AND A CHORD WHICH BEARS NORTH 64°47'36" EAST 256.33 FEET;

THENCE SOUTH 89°54'58" EAST 752.35 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 515.00 FEET, AN ARC LENGTH OF 129.27 FEET, A TOTAL ANGLE OF 14°22'55", AND A CHORD WHICH BEARS SOUTH 23°34'46" WEST 128.93 FEET;

THENCE SOUTH 30°46'13" WEST 120.44 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 585.00 FEET, AN ARC LENGTH OF 127.38 FEET, A TOTAL ANGLE OF 12°28'33", AND A CHORD WHICH BEARS SOUTH 24°31'57" WEST 127.13 FEET;

THENCE SOUTH 18°17'40" WEST 203.99 FEET;

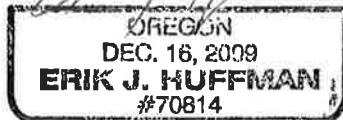
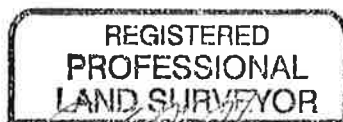
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1965.00 FEET, AN ARC LENGTH OF 298.02 FEET, A TOTAL ANGLE OF 08°41'23", AND A CHORD WHICH BEARS SOUTH 22°38'22" WEST 297.73 FEET;

THENCE SOUTH 26°59'03" WEST 456.39 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1465.00 FEET, AN ARC LENGTH OF 116.71 FEET, A TOTAL ANGLE OF 04°33'52", AND A CHORD WHICH BEARS SOUTH 29°15'59" WEST 116.67 FEET;

THENCE NORTH 89°57'40" WEST 294.72 FEET TO THE POINT OF BEGINNING.

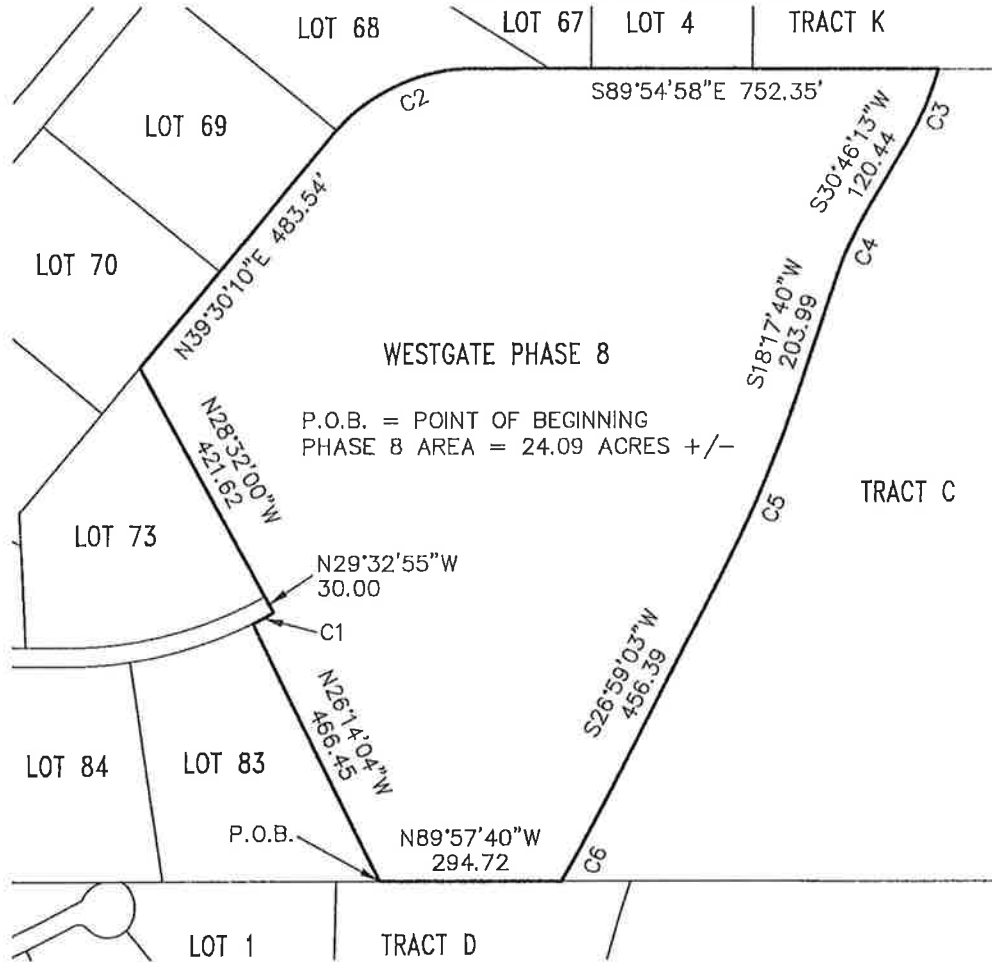
CONTAINS 24.09 ACRES MORE OR LESS.



Revised 6/30/2023

EXHIBIT "B"

LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 35
TOWNSHIP 17 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN
DESCHUTES COUNTY, OREGON



Curve Table					
Curve #	Delta	Radius	Arc	Chord	Chord Bearing
C1	03°18'51"	665.00'	38.47'	38.46'	N62° 06' 30"E
C2	50°34'52"	300.00'	264.84'	256.33'	N64° 47' 36"E
C3	14°22'55"	515.00'	129.27'	128.93'	S23° 34' 46"W
C4	12°28'33"	585.00'	127.38'	127.13'	S24° 31' 57"W
C5	08°41'23"	1965.00'	298.02'	297.73'	S22° 38' 22"W
C6	04°33'52"	1465.00'	116.71'	116.67'	S29° 15' 59"W



549 SW MILL VIEW WAY
SUITE 100
BEND, OREGON 97702
(541) 633-3140
www.beconeng.com

FOR: EMPIRE WESTGATE, LLC
63026 LOWER MEADOW DR
SUITE 200
BEND, OREGON 97701

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
DEC. 16, 2009
ERIK J. HUFFMAN
70814

DATE: 03/14/2022

SCALE: 1" = 300'

DRAWN BY: EJH

PROJ: 13861

RENEWS: JUN. 30, 2023

"EXHIBIT C"

Empire Westgate LLC, Westgate Phase 8, Construction Cost Estimate for Improvement Agreement, Deschutes County
File No. 247-19-000500-MP and 247-19-000501-TP.

DATE: MARCH 4TH, 2022 CONTRACTOR: SAGE RIDGE, INC. PREPARED BY: ERIK HUFFMAN					
A	Bid Item				
NO.	Description	QTY	UNIT	Cost per Unit	Total Cost
1	Watering	1	LS	\$850.00	\$850.00
2	Excavation & Embankment	300	CY	\$10.00	\$3,000.00
3	6" Agg Base	2000	SY	\$7.00	\$14,000.00
4	2" Asphalt	1950	SY	\$10.00	\$19,500.00
5	8" Water Main	520	LF	\$58.00	\$30,160.00
6	8" Valves	1	EA	\$2,300.00	\$2,300.00
7	8" Bends & Tees	2	EA	\$2,100.00	\$4,200.00
8	6" Water Line	20	LF	\$50.00	\$1,000.00
9	6" Valves	2	EA	\$2,000.00	\$4,000.00
10	1" Water Service	9	EA	\$1,700.00	\$15,300.00
11	Fire Hydrant	2	EA	\$3,800.00	\$7,600.00
12	Utility Trench	630	LF	\$21.00	\$13,230.00
13	Utility Vault	1	EA	\$3,700.00	\$3,700.00
14	4" Conduit	1950	LF	\$3.50	\$6,825.00
15	2" Conduit	1950	LF	\$3.00	\$5,850.00
16	4" Sweeps	4	EA	\$95.00	\$380.00
17	Street Light Bases	1	EA	\$1,200.00	\$1,200.00
18	Drainage Check Dams	6	EA	\$50.00	\$300.00
B	SUBTOTAL:				\$133,395.00
C	20% CONTINGENCY FOR BONDING:				\$26,679.00
D	Total Estimated Project Cost:				\$160,074.00
Notes: Total Estimated Unit Costs determined from Sage Ridge, Inc. contract. Survey Staking costs determined by Becon Engineering contract.					

HEARING OFFICER DECISION

FILE NUMBERS: 247-19-000500-MP, 247-19-000501-TP

APPLICANT: Empire Construction, Kevin Spencer

OWNER: Rio Lobo Investments, LLC

LAND USE CONSULTANT: Retia Consult, LLC, Tammy Wisco, PE, AICP

PROPOSAL: Applicant requested approval of a Master Plan (MP) and Tentative Plan (TP) for an 85-lot subdivision within the Westside Transect Zone.

STAFF CONTACT: Jacob Ripper, AICP, Senior Planner
Jacob.Ripper@deschutes.org, 541-385-1759

SUMMARY OF DECISION: Approved with conditions

I. STANDARDS AND APPLICABLE CRITERIA:

Deschutes County Code (DCC)

Title 17, Deschutes County Subdivision and Partition Ordinance
Chapter 17.12, Administration and Enforcement
Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans
Chapter 17.36, Design Standards
Chapter 17.44, Park Development
Chapter 17.48, Design and Construction Specifications

Title 19, Deschutes County Zoning Ordinance of the Bend Urban Area
Chapter 19.04, Title, Purpose, and Definitions
Chapter 19.22, Westside Transect Zone (WTZ)
Chapter 19.80, Off-Street Parking and Loading
Chapter 19.88, Provisions Applying to Special Use Standards
Chapter 19.92, Interpretations and Exceptions

Title 22, Deschutes County Development Procedures Ordinance

Oregon Revised Statutes (OAR) Chapter 92, Subdivisions and Partitions

II. BASIC FINDINGS:

LOCATION: The property subject to this decision has an assigned address of 62600 McClain Drive, Bend; and is further identified on County Assessor Tax Map 17-11, as tax lot 6000.

LOT OF RECORD: The property described above was recognized as a legal lot of record pursuant to the Lot of Record Verification file no. LR-05-14. The property described above was subsequently adjusted by a Property Line Adjustment file no. 247-18-000400-LL.

ZONING AND PLAN DESIGNATION: The majority of the property described above and the portion subject to this proposal (the "Subject Property") is primarily within the Westside Transect Zone ("WTZ"). There is an approximately 32-acre portion of the property described above, located in the southeastern region, that is within the Bend Urban Growth Boundary ("UGB") and is zoned Urbanizable Area ("UA"). The portion of the property described above that is within the UGB is not subject to this proposal. The entire property is within the Destination Resort (DR) Combining Zone. The Subject Property is designated as Urban Area Reserve ("UAR") in the Deschutes County Comprehensive Plan.

PROPOSAL: The Applicant requested approval of a Master Plan ("MP") and Tentative Plan ("TP") for an 85-lot subdivision within the Westside Transect Zone. Proposed lots would be approximately 2.5 to 5 acres in size, with no lot being smaller than 2.5 acres. The proposed MP included open space areas and trail connections. Water would be provided from the City of Bend and each lot would have an onsite sewage disposal system. Access would be provided through an extension and connection of McClain Drive and Sage Steppe, which would be a public right-of-way. Other roads within the subdivision are proposed to be private roads. The subdivision is proposed in eight (8) phases, with nine (9) to 14 lots per phase.

SITE DESCRIPTION: The property described above is approximately 335 acres in size, however, as described in the Zoning and Plan Designation section above, this proposal does not include the approximate 32-acre portion of the property that is located within the UGB. Therefore, throughout this Decision, the Subject Property shall refer only to the 303 acres which are subject to this proposal and located outside of the UGB, unless specifically stated otherwise.

Deschutes County Planning Staff ("Staff") performed a site visit in the afternoon of July 9, 2019 when the weather was clear and there was good visibility. The Staff site visit consisted of a drive around the primitive loop driveway that exists on the property. The Subject Property is irregular in shape, see Figure 1 below. Topography varies across the Subject Property with a slope down towards Shevlin Park and Tumalo Creek to the west, both sloped and relatively flat areas in the center, and areas of rocky outcroppings and short cliffs in the southeast and east. Vegetation also varies across the Subject Property, with brush and grasses covering the majority of the property. Pine trees are mostly located in the eastern and northern areas, although there is a run of dispersed pine trees in the central western portion of the property as well. Views of the Cascade Range are to the west.

Figure 1 – Subject Property



SURROUNDING LAND USES: To the west of the Subject Property are lands owned by the Bend Parks and Recreation District (“BPRD”) which include Shevlin Park, Tumalo Creek, and adjacent properties. The Subject Property is surrounded by residential development to the north, east, and south in a range of densities. Larger rural lots in the Tree Farm subdivision are to the south, while relatively smaller urban subdivision lots are in areas to the east and north. Shevlin Park Road is located approximately 0.25 miles to the northeast and Skyliners Road is located approximately 0.7 miles to the south.

LAND USE HISTORY: Previous land use actions associated with the subject property are below.

- MJP-85-3: Major Partition to create three parcels*
- MJP-88-7: Major Partition to create three parcels*
- LR-05-14: Lot of Record Verification for the subject property
- CU-05-17, TP-05-958: Application for a 34-lot PUD subdivision (denied)
- 247-17-000420-LL: Property Line Adjustment (void)
- 247-17-001013-ZC, 1014-PA, 1015-TA: Zone Change, Plan Amendment, and Text Amendment to create the Westside Transect Zone (withdrawn)
- 247-18-000400-LL: Property Line Adjustment

- 247-18-000612-ZC, 613-PA, 614-TA: Zone Change, Plan Amendment, and Text Amendment to create and implement the Westside Transect Zone
- 247-18-000957-PA, 958-ZC: Plan Amendment and Zone Change for minor adjustments of the Bend UGB

*It appears these approvals were never acted upon.

The Subject Property was part of a recently approved Plan Amendment, Text Amendment, and Zone Change proposal to designate certain areas west of the City of Bend as being within the Westside Transect Zone. Ordinance No. 2019-001 enacted the amendments and became effective on April 16, 2019.

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 July 10, 2019, indicating the Applicant posted notice of the land use action on July 7, 2019. A Notice of Application was mailed on June 27, 2019 to surrounding property owners and affected agencies.

PUBLIC COMMENTS: Notice of this application was provided to all property owners within 250 feet of the exterior boundary of the subject property. One public comment in support of the application was received from the legal counsel for the Coats family, who are the owners of the North Transect area. Additional letters were received from two attorneys involved with the proposal to create the WTZ Zone. The letters are regarding the slope setback requirement within DCC 19.22 and are quoted in findings below. Three additional comments were received from the public which addressed trails, roadways, construction traffic, and setbacks. Those topics are addressed in findings below.

PUBLIC AGENCY COMMENTS: The Deschutes County Community Development Planning Division mailed notice to several agencies and received the following comments.

Bend Fire Department. On July 5, 2019, Deputy Chief of Fire Protection Larry Medina responded:

"FIRE APPARATUS ACCESS ROADS:

- ***Approved vehicle access for fire fighting shall be provided to all construction or demolition sites. Vehicle access shall be provided to within 100 feet of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting vehicle loading under all weather conditions. Vehicle access shall be maintained until permanent access roads are available. 2014 OFC 3310.1. Prior to the issuance of construction permits the applicant shall provide to the City of Bend Fire Department a proposed plan for fire apparatus access to the construction site.***
- ***Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet of all portions of the facility and all portions of the exterior***

walls of the first story of the building as measured by an approved route around the exterior of the building or facility. **2014 OFC 503.1.1 Provide the City of Bend Fire Department a proposed site plan illustrating compliant fire apparatus access.**

- **Fire apparatus roads shall have an unobstructed width of not less than 20 feet**, exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches. Where a fire hydrant is located on a fire apparatus road, the minimum width shall be 26 feet, exclusive of shoulders. Traffic calming along a fire apparatus road shall be approved by the fire code official. Approved signs or other approved notices or markings that include the words NO PARKING-FIRE LANE shall be provided for fire apparatus roads to prohibit parking on both sides of fire lanes 20 to 26 feet wide and on one side of fire lanes more than 26 feet to 32 feet wide. **2014 OFC 503.2.1, D103.1, 503.4.1, 503.3**
- **Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (60,000 pounds GVW) and shall be surfaced (asphalt, concrete or other approved driving surface) as to provide all weather driving capabilities.** Inside and outside turning radius shall be approved by the fire department. All dead-end turnarounds shall be of an approved design. Bridges and elevated surfaces shall be constructed in accordance with AASHTO HB-17. The maximum grade of fire apparatus access roads shall not exceed 10 percent. Fire apparatus access road gates with electric gate operators shall be listed in accordance with UL325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. A Knox® Key Switch shall be installed at all electronic gates. **2014 OFC D102.1, 503.2.4,**
- **Multiple-family residential developments have more than 100 dwellings and one- or two-family residential developments where the dwelling units exceed 30 shall be provided with separate and approved fire apparatus access roads. Provide a site plan to the City of Bend Fire Department illustrating a secondary access point.**

FIRE PROTECTION WATER SUPPLIES:

- **An approved water supply capable of supplying the required fire flow for fire protection shall be provided** to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.
- Fire flow requirements for buildings or portions of buildings shall be determined by an approved method. **Documentation of the available fire flow shall be provided to the fire code official prior to final approval of the water supply system. Provide the City of Bend Fire Department a fire flow analysis.**
- Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet from a hydrant on a fire apparatus road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official. For Group R-3 and Group U occupancies the distance requirement shall be 600 feet. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.3.1.2, the distance requirement shall be 600 feet. Fire hydrants shall be provided along required fire apparatus roads and adjacent public streets. The minimum number of fire hydrants shall not be less than that listed in table C105.1 of the 2010 OFC. Existing fire hydrants on public streets are allowed to be considered as available. Existing fire hydrants on adjacent

properties shall not be considered available unless fire apparatus access roads extend between properties and easements are established to prevent obstruction of such roads. The average spacing between fire hydrants shall not exceed that listed in table C105.1 of the 2010 OFC. **Provide the City of Bend Fire Department a site plan illustrating the quantity and locations of fire hydrants.**

- ORS 811.550(16) prohibits parking within 10 feet of a fire hydrant. Provide approved signs or other approved markings to prohibit parking within 10 feet of a fire hydrant. ORS 860-024-0010 limits the placement of a fire hydrant a minimum of 4 feet from any supporting structure for electrical equipment, such as transformers and poles. Maintain a minimum 4 foot clearance of fire hydrants to any supporting structure for electrical equipment. Where fire hydrants are subject to impact by a motor vehicle, guard posts or other approved means shall comply with Section 312 of the 2010 OFC. **Provide a site plan that illustrates any parking restrictions.**

OTHER FIRE SERVICE FEATURES:

- ***New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum 4 inches high with a minimum stroke width of 0.5 inch. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole, or other sign or means shall be used to identify the structure. Address numbers shall be visible under low light conditions and evening hours. Provide illumination to address numbers to provide visibility under all conditions. Address signs are available through the Deschutes Rural Fire Protection District #2. An address sign application can be obtained from the City of Bend Fire Department website or by calling 541-388-6309 during normal business hours.***
- ***A KNOX-BOX® key vault is required for all newly constructed commercial buildings, facilities or premises to allow for rapid entry for emergency crews. A KNOX® Key Switch shall be provided for all electrically operated gates restricting entry on a fire apparatus access road. A KNOX® Padlock shall be provided for all manually operated gates restricting entry on a fire apparatus road and security gates restricting access to buildings.***

Deschutes County 9-1-1 Service District. On July 9, 2019, GIS Analyst Evan Clark responded:

"The Deschutes County 9-1-1 Service District would like to submit its concern for the street names displayed on the site plan. At the southern end of the subdivision McClain Dr transitions into the existing Sage Steppe Dr from the adjacent Tree Farm subdivision. The site plan doesn't make it clear where McClain Dr will end and Sage Steppe Dr will begin.

9-1-1 would like to request that McClain Dr end at the intersection with Road 'D' and Road 'A'. At this intersection, Sage Steppe Dr would begin and continue south to the existing blocks in the Tree Farm subdivision. This request is to avoid any potential addressing conflicts that could result in the delayed response of emergency services. If this is agreed upon, we would ask that this is made clear on the site plan and annotated correctly on the subdivision plat."

Deschutes County Building Division. On June 27, 2019, Building Official Randy Scheid responded:

"NOTICE: 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."

Deschutes County Community Development Department, Property Address Coordinator. On June 28, 2019, Property Address Coordinator Tracy Griffin responded:

"Addresses to be determined when road names are assigned."

Deschutes County Planning Division, Senior Transportation Planner. On July 12, 2019, Senior Transportation Planner Peter Russell responded:

"I have reviewed the transmittal materials for 247-19-000500-MP/501-TP for an 85-unit subdivision on 335 acres within the Westside Transect Zone (WTZ) at 62600 McClain Drive, aka County Assessor Tax Map 17-11, Tax Lot 6000.

The applicant has submitted a traffic study dated June 18, 2019, which demonstrates the current proposal is consistent with the traffic analysis done for the larger plan amendment/zone change approved under 247-18-612-ZC/613-PA/614-TA for the entire 737 acres. The mitigations required for that change from Urban Area Reserve (UAR-10) to WTZ were resolved in that 2018 decision. The current proposal does not result in any additional deficiencies in the roadway system.

Deschutes County Code 17.48.050 and its Table A sets a paved width of 20' or 28' for private roads; for a 20' foot private road multiuse paths are required for narrower width. DCC 17.48.140(B)(2) states multiuse paths have a standard width of 10' and 12' feet if the multiuse path will be subject to high volumes of multiple users. The applicant is proposing a 24' width for the private roads, but apparently only for the short sections which lead to natural trails; the remaining portions of private roads will be 20' with no multiuse path. Staff is uncertain if the code allows this hybrid. The applicant posits this is consistent to what the County approved in the adjacent Miller Tree Farm under 247-14-000243-TP.

The proposed collector, an extension of McClain Drive to Sage Steppe, will be a public road, and also have an 8' multiuse path based on anticipated low volumes of usage and the road's low speed. While staff can understand the rationale for the reduced width on a private road that will see little to no through traffic, staff does not support similar reduced widths for a north-south collector that ultimately will provide a critical link between Johnson Road/Shevlin Park Road to the north and Skyliners Road and Century Drive, aka Cascade Lakes Highway, to the south.

Board Resolution 2013-020 sets a transportation system development charge (SDC) of \$4,448 per p.m. peak hour trip. County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is \$3,603 (\$4,448 X 0.81) per residence.

The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final."

Deschutes County Road Department.

On July 23, 2019 Cody Smith, County Engineer for the Deschutes County Road Department submitted the following comments:

"I have reviewed the application materials submitted to date for the above-referenced file numbers, proposing an 85-lot subdivision within the Westside Transect Zone on County Assessor's Tax Map 17-11, Tax Lot 6000. The subject property is accessed by Sage Steppe Dr and McClain Dr. Road Department records indicate that these roads have the following attributes where they abut the subject property:

Sage Steppe Dr

- *Road Status* - *Local Access Road (Public, Not County Maintained)*
- *Surface Type* - *Asphalt Concrete*
- *Surface Width* - *26 ft.*
- *Functional Classification* - *Rural Local*
- *Right of Way Width* - *60 ft.*
- *Right of Way Instrument* - *Tree Farm Subdivision Plat (2016-44585)*

McClain Dr

- *Road Status* - *City of Bend Road*
- *Surface Type* - *Asphalt Concrete*
- *Surface Width* - *28 ft.*
- *Functional Classification* - *City Local*

The applicant has proposed an interior private road system connecting to an interior public road that would be an extension of McClain Dr to Sage Steppe Dr for the proposed subdivision. Road Department anticipates that the extension of McClain Dr to Sage Steppe Dr, which is proposed with a paved width of 28 ft. and an 8-ft. wide multiuse path, will become a County collector road upon connecting Sage Steppe Dr to NW Crosby Dr or Skyliners Rd towards the south. The applicant has proposed 24-ft. wide paved private roads with no adjacent multi use paths for all other internal roads. The application states that the applicant coordinated with the County Road Department regarding the roadway cross-sections. It should be noted that while the applicant did coordinate their conceptual plans with the Road Department, Road Department staff did not indicate any acceptance of deviation from the private road standards in Deschutes County Code (DCC) 17.48.180 and 17.48A. Rather, Road Department staff stated to the applicant prior to application submission that they would need to provide justification or mitigation for a variance to the County private road standard in their application burden of proof. Road Department staff acknowledges that the applicant has provided a reason for the variance in their burden of proof, but Road Department is neutral as to whether or not the applicant has provided a sufficient reason.

