



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

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

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

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

NOTICE OF ADOPTED AMENDMENT



February 3, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 003-96

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office. This adoption was adopted by the City on August 19, 1996, and passed the 21-day appeal period from the date of the adoption.

Appeal Procedures*

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

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

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

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

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Terri Payne, Deschutes County

<paa> y/ph

FORM 2

DEPT OF

DLCD NOTICE OF ADOPTION

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

JAN 23 2006

**LAND CONSERVATION
AND DEVELOPMENT**

(See reverse side for submittal requirements)

Jurisdiction: Deschutes County Local File No.: ZC 95-12 (PA 95-15)
(If no number, use none)

Date of Adoption: 7/29/96 Date Mailed: 1-20-06
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: unknown

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

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

Change the zoning for certain properties from Urban Area Reserve
10 (UAR-10) to RH and RS

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

Same

Plan Map Changed from : _____ to _____

Zone Map Changed from: UAR-10 to RH and RS

Location: Sisters UAR Acres Involved: ~50

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: _____

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 003-96
(7182)

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

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

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

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

Deschutes County Sisters City

Local Contact: Terril Hansen Payne Area Code + Phone Number: 541-385-1404

Address: 117 NW Lafayette City: Bend

Zip Code+4: 97701 Email Address: terrip@co.deschutes.or.us

ADOPTION SUBMITTAL REQUIREMENTS

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

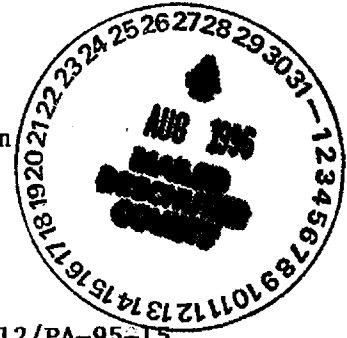
1. Send this Form and TWO (2) Copies of the Adopted Amendment to:
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - **ATTENTION: PLAN AMENDMENT SPECIALIST.**

DEPT OF
AUG 30 1996
LAND CONSERVATION
AND DEVELOPMENT

NOTICE OF ADOPTION

This form must be mailed to DLCD not later than 5 working days after adoption
ORS 197.615 and OAR Chapter 660, Division 18

See reverse side for submittal requirements



Jurisdiction Deschutes County Local File # ZC-95-12/PA-95-15
Date of Adoption 07/29/96 Date Mailed 07/29/96
Date the Proposed Notice was mailed to DLCD 01/26/96

- Comprehensive Plan Text Amendment
- Comprehensive Plan Map Amendment
- Land Use Regulation Amendment
- Zoning Map Amendment
- New Land Use Regulation

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

The Board of County Commissioners adopted a request for a Zone Change from UAR-10, Urban Area Reserve to RS, Urban Standard REsidential, and RH, Urban High Density Residential and a Comprehensive Plan Map Amendment with the same designations.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice of the proposed amendment, write "N/A."

Same

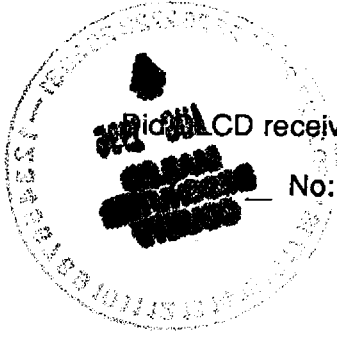
Plan Map Change From Urban Area Reserve to Urban High Density Residential
Urban Standard Residential
Zone Map Change From UAR-10 to RH and RS

Location: 319 S Pine Street, Sisters, 151008-707/709 Acres Involved: 50

Specify Density: Previous Density 10 acres New Density 1/2 acre per dwelling

Applicable Goals: _____ Was an Exception adopted? Yes No

DLCD File # 003-96 DLCD Appeal Deadline _____
7182
* appealed / BH



Did the CD receive a Notice of Proposed Amendment 45 days prior to the final hearing?

- No: The Statewide Planning Goals do not apply
 Emergency Circumstances Required Expedited Review

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

City of Sisters, DEQ

Local Contact: Brian J. Harrington, Associate Planner Phone: 541-388-6575

Address: 1130 NW Harriman Street, Bend, Oregon 97701

SUBMITTAL REQUIREMENTS

ORS 197.615 and OAR Chapter 660, Division 18

1. Send this Form and One (1) Copy of the Adopted Amendment to:

**Department of Land Conservation and Development
1175 Court Street, N.E.
Salem, Oregon 97310-0590**

2. Submit three (3) copies of bound documents and maps larger than 8½ by 11 inches.
3. Adopted materials must be sent to DLCD not later than five (5) working days following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will be extended if you do not submit this Notice of Adoption within five working days of the final decision. Appeals to LUBA may be filed within 21 days of the date Notice of Adoption is sent to DLCD.
6. In addition to sending Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

If you need more copies of this form, please call the DLCD at 503-373-0050 or this form may be duplicated on green paper.

Sandy Russell

REVIEWED
Burn
LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending the Sisters
Urban Area Zoning Map to Change the
Zoning Designation of Certain Property
From Urban Area Reserve to Urban High
Density and Urban Standard Density
and Declaring an Emergency.

*
* RECEIVED
*
* JUL 31 1996
*
* DESCHUTES COUNTY CDD

ORDINANCE NO. 96-062

WHEREAS, applicants proposed a plan amendment and zone change (PA-95-15/ZC-95-12) to change the designation under the Sisters Urban Area Plan for certain property described herein from Urban Area Reserve to Urban High Density and Urban Standard Density and from UAR-10 to RH and RS; and

WHEREAS, after notice and hearing on the applicant's application in accordance with applicable law, the Hearing Officer recommended approval of the application and as to the plan amendment that recommendation was not appealed; and

WHEREAS, the zone change was appealed, but pursuant to DCC 12.32.035 the Board declined to hear the appeal and to accept the recommendation of the Hearing Officer and to adopt the proposed zone change; and

WHEREAS having declined to hear the appeal, the Board is free to adopt this zone change ordinance; and

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

Section 1. Adoption of Zoning Map Amendment. The Sisters Urban Area Zoning Ordinance Map, as amended, is further amended to change the designation of the areas described in Exhibit A and depicted in Exhibit B attached hereto and by this reference incorporated herein, from UAR-10 to RH (described in Exhibit A-1 and denoted as "RH" on Exhibit B) and RS (described in Exhibit A-2 and denoted as "RS" on Exhibit B).

Section 2. Findings. The Board of County Commissioners adopts as its findings in support of this ordinance the recitals set forth above and the findings attached hereto as Exhibits C and D and incorporated herein by this reference.

Section 3. Severability. The provisions of this ordinance are severable. If any section, sentence, clause or phrase of this ordinance or any line or area on any map is adjudged to be invalid by a court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. Codification. County Legal Counsel shall have the authority to format the provisions contained herein in a manner that will integrate them into the County Code consistent with the Deschutes County Form and Style Manual for Board Documents. Such codification shall include the authority to make such changes, to make changes in numbering systems and to make such numbering changes consistent with interrelated codes sections. In addition, as part of codification of these ordinances, County Legal Counsel may insert appropriate legislative history references. Any legislative history references included herein are not adopted as part of the substance of this ordinance, but are included for administrative convenience and as a reference. They may be changed to correct errors and to conform to proper style without action of the Board of County Commissioners.

Section 5. Emergency. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 29th day of July, 1996.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Excused

NANCY POPE SCHLANGEN, Chair

Barry H. Slaughter

BARRY H. SLAUGHTER, Commissioner

ATTEST:

Osuta M. Mutchie

Recording Secretary

Robert L. Nipper

ROBERT L. NIPPER, Commissioner

**URBAN AREA
HIGH DENSITY RESIDENTIAL**

A PARCEL OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 15 SOUTH, RANGE 10 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON THE BOUNDARY OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 8; THENCE SOUTH 00°15'56" EAST, ON THE EAST LINE OF SAID SECTION 8, 1110.03 FEET TO THE INTERSECTION OF SAID SECTION LINE WITH THE WESTERLY EXTENSION OF THE CENTERLINE OF THE ALLEY BETWEEN "JEFFERSON STREET" AND "ST. HELENS STREET"; THENCE SOUTH 89°53'03" WEST, 30.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89°53'03" WEST, 1289.31 FEET TO A POINT ON THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 8:

THENCE NORTH 00°04'29" EAST, ON SAID WEST LINE, 480.00 FEET TO A 5/8" IRON ROD;

THENCE NORTH 89°53'03" EAST, 1286.46 FEET TO A 5/8" IRON ROD;

THENCE SOUTH 00°15'56" EAST, ON A LINE 30.00 FEET WESTERLY OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 8, 480.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 14.19 ACRES, MORE OR LESS.

URBAN STANDARD RESIDENTIAL

A PARCEL OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 15 SOUTH, RANGE 10 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON THE BOUNDARY OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 8; THENCE SOUTH 00°15'56" EAST, ON THE EAST LINE OF SAID SECTION 8, 1110.03 FEET TO THE INTERSECTION OF SAID SECTION LINE WITH THE WESTERLY EXTENSION OF THE CENTERLINE OF THE ALLEY BETWEEN "JEFFERSON STREET" AND "ST. HELENS STREET"; THENCE SOUTH 89°53'03" WEST, 30.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 00°15'56" EAST, PARALLEL TO THE EAST LINE OF SAID SECTION 8, 1210.02 FEET TO A 5/8" IRON ROD;

THENCE SOUTH 89°46'33" WEST, 1296.80 FEET TO A POINT ON THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 8;

THENCE NORTH 00°05'29" EAST, ON SAID WEST LINE, 1007.83 FEET TO THE NORTHEAST SIXTEENTH CORNER OF SAID SECTION 8;

THENCE NORTH 00°04'29" EAST, ON SAID WEST LINE, 205.02 FEET;

THENCE NORTH 89°53'03" EAST, 1289.31 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 35.96 ACRES, MORE OR LESS.

