



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

AMENDED NOTICE OF ADOPTED AMENDMENT

December 27, 2007

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 009-07



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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: January 10, 2008

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

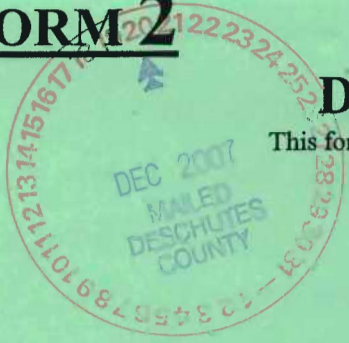
If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the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

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

Cc: Doug White, DLCD Community Services Specialist
Mark Radabaugh, DLCD Regional Representative
Jon Jinings, DLCD Regional Representative
Chris Bedsaul, Deschutes County

<paa> ya

FORM 2



D L C D NOTICE OF ADOPTION DEPT OF

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

DEC 24 2007

(See reverse side for submittal requirements)

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: Deschutes County Local File No.: ZC-07-3
(If no number, use none)

Date of Adoption: 12-12-07 Date Mailed: 12-20-07
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 5-23-07

- 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 see Attached.≡

A zone change of SM to UAR-10 to be in conformance with the underlying
general plan designation. The subject property is zoned SM and not on
County Goal 5 inventory.

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

Same

Plan Map Changed from : _____ to _____

Zone Map Changed from: Surface Mining (SM) to Urban Area Reserve (UAR-10)

Location: Map 17-11-13-0000-500 Acres Involved: 104

Specify Density: Previous: 0 New: 10

Applicable Statewide Planning Goals: 5 and 12

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 009-07 (16119)

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

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

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

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

Deschutes County, DOGAMI and City of Bend

Local Contact: Chris Bedsaul Area Code + Phone Number: 541-383-6719

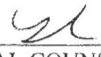
Address: 117 NW Lafayette City: Bend

Zip Code+4: 97701 Email Address: _____

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 Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18, the Deschutes *
County Zoning Map, to Change the Zone * ORDINANCE NO. 2007-027
Designation on Certain Property from Surface *
Mining (SM) to Urban Area Reserve (UAR-10). *

WHEREAS, Eric Coats and Robin Coats have proposed a zone change to Title 18, Deschutes County Zoning Map, to rezone certain property from Surface Mining (SM) to Urban Area Reserve (UAR-10) Zone; and

WHEREAS, notice was given and review of the Hearings Officer decision was conducted on November 26, 2007, before the Board of County Commissioners ("Board") in accordance with applicable law; and

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

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

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

Section 1. AMENDMENT. DCC Title 18, Zoning Map, is hereby amended to change the zone designation of the subject property, described as tax lot 500 in Section 23 of Township 17 South, Range 11 East, Willamette Meridian, and as further described by the legal description attached as Exhibit "A" and depicted on the map set forth as Exhibit "B", and by this reference incorporated herein, from Surface Mining (SM) to Urban Area Reserve (UAR-10) Zone.

////

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, dated September 28, 2007, as Exhibit "C", and by this reference incorporated herein.


Dated this 12th of December 2007

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


MICHAEL M. DALY, CHAIR


DENNIS R. LUKE, VICE CHAIR

ATTEST:


Recording Secretary

- absent -
TAMMY BANEY, COMMISSIONER

Date of 1st Reading: 26th day of November, 2007.

Date of 2nd Reading: 12th day of December, 2007.

Record of Adoption Vote

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

Effective date: 13th day of March, 2008.

ATTEST:


Recording Secretary

A tract of land located in the Southeast Quarter (SE ¼) of Section 23, Township 17 South, Range 11 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Beginning at the Southeast corner of said Section 23; thence N 89° 51' 34" W, along the South line of Section 23, a distance of 1332.17 feet to the Southwest corner of the Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section 23; thence N 00° 06' 04" E, along the West line of said Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section 23, a distance of 1317.89 feet to the Northwest corner thereof; thence N 89° 51' 33" W, along the South line of the Northwest Quarter of the Southeast Quarter (NW ¼ SE ¼) of Section 23, a distance of 1330.35 feet to the Southwest corner of said Northwest Quarter of the Southeast Quarter (NW ¼ SE ¼) of Section 23; thence N 00° 10' 50" E, along the West line of said Northwest Quarter of the Southeast Quarter (NW ¼ SE ¼) of Section 23, a distance of 400.00 feet; thence S 89° 51' 32" E, 200.00 feet; thence N 48° 24' 41" E, 1379.02 feet to the North line of said Northwest Quarter of the Southeast Quarter (NW ¼ SE ¼) of Section 23; thence S 89° 51' 32" E, along said North line, 100.00 feet to the Northeast corner thereof; thence continuing S 89° 51' 32" E, along the North line of the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of Section 23, a distance of 1328.51 feet to the Northeast corner thereof; thence S 00° 01' 18" W, along the East line of said Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of Section 23, a distance of 1317.89 feet to the Southeast corner thereof; thence continuing S 00° 01' 18" W, along the East line of the Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section 23, a distance of 1317.89 feet to the true point of beginning.

Containing 105.67 acres more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

