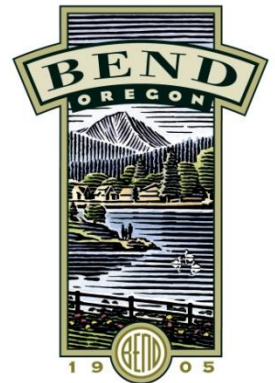


# AGENDA

## UGB Remand Task Force (RTF)

Monday, January 13, 2014  
3:00 p.m.

DeArmond Room  
Deschutes Services Building  
1300 NW Wall St, Bend, OR 97701



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JIM CLINTON  
*Mayor*

JODIE BARRAM  
*Mayor Pro Tem*

VICTOR CHUDOWSKY  
*City Councilor*

DOUG KNIGHT  
*City Councilor*

SALLY RUSSELL  
*City Councilor*

MARK CAPELL  
*City Councilor*

SCOTT RAMSAY  
*City Councilor*

ERIC KING  
*City Manager*

1. Call to Order
2. Appointment of Chair, Vice Chair
3. Approval of Minutes – November 18, 2013
4. Recap of Presentation from November 18, 2013
5. Presentation and Discussion – UGB Remand Task 2.2 – Buildable Lands Inventory
  - a. Staff presentation - Draft changes to August 31, 2011 memorandum and Draft Findings
  - b. Discussion, RTF, Staff
  - c. Testimony-Public
  - d. RTF deliberation and Action

**Requested Action:** Approve changes to August 2011 memo and proposed findings on Remand Task 2.2
6. Prep for February 10, 2014 RTF Meeting (DeArmond Room)
7. Adjourn

**1. Call to Order**

The Remand Task Force Meeting was called to order in the Deschutes County Building at 3:03 PM. Present were the Remand Task Force Members: Chair Cliff Walked, Bill Wagner, Mayor Clinton, Jodie Barram, Doug Knight, Sally Russell and Scott Ramsay.

**2. Approval of Minutes from October 21, 2013**

Ms. Russell asks that the minutes be edited for brevity and clarity. We should then bring them to the next RTF meeting for approval.

**3. Recap of Presentation from October 21, 2013** (see attached PowerPoint presentation)

Mr. Syrnyk began by mentioning that we'll begin to go through the 2010 remand order and while we go through the remand tasks themselves, we'll be covering tasks that already have work product and findings that were already reviewed by the RTF. We'll go through the residential lands and capacity and efficiency measures and other non-employment lands. At the end of the meeting, we'll ask for direction and whether we're comfortable relying on the past work that was done by the RTF.

**4. Presentation and Discussion - UGB Remand Order: Residential Lands, Capacity and Efficiency Measures, and Other Lands**

The term "substantial evidence" was discussed and that fact that our decision must be supported by substantial evidence. When we want to make findings, we need to look at the evidence in the record and see if there is any conflicting evidence.

Findings include articulating its thinking through findings; explaining why the City's decision complies with this standard; identify substantial evidence to support such evidence; and local government must articulate its thinking through findings.

Residential land needs was then discussed including 2.2 and the housing needs analysis, then 2.3 was presented with clear components listed. For residential land needs, the City must plan lands within existing UGB and any expansion so that there are sufficient buildable lands in each plan district to meet anticipated needs for particular needed housing types. We need to make sure we classify residential land into four different categories (see presentation).



The housing needs analysis is a foundational piece like the buildable lands inventory. It also helps us identify our future land needs for housing. This also helps us identify our future mix of housing and future density.

Mr. Syrnyk then went out to explain other upcoming tasks they are working on.

Mr. Wagner asked about infill acreage and how it is determined that it's a piece of land and why it's infill as opposed to developed. Mr. Syrnyk explained the reasoning behind the designation. Mr. Wagner further mentioned that we are looking at tax lots and not where that development occurred on the lot. Mr. Syrnyk mentioned they looked at how much frontage the property had, looking at property size, and whether the housing designation allowed it to be further developed, to which Mr. Wagner mentions that on the higher level, theoretically, it could be developed. It might be significantly less than 5,000 acres to which Mr. Syrnyk affirmed.

Mr. Capell asked if it takes into account HOA restrictions to which Mr. Rankin mentions that he believes it does not take that into account.

Further discussion about the BLI map took place and Mr. Syrnyk further explained buildable lands as noted in the first two slides of the presentation.

Mr. Rankin mentioned that this is a high level of what has been done today. We are first talking about buildable lands, etc., and the amount of work that has been done. If there are questions, we can schedule a meeting on specific questions. If the RTF members are comfortable with the prior work approved by the prior RTF, we can go forward.

Ms. Russell mentioned that these are 2008 numbers and we're now in 2013. She asked how we take into account that planning and what has happened between 2008 and today. Mr. Syrnyk mentioned that a summary table was handed out that outlined the different remand tasks. We might need some good current data in some scenarios, such as efficiency measures because it is not required in the remand to use new data in the BLI. Mr. Capell mentioned that if we look into the CC&Rs, it could be a big reduction in the BLI. Mr. Rankin mentioned that we should keep in mind that if we update the BLI and use current information, we have to update our housing analysis. It is hard to update one thing and not update others.

Mr. Syrnyk finished his presentation by concluding that there are two tasks on efficiency measures. One is 3.1 and one is 3.2. Also, the City must make findings to address OAR 660-024-0050(4).

Chair Walked asks that the RTF do their homework and determine whether the former RTF approved items are acceptable. Mr. Knight likes the idea of homework but he also likes that by cursory approval, we move the process forward.

Mr. Wagner mentions his concern about the broad definition of infill lands. Mr. Chudowsky agrees with Mr. Wagner. Mr. Chudowsky would like to talk to the previous RTF and determine they agreed to the 5,000. He asked more about if we redid the buildable lands, why would we then have to also redo the housing needs analysis? Mr. Rankin explained that the housing needs starts allocating so there would be a gap in time. If you update the BLI to 2013, there is a need for matching this up. This infill had a ton of acreage and then there was a trend analysis on that acreage. Mr. Capell says that assuming Mr. Rankin is right in assuming 5%, if it is off by a half or 1 percent, going back to the CC&Rs wouldn't have much of an impact as he once thought. Now he is kind of thinking that if we pick up 20 acres, that it is a waste of time.

Mr. Chudowsky mentions that it would be great if staff could look into that. Mr. Wagner also mentions that if we could find out what percent of infill was seen as buildable, it would be useful. Ms. Russell mentioned that she would also like to see that.

Mr. Walkey asked Mr. Rankin to elaborate on the new data as far as local trend analysis. Mr. Rankin replied that when we were looking at the remand, we met with legal staff and found that it is practically impossible to do the work without accepting some of the new data. Because the record is old and our BLI is old, and because the map is antiquated, it's tough to predict. If we could look at information from our public facilities plans, we can talk about capacity, like the water PFP. You can take into consideration those other plans.

Mr. Syrnyk mentioned that we're not just looking at these for efficiency measures, that this is something that we could make an argument for that we could meet our housing needs.

Mayor Clinton asks that during this planning period, how much of this land is getting a new house on it? Is that where you guessed at 5%? Also, if you're doing it for a certain number of years, the only area where you really get to where it'd be wise to reconsider based on current data is what the trend is rather than what the basic numbers are. Maybe we should think of current data to establish current trends, but as far as the basic numbers, he thinks it would serve no useful purpose to reconsider those as long as we check to see how they have been arrived at.

Mr. Wagner mentions that he is more comfortable after hearing that 5% number.

Mayor Clinton discussed trend analysis and wondered if maybe we have more information now. We have more backup for our predictions now of what the trends are.

Mr. Rankin mentions that that may be tricky. We're going to work with legal and put our heads together. The question is if you open up a task for one area, like a trend, does

that mandate us to bring the whole thing up to date? We haven't asked DLCD about it. We need to get back to the RTF on that.

There was further discussion on revisiting the issues and the analyses among the RTF members. Ms. Winters mentioned that we may have been resistant to open it back up in the past, but for efficiency measures, we might. You might get some trend data on how it's been developing, what kind of industrial, what kind of housing, etc. If we're going to talk about density, we want it to mean something. We made assumptions but we didn't make a lot of findings. We need to do a better job this time and explain our assumptions.

Mr. Rankin mentioned other data that was approved by the prior RTF and asked the RTF members whether they are comfortable with the second homes? Mr. Chudowsky mentioned that he didn't see a point in revisiting it; Mr. Cappell is comfortable with it; and Mr. Knight says if it hasn't been remanded, then he is comfortable with it. Mayor Clinton asked for clarification for second homes and whether it was part of the remand tasks to which Mr. Rankin mentioned that we were required to do additional findings and explain them and also to coordinate with the county. Mayor Clinton mentions that we come up with findings to say our reasoning was perfect and we're presuming that's correct.

Mayor Clinton asks if you came up with a different number, would that be a risky move, to which Mr. Syrnyk affirms.

Ms. Barram remarks that we're spending too much time talking about this. She agrees with others that since the state didn't ask for corrections, we should move beyond it.

Bob from Kirkham Commercial Group spoke. He mentioned that when you get past residential and get into employment lands, he would urge everyone to remember that we're dealing with a state agency that controls every land use decision throughout the state and are heavily influenced by Portland. He fears that the state may look at that in not the same light that we are. It might give them cause to ask more questions. He then talked about Juniper Ridge. When is it going to be in the UGB?

Dale Van Valkenburg mentions that what the remand does is that it reduces the size of the UGB. If we start unraveling, how much do we start unraveling? He goes on to say that he thinks we should do better findings. Ms. Swirsky mentions that we can open up whatever we want; it is up to the City. She mentions that there was an idea of doing a sample of CCRs. There was a subcommittee that looked at those CCRS, some in the boundary and some out of the boundary. So that's more tied to remand task 2.6 or 2.7. We do need to look at the CCRs for land in the boundary to see what they affect.

Mr. Rankin mentioned that at the last meeting, we presented the schedule. As we did that, this topic comes up: do we assume the decisions from the prior RTF is sufficient or go task by task? He doesn't have a clear sense if the group wants to consider the work done, or take step by step.

Further discussion ensued on whether we accept what has been approved before. Ultimately, Mr. Walkey asks each member to weigh in on that. Are you comfortable accepting or would like to explore those topics?

Ms. Barram would like to go with what the RTF has already done; let's move forward with new findings. Mr. Ramsay agrees that he is confident with what the RTF has done and let's move forward. Mr. Wagner asks regarding the summary table that was given to us in the October meeting, if it has a little check mark, does that mean DLCD has approved it? Yes, staff has reviewed. Mr. Rankin explained that we still have to discuss these, but it's been approved by the RTF and DLCD. Mr. Wagner mentions that this is helpful and it hasn't been a waste of time. He will be able to have a better say on the findings. Mr. Knight says he trusts what the prior RTF has done.

Council Russell says it is easier to understand when we have everything in context. She's looking at the summary and mentions that there's several different ways to deal with this. Should we ask questions maybe without the rest of the group? The other question is, are we almost there? Mr. Rankin mentions that we're asking whether you want to accept what the former RTF already recommended? Councilor Russell says she has to look at it first. Mr. Rankin says he's happy to meet and have discussion individually.

Mr. Clinton mentions that in the summary table, for every place there's already a check, he would like those checks to remain. He sees that virtually all of them have new findings required. Ms. Swirsky points out that almost all of the draft memos that Damian and Brian provided us did have draft findings in them. Mayor Clinton says maybe put a check next to different new findings as opposed to older findings. Chair Walkey is comfortable with accepting all of the findings and mentions that others should feel free to check the comprehensive meeting minutes. Mark Cappell is comfortable and wants to see us move forward. Mr. Chudwosky is 99% comfortable, maybe just have the BLI explained to him more. It's not an objection; it's just that he doesn't understand it well enough.

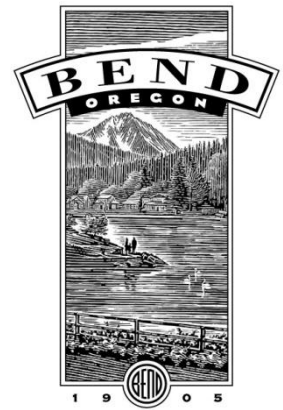
Brenda Pace asks that she believes what we are saying is that there is several items that are complete and approved by the RTF. She mentions that she hasn't seen a copy of those findings and are they available, to which Mr. Rankin mentions that the findings, with parks and school and other lands are online, but again, not for the housing needs analysis, but for other lands. She asks if these exist to which Brian mentions that they

are completed and reviewed. Mr. Syrnyk adds that they approved the technical work and methodology.

Ms. Barram requests that they have the summary table on every agenda and note if it's been updated. Can we note that it is a Staff action required and not an RTF required.

It was decided that we'll have a side meeting about the BLI before the next meeting. And, we will set aside 10 or 15 minutes to talk about infill at the next meeting. In addition, we hope to preview some employment land needs next time.

Mr. Walkey adjourned the meeting at 4:59 PM.



## MEMORANDUM

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TO: **BEND UGB REMAND TASK FORCE**  
FROM: **DAMIAN SYRNYK, SENIOR PLANNER**  
SUBJECT: **JANUARY 13, 2014 TASK FORCE MEETING**  
DATE: **JANUARY 9, 2014**

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### Purpose

This memorandum provides an overview of the meeting agenda and the actions that Staff will request from the RTF during the January 13, 2014 meeting.

### New RTF Chair

RTF Chair Cliff Walkey has recently retired from the Planning Commission. Staff requests the RTF appoint a new Chair. You will find a pdf copy of the approved RTF Charter included with your meeting materials that describes the duties and the structure of the RTF.

### Buildable Lands Inventory (BLI)

You will find included two products related to remand task 2.2, the residential buildable lands inventory or BLI. These products include a technical memorandum and findings addressing Task 2.2. The RTF's review of these products will include opportunities for public review and comment. Staff requests the RTF review these products, obtain comments from the public, and then decide whether they satisfy the applicable laws.

The BLI memorandum was reviewed by the RTF in September 2011. Staff has proposed changes to this memorandum to respond to comments from staff at the Oregon Department of Land Conservation and Development (DLCD) following their review. You will notice that the proposed edits to the BLI memorandum are shown in track changes. The meeting materials also include pdf copies of the BLI map and the map of infill occurrences reviewed by the RTF in 2011. The maps identify how parcels with either a residential or mixed used plan designation were classified in the inventory.

### Next meeting and steps

The next RTF meeting is scheduled for Monday, February 10, 2014. The agenda for this meeting will include review of work products for remand task 2.3, the Housing Needs Analysis (HNA).

# M E M O R A N D U M

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[www.ci.bend.or.us](http://www.ci.bend.or.us)

TO: **UGB REMAND TASK FORCE**  
FROM: **LONG RANGE PLANNING STAFF, CITY OF BEND**  
SUBJECT: **DRAFT BUILDABLE LANDS INVENTORY – SUB-ISSUE 2.2**  
DATE: **AUGUST 31, 2011 (REVISED JANUARY 9, 2014)**

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## Introduction

This memo responds to Sub-issue 2.2 of the City of Bend Remand and Partial Acknowledgment 10-Remand-Partial Acknow-001795 (hereinafter referred to as Remand and Sub-Issue). This sub-~~issue~~is issue is found on pages 18-26 of the Remand order. This version of the August 31, 2011 memorandum to the RTF incorporates edits that address comments from the Department of Land Conservation and Development.

This memo includes a discussion of the sub-issue and a staff recommendation. Because this memo includes only a partial BLI, draft findings that respond to all related remand issues will be prepared as remaining elements of the BLI are completed and submitted to DLCD for review. The contents of this memo and its preliminary estimates of housing capacity have been reviewed by DLCD staff. Based on discussions with DLCD staff, the City believes that ~~the analysis~~the analysis contained in this memo, and its preliminary estimates of buildable lands and capacity, will be supported by DLCD staff as satisfactorily addressing the concerns expressed specifically under Sub-Issue 2.2. Both City and DLCD staff understand that these estimates will be subject to further revision based on a revised housing needs analysis (Sub-Issue 2.3) and any additional land use efficiency measures (Sub-Issues 3.1 and 3.2).

## Remand Sub-issue 2.2

*“Whether the City’s Buildable Lands Inventory (BLI) is adequate for review. Whether the City correctly determined what lands are ‘Vacant’ and what lands are ‘Redevelopable’ Whether the City’s estimate of the development capacity of those lands complied with the needed housing statutes and the Commission’s rules”<sup>1</sup>*

### Conclusion:

“The Commission denies the city’s and Newland’s appeals on this subissue, upholds the Director’s Decision, including the director’s disposition of objections (for the reasons set forth in the Director’s

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<sup>1</sup> Oregon Land Conservation and Development Commission, Remand and-Partial Acknowledgement Order 10-Remand-Partial Acnow-001795, November 2, 2011, p. 18.

Decision) and remands the city's decision with instructions for it to develop a record and adopt a buildable lands inventory supported by findings that are consistent with state law. The city's findings must explain what criteria it uses (based on ORS 197.296, OAR 660-024 and 660-008) to determine whether particular lands are vacant or redevelopable, examine the amount and type of development that has occurred on the vacant and redevelopable lands since its last periodic review, and project the capacity of the city's buildable lands (prior to additional measures being implemented) based on that analysis (and as further detailed in connection with Goal 14, below). If the amount of redevelopment and infill within the city's UGB is projected to differ significantly from past trends, the City must explain why, and provide an adequate factual and policy basis to support that change.

The city's buildable lands inventory may not exclude lots and parcels smaller than 0.5 acres with no improvements without specific findings consistent with OAR 660-008-0005. Similarly, the City may not exclude lots and parcels subject to CC&Rs unless it adopts specific findings, supported by an adequate factual base, that show why the lands are not available for development or redevelopment during the planning period. In addition, the City has agreed to reexamine lands it identified as "constrained" to determine whether the lands are buildable under OAR 660-008-0005.

Finally, the Commission denies the objection of Newland for the reasons set forth in the Director's Decision, which are incorporated herein by this reference. Director's Decision, at 42-43." <sup>2</sup>

## **Discussion of Sub-Issue 2.2 Conclusion**

In summary, the conclusion of Sub-Issue 2.2 directs the City to:

- 1) Explain the criteria used to determine whether lands are vacant or redevelopable, consistent with ORS 197.296, OAR 660-024 and 660-008.
- 2) Examine the amount and type of development that has occurred on vacant and redevelopable lands since the City's last periodic review.
- 3) Include vacant lots smaller than 0.5 acre in size in the inventory.
- 4) Project the capacity of the city's buildable lands (prior to implementing efficiency measures).
- 5) Reexamine lands defined as "constrained" to determine whether the lands are buildable under OAR 660-008-0005.

In order to comply with the mandates of this sub-issue, the previous BLI<sup>3</sup> has been completely revised, based on different categories of vacant and developed

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<sup>2</sup> Ibid., p. 26.

<sup>3</sup> Pre-Remand Record p. 1288.



land, and new analyses of land use and development activity during the 1999-2008 period. Much of this information was in the record prior to the remand; ~~however;~~ however, the analysis of development trends is more extensive than in the previous BLI. In addition, land use and parcel data in the record for the previous BLI has been re-categorized, based on guidance from DLCD, to ensure consistency with state law. All of the data analyzed in the revised BLI existed and was available as of December 2008. The analyses which form the basis for the new BLI include no new data subsequent to December 2008.

## Applicable Legal Standard

Following are provisions in state law that must be addressed in preparing a BLI for housing.

ORS 197.296:

\* \* \*

(2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands;

\* \* \*

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:

(A) Vacant lands planned or zoned for residential use;  
(B) Partially vacant lands planned or zoned for residential use;  
(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and  
(D) Lands that may be used for residential infill or redevelopment.

\* \* \*

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;  
(B) Trends in density and average mix of housing types of urban residential development;

\* \* \*

OAR 660-008-0005(2) and (6):

(2) "Buildable Land" means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered "suitable and available" unless it:

- a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;
- b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 15, 16, 17, or 18;
- c) Has slopes of 25% or greater;
- d) Is within the 100-year flood plain; or
- e) Cannot be provided with public facilities.

\* \* \*

(6) "Redevelopable Land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.

OAR 660-024-0050 (2007 Version):

- (1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute. \* \* \*
- (2) As safe harbors, a local government, except a city with a population over 25,000 or a metropolitan service district described in ORS 197.015(14), may use the following assumptions in inventorying buildable lands to accommodate housing needs:

## Substantial Evidence

The Conclusion section of Sub-Issue 2.2 summarizes the need for an adequate factual base and findings that are consistent with state law. The steps which make up the remainder of this memo provide the factual base serving as substantial evidence of compliance with state law in preparing a BLI:

- **Steps 1 & 2** - Explanation of criteria used to inventory vacant and redevelopable lands;
- **Steps 3 & 4** - Examination of the amount and type of development that has occurred since Bend's last periodic review;
- **Step 5** - Projected capacity of buildable lands;
- **Step 5** - Explanation with adequate factual and policy basis for projections that differ significantly from past trends;

- **Step 2** - Inclusion in the inventory of parcels smaller than 0.5 acre; and
- **Step 2** - Inclusion of parcels subject to CC&Rs, unless findings show why they are not available for development or redevelopment;
- **Step 2** - Inclusion of buildable acreage within parcels that are partially affected by “constrained” lands.

As required by ORS 197.296(5), the table provided as Attachment A summarizes the number, density, and average mix of housing types that have occurred since periodic review (1999-2008). This table also indicates trends in density and average mix of housing types during that period.

## **Explanation of Compliance**

The remainder of this memo explains the steps that have been taken to ensure that the revised BLI will be fully compliant with state law. Step 1 outlines the definitions that have been used to classify residential land consistent with ORS 197.296, OAR 660-008, and OAR 660-024. Remaining steps describe in detail the methodologies used to estimate the amounts of acreage within these categories and the potential yield in housing units by category. The housing unit yield is the basis for preliminary estimates of capacity within the 2008 UGB. Those capacity estimates are also based in part on housing trends observed during 1999-2008. Those ten years correspond to the period since the last periodic review, consistent with ORS 197.296(5)(a).

## **Step 1: Criteria Used for Buildable Lands Inventory**

In reviewing the BLI adopted in 2008, much of DLCD’s concern centered on the City’s interpretations of categories of land to be included in the inventory. In the remand order, LCDC ruled that the City’s categories (vacant acreage, vacant platted lots, vacant with pending land use approvals, and redevelopable) were not consistent with state law. Except for “Redevelopable Land,” the terms used in state law (above) for the categories of land to be included in a BLI are not defined. (Even the definition of “Redevelopable Land” is open to interpretation.) To ensure that on remand the correct categories would be used by the City in the revised BLI, we contacted DLCD staff for more specific guidance on how to define the categories of potentially buildable land within the UGB. This guidance was also needed to prevent double counting of some types of land, since several of the required categories could be considered to overlap, e.g. partially vacant and infill. Through a series of recent e-mail exchanges, DLCD staff provided their interpretations of state law in the form of definitions that could be used to conduct a GIS parcel-based analysis of every acre of residentially planned or zoned land in the Bend UGB as of 2008.<sup>4</sup> Those definitions as provided by DLCD, for land that is vacant, partially vacant, developed, redevelopable, or developed with infill potential, are shown below.

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<sup>4</sup> E-mail from Gloria Gardiner, DLCD, to Damian Syrnky, October 21, 2010. See also e-mail response from Gloria Gardiner, DLCD, to Karen Swirsky, dated June 9, 2011.

With clarity as to definitions, the revised BLI has been developed through a GIS database of all tax lots within the City. Information available in the database includes Deschutes County Assessor data such as real market land and improvement values, assessed values, property use information, and ownership information. The database also includes zoning and General Plan designation, property size, and the number and type of dwelling unit(s). Using this database, lots as of 2008 were assigned to the categories below:

**Vacant** (Completely) – Land planned or zoned for residential use that has \$0 in improvements value. Properties that are planned or zoned for residential use, but are dedicated for other uses such as parks, common areas, rights of way or utilities are excluded. Publicly owned land is also excluded.

**Partially Vacant** – Land planned or zoned for residential use that has an improvements value greater than \$0, but contains fewer dwelling units than permitted in the zone. Based solely on lot size, additional units could be built without removal of the existing structure, but the lot is not large enough to further divide. To identify partially vacant lands, we calculated the maximum number of units that could be built on each developed parcel that was not large enough to divide, based on the maximum density allowed per the development code and the parcel size. The number of existing units was then subtracted from the maximum number of units allowed. If one or more new units could be accommodated, the parcel was categorized as partially vacant. (Considerations such as setback and frontage requirements, lot coverage, or location of the existing unit on the lot were not considered, although those will be limiting factors in many cases.)

**Developed** – Land planned or zoned for residential use that is currently developed with the maximum number of dwelling units allowed in the zone, and the size of the lot does not allow for further division. (Residentially zoned land that is currently developed with employment uses is categorized as Developed.)

**Redevelopable** - ~~Lands in the Developed category~~ may be considered redevelopable only if there exists “the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.” We have examined prior trends and examples of redevelopment to estimate the extent to which developed lots have redeveloped in the past, ~~and the resulting housing yield.~~ This work has focused on residentially zoned or designated lots that were completely developed, not large enough to further divide or to have additional units added without division, and where the existing unit(s) was demolished in order to develop at a higher density.<sup>5</sup> The City distinguished Redevelopable lands from those identified as Partially Vacant or with Infill Potential as these lands were not developed with the maximum number of units allowed by their respective zones and additional units could be developed on site.

**Developed w/ Infill Potential** – Land planned or zoned for residential use that is currently developed, but where the lot is large enough to further divide consistent with its current zoning without the removal of the existing dwelling. As with

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<sup>5</sup> E-mail from Gloria Gardiner to Damian Syrnyk, October 21, 2010.

Partially Vacant land, this category does not consider limiting factors such as setback and frontage requirements, lot coverage, or location of the existing unit on the lot.

## **Step 2: Classify the 2008 Parcel Database into Developed, Vacant, Partially Vacant, or Infillable Categories**

Using criteria contained in the definitions above, every residentially designated or zoned lot/parcel within the current UGB as of 2008 has been placed into one of the following categories:

- Vacant (completely) land
- Partially vacant land
- Developed land
- Developed land with infill potential

State law also requires consideration of potentially redevelopable lands. Because potentially redevelopable lands also require a finding of a “strong likelihood” to redevelop, it is not possible to identify them in advance through a GIS-based analysis. The role of potentially redevelopable lands in this revised BLI is discussed in more detail under Step 6 as a sub-category of Developed lands.

For each of the other categories above we have analyzed total developable acres, as well as characteristics such as total number of lots/parcels, size of lots/parcels, zoning/plan designation, real market land and improvement values, assessed values, current property use, and ownership.

Within each of these categories, acres that are not buildable, based on criteria in OAR 660-008-0005(2), have been identified and tabulated, i.e. any land that:

- a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;
- b) Is subject to natural resource protection measures determined under statewide Planning Goals 5, 15, 16, 17, or 18;
- c) Has slopes of 25% or greater;
- d) Is within the 100-year flood plain; or
- e) Cannot be provided with public facilities.

At this point, the only criteria from OAR 660-008-0005(2) that have been used to exclude land as unsuitable are slopes in excess of 25% and land within the boundaries of the 100-year floodplain. All other residentially planned or zoned lands are considered buildable.

Results of this classification of 2008 residential parcels are summarized in Table 1. This summary indicates that as of 2008 there were a total of 7,210 acres of residentially zoned or designated land considered suitable and potentially available to accommodate needed housing units over the 2008-28 planning period. An additional 128 acres of potentially available land for housing were

identified in two mixed-use zones, the Mixed-Use Riverfront (MR) Zone and the Mixed Employment (ME) Zone. Note that for the RM and RH zones, Table 1 shows separate columns for a small amount of RM and RH acreage within the Medical District Overlay Zone (MDOZ). For purposes of estimating housing capacity, residential acres within the MDOZ are treated differently than RM and RH land elsewhere. Whereas the RM and RH zones in general permit housing as the primary use, within the boundaries of the MDOZ overlay the primary purpose is “to allow for the continuation and flexible expansion of the hospital, medical clinics, and associated uses in a planned and coordinated manner.”<sup>6</sup> Housing is not precluded in the MDOZ, but medical and related uses are the highest priority. Residential acreage in the MDOZ is included in Table 1 because of its residential zoning, but is not treated as having capacity for new housing.<sup>7</sup> Instead, this land has been treated as employment land for Goal 9 purposes, and is expected to accommodate economic uses rather than housing.

**Table 1**  
**Preliminary BLI Acreage Summary - 2008**

	PLAN DESIGNATED OR ZONED (NON-MDOZ)								MDOZ				MR <sup>1</sup>	ME <sup>1</sup>
	RL	RS	RM	RH	PO/RM/RS	SR2 1/2	UAR10	TOTAL	RM	RH				
<b>Developed</b>														
Lots	2590	11958	881	77	5	1	0	15,512	6	77			440	259
Existing Units	2537	10923	814	5	5	0	0	14,284	0	22			137	11
Total Acres	1152	3634	161	31	1	0	0	4,979	9	121			194	169
Constrained Acres	20	232	4	1	0	0	0	257	0	1			23	2
Total Potential Acres	0	0	0	0	0	0	0	0	0	0			0	0
<b>Developed w/ Infill Potential</b>														
Lots	307	9486	1962	171	6	0	0	11,932	8	16			n/a	n/a
Existing Units	448	10629	6524	1005	6	0	0	18,612	302	141			n/a	n/a
Total Acres	403	4201	751	59	2	0	0	5,416	16	23			n/a	n/a
Constrained Acres	14	238	12	0	0	0	0	265	0	1			n/a	n/a
Total Potential Acres	389	3963	739	59	2	0	0	5,151	16	21			n/a	n/a
<b>Partially Vacant</b>														
Lots	2	21	1292	59	0	0	0	1,374	31	0			n/a	n/a
Existing Units	0	0	1454	73	0	0	0	1,527	62	0			n/a	n/a
Total Acres	1	3	141	6	0	0	0	151	4	0			n/a	n/a
Constrained Acres	0	0	1	0	0	0	0	1	0	0			n/a	n/a
Total Potential Acres	1	3	140	6	0	0	0	150	4	0			n/a	n/a
<b>Vacant</b>														
Lots	92	2933	421	44	15	0	0	3,505	15	27			16	19
Existing Units	0	0	0	0	0	0	0	0	0	0			0	3
Total Acres	82	1778	183	22	3	0	0	2,068	34	32			30	105
Constrained Acres	6	144	8	0	0	0	0	159	0	0			1	5
Total Potential Acres	75	1634	175	22	3	0	0	1,909	34	32			28	100
<b>Publicly Owned</b>														
Lots	8	287	79	16	0	0	2	392	1	1			n/a	n/a
Existing Units	1	9	4	0	0	0	0	14	88	0			n/a	n/a
Total Acres	16	1089	100	25	0	0	506	1,736	5	3			n/a	n/a
Constrained Acres	0	186	7	0	0	0	0	193	0	0			n/a	n/a
Total Potential Acres	0	0	0	0	0	0	0	0	0	0			n/a	n/a
<b>TOTAL</b>														
Lots	2999	24685	4635	367	26	1	2	32,715	61	121			456	278
Existing Units	2986	21561	8796	1083	11	0	0	34,437	452	163			137	14
Total Acres	1654	10704	1337	143	6	0	506	14,349	68	179			224	274
Constrained Acres	40	801	31	1	0	0	0	874	0	2			24	7
Total Potential Acres	465	5599	1054	86	5	0	0	7,210	53	54			28	100

The majority of potentially developable residential acres (5,151) are in the Developed with Infill Potential (Infillable) category. The next largest category is completely Vacant land, with a total of 1,909 residential acres. (For comparison, the previous BLI [\(submitted in 2009\)](#) had estimated a total of 3,260 vacant acres, when combining Vacant, Vacant–Pending Land Use, and Vacant–Platted Lots).

<sup>6</sup> Bend Development Code, Sec. 2.7.510.

<sup>7</sup> Since adoption of the MDOZ in 2004, only 5 housing units have been built within MDOZ boundaries. See also Director’s Decision, Bend UGB Order 001775, January 8, 2010, p. 35.

Total Developed residential acres, with no further capacity, are estimated at 4,979 acres (compared with 9,554 acres in the previous BLI). The BLI presented in this memorandum does not classify Vacant land by these previous categories.

### Step 3: Determine the Amount and Types of Past Housing Development that Has Occurred on Residentially Designated or Zoned Lands

The City has examined all new residential construction that occurred from 1999 (start of last periodic review) through 2008 to determine the amount and type that has taken place on vacant lands, partially vacant lands, infill lands, and developed lands (redevelopment). As previously noted, we used a database of tax lots from 1999 that includes (for each property) characteristics such as the existing level of development, land and improvement values, zoning and general plan designation, whether it was large enough to divide, and whether a demolition permit has been issued. The City then examined the land divisions and building permit activity that took place on those properties for the 10-year period, 1999-2008.

The result of this work is a database of residential land divisions and new residential construction from 1999-2008, with each new division or building permit categorized as occurring on either vacant land, partially vacant land, developed infill land, or redeveloped land. The data also show the number of permits and resulting units by type of housing by year:

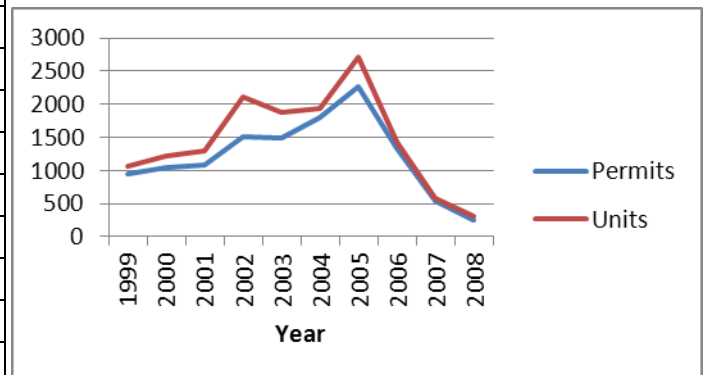
- Single-family dwelling
- Attached single-family dwelling
- Manufactured home on an individual lot
- Multi-family dwelling (two or more attached dwellings on a single lot).

Table 2 and Figure 1 summarize the total number of permits and new housing units built during 1999-2008:

**Table 2**

Year	Permits	Units
1999	945	1,057
2000	1,052	1,218
2001	1,085	1,305
2002	1,520	2,115
2003	1,484	1,879
2004	1,808	1,944
2005	2,263	2,720
2006	1,340	1,430
2007	543	583
2008	255	313
<b>Total</b>	<b>12,295</b>	<b>14,564</b>

**Figure 1**



Of interest in these summaries is the sharp spike in permits issued and housing units built during the middle portion of the period, and in particular during 2002-2005. These peaks coincided with the nationwide housing boom during this period. The steep decline from 2006-2008 suggests a more modest rate of construction activity that appears likely to continue in the near term, at least.

#### **Step 4: Identify Trends of Development by Category of Lot/Parcel and Type of Housing**

In this step, land divisions and building permits for new residential units in residentially planned or zoned areas were analyzed to estimate both the number and proportion of units built during the 1999-2008 period by the lot/parcel categories identified in Step 2. The result provides a compilation of total land divisions and units built by year and by:

- Vacant (completely) land
- Partially vacant land
- Developed land with infill potential
- Developed land (occurrences of redevelopment)

Table 3, below, summarizes the permits that were issued between 1999 and 2008 by land development status.

**Table 3**  
**Residential Building Permits by Land Category 1999-2008**

<b>Development Status</b>	<b>Building Permits</b>	<b>% of Total</b>
Vacant	8,173	66.47 %
Redevelopment	2	0.002%
Developed (Replacement units)	48	0.39 %
Partially Vacant	80	0.65 %
Infill	3,724	30.29 %
Publicly Owned or Institutional/Open Space <sup>8</sup>	268	2.18%
<b>Total</b>	<b>12,295</b>	<b>100.00%</b>

<sup>8</sup> These are units that were built on land that is generally not available for housing. An example would be a portion of public park land that was sold off for housing, while acquiring additional residential land elsewhere for park expansion. During any given period, some small amount of publicly owned or open space land may be made available for housing. During the same period, some residential land is likely to be acquired for non-housing purposes, thus becoming unavailable for housing. This activity does not indicate a general trend toward housing development on publicly owned, institutional, or open space land; it simply reflects on-going real estate transactions that in the end have relatively little impact on land availability or housing production.



Table 3 indicates that roughly two-thirds of all permits issued were for development on vacant land, while approximately 30% took place on land categorized as infill. Based on the definition of “Redevelopment” cited in Step 1, there was virtually no redevelopment activity during 1999-2008. There were a total of 50 permits issued on lands where there was an existing unit AND where the existing unit was demolished. That might initially seem to indicate instances of redevelopment. However, when looking at these 50 permits, only 2 of them resulted in more units than had existed prior to the demolition. In both of these cases, duplexes were built after a single family home was demolished. The rest of the 50 permits resulted in the same number of units (e.g., a single family home was demolished and replaced with another single family home). Therefore, we can assume that only 2 permits were the result of redevelopment; ~~the~~ the other 48 were merely replacements of existing units.

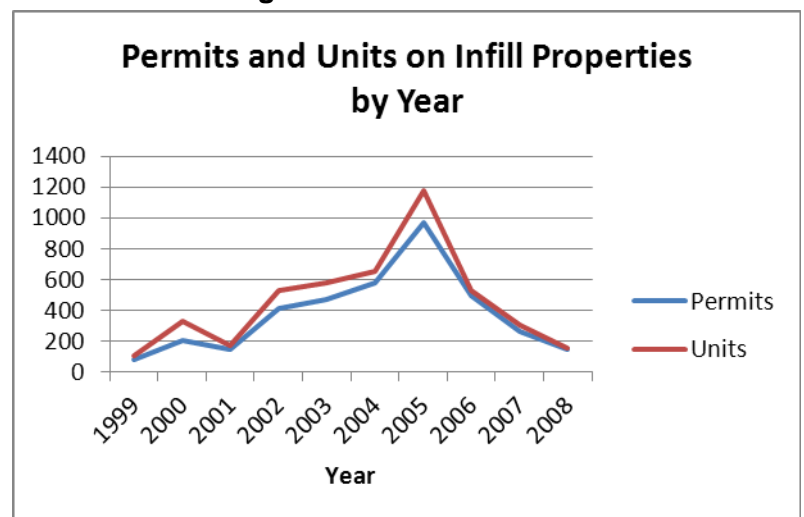
There were also very few permits issued for parcels categorized as partially vacant – less than 1% of the total. These were cases where housing units were built on parcels that had an existing dwelling(s), and there was enough area for additional dwellings to be built, but the parcel was not large enough to divide.

Because of the significant share of new housing built on lands classified as infillable during 1999-2008 we took a closer look at that category. As noted above, approximately 30% of all permits for new housing units during that period (~~3,724~~(3,724) permits) were issued for infill parcels. That resulted in 4,507 new housing units, out of a total of 14,564 new units built during that period. The distribution by year of infill units built between 1999-2008 is shown below in Table 4 and Figure 2:

**Table 4**

Year	Permits	Units
1999	97	120
2000	202	323
2001	128	154
2002	409	553
2003	474	586
2004	576	652
2005	943	1152
2006	488	518
2007	260	298
2008	147	151
Total	3,724	4,507

**Figure 2**



The spike shown in Figure 2 for units produced during 2004-06 on Infill lots is similar to that for construction of total units during that period, but even more pronounced for infill construction. This suggests that during the height of the housing boom, the owners of infill properties were much more motivated to

develop housing ~~when compared to the housing market conditions that preceded and followed this housing boom. than during more normal housing market conditions. This degree of motivation is important because in normal times owners of most infill parcels are more likely to think of their properties as built out, with less inclination to pursue further development.~~

In 1999 there were 8,158 parcels that satisfied the criteria for a potential Infill lot, i.e. a developed residential lot large enough to divide further without removing the existing dwelling. Over 90% of those lots (91.4%) were ~~under less than~~ one acre in size. Each of these infillable lots already had some improvement value greater than \$0. Any of these potential Infill lots in theory might have been further developed with additional housing units, but most owners would have needed unusually strong motivation to do so. Conditions in the local housing market during 2004-06 were such that a reasonable person might have assumed more owners of potential Infill lots ~~were in fact unusually motivated to consider would act to divide dividing~~ their lots and selling them for new housing units. ~~(Even so, The trend data shows that~~ only 5.7% of all infillable lots as of 1999 actually received building permits for residential infill development during the 1999-2008 period.) By 2008 market conditions had changed significantly. At that time, a consensus was developing among economists and housing specialists that the boom conditions that existed during 2004-06 were unlikely to be repeated for the foreseeable future.

## **Step 5: Estimate Preliminary Capacity of Vacant Lands**

Housing trends observed during the 1999-2008 period can be useful as a resource for estimating future housing capacity. Consideration of these trends is also required by ORS 197.296(5).

In Step 5 we consider the potential capacity of vacant lands, based on past trends and the amount of estimated suitable, available acreage. As discussed above, there are two sub-categories of vacant lands: Completely vacant and partially vacant. Table 5, below, summarizes the completely vacant acreage by zone as of 2008. Although not required by rule or statute, these completely vacant acres are further broken down in Table 5 into vacant platted lots, and raw, un-platted vacant acreage for the purpose of more accurately estimating the future capacity of these lands. As Table 5 indicates, as of 2008, there were 723 acres of buildable, completely vacant land in the form of platted lots; ~~there;~~ there were another 1,186 gross acres of completely vacant raw land.

### **Vacant Platted Lots**

As part of the completely vacant category, Table 5 shows that in 2008 the 723 vacant, available, platted acres were made up of 2,965 individual lots (outside the MDOZ). The median size of these platted lots is .15 acre. Nearly all of these lots (90%) were in single-family residential zones (RL or RS), or were platted for single-family (attached) dwellings in other residential zones. Therefore, in terms of capacity, we assume that each of these vacant lots will be developed with one dwelling unit, for a total yield of 2,965 units.

**Table 5**  
**2008 Vacant Residential Lands Summary**  
**And Potential Housing Unit Yield**

	RESIDENTIAL PLAN DESIGNATED OR ZONED (NON-MDOZ)								MDOZ	
	RL	RS	RM	RH	PO/RM/RS	SR2 1/2	UAR10	TOTAL	RM	RH
<b>Vacant - Platted Lots</b>										
Lots	60	2601	266	23	15	0	0	2,965	8	9
Units	0	0	0	0	0	0	0	0	0	0
Acres	29	731	33	3	3	0	0	800	2	4
Constrained Acres	0	75	1	0	0	0	0	77	0	0
Total Available Acres	29	655	33	3	3	0	0	723	2	4
<b>Potential Housing Yield</b>	<b>60</b>	<b>2601</b>	<b>266</b>	<b>23</b>	<b>15</b>	<b>0</b>	<b>0</b>	<b>2,965</b>	<b>8</b>	<b>9</b>
<b>Vacant - Non-Platted (Raw land)</b>										
Lots	32	332	155	21	0	0	0	540	7	18
Units	0	0	0	0	0	0	0	0	0	0
Acres	52	1048	149	19	0	0	0	1,268	32	29
Constrained Acres	6	69	7	0	0	0	0	82	0	0
Total Available Acres (Gross)	46	979	142	18	0	0	0	1,186	32	28
Total Available Acres (Net)	37	773	112	15	0	0	0	937	NA	NA
Assumed Net Density <sup>1</sup>	2.10	4.90	13.40	27.47	0	0	0		NA	NA
<b>Potential Housing Yield</b>	<b>77</b>	<b>3790</b>	<b>1507</b>	<b>401</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5,775</b>	<b>0</b>	<b>0</b>
<b>Total Potential Housing Yield</b>	<b>137</b>	<b>6391</b>	<b>1773</b>	<b>424</b>	<b>15</b>	<b>0</b>	<b>0</b>	<b>8,740</b>	<b>0</b>	<b>0</b>

<sup>1</sup> See Attachment A

### Completely Vacant (Non-Platted) Land

Table 5 indicates a 2008 total of 1,186 gross buildable acres classified as completely vacant, non-platted (raw) land. Of this amount, 21% must be deducted for land for streets and utilities that will need to be dedicated, resulting in a net vacant acreage figure of 937 acres. Average net densities by zone for the 1999-2008 period have been calculated (see Attachment A of this memo), and are shown in Table 5 to estimate capacity for vacant raw land. ~~Actual average~~Actual average densities for 1999-2008 range from 2.1 units/net acre in the RL zone to 16.9 units/net acre in the RH zone. (Because the 16.9 density figure for the RH zone, based on trends, is lower than the current minimum allowed density of 27.47, we assume that net buildable acres in the RH zone would be built out at 27.47 units/net acre, rather than the 16.9 actual average density observed during 1999-2008.) ~~Applying the~~Applying the 1999-2008 densities to the available net acres in the completely vacant, raw land sub-category, (with an assumed density of 27.47 units/net acre for the RH zone), the resulting total yield in potential housing units is 5,775 units.<sup>9</sup> When combined

<sup>9</sup> This estimate assumes development during the planning period of all vacant land within the UGB as of 2008. In reality this is extremely unlikely, since at any given time there is always some amount of vacant land in Bend or any other community. In 1999 there were 5,086 acres of vacant, raw (un-platted) land, and in 2008 there were 2,064 acres in that category. It would seem safe to assume that at the end of the 2008-28 planning period there will still be some amount of un-developed residential land, being held by owners who for various reasons have chosen not to make their buildable land available for

with the estimated capacity of vacant platted lots, we estimate a total capacity of 8,740 housing units for completely vacant residential land.

### Partially Vacant Land

For the Partially Vacant category, Table 1 indicates a 2008 total of 150 acres of potentially available land. As defined above, these are parcels that are planned or zoned for residential use, that are currently developed, but contain fewer dwelling units than permitted in the zone; ~~additional~~; additional units can be built without the removal of the existing dwelling, but the lot is not large enough to further divide. Nearly all of these partially vacant lots (94%) are located in the RM zone. Analysis of all partially vacant lots during 1999-2008 shows that very few of them experienced further development that resulted in additional housing units. Of the 12,295 permits issued for new housing units during that period, only 80 (less than 1%) were issued for partially vacant lots. As with developed Infill lots, owners of partially vacant lots generally must be highly motivated to build additional units on these lots. As noted above, the market conditions that produced some new housing on partially vacant lots during 1999-2008 are not likely to be experienced again in the foreseeable future. There are also significant practical difficulties to building more units on partially vacant lots. Because the existing units are not removed, and because these partially vacant lots are not large enough to further divide, there is very little room left for adding units. What remaining area might be technically available for more housing units is likely to be in use for parking, open space, or landscaping. For these reasons, and because of the observed trend of very limited amounts of new housing built on partially vacant lots during 1999-2008, the City assumes only a negligible housing unit yield from partially vacant lands during the 2008-28 planning period.

When the estimated yield from buildable, available completely vacant platted lots (2,965 units) is combined with the estimated yield from completely vacant raw land (5,775) as of 2008, we estimate that these completely vacant lands within the current UGB have a theoretical capacity of approximately 8,740 units. Allowing for a very limited yield from potentially available partially vacant lands, this estimate for all vacant and partially vacant lands might reasonably be rounded up ~~to 8,750~~ to 8,750 units for the 2008-28 planning period.

### Step 6: Estimate Raw Capacity of ~~Developed Lands~~ Developed Lands

As discussed above, there are three categories of Developed residential lands to be considered in the BLI: Developed with no further opportunities for new development; developed with infill potential; and developed parcels that may be redeveloped with a larger number of housing units, assuming there is evidence of a “strong likelihood” to do so. Table 1 indicates that in the first category, as of 2008, there were 15,512 fully developed residential lots in the current UGB, comprising 4,979 ~~acres, that~~ acres that are fully built out with no additional

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housing. A capacity estimate that assumes build-out of every acre of vacant land is unavoidably inflated.

capacity. Below, we estimate the capacity of the other two categories of Developed residential lands – those with infill potential and those that may be redeveloped.

## Infill Land

Table 1 indicates that there are 11,932 residential lots totaling 5,151 acres (not including MDOZ; see Footnote 7) that are potentially available for additional infill development. Although there may appear to be considerable potential for additional capacity on these infill lands, the history of infill development during 1999-2008 shows that only a relatively small proportion of them actually yielded additional units. In 1999 there were 8,158 infillable lots within the UGB. Between 1999 and 2008, infill activity resulting in permits for new units occurred on only 5.7% (465) of those lots, comprising 26% of all potentially infillable acres. Looking at patterns of infill development during 1999-2008, we see that some amount of infill development occurred in all residential zones, although it was mostly concentrated in the RS zone:

**Table 6**  
**Proportion of Divided Acres on Infill Lots ~~By~~ Zone 1999-2008**

Zone	Percentage of Divided Acres
RL	7.96%
RS	77.39%
RM	13.66%
RH	0.99%
Total	100%

As illustrated in Figure 2 above, the amount of infill development peaked dramatically during the 2004-06 period, coincident with the height of the housing boom. This strongly suggests that the volume of infill housing development is influenced by the ~~perceived strength~~perceived strength of the local housing market and the inclination of the owners of infillable lots to make them available for more development. As economic conditions favor or stimulate all types of housing development, owners of some infillable lots are increasingly motivated to sell parts of their land for new housing, or to develop new units themselves. As shown in Table 4, the 3-year period 2004-06 accounted for 52% of total infill units built during the ten years of 1999-2008; ~~2005; 2005~~ alone accounted for 26% of the 10-year total. As of 2008, a general consensus was emerging that those economic and housing market conditions that drove the spike in infill housing development during 2004-06 are unlikely to be repeated in the foreseeable future.