Deschutes County Road Department requests that approval of the proposed subdivision be subject to the following conditions:

Prior to construction of public and private road improvements:

- Applicant shall submit road improvement plans to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. The roads shall be designed to the minimum standard for a private road pursuant to 17.48.160, 17.48.180, and 17.48A or pursuant to the master plan upon approval. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

Prior to final plat approval by Road Department:

- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
- Maintenance of all public and private roads, including multiuse paths, shall be assigned to a home owners association by covenant pursuant to DCC 17.16.040, 17.16.105, 17.48.160(A), and 17.48.180(E). Applicant shall submit covenant to Road Department for review and shall record covenant with the County Clerk upon Road Department approval. A copy of the recorded covenant shall be submitted to the Community Development Department prior to final plat approval.
- All easements of record or existing rights of way shall be noted on the final plat pursuant to DCC 17.24.060(E),(F), and (H).
- The surveyor preparing the plat shall, on behalf of Applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).
- Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.24.070(E)(1).
- Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.

Prior to issuance of any building permits:

- Applicant shall obtain driveway access permits for any driveway accesses to the new public road connection between McClain Dr and Sage Steppe Dr pursuant to DCC 12.28.050 and 17.48.210(A)."

The following agencies did not respond: Bend Metro Parks & Recreation District, City of Bend Growth Management Department, City of Bend Planning Division, City of Bend Public Works Department, Cascade Natural Gas Company, CenturyLink, Deschutes County Assessor, Deschutes County Environmental Soils Division, Deschutes County Sheriff, Deschutes County Surveyor, Pacific Power, and Watermaster – District 11.

REVIEW PERIOD: The application was submitted on June 19, 2019. It was accepted and deemed complete on July 18, 2019. The 150th-day on which the County must take final action on this application is December 15, 2019.

III. FINDINGS & CONCLUSIONS:

PRELIMINARY HEARINGS OFFICER COMMENTS:

At the start of the July 25, 2019 public hearing (the “Hearing”) the Hearings Officer requested the Deschutes County Staff, the Applicant and/or Applicant’s representatives and any other interested person to address various issues. Those issues included:

- Are “lot area” measurements/sizes provided by Applicant “gross” or “net.” Restated, are Applicant’s proposed lot measurements/sizes inclusive of roads, streets, rights of way or easements of access to other property? (See DCC 19.22.050(A) and DCC 19.04.040)
- What is the proper interpretation of DCC 19.22.050(H)? Applicant and supporters of the Application suggested DCC 19.22.050(H) was intended to provide a minimum setback requirement from the “Rim of the Tumalo Creek Canyon,” and was not intended to create a 30-foot building setback from every topographical feature within the Westside Transect Zone (“WTZ”) where slopes exceed the 20% requirement.” (See July 12, 2019 letter from Tia Lewis).
- Address all issues raised in the July 24, 2019 “Staff Memorandum.”

The Hearings Officer reviewed the testimony offered at the Hearing and documents contained in the record of this case. The Hearings Officer, based upon his review of the record, found no person responded to the “lot area” information request. The Hearings Officer, based upon the findings below, determined that there was insufficient evidence in the record to reach a defensible position to conclude that Applicant’s proposed “lot area” was either “net” or “gross.”

The Hearings Officer, based upon a review of the evidence in the record, concluded that issues (excepting the “lot area” issue) raised above by the Hearings Officer were addressed during Hearing testimony or record submissions.

The Hearings Officer, at the conclusion of the Hearing, commended the Applicant’s public involvement process. The Hearings Officer commented that the Application in this case appeared to have been a result of a collaborative effort of persons/entities with a history of different

perspectives of what constitutes “good planning.” To that end the Hearings Officer would like to have agreed, in all instances, with Applicant’s requests. However, the Hearings Officer is obligated to “follow the law” by considering the evidence “in the record” in the context of relevant approval criteria.

TITLE 19 OF THE DESCHUTES COUNTY CODE, DESCHUTES COUNTY ZONING ORDINANCE OF THE BEND URBAN AREA:

Chapter 19.22, Westside Transect Zone – WTZ

Section 19.22.020. Permitted Uses.

The following uses and their accessory uses are permitted outright:

- A. *Single-family dwelling.***
- B. *Home occupation subject to DCC 19.88.140.***
- C. *Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.***

Section 19.22.030. Conditional Uses.

The following uses and their accessory uses may be permitted subject to site plan review and a conditional use permit as provided in DCC 19.76, 19.88, and 19.100:

- A. *Public, parochial and private schools, including nursery schools, kindergartens and day nurseries; but not including business, dancing, trade, technical or similar schools subject to DCC 19.88.160.***
- B. *Parks and recreation facilities, community buildings and fire stations; but not including storage or repair yards, warehouses or similar uses.***
- C. *Utility facility, including wireless telecommunications facilities, subject to DCC 19.88.120.***
- D. *Churches.***

FINDING: The Applicant proposed an 85-lot subdivision for residential and accessory uses only. No specific development beyond the division of land and the associated transportation and utility improvements are proposed at this time. Uses in the future will be subject to DCC 19.22 and any other applicable title/chapter of the DCC.

Section 19.22.040. Height Regulations.

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

FINDING: No structures are being proposed as part of this application. However, Staff recommended, in the Staff Report, the following condition of approval is included to ensure ongoing compliance with this criterion.

Building Height: Prior to the issuance of building permits for individual lots, no building or structure shall be hereafter erected, enlarged or structurally altered to exceed 30 feet in height, except for schools which shall not exceed 45 feet in height.

The Hearings Officer finds that with Staff's recommended condition this approval criterion can be met.

Section 19.22. 050. Lot Requirements.

The following requirements shall be observed:

A. Lot Area. Each lot shall have a minimum of 2.5 acres.

FINDING: Applicant's proposal includes lots ranging in size from 2.5 acres to 5.0 acres. Staff, in the Staff Report (page 9 of 65), stated "it is unclear if these lot area measurements are net lot area or gross lot area." DCC 19.04.040 provides the following definition:

"Lot area' means the total horizontal area contained within the lot lines; said area shall be computed as gross area for lots larger than 2.5 acres and net area for lots 2.5 and smaller. The total horizontal net area within lot lines of a lot is that square footage of a lot that is free from roads, streets, rights of way or easements of access to other property. The Planning Director shall include in gross lot areas all streets, roads and easements of access to other property that would accrue to that lot if the road, street or easement were vacated, and shall treat the gross areas of lots that have never been previously described of record as other than fractions of a section as if the section contained 640 acres, in cases where a lot is sought to be partitioned."

Several lots are listed as being exactly 2.50 acres while others are larger. It is unclear if the Applicant included streets and easements in the calculations for the 2.50-acre lots (which would not be allowable).

In addition to the portion of the Subject Property within the WTZ Zone, there is an approximately 32-acre portion of the overall property within the UGB in the UA Zone. Under the Bend Development Code this portion of the property is subject to a minimum lot size of 20 acres (BCD 2.8.300, Lot Area and Dimensions). Pursuant to the definition of "Lot of Record" in DCC 19.04.040, a remainder lot of record can be created by, "the subdividing or partitioning of adjacent or surround land, leaving a remainder lot or parcel". Staff noted that at the completion of platting all proposed phases, this remainder lot will be approximately 32 acres in size and will be above the minimum lot size for the UA Zone, assuming it is not further divided in that time period.

The Hearings Officer concurs with Staff's "lot size" concerns. The Hearings Officer, as noted in the Preliminary Comment section of this decision and earlier in these findings, found Applicant did not provide any additional evidence following the issuance of the Staff Report that clearly and directly addressed Staff's "lot size" concerns. The Hearings Officer finds with a condition requiring Applicant, prior to final plat approval for each phase, to meet the requirement of DCC 19.22.050 (in the context of DCC 19.04.040) this approval criterion can be met.

B. Lot Width. Each lot shall be a minimum width of 125 feet.

FINDING: DCC 19.04.040 provides the following definition for “lot width”:

“Lot width” means the horizontal distance between the side lot lines measured within the lot boundaries or the mean distance between the side lot lines within the buildable area. In the case of a corner lot, lot width shall mean the mean horizontal distance between the longest front lot line and the opposite lot line not abutting the street.

Lots 33, 37, and 77 are proposed as “flag lots” with a narrow access strip leading from the road to a larger area to the rear of the lot where development is intended. This “pole” part of a flag lot is not considered buildable area as a structure would not meet minimum setbacks in this area of the lot. Lots 33, 37, and 77 all have lot widths in excess of 300 feet. All lots within the proposed subdivision exceed the minimum width of 125 feet. The Hearings Officer finds this approval criterion will be met.

- C. Front Yard. The front yard shall be a minimum of 40 feet.**
- D. Side Yard. There shall be a minimum side yard of 30 feet.**
- E. Rear Yard. There shall be a minimum rear yard of 30 feet.**
- F. Solar Setback. The solar setback shall be as prescribed in DCC 19.88.210.**
- G. Park Setback. The setback from Shevlin Park shall be a minimum of 100 feet.**

FINDING: Shevlin Ridge residents Steven L Wallaert and Pam Robbins (“Wallaert & Robbins”), in a July 18, 2019 email, expressed concerns related to setbacks on the eastern edge of the proposed development. Wallaert & Robbins requested, in their email, assurances that a 50-foot setback (not the minimum DCC required 30-foot setback), are part of any approval of Applicant’s proposal.

Applicant, in July 16, 2019 supplemental submission, stated the following:

“Lots 60 to 67 will include a 50-foot setback along their eastern property line, greater than required by County code. This increased setback will be provided to create a larger buffer area between Westgate and the adjacent urban neighborhood to the east. These setbacks are shown on the plans submitted with this memo, dated 7/12/19.”

Tammy Wisco (“Wisco”), the Applicant’s planning representative, testified at the Hearings that there would be a 50-foot setback along the eastern boundary adjacent to Shevlin Ridge. Further, Wisco, included a Power Point presentation slide (Slide 7) as part of her Hearing testimony. Slide 7 is a map showing the eastern edge of the proposed development and a 50-foot setback adjacent to Shevlin Ridge. The Hearings Officer finds, based upon the above-quoted statement by Applicant, Wisco’s testimony and Power Point Slide 7, that Wallaert & Robbins concerns have been adequately addressed by Applicant. The Hearings Officer further notes that the 50-foot proposed setback, along Shevlin Ridge, exceeds the setback required by the DCC.

Staff noted, in the Staff Report, that the No Build Line and the Conservation Area (Tract B) along the

western portion of the subdivision would guarantee that the park setback of subsection (G) above will be met. Staff, in the Staff Report, also noted that even though no structures were proposed at this time, Staff was recommending the following condition of approval to ensure ongoing compliance with these criteria:

Setback and Yard Requirements: **As an ongoing condition of approval**, the subdivision lots shall observe the applicable setback and yard requirements of DCC 19.22.050(C)-(G).

The Hearings Officer finds that with Staff's recommended condition of approval these approval criteria can be met.

H. Slope Setback. There shall be a minimum setback of 30 feet from the edge of any slope which exceeds 20%.

FINDING: This section of the DCC generated a number of comments from supporters of Applicant's proposal (Tia Lewis letter dated July 12, 2019, Myles Conway letter dated July 16, 2019, Paul Dewey letter dated July 23, 2019, and Myles Conway final argument dated July 30, 2019). The issue raised in these letters can best be summarized by Conway's conclusion statement in his July 16, 2019 letter which states:

"In sum, the Slope Setback requirement contained in DCC 19.22.050 (H) was intended to create a setback from the canyon rim. It was not intended to create a 30-foot building setback from every topographical feature within the South Transect property that exceeds the 20 percent requirement."

The Hearings Officer takes notice that the Subject Property contains areas that are "sloped." The Hearings Officer also takes notice that Tumalo Creek Canyon is located in the western portion of the Subject Property and that Shevlin Park and Tumalo Creek are located to the west of the Subject Property. The Hearings Officer also takes notice that views up to the Subject Property from Shevlin Park and fire protection/mitigation were very important considerations in the comprehensive plan/zone change process leading the approval of the Westside Transect zone code language.

Applicant, in its burden of proof, stated:

"This requirement [DCC 19.22.050 H] was adopted through the Westside Transect Zone text amendment (247-18-000614-TA), which became effective April 16, 2019. The intent of this requirement was to mitigate wildfire spread through Tumalo Canyon, based on the Singletree Wildfire Mitigation and Forest Health Plan (Exhibit C). In this report, Mr. Jackson notes:

'Drainages with significant canyons such as Tumalo Creek typically can vector wind patterns away from prevailing free-air wind flow...accelerated rates of fire spread from canyon-bottom ignitions should be expected. Consequently, structures should be located well-away from the mouth at the top of side drainages and well setback from rim-rock edge and/or above steep slopes above drainages and canyon walls.'

The WTZ code was written vaguely, as it was understood that structures would be much further back than 30' from Tumalo Canyon, thereby not needing significant detail on the application of the requirement. Additionally, the code was written prior to having topographical data for the South Transect and was not intended to apply to other slopes on individual lots, separate from Tumalo Canyon and Shevlin Park.

The Applicant has interviewed numerous individuals involved in the text amendment regarding the slope setback requirement of DCC 19.22.050(H), and all confirmed that the intent of this requirement was to address the wildfire spread risk through Tumalo Canyon, and not to require setbacks from all steep slopes existing on an individual lot. Several individuals have noted their willingness to provide testimony to this regard.

The proposed subdivision provides significant structure setbacks from the Tumalo Canyon, far greater than required by this criterion. The western property line of Westgate follows a ridgeline, although it is not the main Tumalo Canyon ridge. As shown on the tentative plan, the proposed development includes an approximately 450-foot setback from the western property line abutting Shevlin Park and the Tumalo Canyon area, well in compliance with the intent of this criterion."

On July 15, 2019, Tia M. Lewis of Schwabe Williamson & Wyatt submitted a letter in support of the proposal and addressed the topic of slope setbacks. The letter states:

"Our office represents the Coats family as owners of the The [sic] North Transect area. We are writing with respect to the Slope Setback requirement for the Westside Transect Zone properties as referenced in DCC 19.22.050 and in support of the above-referenced application. As you are aware, our office worked with County Planning and the present applicants to draft and process the Comprehensive Plan amendments, goal exceptions, zone change and text amendments that gave rise to the approval of the Westside Transect Zone- WTZ (DCC Chapter 19.22). This letter is intended to provide our support for the present applicant's testimony and evidence to clarify the intent of all parties with respect to the Slope Setback requirement contained in DCC 19.22.050(H).

The WTZ provides for a 30-foot minimum setback requirement from the edge of a slope that exceeds 20%. This requirement was specifically intended to provide a minimum setback requirement from the rim of the Tumalo Creek canyon. The purpose of this setback requirement was to provide additional protection from the spread of wildfire and to protect existing viewsheds from the adjacent Shevlin Park and Tumalo Creek as described in the Wildlife Mitigation and Forest Health Plans for the Transect properties.

We agree with the testimony and evidence the present applicant has submitted establishing the Slope Setback requirement contained in DCC 19.22.050(H) was intended to create a setback from the canyon rim and was not intended to create a 30-foot building setback from every topographical feature within the Transect properties that exceeds the 20% requirement.

Thank you for the opportunity to provide this comment. Please let us know if any additional supporting material is required."

On July 16, 2019, Miles A. Conway of Marten Law submitted a letter that was also in support of the proposal and addressed the topic of slope setbacks. The letter states:

"We are writing with respect to the Slope Setback requirement for the Westside Transect Zone properties as referenced in DCC 19.22.050. As you are aware, our office worked with County Planning and the owners of the Coats property (North Transect) to draft and process the Comprehensive Plan amendments, goal exceptions, zone change, and text amendments that gave rise to the approval of the Westside Transect Zone "WTZ"- (DCC Chapter 19.22). This letter is intended to clarify the intent of all parties with respect to the Slope Setback requirement contained in DCC 19.22.050(H).

The WTZ provides for a 30-foot minimum setback requirement from the edge of a slope that exceeds 20 percent. This requirement is specifically intended to provide a minimum setback requirement from the rim of the Tumalo Creek Canyon. The purpose of this setback requirement is to provide additional protection from the spread of wildfire and to protect existing viewsheds from the adjacent Shevlin Park and Tumalo Creek. The Singletree Wildfire Mitigation and Forest Health Plan (attached as Exhibit C to County file 247-18-000614-TA) provides as follows:

'Drainages with significant canyons such as Tumalo Creek typically can vector wind patterns away from prevailing free-air wind flow...accelerated rates of fire spread from canyon-bottom ignitions should be expected. Consequently, structures should be located well away from the mouth at the top side drainages and well setback from rim-rock edge and/or steep slopes above drainages and canyon walls.'

The minimum slope setback requirement was intended to provide an additional degree of protection from fires emanating on forest lands to the west, consistent with the requirements of our fire plan and the applicable National Fire Protection Association standards.

In addition to fire concerns, the slope setback requirement was implemented as part of a comprehensive measures that will protect existing viewsheds from Tumalo Creek. As noted in testimony before the Hearings Officer and County Board, the rim of the Tumalo Creek Canyon is a prominent physical feature when viewed from the trails and public areas within Shevlin Park. The applicable slope setback was incorporated to insure planned home site locations would be setback from the rim of Tumalo Creek. For the South Transect property, the applicant also incorporated both a "Conservation Area" and "No-build Area" that create a more significant buffer between planned homesites and the canyon rim. These requirements result in a minimum of 450-feet of setback from the canyon rim (See Westgate Master Plan Development plans, submitted with the Applicant's Land Use Narrative).

In sum, the Slope Setback requirement contained in DCC 19.22.050(H) was intended to create a setback from the canyon rim. It was not intended to create a 30-foot building setback from every topographical feature within the South Transect property that exceeds the 20 percent requirement.

Thank you for the opportunity to provide this comment. Please let us know if any additional supporting material is required."

Paul Dewey, Executive Director of Central Oregon Landwatch, also provided comments related to DCC 19.22.050 H. Dewey, in his July 23, 2019 letter, stated:

"During the development of the Westside Transect Zone code, this slope setback was intended to provide a setback requirement from the Tumalo Creek Canyon rim, to provide wildfire mitigation from forestlands to the west, in response to the Singletree Wildlife Mitigation and Forest Health Plan. This requirement was not intended to be applied on a lot-by-lot basis in the Westside Transect Zone to other features with slopes over 20%.

The slope setback requirement for the Westside Transect Zone was also intended to protect the viewsheds from Tumalo Canyon and Shevlin Park, through ensuring ample setbacks of home sites from the Tumalo Canyon rim. The proposed Westgate master plan and tentative plan comply with the code by including significantly greater setbacks from the rim.

In summary, the slope setback requirement of DCC 19.22.050(H) was not intended to be applied on an individual lot basis to all features with slopes greater than 20 percent, but rather, was intended to apply to the Tumalo Canyon rim along the south side of Shevlin Park and Tumalo Creek."

Conway, in Applicant's July 30, 2019 "final argument," provided additional argument in support of Applicant's interpretation of DCC 19.22.050 H. Conway stated, in his "final argument" the following:

"The applicant offers the following as its final argument under ORD 197.763.(6)(e) with respect to the "Slope Setback" requirement set forth in DCC19.22.050(H). This provision requires a minimum 30-foot setback 'from the edge of any slope which exceeds 20%.'

The term 'slope' is not defined in either DCC Chapter 19 or DCC Chapter 18. As a result, the Hearings Officer must interpret what the term 'slope' means in the context of DCC 19.22.050(H).

Under PGE v. Bureau of Labor and Industries, 217 Or. 606 (1993) and its progeny, the fundamental task in interpreting an ordinance is to determine the legislative intent. Here, the Hearings Officer must first examine the text and context of DCC 19.22.050 (H). Under State v. Gaines, 346 Or. 160 (2009), the Hearings Officer may resort to any proffered legislative history to determine the intent of the drafters, while applying relevant rules of statutory construction.

First, what is a 'slope'? Because the term is not defined by the code, the Hearings Officer should apply the standard dictionary definition: Slope 'ground that forms a natural or artificial incline; upward or downward slant or inclination or degree of slant; the tangent of the angle made by a straight line with the x-axis.' Dictionary by Merriam-Webster.

Applying these definitions, there is still ambiguity because, as our testimony revealed, there could be 'slopes' greater than 20% in multiple places in a single lot depending on the distance measured between the two points. There are 20% slope where there are small depressions or other small natural features such as boulders. One maxim of statutory construction is to avoid an 'absurd'

result. Applying 'slope' to short distances would lead to the absurd result that setbacks could be measured from rocks, boulders or other measured feature.

Turning to the legislative history, the 20% slope setback was imposed specifically to address wildlife hazards threatening the subject property from the west during fire season. Under PGE and Gaines, the intent of the County Commissioners in adopting this setback was to place homes away from steep canyon slopes to avoid wildfire hazards. Consequently, an appropriate interpretation under PGE and Gaines, is that the setbacks should be measured only from Tumalo Creek canyon slopes exceeding 20%.

If the Hearings Officer is unable to limit application of the setback to Tumalo Creek canyon slopes, the applicant requests that the Hearings Officer approve the Westgate Master Plan and Tentative Plan with an ongoing condition of approval that all buildings observe the 30-foot setback imposed by DCC 19.22.050(H). This condition would demonstrate compliance with the setback requirement and would permit the applicant to seek a formal code interpretation, modify the code or resolve the issue at the building permit stage without the need to amend the Master Plan/Tentative Plan."

Staff, in the Staff Report, stated that Applicant had not provided (prior to the issuance of the Staff Report) any transcripts or minutes from the WTZ text amendment proceedings to support the Applicant's interpretation of DCC 19.22.050(H). Staff, in the Staff Report, opined that the Applicant's argument was plausible and likely accurate. However, Staff requested that the Hearings Officer make a determination as to whether the setback from slopes exceeding 20% applies throughout the entire WTZ or only within the western portions closest to Tumalo Creek and Shevlin Park. Additionally, Staff, in the Staff Report, also requested that the Hearings Officer determine if the "edge of any slope" refers to both the top and bottom "edges" or only to the top "edge".

The Hearings Officer first reminds readers of this decision that the Hearings Officer in this case is the same Hearings Officer that presided over the initial hearing related to the comprehensive plan change, zone change and zoning code text amendment (creating the WTZ) for the Westside Transect area. The Hearings Officer clearly recalls expert testimony from the Applicant's fire consultant related to wildfire mitigation measures; why they were necessary and how the Applicant's proposal supported fire safety. The Hearings Officer agrees, at the earlier Hearings Officer level of review, that wildfire mitigation measures were a primary focus of the WTZ.

The Hearings Officer finds that the Hearings Officer's recommendation to the Deschutes County Board of Commissioners (the "Board"), in the earlier comprehensive plan change, zone change and zoning code text amendment for the Westside Transect area is relevant "legislative history." Further, the Hearings Officer finds any comments, responses or statements made by members of the Board constitutes relevant "legislative history." The Hearings Officer finds that the recollections of participants in the earlier process, expressed in letters to the Hearings Officer in this case, do not constitute persuasive "legislative history."

The Hearings Officer also reminds reader of this decision that the WTZ text amendment recommendation by the Hearings Officer was required to be reviewed and ultimately approved by the Board. The Hearings Officer did not observe or otherwise participate in the Board's review of

the Hearings Officer's WTZ text amendment recommendation. The only evidence that would be persuasive to this Hearings Officer would be on-the-record comments, responses or statements made by the Board that related to DCC 19.22.050(H).

The Hearings Officer finds that Staff (in the Staff Report) and the Hearings Officer (in opening comments at the Hearing) requested Applicant (or any other interested person/entity) to fill in the 'legislative history' gaps related to DCC 19.22.050(H). The Hearings Officer finds, excepting for references to fire mitigation measures mentioned above, that no evidence of legislative history of DCC 19.22.050(H) is in the evidentiary record.

The Hearings Officer finds that DCC 19.22.050 is titled "Lot Requirements." Dewey's statement that DCC 19.22.050(H) "was not intended to be applied on a lot-by-lot basis in the Westside Transect Zone to other features with slopes over 20 percent" is simply contrary to the clear and unambiguous language of DCC 19.22.050. The Hearings Officer finds DCC 19.22.050, including DCC 19.22.050(H), apply to all lots in the WTZ and not to any particular subset of lots.

Tia Lewis, Myles Conway and Paul Dewey all, in letters which are part of the record of this case, assert that DCC 19.22.050(H) was "intended" to apply only to the Tumalo Canyon rim as a wildfire and view mitigation measure. The Hearings Officer finds that the testimony/letters, in this case, from Lewis, Conway and Dewey do not constitute persuasive 'legislative history' related to the enactment of DCC 19.22.050(H). While the Hearings Officer acknowledges that Lewis, Conway and Dewey were each involved in legislative process resulting in the enactment of DCC 19.22.050(H) their comments alone, in this case, are not persuasive evidence that DCC 19.22.050(H) should be interpreted to mean "slope" refers only to the Tumalo Canyon rim and not to all lots within the Applicant's proposed land division.

The Hearings Officer next addresses Myles Conway's "final argument" that the "setback slope" referred to in DCC 19.22.050(H). is (1) ambiguous and (2) should be interpreted to mean "setbacks should be measured only from Tumalo Creek Canyon slopes exceeding 20%." The Hearings Officer, for the purposes of this section of the findings, assumes that the term "slope" is ambiguous. This assumption is made despite reservations by the Hearings Officer based upon the fact that the term "slope" has a clear and concise dictionary definition (see Myles Conway "final argument" dated July 30, 2019). Conway, in the "final argument" stated that "slope" could be considered ambiguous because (1) the slope could vary depending upon the distance measured between two points and, (2) boulders or other natural features could distort result in a "slope" greater than 20%.