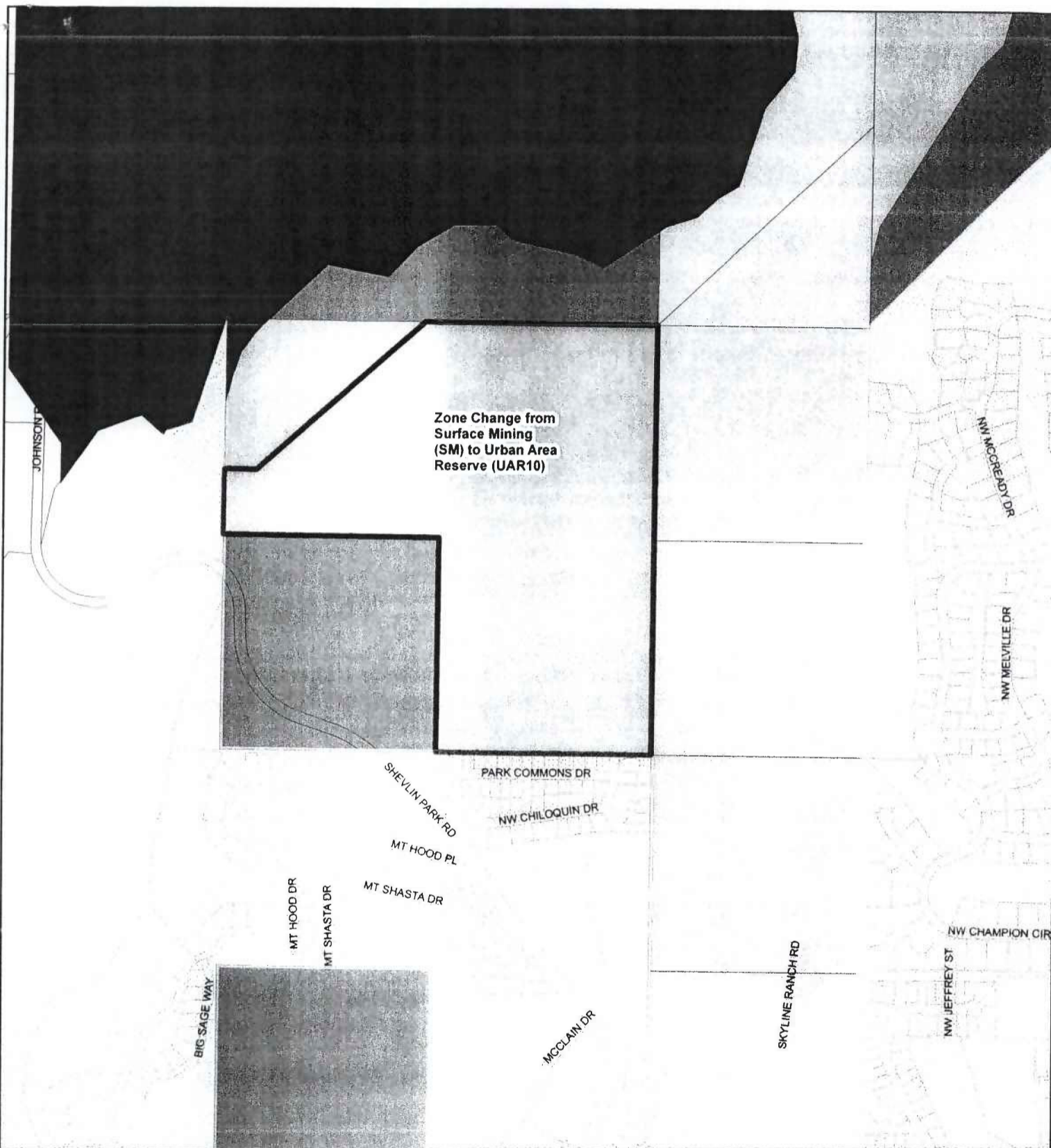
Jeff Kern

OREGON
JULY 30, 1976
JEFFREY A. KERN
1081

RENEWAL
JUNE 30, 2009

Jeff Kern & Assoc., Inc.
PROFESSIONAL LAND SURVEYORS
P.O. Box 337, Bend, OR 97709-0337 ■ (541) 389-4736

Exhibit "A" Ordinance 2007 027 (11 28 07)



-  Bend City Limits
-  Subject_Property
-  RR10 - Rural Residential
-  SM - Surface Mining
-  UAR10 - Urban Area Reserve - 10 Acre Minimum

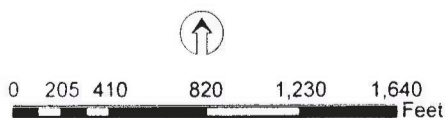


DISCLAIMER
The information on this map was derived from digital databases on Deschutes County's GIS. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying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

N:\Custom\County\CD\Planning\Chris\Beds\au2C-07-03\exhibit.mxd

ZONING MAP File No. ZC-07-03

Exhibit "B" to Ordinance 2007-027



October 10, 2007

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Michael M. Daly, Chair

Dennis R. Luke, Vice Chair

Tammy Baney, Commissioner

ATTEST: Recording Secretary

Dated this ____ day of November, 2007
Effective Date: November ____, 2007

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBER: ZC-07-3

**APPLICANTS/
PROPERTY OWNER:** Eric and Robin Coats
P.O. Box 5984
Bend, Oregon 97708

**APPLICANTS'
ATTORNEY:** Liz Fancher
644 N.W. Broadway
Bend Oregon 97701

APPLICANTS' AGENT: Jon Skidmore
Skidmore Land Services, LLC
2570 N.W. Sacagawea Lane
Bend Oregon 97701

REQUEST: The applicants requesting approval a zone change from SM to UAR-10 for a 104.95-acre parcel located north and east of Shevlin Park Road and east of Tumalo Creek on the west side of Bend.

STAFF REVIEWER: Chris Bedsaul, Associate Planner

HEARING DATE: August 7, 2007

RECORD CLOSED: August 7, 2007



- I. APPLICABLE STANDARDS AND CRITERIA:**
- A. Title 19 of the Deschutes County Code, the Bend Urban Area Zoning Ordinance**
1. Chapter 19.12, Urban Area Reserve Zone (UAR-10)
* Section 19.12.010, Purpose
 2. Chapter 19.16, Surface Mining (SM)
 3. Chapter 19.116, Amendments, Appeals and Procedures
* Section 19.116.020, Standards for Zone Change
- B. Oregon Administrative Rules (OAR) Chapter 660**
1. OAR 660-012, Transportation Planning Rule

Coats
ZC-07-3
Page 1 of 11

EXHIBIT "C"
Ordinance No. 2007-027

* OAR 660-012-0060, Plan and Land Use Regulation Amendments

II. **FINDINGS OF FACT:**

- A. **Location:** The subject property does not have an assigned address. It is identified as Tax Lot 500 on Deschutes County Assessor's Map 17-11-23. The property is located east of Shevlin Park and Tumalo Creek and approximately 200 feet north Shevlin Park Road.
- B. **Zoning and Plan Designation:** The subject property is zoned Surface Mining (SM) and is designated Urban Area Reserve on the Bend Area General Plan map.
- C. **Site Description:** The subject property is 104.95 acres in size and irregular in shape. It has varying topography including some steep slopes near Tumalo Creek. Portions of the property have not been mined. In areas with vegetation there are scattered Ponderosa pine and Juniper trees. The property is crossed by a number of roads constructed as part of the previous surface mining operation. Access to the property is through adjacent property owned by Shevlin Sand and Gravel and located at 63285 Skyline Ranch Road. The record indicates the subject property has no irrigation water rights.
- D. **Surrounding Zoning and Land Uses:** The subject property is located near other lands owned by the Coats family that are used in conjunction with the Shevlin Sand and Gravel operations and zoned SM. To the southeast are the company's administrative offices, storage buildings and the redi-mix operation. To the east is old mining pit in the process of being reclaimed pursuant to a permit from the Oregon Department of Geology and Mineral Resources (DOGAMI). Property to the south is located within the Bend city limits, zoned Residential Standard Density (RS), and recently was approved for development with a residential subdivision and on which infrastructure has been constructed. Property to the west and north is part of Shevlin Park which is owned, managed and maintained by the Bend Metro Parks & Recreation District (park district). Property to the south is owned by Bend-La Pine School District (school district), is zoned UAR-10 and is under consideration for inclusion in Bend's Urban Growth Boundary (UGB).
- E. **Procedural History:** This application was submitted on May 10, 2007 and was accepted by the county as complete on May 21, 2007. Therefore, the 150-day period for issuance of a final local land use decision under ORS 215.427 would have expired on October 18, 2007. A public hearing on the application was scheduled for June 5, 2007. At the applicants' request, the public hearing was continued to August 7, 2007 to allow the applicants to obtain and submit a traffic study into the record. At the continued hearing on August 7, 2007, the Hearings Officer received testimony and evidence and closed the written record. The applicants waived their right to submit final argument pursuant to ORS 197.763, and the record closed on August 7, 2007. Because the hearing was continued from June 5 to August 7, 2007 at the applicants' request, the 150-day period was tolled for 63 days and now expires on December 20, 2007. As of the date of this decision there remain 86 days in the 150-day period.