One way of realistically estimating capacity of infillable lands is to consider the pattern of previous infill activity based on the size of infillable parcels. Based on trends observed during 1999-2008 we can estimate the proportion of small lots (<1 acre) and the proportion of large lots (>1 acre) that will experience infill during the planning period. During the 1999-2008 period, 4% of infillable lots less than 1 acre divided (on 4.5% of the infillable acres of small lots), and 36% of

infillable lots larger than 1 acre divided (on 51% of the infillable acres of large lots). Applying these same proportions to infillable land as of 2008 results in estimates of 452 lots (157 acres) smaller than 1 acre in size, and 231 lots (850 acres) larger than 1 acre in size that could be expected to see infill development during the planning period. Assuming these acres are distributed among residential zones and plan designations similar to observed patterns during 1999-2008 (Table 6), we can estimate that a total of 1,007 acres will experience infill, as shown in Table 7, below.

**Table 7**  
**Projected Potential Developed Infill Acres by Zone 2008-28**

	Acres		
Zone	Small Lots	Large Lots	Total
RL	12.49	67.71	80.20
RS	121.33	657.96	779.29
RM	21.41	116.10	137.51
RH	1.55	8.41	9.96
Total	156.78	850.17	1006.95

The next step was to estimate the number of units that might be accommodated on these 1,007 acres. Actual average densities of infill properties for 1999-2008 were examined by zone and lot size, and by applying those densities to the estimated number of acres that would infill, a resulting raw unit yield of 4,893 was derived (Table 8).

**Table 8**  
**Projected Capacity of Infill Acres by Zone 2008-28**

	Small Lots			Large Lots			Total
Zone	Acres	Density	Capacity (Units)	Acres	Density	Capacity (Units)	Capacity (Units)
RL	12.49	2.21	28	67.71	1.83	124	152
RS	121.33	7.57	918	657.96	3.36	2,211	3,129
RM	21.41	11.56	247	116.10	9.17	1,065	1,312
RH	1.55	18.50	29	8.41	32.35	272	301
Total	156.78	n/a	1,222	850.17	n/a	3,671	4,893

Next, the raw estimate of 4,893 was adjusted to deduct existing units that would be assumed to already exist on these infillable lots. The average number of existing housing units on lots underless than 1 acre in size in 2008 was 1.2. The average number of existing units on lots larger than 1 acre was 8.03. By applying these figures to the estimated number infillable lots by lot size, it can be estimated that a total of 2,397 existing units should be deducted from the raw estimate of 4,893 total units on infillable acres. The result of this calculation is a final estimate of 2,496 new units on infillable land during the planning period.

## Redevelopable

The final sub-category of the Developed lands category is redevelopment potential. The criterion for redevelopment, as provided in Step 1 with guidance from DLCD, is very narrow. Based on state law, DLCD considers that redevelopment occurs only on -a completely developed lot, which is not large enough to further divide, where the existing unit(s) is demolished in order to develop at a higher density. In addition, state law requires evidence of a “strong likelihood” of redevelopment in order to assume any amount of redevelopment activity.<sup>10</sup> Given these criteria, as discussed above, only two cases of residential redevelopment were identified for the entire 1999-2008 period. Potentially, any of the 1,355 developed lots in the partially vacant category or the 11,873 developed lots in the infill category might be considered a candidate for redevelopment. However, when the evidence indicates that redevelopment as defined here essentially did not occur during the extraordinary boom years of 1999-2008, ~~there’s very little the trend data does not suggest basis for a strong likelihood of redevelopment during the 2008-28 planning period. Therefore, we conclude that there is not a strong likelihood that there will be any measurable yield from redevelopment activity, as defined above, during the planning period. For the purpose of this analysis, the BLI does not include measurable yield from redevelopable lands. This conclusion will likely need to be reexamined after the conclusion of the housing needs analysis and further work on efficiency measures (See Tasks 3.1 and 3.2). The City may need to consider revising the estimate of “redevelopable” lands in the UGB if efficiency measures are proposed that would increase the likelihood that certain parcels would be redeveloped (e.g. rezoning to allow higher densities of housing.)~~

## Total Residential Lands Capacity

Table 9, below, summarizes preliminary estimates of residentially zoned or designated lands capacity for the 2008-28 planning period:

**Table 9**

<b>Residential Land Category</b>	<b>Potential Capacity (Units)</b>
Vacant	8,740
Partially Vacant	10
Infill	2,496
Redevelopment	0
<b>Total</b>	<b>11,246</b>

## Step 7: Housing Capacity of Mixed-Use Zones

<sup>10</sup> OAR 660-008-0005(6): “Redevelopable Land” means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.”



ORS 197.296(4)(a) includes “Lands that may be used for a mix of residential and employment uses under the existing planning or zoning” among the types of lands that must be included in the buildable lands inventory. Bend has three mixed-use districts: the Mixed Employment District (ME), the Mixed Use Riverfront District (MR) and the Professional Office District (PO). Each of these allows some housing, as well as various combinations of retail, commercial, public/institutional, and light industrial uses. The PO zone applies to only a few very small parcels that are adjacent to each other (off of Empire Ave.), with a combined acreage of approximately 7.5 acres. There is no history of development of any kind on PO land. These parcels are currently included in the Bend Economic Opportunities Analysis inventory of employment land.

As of 2008, the MR zone (Old Mill District) contains a total of 222 non-constrained acres, of which 28 acres are vacant.<sup>11</sup> Single-family and multi-family housing are listed as permitted uses in the Bend Development Code for the MR zone. During the 1999-2008 period permits were issued for a total of 115 housing units in this zone. The MR zone does not establish minimum or maximum densities for housing. The existing housing units in this zone occupy 7.74 acres, and have an average density (2008) of 15 units/acre. The 7.74 acres of housing represent 4% of total, developed MR zone acreage. Assuming this ratio of housing to non-housing acreage continues into the planning period, we could expect 1.12 acres of the remaining 28 acres of vacant MR land to accommodate new housing. Assuming also a continuation of the 2008 average density of 15 units/acre, another 17 housing units could be expected in the MR zone during the planning period.

Although it is a mixed-use zone, the ME zone has a stronger emphasis on employment uses. Its purpose is described in the Bend Development Code as follows:

The Mixed Employment zone is intended to provide a broad mix of uses that offer a variety of employment opportunities. Where Mixed Employment Districts occur on the edge of the city, their function is more transitional in nature providing service commercial businesses and supporting residential uses in an aesthetic mixed environment. In this instance, when residential units are provided, the units shall be within easy walking distance to the commercial and employment uses.<sup>12</sup>

Both single family housing and multi-family housing are listed as conditional uses in the ME zone, rather than as outright permitted uses, as in the MR zone. As of 2008, there were 11 housing units in the ME zone, and a total of 100 vacant,<sup>13</sup> non-constrained acres in the ME zone. During the 1999-2008 period there were no permits issued for any housing units in the ME zone. These 100 acres are currently included in the Bend Economic Opportunities Analysis inventory of

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<sup>11</sup> Because acreage in the MR and ME zones was considered as available for employment uses, and is tallied in the Bend Economic Opportunities Analysis, vacant acres in these zones are defined as provided in OAR 660-009-0005.

<sup>12</sup> Bend Development Code, Chapter 2.3, Sec. 2.3.100.

<sup>13</sup> Because acreage in the MR and ME zones was considered as available for employment uses, and is tallied in the Bend Economic Opportunities Analysis, vacant acres in these zones are defined as provided in OAR 660-009-0005.



vacant, available employment land. Given the basic purpose of the ME zone, and the absence of any new housing production during the 1999-2008, we assume all remaining vacant acreage in this zone will be occupied by non-residential employment uses.

### **Step 8: Total Estimated Capacity 2008-28 by Category**

Table 10 below summarizes estimates derived from the steps discussed above, including estimated capacity from mixed-use zones, to arrive at a raw, grand total capacity estimate by land category. Final capacity estimates will be revised based on an updated Housing Needs Analysis and any additional land use efficiency measures that may be identified.

**Table 10**

<b>Residential Land Category</b>	<b>Potential Capacity (Units)</b>
Vacant	8,740
Partially Vacant	10
Infill	2,496
Redevelopment	0
Mixed-Use Capacity	17
<b>Total</b>	<b>11,263</b>

The preliminary capacity estimate of 11,263 units represents 67.5% of the 16,681 total needed housing units for the 2008-28 planning period. This estimate can be compared with an initial capacity estimate of 10,059 units (60% of needed units), prior to efficiency measures, from the previous BLI. Additional measures taken as a result of the updated Housing Needs Analysis and in compliance with Goal 14 may increase further the final capacity estimate for the current UGB.

### **Conclusion**

It is important to emphasize that the contents of this memo do not make up a complete, final BLI. Because Bend is under remand, and because Sub-Issue 2.2 must be addressed specifically, this memo combines several of the most important steps in the process of compiling a BLI for housing. The next step in this process is for the City to complete revision the Housing Needs Analysis, as directed by Sub-Issues 2.3 and 2.4. One possible outcome of that step could be a revised estimate of acres needed for multi-family housing, with corresponding revisions to estimates of acres assumed to be available for that housing type. Finally, we will consider any additional land use efficiency measures that may be warranted, in response to Sub-Issue 3.1. To the extent additional measures are identified, capacity estimates contained in this memo will be further adjusted.

### **Recommendation**

City staff recommends that the Remand Task Force accept this memo as a preliminary Buildable Lands Inventory satisfying Remand Sub-Issue 2.2.

## Attachment A

HOUSING UNITS BY TYPE AND PLAN DESIGNATION												
<b>PRE-1998 <sup>1</sup></b>												
	<b>RL</b>		<b>RS</b>		<b>RM</b>		<b>RH</b>		<b>ALL RESIDENTIAL ZONES</b>			
	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>Pre-1998 Units - % of Total</b>	
Single Family - Detached <sup>4</sup>	2,146	1.9	8,846	3.1	1,606	4.7	145	6.6	12,743	2.9	66%	SFD
Single Family - Attached <sup>5</sup>	0	0.0	26	5.1	22	21.5	0	0.0	48	7.8	0%	SFDA
Multiple Family Housing <sup>6</sup>	57	8.8	500	9.7	3,314	16.6	539	20.9	4,410	15.5	23%	Multifamily
Manufactured Homes - In Parks <sup>7</sup>	148	2.7	557	3.4	593	6.5	0	0.0	1,298	4.1	7%	Manuf in Parks
Manufactured Homes - On Lots <sup>8</sup>	382	2.9	241	3.2	73	5.8	0	0.0	696	3.1	4%	Manuf on Lots
<b>TOTAL</b>	<b>2,733</b>	<b>2.1</b>	<b>10,170</b>	<b>3.2</b>	<b>5,608</b>	<b>8.5</b>	<b>684</b>	<b>14.4</b>	<b>19,195</b>	<b>3.7</b>	<b>100%</b>	<b>TOTAL</b>
<b>1998-2008</b>												
	<b>RL</b>		<b>RS</b>		<b>RM</b>		<b>RH</b>		<b>ALL RESIDENTIAL ZONES</b>			
	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>New Units - % of Total</b>	
Single Family - Detached <sup>4</sup>	210	2.0	10,306	4.6	828	8.7	27	13.4	11,371	4.7	72%	SFD
Single Family - Attached <sup>5</sup>	0	0.0	435	8.7	175	12.5	0	0.0	610	9.5	4%	SFDA
Multiple Family Housing <sup>6</sup>	0	0.0	514	14.2	2,547	16.1	535	17.1	3,596	16.0	23%	Multifamily
Manufactured Homes - In Parks <sup>7</sup>	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0%	Manuf in Parks
Manufactured Homes - On Lots <sup>8</sup>	43	3.1	71	6.6	43	7.0	0	0.0	157	5.1	1%	Manuf on Lots
<b>TOTAL</b>	<b>253</b>	<b>2.1</b>	<b>11,326</b>	<b>4.9</b>	<b>3,593</b>	<b>13.4</b>	<b>562</b>	<b>16.9</b>	<b>15,734</b>	<b>5.7</b>	<b>100%</b>	<b>TOTAL</b>
<b>ALL YEARS</b>												
	<b>RL</b>		<b>RS</b>		<b>RM</b>		<b>RH</b>		<b>ALL RESIDENTIAL ZONES</b>			
	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>TOTAL UNITS<sup>2</sup></b>	<b>AVE DENSITY<sup>3</sup></b>	<b>All Units - % of Total</b>	
Single Family - Detached <sup>4</sup>	2,356	1.9	19,152	3.8	2,434	5.6	172	7.2	24,114	3.6	69%	SFD
Single Family - Attached <sup>5</sup>	0	0.0	461	8.4	197	13.1	0	0.0	658	9.4	2%	SFDA
Multiple Family Housing <sup>6</sup>	57	8.8	1,014	11.3	5,861	16.6	1,074	18.8	8,006	15.8	23%	Multifamily
Manufactured Homes - In Parks <sup>7</sup>	148	2.7	557	3.4	593	6.5	0	0.0	1,298	4.1	4%	Manuf in Parks
Manufactured Homes - On Lots <sup>8</sup>	425	2.9	312	3.6	116	6.2	0	0.0	853	3.4	2%	Manuf on Lots
<b>TOTAL</b>	<b>2,986</b>	<b>2.1</b>	<b>21,496</b>	<b>3.9</b>	<b>9,201</b>	<b>9.9</b>	<b>1,246</b>	<b>15.5</b>	<b>34,929</b>	<b>4.4</b>	<b>100%</b>	<b>TOTAL</b>
Summary data prepared 12/28/2010 by C. Miller from February 2008 Buildable Lands Inventory												
<sup>1</sup> Pre-1998 data includes all properties, and the dwelling units on those properties, that are in the <u>current</u> Urban Growth Boundary. Some properties were outside of Bend's current UGB at the time they were constructed.												
<sup>2</sup> Total units includes all built and permitted units, including units in the MDOZ, by general plan designation.												
<sup>3</sup> Average density is the total number of built and permitted units (WHERE ONLY ONE TYPE OF HOUSING UNIT WAS ON A PROPERTY), divided by the total acres of those properties, by housing unit type and general plan designation.												
<sup>4</sup> "Single Family - Detached" means a housing unit that is free standing and separate from other housing units. OAR 660-008-0005(3)												
<sup>5</sup> "Single Family - Attached" means common-wall dwellings or row houses where each dwelling unit occupies a separate lot. OAR 660-008-0005(1)												
<sup>6</sup> "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot. OAR 660-008-0005(5) This category includes duplexes, triplexes, fourplexes, buildings with five or more dwelling units, and condominiums.												
<sup>7</sup> "Manufactured Homes - In Parks" are those in designated manufactured home parks.												
<sup>8</sup> "Manufactured Homes - On Lots" are manufactured homes located on a separate lot, including those in designated manufactured home subdivisions.												

### **Remand Sub-issue 2.2 - Conclusion**

“The Commission denies the city's and Newland's appeals on this subissue, upholds the Director's Decision, including the director's disposition of objections (for the reasons set forth in the Director's Decision) and remands the city's decision with instructions for it to develop a record and adopt a buildable lands inventory supported by findings that are consistent with state law. The city's findings must explain what criteria it uses (based on ORS 197.296, OAR 660-024 and 660-008) to determine whether particular lands are vacant or redevelopable, examine the amount and type of development that has occurred on the vacant and redevelopable lands since its last periodic review, and project the capacity of the city's buildable lands (prior to additional measures being implemented) based on that analysis (and as further detailed in connection with Goal 14, below). If the amount of redevelopment and infill within the city's UGB is projected to differ significantly from past trends, the City must explain why, and provide an adequate factual and policy basis to support that change.

The city's buildable lands inventory may not exclude lots and parcels smaller than 0.5 acres with no improvements without specific findings consistent with OAR 660-008-0005. Similarly, the City may not exclude lots and parcels subject to CC&Rs unless it adopts specific findings, supported by an adequate factual base, that show why the lands are not available for development or redevelopment during the planning period. In addition, the City has agreed to reexamine lands it identified as "constrained" to determine whether the lands are buildable under OAR 660-008-0005.

Finally, the Commission denies the objection of Newland for the reasons set forth in the Director's Decision, which are incorporated herein by this reference. Director's Decision, at 42-43.”<sup>1</sup>

### **Summary of Analysis – Sub-issue 2.2**

The Commission found that the City had not properly classified land in the Bend UGB according to the categories of vacant and redevelopable lands in the buildable lands inventory (BLI) <sup>2</sup>. The Commission further concluded that the City's findings were inadequate as to some of the decisions made in categorizing land in the BLI. The Commission found that the city needed to provide better findings, supported by evidence in the record, regarding the impact of covenants, conditions, and restrictions on future development. In revising the BLI, the City must consider past development trends and how these trends would affect development over the planning period.

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<sup>1</sup> See November 2, 2010 “Remand and Partial Acknowledgement Order 10-Remand-Partial Acknow-001795,” pages 26.

<sup>2</sup> Ibid pages 22-26.

### Applicable Legal Standards

The applicable legal standards under Remand Task 2.2<sup>3</sup> are:

**1. ORS 197.296, Factors to establish sufficiency of buildable lands within urban growth boundary; analysis and determination of residential housing patterns**

\*\*\*

(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

\*\*\*

4(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:

(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;

(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and

(C) The presence of a single family dwelling or other structure on a lot or parcel.

(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.

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<sup>3</sup> Ibid pages 18-21

### 2. OAR 660-008, Interpretation of Goal 8, Housing.

#### 660-008-0005

##### Definitions

For the purpose of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions shall apply:

\*\*\*

(2) "Buildable Land" means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered "suitable and available" unless it:

(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18;

(c) Has slopes of 25 percent or greater;

(d) Is within the 100-year flood plain; or

(e) Cannot be provided with public facilities.

\*\*\*

(6) "Redevelopable Land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.<sup>4</sup>

### 3. OAR 660-024, Urban Growth Boundaries (2007)

OAR 660-024-0050 (2007 version)<sup>5</sup>

"(1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. *For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute.* \* \* \*

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<sup>4</sup> Please note that this section was amended and renumbered in 2012 to implement and ensure consistency with changes in statute adopted in HB 2131 (2011). The presentation of the rule in these findings reflects the rule as it was in effect in 2010.

<sup>5</sup> See Remand Order p. 20. The 2007 version of OAR 660-024-0050 was in effect at the time the proposal was developed and adopted by both the City and the County.

### **City's Position**

Remand Sub-Issue 2.2 requires the City to develop a record to support adoption of a buildable lands inventory, map, and findings consistent with Commission's analysis of this sub-issue at pages 22 through 26 of the 2010 Remand Order. The City's findings must explain how the inventory satisfies the requirements of ORS 197.296, OAR 660-024, and OAR 660-008. The inventory must show that land has been classified according to the definitions of vacant, partially vacant, developed with infill potential or redevelopable lands. Lands that are developed, not partially vacant, are not redevelopable and do not have infill potential are not buildable lands. The BLI cannot exclude lots or parcels smaller than one-half (1/2) acre with no improvements or lands subject to CCRs unless the City adopts specific findings, supported by an adequate factual base, that show why these lands are not available for development or redevelopment during the planning period. The City agreed to and has reconsidered lands that were previously classified as "constrained" and determined which of these lands should be included as vacant, partially vacant, redevelopable, or as having infill potential.

This task further requires the City to examine trends in development on vacant, partially vacant, developed land subject to infill, and redevelopable land. This trend analysis must then estimate the capacity of buildable lands for development over the planning period. The city must explain if future trends differ from past trends and, if so, why, and provide adequate factual and policy bases to support this conclusion.

### **Substantial Evidence**

The City bases the subsequent findings on the following evidence. This evidence has been reviewed by the Remand Task Force during their meetings in June and September, 2011.

1. October 11, 2010 and October 21, 2010 email messages from Gloria Gardiner, DLCD to City of Bend staff defining terms for classifying buildable land.
2. May 27, 2011 memorandum to the Remand Task Force: Work Session on Buildable Lands Inventory.
3. August 31, 2011 memorandum to the Remand Task Force: Draft Buildable lands Inventory.
4. August 8, 2011 buildable lands map
5. September 23, 2011 infill occurrences map

### Findings

The following findings have been prepared to address the statutes and rules cited above regarding creating an inventory of buildable lands for needed housing. These findings also demonstrate satisfaction with the requirements of Sub-issue 2.2 of the Remand Order. They address either the statute/rule and/or remand order where appropriate.

#### **1. ORS 197.296(2), (3), (4)(a), OAR 660-008-005, and OAR 660-024-0040(7) – classification of land in buildable lands inventory**

**ORS 197.296 provides:**

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**(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.**

**(3) In performing the duties under subsection (2) of this section, a local government shall:**

**(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and**

\*\*\*

**4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, “buildable lands” includes:**

**(A) Vacant lands planned or zoned for residential use;**

**(B) Partially vacant lands planned or zoned for residential use;**

**(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and**

**(D) Lands that may be used for residential infill or redevelopment.**

**OAR 660-008-0005 provides:**

#### **Definitions**

**For the purpose of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions shall apply:**

\*\*\*

**(2) “Buildable Land” means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered “suitable and available” unless it:**

**(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;**

**(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18;**

**(c) Has slopes of 25 percent or greater;**

**(d) Is within the 100-year flood plain; or**

**(e) Cannot be provided with public facilities.**

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## FINDINGS FOR REMAND SUB-ISSUE 2.2 – BUILDABLE LANDS INVENTORY

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*(6) “Redevelopable Land” means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.<sup>6</sup>*

*OAR 660-024-0050 (2007 version) provides:*

*“(1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute.\* \* \**

*(2) As safe harbors, a local government, except a city with a population over 25,000 or a metropolitan service district described in ORS 197.015(14), may use the following assumptions in inventorying buildable lands to accommodate housing needs:*

*(a) The infill potential of developed residential lots or parcels of one-half acre or more may be determined by subtracting one-quarter acre (10,890 square feet) for the existing dwelling and assuming that the remainder is buildable land;*

*(b) Existing lots of less than one-half acre that are currently occupied by a residence may be assumed to be fully developed.*

**FINDING:** This finding addresses the requirements of ORS 197.296, OAR 660-008-005, and OAR 660-024-0050. The proposed BLI satisfies each of these laws because the City has revised the BLI consistent with the terms of the 2010 Remand Order and the definitions of the terms outlined above. The City has reviewed these statutes and rules with DLCD to confirm their applicability. The City also contacted DLCD staff directly to confirm the definitions of vacant, partially vacant, developed with infill potential and redevelopable. The Department provided guidance on defining these terms through emails dated October 11, 2010 and October 21, 2010. Through this finding, these emails are incorporated by reference in the record.

The proposed BLI has been presented in the form of a summary table and report (See August 31, 2011 memorandum to the Remand Task Force) and a map (See August 8, 2011 map of buildable lands inventory) consistent with ORS 197.296. This work involved using the data from the 2008 residential parcel inventory and assigning parcels to one of the following categories:

- a. **Vacant** (Completely) – Land planned or zoned for residential use that had \$0 in improvements value. Properties that were planned or zoned for residential use, but were dedicated for other uses such as parks, common areas, rights of way or utilities were excluded. Publicly owned land was also excluded.
- b. **Partially Vacant** – Land planned or zoned for residential use that had an improvement value greater than \$0, but contained fewer dwelling units than permitted in the zone. Based solely on lot size, additional units could be built without removal of the existing structure, but the lot was not large enough to further divide. To identify partially vacant lands, the City calculated the maximum number of units that could be built on each developed parcel that was not large enough to divide,

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<sup>6</sup> Please note that this section was amended and renumbered in 2012 to implement and ensure consistency with changes in statute adopted in HB 2131 (2011). The presentation of the rule in these findings reflects the rule as it was in effect in 2010.

## FINDINGS FOR REMAND SUB-ISSUE 2.2 – BUILDABLE LANDS INVENTORY

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based on the maximum density allowed per the Bend Development Code and the parcel size. The number of existing units was then subtracted from the maximum number of units allowed. If one or more new units could be accommodated, the parcel was categorized as partially vacant. Potential considerations such as setback and frontage requirements, lot coverage, or location of the existing unit on the lot were not considered.

- c. **Developed** – Land planned or zoned for residential use that was developed with the maximum number of dwelling units allowed in the zone, and the size of the lot does not allow for further division. Residentially zoned land that was developed with an employment use was also categorized as Developed. Developed land that is not redevelopable and does not have infill potential is not considered buildable land.
- d. **Redevelopable** - Lands planned or zoned for residential use were considered redevelopable only if there existed a "... strong likelihood that existing development will be converted to more intensive residential uses during the planning period." The City examined prior trends and examples of redevelopment to estimate the extent to which developed lots have redeveloped in the past, and the resulting housing yield. This work has focused on residentially zoned or designated lots that were completely developed, not large enough to further divide, and where the existing unit(s) was demolished in order to develop at a higher density.<sup>7</sup> Lands were classified as Partially Vacant or with Infill potential instead of Redevelopable if these lands were not already developed with the maximum number of units allowed and additional units could be developed on site (with or without a land division).
- e. **Developed w/ Infill Potential** – Land planned or zoned for residential use that was developed, but where the lot was large enough to further divide consistent with its current zoning without removal of the existing dwelling. As with Partially Vacant land, this category did not consider limiting factors such as setback and frontage requirements, lot coverage, or location of the existing unit on the lot.

The acres of land in each category considered not buildable were limited to those that met one of the constraints of OAR 660-008-0005(2)(c) and (2)(d). These constraints were limited to land with slopes in excess of 25% and land within the boundaries of the 100-year flood plain. The presence of covenants, conditions, and restrictions (CCRs) was not considered a constraint.

This inventory of land was first presented in Table 1 of the August 31, 2011 memorandum to the RTF. Table 1 presented the inventory of land in four of these categories (vacant, partially vacant, developed, developed with infill potential), and by plan designation, including those lands zoned for residential use that were located within the Medical District Overlay zone. Those lands that were originally planned for residential use as RM or RH were subsequently identified as lands that would meet employment land needs for medical uses in the MDOZ.

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<sup>7</sup> E-mail from Gloria Gardiner to Damian Syrnys, October 21, 2010.

## **FINDINGS FOR REMAND SUB-ISSUE 2.2 – BUILDABLE LANDS INVENTORY**

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The proposed BLI satisfies ORS 197.296(4)(a) because the City has defined vacant and partially vacant lands consistent with the direction of DLCD and inventoried these lands in the current UGB. (4)(a)(A) and (B). The City's inventory also includes those lands that are designated mixed-use under the City's General Plan (4)(a)(C) and those lands that were identified as developed with infill potential and redevelopable 4(a)(D). The City's forgoing findings show the inventory includes both types of land that were also plan designated for residential use.

The proposed BLI satisfies OAR 660-008-005(2) because the City has taken the 2008 data from the BLI and assigned parcels in the database to one of the categories of buildable land. The City classified parcels with a residential or mixed use plan designation according to one of the definitions cited above under (a) through (e) above. The purpose of this was to show that the definitions were consistent with OAR 660-008-0050(2).

The proposed BLI further satisfies OAR 660-008-005(2) because the City re-evaluated parcels that in 2008 were considered "constrained" and either (1) included them in the BLI or (2) considered them unbuildable only if they satisfied the conditions under OAR 660-008-005(2)(c) or (2)(d).

The proposed BLI satisfies OAR 660-024-0050(2007 version) because it includes land classified as vacant and redevelopable and was conducted in accordance with OAR 660-008-0010 and ORS 197.296. OAR 660-008-0010 requires that:

### ***"Allocation of Buildable Land***

*The mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection. The local buildable lands inventory must document the amount of buildable land in each residential plan designation."*

The proposed BLI documents the amount of buildable land in each residential plan designation (See Attachment A to August 31, 2011 memorandum to the RTF).

## **2. ORS 197.296(4)(b) – estimate of capacity of land in buildable lands inventory**

**ORS 197.296(4)(b) provides:**

***4(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:***

***(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;***

***(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and***

***(C) The presence of a single family dwelling or other structure on a lot or parcel.***

***(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.***

## **FINDINGS FOR REMAND SUB-ISSUE 2.2 – BUILDABLE LANDS INVENTORY**

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**FINDING:** The City provides the following finding to show the BLI satisfies the requirements of ORS 197.296(4)(b) regarding the estimate of capacity for housing.

The BLI satisfies (4)(b)(A) because the City considered the extent that residential development was prohibited or restricted by local regulation. To estimate capacity of future development, the City evaluated those parcels with a residential plan or mixed use plan designation where housing is an allowed use and subject to the regulations of the Bend Development Code. Following the development of the BLI, the City examined past trends to determine how residential development occurred between 1999 and 2008. This process and the results are documented in the August 31, 2011 memorandum to the Remand Task Force<sup>8</sup>.

The requirement at ORS 197.296(4)(b)(B) is not applicable because no copies of written long term contracts or easements for radio, telecommunications or electrical facilities have been provided to the City. The City acknowledges that if such a document is submitted to the City for consideration that we will need to examine such a contract or easement to determine if it has the effect of reducing the capacity of buildable lands.

The BLI satisfies (4)(b)(C) because the presence of a single family dwelling or other structure on a lot or parcel in considering how to classify the parcel and its capacity for development of additional housing. Those parcels that were classified as either partially vacant or development with infill potential were so classified because they were already developed with a single family dwelling or other structure and had additional land area available for further development.

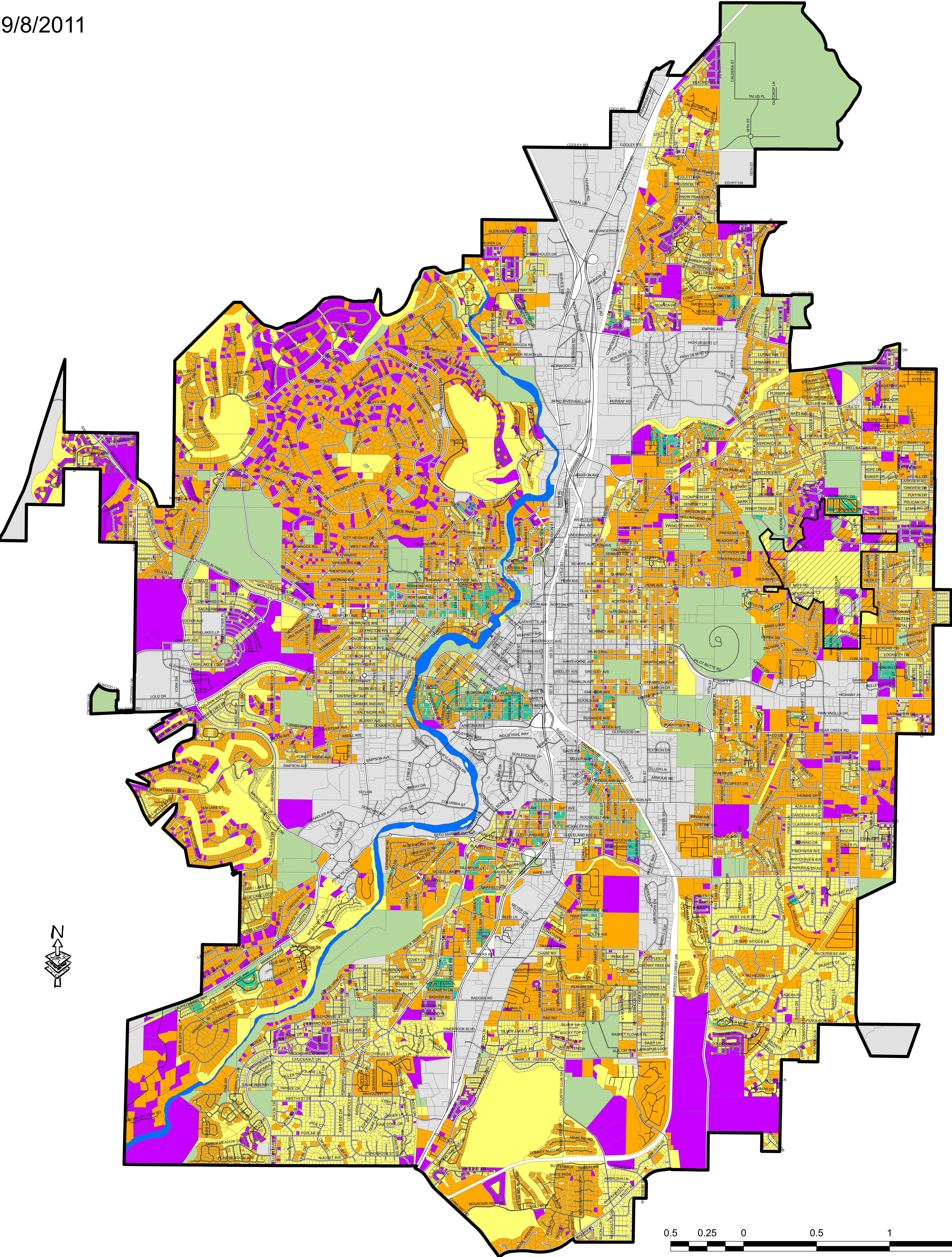
The BLI satisfies (4)(b)(C)(c) because it includes a map that identifies the parcels identified as buildable according to the categories of vacant, partially vacant, and developed with infill potential (See August 8, 2011 buildable lands map and September 2011 infill occurrences map).

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<sup>8</sup> See pages 9 through 19 of the August 31, 2011 memorandum.



9/8/2011




0.5 0.25 0 0.5 1 1.5 2 Miles

Map prepared by the City of Bend, 9/8/2011 BLI\_Residential Lands\_090811.mxd



# Buildable Lands Inventory - Residential Lands

- |                                                                                     |                               |                                                                                     |                               |
|-------------------------------------------------------------------------------------|-------------------------------|-------------------------------------------------------------------------------------|-------------------------------|
|  | Vacant                        |  | Publicly Owned                |
|  | Partially Vacant              |  | Non-Residential Land          |
|  | Developed w/ Infill Potential |  | Urban Growth Boundary         |
|  | Developed                     |  | Medical District Overlay Zone |

DISCLAIMER: The information on this map was derived from City of Bend and Deschutes County digital GIS databases and land records. Care was taken in the creation of this map, but it is provided "AS IS." There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product.

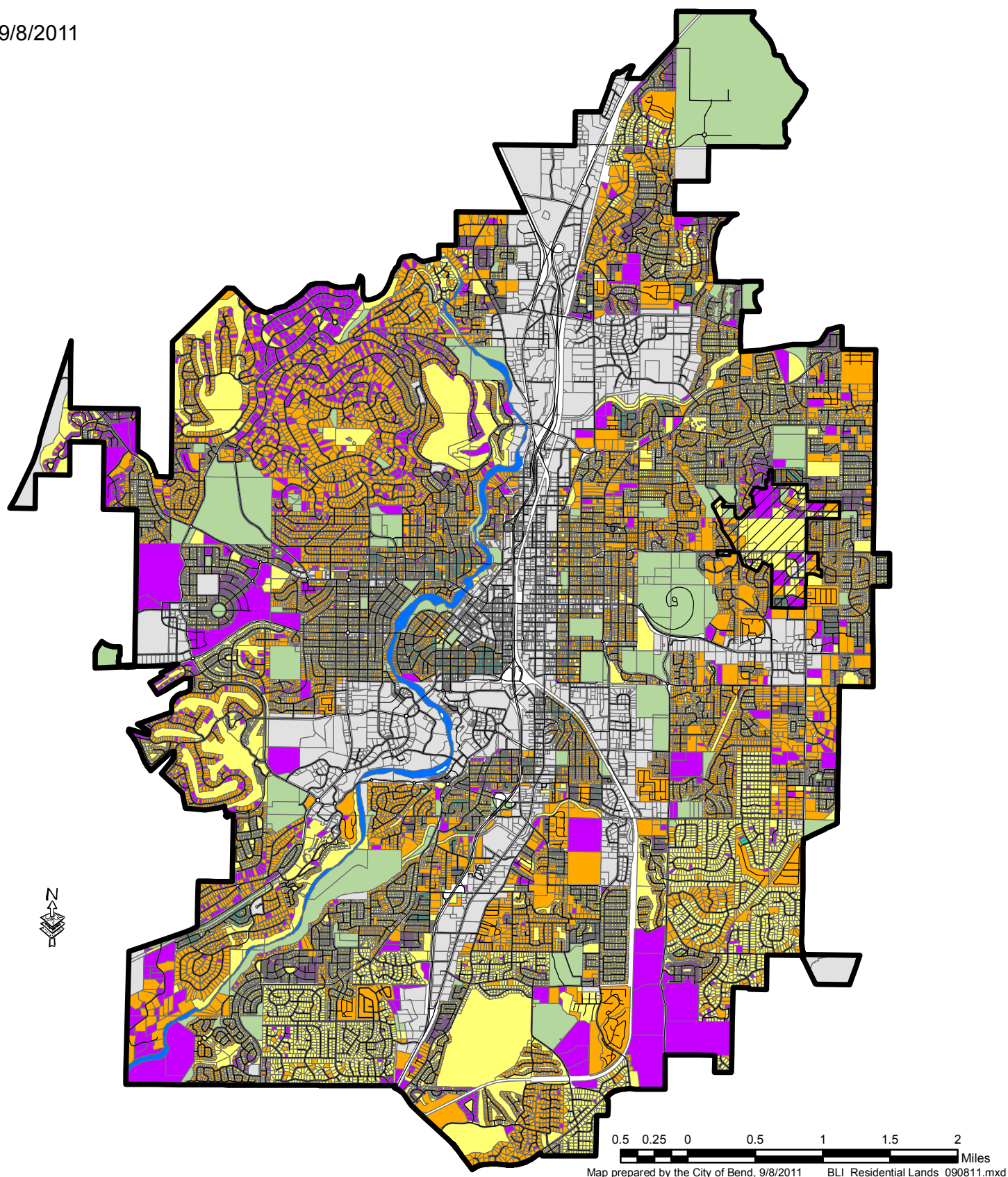
This map was prepared for the City of Bend's Urban Growth Boundary expansion project and may be updated or further refined. Data was last updated on 9/8/2011 and was based on an original BLI prepared 2/28/2008.

Residential Lands are properties with a general plan or zoning designation of RL, RS, RM, RH, SR2.5, or UAR10.

For definitions of the land categories listed, refer to the memo to the UGB Remand Task Force on the Draft Buildable Lands Inventory dated 8/31/2011.




9/8/2011



Map prepared by the City of Bend, 9/8/2011 BLI\_Residential Lands\_090811.mxd

## Buildable Lands Inventory - Residential Lands



- |                                                                                                                   |                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
|  Vacant                        |  Publicly Owned                |
|  Partially Vacant              |  Non-Residential Land          |
|  Developed w/ Infill Potential |  Urban Growth Boundary         |
|  Developed                     |  Medical District Overlay Zone |

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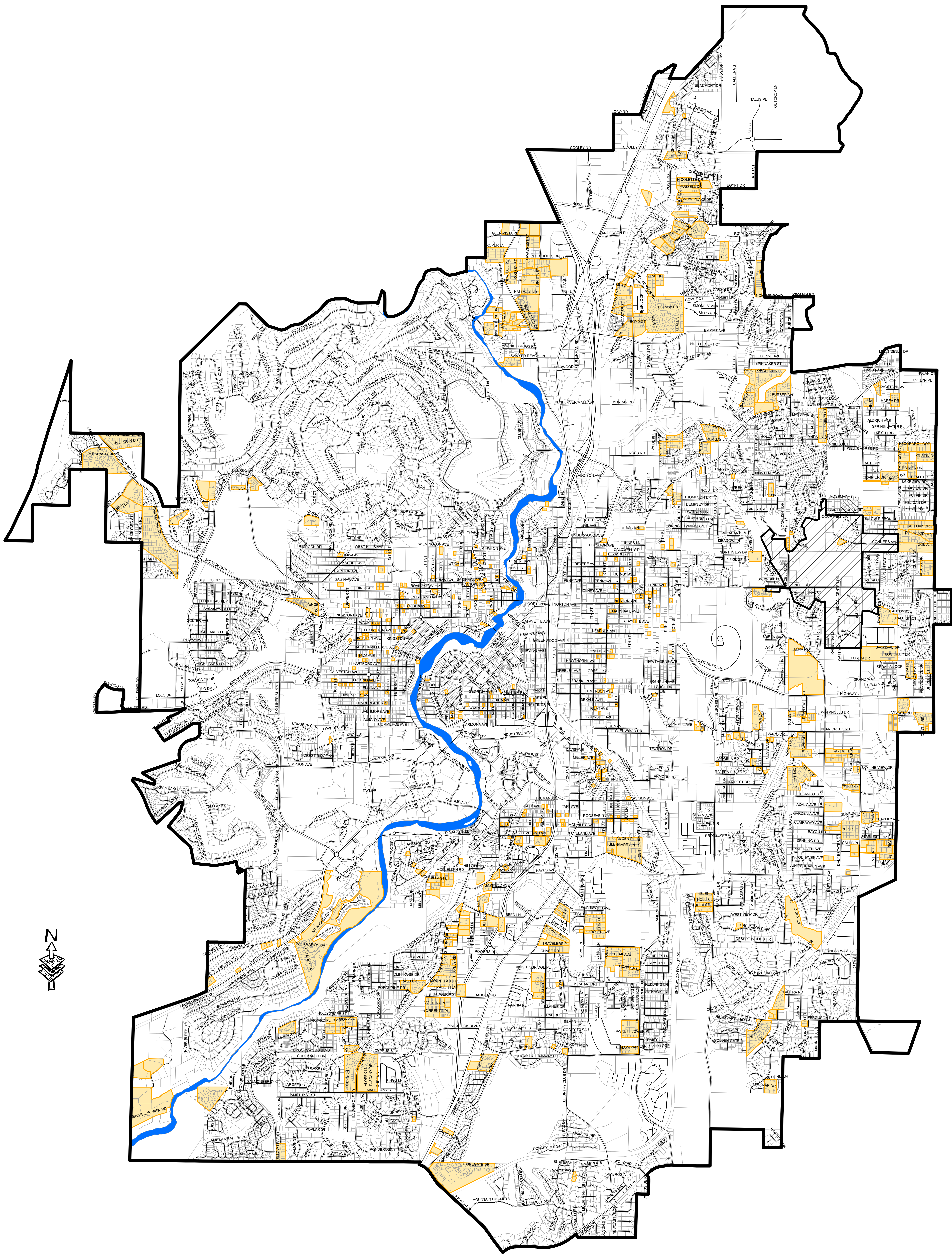
This map was prepared for the City of Bend's Urban Growth Boundary expansion project and may be updated or further refined. Data was last updated on 9/8/2011 and was based on an original BLI prepared 2/28/2008.

Residential Lands are properties with a general plan or zoning designation of RL, RS, RM, RH, SR2.5, or UAR10.

For definitions of the land categories listed, refer to the memo to the UGB Expansion Task Force on the Draft Buildable Lands Inventory dated 8/31/2011.

00817





Map prepared by the City of Bend, 9/23/2011 Infill\_Occurrences\_99\_08.mxd

## Infill Occurrences (1999-2008)

-  Tax Lots (2008)
-  Tax Lots (1999) Experiencing Infill\*
-  Urban Growth Boundary
-  Medical District Overlay Zone

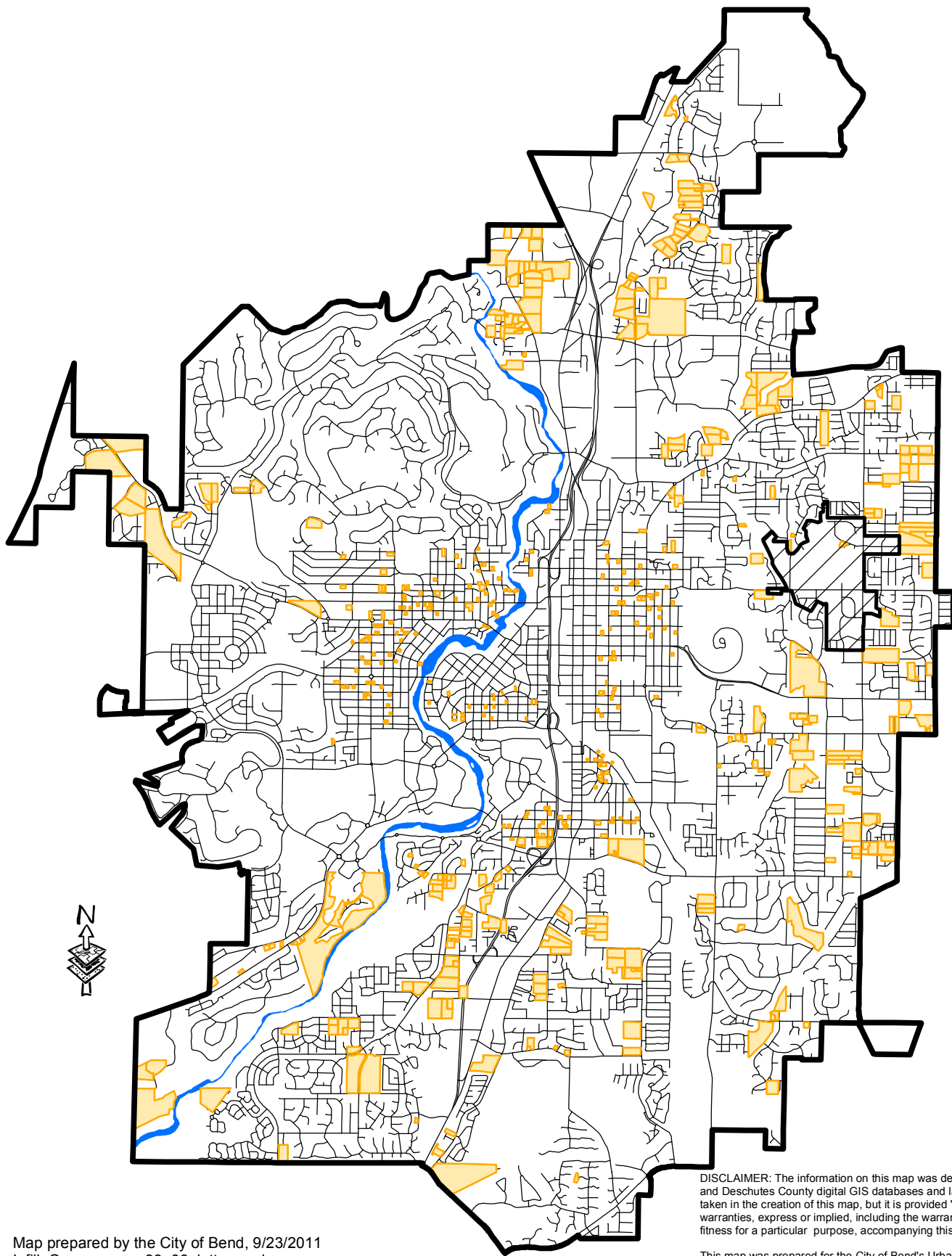
\*Infill occurrences are defined as residential lands with existing improvements that had a land division between 1999 and 2008. Land used for parks, open space, rights of way, institutional purposes, or employment, or that were publicly owned, are not included.

DISCLAIMER: The information on this map was derived from City of Bend and Deschutes County digital GIS databases and land records. Care was taken in the creation of this map, but it is provided "AS IS." There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product.

This map was prepared for the City of Bend's Urban Growth boundary expansion project and may updated or further refined. Data was last updated on 9/8/2011 and was based on an original BLI prepared 2/28/2008.







Map prepared by the City of Bend, 9/23/2011  
Infill\_Occurrences\_99\_08\_letter.mxd

DISCLAIMER: The information on this map was derived from City of Bend and Deschutes County digital GIS databases and land records. Care was taken in the creation of this map, but it is provided "AS IS." There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product.

This map was prepared for the City of Bend's Urban Growth Boundary expansion project and may be updated or further refined. Data was last updated on 9/8/2011 and was based on an original B.L.I. prepared 2/28/2008.



## Infill Occurrences (1999-2008)

- Tax Lots (1999) Experiencing Infill\*
- Urban Growth Boundary
- Medical District Overlay Zone

\*Infill occurrences are defined as residential lands with existing improvements that had a land division between 1999 and 2008. Land used for parks, open space, rights of way, institutional purposes, or employment, or that were publicly owned, are not included.

00819



OAR 660-024 in effect on April 5, 2007 applies to the city's decision. The Commission concurs.