The Hearings Officer, for this purpose of discussion of the findings for DCC 19.22.050(H), agrees with Conway that the "slope" of a specific geographical area could be determined by the "distance measured between two points" and even possibly by the existence of "boulders" or other "natural features." However, these arguments presented by Conway do not support Applicant's contention that "slope" (as used in DCC 19.22.050(H)) should be interpreted to **include** or **reference only** the Tumalo Canyon Rim and **not include** other locations where the "slope exceeds 20%."

The Hearings Officer finds, based upon experience in prior land use hearings, that civil engineers and surveyors utilize standard protocols in determining "slope." No interested person, in the record of this case, referenced engineering standards or protocols in the context of measuring "slope." The Hearings Officer, based upon the lack of evidence or argument, finds that until challenged the measurement of "slope" is an engineering matter and not one to be interpreted by a Hearings Officer. If, on the oft chance, there would be a dispute between expert engineers as to the meaning of "slope" a hearings officer or the Board would correctly be forced to address that issue.

Finally, the Hearings Officer notes that DCC 19.22.050(H) states that a 30-foot setback is required "from the edge of any slope which exceeds 20%." The language of DCC 19.22.050(H) clearly does not state 30-foot setbacks required from the Tumalo Canyon rim or any other specific "slope." The Hearings Officer finds the use of the words "any slope" do not limit the 30-foot setback requirement to "some" slopes or to any "particular" slope. The Hearings Officer finds it would be presumptuous, and not legally supportable, to interpret the term "slope" as requested by Applicant (i.e. "slope only refers to the Tumalo Canyon rim).

The Hearing Officer finds Conway's request to "approve the Westgate Master Plan and Tentative Plan with an ongoing condition of approval that all future building improvements observe the 30-foot setback imposed by DCC 19.22.050(H) is reasonable. The Hearings Officer finds that with such a condition this approval criterion can be met.

Staff, in the Staff Report, requested the Hearings Officer determine the meaning of "edge of any slope." Staff suggested that "edge of any slope" could mean "top and bottom of edges" or it could refer to only the "top edge." The Hearings Officer agrees with Staff that the phrase "edge of any slope," in the context of determining a point of measurement (for the 30-foot setback) may be an ambiguous phrase. The Hearings Officer notes that no evidence was brought to the attention of the Hearings Officer, following the issuance of the Staff Report, addressing this issue at the Hearing.

The dictionary definition of "edge" is:

- *The line where an object begins or ends*
 - *A point near the beginning or the end"*
- Merriam-Webster Dictionary*

The Hearings Officer finds, with the dearth of assistance from persons or entities involved in this case, that "edge" means, in the context of DCC 19.22.050(H), both the top and bottom edges. While the Hearings Officer believes a reasonable interpretation of "edge," in the context of DCC 19.22.050(H), would include only the "top edge" there simply is no substantial evidence in the record (such as legislative history) to support such an interpretation.

The Hearings Officer finds this approval criterion can be met with condition of approval requiring all future building improvements on the Subject Property observe the 30-foot setback imposed by DCC 19.22.050(H).

Section 19.22.060. Land Divisions.

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

A. Master Development Plan Requirements. In addition to the overall master development plan requirements of DCC 17.16.050, such master development plans in the Westside Transect Zone shall also demonstrate:

- 1. The lot configuration, street layout, parking lots, trails and any open space, common areas, and public parks are designed to be compatible with existing or projected uses on adjacent properties and provide sufficient public access to and through the subject property;**

FINDING: The master development plan requirements of DCC 17.16.050 are reviewed separately in this decision. Applicant, in its burden of proof, it stated:

"The Westside Transect Zone (WTZ) allowed uses, requirements, and criteria were adopted by the County, with compatibility as a cornerstone. Compatibility with adjacent neighborhoods, parks, wildlife and forest lands has been incorporated into DCC 19.22 Westside Transect Zone and compliance with the criteria of this section of the code ensures compatibility. As noted in the WTZ zone change application, "[t]he low density residential development permitted in the WTZ is intended to minimize conflicts with urban uses with the City of Bend and the natural resource values of Shevlin Park and Tumalo Creek to the west."

Lot configuration: Existing and proposed uses to the north, south, and east are all residential. The proposed lots for the subject project are all large lots (2.5 acres and larger) and are significantly larger in size than the existing and planned adjacent developments. This strategy is to provide for a transition area ("transect") between urban development in the City to the east and Shevlin Park and forestlands to the west, minimizing conflicts between urban and rural uses. Additionally, the proposed uses for the lots are solely residential, a permitted use in the zone. As noted in the WTZ zone change hearings officer recommendation (247-18-000612-ZC):

"The proposed use has been designed in a manner that is entirely compatible with adjacent land uses. The low density residential development authorized in the WTZ will minimize the potential for conflicts with both urban uses within the City of Bend and the natural resource values of Shevlin Park and Tumalo Creek to the west. Individual residential home sites within the WTZ will be buffered from the park boundary and Shevlin Park.

...

The South Property borders lands zoned for urban development to the north and east. The existing Shevlin Commons development borders the property directly to the north. Platted rural residential lots (2-acres in size) abut the property to the south. Shevlin Park and Tumalo Creek border the property to the west, where no development (other than public park uses) is contemplated or authorized... The low density residential development standards within the WTZ will be entirely compatible with the size and configuration of lots within the adjacent Tree Farm residential development. Substantial topography (rock

outcroppings and a steep ridge line) will separate the South Property from planned urban development to the east.'

Open Space/ Trails/ Parks: The open space shown on the Westgate subdivision tentative plan can be categorized into four groups: conservation area, no build zone, natural areas, and open space to be dedicated to BPRD. Each open space was designed with a specific focus on compatibility:

Conservation Area: Reserved as a dedicated wildlife corridor, with a focus on maintenance of wildlife habitat.

No Build Zone: To be managed and maintained primarily for fire protection purposes.

Natural Areas: Visually unique locations, highlighted for preservation as natural resources.

Future BPRD Property: Provides a buffer between proposed development and neighborhoods to the north, as well as trail connectivity to Bull Springs Trail and Shevlin Park for surrounding neighborhoods.

Shevlin Park borders the subject property to the west; further west is the Deschutes National Forest. A minimum of 450' has been reserved between the park and buildable area along the western edge of the proposed development, as conservation and no build areas, for both wildfire and wildlife management. These areas are clearly depicted in the tentative plan and will be defined as through open space and no build easements. The management of these areas is detailed in the draft CC&Rs (Exhibit G), which will be enforced through an HOA.

Along the northwestern edge of the subject property, approximately eight acres are proposed for donation to Bend Parks and Recreation District, to provide natural open space areas and neighborhood bike and pedestrian connections. These significant management corridors and open spaces will further reinforce the compatibility between neighborhoods and Shevlin Park, by providing buffers along the entire west side of the subject property.

The WTZ zone change hearings officer recommendation noted:

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

The WTZ zone change hearings officer recommendation continues:

'As a condition of development approval, the applicant is prepared to dedicate a 50-acre "Conservation Area" immediately adjacent to its boundary with Shevlin Park. The Conservation Area will be managed under the terms of a conservation easement that will protect and preserve areas of wildlife habitat. In addition, the applicant intends to create an additional 30-acre "No-Build Area" immediately east of the Conservation Area. The "No-Build Area" will be part of individual lots but no structures will be permitted and the area will be managed primarily for fire protection purposes. The protection of these two areas (located along the western boundary of the South Property) will insure that management of the WTZ is compatible with Shevlin Park. The planned Conservation Area and No Build Area will work to insure that residential development within the WTZ is not visible from Tumalo Creek. The joint management of such areas will provide additional protections for the natural resource and public values of Shevlin Park.

Fire management standards within the WTZ will provide a benefit to the residential development to the north, south and east. A portion of the planned No-Build Area will provide an additional fire protection buffer between the Shevlin Commons development and the South Property.'

The proposed development also includes multiple trails that will connect adjacent neighborhoods through the development and to open spaces and Shevlin Park.

Compliance with DCC 19.22 Westside Transect Zone ensures that the proposed subdivision is designed to be compatible with adjacent neighborhoods, open space, and wildlife. A natural trail is proposed to connect to future and existing areas of Northwest Crossing, through the proposed Westgate subdivision to the north-south extension of Sage Steppe Road, where the path becomes a paved multiuse path. At the north end of Westgate, another trail connects to the multiuse trail to connect bicyclists and pedestrians to the eight acres of dedicated open space and to the existing Bull Springs Trail that provides access to Shevlin Park. These trail connections provide significant access to surrounding neighborhoods.

The proposal does not include parking lots or public parks.

Streets/Public Access: The proposed development includes one north-south street, designed to County collector standards, which will connect existing developments to the north and south through the extension of existing roadways. This main "spine" will be accessed by private streets to serve the proposed development, including a looping street through the western portion of the property. This proposed north-south roadway will provide not only public access to the proposed development, but also a street for north-south vehicular, pedestrian and bicycle connectivity from the Shevlin Park area ultimately to Skyliners, without accessing Mt. Washington Way. As the subject property is bounded by Shevlin Park on the west and topography on the east, there are no proposed or existing east-west connections. The street layout is designed to be compatible with uses on adjacent properties while providing connectivity that is currently not available on the far west side of Bend."

As noted earlier in this decision the Hearings Officer in this case is the same hearings officer who issued the recommendations quoted above. With that said, the Hearings Officer concurs with the Applicant's statements and finds the proposed configuration and layout are compatible with existing and projected surroundings uses and provides sufficient access.

2. The development contributes to the preservation of natural and physical features of the site; and

FINDING: Applicant, in its burden of proof, stated:

"Preservation of natural and physical features is central to the Westgate subdivision development strategy. As detailed previously in this document, the proposed development dedicates significant acreage to conservation areas, natural areas, open space and no build areas; approximately 80 acres are included in one of these conservation categories. These areas are clearly depicted on the tentative plan and will be managed through separate tracts and/or no build easements. The CC&Rs include strict provisions for the preservation of these areas, through:

- o prohibition of certain activities (tree/vegetation removal without HOA approval, modification of topography, debris disposal, parking/motor vehicle access, burning of debris, construction),*
- o landscape maintenance,*
- o specific permitted uses, and*
- o implementation and enforcement of the Wildlife Habitat Management Plan and Wildfire Protection Management Plan.*

Additionally, due to the nature of large lot developments, each individual lot will include areas that remain natural."

The Hearings Officer concurs with the above-quoted statements by Applicant and finds the proposed development contributes to the preservation of natural and physical features of the Subject Property.

3. Compliance with provisions of the Oregon State Scenic Waterway Act and the Deschutes County Landscape Management Combining Zone, as applicable.

FINDING: The Subject Property is not located within an Oregon Scenic Waterway nor is it within the Landscape Management Combining Zone. The Hearings Officer finds these provisions do not apply.

B. Residential lots shall be limited to 100 residential lots for the North Transect and 87 residential lots for the South Transect, as depicted on Figure 1 at the end of this chapter.

FINDING: The proposal includes the entire South Transect area and consists of 85 residential lots, two less than the maximum. The Hearings Officer finds this approval criterion will be met.

- C. **The subdivision shall be designed in accordance with a Wildlife Habitat Management Plan and a Wildfire Mitigation Plan for the subdivided property as described below and submitted with the master development plan application.**
1. **A Wildlife Habitat Management Plan prepared by a professional biologist which identifies important wildlife habitat and migration corridors and contains provisions for deed restrictions or restrictive covenants which include but are not limited to the following components:**
- a. **Dedicated open space and/or resource management corridors with specific enforceable measures to aid in wildlife migration and protect habitat within these areas.**

FINDING: Applicant, in its burden of proof, stated:

"A 'Wildlife Habitat Management Plan for the Rio Lobo Property' was produced for the subject property by Mason, Bruce & Girard, Inc., dated December 21, 2017. The submitted Wildlife Habitat Management Plan notes that the subject property is located within a biological mule deer and elk winter range, as identified by the Oregon Department of Fish and Wildlife ("ODFW"). As a result of this study and significant coordination with interested agencies and organizations, a large conservation and no build area is proposed along the entire western border of the proposed subdivision. This area is approximately 72 acres and is 450 feet wide at its narrowest and are proposed to be enforced through no build easements and CC&Rs.

The Wildlife Habitat Management Plan includes specific wildlife habitat conservation measures, which will be enforced by the Westgate CC&Rs. In addition to habitat management, the draft Westgate CC&Rs requires wildlife protection in Section 10.16:

*10.16 **Wildlife Protection.** Each Owner shall comply with such provisions of the Wildlife Habitat Management Plan as are applicable to his or her Homesite. The harassment, capturing, trapping, injuring, or killing of wildlife within the Property is expressly prohibited, except when reasonably necessary to avoid an imminent threat of personal injury or death to any person or except when reasonably necessary to protect property from damage by rodents or other pests and then only to the extent permissible under applicable laws. The feeding of wildlife or leaving salt blocks out for big game is also expressly forbidden.*

Article XII addresses enforcement of the covenants. More specifically, Section 12.1 provides the Association the right to assess fines and interest rates, enter the homesite to remedy the violation and assess owners for the work, suspend voting rights, place liens, and bring suit or action against the owner." [emphasis in original]

The Hearings Officer concurs with the Applicant's statements and finds the proposed development meets the Wildlife Habitat Management Plan requirements of this section to aid in wildlife migration and habitat protection.

- b. Specific vegetation management standards for areas within the open space and/or resource management corridors to protect wildlife habitat funded through homeowner assessment and performed, monitored and enforced by the homeowners association.**

FINDING: Applicant, in its burden of proof, stated:

The Wildlife Habitat Management Plan (WHMP, Exhibit D) notes that the Singleton Wildfire Management and Forest Health Plan (WMFHP) was developed in conjunction with the WHMP “in order to produce a comprehensive vegetation management plan that will reduce the threat of wildfire spread while also maintaining quality wildlife habitat within the conservation area, the designated open space, and in the undeveloped portions of the residential lots. As explained in the WMFHP, vegetation will generally be managed in compliance with the National Fire Protection Association (NFPA) codes and defensible space standards which use a zone of protection approach.” The WHMP continues to note that “[t]he following provisions will be implemented to maintain wildlife habitat value within the context of the NFPA standards...:

- *Downed logs: Downed logs will be left as a source of visual screening if they will not act as ladder fuel, per guidance provided in the WPMP. Where possible, retain an average of two downed logs per acre, consistent with the goals of adjacent Shevlin Park (Boldenow 2008).*
- *Standing snags (dead trees) provide food and nest site locations for wildlife, especially cavity nesting birds (Photo 1, Appendix B). Leave snags in place where practical. The density target for snags will be two of each per acre, consistent with the goals of adjacent Shevlin Park (Boldenow 2008).*
- *Brush: Leave patches of brush (Photos 4 and 10, Appendix B), especially those associated with rock outcrops. Most brush under the drip line of trees must be removed often enough to maintain a distance of at least three times the height of the ground fuel and the tree crown. In open areas, older and taller brush patches can be maintained and remain consistent with the fire protection guidelines (WMFHP).*
 - *Patches of brush will specifically be left within the conservation area along the western boundary of the PSA and opportunistically within other open spaces and building lots when also in compliance with the WMFHP (see current brush patch pattern in Figure 3).*
 - *Brush patches will be maintained in a mosaic pattern following a multi-year cycle of brushing so that brush patches will vary in age and height.*
- *Slope-specific brush treatments: Hand-pruning treatments will be used to maintain brush patches as wildlife habitat while also providing breaks in the linear continuity of brush patches oriented along steep slopes and rock outcrops; consistent with a fire fuels reduction practice (WMFHP).*

The Wildlife Habitat Management Plan continues on to note that the above vegetation treatments will support deer and other wildlife species and particularly suggests its application in the conservation area along the western border of the subject property, in order to maintain a north-south travel corridor.

Article IV, Section 4.2 gives the HOA the authority to utilize the operating fund for the "performance of all the Association's obligations under the following: the COL Agreement, the Revised Wildlife Health and Forest Health and Management Plan the Wildlife Habitat Management Plan, the Wildfire Protection and Management Plan...". Article XII of the draft CC&Rs provides the HOA authority to enforce the requirements of the CC&Rs.

This criterion has been met through the establishment of vegetation standards through the wildlife habitat and wildfire mitigation plans, and the mechanism by which to fund and enforce them through the CC&Rs."

The Hearings Officer concurs with the Applicant's statements and finds the homeowners association's responsibilities for vegetation management will be met.

c. Specific setbacks from wildlife corridors.

FINDING: Applicant, in its burden of proof, stated:

"The primary wildlife corridor identified by the Wildlife Habitat Management Plan is a north-south route along the western edge of the subject property. The proposed tentative plan includes a significant structure setback from Shevlin Park (minimum of 450 feet).

'The conservation area proposed in the Preliminary Plan along the western edge of the PSA is designed to provide a minimally obstructed wildlife travel corridor, especially for deer and elk, that is contiguous with adjacent protected areas to the west of the development (the riparian zone of Tumalo Creek, Shevlin Park, and public lands farther to the west). In conjunction with other development plans and their associated open spaces located to the north and south of the PSA, this conservation area provides a key link in the landscape-level continuity of wildlife habitat maintained along Tumalo Creek. The corridor follows the natural topography of a ridge that parallels the creek, originating on the southwestern border with the WA zone, and gently dropping down in elevation toward the riparian zone of Tumalo Creek to the north-west of the PSA (Figure 4). According to ODFW biologists, deer migrating through the Bend area on an east-west path are already likely to avoid residentially developed areas, travelling instead along the southern border of the City; however, animals approaching the developed areas are likely to continue using contiguous corridors such as that along Tumalo Creek.'

The setback from this wildlife corridor on the western border of the subject property will be enforced through easements and CC&Rs."

The Hearings Officer concurs with the Applicant's statements and finds the wildlife setbacks will be met.

d. Provisions which demonstrate coordination with the Wildfire Mitigation Plan described below to establish joint management

objectives and designated areas for wildlife habitat measures which are outside of the defensible space and wildfire mitigation areas.

FINDING: Applicant, in its burden of proof, stated:

"A Revised Wildlife Habitat and Forest Health Management Plan was developed to "balance the protection of wildlife with a wildland fire management plan." This plan includes a comprehensive vegetation management plan to reduce the threat of wildfire spread while maintaining quality habitat. This plan includes various strategies for wildlife habitat measures outside of the defensible space and wildfire mitigation areas, such as:

- maintenance of forest health and landscape resiliency*
- fencing standards for the subdivision*
- limitations on allowed uses (e.g. no high intensity recreational uses)*

Additionally, Section VII of this plan includes restrictions for the entire subject property, including:

- o No high-intensity recreational uses (i.e. playgrounds or motorized uses) will be allowed.*
- o No fireworks of any type are allowed.*
- o No hunting, discharge of firearms or trapping is allowed.*
- o No use of drones will be allowed."*

The Hearings Officer concurs with the Applicant's statements and finds the wildfire and wildlife plans accomplish the joint management objective of this criterion.

- e. Requirements for annual review of the plan by a professional biologist and a reporting of those findings and any recommended alterations to the plan to the homeowner association.***

FINDING: The Applicant's draft CC&Rs include a section¹ that provides for the periodic review of the Wildlife Habitat Management Plan. Staff, in the Staff Report, noted that this criterion requires annual review. The Hearings Officer finds that with a condition requiring that Applicant's proposed CC&R's be modified to require "annual" review of the Wildlife Habitat Management Plan this approval criterion can be met.

- 2. A Wildfire Mitigation Plan prepared by a professional forester that identifies and includes enforceable measures to prevent the ignition and spread of wildfire, and contains provisions for deed restrictions and/or restrictive covenants, enforced by a homeowners association, which include but are not limited to the following components:***

- a. Requirement to develop and maintain all residential lots in compliance with the most current National Fire Protection Association (NFPA) Zone 1, 2 and 3 standards, containing concentric rings extending outward from the structure implementing the defense in depth approach, with Zone 1: 30 feet adjacent to structures, Zone***

¹ Exhibit G, Section 5.5(C)

2: 30 to 100 feet from structures, and Zone 3: 100 to 200 feet from structures.

FINDING: Applicant, in its burden of proof, stated:

"A Wildfire Mitigation Plan (Exhibit C) was developed by Singletree Enterprises, LLC, dated December 19, 2017. This Plan includes vegetation management standards for structural defensible space, including the designation of Zone 1, Zone 2 and Zone 3 as concentric rings around structures, each with specific requirements. The developer's agreement with Central Oregon Landwatch (Exhibit E) includes an integrated plan for the management of wildlife habitat and forest health management. This plan requires the implementation and enforcement of these zonal rings for vegetation management around structures:

Zone 1: 30 Feet Adjacent to Structures

Use non-flammable landscaping materials within first 5 feet of structures. All vegetation and combustibles are removed from under decks and within 5 feet of the home or auxiliary structures. Outside of 5 feet, low-growing, resin-free fire resistive plants are carefully spaced and maintained, and are kept free of dead material that do not allow flame lengths greater than 3 feet. Areas of lawn must be well irrigated and regularly mowed. Mature trees are pruned to a height of 6 to 10 feet from the ground with no brush inside of the tree dripline. Juvenile trees are not pruned more than 20% of stem length. Trees may not touch the home. No firewood storage is permitted outside of an enclosed structure. This zone includes driveway/road surfaces.

Zone 2: 30 to 100 Feet from Structures

Plants are low-growing and well irrigated. Tree canopies are spaced at 15-20 feet, or 30 feet between small groups of small trees. Zone 2 treatments will extend to the lot boundary (beyond the 100-foot zone) when the lot is adjacent to down-hill slopes greater than 20%. Small individual brush species will be irrigated, maintained free of dead material and outside the dripline of trees.

Zone 3: 100 to 200 Feet from Structures

Trees will be thinned and pruned, woody debris removed and brush fields mowed or removed. Density of taller trees will be reduced and maintained so that canopies do not touch. Taller, more mature trees however, typically present less of a fire risk as long as brush is not present within the tree drip-line and lower limbs are pruned.

The Draft Westgate CC&Rs (Exhibit G) Section 4.4 requires compliance with the Wildfire Management, including a requirement for the Association to submit applications for the recognition of each homesite under the Firewise Communities USA/Recognition Program. Section 10.2 requires that landscaping plans for each Homesite be in compliance with the Wildfire Protection Management Plan. In addition, Section 5.5 of the draft CC&Rs requires that "The Association shall comply with all terms of the COL Agreement, Revised Wildlife Habitat and Forest Health Management Plan, and Wildlife Habitat Management Plan."

The Applicant has complied with the requirements of this section through numerous mechanisms - through the Wildfire Mitigation Plan, the Revised Wildlife Habitat and Forest Health Management Plan. These Plans are implemented and enforced by the draft CC&Rs and the Central Oregon Landwatch Agreement.” [emphasis in original]

The Hearings Officer concurs with the Applicant’s above-quoted statements and finds the proposal complies with the three-zone, concentric ring defensible space requirements of this section.

- b. Enhanced construction design and materials to prevent home ignition from external fire sources.***
 - c. Requirements and specific provisions for ongoing vegetation management funded through homeowner assessment and performed, monitored, and enforced by the homeowners association, as adopted by Deschutes County or as recommended in forest management plan, whichever standard is the most stringent.***
 - d. Provisions which demonstrate coordination with the Wildlife Habitat Management Plan described above to establish joint management objectives and designated areas for wildlife habitat measures which are outside of the defensible space and wildfire mitigation areas.***
 - e. Requirements for annual review of the plan by a professional forester and annual reporting of those findings and any recommended alterations to the plan to the homeowner association.***
- D. A Stewardship Community Plan which includes provisions designed to educate residents of the unique resource values of the area and the community goals to utilize best management practices in the community development and operation to protect wildlife habitat and to establish and implement firewise community strategies.***

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

“The Stewardship Community Plan is included in Exhibit E as part of the Rio Lobo - Landwatch Agreement. This agreement encompasses the Revised Wildlife Habitat and Forest Health Management Plan, which includes community implementation approaches for the integration of the wildlife and wildfire management plans, focused on the unique resource values of the area. The intent of the plan is to balance the protection of wildlife with a wildland fire management plan within the Westside Transect Zone, to ensure the protection of wildlife habitat in a known wildfire hazard area.

The Plan includes best management practices to protect the wildlife habitat and implement firewise community strategies, most of which were developed in collaboration with multiple agencies during the zone change process.

More specifically, the integrated plan includes prescriptive requirements for:

- o Vegetation management standards for structural defensible space (by zones)*

- *Vegetation management standards for wildlife*
- *Management of Forest Health and Landscape Resiliency*
- *Structural Design and Materials Selection*
- *Operational Issues and Standards (evacuation routes, communication plans)*
- *Wildlife Habitat Measures*

This Stewardship Community Plan requires education and enforcement by the homeowners' association through the CC&Rs.