- F. **Proposal:** The applicants request approval of a zone change from SM to UAR-10 to conform the property's zoning with its plan designation.
- G. **Public/Private Agency Comments:** The Planning Division sent notice of the applicants' proposal to a number of public and private agencies and received responses from: the Deschutes County Transportation Planner, Assessor, and Property Address Coordinator; and the Oregon Department of Water Resources, Watermaster-District 11. These comments are set forth verbatim at pages 3-4 of the staff report and are included in the record. The following agencies had no comments or did not respond to the request for comments: the Deschutes County Building Division, Environmental Health Division, and Road Department; the City of Bend Fire Department; the park district; Tumalo Irrigation District; the school district; DOGAMI; and the Oregon Department of Land Conservation and Development (DLCD).
- H. **Public Notice and Comments:** The Planning Division mailed individual written notice of the applicants' proposal and the public hearing to the owners of record of all property located within 750 of the subject property. The record indicates these notices were mailed to 110 property owners. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed the county had received no comments from the public. No members of the public testified at the public hearing.
- I. **Lot of Record:** The staff report states the county recognizes the subject property as comprised of three legal lots of record as a result of a 2002 lot-of-record determination (LR-02-17).

III. CONCLUSIONS OF LAW:

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

1. Chapter 19.116, Amendments, Appeals and Procedures

FINDINGS: The Hearings Officer notes at the outset that the applicants' proposed zone change from SM to UAR-10 is not subject to the Goal 5 post-acknowledgement plan amendment requirements of OAR 660-023-0180 because the subject property is not designated Surface Mining on the Bend Urban Area General Plan and was not assigned a site number as part of the county's Goal 5 inventory of significant mineral and aggregate resources. Therefore no plan amendment is required.¹ In addition, Title 19 does not contain provisions specifically governing the termination of SM zoning as are included in Title 18.²

a. Section 19.116.020, Standards for Zone Change

¹ Compare, *Coats* (PA-06-2,ZC-06-1), *Stott* (PA-98-12, ZC-98-6).

² See, Section 18.52.200.

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

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

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

1. **Conformance With the Comprehensive Plan Map.**

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

2. **Conformance With the Comprehensive Plan Text.**

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

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

In numerous previous decisions the Hearings Officer has found the above-underscored language signifies comprehensive plan policies are *not* approval criteria for quasi-judicial land use applications. Rather, they provide guidance in interpreting and applying the provisions of the zoning ordinance. I adhere to that holding here and find the applicants are not required to demonstrate the proposed zone change complies with individual plan policies.

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

a. **Orderly Pattern of Growth**

In numerous previous decisions the Hearings Officer has found an orderly pattern of growth "is one that promotes compatible physical relationships between zoning districts and uses." The

record indicates the subject property is located north of recently platted and developed residential subdivisions within the Bend city limits. Moreover, the abutting property to the south (Tax Lot 600 on Assessor's Map 17-11-23) currently is under consideration for inclusion in the expanded Bend UGB.³ In addition, the subject property is located adjacent to Shevlin Park, a large suburban park, and is near large areas of urban-density residential development on the west side of Bend along both sides of Shevlin Park Road. Rezoning the subject property to UAR-10 would allow it to be developed with uses permitted in the zone including residential development on large lots with the potential for future redevelopment at urban density when the property becomes part of the UGB.

The applicant argues, and the Hearings Officer agrees, that retention of the property's SM zoning and extraction and processing of mineral and aggregate resources would not be compatible with the rapidly-urbanizing surrounding area, and therefore would not promote compatible physical relationships between zoning districts and uses. The staff report notes the subject property is not surrounded by a Surface Mining Impact Area (SMIA) Zone that is designed to protect the surface mining activities from incompatible uses such as residences. Therefore, the minimum setbacks for noise- and dust-sensitive uses such as dwellings would not apply, allowing dwellings to be located close enough to the property to be adversely affected by noise and dust impacts. Finally, the applicant argues, and I agree, that the subject property's UAR designation clearly indicates the city's and county's intention that the subject property be developed in such a manner that it can be redeveloped at urban density when needed for future growth.

For the foregoing reasons, the Hearings Officer finds applicants proposed zone change from SM to UAR-10 will promote compatible physical relationships between zoning district uses, therefore, will be consistent with the plan's intent to promote an orderly pattern of growth.

b. Orderly Sequence of Growth

In numerous previous decisions the Hearings Officer has found that "an orderly sequence of growth promotes development concurrent with the provision of adequate services." As discussed in the findings above, the subject property abuts land being considered for inclusion in the Bend UGB as well as land approved for and developed with urban-density residential development that will be served by urban infrastructure including city sewer and water service and streets constructed to the city's standards and specifications for urban streets, including requirements that such infrastructure be constructed "to and through" the property to allow future infrastructure extensions from the point where they would be stubbed off at the subject property's boundary. Therefore, when the subject property is brought within the Bend UGB urban infrastructure would be available to serve urban-density development the subject property. Finally, the subject property is located near the right-of-way for Skyline Ranch Road, a future major collector street on the west side of Bend. For these reasons, I find the applicants' proposed zone change will promote an orderly sequence of growth that promotes development concurrent with the provision of adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities.

³ The Hearings Officer is aware Bend and the county are undertaking a comprehensive legislative process to expand the Bend UGB.

For the foregoing reasons, the Hearings Officer finds the applicants' proposed zone change satisfies this criterion.

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

FINDINGS: As discussed above, existing development in the area surrounding the subject property consists of other facets of the Coats family's surface mining related businesses, as well as land being considered for inclusion in the Bend UGB and land approved for and developed with urban-density residential subdivisions. The Hearings Officer finds the applicants' proposed zone change from SM to UAR-10 will not interfere with any of this existing development, or with the development potential or value of this land. The applicant argues, and I agree, that the proposed zone change is likely to have a positive impact on existing and potential development and land values because it will remove the potential for surface mining activities that would be incompatible with the rapidly-urbanizing surrounding area. The applicants argue, and I agree, that the proposed rezoning also will not interfere with the adjacent SM-zoned land owned by the Joyce E. Coats Revocable Trust – known as the "Cake Pit" – inasmuch as the record indicates active mining operations on that site are occurring 1.5 miles from the subject property and there are residential developments located closer to the Cake Pit than the subject property.

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

FINDINGS: Section 19.12.010 establishes the purpose of the UAR-10 Zone as follows:

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

The Hearings Officer finds the proposed zone change is consistent with the purpose of the UAR-10 Zone because the applicants intend to request that the subject property eventually be included in the Bend UGB to allow for future urban-density development, but in the interim will hold the property in open space or develop it with uses permitted in the UAR-10 Zone including dwellings on large lots that are capable of redevelopment at urban density.

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

FINDINGS: As discussed in the findings above, the Hearings Officer has found the proposed zone change to UAR-10 will promote an orderly pattern and sequence of growth, including the orderly provision of urban-density infrastructure through future extension of and connection to urban infrastructure being installed "to and through" adjacent land within the Bend UGB,

including city sewer and water service and city-standard streets connecting to Shevlin Park Road, a designated arterial street, and eventually to Skyline Ranch Road, a designated major collector street. As discussed in the findings below concerning the proposal's compliance with the Transportation Planning Rule (TPR), the applicant's traffic study predicts development of the subject property under the proposed UAR-10 zoning would generate approximately 100 average daily vehicle trips (ADTs), of which approximately 10 would occur during the p.m. peak hour (4:00 p.m. to 6:00 p.m. weekdays). The staff report states, and I agree, that the addition of this minimal amount of traffic to Shevlin Park Road will not exceed the capacity of this designated arterial street. The record indicates the subject property is located adjacent to Shevlin Park and near High Lakes Elementary School and Summit High School which have been developed on Bend's west side. Finally, the record indicates that with the proposed re-zoning to UAR-10 the subject property would continue to receive police protection from the Deschutes County Sheriff and fire protection from the City of Bend Fire Department through a contract with the Deschutes County Rural Fire Protection District #2 within whose boundaries the subject property is located.