EXHIBIT MAP

DEFINING "RH" AND "RS" ZONES
SITUATED IN THE NE 1/4, SEC. 8, T15S, R10E, W.M.,
DESCHUTES COUNTY, OREGON

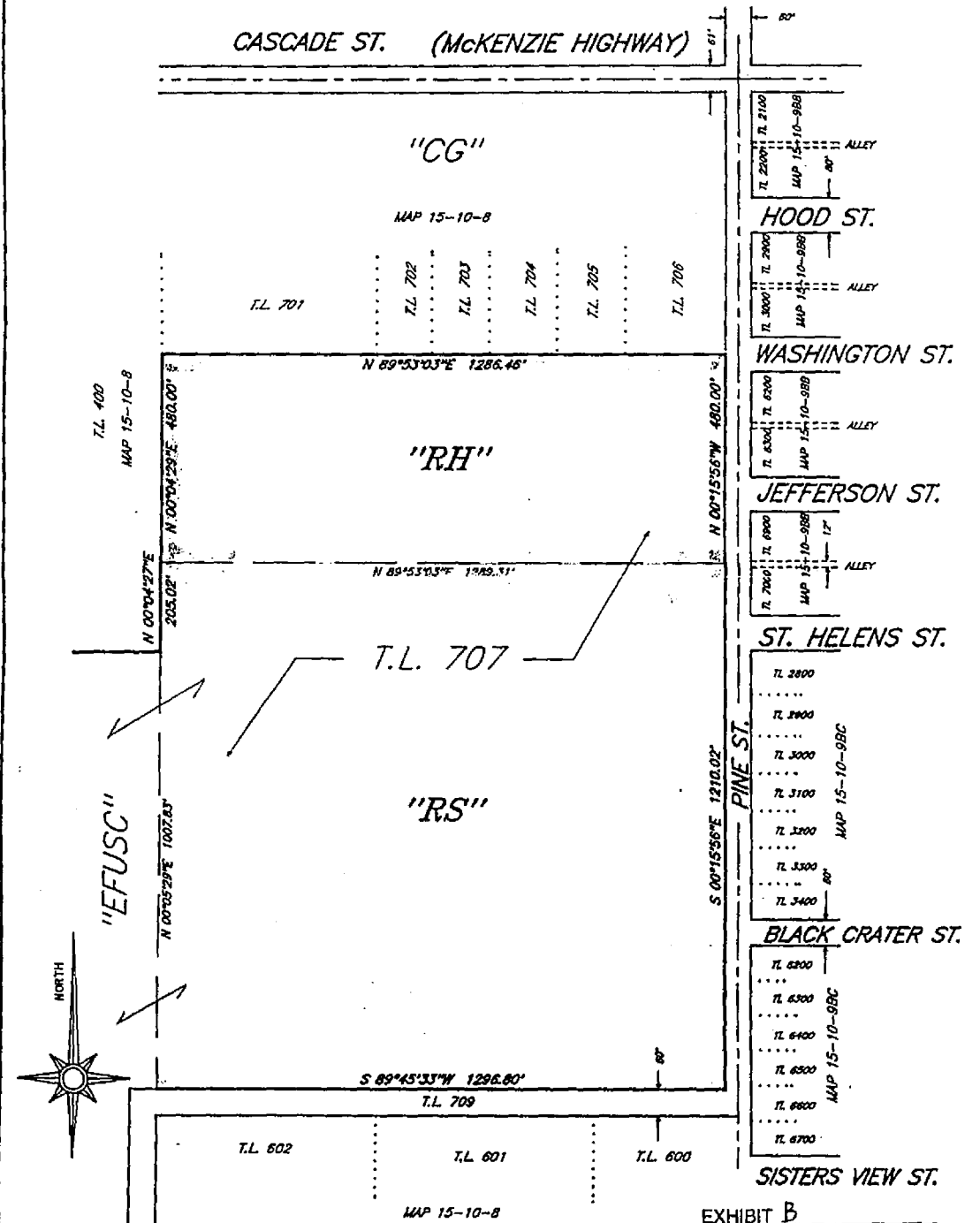
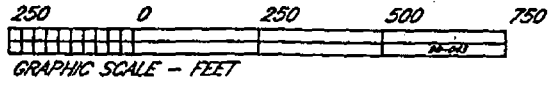


EXHIBIT B
Page _____



FRED A. AST, Jr & ASSOCIATES
Land Surveying & Water Rights
260 W. Cascade St. - P.O. Box 751
Sisters, Oregon ***** 97759
Phone: (541) 549 - 7851

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

APPLICANT: PMR Dev. Co. L.L.C.
P.O. Box 1779
Sisters, Oregon 97759

PROPERTY OWNER: Pine Meadow Ranch, Inc.
P.O. Box 969
Sisters, Oregon 97759

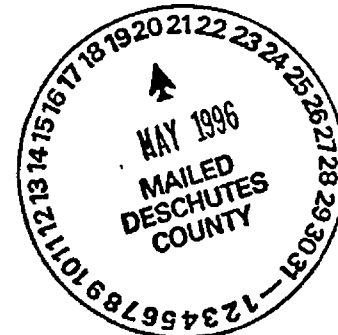
ATTORNEY: Liz Fancher
The Law Offices of James T. Massey
P.O. Box 1689
Sisters, Oregon 97759

REQUEST: The applicant is requesting a plan amendment and zone change for property zoned UAR-10, Urban Area Reserve, and located on the western edge of the Sisters Urban Growth Boundary. The Plan Amendment would remove the "reserve" plan designation. The zone change would change the zone from UAR-10 to RS, Urban Standard Residential, and RH, Urban Area High Density Residential.

STAFF REVIEWER: Brian J. Harrington, Associate Planner

HEARING DATES: March 5, 1996, and April 2, 1996

RECORD CLOSED: April 16, 1996



I. APPLICABLE STANDARDS AND CRITERIA:

- A. PL-16, the Sisters Urban Area Comprehensive Plan**
- B. PL-17, the Sisters Urban Area Zoning Ordinance**
- C. Title 22, the Deschutes County Development Procedures Ordinance**
- D. Oregon Statewide Land Use Planning Goals**
- E. Transportation Planning Rule, OAR 660-12-060**

II. FINDINGS OF FACT:

- A. Location:** The subject property consists of approximately 50 acres of land located on the western edge of the Sisters City Limits abutting Pine Street. It is part of the Pine

Meadow Ranch, and is further identified as that part of Tax Lot 707 on Deschutes County Assessor's Map # 15-10-08 that lies within the Sisters Urban Growth Boundary (UGB).

- B. Zoning and Plan Designation:** The subject property is zoned UAR-10. The Sisters Comprehensive Plan designates the portion of the property that lies between the northern property boundary at Washington Street and the logical extension of the alley between Jefferson Street and St. Helens Street as Urban High Density Residential Reserve. The remainder of the property is designated Urban Standard Residential Reserve. The subject property also lies within the Airport Overlay Zone.
- C. Site Description:** The subject property is approximately 50 acres in size and consists of pasture land that slopes gently west toward the Cascade Mountains. The property has been cleared of trees except along the boundary of the property. There are two structures on the portion of the property designated RH and facing Pine Street: a farm-related storage building and a small residence.
- D. Surrounding Land Uses:** The northern boundary of the subject property adjoins undeveloped properties that are zoned CG, General Commercial. Developed commercial properties lie a short distance to the north, including two motels, a gasoline station/convenience store and a vacant commercial building. The eastern boundary of the subject property adjoins the city limits. The eastern boundary of the portion of the subject property designated RH adjoins RH-zoned land and the eastern boundary of the portion of the subject property designated RS adjoins RS-zoned land.

Most of the lots that adjoin the eastern boundary of the subject property are developed with dwellings on small residential lots. The dwellings include a mix of mobile, manufactured and site-built homes that are used as single family residences or vacation homes. A large office building is located northeast of the subject property at the southeast corner of Hood Street and Pine Street.

The southern boundary of the subject property adjoins one lot zoned RS, two lots zoned UAR-10 and land zoned EFU, Exclusive Farm Use, and owned by Pine Meadow Ranch. The two UAR-10 lots are designated as reserve for RS development. The western boundary of the subject property adjoins the Patterson Llama Ranch which is zoned EFU.

- E. Procedural History:** At the initial public hearing in this matter, one of the opponents to the proposal requested and was granted a continuance of the hearing on the basis that the staff report was not available seven days prior to the hearing pursuant to Section 22.24.130 of the Procedures Ordinance. The public hearing was continued to April 2, 1996. At the continued hearing, the Hearings Officer left the written record open until April 16, 1996. In addition, the applicant's attorney indicated her intent to submit final legal arguments within seven days of the close of the record pursuant to ORS 197.763 (6)(e). Subsequently, by letter to Brian Harrington dated April 15, 1996, the applicant's attorney advised the Hearings Officer that she would not be submitting additional legal

arguments and waived the remainder of the seven-day period. The matter then came to the Hearings Officer for decision on April 16, 1996.

- F. **Proposal:** At the county's request, the applicant submitted an application proposing to remove the "reserve" plan designation from the subject property. The applicant also seeks to rezone the subject property from UAR-10 to RS and RH in order to develop the subject property as a residential subdivision. The applicant has submitted a conceptual development plan for the subdivision, but this plan is not being reviewed in this proceeding.
- G. **Public/Private Agency Comments:** The Deschutes County Planning Division sent written notice of the proposed plan amendment/zone change to a number of public and private agencies and received responses from: the Deschutes County Public Works Department, Property Address Coordinator and Transportation Planner; the City of Sisters Planning Department; and the Oregon Department of Transportation (ODOT). These comments are set forth at pages 2-4 of the Staff Report, or are included in the record, and are incorporated by reference herein.
- H. **Public Notice and Comments:** The Planning Division sent written notice of the public hearing in this matter to owners of all property located within 100 feet of the subject property, and published notice of the initial public hearing in the Bend "Bulletin." As of the time the record closed in this matter, five letters in support of the proposal and fourteen letters in opposition had been received. A list of those letters is attached as Appendix A.

