



January 28, 2010

VIA UPS OVERNIGHT DELIVERY

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LAND CONSERVATION
AND DEVELOPMENT

Neil R. Bryant
Robert S. Lovlien
John A. Berge
Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
Kitri C. Ford
Paul J. Taylor
Kyle D. Wuepper
Jeremy M. Green
Helen L. Eastwood
Peter A. Christoff
Melinda Thomas

DEPARTMENT OF LAND CONSERVATION
AND DEVELOPMENT
ATTN: RICHARD WHITMAN, DIRECTOR
635 CAPITOL ST., NE, SUITE 150
SALEM, OR 97301-2540

Re: DLCD Order No.: 001775
Report on Bend and Deschutes County's Amendment to Bend Urban
Growth Boundary Dated January 8, 2010

Dear Mr. Whitman:

This office represents the Rose & Associates, LLC. The District is hereby appealing to the Land Conservation and Development Commission the Director's Decision on Bend's Urban Growth Boundary Amendment (Order No. 001775). This appeal is made pursuant to OAR 660-025-0150.

Rose & Associates, LLC did submit written information to the City of Bend. Enclosed please find a copy of a letter dated November 18, 2008 from West Ridge Development Services, LLC, together with a "Southeast Bend UGB Expansion Analysis."

Rose & Associates, LLC also raised the issue of general plan policies that have not been addressed in Bend Urban Growth Boundary Amendment. See letter dated December 8, 2008, addressed to the City of Bend, a copy of which is also enclosed.

Rose & Associates, LLC maintains that the Bend UGB should be expanded in the southeast quadrant to allow additional industrial zoning. The reasons for this proposition are set forth in the Southeast Bend UGB Expansion Analysis dated November 18, 2008 that is part of the record.

Rose & Associates, LLC also maintains that Chapter 6 of the Bend General Plan contains two policies which have not been addressed. These policies are as follows:

"17. Commercial Development. The existing pattern of commercial designations shown on the plan map along Highway 97 and Highway 20, and along arterial streets such as Newport Avenue, Galveston Avenue, SW 14th Street, 27th Street and O.B. Riley Road shall not be extended farther along the street corridors.

591 S.W. Mill View Way
Mail: P.O. Box 880
Bend, Oregon 97709
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Richard Whitman, DLCD
January 28, 2010
Page 2

18. No new strip commercial development or extensions of the commercial designations shall be permitted along arterial or collector streets.”

Until these policies have been addressed, the Bend Urban Growth Boundary should not be expanded.

Very truly yours,



ROBERT S. LOVLIE

RSL/alk

Encl.

cc: Rose & Associates, LLC

11146-005 119.doc



COPY

December 8, 2008

HAND DELIVERED

Neil R. Bryant
Robert S. Lovlien
John A. Berge
Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
Kitri C. Ford
Paul J. Taylor
Christopher A. Bagley
Kyle D. Wuepper
Jeremy M. Green
Helen L. Eastwood
Leanne Ryan-Nokell

DAMIAN SYRNYK
CITY OF BEND
710 NW WALL ST.
BEND, OR 97701

Re: Rose & Associates, LLC/Bend UGB Expansion

Dear Damian:

As you know, this office represents Rose & Associates, LLC. The purpose of this letter is just to put into the record our concerns about the City and County ignoring two provisions in the existing Bend Area General Plan.

Chapter 6 of the General Plan states as follows:

“17. Commercial Development. The existing pattern of commercial designations shown on the plan map along Highway 97 and Highway 20, and along arterial streets such as Newport Avenue, Galveston Avenue, SW 14th Street, 27th Street, and O.B. Riley Road shall not be extended farther along the street corridors.

18. No new strip commercial development or extensions of the commercial designations shall be permitted along arterial or collector streets.”

I have been involved in one project where these provisions were asserted. It killed a mixed use project around and east of the cinemas on Highway 20. It was a project where there was no neighborhood opposition. In fact, the one neighbor, Dr. Litchfield and his wife, actually supported the proposal. There are other projects that have run afoul of these provisions.

It seems odd that in less than eight years these two goals are simply being ignored as part of this UGB expansion.

Very truly yours,

ROBERT S. LOVLIN

RSL/alk
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COPY

November 18, 2008

Mayor and Council
City of Bend
710 NW Wall Street
Bend, Oregon 97701

Board of County Commissioners
Deschutes County
1300 NW Wall Street, Suite 200
Bend, Oregon 97701

Re: Industrial Lands - City of Bend Urban Growth Boundary Expansion

Dear Councilors and Commissioners:

I am writing on behalf of Rose and Associates and Dale Hukari who own approximately 484 acres in southeast Bend (Rose property). The Rose property is contiguous to, but just outside the existing UGB and the Alternative 4 UGB expansion area that was recently recommended by the City and County Planning Commissions. The purpose of this letter is to point out the many compelling reasons why a portion of the Rose property should be included in the UGB. Specifically, our request is for inclusion of 90-120 acres of light-industrial and/or special site industrial zoned land within the UGB expansion area.

There is a pressing need for additional industrial land within the City of Bend which has been well documented throughout the UGB expansion process. However, many of the properties that are currently being considered for inclusion are problematic due to unsuitable locational factors and extremely high infrastructure costs. Shifting 90-120 acres of industrial zoning away from these areas to the Rose property is plausible for the following reasons:

- Readily serviceable with transportation, sewer, water, and other infrastructure allowing for development to occur in the near term and at a lower overall cost thus meeting UGB expansion policies set forth by City Council.
- Significantly reduces transportation system impacts and associated mitigation costs. ODOT and DLCD have both expressed serious concerns about the massive cost of transportation improvements needed to support any of the alternatives considered to date. They also note the questionable methodologies employed and the lack of alternatives analysis aimed at reducing those costs. Areas of particular concern are US 97/20 North, a bridge across the Deschutes River in the northwest area, US 97 South rural interchange, and US 20 East. ODOT staff supports

shifting industrial lands away from these areas in favor of the Rose and Associates property.

- Reduces negative impacts to the livability of existing and planned neighborhoods. Landowners in the north and west UGB expansion areas have testified their preference for removing altogether or significantly reducing the amount of industrial zoning on their properties and would be supportive of moving it elsewhere.
- Follows intelligent planning principles in its compatibility with adjacent existing uses (Knott Landfill, Central Electric Co-op, Humane Society, and County Public Works) and provision for suitable transition for future mixed-use development. Also offers a more geographically balanced overall UGB expansion.