For the foregoing reasons, the Hearings Officer finds the applicants' proposed zone change satisfies this criterion.

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

FINDINGS:

1. Mistake in Original Zoning:

The record indicates the subject property was zoned SM in 1990 as part of the county's legislative process to update the mineral and aggregate resource element of its comprehensive plan under Goal 5. The SM designation of all contiguous land owned at that time by R.L. and Joyce Coats was zoned SM without specific determinations concerning the amount of mineral and aggregate resource on each parcel, but rather based on historic, existing and planned surface mining activities on these contiguous Coats parcels. And the SM zoning was applied to the subject property even though the property was designated UAR. The applicants' burden of proof states that at the time the SM zoning was applied to the subject property it was not in fact being actively mined. The applicants argue that under these circumstances the county's decision to zone the subject SM was a mistake because it was not based on precise, site-specific inventorying of mineral and aggregate resources and was not consistent with the property's plan designation.

The Hearings Officer is aware that the county treated surface mining sites located within what was then known as the city's "inner UGB" in a different manner than sites located in other areas of the county, and applied somewhat less site-specific scrutiny to the determination of the quantity and quality of resources on these sites. And I understand the county's 1990 reasoning for the subject property's SM zoning considering the property's proximity to the Coats family's very large and active surface mining operations in the surrounding area. And the record indicates the DOGAMI permit issued for Coats Cake Pit (#09-0018) includes the eastern 80 acres of the subject property.

In support of their proposed zone change, the applicants submitted an aggregate resource evaluation dated April 19, 2007 and prepared by Mark Herbert and Brian Benson, engineers with Kleinfelder, Inc. These engineers surveyed the subject property to determine the quantity and quality of mineral and aggregate resources on the subject property including sampling material from 24 test pits. This evaluation showed there is good quality basalt on the property that could be processed to create crushed rock satisfying the Oregon Department of Transportation's (ODOT's) specifications. However, these materials are at such depth and are covered with so much overburden – a layer as much as 15 feet deep and containing as much as 600,000 cubic yards of material *not* meeting ODOT's specifications -- that mining the site would be both uneconomical and incompatible with the increasingly dense urban development the south and west part of the site. The Hearings Officer finds it is not clear whether the county would have zoned the subject property SM in 1990 if it had available to it this detailed, site-specific resource information. Nevertheless, inasmuch as the property is near the Coats' Cake Pit and part of it was included in a DOGAMI mining permit, the Hearings Officer cannot find its original 1990 SM zoning was a mistake.

2. Change of Circumstances.

The applicants argue the proposed rezoning from SM to UAR-10 also is justified by two changes of circumstance. First, as discussed in the findings above, the subject property is located in an area on the west side of Bend that is rapidly urbanizing with residential development, including the Shevlin Commons, Shevlin Meadows, Three Pines, and Awbrey Glen subdivisions, and is located adjacent to Shevlin Park, a large regional park. The Hearings Officer is aware that most of these subdivisions were not developed in 1990 when the subject property was zoned SM, and in fact the surrounding area was very rural. The significant residential and park development in the area surrounding the subject property has created the potential for significant conflicts between mining operations and residential uses. Second, as discussed above, site-specific information about the quantity and quality of mineral and aggregate resources on the subject property has become available through the aforementioned Kleinfelder aggregate resource evaluation. This information shows that while there may be significant resources on the property, their extraction would require the removal of an enormous amount of overburden that would not be economical and likely would create noise, dust and traffic impacts incompatible with nearby residential and park development. The Hearings Officer finds this evidence demonstrates changes of circumstance justifying removal of the subject property's existing SM zoning.

For the foregoing reasons, the Hearings Officer finds the applicants' proposed zone change from SM to UAR-10 satisfies this criterion.

B. Oregon Administrative Rules, Chapter 660, Land Conservation and Development Commission

1. Division 12, Transportation Planning Rule

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

(1) Where an amendment to a functional plan, an acknowledged

comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system; or
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Amendments to functional plan, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:
- (a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;

- (b) **Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or**
- (c) **Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.**

FINDINGS: The Hearings Officer finds the TPR applies to the applicants' proposed zone change because it would result in a change to the Bend Urban Area zoning map which is a part of the Bend Urban Area Zoning Ordinance, a land use regulation. I further find the proposed zone change, in and of itself, would not have any impact on affected transportation facilities. However, it would allow development of the subject property with uses permitted in the UAR-10 Zone, including, as discussed above, development with up to 10 dwellings on the 104-acre property.

In support of their application, the applicants submitted a traffic study dated July 27, 2007 and prepared by Scott Ferguson of Ferguson & Associates, Inc. This study predicts that surface mining activity on 90 acres of the subject property would generate approximately 10 p.m. peak hour trips, and that residential development of the subject property under the proposed UAR-10 zoning – i.e., one dwelling per ten acres or a total of 10 dwellings on the 104-acre property – also would generate approximately 10 p.m. peak hour trips out of approximately 100 ADTs. Therefore, the proposed zone change would not increase the amount of traffic from the subject property onto the adjacent Shevlin Park Road. The traffic study also found that there is considerable additional capacity on Shevlin Park Road because this designated arterial street is handling less than 2,500 ADTs in the vicinity of the subject property. The county's Senior Transportation Planner reviewed Ferguson's traffic study and concluded its methodology and conclusions regarding traffic were appropriate and accurate.

Based on the applicant's traffic study, the Hearings Officer finds rezoning the subject property from SM to UAR-10 will not result in traffic significantly affecting Shevlin Park Road, or changing its classification as a minor arterial street or the standards applicable to arterial streets, or exceeding the capacity of Shevlin Park Road. In addition, the record indicates Bend's TSP has not been acknowledged, and therefore it does not establish minimum performance standards.⁴ For these reasons, I find the applicants' proposed zone change from SM to UAR-1 is consistent with the TPR.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby


⁴ The staff report correctly notes that when the subject property is included in the Bend UGB and proposed for development at urban density the city will require the applicant to submit a traffic impact analysis demonstrating that traffic generated by such development will not unduly burden the transportation system, and what, if any, mitigation to the system may be required as a condition of approval for such development.

APPROVES the applicants' proposed zone change for the subject property from SM to UAR-10, **SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL:**

1. Prior to the hearing before the Deschutes County Board of Commissioners to consider approval of the proposed zone change, the applicants/owners shall submit to the Planning Division a metes and bounds description of, and surveyed acreage calculation for, the property subject to the zone change.

Dated this 28th day of September, 2007.

Mailed this 1st day of October, 2007.


Karen H. Green, Hearings Officer



Community Development Department

Planning Division Building Safety Division Environmental Health Division

117 NW Lafayette Avenue Bend Oregon 97701-1925
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

STAFF REPORT

FILE NUMBERS: ZC-07-3

HEARING DATE: Tuesday, August 7, 2007 at 6:30 P.M. in the Barnes and Sawyer rooms of the Deschutes Services Building located at 1300 NW Wall Street in Bend.

APPLICANT/ OWNER: Eric and Robin Coats
PO Box 5984
Bend, Oregon 97708

ATTORNEY: Liz Fancher
644 NW Broadway
Bend OR 97701

PLANNING CONSULTANT: Jon Skidmore
Skidmore Land Services, LLC
2570 NW Sacagawea Lane
Bend OR 97701

REQUEST: The applicant is requesting approval a zone change from Surface Mining (SM) to Urban Area Reserve (UAR-10) Zone on 104.95 acres located north and east of Shevlin Park Road and east of Tumalo Creek.