The Hearings Officer concurs with the Applicant's statements but questions how the details of this "Stewardship Community Plan" are planned to be communicated to new residents.

Similar to earlier findings where the Hearings Officer found that a condition of approval was required to assure that the CC&Rs required an annual review of the Wildlife Management Plan. The CC&Rs should be required to include annual review and reporting requirements of this approval criterion. With such a condition the Hearings Officer finds this approval criterion can be met.

E. Mandate deed restrictions and/or restrictive covenants that implement lot-specific and applicable general provisions of the Wildlife Habitat Management and Wildfire Mitigation Plans. The deed restrictions and/or restrictive covenants must run with the land and must be enforceable by the homeowner association.

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"Draft restrictive covenants for the proposed subdivision are included in Exhibit G. These CC&Rs require individual lot compliance with the Wildlife Habitat Management Plan, Wildfire Protection and Management Plan and the Revised Wildlife Habitat and Forest Health Management Plan. These CC&Rs will be recorded and will run with the land, enforceable by the homeowner association. The restrictive covenants submitted with this master plan and tentative plan submittal are in draft form and the Applicant reserves the right to make corrections and changes prior to recording."

On July 19, 2019, the Applicant provided the following supplemental statement:

"The Applicant's intent is to record CC&Rs in phases. During each phase, CC&Rs will be recorded for the individual lots created, but not for the remainder parcel, until it is developed into individual lots in subsequent phases."

Staff, in the Staff Report, concurred with the Applicant's above-quoted statements but noted that the final CC&Rs presented for recording must substantially conform to those reviewed or modified as part of this review process. Staff noted, in the Staff Report, that revised CC&Rs would be reviewed in detail at the time of Final Plat submissions and if the CC&Rs were found to contain more than corrections or minor changes related to the approval criteria listed in the Staff Report, then the Community Development Planning Division has the right to reject the modifications.

The Hearings Officer agrees that Applicant, Homeowners Association or successors in interest, should have the right to modify the proposed CC&Rs. However, the Hearings Officer also agrees with Staff that any changes must be in substantial conformance with to the CC&Rs submitted by Applicant (Exhibit G, Section 5.5(C)) and may not diminish the Applicant's or successor to Applicant's obligations related to the Wildlife Management Plan, Wildfire Protection and Management Plan and Revised Wildlife Habitat and Forest Health Management Plan (including review and reporting requirements).

- F. *Mandate that the recorded duties and obligations of the homeowners association compel the homeowners association to provide for enforcement of the deed and/or covenant restrictions, maintenance of any common property, open space or resource management corridors and private streets, and provide for the assessment and collection of fees to fund the deed and/or covenant restrictions.***

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

*"The draft CC&Rs for the subdivision are included in Exhibit G. Article III defines specific types of assessments that will be required to **'promote the recreation, health, safety and welfare of the Owners and Occupants of the Property for the improvement, operation and maintenance of the Common Maintenance Areas and other areas to be maintained by the Association.'** The CC&Rs define the Common Maintenance Areas to include common areas, conservation area, natural areas, no-build zone, multiuse paths, private streets, neighborhood signage, common area utilities, and Sage Steppe Drive until it is accepted as a county road by the County.*

The CC&Rs direct the development of an Operations Fund for these maintenance expenditures (Section 3.6). Article XII empowers the Association to enforce the CC&Rs, through the following measures:

- o assessment of fees (12.1(A)),*
- o entering offending Homesite to remedy the violation (12.1(B)),*
- o tow vehicles in violation (12.1(C)),*
- o suspend voting rights and utility services (12(D)), and*
- o bring suit or action against an owner (12(E)),*

The proposed development can comply with this criterion upon recording of the CC&Rs at time of final plat, based on the detailed draft CC&Rs including requirements and enforcement."
[emphasis in original]

Staff, in the Staff Report, expressed concurrence with the Applicant's above-quoted statements but noted that the reference to Sage Steppe should include the entire extension of Sage Steppe and McClain Drive. Staff, in the Staff Report, also noted that the public road extension through the subdivision may never be accepted by the County for road maintenance, although it will be required

to be dedicated to the public. This topic is further discussed in the findings for Title 17 approval criteria in this decision.

Article XII, section 12.1 in Applicant's proposed/draft CC&Rs gives the HOA, "the right to do any or all of the following", followed by a list of enforcement actions. Staff, in the Staff Report, expressed concern as to whether this enforcement provision "*compelled*" the HOA to enforce the CC&Rs or only grants the option to enforce the CC&Rs. Staff, in the Staff Report, requested that the Hearings Officer consider requiring the Applicant to revise the CC&Rs to achieve compliance.

Staff, in the Staff Report, noted that the WTZ Zone criteria sets out responsibility for the Homeowners Association to inspect, review, enforce, and manage several ongoing critical aspects of the subdivision that are described in the sections above. The Hearings Officer shares the Staff's above-referenced concerns. In particular, enforcement obligations related to the Wildlife Management Plan, Wildfire Protection and Management Plan and Revised Wildlife Habitat and Forest Health Management Plan (including review and reporting requirements) should be mandatory upon the Homeowners Association.

Staff, in the Staff Report, also raised "a speculative concern" related to the Homeowners Association and CC&Rs. Staff inquired as to what would happen if the Homeowners Association for the proposed development would disband, dissolve or otherwise cease operation. Staff was concerned about the County's ability to enforce the requirements set out in this decision. Staff, in the Staff Report, noted that Section 2.1 of the draft CC&Rs provides some guidance. This section states that "In the event that the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association having the same name and purpose ...". Staff questioned whether or not the County had the ability to enforce against the Homeowners Association, an unincorporated association, or individual lot owners for non-compliance.

The Hearings Officer finds it reasonable and appropriate to require, as conditions of approval in this decision, the Applicant to have CC&Rs that address relevant approval criteria. The Hearings Officer finds that it is beyond the Hearings Officer's authority to anticipate and thereby condition the approval upon the possible demise of the proposed Homeowners Association. The Hearings Officer finds that the County, under the approval and conditions imposed in this decision, has the right to enforce the decision. If the Homeowners Association remains in legal existence the County shall have the right to enforce conditions of approval against the Homeowners Association. If the Homeowners Association disbands, dissolves or otherwise ceases operation the County shall have the right to enforce the approval and conditions of this decision against any successor organization and/or against individual property owners within the development.

The Hearings Officer finds, with the condition of approval set forth below, that this approval criteria can be met.

HOA Reporting: **As an ongoing condition of approval**, the Homeowners Association, or any successor or equivalent organization or if no such organization then individual owners of lots shall be required to annually review of the Wildlife Habitat Management Plan. Further, the

County may request the Homeowners Association, or any successor organization or if no such organization then individual owners of lots, shall to provide within a reasonable timeframe documentation demonstrating compliance with the reporting, annual review, maintenance, and other responsibilities associated with the Wildlife Habitat Management Plan, Wildfire Mitigation Plan, and Stewardship Community Plan, as described in DCC 19.22.060 (C)-(F).

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

FINDING: The Applicant proposed a subdivision in eight phases as part of its Tentative Plan. Compliance with this criterion is ensured through the review of Title 17 criteria within this decision.

Section 19.22.070. Street Improvements.

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

- A. *Notwithstanding the allowance for private roads, the county may determine that public road(s) are required to meet public access and/or regional transportation needs and goals, including but not limited to a collector road to provide north-south connectivity through the Westside Transect Zone. The owner and homeowners association shall be jointly liable and responsible for all costs associated with initial construction of any such public road (including the one-year guarantee).***

FINDING: The proposed subdivision included a public right-of-way for a north-south connection, which will be an extension between McClain Drive and Sage Steppe and constructed to County collector road standards. The Applicant stated the developer would be responsible for initial construction costs and the Homeowners Association would be responsible for maintenance of the public road. The draft CC&Rs (Exhibit G) Section 1.10 – Common Maintenance Areas and Article IV requires the use of the Operating Fund for the maintenance of common areas.

The other roads within the subdivision are proposed to be private roads. The Applicant's burden of proof stated:

"The remainder of the roadways are proposed to be private; ownership, maintenance and management of which will be conducted by the homeowners association. The draft CC&Rs (Exhibit G) include all private streets in the definition of "Common Areas" and require the HOA maintain all common areas. The CC&Rs further address the "no parking" enforcement and maintenance of these private roadways:

- o Section 10.11 addresses the enforcement of "no parking" on private streets.*
- o Section 4.2 details the uses of the Operating Fund, including the performance of the Association's obligations under the Roadway Maintenance Agreement."*

Staff, in the Staff Report, recommended the following condition of approval for parking. The Hearings Officer finds, with Applicant's proposed CC&Rs and Staff's recommended condition below, these approval criteria will be met

Street Parking: **As an ongoing condition of approval**, on-street parking is prohibited on private roads within the subdivision.

Section 19.22.080. Off-street Parking.

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

FINDING: Compliance with the parking standards of DCC 19.80 are reviewed within this decision.

Section 19.22.090. Fence Standards.

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

- A. New fences shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provided equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:***
 - 1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.***
 - 2. The height of the fence shall not exceed 48 inches above ground level.***
 - 3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.***
- B. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.***

FINDING: No specific fencing is proposed at this time. The Applicant stated that the draft CC&Rs require compliance with DCC 18.22.090 and also prohibit perimeter fencing of home sites, except for wooden split rail fencing which abuts open space. Staff, in the Staff Report, proposed the following condition of approval to ensure ongoing compliance with these criteria. The Hearings Officer concurs with Staff's comments and recommended condition of approval. The Hearings Officer finds that with the proposed CC&R's and Staff's recommended condition of approval these criteria can be met.

Fencing: **As an ongoing condition of approval**, any fence constructed as a part of residential development shall comply with DCC 19.22.080.

Chapter 19.80, Off-Street Parking and Loading

Section 19.80.030. Off Street Parking.

Off street parking space shall be provided and maintained as set forth in DCC 19.80.030 for all uses in all zones, except for the CB zone. Such off street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 19 is changed. Improved off street parking shall mean paved with two inches of paving.

Section 19.80.040. Number of Spaces Required.

Off-street parking shall be provided as follows:

A. Residential.

<i>One, two and three-family dwellings:</i>	<i>2 spaces per dwelling unit.</i>
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FINDING: The maximum density within the WTZ Zone is one single-family dwelling per lot. Staff, in the Staff Report, recommended the following condition of approval to ensure compliance with DCC 19.80. The Hearings Officer concurs with Staff's comments and recommended condition of approval.

Parking: Prior to the issuance of building permits for dwellings on individual lots, each dwelling unit shall provide a minimum of two paved parking spaces.

Chapter 19.88, Provisions Applying to Special Use Standards.

Section 19.88.210. Solar Setbacks.

- A. Purpose.** *The purpose of DCC 19.88.210 is to provide as much solar access as practical during the winter solar heating hours to existing or potential buildings by requiring all new structures to be constructed as far south on their lots as is necessary and feasible.*
- B. Standards.** *Every new structure or addition to an existing structure shall meet the following standards except as provided in DCC 19.88.210(C):*
- 1. South Wall Protection Standard.** *The south wall protection standard is established in Appendix A, and all new structures or additions shall meet this standard if feasible. If it is not feasible due to physical constraints of the lot, including but not limited to, rock outcroppings, septic systems, existing legal restrictions or lot dimensions as determined by the Planning Director, then the structure or addition must be located as far to the south on the lot as feasible and must meet the standard set forth in DCC 19.88.210(B)(3)(b).*
 - 2. South Roof Protection Standard.** *All new structures or additions to existing structures shall meet the standard for south roof protection set forth in Appendix B.*

3. **Exceptions. The south roof protection standard shall not apply only if the applicant establishes:**
 - a. **That the structure cannot be located on the lot without violating the requirements contained in Appendix B of Ordinance No. 83 041; and**
 - b. **That the structure is built with its highest point as far to the south as feasible; and**
 - i. **That the structure is a single family residence with a highest point less than or equal to 16 feet high; or, if not a single family residence;**
 - ii. **That it is a permitted or conditional use for the lot.**
- C. **Exemptions.**
 1. **The governing body may exempt from the provisions of DCC 19.88.210 any area which it determines unfeasible for solar use because the area is already substantially shaded due to heavy vegetation or steep north facing slopes and any area or zone in which taller buildings are planned.**
 2. **The Planning Director shall exempt a structure from the provisions of DCC 19.88.210 if the structure will shade only a protected area in which solar uses are not feasible because the protected area is already substantially shaded at the time a request for exemption is made and approved by the Planning Director.**
 3. **The Planning Director shall exempt a structure from the provisions of DCC 19.88.180, if the structure is in conformance with a solar height restriction as provided in Ordinance 81 043, Deschutes County Subdivision/Partition Ordinance, as amended.**

FINDING: The smallest proposed lots in the subdivision will be a minimum of 2.5 acres in size, leaving enough space to meet the solar setback requirements. Compliance with this criterion is already ensured by the Setback and Yard Requirements condition of approval.

TITLE 17 OF THE DESCHUTES COUNTY CODE, SUBDIVISIONS:

Chapter 17.16, Approval of Subdivision Tentative Plans.

Section 17.16.040. Protective Covenants and Homeowner Association Agreements.

Landowner covenants, conditions, and restrictions and homeowner association agreements are not relevant to approval of subdivisions and partitions under DCC Title 17, unless otherwise determined by the County to carry out certain conditions of approval, such as road maintenance or open space preservation. Any provisions in such agreements not in conformance with the provisions of DCC Title 17 or applicable zoning ordinances are void.

FINDING: As discussed above in this decision, there are CC&R requirements for the proposed subdivision pursuant to DCC 19.22. No other landowner covenants, conditions, or restrictions have been proposed or considered as part of this application.

Section 17.16.050. Master Development Plan.

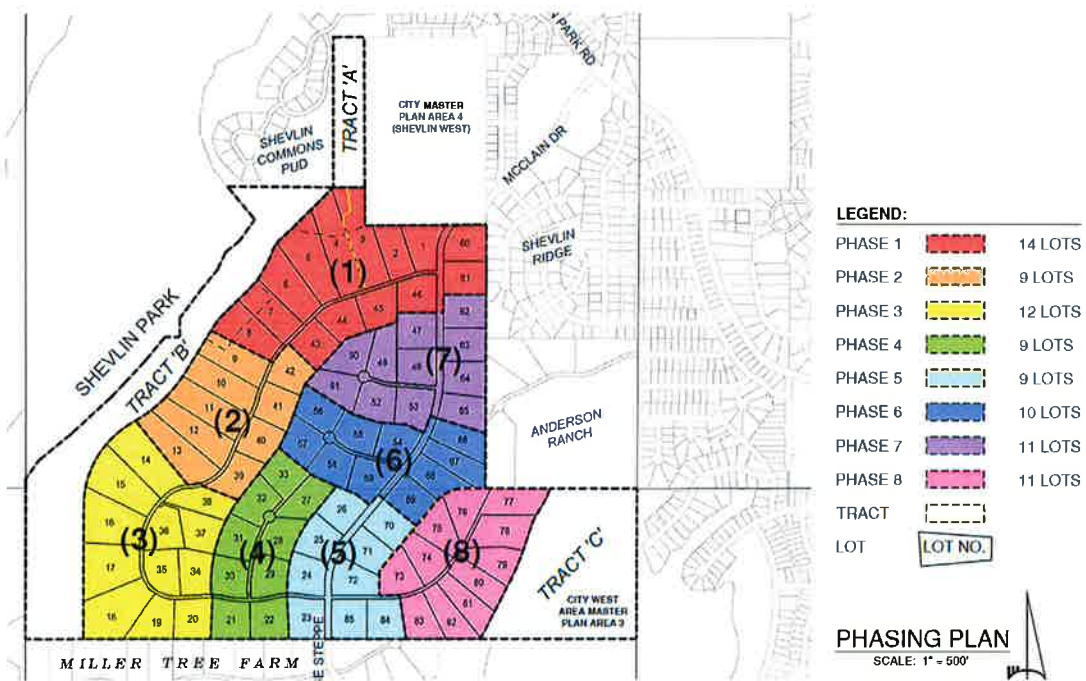
An overall master development plan shall be submitted for all developments affecting land under the same ownership for which phased development is contemplated. The master plan shall include, but not be limited to, the following elements:

FINDING: A Master Development Plan is required under this section as well as DCC 19.22.060.

A. Overall development plan, including phase or unit sequence;

FINDING: The Applicant proposed an overall development plan of an 85-lot subdivision with eight specific phases. A portion of the sheet containing the phasing map submitted as part of the application is included below as Figure 2.

Figure 2 – Phasing Plan



B. Show compliance with the comprehensive plan and implementing land use ordinances and policies;

FINDING: Titles 17, 18, 19, and 22 of the DCC are the implementing land use ordinance and policies of the Deschutes County Comprehensive Plan. All relevant chapters and sections of the DCC are reviewed for compliance in this decision. Staff noted, in the Staff Report, that it was unaware of any specific goals or policies contained in the Comprehensive Plan that are not addressed by the

relevant criteria found within the DCC, as it applies to this subdivision proposal. Based upon the evidence in the record the Hearings Officer concurs with Staff's comments.

C. *Schedule of improvements, initiation and completion;*

FINDING: The Applicant indicated that it intended to initiate the development of one or two phases immediately upon receiving land use approval. The application goes on to explain the development of the other phases will occur as market conditions and demand allows. The goal is to complete one or two phases per year, with an anticipated completion of the subdivision within approximately eight years, depending on the real estate market.

D. *Overall transportation and traffic pattern plan, including bicycle, pedestrian and public transit transportation facilities and access corridors;*

FINDING: The application materials show a north-south public right-of-way connection, several private roads, a separated multiuse path for bicyclists and pedestrians, and natural trails. No public transportation facilities are provided.

E. *Program timetable projection;*

FINDING: This criterion is similar to (C) above and the Hearings Officer incorporates those findings here.

F. *Development plans for any common elements or facilities;*

FINDING: The Applicant has not proposed any common development or facilities beyond the roads, multiuse path, and natural trails. The only development proposed in the open space Tracts A, B, and C are natural trails.

G. *If the proposed subdivision has an unknown impact upon adjacent lands or lands within the general vicinity, the Planning Director or Hearings Body may require a potential development pattern for streets, bikeways and access corridors for adjoining lands to be submitted together with the tentative plan as part of the master development plan for the subject subdivision.*

FINDING: Applicant, in its burden of proof, stated:

“Adjacent lands to the north and east are urban (City) residential subdivisions; Shevlin Park is immediately to the west; and The Tree Farm, a rural (County) residential subdivision is to the south. County staff and Applicant have coordinated for several years regarding the subject property, through the Westside Transect Zone change process and pre-application meetings for this master plan and tentative plan application. Mitigation for potential impacts to the Shevlin Park area are addressed throughout this narrative, through the development and implementation of the wildfire and wildlife management plans. Due to the presence of topography in the eastern side of the property, no impacts are anticipated to the adjacent development to the east as there are no

access points between the two areas. The Tree Farm to the south was developed with an understanding of potential future development to the north, and even included an abutting street (Sage Steppe) for future connectivity to the north.

The Applicant was party to the Westside Infrastructure Group (WIG) and entered into a Development Agreement (WIG DA, Ordinance NS-2316, effective November 16, 2018) with the City of Bend that assessed the infrastructure impacts and mitigations to City infrastructure as a result of the combined westside development. Ordinance NS-2316 notes “[b]ecause the uses and density of the Properties are either prescribed by the BCP and BDC ...the overall off-site infrastructure impact as a result of development of the Properties can be reasonably determined and addressed. The purpose of this Agreement is to provide for the equitable allocation of these costs, and define development triggers and assignment of responsible parties for the construction of the required public improvements to fully mitigate off-site sewer, water and vehicular transportation infrastructure impacts from the development of the Properties subject to this Agreement.” As such, the WIG Development Agreement analyzed all City water and street services for this master plan area. The terms of the Development Agreement commit the Applicants and the City of Bend to the terms of the agreement for a period of 15 years.

No unknown impacts on adjacent lands have been determined that would require submittal of potential development patterns for adjoining lands.”

The Hearings Officer accepts, as reasonable and appropriate, Applicant’s above-quoted statements. The only impact to adjoining land that may be of concern is the place of connection along the extended McClain Drive at the boundary between the Subject Property and the adjacent property at 3229 NW Shevlin Park Road, Map and Tax Lot 17-11-26, 400. The adjacent property is within the city limits and McClain Drive will need to be extended through that property as well to ultimately provide access to and through the Subject Property. The Hearings Officer finds, based upon Applicant’s statements, that this approval criterion will be satisfied.

Section 17.16.070. Development Following Approval.

Once a master plan is approved by the County, the plan shall be binding upon both the County and the developer; provided, however, after five years from the date of approval of the plan, the County may initiate a review of the plan for conformance with applicable County regulations. If necessary, the County may require changes in the plan to bring it into conformance.

FINDING: This section is included for reference to these procedural requirements.

Section 17.16.080. Tentative Plan as a Master Plan.

A. *As an alternative to the filing of a master plan for phased development, the applicant may file a tentative plan for the entire development. The plan must comply with the provisions of DCC Title 17 for tentative plans.*

- B. If the applicant proposed to phase development, he shall provide sufficient information regarding the overall development plan and phasing sequence when submitting the tentative plan.**
- C. If the tentative plan is approved with phasing, the final plat for each phase shall be filed in accordance with DCC 17.24.020 through 17.24.110.**

FINDING: The Applicant was required to apply for Master Plan approval regardless of this section. However, the Applicant has also proposed a Tentative Plan that covers the entire Master Plan area and includes details of an eight-phase development. All Final Plats will be reviewed and processed in accordance with the procedures of DCC Title 17.

Section 17.16.100. Required Findings for Approval.

A tentative plan for a proposed subdivision shall not be approved unless the Planning Director or Hearings Body finds that the subdivision as proposed or modified would meet the requirements of this title and Titles 18 through 21 of this code and is in compliance with the comprehensive plan. Such findings shall include, but not be limited to, the following:

- A. The subdivision contributes to the orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, agricultural and forest lands and other natural resources.**

FINDING: Compliance with Titles 17 and 19 of the Deschutes County Code is addressed in findings in this decision. The requirements of the Comprehensive Plan are codified within the Zoning Ordinance. Because no change to the Comprehensive Plan is sought by this application, conformance with Title 17 and 19 establishes conformance with the Comprehensive Plan.

Applicant, in its burden of proof, stated:

“Compliance with Deschutes County Code is addressed in this narrative and associated exhibits. The requirements of the Comprehensive Plan are codified within the Titles 17, 18, and 19, so compliance with these titles establishes compliance with the Comprehensive Plan.

Orderly Development and Land Use Patterns in the Area: The proposed Westgate subdivision was designed to meet the lot requirements of the Westside Transect Zone, with minimum 2.5-acre lots, while providing efficient roadway connectivity within the development and to adjacent developments. The elements of the proposed subdivision are clearly delineated for specific uses, including roadway tracts, individual lots, conservation areas, no build areas, and open space. This clear delineation, combined with CC&Rs, creates orderly development by which uses and responsibilities are known. The traffic circulation, water service and onsite septic systems have been planned for the entire development, to provide a comprehensive system for orderly development.

Preservation of Natural Features and Resources: Natural resources within or nearby Westgate include wildlife habitat, native vegetation, and topography. The cornerstone of this development

is the integration and implementation of wildlife habitat and wildfire mitigation plans, which include significant preservation of natural features and resources along the western border of the subject property, as discussed in great length below and in the associated Exhibits C and D. These plans identify resources (wildlife and wildlife habitat) and risks (habitat loss or wildfire) and strategies to preserve the resources by managing both together (e.g. appropriate management of vegetation to maintain wildlife habitat while still reducing fire fuel). The plans will be supported by the CC&Rs that require and enforce compliance with the Wildlife Habitat Management Plan and the Wildfire Mitigation Plan for the subdivision."

The Hearings Officer concurs with the Applicant's statements and finds the proposed development contributes to orderly development and natural features.

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

FINDING: Applicant, in its burden of proof, stated:

"The public facilities and services required by the proposed subdivision include water, sewage treatment, roads, electricity, natural gas, telephone service, and police and fire protection. These are addressed individually below.

Additionally, the Applicant was party to the Westside Infrastructure Group (WIG) and entered into a Development Agreement (WIG DA, Ordinance NS-2316, effective November 16, 2018) with the City of Bend that assessed the infrastructure impacts and mitigations to City infrastructure as a result of the combined westside development. Ordinance NS-2316 notes "[b]ecause the uses and density of the Properties are either prescribed by the BCP and BDC ...the overall off-site infrastructure impact as a result of development of the Properties can be reasonably determined and addressed. The purpose of this Agreement is to provide for the equitable allocation of these costs, and define development triggers and assignment of responsible parties for the construction of the required public improvements to fully mitigate off-site sewer, water and vehicular transportation infrastructure impacts from the development of the Properties subject to this Agreement." As such, the WIG Development Agreement analyzed all City water and street services for this master plan area. The terms of the Development Agreement commit the Applicants and the City of Bend to the terms of the agreement for a period of 15 years.