Rose and Associates has assembled a team of experienced engineering, planning, legal, and transportation professionals to review the merits of inclusion of their property into the UGB. After much comparative analysis, it is our considered opinion that, for the reasons stated above and as supported by the enclosures listed below as well as the overall record, 90-120 acres of the Rose property should be designated light industrial and/or special site industrial in the UGB expansion area.

Please feel free to contact me directly should you have any questions or require additional information.

Sincerely,



Jeffrey S. England, PE

Enclosures: Alternative 4 Map Including Rose Property and Comparative Evaluation
 ODOT Comments Dated October 27, 2008
 Excerpt from DLCD Comments Dated October 24, 2008
 Rose and Associates Southeast UGB Expansion Analysis

cc: Peter Gutowsky, Deschutes County Principal Planner
 Brian Shetterly, City of Bend Long Range Planning Manager
 Damian Syrnyk, City of Bend Senior Planner

ROSE & ASSOCIATES

**SOUTHEAST BEND UGB
EXPANSION ANALYSIS**

Presented To:

CITY OF BEND MAYOR AND COUNCIL



BOARD OF COUNTY COMMISSIONERS



Presented By:

Clifford "Bud" Rose – Rose and Associates, Managing Member

West Ridge Development Services, LLC

November 18, 2008

Location of subject site:

The specific tax lots include the following:

Assessors Map 18 12 23, tax lots 100, 200, 300, and 500;

The combined lots comprise an approximate 484-acre site, located adjacent to Assessor Map 18 12 14, tax lot 200. Tax Lot 200 is within the proposed UGB expansion area for all three scenarios currently being considered by the Bend Planning Commission.

Background/ History of Property:

The site is located at the southeast corner of Knott Road and Rickard Road, and is bounded on the east by Arnold Market Road, to the north by Rickard Road, to the south by Back Alley Road, and to the west by Heidi Lane. The properties are currently accessed from Rickard Road, Heidi Lane, Arnold Market, and Back Alley Road. Deschutes County's Knott Landfill lies to the north of the site, across Rickard Road approximately 250 feet. Rickard Road is designated a "Rural Collector" in the Deschutes County Transportation System Plan (TSP), and a "Major Collector" in the City of Bend TSP. Knott Road is designated a "Minor Arterial" in the City of Bend TSP. Both Knott and Rickard Roads provide access routes to the site.

The site is primarily level, with some elevation gain towards the southern portion. The site is generally surrounded by large-lot rural residential development across Arnold Market Road to the east, residential to the west and south, and public facilities to the north across Rickard Road. The site is vegetated with bitterbrush, rabbitbrush, bunchgrass, Ponderosa pine, and Juniper. Some large rock outcroppings exist.

The site is zoned and designated in the Deschutes County Comprehensive Plan a combination of Exclusive Farm Use (EFU/TRB) and Surface Mining (SM). Approximately 92 acres of the 484 acre site contain a reclaimed surface mining operation, designated as a Goal 5 resource in the County's Comprehensive Plan (Site #392). The surface mine was in operation from 1993 until 2005. Since then, Rose & Associates has been working with Deschutes County to properly reclaim the site using material from the adjacent Knott Landfill. When operating, the surface mine was significantly limited, due in part to opposition from a large number of surrounding residential property owners and operational limitations on the mine imposed by the County, discussed further on pages 5 and 6 of this submittal.

Since the site is zoned EFU, a *Soil Investigation Report: Soil Classification Determination for Agricultural Land* (Attachment A) has been prepared for the site and made part of this submittal. The soils report classifies the site as having minimal agricultural value. Seventy percent (339 acres) are Class 7 and 8 soils and 30 percent (145 acres) is Class 6 soil. Of the 145 acres of Class 6 soil, approximately 34 acres (7 percent) are considered Class 3 soils when irrigated as defined by the NRCS Land Capability Classification System (LCC) and Prime and Unique Farmland designations. The limited soil capabilities and lack of agricultural productivity of the site is discussed on pages 7 and 8 of this submittal. Although approximately 67.5 acres of the site are currently utilized for alfalfa production through the use of an irrigation pivot, it can hardly be represented as productive agricultural land.

Development Concept Plan for Site:

The subject property is located close to existing industrial type uses as well as schools, parks, and transportation connections, and provides a perfect opportunity for implementation of a Framework Plan, one of the objectives for larger sites to be included in the Bend UGB. In the proposed Draft Bend Area General Plan Amendments (Section 'Plan Management and Citizen Involvement)', page 1-9, the following is provided:

With the 2008 UGB expansion, the City created a framework plan as a tool to illustrate and guide the location of specific land uses within future urban areas of the expanded urban growth boundary. The framework plan depicts an orderly and efficient transition from rural to urban development by identifying future commercial and industrial centers, park and open space sites, school sites, and trails.. The framework plan functions somewhat like a general plan map by indicating general locations and densities of a variety of future urban uses. The framework plan also provides accountability for the city to ensure that the identified land needs for residential and economic uses can be met. Through a master planning process, owners of large parcels in the expanded UGB will be required to demonstrate how projects will be developed after annexation in ways that are consistent with the illustrations of the framework plan.

By including 90-120 acres of industrial zoning within the 2028 UGB scenarios, the site provides an opportunity for a future master planned, mixed-use neighborhood, incorporating a mix of approximately 1,500 units of low- and high-density housing types, limited commercial/employment development, open space and trail systems, and wetlands throughout the development area, with considerably less of an impact on surrounding properties than its current use. Larger residential lots and open space buffers will be incorporated into the framework plan in order to ease the transition areas between the adjacent rural residential development and the subject site.

Evaluation of the Site with Relevant Criteria of Approval:

The content of this submittal is broken into 3 sections, as follows, in order to respond to adopted criteria used to evaluate proposals for inclusion to the Bend UGB, as well as to the Suitability Criteria adopted by the City of Bend Planning Commission, in order to illustrate why the subject site is suited to inclusion into all of the 3 scenarios currently being considered by the Planning Commission.