STAFF CONTACT: Chris Bedsaul, Associate Planner

I. APPLICABLE STANDARDS AND CRITERIA:

The Bend Area General Plan

Title 19 of the Deschutes County Zoning Ordinance:

Chapter 19.04, Title, Purpose, Compliance and Definitions
Section 19.04.025, Bend Unincorporated Urban Area
Section 19.04.661, Definition - Lot of Record
Chapter 19.12, Urban Area Reserve Zone (UAR-10)
Chapter 19.16, Surface Mining (SM)
Chapter 19.116, Amendments, Appeals and Procedures

Oregon Administrative Rules
(660-012-0060), Transportation Planning Rule

Quality Services Performed with Pride

II. **FINDINGS OF FACT:**

- A. **Location:** The subject property is described as Tax Lot 500 in Township 17 South, Range 11 East, Section 23. The subject property is located just beyond the City of Bend's Urban Growth Boundary on the west side of town. The property is located east of Shevlin Park, Tumalo Creek and approximately 200 feet north Shevlin Park Road. Access to the property is provided via existing roadways through the adjacent commonly owned property of Shevlin Sand & Gravel located at 63285 Skyline Ranch Road.
- B. **Lot of Record:** The subject property contains the consolidated area of three legal lots of record as noted by LR02-17.
- C. **Zoning and Plan Designation:** The subject property is designated as Surface Mining (SM) Zone. The Comprehensive Plan identifies the subject property as Urban Reserve Area (UAR-10).
- D. **Site Description:** The property has differing topography. The property is extremely sloped on the northern portion of the property in close proximity to Tumalo Creek. The property contains a mix of treed areas consisting of Ponderosa pine and Juniper. The property contains service roads that were constructed to serve the mining sites associated with the Shevlin Sand & Gravel mining operations but those roads are not needed for current or future mine operations. No commercial mining has been conducted on the site due to the mine operator's belief that this property lacks mineral and aggregate resources of commercial quality that can be economically mined. The "Aggregate Resource Evaluation" prepared by Kleinfelder, Inc. has determined that any mineral and aggregate resource on this property is located so far below the surface of the ground that is not economically feasible to mine the site.

The Oregon Department of Geology & Mineral Industries (DOGAMI) issues permits for mine sites throughout the state. DOGAMI permit #09-0018 covers the Shevlin Sand & Gravel site (Cake Pit) located to the east of the subject property. The same DOGAMI permit includes the eastern 80-acre portion of the subject property but does not cover the western 24 acres.

In order to mine the western 24 acres of the property, the applicant would need to expand the boundaries of the existing DOGAMI permit. It is also likely that the applicant would need to obtain County land use approvals to begin mining this part of the property since this area has never been mined.

- E. **Procedural History:** A study in 1990 was undertaken to bring the County's code into compliance with Statewide Goal 5. Deschutes County completed the Goal 5 study that identified and inventoried the majority of the active Surface Mine operations and property in the County. The County applied surface mine zoning, plan designations to mine sites and surface mine impact areas to land around protected sites. The intent of the 1990 Goal 5 inventory study was to identify the resource areas and protect the ability of owners and mine operators to mine the mineral and aggregate resources. During the resource analysis process, the County determined that existing mines and potential aggregate resource areas located within the Bend Urban Growth Boundary and Urban Reserve Area were not to be inventoried as Goal 5 resources.

The subject property has not been assigned a site number by the County that identifies the area as an aggregate resource. It appears, however, that the Surface Mine (SM) zoning designation was applied to the subject property by the County without specific information regarding the availability of aggregate and mineral resources. The report completed by Mark Herbert, P.E., Senior Geotechnical Engineer with Kleinfelder, Inc. provides specific information regarding the availability of aggregate resources on the subject property. The report shows that there are three legal lots that comprise the subject property that have a limited quantity of sand and gravel and some crushable rock but the expense to access the rock is determined currently to be not economically feasible.

- F. Surrounding Land Use:** The subject property is located near other lands owned by the Coats family that are used in conjunction with the Shevlin Sand and Gravel operations. To the southeast are the administrative offices, storage buildings and the redi-mix operation. To the east lies an old mining pit that is in the process of being reclaimed. The old pit area has been filled and removed from the "disturbed area" covered by the DOGAMI permit, as well as from the area required to be included in a bond for the site.

Eighty (80) acres of the subject property are "covered" by DOGAMI Permit #09-0018, however, the subject property has never been mined commercially. The property to the south of the subject property is within the Bend City Limits, zoned Residential Standard Density (RS) and was recently approved for a residential subdivision through City files PZ05-429 and PZ05-430. The infrastructure and improvements for that subdivision have been constructed. Property to the west and north of the subject property is part of Shevlin Park and is owned, managed and maintained by Bend Metro Parks & Recreation District. The property to the south (17-11-23, Tax lot 600) is owned by Bend-LaPine Administrative School District #1 and is under consideration for inclusion into the City of Bend's Urban Growth Boundary.

- G. Proposal:** The applicant is requesting approval of a zone change from Surface Mining (SM) to Urban Area Reserve (UAR-10) Zone on 104.95 acres in conformance with the underlying General Plan designation.
- H. Public Agency Comments:** The Planning Division mailed notice to several agencies and as of the date of this Staff Report has received the following comments:

Deschutes County Transportation Planner: The traffic analysis does not meet our code requirements on several levels. 17.16.115(C) requires all traffic studies will be done under the supervision of a professional traffic engineer and be stamped. The submitted traffic analysis is merely a restating of current functional classification and assertions with no factual, numerical analysis. 17.16.115(E) (d) requires zone changes to perform a 20-year traffic analysis and the submittal does not meet this criteria. In fact, the submittal has no numeric analysis of existing Level of Service or future Level of Service. A traffic analysis looks at the both property's trip generation rates AND the future volumes of the affected road network. The submittal discusses a 100 daily trips, which is correct, but does not have any information regarding current and future traffic volumes on the affected County or City roads as called for at 17.16.115(D)(2)(a-c).

I would request the applicant be required to perform a traffic analysis consistent with DCC 17.16.115 prior to any land use decision being made.

Staff Note: The applicant has provided a traffic analysis prepared by Ferguson & Associates, Inc., dated July 27, 2007, that the County Senior Transportation Planner has reviewed and agrees with its methodology and conclusions.

Deschutes County Assessor: Currently under deferral

Deschutes County Address Coordinator: If this application is approved, the applicants shall contact the property address coordinator for a new address.

Watermaster – District 11: No irrigation rights on subject property

The following agencies had no comments or did not respond to the request for comments: Bend Fire Department, Deschutes County Building Division, Deschutes County Environmental Health Division, Deschutes County Road Department, Department of Land Conservation and Development, Tumalo Irrigation, City of Bend, Bend Metro Parks & Recreation, Bend-LaPine School District, Oregon Department of Geology and Mineralogy.

- I. **Public Notice and Comments:** The Planning Division mailed written notice of the applicant's proposal and the public hearing to 110 owners of record of all property located within 750 feet of the subject property. In addition, notice of the public hearing was published in the "Bend Bulletin" newspaper on July 15, 2007.

The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicants have submitted a Land Use Action Sign Affidavit, dated July 18, 2007, that indicates that the applicant posted notice of the land use action on July 13, 2007 that was clearly visible to vehicle traffic from Shevlin Park Road.