III. CONCLUSIONS OF LAW:

The applicant initially sought a zone change from UAR-10 to RS and RH for the subject property and did not request a plan amendment. The record indicates the county concluded a plan amendment also was required for the applicant's proposal in order to remove the "reserve" plan designation, and subsequently the applicant filed for a plan amendment. Section 23(3) of the Sisters Urban Area Zoning Ordinance provides as follows:

A. STANDARDS FOR ZONE CHANGE

- 3. **Standards for Zone Change. The Burden of Proof is upon the one seeking change. The degree of that burden increases proportionately with the degree of impact of the change which is sought. The applicant shall in all cases establish:**
 - A. **Conformance with the Comprehensive Plan.**
 - B. **Conformance with all applicable statutes.**
 - C. **Conformance with statewide planning goals wherever they are determined to be applicable.**

D. That there is a public need for a change of the kind in question.

E. That the need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

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

G. That annexation to the City of sisters will accompany the zone change.

A. CONFORMANCE WITH COMPREHENSIVE PLAN:

Comprehensive Plan Review, Adoption, Amendments (page 108)

Plan Amendments will be necessary as time passes and conditions change. . . Any changes should be consistent with the goals, objectives, policies and statements of intent of the plan or these guidelines should first be changed or amended to reflect the new policies.

FINDINGS: At the outset, the applicant has questioned whether a plan amendment is required for this proposal. Specifically, the applicant argues that the proposed zone change from UAR-10 to RS and RH is consistent with the plan designation of the subject property as RS and RH "reserve." The applicant further argues that this plan policy and the definition of "urban reserve" areas (which provides that such lands may be developed for urban uses "when at least 75% of the present (1979) city limits has developed) contemplates that the proposed zone change may occur without a plan amendment once that 75% capacity has been reached.

Staff asserts that a plan amendment is required in order to remove the "reserve" designation because even assuming the 75% development level has been reached, redesignation out of the "reserve" category is not self-activating.

The applicant has not cited any caselaw supporting its argument that no plan amendment is required. However, two cases are instructive. In Foland v. Jackson County, 311 Or 167, 807 P2d 801 (1991), the Supreme Court considered the question of whether a plan amendment was required for the county to revise its destination resort siting map on the basis of better soils information. The county's acknowledged plan provisions for destination resorts contained a "refinement clause" expressly allowing the map to be revised in such circumstances. The court reasoned that refinement of the map under this clause did not constitute a plan amendment but merely the county's exercise of its power under the "refinement clause."

Subsequently, in Opus Development Corp. v. city of Eugene, 28 Or LUBA 670 (1995), LUBA was called upon to determine if an amendment to an acknowledged neighborhood plan in the city's comprehensive plan constituted an amendment to the plan. In holding that it did, LUBA contrasted this "refinement plan" with the "refinement clause" in Foland, concluding that the

original neighborhood plan was essentially a broad-based "comprehensive plan" for the neighborhood, and therefore any amendment to it would by definition be a plan amendment.

The Hearings Officer finds the plan provision at issue here is more similar to the "refinement clause" at issue in Foland than it is to the neighborhood plan at issue in Opus. That is because it sets out the specific circumstances under which urban development may occur on "urban reserve" lands -- i.e., once the city develops to 75% capacity. Arguably, then, removal of the "reserve" plan designation could be considered simply the county's exercise of authority provided in this plan provision. Weighed against this argument is the fact that the county's interpretation of its own plan provision to require a plan amendment in order to remove the "urban reserve" designation is entitled to deference unless it is inconsistent with the language or context. Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992).

Although the applicant's argument clearly has merit under Foland, I find the county's interpretation is more consistent with the context of the plan language. As discussed in detail in the findings below, the plan provides that "urban reserve" lands can be developed under one of several circumstances, including a showing of need or the lack of other available non-agricultural lands in the urban area. In this context, the "75% development" criterion appears to be less self-activating and more discretionary. Therefore, I find that a plan amendment is required to remove the "urban reserve" designation from the subject property.

The Hearings Officer finds that the following plan goals, findings and policies apply:

Urbanization Policies (page 93)

The following policies are developed in support of the foregoing Urbanization factors of Urban Growth Boundary consideration.

3. In order to assure the economic provision and utilization of future public facilities and services, the present city should develop at 75% capacity before expanding into the "urban reserve" areas.

FINDINGS: The applicant's Burden of Proof includes a developed lands study (Exhibit B) indicating that over 75% of the lands included within the 1979 Sisters City Limits has been developed. Opponents dispute the applicant's methodology and calculations in several respects. Before addressing the merits of this study, the Hearings Officer will address each of opponents' issues separately below.

1. Opponents' Objections:

a. **Significance of the Term "Should."** The record indicates that while an earlier version of the Sisters plan provided that the city "shall" develop to 75% capacity before expansion into the urban reserve areas, the adopted plan substituted the word "should" for "shall." Opponent Howard Paine has argued that the use of the word "should" signifies that development of the urban reserve lands is not *required* once the 75% capacity level has been reached. The Hearings

Officer concurs. As discussed in the findings above, this "build-out" provision is one of several criteria under which development of the urban reserve lands may proceed.

b. Significance of the Term "Present City." The plan does not define the term "present city" for purposes of this provision. The applicant argues the term means lands within the city limits as they existed at the time the plan was adopted on September 28, 1979, *not* including the lands in the northwest part of the city limits occupied by the United States Forest Service (USFS) and the Three Winds Shopping Center, the annexation of which lands was not effective until filed with the Secretary of State's Office in 1980. Opponent Gordon Petrie, in his April 9, 1996, letter in opposition, argues that the term "present city" means the current -- that is the 1996 -- City of Sisters. The Hearings Officer finds Mr. Petrie's interpretation unreasonable. The term "present city" is contained in a plan document adopted in 1979. I find the only reasonable interpretation is that it was intended to include the city limits *as they existed when the plan was adopted.*

However, the record does not indicate whether at the time of plan adoption the city and county believed they were including the USFS and shopping center lands. The Hearings Officer finds that they may have, in light of the timing of the annexation of these lands. However, I find the applicant's analysis of the effective date of the annexation of these lands is correct and that these lands were not in fact a part of the city when the plan was adopted. Therefore, I concur with the applicant's conclusion that the term "present city" for purposes of this plan policy means the lands legally included within the 1979 Sisters City Limits at the time of plan adoption.

In addition, opponent Betty Marquardt argues that the Buck Run Subdivision should not have been included in the applicant's developed lands study because it was not annexed to the city until 1989. However, evidence in the record submitted by Ms. Marquardt in the form of a city map indicates the Buck Run area was included within the Sisters City Limits in 1974, thus properly included within "the present city" calculations.

c. "Platted" vs. "Unplatted" Lands. Opponent Gordon Petrie has argued that the applicant's calculations of developed lands improperly exclude "unplatted" lands and therefore the percentage of land in the city limits which the applicant calculates as developed is too large. The applicant has responded that all lots within the city limits were included in the calculation and that the term "platted" as it appears in the applicant's developed lands study is a misnomer. The Hearings Officer concurs with the applicant's analysis and finds that all lands that were included in the 1979 Sisters City Limits are accounted for in the applicant's calculations.

d. The 75% Development Calculation Should Be Made As To Each Zone. Opponent Betty Marquardt has argued the applicant should be required to show that each zone within the city limits has been developed to 75% capacity before expansion into the urban reserve areas is permitted. In particular, she argues that 75% of the existing RH-zoned lands should be developed first. The Hearings Officer disagrees. I find there is nothing in this plan policy language supporting Ms. Marquardt's interpretation.

e. "Developed" Means Actual Construction. Mr. Paine has argued that lands in the city limits should not be considered "developed" solely on the basis of the issuance of a building permit. In

response to Mr. Paine's argument, the applicant has indicated that the developed lands methodology and calculations were revised to include as "developed" lands those lands that are not vacant, regardless of building permit status.

2. Developed Lands Study. As discussed above, the applicant conducted a developed lands study to determine if the 75% capacity development requirement had been met. The applicant states, and the Hearings Officer concurs, that the Sisters plan does not provide an explicit methodology for determining whether the 75% developed requirement has been met. However, the Hearings Officer finds that the information and methodology used by the applicant is appropriate.

The record indicates that the applicant utilized inventories of buildable lands in the plan that categorize lands as developed and undeveloped. The most recent inventory of such land is found in Deschutes County Ordinance No. 81-039, which amended the 1979 plan. That document inventories the acreage of "buildable" lands within the Sisters City Limits but does not disclose what date was used to determine the location of the city limits. The 1981 adopted inventory considers land available for conversion (e.g., from single family to multiple family or from single family to commercial) as developed lands. The inventory also categorizes all public right of way and public lands as "developed/committed" lands. The inventory indicates that committed lands include USFS facilities, ODOT facilities, UAR-2-1/2 zones, schools, parks, and other potential public and quasi-public facilities. The inventories found in Ordinance No. 81-039 are included as Exhibit C to the application.

The 1979 plan also contains a "Buildable Lands" table on page 31. That table lists the number of "combined parcels" that are "buildable" considering parcel size, sewage disposal limitations and flood hazard areas along Squaw Creek. A copy of this table is included as Exhibit D to the application. The plan further states that "[o]riginal platted lots within the city are not adequate to accommodate individual sewage systems and it is necessary to combine parcels in order to be able to build." In addition, Finding #5 at page 57 of the plan's Residential Areas element states that "the originally platted 30 and 40 foot wide lots in Sisters are not adequate to accommodate new residential units and it is necessary to combine them reducing the total number of vacant buildable lots."

The record indicates that based upon these plan policies and discussions with county and city planning staff, the applicant developed the study methodology to determine whether the City was developed to 75% of capacity. The applicant's methodology and calculations are quoted below from the Burden of Proof:

First, the applicant determined which lots are presently vacant and which are developed. If a lot was developed with structures and utilities, it was treated as developed. This is consistent with the Plan's definition of "developed" land which is found in its definition of "improved land." The Plan states that "usually land with buildings and utilities would be called a developed area, while the term improved land more often described vacant land with utilities only."