- 1) Suitability Criteria and Guidelines from the Bend Planning Commission
- 2) Oregon Revised Statutes
 - A) ORS 197.298, Priority of Lands
- 3) Oregon Administrative Rules
 - A) OAR 660-024, Urban Growth Boundaries
 - B) OAR 660-008, Interpretation of Goal 10, Housing
 - C) OAR 660-009, Economic Development
 - D) OAR 660-011, Public Facilities Planning
 - E) OAR 660-012, Transportation

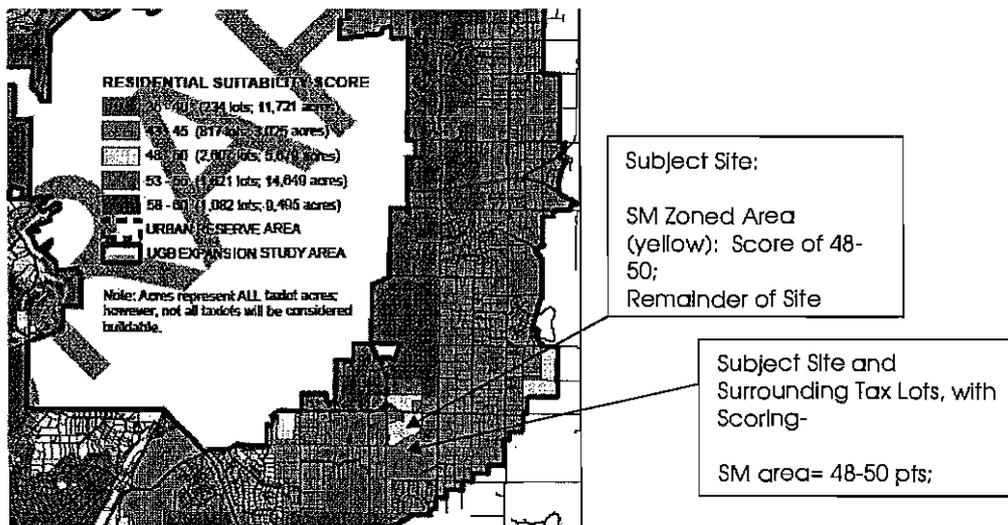
1) Suitability Criteria and UGB Guidelines from Bend Planning Commission

In order to evaluate sites within the UGB study area, the City released Draft Suitability Criteria maps dated April 25, 2008. Based on these maps, the subject site received a preliminary residential suitability score of between 54 and 55 points, with the area designated SM (approximately 92 acres out of a total of 484 acres) receiving a lower score of between 48 and 50 points, based on a maximum number of points of 60. The site was identified as suitable for the following factors:

- Minimal areas with for slopes greater than 25 percent;
- Within the area designated for cost-effective water serviceability;
- Designated for “medium connectivity” for transportation connectivity, directly adjacent to an area characterized by “high connectivity”; and,
- Not characterized by wildlife areas, cemeteries or parks or federal land (note: the property is directly adjacent to an area owned by Bend Metro Parks and Recreation District, and is within ¼-mile of a Neighborhood Park).

The subject site’s compliance with the initial suitability factors resulted in the area receiving the 2nd highest suitability score category in April, 2008 for the area not designated as SM. Regardless of the existence of the surface mine, the portion of the site designated SM received the 3rd highest suitability score category. The City’s Draft Residential Suitability Criteria Scoring is illustrated in Figure 1.

Figure 1. Residential Suitability Scoring, City of Bend, April 25,



On June 13, 2008, the City established the “Final Suitability and Goal 14 Criteria”, to determine further parcels to exclude from the UGB Scenarios.

Based on the June 13 analysis, it appears that in June 2008, the site was excluded from further evaluation because of the former surface mine which is designated as a Goal 5 resource, the limitations of sewer service, and the County zoning designation of EFU for the subject site.

The primary limitations, from the City's perspective, for the site to be included as a viable UGB expansion area appears to be as follows:

- A) Surface Mining (SM) zoning designation on approximately 92 acres of the site;
- B) Zoning designation of EFU/TRB on the site; and
- C) Lack of sewer service within the City's Sewer Master Plan service area.

Notable is that regardless of the perceived limitations of the subject site, the site scores either a "2" out of "3" possible points" or a "3" on many of the City's Final Suitability and Goal 14 Criteria, established by the City on August 15, 2008. Using the "Goal 14 Criteria for All Uses-Use to Form UGB Alternatives", the subject property receives an overall score which is sufficient for inclusion in the UGB. Additionally, the site scores highly on many of the City's suitability criteria to evaluate suitability for future economic and/ or housing uses. The attributes of the subject site as a viable UGB alternative are discussed in the following section.

A) Surface Mine and Goal 5 Resource Designation:

The approximate 92-acre area of the site designated SM is located on the northwesterly portion of Assessor Map Number 18 12 23, tax lot 300.

The property has a long history with Deschutes County concerning the viable economic use as a functioning surface mine. The following are land use applications received by the County over the past 17 years, associated with the property:

<i>County Land Use File #</i>	<i>Request</i>
SP 92-98	Site Plan Review for Surface Mining
V 93-12	Variance to Allow Rock Berm w/out Ground Cover
MC93-8	Modification to Site Plan for Surface Mining
MC 93-9	Modification to Site Plan for Surface Mining
SP 95-62	Alteration of Site Plan for Surface Mining
A 95-21	Appeal of Denial of SP9562
SP 98-65	Minor Alteration to Site Plan for Screening, Etc.
PA 98-10	Plan Amendment to Amend ESEE Analysis for Site 392

The SM portion of the site is designated as a Goal 5 Resource, Site #392, the "Rose Pit" in the Deschutes County Comprehensive Plan, in recognition of the need for mineral and aggregate resources to serve the area's needs. The Goal 5 Economic, Social, Environmental and Energy (ESEE) Analysis for Site #392 was adopted as part of the Deschutes County Year 2000 Comprehensive Plan through Ordinance 90-029, in 1990.

However, as illustrated in every land use decision regarding the use of the property as a viable surface mine operation, Rose & Associates has faced fierce opposition from surrounding property owners, including the Bend-Lapine School District (because of the proximity of High Desert Middle School, approximately ¼-mile northwest of the subject site), and nearby commercial and residential uses, primarily concerning noise, dust, and truck traffic generated by the uses allowed within the SM zoning district.