No written comments have been received by the public at the writing of this staff report.

- J. **Review Period:** The application was deemed complete and accepted for review on May 21, 2007.

III. CONCLUSIONS OF LAW:

ZONE CHANGE

A. **BEND AREA GENERAL PLAN**

The Bend Area General Plan (BAGP) does not contain approval criteria for the proposed zone change, however, there is language in the document that supports this zone change.

When the General Plan was "acknowledged" by the state in 1981, the Urban Reserve area was recognized as an "exception area" to long-term farm or forest uses under statewide planning Goals 3 and 4, and therefore available for urban development. Lands in this Urban Reserve area are considered first for any expansion of the Urban Growth Boundary.

The western portion of the Urban Reserve area has been a source of pumice, dirt, and some sand and gravel. The Deschutes County Community Development Department has an inventory of these resource sites. Areas actively mined are zoned for Surface Mining. The classification will help isolate these resource extraction operations from incompatible urban uses.

Finding: The subject property is within the urban reserve exception area referenced above. Staff notes that the urban reserve area was established to designate lands for future UGB expansions. The subject property is in close proximity to productive sources of aggregate resources, however, is not classified as a good source of such resources. As urban density development has been approved nearby and property directly south is under consideration for inclusion in the UGB, the zone change proposed would place non-productive SM-zoned land into the Urban Area Reserve zoning. This zoning would be compatible with the surrounding uses.

The property directly east of the subject property that is owned by the Coats family is used in conjunction with the Shevlin Sand and Gravel operations. The Shevlin Sand and Gravel operation contains the weigh station, offices, storage buildings and the redi-mix batch plant. These types of existing uses are acceptable with other urban development. No crushing or other adverse impact causing activities are conducted on this portion of the Shevlin Sand and Gravel site. The actual active mining site (Cake Pit) is located approximately 1.5 miles north of the subject property. The Cake Pit is where the heavy processing of mined materials has been conducted. The Cake Pit is closer to existing residential urban developments, such as Awbrey Glen and other developments on Awbrey Butte, than it is to the subject property. As a result, any future residential type of development on the subject property will not have any more significant negative impacts on the operations conducted at the Cake Pit.

The BAGP states that areas that were actively mined were zoned Surface Mining. The subject property was not being actively mined when SM zoning was applied to the property nor has it been mined since 1990. As a result, the SM zoning of the subject property is inconsistent with the comprehensive plan and resulted from a mistake (see staff comments below in CDD 19.116.020 E) that should be corrected by approval of this zone change request.

The Plan text and policies describe several land use categories that provide for the various types of development expected to occur within the urban area during the 20-year planning period. These land use categories – residential, commercial, industrial, and mixed-use – have very specific boundaries that are shown on the General Plan Map. The city and county apply zoning to property based on the General Plan Map categories.

Finding: The plan map designates the subject property as Urban Area Reserve. The Policies of the BAGP regarding “Planning in the Urban Reserve” states that “Areas mined for sand, gravel, rock, pumice, or other materials shall ultimately be redeveloped for urban uses”. This zoning designation of UAR-10 should be applied to achieve consistency with the plan map and this language from the Preface of the BAGP.

B. TITLE 19, BEND URBAN GROWTH BOUNDARY ZONING ORDINANCE

Chapter 19.12, URBAN AREA RESERVE ZONE UAR-10

1. 19.12.010, PURPOSE

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

Finding: Purpose statements do not typically designate approval criteria for land use applications, however, the purpose of the UAR-10 Zone is relevant to review of this application since land is being proposed for inclusion in this zone. The subject property is within the Urban Area Reserve (UAR-10) plan designation. The zone change will provide for orderly future growth due to the fact that the property directly south of the subject property is developing at residential standard densities and is located in the City of Bend. The City of Bend is also developing plans to extend a sewer interceptor line to serve this part of the community once it is annexed to the urban growth boundary. According to the applicant, portions of the subject property may need to be used to construct the planned interceptor line.

The property to the south and west of the subject property, Tax Lot 600, Assessor's Map 17-11-23, is currently zoned UAR-10 and is designated for inclusion in the City of Bend's Urban Growth Boundary. The properties to the south and ¼ mile east of the subject property are located in the City and being developed with urban density residential subdivisions. Staff believes that orderly development can occur by approval of this zone change when considering future residential development adjacent to such properties where sewer, water and utility lines can be efficiently extended to serve future growth on the subject property and adjacent Tax lot 600.

CHAPTER 19.116, AMENDMENTS, APPEALS AND PROCEDURES

1. Section 19.116.020, Standards for Zone Change

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

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

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

1. Conformance With the Comprehensive Plan Map.

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

2. Conformance With the Comprehensive Plan Text.

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

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

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

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

The Hearings Officer in a previous zone change approval from Surface Mining to UAR-10 (file numbers (ZC-00-5, TP-00-916, CU-00-112) made the following findings relative the applicability of the comprehensive plan:

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

Based on the Hearings Officer’s prior finding, staff is not addressing individual plan policies.

a. Orderly Pattern of Growth.

The applicant states that Hearings Officer decisions have also previously found that the orderly pattern of growth “is one that promotes compatible physical relationships between zoning districts and uses.” The subject property is located north of a recently platted and developed subdivisions within the City limits. The property to the south of the subject property (Tax Lot 600, Assessor’s Map 17-11-23) is currently under consideration for inclusion into the expansion area of the City of Bend’s Urban Growth Boundary. The subject property also is adjacent to Shevlin Park and is in close proximity to urban style residential development to the east within the City of Bend, as well as rural residential style development north of the site across Tumalo Creek. These areas have been approved by Deschutes County as goal exception areas that allow rural residential development.

The change in zoning would require any development on the site to comply with the Urban Area Reserve Zoning (rural residential densities). This type of zoning will preserve the subject

property area for future urban density development. The future development intended for this property by the BAGP will be compatible with the surrounding residential development. The retention of Surface Mining zoning would not be compatible with the urbanizing area within which the subject property is located. The Kleinfelder, Inc. report demonstrates that the site is not suited to mining due to the extremely deep layer of overburden that exists on the property.

The retention of the SM Zone does not promote compatible physical relationships between zoning districts and types of mining activities. Adjacent and nearby lands in the City of Bend have been developed with urban standard density residential subdivisions. Any large-scale mining activity on the subject property would most certainly result in the generation of noise and dust complaints submitted to DEQ by existing or new area residents within the City. The subject property lacks SMIA protection from increasingly surrounding urban uses and it would be extremely difficult to use the property for mining activities due to compatibility issues. In addition to compatibility conflicts, if the subject property area were to be considered for active mining practices, the setbacks required from residential areas and Tumalo Creek would greatly reduce the area that could be mined. The air quality issues provide another challenge to active mining the site due to its close proximity to residential uses. This close proximity requires; (1) tall berms be built to capture dust from the mining operation; (2) close proximity of mining to residences will limit hours of operations due to noise concerns and will prevent drill and shoot operations from occurring near residential areas (approximately 500 feet or so); (3) issues also prohibit a mine operator from conducting drill and shoot operations over a large area at one time, increasing the costs to shoot rock; and (4) requires isolated, contained areas be "shot" and this increases time, effort and expense to mine the area. The existing designated outright or conditional uses permitted in the zone are not compatible with the existing or future urban development uses in the area.