Second, the Applicant reviewed City annexation records to establish the limits of the 1979 City. The Applicant prepared study maps that reflect the 1979 City limits. A copy of the study map is included as a part of Exhibit B.[¹]

Third, the Applicant determined the acreage of vacant and developed land within the 1979 city and its zoning. An acreage test was utilized as it is the only measure of developed land used by the Comprehensive Plan.

Fourth, a lot used as the drainfield area for a building on an adjoining lot was treated as a part of the developed lot if the remainder of the drainfield lot was not large enough to accommodate a building and drainfield. If a lot was partially developed with a drainfield, the portion of the lot used for the drainfield was treated as developed and the portion that is still available for development was treated as vacant. This approach is supported by the language of the Buildable Lands Section of the 1979 Plan, Exhibit D, referenced and incorporated herein.. The Applicant obtained information regarding drainfields from the Deschutes County Sanitarian and utilized the approach described in Item 6, below to determine whether a lot was suitable for development.

Fifth, public right of way and lands were treated as "developed/committed" lands. Deschutes County Ordinance No. 81-039 indicates that this is the correct approach. This approach also reflects reality as these areas are not available for development. This is also consistent with Ordinance No. 80-224 which lists public right-of-way and lands separately from vacant land.

Sixth, the Applicant reviewed all residential lots more than one acre in size to determine whether any portion of the property is available for development and might be considered vacant. In determining whether a vacant portion of a residential piece of property could be divided and developed, a 1/2 acre minimum lot size was used by the Applicant. This lot size is the minimum lot size required by the Deschutes County Sanitarian for a typical septic system drainfield. The same approach was utilized for commercial and industrial lots, but a minimum lot size of 1/6 of an acre and large parcel size of 2/6 of an acre were utilized. In determining lot size, the Applicant extended the property boundaries to the centerline of any adjoining right-of-way and treated that area as if it were a part of the lot. This is the method used by the County Sanitarian.

Seventh, the Applicant included all lands for which building permits had been issued as developed lands. They are being developed and, therefore, are no longer available for development. This step was recommended by the Deschutes County Planning Division.[²]

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¹ As discussed in the findings above, the applicant removed from the original study data the USFS and Three Winds Shopping Center lands that were not officially annexed to the city until 1980.

² As also discussed in the findings above, the applicant removed from the study methodology those lands that were included solely because they had received a building permit and instead included all vacant lands regardless of building permit status.

Eighth, the Applicant utilized Deschutes County Tax Assessor's maps and information to confirm uses and sizes of parcels. The Applicant found discrepancies between the land area determined by adding up the listed sizes of all parcels within the City and the mapped area of the City. As a result, figures were calculated using both the Assessor's parcel size and map information.

Finally, the Applicant took a conservative approach to its developed lands study. The Applicant elected to include all portions of City lots located within the flood plain for Squaw Creek, despite the fact that Plan language would warrant exclusion of this land. The Applicant also did not exclude lands that are unsuitable for development due to the presence of easements and septic permit denials. Both of these approaches lowered the percentage of developed land using the above methodology, the Applicant determined that between 81.40 and 81.84% of the 1979 City is presently developed.

The applicant submitted a table illustrating calculations from the original developed lands study. However, as discussed above, modifications to the methodology and calculations were made in response to objections from opponents, and a revised table was included in the applicant's revised Burden of Proof, as follows:

<i>Summary of Land Use Survey City of Sisters November 1995</i>		
	<i>Based on Assessors Computer Data</i>	<i>Based on the Map</i>
<i>1979 Gross Area of City Limits</i>	<i>382.27 acres</i>	<i>388 acres</i>
<i>Area of Rights of Way</i>	<i>88.28 acres</i>	<i>94 acres</i>
<i>Net Platted Area</i>	<i>293.99 acres</i>	<i>292 acres</i>
<i>Area That Is Built-Out</i>	<i>204.64 acres</i>	<i>204.83 acres</i>
<i>Area That Is Vacant and Buildable</i>	<i>89.35 acres</i>	<i>87.17 acres</i>
	<i>Build-out</i>	<i>Build-out</i>
<i>% of Area Built-Out</i>	<i>76.63 %</i>	<i>77.02 %</i>

The Hearings Officer finds that the developed lands study methodology utilized by the applicant is appropriate with the modifications discussed in the findings above. I further find that the calculations derived from this methodology are accurate and that they demonstrate compliance

with Urbanization Policy 3. I therefore find that the applicant has met the burden of proving that the 1979 City of Sisters has developed to 75% capacity.

4. Marginal agricultural lands within the urban growth boundary shall be classified as "urban reserve," to be used for limited agricultural purposes until such time as other non-agricultural lands develop first or until a demonstrated public need, consistent with these policies, can be shown to exist.

FINDINGS:

1. Opponents' Objections:

a. Zoning of Subject Property. Opponent William Boyer argues that the subject property is zoned EFU/UAR-10 and that it should continue to be used for agricultural purposes. The record indicates the subject property is *not* zoned for agriculture, although it has been utilized for agricultural purposes. Moreover, the Hearings Officer finds this parcel is by definition "marginal" agricultural land because it was designated as "urban reserve" when the plan was adopted.

b. Availability of Other Non-Agricultural Lands. Opponents argue there are several large parcels of non-agricultural land available for development within the Sisters UGB that should be developed before the subject property. Exhibit B to Howard Paine's April 2, 1996, letter in opposition identifies six such properties, two of which are zoned UAR-10 -- the USFS land and another parcel near the northwest corner of the UGB -- and four of which are zoned RS and located in the city limits.

In response, the applicant disputes that three of the parcels Mr. Paine has identified as "non-agricultural" and developable are actually in that category. The applicant argues the two UAR-10 zoned parcels are in the same category as the subject property -- that is, marginal agricultural land awaiting development when the 1979 city limits are developed to 75% capacity. The applicant argues that one of the RS-zoned parcels -- the Tehan property in the northeast corner of the city limits -- is currently in agricultural use. The applicant also argues that significant amounts of non-agricultural lands have been developed since the plan was adopted, citing the Sisters Industrial Park, the Buck Run and Rolling Horse Meadows Subdivisions and a number of individual commercial and office properties in the center of the city, and that large undeveloped parcels suitable for residential development no longer exist within the city limits due to strict septic system requirements. Finally, the applicant argues that the availability of non-agricultural lands in the UGB is only one of the two prerequisites for development of urban reserve lands in Urbanization Policy 4, the other being a demonstrated need.

The Hearings Officer concurs with the applicant's argument that the two UAR-10-zoned parcels north and northwest of the subject property are in the same category as the subject property and therefore have no greater priority for development. However, I find that the vacant RS-Zoned lands within the city limits, with the exception of the Tehan property, do constitute non-agricultural lands that have priority for development under Urbanization Policy 4. However, their capacity for residential development is questionable. As discussed in detail in the findings below,

these lands may not be developable without city sewer and because many of the RS-zoned parcels within the city limits currently are being used for septic drainfields and reserve areas.

For the foregoing reasons, I find that there are no non-agricultural lands within the Sisters UGB that have priority for development over the subject property.

3. No Establishment of Public Need. Opponents have argued there is no demonstrated public need for additional residential development because the population of Sisters has not increased at the rate anticipated in the comprehensive plan. The applicant responds that lack of population growth in the city limits in fact demonstrates a need for more housing in the city. The applicant points to evidence in the record indicating there has been a significant population *increase* within the Sisters School District which includes lands both inside and outside the city limits, as well as evidence that a considerable amount of residential-zoned land in the city has been committed to on-site septic system drainfields. The evidence of school district growth -- included in tables attached to the document entitled "Applicant's Additions and Corrections to Application" -- indicates enrollment in the district increased by nearly 30% from September of 1989 to September of 1994.

The applicant argues from this evidence that residential development has been forced to occur on rural lands *outside* the city limits due to lack of developable residential land within the city limits and strict sewage disposal regulations that have restricted or prevented residential development in the city. The applicant also relies on language in the city's final period review order which is included in the record as an exhibit to Betty Marquardt's March 5, 1996, testimony in opposition. In approving the city's periodic review, the order states:

"The city's population projections acknowledged in the plan have not been met. (see pages 28-29 Comprehensive Plan). While most commercial developments are locally owned, many business people choose to live outside of the city limits. *This trend has created a deficit in new housing starts within city.* Further complications resulting from an area-wide slowdown in the economy have brought the city less than expected growth. Even though population growth has been less than projected, the city feels major plan revisions are not necessary. Therefore, the anticipated turnaround in local economy (see Economic Study) the Comprehensive Plan will carry over into this planning period 1986-2006 the population projections of the 1982 acknowledged plan." (Emphasis added.)

In addition to this evidence, several persons submitted testimony that they had been unable to find suitable housing within the city limits and had consequently been forced to live outside the city.

The Hearings Officer finds the evidence clearly indicates that the Sisters area has grown both by build-out of developable lands in the city limits -- as documented in the applicant's developed lands study -- and by development in the outlying rural areas due to constraints on buildable residential-zoned land within the city limits. This pattern is contrary to the plan and statewide planning goals. Based upon this evidence, I find the applicant has demonstrated a public need for additional residential development in the city limits.

Open Lands (Page 56)

Open lands within the Urban Growth Boundary consist of open grazing lands, forest areas and open space.

Findings

1. **Agriculture:** Agricultural land within the Urban Growth Boundary is limited to grazing and is considered marginal and uneconomical for general agricultural production. Such lands are located adjacent to the present city limits. These areas will be held in "urban reserve" according to established urbanization policies.

Policies

1. Agricultural lands within the Urban Growth Boundary shall be maintained and used as "urban reserve" areas until such time as needed for urban expansion pursuant to established urbanization policies.

FINDINGS: As discussed in the findings above, the subject property is considered marginal agricultural land and has been held in reserve for urban residential development as required by these policies. Based upon the findings above, the Hearings Officer finds that the subject property is now needed for development as more than 75% of the 1979 city has been developed.