With each application, there is substantial written public testimony in opposition to the proposals for use of the Rose Pit, and in the case of Applications V93-12 and MC93-9, a neighborhood group, "Citizens Against Rose Pit", formed to fight the modifications to approval of operational uses proposed by Rose & Associates. Much of the testimony spoke to the "rural residential character of the neighborhood" and the concern that the Rose Pit was not an appropriate use in such a rural residential area.

In fact, the ESEE findings for Site #392, adopted by the Board of Commissioners in 1990, recognized that approximately 49 parcels within ½-mile of the SM site were developed, or could be developed, with residential properties, continuing with the following findings regarding the impacts of the SM Designation on the site: (page 3, "Conflicts Analysis"):

"b. Land Use Conflicts.

Surrounding Zones (EFU-20, UAR-10 & SM)

- (1) *The impact of noise, including heavy equipment and truck traffic on persons dwelling in the surrounding zoning.*

The Board finds that existing residential development in the area would be adversely affected. Many of the residents in the immediate area testified concerning the probable impacts of noise.

- (2) *The impacts of dust on dust-sensitive areas. The Board finds that residential-type uses are dust sensitive areas....*
- (3) *The impact of truck traffic on roads and on the public safety.*
- (4) *The impact to aesthetic values due to dust, physical scarring of the landscape and the introduction of a surface mining operation into this rural setting.*
- (5) *The impact of blasting to remove the aggregate material would be significant to nearby residents."*

At the time the ESEE findings were adopted, the Board found that with the proximity of the Knott Landfill to the subject site, the conflicts of allowing the use of the site for surface mining adjacent to residential, regardless of the public testimony in opposition, were lowered. Further, the Board stated, "Adequate local supplies of quality fill material are important to Deschutes County" and "Considering the quantity, quality, and location of this site close to Bend urban area market, this is an important fill material deposit." (page 6, ESEE findings).

In the ESEE findings, the aggregate resource was shown not to be viable for protection, however the fill material resource was, as limited by balancing the protection of surrounding natural resources. In summary, the ability of the property owner to use the aggregate resource and blast, or process on site was limited, in part, due to the proximity of the residences (see page 11, ESEE findings). The Board then applied the County's Surface Mining Impact Area (SMIA) combining zone on a ½-mile buffer area surrounding the SM zone (Ordinance 90-014), to further protect the aggregate resource. Within the SMIA combining zone, new residential dwellings can only be sited if the applicant signs a waiver of remonstrance precluding protest of any surface mine activities.

Clearly, by making these findings, the Board acknowledged the potential conflicts between the SM operational capacity of the site and the livability of the neighboring residents, and limited the uses allowed on the SM portion of the property. Rose & Associates ceased mining operations in 2005, and is now actively pursuing reclamation of the mine for use by the County for fill.

The City of Bend now has an opportunity to actively improve the livability of area surrounding the Rose Pit, by including the site and adjacent properties in the UGB Scenarios. As evidenced by the opposition the property owner has encountered with mining the Rose Pit over past 17 years, the site is better-suited as part of a master-planned area, serving as open space, park, or other buffer use to adjacent Rickard Road, within a larger residential or mixed-use development area.

B) EFU/TRB Zoning and the Presence of Non-High-Value Farmland

One of the many factors in determining the location of the City's UGB is whether the property is classified as a "commercial farm". According to the City's suitability criteria, if the *"tax lot is zoned EFU/TRB with 23 acres of high value soils when irrigated (per NRCS) in addition to containing 23 acres of water rights certified by the State of Oregon Water Resources Department"*.

As noted in a letter submitted to the Commission on August 8, 2008, on behalf of ACME Development, LLC, the City began considering soil classifications only within the last month, and accordingly, property owners have not been allowed reasonable time to respond. Furthermore, it appears that the existence of high value soils is a primary factor in the Rose & Associates site being removed from the UGB suitability scenarios, although the site initially scored relatively high on the City's Suitability Criteria in April 2008. As recognized by Deschutes County in applications for non-farm dwellings on EFU-zoned land, the existence of an EFU zoning district does not necessarily imply the site contains Class 1, 2, or 3 soils and therefore suitable for agriculture, as areas zoned EFU are based on the Natural Resource Conservation Service (NRCS) surveys which were not based on actual soil investigations by site.

In response to the issues regarding the soils and the EFU/TRB designation of the subject site, Rose & Associates contracted with Roger Borine, a Certified Professional Soil Scientist and Certified Professional Soil Classifier to evaluate the existence of "high value soils" on the subject site. Based on the findings of Mr. Borine's report, roughly 70 percent of the nearly 500-acre site is considered Class 7 and 8 soils, which by definition, do not support high value agricultural production, and thus should not be considered suitable as a commercially classified farm.

As provided in an "Agricultural Use Evaluation" submitted to the City in May 2008 by PBS Environmental and Engineering Services for New Century Ranch, as supplemented by Mr. Borine, the following summary of soil classifications was provided:

"Soil Capabilities are ranked using a numbering system from Classes I-VIII, with Class I being the highest rating. Properties with soils having capabilities of VI or higher are considered suitable for designation as EFU. In Central Oregon, soils with capabilities of VII or greater are typically suited for a non-resource land designation because of limitations for agricultural use and Goal 3's definition of Agricultural Land. The following is a summary of soil capability classifications.

Class 1 Soils have few limitations that restrict their use

Class 2 Soils have moderate limitations that reduce the choice of plants or that require moderate conservation practices

Class 3 Soils have severe limitations that reduce the choice of plants or that require special conservation practices, or both

- Class 4 Soils have very severe limitations that reduce the choice of plants or that require very careful management, or both*
- Class 5 Soils are subject to little or no erosion but have other limitations, impractical to remove, that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat*
- Class 6 Soils have severe limitations that make them generally unsuitable for cultivation and that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat*
- Class 7 Soils have very severe limitations that make them unsuitable for cultivation and that restrict their use mainly to grazing, forestland, or wildlife habitat*
- Class 8 Soils and miscellaneous areas have limitations that preclude commercial plant production and that restrict their use to recreational purposes, wildlife habitat, watershed, or aesthetic purposes”*

As noted in Mr. Borine’s soil survey, the only portion of the site that can be considered viable for agriculture occupies roughly 67 acres of the site, and has been augmented to support alfalfa production with the use of an irrigation pivot. The pivot area includes irrigated land that has been:

“...Highly modified with cuts, fills, and rock removal. The area is undulating with very shallow... soils, and rock outcrop on the convex slopes and shallow and moderately deep soils in concave areas. Due to the extreme modification of this area revised soil mapping more accurately describes this landscape than existing NRCS mapping.” (page 4, Soils Survey)

In his report, Mr. Borine includes a breakdown of the soils within the pivot area, and concludes that the area is not considered “prime” farmland, and is only marginally productive when irrigated.