***e. Conclusion***

The Commission concludes that the April 2007 version of the commission's Goal 14 rules apply to the city's decision, and affirms the city's appeal. The current version of the commission's Goal 10 rules apply to the city's decision. On remand, the City may need to apply the current version of the Goal 14 rules, depending on the application of OAR 660-024-0000 to its actions on remand.

***2.2. Whether the City's Buildable Lands Inventory (BLI) is Adequate for Review. Whether the City Correctly Determined what Lands are "Vacant" and What Lands are "Redevelopable. Whether the City's Estimate of the Development Capacity of those Lands Complied with the Needed Housing Statutes and the Commission's Rules.***

***a. Summary of Issue and Objectors/Appellants***

Swalley objected to the city's buildable lands inventory (BLI), arguing that the City failed to distinguish between vacant and redevelopable lands as required by state law. Swalley Objection, at 63-64. The Director agreed, and determined that the city's BLI was not adequate for review due to an inadequate map of vacant and redevelopable lands, due to the city's use of criteria for categorizing lands as vacant and redevelopable that were inconsistent with the Commission's rules and state statutes, due to inadequate findings concerning what lands were categorized as vacant and redevelopable and why (including an inadequate factual basis for the determinations), and due to inadequate findings concerning the projected capacity of vacant and redevelopable lands over the planning period. Newland also objected to the city's decision, arguing that the city's estimates of residential development capacity on buildable lands *underestimated* the amount of land needed to be added to the UGB by not properly accounting for land needs for schools and parks, by not reflecting infrastructure constraints, and by not considering the location of dwellings on lots. Newland Objection, at 25-26. The Director denied Newland's objection. Director's Decision, at 42.

The City and Newland appealed the director's decision on this subissue. City Appeal, at 18-20.

***b. Legal Standard***

The statutory requirement for a map of buildable lands is found in ORS 197.296. ORS 197.296(4)(c) provides that:

"Except for land that may be used for residential infill or redevelopment, a local

government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands."

In other words, the BLI map must show specific lots and parcels that have been determined to be "buildable." As detailed below, those lands include: (a) vacant lands planned or zoned for residential use; (b) partially vacant lands planned or zoned for residential use; and (c) lands that may be used for a mix of residential and employment uses under the existing planning or zoning. However, lands that may be used for residential infill and redevelopment do not have to be shown on the map.

The statutory requirement for a buildable lands inventory (the determination of the *amount* of buildable land within the existing UGB), along with some direction concerning what lands are to be inventoried as "buildable," is contained in ORS 197.296(3), which provides in pertinent part that:

"\* \* \* a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands;

\* \* \*

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

The Commission's rules further define what lands are "buildable" for purposes of the buildable lands inventory. OAR 660-008-0005(2) and (6) state that:

(2) "Buildable Land" means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered "suitable and available" unless it:

(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

(b) Is subject to natural resource protection measures determined under statewide Planning Goals 5, 15, 16, 17, or 18;

(c) Has slopes of 25 percent or greater;

(d) Is within the 100-year flood plain; or

(e) Cannot be provided with public facilities.

\* \* \*

(6) "Redevelopable Land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.

The Commission's division 24 rules also clarify certain aspects of how the BLI must be carried out. OAR 660-024-0050 (2007 version) provides that:

"(1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. *For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute.*\* \* \*

(2) As safe harbors, a local government, except a city with a population over 25,000 or a metropolitan service district described in ORS 197.015(14), may use the following assumptions in inventorying buildable lands to accommodate housing needs:

(a) The infill potential of developed residential lots or parcels of one-half acre or more may be determined by subtracting one-quarter acre (10,890 square feet) for the existing dwelling and assuming that the remainder is buildable land;

(b) Existing lots of less than one-half acre that are currently occupied by a residence may be assumed to be fully developed.

\*\*\*\*." OAR 660-024-0050 (emphasis added).

Finally, OAR 660-008-0010 requires that: "\* \* \* the local buildable lands inventory must document the amount of buildable land in each residential plan designation."

Together, the statutes and the Commission's rules make it clear that for purposes of the BLI, vacant land is distinguished from land that is already developed. Vacant lands are further broken down into two subcategories: completely vacant, and partially vacant. ORS 197.296(3). Both types of vacant land, if they are planned *or* zoned for residential use, must be included in the BLI unless one or more of the screens listed in OAR 660-008-0005(2) is present.

Like "vacant" lands, "developed" lands also are further broken down into subcategories: lands with infill potential, lands that are redevelopable, and lands that are developed and that do not have a strong likelihood of redevelopment during the planning period. The context provided by OAR 660-024-0050(2) (2007) shows that developed lands with infill potential are lots or parcels that have one or more existing dwellings on them, but where there is enough land

remaining that one or more additional dwellings could be developed. Redevelopable lands are lots or parcels where there is a strong likelihood that existing residential development is likely to be converted to a more intensive form (more units) during the planning period. OAR 660-008-005(6). For example, a lot with an existing dwelling that is projected to be converted into a duplex would fall into the redevelopment subcategory.

These categories and subcategories matter, because for "redevelopable" lands (unlike vacant and partially vacant lands) the local government must show that there is a strong likelihood of more intensive residential development during the planning period due to present or expected market forces in order to include additional future capacity from this element in determining the residential capacity of the existing UGB over the planning period.. OAR 660-008-0005(6). That is not the case for vacant and partially vacant lands.

***c. Local Actions, Director's Decision, and Appeal***

The City adopted a map of buildable lands and included that map in the record. However, the map transmitted to the Department by the City as part of the local record was not at a scale sufficient to determine what lots and parcels had been inventoried as buildable. R. at Supplement 1257.

The city's findings state that it assigned each tax lot within the four primary residential plan designations within the Bend UGB to one of the several categories of development status, including vacant acres (platted lots), vacant acres with minimal improvements, vacant acres with physical constraints, and redevelopable acres. R. at 1071. The city's findings also summarize the development capacity it projects over the planning period by several subcategories of vacant lands and redevelopable lands. R. at 1071 (Table III-4). However, these subcategories differ both from the types described under statute and Commission rule, and from the narrative summary in the city's findings.

The Director determined that the BLI map the City provided to the department was not adequate to comply with ORS 197.296, because it did not show specific lots and parcels that have been determined to be "buildable," and more specifically lots and parcels that are: (a) vacant lands planned or zoned for residential use; (b) partially vacant lands planned or zoned for residential use; and (c) lands that may be used for a mix of residential and employment uses under the existing planning or zoning. Director's Decision, at 26.

The Director also determined that the city's BLI was inconsistent with the categories

established by state statute and commission rule, and that the city's findings failed to explain what criteria the City used to determine that specific lots and parcels fell under the particular subcategories of buildable lands. Director's Decision, at 25-26.

The City and Newland appealed the Director's Decision on this subissue. In addition to disagreeing with the Director that state statute and commission rules require the City to document what lands are included in its BLI by categories other than those used by the City, the City and Newland also argued that state law allows a BLI to be organized by comprehensive plan designation (rather than zoning designations).

On appeal, the City provided a map at a sufficient level of detail (by tax lot) to show what lands it inventoried as buildable (copies of this map were provided to the other parties and to the commission as Exhibit 1 to the department's Report). The City also clarified in its appeal that its 2005 BLI was updated with data from 2005 to 2007. City Appeal, at 18. The data were not included in the record submitted to the department, however. City Appeal, at 19-20.

***d. Analysis***

The mapping the City provided (on appeal) of buildable lands is sufficient to comply with ORS 197.296(4)(c), because it shows what lands the City inventoried as buildable on a tax lot basis (generally, while not all tax lots are necessarily lots or parcels, all lots or parcels typically have a separate tax lot). In addition, the city's BLI is properly based on plan districts rather than zoning districts, as permitted by OAR 660-008-0010.<sup>6</sup>

The city's findings, however, do not adequately explain its determination of what lands are “vacant” (including lands that are “partially vacant”) and what lands are “redevelopable” as those terms are used in ORS 197.296 and in OAR 660 divisions 8 and 24. The City inventoried three types of “vacant” land: vacant acres (with platted lots); vacant acres with minimal improvements, and vacant acres with physical constraints. R. at 1071. However, those categories do not correspond to the categories used in Table III-4 of the city's findings, and it is not clear how the City considered the three types of vacant lands.

For example, it is not clear whether vacant lands with “minimal improvements” were treated as “vacant” lands or as “redevelopable” lands. This matters because, as described above,

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<sup>6</sup> However, ORS 197.296(4)(a), requires that lands be included in the inventory whether they are planned *or* zoned for residential use. In other words, although the BLI may categorize buildable lands by plan designation, it must include all lands that are planned *or* zoned for residential use. If land is zoned for residential use, but in a non-residential plan designation, it still must be included in the BLI.

under the commission's rules “redevelopable” lands are considered “buildable” only if there is a strong likelihood that they will be converted to a more intensive residential use during the planning period, while “vacant” lands are not subject to this additional test (and are generally considered “suitable and available”). It is not clear why the City distinguished between different types of vacant lands.

Table 5-4 of the city’s Housing Element, which the City identifies as the summary of its final BLI (R. at 1288), uses the terms: “vacant acres,” “vacant acres - pending land use,” and “vacant acres - platted lots.” The city’s findings do not describe how these types are defined or how they relate to the statutory and rule definitions.<sup>7</sup>

There also are several problems with the city’s approach to physical constraints. OAR 660-008-0005 provides that:

- "(2) Land is generally considered 'suitable and available' [for inclusion in the BLI] unless it:
  - (a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;
  - (b) Is subject to natural resource protection measures determined under statewide Planning Goals 5, 15, 16, 17, or 18;
  - (c) Has slopes of 25 percent or greater;
  - (d) Is within the 100-year flood plain; or
  - (e) Cannot be provided with public facilities.

The City excluded lands from its BLI as “constrained” if the lands had physical constraints over 50 percent or more of the lot. R. at 2042; Director's Decision at 26. The commission’s rule does not authorize a local government to exclude vacant lands from a BLI on the basis that more than half of a lot or parcel is constrained.<sup>8</sup> While that approach *might* be justified for small lots, with larger lots it would potentially exclude a significant amount of land that is in fact buildable over the planning period.

The City also excluded lands within the city's “areas of special interest.” These are lands protected by the City for natural resource values, but which the City has not inventoried or

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<sup>7</sup> The city's findings under OAR 660-008-0005 state that: "The city has relied on these definitions to develop the foregoing findings, and the subsequent findings, to demonstrate compliance with Goal 10." However, the findings do not explain how the categories and subcategories the city uses related to the provisions of OAR 660-008-0005 or ORS 197.296. R. at 1097.

<sup>8</sup> OAR 660-024-0050 (2007) does contain a safe harbor authorizing local governments with a population within the UGB of less than 25,000 to assume that one-quarter acre of a lot or parcel over half an acre with an existing dwelling is developed for purposes of calculating the infill potential of the lot or parcel. The City of Bend is not authorized to use this safe harbor, however, as its population is greater than 25,000.

protected as containing significant natural resources under statewide land use planning Goal 5. The commission's rule authorizes a city to exclude lands that are protected under Goal 5, but not lands that the city is protecting under its own local code provisions. OAR 660-008-0005(2)(b).

Additional findings also are necessary to clarify how the City considered “redevelopable” lands. Despite some argument to the contrary,<sup>9</sup> there is not any disagreement about how these lands are defined. Lands that are fully developed are “redevelopable” and included in an inventory as “buildable” only if there is a strong likelihood that the existing development will be converted to more intensive residential uses during the planning period. OAR 660-008-0005(6). The City excluded parcels that contain less than 0.5 acres from its inventory of “redevelopable” lands if they have a land value exceeding improvement value. While this *may* be a reasonable application of OAR 660-008-0005(6), the city’s findings do not identify what the factual basis for this assumption is. For instance, the City does not identify whether lands with these characteristics have seen little or no redevelopment since the city’s last periodic review.

The City also excluded some lands from its inventory on the basis of covenants, conditions, and restrictions (CC&Rs) imposing restrictions on future development. However, the City's findings do not explain why the CC&Rs make redevelopment less than highly likely, or why they preclude future development of vacant lands covered by the CC&Rs.

The city’s summary of its BLI in Table 5-4 of its Housing Element, R. at 1288, shows that it counted about five percent of its lands in its residential plan districts as being “redevelopable” and another five percent were counted as "vacant." *Id.* On remand, the City must analyze the development capacity of the vacant and redevelopment lands in light of the actual trends in redevelopment of developed properties and infill of vacant properties. Those trends include the fact that the city’s 2007 Residential Lands Study reported that 12,800 building permits were issued for lands within the prior UGB between 1998 and 2005. R. at 1807. While the Commission understands that this development may have utilized much of the vacant and redevelopable land within the prior UGB, to the extent the City projects that it will deviate from those past trends significantly in the future, the City needs to explain why in its findings. It also appears that some of the redevelopment and infill activity during the 1998-2005 period occurred as a result of significant annexations and subsequent plan and zone changes that provided an increase in the residential capacity of the prior UGB of between 4,259 and 5,950 units. R. at

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<sup>9</sup> City Appeal at 20-22, Newland Appeal at 3-7.

1827. It is unclear, however, whether this is the case and, if so, whether this trend is expected to continue, or whether the potential for additional up-zoning within the prior UGB is limited.

The city's findings state that:

"\* \* \* the city is assuming that development in the RL, RS, and RM designations will meet minimum densities for vacant lands; development in the RH designation will occur at lower than minimum densities because of the parcelized pattern of RH lots in the current UGB. The density of redevelopment will be lower than minimum as well because of the parcelized pattern of redevelopable lots within the current UGB." R. at 1071.<sup>10</sup>

The City also assumed that already platted lots would not further divide. R. at 1071. The city's minimum densities are: RL – 1.1 dwellings per gross acre; RS – 2.2 dwellings per gross acre, RM 6.0 dwellings per gross acre; and RH – 22 dwellings per gross acre. R. at 1287. Most vacant and redevelopable land in the prior UGB was in the RS plan district (2,410 acres out of 2,909 total). R. at 1071 (Table III-3). In other words, the City is projecting that much infill and redevelopment will occur at relatively low densities – an average of about 3 units per acre. Without additional explanation, the Commission finds that this assumption is not justified, either in terms of what has happened in the City in the past, or in terms of what is likely to occur within the UGB in the future.

Without a BLI and findings that follow state statutes and the Commission's definitions of "vacant" and "redevelopable," and that explain the city's projections and policy choices, the commission is left with the summary BLI table in Chapter 5 of the comprehensive plan, the city's findings (which contain no explanation of how the City determined whether lands were vacant or redevelopable), and the BLI map. The commission finds that there is not an adequate explanation in the city's findings, nor an adequate factual basis in the record to determine how the City compiled its buildable lands inventory. Without that key baseline, the Commission is not able to evaluate the city's projections for the residential capacity of its buildable lands over

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<sup>10</sup> In its appeal, Newland notes that the City calculated capacity based on plan districts rather than current zoning, which (according to Newland) resulted in the city's determination of capacity being "aggressive." Newland Appeal, at 4-5. However, it is not clear from the city's findings that when it used minimum densities for each plan district, exactly which minimum densities it used. See, e.g., Table 5-3A of the city's Housing Element. R. at 1287 (reporting density ranges by plan district). For the plan district containing the most lands (RS), the City found there are 2,410 acres of vacant or redevelopable lands, and that those lands have a capacity for 7,458 potential units (R. at 1071, Table III-3 and III-4) – an average gross density of about three units to the acre. That figure is very close to the average actual density of single-family housing city-wide at present, R. at 1289. The Commission also notes that the city's findings concerning the capacity of buildable lands for additional residential units (10,059 units plus 1,100 units through measures, R. at 1071) do not match what the City adopted in its Housing Element (10,789 units plus 1,100 units through measures, R. at 1303).



the planning period. This latter issue is addressed further in connection with the requirement in Goal 14 to "reasonably accommodate" future land needs within the existing UGB prior to expanding onto new lands, beginning at page 50, below.

***e. Conclusion***

The Commission denies the city's and Newland's appeals on this subissue, upholds the Director's Decision, including the director's disposition of objections (for the reasons set forth in the Director's Decision) and remands the city's decision with instructions for it to develop a record and adopt a buildable lands inventory supported by findings that are consistent with state law. The city's findings must explain what criteria it uses (based on ORS 197.296, OAR 660-024 and 660-008) to determine whether particular lands are vacant or redevelopable, examine the amount and type of development that has occurred on the vacant and redevelopable lands since its last periodic review, and project the capacity of the city's buildable lands (prior to additional measures being implemented) based on that analysis (and as further detailed in connection with Goal 14, below). If the amount of redevelopment and infill within the city's UGB is projected to differ significantly from past trends, the City must explain why, and provide an adequate factual and policy basis to support that change.

The city's buildable lands inventory may not exclude lots and parcels smaller than 0.5 acres with no improvements without specific findings consistent with OAR 660-008-0005. Similarly, the City may not exclude lots and parcels subject to CC&Rs unless it adopts specific findings, supported by an adequate factual base, that show why the lands are not available for development or redevelopment during the planning period. In addition, the City has agreed to reexamine lands it identified as "constrained" to determine whether the lands are buildable under OAR 660-008-0005.

Finally, the Commission denies the objection of Newland for the reasons set forth in the Director's Decision, which are incorporated herein by this reference. Director's Decision, at 42-43.

***2.3. Whether the City's Housing Needs Analysis and Comprehensive Plan Identify Needed Housing as Required by Goal 10 and the Needed Housing Statutes. Whether the City is Required to Analyze Housing Need by Tenure, Given that it Does Not Regulate Tenure (OAR 660-008-0040). Whether ORS 197.296 Requires an Analysis of Housing Needs for Owner-occupied and Rental Housing?***

***a. Summary of Issue and Objectors/Appellants***

## ***Attachment A***

### **Charter**

#### **City of Bend Urban Growth Boundary *Remand Task Force***

March 3, 2011

#### **ACRONYMS**

UGB = Bend Urban Growth Boundary

RTF = Remand Task Force

LCDC = State of Oregon - Land Conservation and Development Commission

#### **BACKGROUND**

On January 5, 2009, the Bend City Council adopted a proposal to expand the existing UGB by 8,462 acres (gross). The adoption included related amendments to the City of Bend Public Facilities Plans, Comprehensive Plan and the Development Code.

On November 3, 2010, LCDC issued a final order that partially acknowledged and partially remanded Bend's proposed UGB expansion.

On January 19, 2011, the Bend City Council approved a motion to form a special task force comprised of three City Councilors and two Bend Planning Commissioners - referred to as the ***Remand Task Force (RTF)*** to act as official review body to assist staff in addressing issues raised in the UGB remand order, and to help form a recommendation to the full City Council. The City Council also approved the appointment of City Councilors Jodie Barram, Jim Clinton, and Tom Greene along with Planning Commissioners Kevin Keillor and Cliff Walkey to the RTF.

#### **MISSION**

The mission of the UGB RTF is to make recommendations to the City Council regarding responses to all issues raised in the LCDC remand order requiring action by the governing body. The City Council's final consideration of actions in response to the remand order, during formal public hearings, will be based on recommendations made by the RTF and on public input.

#### **DUTIES OF THE RTF**

- Review draft material prepared by City staff in response to remand issues

- Provide policy guidance to staff
- Receive public input on remand tasks at appropriate times
- Serve as liaisons to City Council and Planning Commission
- Recommend adoption of remand materials to City Council
- Stay focused on remand tasks, in accordance with an accepted timeline to complete all tasks in a timely, efficient manner.

## **RTF MEETINGS**

### ***Structure:***

A chair and vice-chair for the task force will be selected by RTF members. A majority of the RTF being present will constitute a quorum to conduct business.

### ***Schedule:***

The timing and location of RTF meetings will be scheduled as determined by the RTF Chair and City staff. The RTF will meet as needed to consider work related to specific remand tasks.

### ***Conduct:***

In general, meetings of the RTF will be conducted similar to City Council work sessions. The meeting format will focus on direct interaction between staff and RTF members on agenda topics announced before each meeting. Agenda topics will be limited to remand tasks.

### ***Public Participation:***

All meetings of the RTF are open to the public. Prior notice of the time and place for meetings will be provided in accordance with City of Bend policy and state law. Meeting minutes will be kept.

During RTF meetings the Chair may choose at his/her discretion to receive oral or written comment from the public. When allowed, the time period for oral comments should be limited to allow all interested members of the public to speak while also working through topics on the meeting agenda. (Staff recommends allowing time for public comment at the beginning or end of all meetings rather than during the RTF member/staff discussion.)

## **THE RECORD**

The adoption of any amendments to the UGB and to related planning documents must be based on a legislative record. For purposes of the Bend UGB remand, the legislative record will be opened on the date the City submits a formal Notice of Proposed Amendment to the Oregon Department of Land Conservation and Development. That notice will be submitted after the RTF has completed its work, and at least 45 days prior to the first evidentiary hearing on the proposed remand amendments. The record will not be open during the time the RTF is

meeting to carry out its mission. Citizens may submit written materials or oral comments to the RTF at any time, as authorized by the Chair, however such materials and comments will not be considered part of the legislative record. Similarly, materials submitted to the RTF by City staff for consideration will not be considered part of the record.

## **DECISION MAKING**

The RTF will make decisions by consensus where feasible, and by majority vote when consensus is not possible. In general, City staff will use the RTF's preliminary decisions as the basis for further work on remand tasks. The RTF may modify its decisions at any point before recommending draft remand materials for formal consideration and adoption by the City Council.

In the interest of accomplishing remand tasks quickly and efficiently, RTF meeting agendas will be focused and task-oriented. The specific tasks listed in the remand order will be used as the basis for staff work, and to focus discussion during RTF meetings.

## **CONCLUSION**

The mission of the RTF will conclude when it has made recommendations to the City Council regarding responses to all issues raised in the remand order requiring action by the governing body. The City Council's consideration of actions in response to the remand order during formal public hearings will be based on recommendations made by the RTF and on public input.

## REMAND TASK TRACKING TABLES

January 2014

**Table 1: Remand Tasks and Products to Complete**

Remand Issue	Next Action Required	DLCD		RTF	
		Product Reviewed	Findings Reviewed	Product Reviewed	Findings Reviewed
2.2. Whether Buildable Lands Inventory (BLI) is adequate and capacity estimate complies with rules.	<b>Prepare Findings</b>	✓	✓	✓	
2.3. Whether Housing Needs Analysis is adequate.	<b>Prepare Findings</b>	✓	✓	✓	
2.4. Whether City has planned for an adequate supply of land for needed housing types.					
2.5 Second homes (County)	<b>Prepare Findings</b>	✓		✓	
2.6. Whether City's inclusion of "unsuitable" acres complies with Goals 10 and 14.	<b>New analysis and findings – based on boundary location analysis</b>				
2.7. Whether inclusion of 500 "surplus" acres complies with Goal 14.	<b>No action required if City does not include any land that is "surplus."</b>				
2.8. Whether UGB expansion is consistent with General Plan housing policies promoting higher densities.	<b>Prepare findings addressing consistency of housing-related plan amendments with policies in BAGP Ch. 5.</b>				
3.1. Whether City has demonstrated that it has "reasonably accommodated" projected growth with its proposed efficiency measures.	<b>New analysis and findings</b>				
3.2. Whether the City's two efficiency measures demonstrate that the needed mix and density of housing will be achieved.	<b>New analysis and findings</b>				

## REMAND TASK TRACKING TABLES

January 2014

Remand Issue	Next Action Required	DLCD		RTF	
		Product Reviewed	Findings Reviewed	Product Reviewed	Findings Reviewed
4.1. Whether City justified an additional 15% factor for “other lands.”	None	✓	✓	✓	✓
4.2. Whether findings are adequate to justify parks and schools land needs.	None	✓	✓	✓	✓
4.3. Whether findings are adequate to demonstrate that parks and schools needs cannot be met inside current UGB.	<b>New analysis and findings based on evaluation of capacity of current UGB and boundary location analysis</b>				
5.1. Whether City’s EOA is consistent with rules for Goals 9 and 14.	<b>Need to clarify in findings that city used 2008 EOA, Scenario A or B as basis for estimating employment land need</b>				
5.2. Whether City’s use of 10% refill factor for employment lands is supported by factual base and justified by findings.	<b>New analysis and findings</b>				
5.4. Whether City may apply “market choice” factors to estimated employment land needs.	<b>New findings</b>				
5.5. Whether City’s policies are adequate to manage short-term supply of employment land.	<b>New analysis and findings</b>				
5.6. Whether City’s use of a 15% vacancy rate for employment lands is supported by the record.	None	✓	✓	✓	✓
5.8. Whether City justified 119 acres to account for employment uses in residential lands.	<b>New findings</b>				

## REMAND TASK TRACKING TABLES

### January 2014

Remand Issue	Next Action Required	DLCD		RTF	
		Product Reviewed	Findings Reviewed	Product Reviewed	Findings Reviewed
5.9. Whether City's UGB decision is consistent with General Plan policies 27 & 28 of Chapter 6 on commercial strip zoning.	<b>New analysis and findings</b>				
6.1. Whether City's UGB decision is consistent with Goal 5 and its administrative rule.	<b>New analysis and findings – to be completed during boundary location analysis</b>				
6.2. Whether City is required to address wildfire hazard as a Goal 7 issue.	<b>Address during boundary location analysis</b>				
6.3. Whether surface mining Plan designation is supported by adequate factual base.	<b>New findings depending on boundary location analysis.</b>  <b>Plan designation of surface mining only required for property with DOGAMI permit</b>				
7.1. Whether City may do a serial adoption of a PFP for the current UGB, followed by separate PFP analyses of the UGB expansion area.	<b>Water PFP acknowledged on remand 2013</b>  <b>Sewer PFP in works</b>  <b>New analysis and findings during boundary location</b>				

## REMAND TASK TRACKING TABLES

### January 2014

Remand Issue	Next Action Required	DLCD		RTF	
		Product Reviewed	Findings Reviewed	Product Reviewed	Findings Reviewed
	<b>analysis</b>				
7.2. May City plan for sewer facilities to serve areas outside the current UGB?	<b>New analysis and findings</b>				
7.3. Whether City's PFPs were improperly used to determine location of expanded UGB.	<b>New findings</b>				
7.4. Whether PFPs need to be consistent with measures to provide land for needed housing.	<b>New analysis and findings</b>				
7.5. What are City's obligations for coordinating with private water system providers?	<b>Addressed in acknowledged 2013 Water PFP – incorporates and relies upon plans from Avion and Roats Water Companies.</b>				
7.7. Whether CSMP and water master plans must cover all of UGB expansion area.	<b>New analysis and findings</b>				
7.9. Whether City must reconsider relative costs of providing public facilities to UGB expansion area generally, and in planning for needed housing in particular.	<b>City will need to reevaluate public facility costs of alternative UGB expansion areas as described in 7.7.</b>				
8.1. Whether City's findings adequately explain the relative costs of providing transportation improvements to serve alternative UGB expansion areas.	<b>New analysis and findings</b>				
8.2. Whether City must provide more detailed transportation analysis to consider	<b>New analysis and findings</b>				



## REMAND TASK TRACKING TABLES

### January 2014

Remand Issue	Next Action Required	DLCD		RTF	
		Product Reviewed	Findings Reviewed	Product Reviewed	Findings Reviewed
"extraordinary" improvement costs.					
8.3. Whether City must re-analyze relative costs of transportation improvements on the west side to be comparable with other expansion areas.	<b>New analysis and findings</b>				
8.6. What must City do to comply with TPR?	<b>New analysis and findings</b>				
9.1. Whether City's use of suitability criteria complies with state statutes and Goal 14.	<b>New analysis and findings</b>				
9.2. Whether City has justified use of exceptions allowed under ORS 197.298(3).	<b>New analysis and findings.</b>				
9.3. Whether City properly applied ORS 197.298(3) (c) to include lower priority lands.	<b>New analysis and findings.</b>				
9.6. Whether City may exclude developed lots less than 3 acres as unsuitable.	<b>New analysis and findings based on Task 9.1</b>				
9.7. Whether City's threshold suitability criteria have an adequate factual base.	<b>New analysis and findings based on Task 9.1</b>				
9.9. Whether City should reconsider specifically inclusion of northwest UAR lands in UGB.	<b>New analysis and findings.</b>				
9.10. Whether exclusion of Buck Canyon area from expanded UGB was consistent with statutory priorities.	<b>New analysis and findings</b>				
10.2. Whether City and County applied appropriate comp. plan and zoning designations to the UGB expansion area.	<b>New findings and analysis.</b>				

## REMAND TASK TRACKING TABLES

### January 2014

**Table 2: Issues Resolved**

<b>Remand Issue</b>	<b>Resolution</b>
1. Whether the City's findings are adequate for review.	<b>Director had correctly determined that City's work must be supported by substantial evidence and present adequate findings.</b>
2.1. Whether the Director applied the correct version of the commissions Goal 10 and Goal 14 rules to the City's decision.	<b>Objector's appeal denied. Affirms City's position.</b>
2.5 Planning for second homes (City)	<b>Objector's appeal denied. Affirms City's position.</b>
5.3. Whether City must update EOA to reflect more recent economic trends.	<b>Objector's appeal denied. Affirms City's position.</b>
5.7. Whether UGB expansion must consider impacts on agriculture as an industry.	<b>Objector's appeal denied. Affirms City's position.</b>
6.2. Whether City is required to address wildfire hazard as a Goal 7 issue	<b>Objector's appeal denied. Affirms City's position. City is not required to address wildfire risk under Goals 2 and 7.</b>
7.6. What was City's obligation to provide notice prior to adoption of PFPs?	<b>This issue will be resolved once the new 45-Day notice is sent</b>
7.8. Whether City must coordinate with Swalley as an urban service provider.	<b>Objector's appeal denied. Affirms City's position.</b>
7.9. Whether City must reconsider relative costs of providing public facilities to UGB expansion area generally, and in planning for needed housing in particular.	<b>Commssion denied objector's appeal. City will need to reevaluate public facility costs of alternative UGB expansion areas as described in 7.7.</b>
8.5. Whether City's findings regarding transportation impacts on the west side are consistent with TSP Policy 21.	<b>Objector's appeal denied. Affirms City's position.</b>
8.7. May City rely on partially-acknowledged TSP for UGB amendment?	<b>Objector's appeal denied. Affirms City's position.</b>
9.4. Whether UAR lands are exception lands.	<b>Objector's appeal denied. Affirms City's position.</b>
9.5. Whether City was required to exclude lands due to high costs to serve.	<b>Objector's appeal denied. Affirms City's position.</b>
9.8. Whether City must apply Deschutes County Code 23.48.030.	<b>Objector's appeal denied. Affirms City's position.</b>
10.1. Validity of objections.	<b>City appeal denied. Does not result in a remand task.</b>
10.3. Whether City provided adequate notice.	<b>This issue will be resolved once the new 45-Day notice is sent.</b>
10.4. Whether City coordinated adequately with Swalley.	<b>Objector's appeal denied. Affirms City's position.</b>
10.5 Whether City violated Goal 1.	<b>Objector's appeal denied. Affirms City's position.</b>

**REMAND TASK TRACKING TABLES**  
**January 2014**

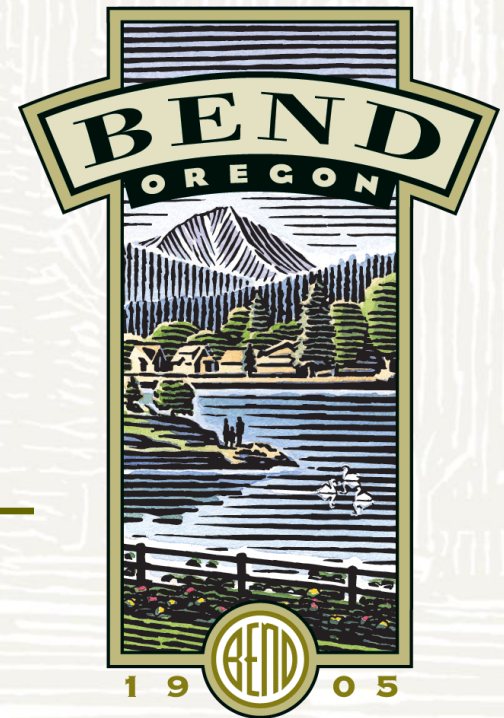
<b>Remand Issue</b>	<b>Resolution</b>
10.6 Did City place information in the record after public hearing was closed?	<b>City will issue new 45-day notice and allow new evidence to be introduced into the record.</b>
10.7 Should LCDC more clearly define scope of remand?	<b>Objector's appeal denied. Affirms City's position.</b>

# UGB Remand Task Force: Review of Task 2.2 - BLI

*DeArmond Room*

*Deschutes Services Building*

*1300 NW Wall Street, Bend*



*Damian Syrnyk  
Senior Planner*

*January 13, 2014*

# Overview

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- Brief background BLI and its purposes
- Review BLI data and proposed findings
- RTF – discussions, questions
- Public Comment
- Action on BLI



# The BLI Defined

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- An inventory of all buildable lands for housing in the Bend UGB
  - a table to incorporate in General Plan
  - a map to also incorporate in General Plan
- Includes land with a residential or mixed use plan designation
- Classifies land as developed, vacant, partially vacant, with infill potential, or as redevelopable

# Why inventory buildable land?



- Required by Goal 10, statute, and rule
- Need inventory to determine capacity of UGB for needed housing
- Need inventory to determine if UGB includes enough land in the right zones and locations
- Need capacity data to determine whether additional land is needed through re-zoning, UGB expansion, or both to provide enough land for needed housing

# Substantial Evidence

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- Legislative land use decisions must be supported by substantial evidence
- Substantial evidence is evidence a reasonable person would rely on in reaching a decision.
- Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding
- Where the evidence in the record is conflicting, if a reasonable person could reach the decision the city made in view of all the evidence in the record, the choice between the conflicting evidence belongs to the city.



# Classifications

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- **Vacant** (Completely) – \$0 in improvements value
- **Partially Vacant** – an improvement value greater than \$0, but contained fewer dwelling units than permitted in the zone; additional units possible without removal of dwelling
- **Developed** – developed with the maximum number of dwelling units allowed in the zone, and the size of the lot does not allow for further division
- **Developed w/ Infill Potential** – the lot was large enough to further divide consistent with its current zoning without the removal of the existing dwelling
- **Redevelopable** - Classified as a "... strong likelihood that existing development will be converted to more intensive residential uses during the planning period."

# Summary Data



## Preliminary Acres in BLI

Classification	Potential Acres
Developed w/Infill Potential	5,151
Partially Vacant	150
Vacant	1,909
Total	7,210

## Capacity (Housing Units)

Classification	Potential Units
Developed w/Infill Potential	2,496
Partially Vacant	10
Vacant	8,740
Mixed Use	17
Redevelopable	0
Total	11,263

# Findings

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- Local government must articulate its thinking through findings
- Articulate the applicable standard the City is showing is met
- Explain why the City's decision complies with this standard
- Identify substantial evidence in the record to support its explanation



# Next Steps on Use of BLI

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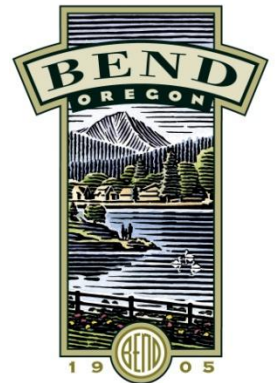
- First cut at capacity for housing in UGB (pre-efficiency measures)
- Results may change further based on housing needs analysis and efficiency measures
- BLI provides starting point for estimating capacity of UGB for meeting housing needs
- Work on efficiency measures provides opportunity to look a new data – whether changes zoning, code provide incentive for development of housing

# AGENDA

## UGB Remand Task Force (RTF)

Friday, January 24, 2014  
1:00 p.m.

Council Chambers  
Bend City Hall  
710 NW Wall St, Bend, OR 97701



710 NW WALL  
STREET  
PO BOX 431  
BEND, OR 97701  
[541] 388-5505 TEL  
[541] 385-6676 FAX  
BENDOREGON.GOV

1. Call to Order
2. Confirm direction on infill lands from January 13, 2014 meeting
3. Present recommended direction to address CCRS and their effect on lands classified as infill
  - a. Discussion with RTF
  - b. Public Comment
  - c. RTF deliberation and final direction to Staff
4. Update on Request for Proposals
5. Adjourn

JIM CLINTON  
*Mayor*

JODIE BARRAM  
*Mayor Pro Tem*

VICTOR CHUDOWSKY  
*City Councilor*

DOUG KNIGHT  
*City Councilor*

SALLY RUSSELL  
*City Councilor*

MARK CAPELL  
*City Councilor*

SCOTT RAMSAY  
*City Councilor*

ERIC KING  
*City Manager*



## MEMORANDUM

710 WALL STREET  
PO BOX 431  
BEND, OR 97709  
[541] 388-5505  
TEL  
[541] 388-5519  
FAX  
bendoregon.gov

TO: **BEND UGB REMAND TASK FORCE**  
FROM: **BRIAN RANKIN, PRINCIPAL PLANNER**  
**DAMIAN SYRNYK, SENIOR PLANNER**  
SUBJECT: **APPROACH TO ADDRESS EFFECT OF CCRs ON INFILL LANDS**  
DATE: **JANUARY 23, 2014**

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### Purpose

This memorandum seeks to confirm the discussion and direction from the Remand Task Force (RTF) on addressing the potential effect of CCRs on lands classified as developed with infill potential (aka infill) in the buildable lands inventory.

### Direction

Staff presented the results of the buildable lands inventory (BLI) to the RTF at the January 13, 2014 meeting. Two RTF members and several attendees raised the question of whether work products should re-examine the effect of covenants, conditions, and restrictions (CCRs) on the supply of land classified as Developed with Infill Potential. Staff understood that this issue was raised for the following reasons:

1. The supply of acres that met the definition of Developed with Infill Potential is 5,151 acres, and represents the largest category of residential land in the BLI.
2. This estimate of land may not be accurate given that a significant amount of land was classified as Developed with Infill Potential may not in fact be available for additional development. This may be the case because a significant proportion of lands that were classified as infill are lots within platted subdivisions, and these lots may be restricted by CCRs that limit density beyond the terms of the City's zoning. For example, a half-acre lot developed with a dwelling may not be further developed over the planning period if there are recorded CCRs that limit development of the lot to one dwelling or that prohibit further division.
3. Work products should reexamine this supply of land and subtract from the supply of infill acres those lots and parcels that are restricted from further development due to CCRs. The work products should include a review of the CCRs that affect lots in the current UGB to determine how much of this supply of infill land is restricted from further development. This review should also include reviewing the terms of the CCRs to determine (a) if they have changed at all during the 1999 to 2008 period and (b) the terms of the CCRs that would outline the difficulty or ease with which the CCRs can be changes to be less restrictive.

The RTF directed Staff to determine if this work should be completed, how long it might take, and inform the RTF as to whether this work would affect the timeline for completion.

### **Staff Recommendations**

Staff recommends that the BLI work products evaluate the terms of CCRS that apply to lots within subdivisions in Bend that were classified as Developed with Infill Potential. This evaluation would include looking at when the CCRs were recorded, whether they were changed, and what is required in terms of a vote of the home owners (e.g. what percentage) in order to change the CCRs.

Staff has met with the Department of Land Conservation and Development (DLCD) and discussed a potential method for re-calculating the supply of infill land, and its capacity, after review of the CCRS.

Staff believes that this work can be completed over the next two months and will not have a measurable impact on the timeline to complete local adoption of the UGB remand.



## Brooks Resources Corporation

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January 22, 2014

Damian Syrnyk  
Senior Planner  
City of Bend  
710 NW Wall Street  
Bend, Oregon 97701

### **RE: Covenants, Conditions and Restrictions (CCRs) on Brooks Resources projects**

Dear Damian:

As promised at the January 13 Remand Task Force Meeting, I have completed compiling and analyzing the CCRs for several subdivision projects in the City of Bend in which Brooks Resources has been involved. I undertook this effort because the City's current Buildable Lands Inventory (BLI) Map indicates that most of the lots in these subdivisions are either "developed with infill potential" or "vacant". As such, the City assumes these lands are "likely" to see an increase in density over the 20 year planning period. However, the BLI does not take into consideration the existence of recorded CCRs on these properties that severely limit re-development potential. Further, these CCRs can only be removed or amended by a 75% majority of owners, which is an extremely unlikely occurrence.

Attached are CCRs for the following subdivisions that Brooks Resources has developed over the past couple of decades (all prior to 2008). I have noted the sections containing the pertinent provisions of the CCRs for each of these subdivisions; each prohibits development beyond a single family home on each lot created by the subdivision.

1. **Awbrey Butte:** CCRs were first enacted in 1984 with Phase 1, and subsequent phases were annexed into the CCRs as those phases were developed. Interestingly, the CCRs for Awbrey Butte were amended and restated in 2008 to establish a formal homeowners association to enforce the CCRs; this was specifically contemplated in the 1984 CCRs and required only a 51% vote to enact. However, the restrictions on development of the lots were not relaxed in any way. Both the 1984 and 2008 amended and restated CCRs are included, and contain the following restriction: "*No more than one single family residence shall be erected or placed on any lot.*" (Section 4.11 of 1984, Section 10.11 of 2008). CCRs run for 30 years from 1998 declaration and automatically extend for 10 year periods unless 75% of owners vote to terminate. A 75% vote is also required to amend the CCRs (Section 12.3).



2. **Awbrey Glen:** CCRs established in 1992 with subsequent annexation of later phases. Article 2 of the CCRs states that *"the initial development contains 48 homesites and contemplates construction of one living unit on each homesite"*. Article 12 contains a provision requiring a 75% vote of owners to terminate or amend the CCRs.
3. **Awbrey Road Heights:** CCRs enacted in 2002. Section 4.11 states that *"No more than one single family residence shall be erected or placed on any lot"*. Article 6 contains a provision requiring a 75% vote of owners to terminate or amend the CCRs.
4. **Awbrey Park:** CCRs enacted in 2003 with subsequent annexation of later phases. Section 7.1 states *"All Lots and Units shall be used only for single-family residential purposes"*. Section 8.4 states that *"No lot shall be rezoned without the prior written consent of the Board"*. Section 8.5 states that *"No lot may be subdivided."* Section 11.3 contains a provision requiring a 75% vote of owners to terminate or amend the CCRs.
5. **North Rim:** CCRs enacted in 2004 with Subsequent annexation of later phases. Section 7.1 provides that *"all homesites and units shall be used only for single-family residential purposes in accordance with, and subject to, the other provisions of this Declaration."* Section 8.5 states that *"No Homesite may be subdivided... Declarant shall have the right to consolidate and or subdivide homesites within North Rim, provided no homesite is less than one (1) acre in size"*. Section 11.3 contains a provision requiring a 75% vote of owners to terminate or amend the CCRs.

This evidence clearly supports a finding that it is highly unlikely that any of the lots in these subdivisions will be developed with anything more than one single family dwelling within the planning period. These six subdivisions alone represent several hundred acres of land that is not available for any level of additional development within the planning period; thus, the need for additional housing must be met elsewhere.

While the results of considering the CCRs for just these 5 subdivisions is significant on its own, it really points to the potential for a very large discrepancy in the BLI when the potential for CCR restrictions are extrapolated across the entire city. It is therefore imperative that this type of analysis for other subdivisions in the City of Bend be completed prior to finalizing the City's BLI; otherwise, we will end up seriously overstating our ability to accommodate needed housing within the existing UGB, and as a result we will not provide an adequate land base for needed housing.

This analysis of CCRs is neither complicated nor time consuming, and, in fact, a more comprehensive city-wide effort has already been initiated by private sector volunteers. It is likely that this initial work can be completed within just a few weeks. If additional analysis of lands identified in the BLI appears warranted, this could be accomplished in a three step process:

1. Step 1 would consist of the "paper" CCR analysis already underway that can be completed very quickly. The initial scoping study of Brooks' projects indicates that there is the potential for a very significant amount of acres of residential land need that can't actually be met by the CCR- constrained land identified in the

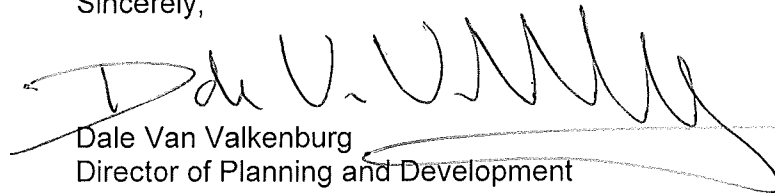
BLI. I am certain Step 1 is well worth the investment in time and effort – the low hanging fruit.

2. Step 2 could be a more in depth analysis of various purple (vacant) and orange (infillable) designated areas on the BLI Map to determine their likelihood for redevelopment. Just as an example, in NorthWest Crossing alone I have noted several large commercial-zoned lots that appear to be in error on the inventory. While Step 2 would be more time consuming, this second category could be considered fruit easily reached with a stepstool.
3. Step 3 could be a more extensive aerial photo or ground truth analysis of lots considered re-developable to determine the location of existing homes or other physical constraints. This would require substantially greater effort to complete, and while the end result would be a much more accurate BLI, this fruit would require tall ladders to reach, and would be more questionable if it is worth the effort.

I trust this very quick review of Brooks Resources' projects demonstrates both the value and the necessity of completing a wider range analysis prior to finalizing the Buildable Lands Inventory. If this compelling evidence of incorrect assumptions in the BLI is not addressed by the City, it could create an appealable issue on its own.

I look forward to discussing this more at the next RTF meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Van Valkenburg", with a long horizontal flourish extending to the right.

Dale Van Valkenburg  
Director of Planning and Development  
Brooks Resources Corporation  
409 NW Franklin Avenue  
Bend, Oregon 97701

DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
AWBREY BUTTE HOMESITES

These Covenants, Conditions, and Restrictions are made this 27th day of August, 1984, by Brooks Resources Corporation, an Oregon corporation, hereinafter referred to as "Declarant", as owner of the real property in the City of Bend, Deschutes County, State of Oregon, described in Exhibit "A", attached hereto, and incorporated by reference herein.

The property described in Exhibit "A" is hereby subject to these Covenants, Conditions, and Restrictions and will be known as the Awbrey Butte Homesites, Phase I, hereinafter referred to as the Awbrey Butte Homesites.

Awbrey Butte Homesites is being developed as a planned residential community. Except where this Declaration for Awbrey Butte Homesites conflicts with any applicable government municipal regulations, this Declaration shall be binding upon all subject to this Declaration and their successors in interest as set forth herein. In the event any of the development standards or use restrictions of this Declaration should conflict with a more restrictive standard or requirement set by an applicable zoning ordinance of the City of Bend, the more restrictive standard or requirement of the applicable City of Bend ordinance shall apply.

Section 1. Definitions

1.1 Awbrey Butte Homesites: The term "Awbrey Butte Homesites" shall mean all of the real property now or hereafter made subject to this declaration.

1.2 Declarant: The term "declarant" shall mean Brooks Resources Corporation, an Oregon corporation, or its successors in interest.

1.3 Block: The term "block" shall mean those areas designated as blocks on subdivision or partition maps according to the records of Deschutes County.

1.4 Lot: The term "lot" shall mean each lot described on a subdivision plat or partition map to any alteration thereof as may be made by a valid lot line adjustment.

1.5 Declaration: The term "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for Awbrey Butte Homesites.

(b) Architectural plans and drawings showing the nature, style, and dimensions of any building, structure, fence, wall, barrier or deck (or, where applicable, any alteration, addition, modification or destruction thereof), including the exterior material types, colors, and appearance. The scale of plans shall be 1 inch = 20 feet or larger.

(c) A landscape plan showing the nature, type, size, location, and layout of all landscaping, vegetation ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

3.4 Review. All plans and drawings identified in paragraph 3.3 above, shall be submitted to Declarant for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied with a check payable to Declarant in an amount to be determined by Declarant from time to time. No plans shall be reviewed until the architectural review fee is paid in full and all items specified in this section are submitted. Within 30 days following receipt of such plans and drawings, and the full amount of the architectural review fee, Declarant shall review the plans and shall inform the owner in writing whether the plans conform to the development concept for Awbrey Butte Homesites. In the event the owner is not notified as to the conformity of the plans within the 30 day review period, the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to the Awbrey Butte Homesites development concept, the owner shall resubmit those non-conforming portions of the plans for review in accordance with the procedures outlined in paragraph 3.3 above, and this paragraph. No work may be performed relating to any improvement unless and until all aspects of all plans required under paragraph 3.3 above have been approved by Declarant. Any site plans, construction plans or similar plans and drawings submitted to the City of Bend in connection with the construction of any improvement in the Awbrey Butte Homesites must bear the prior written approval of Declarant.

3.5 Architectural Guidelines. The development concept for the Awbrey Butte Homesites shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published from time to time by Declarant, but Declarant shall not be required to do so. Declarant shall have the right to alter, rescind or amend any published guidelines without prior notice to any party; provided however, that once approval has been given pursuant to paragraph 3.4 above, work may proceed in accordance with the approved plans and drawings notwithstanding any changes in the development concept. All such guidelines shall be in general

conformity with this Declaration.