Residential Areas (Page 57)

Findings

1. Residential development in Sisters is held at relatively low density because of the lack of public sewers and limited water supply.
2. Most of the city consists of older housing units, many of which are being replaced in commercial zones and thereby reducing the number of available lots in the city.
3. There is not a sufficient amount of buildable lots available within Sisters to accommodate the projected growth. An additional 280 acres of residential land will be needed by the year 2000.
5. The originally platted 30 and 40 foot wide lots in Sisters are not adequate to accommodate new residential units and it is necessary to combine them reducing the total number of vacant buildable lots.
7. There is a shortage of apartment units in Sisters which is partly due to the lack of public sewers and an adequate water system.

Policies

- 1. Housing density shall be the basic and most important development criteria for residential areas.**
- 2. Residential densities indicated on the comprehensive plan shall be respected and reflected in city and county codes, ordinances and development policies. The intent of the plan is to indicate housing density rather than type of building construction permitted within various density areas.**

FINDINGS: The Hearings Officer finds the residential densities planned for and designated on the subject property are the densities allowed in the RH and RS zones. The proposed plan amendment will remove the "reserve" designation and allow the subject property to be developed at these densities consistent with this plan policy.

- 5. In areas without community services, housing densities shall be determined by the physical capabilities of the soils to accommodate individual sub-surface disposal systems and to provide adequate area for future subdivision.**

FINDINGS: The record indicates the applicant intends to develop the subject property with either individual on-site sewage disposal systems or with a community sewer system having a drainfield located on adjacent property within the Pine Meadow Ranch. The record also indicates the applicant's soil expert has concluded the soils on the subject property and the adjacent property are suitable for on-site sewage disposal. The Hearings Officer therefore finds the proposal is consistent with this plan policy.

Opponents have questioned whether the applicant's proposed sewage system would ultimately have to be maintained by the city. The applicant has responded that the system will be maintained by individual lot owners or by an owners' association in the case of a community sewer system. Opponents also have argued that the density of residential development proposed by the applicant cannot be achieved without city sewer. The applicant has responded that the subject property should be zoned for urban residential densities as contemplated in the plan, and that if it is determined by the county or the Department of Environmental Quality (DEQ) that the soils will only support on-site sewage disposal for a lesser density, the designated RS and RH zoning will allow denser development once city sewer is available.

The Hearings Officer concurs with the applicant's analysis and finds that the proposal is consistent with this policy.

- 9. Medium and high-density residential developments should be located where they have good access to arterial streets and are near commercial services or public open space.**

FINDINGS: A portion of the subject property is designated RH, allowing high-density residential development. The record indicates that the subject property is located within walking distance of

the downtown and its commercial services and downtown park. In addition, the property has good access to Hood Street, a designated arterial street, from Pine Street, a designated collector. The applicant has indicated when the subject property is developed, it plans to dedicate right-of-way to widen Pine Street and to improve the street along the subject property to the intersection of Hood Street and Pine Street. For these reasons, the Hearings Officer finds the proposal is consistent with this policy.

10. **Higher density residential areas should be concentrated adjacent to commercial services.**
11. **Higher density residential uses should be concentrated in closer-in areas to downtown to provide maximum convenience to highest concentrations of population.**

FINDINGS: The record indicates the RH-designated portion of the subject property adjoins property zoned for commercial use and is close to existing commercial services in the core downtown area, therefore meeting this plan policy.

22. **Schools and parks should be distributed throughout the residential sections of the community and every dwelling unit in the area should be within walking distance of a school or a park.**

FINDING: The record indicates the subject property is located within walking distance of all Sisters schools. The property also is located within walking distance of the downtown Sisters park. The Hearings Officer therefore finds the proposal is consistent with this policy.

Transportation Element (Page 71)

Policies

4. **Collector streets will service residential areas, off of arterials.**

FINDINGS: The record indicates the applicant plans to dedicate right-of-way and to improve Pine Street when it develops the subject property. This will allow Pine Street to serve its planned function as a collector street, consistent with this plan policy.

14. **Citizens should be encouraged to utilize methods of travel other than the automobile as much as possible to facilitate energy conservation.**

FINDINGS: As discussed above, the subject property is located close to the core downtown area and within walking distance of all Sisters schools. Therefore, the Hearings Officer finds that the proposal will facilitate residents' walking instead of using automobiles.

Economic Element (Page 75)

Policies

- 7. Zoning for the various land uses shall be done in a timely manner to assure proper balance of economic growth and residential development and the provision of public facilities and services.**

FINDINGS: As discussed in the findings above, the applicant has proven that the land within the 1979 Sisters City Limits has developed to 75% of capacity, thus making the timing of the proposed plan amendment and zone change consistent with the plan's urbanization policies. The applicant also argues the proposal will provide for the proper balance of economic growth and residential development and the appropriate extension and provision of public facilities and services by facilitating urban development of the subject property which adjoins a developed area of the city and is close to urban service providers. For the foregoing reasons, the Hearings Officer finds that the proposal is consistent with this plan policy.

Housing (Page 78)

Goal: To provide adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of households. To allow for flexibility of housing location, type and density within the Sisters Urban Growth Boundary consistent with Statewide Planning Goal No. 10.

Findings

- 2. There is an inadequate number of rental units available in the Sisters area. Additional rental units are needed to accommodate retired singles and couples.**

Policies

- 2. Zoning standards shall encourage high density development in appropriate areas to minimize the cost of public facilities and services and facilitate energy conservation.**

FINDINGS: The proposed plan amendment would remove the "reserve" designation and allow the portion of the subject property designated RH and located close to the center of Sisters to be developed for high density residential development that could address the city's needs for additional rental units. The Hearings Officer finds that the location of the RH-designated lands will make it less costly for the city and other urban service providers to serve the property and will also facilitate energy conservation by making it possible for residents to walk to area parks, schools and commercial services. For these reasons, the Hearings Officer finds the proposal is consistent with this plan policy.

3. **The Land Use Plan shall provide a sufficient amount of land for the various housing types. The amount of land allocated shall be consistent with the findings for housing needs.**

FINDING: The plan indicates an intention to make all urban reserve areas available for urban residential development by the end of 1999. The record indicates that no urban reserve lands have yet been converted to urban residential zoning. The Hearings Officer finds that the proposed plan amendment/zone change will begin this planned conversion and help the community provide the amount of land needed for projected growth. I further find that if the subject property is not made available for urban residential development in accordance with the plan, the Sisters area will continue to grow outside the UGB contrary to both the plan and with statewide planning goals.

Energy Conservation (Page 86)

Goal: To manage land uses in a manner to maximize the conservation of all forms of energy, based upon sound economic principles.

Findings

3. **A high degree of energy consumption in proportion to the size of the city is due to its geographic location in relation to major transportation routes, extensive commercial service area requirements and scattered low density developments in outlying rural areas that depend on Sisters for goods and services.**
5. **Low density and/or scattered development is not energy efficient.**

Policies

6. **Energy efficient transportation systems shall be promoted and reflected in the transportation plan. Methods of travel other than the automobile should be encouraged.**

FINDINGS: As discussed above, the proposed plan amendment/zone change will allow the subject property to be developed at urban residential densities, reducing the need for low-density residential development in the rural lands surrounding the Sisters UGB. The Hearings Officer finds that development of the subject property at urban densities will allow residents to walk to public schools, commercial facilities, industrial park, offices, churches, City Hall and city parks as an alternative to motorized transportation. For these reasons, the Hearings Officer finds the proposal is consistent with this plan policy.

9. **To eliminate energy waste in the provision of public services (school bus, fire protection, utilities, and transportation), development within the urban growth boundary must be orderly and "leapfrogging" shall be avoided where possible.**

FINDINGS: The record indicates the area adjacent to the subject property on the east is developed with single family residences. Therefore, the Hearings Officer finds that development of the subject property will not result in "leapfrogging" discouraged by this plan policy.

10. To minimize transportation needs, higher densities should be located near urban centers and along major transportation corridors.

FINDINGS: As discussed in the findings above, the proposed change to RH zoning for the northernmost portion of the subject property will further this policy by allowing higher density development adjacent to commercial properties and businesses.

B. CONFORMANCE WITH APPLICABLE STATUTES.

FINDINGS: The Hearings Officer finds that applicable state statutory requirements are reflected in the county's acknowledged comprehensive plan and zoning and procedures ordinances. Therefore, I find that compliance with those ordinances constitutes compliance with state statutes. I further find that all procedural requirements have been or will be met in that the county will have conducted at least one public hearing prior to enactment of the proposed zone change and will have provided a minimum of 10 days advance public notice of both public hearings in this matter in a newspaper of general circulation in the county -- i.e., the Bend "Bulletin" -- and mailed notice to the record owners of property within 100 feet of the subject property.

C. CONFORMANCE WITH APPLICABLE STATEWIDE PLANNING GOALS.

FINDINGS: At the outset, the applicant asserts that statewide land use planning goals are not applicable to the proposed zone change, relying on Opus Development Corp. v. City of Eugene, cited above. There, LUBA held affirmed that the challenged zoning ordinance amendments were subject to review for compliance with statewide planning goals where the comprehensive plan did not contain specific policies or other provisions providing the basis for the proposed amendments. The applicant argues that since the city's acknowledged plan complies with the goals, and since the proposed zone change is expressly contemplated in the plan's Urbanization Policy 3, the zone change necessarily complies with the statewide planning goals and does not require a separate review for goal compliance.

The Hearings Officer concurs with the applicant's analysis that no review for statewide planning goal compliance is required for the proposed zone change. However, because this decision may be appealed and the issue of goal compliance may be an issue in that appeal, the Hearings Officer makes the following findings with respect to the proposal's compliance with the applicable statewide planning goals in order to assist the Board of County Commissioners:

Goal 1, Citizen Involvement will be met by Deschutes County, which will hold a public hearing regarding the proposed zone change. The county will publish notice of its hearing in The Bend Bulletin, a newspaper of general circulation within Deschutes County. The county will also mail

notice of the hearing to surrounding property owners and to those affected by the proposed plan amendment. This application will be available for citizen review and comment once it is filed.