C) Sanitary Sewer Service

Rose and Associates property is directly south of “Section 11 and South” in the City’s sewer serviceability evaluation. Section 11 and South had the highest possible scores. Rose and Associates property falls into this category as well.

A preliminary analysis was performed to determine if sewer service is feasible and determine the least cost alternative for sewer service to the Rose and Associates property in southeast Bend. Two alternatives were considered; a satellite treatment facility and gravity connection to the City of Bend South East Interceptor. Based on the analysis to date, both alternatives appear viable.

Gravity service could be provided by extending a sewer main line from the SE Interceptor at or near the intersection of 27th and Reed Mkt. Road; east along Ward Road a distance of approximately 0.75 miles; then south through Section 11 and County lands to Rickard Road. All portions of the Rose property would be serviceable by gravity sewer.

The cost of providing gravity sewer service to Section 11 and South are already low (\$6,000 +/- per acre) based on information provided by City Engineering staff. Adding Rose property to the service area actually decreases the cost to \$5,000 +/- per acre.

A satellite treatment facility was also analyzed. The Collection System Master Plan (CSMP) "King's Forest" gravity alignment was re-aligned to follow Ferguson Road east to 27th Street, then continue south along 27th to the Rose property. It was assumed the MBR, water reclamation, and solids handling facilities would be constructed on Rose property for which there is more than adequate area available.

The total cost of the revised gravity sewer alignment and MBR is approximately equal to the total cost of the gravity alignment described above. The Rose property can be served by sewer in either case.

D) Transportation System

The site is bordered by Knott Road which is classified as a minor arterial and Rickard Road which is classified as a rural collector. The subject site is also bordered by Arnold Market Road to the east. The streets abutting the site are improved and provide excellent access and circulation to the site.

From a transportation perspective, there are conclusive reasons why Rose and Associates property should be included in the UGB expansion evaluation process and ultimately, included in the UGB. Rose and Associates property is more suitable than many that are currently being proposed for inclusion.

In general, there is surplus roadway capacity in southeast Bend. Rose and Associates property would be able to take advantage of available surplus capacity in the southeast quadrant. A study was prepared for the Bend MPO plan by DKS. The 2030 forecast for this plan shows that there is surplus capacity in the southeast section of Bend on the arterial/collector and highway system, especially to the south of Reed Market Road, while northeast and central Bend arterials/collectors and highways are shown to be over capacity. (Committed Scenario V/C Plat, from the Draft BMPO Transportation Plan, Chapter 8; April, 2007).

At the same time, there appears to be an undue preference given to properties on the north side of the City in terms of transportation evaluation considering that there are significant problems in the north. (See August 11, 2008 power point slides presented to the working group). While there are significant transportation deficiencies on the north side of Bend, these properties were consistently rated higher than properties in the southeast. This appears to be a contradiction.

There are concerns that the transportation assessment for the UGB expansion is inadequate. A number of comments, including informal comments submitted previously by Ferguson and Associates, have suggested that additional analysis is needed. The financial impact as it relates to transportation needs as well as other measures of effectiveness need to be included in a meaningful way. The most recent information available has attempted to address this by assigning a dollar value per acre for transportation costs; however, no supporting technical information has been made available as to what projects were included in each cost estimate; and the cost per acre is highly dependent upon the amount of land that is included in the denominator. What would happen, for example, if 450 acres were added to the southeast area acreage calculations? The answer is that the cost per acre would significantly decrease (provided that additional improvements are not triggered).

Moreover, it appears that the methodology used to rank the other parcels (or at least its implementation) is flawed. We have reviewed a few parcels, looking at low ranking parcels and high ranking parcels. The first two parcels we picked appear to have significant errors in how they were ranked. Given that the first two parcels we reviewed were problematic, it brings to question the validity of the entire ranking.

Because the site is surrounded by existing low volume, high capacity transportation connections, which provide access to the current Bend Urban Area as well as the surrounding rural residential area, it is suitable in terms of transportation for inclusion in the UGB scenarios.

E. Water Service

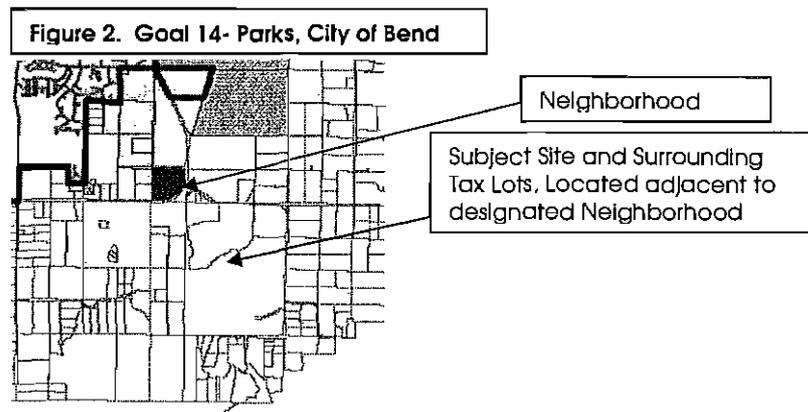
A City of Bend Public Works Department Memorandum dated August 1, 2008, from Victoria Wodrich, identifies the cost to serve the various UGB expansion areas with water per developable acre. "Knott rd. North- Avion" received the highest criteria scoring (3 out of 3), based on a figure of \$780/ per developable acre.

The subject site is shown within the boundaries of the Avion Service Area, and within .5 miles of the Knott Rd. North area and adjacent to the Hamby south areas, which are both received a criteria of 3. On the "Figure 1: Goal 14 Water Analysis Basins" map prepared by the City on July 18, 2008, it is noted that "This service area has sufficient service with existing distribution mains to the area and does not require any water system upgrades."