Water: *The Applicant proposes to provide domestic water to the proposed residential lots through the extension of City of Bend water service. The City provided a Will Serve letter, which is included in Exhibit A.*

Sewage Treatment: *The Applicant proposes to serve the residential lots with individual on-site private underground septic systems. At the time of tentative plan submittal, numerous septic submitted septic approvals have been received from Deschutes County Environmental Soils Division. The Applicant understands that septic approvals shall be received prior to submittal of final plat.*

Roads/Access: Site access will be provided through the extension and connection of McClain Drive and Sage Steppe. This north-south roadway connection will be dedicated to the public. The other proposed roadways in the subdivision are proposed to be private roadways, with ownership and maintenance by the homeowners association. The development's Site Traffic Report (STR) is included in Exhibit F and notes the following findings, demonstrating that the proposed development will not create excessive demands on the transportation system:

- The trips for 85 lots will be less than those previously assumed number for the South Transect property in the WIG study and associated WIG Agreement.
- Off-site mitigations and assessments to City of Bend facilities have already been determined with the WIG agreement. While this analysis did not focus on Deschutes County facilities no additional analysis should be required based on the access routes.

Electric: Electrical service will be provided by Pacific Power and a Will Serve letter is included in Exhibit B.

Telephone: A Will Serve letter from Century Link is included in Exhibit B.

Natural Gas: A Will Serve letter from Cascade Natural Gas is included in Exhibit B.

Police: Police protection will be provided by the Deschutes County Sheriff.

Fire Protection: Fire protection will be provided by the City of Bend Fire Department." [emphasis in original]

In regards to the public services aspect of these criteria, Staff (in the Staff Report) noted that the Bend Fire Department responded to the Notice of Application with several requirements for access and fire protection, which the Applicant will be required to meet. The Fire Department's comments are quoted in full earlier in this decision. The Fire Department's comments describe requirements related to construction activities and fire protections such as access during construction, gates, water supply, fire flow analysis, addresses, etc. Several other requirements from the Fire Department address timing that is more appropriate to be associated with final plat approval and are addressed separately in this decision. Staff, in the Staff report, suggested a condition of approval (set forth below) to ensure the public safety requirements submitted by the Bend Fire Department will be met. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

Fire District Approval: **Prior to issuance of building permit on individual lots**, the Applicant shall submit confirmation from the Bend Fire Department verifying the proposed lots, phase, or entire master plan area will conform to applicable Fire Code as it relates to the following requests from the Fire Department:

- Prior to the issuance of construction permits the Applicant shall provide to the City of Bend Fire Department a proposed plan for fire apparatus access to the construction site.
- Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. A Knox® Key Switch shall be installed at all electronic gates.

- An approved water supply capable of supplying the required fire flow for fire protection shall be provided.
- Documentation of the available fire flow shall be provided to the fire code official prior to final approval of the water supply system. Provide the City of Bend Fire Department a fire flow analysis.
- New and existing buildings shall have approved address numbers.

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

FINDING: The relevant provisions of ORS 92.090 and the proposal's compliance with those provisions are addressed in the findings below.

ORS 92.090

- (1) ***Subdivision plat names shall be subject to the approval of the county surveyor or, in the case where there is no county surveyor, the county assessor. No tentative subdivision plan or subdivision plat of a subdivision shall be approved which bears a name similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed. On or after January 1, 1992, any subdivision submitted for final approval shall not use block numbers or letters unless such subdivision is a continued phase of a previously recorded subdivision, bearing the same name, that has previously used block numbers or letters.***

FINDING: The Applicant requested the subdivision name Westgate. This name was submitted to the County Surveyor for review and the approval letter from the County Surveyor, dated May 30, 2019 is included as Exhibit I.

- (2) ***No tentative plan for a proposed subdivision and no tentative plan for a proposed partition shall be approved unless:***
- (a) ***The streets and roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width, general direction and in all other aspects unless the city or county determines it is in the public interest to modify the street or road pattern.***

FINDING: Applicant, in its burden of proof, stated:

"The proposed north-south public road will connect the existing McClain Drive to the north and Sage Steppe to the south. The proposed subdivision is bounded on the west by Shevlin Park and on the east by topography. As such, there are no through east-west streets. The north-south public

road has been designed to collector standards, through coordination with the County Roadway Department. In addition, the proposed multiuse path along this roadway was designed at eight feet wide, to match the existing width of the path along Sage Steppe."

The Deschutes County Road Department ("Road Department"), on July 23, 2019, submitted comments related to Applicant's proposal. The Road Department comments are included in the July 24, 2019 Staff Memo which is part of the record in this case. The Road Department, in its July 23, 2019 comments, acknowledged that the Applicant and Road Department had "coordinated their conceptual plans" but the Road Department then stated that it:

"did not indicate any acceptance of deviation from the private road standards in Deschutes County Code (DCC) 17.48.180 and 17.48A. Rather, Road Department staff stated to the Applicant prior to application submission that they would need to provide justification or mitigation for a variance to the County private road standard in their application burden of proof. Road Department staff acknowledges that the Applicant has provided a reason for the variance in their burden of proof, but the Road Department is neutral as to whether or not the Applicant has provided a sufficient reason."

The Road Department, in its July 23, 2019 comments, recommended conditions of approval. Staff, in the July 24, 2019 Staff Memo, requested the Hearings Officer consider the Road Department's recommended conditions.

The Hearings Officer incorporates the findings for DCC 17.48 and DCC 17.36.140 as additional findings for this approval criterion.

Wisco, on behalf of Applicant, testified at the Hearing related to the collector roadway extension of McClain Drive and Sage Steppe. Wisco utilized a Power Point presentation at the Hearing (Exhibit B). Wisco, in the Power Point presentation, provided a copy of a typical section of McClain Drive/Sage Steppe (Slide 12 of Exhibit B). Slide 12 showed a 28-foot wide roadway and an 8-foot wide multiuse path. Slide 13 of the Power Point presentation includes a portion of DCC 17.48A, Table B. Slide 13 indicates that minimum bikeway widths to be 8-feet. Slide 16 of the Power Point presentation is copy of a portion of Table B notes for DCC 17.48A. Footnote 1 of the Table B, as shown on Slide 16, indicates that while 10-feet is the standard width for multiuse paths 8-foot paths are acceptable "where long-term usage is expected to be low, and with proper horizontal and vertical alignment to assure good sight distances."

Wisco, on Slide 15 of the Power Point presentation, noted that DCC 19.22.060 requires compatibility with surrounding development. Wisco, in the Power Point presentation, noted that Sage Steppe road in the adjacent Tree Farm development includes 8-foot paths (citing low volume of usage). Wisco concluded, on Slide 15 of the Power Point presentation, that the present proposal for an 8-foot path matches the existing path in the Tree Farm development.

Wisco, on Slides 16-20 of the Power Point presentation (Exhibit B), described the private roads (not the extension of McClain Drive/Sage Steppe) included in the Applicant's proposed subdivision (See also pages 46-47 of the Applicant's Burden of Proof statement). The private roads are proposed to

be 24-feet of pavement (4-feet greater than the minimum code requirement) but with no multiuse path. Wisco, on Slide 16 of the Power Point presentation stated that the private roads would only serve the parcels abutting the private roads and not serve other origins/destinations.

Staff, in the Staff Report, concurred with the Applicant's statements and concluded that the proposed development would conform to the **street and road patterns** in the area. The Hearings Officer finds the proposed "collector" roadway (extension of McClain Drive/Sage Steppe) will meet County standards. The Hearings Officer finds that the private roads will meet the pavement width standard but not technically the "path" standard. The Hearings Officer agrees with Wisco's statements that the private roads will experience low volume of local traffic and will not serve other origins or destinations. The Hearings Officer finds, for the purpose of this approval criterion, the collector roadway (extension of McClain Drive and Sage Steppe) and the private roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width and general direction. The Hearings Officer finds that with a condition requiring multiuse paths along the private roads this approval criterion will be met. (See findings for DCC 17.36.140 and 17.48).

- (b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.**

FINDING: The proposed streets and roads for private use are clearly indicated on the Tentative Plan. The Hearings Officer finds this criterion is met.

- (c) The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances and regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.**

FINDING: This decision identifies applicable zoning ordinances and evaluates compliance with those ordinances. The Hearings Officer finds that the Tentative Plan, as conditioned, complies with the applicable zoning ordinances and regulations, and the ordinances and regulations adopted under ORS 92.044.

- (3) No plat of a proposed subdivision or partition shall be approved unless:**
- (a) Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.**
 - (b) Streets and roads held for private use and indicated on the tentative plan of such subdivision or partition have been approved by the city or county.**
 - (c) The subdivision or partition plat complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the subdivision or partition plat is situated.**
 - (d) The subdivision or partition plat is in substantial conformity with the provisions of the tentative plan for the subdivision or partition, as approved.**

- (e) ***The subdivision or partition plat contains a donation to the public of all sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or partition plat.***
- (f) ***Explanations for all common improvements required as conditions of approval of the tentative plan of the subdivision or partition have been recorded and referenced on the subdivision or partition plat.***

FINDING: The proposed roads will consist of one public right-of-way and all other roads will be private roads. All roads will be reviewed by the County Road Department prior to final plat approval. The proposal includes the right-of-way dedication associated with the extension of McClain Drive. Compliance with the zoning ordinance is addressed in the findings in this decision. Sections (a), (d), (e), and (f) of this section establish requirements for final plat review and have been added as conditions of approval to comply with this statute section.

Road Approval: **Prior to final plat approval of each phase**, streets and roads held for private use and indicated on the tentative plan shall be approved by the County Road Department. Streets and roads for public use shall be dedicated to the public without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.

Conformity to Tentative Plan: **Prior to final plat approval of each phase**, the subdivision final plat shall be in substantial conformity with the provisions of the tentative plan for the subdivision, as approved.

Explanations: **Prior to final plat approval of each phase**, explanations for all common improvements required as conditions of approval of the tentative plan of the subdivision shall be recorded and referenced on the subdivision plat.

- (4) ***Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:***
 - (a) ***A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system, subject to regulation by the Public Utility Commission of Oregon, that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat;***
 - (b) ***A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city or county that a domestic water supply system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted in the proposed subdivision plat; and the amount of any such bond, irrevocable letter of credit, contract or other assurance by the subdivider shall be determined by a registered professional engineer, subject to any change in such amount as determined necessary by the city or county; or***
 - (c) ***In lieu of paragraphs (a) and (b) of this subsection, a statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, even though a domestic water supply source may exist.***

A copy of any such statement, signed by the subdivider and indorsed by the city or county, shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in any public report made for the subdivision under ORS 92.385 (Examination). If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

FINDING: The Applicant proposed the City of Bend's city-owned domestic water supply system to serve all lots. The Applicant included a "will-serve" letter from the City (Attachment A to the Burden of Proof – Application) indicating the willingness of the City to provide such service to the Subject Property. However, the letter is not a "certification [...] that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat". The Hearings Officer finds that with the following condition of approval this criterion can be met.

Domestic Water Supply Certification: **Prior to final plat approval of each phase**, the Applicant shall provide to the County a certification by the city-owned domestic water supply system that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat.

- (5) ***Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:***
- (a) ***A certification by a city-owned sewage disposal system or by the owner of a privately owned sewage disposal system that is subject to regulation by the Public Utility Commission of Oregon that a sewage disposal system will be available to the lot line of each and every lot depicted in the proposed subdivision plat;***
 - (b) ***A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city or county that a sewage disposal system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted on the proposed subdivision plat; and the amount of such bond, irrevocable letter of credit, contract or other assurance shall be determined by a registered professional engineer, subject to any change in such amount as the city or county considers necessary; or***
 - (c) ***In lieu of paragraphs (a) and (b) of this subsection, a statement that no sewage disposal facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, where the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (Fees for certain reports on sewage disposal) (1)(b). A copy of any such statement, signed by the subdivider and indorsed by the city or county shall be filed by the subdivider with the Real Estate***

Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385 (Examination). If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

FINDING: The Applicant proposed onsite subsurface sewage disposal systems on individual lots. The Hearings Officer finds that with the following condition of approval this approval criterion can be met.

Sewage Disposal Statement: **Prior to final plat approval of each phase**, a statement that no sewage disposal facility will be provided to the purchaser of any parcel depicted in the proposed partition plat, where the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (Fees for certain reports on sewage disposal) (1)(b). A copy of any such statement, signed by the Applicant and indorsed by the County shall be filed by the Applicant with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385 (Examination). If the making of a public report has been waived or the partition is otherwise exempt under the Oregon Subdivision Control Law, the Applicant shall comply with the applicable provisions of ORS 92.090(5)(c).

- (6) *Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of subdivision or partition located within the boundaries of an irrigation district, drainage district, water control district, water improvement district or district improvement company shall be approved by a city or county unless the city or county has received and accepted a certification from the district or company that the subdivision or partition is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision or partition to the fees and other charges of the district or company.***

FINDING: The Subject Property is not located within an irrigation district or any other district mentioned in this ORS section. The Hearings Officer finds this approval criterion does not apply.

- D. *For subdivision or portions thereof proposed within a Surface Mining Impact Area (SMIA) zone under DCC Title 18, the subdivision creates lots on which noise or dust sensitive uses can be sited consistent with the requirements of DCC 18.56, as amended, as demonstrated by the site plan and accompanying information required under DCC 17.16.030.***

FINDING: The Subject Property is not within a Surface Mining Impact Area Zone. The Hearings Officer finds this approval criterion does not apply.

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

FINDING: This requirement has already been addressed under subsection (C) above, under ORS 92.090(1).

Section 17.16.105. Access to Subdivisions.

No proposed subdivision shall be approved unless it would be accessed by roads constructed to County standards and by roads under one of the following conditions:

- A. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or***
- B. Private roads, as permitted by DCC Title 18, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; or***
- C. This standard is met if the subdivision would have direct access to an improved collector or arterial or in cases where the subdivision has no direct access to such a collector or arterial, by demonstrating that the road accessing the subdivision from a collector or arterial meets relevant County standards that maintenance responsibility for the roads has been assigned as required by this section.***

FINDING: The proposed primary access will be a public road constructed to the County's collector standards, connecting McClain Drive to Sage Steppe. All other roads within the subdivision will be private roads. Maintenance of all roads within the subdivision will be assigned to the Homeowners Association by the CC&Rs. Access to the subdivision will be from the existing McClain Drive (city local street) which leads to Shevlin Park Road (city arterial road) from the north, and Sage Steppe (public rural local road) which leads to Ridgeline Drive (private rural local road), to Tree Farm Drive (private rural local road), and finally to Skyliners Road (forest highway) to the south. The Hearings Officer finds the approval criteria under subsections (a) and (b) are met.

Section 17.16.115. Traffic Impact Studies.

A. *The traffic studies will comply with DCC 18.116.310.*

FINDING: In response to this criterion, the Applicant's burden of proof stated:

"The site is expected to generate more than 200 weekday daily trips and more than 20 peak hour trips. Per DCC 18.116.310(C)(3)(c), the minimum thresholds for a traffic impact analysis (TIA) are exceeded based on the trip generation. The TIA was completed for this development along with other transect and UGB expansion areas through the Westside Infrastructure Group (WIG) 2018.

The two Westside Transect Areas along with other projects on the west side of Bend are anticipated to have impacts on the transportation facilities in the area. The property owners formed the WIG to work with the City and collaborate on the identification of the transportation needs for the desired development. As a result, multiple regional projects were identified, some of which would be City projects and others to be funded by the WIG. The contribution towards off-site mitigations for Westgate and the documentation of this process has been established in the "Westside Infrastructure Group Proportionate Sharing – Transportation Methodology and Findings" Memorandum dated June 28, 2018 prepared by Kittelson & Associates, Inc. While this work effort primarily focused on City of Bend transportation infrastructure, it is the Applicant's understanding that pending additional direction from Deschutes County only a Site Traffic Report (STR) is required for the Westgate Subdivision. The Applicant has submitted an STR, which is included in Exhibit F. This STR was prepared by a professional engineer at Transight Consulting, in compliance with DCC 18.116.310, and includes all the required minimum study requirements of DCC 18.116.310(F), including a vicinity map, trip generation forecast, trip distribution and assignment, safety analysis, and a description of the proposed development and surrounding land uses."

The Senior Transportation Planner submitted comments regarding the traffic study, repeated here for ease of reference:

"The applicant has submitted a traffic study dated June 18, 2019, which demonstrates the current proposal is consistent with the traffic analysis done for the larger plan amendment/zone change approved under 247-18-612-ZC/613-PA/614-TA for the entire 737 acres. The mitigations required for that change from Urban Area Reserve (UAR-10) to WTZ were resolved in that 2018 decision. The current proposal does not result in any additional deficiencies in the roadway system."

The Hearings Officer finds the submitted traffic study satisfies DCC 18.116.310, thus satisfying this criterion.

Chapter 17.24, Final Plat.

Section 17.24.060. Required Information.

In addition to that required for the tentative plan or otherwise specified by law, the following information shall be shown on the submitted plat:

...

- E. The exact location and width of streets and easements intercepting the boundary of the tract.***
- F. Tract, lot or parcel boundary lines and street rights of way and centerlines, with dimensions, bearing or deflection angles, radii, arcs, points of curvature and tangent bearings. Normal high water lines for any creek, bay or other body of water. Tract boundaries and street bearings shall be shown to the nearest second with the basis of bearings. Distances shall be shown to the nearest 0.01 feet.***
- G. Streets. The width of the streets being dedicated and the curve data shall be based on the street centerline. In addition to the centerline dimensions, the radius and central angle shall be indicated, together with the long chord distance and bearing.***

- H. Easements. The location, dimensions and purpose of all recorded and proposed public easements shall be shown on the plat along with the County Clerk's recording reference if the easement has been recorded with the County Clerk. All such easements shall be denoted by fine dotted lines and clearly identified. If an easement is not of record, a statement of the grant of easement shall be given. If the easement is being dedicated by the plat, it shall be properly referenced in the owner's certificate of dedication.**

FINDING: This section provides information on requirements for submittal of the final plat. Within this section and DCC 17.24.070 are criteria relevant to conditions of approval typically received from the County Road Department. The Road Department submitted, on July 23, 2019, a memorandum/letter to Staff. The Road Department July 23, 2019 memorandum/letter recommended the following conditions of approval:

"Prior to construction of public and private road improvements:

- Applicant shall submit road improvement plans to the Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. The roads shall be designed to the minimum standard for a private road pursuant to 17.48.160, 17.48.180, and 17.48A or pursuant to the master plan upon approval. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

Prior to final plat approval by Road Department:

- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
- Maintenance of all public and private roads, including multiuse paths, shall be assigned to a home owners association by covenant pursuant to DCC 17.16.040, 17.16.105, 17.48.160(A), and 17.48.180(E). Applicant shall submit covenant to Road Department for review and shall record covenant with the County Clerk upon Road Department approval. A copy of the recorded covenant shall be submitted to the Community Development Department prior to final plat approval.
- All easements of record or existing rights of way shall be noted on the final plat pursuant to DCC 17.24.060(E), (F), and (H).
- The surveyor preparing the plat shall, on behalf of Applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E), (F), and (G), and 17.24.070(E)(8).

- Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.24.070(E)(1).
- Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110 and 140.”

Staff included, in the Staff Report (issued prior to the July 23, 2019 Road Department memorandum/letter), the following suggested conditions:

Existing Easements and Rights-of-Way: **Prior to final plat approval of each phase**, the Applicant shall note all easements of record and existing rights-of-way on the final plat, in conformance with DCC 17.24.060.

Location of Roads: **Prior to final plat approval of each phase**, the surveyor or engineer submitting the plat shall submit information showing the location of the existing roads in relation to the roads rights-of-way, on behalf of the Applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights-of-way. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County Standards.

The Hearings Officer finds that the Road Department and Staff recommended conditions are generally consistent. The Hearings Officer finds that with Hearings Officer imposed conditions of approval that meet the goals of those proposed by the Road Department and Staff recommended conditions this approval criterion can be met.

Section 17.24.120. Improvement Agreement.

- A. The subdivider may, in lieu of completion of the required repairs to existing streets and facilities, and improvements as specified in the tentative plan, request the County to approve an agreement between himself and the County specifying the schedule by which the required improvements and repairs shall be completed; provided, however, any schedule of improvements and repairs agreed to shall not exceed on[e] year from the date the final plat is recorded, except as otherwise allowed by DCC 17.24.120(F) below. The agreement shall also provide the following:**

...

FINDING: The Applicant initially did not request review and approval of an Improvement Agreement. However, in Applicant’s proposed modification to Staff recommended conditions 16 and 21 the Applicant raised the possibility of one or more improvement agreements. The Hearings Officer modified Applicant’s proposed language for conditions 16 and 21 to include review and approval by Deschutes County Community Development and County Counsel to assure such agreements meet the requirements of DCC 17.24.120. The Hearings Officer finds that with a

condition that any improvement agreement(s) proposed by Applicant assuring the satisfaction of the requirements of DCC 17.24.120 this approval criterion will be met.

Chapter 17.36, Design Standards.

Section 17.36.020. Streets.

- A. *The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including pedestrians, bicycles and automobiles, with intersection angles, grades, tangents and curves appropriate for the traffic to be carried, considering the terrain. The subdivision or partition shall provide for the continuation of the principal streets existing in the adjoining subdivision or partition or of their property projection when adjoining property which is not subdivided, and such streets shall be of a width not less than the minimum requirements for streets set forth in DCC 17.36.***

FINDING: The proposed street designs, including the location, width, and grades for the road within the proposed subdivision, are shown on the submitted Tentative Plan materials. The vehicular, bicycle and pedestrian traffic is north-south directional. The Subject Property is bounded by Shevlin Park to the west and by some steep topography to the east. No east-west through streets are proposed nor are any necessary. The north-south connection between Sage Steppe and McClain Drive is proposed to be constructed to County collector standards with 60-foot right of way with a separated multiuse path, as the direct route through the proposed development. With the exception of Shevlin Park property to the west, all adjoining properties are either developed with subdivisions or PUDs, or are in the planning stages for subdivision development.

In regards to the “public convenience and safety” the Staff, in the Staff Report, noted that Bend Fire Department responded to the Notice of Application with several requirements for access and road design, which the Applicant will be required to meet. The Fire Department’s comments are quoted in full above in this decision and describe requirements for access, fire hydrant locations, road surfacing, fire flow for fire protection (water), parking restrictions near fire hydrants, parking restrictions along fire access roads, etc. Several other requirements from the Fire Department address timing. The Hearings Officer finds that the timing issues are better addressed at the time of issuance of permits and are addressed separately in this decision. Staff, in the Staff Report, suggested a condition of approval (set forth below) to ensure the public safety requirements submitted by the Bend Fire Department will be met. The Hearings Officer agrees with Staff’s comments and recommended condition of approval.

Fire District Approval: Prior to final plat approval of each phase, the Applicant shall submit confirmation from the Bend Fire Department verifying the proposed phase or entire master plan will conform to applicable Fire Code as it relates to the following requests from the Fire Department:

- Provide the City of Bend Fire Department a proposed site plan illustrating compliant fire apparatus access.
- Approved signs or other approved notices or markings that include the words NO PARKING-FIRE LANE shall be provided for fire apparatus roads to prohibit parking on both sides of fire lanes 20 to 26 feet wide and on one side of fire lanes more than 26 feet to 32 feet wide.
- Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (60,000 pounds GVW) and shall be surfaced (asphalt, concrete or other approved driving surface) as to provide all weather driving capabilities.
- Provide a site plan to the City of Bend Fire Department illustrating a secondary access point.
- Provide the City of Bend Fire Department a site plan illustrating the quantity and locations of fire hydrants.
- Provide a site plan that illustrates any parking restrictions.

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

FINDING: The proposed extension of McClain Drive will be a public right-of-way, but maintained by the subdivision home owner association. As a master-planned subdivision, the application is requesting the remainder of internal roads be private roads. The Hearings Officer finds these criteria can be met.

Section 17.36.030. Division of Land.

Any proposal for a condominium conversion which results in a division of real property shall comply with the provisions of DCC Title 17 and ORS 92.

FINDING: No proposal for a condominium conversion is included in this application.

Section 17.36.040. Existing Streets.

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

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"There are no existing streets within the subject property. Access to the subject property will be provided through McClain Drive on the north and Sage Steppe on the south. Sage Steppe was recently completed, constructed to County standards, following the County's approval of planning file PZ-247-14-000243-TP. The existing McClain Drive to the north is currently inadequate, however, the development to the north (Pahlisch Homes, Skyline West) fronts on McClain Drive and has plans to improve the street to City standards, prior to the construction of the Westgate project's connection to McClain Drive."