3.6 Inspection. All work related to any building, structure or improvement or any landscaping, vegetation, ground cover or other improvements within the Awbrey Butte Homesites shall be performed in strict conformity with the plans and drawings approved under paragraph 3.4 above. Declarant shall have the right to inspect any such work to determine its conformity with the approved plans and drawings, and reserves the right to order a stop to all work, if, in good faith, it believes that any such work is non-conforming. In the event that it is determined in good faith by Declarant that certain work is non-conforming, a stop work notice may be issued, without necessity of court order, which shall require the owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of this Declaration. The Declarant or officer, director, employee, agent or servant of Declarant shall not be responsible for any damages, loss, delay, cost or legal expense occasioned through a stop work notice given in good faith even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

3.7 Waiver. Any condition or provision of paragraphs 3.2 through 3.6 above, may be waived by Declarant in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for the Awbrey Butte Homesites. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under paragraphs 3.2 through 3.6. The granting of a waiver as to one owner shall not automatically entitle any other owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of Declarant and delivered by certified mail to the party claiming the benefit of such waiver.

#### Section 4. Restrictions on Use of Property

4.1 Occupancy. No owner shall occupy, use or permit his lot or any part thereof to be used for any purpose other than a private residence for the owner, his family, or his guests, except that each owner shall be permitted to rent the unit when he is not in occupancy.

4.2 Improvements. Each lot within the Awbrey Butte Homesites shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard.

4.3 Appearance. All garbage, trash, cuttings, refuse, garbage and refuse containers, clothes drying apparatus, and other service facilities located on the lot shall be screened from view in a manner approved by Declarant.

4.4 Construction and Alteration. Nothing shall be altered or constructed in or removed from or placed on a lot except with the prior written consent of Declarant.

4.5 Offensive or Commercial Activity. No offensive or commercial activity shall be carried on nor shall anything be done which may be or become an annoyance or nuisance to the other owners.

4.6 Signs. No sign of any kind shall be displayed to public view on or from any lot without the Declarant's prior written consent, provided, however, that an owner may display not more than one (1) "for sale" sign per lot which has a maximum area not to exceed 300 square inches, the longest dimension being not greater than 20 inches.

4.7 Exterior Lighting or Noise Making Device. No exterior lighting or noise making device shall be placed on a lot or any portion thereof without the Declarant's prior written consent.

4.8 Antennas. No television antenna, radio antenna, statelite antenna, or other receiving device shall be placed on any lot without the Declarant's prior written consent.

4.9 Limitation on Transfer. No owner shall transfer either by conveyance, contract of sale or lease any interest in his lot which would result in ownership of such lot being held by more than ten persons.

4.10 Mobile homes. No house trailer, mobile home, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any lot.

4.11 Single family residences. No more than one single family residence shall be erected or placed on any lot.

4.12 Utilities. No above-ground utilities, pipes or wires shall be used to connect improvements with supplying facilities.

4.13 View. The height of improvements or vegetation and trees on a lot shall not materially restrict the view of other lot owners. The Declarant shall be the sole judge of the suitability of such heights. If the Declarant determines there is such restriction in the view of the other lot owners, written notice shall be delivered to the offending lot owner. If after 30 days the improvement, vegetation, or trees are not removed or reduced in height as directed by the Declarant, the Declarant

shall enter the offending lot, complete the removal or reduction, charging the owner of the lot the reasonable costs for the work done. This section is not to be read as justification to create views not present when the lot was originally purchased.

4.14 Parking. A minimum of two parking places must be provided for each lot and must meet the standards set by the Declarant. No extended parking on any street shall be allowed by any house trailer, travel trailer, boat trailer, camper or incapacitated motor vehicle.

## Section 5. Determination of Declarant's Role

5.1 Declarant's Control. At such time as the Declarant shall no longer desire to exercise the architectural, landscaping, signing and lighting controls over any lots within the Awbrey Butte Homesites, Declarant shall cause to be recorded in the official records of Deschutes County, Oregon a declaration stating that Declarant no longer desires to exercise any further controls over development in the Awbrey Butte Homesites. Recordation of such a declaration shall formally terminate Declarant's interest and all rights of architectural landscaping, signing and lighting controls, as well as any other duties of Declarant under this declaration.

5.2 Formation of ABARC. (a) Upon formal termination of Declarant's control, Declarant shall form an Oregon non-profit organization called the Awbrey Butte Architectural Review Committee (ABARC). The ABARC shall be governed by a five person board of directors. ABARC shall succeed to all powers, responsibilities, and rights of Declarant under this declaration with respect to the exercise of architectural, landscaping, signing and lighting controls.

(b) Within thirty days after the commencement date of ABARC, the initial board of directors shall be elected. Persons eligible for the initial ABARC shall be limited to owners of any lot within the Awbrey Butte Homesites. Declarant shall solicit from and circulate to all lot owners a list of nominees for the initial board of directors' positions within the thirty day ABARC organizational period. Declarant shall then conduct an election of the initial board of directors. The five nominees obtaining the five highest vote totals shall constitute the initial board of directors.

(c) The total number of votes entitled to be cast for each director's position shall be based upon the total number of lots within Awbrey Butte Homesite Section. Each lot owner shall have the right to cast one vote for each lot owned. The initial board of directors shall meet within ten days after their election and may at that time adopt any governing documents including bylaws, guidelines, procedures, rules and regulations, relating

to the architectural, landscaping, signing and lighting controls within Awbrey Butte Homesite Section.

5.3 Failure to Organize. In the event Declarant is unsuccessful in organizing the board of directors of ABARC within the thirty day organizational period specified above, Declarant shall have no further responsibilities relating to ABARC and the ABARC board of directors shall be organized exclusively by the owners of lots within Awbrey Butte Homesite Section. Such failure of organization of the ABARC board of directors shall not affect the existence of ABARC or the effectiveness of this Declaration.

#### Section 6. Duration and Amendment of this Declaration.

6.1 Duration. The Covenants, Conditions, and Restrictions of Awbrey Butte Homesites shall continue to remain in full force and effect at all times with respect to all property, and each part thereof, now or hereafter made subject thereto (subject however, to the right to amend and repeal as provided for herein) for a period of thirty years from the date this Declaration is recorded. However, unless within one year from the date of said termination, there shall be recorded an instrument directing the termination of this Declaration signed by owners of not less than two-thirds of the lots then subject to this Declaration, this Declaration, as in effect immediately prior to the expiration date, shall be continued automatically without further notice for an additional period of ten years and thereafter for successive periods of ten years unless within one year prior to the expiration of such period the Covenants, Conditions, and Restrictions for Awbrey Butte Homesites are terminated as set forth above in this section.

6.2 Amendment. This Declaration or any provision thereof, or any Covenant, Condition or Restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any part thereof with a written consent of the owners of fifty-one percent (51%) of the lots subject to these Restrictions, provided, that the provisions of Article 4 hereof shall inure to the benefit of and be enforceable solely by Declarant, shall be capable of being amended by Declarant without the consent of any other owner, person or entity and shall not give any third party any right or cause of action on account of the terms of this Declaration, and further provided that no amendment which enlarges or diminishes the powers and responsibilities of the Declarant shall be effective without the written consent of the Declarant.

6.3 Any amendment, deletion, or repeal of this Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.



Section 7. Enforcement.

7.1 This declaration shall be specifically enforceable by Declarant or by any owner of any lot in the Awbrey Butte Homesites. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvement or condition.

7.2 In the event that legal suit or legal action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover that party's reasonable attorney fees incurred in such suit or action (or any appeal therefrom) as adjudged by the trial or appellate court.

Section 8. Effect of Declaration

The Covenants, Conditions, and Restrictions of this declaration shall run with the land included in Awbrey Butte Homesites and shall bind, benefit, and burden each lot in Awbrey Butte Homesites, including any additions thereto. The terms of this Declaration shall inure to the benefit and shall bind Declarant, all successors and assigns of Declarant and all owners of any lot in Awbrey Butte Homesites, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees or any other party claiming or deriving any right, title, or interest or use in or to any real property in the Awbrey Butte Homesites. The use restrictions and regulations set forth in Section 4 and Section 5 of this declaration shall be binding upon all Owners, lessees, licensees, occupants and users of the property known as Awbrey Butte Homesites and their successors in interest as set forth in this declaration, including any person who holds such interests as security for the payment of an obligation including any mortgagee or other security holder in actual possession of any lot by foreclosure or otherwise and any other person taking title from such security holder.

BROOKS RESOURCES CORPORATION

By Michael P. Hollern  
MICHAEL P. HOLLERN  
President

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of August, 1984, by MICHAEL P. HOLLERN, President of BROOKS RESOURCES CORPORATION, an Oregon corporation, on behalf of the corporation.

Paul H. Buchanan  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: Jan 22, 1987

## EXHIBIT "A"

## Declaration for Awbrey Butte Homesites

That portion of the West 1/2 of Section 30, Township 17 South, Range 12 East of the Willamette Meridian, City of Bend, Deschutes County, Oregon described as follows:

Beginning at the center-west 1/16th corner of said Section 30 and also being the southerly most point of the Awbrey Butte L.I.D. 627 lower reservoir site as described in Volume 6, Page 816 of Deschutes County Records, from which a 3" brass cap marking the West 1/4 corner of said Section 30 bears North 89°00'05" West 1160.61 feet and from which a 5/8" iron rod marking the Northwest corner of said Section 30 bears North 23°00'16" West 2889.41 feet; thence along the southerly and easterly boundaries of said reservoir site the following two courses:

North 75°03'35" East 185.66 feet; North 14°51'09" West 170.00 feet;

Thence leaving said reservoir boundary North 10°42'40" West 329.60 feet to a point on the southerly right-of-way line of Summit Drive (referred to as Collector Street) as described in Volume 6, Page 816 of Deschutes County Records; thence along said southerly right-of-way and the extension thereof, the following two courses and two curves:

South 45°53'23" East a distance of 570.00 feet; around a 1960.00 foot radius curve right 148.61 feet (chord bears S 43°43'04" E 148.57 feet); South 41°32'44" East 190.60 feet; around a 459.88 foot radius curve left 260.89 feet (chord bears S 57°47'51" E 257.40 feet);

Thence leaving said right-of-way line and following a 70.00 foot radius curve left 56.62 feet (chord bears S 11°35'05" E 55.09 feet); thence South 08°56'14" West 231.84 feet; thence South 73°39'42" West 50.00 feet; thence South 00°57'37" West 240.00 feet; thence North 89°02'23" West 89.95 feet to the Northeast corner of major partition No. MJP-11-80; thence along the northerly and westerly boundaries of said partition the following five courses and distances and three curves:

North 89°02'23" West (N 89°28'28" W Record) 420.12 feet; South 00°23'43" East (S 00°49'48" E Record) 60.09 feet; around a 31.70 foot radius curve right 10.40 feet (chord bears S 09°00'05" W 10.35 feet) (Record chord bearing S 08°34'01" W); South 18°23'54" West (S 17°57'50" W Record) 37.41 feet; around a 697.35 foot radius curve left 336.72 feet (chord bears S 04°33'56" W 333.46 feet) (Record chord bearing S 04°07'52" W); South 09°16'03" East (S 09°42'06" E Record) 80.67 feet; around a 143.49 foot radius curve right 24.30 feet (chord bears S 04°24'59" E 24.27 feet) (Record chord bearing S 04°51'03" E); South 00°22'42" West (S 00°03'23" E Record) 8.99 feet to the northerly boundary of the plat of West Hill 4th Addition;

Thence following said northerly plat line North 88°46'36" West (N 88°28'28" W Record) a distance of 330.96 feet to the southwest 1/16th corner of said Section 30; thence North 00°30'58" East a distance of 1320.38 feet along the west line of the NW¼ of the SW¼ of said Section 30 to the point of beginning.

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND  
RECORDER OF CONVEYANCES, IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY:

1984 SEP 13 AM 8 15

MARY SUE PENHOLLOW  
COUNTY CLERK

BY: Clara Gardner DEPUTY

NO. 84-15905 FEE 41 --

DESCHUTES COUNTY OFFICIAL RECORDS

92-25570

DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR AWBREY GLEN

THIS DECLARATION is made this 8th day of July, 1992, by Brooks Resources Corporation, an Oregon corporation ("Declarant").

O B J E C T I V E S

Declarant owns property located on Awbrey Butte in Deschutes County, Oregon. Declarant proposes to develop portions of this property as a planned development to be known as "Awbrey Glen." Declarant intends to create in Awbrey Glen a planned community which will provide an attractive place to live.

Declarant has recorded the plat of Awbrey Glen Homesites, Phase One, in the plat records of Deschutes County, Oregon. Declarant desires to subject the property described in such plat to the covenants, conditions, restrictions, and charges set forth herein for the benefit of such property and its present and subsequent owners, and to establish such property as the first phase of the planned community to be known as "Awbrey Glen." Additional areas may be annexed to Awbrey Glen in accordance with the provisions set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the property covered in the plat of Awbrey Glen Homesites, Phase One, more particularly described on Exhibit A attached hereto shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 "Appeals Board" means a board formed pursuant to Section 7.13 to consider decisions of the Architectural Review Committee.

1.2 "Architectural Review Committee" means the Architectural Review Committee appointed pursuant to Article 7 hereof.

1.3 "Association" means the nonprofit corporation to be formed to serve as the association of Owners (as hereinafter defined) as provided in Article 8 hereof, and its successors and assigns.

1.4 "Awbrey Glen" means the property designated in Section 2.1 of this Declaration and any other property designated in any declaration annexing such property to Awbrey Glen in accordance with Section 2.2 of this Declaration, but excluding any property withdrawn from Awbrey Glen in accordance with Section 2.3 of this Declaration.

1.5 "Capital Improvement Assessments" means assessments to cover the cost of capital improvements made pursuant to Section 10.3.

1.6 "Common Areas" means the property referred to in paragraph 3.1(b).

1.7 "Declarant Area" means the land use classification described in paragraph 3.1(c).

1.8 "Declarant" means Brooks Resources Corporation, an Oregon corporation, any person who succeeds to any special Declarant right and to whom all of the Declarant's ownership interest in Awbrey Glen is transferred, or any person, other than the Association, to whom the Declarant has transferred, for purposes of resale, all of Declarant's ownership interest in the planned community.

1.9 "Homesite" means a Lot as defined in Section 1.13.

1.10 "Improvement" means every temporary or permanent structure or improvement of any kind, including but not limited to a house, fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to any property within Awbrey Glen, including landscaping, and every alteration, painting or reconstruction thereof.

1.11 "Initial Development" means the property referred to in Section 2.1.

1.12 "Living Unit" means a building located or to be located upon a Homesite within Awbrey Glen and designated for separate residential occupancy (whether or not occupied) or ownership, but not including any building or portion of a building located on a Common Area.

1.13 "Lot" means a platted or legally partitioned lot, within Awbrey Glen or any property so designated in any Supplemental Declaration annexing such property to Awbrey Glen, but not including any Common Area or any Declarant Area.

1.14 "Mortgage" means a mortgage, trust deed, or land sales contract; "mortgagee" means a mortgagee, beneficiary of a trust deed, or vendor under a land sales contract; and

"mortgagor" means a mortgagor, grantor of a trust deed, or vendee under a land sales contract.

1.15 "Operating Assessments" means the assessments to cover operating expenses referred to in Section 10.2.

1.16 "Owner" means the person or persons, including Declarant, owning any Homesite, including any vendee under a recorded land sales contract to whom possession has passed, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Homesite, including any vendor under a recorded land sales contract who has given up possession. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Homesite and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.17 "Private Recreational Area" means any portion of the Common Area which is designated as such by Declarant pursuant to Section 3.1(d).

1.18 "Private Way" means any area which is designated as such in the plat of the Initial Development or any plat filed in connection with the annexation of additional real property, or in any Supplemental Declaration.

1.19 "Reserve Account Assessments" means assessments to cover the reserve fund for replacements pursuant to Section 10.4.

1.20 "Supplemental Declaration" means an instrument annexing additional real property to Awbrey Glen.

1.21 "This Declaration" means this Declaration of Covenants, Conditions, and Restrictions for Awbrey Glen and any and all declarations annexing property to Awbrey Glen.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial Development. Declarant hereby declares that all of the real property described on Exhibit A attached hereto is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration. The Initial Development contains 48 Homesites and contemplates construction of one Living Unit on each Homesite.

2.2 Annexation of Additional Property. Declarant may from time to time and in its sole discretion annex to Awbrey Glen any adjacent real property now or hereafter acquired by it. The

annexation of such adjacent real property shall be accomplished as follows:

(a) Supplemental Declaration. Declarant shall record a Supplemental Declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish any additional limitations, uses, restrictions, covenants, and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration.

(b) Provisions of Supplemental Declaration. Notwithstanding any provision apparently to the contrary, a Supplemental Declaration with respect to any annexed property may:

(i) Establish such new land classifications and such limitations, uses, restrictions, covenants, and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property.

(ii) With respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants, and conditions with respect thereto as Declarant may deem to be appropriate for the development of such annexed property.

(c) Effect of Annexation. The property included in any such annexation shall thereby become a part of Awbrey Glen and this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(d) No Limitation on Annexation. There is no limitation on the number of Homesites or Living Units which Declarant may create or annex to Awbrey Glen. There is no limitation on the right of Declarant to annex Common Areas.

(e) Voting Rights. Upon annexation, additional Homesites so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(f) Adjustment of Association Expenses. The formula to be used for reallocating the common expenses if additional Homesites are annexed and the manner of reapportioning the common expenses if additional Homesites are annexed during a fiscal year are set forth in Section 10.5 below.

2.3 Withdrawal of Property. Declarant may withdraw property from Awbrey Glen, including Common Area property, only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of any property annexed pursuant to a declaration described in Section 2.2 above at any time prior to the sale of the first Homesite in the property annexed by such declaration. Such withdrawal shall be by a declaration executed by Declarant and recorded in the official records of Deschutes County. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Homesites being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.5 below. The right of Declarant to withdraw property hereunder shall not expire until the first Homesite in the last phase of Awbrey Glen has been sold.

2.4 Declarant Improvements. Declarant agrees to build all improvements necessary for the Private Ways in Awbrey Glen. Declarant also agrees to build at least two tennis courts in Awbrey Glen. Declarant does not agree to build any additional improvements but does not choose to limit Declarant's rights to add improvements not described in this Declaration.

### ARTICLE 3

#### LAND CLASSIFICATIONS

3.1 Initial Development. All land within the Initial Development is included in one of the following classifications:

(a) Homesites. Homesites shall consist of each Lot described on a subdivision plat or partition map with respect to Awbrey Glen or any alteration thereof as may be made by a valid Lot line adjustment. Homesites are intended for residential use.

(b) Common Areas. Common Areas shall consist of all areas designated as such or as "open space", "private way", or "bike paths" on the plat of the Initial Development or in any Supplemental Declaration or on the plat of any land annexed by Supplemental Declaration. Common Areas shall be subject to easements as provided in Section 4.3(f).

(c) Declarant Areas. Declarant Areas shall consist of the areas designated as such on the plat of the Initial Development or on the plat of any land annexed by Supplemental Declaration or in any Supplemental Declaration. Declarant Areas shall be owned by Declarant and may be used for a golf course, pro shop, restaurant, parking, sales or branch office, and other purposes compatible with the remainder of Awbrey Glen. Declarant Areas shall not be subject to any regular assessment, Capital Improvement Assessment, or other assessment pursuant to this Declaration.



(d) Private Recreational Areas. Declarant may designate certain portions of the Common Areas as Private Recreational Areas. Private Recreational Areas shall be available for the use of Owners of less than all of the Homesites. The location of each Private Recreational Area and the Homesites entitled to use each Private Recreational Area shall be designated either on the plat covering the Private Recreational Area or in a separate instrument recorded by Declarant in the official records of Deschutes County, Oregon. The cost of maintenance and improvement of each Private Recreational Area shall be borne equally by the Owners of Homesites entitled to use such Private Recreational Areas.

3.2 Additional Land Classifications. Additional land classifications and uses may hereafter be established in any declaration annexing property to Awbrey Glen as provided in Section 2.2 above.

3.3 Conversion of Homesites to Common Areas. Declarant may elect to build common facilities on one or more Homesites and designate such Homesites as Common Areas by a declaration recorded in the official records of Deschutes County. Such declaration shall be executed by Declarant, as owner of the Homesites.

3.4 Consolidation of Homesites. The Owner of two adjoining Homesites or portions of adjoining Homesites, with the approval of the Architectural Review Committee, may elect to consolidate such Homesites into one Homesite. The Architectural Review Committee may impose reasonable conditions or restrictions on the granting of its approval of a Homesite consolidation, including, but not limited to maintenance or landscaping requirements and limitations on use. The consolidation shall be effective upon the recording in the deed records of Deschutes County of a declaration of the Owner stating that the two Homesites are consolidated. The declaration shall include a written consent to the consolidation executed on behalf of the Architectural Review Committee by at least one member thereof and a description of any restrictions and conditions imposed as a condition of such consent. Thereafter, and except if otherwise provided by the Architectural Review Committee as a condition to its consent, the consolidated Homesites shall constitute one Homesite for all purposes of this Declaration, including voting rights and assessments. No Living Unit may be placed upon the remainder of a Homesite, a portion of which was consolidated with another Homesite but which remainder has not been consolidated with another Homesite, unless the area of such remainder constitutes at least 90 percent of the original area of the Homesite. Areas which have once been consolidated may not be partitioned at any time in the future.

#### ARTICLE 4

PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners' Easements of Enjoyment. Subject to provisions of this Declaration, every Owner and such Owner's invitees shall have a right and easement of enjoyment in and to the Common Areas including, without limitation, Private Ways and bike paths but excluding Private Recreational Areas.

4.2 Title to Common Areas. Fee title to the Common Areas shall be conveyed by Declarant to, and must be accepted by, the Association free and clear of liens and encumbrances other than those created pursuant to this Declaration.

4.3 Extent of Owners' Rights. The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) Association's and Owners' Easements. Declarant grants to the Association for the benefit of the Association and all Owners of Homesites within Awbrey Glen the following easements over, under, and upon the Common Areas:

(i) An easement for installation and maintenance of power, gas, electric, water, and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of property within Awbrey Glen.

(ii) An easement for construction, maintenance, repair, and use of the Common Areas and common facilities thereon, including, but not limited to, walkways, bike paths, fences, landscaping, irrigation systems, entry way structures, decorative ornamentation, and signs, and for any purposes and uses adopted by the Association for the benefit of the Association and the Owners.

(iii) An easement for the purpose of making repairs to any existing structure on the Common Areas.

(b) Declarant's Easements. So long as Declarant owns any Homesite, and in addition to any other easements to which Declarant may be entitled, Declarant reserves an easement over, under, and across the Common Areas in order to carry out development, construction, and sales activities necessary or convenient for the development of Awbrey Glen and the sale of Homesites and Living Units and for such other purposes as may be necessary or convenient for the development of Awbrey Glen and the sale of Homesites and Living Units and for such other purposes as may be necessary or convenient for discharging

Declarant's obligations or for exercising any of Declarant's rights hereunder. As long as Declarant owns any Declarant Areas within or adjacent to Awbrey Glen or has any maintenance obligations with respect to Awbrey Glen, Developer shall have an easement across the Common Areas as required to maintain and improve the Declarant Areas and to carry out its maintenance responsibilities with respect to Awbrey Glen. Declarant shall have an easement varying in width designated as "Developer's Easement" on the plat of the Initial Development and on plats covering any land annexed by Supplemental Declaration for golf course purposes, including the right in ingress and egress for construction, maintenance, and for players during the regular course of play on the golf course.

(c) Utility Easements. Declarant or the Association may (and, to the extent required by law, shall) grant or assign easements to municipalities, communication companies, or other utilities over Common Areas performing utility services, and the Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving Awbrey Glen.

(d) Use of the Common Areas. Except as otherwise provided in this Declaration, including without limitation the provisions in Section 4.3(f), the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas for the purpose of identifying Awbrey Glen or any subdivision therein, indicating golf cart path directions, or identifying trails or other items of interest, provided such signs are approved by the Architectural Review Committee. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

(e) Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, cause the Common Area to be subject to any security interest, sell, or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Homesites unless the holders of at least 80 percent of the Class A voting rights (as described in Section 8.3(b) below) and the Class B member (as defined in Section 8.3(b) below), if any, have given their prior written approval. This provision shall not apply to the easements described in this Section 4.3. A sale, transfer, or encumbrance of the Common Area or any portion of the Common Area in accordance with this Section 4.3(e) may provide that the Common Area so conveyed shall be released from any restriction imposed on such Common Area by this Declaration. No sale, transfer, or encumbrance, may, however, deprive any Homesite of

such Homesite's right of access or support without the written consent of the Owner of the Homesite.

(f) Restrictions on Use of Common Areas. Use of the common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner to the extent provided in Article 11 below.

(ii) The right of the Association to adopt, amend, and repeal rules and regulations in accordance with this Declaration and the Bylaws of the Association, including, without limitation, the right to require reservations for use of the Common Area or Common Area facilities and the right to impose reasonable fees in connection with such use.

(iii) The right of Declarant to construct and maintain golf cart paths and related signage on the Common Area for use by invitees of Declarant and users of facilities on Declarant Areas.

Declarant hereby reserves for each Owner an easement for driveway and underground utility purposes across any Common Area lying between such Owner's Homesite and the Private Way providing access to such Homesite. The width of such driveway easement shall not exceed 20 feet. Declarant also reserves a nonexclusive easement over the Common Area for signs, public utilities operation, maintenance, ingress and egress of its golf course, well, pipelines irrigation systems, and related uses on property owned by Declarant.

(g) Private Ways. Each Owner shall have a nonexclusive easement for use of Private Ways for the purposes of walking thereon or traveling thereon by appropriate means. Each Owner may permit his guests and invitees to use the Private Ways for such purposes. The easement provided for herein shall be appurtenant to and assignable with the Homesite with respect to which it is granted, but shall not be otherwise assignable. The use of Private Ways shall be subject to rules and regulations adopted by the Board of Directors of the Association. The Board of Directors shall have the right to erect gates across Private Ways and bike paths and to regulate access through such gates. Declarant, its employees and invitees of its pro shop, learning center, and maintenance facilities, shall at all times have reasonable access over and across Private Ways. The Board of Directors shall be responsible for providing reasonably convenient means by which Declarant, its employees and invitees, shall have access through any gates. Gates across Private Ways shall be placed in such a manner as to minimize passage by

Declarant, its employees and invitees. The Board of Directors, in its discretion, may dedicate Private Ways to the public. The Board of Directors shall grant free access on Private Ways to police, fire, and other public officials, to employees of utility companies serving Awbrey Glen, and to such others to whom the Board believes access should be given for the benefit of Owners. Declarant may use Private Ways for its own purposes and for the purpose of location of utilities. There shall be no implied dedication of Private Ways.

4.4 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, such Owner's right of enjoyment of the Common Areas to the members of such Owner's family or tenants who reside on the Homesite.

## ARTICLE 5

### PROPERTY RIGHTS IN HOMESITES

5.1 Use and Occupancy. Except as otherwise expressly provided in this Declaration, in the plat in which a Homesite was platted or partitioned, or in any declaration annexing such Homesite to Awbrey Glen, the Owner of a Homesite in Awbrey Glen shall be entitled to the exclusive use and benefit of such Homesite.

5.2 Easements Reserved. In addition to any easements shown on the recorded plats, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

(a) Adjacent Common Area or Declarant Area. The Owner of any Homesite which blends together visually with any Common Area or Declarant Area shall permit the Association or Declarant, as the case may be, to enter upon such Homesite to perform the maintenance of such Common Area or Declarant Area.

(b) Right of Entry. Declarant, the Architectural Review Committee, and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Homesite for the purpose of determining whether or not the use of and/or Improvements on such Homesite are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Homesite.

(c) Utility Easements. Easements for installation and maintenance of utilities are reserved over the rear and side five (5) feet of each Homesite. Such easements are also reserved over the front and on other portions of certain Homesites, as shown on the recorded plat. Within the easements, no structure,

planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities. The easement area of each Homesite and all Improvements in it shall be maintained continuously by the Owner of the Homesite, except for those improvements for which a public authority or utility company is responsible.

5.3 Restriction on Transfer. There shall be no inter vivos transfer, either directly or indirectly, of any interest in a Homesite or a Living Unit which would result in any person owning, either directly or indirectly through a corporation or a partnership, less than a twenty percent (20%) interest in such Homesite or Living Unit without the prior written consent of Declarant.

## ARTICLE 6

### RESTRICTIONS ON USE OF HOMESITES

6.1 Occupancy. No Owner shall occupy, use, or permit his Homesite, or any part thereof, to be used for any purpose other than a private residence for the Owner, his family or his guests, except that each Owner shall be permitted to rent the Unit for periods of no shorter duration than 30 days when he is not in occupancy. Nothing in this section shall be deemed to prohibit (a) activities relating to the sale of Living Units, or (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Homesite, to store construction materials and equipment on Homesites in the normal course of construction. Declarant may use any Living Unit as a sales office or model home for purposes of sales in Awbrey Glen.

6.2 Improvements. Each Homesite shall be maintained in a clean and attractive condition, in good repair, and in such a fashion as not to create a fire hazard.

6.3 Appearance. All garbage, trash, cuttings, refuse, garbage, and refuse containers, clothes drying apparatus, and other service facilities located on each Homesite shall be screened from view in a manner approved by Declarant.

6.4 Construction and Alteration. Nothing shall be altered or constructed in or removed from or placed on a Homesite except with the prior written consent of Declarant.

6.5 Offensive or Commercial Activity. No offensive or commercial activity shall be carried on, nor shall anything be done on any Homesite which may be or become an annoyance or nuisance to the other Owners.

6.6 Signs. No signs shall be erected or maintained on any Residential Homesite except signs which are approved as to

appearance and location by Declarant. The restrictions contained in this paragraph shall not apply to:

(a) Political Signs. The temporary placement of "political" signs on any Homesite by the Owner thereof;

(b) Declarant's Sales Office and Model Home Signs. The placement by the Declarant or Declarant's agent of one or more signs identifying the name of the Declarant and/or the location of a sales office or model home; or

(c) For Sale Signs. The temporary placement of not more than one "For Sale" sign on any Homesite meeting the guidelines of Declarant or the Architectural Review Committee and facing the Private Way providing access to such Homesite.

6.7 Exterior Lighting or Noise Making Device. No exterior lighting or noise making device shall be placed on a Homesite, or any portion thereof, without the Declarant's prior written consent.

6.8 Antennas and Satellite Dishes. Exterior satellite receiver, transmission dishes, exterior antennas, or other sending or receiving devices shall not be permitted to be placed upon any Homesite except as approved by Declarant.

6.9 Limitation on Transfer. No Owner shall transfer, either by conveyance, contract of sale, or lease, any interest in his Homesite which would result in ownership of such Homesite being held by more than ten persons.

6.10 Prohibited Structures. No house trailer, mobile home, manufactured home assembled off site, tent, shack, barn, or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Homesite.

6.11 Single Family Residences. No more than one single family residence shall be erected or placed on any Homesite.

6.12 Utilities. No above-ground utilities, pipes, or wires shall be used to connect improvements with supplying facilities.

6.13 View. The height of vegetation and trees on a Homesite shall not materially restrict the view of other Owners. Declarant shall be the sole judge of the suitability of such heights. If the Declarant determines there is such restriction to the view of the other Owners, written notice shall be delivered to the offending Owner. If after 30 days the vegetation or trees are not removed or reduced in height as directed by Declarant, Declarant shall enter the offending

Homesite, complete the removal or reduction, charging the Owner of the Homesite the reasonable costs for the work done. This section is not to be read as justification to create views not present when the Homesite was originally purchased.

6.14 Parking. A minimum of two outdoor parking places in addition to covered parking must be provided for each Homesite and must meet the standards set by the Declarant. No house trailer, travel trailer, boat trailer, camper, incapacitated motor vehicle, snowmobile, motor home, or off-road vehicle shall be parked or stored on any Homesite or Common Area except as provided in the Association's rules and regulations or the architectural guidelines.

6.15 Control of Pets. No pets or domestic animals shall be permitted to run loose or unattended. Owners of pets shall be responsible for compliance with all leash laws and other laws related to the control of pets. No animals shall be kept or raised on any Homesite except household pets and domestic animals not used for any commercial purpose.

6.16 Firearms or Other Weapons. No firearms, air pistols, archery, sling shots, fireworks, or any other weapons or projectiles shall be used or discharged within Awbrey Glen except in such areas as may be designated in writing by the Board of Directors.

6.17 Motor Vehicles. Except for golf carts and carts specifically approved by the Board of Directors, no motorized vehicle shall be operated anywhere except upon a surfaced roadway, nor shall any motor vehicle be parked in other than a designated parking area. Except for golf carts or other carts specifically approved by the Board of Directors and except for construction equipment not required to be licensed, no unlicensed vehicles shall be operated within Awbrey Glen.

## ARTICLE 7

### ARCHITECTURAL REVIEW

7.1 Approval Required. No Improvement, as defined in Section 1.10 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by Declarant. All approvals shall be in conformance with the building area established on each Homesite unless otherwise approved by the Declarant.

7.2 Procedure. Any Owner proposing to construct any Improvements within Awbrey Glen (including any exterior alteration, addition, destruction, or modification to any such Improvements) shall follow the procedures and shall be subject to



the approvals required by this Article 7. Failure to follow such procedures or obtain such approvals as required by this Article 7 shall be deemed a breach of this Declaration.

7.3 Required Documents. Any Owner proposing to utilize, improve, or develop real property within the Awbrey Glen shall submit the following items for review:

(a) A site plan showing the location, size, configuration, and layout of any building, structure, or Improvement (or, where applicable, any alteration, addition, modification, or destruction thereto), including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian traffic and circulation.

(b) Architectural plans and drawings showing the nature, style, and dimensions of any building, structure, fence, wall, barrier, or deck (or, where applicable, any alteration, addition, modification, or destruction thereof), including the exterior material types, colors, and appearance. The scale of plans shall be 1 inch = 20 feet or larger.

(c) A landscape plan showing the nature, type, size, location, and layout of all landscaping, vegetation ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

7.4 Review. All plans and drawings identified in Section 7.3 above shall be submitted to Declarant for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied by a check payable to Declarant in an amount to be determined by Declarant from time to time. No plans shall be reviewed until the architectural review fee is paid in full and all items specified in this section are submitted. Within 30 days following receipt of such plans and drawings, and the full amount of the architectural review fee, Declarant shall review the plans and shall inform the Owner in writing whether the plans conform to the development concept for Awbrey Glen. In the event the Owner is not notified as to the conformity of the plans within the 30-day review period, the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to the Awbrey Glen development concept, the Owner shall resubmit those nonconforming portions of the plans for review in accordance with the procedures outlined in Section 7.3 above and this paragraph. No work may be performed relating to any Improvement unless and until all aspects of all plans required under Section 7.3 above and this paragraph. No work may be performed relating to any improvement unless and until all aspects of all plans required under Section 7.3 above have been approved by Declarant. Any site plans, construction plans, or similar plans and drawings

submitted to the city of Bend in connection with the construction of any Improvement in the Awbrey Glen must bear the prior written approval of Declarant.

7.5 Architectural Guidelines. The development concept for Awbrey Glen shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning, and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published from time to time by Declarant, but Declarant shall not be required to do so. Declarant shall have the right to alter, rescind, or amend any published guidelines without prior notice to any party; provided, however, that once approval has been given pursuant to Section 7.4 above, work may proceed in accordance with the approved plans and drawings, notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

7.6 Inspection. All work related to any building, structure, or Improvement or any landscaping, vegetation, ground cover, or other Improvements within Awbrey Glen shall be performed in strict conformity with the plans and drawings approved under Section 7.4 above. Declarant shall have the right to inspect any such work to determine its conformity with the approved plans and drawings and reserves the right to order a stop to all work if, in good faith, it believes that any such work is nonconforming. In the event that it is determined in good faith by Declarant that certain work is nonconforming, a stop work notice may be issued, without necessity of court order, which shall require the Owner to correct all nonconforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such nonconforming items shall be deemed a breach of this Declaration. Neither Declarant nor any officer, director, employee, agent, or servant of Declarant shall be responsible for any damages, loss, delay, cost, or legal expense occasioned through a stop work notice given in good faith, even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

7.7 Waiver. Any condition or provision of Sections 7.2 through 7.6 above may be waived in Declarant in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for Awbrey Glen. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under Sections 7.2 through 7.6. The granting of a waiver as to one Owner shall not automatically entitle any other Owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of Declarant

and delivered by certified mail to the party claiming the benefit of such waiver.

7.8 Architectural Review Committee. At such time as Declarant shall no longer desire to exercise its rights of approval under Article 5, Article 6, and Article 7, such approval rights shall be exercised by an Architectural Review Committee. The termination of Declarant's approval rights shall be evidenced by the recording of an instrument in the official records of Deschutes County, Oregon. The Board of Directors shall have responsibility for appointment and removal of members of the Architectural Review Committee. The Architectural Review Committee shall consist of as many persons, but not less than three, as the Board of Directors may from time to time appoint. If the Board of Directors fails to appoint the members of the Architectural Review Committee, the Board of Directors shall itself serve as the Architectural Review Committee.

7.9 Majority Action. Except as otherwise provided herein, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Architectural Review Committee, without the necessity of a meeting and without the necessity of consulting or notifying the remaining members of the Architectural Review Committee. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

7.10 Liability. The scope of Declarant's or the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering, building or zoning code compliance, or other similar considerations. Neither Declarant nor the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, builder, or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Architectural Review Committee or a member thereof, provided only that Declarant or the Architectural Review Committee has, or the member has, in accordance with the actual knowledge possessed by Declarant or the Architectural Review Committee or by such member, acted in good faith.

7.11 Effective Period of Consent. The Declarant's and the Architectural Review Committee's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the Improvement has been commenced or the Owner has applied for and received an extension of time from the party granting consent.

7.12 Construction by Declarant. Improvements constructed by Declarant on any property owned by Declarant, are not subject to the requirements of this Article 7.

7.13 Appeals Board. Any person adversely affected by a decision of the Architectural Review Committee, which decision is made after the turnover meeting described in Section 8.6, may appeal such decision to an Appeals Board. The Appeals Board shall be appointed by the President of the Association and shall include at least one member of the Architectural Review Committee. The decision of the Appeals Board shall be final. Any appeal of a decision of the Architectural Review Committee must be in writing and must be delivered to the President of the Association within ten days after the decision to which the appeal relates. The Board of Directors may impose a reasonable fee to cover the cost of any appeal.

## ARTICLE 8

### ASSOCIATION

Declarant shall organize an association of all of the Owners within Awbrey Glen. Such Association, its successors, and assigns, shall be organized under the name "Awbrey Glen Homeowners Association, Inc." or such similar name as Declarant shall designate, and shall have such property, powers, and obligations as are set forth in this Declaration for the benefit of Awbrey Glen and all Owners of property located therein.

8.1 Organization. Declarant shall, before the first Homesite is conveyed to an Owner, organize the Association as a nonprofit mutual benefit corporation under the Oregon Nonprofit Corporation Act.

8.2 Membership. Every Owner of one or more Homesites within Awbrey Glen shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Homesites within Awbrey Glen, be a member of the Association. Such membership shall commence, exist, and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 Voting Rights. Voting rights within the Association shall be allocated as follows:

(a) Homesites. except as provided in Section 8.3(b) with respect to Class B members Homesites shall be allocated one vote per Homesite.

(b) Classes of Voting Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant (except that beginning on the date on

which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant). Class A members shall be entitled to voting rights for each Homesite owned computed in accordance with Section 8.3(a) above. When more than one person holds an interest in any Homesite, all such persons shall be members. The vote for such Homesite shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Homesite.

Class B. The Class B member shall be Declarant and shall be entitled to nine times the voting rights computed under Section 8.3(a) for each Homesite owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When seventy-five percent (75%) of the Homesites in the final phase of development of Awbrey Glen have been sold and conveyed to Owners other than Declarant; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

8.4 Powers and Obligations. The Association shall have, exercise, and perform all of the following powers, duties, and obligations:

(a) Declaration. The powers, duties, and obligations granted to the Association by this Declaration.

(b) Statutory Powers. The powers, duties, and obligations of a mutual benefit nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act and of a homeowners association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time.

(c) General. Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within Awbrey Glen.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the Oregon Nonprofit Corporation Act.

8.5 Liability. Neither the Association nor any officer or member of its Board of Directors shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of its Board of Directors, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by him.

8.6 Interim Board; Turnover Meeting. Declarant shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of Directors of the Association until replaced by Declarant or their successors have been elected by the Owners at the turnover meeting described in this Section. Declarant shall call a meeting by giving notice to each owner as provided in the Bylaws of the Association for the purpose of turning over administrative responsibility for Awbrey Glen to the Association not later than one hundred twenty (120) days after Homesites representing seventy-five percent (75%) of the votes in all phases of Awbrey Glen computed in accordance with Section 8.3(a) above have been sold and conveyed to Owners other than Declarant. If Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 8.7 below or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners and Declarant as provided in this Declaration and the Bylaws of the Association.

8.7 Transitional Advisory Committee. Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant of Awbrey Glen to administrative responsibility by the Association. Not later than the sixtieth (60th) day after the Declarant has conveyed to Owners other than Declarant Homesites representing fifty percent (50%) of the votes of all phases in Awbrey Glen computed in accordance with Section 8.3(a) above, Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than Declarant, shall select two or more members. Declarant may select no more than one member. The Transitional Advisory Committee shall have reasonable access to all information and documents which Declarant is required to turn over to the Association under ORS 94.616.

(a) Declarant Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided above.

(b) Owners' Failure to Select Members.

Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant shall have no further obligation to form the Transitional Advisory Committee.

(c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 8.6 above has been held.

8.8 Declarant Control After Turnover. After the turnover meeting described in Section 8.6 above, Declarant shall continue to have the voting rights described in Section 8.3(b) above. In addition, a majority of the Board of Directors of the Association shall be elected by Declarant, as Class B member, with the balance of the Board of Directors elected by the Class A members. After termination of Class B membership, all directors shall be elected by the Class A members.

8.9 Subassociations. Nothing in this Declaration shall be construed as prohibiting the formation of subassociations within Awbrey Glen.

8.10 Association Rules and Regulations. The Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Homesites and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the property within Awbrey Glen. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and Occupants of all Homesites upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

## ARTICLE 9

MAINTENANCE, UTILITIES, AND SERVICES

9.1 Maintenance and Lighting of Common Areas. The Association shall perform all maintenance upon, and where the Association deems appropriate provide exterior lighting for, the Common Areas and all improvements situated thereon, including without limitation, gates and recreational facilities, provided that any such lighting shall require prior written consent of Declarant. The Association shall also perform necessary maintenance on all Private Recreational Areas, the cost of which shall be allocated pursuant to paragraph 3.1(d).

9.2 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines, storm water detention facilities, and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services.

9.3 Road Maintenance. It is anticipated that a road running generally in a north-south direction on the west side of Awbrey Glen and a road on the south boundary of Awbrey Glen will be dedicated to the public. Notwithstanding the fact that such roads will serve property not included in Awbrey Glen, the Association shall be responsible for maintenance of such north-south road until such time as it is accepted for maintenance by the city of Bend or other entity.

## ARTICLE 10

### ASSESSMENTS

10.1 Annual Operating Budgets. The Association Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or desirable or as may be required by law. The method of adoption of the budget shall be as provided in the Bylaws.

10.2 Operating Assessments. All Homesites shall be assessed equally for operating costs. The amount of the assessment per Homesite shall be determined by dividing the annual budget by the total number of Homesites.

10.3 Capital Improvement Assessments. The Association may purchase, construct or otherwise acquire additional equipment, facilities or other capital improvements for the general use and benefit of all the members of the Association, and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment." Any such assessment shall be assessed to the Homesites within Awbrey Glen on the same formula as set forth in Section 10.2. No new Capital Improvement Assessment may be imposed under this section which, for any one purchase, construction or other acquisition, or group of related purchases, constructions or other acquisitions, in the aggregate exceeds \$300 per Homesite, unless approved by the vote or written consent of the Class B member, if any, and by not less than sixty percent (60%) of the votes of the Class A members who are voting in person, by absentee ballot or by proxy at a meeting



duly called for the purpose of approving the Capital Improvement Assessment.

10.4 Reserve Account for Replacing Common Property. Declarant shall establish a reserve account which shall be called the "Common Property Reserve Account," and which will be kept separate and apart from all other funds of the Association. Except as provided in Section 10.4(b) below, the Common Property Reserve Account shall be used exclusively for replacement of items of common property which will normally require replacement, in whole or in part, in more than three and less than thirty years and not for regular or periodic maintenance expenses.

(a) Reserve Account Assessments. Not less often than annually, the Association shall inventory all items of common property which will normally require replacement, in whole or in part, in more than three and less than thirty years, and shall estimate the remaining life of each item of common property and the current replacement cost of each of such items. The Association may identify items for which a reserve account assessment is required as those items which are insurable by a common carrier of all-purpose risk insurance. For the purpose of funding the Common Property Reserve Account, the Association shall impose an assessment to be called the "Common Property Reserve Account Assessment" against each Homesite on the same formula as set forth in Section 10.2. The total Common Property Reserve Account Assessment shall take into account the current replacement cost of each item of common property which has an estimated life of greater than three but less than thirty years and the estimated remaining life for such items of common property. Declarant shall not be required to pay any assessment under this Section 10.4 assessed to a Homesite owned by Declarant until such date as the Homesite is conveyed by the Declarant to an unaffiliated party in an arms-length transaction.

(b) Loan From Common Property Reserve Account. After the turnover meeting described in Section 8.6 above, the Board of Directors of the Association may borrow funds from the Common Property Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet other temporary expenses. Funds borrowed to meet high seasonal demands or temporary expenses under this paragraph must be repaid from special or operating assessment within six months of the date such funds are borrowed.

(c) Increase, Reduction, or Elimination of Common Property Reserve Account Assessments. At any time after the second year after the turnover meeting described in Section 8.6 above, future assessments for the Common Property Reserve Account may be increased, reduced or eliminated by the vote of Owners of Homesites representing seventy-five percent (75%) of the votes computed in accordance with Section 8.3 above.

10.5 Reallocation Upon Annexation or Withdrawal of Property. When additional property or phases are annexed to or withdrawn from Awbrey Glen, the Association shall, within 60 days of the annexation, recompute the budget in accordance with Section 10.1 based upon the additional Homesites and Common Areas and recompute assessments for each Homesite based upon the formula set forth in Section 10.2. Newly annexed Homesites shall be subject to assessment from the time of annexation of such Homesites to Awbrey Glen, in accordance with the provisions of Section 10.2. The Association shall send notice of the assessment to the Owners of newly annexed Homesites not later than 60 days after the annexation or with the next occurring annual assessment whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date that notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. To the extent that any adjustment results in a credit for an Owner, such credit shall be applied towards the next occurring payment or payments on the annual assessment.

10.6 Payment of Assessments. The Association shall, not less than annually, provide notice to the Owner of each Homesite of the amount of the assessments for such Homesite. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. The Board shall have the right to give discounts for advance payment of assessments.

10.7 Creation of Lien; and Personal Obligation of Assessments. Declarant, for each Homesite owned by it within Awbrey Glen does hereby covenant, and each Owner of any Homesite by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorney fees imposed pursuant to Section 11.6, shall be a charge on the land and a continuing lien upon the Homesite against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligation of the person who was the Owner of such Homesite at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

10.8 Declarant's Maintenance Payments. After conversion of Declarant's Class B membership, Declarant shall pay 3 percent of the cost of maintenance of Private Ways to

compensate for the use of Private Ways by its employees and invitees of Declarant's pro shop, learning center, and maintenance facilities.

## ARTICLE 11

### ENFORCEMENT

11.1 Use of Common Areas. In the event any Owner or the invitee of any Owner shall violate any provision of this Declaration, the Bylaws of the Association or any rules or regulations adopted by the Association governing the use of Homesites or Common Areas, then the Association, acting through its Board of Directors, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) bring suit or action against such Owner to enforce this Declaration, or (c) impose fines as provided in Section 11.7. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from such Owner's Homesite.

11.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Homesite an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Homesite, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Homesite, the Improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives or remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

(a) Remove Cause of Violation. Enter onto the offending Homesite, without being subject to any trespass, conversion or any other claim for damages, and remove the cause

of such violation, or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done.

(b) Suit or Action. Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

(c) Fines. Impose one or more fines as provided in Section 11.7.

11.3 Default in Payment of Assessments; Enforcement of Lien. If an assessment, fine, or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth below and, in addition, the Association may exercise any or all of the following remedies:

(a) Suspension of Rights; Acceleration. The Association may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from such Owner's Homesite.