F) Proximity to Existing Parks

August 8, 2008, "Goal 14 Criteria for Housing- Parks" map illustrated the subject site directly adjacent to a Neighborhood Park. According to the suggested scoring on the map, shown in **Figure 2**, the property is located within ½- mile of a neighborhood park and thus scores a "2" on the suitability criteria.

In addition to the existing neighborhood park, the site itself, at 484 acres, is capable of supporting its own open space and park system. Moreover, according to Deschutes County, the long-range plan for the Knott Landfill is to reclaim the facility for park and open space uses. When the landfill is redeveloped into park and open space, the subject site will be directly adjacent to a large amenity that further satisfies the City's locational suitability criteria for proximity to parks.



G. Proximity to Existing Schools

According to the August 8, 2008 map, "Goal 14 Criteria for Housing- Schools", the subject site is greater than 1 mile, but less than 2 miles from the existing High Desert Middle School, located northeast of the site on 27th Street. The site's proximity to existing schools and parks provides an advantage for inclusion in the Bend UGB, as a combination of facilities for future and existing residents are available for use.

H. Additional Suitability Criteria

The document "City of Bend Urban Growth Boundary Expansion Project- Suitability Analysis" (June 2008) provides additional analysis of the properties within the UGB expansion areas, providing "yes" or "no" designations for each suitability criteria, without scoring, in a spreadsheet. The subject site is illustrated as being suitable for the following criteria:

Slope, Floodplain, Water Service, Storm Drainage Plan Service Area, Transportation, Federal Land, Destination Resort, Parks, Cemetery, Wildlife Area, Forest, and Development Status,* .

*Note: In the City's Suitability Analysis, all tax lots that comprise the subject property are considered suitable for development status categories, excepting the surface mine which can be utilized as open space and parks within the future Framework Plan.

The property is perceived to be limited only in the following categories, according to the City's analysis:

Existence of surface mine, sewer serviceability, residential suitability, and economic suitability.

Although the City has not ranked the site as suitable for residential or economic development, as illustrated throughout this submittal, the site provides a large, undeveloped "shovel ready" area, owned by two property owners, in close proximity to schools, parks, and services. From a fiscal standpoint, it is easily serviceable, and could support roughly 1,500 homes and a large employer in an efficient, master planned community. Evaluation of the site's attributes in terms of meeting the City's objectives for economic development and housing for the proposed UGB areas is discussed in detail beginning on page 16 of this submittal, under evaluation of the applicable OARs.

The City's Suitability Analysis does not provide specific details relating to the exclusion of the subject site, but from the submitted information contained herein, it is clear that the site has merit to be re-included in the evaluation for inclusion in the Bend UGB, as evaluation of the attributes of the site against the Final Suitability Criteria (August 15, 2008) warrants further consideration. Through this submittal, we have illustrated how the subject site meets or exceeds the evaluation criteria to a degree necessary for inclusion in all proposed UGB scenarios. As evidenced by the land use history regarding the use of the site as a surface mine, it is better-suited to open space, park, or other amenity as part of a master planned community; the existing EFU/TRB zoning, as found in the soils survey, is not warranted, as most of the site is not suitable for agriculture; and, finally, the site can be efficiently served with sanitary sewer and other urban services in a cost-effective means that will benefit other areas of the City's urbanizable area.

The following section discusses the site's compliance with Goal 14 Criteria for inclusion in an urban growth boundary expansion area.

2) Oregon Revised Statutes

Oregon Revised Statutes (ORS) 197.298 provides guidance with respect to evaluating the location and evaluation criteria for land to be included within UGBs. As noted in previous testimony before the Planning Commission, the City's urban reserve lands are not "land designated urban reserve under ORS 195.145, rule or metropolitan service district action plan". The City's urban reserve lands were designated urban reserve prior to the adoption of ORS 195.145, and have not been evaluated in accordance with this urban reserve rule, which would give them a designation as first priority land.

The subject site, under ORS 197.298, would be considered 4th priority. Specifically, ORS 197.298(1)(d) provides:

"197.298 Priority of land to be included within urban growth boundary.

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

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

Additionally, the statute provides that higher priority "shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use." (ORS 197.298(2)).

The subject property, because of its designation as "EFU/TRB" in the Deschutes County Comprehensive Plan, is considered 4th priority land for inclusion in the Bend UGB under the Statute. However, as noted within Mr. Borine's Soils Survey, 70 percent of the site is considered Class 7 and 8 soils. Deschutes County Code, section 18.16.050, Standards for Dwellings in EFU Zones, subsection (2)(b) recognizes that "A lot or parcel or portion of a lot or parcel is presumed to be suitable (for farm use) if it is composed predominantly of Class I-VI soils." Because 70 percent of the property is not considered suitable for farm use under the provisions of the Deschutes County Code, the site is more aptly suited to development of urban uses.

Furthermore, ORS 197.298(3) provides:

(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:

(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;

(b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or

(c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands."

The site meets the state criterion for Subsection (3)(a), as the approximate 484-acre site is owned by only two property owners, is a large, predominantly undeveloped area located close to the current City Limits, nearby commercial services, schools, and parks. In addition, because the site is undeveloped and comprised primarily of one large parcel, it could support a master planned area, with housing, employment, and commercial services, more efficiently than other areas included within the UGB scenarios. The City's adopted UGB Policy Statement number 10 provides:

"10. Include land that promotes the creation of "complete neighborhoods," with access to schools, parks, commercial services, and employment.

Explanation: *In considering alternative areas for inclusion in the UGB, priority should be given to those areas where parcel size and patterns of ownership suggest that the design and development of complete neighborhoods are more likely. In general, these areas will have larger parcels with a relatively small number of landowners. Areas comprised of a large number of smaller parcels, with multiple landowners, are more likely to present obstacles to the development of complete neighborhoods."*

The City's own adopted policy, as well as ORS 197.298(3)(a) supports the site as a viable property within the UGB.

Subsection (3)(b) supports inclusion of the property within a UGB scenario, as other lands proposed have topographic or physical constraints. The subject site does not have substantial slopes, floodplains, or other physical constraints that would create a hazard or difficult area to develop.