The proposed zone change would allow the subject property to be developed with uses permitted in the UAR-10 Zone. As discussed above, the abutting area surrounding the subject property currently is undeveloped. However, the applicant indicates that three nearby tax lots within the city limits have received approval for urban-density residential subdivisions. Staff believes the subject property's Urban Area Reserve designation clearly indicates the city's and county's intention that the subject property be developed in such a manner that it can be redeveloped at urban density when needed for future growth. Staff believes the applicant's proposed zone change from SM to UAR-10 will promote compatible physical relationships between zoning district uses, therefore, will be consistent with the plan's intent to promote an orderly pattern of growth.

b. Orderly Sequence of Growth.

The Hearings Officer in ZC00-5 has previously found that "an orderly sequence of growth promotes development concurrent with the provision of adequate services." Again, the subject property is increasingly being surrounded by urban density development. Residential standard density subdivisions have been approved nearby and south of the subject property within the City of Bend. According to the applicant, "To and through" extensions for roads, sewer and water were stubbed at the subject property's southern property line. Therefore, if the zoning change is approved, the property is included in the City's Urban Growth Boundary and the property is annexed, those designated urban services will be available to serve the subject property.

If the property remains in Urban Area Reserve and is not included in the UGB expansion area, the resulting UAR zoning will require 10 acre minimum lot sizes for any developed lots. This

development option would require use of on-site sewage disposal systems and individual wells. This development pattern preserves land in large tracts that can be redeveloped once land is included in the urban growth boundary.

The requested zone change area will provide approximately 104 acres of low-density residential urban reserve land in direct proximity to existing urban development. The property provides area for future urban growth. It will be served by extending roads and utilities from the development to the south of the property. The subject property is located in close proximity to development that is within the City, necessary utilities and is adjacent to the property that will contain a future Major Collector (Skyline Ranch Road) which makes this property attractive for the City's UGB expansion that is currently in process. These facts also show that approving a zone change on this lot would promote an orderly sequence of growth. As discussed above, the Hearings Officer has held an orderly sequence of growth is one that promotes development concurrent with the provision of adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities. The subject property will be adjacent to or nearby the urban infrastructure necessary for future development.

Staff believes that the applicant has met its burden of demonstrating the proposed zone change satisfies this approval criterion.

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

FINDINGS: The proposed zone change will not interfere with existing development, development potential or value of the land in the general vicinity of the subject property. In this case, this zone change will have a positive impact on existing and approved developments, development potential and the value of land in the general vicinity. The change in zoning will remove the potential for an incompatible mining land use to be located adjacent to urban density residential development. The development potential of the adjacent Tax Lot 600 also increases due to the elimination of the potential conflict caused by SM zoning. This change will help to increase the value of the surrounding lands.

Removing the SM zoning of the subject property will not harm the adjacent SM land owned by the Joyce E. Coats Revocable Trust since active mine operations within the Cake Pit on that property occur 1.5 miles away from the subject property. The proposed new zoning will not create any new significant conflicting potential residential uses that will harm the Cake Pit operations because other residential developments are currently located closer to the Cake Pit mine.

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

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

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

The proposed zoning district is the UAR-10 zone as described in Title 19 of the Deschutes County Code. As detailed above, the purpose of the UAR-10 zone is to among other things, "preserve [land] as long as possible as useful open space until needed for orderly growth." The proposed zone change to UAR-10 is consistent with the purpose statement for that zoning district. The applicant is preparing the property to be considered for the City of Bend's UGB Expansion area and in turn for eventual urban style development. The property to the south and adjacent to the subject property has been developed and provides utility and road stubs to the property in anticipation of future development. The 104-acre subject property will remain in open space until the property is included in the City's UGB or will be developed per the UAR-10 zoning regulations. If the property is developed under the UAR-10 zoning regulations, the resulting development will be required to accommodate future urban growth. The property will fulfill the purpose and intent of the Urban Area Reserve zoning district following the zone change.

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

FINDINGS: Currently, the property is located adjacent to but outside the City of Bend's Urban Growth Boundary. It is located in the City's urban area reserve. Therefore, utilities such as sewer will not be extended onto the property until the property is included in the UGB. If and when the property is included into the UGB, it is exceptionally well located to assure orderly and efficient extensions of public services. The property is located in close proximity to a regional park (Shevlin Park), schools (High Lakes Elementary, Cascade Middle School, Summit High School), necessary utilities (sewer and water), and the transportation system (Shevlin Park Road and the future Skyline Ranch Road). The property is well located for urban development due its close proximity to the needed urban type services listed above.

The transportation network in the area will not be degraded by the proposed zone change. Based on the size of the subject property (approximately 104 acres) and using industry accepted standards, if this zone change is approved, the property would generate approximately 100 trips per day. This is based on approximately 10 average daily trips (ADT) per day per single family residence and obtaining approval for 10 lots of approximately 10 acres in size each on the subject property. Further, the entire property would generate approximately 10 PM peak hour trips per day. This minimal amount of traffic generation will not exceed the capacity of Shevlin Park Road. Again, Skyline Ranch Road is a future collector planned for the property east of the subject property that will eventually serve the subject property as well.

If the City of Bend includes this area within its UGB and the property is developed at urban densities, the City will require traffic impact studies to evaluate the impact of the proposed development on the transportation system at that time. Consistency with Goal 12 is reviewed further in the staff report.

Because the property lies outside the city limits, police protection will be provided by the Deschutes County Sheriff. The record indicates the subject property is within the boundaries of Bend Rural Fire Protection District #2.

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

FINDINGS:

1. Mistake in Original Zoning:

The subject property was zoned as Surface Mining (SM) in 1990 based on existing and potential mining activities on land commonly owned by R.L. and Joyce Coats. The SM zoning was applied to all of the contiguous land owned by the Coats family in the vicinity of the Cake Pit (DOGAMI Permit #09-0018). The SM zoning was apparently applied by the County without a geologic determination that a Goal 5 resource existed on all of the property that would require protection under Goal 5. The subject property was included in the County's Goal 5 inventory of significant mineral and aggregate sites, even though it was located within a residential exception area. The SM zone designation of the subject property by the County study of Goal 5 resources clearly did not indicate the type, quantity or quality of mineral resources.

The BAGP says that SM zoning was to be applied to lands in active mining use, however, the area within the subject property was not (emphasis added) in active mining use when it was zoned SM. The necessary analysis of the Goal 5 resources by the County, in order to apply a plan designation of Surface Mining on the property, was never done. The BAGP states in the preface that zoning will be applied based on the underlying Plan Designation. The BAGP also cites that "The zoning for land within the urban planning area must be consistent with the designated land use categories in the General Plan," (page 4) and "The city and county apply zoning to property based on the General Plan Map categories" (page 6). The zone change requested in this application will provide a zoning that is consistent with the plan designation. Changing the SM zoned property to UAR-10 that is consistent with the underlying Plan Designation will correct the previous County mistake of not adequately identifying the Goal 5 resource.

Staff believes that the current zoning is not consistent with the underlying BAGP designation and there is sufficient evidence in the 1990 County Goal 5 study to show that a mistake was made in the subject property's original SM zoning.

2. Change of Circumstances.

The property is in an area that is increasingly being developed at urban densities. In the past, the SM zoned Coats property was outside of any projected future expansion for the City of Bend. Over a short time period of increased population growth accompanied by development and growth for the City of Bend, the subject property is currently within close proximity to Shevlin Commons, Shevlin Meadows, Three Pines, Awbrey Glen and other recently approved urban density residential neighborhoods. The subject property has not been mined commercially in the past. The *Aggregate Resource Evaluation* by Kleinfelder, Inc. shows that the property is not suited for mining activities due to the presence of deep overburden on the site. A new mining site on the property would be incompatible with the increasingly dense urban development the south and west part of the site. Such mining would also represent a significant change in the mining operations by Shevlin Sand & Gravel by introducing a new disturbance area to DOGAMI permit #09-0018 which would require new permit approvals. The permit area would also need to be expanded to include the entire subject property. This process would involve significant time and expense.