(b) Lien. The Association shall have a lien against each Homesite for any assessment levied against the Homesite and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Homesite from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.386 shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Homesite at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Homesite. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.

(c) Suit or Action. The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in paragraph 11.3(b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) Other Remedies. The Association shall have any other remedy available to it by law or in equity.

11.4 Notification of First Mortgagee. The Board of Directors may notify any first mortgagee of any Homesite of any default in performance of this Declaration by the Homesite Owner which is not cured within sixty (60) days.

11.5 Subordination of Lien to First Mortgages. The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first mortgage on such Homesite which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Homesite shall not affect the assessment lien, provided however, that if a first mortgagee acquires a Homesite by foreclosure or deed in lieu of foreclosure, such mortgagee and a subsequent purchaser (other than the Owner liable for payment of the assessment covered by the lien) shall not be liable for any of the common expenses chargeable to the Homesite which became due before the mortgagee or purchaser acquired title to the Homesite by foreclosure or deed in lieu of foreclosure. Such sale or transfer, however, shall not release the Homesite from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

11.6 Interest, Expenses, and Attorney Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at the rate of 12 percent per annum. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed 10 percent of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorney fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding.

11.7 Fines. The Board of Directors may establish a schedule of fines applicable to violations of this Declaration or rules and regulations established pursuant to this Declaration. Fines may be imposed by the Board of Directors after giving the

alleged violator notice of the proposed fine and an opportunity to be heard. Fines shall be payable within ten days after receipt of written notice of the imposition of the fine. All fines shall be deposited in the Association's operating account.

#### 11.8 Nonexclusiveness and Accumulation of Remedies.

An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

### ARTICLE 12

#### MISCELLANEOUS PROVISIONS

12.1 Amendment and Repeal. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of Awbrey Glen may be amended or repealed by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the Class A votes, together with the vote or written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, increase the number of Homesites or Living Units, or change the boundaries of any Homesite or any uses to which any Homesite is restricted unless the Owners of the affected Homesites unanimously consent to the amendment.

12.2 Regulatory Amendments. Notwithstanding the provisions of Section 12.1 above, until termination of the Class B membership, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance, or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency

of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

12.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in Awbrey Glen and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property in Awbrey Glen and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Class A votes and the vote or written consent of the Class B member, if any, and the written approval of the holders of mortgages on Homesites in the project to the extent required by Section 12.4. Any such termination shall become effective only if prior to the intended termination date a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon. Such termination shall not have the effect of denying any Owner access to such Owner's Homesite unless such Owner and any mortgagee of such Homesite have consented in writing to the termination.

12.4 Right of Mortgagees Relating to Maintenance. At any time that the Common Areas, including the Private Ways, are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the Owner of the Homesite as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 12.4 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

12.5 Joint Owners. In any case in which two or more persons share the ownership of any Homesite, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

12.6 Lessees and Other Invitees. Lessees, invitees, contractors, family members, and other persons entering Awbrey Glen under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's Homesite and other areas within Awbrey Glen. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

12.7 Nonwaiver. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.8 Construction; Severability. This Declaration and all declarations annexing property to Awbrey Glen shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and all declarations annexing property to Awbrey Glen shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

12.9 Number. As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires.

12.10 Captions. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

12.11 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing



and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States mails certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section 12.11.

(a) Addresses. All notices and other communications under this Declaration shall be given to the parties hereto at the following addresses:

(i) If to an Owner, then to the last address for such Owner shown in the Association's records.

(ii) If to Declarant or to the Association, then to Declarant or the Association at:

Brooks Resources Corporation  
416 N.E. Greenwood Avenue  
Bend, Oregon 97708  
Att: Mr. Michael P. Hollern

(b) Change of Address. Any party hereto may change the address to which notices shall be directed by giving ten days' written notice of such change delivered as provided herein.

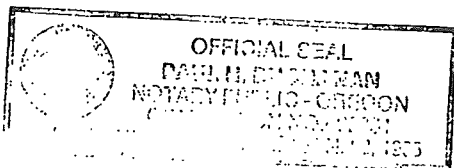
IN WITNESS WHEREOF, Declarant has executed this Declaration the date first above written.

BROOKS RESOURCES CORPORATION

By Michael P. Hollern  
Michael P. Hollern, President

STATE OF OREGON           )  
                                      ) SS  
COUNTY OF                )

The foregoing instrument was acknowledged before me on this 8th day of July, 1992, by Michael P. Hollern who is the President of Brooks Resources Corporation on behalf of the corporation.



Paul H. Buchanan  
Notary Public for Oregon  
My Commission Expires: Jun. 22, 1995

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND  
RECORDER OF CONVEYANCES, IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY:

92 AUG -4 AM 10:56

MARY SUE PENHOLLOW  
COUNTY CLERK

BY. T. Moore DEPUTY

NO. 92-25570 FEE 155<sup>00</sup>

DESCHUTES COUNTY OFFICIAL RECORDS

DESCHUTES COUNTY OFFICIAL RECORDS  
MARY SUE PENHOLLOW, COUNTY CLERK

2002-41185



\$106.00

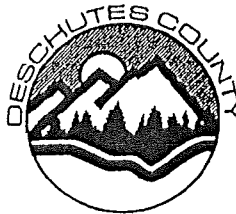
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07/31/2002 10:56:46 AM

D-PCD Cnt=1 Stn=4 MARSHA  
\$80.00 \$11.00 \$10.00 \$5.00

# DESCHUTES COUNTY CLERK

## CERTIFICATE PAGE



This page must be included  
if document is re-recorded.  
Do Not remove from original document.

*Planned Community Subdivision Declaration*

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
AWBREY ROAD HEIGHTS  
PHASES II AND III**

These Covenants, Conditions and Restrictions are made this 30th day of July, 2002, by Brooks Resources Corporation, and Oregon corporation, hereinafter referred to as "Declarant", as owner of the real property in the City of Bend, Deschutes County, State of Oregon, described in Exhibit A, attached hereto, and incorporated by reference herein.

**OBJECTIVES**

Declarant owns this property located on Awbrey Butte in Deschutes County, Oregon. Developer proposed to develop a portion of this property to be known as Awbrey Road Heights Phases II and III. Developer intends that the property covered within the plat of Awbrey Road Heights Phases II and III will be subject to essentially the same architectural rules and design guidelines and review and appeals process as described in the Awbrey Butte Architectural Committee Rules and Design Guidelines with some exceptions more particularly described in Article 3 below.

NOW THEREFORE, Declarant hereby declares that the property covered in the plat of Awbrey Road Heights, Phases II and III, more particularly described on Exhibit A attached hereto shall be held, sold, and conveyed subject to the following easements, covenants, conditions restrictions and charges which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof. Except where this Declaration for Awbrey Road Heights conflicts with any applicable government municipal regulations, this

Declaration shall be binding upon all owners of real property subject to this Declaration and their successors in interest as set forth herein. In the event any of the development standards or use restrictions of this Declaration should conflict with a more restrictive standard or requirement set by an applicable zoning ordinance of the City of Bend, the more restrictive standard or requirement of the applicable City of Bend ordinance shall apply.

#### **ARTICLE 1: DEFINITIONS**

1.1 Awbrey Road Heights Homesites: Shall mean all of the real property now or hereafter made subject to this declaration.

1.2 Architectural Review Committee or "ARC": Shall mean the Awbrey Butte Architectural Review Committee.

1.3 Architectural Review Committee Rules and Design Guidelines: Shall mean the Awbrey Butte Architectural Review Committee Rules and Design Guidelines.

1.4 Declarant: Shall mean Brooks Resources Corporation, an Oregon corporation, or its successors in interest.

1.5 Declaration: Shall mean this Declaration of Covenants, Conditions, and Restrictions for Awbrey Road Heights.

1.6 Exempt Lots: Shall mean lots that are exempt, as described in this Declaration, from certain restrictions contained in the Architectural Review Committee Rules and Design Guidelines.

1.7 Homesite: Shall mean a lot as defined herein.

1.8 Improvements: Shall include, but not be limited to, any buildings, outbuildings, private or shared driveways, parking areas, fences and barriers, retaining walls and stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, signs, storage areas and all other structures or exterior landscaping vegetation or ground cover of every type and every kind above the land surface.

1.9 Lot: Shall mean each lot described on a subdivision plat or partition map to any alternation thereof as may be made by a valid lot line adjustment.

1.10 Owner: Shall mean any person or persons or legal entity owning real property within the Plat of Awbrey Road Heights Phases II and III.

1.11 Streets: Shall mean any Street, highway or other thoroughfare within or adjacent to the Awbrey Road Heights homesites and shown on any recorded subdivision or partition map, or survey map of record, whether designated thereon as street, boulevard, place, drive, road, terrace, way, land, circle or otherwise.

## **ARTICLE 2: PROPERTY SUBJECT TO THESE DECLARATIONS**

2.1 General Declaration creating Awbrey Road Heights. Declarant hereby declares that all of the real property located within the Plat of Awbrey Road Heights, Phases II and III, in Deschutes County, Oregon described in Exhibit "A" is and shall be hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part subject to this Declaration. All of said Restrictions are declared and agreed to be established with the purpose of protecting the desirability and attractiveness of said real property and every part thereof. All of the Covenants, Conditions and Restrictions of Awbrey Road Heights run with all of said real property for all

purposes and shall be binding upon and inure to the benefit of Declarant and all owners, and their successors in interest as set forth in this Declaration.

2.2 Addition of Other Real Property by Grantor.

(a) Declarant may, at any time during the term of this Declaration, add all or a portion of any land now or hereafter owned by Declarant to the property which is covered by this Declaration, and upon recording of a notice of addition of real property, as set forth below, the provisions of this Declaration specified in said notice shall apply to such added land in the same manner as if it were originally covered by this Declaration. Thereafter, to the extent this Declaration is made applicable thereto, the rights, powers and responsibilities of Declarant and owners of parcels within such added land shall be the same as in the case of the land described in exhibit "A".

(b) The notice of addition of real property referred to above shall contain at least the following provisions:

- (1) A reference to this Declaration stating the date of recording and the recording information where the Declaration is recorded.
- (2) A statement that the provisions of this Declaration or some specified part thereof shall apply to such added real property
- (3) A legal description of such added real property.
- (4) Such other or different covenants, conditions, and restrictions as Declarant shall, in its discretion, specify to regulate and control the use, occupancy, and improvement of such added real property.

### **ARTICLE 3: ARCHITECTURAL REVIEW AND CONTROLS**

3.1 **Approval Required.** No improvement, as defined in Section 1.8 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by the ARC. Lots 14 through 23 of Phase III, and other lots that may be designated by the Declarant, shall be in conformance with a building site circle established on each lot by the Declarant as described in the Awbrey Butte Architectural Committee Rules and Design Guidelines.

3.2 **Exempt Lots.** Lots 24 through 45 in Phases II and III shall be Exempt Lots and shall be exempt only as to Building Site Location, Building Setbacks, Other Setbacks, and Fencing restrictions as described in the Architectural Review Committee Rules and Design Guidelines. However, location and design of such improvements will be subject to the Architectural Review Committee Rules and Design Guidelines.

3.3 **Procedure.** Any owner proposing to construct any improvements within Awbrey Road Heights Phases II and III (including any exterior alteration, addition, destruction, or modification to any such improvements) shall follow the procedures and shall be subject to the approvals required by paragraphs 3.3 through 3.7 below. Failure to follow such procedures or obtain such approvals as required by paragraphs 3.3 through 3.7 below shall be deemed a breach of this Declaration.

3.4 **Required Documents.** Any Owner proposing to utilize, improve, or develop real property within Awbrey Road Heights shall submit the following items for review along with application fee.



(a) A site plan showing the location, size, configuration and layout of any building, structure, or improvement (or, where applicable, any alteration, addition, modification, or destruction thereto) including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian traffic and circulation.

(b) Architectural plans and drawings showing the nature, style, and dimensions of any building, structure, fence, wall, barrier or deck (or, where applicable, any alteration, addition, modification or destruction thereof), including the exterior material types, colors, and appearance. The scale of plans shall be 1 inch = 20 feet or larger.

(c) A landscape plan showing the nature, type, size, location, and layout of all landscaping and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

3.5 Review. All plans and drawings identified in paragraph 3.3 above, shall be submitted to Declarant for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied with a check payable to Declarant in an amount to be determined by Declarant from time to time. No plans shall be reviewed until the architectural review fee is paid in full and all items specified in this section are submitted. Within 30 days following receipt of such plans and drawings, and the full amount of the architectural review fee, Declarant shall review the plans and shall inform the owner in writing whether the plans conform to the development concept for Awbrey Road Heights. In the event the owner is not notified as to the conformity of the plans within the 30 day review period, the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to the development concept, the owner shall resubmit those non-conforming portions of the plans for review in accordance with the procedures outlined in paragraph 3.3 above, and this paragraph. No work may be performed relating to any improvement unless and

until all aspects of all plans required under paragraph 3.3 above have been approved by Declarant. Any site plans, construction plans or similar plans and drawings submitted to the City of Bend in connection with the construction of any improvement in Awbrey Road Heights prior to written approval of Declarant is at the sold risk of the applicant.

3.6 Architectural Guidelines. The development concept for Awbrey Road Heights shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, are essentially contained in the Architectural Review Committee Rules and Design Guidelines and may be published from time to time by Declarant, but Declarant shall not be required to do so. Declarant shall have the right to alter, rescind or amend any published guidelines without prior notice to any party; provided however, that once approval has been given pursuant to paragraph 3.4 above, work may proceed in accordance with the approved plans and drawings notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

3.7 Inspection. All work related to any building, structure or improvement or any landscaping, vegetation, ground cover or other improvements within Awbrey Road Heights shall be performed in strict conformity with the plans and drawings approved under paragraph 3.4 above. Declarant shall have the right to inspect any such work to determine its conformity with a stop to all work, if, in good faith, it believes that any such work is non-conforming. In the event that it is determined in good faith by Declarant that certain work is non-conforming, a stop work notice may be issued, without necessity of court order, which shall require the owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non conforming items shall be deemed a breach of this

Declaration, The Declarant or officer, director, employee, agent or servant of Declarant shall not be responsible for any damages, or loss, delay, cost or legal expense occasioned through a stop work notice given in good faith even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

3.8 Waiver. Any condition or provision of paragraph 3.2 through 3.6 above may be waived by Declarant in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for Awbrey Road Heights. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under paragraphs 3.2 through 3.6. The granting of a waiver as to one owner shall not automatically entitle any other owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of Declarant and delivered by certified mail to the party claiming the benefit of such waiver.

#### **ARTICLE 4: RESTRICTIONS ON USE OF PROPERTY**

Restrictions on use of property are included but not limited to those outlined in paragraphs 4.1 through 4.14, and may be more particularly described in the Architectural Review Committee Rules and Design Guidelines.

4.1 Occupancy. No owner shall occupy, use or permit his lot or any part thereof to be used for any purpose other than a private residence for the owner, his family, or his guests, except that each owner shall be permitted to rent the home on a thirty day or longer, basis when not in occupancy.

- 4.2 Improvements. Each lot within Awbrey Road Heights shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard.
- 4.3 Appearance. All garbage, trash, cuttings, refuse, garbage and refuse containers, clothes drying apparatus and other service facilities located on the lot shall be screened from view in a manner approved by Declarant.
- 4.4 Construction and Alteration. Nothing shall be altered or constructed in or removed from or placed on a lot except with the prior written consent of Declarant.
- 4.5 Offensive or Commercial Activity. No offensive or commercial activity shall be carried on nor shall anything be done which may be or become an annoyance or nuisance to the other owners.
- 4.6 Signs. No sign of any kind shall be displayed to public view on or from any lot without prior ARC approval, provided, however, that an owner may display not more than one (1) "for sale" sign per lot which sign has a maximum area not to exceed 300 square inches, the longest dimension being no greater than 20 inches and in conformance with signage restrictions more particularly described in the Architectural Review Committee Rules and Design Guidelines.
- 4.7 Exterior Lighting or Noise Making Device. No exterior lighting or noise making device shall be place on a lot or any portion thereof without prior approval and in conformance with lighting restrictions more particularly described in the Architectural Review Committee Rules and Design Guidelines.
- 4.8 Antennas. No television antenna, radio antenna, satellite antenna, or other receiving device shall be place on any lot without prior approval.

4.9 Limitation on Transfer. No owner shall transfer either by conveyance, contract of sale or lease any interest in his lot which would result in ownership of such lot being held by more than ten persons.

4.10 Mobile Homes. No house trailer, mobile home, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, unless such structure is for the purpose of construction of the improvement and only with approval of Declarant. The location of such temporary structures must be approved by Declarant

4.11 Single Family Residence. No more than one single family residence shall be erected or placed on any lot.

4.12 Utilities. No above-ground utilities, pipes or wires shall be used to connect improvements with supplying facilities, unless such temporary use is for the purpose of construction of the improvement and approved by Declarant.

4.13 View. The height of improvements or vegetation and trees on a lot shall not materially restrict the view of other lot owners. The Declarant shall be the sole judge of the suitability of such heights. If the Declarant determines there is such restriction in the view of the other lot owners, written notice shall be delivered to the offending lot owner. If after 30 days the improvement, vegetation, or trees are not removed or reduced in height as directed by the Declarant, the Declarant shall enter the offending lot, complete the removal or reduction, charging the owner of the lot the reasonable costs for the work done. This section is not to be read as justification to create views not present when the lot was originally purchased, or to prevent the construction of an improvement on another lot provided such improvement is in conformance with the ARC approval.

4.14 Parking. No extended parking on any street shall be allowed by any house trailer, travel trailer, boat trailer, camper or incapacitated motor vehicle.

#### **ARTICLE 5: DETERMINATION OF DECLARANT'S ROLE**

5.1 Declarant's Control. At such time as the Declarant shall no longer desire to exercise the architectural, landscaping, signing and lighting controls over any lots within Awbrey Road Heights, Declarant shall cause to be recorded in the official records of Deschutes County, Oregon, a declaration stating that Declarant no longer desires to exercise any further controls over development in Awbrey Road Heights. Recording of such a declaration shall formally terminate Declarant's interest and all rights and controls under this declaration.

5.2 Architectural Controls Upon Declarant's Termination. Upon formal termination of Declarant's control, architectural controls will remain under the control of the Architectural Review Committee Rules and Guidelines and this Declaration unless Declaration is terminated in accordance with paragraph 6.1 below.

#### **ARTICLE 6: DURATION AND AMENDMENT OF THIS DECLARATION**

6.1 Duration. The Covenants, Conditions, and Restrictions of Awbrey Road Heights shall continue to remain in full force and effect at all times with respect to all property, and each part thereof, now or hereafter made subject thereto (subject however, to the right to amend and repeal as provided for herein) for a period of thirty years from the date this Declaration is recorded. However, unless within one year from the date of said termination, there shall be recorded an instrument directing the termination of this Declaration signed by owners of not less than

seventy-five percent (75%) of the lots then subject to this Declaration, this Declaration, as in effect immediately prior to the expiration date, shall be continued automatically without further notice for periods of ten years unless within one year prior to the expiration of such period the Covenants, Conditions, and Restrictions for Awbrey Road Heights are terminated as set forth above in this section.

6.2 Amendment. This Declaration or any provision thereof, or any Covenant, Condition or Restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any part thereof with a written consent of the owners of seventy-five percent (75%) of the lots subject to these restrictions, provided that the provisions of Article 4 hereof shall inure to the benefit of and be enforceable solely by Declarant, shall be capable of being amended by Declarant without the consent of any other owner, person or entity and shall not give any third party any right or cause of action on account of the terms of this Declaration, and further provided that no amendment which enlarges or diminishes the powers and responsibilities of the Declarant shall be effective without the written consent of the Declarant.

6.3 Amendment, Deletion or Repeal. Any amendment, deletion, or repeal of this Declaration shall not become effective until recorded in the official records of Deschutes County, Oregon.

#### ARTICLE 7: ENFORCEMENT

7.1 Enforcement: This declaration shall be specifically enforceable by Declarant or by any owner of any lot in Awbrey Road Heights. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvement or condition.

7.2 Legal Suite or Action. In the event that legal suit or legal action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover that party's reasonable attorney fees incurred in such suite or action, or any appeal therefrom as adjudged by the trial or appellate court.

## **ARTICLE 8 EFFECT OF DECLARATION**

8.1 Effects. The Covenants, Conditions and Restrictions of this declaration shall run with the land included in Awbrey Road Heights and shall bind, benefit, and burden each lot in Awbrey Road Heights, including any additions thereto. The terms of this Declaration shall inure to the benefit and shall bind Declarant, all successors and assigns of Declarant and all owners of any lot in Awbrey Road Heights, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees or any other party claiming or deriving any right, title, or interest or use in or to any real property in Awbrey Road Heights. The use restrictions and regulations set forth in Article 4 and Article 5 of this Declaration shall be binding upon all owners, lessees, licensees, occupants and users of the property know as Awbrey Road Heights and their successors in interest as set forth in this Declaration, including any person who holds such interests as security for the payment of an obligation including any mortgagee or other security holder in actual possession of any lot by foreclosure or otherwise and any other person taking title from such security holder.

## **ARTICLE 9: MISCELLANEOUS PROVISIONS**



9.1 Joint Owners. In any case in which two or more persons share the ownership of any Homesite, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest.

9.2 Construction; Severability. This Declaration and all declarations adding property to Awbrey Road Heights shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and all declarations adding property to Awbrey Road Heights shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

9.3 Number. As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires.

9.4 Captions. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration

9.5 Notices and other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States Postal Service certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided herein:

- (a) If to an Owner, then to the last address known for such owner kept at the Brooks Resources Corporation main Office.

(b) If to Declarant or the Architectural Review Committee, then to  
Declarant or Committee at:

Brooks Resources Corporation  
296 SW Columbia Street, Suite A  
Bend, Oregon 97708  
Attention: Mr. Kirk E. Schueler, President

In WITNESS WHEREOF, Declarant has executed this Declaration the  
date first above written.

BROOKS RESOURCES CORPORATION

By: *Kirk E. Schueler*

Kirk E. Schueler, President

STATE OF OREGON )

) SS

COUNTY OF DESCHUTES )

The foregoing instrument was acknowledged before me on this 30  
day of July, 2002, by Kirk E. Schueler, President of  
Brooks Resources Corporation on behalf of the corporation.

*Kathleen Restivo*

Notary Public for Oregon



**EXHIBIT A**

**AWBREY ROAD HEIGHTS  
PHASES II AND III**

A track of land located in the Southwest one quarter (1/4) of  
Section 29, Township 17 South, Range 12 East, Willamette  
Meridian, more particularly described as:

Lots 26 through 35 of Awbrey Road Heights, Phase II and  
Lots 14 through 25 and Lots 36 through 45 of Awbrey Road  
Heights, Phase III.



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D-COTV Cnt=2 Stn=4 TRACY

\$185.00 \$5.00 \$11.00 \$10.00 \$5.00

Recorded by AmeriTitle as an  
accommodation only. No liability  
is accepted for the condition of  
title or for the validity, sufficiency,  
or effect of this document.

After Recording Return to:

Awbrey Park Homeowners' Association, Inc.

296 SW Columbia, Suite A

Bend, Oregon 97702

Attn: Jade Mayer

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR AWBREY PARK PHASE ONE**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR AWBREY PARK (this "Declaration"), to be effective upon its recording in Deschutes County, Oregon, is made and executed on the date hereinafter set forth by Brooks Resources Corporation, an Oregon corporation, hereinafter referred to as the "Declarant".

**WITNESSETH**

Declarant is the owner of that certain real property in the City of Bend, Deschutes County, Oregon, described on **Exhibit A** attached hereto and incorporated herein by reference, which property was platted pursuant to that certain plat recorded in the real property records of Deschutes County in Volume 2003, Page 84257 on December 11, 2003 (the "Plat").

Declarant desires to create a planned community known as Awbrey Park on the land described on **Exhibit A** and on such other land as may be added thereto pursuant to the terms and provisions of this Declaration.

NOW THEREFORE, the Declarant declares that the real property described on attached **Exhibit A**, and any property subsequently annexed into this Declaration (collectively, the "Property"), shall be held, sold, hypothecated, and conveyed subject to the covenants, conditions, and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

By recordation of this Declaration in the real property records of Deschutes County, Oregon, Declarant is hereby creating a Class I planned community, pursuant to and subject to ORS 94.550 to 94.785, and applicable successor provisions.

Funds for the maintenance and operation of common maintenance areas will be provided through assessments against those who purchase property within Awbrey Park, although to assist with the development, Declarant may from time to time itself provide some improvements. For the protection of all owners of property in Awbrey Park, there will be a

system designed to assure that each person who purchases property in Awbrey Park will pay an equitable share of the costs for maintenance and development of the common maintenance areas.

## ARTICLE I - DEFINITIONS

### Section 1.1    "Architectural Guidelines" or "Guidelines"

"Architectural Guidelines" or "Guidelines" shall mean the Awbrey Park Architectural Rules and Design Guidelines, established and revised pursuant to Section 5.2.

### Section 1.2    "Association"

"Association" shall mean Awbrey Park Homeowners' Association, Inc., an Oregon nonprofit corporation established for the purposes set forth herein and pursuant to ORS Chapter 65.

### Section 1.3    "Awbrey Park"

"Awbrey Park" shall mean the community of Awbrey Park created on the Property.

### Section 1.4    "Board"

"Board" shall mean the Board of Directors of Awbrey Park Homeowners' Association, Inc.

### Section 1.5    "Builder"

"Builder" shall mean Declarant and any residential building company acquiring Lots from the Declarant for the purposes of construction and sale of homes.

### Section 1.6    "Bylaws"

"Bylaws" shall mean the Bylaws of the Association, as amended from time to time. The Bylaws shall be recorded in the real property records of Deschutes County, Oregon.

### Section 1.7    "Common Areas"

"Common Areas" as used herein, shall mean only that portion of the Property, together with all improvements located thereon, that is established for the common use and benefit of property owners within Awbrey Park and identified as "Common Areas" on a plat of any portion of the Property, in an amendment to this Declaration or in a supplemental declaration or Declaration of Annexation, and which shall be conveyed to the Association for the use and benefit of the Owners. The initial Common Areas are identified on the Plat as Tracts A and B. Until the Turnover Meeting, the Declarant shall have the right to designate Common Areas in the future by recordation of a duly approved amendment to this Declaration or by recordation of a

supplemental declaration or Declaration of Annexation. Not later than the Turnover Meeting, Declarant shall convey in fee the Common Areas to the Association, subject to the Association's agreement to continue maintenance thereon.

Section 1.8    "Common Maintenance Areas"

"Common Maintenance Areas" shall mean that property and/or Improvements for which the Association bears some responsibility to operate and/or maintain and/or repair and/or replace and/or insure. Common Maintenance Areas include the Common Areas, but also includes other property and/or Improvements owned by third parties. The Association shall not be responsible for insuring and/or replacing real property that it does not own, except for those Improvements located on such property, which Improvements are identified as "Common Maintenance Areas." The Common Maintenance Areas shall include the following:

1.     The Common Areas;
2.     All ornamental lighting on roads and Common Areas;
3.     All mail stations and lighting of mail stations.
4.     Any areas within public rights of way that are landscaped and/or irrigated by Declarant and/or the Association;
5.     Any street identification signs or markers installed by Declarant and/or the Association; and
6.     Any areas within public rights-of-way, public easements, tracts, public parks or any other property (including improvements) that the Board deems necessary or appropriate to maintain for the common benefit of the Owners.

Until the Turnover Meeting, the Declarant shall have the right to designate additional Common Maintenance Areas (including Common Areas) in the future or to remove Common Maintenance Areas (including Common Areas) by recordation of a duly approved amendment to this Declaration or by recordation of a supplemental declaration or Declaration of Annexation.

Section 1.9    "Conversion Date"

"Conversion Date" shall be the date upon which Class "B" membership (as defined in Section 2.2) shall cease and be converted to Class "A" membership (as defined in Section 2.2). Such date shall be the date which is the earliest of (i) the date at which one hundred percent (100%) of the total Lots existing at any time (including any annexed Lots) have been conveyed to Class "A" members; or (ii) fifteen (15) years after conveyance of the first Lot to a Class "A" member; or (iii) at such earlier time as Declarant may elect in writing to terminate Class "B" membership.

Section 1.10 "County"

"County" shall mean Deschutes County, Oregon.

Section 1.11 "Declarant"

"Declarant" shall mean Brooks Resources Corporation and/or its successors and assigns, who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.

Section 1.12 "Declaration"

"Declaration" shall mean this Declaration of Protective Covenants, Conditions, and Restrictions for Awbrey Park and any amendments and supplements thereto made in accordance with its terms.

Section 1.13 "Directors"

"Directors" shall mean the Board of Directors of the Association.

Section 1.14 "Improvement"

"Improvement" shall mean every structure or improvement of any kind, including, but not limited to, a Unit, landscaping, fences, walls, driveways, fixtures, shelters, or other product of construction efforts (including painting, alterations, and reconstruction) on or with respect to Awbrey Park.

Section 1.15 "Lot"

"Lot" shall mean any of the plots of land indicated upon the recorded subdivision map of the Property or any part thereof creating single-family home sites, with the exception of the Common Areas and areas deeded to a governmental authority or utility, together with all Improvements thereon.

Section 1.16 "Owner"

"Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.17 "Phase"

"Phase" shall mean all the Lots made subject to this Declaration together as part of the same Plat.

Section 1.18 "Plat"

"Plat" shall mean the duly recorded plat of \_\_\_\_\_, recorded in Cabinet "\_\_\_\_," Page \_\_\_\_ under Recorder's No. Volume 2003-\_\_\_\_\_, Official Records, Deschutes County, Oregon and any other recorded plats of real property brought within the jurisdiction of the Association and made subject to this Declaration by a Declaration of Annexation.

Section 1.19 "Property"

"Property" shall mean the real property described on the attached **Exhibit A**, and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration by a Declaration of Annexation.

Section 1.20 "Turnover Meeting"

"Turnover Meeting" shall be the meeting of the Owners called by the Declarant to turn over control of the Association to the Class A members.

Section 1.21 "Unit"

"Unit" shall mean any residential dwelling situated upon any Lot.

**ARTICLE II – AWBREY PARK HOMEOWNERS' ASSOCIATION, INC.**

Section 2.1 Membership

The Declarant and every Owner of a Lot by virtue of ownership of such Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Until the Conversion Date, there shall be two (2) classes of membership, Class A and Class B as described in Section 2.2.

Section 2.2 Voting Rights

The Association shall have two (2) classes of voting membership:

A. Class A

Class A members shall be all Owners with the exception of Declarant (except that beginning on the date on which Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners, including Declarant) and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot.

B. Class B



The Class B member shall be the Declarant, who shall be entitled to one hundred fifty (150) votes for each Lot it owns until the Conversion Date at which time the Class B membership shall be converted to a Class A membership.

### Section 2.3    Suspension

All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to this Article II or is otherwise in default under this Declaration, the Bylaws or the Rules and Regulations of the Association.

### Section 2.4    Turnover Meeting

The Declarant shall call a Turnover Meeting within ninety (90) days following the Conversion Date for the purposes of turning over control of the Association to the Class A members. The Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. The Turnover Meeting shall be conducted in accordance with the Bylaws of the Association. At the Turnover Meeting, the Declarant shall turn over to the Association the responsibility for the planned community of Awbrey Park and of the Association and the Association shall accept such administrative responsibility. At the Turnover Meeting, the Owners shall elect a Board in accordance with the Bylaws. At the Turnover Meeting, the Declarant shall deliver to the Association those items and documents required by ORS 94.616 or applicable successor provisions. In order to facilitate an orderly transition, during the three-month period following the Turnover Meeting, the Declarant or an informed representative shall be available to meet with the Board on at least three mutually acceptable dates to review the documents delivered pursuant to this Section 2.4. Not later than ninety (90) days after the Turnover Meeting, the Association shall provide Declarant with an estoppel certificate (i) certifying that Declarant has satisfied all of its obligations owed to the Association, including, without limitation, any obligations arising out of or related to this Declaration, or (ii) identifying with specificity the extent to which any such obligations remain unsatisfied.

### Section 2.5    Transitional Advisory Committee

Declarant or the Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant for the planned community of Awbrey Park to administrative responsibility by the Association. Not later than the sixtieth (60th) day after Declarant has conveyed to Owners other than Declarant Lots representing fifty (50) percent or more of the Lots then existing in Awbrey Park, Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three (3) or more members. The Owners, other than Declarant, shall select two (2) or more members. Declarant may select no more than one (1) member. The Transitional Advisory Committee shall have reasonable access to all information and documents that Declarant is required to turn over to the Association under ORS 94.616(3).

## Section 2.6    Funding

Subject to the terms of this Article II, the Declarant hereby covenants for each Lot owned within the Property, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) annual or periodic assessments or charges; and (ii) special assessments for capital improvements to the Common Areas and Common Maintenance Areas, such assessments to be established and collected as hereinafter provided. The annual or periodic assessments shall include any reserve assessments necessary to establish and maintain any reserve funds created under Section 2.10. Such assessments will remain effective for the full term (and extended term, if applicable) of this Declaration. The annual and special and other assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot(s) at the time when the assessment fell due.

## Section 2.7    Annual Assessment or Charge for Lots

Subject to the terms of this Article, each Lot is hereby subject to an assessment in an amount not to exceed an amount determined by the Board (until such assessment charge shall be modified as provided in the Bylaws of the Association), for the purpose of creating a fund to be designated and known as the "maintenance fund" for matters described under Section 2.9, the "reserve fund" for matters described under Section 2.10, as well as any other funds contemplated under this Declaration, or any other fund called for by this Declaration or a Declaration of Annexation. Charges and assessments for funding such funds will be paid by the Owner or Owners of each such Lot in advance in monthly, quarterly or annual installments, commencing as provided in this Section 2.7. The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly or annually, will be determined by the Board at least thirty (30) days in advance of each assessment period. Said rate may be adjusted from time to time by the Board as the needs of the Association may, in the judgment of the Board, require. The annual assessment (excluding additional assessments pursuant to Section 2.13 and/or Section 2.15) for each Lot shall be uniform except as specifically provided herein or as provided in any Declaration of Annexation for Awbrey Park. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment for a particular Lot has been paid for a particular assessment period. No Lot Owner shall have any right to any common profits of the Association. All Lots in a Phase (including those owned by Declarant) become subject to assessment on the day the first Lot in that Phase is conveyed to an Owner other than Declarant. Notwithstanding any other terms contained herein, the Declarant shall have the right to abate or pro-rate annual assessments for Lots sold prior to the date on which all intended subdivision improvements and/or improvements to Common Maintenance Areas are completed, all in Declarant's reasonable discretion.

## Section 2.8     Declarant Responsibility

So long as there is Class B membership, Declarant hereby covenants and agrees that in the event that the annual maintenance fund revenues are insufficient to pay the operating expenses of the Association, it shall provide the funds necessary to make up the deficit, within thirty (30) days of receipt of request for payment thereof from the Association, provided that if the deficit is the result of the failure or refusal of an Owner or Owners to pay their annual maintenance assessments, the Association shall diligently pursue all available remedies against such defaulting Owners, including the immediate institution of litigation to recover the unpaid assessments, and shall reimburse the Declarant the amounts, if any, so collected.

## Section 2.9     Establishment of Maintenance Fund

The Association shall establish a maintenance fund composed of annual maintenance assessments and shall use the proceeds of such fund in providing for the operating expenses and normal, recurring maintenance expenses of the Association. Those items to be funded by such assessments may include, by way of clarification and not limitation, any and all of those items listed in Section 3.2.

## Section 2.10   Reserve Funds

### A.     Reserve Fund for Replacing Common Maintenance Areas.

Declarant shall in addition establish a reserve fund in the name of the Association for replacement, in whole or in part, of the Common Areas and any Improvements located in, on, or under the Common Maintenance Area for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years, including exterior painting, if any. The reserve account need not include those items that could reasonably be funded from the maintenance fund. Declarant may elect to defer payment of accrued assessments for reserves for a Lot owned by Declarant until the date the Lot is conveyed; provided, however, the Declarant may not defer such payment beyond the date of the Turnover Meeting. The book and records of the Association shall reflect the amount owing from the Declarant for all reserve assessments. For purposes of funding the reserve fund, the Association shall impose an assessment to be called the "Reserve Fund Assessment" against each Lot, which assessment shall be spread equally over the Lots. The reserve fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section. However, after the Turnover Meeting (as required by ORS 94.616 or applicable successor provisions), if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds, the Board may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. The Association shall administer the reserve fund and shall make periodic payments into the account. The Board shall set future assessments for the reserve fund annually. Any funds established for any of the purposes

mentioned in this Section shall be deemed to be a reserve fund notwithstanding that it may not be so designated by the Board. The amount of the reserve fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner. The reserve portion of the initial assessment determined by the Declarant shall be based upon the initial reserve study described in Section 2.10.B.a, or other sources of reliable information.

B. Reserve Study.

a) Prior to conveying the first Lot, the Declarant shall conduct an initial reserve study, which shall comply with the requirements for reserve studies set forth in Section 2.10.B.b. below and applicable law.

b) The Board shall annually commission or conduct a reserve study, or review and update an existing study, to determine the reserve fund account requirements and may adjust the amount of payments as indicated by the study or update and provide for other reserve items that the Board, in its discretion, may deem appropriate. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, and replacement schedule.

Section 2.11 Non-payment of Assessments: Remedies of the Association

Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the rate set by the Board by resolution from time to time but in no event greater than the highest rate of interest allowed by Oregon law at the time of the non-payment. The Association shall have the authority to impose late charges to compensate for the administrative, legal (if any) and processing costs of late payments on such terms as it may establish by duly adopted resolutions, and the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of Owner's Lot and/or Unit.

Section 2.12 Subordinated Lien to Secure Payment and Other Obligations

To secure the payment of the maintenance charge and all other assessments (including for reserves) established hereby and to be levied on individual Lots as provided in this Article II and all other obligations of a Lot Owner under this Declaration, there is hereby reserved a lien for the benefit of the Association on each Lot, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to any prior recorded deed of trust securing payment for the subject Lot and/or the Unit on such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon

which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such first mortgage lien holder by prepaid U.S. registered mail, to contain the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lien holder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. The provisions of ORS 94.709 (or applicable successor provisions) shall apply to the Association's lien. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments that became due before such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No sale, foreclosure or transfer shall extinguish the personal obligation of the Owner who owned the Lot at the time the delinquent assessment and/or payment became due. The lien described herein shall include not just assessments but also interest, late charges, attorneys' fees, costs or other amounts imposed hereunder or under the Bylaws, regardless of whether the same are characterized as assessments.

#### Section 2.13 Additional Assessments

In addition to the periodic assessments described in this Article II, the Association shall have the authority to assess an Owner's Lot(s) for costs and expenses incurred by the Association for corrective action that is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees, including, without limitation, a breach of this Declaration. Each such additional assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land, a continuing lien upon the Lot, and the personal obligation of the Owner in the manner described in Section 2.6 for annual and special assessments.

#### Section 2.14 Reallocation Upon Annexation of Property

If additional property is annexed to the Property, the Association shall, within sixty (60) days after the annexation, recompute the budget based upon the additional Lots and Common Areas and Common Maintenance Areas and recompute all applicable assessments for each Lot. New Lots shall be subject to assessment from the time of annexation of such Lots to the Property. The Association shall send notice of any applicable assessment to the Owners of new Lots not later than sixty (60) days after the annexation or with the next occurring annual assessment, whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws. If additional property is annexed to the planned community of Awbrey Park during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Lots that were within the Property prior to the annexation. Notice of the adjustment in the assessments shall be sent to such Owners not later than sixty (60)

days after the annexation or with the next occurring annual assessment, whichever is sooner. To the extent that any adjustment results in a credit with respect to assessments payable by an Owner, such credit shall be applied toward the next occurring payment or payments of the applicable assessment.

#### Section 2.15 Association Maintenance Standards

The Association shall maintain the Common Maintenance Areas to such standards as the Board may establish from time to time in its sole and absolute discretion.

#### Section 2.16 Professional Management

The Association may be professionally managed. In the event that the Board or the Owners elect to use a professional manager, the same shall be selected and hired by the Association Board. After the Turnover Meeting, the Board shall not engage any professional manager if any member of the Board has any financial (whether direct or indirect) or familial relationship with such manager unless such member (the "Interested Member") has disclosed the relationship and a majority of the Board other than the Interested Member has approved the contract. As used herein, familial relationship shall mean and include the following (whether natural or adopted): spouses, parents (including in-laws), siblings (including in-laws), children, grandparents, grandchildren, aunts, uncles, nieces, nephews, and first cousins. If a professional manager is engaged, the Board shall annually review the scope of and compensation provided by, the management contract.

### **ARTICLE III - GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS**

#### Section 3.1 Interim Board

Declarant shall have the right to appoint an interim board of three (3) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting.

#### Section 3.2 Purpose of Maintenance Fund

The Board, for the benefit of the Owners, shall provide and shall pay for out of the maintenance fund provided for in Article II above the following:

A. Labor, supplies and operating costs associated with running the Association and performing its obligations hereunder, including the operation of Common Maintenance Areas;

B. Normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for landscaping) and the Improvements to such Common Maintenance Areas, such as fences, columns, walls, grounds, landscaping, lights, irrigation systems, entry

monuments and mail stations, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas;

C. Repairs and enhancement of the Common Maintenance Areas;

D. Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Lots and/or Owners, if any;

E. Payment of expenses for utilities serving Common Maintenance Areas for which the Association is responsible or the Board deems to be in the best interest of the Association;

F. The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager; provided that a management agreement entered into prior to the Turnover Meeting shall not have a term in excess of three (3) years and shall be terminable without penalty if the Board gives not less than thirty (30) days written notice of termination to the other party not later than sixty (60) days after the Turnover Meeting. The management agreement may provide that if it is not terminated as provided in the foregoing sentence, it will renew automatically for successive one-year periods, until terminated by either party (i) without cause, effective as of the next scheduled renewal date, by providing not less than thirty (30) days' written notice to the other party; or (ii) with cause, effective upon the date of written notice, by providing such notice to the other party;

G. Legal and accounting services for the benefit of the Association or otherwise deemed necessary by the Board, including, without limitation, payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property;

H. Payment of all reasonable and necessary expenses in connection with the collection and administration of assessments and Association funds;

I. A policy or policies of insurance insuring the Association and/or its Board and officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided in Article IV;

J. Workers compensation insurance to the extent necessary to comply with any applicable laws;

K. Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable; and

L. Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes, assessments, fees or costs, which (i) the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law; (ii) are necessary to fulfill the obligations of the Association hereunder; (iii) in the Board's opinion shall be necessary or proper for the enforcement of this Declaration; (iv) are necessary or desirable in the opinion of the Board to keep the Property neat and in good order; or (v) the Board considers to be of general benefit to the Owners or occupants of the Property.

The judgment of the Board in the expenditure of funds and what constitutes a proper expense under Section 2.9 and this Section 3.2 shall be final and conclusive so long as such judgment is exercised in good faith.

### Section 3.3 Powers and Duties of Board

The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association and the powers and duties of a non-profit corporation pursuant to the Oregon Nonprofit Corporation Act and a homeowners association pursuant to ORS 94.630:

A. To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

B. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

C. To enter into contracts, maintain one (1) or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

D. To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

E. To make reasonable rules and regulations for Awbrey Park, including the operation of the Common Areas, and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Common Areas, by the Owners in the portions affected.

F. Within ninety (90) days after the end of the fiscal year, the Board shall prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year and distribute a copy of such financial statement to each Owner and, upon written request, to any mortgagee of a Lot.



G. To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

H. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

I. To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

J. To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

K. To grant easements, licenses and concessions through or over the Common Areas.

#### Section 3.4 Board Powers Exclusive

The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

#### Section 3.5 Maintenance Contracts

The Board, on behalf of the Association, may enter into contracts by which the Association agrees to perform services that the Association is not otherwise required to perform. Such contracts may be with any Owner or other person or entity and shall be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association. Without limiting the generality of the foregoing and by way of example, the Association may contract to resurface an Owner's driveway at the same time as the Association is completing road projects on Common Maintenance Areas.

#### Section 3.6 Indemnification

The Association shall indemnify every officer, director, or member of a committee established under the Bylaws against all expenses, including attorneys' fees and costs, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as an expense funded by maintenance assessments, maintain adequate officers' and directors' liability insurance to fund this obligation.

## ARTICLE IV - COMMON MAINTENANCE AREAS

### Section 4.1    Improvements

The Declarant has or will construct the following Improvements to the Common Maintenance Areas (which shall become Common Maintenance Areas upon completion): Entry monument(s), including landscaping, irrigation and lighting; landscaping, irrigation, street lighting, street signs and mail station(s) within street rights of way; and some ornamental lighting on roads and Common Areas. The foregoing shall not be construed so as to require that such Improvements be built to any specified design or other standards, except applicable Deschutes County or State of Oregon codes and requirements. Notwithstanding the foregoing, the Declarant does not choose to limit its right to add Improvements not described in this Declaration to the planned community of Awbrey Park, whether on Common Maintenance Areas or not.

### Section 4.2    Association to Hold

Declarant shall convey the Common Areas to the Association, free and clear of financial liens and encumbrances not later than the Turnover Meeting. The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Maintenance Areas, including any Common Areas that may be hereafter established. Nothing contained herein shall create an obligation on the part of Declarant to establish any Common Area. Following the conveyance of the Common Areas to the Association, the dedication, mortgage, or conveyance of any Common Areas shall require the affirmative vote of at least seventy five percent (75%) of the outstanding votes.

### Section 4.3    Liability Insurance; Casualty Insurance

From on and after the date on which title to or responsibility for any Common Areas or Common Maintenance Areas vests in the Association, the Association shall purchase and carry (i) insurance for all insurable improvements in the Common Maintenance Areas against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, which insurance shall cover the full replacements costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; and (ii) a general comprehensive public liability insurance policy for the benefit of the Association, covering occurrences on the Common Areas and in the Common Maintenance Areas and all damage or injury caused by the negligence of the Association, which policy limits shall be as determined by the Board of the Association, but shall include public liability insurance of at least One Million Dollars (\$1,000,000.00) per occurrence. The Association shall use its best efforts to see that such policy shall contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of the Board, the Owners and other insureds, as their interests may be determined by the Board, ensuring all against liability to each other insured as well as third parties. Any proceeds of insurance policies owned by the Association shall be received, held in a segregated account and distributed to all interested parties, as their interests may be determined. The insurance coverage obtained and

maintained by the Association may not be brought into contribution with insurance bought by Owners or their mortgagees.

#### Section 4.4    Condemnation

If there is a condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the Association shall represent the Owners in negotiations with the condemning authority. The funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. If the Board of Directors of the Association determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Areas or for whatever reason, any remaining funds may be distributed to each Owner based on an equal amount per Lot.

#### Section 4.5    Maintenance of Common Maintenance Areas

The Association will permanently maintain, repair and replace as necessary:

- A.     All Common Maintenance Areas (including Common Areas);
- B.     The Improvements installed pursuant to Section 4.1, to the extent the same benefit the Association and/or the Owners; and
- C.     Association irrigation lines.

#### Section 4.6    Prohibited Activities

Neither the Association nor any Owner shall conduct any of the following activities within any Common Maintenance Area or any Common Area: i) the removal of any tree without the written approval of the Architectural Review Committee and the written opinion of a certified Arborist that the tree is diseased and will not survive, or that the tree poses a substantial threat of property damage or personal injury; ii) the removal of any other vegetation without the written consent of the ARC; iii) the modification, grading, excavation, filling or other activities which would alter the topography or vegetative cover of any Common Maintenance Area or Common Area without the written consent of the ARC; v) the disposal or placement of any debris, refuse, soil, rock, landscape debris or other deleterious materials; vi) parking, storage, repair, or disposal of any motor vehicle; and vii) motor vehicle access (except on roads or roadways or as may be necessary for repairs or maintenance approved by the Board or in conjunction with maintenance of utilities).

## ARTICLE V - ARCHITECTURAL REVIEW

### Section 5.1 Architectural Review Committee

A committee to be known as the Architectural Review Committee (the "ARC") shall be established consisting of the number of members as determined by the Board, except that the ARC shall consist of not less than three (3) members. ARC members need not be members of the Association.

A. The members of the ARC shall be appointed, terminated and/or replaced by the Declarant until the earlier to occur of the following: (i) the date of expiration of the Initial Term of this Declaration; or (ii) the date on which Declarant records an instrument in the real property records of Deschutes County stating that it is turning over control of architectural review, including appointment of ARC members, to the Association, which shall occur no earlier than the date of the Turnover Meeting, but which may occur later than the date of the Turnover Meeting. Thereafter the Board shall appoint the members of the ARC. After Declarant has turned over control of architectural review, members of the ARC may be terminated and/or replaced by the Board with or without cause. Individuals may serve as members of the Board and members of the ARC simultaneously.