Finally, subsection (3)(c) of the Statute supports inclusion of the subject site in the UGB scenarios, as the site and surrounding southeast properties can be served with urban services in a more efficient, cost-effective manner than alternative properties located in currently-proposed scenarios by the City of Bend. Analysis of the site using City of Bend suitability criteria illustrates that the site can be immediately served with the following infrastructure in a cost-efficient manner:

- **Water service:** Sites immediately adjacent to the site received the highest scoring for serviceability for water;
- **Transportation Connectivity:** The site received the 2nd-highest rating in the City's Suitability Criteria for existing transportation linkages; and a high scoring for cost for mitigation of transportation impacts. Other properties under consideration for inclusion in the UGB, particularly in the north areas, have severe transportation system limitations;
- **Sanitary Sewer service:** Rose & Associates can either be served by gravity connection to the City's SE Interceptor or by satellite MBR treatment and water reclamation facility (see Executive Summary above). Either alternative is economically and physically viable. Either alternative also provides benefit to surrounding properties as well.

Inclusion of the site within the UGB scenarios makes sense from not only a fiscal standpoint for the City, as the site can be immediately served, but additionally, because of its location, lack of physical constraints, and its ability to be immediately served with urban services. ORS 197.298 supports the inclusion of the site as a viable option for the City's consideration.

3) Oregon Administrative Rules

The following Oregon Administrative Rules (OARs) are applicable to the City's UGB expansion project:

- OAR 660-024, Urban Growth Boundaries
- OAR 660-008, Interpretation of Goal 10, Housing
- OAR 660-009, Economic Development
- OAR 660-011, Public Facilities Planning
- OAR 660-012, Transportation

The following discusses how the subject site is supported by the applicable OARs.

A) OAR 660-024, Urban Growth Boundaries

Statewide Planning Goal 14 provides for "orderly and efficient transition from rural to urban use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

Land Need

Establishment and change of urban growth boundaries shall be based on the following:

- 1. Demonstrated need to accommodate long-range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and*
- 2. Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).*

In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.

Response: The subject site has locational and size characteristics that make it advantageous for inclusion in the Bend UGB to meet the City's projected land needs for urban growth. Firstly, the site is one of the larger areas- roughly 496 acres, comprised of 4 parcels- directly adjacent to the current City Limits. The largest parcel is roughly 308 acres, providing a large, undeveloped parcel and surrounding parcels to efficiently master plan to meet community goals.

Secondly, under subsection (2) of OAR 660-024, local governments are permitted to specify characteristics, such as parcel size, topography, in determining types of land to be included in a

UGB expansion. As discussed previously in this submittal, the site meets several of the City's Suitability Criterion, such as strong transportation connectivity and cost for transportation mitigation; proximity to existing parks and schools; cost-effective water service; and additionally, the site is not located in an area of slopes in excess of 25 percent, is not within a floodplain, nor is it characterized by federal land ownership, a cemetery, or wildlife area.

Including the site within the UGB scenarios would provide a larger parcel to meet the City's projected land needs to the future, in accordance with OAR 660-024.

Boundary Location

The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

1. *Efficient accommodation of identified land needs;*
2. *Orderly and economic provision of public facilities and services;*
3. *Comparative environmental, energy, economic and social consequences;*
4. *Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside of the UGB.*

Response: In evaluating the location of the UGB, OAR 660-024 provides that alternative boundary locations be considered. The subject site complies with the guidance from the "Boundary Location" provisions of the OAR for the following reasons:

1. The site provides a large, undeveloped area under few ownerships, in compliance with the OAR's requirement for "efficient accommodation of identified land needs." One of the key outcomes of the City's UGB expansion of roughly 5,500 acres is the requirement for owners of larger parcels within the 2028 UGB to complete "Framework Plans" for those areas.

The proposed Draft Bend Area General Plan Amendments (Section 'Plan Management and Citizen Involvement', page 1-9) provides:

With the 2008 UGB expansion, the City created a framework plan as a tool to illustrate and guide the location of specific land uses within future urban areas of the expanded urban growth boundary. The framework plan depicts an orderly and efficient transition from rural to urban development by identifying future commercial and industrial centers, park and open space sites, school sites, and trails.. The framework plan functions somewhat like a general plan map by indicating general locations and densities of a variety of future urban uses. The framework plan also provides accountability for the city to ensure that the identified land needs for residential and economic uses can be met. Through a master planning process, owners of large parcels in the expanded UGB will be required to demonstrate how projects will be developed after annexation in ways that are consistent with the illustrations of the framework plan.

The subject property is located close to existing schools, parks, and transportation connections, and provides a perfect opportunity for implementation of a Framework Plan, supported by the OAR provisions to accommodate "efficient accommodation of identified land needs." Further, the site totals 484 acres, providing nearly 9 percent of the City's identified land needs.

2. Including the site in the UGB scenarios is supported by the provision in the OAR to provide “*Orderly and economic provision of public facilities and services*”. As noted throughout this submittal, the site scored high on several of the City’s Suitability Criteria for public facilities such as water, transportation, and proximity to schools and parks.

3. Through evaluation of the “*comparative environmental, energy, economic and social consequences*” of the subject site, it is important to consider the extreme opposition to the site in regard to the reclaimed surface mine. Approximately 92 acres of the site are designated for surface mining, and, as noted previously, are protected under the Deschutes County Comprehensive Plan as a Goal 5 resource. However, as evidenced over the past 17 years as the property owner has attempted to utilize the surface mining resource, neighboring residential, commercial, and public facility property owners have protested the mining operation.

Moreover, in designating the site as a Goal 5 resource, the Deschutes County Board of Commissioners made findings to protect the neighboring rural residential development from potential dust, noise, and other operational consequences of the mine. The surrounding area to the south and east is developed with large-lot residential development.

By including the site within the 2028 UGB scenarios, the site could provide a mix of housing types, limited commercial/employment, open space and trail systems, and wetlands throughout the development area, with much less of an impact on surrounding properties than its current use. Larger residential lots and open space buffers will be incorporated into the Framework Plan in order to ease the transition areas.

4. Inclusion of the site in the 2028 UGB scenarios provides, “*Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside of the UGB*”, in accordance with OAR 660-024. As noted previously, directly adjacent to the site is primarily larger-lot residential development, with scattered small-scale farm operations. By including the site, an opportunity for a master-planned area, with varying densities in housing types, could be provided between the larger lot rural residential and the existing urban area, effectively providing a transition to the larger agricultural uses farther east of the site.

B) OAR 660-008, Interpretation of Goal 10, Housing

OAR 660-008, Oregon Statewide Planning Goal 10, Housing, requires cities to “encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.”