Goal 2, Land Use Planning requires that at least one public hearing be held prior to adoption of comprehensive plan and zoning ordinance amendments. A public hearing will be held prior to adoption of the proposed zone change and comprehensive plan amendment.

Goal 3, Agricultural Lands and Goal 4, Forest Lands do not apply to this review as the subject property is located within an urban growth boundary and the property is not designated as agricultural or forest land by the comprehensive plan.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources continues to be met by the plan as the plan contemplated that the subject property would be developed with housing once the city developed to 75% of capacity. The plan calls for the subject property to serve as community open space until that point in time, a function it has served since plan adoption. Further, parks district systems development charges will be required by the county's subdivision ordinance at the time the subject property is developed, assuring that public park land will be provided.

Goal 6, Air, Water and Land Resources Quality required the county and city to develop a comprehensive plan that would not degrade air, water and land resources in applicable air sheds and river basins. The Sisters Plan, with its planned expansion into the urban reserve areas, was acknowledged by the state as meeting this goal. The applicant's zone change request does not change any of the mechanisms adopted in the plan or local ordinances to assure compliance with Goal 6. For instance, the county strictly regulates sewage disposal and the applicant will be required to obtain county and/or DEQ approval for any sewage disposal system. No development will be allowed on the subject property unless the sewage generated by the uses on that property will be properly treated. At present, the county requires that an area of ½ acre be available for each residential lot to assure water quality protection. The close-in location of the subject property will eliminate the need for many resident vehicle trips as many community businesses, offices and parks are located within easy walking distance of the subject property.

Goal 7, Areas Subject to Natural Disasters and Hazards. The subject property is not located in an area recognized in the plan as a natural disaster or hazard area. Recent studies of the risks posed by potential flooding from Carver Lake determined that the risk had been greatly overestimated and that the lake does not pose a significant threat of flooding to the subject property. The entire Central Oregon area is subject to possible volcanic and earthquake risks, although there have been no recent, major volcanic eruptions or earthquakes. The approval of this application will not affect those risks.

Goal 8, Recreational Needs. Deschutes County met its obligation to provide for the recreational needs of its citizens by adopting a park dedication and development ordinance, Chapter 17.44 of the Deschutes County Code. Compliance with Chapter 17.44 will be achieved by the assessment of parks district systems development charges at the time building permits are issued on the subject property.

Goal 9, Economic Development. Approval of this zone change will make more land available for residential development. Development of the property will provide jobs for area residents.

Goal 10, Housing is met as the plan indicates that all urban reserve areas will be needed by the year 2000 to meet area housing needs. The proposed change will make the first major reserve area available for development approval in 1996 or 1997.

Goal 11, Public Facilities and Services requires the county to plan and develop the Sisters urban area in a timely, orderly and efficient fashion, based upon the availability of public services. Needed public facilities and services must be provided before development occurs. The plan's urbanization policies make this goal a reality. The zoning ordinance implements Goal 11's requirement of orderly development by requiring that adequate public services be provided as a condition of subdivision approval.

Goal 12, Transportation has been met by the adoption of the community's Transportation Plan. All development of the subject property will be required to comply with that plan. That plan was developed with the understanding that urban reserve areas would be developed at urban densities prior to the year 2000 and once 75% of the city developed. The plan designates Hood Street as an arterial and Pine Street as a collector.

The applicant has indicated its intention to widen and improve Pine Street along the frontage of the subject property and from the northern boundary of the subject property to the intersection of Hood Street when it develops the subject property for residential use, and this requirement will be a precondition to development of the property. The improvement of Pine Street will allow residential traffic generated by existing Pine Street homes and new homes built on the subject property to safely access Hood Street.

Goal 13, Energy Conservation requires that land and uses developed on the land be managed so as to maximize the conservation of all forms of energy, based upon sound economic principles. The location of the subject property within walking distance of downtown Sisters will encourage residents to leave their cars at home when making local trips.

Goal 14, Urbanization is met as the zoning proposed for the subject property will allow urban density development with urban uses on land located within an urban growth boundary, as contemplated by this goal.

Goal 15, Willamette River Greenway is not applicable as the subject property is not located within Willamette River Greenway.

Goal 16, Estuarine Resources is not applicable as the subject property is not a part of an estuary or wetland and does not contain an estuary or wetland.

Goal 17, Coastal Shorelands is not applicable to property in the Sisters urban area as there are no coastal shorelands in the urban area.

Goal 18, Beaches and Dunes is inapplicable as the subject property does not include beaches or dunes.

Goal 19, Ocean Resources is inapplicable.

D. PUBLIC NEED FOR ZONE CHANGE.

FINDINGS: As discussed in detail in the findings above concerning the proposal's compliance with the comprehensive plan, the Hearings Officer has found the applicant has demonstrated a public need for additional residential development, including rental units, in the Sisters UGB. Those findings are adopted and incorporated by reference herein.

**E. DEMONSTRATED PUBLIC NEED WILL BE BEST SERVED BY ,
CHANGING THE ZONE ON THE SUBJECT PROPERTY COMPARED
WITH OTHER AVAILABLE PROPERTY.**

FINDINGS: The applicant has argued the need for additional urban residential land is best served by changing the classification of the subject property, rather than by changing the zoning of other available property, for the following reasons:

1. The subject property is located within walking distance of the commercial center of the City of Sisters. This proximity will make it easy for future residents to walk to area shops and restaurants and reduce dependence by residents upon their cars for intra-city travel. Many of the other UAR-10 zoned areas do not share this desirable characteristic with the subject property.
2. The subject property is located along Pine Street, a collector, that can carry traffic to and from the subject property. Pine Street provides convenient access to Hood Street which is listed in the plan as a highway. The applicant has indicated its willingness to dedicate additional right-of-way for Pine Street and to improve the road to collector street standards in order to facilitate this planned change.
3. Developing land located within the city's urban growth boundary before expanding the UGB to include more developable land furthers orderly growth of the community from the center outward. Lots adjoining the east side of the subject property across Pine Street are almost completely developed with residences. Development of homes on the west side of this street as proposed by the applicant would be a logical addition to the Pine Street neighborhood.
4. The airport overlay zone places little or no burden upon development of the subject property, whereas it places significant restraints upon the development of the UAR-10 zoned property that adjoins the airport.

The Hearings Officer concurs that all of these circumstances make the subject property appropriate for urban density residential development.

In addition to opponents' arguments set forth in the findings above, they have argued that the subject property is not suitable for the proposed development and that other property is more suitable. Each of opponents' objections is discussed below.

1. Other RH-Zoned Property Should Be Developed First. Opponents have argued the proposed zone change from UAR-10 to RH should be denied because there is vacant property within the Sisters City Limits currently zoned RH and available for development. The Sisters zoning map indicates there are three areas of RH-zoned land in the city limits: two areas on either side of the General Commercial-zoned lands in the center of town, and a third area west of Hood Street and north of the MacKenzie Highway. Table 10A of the Sisters plan, updated in 1981, containing the buildable lands inventory within the Sisters City Limits, shows that at that time there were 26 acres of net buildable lands zoned RH. However, the record indicates that much of that acreage has since been developed -- particularly as drainfields for adjacent and nearby commercial uses, making them unavailable for other development. (See, e.g., Exhibit B, Part 2, to the applicant's developed lands study; Betty Marquardt's March 5, 1996, letter in opposition.)

Exhibit B to the developed lands study contains a chart showing the status of each lot in the Sisters UGB as of the date the study was conducted and indicates there remain only sixteen RH-zoned parcels within the city limits that are vacant and are not currently being used for septic drainfields. Section 11 of the Sisters Urban Area Zoning Ordinance provides that the minimum lot size in the RH Zone is that which is sufficient to meet DEQ's and the county's on-site septic system requirements. Half of the vacant RH-zoned lots are under 10,000 square feet in size, making it questionable whether they could be developed for high-density residential uses *and* have enough space to include a drainfield and reserve area. Their size and the lack of a city sewer system may well account for why these lots have not already been developed for high-density residential uses. The remaining eight vacant RH-zoned lots range in size from 13,680 to 25,200 square feet, with only two lots being larger than 20,000 square feet. The lots under 20,000 square feet in size also may have questionable potential for high-density residential development, leaving only two RH-zoned lots potentially developable at the designated density.

For the foregoing reasons, the Hearings Officer finds there is insufficient vacant, developable RH-zoned land in the Sisters UGB and that, therefore, the public need for high-density, multi-family housing identified in the Sisters plan can be best met by changing the zone on the affected portion of the subject property from UAR-10 to RH.

2. RH Density Is Not Appropriate on the Subject Property. Opponents have argued that high-density residential development is not appropriate for the subject property because of its proximity to existing standard-density residential development to the east and the Patterson Llama Ranch to the west. However, as discussed in the findings above, the Hearings Officer has found the northern portion of the subject property has a plan designation of RH reserve, indicating the judgment by the City of Sisters that this area is suitable for high-density residential development.

Opponents also have argued that adequate sewage disposal will not be possible on the subject property for high-density residential development. Evidence in the record refutes this argument. Exhibit AR-2 to the applicant's revised Burden of Proof indicates that the applicant's soils expert,

Dr. Paeth, has concluded soils on the subject property and the adjacent Pine Meadow Ranch property are suitable for sewage disposal. In addition, Exhibit AR-4 contains a letter from the applicant's architect, David Edrington, indicating DEQ's informal approval of the concept of providing off-site drainfields for a community sewer system on Pine Meadow Ranch property adjacent to the subject property with a recorded easement for such use.

The Hearings Officer is aware that the type, location and capacity of any off-site community sewage disposal system must be approved by DEQ at the time of a development proposal. However, I find that even if it is determined at the time of a development proposal that on-site or off-site soils are not suitable to provide sewage treatment for a high-density residential development, the proposed zone change nevertheless is appropriate in order to assure that this density of development can be provided once a city sewer system is constructed.