B. The purpose of the ARC is to enforce the architectural and design standards of the community and to approve or disapprove plans for Improvements proposed for the Lots.

C. The ARC shall act by simple majority vote, and shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties; provided, however, if the costs of a professional engaged by the ARC is to be borne by a particular Owner whose plans are being reviewed, the Owner shall first be apprised in writing of the estimated costs thereof.

D. The ARC shall establish an appeal procedure from time to time, but after exhaustion of such appeal(s), the decision of the ARC shall be final. In no event may an ARC decision be appealed to the Board.

E. No approval of the ARC required hereunder shall be valid unless and until the same is granted in writing.

### Section 5.2 Architectural Guidelines

Subject to the terms of this Section 5.2, the Board has adopted and may, from time to time, amend, modify, or revise the Awbrey Park Architectural Rules and Design Guidelines. Amendments, modifications, or revisions to the Guidelines may be made by the Declarant, without the consent of anyone, prior to the date on which Declarant turns over control of the Architectural Review Committee pursuant to Section 5.1.A. Thereafter the ARC shall have the

right to amend, modify, or revise the Guidelines, subject to the approval of the Board. No such amendments, modifications, or revisions shall affect any prior ARC approval.

### Section 5.3    Scope of Review

No building, fence, wall, patio, deck, outbuilding, landscaping, pool, athletic facility or other structure or Improvement shall be erected, altered or added onto or repaired upon any portion of the Property without the prior written consent of the ARC, provided however, that all Improvements erected, altered, added onto or repaired by Declarant shall be exempt from the provisions of this Article V. The Guidelines shall include restrictions on, and ARC review shall include a review of, materials, colors, design, location and such other items as the ARC shall determine from time to time in its sole discretion.

### Section 5.4    Submission of Plans

Before the initiation of construction upon any Lot (including material changes to landscaping), the Owner thereof shall first submit to the ARC a complete set of plans and specifications for the proposed Improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ARC for the performance of its function pursuant to the procedure outlined in the Guidelines (if any). In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates and funds in the amount of the applicable review fee. The review fee schedule shall be established by the ARC from time to time and shall set forth the review fee for various review/approval requests. The ARC shall have the right from time to time to amend such schedule, adjusting the fee amounts. The Association's Board shall have the authority to disapprove any fees that it deems unreasonable. The ARC may, in its discretion, require a two-step review process, whereby conceptual drawings are submitted and reviewed first. After approval of the conceptual plans, the Owner would submit the more technical plans required by this Section 5.4. The process for ARC review shall be set forth in the Architectural Guidelines promulgated by the ARC from time to time.

### Section 5.5    Plan Review

Upon receipt by the ARC of all of the information required by this Article V, it shall have twenty-one (21) days in which to review said plans. The proposed Improvements will be approved if, in the sole opinion of the ARC: (i) the Improvements will be of an architectural style and material compatible with the other structures in the Property; (ii) the Improvements will not violate any restrictive covenant or encroach upon any easement or cross building setback lines; (iii) the Improvements will not result in the reduction in property value, use or enjoyment of any of the Property; (iv) the individual or company intended to perform the work has provided proof that it is licensed under the laws of the State of Oregon and has procured insurance reasonably acceptable to the ARC; and (v) the Improvements will be substantially completed, including all cleanup, within three (3) months of the date of commencement (twelve (12) months for the construction of a complete house).

#### Section 5.6    Non-Conforming Structures

If there shall be a material deviation from the approved plans in the completed Improvements, such Improvements shall be in violation of this Article V to the same extent as if erected without prior approval of the ARC unless the Owner subsequently obtains ARC approval for such deviation, which approval may be granted or denied in the ARC's sole discretion. The ARC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof, which, if incurred by the Association, shall constitute an assessment against the applicable Lot(s).

#### Section 5.7    Immunity of ARC Members

No individual member of the ARC shall have any personal liability to any Owner or any other person for the acts or omissions of the ARC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ARC or any member thereof arising from acts or omissions of the ARC committed in good faith and without malice.

#### Section 5.8    Limited Review

Any review and approval made by the ARC is limited to compliance with the intent of the architectural and design standards of the neighborhood as may from time to time be established by the Board and/or the Guidelines. The review and approval made by the ARC is not to be construed as superseding, replacing, or modifying any review, approval, or permit required by any local, state or federal jurisdictional agencies. It is the applicant's responsibility to obtain and comply with any permits that may be required by any local, state, or federal jurisdictional agency. Nor shall any such review or approval by the ARC be deemed an assurance or statement of compliance with any applicable laws, ordinances or regulations.

#### Section 5.9    Address for Notice

Requests for ARC approval or correspondence with the ARC shall be addressed to Awbrey Park Architectural Review Committee, c/o Owner Relations Department, 296 SW Columbia, Suite A, Bend, Oregon 97702, or such other address as may be designated from time to time by the ARC in a writing addressed to all Owners. No correspondence or request for approval shall be deemed to have been received until actually received by the ARC in a form satisfactory to the ARC.

#### Section 5.10    Completion of Improvements

Once construction has commenced, each Owner shall have twelve (12) months during which to substantially complete construction, including all cleanup, of the initial Unit and three (3) months thereafter to complete the installation of landscaping on the Lot. ARC approval shall be deemed invalid if construction does not commence on the approved Improvement within

three (3) months of approval or such longer period of time as may be specified by the ARC. The ARC shall have the right to grant extensions for any deadline in this Section 5.10 with respect to any Lot when it deems the same reasonable under the circumstances.

#### Section 5.11 Unimproved Lot Maintenance

Each Owner shall maintain any vacant Lot he or she owns in a manner consistent with those standards set forth by the ARC for vacant Lots. An Owner who chooses to hold a Lot for future construction may do so provided the Lot is maintained in an attractive and neat condition and safe from fire hazard. If a Lot is not maintained as required by this Section 5.11, the Association shall have the right to perform the necessary maintenance and assess the Lot Owner for such costs.

### **ARTICLE VI - EASEMENTS**

#### Section 6.1 Utility Easements

As long as the Declarant owns a Lot, the Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. The Board shall also have the right to grant the easements described herein, subject to the approval of the Declarant so long as Declarant owns a Lot.

#### Section 6.2 Declarant's Easement to Correct Drainage

Declarant hereby reserves for the benefit of Declarant and any Builder a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property.

#### Section 6.3 Easement for Unintentional Encroachment

The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching property to the extent of such encroachment.

#### Section 6.4    Entry Easement

If the Owner of any Lot fails to maintain the Lot as required herein, fails to comply with any requirements hereunder, or if there is an emergency, the Association and/or the ARC shall have the right to enter upon the Lot as provided herein. The Association shall have the right to enter upon the Lot to make emergency repairs without providing advance notice. The Association shall have the right to enter upon the Lot to do other work reasonably necessary for the proper maintenance and operation of the Lot after providing five (5) days' written notice to the Owner. In the event that the failure to comply is related to Article V and/or the Guidelines, the ARC shall have the right to enter upon the Lot to do the work reasonably necessary to bring the Lot into compliance by providing one (1) day written notice to the Owner. In each case that notice is required, such notice may be made by a posting on the front door of the Unit located on the particular Lot. Entry upon the Lot as provided herein shall not be deemed a trespass, and neither the Association nor the ARC shall be liable for any damage so created unless such damage is caused by the Association's or the ARC's willful misconduct or gross negligence.

#### Section 6.5    Reserved Easements

Easements for installation and maintenance of utilities and/or buffers with adjacent property are reserved as may be shown on the Plat or any replat of the Property. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which would violate the terms of the easements as described on the Plat. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

#### Section 6.6    Temporary Completion Easement

All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent to the property, provided that such easement shall terminate twenty-four (24) months after the date such Lot is conveyed to the Owner by the Declarant.

#### Section 6.7    Maintenance Easements

An easement is hereby granted and reserved in favor of the Association and its successors, assigns, contractors, property managers, agents and employees over, across and upon the Common Areas and any Common Maintenance Areas or other areas of Awbrey Park necessary or appropriate for purposes of accomplishing the maintenance, repair, replacement or other obligations of the Association hereunder.



## ARTICLE VII- USE, OCCUPANCY, CASUALTY, AND INSURANCE

### Section 7.1 Residential Use/Rental/Compliance by Invitees

All Lots and Units shall be used only for single-family residential purposes in accordance with, and subject to, the other provisions of this Declaration. No Lot and/or Unit may be sold to or owned by more than four (4) people or entities jointly. In no event shall any Lot and/or Unit be used as a "timeshare" (as that term is defined by Oregon law). No Owner or Owners of any Lot may rent his or her Unit to any person or persons for transient occupancy. As used herein, "transient occupancy" shall mean a period of thirty (30) days or less. Transient use shall not include a rental of any Unit for a period of in excess of thirty (30) consecutive calendar days. Each Owner shall be responsible for compliance by all of such Owner's visitors, tenants or invitees, whether such visitor, tenant or invitee is occupying the Owner's Lot and/or Unit or otherwise visiting or using any portion of the Property, with all provisions of this Declaration, any and all rules and regulations, and all applicable laws.

### Section 7.2 Commercial, Institutional, or Other Non-Residential Uses

No commercial, institutional, or other non-residential use (including residential day care facilities) shall be conducted on any Lot without the written approval of the Board. Any such use must comply with applicable law, including, without limitation, zoning requirements. The decision of the Board shall be final and conclusive. The Board may review, and repeal, any such approval from time to time at the discretion of the Board if, in the opinion of the Board, the use has changed or increased to a level not consistent with the original approval. In no event shall the decision of the Board as to permissibility of a requested non-residential use be construed as a representation of the legal permissibility of such use.

### Section 7.3 Declarant or Builder Use

The provisions of this Article shall not apply to the use of any Lot or Unit by the Declarant or a Builder, provided such Builder obtains the written approval of Declarant, as i) a model home, sales office, or construction office; or ii) the use of any Lot as a site for a sales office trailer or construction office trailer. Declarant shall not unreasonably withhold approval under this Section 7.3.

### Section 7.4 Casualty

In the event of damage to or destruction of a Unit, the Owner of the Unit shall repair, reconstruct, and rebuild the damaged or destroyed portions of the Unit to substantially the same condition that existed prior to the damage or destruction or consistent with such plans and specifications as are approved in accordance with Article V of this Declaration. Alternatively, the Owner shall promptly clear the Lot of all debris and ruins and maintain the Lot consistent with the terms of Section 5.11. All repair, reconstruction, or rebuilding shall begin within six (6) months following the damage or destruction, and shall be diligently pursued to completion within twelve (12) months following the damage or destruction, unless work is delayed by causes

beyond the reasonable control of the Owner. If an Owner fails to timely repair such damage or clear the Lot, the Association shall have all rights of enforcement and remedies set forth under this Declaration. The ARC shall have the right to extend the deadlines contained in this Section 7.4 if it deems the same reasonable under the circumstances; provided, however, in no event may any Owner leave his or her Unit or Lot in a condition that poses a health or safety hazard.

## **ARTICLE VIII- PROPERTY RIGHTS**

### **Section 8.1    Owner's Use and Occupancy**

Except for the easements shown on the Plat and/or granted herein, or as otherwise provided herein, by applicable law or by the terms of any instruments recorded against the applicable Lot, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot. Declarant, the ARC and any representative of the Association authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use of and/or Improvements on such Lot are then in compliance with this Declaration; provided however, except in the case of emergency, the Association shall first provide the Owner with five (5) days' prior written notice if entry is to be by the Association or Declarant or one (1) day written notice if entry is to be by the ARC, which notice may be given by posting on the front door of the Unit. No notice shall be required in the case of emergency. No such entry shall be deemed to constitute a trespass, conversion, or otherwise create any right of action in the Owner of such Lot.

### **Section 8.2    Owners' Easements of Enjoyment**

Every Owner shall have a right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A.     The right of the Association to establish and publish rules and regulations governing Awbrey Park, including use of the Common Areas, affecting the welfare of Association members.
- B.     The right of the Association (subject to such notice and/or hearing requirements as may be imposed by applicable law) to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid or during which such Owner is otherwise in material breach hereunder; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- C.     The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for public right-of-way purposes. Any other transfer or mortgage of Common Areas requires the consent of at least seventy-five percent (75%) of the votes outstanding, and the consent of the Declarant so long as Declarant owns a Lot.

D. All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

#### Section 8.3 Effect of Declaration

Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

#### Section 8.4 Rezoning Prohibited

No Lot shall be rezoned without the prior written consent of the Board and of the Declarant so long as Declarant owns a Lot, which may be withheld in the Board's or Declarant's sole discretion, as applicable. Declarant or the Board may enforce this covenant by obtaining an injunction against any non-approved rezoning at the expense of the enjoined party.

#### Section 8.5 Lot Consolidation and Division

No Lot may be consolidated with another Lot. No Lot may be subdivided. Notwithstanding the foregoing, so long as there is at least one Class B Member Declarant shall have the right to consolidate and/or subdivide Lots within Awbrey Park, subject to applicable Deschutes County Ordinances. Upon the completion of a subdivision of a Lot, each newly created parcel shall immediately constitute a Lot and the owner of fee title thereof shall become an Owner with all of the rights granted to Owners hereunder. Upon the completion of a subdivision of a Lot, each newly created Lot shall be entitled to the voting rights as set forth in Section 2.2, and assessments shall be reallocated and reapportioned in the manner set forth in Section 2.14 as if each of the newly created lots had been annexed into Awbrey Park. Upon the completion of a consolidation of two Lots, the newly created Lot shall be treated as one Lot, entitled to the voting rights as set forth in Section 2.2. The newly created Lot shall continue to pay assessments as if it were two Lots until the end of the then-current assessment year. Thereafter, the Lot shall be subject to only one set of assessments and the Association shall calculate assessments on the basis that there is one less Lot in Awbrey Park.

#### Section 8.6 Drainage Alteration Prohibited

The surface water drainage contours of each Lot shall conform to the approved grading plan established by the Declarant or any Builder. No Owner shall fill or alter any drainage swale established by the Declarant or any Builder, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by the Declarant or any Builder. Each Owner shall take steps

to assure that its Lot has adequate drainage and does not cause runoff to be directed onto any adjacent property.

## **ARTICLE IX- USE RESTRICTIONS/BUILDING STANDARDS**

### **Section 9.1 Exterior Lighting and Noise-making Devices.**

All exterior lighting and noise-making devices shall be subject to the Guidelines, the review and approval of the ARC and all applicable ordinances.

### **Section 9.2 Nuisances**

No noxious or offensive activity shall be carried out upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting the generality of the foregoing, "noxious or offensive activity" shall include the generation of noxious odors or noise. The Board shall have the sole authority to determine nuisances and its decision shall be final and conclusive.

### **Section 9.3 Development Activity**

Notwithstanding any other provision herein, Declarant, and its successors and assigns to whom Declarant assigns such rights, shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of dwelling units on the Property.

### **Section 9.4 Temporary Structures**

No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant or any Builder (with permission from Declarant) to use trailers or outbuildings as sales offices, construction offices, material storage facilities, or sanitation facilities.

### **Section 9.5 Signs**

Except as permitted in this Section 9.5, no sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot or mounted on any vehicle or trailer parked or driven on the Property or carried by any person or by any other means displayed within the Property except with the written approval of the ARC. Notwithstanding the foregoing, "for sale" signs shall be permitted on a Lot provided the same complies with ARC design standards. In addition, until the Turnover Meeting, Declarant may erect signs or billboards, and at any time, Declarant or the Association shall have the right to erect signs or monuments that identify Awbrey Park, in either case without the need for ARC approval.

Section 9.6 Campers, Boats, Recreational Vehicles, Certain Trucks, Commercial Vehicles, and other Non-Passenger Vehicles

No campers, boats, boat trailers, recreational vehicles, commercial vehicles, trucks weighing more than 10,000 pounds GVW, or other types of non-passenger vehicles, equipment, implements, or accessories shall be kept or stored on any Lot except (i) with the Board's approval, or (ii) as provided below:

A. Except to the extent the same is screened from public view and from the view from adjacent property (including adjacent Lots and public rights of way), no recreational vehicles, disabled vehicles, campers, boats, boat trailers, recreational trailers, or other types of non-passenger vehicles, equipment, implements, or accessories shall be parked or stored on or adjacent to any Lots. In the event of a dispute as to whether there is adequate screening for purposes of this Section 9.6, the determination of the ARC shall be definitive.

B. The Board, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle, equipment, implements and/or accessory is operable and adequately screened from public view and from the view from any portion of the Property other than the applicable Lot. Upon an adverse determination by said Board, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this Section 9.6.

C. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in the streets within the Property, or in any driveway or yard adjacent to a street, or that is not screened from public view and from the view from any portion of the Property other than the applicable Lot.

Section 9.7 Pets, Livestock and Poultry

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except for cats, dogs or other generally recognized household pets of a reasonable number, provided that they are not kept, bred, or maintained for any commercial purpose. In the event of a dispute, the Board shall make the final decision as to what constitutes "a reasonable number" under particular circumstances. All such animals shall be kept on the Lot and in strict accordance with all applicable laws and ordinances (including leash laws) and in accordance with all rules established by the Association. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the ARC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened from public view and from the view from adjacent property (including adjacent Lots and public rights of way). Each Owner is solely responsible for his or her pets, shall assure that such pets do not create a nuisance or otherwise damage any portion of the Property, and shall clean up after such pets.

#### Section 9.8 Garbage and Refuse Disposal; Wood Piles

No Lot, Common Area or any other portion of Awbrey Park shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, or disposed of, on any Lot or Common Area except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, debris, or recyclable materials shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage, rubbish, or recyclable materials, and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal, but shall be removed from view before the following day. All wood piles shall be screened from public view and from the view from any portion of the Property other than the applicable Lot. All such screening shall be of an attractive nature, consistent with the overall development scheme of Awbrey Park.

#### Section 9.9 Parking in Common Areas/No Parking Signage

No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, or on any easement unless in use for maintaining such Common Areas, provided however, that this restriction shall not apply to driveways, streets or paved areas intended for vehicular use. In addition, parking of vehicles is prohibited on any public or private street within the Property that is signed or otherwise marked for "No Parking" by the Association or a governmental authority. The Association shall have the right to tow any vehicles in violation of this Section 9.9 at the vehicle owner's expense.

#### Section 9.10 Commercial or Institutional Use

No Lot, and no building erected or maintained on any Lot shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes, except as set forth in Article VII.

#### Section 9.11 Detached Buildings

No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior consent of the ARC. Every detached accessory building, inclusive of such structures as storage buildings, greenhouses, doghouses, or children's playhouses shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition and consistent with the Guidelines.

#### Section 9.12 General Landscaping and Exterior Maintenance

A. Each Lot Owner shall keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. Each Lot Owner shall keep all Improvements upon his or her Lot in good condition and repair and



adequately painted or otherwise maintained. Declarant, the Association, and the ARC shall have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; and to paint, repair, or otherwise maintain any improvements in need thereof, and to charge the cost thereof to the Lot Owner; provided, however, except in the case of emergency, the Declarant, the Association and/or the ARC shall first provide the Owner with at least one (1) day prior written notice, which notice may be given by a posting on the front door of the Unit located on such Lot.

B. The initial landscaping, as well as all subsequent material changes to such landscaping, shall be subject to final approval by the ARC; provided, however, the planting of annual flowers or plants shall not require ARC approval. In the event that an Owner complains to the ARC that the annual flowers or plants planted by another Owner are not in keeping with the general character and appearance of Awbrey Park, the ARC shall review the same and its determination shall be conclusive. All landscaping shall remain fully irrigated unless otherwise approved by the ARC. All Owners shall keep their Lots, including all Improvements thereon, well-maintained and in an attractive condition, consistent with the overall development approved within Awbrey Park by the ARC. All vacant Lots shall be maintained in a manner that is consistent with ARC guidelines for vacant Lots.

C. Except in the case of imminent threat of harm to persons or Improvements or as may be deemed advisable by the Association, the removal of trees shall require the prior written approval of the ARC. All tree removal shall comply with applicable laws and ordinances.

#### Section 9.13 Antennae, Satellite Dishes and Solar Collectors

No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view and from the view from any portion of the Property other than the applicable Lot; and no such apparatus shall be erected without the prior written consent of the ARC. The ARC, as designated in this Declaration, shall have the absolute authority to determine whether an accessory is adequately screened. The authority of the ARC in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority.

#### Section 9.14 Clothes Hanging Devices/Fences

Clothes hanging devices exterior to a dwelling shall be temporary, unaffixed structures shall not be visible from adjacent property or any portion of the Property. Clothes hanging devices shall be screened from public view and from the view from any portion of the Property other than the applicable Lot. No fences shall be permitted except with the prior written approval of the ARC or as may be installed by the Association.

#### Section 9.15 Security

Neither Declarant nor the Association shall be responsible for security of the Common Maintenance Areas (including the Common Areas) or any Unit or Lot, and the Owners are exclusively responsible for security of their Units, Improvements, Lots and property.

#### Section 9.16 Construction Activities

This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by a Lot Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the Deschutes County area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the ARC in its sole good faith judgment, the ARC shall have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is excessive accumulation of debris of any kind which is offensive, or detrimental to it or any other portion of the Property, then the ARC may contract for or cause such debris to be removed, and the Lot Owner shall be liable for all expenses incurred in connection therewith. Each Owner shall assure that his or her contractor(s) shall strictly comply with such construction rules and regulations as may be set forth by the ARC and/or the Board from time to time.

#### Section 9.17 Unit Construction

All buildings or other Improvements (including fences), permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with such setback standards as may be imposed by the local governmental jurisdictional authority, as may be set forth in the deed for a particular Lot and/or as may be established by the ARC from time to time. In no event shall any Owner apply to the applicable local governmental jurisdictional authority and/or the ARC for a variance to construct any Improvement in excess of thirty (30) feet.

#### Section 9.18 ARC Supervisory Authority Over Construction Activities

All construction activities on the Property, including, without limitation, staging, shall be governed by the ARC and such guidelines, rules and regulations as it may promulgate from time to time.

#### Section 9.19 Motorized Vehicles

No motorized vehicles of any kind shall be permitted on any part of the Property except roads and driveways.

## ARTICLE X - ANNEXATION

### Section 10.1 Annexation by Declarant

At any time during the Initial Term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 129 Lots in the planned community of Awbrey Park, including the Lots currently existing, and Lots expected to be created in property to be annexed to Awbrey Park, but this number may be adjusted at the sole discretion of Declarant, subject to the terms of Section 10.1.A. Declarant shall have no obligation of any kind to annex any additional property to the Property.

#### A. Eligible Property

Any or all of the real property in Deschutes County, Oregon adjacent to ("adjacent" property shall include property on the other side of a public right of way, a public or private street or a river) or contiguous with the Property shall be eligible for annexation. There is no limitation on the amount of land that Declarant may annex to the Property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements, or land use approvals or as set forth herein.

#### B. Consent or Joinder Not Required

No consent or joinder of any Class A member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

#### C. Declaration of Annexation

Annexation shall be evidenced by a written Declaration of Annexation (the "Declaration of Annexation") executed by the Declarant, or (in the case of an annexation by action of members) by the Board and the owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a declaration of annexation with respect to any annexed property may:

- i) establish such limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property;
- ii) establish additional or different limitations, uses, restrictions, covenants and conditions as Declarant may deem to be appropriate for the development of such annexed property; and/or

iii) contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.

Without limitation of the meaning of the foregoing provisions of this Section 10.1, in any Declaration of Annexation Declarant may, but shall not be obligated to, establish easements particular to different Lots and/or to create any such Sub-Associations as it may elect.

D. Voting Rights; Allocation of Assessments

Upon annexation, additional Lots so annexed shall be entitled to the voting rights as set forth in Section 2.2, and assessments shall be reallocated and reapportioned in the manner set forth in Section 2.14.

Section 10.2 Annexation by Action of Members

At any time the Board may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved by at least seventy-five percent (75%) of the outstanding votes and by Declarant so long as Declarant owns at least one (1) Lot. Any property that is contiguous to existing property subject to this Declaration may be annexed hereto according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation as set forth in Subsection 10.1.C above executed by the parties herein described.

Section 10.3 No Duty to Annex

Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

**ARTICLE XI – GENERAL**

Section 11.1 Remedies

If any default by any Owner under the provisions of the Declaration, Bylaws or rules and regulations of the Association shall occur, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided

or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest from the due date until paid at the rate set by the Board by resolution from time to time but in no event greater than the highest rate allowed by Oregon law at the time of the non-payment, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective maintenance assessment (to the same extent as the lien provided herein for unpaid assessments), upon the Lot and upon all of his additions and Improvements thereto, and upon all of his personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner. Without limiting the generality of this Section 11.1, any and all costs incurred by the Association and/or the ARC in remedying an Owner's violation of this Declaration shall be an assessment against such Owner's Lot in accordance with Section 2.13, secured by a lien upon such Lot pursuant to the terms of Section 2.12.

#### Section 11.2 Fines Imposed by the Association

In addition to any other remedies available to the Association hereunder, the Association shall have the right to impose reasonable fines upon an Owner who violates the Declaration, Bylaws and any rules or regulations of the Association, in the manner and amount the Board deems appropriate in relation to the violation after giving written notice and an opportunity to be heard to the alleged violating Owner; provided, however, such charge or fine is based upon (i) a schedule contained in the Bylaws (or amendment thereto or to this Declaration that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing addresses designated in writing by the Owners); or (ii) a resolution of the Association or its Board that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing addresses designated in writing by the Owners.

#### Section 11.3 Term and Amendments

The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded (the "Initial Term"), after which time they shall be automatically extended for successive periods of ten (10) years each, unless a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding is presented to the Board or other duly appointed and authorized persons, which shall authorize the Board, or other duly appointed and authorized persons, to execute and properly record a notice of termination of this Declaration in the real property records of Deschutes County, Oregon. This Declaration may be amended at any time during the first thirty (30) year period or any extension thereof, by a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding, and the consent of the Declarant so long as the Declarant is a Class B Member, being presented to the Board, or other duly appointed and authorized persons, which shall authorize the Board, or other duly appointed and authorized persons, to execute and properly record an instrument amending this Declaration. Subject to the

provisions of Section 11.4, notwithstanding any provisions hereof to the contrary, the Declarant may, at its sole discretion and without consent being required of anyone, modify, amend or repeal this Declaration at any time before the closing of the sale on the first Lot, provided said amendment, modification, or repeal is in writing and properly recorded in the Deed Records of Deschutes County, Oregon.

Declarant further reserves the right at any time to amend this Declaration, or any amendment hereto, in order to correct scrivener's errors. In no event shall an amendment pursuant to this Section create, limit, or diminish Declarant's special rights without Declarant's written consent or change the boundaries of any Lot or any use to which any Lot is restricted unless the Owners of the affected Lots consent to the amendment.

#### Section 11.4 Regulatory Amendments

Notwithstanding the provisions of Section 11.3, until the Turnover Meeting described in the Bylaws and to the extent permitted by applicable law, Declarant shall have the right to amend this Declaration or the Bylaws in order to comply with the requirements of any applicable statute, ordinance, regulation or guideline of any department, bureau, board, commission or agency of the United States or the State of Oregon or to comply with any applicable law, including, without limitation, the Oregon Planned Community Act.

#### Section 11.5 Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

#### Section 11.6 Rights and Obligations

The provisions of this Declaration and the Articles of Incorporation and Bylaws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and Bylaws, whether or not mention thereof is made in said deed.

#### Section 11.7 Miscellaneous Provisions

Any provision of the within Declaration or of the Articles of Incorporation and Bylaws to the contrary notwithstanding, the following provisions shall control:



A. Notice to Institutional Holders of First Mortgage Liens

The following actions will require notice to all institutional holders of first mortgage liens: (i) abandonment or termination of the Association; or (ii) material amendment to the Declaration.

B. Notice to Institutional Holders of First Mortgage of Default or Liens

Upon the written request of any first mortgagee of a dwelling on a Lot, the Association shall furnish to such mortgagee a written notice of any default by the Owner of such dwelling in the performance of such Owner's obligations under the within Declaration or the Bylaws or Association rules or regulations which is not cured within thirty (30) days. Any first mortgagee of a dwelling who comes into possession of the said dwelling pursuant to the remedies provided in the mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged dwelling which accrued before the time such holder comes into possession of the dwelling.

C. Consent of Institutional Holders of First Mortgage Liens

Unless at least seventy-five percent (75%) of the first mortgagees (based upon one (1) vote per Lot for each mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

i) by act or omission seek to abandon, partition, encumber, or transfer the Common Areas, if any, or any portion thereof or interest therein except for the purpose of dedication for public right of way. (The granting of easements for public utilities or other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause.);

ii) substantially change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner by the Association;

iii) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the Units or maintenance of the Units or Lots; or

iv) fail to maintain liability and extended coverage insurance on insurable property comprising a part of the Common Areas on a current replacement cost basis in an amount not less than one hundred (100) percent of the insurable value (based on current replacement costs).

Section 11.8 Personal Pronouns

All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

Section 11.9 Statutory References

All references to particular statutory provisions in this Declaration shall be deemed to refer to such statutory provisions or their successor provisions, if applicable.

Section 11.10 Headings

The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 11.11 Conflicts

If there is a conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

Section 11.12 Partial Invalidity

The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of this \_\_\_ day of December, 2003.

**DECLARANT:**

BROOKS RESOURCES CORPORATION, ,  
an Oregon corporation

By: Barbara Hess  
Name: Barbara Hess  
Title: Corp. Secretary

STATE OF OREGON        }  
                                      }  
COUNTY OF Deschutes }

The foregoing instrument was acknowledged before me the 11 day of December 2003, by Barbara Ness, the Secretary of Brooks Resources Corporation, an Oregon corporation, on behalf of the corporation.

Kathleen Restivo  
Notary Public, State of Oregon  
My Commission Expires: 7-29-2004



**EXHIBIT "A"**

**PROPERTY SUBJECT TO DECLARATION**

ALL LTHAT LAND WITHIN THE OFFICIAL PLAT of AWBREY PARK, PHASE ONE  
recorded on December 11, 2003, in Plat Cabinet G, Page 107 in the Office of Deschutes County  
Clerk and recorded in Volume 2003, Page 84257 in the official records of Deschutes County,  
Bend, Oregon

2004 / 37430  
6/24/04

2004 / 37430  
6/24/04

6/24/04

**DECLARATION  
ADDING LAND TO THE  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR AWBREY PARK**

The undersigned does hereby declare and provide that the property shown on the official plat of AWBREY PARK, PHASE TWO, City of Bend, Deschutes County Oregon, shall be subject to the terms of the Declaration of Covenants, Conditions and Restrictions for AWBREY PARK, PHASE ONE, recorded on December 11, 2003 in Volume 2003 Page 84437, Deschutes County Official Records, and to the Bylaws of Awbrey Park Homeowners' Association, Inc recorded on December 11, 2003 in Volume 2003, Page 84438, Deschutes County Official Records.

IN WITNESS WHEREOF, BROOKS RESOURCES CORPORATION, an Oregon Corporation, have executed this Declaration the 24<sup>th</sup> day of May, 2004

BROOKS RESOURCES CORPORATION, an Oregon corporation.

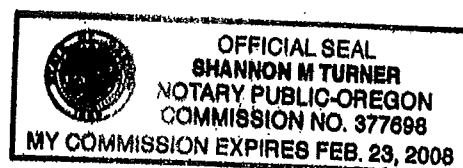
**Kirk E. Schueler, President**

[illegible]

The foregoing instrument was acknowledge before me this 24th day of May, 2004 by Kirk E. Schueler, President of Brooks Resources Corporation, an Oregon Corporation.

Notary Public for Oregon

After recording, return to  
Amerititle  
15 OREGON AVENUE, BEND



00948



226↓  
After Recording Return to:  
North Rim Homeowners' Association, Inc.  
409 NW Franklin Street  
Bend, Oregon 97701  
Attn: Sue Bussard

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR NORTH RIM**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR NORTH RIM (this "Declaration"), to be effective upon its recording in Deschutes County, Oregon, is made and executed on the date hereinafter set forth by Brooks Resources Corporation, an Oregon corporation, hereinafter referred to as the "Declarant".

**WITNESSETH**

Declarant is the owner of that certain real property in the City of Bend, Deschutes County, Oregon, described on **Exhibit A** attached hereto and incorporated herein by reference, which property was platted pursuant to that certain plat recorded in the real property records of Deschutes County on June 30, 2004, in Volume 2004, Page 39029.

Declarant desires to create a planned community known as North Rim on the land described on **Exhibit A** and on such other land as may be added thereto pursuant to the terms and provisions of this Declaration.

NOW THEREFORE, the Declarant declares that the real property described on attached **Exhibit A**, and any property subsequently annexed into this Declaration (collectively, the "Property"), shall be held, sold, hypothecated, and conveyed subject to the covenants, conditions, and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Homesite and other portions of the Property in order to maintain within the Property a community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

By recordation of this Declaration in the real property records of Deschutes County, Oregon, Declarant is hereby creating a Class I planned community, pursuant to and subject to ORS 94.550 to 94.785, and applicable successor provisions.

Funds for the maintenance and operation of common maintenance areas will be provided through assessments against those who purchase property within North Rim, although to assist with the development, Declarant may from time to time itself provide some improvements. For the protection of all owners of property in North Rim, there will be a system



designed to assure that each person who purchases property in North Rim will pay an equitable share of the costs for maintenance and development of the common maintenance areas.

## ARTICLE I - DEFINITIONS

### Section 1.1    "Architectural and Landscape Review Committee" or "ALRC"

"Architectural and Landscape Review Committee" shall mean the North Rim Architectural and Landscape Design Committee, established pursuant to Section 5.1.

### Section 1.2    "Association"

"Association" shall mean North Rim Homeowners' Association, Inc., an Oregon nonprofit corporation established for the purposes set forth herein and pursuant to ORS Chapter 65.

### Section 1.3    "Board"

"Board" shall mean the Board of Directors of North Rim Homeowners' Association, Inc.

### Section 1.4    "Buildable Area"

"Buildable Area" shall have the meaning given that term in Section 5.12 hereof.

### Section 1.5    "Builder"

"Builder" shall mean Declarant and any residential building company acquiring Homesites from the Declarant for the purposes of construction and sale of homes.

### Section 1.6    "Bylaws"

"Bylaws" shall mean the Bylaws of the Association, as amended from time to time. The Bylaws shall be recorded in the real property records of Deschutes County, Oregon.

### Section 1.7    "Common Areas"

"Common Areas" as used herein, shall mean only that portion of the Property, together with all improvements located thereon, that is established for the common use and benefit of property owners within North Rim and identified as "Common Areas" on a plat of any portion of the Property, in an amendment to this Declaration or in a supplemental declaration or Declaration of Annexation, and which shall be conveyed to the Association for the use and benefit of the Owners. The initial Common Areas are identified on the Plat as Common Lots and include a Lodge, sidewalks, open spaces, roads and trails. Until the Turnover Meeting, the Declarant shall have the right to designate Common Areas in the future by recordation of a duly approved amendment to this Declaration or by recordation of a supplemental declaration or

Declaration of Annexation. In addition, the private ways (roads) are initially designated as Common Maintenance Areas, but the Declarant reserves the right at any time in the future (prior to the Turnover Meeting) to designate such private ways and sidewalks (whether relocated or not) as Common Areas. Not later than the Turnover Meeting, Declarant shall convey in fee the Common Areas to the Association, subject to the Association's agreement to continue maintenance thereon. The Common Areas are subject to such easements as may be recorded against them and/or shown on the Plat.

Section 1.8    "Common Maintenance Areas"

"Common Maintenance Areas" shall mean that property and/or Improvements for which the Association bears some responsibility to operate and/or maintain and/or repair and/or replace and/or insure. Common Maintenance Areas include the Common Areas, but also includes other property and/or Improvements owned by third parties. The Association shall not be responsible for insuring and/or replacing real property that it does not own, though it may choose to do so, if the Board, in its sole discretion, deems the same to be in the best interests of the Association. The Common Maintenance Areas shall include the following:

1.     The Common Areas;
2.     All ornamental lighting on private ways (roads) and Common Areas;
3.     The private ways (roads), which Declarant may relocate and/or realign from time to time prior to the Turnover Meeting;
4.     Sidewalks, some of which cross individual Homesites;
5.     The Native Areas (as defined in Section 1.18)
6.     Any areas within public rights of way that are landscaped and/or irrigated by Declarant and/or the Association;
7.     Utilities that serve Common Areas and, in the discretion of the Board, that serve Common Maintenance Areas;
8.     Any street identification signs, including but not limited to traffic control and parking signs, or homesite markers and address markers installed by Declarant and/or the Association; and
9.     Any areas within public rights-of-way, public easements, tracts, public parks or any other property (including improvements) that the Board deems necessary or appropriate to maintain for the common benefit of the Owners.

Until the Turnover Meeting, the Declarant shall have the right to designate additional Common Maintenance Areas (including Common Areas) in the future or to remove Common Maintenance Areas (but excluding Common Areas unless approved by a vote of the

Owners) by recordation of a duly approved amendment to this Declaration or by recordation of a supplemental declaration or Declaration of Annexation.

Section 1.9 "Conversion Date"

"Conversion Date" shall be the date upon which Class "B" membership (as defined in Section 2.2) shall cease and be converted to Class "A" membership (as defined in Section 2.2). Such date shall be the date which is the earliest of (i) the date at which one hundred percent (100%) of the total Homesites existing at any time (including any annexed Homesites) have been conveyed to Class "A" members; or (ii) fifteen (15) years after conveyance of the first Homesite to a Class "A" member; or (iii) at such earlier time as Declarant may elect in writing to terminate Class "B" membership.

Section 1.10 "County"

"County" shall mean Deschutes County, Oregon.

Section 1.11 "Declarant"

"Declarant" shall mean Brooks Resources Corporation and/or its successors and assigns, who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Homesites acquired by such successor or assign.

Section 1.12 "Declaration"

"Declaration" shall mean this Declaration of Protective Covenants, Conditions, and Restrictions for North Rim and any amendments and supplements thereto made in accordance with its terms.

Section 1.13 "Design Guidelines" or "Guidelines"

"Design Guidelines" or "Guidelines" shall mean the North Rim Architectural and Landscape Design Guidelines, established and revised pursuant to Section 5.2.

Section 1.14 "Directors"

"Directors" shall mean the Board of Directors of the Association.

Section 1.15 "Homesite"

"Homesite" shall mean any of the plots or lots of land indicated upon the recorded subdivision map of the Property or any part thereof creating single-family homesites, with the exception of the Common Areas and the private ways (roads) and areas deeded to a governmental authority or utility, together with all Improvements thereon.

Section 1.16 "Improvement"

"Improvement" shall mean every structure or improvement of any kind, including, but not limited to, a Unit, landscaping, screening features, site walls, walls, driveways, fixtures, shelters, or other product of construction efforts (including painting, alterations, and reconstruction) on or with respect to North Rim.

Section 1.17 "Native Area"

"Native Area" shall mean that portion of each Homesite designated in the Design Guidelines as the "Native Area" on which the applicable Owner may not install any Improvements, including landscaping; provided, however, each Owner shall be responsible for the restoration of any Native Area damaged by construction on the Homesite. Such restoration plan shall be subject to the prior, written approval of the ALRC. The Declarant shall install and the Association shall maintain native vegetation in the Native Area. As used herein, "native vegetation" shall mean vegetation that is native to Central Oregon or otherwise grows naturally in and around Central Oregon and is included on the North Rim Native Area Plant List maintained by the ALRC.

Section 1.18 "North Rim"

"North Rim" shall mean the community of North Rim created on the Property.

Section 1.19 "Ornamental Area"

"Ornamental Area" shall mean that portion of each Homesite designated in the Design Guidelines as the "Ornamental Area" on which the applicable Owner may install non-native landscaping, provided the same is first approved by the ALRC. The Ornamental Area shall be subject to screening or enclosing requirements established by the ALRC.

Section 1.20 "Owner"

"Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Homesite, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.21 "Phase"

"Phase" shall mean all the Homesites made subject to this Declaration together as part of the same Plat.

Section 1.22 "Plat"

"Plat" shall mean the duly recorded plat of \_\_\_\_\_, recorded in Cabinet "\_\_\_\_," Page \_\_\_\_ under Recorder's No. Volume 2004-\_\_\_\_, Official Records, Deschutes County,

Oregon and any other recorded plats of real property brought within the jurisdiction of the Association and made subject to this Declaration by a Declaration of Annexation.

Section 1.23 "Property"

"Property" shall mean the real property described on the attached **Exhibit A**, and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration by a Declaration of Annexation.

Section 1.24 "Turnover Meeting"

"Turnover Meeting" shall be the meeting of the Owners called by the Declarant to turn over control of the Association to the Class A members.

Section 1.25 "Unit"

"Unit" shall mean any residential dwelling and all related accessory buildings situated upon any Homesite.

**ARTICLE II – NORTH RIM HOMEOWNERS' ASSOCIATION, INC.**

Section 2.1 Membership

The Declarant and every Owner of a Homesite by virtue of ownership of such Homesite shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Homesite. Until the Conversion Date, there shall be two (2) classes of membership, Class A and Class B as described in Section 2.2.

Section 2.2 Voting Rights

The Association shall have two (2) classes of voting membership:

A. Class A

Class A members shall be all Owners with the exception of Declarant (except that beginning on the date on which Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners, including Declarant) and shall be entitled to one (1) vote for each Homesite owned. When more than one (1) person holds an interest in any Homesite, all such persons shall be members, but the vote for such Homesite shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Homesite.

B. Class B

The Class B member shall be the Declarant, who shall be entitled to one hundred twenty-five (125) votes for each Homesite it owns until the Conversion Date at which time the Class B membership shall be converted to a Class A membership.

Section 2.3    Suspension

All voting rights of an Owner shall be suspended during any period in which such Owner is thirty (30) or more days overdue in the payment of any assessment duly established pursuant to this Article II (provided the suspension shall not be effective unless and until the Association has followed all notice and hearing requirements established by applicable law, if any) or is otherwise in default under this Declaration, the Bylaws or the Rules and Regulations of the Association.

Section 2.4    Turnover Meeting

The Declarant shall call a Turnover Meeting within ninety (90) days following the Conversion Date for the purposes of turning over control of the Association to the Class A members. The Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. The Turnover Meeting shall be conducted in accordance with the Bylaws of the Association. At the Turnover Meeting, the Declarant shall turn over to the Association the responsibility for the planned community of North Rim and of the Association and the Association shall accept such administrative responsibility. At the Turnover Meeting, the Owners shall elect a Board in accordance with the Bylaws. At the Turnover Meeting, the Declarant shall deliver to the Association those items and documents required by ORS 94.616 or applicable successor provisions. In order to facilitate an orderly transition, during the three-month period following the Turnover Meeting, the Declarant or an informed representative shall be available to meet with the Board on at least three mutually acceptable dates to review the documents delivered pursuant to this Section 2.4. Not later than ninety (90) days after the Turnover Meeting, the Association shall provide Declarant with an estoppel certificate (i) certifying that Declarant has satisfied all of its obligations owed to the Association, including, without limitation, any obligations arising out of or related to this Declaration, or (ii) identifying with specificity the extent to which any such obligations remain unsatisfied.

Section 2.5    Immunity of the Board

No individual member of the Board shall have any personal liability to the Association, any Owner or any other person for the acts or omissions of the Board if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the Association, the Board or any member thereof arising from such acts or omissions.



## Section 2.6 Clarification of Role of Association

The Association shall have the general powers and duties of a nonprofit corporation pursuant to the Oregon Nonprofit Corporations Act, as well as the specific powers and duties set forth in the provisions of this Article and the other provisions of this Declaration that expressly relate to the Association, as well as pursuant to the Articles of Incorporation of the Association ("Articles") and the Bylaws. However, unless expressly set forth herein or in the Articles or the Bylaws, the Association shall not act in the capacity of settling disputes between Owners or resolving problems that Owners may experience. Disputes or problems experienced by Owners to which the Association has no express authority or role as set forth in this Declaration shall be resolved by private, lawful means chosen by the affected Owners and there shall be no recourse to the Association.

## Section 2.7 Transitional Advisory Committee

Declarant or the Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant for the planned community of North Rim to administrative responsibility by the Association. Not later than the sixtieth (60th) day after Declarant has conveyed to Owners other than Declarant Homesites representing fifty (50) percent or more of the Homesites then existing in North Rim, Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three (3) or more members. The Owners, other than Declarant, shall select two (2) or more members. Declarant may select no more than one (1) member. The Transitional Advisory Committee shall have reasonable access to all information and documents that Declarant is required to turn over to the Association under ORS 94.616(3), or applicable successor provisions.

## Section 2.8 Funding

Subject to the terms of this Article II, the Declarant hereby covenants for each Homesite owned within the Property, and each Owner of any Homesite by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) annual or periodic assessments or charges; and (ii) special assessments for capital improvements to the Common Areas and Common Maintenance Areas, such assessments to be established and collected as hereinafter provided. The annual or periodic assessments shall include any reserve assessments necessary to establish and maintain any reserve funds created under Section 2.10. Such assessments will remain effective for the full term (and extended term, if applicable) of this Declaration. The annual and special and other assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Homesite against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Homesite(s) at the time when the assessment fell due.

## Section 2.9    Annual Assessment or Charge for Homesites

Subject to the terms of this Article, each Homesite is hereby subject to an assessment in an amount not to exceed an amount determined by the Board (until such assessment charge shall be modified as provided in the Bylaws of the Association), for the purpose of creating a fund to be designated and known as the "maintenance fund" for matters described under Section 2.9, the "reserve fund" for matters described under Section 2.10, as well as any other funds contemplated under this Declaration, or any other fund called for by this Declaration or a Declaration of Annexation. Charges and assessments for funding such funds will be paid by the Owner or Owners of each such Homesite in advance in monthly, quarterly or annual installments, commencing as provided in this Section 2.7. The rate at which each Homesite will be assessed, and whether such assessment shall be payable monthly, quarterly or annually, will be determined by the Board at least thirty (30) days in advance of each assessment period. Said rate may be adjusted from time to time by the Board as the needs of the Association may, in the judgment of the Board, require. The annual assessment (excluding additional assessments pursuant to Section 2.13 and/or Section 2.15) for each Homesite shall be uniform except as specifically provided herein or as provided in any Declaration of Annexation for North Rim. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment for a particular Homesite has been paid for a particular assessment period. No Homesite Owner shall have any right to any common profits of the Association. All Homesites in a Phase (including those owned by Declarant) become subject to assessment on the day the first Homesite in that Phase is conveyed to an Owner other than Declarant. Notwithstanding any other terms contained herein, the Declarant shall have the right (i) to abate or pro-rate the initial imposition of annual assessments for the first Phase for a period of time determined by Declarant; and/or (ii) to abate or pro-rate annual assessments for Homesites sold prior to the date on which all intended subdivision improvements and/or improvements to Common Maintenance Areas are completed, all in Declarant's reasonable discretion.

## Section 2.10    Declarant Responsibility

So long as there is Class B membership, Declarant hereby covenants and agrees that in the event that the annual maintenance fund revenues are insufficient to pay the operating expenses of the Association, it shall provide the funds necessary to make up the deficit, within thirty (30) days of receipt of request for payment thereof from the Association, provided that if the deficit is the result of the failure or refusal of an Owner or Owners to pay their annual maintenance assessments, the Association shall diligently pursue all available remedies against such defaulting Owners, including the immediate institution of litigation to recover the unpaid assessments, and shall reimburse the Declarant the amounts, if any, so collected.

## Section 2.11    Establishment of Maintenance Fund

The Association shall establish a maintenance fund composed of annual maintenance assessments and shall use the proceeds of such fund in providing for the operating expenses and normal, recurring maintenance expenses of the Association. Those items to be

funded by such assessments may include, by way of clarification and not limitation, any and all of those items listed in Section 3.2.

#### Section 2.12 Reserve Funds

##### A. Reserve Fund for Replacing Common Maintenance Areas.

Declarant shall in addition establish a reserve fund in the name of the Association for replacement, in whole or in part, of the Common Areas and any Improvements located in, on, or under the Common Maintenance Area for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years, including exterior painting, if any. The reserve account need not include those items that could reasonably be funded from the maintenance fund. Declarant may elect to defer payment of accrued assessments for reserves for a Homesite owned by Declarant until the date the Homesite is conveyed; provided, however, the Declarant may not defer such payment beyond the date of the Turnover Meeting. The book and records of the Association shall reflect the amount owing from the Declarant for all reserve assessments. For purposes of funding the reserve fund, the Association shall impose an assessment to be called the "Reserve Fund Assessment" against each Homesite, which assessment shall be spread equally over the Homesites. The reserve fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section. However, after the Turnover Meeting (as required by ORS 94.616 or applicable successor provisions), if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds, the Board may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. The Association shall administer the reserve fund and shall make periodic payments into the account. The Board shall set future assessments for the reserve fund annually. Any funds established for any of the purposes mentioned in this Section shall be deemed to be a reserve fund notwithstanding that it may not be so designated by the Board. The amount of the reserve fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner. The reserve portion of the initial assessment determined by the Declarant shall be based upon the initial reserve study described in Section 2.10.B.a, or other sources of reliable information.