The connection between the existing McClain Drive right-of-way and the proposed extension of McClain Drive through the Subject Property is separated by a parcel owned by the same owner as the Subject Property and is within the City of Bend's Urban Growth Boundary. The Applicant submitted information for the adjacent parcel (Tax Lot 1711260000400) that is currently being reviewed for a subdivision and associated construction of McClain Drive. This access connection is approximately 200 feet in length but is critical for access to and through the Subject Property. As of the date of this decision there is no evidence in the record indicating the City of Bend approval or other disposition of the roadway issue over Tax Lot 1711260000400.

Staff, in the Staff Report, suggested the following condition of approval:

Adjacent McClain Drive Improvement: **Prior to final plat approval of the first phase**, the Applicant shall submit evidence that McClain Drive on Map and Tax Lot 1711260000400 has been approved by the City of Bend or otherwise constructed as a legal right-of-way and improved to City of Bend standards for streets.

Staff, in the July 24, 2019 Staff Memo, expanded on its rationale underlying the condition of approval noted above. Staff, in the July 24, 2019 Staff Memo, stated:

"The connection between the existing McClain Drive right-of-way and the proposed extension of McClain Drive through the subject property is separated by a parcel located within Bend city limits and is owned by the same owners as the subject property. The applicant has applied for master plan approval for a subdivision on that lot, but staff understands that the review of that master plan has not been completed at this time. This access connection is approximately 200 feet in length but is critical for access to and through the subject property. Staff's intention with the condition was two-part. Emergency access is the primary concern, especially when residential construction begins. The second concern is a long-term assurance that the subdivision will have two access points, as required by the Bend Fire Department in its comments and in DCC 17.48.160(D), in the event that full development of either the subject subdivision or the adjacent subdivision in the City is interrupted or abandoned. It was not staff's intention to impose needless delay with this suggested condition of approval."

On July 23, Tammy Wisco submitted the following comments and suggested a modification to the condition of approval:

Adjacent McClain Drive Improvement: Prior final plat approval of the first phase, the applicant shall submit evidence that McClain Drive on Map and Tax Lot 1711260000400 has been either constructed to City of Bend standards, or the applicant has submitted an improvement agreement and performance assurance for such construction. During all phases, fire access shall be provided as required by the Bend Fire Department.

I removed the reference to city approvals and dedication of right-of-way, as that could be a very timely process, given that those applications were only recently submitted to the City. But, Kevin is planning to construct that segment in the first phase of Westgate anyway.'

Staff believes this modified condition of approval can substitute for the original condition #16, as it addresses the concerns regarding fire and long-term access."

The Hearings Officer concurs with the Staff comments quoted above. The Hearings Officer finds that Staff's stated goals of "emergency access" and "two-access points" are relevant and important. The Hearings Officer also agrees with Wisco's above quoted proposed substitute condition #16. The Hearings Officer finds that Wisco's proposed condition language should also include language assuring that the form of the improvement agreement and performance assurance are satisfactory to the Deschutes County Community Development Department and County Counsel. The Hearings Officer finds that with a condition of approval (Wisco's substituted condition #16 language, including an assurance the form of the improvement agreement and performance assurance is satisfactory to the County) this criterion can be met.

Section 17.36.050. Continuation of Streets.

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

FINDING: The proposed extension of McClain Drive and Sage Steppe will be required to be aligned so that their centerlines coincide. The Hearings Officer finds the Tentative Plan materials indicate this will occur. The Hearings Officer finds that with approval of the proposed Tentative Plan this criterion will be met.

Section 17.36.060. Minimum Right of Way and Roadway Width.

The street right of way and roadway surfacing widths shall be in conformance with standards and specifications set forth in DCC 17.48. Where DCC refers to street standards found in a zoning ordinance, the standards in the zoning ordinance shall prevail.

FINDING: The Hearings Officer adopts the findings for ORS 92.090 (2), as set forth earlier in this decision, as additional findings for this approval criterion. The Hearings Officer also adopts the findings for DCC 17.48.140, as set forth later in this decision, as additional findings for this approval criterion.

The relevant street surfacing width standards of DCC 17.48, Table A for a collector road are 60' ROW, 28'-46' paved surface with footnote (9) stating:

"The larger of the two widths is necessary if a shoulder bikeway is required (4' for collector and 5' for arterial) 11' travel lane, 3'-5' paved shoulder, and 2' gravel shoulder."

Footnote (23) for multiuse paths states:

"The minimum width is 8 ft. However, 8 ft. wide multiuse paths are not recommended in most situations because they may become over-crowded. They should only be constructed as short connectors, or where long term usage is expected to be low, and with proper horizontal and vertical alignment to assure good sight distances. 10 ft is the standard width for a two-way multiuse path but they should be 12 ft wide in areas with high mixed-use. Optimum width should be based on the relative use by cyclists and pedestrians. High use by skaters may also require greater width"

For the collector road (extension of McClain Drive and Sage Steppe) the Applicant proposed a 60-foot ROW, 28-foot paved surface, 14-foot travel lane, 2-foot paved shoulder, 6-foot gravel shoulder/swale, and a separated 8-foot paved multiuse path. The relevant street surfacing width standards of DCC 17.48, Table A for a private road are 20-foot or 28-foot paved surface with footnote (8) stating:

"20' allowed for cul-de-sacs and roads with low anticipated traffic volumes as long as separate multiple use paths are provided. 28' width required (including the required 4' striped shoulder bikeway in each direction) for circulator and primary subdivision access roads and other roads when separate multiple use paths are not provided."

The Applicant proposed private roads with a 24-foot paved width, 14-foot travel lanes, 3-foot gravel shoulders, and a paved 8-foot multiuse path within easement areas. Staff noted, in the Staff Report, that the Tentative Plan materials showed the paved multiuse path only being present on short portions of the private roads, specifically on "Road A" from the southeast corner of Lot 1 to the trail easement between Lots 3 and 4. The Applicant's July 16, 2019 Clarification Memo indicated the multiuse path is not intended for the section on "Road D" along the southern boundary of Lot D, despite being shown on the Tentative Plan materials.

The Deschutes County Senior Transportation Planner submitted comments with concerns about these proposed widths and comments from the Road Department were expected prior to the Hearing (but were not available as of the date of the Staff Report). The Senior Transportation Planner stated:

"Deschutes County Code 17.48.050 and its Table A sets a paved width of 20' or 28' for private roads; for a 20' foot private road multiuse paths are required for narrower width. DCC 17.48.140(B)(2) states multiuse paths have a standard width of 10' and 12' feet if the multiuse path will be subject to high volumes of multiple users. The applicant is proposing a 24' width for the private roads, but apparently only for the short sections which lead to natural trails; the remaining

portions of private roads will be 20' with no multiuse path. Staff is uncertain if the code allows this hybrid. The applicant posits this is consistent to what the County approved in the adjacent Miller Tree Farm under 247-14-000243-TP.

The proposed collector, an extension of McClain Drive to Sage Steppe, will be a public road, and also have an 8' multiuse path based on anticipated low volumes of usage and the road's low speed. While staff can understand the rationale for the reduced width on a private road that will see little to no through traffic, staff does not support similar reduced widths for a north-south collector that ultimately will provide a critical link between Johnson Road/Shevlin Park Road to the north and Skyliners Road and Century Drive, aka Cascade Lakes Highway, to the south."

Wisco, at the Hearing, testified and submitted a Power Point presentation addressing this approval criterion and the County Staff comments quoted above (See Power Point presentation Slides 10, 13, 14, 15, 16, 17, 18, 19, 20 and 21). Wisco stressed, in her testimony, that the extension of McClain Drive and Sage Steppe would be a County "collector" roadway. Wisco indicated, during her testimony and Power Point presentation, that the extension of McClain Drive and Sage Steppe, are proposed to meet County collector roadway width standards. Wisco, in the Power Point presentation (Slide 14), stated that the McClain Drive/Sage Steppe multiuse path met the "minimum" width standards (DCC 17.48 A, Table B).

As noted in the Hearings Officer's findings for ORS 92.090 (2) the proposed multiuse path along the extension of McClain Drive and Sage Steppe was expected to experience low use volume. Bend Parks and Recreation District ("BPRD"), through Hearing testimony of Quinn Keever (see also July 24, 20019 written record submission), agreed that an 8-foot hard surface trail (off-set from the road) was acceptable along the extension of McClain Drive and Sage Steppe.

Applicant proposed 24 feet of pavement for the private roads (not the extension of McClain Drive and Sage Steppe - aka referred to as Roads A, B, C and D on the Site Plan). Wisco testified, at the Hearing, that the proposed 24-foot pavement for private roads is 4-feet greater than the minimum (See Power Point presentation Slides 19 & 20). Applicant proposed no multiuse paths on the private roads excepting for Road A (connecting to path to Shevlin Park). BPRD requested, in addition to the section of multiuse path between the collector and path on Road A, that the Applicant construct an 8-foot hard surface path on Road D between the collector and proposed nature trail running north from Road D (between proposed lots 72 and 73).

Wisco, in her Hearing testimony and Power Point presentation (See page 21), requested the Hearings Officer approve the proposed private streets without requiring a separate path (excepting for the path connecting the McClain Drive and Sage Stepp, along private Road A, to the proposed nature trail). The Hearings Officer finds, for the purposes of this approval criterion, that proposed collector (connecting McClain Drive and Sage Steppe) and private roads are reasonable and appropriate. The Hearings Officer specifically finds that the roadway widths (including pavement areas) for both the collector and private roads meets relevant County standards and also this approval criterion. The Hearings Officer specifically finds that the proposed collector multiuse path meets relevant County standards and this approval criterion. The Hearings Officer will address the multiuse path on private roads in the findings for DCC 17.48.140.

Section 17.36.070. Future Resubdivision.

Where a tract of land is divided into lots or parcels of an acre or more, the Hearings Body may require an arrangement of lots or parcels and streets such as to permit future re-subdivision in conformity to the street requirements and other requirements contained in DCC Title 17.

FINDING: All proposed lots are more than one acre in size. Staff, in the Staff Report, stated that it does not anticipate the need for rearrangement for future re-subdivision as the newly-created WTZ Zone has a minimum acreage size of 2.5 acres. The Hearings Officer concurs with Staff's comments related to this approval criterion.

Section 17.36.080. Future extension of streets.

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

FINDING: The Subject Property is surrounded by publicly-owned lands or properties that have already been or are in the process of being subdivided. The proposal includes a north-south through street connecting Sage Steppe to McClain Drive. The Hearings Officer finds this approval criterion will be met.

Section 17.36.100. Frontage Roads.

If a land division abuts or contains an existing or proposed collector or arterial street, the Planning Director or Hearings Body may require frontage roads, reverse frontage lots or parcels with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic. All frontage roads shall comply with the applicable standards of Table A of DCC Title 17, unless specifications included in a particular zone provide other standards applicable to frontage roads.

FINDING: The Hearings Officer finds that no frontage road or reverse frontage lots are required.

Section 17.36.110. Streets Adjacent to Railroads, Freeways and Parkways.

When the area to be divided adjoins or contains a railroad, freeway or parkway, provision may be required for a street approximately parallel to and on each side of such right of way at a distance suitable for use of the land between the street and railroad, freeway or parkway. In the case of a railroad, there shall be a land strip of not less than 25 feet in width adjacent and along the railroad right of way and residential property. If the intervening property between such parallel streets and a freeway or a parkway is less than 80 feet in width, such intervening property shall be dedicated to park or thoroughfare use. The intersections of such parallel streets, where they intersect with streets that cross a

railroad, shall be determined with due consideration at cross streets of a minimum distance required for approach grades to a future grade separation and right-of-way widths of the cross street.

FINDING: The Hearings Officer finds that the Subject Property is not adjacent to a railroad, freeway, or parkway. The Hearings Officer finds this approval criterion is not applicable to the proposed subdivision.

Section 17.36.120. Street Names.

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

FINDING: No specific names have been proposed for the private roads. The Applicant requested the extension of McClain Drive to be named McClain Drive as well. The Deschutes County 911 District submitted comments, in part stating:

"9-1-1 would like to request that McClain Dr end at the intersection with Road 'D' and Road 'A'. At this intersection, Sage Steppe Dr would begin and continue south to the existing blocks in the Tree Farm subdivision. This request is to avoid any potential addressing conflicts that could result in the delayed response of emergency services. If this is agreed upon, we would ask that this is made clear on the site plan and annotated correctly on the subdivision plat."

Staff, in the Staff Report, noted there are two roads labeled "Road B" on the Tentative Plan materials, but that naming these different road names at the time of final plat should resolve this conflict. Staff recommended the following condition of approval.

Street Names: Prior to final plat approval of each phase, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County and shall require approval from the County Property Address Coordinator. The north-south collector road shall be named McClain Drive north of the intersection of "Road A" and "Road D", and shall be named Sage Steppe south of the same intersection.

The Hearings Officer concurs with the Deschutes County 911 District submitted comments and Staff's responsive comments. The Hearings Officer finds that with the Staff recommended condition this criterion can be met.

Section 17.36.130. Sidewalks.

A. *Within an urban growth boundary, sidewalks shall be installed on both sides of a public road or street and in any special pedestrian way within the subdivision or*

partition, and along any collectors and arterials improved in accordance with the subdivision or partition.

- B. *Within an urban area, sidewalks shall be required along frontage roads only on the side of the frontage road abutting the development.***
- C. *Sidewalk requirements for areas outside of urban area are set forth in section 17.48.175. In the absence of a special requirement set forth by the Road Department Director under DCC 17.48.030, sidewalks and curbs are never required in rural areas outside unincorporated communities as that term is defined in Title 18.***

FINDING: The proposed subdivision is not located within an Urban Growth Boundary or in any of the Urban Unincorporated Communities included within DCC 17.48.175. The Director of the Road Department has not applied additional requirements for sidewalks as allowed under DCC 17.48.030. The Hearings Officer finds that sidewalks are not required.

Section 17.36.140. Bicycle, Pedestrian and Transit Requirements.

Pedestrian and Bicycle Circulation within Subdivision.

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

FINDING: The Tentative Plan provides a paved multiuse path along the extension of McClain Drive and short sections of "Road A" and "Road D" to connect to natural trails. The natural trail connection to the north, from Road A, will connect to existing trails in and near Shevlin Park. This separated multiuse path will minimize interference with automobile traffic along the extension of McClain Drive and Sage Steppe. Issues related to the width of streets and the multiuse path, raised by the Senior Transportation Planner, Staff and Applicant are discussed in other sections of this decision.

Staff, in the Staff Report, indicated that there is no evidence of other existing or planned neighborhood activity centers outside of the subdivision. The Hearings Officer, upon review of the record, concurs with this Staff statement. The Hearings Officer finds this approval criterion can be met.

B. *Subdivision Layout.*

- 1. *Cul-de-sacs or dead-end streets shall be allowed only where, due to topographical or environmental constraints, the size and shape of the parcel, or a lack of through-street connections in the area, a street connection is determined by the Planning Director or Hearings Body to be infeasible or***

inappropriate. In such instances, where applicable and feasible, there shall be a bicycle and pedestrian connection connecting the ends of cul-de-sacs to streets or neighborhood activity centers on the opposite side of the block.

FINDING: The proposal includes four private streets ending in cul-de-sacs to access interior lots. As described in previous findings, there is no need for an east-west connection through the subdivision, beyond the natural trails that are provided to access Shevlin Park and lands to the east. The main route through the subdivision will be the north-south extension of McClain Drive, which includes a separated multiuse path for pedestrians and cyclists. The Hearings Officer finds this approval criterion will be met.

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

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"[T]he bicycle/pedestrian traffic is north-south directional, as the development is bounded by Shevlin Park to the west and by topography to the east, with no through streets east or west. A direct north-south roadway connection is proposed for vehicles, bicycles, and pedestrians. There are no existing or planned neighborhood activity centers that would warrant mid-block connections."

The Hearings Officer, based upon a review of the record, concurs with Applicant's above-quoted statement. The Hearings Officer finds this approval criterion is met.

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

FINDING: The only local roads crossing a collector will be the connection of "Road A" and "Road D" and will align with each other across the north-south road. The Hearings Officer finds this approval criterion will be met.

C. *Facilities and Improvements.*

1. ***Bikeways may be provided by either a separate paved path or an on-street bike lane, consistent with the requirements of DCC Title 17.***
2. ***Pedestrian access may be provided by sidewalks or a separate paved path, consistent with the requirements of DCC Title 17.***
3. ***Connections shall have a 20 foot right of way, with at least a 10 foot usable surface.***

FINDING: The proposal includes areas with paved multiuse paths (along the collector roadway and one segment located on Road A between the collector road and nature path west of Lot 3). Generally, the proposal does not include multiuse paths on the private roads. The multiuse path on the collector road is proposed to be 8-feet in width. This issue will be addressed in the findings for DCC 17.48. The Hearings Officer incorporates findings for DCC 17.48 as additional findings for this approval criterion. The Hearings Officer finds, with a condition of approval, this criterion will be met.

Section 17.36.150. Blocks.

- A. General. The length, width and shape of blocks shall accommodate the need for adequate building site size, street width and direct travel routes for pedestrians and cyclists through the subdivision and to nearby neighborhood activity centers, and shall be compatible with the limitations of the topography.**
- B. Size. Within an urban growth boundary, no block shall be longer than 1,200 feet between street centerlines. In blocks over 800 feet in length, there shall be a cross connection consistent with the provisions of DCC 17.36.140.**

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"The subject property is not within an Urban Growth Boundary. The vehicular, bicycle and pedestrian traffic is north-south directional, and the development is bounded by Shevlin Park to the west and by topography to the east, with no through streets east or west. The north-south connection between Sage Steppe and McClain Drive is proposed to be constructed to collector standards and is as direct a route as feasible through the proposed development while also accommodating topography and required minimum lot sizing. While there are no neighborhood activity centers nearby the proposed subdivision at the time of submittal, this north-south connection will provide access to any future neighborhood activity centers that might be developed to the south."

The Hearings Officer, based upon a review of the record, concurs with Applicant's above-quoted statement. The Hearings Officer finds subsection (A) will be met and that Subsection (B) does not apply.

Section 17.36.160. Easements.

- A. Utility Easements. Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage. Such easements shall be labeled "Public Utility Easement" on the tentative and final plat; they shall be at least 12 feet in width and centered on lot lines where possible, except utility pole guyline easements along the rear of lots or parcels adjacent to unsubdivided land may be reduced to 10 feet in width.**

- B. Drainage.** *If a tract is traversed by a watercourse such as a drainageway, channel or stream, there shall be provided a stormwater easement or drainage right of way conforming substantially with the lines of the watercourse, or in such further width as will be adequate for the purpose. Streets or parkways parallel to major watercourses or drainageways may be required.*

FINDING: The Applicant will be required to show all required utility easements on the final subdivision plat and to label them "Public Utility Easements." The Hearings Officer finds that approval criterion (B) is not applicable, as the tract does not appear to be traversed by a watercourse.

Utility Easements: **Prior to final plat approval of each phase**, all required utility easements shall be shown on the final plat. Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage. Such easements shall be labeled "Public Utility Easement" on the tentative and final plat; they shall be at least 12 feet in width and centered on lot lines where possible, except utility pole guyline easements along the rear of lots or parcels adjacent to unsubdivided land may be reduced to 10 feet in width.

The Hearings Officer finds, with the inclusion of the above-quoted condition of approval this approval criterion will be met.

Section 17.36.170. Lots, Size and Shape.

The size, width and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated, and shall be consistent with the lot or parcel size provisions of DCC Title 18 through 21, with the following exceptions:

- A. *In areas not to be served by a public sewer, minimum lot and parcel sizes shall permit compliance with the requirements of the Department of Environmental Quality and the County Sanitarian, and shall be sufficient to permit adequate sewage disposal. Any problems posed by soil structure and water table and related to sewage disposal by septic tank shall be addressed and resolved in the applicant's initial plan.***
- B. *Where property is zoned and planned for business or industrial use, other widths and areas may be permitted by the Hearings Body. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off street service and parking facilities required by the type of use and development contemplated.***

FINDING: The size, width, and orientation of the lots are appropriate to the proposed residential use. Lot size and shape criteria are governed by DCC 19.22, which has been reviewed earlier in this decision. The Applicant has applied and been approved for a number of onsite sewage disposal system evaluations. Onsite system approvals are required prior to the final plat approval. The

Hearings Officer finds that subsection (B) above does not apply to this proposal. The Hearings Officer finds these approval criteria will be met.

Section 17.36.180. Frontage.

- A. Each lot or parcel shall abut upon a public road, or when located in a planned development or cluster development, a private road, for at least 50 feet, except for lots or parcels fronting on the bulb of a cul de sac, then the minimum frontage shall be 30 feet, and except for partitions off of U.S. Forest Service or Bureau of Land Management roads. In the La Pine Neighborhood Planning Area Residential Center District, lot widths may be less than 50 feet in width, as specified in DCC 18.61, Table 2: La Pine Neighborhood Planning Area Zoning Standards. Road frontage standards in destination resorts shall be subject to review in the conceptual master plan.**

FINDING: The lots in this proposed subdivision are required to meet the frontage standards. Most lots exceed this requirement. Some lots meet the minimum requirement, such as flag lots 33 and 77. The Hearings Officer finds this approval criterion will be met.

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

FINDING: As designed, all side lot lines would, to the maximum extent practicable considering terrain, be at approximately right angles to street lines or radial to curved streets. The Hearings Officer finds this approval criterion will be met.

Section 17.36.190. Through Lots.

Lots or parcels with double frontage should be avoided except where they are essential to provide separation of residential development from major street or adjacent nonresidential activities to overcome specific disadvantages of topography and orientation. A planting screen easement of at least 10 feet in width and across which there shall be no right of access may be required along the lines of lots or parcels abutting such a traffic artery or other incompatible use.

FINDING: There are no proposed lots with double frontage. The Hearings Officer finds this approval criterion does not apply.

Section 17.36.200. Corner Lots.

Within an urban growth boundary, corner lots or parcels shall be a minimum of five feet more in width than other lots or parcels, and also shall have sufficient extra width to meet the additional side yard requirements of the zoning district in which they are located.

FINDING: The proposed development is not within an urban growth boundary. The Hearings Officer finds this criterion does not apply.

Section 17.36.210. Solar Access Performance.

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

FINDING: The proposed lots will be no smaller than 2.5 acres, which should provide adequate area to provide solar access at southern property lines. Additionally, a condition of approval has already been suggested to require compliance with the solar setback requirements of DCC 19.88.210.

Section 17.36.220. Underground Facilities.

Within an urban growth boundary, all permanent utility services ...

FINDING: The proposed subdivision is not within an urban growth boundary. The Hearings Officer finds this approval criterion does not apply.

Section 17.36.230. Grading of Building Sites.

Grading of building sites shall conform to the following standards, unless physical conditions demonstrate the property of other standards:

- A. Cut slope ratios shall not exceed one foot vertically to one and one half feet horizontally.**
- B. Fill slope ratios shall not exceed one foot vertically to two feet horizontally.**
- C. The composition of soil for fill and the characteristics of lots and parcels made usable by fill shall be suitable for the purpose intended.**
- D. When filling or grading is contemplated by the subdivider, he shall submit plans showing existing and finished grades for the approval of the Community Development Director. In reviewing these plans, the Community Development Director shall consider the need for drainage and effect of filling on adjacent property. Grading shall be finished in such a manner as not to create steep banks or unsightly areas to adjacent property.**

FINDING: No specific grading or fill has been proposed by the Applicant. Staff noted, in the Staff Report that

"if grading were to be proposed, it is difficult to craft a clear and objective condition of approval from these criteria, so staff defers to the Hearings Officer as to if a condition of approval is required, and suggests the following draft condition if so."

Grading: **Prior to the issuance of building permits on individual lots,** the Applicant shall demonstrate cut slope ratios shall not exceed one foot vertically to one and one half feet horizontally, fill slope ratios shall not exceed one foot vertically to two feet horizontally, and grading plans shall comply with DCC 17.36.230.

The Hearings Officer agrees with both the Staff's comments and recommended language for a condition. The Hearings Officer finds that if the above-quoted condition language is included in an approval then this criterion will be met.

Section 17.36.250. Lighting.

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

FINDING: The proposed development is not within an urban growth boundary. The Hearings Officer finds this approval criterion does not apply.

Section 17.36.260. Fire Hazards.

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

FINDING: The north-south extension of McClain Drive and Sage Steppe will provide two points of access to the subdivision. As noted in earlier findings emergency access will need to be provided even if the McClain Drive extension is not fully constructed yet. Applicant agreed to conditional language and the Fire Department suggested conditional language that if included in any approval of this application will satisfy the requirements of this approval criterion.

Section 17.36.270. Street Tree Planting.

Street tree planting plans, if proposed, for a subdivision or partition, shall be submitted to the Planning Director and receive his approval before the planting is begun.

FINDING: No street trees have been proposed by the Applicant.

Section 17.36.280. Water and Sewer Lines.

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

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"No sewer lines are proposed as subdivision lots will be served by individual on-site subsurface disposal. City water lines are proposed to serve the subdivision and will be installed to City standards and specifications, including installation prior to paving of the streets. The City of Bend has provided a Will Serve letter for water, included in Exhibit A.