Response: In accordance with OAR 660-008, a major objective of the Bend Area General Plan is to establish residential areas that are safe, convenient, healthful, and attractive places to live, and which will provide a maximum range of residential choices for the people in Bend. The City’s Draft Housing and Residential Lands chapter (August 2008 version) of the Bend Area General Plan estimates an average density (averaged over all types of dwelling units) of 5.9 units/ net acre for the areas to be included within the 2028 Bend UGB (page 5-29).

The subject site provides an opportunity for the City in terms of meeting future housing needs. The site has roughly 400 net acres (496 total acres, less 92 acres currently dedicated to surface mining), which calculates to 288 net acres using a factor of 38 percent for roads and rights of way. An additional reduction of 10 percent (currently required for Master Plan Development Areas per the Bend Development Code) for open space results in 259 net acres.

The City's Draft Housing and Residential Lands report identified a benchmark of 5,892 housing units to achieve in the areas to be added to the UGB. **Based on the targeted density of 5.9 units/ net acre, and a developable acreage figure of 259 net acres, the site could generate roughly 1,528 housing units of varying types, providing over 25 percent of the City's identified UGB-area housing needs.** If the surface mine area is utilized for a park, reclaimed as a natural area, or used as open space, additional developable acreage would result. Additionally the site could support some limited commercial or employment development, which may reduce the housing potential slightly, but provide mixed-use opportunities close to housing and transportation connections.

The site is unique in that it provides a large tract of land for meeting the City's identified housing needs as provided in OAR 660-008, in close proximity to urban services, schools, and parks, and should be re-considered as a viable development area within the City's 2028 UGB.

C) OAR 660-009, Economic Development

The intent of OAR 660-009 is to "provide an adequate land supply for economic development and employment growth in Oregon. The intent of this division is to link planning for an adequate land supply to infrastructure planning, community involvement and coordination among local governments and the state. The purpose of this division is to implement Goal 9, Economy of the State (OAR 660-015-0000(9)), and ORS 197.712(2)(a) to (d). This division responds to legislative direction to assure that comprehensive plans and land use regulations are updated to provide adequate opportunities for a variety of economic activities throughout the state (ORS 197.712(1)) and to assure that comprehensive plans are based on information about state and national economic trends (ORS 197.717(2))".

Response: The City's Suitability Criteria was developed in accordance with the provisions OAR 660-009, and the intent to provide economic and employment opportunities within the areas proposed for inclusion in the Bend 2028 UGB.

Although the site is well-suited for residential development, it is also well-situated along two major transportation corridors, is a large, undeveloped property, and is located between existing rural residential development and the urbanized area of Bend. One of the objectives of the UGB expansion project is to identify sites that are "shovel ready" for economic development, and also sites that are larger than 50 acres for "general industrial" or "targeted industry sectors" (August 18 Master Suitability Criteria, City of Bend).

The subject site, at 484 acres, could support not only approximately 1,500 units of housing, but also employment opportunities, and a variety of economic uses in a location bordered by existing transportation linkages, satisfying the intent of OAR 660-009.

D) OAR 660-011, Public Facilities Planning

OAR 660-011 provides guidance to cities larger than 2500 in population to develop public facilities plans. The purpose of the plan is to help assure that urban development in such urban growth boundaries is guided and supported by types and levels of urban facilities and services appropriate for the needs and requirements of the urban areas to be serviced, and that those facilities and services are provided in a timely, orderly and efficient arrangement, as required by Goal 11.

Response: As noted previously in this submittal, the site received high scoring on the City's Suitability Analysis for public facilities such as water, transportation, and storm drainage. The property owner has worked to develop viable sewer alternatives which also score high using the City suitability criteria.

Inclusion of the site within the UGB scenarios makes sense from not only a fiscal standpoint for the City, as the site can be immediately served, but additionally, because of its location, lack of physical constraints, and its ability to be immediately served with urban services, meeting the intent of OAR 660-011.

E) OAR 660-012, Transportation

OAR 660-012 implements Statewide Planning Goal 12 (Transportation) to provide and encourage "a safe, convenient and economic transportation system. This division also implements provisions of other statewide planning goals related to transportation planning in order to plan and develop transportation facilities and services in close coordination with urban and rural development."

Response: The City has developed the Suitability Criteria based on interpretation and compliance with the provisions of OAR 660-012, and the site has scored high to medium on the City's Suitability Analysis with regard to transportation. The subject site was not included within the *Draft Bend UGB Expansion: Transportation Analysis* (April 2007, DKS), presumably because of the perceived limitations of the property due to its present zoning as EFU and SM. However, the subject site should be evaluated as a viable property for inclusion in the UGB, based on its existing location and surrounding transportation network.

The site is bordered to the north by Rickard Road and to the northeast by Knott Road. Rickard Road is designated a "Rural Collector" in the Deschutes County Transportation System Plan (TSP), and a "Major Collector" in the City of Bend TSP, and Knott Road is designated a "Minor Arterial" in the City of Bend TSP. Both Knott and Rickard Roads provide access routes to the site. The site has direct access to both a Collector and an Arterial, satisfying the Suitability Criteria that the site be adjacent to a multiple transportation network with an arterial and collector. Additionally, the site is located within the SE Area of the UGB expansion area. As noted in a City of Bend PowerPoint presentation on August 11, 2008, this area has a "Medium" (score of 2 out of 3 possible points) for off-site mitigation factors, and scored "Medium" in terms of transportation connectivity.

In evaluating the site for compliance with the provisions of OAR 660-012, the site is well suited to meet the future transportation needs of the southeast area, and should be considered for additional analysis for inclusion in the Bend UGB.

Conclusion

As illustrated throughout this submittal, the site is suitable for inclusion in the future Bend UGB, as the site is nearly 484 acres owned by two property owners, located in close proximity to urban services such as schools, parks, along planned and existing roadway networks, and as illustrated in this supporting information, could be served with urban services in a timely and cost-effective manner.

Furthermore, including the subject site within the UGB expansion area would create an opportunity for an efficient master-planned mixed-use development opportunity area that provides an orderly transition between the current City UGB and nearby low-density, rural

residential Deschutes County development. By providing this analysis, our expectation is that the City of Bend Planning Commission will consider including the subject property within the proposed UGB scenarios, for recommendation to the Bend City Council.



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