The exploratory studies done by Kleinfelder, Inc. found that the "subject site does not contain a significant resource of sand and gravel." The analysis did find that there may be good quality basalt bedrock located within the northern portion of the site but [t]o reach the basalt, it will be

necessary to over-excavate and temporarily stockpile approximately 600,000 cubic yards of non-ODOT spec material. The expense of removing and stockpiling the overburden material would need to be considered to determine the economic feasibility of crushed rock production. The report indicates that it would not be economically feasible to mine the basalt due to the approximate average of 15-feet of overburden. The amount of resource can not be accurately determined without removing the overburden. Further, the increasingly urbanizing area surrounding the site creates a situation where any new mining sites would be incompatible with surrounding land uses. The incompatibility often leads to increased costs associated with mining resulting from complaints, noise citations, etc. The incompatibility also leads to reduced mine-able areas on the subject property due to setback requirements and prohibitions on mining activities such as "drill and shoot" in areas close to residential uses.

The subject property is close to other lands that are being developed at urban densities with home sites and other land that is currently proposed for UGB expansion on the south (17-11-23, Tax lot 600). The direct proximity to lands that are either developed at urban densities or planned for urban development is a change in circumstance that also affects the ability of this land to be used for mining. The approval of this zone change request would permit this property to be considered for inclusion in the City of Bend's Urban Growth Boundary and provide the orderly sequence of urban growth desired by the BAGP.

The applicant asserts and staff concurs that considering the subject property location so close to the Bend urban area and other mine operation impacts or restriction factors, individually or together, make it economically not feasible to mine this site. Based on this evidence, staff concludes that the applicant has met its burden of demonstrating a change of circumstance justifying the proposed zone change from SM to UAR-10.

B. Oregon Administrative Rules

1. OAR 660, Division 12, Transportation Planning Rule

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

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

- (a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;**
- (b) Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;**
- (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.**

- (2) **A plan or land use regulation amendment significantly affects a transportation facility if it:**
- (a) **Changes the functional classification of an existing or planned transportation facility;**
 - (b) **Changes standards implementing a functional classification system;**
 - (c) **Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or**
 - (d) **Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.**

FINDINGS:

This zone change request, if approved, would apply a zoning of UAR-10 on the subject property. Staff notes that OAR 660-012-060 above does not describe or specify that a traffic analysis shall be prepared by a professional engineer as noted in Title 17.

The applicant has originally cited that based on the minimum lot size for the zoning district, a total of 10 lots can potentially be developed on the site. Using industry accepted standards, each proposed home on the 10 lots would generate approximately 10 ADT, totaling 100 trips per day from the entire property. The property would generate approximately 10 PM peak hour trips. Based on this minor increase in the amount of trips that would be generated from the site and use Shevlin Park Road, staff agrees with the applicant that the proposed zone change will probably not significantly affect the transportation system.

The applicant states further that the addition of approximately 100 ADT and 10 PM peak hour trips will not change the functional classification of the existing transportation system. Shevlin Park Road is a designated arterial street designed and planned to carry large amounts of traffic to and from the City of Bend. Shevlin Park Road serves as the main transportation facility for traffic exiting or entering the Coats property. The applicant asserts and staff concurs that the proposed zone change will not change the standards that implement the functional classification system. The proposed zone change will not allow land uses and/or levels of development that would result levels of travel that are inconsistent with the arterial standards. Further, the zone change will not reduce the level of service of Shevlin Park Road below the minimum acceptable performance standards identified in the City's Transportation System Plan (TSP). The applicant asserts that the City's TSP has not been acknowledged, therefore, an unacknowledged TSP does not contain minimum performance standards. The applicant did not provide any additional findings to support this claim regarding the City's TSP status. The applicant states that a City Hearings Officer has held in several previous decisions that until the TSP is acknowledged, it does not identify acceptable levels of service for purposes of the TPR. The applicant did not identify any specific Hearings Officer cases to support this claim. The applicant asserts and staff agrees that the proposed zone change will not worsen the performance of Shevlin Park Road due to the minor increases cited by the applicant in the amount of ADT's on the facility.

Staff notes that if the property is included in the UGB and is developed at urban densities, the City of Bend will require a traffic impact analysis to accompany development proposals. The impacts from future development proposals will be reviewed and mitigation will be required by the City as appropriate at that time. Staff believes that the existing transportation system is adequate to withstand the minimal impact that future outright permitted residential development may have on the system based on a UAR-10 zone designation.

Staff believes that compliance with the Transportation Planning Rule (TPR) is applicable to zone change applications because the zoning map is a part of the zoning ordinance, therefore, is a "land use regulation." The applicant and County Senior Transportation Planner differ on opinions whether additional traffic studies are required or necessary for compliance with Title 17 criteria. The applicant, however, has elected to provide a traffic analysis prepared by Ferguson & Associates, Inc. to address any impacts to the existing transportation facilities.

The applicant asserts and staff agrees that with respect to paragraphs (2)(a) and (b) above, the proposal will not change the functional classification of or standards applicable to Shevlin Park Road. The functional classification of Shevlin Park Road as a designated minor arterial should not be significantly impacted with the addition of only 100 ADT's expected to be generated following a zone change to UAR-10. The County Senior Transportation Planner has reviewed a traffic data analysis report, dated July 27, 2007, prepared by Ferguson & Associates, Inc. and the Senior Transportation Planner has stated that the methodology and conclusions regarding traffic impacts in the Ferguson report are acceptable to determine that there would not be any significant impacts to the transportation facilities resulting from the proposed zone change.

OAR 660-012-060 (2)(c) provides that an amendment to a land use regulation "significantly affects" a transportation facility if it would allow development that would "result in" levels of traffic inconsistent with a facility's functional classification. As discussed in the findings above, staff concludes the addition of the minimal traffic, as cited by the Ferguson & Association, Inc. report that would be generated by future development of the subject property would not exceed the capacity of these facilities

IV. CONCLUSION AND RECOMMENDATION:

The applicant has demonstrated that the proposed zone change from Surface Mining to Urban Area Reserve (UAR-10) is justified based on the applicable criteria. The applicant has demonstrated that the Zone Change application is consistent with the underlying Bend Area General Plan Designation. The applicant has demonstrated that the change will not negatively interfere with existing development, development potential or value of other land in the vicinity of the proposed action. The applicant has demonstrated that the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification. The applicant has demonstrated that the change will result in the orderly and efficient extension and provision of public services. Further, the proposal is consistent with the County's policy for provision of public facilities. The applicant has demonstrated that there was a change of circumstance and a mistake in the original zoning that justifies the proposed zone change. The applicant has demonstrated that the proposed zone change is consistent with OAR 660, Division 12, Transportation Planning Rule, and the applicant has submitted a traffic analysis that is acceptable to the County Senior Transportation Planner.

Based upon the findings noted above and application compliance with Statewide Planning Goals, County Comprehensive Plan and Zoning Ordinance criteria, staff recommends the proposed Zone Change from Surface Mine (SM) to Urban Area Reserve (UAR-10) be approved.



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