3. Development of the Subject Property Will Ruin the Mountain View. Opponent Virginia Groom has argued that the subject property should not be rezoned because development on it will obstruct the view of the Cascade Mountains from properties to the east. The Hearings Officer is familiar with the subject property and aware of the sensitivity of its location and its extraordinary view. However, the subject property has been designated for urban development in the Sisters plan since it was adopted in 1979. Thus, development of this property has been contemplated for nearly twenty years. I find there is no legal basis for me to deny the applicant's proposed zone change because of the subject property's unique location or to protect other property owners' views.

4. Development of the Subject Property Will Unduly Burden the City's Infrastructure. As discussed above, the subject property has been designated for urban density residential development since the plan was adopted in 1979. The proposed rezoning is consistent with that designation and with plan policies setting forth the circumstances under which development of the property may take place. The Hearings Officer finds that any development on the subject property will be subject to provisions of the Sisters Urban Area Zoning Ordinance and the county's subdivision ordinance. The subdivision ordinance requires the developer to construct required infrastructure, and prohibits development that would unduly burden the existing infrastructure.

The record indicates the City of Sisters recommends approval of the applicant's proposal, apparently concluding that the proposal is consistent with the plan and that development on the subject property -- with required infrastructure improvements -- can be accommodated within the city's infrastructure. Opponent Virginia Groom argues the city's approval recommendation should be given little weight because citizen participation in the city's consideration of its recommendation was inadequate. The Hearings Officer finds the issue of the city's procedure in recommending approval of the applicant's proposal is not before me and not relevant to the proposal's compliance with the plan and zoning ordinance.

5. Sisters Residents Do Not Want Additional Development in the Urban Area. Opponents argue that the majority of city residents oppose development of the subject property and believe the proposed plan amendment and zone change will destroy Sister's quality of life. The Hearings Officer finds the applicant's proposal must be evaluated solely on the basis of its compliance with

applicable plan and ordinance provisions, none of which includes a determination of public opinion. I further find that questions of how development of the subject property will affect quality-of-life issues has primarily to do with impacts on infrastructure, and that those impacts can be addressed at the time a development proposal is considered.

6. Development of the Subject Property Is Inconsistent With the Airport Overlay Zone. Opponent Howard Paine argues that over half of the subject property lies within the Airport Approach Safety Zone and that urban density residential development within that zone will create undue safety hazards for residents. The applicant responds that the entire Sisters Urban Area is covered by some portion of the Airport Overlay Zone, but that based upon calculations made from the text of the Sisters Urban Area Zoning Ordinance only a small portion of the subject property lies within the Approach Safety Zone. The applicant argues that in any event the zone's height restrictions must be met in any future development on the subject property. Finally, the applicant argues that development of the subject property will present a significantly lesser hazard than development of other UAR-10-zoned property located closer to the Sisters Airport.

The Hearings Officer concurs with the applicant's analysis of the impacts of the Airport Overlay Zone on the proposed development, and finds that the subject property is not rendered inappropriate for urban-density residential development by that zone.

For the foregoing reasons, the Hearings Officer finds the demonstrated need for additional residential development in the Sisters Urban Area would be best served by rezoning the subject property compared with other property in the urban area.

F. THERE IS PROOF OF A CHANGE OF CIRCUMSTANCES OR MISTAKE IN THE ORIGINAL ZONING.

FINDINGS:

1. Change of Circumstances. The applicant argues there has been a change of circumstances since the Sisters Urban Area Zoning Ordinance was adopted justifying the proposed zone change from UAR-10 to RS and RH, consisting of development of the 1979 City of Sisters to 75% of capacity as contemplated in the Sisters plan and documented in the applicant's developed lands study discussed in detail in the findings above. In response, opponents have challenged the methodology and calculations in the developed lands study as discussed above. In addition, opponents have asserted that the only relevant change of circumstances since the plan was adopted -- the failure of the city's population to grow as projected in the plan -- in fact argues *against* the proposed zone change.

As discussed above, the Hearings Officer has found that the applicant's developed lands study demonstrates the 75% capacity development prerequisite for the proposed zone change. In addition, I have found that the record indicates the city's population has not grown as projected because of lack of available housing within the city limits forcing growth in the city's outlying rural areas contrary to the plan and statewide planning goals. For these reasons, I find the

applicant has met the burden of demonstrating a change of circumstances justifying the proposed zone change from UAR-10 to the RS and RH zoning contemplated in the plan.

2. Mistake. Opponents have argued that there was a mistake in the original UAR-10 zoning of the subject property and that it should be rezoned to EFU to prohibit urban development. The Hearings Officer finds there is no evidence in the record to support this argument. To the contrary, the record indicates the plan designation and zoning of the subject property have been determined appropriate through acknowledgment and subsequent periodic review by the Land Conservation and Development Commission (LCDC).

G. ANNEXATION TO THE CITY OF SISTERS WILL ACCOMPANY THE ZONE CHANGE.

FINDINGS: This criterion appears to require the applicant to consent to annexation of the subject property as a condition of approval of the requested zone change. Opponent Betty Marquardt has asserted that annexation should not occur until the infrastructure required for development on the subject property has been constructed and approved. The Hearings Officer concurs with Ms. Marquardt that annexation after development represents the more typical sequence of events. However, I find this criterion is clear in requiring annexation *with the zone change*. I therefore find that as a condition of approval the applicant will be required to provide a written consent to annex the subject property to the City of Sisters prior to adoption of the zone change ordinance by the Deschutes County Board of Commissioners.

Opponents have argued that annexation of the subject property into the City of Sisters will impose an undue burden on the city's taxpayers and infrastructure. As discussed in the findings above, the city has indicated its support for the proposed zone change. In addition, the applicant/developer will be required as a condition of any development approval to construct and improve infrastructure required to serve any development on the subject property to county standards and specifications. The Hearings Officer concurs with the applicant's observations that development of the subject property and annexation to the city will increase the city's tax base and tax and other revenue the city requires to construct and maintain its infrastructure.

B. CONFORMANCE WITH TRANSPORTATION PLANNING RULE

1. OAR 660-12-060, Plan and Land Use Regulation Amendments

(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.

FINDINGS: The Hearings Officer finds this rule is applicable to the applicant's proposal because it includes proposed amendments to the Sisters Urban Area plan and zoning ordinance. However, as discussed in the findings below, I concur with the opinion of ODOT as expressed in Mark DeVoney's March 5, 1996, letter included in the record that the proposal will not "significantly

affect" any transportation facilities as contemplated by this administrative rule provided the transportation facilities impacted by the proposed development are dedicated and constructed as proposed by the applicant and recommended by ODOT.

(2) A plan or land use regulation amendment significantly affects a transportation facility if it:

(a) Changes the functional classification of an existing or planned transportation facility;

(b) Changes standards implementing a functional classification system;

FINDINGS: The Hearings Officer finds the proposed zone change from UAR-10 to RS and RH will not change the functional classifications of Pine Street or Hood Street or change the standards applicable to these facilities. The proposed change was anticipated and planned for by the City of Sisters. Pine Street is designated as a collector street in the current (1985) Sisters Transportation Plan (attached as Exhibit AR-3 to the applicant's revised Burden of Proof). This designation was intended to provide a convenient collector street for residential development in this part of the Sisters Urban Area and on the subject property. When the subject property develops, Pine Street will be developed to collector standards and begin to function as a collector. Collector streets gather local street traffic and take it to major area streets and highways. In this case, Pine Street will take residents to Hood Street, a designated highway. Hood Street will take residents to the core of the community or to other area highways.

(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

FINDINGS: Although there is no specific development proposal before me at this time, the applicant's conceptual development plan and revised Burden of Proof indicate the RH-designated portion of the subject property could be developed for a maximum of 144 units (10 units/acre x 14.435 acres). The ITE (Institute of Traffic Engineers) trip generation tables project that apartment buildings will generate 6.47 average daily vehicle trips (ADT's) per unit, or a total of 931.68 ADT's for the RH portion of the property.

The remaining approximately 35 acres of the subject property are proposed to be developed for single-family residences. The ITE tables project 9.55 ADT's for single-family dwellings. Because of the uncertainty about the type and capacity of the sewage disposal system developed for the proposed residential uses, it is not possible to accurately determine at this time the maximum density of the RS portion of the subject property. However, using 100 single-family residential lots as an estimate (considering the acreage potentially lost to septic systems and public right-of-way dedication) the ITE manual projects a total of 955 ADT's (100 x 9.55) for those residents. Thus, the total anticipated ADT's from development of the subject property would be approximately 1887 -- well below the design capacity of 7,000 ADT's for a collector.

As the applicant notes its Burden of Proof, under the current UAR-10 zoning subject property is capable of being developed with allowed uses which could generate many vehicle trips each day, including day care centers, churches or a surface mining operation with potentially greater traffic impacts on the street system and upon the surrounding neighborhood than would the proposed residential uses permitted in the RS and RH Zones.

(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.

FINDINGS: The record indicates Sister's TSP is in the process of adoption. The applicant asserts its planned dedication and improvements for Pine Street are consistent with this proposed TSP. However, current transportation plans for the city and the county do not contain any minimum acceptable level of service identified for Pine Street or Hood Street. The Hearings Officer finds that it is likely a traffic impact study will be required to accompany any development proposal for the subject property, and that such study will be required to determine both at what level of service Pine Street and Hood Street are projected to operate with anticipated traffic from development of the subject property, and what right-of-way and improvements to these facilities will be required to accommodate this traffic and assure an adequate level of service for each facility.

Even assuming the applicant's proposal will "significantly affect" a transportation facility, the Hearings Officer finds the subject property can be developed consistent with the provisions of OAR 660-12-060 (1), as discussed in the findings below, if the right-of-way dedication and improvements to Pine Street and connections between Pine and Hood Streets are provided as described by the applicant in its proposal.