The Applicant was party to the Westside Infrastructure Group (WIG, Exhibit J) and entered into a Development Agreement (WIG DA, Ordinance NS-2316, effective November 16, 2018) with the City of Bend that assessed the infrastructure impacts and mitigations to City infrastructure as a result of the combined westside development. Ordinance NS-2316 notes "[b]ecause the uses and density of the Properties are either prescribed by the BCP and BDC ...the overall off-site infrastructure impact as a result of development of the Properties can be reasonably determined and addressed. The purpose of this Agreement is to provide for the equitable allocation of these costs, and define development triggers and assignment of responsible parties for the construction of the required public improvements to fully mitigate off-site sewer, water and vehicular transportation infrastructure impacts from the development of the Properties subject to this Agreement." As such, the WIG Development Agreement analyzed all City water and street services for this master plan area. The terms of the Development Agreement commit the Applicants and the City of Bend to the terms of the agreement for a period of 15 years. This WIG agreement identifies the only water element to be the extension of the waterline at Sage Steppe Drive in Tree Farm, north to McClain Drive. The WIG Agreement requires this waterline to be constructed by Rio Lobo Investments (subject property owner), if the property is served by City water. The WIG Agreement further notes that no other off-site water infrastructure improvements or upgrades are required."

Staff, in the Staff Report, recommended the following condition of approval to ensure compliance with this criterion.

Water and Sewer Lines: Prior to curbing and paving new streets, water mains and water and sewer lines shall be constructed and installed to County and City standards and specifications. Evidence of approved completion of the water mains and lines to the City of Bend's standards shall be submitted to the Planning Division for review.

The Hearings Officer finds that with the inclusion of Staff's recommended condition of approval this approval criterion will be met.

Section 17.36.290. Individual Wells.

In any subdivision or partition where individual wells are proposed, the applicant shall provide documentation of the depth and quantity of potable water available from a minimum of two wells within one mile of the proposed land division. Notwithstanding DCC 17.36.300, individual wells for subdivisions are allowed when parcels are larger than 10 acres.

FINDING: No individual wells are proposed. The Hearings Officer finds this approval criterion does not apply.

Section 17.36.300. Public Water System.

In any subdivision or partition where a public water system is required or proposed, plans for the water system shall be submitted and approved by the appropriate state or federal agency. A community water system shall be required where lot or parcel sizes are less than one acre or where potable water sources are at depths greater than 500 feet, excepting land partitions. Except as provided for in sections 17.24.120 and 17.24.130, a required water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed subdivision or partition plat, prior to final approval.

FINDING: Water is proposed to be supplied by the City of Bend. Staff, in the Staff Report, recommended the following condition of approval to ensure compliance.

Public Water System: **Prior to final plat approval of each phase**, plans for the water system shall be submitted and approved by the appropriate city, state, or federal agency. The water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed subdivision.

Applicant proposed the above-quoted condition of approval be modified to read as follows:

Public Water System: **Prior to final plat approval of each phase, plans for the water system shall be submitted and approved by the appropriate city, state, or federal agency. The water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed phase, or the applicant has submitted an improvement agreement and performance assurance for such construction.**

The Hearings Officer finds that with Applicant's proposed condition of approval is appropriate so long as additional language is included to assure for the form of any improvement agreement and performance assurance is in a form acceptable to the County. The Hearings Officer finds this approval criterion will be met with the following condition of approval:

Public Water System: **Prior to final plat approval of each phase**, plans for the water system shall be submitted and approved by the appropriate city, state, or federal agency. The water system shall be constructed and operational, with lines extended to the lot line of each and every

lot depicted in the proposed phase, or the Applicant has submitted an improvement agreement and performance assurance. Any improvement agreement shall be reviewed and approved by Deschutes County Community Development and County Council to assure the agreement(s) is/are in a form that meets the requirements of DCC 17.24.120. Documentation related to performance assurances shall be in a form satisfactory to the Deschutes County Community Development and County Council.

Chapter 17.44, Park Development.

Section 17.44.010. Dedication of Land.

- A. For subdivisions or partitions inside an urban growth boundary, the developer shall set aside and dedicate to the public for park and recreation purposes not less than eight percent of the gross area of such development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.**
- B. For subdivisions or partitions outside of an urban growth boundary, the developer shall set aside a minimum area of the development equal to \$350 per dwelling unit within the development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.**
- C. For either DCC 17.44.010 (A) or (B), the developer shall either dedicate the land set aside to the public or develop and provide maintenance for the land set aside as a private park open to the public.**
- D. The Planning Director or Hearings Body shall determine whether or not such land is suitable for park purposes.**
- E. If the developer dedicates the land set aside in accordance with DCC 17.44.010 (A) or (B), any approval by the Planning Director or Hearings Body shall be subject to the condition that the County or appropriate park district accept the deed dedicating such land.**
- F. DCC 17.44.010 shall not apply to the subdivision or partition of lands located within the boundaries of a parks district with a permanent tax rate.**

FINDING: The Subject Property is located within the boundaries of the Bend Park and Recreation District, which has a permanent tax rate. The Hearings Officer finds these approval criteria do not apply.

Chapter 17.48, Design and Construction Specifications.

Section 17.48.060. Improvement Plans.

- A. A complete set of certified mylar improvement plans shall be approved by the Road Department Director prior to the start of construction or the signing of the final plat.**
- B. The improvement plans shall become the property of the County and will remain at the Road Department.**

- C. ***The improvement plans which shall be 24 by 36 inches shall include, but not be limited to: [...]***

FINDING: The Applicant will be required to meet subsection (A) above and the requirements of this section. Staff, in the Staff report, recommended the following condition of approval.

Road Improvement Plans **Prior to final plat approval of each phase**, the Applicant shall submit a complete set of certified mylar improvement plans to the Road Department Director for approval. Public and private road design and construction shall be in accordance with all applicable sections of DCC 17.48. Applicant shall submit public and private road improvement plans to Road Department for approval **prior to commencement of construction** pursuant to DCC 17.40.020 and 17.48.060. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040.

The Road Department recommended slightly different conditional language to address this approval criterion. The Road Department recommended the following:

Road Improvement Plans Applicant shall submit road improvement plans to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. The roads shall be designed to the minimum standard for a private road pursuant to 17.48.160, 17.48.180, and 17.48A or pursuant to the master plan upon approval. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

The Hearings Officer finds that with the inclusion of Staff's recommended condition of approval this approval criterion will be met.

Section 17.48.100. Minimum Right of Way Width.

The minimum right of way width is 60 feet unless specified otherwise in Table A (or in any right of way specifications set forth for a particular zone in a zoning ordinance). (See Table A set out at the end of DCC Title 17.)

FINDING: No right-of-way width is required for private streets, therefore, the Hearings Officer finds that this approval criterion does not apply to private roads. The right-of-way for the north-south extension of McClain Drive is proposed to be 60 feet, meeting this standard.

Section 17.48.110. Turn Lanes.

When a turn lane is required, it shall be a minimum of 14 feet in width, except where road specifications in a zoning ordinance provide for travel lanes of lesser width. Additional right of way may be required.

FINDING: No turn lanes have been required.

Section 17.48.120, Partial Width Roads.

Partial width roads or half streets shall not be allowed.

FINDING: No partial width road or half streets are proposed.

Section 17.48.130, Road Names.

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

FINDING: Although similar to a previous condition of approval, Staff, in the Staff Report, recommended the following addition to a previous condition of approval to ensure compliance with this somewhat different criterion. Changes are *in italic font*.

Street Names: Prior to final plat approval of each phase, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County and shall require approval from the County Property Address Coordinator. The north-south collector road shall be named McClain Drive north of the intersection of "Road A" and "Road D", and shall be named Sage Steppe south of the same intersection. *All roads shall be named in conformance with the provision of the Deschutes County uniform road naming system set forth in DCC Title 16.*

The Hearings Officer finds that with the inclusion of Staff's recommended condition of approval this approval criterion will be met.

Section 17.48.140, Bikeways.

A. General Design Criteria.

1. ***Bikeways shall be designed in accordance with the current standards and guidelines of the Oregon (ODOT) Bicycle and Pedestrian Plan, the American Association of State Highway Transportation Officials (AASHTO) Guide for Development of New Bicycle Facilities, and the Deschutes County Bicycle Master Plan. See DCC 17.48 Table B.***
2. ***All collectors and arterials shown on the County Transportation Plan map shall be constructed to include bikeways as defined by the Deschutes County Bicycle Master Plan.***
3. ***If interim road standards are used, interim bikeways and/or walkways shall be provided. These interim facilities shall be adequate to serve bicyclists and pedestrians until the time of road upgrade.***

B. Multi-use Paths.

1. ***Multi-use paths shall be used where aesthetic, recreation and safety concerns are primary and a direct route with few intersections can be established. If private roads are constructed to a width of less than 28 feet, multi-use paths shall be provided.***

2. ***Multi-use paths are two way facilities with a standard width of 10 feet, but with a 12 foot width if they are subjected to high use by multiple users. These paths shall meet County multi-use path standards and shall connect with bike facilities on public roads.***

FINDING: The proposed collector road is not on the County's Transportation Plan, but the Applicant did propose a paved multiuse path along the length of this new collector road. No interim features are proposed. Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"The public north-south roadway will serve the through traffic (vehicular, bicycle, pedestrian) between the adjacent north and south neighborhoods. Aesthetic, recreation and safety concerns are paramount for this proposed subdivision. The new connection between Sage Steppe and McClain includes only one four-way intersection and it is with a small, low volume private street; the others are T-intersections with private cul-de-sac and/or a private street. An 8-foot multiuse path is proposed along the entire north-south roadway connection between Sage Steppe and McClain Drive. This eight-foot width was designed to match the existing multiuse path along Sage Steppe, to meet the minimum bikeway design requirements of DCC Chapter 17.48, Table B. The eight-foot wide multiuse path in The Tree Farm was approved through the County decision 247-14-000243-TP, due to forecasted low traffic volumes and the Applicant requests approval of the eight-foot width on this same basis, and to permit the extension of the path with the same design as existing.

Bicycle and pedestrian traffic is forecast to be minimal on the private streets, originating and destined only for the individual lots on each private street, as the private streets do not connect to any other access points or streets. This low volume does not warrant separate bike lanes and/or multiuse paths on these private streets. As a result, the Applicant coordinated with the County Roadway Department to propose 24-foot wide private streets, four feet greater than the minimum private street width. The additional four feet will provide extra width for local bicyclists and pedestrians, to accommodate all modes within the pavement."

On July 16, 2019, the Applicant provided the following supplemental comments:

"The submitted typical street sections include an 8-foot multiuse path along the private street and refers to the plan for the location of this path. The plan includes the path along the northern section of the private street, between McClain Drive and the trail that accesses the northern open space and Bull Springs Trail.

The proposal does not include a multiuse path continuing south along the private streets, for the following reason, as referenced in the narrative:

Any bicycle or pedestrian traffic on the private street will be local traffic, not warranting or requiring a dedicated bikeway or sidewalk. Further, DCC 17.48 Table B allows for shared roadways when the speeds are below 25 mph and ADT is less than 3000. The speed limit on the private streets will be less than 25 mph and the submitted Site Traffic Report

estimates the entire development to have less than 800 ADT, suggesting that the private streets would each have even less traffic, as they are not through streets. Through coordination with the County Roadway Department, the Applicant has included four feet of extra pavement width on the shared roadway private streets to minimize potential conflicts between bicyclists, pedestrians and vehicles."

As discussed in the findings for DCC 17.36.060 above, the Applicant proposed for the private roads to be approved with a 24-foot paved surface where there are no multiuse paths or bike lanes proposed, which is 4-foot narrower than the standard. The Applicant also requested approval for 8-foot multiuse paths where they are provided, which are 2-feet to 4-feet narrower than the standard.

The Hearings Officer incorporates the findings for DCC 17.36.060 and ORS 92.090(2) as additional findings for this approval criterion. The Hearings Officer finds the Applicant's proposed street widths are appropriate and meet minimum standards.

The Hearings Officer next addresses the path locations and widths within the proposed subdivision. The Hearings Officer acknowledges that pathway findings also are relevant to other approval criteria and will be incorporated into those findings where appropriate.

The Hearings Officer previously noted concurrence with the Applicant's comments related to the width of the multiuse path along the collector road (extension of McClain Drive/Sage Steppe). The Hearings Officer is aware of DCC 17.48 Table A Note 23 which, in summary, states that the minimum path width is 8-feet and that wider paths (10-feet standard width) are preferred. Note 23 factors include the length of the path connection, the anticipated usage and sight distance considerations. The Hearings Officer finds that the proposed 8-foot paved multiuse path along the collector road "matches" the multiuse path at the adjacent Miller Tree Farm development. Further, the Hearings Officer finds that the anticipated use of the collector road multiuse path will be low. The Hearings Officer finds the proposed collector road multiuse path will be compatible with surrounding development. The Hearings Officer finds that proposed multiuse path (paved and 8-feet in width), along the extension of McClain Drive and Sage Steppe, is appropriate considering the Note 23 factors set forth in DCC 17.48.

The Hearings Officer finds the Applicant's proposal for 24-feet of pavement on the private roadways with **no** multiuse path is more problematic. DCC 17.48.140(B)(1) clearly states that if

"private roads are constructed to a width of less than 28 feet, multi-use paths shall be provided."

Applicant proposed private roads with a "width of 24-feet of pavement."

Applicant justified that there would be **no** multiuse path along the private roads because the private roads "only serve the parcels abutting" them. Further, Applicant stated that the private roads will experience "low local traffic" volume and "no through traffic." Applicant referred the Hearings Officer to the Senior Transportation planner's comment that he (the transportation planner) "understands the rationale for the reduced width on a private road that will see little to no through

traffic." The Hearings Officer concurs with the underlying logic of Applicant's justification for **no** multiuse paths along the private roads.

However, the Hearings Officer finds Applicant failed to provide legal authority or persuasive argument to support a Hearings Officer finding that **no** multiuse paths are acceptable under this criterion. The Hearings Officer takes note that Wisco, in her Hearing testimony and Power Point presentation (Slides 19 and 20), referred to DCC 17.48 Table A notes 8 and 10. The Hearings Officer finds that neither note 8 nor 10 clearly justify Applicant's proposed 24-foot private roads and **no** multiuse path. The Hearings Officer agrees with Wisco that 20-foot private roads may be allowed for "cul-de-sac's and roads with low anticipated traffic volumes" but only so if "separate multiple paths are provided (DCC 17.48 Table A, Note (8)).

The Hearings Officer also takes note that Wisco referenced, in her Hearing testimony and Power Point presentation (Slide 21) DCC 17.48.040. The Hearings Officer does not understand Wisco's testimony related to DCC 17.48.040 to provide legal justification for 24-foot private roads and **no** multiuse paths. The Hearings Officer finds DCC 17.48.040 allows up to a "10% variation" without applying variance criteria if certain factors are present. The Hearings Officer does not believe that the width requirement for a multiuse path (likely at a minimum width of 8-feet) can be reduced to zero.

No interested person in this case pointed the Hearings Officer to a section of the DCC, or any other relevant law, that requires that the width of a multiuse path be dedicated, in fee, to the County. If that is in fact a true representation of the law then the Hearings Officer finds that any multiuse path required by DCC 17.48 Table A may be created by an easement. The Hearings Officer also finds that the multiuse paths adjacent to private roads need not be paved; rather, they may remain in a "natural state." The Hearings Officer finds that a condition of approval is necessary to assure that a minimum width of 8-feet for multiuse path along private roads be shown on the final plat for all phases of the proposal.

The Hearings Officer notes that Applicant, Staff and BPRD agree that a hard-surface multiuse path is required on Road A between the McClain Drive /Sage Steppe collector road and "the natural surface trail to the west" (See Applicant's burden of proof page 46 and July 16, 2019 record submission). The Hearings Officer finds the record is less clear regarding a "trail" connection on Road D between the McClain Drive /Sage Steppe collector road and a natural surface trail running north/northeast between lots 72 and 73.

BPRD (Keever July 24, 2019 letter, page 2) stated the Applicant and BPRD participated in the Westside Transect Zone project. Keever stated, in the July 24, 2019 letter (page 1), that "the Westgate Master Plan and Tentative Plan represent the details the District and the applicant have agree upon..." Keever, on page 2, stated that the BPRD/Applicant agreement included the following:

"The applicant will build and maintain an 8-foot wide hard surface trail, set-off from the street, along Sage Steppe Drive connecting to McClain Drive, with spurs on Road A and Road D...The trail on Road D is to connect to the trail on Sage Steppe Drive and the natural surface trail to the east."

The Hearings Officer, based upon a review of documents in the record, finds that Applicant did not clearly convey whether or not its proposal included a "hard-surface trail" connection between the McClain Drive /Sage Steppe collector road and the trail intersection on Road D. The Hearings Officer finds it necessary and appropriate to require an 8-foot width hard-surface on the north side of Road D between the McClain Drive /Sage Steppe collector road and the natural trail located to the west of Lot 73. The Hearings Officer finds the following language for a condition of approval adequately addresses the private road multiuse path issue:

Multiuse Paths on Private Roads. **As an ongoing condition of approval,** Applicant must show, on the final plat for each phase, an 8-foot multiuse path along all private roads excepting for (1) an 8-foot hard surface trail is required on a segment of Road A between the collector road (extension of McClain Drive and Sage Steppe) and the nature trail running north between lots 3 and 4 and (2), an 8-foot hard surface trail is required on a segment of Road D between the collector road (extension of McClain Drive and Sage Steppe) and the nature trail running north/northeast between lots 72 and 73.

The Hearings Officer takes note of a letter submit on July 23, 2019 by Rick Root. Root, in the July 23, 2019 letter, stated the following:

"Provide a new (or revised) public trail connection that makes a more direct connection between the eastern and western boundaries of the subdivision from the city of Bend side of the development to/from Shevlin Park. This trail would hopefully align, as much as practical, with the existing trail within the park that traverses up the grade from Tumalo Creek (i.e., near the covered bridge). This would provide a greater benefit to the public use of the park and trail network. The entire trail corridor should be contained within a public easement (or more ideally, separate tracts - where not within roadways - possibly even the tracts being dedicated to the Bend Park & Recreation District? I have attached a sketch that illustrates one possible alignment for this connection (Attachment - A)."

The Hearings Officer reviewed "Attachment - A) to the Root July 23, 2019 letter. The Hearings Officer notes that the Attachment - A proposed connection is located immediately south/southwest of proposed Lot 9 and runs through the planned "No Build Zone" and the "Conservation Zone."

The "No Build Zone" and "Conservation Zones" have at least two very important purposes; wildfire mitigation and wildlife protection. As stated by Paul Dewey (Central Oregon Landwatch) and Myles Conway (attorney for Applicant) new connections to Shevlin Park, through the "No Build Zone" and "Conservation Zone" are discouraged. Hearing testimony of Quinn Keever, on behalf of BPRD, appeared to the Hearings Officer to concur that no new connections to Shevlin Park, through the Subject Property, should be allowed. Keever noted the connection to Shevlin Park, through the Subject Property, would be via a natural trail running north from Road A.

The Hearings Officer finds, based upon the evidence in the record, that the proposed connection from the Subject Property running north from Road A should be the only connection from the Subject Property to Shevlin Park.

The Hearings Officer finds, with the condition referenced above (private roadway multiuse path easements, hard-surface paths connecting the McClain Drive /Sage Steppe collector road to natural paths on Roads A and D) these criteria can be met.

- C. *Bike Lanes. Six foot bike lanes shall be used on new construction of curbed arterials and collectors.***
- D. *Shoulder Bikeways.***
 - 1. *Shoulder bikeways shall be used on new construction of uncurbed arterials and collectors.***
 - 2. *Shoulder bikeways shall be at least four feet wide. Where the travel lane on an existing arterial or collector is not greater than eleven feet, the bikeway shall be a minimum of four feet wide.***
- E. *Mountain Bike Trails.***
 - 1. *Mountain bike (dirt or other unpaved surface) trails may be used as recreational or interim transportation facilities.***
 - 2. *Trails used for transportation shall have a two foot minimum tread width and a six foot minimum clearing width centered over the trail, and a minimum overhead clearance of seven feet. Trails used solely for recreational use may be narrower with less clearing of vegetation.***

FINDING: The Applicant proposed a separated multiuse path rather than bike lanes. The natural trail connections identified in the application materials are not indicated as specifically mountain bike trails but are indicated as connections to other trails outside of the Subject Property. If these trails will be open for mountain bike use, Staff, in the Staff Report, recommended the following condition of approval.

Mountain Bike Trails: **As an ongoing condition of approval**, mountain bicycle trails used for transportation shall have a two-foot minimum tread width and a six-foot minimum clearing width centered over the trail, and a minimum overhead clearance of seven feet. Trails used solely for recreational use may be narrower with less clearing of vegetation.

As a cautionary measure the Hearings Officer finds it reasonable and appropriate to include the Staff recommended condition.

Section 17.48.150. Structures.

All structures that carry a road or cross over a road shall be designed to have a 50-year life span. All designs must be approved by the Road Department Director and other affected public or private agencies.

FINDING: No structures to carry a road or cross over a road are proposed or required.

Section 17.48.160. Road Development Requirements – Standards.

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

FINDING: The proposed roads include one public right-of-way and several private roads that are required to be constructed to County standards. The Deschutes County Road Department, on July 23, 2019, submitted comments into the record (See Public Agency Comments). The Road Department requested that the Hearings Officer, if the application was approved, to include a number of conditions. The Hearings Officer concurs with the Road Department's recommended conditions. The Hearings Officer finds with the inclusion of the Road Department's recommended conditions this approval criterion will be met.

- B. *Improvements of Public Rights of Way.***
- 1. *The developer of a subdivision or partition will be required to improve all public ways that are adjacent or within the land development.***
 - 2. *All improvements within public rights of way shall conform to the improvement standards designated in DCC Title 17 for the applicable road classification, except where a zoning ordinance sets forth different standards for a particular zone.***
- C. *Primary Access Roads.***
- 1. *The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A.***
 - 2. *The applicable standard shall be determined with reference to the road's classification under the relevant transportation plan.***
 - 3. *For the purposes of DCC 17.48.160 a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.***

FINDING: One public right-of-way (extension of McClain Drive/Sage Steppe) is part of the proposed subdivision. The primary access roads are McClain Drive and Sage Steppe. The proposed public right-of-way and primary access roads will need to be improved to meet the standards in Table A of this section, as will all other roads within the subdivision. The Hearings Officer finds this approval criterion can be met through the suggested condition of approval under DCC 17.48.060.

- D. *Secondary Access Roads. When deemed necessary by the County Road Department or Community Development Department, a secondary access road shall be constructed to the subdivision. Construction shall be to the same standard used for roads within the subdivision.***

FINDING: The Tentative Plan provides two access points. One is located in the north as a connection to McClain Drive and the other is located in the south as a connection to Sage Steppe. The Hearings Officer finds this approval criterion will be met.

- E. *Stubbed Roads. Any proposed road that terminates at a development boundary shall be constructed with a paved cul-de-sac bulb.***

FINDING: The Hearings Officer finds that none of the proposed roads will terminate at the development boundary, therefore, no cul-de-sac bulbs will be necessary.

F. *Cul-de-sacs.*

- 1. *Cul-de-sacs shall have a length of less than 600 feet, unless a longer length is approved by the applicable fire protection district, and more than 100 feet from the center of the bulb to the intersection with the main road.***
- 2. *The maximum grade on the bulb shall be four percent.***

FINDING: The Tentative Plan materials show four cul-de-sacs and each one is longer than 600 feet. The Applicant submitted an email from the Bend Fire Department (Exhibit K) which indicates the Fire Department is agreeable to the lengths. The Hearings Officer finds this approval criterion will be met.

- G. *Frontage Roads. Right of way widths shall be 40 feet when immediately adjacent to a main highway/arterial; 60 feet when the frontage road is separated from the highway or arterial by private land or as set forth for a particular zone in the zoning ordinance.***

FINDING: No frontage roads are proposed as part of this application.

Section 17.48.180. Private Roads.

The following minimum road standards shall apply for private roads:

- A. *The minimum paved roadway width shall be 20 feet in planned unit developments and cluster developments with two foot wide gravel shoulders;***
- B. *Minimum radius of curvature, 50 feet;***
- C. *Maximum grade, 12 percent;***
- D. *At least one road name sign will be provided at each intersection for each road;***
- E. *A method for continuing road maintenance acceptable to the County;***
- F. *Private road systems shall include provisions for bicycle and pedestrian traffic.***
 - 1. *In cluster and planned developments limited to ten dwelling units, the bicycle and pedestrian traffic can be accommodated within the 20-foot wide road.***
 - 2. *In other developments, shoulder bikeways shall be a minimum of four feet wide, paved and striped, with no on street parking allowed within the bikeway, and when private roads are developed to a width of less than 28 feet, bike paths constructed to County standards shall be required.***

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

The north-south roadway connecting Sage Steppe and McClain is proposed to be a public roadway. All other roads in the Westgate subdivision are proposed to be private streets. The proposed private street cross-section is included on the submitted plan and includes 24 feet of pavement, 3-foot gravel shoulders. An 8-foot multi-use path is proposed along the northern connection between McClain Drive and the natural trail that connects to Bull Springs Trail (circled in orange below):



The public north-south roadway will serve the through traffic (vehicular, bicycle, pedestrian) from the adjacent north and south neighborhoods. Bicycle and pedestrian traffic is forecast to be minimal on the private streets, originating and destined only for the individual lots on each private street, as the private streets do not connect to any other access points or streets. This low volume does not warrant separate bike lanes and/or multi-use paths on these private streets.