##### B. Reserve Study.

a) Prior to conveying the first Homesite, the Declarant shall conduct an initial reserve study, which shall comply with the requirements for reserve studies set forth in Section 2.10.B.b. below and applicable law.

b) The Board shall annually commission or conduct a reserve study, or review and update an existing study, to determine the reserve fund account requirements and may adjust the amount of payments as indicated by the study or update

and provide for other reserve items that the Board, in its discretion, may deem appropriate. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, and replacement schedule.

#### Section 2.13 Non-payment of Assessments: Remedies of the Association

Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the rate set by the Board by resolution from time to time but in no event greater than the highest rate of interest allowed by Oregon law at the time of the non-payment. The Association shall have the authority to impose late charges to compensate for the administrative, legal (if any) and processing costs of late payments on such terms as it may establish by duly adopted resolutions, and the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of Owner's Homesite and/or Unit.

#### Section 2.14 Subordinated Lien to Secure Payment and Other Obligations

To secure the payment of the maintenance charge and all other assessments (including for reserves) established hereby and to be levied on individual Homesites as provided in this Article II and the payment of interest, late charges, attorneys' fees or other charges against Owners provided for in this Declaration and/or the Bylaws and all other obligations of a Homesite Owner under this Declaration and the Bylaws, there is hereby reserved a lien for the benefit of the Association on each Homesite, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to any prior recorded deed of trust securing payment for the subject Homesite and/or the Unit on such Homesite; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Homesite upon which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such first mortgage lien holder by prepaid U.S. registered mail, to contain the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lien holder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. The provisions of ORS 94.709 (or applicable successor provisions) shall apply to the Association's lien. Sale or transfer of a Homesite shall not affect the assessment lien. However, the sale or transfer of any Homesite pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments that became due before such sale or transfer. No sale, foreclosure or transfer shall relieve such Homesite from liability for any assessments thereafter becoming due or

from the lien thereof. No sale, foreclosure or transfer shall extinguish the personal obligation of the Owner who owned the Homesite at the time the delinquent assessment and/or payment became due. The lien described herein shall include not just assessments but also interest, late charges, attorneys' fees, costs or other amounts imposed hereunder or under the Bylaws, regardless of whether the same are characterized as assessments.

#### Section 2.15 Additional Assessments

In addition to the periodic assessments described in this Article II, the Association shall have the authority to assess an Owner's Homesite(s) for costs and expenses incurred by the Association for corrective action that is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees, including, without limitation, a breach of this Declaration. Each such additional assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land, a continuing lien upon the Homesite, and the personal obligation of the Owner in the manner described in Section 2.6 for annual and special assessments.

#### Section 2.16 Limited Assessments

In addition to the other assessments set forth herein, the Association shall have the authority to levy assessments to satisfy the common expenses of a particular project or effort undertaken by the Association that benefits some, but less than all, of the Homesites (such assessments, "Limited Assessments"). Limited Assessments shall be levied against the Owners of those Homesites that benefit from the project or effort undertaken by the Association. An example, for illustrative purposes only and not as a limitation, of a project or effort giving rise to a Limited Assessment, is maintenance or repair of a tract of property that benefits and serves certain Homesites, but not other Homesites.

#### Section 2.17 Reallocation Upon Annexation of Property

If additional property is annexed to the Property, the Association shall, during the next annual budget cycle, recompute the budget based upon the additional Homesites and Common Areas and Common Maintenance Areas and recompute all applicable assessments for each Homesite. New Homesites shall be subject to assessment from the time of annexation of such Homesites to the Property even though such assessment may not be levied for several months, pending the reallocation during the next annual budget cycle. The Association shall send notice of any applicable assessment to the Owners of new Homesites not later than the next occurring annual assessment. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws. If additional property is annexed to the planned community of North Rim during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Homesites that were within the Property prior to the annexation. Notice of the adjustment in the assessments shall be sent to such Owners with the next occurring annual assessment. To the extent that any adjustment results in a credit with respect to

assessments payable by an Owner, such credit shall be applied toward the next occurring payment or payments of the applicable assessment.

#### Section 2.18 Association Maintenance Standards

The Association shall maintain the Common Maintenance Areas to such standards as the Board may establish from time to time in its sole and absolute discretion.

#### Section 2.19 Professional Management

The Association may be professionally managed. In the event that the Board or the Owners elect to use a professional manager, the same shall be selected and hired by the Association Board. After the Turnover Meeting, the Board shall not engage any professional manager if any member of the Board has any financial (whether direct or indirect) or familial relationship with such manager unless such member (the "Interested Member") has disclosed the relationship and a majority of the Board other than the Interested Member has approved the contract. As used herein, familial relationship shall mean and include the following (whether natural or adopted): spouses, parents (including in-laws), siblings (including in-laws), children, grandparents, grandchildren, aunts, uncles, nieces, nephews, and first cousins. If a professional manager is engaged, the Board shall annually review the scope of and compensation provided by, the management contract.

### **ARTICLE III - GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS**

#### Section 3.1 Interim Board

Declarant shall have the right to appoint an interim board of three (3) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting.

#### Section 3.2 Purpose of Maintenance Fund

The Board, for the benefit of the Owners, shall provide and shall pay for out of the maintenance fund provided for in Article II above the following:

- A. Labor, supplies and operating costs associated with running the Association and performing its obligations hereunder, including the operation of Common Maintenance Areas;
- B. Normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for landscaping) and the Improvements to such Common Maintenance Areas, such as fences, columns, walls, grounds, landscaping, lights, irrigation systems and entry monuments, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas;



- C. Repairs and enhancement of the Common Maintenance Areas;
- D. Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Homesites and/or Owners, if any;
- E. Payment of expenses for utilities serving Common Maintenance Areas for which the Association is responsible or the Board deems to be in the best interest of the Association;
- F. The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager; provided that a management agreement entered into prior to the Turnover Meeting shall not have a term in excess of three (3) years and shall be terminable without penalty if the Board gives not less than thirty (30) days written notice of termination to the other party not later than sixty (60) days after the Turnover Meeting. The management agreement may provide that if it is not terminated as provided in the foregoing sentence, it will renew automatically for successive one-year periods, until terminated by either party (i) without cause, effective as of the next scheduled renewal date, by providing not less than thirty (30) days' written notice to the other party; or (ii) with cause, effective upon the date of written notice, by providing such notice to the other party;
- G. Legal and accounting services for the benefit of the Association or otherwise deemed necessary by the Board, including, without limitation, payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property;
- H. Payment of all reasonable and necessary expenses in connection with the collection and administration of assessments and Association funds;
- I. A policy or policies of insurance insuring the Association and/or its Board and officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided in Article IV;
- J. Workers compensation insurance to the extent necessary to comply with any applicable laws;
- K. Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable; and
- L. Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes, assessments, fees or costs, which (i) the Board

is required to obtain or pay for pursuant to the terms of this Declaration or by law; (ii) are necessary to fulfill the obligations of the Association hereunder; (iii) in the Board's opinion shall be necessary or proper for the enforcement of this Declaration; (iv) are necessary or desirable in the opinion of the Board to keep the Property neat and in good order; or (v) the Board considers to be of general benefit to the Owners or occupants of the Property.

The judgment of the Board in the expenditure of funds and what constitutes a proper expense under Section 2.9 and this Section 3.2 shall be final and conclusive so long as such judgment is exercised in good faith.

### Section 3.3 Powers and Duties of Board

The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association and the powers and duties of a non-profit corporation pursuant to the Oregon Nonprofit Corporation Act and a homeowners association pursuant to ORS 94.630:

- A. To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.
- B. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.
- C. To enter into contracts, maintain one (1) or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.
- D. To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.
- E. To make reasonable rules and regulations for North Rim, including the operation of the Common Areas, and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Property, by the Owners in the portions affected.
- F. Within ninety (90) days after the end of the fiscal year, the Board shall prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year and distribute a copy of such financial statement to each Owner and, upon written request, to any mortgagee of a Homesite.
- G. To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

H. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

I. To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

J. To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

K. To grant easements, licenses and concessions through or over the Common Areas.

#### Section 3.4 Board Powers Exclusive

The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein. The foregoing shall not be construed so as to prohibit the Board from delegating some or all of its contracting or other day-to-day management authority to a professional manager(s) and/or an officer(s), provided the Board maintains supervisory authority over such manager(s) and/or officer(s) and such manager(s) and/or officer(s) operate within a budget approved by the Board.

#### Section 3.5 Maintenance Contracts

The Board, on behalf of the Association, may enter into contracts by which the Association agrees to perform services that the Association is not otherwise required to perform. Such contracts may be with any Owner or other person or entity and shall be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association. Without limiting the generality of the foregoing and by way of example, the Association may contract to resurface an Owner's driveway at the same time as the Association is completing road projects on Common Maintenance Areas.

#### Section 3.6 Indemnification

The Association shall indemnify every officer, director, or member of a committee established under the Bylaws against all expenses, including attorneys' fees and costs, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as an expense funded by maintenance assessments, maintain adequate officers' and directors' liability insurance to fund this obligation.

## ARTICLE IV - COMMON MAINTENANCE AREAS

### Section 4.1    Improvements

The Declarant has or will construct the following Improvements to the Common Maintenance Areas (which shall become Common Maintenance Areas upon completion): Entry monument(s), including landscaping, irrigation and lighting; utilities to serve Common Areas, and, in the discretion of the Board, Common Maintenance Areas; landscaping, irrigation, street lighting, street signs within street rights of way, and mail station(s) located in the lodge; some ornamental lighting on roads and Common Areas; a lodge; trails as shown on a Plat; and roads and sidewalks. The foregoing shall not be construed so as to require that such Improvements be built to any specified design or other standards, except applicable Deschutes County or State of Oregon codes and requirements. Notwithstanding the foregoing, the Declarant does not choose to limit its right to add Improvements not described in this Declaration to the planned community of North Rim, whether on Common Maintenance Areas or not. Until the Turnover Meeting, Declarant shall have the right to use the lodge for sales and other purposes, including Association and ALRC management.

### Section 4.2    Association to Hold

Declarant shall convey the Common Areas to the Association, free and clear of financial liens and encumbrances not later than the Turnover Meeting. The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Maintenance Areas, including any Common Areas that may be hereafter established. Nothing contained herein shall create an obligation on the part of Declarant to establish any additional Common Area. Following the conveyance of the Common Areas to the Association, the dedication, mortgage, or conveyance of any Common Areas shall require the affirmative vote of at least seventy five percent (75%) of the outstanding votes.

### Section 4.3    Liability Insurance; Casualty Insurance

From on and after the date on which title to or responsibility for any Common Areas or Common Maintenance Areas vests in the Association, the Association shall purchase and carry (i) insurance for all insurable improvements in the Common Maintenance Areas against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, which insurance shall cover the full replacements costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; and (ii) a general comprehensive public liability insurance policy for the benefit of the Association, covering occurrences on the Common Areas and in the Common Maintenance Areas and all damage or injury caused by the negligence of the Association, which policy limits shall be as determined by the Board of the Association, but shall include public liability insurance of at least One Million Dollars (\$1,000,000.00) per occurrence. The Association shall use its best efforts to see that such policy shall contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of the Board, the Owners and other insureds, as their interests may be determined by the Board, ensuring all

against liability to each other insured as well as third parties. Any proceeds of insurance policies owned by the Association shall be received, held in a segregated account and distributed to all interested parties, as their interests may be determined. The insurance coverage obtained and maintained by the Association may not be brought into contribution with insurance bought by Owners or their mortgagees.

#### Section 4.4    Condemnation

If there is a condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the Association shall represent the Owners in negotiations with the condemning authority. The funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. If the Board of Directors of the Association determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Areas or for whatever reason, any remaining funds may be distributed to each Owner based on an equal amount per Homesite.

#### Section 4.5    Maintenance of Common Maintenance Areas

The Association will permanently maintain, repair and replace as necessary:

- A. All Common Maintenance Areas (including Common Areas); and
- B. The Improvements installed pursuant to Section 4.1, to the extent the same benefit the Association and/or the Owners.

#### Section 4.6    Prohibited Activities

Neither the Association nor any Owner shall conduct any of the following activities within any Common Maintenance Area or any Common Area: i) the removal of any tree without the written approval of the Architectural and Landscape Review Committee; ii) the removal of any other vegetation without the written consent of the ALRC; iii) the modification, grading, excavation, filling or other activities which would alter the topography or vegetative cover of any Common Maintenance Area or Common Area without the written consent of the ALRC; v) the disposal or placement of any debris, refuse, soil, rock, landscape debris or other deleterious materials; vi) parking, storage, repair, or disposal of any motor vehicle; and vii) motor vehicle access (except on roads or roadways or as may be necessary for repairs or maintenance approved by the Board or in conjunction with maintenance of utilities). The prohibitions contained in this Section 4.6 shall not apply to the activities of Declarant or to any Homesites owned by Declarant.

## ARTICLE V - ARCHITECTURAL REVIEW

### Section 5.1 Architectural and Landscape Review Committee

A committee to be known as the Architectural and Landscape Review Committee (the "ALRC") shall be established consisting of the number of members as determined by the Board, except that the ALRC shall consist of not less than three (3) members. ALRC members need not be members of the Association.

A. The members of the ALRC shall be appointed, terminated and/or replaced by the Declarant until the earlier to occur of the following: (i) the date of expiration of the Initial Term of this Declaration; or (ii) the date on which Declarant records an instrument in the real property records of Deschutes County stating that it is turning over control of architectural review, including appointment of ALRC members, to the Association, which shall occur no earlier than the date of the Turnover Meeting, but which may occur later than the date of the Turnover Meeting. Thereafter the Board shall appoint the members of the ALRC. After Declarant has turned over control of architectural review, members of the ALRC may be terminated and/or replaced by the Board with or without cause. Individuals may serve as members of the Board and members of the ALRC simultaneously.

B. The purpose of the ALRC is to enforce the architectural and design standards of the community and to approve or disapprove plans for Improvements proposed for the Homesites.

C. The ALRC shall act by simple majority vote, and shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, landscaper, inspector or other person to assist in the performance of its duties.

D. The ALRC shall establish an appeal procedure from time to time, but after exhaustion of such appeal(s), the decision of the ALRC shall be final. In no event may an ALRC decision be appealed to the Board.

E. No approval of the ALRC required hereunder shall be valid unless and until the same is granted in writing.

### Section 5.2 Architectural Guidelines

The Declarant has adopted the initial North Rim Architectural and Landscape Design Guidelines (the "Design Guidelines"). Amendments, modifications, or revisions to the Guidelines may be made by the Declarant, without the consent of anyone, prior to the date on which Declarant turns over control of the Architectural Review Committee pursuant to Section 5.1.A. Thereafter, the ALRC shall have the sole authority to amend, modify, or revise the Guidelines. No such amendments, modifications, or revisions shall affect any prior ALRC approval.



### Section 5.3    Scope of Review

No building, wall, patio, deck, outbuilding, landscaping, pool, athletic facility or other structure or Improvement shall be erected, altered or added onto or repaired upon any portion of the Property without the prior written consent of the ALRC, provided however, that all Improvements erected, altered, added onto or repaired by Declarant shall be exempt from the provisions of this Article V. The Guidelines shall include restrictions on, and ALRC review shall include a review of, materials, colors, design, location and such other items as the ALRC shall determine from time to time in its sole discretion.

### Section 5.4    Submission of Plans

Before the initiation of construction upon any Homesite (including material changes to landscaping), the Owner thereof shall first submit to the ALRC such documents and materials as may be required by the Guidelines in accordance with the procedure outlined in the Guidelines. Such submission shall include payment of the review fee payable pursuant to the schedule established and amended by the ALRC from time to time.

### Section 5.5    Plan Review

The ALRC shall review all submissions in accordance with the procedures established in the Guidelines. The proposed Improvements will be approved if, in the sole opinion of the ALRC: (i) the Improvements will be of an architectural style and material compatible with the other structures in the Property; (ii) the Improvements will not violate any restrictive covenant or encroach upon any easement or cross building setback lines; (iii) the Improvements will not result in the reduction in property value, use or enjoyment of any of the Property; (iv) the individual or company intended to perform the work has provided proof that it is licensed under the laws of the State of Oregon, has procured insurance reasonably acceptable to the ALRC and it is in good standing with the ALRC; and (v) the Improvements will be substantially completed, including all cleanup, within the schedule set by the ALRC.

### Section 5.6    Non-Conforming Structures

If there shall be a material deviation from the approved plans in the completed Improvements, such Improvements shall be in violation of this Article V to the same extent as if erected without prior approval of the ALRC unless the Owner subsequently obtains ALRC approval for such deviation, which approval may be granted or denied in the ALRC's sole discretion. The ALRC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof, which, if incurred by the ALRC and/or the Association, shall constitute an assessment against the applicable Homesite(s).

#### Section 5.7 Immunity of ALRC Members

No individual member of the ALRC shall have any personal liability to any Owner or any other person for the acts or omissions of the ALRC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ALRC or any member thereof arising from acts or omissions of the ALRC committed in good faith and without malice.

#### Section 5.8 Limited Review

Any review and approval made by the ALRC is limited to compliance with the intent of the architectural and design standards of the neighborhood as may from time to time be established by the ALRC and/or the Guidelines. The review and approval made by the ALRC is not to be construed as superseding, replacing, or modifying any review, approval, or permit required by any local, state or federal jurisdictional agencies. It is the applicant's responsibility to obtain and comply with any permits that may be required by any local, state, or federal jurisdictional agency. Nor shall any such review or approval by the ALRC be deemed an assurance or statement of compliance with any applicable laws, ordinances or regulations.

#### Section 5.9 Address for Notice

Requests for ALRC approval or correspondence with the ALRC shall be addressed to North Rim Architectural Review Committee, c/o Owner Relations Department, 409 NW Franklin Avenue, Bend, OR 97701, or such other address as may be designated from time to time by the ALRC in a writing addressed to all Owners. No correspondence or request for approval shall be deemed to have been received until actually received by the ALRC in a form satisfactory to the ALRC.

#### Section 5.10 Completion of Improvements

Once construction has commenced, each Owner shall substantially complete construction, including all cleanup, of the initial Unit and the installation of landscaping on the Homesite within the schedule set by the ALRC. ALRC approval shall be deemed invalid if construction does not commence on the approved Improvement within a period established by the ALRC. The ALRC shall have the right to grant extensions for any deadlines it established with respect to any Homesite when it deems the same reasonable under the circumstances.

#### Section 5.11 Unimproved Homesite Maintenance

The Association shall maintain any vacant Homesite in accordance with its standards for maintaining Native Areas.

### Section 5.12 Buildable Area

Each Homesite shall have a Buildable Area. The Buildable Area shall not exceed forty percent (40%) of the Homesite and shall meet the following setbacks: 40 feet from the front property line; 40 feet from the rear property line; and 15 feet from the side property lines, unless other setbacks are established for a particular Homesite on the Plat. The Buildable Area shall be established by the Owner as part of the initial design review process, but shall be subject to prior ALRC approval. All Improvements on any Homesite shall be located within the Buildable Area, except for driveways (including lighting) and address markers, the location and design of which must first be approved by the ALRC. Each Owner shall be solely responsible for the maintenance, repair and replacement, as applicable, of his or her Buildable Area and all Improvements (including landscaping) located thereon, except to the extent there are Native Areas within the Buildable Area. Such Native Areas shall be maintained by the Association. In the event that an Owner wishes to relocate a Buildable Area, the same shall require ALRC approval.

### Section 5.13 Landscaping

Each Homesite shall have a Native Area and an Ornamental Area, each of which shall be designated in the Design Guidelines. The Declarant shall install and the Association shall maintain the landscaping in the Native Area. Each Owner shall be responsible for the installation and maintenance of landscaping in the Ornamental Area. The vegetation in the Ornamental Area shall be selected from a list of approved plants maintained by the ALRC or shall be otherwise approved by the ALRC in writing. The Ornamental Area must be screened by Site Walls as approved by the ALRC.

## **ARTICLE VI - EASEMENTS**

### Section 6.1 Utility Easements

As long as the Declarant owns a Homesite, the Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, fiber optic cables. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. The Board shall also have the right to grant the easements described herein, subject to the approval of the Declarant so long as Declarant owns a Homesite.

### Section 6.2 Declarant's Easement to Correct Drainage

Declarant hereby reserves for the benefit of Declarant (including its contractors and employees) a blanket easement, including a right of entry, on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls

in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

#### Section 6.3 Easement for Unintentional Encroachment

The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching property to the extent of such encroachment.

#### Section 6.4 Entry Easement

If the Owner of any Homesite fails to maintain the Homesite as required herein, fails to comply with any requirements hereunder, or if there is an emergency, the Association and/or the ALRC (in the case of violations of the Design Guidelines) shall have the right to enter upon the Homesite as provided herein. The Association shall have the right to enter upon the Homesite to make emergency repairs without providing advance notice. The Association shall have the right to enter upon the Homesite to do other work reasonably necessary for the proper maintenance and operation of the Homesite after providing five (5) days' written notice to the Owner. In the event that the failure to comply is related to Article V and/or the Guidelines, the ALRC shall have the right to enter upon the Homesite to do the work reasonably necessary to bring the Homesite into compliance by providing one (1) day written notice to the Owner. In each case that notice is required, such notice may be made by a posting on the front door of the Unit located on the particular Homesite or, if the Homesite is vacant, upon a post placed on the Homesite. Entry upon the Homesite as provided herein shall not be deemed a trespass, and neither the Association nor the ALRC shall be liable for any damage so created unless such damage is caused by the Association's or the ALRC's willful misconduct or gross negligence.

#### Section 6.5 Reserved Easements

Easements for installation and maintenance of utilities and/or buffers with adjacent property are reserved as may be shown on the Plat or any replat of the Property. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which would violate the terms of the easements as described on the Plat. The easement area of each Homesite and all improvements contained therein shall be maintained continuously by the Owner of the Homesite, except for those improvements for which a public authority, utility company or the Association is responsible. In addition, the Declarant hereby reserves an easement in favor of the Association to permit maintenance, repair and replacement of sidewalks, Native Areas, utilities serving Common Maintenance Areas and all other Common Maintenance Areas, as deemed reasonably necessary by the Board.

#### Section 6.6 Temporary Completion Easement

Until the Turnover Meeting, all Homesites shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Homesites adjacent to the property.

#### Section 6.7 Maintenance Easements

An easement is hereby granted and reserved in favor of the Association and its successors, assigns, contractors, property managers, agents and employees over, across and upon the Common Areas and any Common Maintenance Areas or other areas of North Rim necessary or appropriate for purposes of accomplishing the maintenance, repair, replacement or other obligations of the Association hereunder. The foregoing includes, without limitation, an easement over the Native Area portion of each Homesite to permit the Association to maintain, install and/or replace any vegetation or other landscaping in such areas. It also includes an easement over individual Homesites to permit maintenance, repair and replacement of sidewalks.

#### Section 6.8 Trail Easement

Declarant shall have the right to grant an easement to the public over portions of the trails, as shown on the Plat.

### **ARTICLE VII- USE, OCCUPANCY, CASUALTY, AND INSURANCE**

#### Section 7.1 Residential Use/Rental/Compliance by Invitees

Except for Homesite 1 (the lodge), which may be used by Declarant and/or the Association for development of North Rim, management of the Association (including ALRC purposes) and/or sales purposes, all Homesites and Units shall be used only for single-family residential purposes in accordance with, and subject to, the other provisions of this Declaration. No Homesite and/or Unit may be sold to or owned by more than four (4) people or entities jointly. Pursuant to ORS 94.811, in no event shall any Homesite and/or Unit be used as a "timeshare" (as that term is defined by Oregon law, ORS 94.803). No Owner or Owners of any Homesite may rent his or her Unit to any person or persons for transient occupancy. As used herein, "transient occupancy" shall mean a period of thirty (30) days or less. Transient use shall not include a rental of any Unit for a period of in excess of thirty (30) consecutive calendar days. Each Owner shall be responsible for compliance by all of such Owner's visitors, tenants or invitees, whether such visitor, tenant or invitee is occupying the Owner's Homesite and/or Unit or otherwise visiting or using any portion of the Property, with all provisions of this Declaration, any and all rules and regulations, and all applicable laws.

## Section 7.2 Commercial, Institutional, or Other Non-Residential Uses

No commercial, institutional, or other non-residential use (including residential day care facilities) shall be conducted on any Homesite without the written approval of the Board; provided, however, home offices shall be permitted unless so long as the same does not constitute a nuisance. In the event of disputes, the determination of the Board as to whether a home office constitutes a nuisance shall be final. Any such use must comply with applicable law, including, without limitation, zoning requirements. The decision of the Board shall be final and conclusive. The Board may review, and repeal, any such approval from time to time at the discretion of the Board if, in the opinion of the Board, the use has changed or increased to a level not consistent with the original approval. In no event shall the decision of the Board as to permissibility of a requested non-residential use be construed as a representation of the legal permissibility of such use.

## Section 7.3 Declarant Use/Construction Trailers

The provisions of this Article shall not apply to the use of any Homesite or Unit by the Declarant, as i) a model home, sales office, or construction office; or ii) the use of any Homesite as a site for a sales office trailer or construction office trailer. Construction trailers may be permitted with written approval from the ALRC, which approval may be granted or withheld in the ALRC's sole discretion.

## Section 7.4 Casualty

In the event of damage to or destruction of a Unit, the Owner of the Unit shall repair, reconstruct, and rebuild the damaged or destroyed portions of the Unit to substantially the same condition that existed prior to the damage or destruction or consistent with such plans and specifications as are approved in accordance with Article V of this Declaration. Alternatively, the Owner shall promptly clear the Homesite of all debris and ruins and maintain the Homesite consistent with the terms of Section 5.11. All repair, reconstruction, or rebuilding shall begin within six (6) months following the damage or destruction, and shall be diligently pursued to completion within twelve (12) months following the damage or destruction (or within such other schedule as is established by the ALRC in writing), unless work is delayed by causes beyond the reasonable control of the Owner. If an Owner fails to timely repair such damage or clear the Homesite, the Association shall have all rights of enforcement and remedies set forth under this Declaration. The ALRC shall have the right to extend the deadlines contained in this Section 7.4 if it deems the same reasonable under the circumstances; provided, however, in no event may any Owner leave his or her Unit or Homesite in a condition that poses a health or safety hazard.

# **ARTICLE VIII- PROPERTY RIGHTS**

## Section 8.1 Owner's Use and Occupancy

Except for the easements shown on the Plat and/or granted herein, or as otherwise provided herein, by applicable law or by the terms of any instruments recorded against the



applicable Homesite, the Owner of a Homesite shall be entitled to the exclusive use and benefit of such Homesite. Declarant, the ALRC and any representative of the Association authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Homesite for the purpose of determining whether or not the use of and/or Improvements on such Homesite are then in compliance with this Declaration; provided however, except in the case of emergency, the Association shall first provide the Owner with five (5) days' prior written notice if entry is to be by the Association or Declarant or one (1) day written notice if entry is to be by the ALRC, which notice may be given by posting on the front door of the Unit or, if the Homesite is vacant, upon a post placed on the Homesite. No notice shall be required in the case of emergency. No such entry shall be deemed to constitute a trespass, conversion, or otherwise create any right of action in the Owner of such Homesite.

#### Section 8.2 Owners' Easements of Enjoyment

Every Owner shall have a right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Homesite, subject to the following provisions:

A. The right of the Association to establish and publish rules and regulations governing North Rim, including use of the Common Areas, affecting the welfare of Association members.

B. The right of the Association (subject to such notice and/or hearing requirements as may be imposed by applicable law) to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against his Homesite remains unpaid or during which such Owner is otherwise in material breach hereunder; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

C. The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for public right-of-way purposes. Any other transfer or mortgage of Common Areas requires the consent of at least seventy-five percent (75%) of the votes outstanding, and the consent of the Declarant so long as Declarant owns a Homesite.

D. All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

#### Section 8.3 Effect of Declaration

Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be

sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

#### Section 8.4 Rezoning Prohibited

No Homesite shall be rezoned without the prior written consent of the Board and of the Declarant so long as Declarant owns a Homesite, which may be withheld in the Board's or Declarant's sole discretion, as applicable. Declarant or the Board may enforce this covenant by obtaining an injunction against any non-approved rezoning at the expense of the enjoined party.

#### Section 8.5 Homesite Consolidation and Division

An Owner may consolidate multiple Homesites he or she owns, provided, however, the same is first approved by the City of Bend and then the ALRC has approved the design plan for the Unit. No Homesite may be subdivided. Notwithstanding the foregoing, so long as there is at least one Class B Member, Declarant shall have the right to consolidate and/or subdivide Homesites within North Rim, provided no homesite is less than one (1) acre in size, subject to applicable City of Bend Ordinances without first obtaining the consent of the ALRC. Upon the completion of a subdivision of a Homesite, each newly created parcel shall immediately constitute a Homesite and the owner of fee title thereof shall become an Owner with all of the rights granted to Owners hereunder. Upon the completion of a subdivision of a Homesite, each newly created Homesite shall be entitled to the voting rights as set forth in Section 2.2, and assessments shall be reallocated and reapportioned in the manner set forth in Section 2.14 as if each of the newly created lots had been annexed into North Rim. Upon the completion of a consolidation of multiple Homesites, the newly created Homesite shall be treated as the original number of Homesites for voting and assessment purposes.

#### Section 8.6 Drainage Alteration Prohibited

The surface water drainage contours of each Homesite shall conform to the approved grading plan established by the Declarant or any Builder. No Owner shall fill or alter any drainage swale established by the Declarant or any Builder, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by the Declarant or any Builder. Each Owner shall take steps to assure that its Homesite has adequate drainage and does not cause runoff to be directed onto any adjacent property.

#### Section 8.7 Damage or Destruction By Owner

If damage to any Common Area or Common Maintenance Area is directly attributable to an Owner or the family members, invitees, licensee, or guest of an Owner, then that Owner shall repair such damage or destruction as soon as reasonably practicable, but in no event later than fifteen (15) days after the date the damage occurred, at his or her sole expense

and without a right of reimbursement. If an Owner fails to repair such damage timely, the Association shall have all rights of enforcement and remedies set forth under this Declaration.

## **ARTICLE IX- USE RESTRICTIONS/BUILDING STANDARDS**

### **Section 9.1 Exterior Lighting and Noise-making Devices.**

All exterior lighting and noise-making devices shall be subject to the Design Guidelines, the review and approval of the ALRC and all applicable ordinances.

### **Section 9.2 Nuisances**

No noxious or offensive activity shall be carried out upon any Homesite, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting the generality of the foregoing, "noxious or offensive activity" shall include the generation of noxious odors or noise. The Board shall have the sole authority to determine nuisances and its decision shall be final and conclusive.

### **Section 9.3 Development Activity**

Notwithstanding any other provision herein, Declarant, and its successors and assigns to whom Declarant assigns such rights, shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of dwelling units on the Property.

### **Section 9.4 Temporary Structures**

No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Homesite at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant or any Builder (with permission from Declarant) to use trailers or outbuildings as sales offices, construction offices, material storage facilities, or sanitation facilities.

### **Section 9.5 Signs**

Except as permitted in this Section 9.5, no sign or emblem of any kind may be kept or placed upon any Homesite or mounted, painted or attached to any Unit or other improvement upon such Homesite or carried by any person or by any other means displayed within the Property except with the written approval of the ALRC. Notwithstanding the foregoing, "for sale" signs shall be permitted on a Homesite provided the same complies with ALRC design standards. In addition, until the Turnover Meeting, Declarant may erect signs or billboards, and at any time, Declarant or the Association shall have the right to erect signs or monuments that identify North Rim, in either case without the need for ALRC approval. This

Section 9.5 shall not be construed to prohibit flags; flags shall be subject to such restrictions and/or prohibitions as may be contained in the Guidelines and/or the rules and regulations.

Section 9.6 Campers, Boats, Recreational Vehicles, Certain Trucks, Commercial Vehicles, and other Non-Passenger Vehicles

No campers, boats, boat trailers, recreational vehicles, commercial vehicles, trucks weighing more than 10,000 pounds GVW, or other types of non-passenger vehicles, equipment, implements, or accessories shall be kept or stored on any Homesite except (i) with the Board's approval, or (ii) as provided below:

A. Except to the extent the same is screened from public view and from the view from adjacent property (including adjacent Homesites and public rights of way), no recreational vehicles, disabled vehicles, campers, boats, boat trailers, recreational trailers, or other types of non-passenger vehicles, equipment, implements, or accessories shall be parked or stored on or adjacent to any Homesites. In the event of a dispute as to whether there is adequate screening for purposes of this Section 9.6, the determination of the ALRC shall be definitive.

B. The Board, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle, equipment, implements and/or accessory is operable and adequately screened from public view and from the view from any portion of the Property other than the applicable Homesite. Upon an adverse determination by said Board, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this Section 9.6.

C. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in the streets within the Property, or in any driveway or yard adjacent to a street, or that is not screened from public view and from the view from any portion of the Property other than the applicable Homesite.

Section 9.7 Pets, Livestock and Poultry

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Homesite, except for cats, dogs or other generally recognized household pets of a reasonable number, provided that they are not kept, bred, or maintained for any commercial purpose. In the event of a dispute, the Board shall make the final decision as to what constitutes "a reasonable number" under particular circumstances. All such animals shall be kept on the Homesite and in strict accordance with all applicable laws and ordinances (including leash laws) and in accordance with all rules established by the Association. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the ALRC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be subject to the ALRC approval. Each Owner is solely responsible for his or her pets, shall assure that

such pets do not create a nuisance or otherwise damage any portion of the Property, and shall clean up after such pets.

Section 9.8 Garbage and Refuse Disposal; Wood Piles

No Homesite, Common Area or any other portion of North Rim shall be used or maintained as a dumping ground for rubbish. Compost, recycling, trash, garbage or waste shall not be kept, or disposed of, on any Homesite or Common Area except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of compost, trash, garbage, refuse, rubble, debris, or recyclable materials shall be stored, kept, placed or maintained on any Homesite where visible from any street except solely on a day designated for removal of garbage, rubbish, or recyclable materials, and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal, but shall be removed from view before the following day. All screening shall be of an attractive nature, consistent with the overall development scheme of North Rim. Wood storage shall be subject to ALRC approval.

Section 9.9 Parking in Common Areas/No Parking Signage

No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, or on any easement unless in use for maintaining such Common Areas, provided however, that this restriction shall not apply to driveways, streets or paved areas intended for vehicular use. In addition, parking of vehicles is prohibited on any public or private street within the Property that is signed or otherwise marked for "No Parking" by the Association or a governmental authority. The Association shall have the right to tow any vehicles in violation of this Section 9.9 at the vehicle owner's expense.

Section 9.10 Commercial or Institutional Use

No Homesite, and no building erected or maintained on any Homesite shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes, except as set forth in Article VII.

Section 9.11 Detached Buildings

No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Homesite without the prior consent of the ALRC. Every detached accessory building, inclusive of such structures as storage buildings, greenhouses, doghouses, or children's playhouses shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition and consistent with the Guidelines.

#### Section 9.12 General Landscaping and Exterior Maintenance

A. Except for the Native Areas, which are to be maintained by the Association, each Homesite Owner shall keep all shrubs, trees, grass, and plantings of every kind on his or her Homesite cultivated, pruned, free of trash, and other unsightly material. Each Homesite Owner shall keep all Improvements upon his or her Homesite in good condition and repair and adequately painted or otherwise maintained. Declarant, the Association, and the ALRC shall have the right at any reasonable time to enter upon any Homesite to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; and to paint, repair, or otherwise maintain any improvements in need thereof, and to charge the cost thereof to the Homesite Owner; provided, however, except in the case of emergency, the Declarant, the Association and/or the ALRC shall first provide the Owner with at least one (1) day prior written notice, which notice may be given by a posting on the front door of the Unit located on such Homesite or, if the Homesite is vacant, upon a post placed on the Homesite.

B. The initial landscaping, as well as all subsequent material changes to such landscaping, shall be subject to final approval by the ALRC. Except for the Native Areas, all landscaping shall remain fully irrigated unless otherwise approved by the ALRC. All Owners shall keep their Homesites, including all Improvements thereon, well-maintained and in an attractive condition, consistent with the overall development approved within North Rim by the ALRC. All vacant Homesites shall be maintained in a manner that is consistent with ALRC guidelines for vacant Homesites.

C. Except in the case of imminent threat of harm to persons or Improvements or as may be deemed advisable by the Association, the removal of trees shall require the prior written approval of the ALRC. All tree removal shall comply with applicable laws and ordinances.

#### Section 9.13 Antennae, Satellite Dishes and Solar Collectors

No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Homesite unless such apparatus is erected and maintained in such a way that it is screened from public view and from the view from any portion of the Property other than the applicable Homesite; and no such apparatus shall be erected without the prior written consent of the ALRC. The ALRC, as designated in this Declaration, shall have the absolute authority to determine whether an accessory is adequately screened. The authority of the ALRC in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority.

#### Section 9.14 Clothes Hanging Devices/Fences

Clothes hanging devices exterior to a dwelling shall be temporary, unaffixed structures shall not be visible from adjacent property or any portion of the Property. Clothes hanging devices shall be screened from public view and from the view from any portion of the



Property other than the applicable Homesite. No fences shall be permitted except as may be installed by the Association.

#### Section 9.15 Security

Neither Declarant nor the Association shall be responsible for security of the Common Maintenance Areas (including the Common Areas) or any Unit or Lot, and the Owners are exclusively responsible for their own security and the security of their Units, Improvements, Lots and property. The Association may elect to, but shall not be required to, provide security features, such as security guards, patrols and/or security cameras within North Rim. The provision of such security features shall not, in any event, be construed to obligate the Association to provide security for North Rim nor shall it subject the Association to liability for any failures of such security features. By acceptance of a deed, each Owner specifically agrees to the terms of this Section 9.15.

#### Section 9.16 Construction Activities

This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by a Homesite Owner (including Declarant) upon any Homesite within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the Deschutes County area. In the event that construction upon any Homesite does not conform to usual practices in the area as determined by the ALRC in its sole good faith judgment, the ALRC shall have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Homesite, there is excessive accumulation of debris of any kind which is offensive, or detrimental to it or any other portion of the Property, then the ALRC may contract for or cause such debris to be removed, and the Homesite Owner shall be liable for all expenses incurred in connection therewith. Each Owner shall assure that his or her contractor(s) shall strictly comply with such construction rules and regulations as may be set forth by the ALRC and/or the Board from time to time.

#### Section 9.17 Unit Construction

All buildings or other Improvements, permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with such setback standards as may be imposed by the local governmental jurisdictional authority, as may be set forth in the deed for a particular Homesite and/or as may be established by the ALRC from time to time. In no event shall any Owner apply to the applicable local governmental jurisdictional authority and/or the ALRC for a variance to construct any Improvement in excess of thirty (30) feet.

#### Section 9.18 ALRC Supervisory Authority Over Construction Activities

All construction activities on the Property, including, without limitation, staging, shall be governed by the ALRC and such guidelines, rules and regulations as it may promulgate from time to time. The foregoing is intended and shall be construed to give the ALRC the right, but not the obligation, (i) to provide supervision of construction activities; and (ii) to enforce ALRC guidelines, rules and regulations.

#### Section 9.19 Motorized Vehicles

Except for emergency vehicles, security and maintenance vehicles (to the extent owned, commissioned or authorized by the Association) and utility maintenance vehicles, no motorized vehicles of any kind shall be permitted on any part of the Property other than roads and driveways.

### **ARTICLE X - ANNEXATION**

#### Section 10.1 Annexation by Declarant

At any time during the Initial Term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 122 Homesites in the planned community of North Rim, including the Homesites currently existing, and Homesites expected to be created in property to be annexed to North Rim, but this number may be adjusted at the sole discretion of Declarant, subject to the terms of Section 10.1.A. There shall be no maximum number of Homesites which may be created by Declarant. Declarant shall have no obligation of any kind to annex any additional property to the Property.

##### **A. Eligible Property**

Any or all of the real property in Deschutes County, Oregon adjacent to ("adjacent" property shall include property on the other side of a public right of way, a public or private street or a river) or contiguous with the Property shall be eligible for annexation. There is no limitation on the amount of land that Declarant may annex to the Property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements, or land use approvals or as set forth herein.

##### **B. Consent or Joinder Not Required**

No consent or joinder of any Class A member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

### C. Declaration of Annexation

Annexation shall be evidenced by a written Declaration of Annexation (the "Declaration of Annexation") executed by the Declarant, or (in the case of an annexation by action of members) by the Board and the owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a declaration of annexation with respect to any annexed property may:

- i) establish such limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property;
- ii) establish additional or different limitations, uses, restrictions, covenants and conditions as Declarant may deem to be appropriate for the development of such annexed property; and/or
- iii) contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.

Without limitation of the meaning of the foregoing provisions of this Section 10.1, in any Declaration of Annexation Declarant may, but shall not be obligated to, establish easements particular to different Homesites and/or to create any such Sub-Associations as it may elect.

### D. Voting Rights; Allocation of Assessments

Upon annexation, additional Homesites so annexed shall be entitled to the voting rights as set forth in Section 2.2, and assessments shall be reallocated and reapportioned in the manner set forth in Section 2.14.

### Section 10.2 Annexation by Action of Members

At any time the Board may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved by at least seventy-five percent (75%) of the outstanding votes and by Declarant so long as Declarant owns at least one (1) Homesite. Any property that is contiguous to existing property subject to this Declaration may be annexed hereto according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation as set forth in Subsection 10.1.C above executed by the parties herein described.

### Section 10.3 No Duty to Annex

Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

## **ARTICLE XI - GENERAL**

### Section 11.1 Remedies

If any default by any Owner under the provisions of the Declaration, Bylaws, Design Guidelines or rules and regulations of the Association shall occur, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Homesite and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest from the due date until paid at the rate set by the Board by resolution from time to time but in no event greater than the highest rate allowed by Oregon law at the time of the non-payment, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective additional assessment or maintenance assessment (to the same extent as the lien provided herein for unpaid assessments), upon the Homesite and upon all of his additions and Improvements thereto, and upon all of his personal property upon the Homesite. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner. Without limiting the generality of this Section 11.1, any and all costs incurred by the Association and/or the ALRC in remedying an Owner's violation of this Declaration shall be an assessment against such Owner's Homesite in accordance with Section 2.13, secured by a lien upon such Homesite pursuant to the terms of Section 2.12.

Except as specifically provided for in this Declaration or the Bylaws, no party in any arbitration, mediation or other proceeding shall be entitled to recover costs or attorneys' fees in connection therewith. To the fullest extent allowed by law, the Association shall not file or maintain any litigation for damages in excess of \$5,000 unless first approved by at least sixty-six percent (66%) of the outstanding votes of the Owners, and the defendant may cause any such litigation filed without such prior approval to be dismissed with prejudice. The foregoing restriction shall not apply to litigation related to the collection of assessments, fines or interest owed to the Association pursuant to the terms of this Declaration or the Bylaws or to actions to summarily abate and remove a structure or condition that violates the Declaration or the Bylaws.

The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of this Declaration.

#### Section 11.2 Fines Imposed by the Association

In addition to any other remedies available to the Association hereunder, the Association shall have the right to impose reasonable fines upon an Owner who violates the Declaration, Bylaws and any rules or regulations of the Association, in the manner and amount the Board deems appropriate in relation to the violation. Prior to collecting (but not prior to imposing) such fines, the Association shall give such written notice and an opportunity to be heard as may be required by applicable law. All such charges or fines shall be based upon (i) a schedule contained in the Bylaws (or amendment thereto or to this Declaration that is delivered to each Homesite, mailed to the mailing address of each Homesite or mailed to the mailing addresses designated in writing by the Owners); or (ii) a resolution of the Association or its Board that is delivered to each Homesite, mailed to the mailing address of each Homesite or mailed to the mailing addresses designated in writing by the Owners.

#### Section 11.3 Term and Amendments

The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded (the "Initial Term"), after which time they shall be automatically extended for successive periods of ten (10) years each, unless a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding is presented to the Board or other duly appointed and authorized persons, which shall authorize the Board, or other duly appointed and authorized persons, to execute and properly record a notice of termination of this Declaration in the real property records of Deschutes County, Oregon. This Declaration may be amended at any time during the first thirty (30) year period or any extension thereof, by a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding, and the consent of the Declarant so long as the Declarant is a Class B Member, being presented to the Board, or other duly appointed and authorized persons, which shall authorize the Board, or other duly appointed and authorized persons, to execute and properly record an instrument amending this Declaration. Subject to the provisions of Section 11.4, notwithstanding any provisions hereof to the contrary, the Declarant may, at its sole discretion and without consent being required of anyone, modify, amend or repeal this Declaration at any time before the closing of the sale on the first Homesite, provided said amendment, modification, or repeal is in writing and properly recorded in the Deed Records of Deschutes County, Oregon.

Declarant further reserves the right at any time to amend this Declaration, or any amendment hereto, in order to correct scrivener's errors. In no event shall an amendment pursuant to this Section create, limit, or diminish Declarant's special rights without Declarant's written consent or change the boundaries of any Homesite or any use to which any Homesite is restricted unless the Owners of the affected Homesites consent to the amendment.

#### Section 11.4 Regulatory Amendments

Notwithstanding the provisions of Section 11.3, until the Turnover Meeting described in the Bylaws and to the extent permitted by applicable law, Declarant shall have the right to amend this Declaration or the Bylaws in order to comply with the requirements of any applicable statute, ordinance, regulation or guideline of any department, bureau, board, commission or agency of the United States or the State of Oregon or to comply with any applicable law, including, without limitation, the Oregon Planned Community Act.

#### Section 11.5 Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

#### Section 11.6 Rights and Obligations

The provisions of this Declaration and the Articles of Incorporation and Bylaws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Homesite or any ownership interest in the Homesite whatsoever, the person to whom such Homesite or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and Bylaws, whether or not mention thereof is made in said deed.

#### Section 11.7 Miscellaneous Provisions

Any provision of this Declaration or of the Articles of Incorporation and Bylaws to the contrary notwithstanding, the following provisions shall control:

##### A. Notice to Institutional Holders of First Mortgage Liens

The following actions will require notice to all institutional holders of first mortgage liens: (i) abandonment or termination of the Association; or (ii) material amendment to the Declaration.

##### B. Notice to Institutional Holders of First Mortgage of Default or Liens

Upon the written request of any first mortgagee of a dwelling on a Homesite, the Association shall furnish to such mortgagee a written notice of any default by the Owner of such dwelling in the performance of such Owner's obligations under the within Declaration or the Bylaws or Association rules or regulations which is not cured within thirty (30) days. Any first mortgagee of a dwelling who comes into possession of the said dwelling pursuant to the remedies provided in the mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of

foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged dwelling which accrued before the time such holder comes into possession of the dwelling.

C. Consent of Institutional Holders of First Mortgage Liens

Unless at least seventy-five percent (75%) of the first mortgagees (based upon one (1) vote per Homesite for each mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

i) by act or omission seek to abandon, partition, encumber, or transfer the Common Areas, if any, or any portion thereof or interest therein except for the purpose of dedication for public right of way. (The granting of easements for public utilities or other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause.);

ii) substantially change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner by the Association;

iii) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the Units or maintenance of the Units or Homesites; or

iv) fail to maintain liability and extended coverage insurance on insurable property comprising a part of the Common Areas on a current replacement cost basis in an amount not less than one hundred (100) percent of the insurable value (based on current replacement costs).

Section 11.8 Personal Pronouns

All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

Section 11.9 Statutory References

All references to particular statutory provisions in this Declaration shall be deemed to refer to such statutory provisions or their successor provisions, if applicable.

Section 11.10 Headings

The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.



Section 11.11 Conflicts

If there is a conflict between the terms of this Declaration and any Bylaws, the Design Guidelines, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

Section 11.12 Partial Invalidity

The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of this 13<sup>th</sup> day of June 2004.

DECLARANT:

BROOKS RESOURCES CORPORATION,  
an Oregon corporation

By:

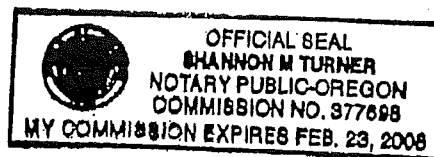
Kirk E. Schueler  
Kirk E. Schueler, President

STATE OF OREGON }

COUNTY OF Deschutes }

The foregoing instrument was acknowledged before me the 13<sup>th</sup> day of June 2004, by Kirk E. Schueler, President of Brooks Resources Corporation, an Oregon corporation, on behalf of the corporation.