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

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

FINDING: The Hearings Officer finds the proposed zone change from UAR-10 to RS and RH will have the effect of limiting the types of land uses that can occur on the subject property and will assure that such uses are consistent with the function, design capacity and level of service of the two affected transportation facilities — Pine Street and Hood Street. The record indicates that the planned function of Pine Street is as a collector street. The street is presently a narrow street without curbs and sidewalks. The street serves residences adjoining the street and carries little other traffic. Improvement of the street and development of the subject property will allow the street to function as a collector street.

The applicant has indicated its willingness to design and build Pine Street to a capacity capable of handling all traffic generated by proposed development on the subject property and the rest of the

Pine Street neighborhood when it develops the subject property and to have these improvements included as a condition of approval of this zone change application. I concur with the applicant's observation that there is no logical reason to believe Pine Street will not function well after improvement to collector street standards since it presently carries little traffic, contains no curves and has no vertical curve or grade problems. As discussed in the findings above, urban-density residential development of the subject property will generate a limited amount of traffic as it borders the urban growth boundary on the west.

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

FINDINGS: The Hearings Officer finds it is not necessary to amend the county's or city's transportation plan to accommodate traffic generated from uses allowed on the subject property under the proposed RS and RH zoning. The collector designation for Pine Street will provide transportation facilities adequate to support the proposed residential uses. Pine Street provides direct and safe access to Hood Street, a highway that can take residents throughout the community and to other cities.

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

FINDINGS: The Hearings Officer finds the applicant's proposal will reduce the need for residents to use their vehicles and will allow the residents to walk or ride bicycles to the businesses, services and schools. Therefore, I find there is no need to alter land use designations to accommodate the applicant's proposal.

(3) Determinations under section (1) and (2) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

FINDINGS: The Hearings Officer finds that review of this application has been coordinated with the City of Sisters, the Deschutes County Public Works Department and ODOT, which are the affected transportation service providers, and that none of these providers has determined the proposal will exceed the capacity or create an unacceptable level of service for adjacent affected streets. In fact, Exhibit AR-5 to the applicant's revised Burden of Proof is a letter from Mark DeVoney, regional ODOT planner, indicating ODOT's approval of the applicant's transportation system proposals for the access to and from the subject property via Pine and Hood Streets.


IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the proposed plan amendment to remove the "reserve" designation from the subject

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the proposed plan amendment to remove the "reserve" designation from the subject property, and the proposed zone change from UAR-10 to RS and RH, **SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The applicant shall submit to the City of Sisters on a form acceptable to the city a consent to annexation of the subject property to the City of Sisters. This consent shall be provided to the city prior to action by the Deschutes County Board of County Commissioners approving the proposed plan amendment and zone change.
2. The applicant shall submit to the county planning division a legal description of the subject property, separately describing the portions of the subject property to be rezoned RS and RH, respectively, for attachment to the county ordinance adopting the zone change approved in this decision.

Mailed this 20th day of May, 1996.


Karen H. Green, Hearings Officer

APPENDIX A
(Letters in Support and Opposition)

<u>Name</u>	<u>Date</u>	<u># of Pages (w/out exhs.)</u>
<u>Letters In Support</u>		
1. Jim and Carol DeKorte	3-5-96	1
2. The Arends Family	3-5-96	1
3. Arthur C. Pratt	3-5-96	1
4. David L. Straight	3-5-96	1
5. Tim and Kara Calmettes	3-5-96	1
<u>Letters in Opposition</u>		
1. Gordon Petrie	11-19-95	1
	3-5-96	2
	4-2-96	2
	4-9-96	2
2. John and Virginia Groom	2-16-96	1
3. Howard Paine	3-5-96	7
	4-2-96	4
	4-9-96	1
4. William Boyer	no date	2
5. Betty Marquardt	3-5-96	14
	4-2-96	4
6. Blair and Kathleen Osterlund	3-26-96	2
7. John Allen	3-26-96	1
8. Virginia Groom	4-2-96	2

Exhibit D

BOARD OF COUNTY COMMISSIONERS'
SUPPLEMENTAL FINDINGS IN SUPPORT
OF ORDINANCES 96-054 and 96-062

Applicants proposed a plan map amendment and a zoning map amendment to certain property located within the Sister Urban Growth Boundary but outside the Sisters City limits. Because of the property's location, it is subject to the Sisters Urban Area Comprehensive Plan and the Sisters Urban Area Zoning Ordinance, as administered under County jurisdiction.

These ordinances were heard before the County Hearing Officer pursuant to Title 22, the Deschutes County Land Use Procedures Ordinance. On May 20, 1996, the Hearing Officer issued a decision recommending approval of the subject ordinances. The Plan Amendment was not appealed and the matter was taken before the Board for adoption of an ordinance. The Board determined at its June 19, 1996 regular meeting that it would proceed to adopt an ordinance effecting the proposed Plan map amendment.

The accompanying zone change was appealed in a timely manner. Pursuant to DCC 22.32.035, the Board determined at its June 19, 1996 meeting that it would decline to hear the appeal and would adopt the ordinances without further testimony of any kind. An order to that effect was to be entered at the same time as these ordinances were adopted.

After the appeal period had run for appealing these ordinances but before the ordinances were set for adoption by the Board of County Commissioners, the Board received objections from Howard Paine and Gordon Petrie alleging that the Board was required under the Sisters Urban Area Comprehensive Plan and the Joint Management Agreement between the County and the City of Sisters, to hold a joint hearing before the Board of County Commissioners and the City of Sisters City Council before the subject ordinances could be enacted.

The purpose of these findings is to address the procedural issues raised by Mr. Paine and Mr. Petrie. It appears from the letters submitted by Mr. Paine and Mr. Petrie that they raised their objections on their own behalf and not on behalf of any organization.

Ordinarily, the objections of Mr. Paine and Mr. Petrie (Objectors) would not be considered. They would have been deemed to have been waived, as being objections of a procedural nature outside the hearing process. However, given that the Objectors raise an issue of whether a hearing is required and that they might raise the same arguments in a procedural challenge at LUBA, the Board determines that it should respond to their arguments in adopting this ordinance so as to have findings on this issue should the issue be reviewed at LUBA.

Requirements of Joint Management Agreement:

Objectors indicate that under the County's Joint Management Agreement with the City of Sisters, the subject ordinances must be heard before a joint meeting between the governing bodies of the City and the County. In making this argument, Objectors refer to Paragraph 7 of the Joint Management Agreement between the City and County.

The Board finds that Objectors misread Paragraph 7 of the Joint Management Agreement. A careful reading of the language of that Paragraph shows that the paragraph was intended to cover coordination procedures in those instances in which either the City or the County chose to initiate legislative text changes to the Sisters Area Comprehensive Plan. This can be seen in the language that speaks about the necessity of the City and County to circulate a discussion draft and to agree on language before setting the matter for a hearing. Clearly this process contemplates a proposal that is within the power of the respective governmental entities to propose and alter rather than a proposal from a private party that must be acted upon.

The Board finds that the kind of application involved in this instance is covered by Paragraph 2 of the Agreement, as a "land use decision" or "action" within the unincorporated urbanizable area of the County. That provision recognizes jurisdiction in the County to act upon such applications.

Requirements of Comprehensive Plan:

Objectors argue that, at Page 108, the City of Sisters Comprehensive Plan requires that the Planning Commissions of the City and County are to review and make recommendations on amendments to their respective governing bodies and that enactment of amending ordinances shall be undertaken by each governing body after each has held a public hearing.

Objectors' argument misreads the Comprehensive Plan. The Board finds that the section quoted by Mr. Paine is somewhat confusing as to whether by its terms it refers to just legislative changes or to quasi-judicial changes and legislative changes. However, it is clear from Section 3 of Ordinance PL-16 that adopted the Comprehensive Plan that quasi-judicial amendments were to be made to the Plan "in accordance with the procedures described in the Oregon Revised Statutes, Urban Growth Management Agreement, County Procedural Ordinance PL-9, and subsequent amendments and revisions thereof." The Board finds that it is also clear from the last sentence of the section quoted by Objectors that in cases of conflict, the procedures specified in PL-16 should govern.

As set forth above, the Board finds that the Urban Management Agreement does not require a joint hearing of the governing bodies to

adopt a quasi-judicial plan amendment. It does not specify that a hearing be held before the Board of County Commissioners before a quasi-judicial plan amendment can be adopted, and therefore, the Board finds that the County is free to describe those procedures in its Procedures ordinance.

As for the Oregon Revised Statutes, the Board finds that, as amended, the Oregon Revised Statutes allow for hearings officers to make decisions on plan amendments such as this that do not involve an exception or lands designated agricultural or forestlands. ORS 215.431. The Board finds that Section 22.28.030 of the County's procedures ordinance is intended to implement ORS 215.431(1).

As for the PL-9, the Board finds that at the time PL-16 was adopted, PL-9 contained the procedures that governed land use proceedings, including the processing of all "permit" applications. Under the definition section of PL-9, the term "permit" included requests for a change in a comprehensive plan. PL-9, Sections 2.005, 2.040, 3.000. The Board takes notice of and finds that the County's land use procedures have subsequently been extensively revised, including by revisions under Ordinance 82-011 (which replaced PL-9 with new procedures) and subsequent revisions to the County's land use procedures set out under Ordinance 82-011, including Ordinances 90-007 and Ordinances 95-045. These latter ordinances made changes to the County's land use procedures in its codified form under Title 22 of the County Code. The Board also takes notice of and finds that at the time the latest changes were made to Title 22, the Board made corresponding changes in Ordinance 95-050 to the Sisters Urban Area Zoning Ordinance to make the procedures set forth there consistent with the procedures set forth in Title 22.

Accordingly, by following the procedures set forth in Title 22, specifically DCC 22.28.030, the Board finds that it has complied with any procedural requirements set forth in the Sisters Area Comprehensive Plan. Objectors have not challenged whether the County has acted consistent with the provisions of Title 22, and the Board finds that its actions are consistent with Title 22 procedures. That is all that is required of the County.