As a result, the Applicant coordinated with the County Roadway Department to propose 24-foot wide private streets, four feet greater than the minimum private street width. The additional four feet will provide extra width for local bicyclists and pedestrians, to accommodate all modes within the pavement.

All radii of curvature are less than 50 and maximum grades are less than 12 percent. Road name signs will be installed in accordance with this criterion during construction." (Applicant's burden of proof included the diagram/map)

The Hearings Officer incorporates the findings for DCC 17.48.140, DCC 17.36.060 and ORS 92.090(2) as additional findings for these approval criteria. The Hearings Officer finds that Applicant's requests for road widths and multiuse paths are acceptable excepting that trail easements are

required on all private roads and a hard-surface off-set (from the road) trail is required on Roads A and D between the collector road extension and nature trails. (See findings for DCC 17.48.140). The Hearings Officer finds that with conditions of approval (See findings for DCC 17.48.140) these approval criteria will be met.

Section 17.48.190. Drainage.

- A. Minimum Requirements.**
 - 1. *Drainage facilities shall be designed and constructed to receive and/or transport at least a design storm as defined in the current Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council and all surface drainage water coming to and/or passing through the development or roadway.*
 - 2. *The system shall be designed for maximum allowable development.*
- B. Curbed Sections.**
 - 1. *Storm drains within curbed streets shall be designed per the requirements of the current Central Oregon Stormwater Manual created by the Central Oregon Intergovernmental Council.*
 - 2. *Catchbasins shall be constructed in accordance with drawing Nos. 3-1, 3-2 and 3-3. (See drawings 3-1, 3-2 and 3-3 set out at the end of DCC Title 17 and by this reference incorporated herein.)*
- C. Noncurbed Sections.**
 - 1. *Road culverts shall be concrete or metal with a minimum design life of 50 years.*
 - 2. *All cross culverts shall be 18 inches in diameter or larger.*
 - 3. *Culverts shall be placed in natural drainage areas and shall provide positive drainage.*
- D. Drainage Swales.** *The Design Engineer is responsible to design a drainage swale adequate to control a design storm as defined in the Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council.*
- E. Drainage Plans.** *A complete set of drainage plans including hydraulic and hydrologic calculations shall be incorporated in all road improvement plans.*
- F. Drill Holes.** *Drill holes are prohibited.*
- G. Injection wells (drywells) are prohibited in the public right-of-way.**

FINDING: The Applicant did not propose curbed streets. No drill holes or injection wells are proposed. The typical road cross sections provided as part of the application materials indicate the north-south extension of McClain Drive will be designed with a 6-foot swale on each side of the road shoulder. No engineered plans for drainage were submitted. Staff, in the Staff Report, recommended the following condition:

Drainage: **Prior to final plat approval of each phase**, the Applicant shall provide certification by a licensed professional engineer that drainage facilities have been designed and constructed to receive and/or transport at least a design storm as defined in the current Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council and all surface

drainage water coming to and/or passing through the development or roadways. The engineer's certification shall confirm that all drainage features have been designed and constructed to comply with DCC 17.48.190.

The Hearings Officer concurs with Staff's recommendation of the above-quoted condition. The Hearings Officer finds that with the Staff recommended condition these approval criteria will be met.

Section 17.48.210. Access.

- A. Permit Required. Access onto public right of way or change in type of access shall require a permit. Permits are applied for at offices of the Community Development Department.**
- B. Access Restrictions and Limitations. The creation of access onto arterials and collectors is prohibited unless there is no other possible means of accessing the parcel. In any event, residential access onto arterials and collectors shall not be permitted within 100 feet of an intersection or the maximum distance obtainable on the parcel, whichever is less.**

FINDING: At least 15 lots adjacent to the proposed north-south collector road have no other access option besides this new road. Due to the size of the parcels, it appears those lots will be able to meet the separation distances in subsection (B) above. Staff, in the Staff Report, suggested the following condition of approval to ensure compliance with subsection (A) above.

Driveway Approach Permits: **Prior to the issuance of building permits on individual lots,** the Applicant shall obtain driveway access permits for any new access points to a public right-of-way pursuant to DCC 17.48.210(A).

The Hearings Officer concurs with Staff's recommendation of the above-quoted condition. The Hearings Officer finds that with the Staff recommended condition these approval criteria will be met.

IV. CONCLUSION:

Overall the Hearings Officer found Applicant in this case collaborated with a multitude of interested persons and agencies. The Hearings Officer believes Applicant's proposal in this case is generally sensitive to the interests of those interested persons and agencies.

The Hearings Officer was required to address two rather sticky issues: (1) the meaning of slope setback and, (2) the necessity of multiuse paths along the proposed private roadways. The Hearings Officer, based upon the evidence in the record and relevant Deschutes County Code language, found that "slope setback" in the context of DCC 19.22.050 means no more or less than the literal language used in the Code: "there shall be a minimum setback of 30 feet from the edge of **any** slope which exceeds 20%." [emphasis added by the Hearings Officer] The Hearings Officer agreed with Applicant's suggestion that a condition of approval be included stating that "all buildings observe

the 30-foot setback imposed by DCC 19.22.050 H" would adequately address the "slope setback" issue. The Hearings Officer included such a condition in the approval of the application.

The second issue involved Applicant's request to construct 24-foot private roads with **no** multiuse paths. The Hearings Officer found that DCC 17.48.140(B)(1) and DCC 17.48 Table A (Notes 8 and 10) required multiuse paths "if private roads are constructed to a width of less than 28-feet." The Hearings Officer found that since the private roads are proposed to be 24-foot multiuse paths are required.

Additional issues were raised by Staff and Applicant that the Hearings Officer found less controversial.

Included in the "additional issues" was a request by Applicant to "bond" for required improvements associated with the Tentative Plan. The Hearings Officer found that Applicant's suggested "bonding" option was authorized by DCC 17.24.120. The Hearings Officer included a condition of approval related to the Applicant's option to "bond" improvements. Applicant also requested that a modification of Staff's proposed condition of approval #16 as it related to the McClain Drive improvement scheduling (See Wisco Power Point presentation, page 22 and Staff Memo, page 3). Similarly, Applicant requested modification to Staff proposed condition #21. The Hearings Officer found that the request to modify conditions #16 and #21 were generally reasonable and appropriate.

One record submission (Root letter dated July 23, 2019) requested an additional trail connection from the Subject Property to Shevlin Park. The Hearings Officer noted that the proposed trail connection would run through the proposed "No Build Zone" and also through the "Conservation Zone." The Hearings Officer found that the advantages of an additional trail connection were outweighed by the wildfire prevention and wildfire preservation goals for which the "No Build Zone" and "Conservation Zone" were designed to protect.

The Hearings Officer found that with conditions of approval the application met all relevant approval criteria.

Other permits may be required. The Applicant is responsible for obtaining any necessary permits from the Deschutes County Building Division, the Deschutes County Environmental Soils Division and the Deschutes County Road Department, as well as any required state and federal permits.

V. DECISION:

APPROVAL, subject to the following suggested conditions of approval

VI. CONDITIONS OF APPROVAL:

1. Master Plan, Tentative Plan, and Final Plat: This approval is based on the information submitted by the Applicant. The subdivision final plat shall be in substantial conformity with the provisions of the tentative plan for the subdivision, as approved. Any substantial change will require a new land use application.
2. Building Height: **Prior to the issuance of building permits for individual lots**, no building or structure shall be hereafter erected, enlarged or structurally altered to exceed 30 feet in height, except for schools which shall not exceed 45 feet in height.
3. Lot Sizes: **Prior to final plat approval for each phase**, the lot sizes for each lot shall be confirmed by the County that they meet the requirements of DCC 19.22.050(A) in the context of DCC 19.04.040.
4. Setback and Yard Requirements: **As an ongoing condition of approval**, the subdivision lots shall observe the applicable setback and yard requirements of DCC 19.22.050(C)-(G) excepting for Lots 60 to 67 which shall have a 50-foot setback along their eastern property line.
5. Slope Setback: **As an ongoing condition of approval**, all future building improvements on the Subject Property shall observe the 30-foot setback imposed by DCC 19.22.050(H).
6. HOA Reporting: **As an ongoing condition of approval**, the Homeowners Association, or any successor or equivalent organization or if no such organization then individual owners of lots shall be required to annually review of the Wildlife Habitat Management Plan. Further, the County may request the Homeowners Association, or any successor organization or if no such organization then individual owners of lots, shall provide within a reasonable timeframe documentation demonstrating compliance with the reporting, annual review, maintenance, and other responsibilities associated with the Wildlife Habitat Management Plan, Wildfire Mitigation Plan, and Stewardship Community Plan, as described in DCC 19.22.060 (C)-(F).
7. Street Parking: **As an ongoing condition of approval**, on-street parking is prohibited on private roads within the subdivision.
8. Parking: **Prior to the issuance of building permits for dwellings on individual lots**, each dwelling unit shall provide a minimum of two paved parking spaces.
9. Fire District Approval: **Prior to issuance of building permit on individual lots**, the Applicant shall submit confirmation from the Bend Fire Department verifying the proposed lots, phase, or entire master plan area will conform to applicable Fire Code as it relates to the following requests from the Fire Department:
 - Prior to the issuance of construction permits the Applicant shall provide to the City of Bend Fire Department a proposed plan for fire apparatus access to the construction site.
 - Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. A Knox® Key Switch shall be installed at all electronic gates.
 - An approved water supply capable of supplying the required fire flow for fire protection shall be provided.

- Documentation of the available fire flow shall be provided to the fire code official prior to final approval of the water supply system. Provide the City of Bend Fire Department a fire flow analysis.
 - New and existing buildings shall have approved address numbers.
10. **Road Approval: Prior to final plat approval of each phase**, streets and roads held for private use and indicated on the tentative plan shall be approved by the County Road Department. Streets and roads for public use shall be dedicated to the public without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.
 11. **Conformity to Tentative Plan: Prior to final plat approval of each phase**, the subdivision final plat shall be in substantial conformity with the provisions of the tentative plan for the subdivision, as approved. Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.24.070(E)(1) and submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110 and 140.
 12. **Explanations: Prior to final plat approval of each phase**, explanations for all common improvements required as conditions of approval of the tentative plan of the subdivision shall be recorded and referenced on the subdivision plat.
 13. **Domestic Water Supply Certification: Prior to final plat approval of each phase**, the Applicant shall provide to the County a certification by the city-owned domestic water supply system that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat.
 14. **Sewage Disposal Statement: Prior to final plat approval of each phase**, a statement that no sewage disposal facility will be provided to the purchaser of any parcel depicted in the proposed partition plat, where the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (Fees for certain reports on sewage disposal) (1)(b). A copy of any such statement, signed by the Applicant and indorsed by the County shall be filed by the Applicant with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385 (Examination). If the making of a public report has been waived or the partition is otherwise exempt under the Oregon Subdivision Control Law, the Applicant shall comply with the applicable provisions of ORS 92.090(5)(c).
 15. **Existing Easements and Rights-of-Way: Prior to final plat approval of each phase**, the Applicant shall note all easements of record and existing rights-of-way on the final plat, in conformance with DCC 17.24.060.
 16. **Location of Roads: Prior to final plat approval of each phase**, the surveyor preparing the plat shall, on behalf of Applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of

way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E), (F), and (G) and 17.24.070(E)(8).

17. **Fire District Approval: Prior to final plat approval of each phase**, the Applicant shall submit confirmation from the Bend Fire Department verifying the proposed phase or entire master plan will conform to applicable Fire Code as it relates to the following requests from the Fire Department:
 - Provide the City of Bend Fire Department a proposed site plan illustrating compliant fire apparatus access.
 - Approved signs or other approved notices or markings that include the words NO PARKING-FIRE LANE shall be provided for fire apparatus roads to prohibit parking on both sides of fire lanes 20 to 26 feet wide and on one side of fire lanes more than 26 feet to 32 feet wide.
 - Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (60,000 pounds GVW) and shall be surfaced (asphalt, concrete or other approved driving surface) as to provide all weather driving capabilities.
 - Provide a site plan to the City of Bend Fire Department illustrating a secondary access point.
 - Provide the City of Bend Fire Department a site plan illustrating the quantity and locations of fire hydrants.
 - Provide a site plan that illustrates any parking restrictions.
18. **Adjacent McClain Drive Improvement: Prior to final plat approval of the first phase**, the Applicant shall submit evidence that McClain Drive on Map and Tax Lot 1711260000400 has been either constructed to City of Bend standards, or the Applicant has submitted an improvement agreement **and** performance assurance for such construction. Any improvement agreement shall be reviewed and approved by Deschutes County Community Development and County Counsel to assure the agreement(s) is/are in a form that meets the requirements of DCC 17.24.120. Documentation related to performance assurances shall be in a form satisfactory to the Deschutes County Community Development and County Counsel. During all phases, fire access shall be provided as required by the Bend Fire Department.
19. **Street Names: Prior to final plat approval of each phase**, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County and shall require approval from the County Property Address Coordinator. The north-south collector road shall be named McClain Drive north of the intersection of "Road A" and "Road D", and shall be named Sage Steppe south of the same intersection. All roads shall be named in conformance with the provision of the Deschutes County uniform road naming system set forth in DCC Title 16.
20. **Utility Easements: Prior to final plat approval of each phase**, all required utility easements shall be shown on the final plat. Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the

subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage. Such easements shall be labeled "Public Utility Easement" on the tentative and final plat; they shall be at least 12 feet in width and centered on lot lines where possible, except utility pole guyline easements along the rear of lots or parcels adjacent to un-subdivided land may be reduced to 10 feet in width.

21. Grading: **Prior to the issuance of building permits on individual lots**, the Applicant shall demonstrate cut slope ratios shall not exceed one foot vertically to one and one half feet horizontally, fill slope ratios shall not exceed one foot vertically to two feet horizontally, and grading plans shall comply with DCC 17.36.230.
22. Water and Sewer Lines: **Prior to curbing and paving new streets**, water mains and water and sewer lines shall be constructed and installed to County and City standards and specifications. Evidence of approved completion of the water mains and lines to the City of Bend's standards shall be submitted to the Planning Division for review.
23. Public Water System: **Prior to final plat approval of each phase**, plans for the water system shall be submitted and approved by the appropriate city, state, or federal agency. The water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed phase, or the Applicant has submitted an improvement agreement and performance assurance. Any improvement agreement shall be reviewed and approved by Deschutes County Community Development and County Counsel to assure the agreement(s) is/are in a form that meets the requirements of DCC 17.24.120. Documentation related to performance assurances shall be in a form satisfactory to the Deschutes County Community Development and County Counsel.
24. Road Improvement Plans **Prior to final plat approval of each phase**, the Applicant shall submit a complete set of certified mylar improvement plans to the Road Department Director for approval. Public and private road design and construction shall be in accordance with all applicable sections of DCC 17.48. Applicant shall submit public and private road improvement plans to Road Department for approval **prior to commencement of construction** pursuant to DCC 17.40.020 and 17.48.060. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040.
25. Road Maintenance Covenant: **Prior to final plat approval of each phase**, Maintenance of all public and private roads, including multiuse paths, shall be assigned to a home owners association by covenant pursuant to DCC 17.16.040, 17.16.105, 17.48.160(A), and 17.48.180(E). Applicant shall submit covenant to Road Department for review and shall record covenant with the County Clerk upon Road Department approval. A copy of the recorded covenant shall be submitted to the Community Development Department prior to final plat approval.
26. Drainage: **Prior to final plat approval of each phase**, the Applicant shall provide certification by a licensed professional engineer that drainage facilities have been designed and constructed to receive and/or transport at least a design storm as defined in the current Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council and all surface drainage water coming to and/or passing through the development or

roadways. The engineer's certification shall confirm that all drainage features have been designed and constructed to comply with DCC 17.48.190.

27. Driveway Approach Permits: **Prior to the issuance of building permits on individual lots,** the Applicant shall obtain driveway access permits for any new access points to a public right-of-way pursuant to DCC 17.48.210(A).
28. Mountain Bike Trails: **As an ongoing condition of approval,** mountain bicycle trails used for transportation shall have a two-foot minimum tread width and a six-foot minimum clearing width centered over the trail, and a minimum overhead clearance of seven feet. Trails used solely for recreational use may be narrower with less clearing of vegetation.
29. Multiuse Paths on Private Roads. **As an ongoing condition of approval,** Applicant must show, on the final plat for each phase a minimum 8-foot multiuse path along all private roads excepting for (1) an 8-foot hard surface trail is required on a segment of Road A between the collector road (extension of McClain Drive and Sage Steppe) and the nature trail running north between lots 3 and 4 and (2), an 8-foot hard surface trail is required on a segment of Road D between the collector road (extension of McClain Drive and Sage Steppe) and the nature trail running north/northeast between lots 72 and 73.
30. Road 'A' Natural Path: The natural path intersecting on the north side of Road A, between lots 3 and 4, shall be 20-feet in width (shown on various site plans as having a width of 15-feet).

VII. DURATION OF APPROVAL:

This Master Plan and Tentative Plan approval shall be void after two years from the date this decision becomes final, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under DCC 22.36.010, or the preliminary plat approval has been initiated as defined in DCC 22.36.020.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.

Dated this 28th day of August, 2019



Gregory J Frank, Hearings Officer

owner	agent	address	cityStZip	type	cdd id
Empire Construction	Kevin Spencer	63026 Lower Meadow Drive, Suite 200	Bend, OR 97701	HOD	19-500-MP
Rio Lobo Investments, LLC		95 SW Scalehouse Loop #100	Bend, OR 97702	HOD	19-500-MP
BECON Engineering, Erik Huffman, PE	Jose Banuelos, PE	549 SW Mill View Way, Suite 100	Bend, OR 97702	HOD	19-500-MP
Retia Consult, LLC	Tammy Wisco, PE, AICP	PO Box 831	Bend, OR 97709	HOD	19-500-MP
Hearings Officer Greg Frank		ELECTRONIC		HOD	19-500-MP
911	ATTN: EVAN CLARK	20355 POE SHOLES DR., STE. 300	Bend, OR 97701	HOD	19-500-MP
BEND FIRE DEPT.	LARRY MEDINA	1212 SW SIMPSON, SUITE B	Bend, OR 97702	HOD	19-500-MP
BEND METRO PARKS & REC.	ATTN: QUINN KEEVER	799 SW COLUMBIA ST.	Bend, OR 97702	HOD	19-500-MP
DESCHUTES CO. ROAD DEPT.		61150 S.E. 27TH ST.	Bend, OR 97702	HOD	19-500-MP
DESCHUTES CO. SR. TRANS. PLANNER	PETER RUSSELL	ELECTRONIC		HOD	19-500-MP
DESCHUTES CO. SURVEYOR		61150 SE 27TH ST.	Bend, OR 97702	HOD	19-500-MP
DESCHUTES CO. ASSESSOR		ELECTRONIC		HOD	19-500-MP
DESCHUTES CO. BUILDING SAFETY		ELECTRONIC		HOD	19-500-MP
PROPERTY ADDRESS COORDINATOR		ELECTRONIC		HOD	19-500-MP
OREGON DEPT OF FISH & WILDLIFE	ATTN: ANDREW WALCH	61374 PARRELL RD.	BEND, OR 97702	HOD	19-500-MP
SCHWABE WILLIAMSON & WYATT	ATTN: TIA LEWIS	360 SW BOND STREET, SUITE 500	BEND, OR 97702	HOD	19-500-MP
MARTEN LAW	ATTN: MYLES CONWAY	404 SW COLUMBIA STREET, SUITE 212	BEND, OR 97702	HOD	19-500-MP
STEVEN L WALLAERT & PAM ROBBINS		3312 NW SHEVLIN RIDGE	BEND, OR 97701	HOD	19-500-MP
CENTRAL OREGON LANDWATCH	ATTN: PAUL DEWEY	50 SW BOND STREET, SUITE 4	BEND, OR 97702	HOD	19-500-MP
RICK ROOT		590 NW LINDSAY COURT	BEND, OR 97701	HOD	19-500-MP
CHARLEY MILLER		18890 GOLDEN MANTLE LOOP	BEND, OR 97703	HOD	19-500-MP
RICK ARTHUR		19009 PARK COMMONS DRIVE	BEND, OR 97701	HOD	19-500-MP

SUBDIVISION BOND

Bond # **SUR0005683**

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned

Empire Westgate, LLC, 63026 NE Lower Meadow Dr., Suite 200, Bend, OR 97701

_____ as Principal,

and Frankenmuth Mutual Insurance Company

1 Mutual Avenue, Frankenmuth, MI 48787

a corporation of the State of Michigan and authorized to do business in the

State of OR, as Surety, are hereby held and firmly bound unto the

Deschutes County, Community Development Department, 117 NW Lafayette Avenue, Bend, OR 87708-6005

_____ as Oblige,

in the penal sum of One Hundred Sixty Thousand Seventy Four and no 00/100 (\$160,074.00) Dollars

for the payment of which, well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

WHEREAS, it is proposed to make certain improvements:

Improvements of Phase 8 with Deschutes County within the Westgate Subdivision

WHEREAS, the Deschutes County, Community Development Department

has approved said plan upon the execution and delivery of this bond.

NOW, THEREFORE, the condition of this obligation is such that if the above bounden Principal shall construct the improvements shown above, and complete said work to satisfaction of the

Deschutes County, Community Development Department

and in accordance with the present standard specifications of the Deschutes County, Community Development Department

Therefore, then this obligation shall be void, otherwise the same remain in full force and effect: it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

Signed, sealed and dated this 10th day of March, 2022

Empire Westgate, LLC

Principal

By: 

Frankenmuth Mutual Insurance Company

Surety

By: 

Craig Sherman/Attorney-in-Fact


Helen Nadirsha, Witness

STATE OF ILLINOIS ((SS
COUNTY OF COOK (

I, Karen N. Genoff A Notary of Public of Cook County, State of Illinois do Hereby Certify that Craig Sherman Attorney in Fact of Frankenmuth Mutual Insurance Company Who is Personally Known to me to be the Same Person Whose Name is Subscribed to the Foregoing Instrument, Appeared Before Me This Day in person and Acknowledged That he Signed, Sealed, and Delivered Said Instrument, For and on Behalf of Frankenmuth Mutual Insurance Company Incorporated in the State of Michigan for the Uses and Purposes Therein Set Forth.

Given Under My Hand and Notarial Seal at My Office in Northfield, Illinois in Said County This

10th Day of March , 2022

My Commission Expires


NOTARY Karen N. Genoff



FRANKENMUTH MUTUAL INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that Frankenmuth Mutual Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the State of Michigan, having its principal office at 1 Mutual Avenue, Frankenmuth, Michigan 48787, does hereby nominate, constitute and appoint:

Craig Sherman, Ted Sherman, Karen Genoff, Helen Nadirsha

Their true and lawful attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal, acknowledge and deliver any and all bonds, contracts and undertakings of suretyship, with the exception of Financial Guaranty Insurance, provided, however, that the penal sum of any one such instrument shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000)

This Power of Attorney is granted pursuant to the following Resolution duly adopted at a meeting of the Board of Directors of Frankenmuth Mutual Insurance Company:

"RESOLVED, that the President, Senior Vice President or Vice President and each of them under their respective designations, hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer of the Company, qualifying the attorney(s) named in the given power of attorney, to execute on behalf of, and acknowledge as the act and deed of Frankenmuth Mutual Insurance Company on all bonds, contracts and undertakings of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 10th day of September, 2018.



Frankenmuth Mutual Insurance Company
By Frederick A. Edmond, Jr.,
President and Chief Operating Officer

STATE OF MICHIGAN
COUNTY OF SAGINAW) ss:

Sworn to before me, a Notary Public in the State of Michigan, by Frederick A. Edmond, Jr., to me personally known to be the individual and officer described in, and who executed the preceding instrument, deposed and said the Corporate Seal and his signature as Officer were affixed and subscribed to said instrument by the authority of the Company.

IN TESTIMONY WHEREOF, I have set my hand, and affixed my Official Seal this 10th day of September, 2018.

Dianne L. Voss (Seal)
Dianne L. Voss, Notary Public
Saginaw County, State of Michigan
My Commission Expires July 23, 2024



I, the undersigned, Vice President of Frankenmuth Mutual Insurance Company, do hereby certify that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and is in full force and effect as of this date.

IN WITNESS WHEREOF, I have set my hand and affixed the Seal of the Company, this 10th day of March, 2022

Andrew H. Knudsen
Andrew H. Knudsen, Vice President