Shannon M. Turner  
Notary Public, State of Oregon  
My Commission Expires: February 23, 2008



**EXHIBIT "A"**

**PROPERTY SUBJECT TO DECLARATION**

All that land contained within the OFFICIAL PLAT OF NORTH RIM PHASE 1, Located in the North Half of the Southwest Quarter and the South Half of the Northwest Quarter, Section 19, Township 17 South, Range 12 East, Willamette Meridian, recorded on June 30, 2004, in Volume 2004, Page 39039, in the real property records of Deschutes County, Bend, Oregon.



After Recording Return to:

Brooks Resources Corporation  
409 NW Franklin Avenue  
Bend, Oregon 97701  
Attn.: Jade Mayer

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR AWBREY BUTTE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR AWBREY BUTTE (this "**Declaration**"), is  
effective upon its recording in Deschutes County, Oregon.

**WITNESSETH**

The Declaration of Covenants, Conditions and Restrictions for Awbrey Butte Homesites was adopted August 27, 1984 by Brooks Resources Corporation ("Declarant") and recorded in the real property records of Deschutes County, Oregon, at Volume 72, Page 902, and modified by those certain Declarations Adding Land to the Covenants, Conditions and Restrictions for Awbrey Butte Homesites recorded at 100-1835, 103-0190, 151-2759, 151-2761, 161-0930, 161-2902, 181-1569, 167-2447, 167-2449, 179-2752, 187-0422, 192-0720, 194-0651, 199-1581, 204-0531, 216-2637, 219-0432, 244-0384, 285-1673, 275-1701, 350-2385, 383-1589, 404-2719, 437-2090, 437-2092, 499-0680, 513-1923, 1999-49410, 2000-4430, 2000-30978, 2001-031744, 2001-47963, 2002-60813, and that certain Warranty Deed that subjected property to the Declaration of Covenants, Conditions and Restrictions for Awbrey Butte Homesites recorded at 145-0908, and that certain Modification of Covenants, Conditions and Restrictions Adding Land to the Covenants, Condition and Restrictions for Awbrey Butte Homesites recorded at 2005-30682 (as modified and amended, the "Original Declaration"). Each of the documents described in this recital are hereinafter referred to collectively, as the "Original Declaration Documents".

Declarant has elected to exercise its rights under Section 5.1 of the Original Declaration to relinquish control over development in Awbrey Butte Homesites, subject, however, to the limited right to appoint directors until December 31, 2008 as provided in this Declaration and the Bylaws. By a vote of owners within Awbrey Butte Homesites, a majority have elected to create an owners' association subject to the Oregon Planned Community Act and to amend and restate the Original Declaration as provided herein.

Accordingly, the owners within Awbrey Butte Homesites hereby declare that effective as of June 4, 2008, a Class I planned community known as Awbrey Butte Homesites shall be hereby created on the real property described on **Exhibit A** (the "Property"). The community shall be subject to the Planned Community Act, and the Property shall be held, sold, hypothecated and conveyed subject to the covenants, conditions and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the

Property a community of high standards. Such covenants shall be binding on all parties having any right, title or interest in or to the Property, or any part thereof, and their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

As of the recordation of this Declaration, this Declaration shall supersede the Original Declaration and the Original Declaration shall be of no further force or effect.

## **ARTICLE I DEFINITIONS**

### Section 1.1    "Architectural Review Committee"

**"Architectural Review Committee" or "ARC"** shall mean the committee established by the Board to administer and conduct the design review procedures set out in Article 6 within Awbrey Butte Homesites. The ARC shall consist of three to five members, as the Board may determine.

### Section 1.2    "Articles"

**"Articles"** shall mean the Articles of Incorporation of the Association filed with the Corporation Division of the Oregon Secretary of State incorporating the Association under ORS Chapter 65.

### Section 1.3    "Association"

**"Association"** shall mean Awbrey Butte Association, Inc., an Oregon nonprofit corporation, established for the purposes set forth in this Declaration, the Articles and the Bylaws.

### Section 1.4    "Board"

**"Board"** shall mean the Board of Directors of the Association.

### Section 1.5    "Bylaws"

**"Bylaws"** shall mean the Bylaws of the Association, as amended from time to time. The Bylaws shall be adopted pursuant to ORS 94.625 and recorded in the official records of Deschutes County, Oregon. A copy of the Bylaws is attached hereto as **Exhibit B**.

### Section 1.6    "City"

**"City"** shall mean the City of Bend, Oregon.

Section 1.7    "Common Maintenance Areas"

**"Common Maintenance Areas"** shall mean any areas within public rights-of-way, Lots or any other property that the Association is required to maintain pursuant to this Declaration or that the Board deems necessary or appropriate for the Association to maintain for the common benefit of the Owners, including without limitation, those areas described in Section 5.4 below.

Section 1.8    "County"

**"County"** shall mean Deschutes County, Oregon.

Section 1.9    "Declarant"

**"Declarant"** shall mean Brooks Resources Corporation, an Oregon corporation.

Section 1.10   "Declaration"

**"Declaration"** shall mean this Declaration of Covenants, Conditions and Restrictions for Awbrey Butte Homesites and any amendments and supplements thereto made in accordance with its terms.

Section 1.11   "Directors"

**"Directors"** shall mean the duly elected and/or appointed members of the Board of the Association. The Declarant shall appoint the initial Directors (the "Initial Directors") and may remove and replace them until December 31, 2008; provided, however, in the event that the Directors elected by Members at the first Annual Meeting request that the Initial Directors resign, they shall do so and thereafter, the Declarant shall have no further rights to appoint Initial Directors.

Section 1.12   "Home"

**"Home"** shall mean any residential dwelling situated upon any Lot and shall also include the definition assigned to such term in the New Home Limited Warranty.

Section 1.13   "Improvement"

**"Improvement(s)"** shall include, but not be limited to, any buildings, outbuildings, private roads, driveways, parking areas, fences, and barriers, retaining walls and stairs, decks, hedges, windbreaks, planting, planted trees and shrubs, signs, storage areas and all other structures or exterior landscaping, vegetation or ground cover of every type and every kind above the land surface.

Section 1.14 "Lot"

**"Lot"** shall mean any of the plots of land indicated on a Plat creating single-family home sites, together with all Improvements thereon, but excluding areas deeded to a governmental authority or utility. Lot shall also include any plot of land identified as such in any of the Original Declaration Documents.

Section 1.15 "Member"

**"Member"** or **"Members"** shall mean every record owner, whether one (1) or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.16 "Nonprofit Corporation Act"

**"Nonprofit Corporation Act"** shall mean the Oregon Nonprofit Corporation Act (ORS 65.001 to 65.990), as amended from time to time.

Section 1.17 "Owner"

**"Owner"** shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.18 "Planned Community Act"

**"Planned Community Act"** shall mean the Oregon Planned Community Act (ORS 94.550 to 94.783), as amended from time to time.

Section 1.19 "Plat"

**"Plat"** shall mean the duly recorded plat of any phase of Awbrey Butte Homesites, recorded in the official records of Deschutes County, Oregon.

Section 1.20 "Property"

**"Property"** shall mean the real property described on **Exhibit A**.

Section 1.21 "Rules and Regulations"

**"Rules and Regulations"** shall mean any rules and regulations governing the use and operation of the Property adopted by the Board pursuant to this Declaration or the Bylaws.

**ARTICLE II**  
**AWBREY BUTTE OWNERS' ASSOCIATION, INC.**

Section 2.1    Membership

Every Owner of a Lot by virtue of ownership of such Lot shall be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot.

Section 2.2    Voting Rights

Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members of the Association, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot. If the co-Owners of a Lot cannot agree upon the vote, the vote of the Lot shall be disregarded in determining the proportion of votes with respect to the particular matter at issue.

Section 2.3    Suspension

All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to Article III of this Declaration or is otherwise in default under this Declaration, the Bylaws or the Rules and Regulations.

Section 2.4    Election of the Board

The Board shall be elected as provided in the Bylaws.

Section 2.5    Immunity of the Board

No Director shall have any personal liability to any Owner or any other person for the acts or omissions of the Board if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the Association, the Board or any Director arising from such acts or omissions.

Section 2.6    Clarification of the Association's Role

The Association shall have the general powers and duties of a nonprofit corporation pursuant to the Nonprofit Corporation Act, and of a homeowners' association pursuant to the Planned Community Act. The Association shall also have those specific powers and duties assigned or delegated to the Association pursuant to the Articles, the Bylaws or this Declaration. However, unless otherwise expressly set forth in this Declaration, the Articles or the Bylaws, the Association shall not act in the capacity of settling disputes between Owners or resolving problems that Owners may experience. Disputes or problems experienced by Owners to which the Association has no express authority or role pursuant to this Declaration, the



Articles or the Bylaws shall be resolved by private, lawful means chosen by the affected Owners and there shall be no recourse against the Association.

### **ARTICLE III FUNDING AND ASSESSMENTS**

#### Section 3.1    Funding

Subject to the terms of this Article III, each Lot is hereby subjected to, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and to agree to pay to the Association: (i) annual or periodic assessments or charges; (ii) special assessments for capital improvements to Common Maintenance Areas; (iii) Limited Assessments (as defined in Section 3.5 below); and (iv) any other assessments or charges provided for in this Declaration. All such assessments shall be established and collected as hereinafter provided. The annual or periodic assessments shall include the Reserve Assessments necessary to establish and maintain the Reserve Fund created under Section 3.4 below. Such assessments will remain effective for the full term (and extended term, if applicable) of the covenants contained in this Declaration. Each assessment levied hereunder, together with interest and late charges as well as costs and reasonable attorneys' fees incurred by the Association in the collection thereof, shall be a charge on the land and a continuing lien upon the Lot against which the assessment is made and shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them in writing.

#### Section 3.2    Commencement and Rate of Assessments

Subject to the terms of this Article III, each Lot is hereby subject to an initial assessment in an amount not to exceed an amount determined by the Board (until such assessment charge shall be modified as provided in the Bylaws), for the purpose of creating the Maintenance Fund pursuant to Section 3.3 below, the Reserve Fund pursuant to Section 3.4 below and any other funds contemplated under this Declaration, including, but not limited to, a fund for assessments and charges on public access areas and a fund for Limited Assessments. Charges and assessments for funding such funds will be paid by the Owner or Owners of each Lot in advance in monthly, quarterly or annual installments commencing as to all Lots upon recordation of this Declaration in the real property records of Deschutes County, Oregon. The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly or annually, will be determined by the Board at least thirty (30) days in advance of each assessment period. The Board may adjust the assessment rates from time to time as the needs of the Association may require, in the Board's discretion, subject to the limitations contained in the Bylaws. Assessments shall be assessed equally as between Lots that benefit from the services or Improvements giving rise to the assessment as determined by the Board, in its sole discretion, except where expressly provided otherwise in this Declaration. The Association shall, upon written request of an Owner and for a reasonable charge, furnish a certificate to the Owner

signed by an officer of the Association indicating whether or not the Owner is current in the payment of all outstanding assessments.

### Section 3.3    Maintenance Fund

The Association shall establish a maintenance fund account in the name of the Association (the “**Maintenance Fund**”) composed of the maintenance assessments and shall use the proceeds of the Maintenance Fund to maintain the Common Maintenance Areas for the benefit of all of the Owners. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: (i) normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for landscaping, if any) and the Improvements located in, on or under such Common Maintenance Areas for which the Association is responsible, such as entry monuments, street signs, mail stations and lighting and irrigation systems, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas; (ii) perpetual maintenance, repair and enhancement of any entry monuments, landscaping, lights, irrigation systems and other Improvements in the Common Maintenance Areas for which the Association is responsible; (iii) payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the property to which the Maintenance Fund applies; (iv) payment of all expenses incurred in connection with the collection and administration of all assessments and charges required to fund and maintain the Maintenance Fund; and (v) all other activities necessary or desirable in the opinion of the Board to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property. The judgment of the Board with respect to expenditures from the Maintenance Fund and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith.

### Section 3.4    Reserve Fund

#### 3.4.1   Reserve Fund for Replacing Common Maintenance Areas

The Board shall establish a reserve fund account in the name of the Association (the “**Reserve Fund**”) to fund major maintenance, repair or replacement, in whole or in part, of the Common Maintenance Areas and any Improvements located in, on or under the Common Maintenance Areas for which the Association is responsible pursuant to this Declaration that will normally require major maintenance, repair or replacement in more than one (1) year and less than thirty (30) years and for exterior painting if any of the Common Maintenance Areas include exterior painted surfaces. The Reserve Fund need not include those items that could reasonably be funded from the Maintenance Fund or for which one or more Owners are responsible for maintenance and replacement under this Declaration. For purposes of funding the Reserve Fund, the Association shall impose assessments against the Lots referred to as the “**Reserve Assessments.**” The Reserve Assessments shall be allocated equally among the Lots. The

Reserve Assessments shall begin accruing from the date this Declaration is recorded in the real property records of Deschutes County.

The amount of the Reserve Assessments shall be based upon the reserve study described in Section 3.4.2 below, and other sources of reliable information. Nothing in this Section 3.4.1 shall limit the authority of the Association to establish other separate or unrelated reserve funds that are funded by assessments. The Reserve Fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section 3.4.1. However, the Board may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other unexpected increases in expenses. Funds borrowed under this Section 3.4.1 shall be repaid from regular annual or special assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. The Board shall administer the Reserve Fund and may reduce or increase the amount of the Reserve Assessments without the consent of the Owners to reflect changes in current maintenance, repair or replacement costs over time as indicated by the reserve study or any update thereto (as discussed in Section 3.4.2 below) and to provide for other reserve items that the Board, in its discretion, deems appropriate. In addition to the authority granted to the Board in the preceding sentence, the amount of the Reserve Assessments may be reduced or increased by an affirmative vote of the Owners of at least seventy-five percent (75%) of the Lots. Any funds established for any of the purposes mentioned in this Section 3.4.1 shall be deemed to be for the Reserve Fund notwithstanding that it may not be so designated by the Board. The amount of the Reserve Fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner.

#### 3.4.2 Reserve Study

The board shall annually conduct a reserve study, or review and update an existing study, of the Common Maintenance Area components to determine the requirements of the Reserve Fund described in Section 3.4.1 above. The reserve study shall: (a) identify all items for which reserves are or will be established; (b) include the estimated remaining useful life of each item as of the date of the reserve study; and (c) include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of the item's useful life. The Board shall also prepare a maintenance plan, or review and update an existing maintenance plan, for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under this Declaration, the Bylaws or the Planned Community Act. The maintenance plan shall: (i) describe the maintenance, repair and replacement to be conducted; (ii) include a schedule for the maintenance, repair and replacement; (iii) be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association; and (iv) address issues that include, but are not limited to, warranties and the useful life of the items for which the Association has maintenance, repair and replacement responsibility.

### Section 3.5    Limited Assessments

In addition to the other assessments described in this Article III, the Association shall have the authority to levy assessments to satisfy the common expenses of a particular project or effort undertaken by the Association that benefits some, but less than all, of the Lots ("**Limited Assessments**"). Limited Assessments shall be levied against the Owners of those Lots that benefit from the project or effort undertaken by the Association. An example, for illustrative purposes only and not as a limitation, of a project or effort giving rise to a Limited Assessment, is maintenance or repair of a tract of property that benefits and serves certain Lots, but not other Lots.

### Section 3.6    Additional Assessments

In addition to the other assessments described in this Article III, the Association shall have the authority to assess an Owner for costs and expenses incurred by the Association for corrective action that is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees.

### Section 3.7    Non-Payment of Assessments; Remedies of the Association

Any assessment or other charge not paid within ten (10) days after the due date shall bear interest from the due date at a rate which is equal to the lesser of: (a) the interest rate established by the Board from time to time in its discretion or (b) the maximum interest rate allowed by Oregon law at the time of non-payment. The Board, acting on behalf of the Association, shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by resolution and to initiate litigation against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Areas or abandonment of the Owner's Home or Lot.

### Section 3.8    Subordinated Lien to Secure Payment

To secure the payment of all assessments, interest, late charges, attorneys' fees and other charges to be levied on the individual Lots and paid by the Owners pursuant to this Declaration and the Bylaws, there is hereby reserved a lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law or in equity by the Association; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to all first mortgage or first trust deed liens, present and future, given, granted, and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced for the purchase of the Lot and/or any Improvements thereon; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action. The notice shall contain a statement of the delinquent assessments or other charges upon which the proposed action is based and shall be sent by

prepaid U.S. registered mail to the first mortgage lienholder's address of record as stated in the recorded mortgage lien document or such other address provided in writing by the first mortgage lienholder to the Association. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Lot covered by such first mortgage lien to the holder thereof. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 94.709 shall apply to the Association's lien. The sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of a Lot pursuant to the foreclosure of a first mortgage lien or execution of a deed in lieu of foreclosure of a first mortgage lien shall extinguish the assessment lien with respect to assessments that became due before such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Additionally, no sale, foreclosure or transfer shall extinguish the personal obligation of the Owner who owned the Lot at the time the delinquent assessment and/or payment became due. The Board shall have the right to file notices of liens in favor of the Association in the official records of Deschutes County, Oregon.

#### **ARTICLE IV GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS**

##### **Section 4.1    Purpose of Maintenance Fund**

The Board, for the benefit of the Owners, shall provide and shall pay for out of the Maintenance Fund provided for in Article III above the following:

4.1.1 Maintenance, repair, and enhancement of the Common Maintenance Areas, including any Improvements in, on or under the Common Maintenance Areas for which the Association is responsible.

4.1.2 The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Association or by the manager.

4.1.3 Legal and accounting services.

4.1.4 A policy or policies of insurance insuring the Association, the Board and/or officers of the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided in Article V below.

4.1.5 Workers compensation insurance to the extent necessary to comply with any applicable laws.

4.1.6 Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

4.1.7 Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in the Board's opinion is necessary or proper for the enforcement of this Declaration, the Bylaws and the Rules and Regulations.

#### Section 4.2 Powers and Duties of Board

The Board, on behalf of the Association for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for in the Articles, the Bylaws or elsewhere in this Declaration and the powers and duties of a board of directors of a nonprofit corporation pursuant to the Nonprofit Corporation Act and a homeowners' association pursuant to the Planned Community Act:

4.2.1 To borrow funds to pay for costs of operation secured by an assignment or pledge of the Association's right to receive assessments from the Owners.

4.2.2 To enter into contracts, maintain one (1) or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

4.2.3 To protect or defend the Common Maintenance Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

4.2.4 To make reasonable Rules and Regulations for the operation of the Property and to amend them from time to time; provided, however, that the Rules and Regulations may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to those Rules and Regulations applicable to less than all of the Property, by a majority of the Owners in the portions affected.

4.2.5 To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

4.2.6 To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

4.2.7 To enforce the Rules and Regulations and to enjoin and seek damages from any Owner for violation of the Rules and Regulations.

4.2.8 To collect all assessments and enforce all penalties for non-payment including the filing of liens and the institution of legal proceedings.

4.2.9 To appoint, remove (with or without cause) and replace members of the Architectural Review Committee in accordance with Article VI below.

Section 4.3    Board Powers Exclusive

The Board shall have the exclusive right to contract for all goods, services and insurance on behalf of the Association, payment of which is to be made from the Maintenance Fund and Reserve Fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

**ARTICLE V**  
**COMMON MAINTENANCE AREAS**

Section 5.1    Liability Insurance; Casualty Insurance

From and after the date on which title to or responsibility for the Common Maintenance Areas vests in the Association, the Board shall purchase and maintain a general comprehensive public liability insurance policy for the benefit of the Association and its members, covering occurrences in the Common Maintenance Areas. The policy limits shall be as determined by the Board, but shall include public liability insurance of at least One Million Dollars (\$1,000,000.00) per occurrence. The Board shall use commercially reasonable efforts to obtain a policy that contains, if available, cross-liability endorsements or other appropriate provisions for the benefit of the Board, the Owners and other named insureds, as their interests may be determined by the Board, insuring each named insured against liability from the other named insureds as well as from other third parties. Any proceeds of insurance policies owned by the Association shall be received, held in a segregated account and distributed to all interested parties, as determined by the Board. In addition the Board shall purchase and maintain extended coverage property insurance for the benefit of the Association insuring all insurable Improvements located in, on or under the Common Maintenance Areas for which the Association is responsible against loss or damage by fire, theft, vandalism, malicious mischief and other hazards on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value of such Improvements (based on current replacement costs).

Section 5.2    Condemnation

If there is a condemnation or a sale in lieu thereof of all or any portion of the Common Maintenance Areas owned by the Association, the Association shall represent the Owners in negotiations with the condemning authority. The funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Maintenance Areas to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. If the Association determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Maintenance Areas or for whatever reason, any remaining funds may be distributed to each Owner based on an equal amount per Lot.



Section 5.3     Maintenance of Common Maintenance Areas

Without limitation to the Association's overall maintenance and other obligations, the Association will permanently maintain and repair the following Common Maintenance Areas as necessary:

5.3.1 The eleven (11) mail stations within City right-of-way, including associated lights and related electricity;

5.3.2 The two (2) Awbrey Butte entry monuments, together with associated landscaping, irrigation and lights;

5.3.3 If deemed desirable by the Board of Directors, the street signs within Awbrey Butte to the extent the same are not maintained by the City of Bend or to the extent that the Board determines that it is desirable to have the signs include the Awbrey Butte logo; and

5.3.4 Any other area determined by the Board to be in the interest of the Association to maintain.

The Association shall keep the Common Maintenance Areas in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Maintenance Areas.

**ARTICLE VI**  
**ARCHITECTURAL REVIEW**

Section 6.1     Approval Required.

No Improvement, as defined in Section 1.8 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by the Architectural Review Committee (the "ARC"). All approvals shall be in conformance with the building site established on each Lot by the Declarant.

Section 6.2     Procedure.

Any Owner proposing to construct any improvements within the Awbrey Butte Homesites (including any exterior alteration, addition, destruction, or modification to any such improvements) shall follow the procedures and shall be subject to the approvals required by paragraphs 6.3 through 6.7 below. Failure to follow such procedures or obtain such approvals as required by paragraphs 6.3 through 6.7 below shall be deemed a breach of this Declaration.

Section 6.3     Required Documents.

Any owner proposing to utilize, improve, or develop real property within the Awbrey Butte Homesites, shall submit the following items to the ARC for review:

6.3.1 A site plan showing the location, size, configuration and layout of any building, structure, or improvement (or, where applicable, any alteration, addition, modification, or destruction thereto) including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian traffic and circulation.

6.3.2 Architectural plans and drawings showing the nature, style, and dimensions of any building, structure, fence, wall, barrier or deck (or, where applicable, any alteration, addition, modification or destruction thereof), including the exterior material types, colors, and appearance. The scale of plans shall be 1 inch = 20 feet or larger.

6.3.3 A landscape plan showing the nature, type, site, location, and layout of all landscaping, vegetation ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

#### Section 6.4 Review.

All plans and drawings identified in paragraph 6.3 above, shall be submitted to the ARC to review prior to the performance of any proposed work. Such plans and drawings shall be accompanied with a check payable to the ARC in an amount to be determined by the ARC from time to time. No plans shall be reviewed until the architectural review fee is paid in full and all items specified in this section are submitted. Within 30 days following receipt of such plans and drawings, and the full amount of the architectural review fee, the ARC shall review the plans and shall inform the owner in writing whether the plans conform to the development concept for Awbrey Butte Homesites. In the event the owner is not notified as to the conformity of the plans within the 30 day review period the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to the Awbrey Butte Homesites development concept, the owner shall resubmit those non-conforming portions of the plans for review in accordance with the procedures outlined in paragraph 6.3 above, and this paragraph. No work may be performed relating to any improvement unless and until all aspects of all plans required under paragraph 6.3 above have been approved by the ARC. Any site plans, construction plans or similar plans and drawings submitted to the City of Bend in connection with the construction of any improvement in the Awbrey Butte Homesites must bear the prior written approval of the ARC.

#### Section 6.5 Architectural Guidelines.

The development concept for the Awbrey Butte Homesites shall be determined by the ARC in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be established from time to time by the ARC, but the ARC shall not be required to do so. The ARC shall have the right to alter, rescind or amend any published guidelines; provided however, that once approval has been given pursuant to paragraph 6.4 above, work may proceed in accordance with the approved plans and drawings notwithstanding any changes in the development concept. All such guidelines shall be

in general conformity with this Declaration.

Section 6.6    Inspection.

All work related to any building, structure or improvement or any landscaping, vegetation, ground cover or other improvements within the Awbrey Butte Homesites shall be performed in strict conformity with the plans and drawings approved under paragraph 6.4 above. The ARC shall have the right to inspect any such work to determine its conformity with the approved plans and drawings, and reserves the right to order a stop to all work, if, in good faith, it believes that any such work is non-conforming. In the event that it is determined in good faith by the ARC that certain work is non-conforming, a stop work notice may be issued, without necessity of court order, which shall require the owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of this Declaration. Neither the Association nor the ARC nor their respective officers, directors, employees, agents or servants shall be responsible for any damages, loss, delay, cost or legal expense occasioned through a stop work notice given in good faith even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

Section 6.7    Waiver.

Any condition or provision of paragraphs 6.2 through 6.6 above, may be waived by the ARC in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for the Awbrey Butte Homesites. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under paragraphs 6.2 through 6.6. The granting of a waiver to one owner shall not automatically entitle any other owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of the ARC and delivered by certified mail to the party claiming the benefit of such waiver.

Section 6.8    Architectural Review Committee

The members of the Architectural Review Committee shall be appointed by and may be removed for any reason or no reason by a majority of the Board. The ARC shall act by majority vote.

**ARTICLE VII  
EASEMENTS**

Section 7.1    Entry Easement

If the Owner of any Lot fails to maintain the Lot as required herein, or if there is an emergency, the Association shall have the right to enter upon the Lot to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall

not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

Section 7.2 Maintenance and Inspection Easements

An easement is hereby granted and reserved in favor of the Association, the Board, the ARC and any employee, contractor, property manager or other agent of the Association over, across, upon, and under the Property to inspect, maintain, repair or replace the Common Maintenance Areas, including the Improvements located thereon for which the Association is responsible, and to perform all other obligations of the Association and to exercise all rights and powers of the Association under this Declaration and/or the Bylaws.

**ARTICLE VIII  
USE, OCCUPANCY, CASUALTY, AND INSURANCE**

Section 8.1 Residential Use

All Lots and Homes shall be kept and maintained primarily for single family residential purposes.

Section 8.2 Owner Insurance

Each Owner of a Lot is encouraged to obtain, and maintain in effect, from a reputable insurance company authorized to do business in the State of Oregon, public liability and property damage insurance with respect to such Lot, fire and extended coverage casualty insurance with respect to the Owner's Home in an amount equal to one hundred percent (100%) of the replacement cost thereof. Each Owner shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to that Owner's personal property. No Owner shall be obligated to obtain any of the insurance coverages described herein or in Section 5.2, nor shall any insurance coverage obtained by an Owner (or such Owner's mortgagee) be brought into contribution with insurance obtained by the Association.

**ARTICLE IX  
PROPERTY RIGHTS**

Section 9.1 Owner's Use and Occupancy

Subject to any easements affecting an Owner's Lot, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot. As such rights of an Owner of a Lot with respect to the Lot or the Home on such Owner's Lot is subject to the rights of the Association under this Declaration, the ARC and any representative of the Association authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use of and/or Improvements on such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass, conversion, or otherwise create any right of action in the Owner of such Lot.

Section 9.2    Effect of Declaration

Reference in any deed, mortgage, trust deed or any other recorded document to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

**ARTICLE X  
USE RESTRICTIONS**

Section 10.1    Occupancy.

No owner shall occupy, use or permit his Lot or any part thereof to be used for any purpose other than a private residence for the owner, his family, or his guests, except that each owner shall be permitted to rent the unit when he is not in occupancy.

Section 10.2    Improvements.

Each Lot within the Awbrey Butte Homesites shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard.

Section 10.3    Appearance.

All garbage, trash, cuttings, refuse garbage and refuse containers, clothes drying apparatus, and other service facilities located on the Lot shall be screened from view in a manner approved by the ARC.

Section 10.4    Construction and Alteration.

Nothing shall be altered or constructed in or removed from or placed on a Lot except with the prior written consent of ARC.

Section 10.5    Offensive or Commercial Activity.

No offensive or commercial activity shall be carried on nor shall anything be done which may be or become an annoyance or nuisance to the other owners.

Section 10.6    Signs.

No sign of any kind shall be displayed to public view on or from any Lot without the ARC's prior written consent, provided, however, that an owner may display not more than one (1) "for sale" sign per Lot which has a maximum area not to exceed 300 square inches, the longest dimension being not greater than 20 inches.

Section 10.7 Exterior Lighting or Noise Making Device.

No exterior lighting or noise making device shall be placed on a Lot or any portion thereof without the ARC's prior written consent.

Section 10.8 Antennas.

No television antenna, radio antenna, satellite antenna, or other receiving device shall be placed on any Lot without the ARC's prior written consent.

Section 10.9 Limitation on Transfer.

No owner shall transfer either by conveyance, contract of sale or lease any interest in his Lot which would result in ownership of such Lot being held by more than ten persons.

Section 10.10 Mobile homes.

No house trailer, mobile home, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Lot.

Section 10.11 Single family residences.

No more than one single family residence shall be erected or placed on any Lot.

Section 10.12 Utilities.

No above-ground utilities, pipes or wires shall be used to connect improvements with supplying facilities.

Section 10.13 View.

The height of improvements or vegetation and trees on a Lot shall not materially restrict the view of other Lot owners. The ARC shall be the sole judge of the suitability of such heights. If the ARC determines there is such restriction in the view of the other Lot owners, written notice shall be delivered to the offending Lot owner. If after 30 days the improvement, vegetation, or trees are not removed or reduced in height as directed by the ARC, the ARC shall enter the offending Lot, complete the removal or reduction, charging the owner of the Lot the reasonable costs for the work done. This section is not to be read as justification to create views not present when the Lot was originally purchased.

Section 10.14 Parking.

A minimum of two parking places must be provided for each Lot and must meet the standards set by the ARC. No extended parking on any street shall be allowed by any house trailer, travel trailer, boat trailer, camper or incapacitated motor vehicle.

#### Section 10.15 Security

The Association is not responsible for security of the neighborhood or any Home and the Owners are exclusively responsible for security of their home and property.

### **ARTICLE XI ANNEXATION**

No additional property shall be annexed into the community of Awbrey Butte Homesites, except as may be permitted by applicable law.

### **ARTICLE XII GENERAL**

#### Section 12.1 Remedies

Subject to the provisions of Article XIII, if any default by any Owner under the provisions of this Declaration, the Bylaws or the Rules and Regulations shall occur, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws or the Rules and Regulations, and those which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, but in all cases subject to the limitations and requirements of the Planned Community Act. No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum rate permitted by law but, with reference to any Lots financed by FHA insured loans, not in excess of the maximum rate of FHA loans at the time of delinquency, from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective maintenance assessment (to the same extent as the lien provided herein for unpaid assessments), upon the Lot and upon all of his additions and Improvements thereto, and upon all of his personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

#### Section 12.2 Fines Imposed by the Association

In addition to any other remedies available to the Association hereunder and subject to the requirements of ORS 94.630(1)(n), the Association shall have the right to impose reasonable fines upon an Owner who violates this Declaration, the Bylaws or the Rules and Regulations in the manner and amount the Board deems appropriate in relation to the violation.



### Section 12.3 Term and Amendments

The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless a signed petition containing the signatures of the Owners holding at least seventy-five percent (75%) of the outstanding votes of the Association is presented to the Board or other duly appointed and authorized persons, which shall authorize the Board, or other duly appointed and authorized persons, to execute and properly record a notice of termination of this Declaration in the official records of Deschutes County, Oregon. This Declaration may be amended at any time during the first thirty (30) year period or any extension thereof, upon the consent of the Owners holding at least seventy-five percent (75%) of the outstanding votes of the Association. Notwithstanding the foregoing, no amendment to this Declaration shall change the boundaries of any Lot or any uses to which any Lot or Home is restricted or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot unless the Owners of the affected Lots or Homes unanimously consent to the amendment. Upon approval of an amendment as provided herein, the president and secretary of the Association shall execute an instrument amending this Declaration and certifying that the amendment was adopted in accordance with this Declaration and ORS 94.590, which certification shall be properly acknowledged in the manner of acknowledgment of deeds, and the Board, or other duly appointed and authorized persons, shall record the instrument amending this Declaration.

### Section 12.4 Severability; Partial Invalidity

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

### Section 12.5 Rights and Obligations

The provisions of this Declaration, the Articles and the Bylaws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in a Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, the Articles and the Bylaws, whether or not mention thereof is made in said deed.

### Section 12.6 Institutional Holders of First Mortgage Liens

The following provisions shall control notwithstanding any provision of this Declaration, the Articles or the Bylaws to the contrary notwithstanding:

#### 12.6.1 Notice to Institutional Holders of First Mortgage Liens

The following actions shall require notice to all institutional holders of first mortgage liens: (i) abandonment or termination of the Association; and (ii) material amendment to this Declaration.

#### 12.6.2 Notice to Institutional Holders of First Mortgage Liens Upon Default

Upon the request of any first mortgagee of a Lot, the Association shall furnish to such mortgagee a written notice of any default by the Owner of such Lot in the performance of such Owner's obligations under this Declaration, the Bylaws or the Rules and Regulations which is not cured within thirty (30) days. Any first mortgagee of a Lot who comes into possession of the Lot pursuant to the remedies provided in the mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the Lot free of any claims for unpaid assessments or charges in favor of the Association against the Lot which accrued before the time such holder comes into possession of the Lot.

#### 12.6.3 Consent of Institutional Holders of First Mortgage Liens

Unless at least seventy-five percent (75%) of the holders of first mortgages on Lots (based upon one vote for each first mortgage held) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

- (a) substantially change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner by the Association; or
- (b) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the Homes or maintenance of the Homes or Lots.

#### Section 12.7 Statutory References

Any reference in this Declaration to a specific section of the Oregon Revised Statutes shall mean such section as it is constituted at the time of execution of this Declaration and as it may hereafter be amended, added to or otherwise changed, and it shall also include any applicable successor provision or any other provision of similar purpose which may hereafter become applicable.

#### Section 12.8 Personal Pronouns

All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders and the singular shall include the plural and vice versa.

Section 12.9 Headings

The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 12.10 Conflicts

If there is a conflict between the terms of this Declaration and the Articles, Bylaws or Rules and Regulations, the terms of this Declaration shall control.

IN WITNESS WHEREOF, Declarant hereby certifies that the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Awbrey Butte has been adopted by the owners within Awbrey Butte Homesites in accordance with applicable law and hereby causes this instrument to be executed as of this 9 day of June, 2008.

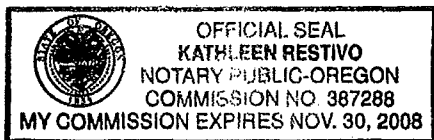
BROOKS RESOURCES CORPORATION,  
An Oregon corporation

By: [Signature]  
Name: Jade Mayer  
Title: CEO

STATE OF OREGON                     )  
                                                  ) ss.  
COUNTY OF Deschutes        )

The foregoing instrument was acknowledged before me the 9 day of June 2008, by Jade Mayer, the CEO of Brooks Resources Corporation.

Kathleen Restivo  
Notary Public for the State of Oregon  
My Commission Expires: 11-30-08



**Consent**

Pursuant to Section 6.2 of the Original Declaration, the undersigned, being the Declarant under the Original Declaration, hereby consents to the above Amended and Restated Declaration of Covenants, Conditions and Restrictions for Awbrey Butte.

BROOKS RESOURCES CORPORATION,  
an Oregon corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Jade Mayes*  
CFO

STATE OF OREGON )

COUNTY OF \_\_\_\_\_ )

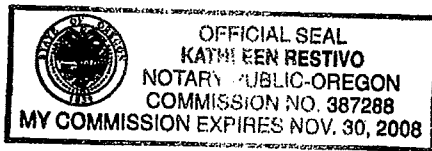
ss.

The foregoing instrument was acknowledged before me the 9 day of June 2008, by Jade Mayes, the CFO of Brooks Resources Corporation.

*Kathleen Restivo*

Notary Public for the State of Oregon

My Commission Expires: 11.30.08



## **EXHIBIT "A"**

### **PROPERTY SUBJECT TO DECLARATION**

#### **PHASE I**

Lots 1-9, Block 1, AWBREY BUTTE HOMESITES, PHASE I, City of Bend, recorded September 13, 1984, in Cabinet C, Page 135, Deschutes County Records, Deschutes County, Oregon.

Lots 1-11, Block 2, AWBREY BUTTE HOMESITES, PHASE I, City of Bend, recorded September 13, 1984, in Cabinet C, Page 135, Deschutes County Records, Deschutes County, Oregon.

Lots 1-5, Block 3, AWBREY BUTTE HOMESITES, PHASE I, City of Bend, recorded September 13, 1984, in Cabinet C, Page 135, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE II**

Lots 1-2, Block 4, AWBREY BUTTE HOMESITES, PHASE II, City of Bend, recorded August 29, 1985, in Cabinet C, Page 156, Deschutes County Records, Deschutes County, Oregon.

Lots 1-14, Block 5, AWBREY BUTTE HOMESITES, PHASE II, City of Bend, recorded August 29, 1985, in Cabinet C, Page 156, Deschutes County Records, Deschutes County, Oregon.

Lots 1-10, Block 6, AWBREY BUTTE HOMESITES, PHASE II, City of Bend, recorded August 29, 1985, in Cabinet C, Page 156, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE III**

Lots 7-10, Block 3, AWBREY BUTTE HOMESITES, PHASE III, recorded September 23, 1987, in Cabinet C, Page 232, Deschutes County Records, Deschutes County, Oregon.

Lots 3-17, Block 4, AWBREY BUTTE HOMESITES, PHASE III, recorded September 23, 1987, in Cabinet C, Page 232, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE IV**

Lots 15-17, Block 5, AWBREY BUTTE HOMESITES, PHASE VI, recorded September 23, 1987, in Cabinet C, Page 231, Deschutes County Records, Deschutes County, Oregon.

Lots 11-12, Block 6, AWBREY BUTTE HOMESITES, PHASE VI, recorded September 23, 1987, in Cabinet C, Page 231, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE V**

Lots 1-8, Block 7, AWBREY BUTTE HOMESITES, PHASE V, recorded April 4, 1988, in Cabinet C, Page 248, Deschutes County Records, Deschutes County, Oregon.

Lots 1, Block 8, AWBREY BUTTE HOMESITES, PHASE V, recorded April 4, 1988, in Cabinet C, Page 248, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE VI**

Lots 11-17, Block 3, AWBREY BUTTE HOMESITES, PHASE VI, recorded April 13, 1988, in Cabinet C, Page 249, Deschutes County Records, Deschutes County, Oregon.

Lots 18-30, Block 4, AWBREY BUTTE HOMESITES, PHASE VI, recorded April 13, 1988, in Cabinet C, Page 249, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE SEVEN**

Lots 1-4, Block 10, AWBREY BUTTE HOMESITES, PHASE SEVEN, recorded April 3, 1989, in Cabinet C, Page 303, Deschutes County Records, Deschutes County, Oregon.

Lots 1-2, Block 11, AWBREY BUTTE HOMESITES, PHASE SEVEN, recorded April 3, 1989, in Cabinet C, Page 303, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE EIGHT**

Lots 2-6, Block 8, AWBREY BUTTE HOMESITES, PHASE EIGHT, recorded July 22, 1988, in Cabinet C, Page 266, Deschutes County Records, Deschutes County, Oregon.

Lots 1-10, Block 9, AWBREY BUTTE HOMESITES, PHASE EIGHT, recorded July 22, 1988, in Cabinet C, Page 266, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE NINE**

Lots 18-20, Block 5, AWBREY BUTTE HOMESITES, PHASE NINE, recorded July 22, 1988, in Cabinet C, Page 268, Deschutes County Records, Deschutes County, Oregon.

Lots 13-15, Block 6, AWBREY BUTTE HOMESITES, PHASE NINE, recorded July 22, 1988, in Cabinet C, Page 268, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE TEN**

Lots 7-14, Block 8, AWBREY BUTTE HOMESITES, PHASE TEN, recorded March 7, 1989, in Cabinet C, Page 297, Deschutes County Records, Deschutes County, Oregon.

Lots 11-15, Block 9, AWBREY BUTTE HOMESITES, PHASE TEN, recorded March 7, 1989, in Cabinet C, Page 297, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE TEN REPLAT**

Lots 15-17, Block 8, A REPLAT OF LOTS 15, 16 & 17, BLOCK 8, AWBREY BUTTE HOMESITES, PHASE TEN, recorded July 3, 1989, in Cabinet C, Page 327, Deschutes County, Oregon.

#### **PHASE ELEVEN**

Lots 11-17, Block 10, AWBREY BUTTE HOMESITES, PHASE ELEVEN, recorded September 15, 1989, in Cabinet C, Page 336, Deschutes County, Oregon.

Lots 1-9, Block 14, AWBREY BUTTE HOMESITES, PHASE ELEVEN, recorded September 15, 1989, in Cabinet C, Page 336, Deschutes County, Oregon.

#### **PHASE TWELVE**

Lots 21-37, Block 5, AWBREY BUTTE HOMESITES, PHASE TWELVE, recorded October 13, 1989, in Cabinet C, Page 349, Deschutes County Records, Deschutes County, Oregon.

Lots 18-21, Block 8, AWBREY BUTTE HOMESITES, PHASE TWELVE, recorded October 13, 1989, in Cabinet C, Page 349, Deschutes County Records, Deschutes County, Oregon.

Lots 1-10, Block 12, AWBREY BUTTE HOMESITES, PHASE TWELVE, recorded October 13, 1989, in Cabinet C, Page 349, Deschutes County Records, Deschutes County, Oregon.

Lots 1-4, Block 13, AWBREY BUTTE HOMESITES, PHASE TWELVE, recorded October 13, 1989, in Cabinet C, Page 349, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE THIRTEEN**

Lots 5-10, Block 10, AWBREY BUTTE HOMESITES, PHASE THIRTEEN, recorded December 27, 1989, in Cabinet C, Page 365, Deschutes County Records, Deschutes County, Oregon.

Lots 3-12, Block 11, AWBREY BUTTE HOMESITES, PHASE THIRTEEN, recorded December 27, 1989, in Cabinet C, Page 365, Deschutes County Records, Deschutes County, Oregon.

Lots 10-17, Block 14, AWBREY BUTTE HOMESITES, PHASE THIRTEEN, recorded December 27, 1989, in Cabinet C, Page 365, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE FOURTEEN**

Lots 9-34, Block 7, AWBREY BUTTE HOMESITES, PHASE FOURTEEN, City of Bend, recorded March 12, 1990, in Cabinet C, Page 384, Deschutes County, Oregon.

#### **PHASE FIFTEEN**

Lots 1-12, Block 15, AWBREY BUTTE HOMESITES, PHASE FIFTEEN, recorded August 23, 1990, in Cabinet C, Page 453, Deschutes County, Oregon.

Lots 1-17, Block 16, AWBREY BUTTE HOMESITES, PHASE FIFTEEN, recorded August 23, 1990, in Cabinet C, Page 453, Deschutes County, Oregon.

Lots 1-8, Block 17, AWBREY BUTTE HOMESITES, PHASE FIFTEEN, recorded August 23, 1990, in Cabinet C, Page 453, Deschutes County, Oregon.

Lots 1-14, 24-28, Block 18, AWBREY BUTTE HOMESITES, PHASE FIFTEEN, recorded August 23, 1990, in Cabinet C, Page 453, Deschutes County, Oregon.

Lots 1-5, Block 19, AWBREY BUTTE HOMESITES, PHASE FIFTEEN, recorded August 23, 1990, in Cabinet C, Page 453, Deschutes County, Oregon.

#### **PHASE SIXTEEN**

Lots 13-15, Block 11, AWBREY BUTTE HOMESITES, PHASE SIXTEEN, recorded October 5, 1990, in Cabinet C, Page 475, Deschutes County, Oregon.

Lots 18-40, Block 14, AWBREY BUTTE HOMESITES, PHASE SIXTEEN, recorded October 5, 1990, in Cabinet C, Page 475, Deschutes County, Oregon.

Lots 1-4, Block 20, AWBREY BUTTE HOMESITES, PHASE SIXTEEN, recorded October 5, 1990, in Cabinet C, Page 475, Deschutes County, Oregon.

#### **PHASE SEVENTEEN**

Lots 16-31, Block 6, AWBREY BUTTE HOMESITES, PHASE SEVENTEEN, recorded September 3, 1991, in Cabinet C, Page 566, Deschutes County, Oregon.

Lots 5-7, Block 13, AWBREY BUTTE HOMESITES, PHASE SEVENTEEN, recorded September 3, 1991, in Cabinet C, Page 566, Deschutes County, Oregon.

#### **PHASE EIGHTEEN**

Lots A, 16-30, Block 11, AWBREY BUTTE HOMESITES, PHASE EIGHTEEN, recorded February 8, 1993, in Cabinet C, Page 745, Deschutes County Records, Deschutes County, Oregon.



#### **PHASE NINETEEN**

Lots 32-54, Block 6, AWBREY BUTTE HOMESITES, PHASE NINETEEN recorded September 17, 1992, in Cabinet C, Page 693, Deschutes County Records, Deschutes County, Oregon.

Lots 8-14, Block 13, AWBREY BUTTE HOMESITES, PHASE NINETEEN recorded September 17, 1992, in Cabinet C, Page 693, Deschutes County Records, Deschutes County, Oregon.

Lots 5-6, Block 20, AWBREY BUTTE HOMESITES, PHASE NINETEEN recorded September 17, 1992, in Cabinet C, Page 693, Deschutes County Records, Deschutes County, Oregon.

Lots 1-3, Block 21, AWBREY BUTTE HOMESITES, PHASE NINETEEN recorded September 17, 1992, in Cabinet C, Page 693, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE TWENTY**

Lots 15-23, Block 18, AWBREY BUTTE HOMESITES, PHASE TWENTY, City of Bend, recorded October 14, 1994, in Cabinet D, Page 87, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE TWENTY-ONE**

Lots 29-35, Block 18, AWBREY BUTTE HOMESITES, PHASE TWENTY-ONE, City of Bend, recorded October 6, 1995, in Cabinet D, Page 159, Deschutes County Records, Deschutes County, Oregon.

Lots 6-12, Block 19, AWBREY BUTTE HOMESITES, PHASE TWENTY-ONE, City of Bend, recorded October 6, 1995, in Cabinet D, Page 159, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE TWENTY-TWO**

Lots 7-33, Block 20, AWBREY BUTTE HOMESITES, PHASE TWENTY-TWO, City of Bend, recorded May 3, 1996, in Cabinet D, Page 221, Deschutes County Records, Deschutes County, Oregon.

Lots 4-18, Block 21, AWBREY BUTTE HOMESITES, PHASE TWENTY-TWO, City of Bend, recorded May 3, 1996, in Cabinet D, Page 221, Deschutes County Records, Deschutes County, Oregon.

Lots 1-6, Block 22, AWBREY BUTTE HOMESITES, PHASE TWENTY-TWO, City of Bend, recorded May 3, 1996, in Cabinet D, Page 221, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE TWENTY-THREE**

Lots 36-62, Block 18, AWBREY BUTTE HOMESITES, PHASE TWENTY-THREE, City of Bend, recorded March 27, 1997, in Cabinet D, Page 332, Deschutes County Records, Deschutes County, Oregon.

Lots 13-25, Block 19, AWBREY BUTTE HOMESITES, PHASE TWENTY-THREE, City of Bend, recorded March 27, 1997, in Cabinet D, Page 332, Deschutes County Records, Deschutes County, Oregon.

Lots 1-3, Block 24, AWBREY BUTTE HOMESITES, PHASE TWENTY-THREE, City of Bend, recorded March 27, 1997, in Cabinet D, Page 332, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE TWENTY-FOUR**

Lots 1-5, Block 23, AWBREY BUTTE HOMESITES, PHASE TWENTY-FOUR, City of Bend, recorded April 18, 1997, in Cabinet D, Page 360, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE TWENTY-FIVE**

Lots 22-26, Block 8, AWBREY BUTTE HOMESITES, PHASE TWENTY-FIVE, City of Bend, recorded June 17, 1998, in Cabinet E, Page 41, Deschutes County, Oregon.

Lots 11-18, Block 12, AWBREY BUTTE HOMESITES, PHASE TWENTY-FIVE, City of Bend, recorded June 17, 1998, in Cabinet E, Page 41, Deschutes County, Oregon.

Lots 63-67, Block 18, AWBREY BUTTE HOMESITES, PHASE TWENTY-FIVE, City of Bend, recorded June 17, 1998, in Cabinet E, Page 41, Deschutes County, Oregon.

Lots 4-9, Block 24, AWBREY BUTTE HOMESITES, PHASE TWENTY-FIVE, City of Bend, recorded June 17, 1998, in Cabinet E, Page 41, Deschutes County, Oregon.

Lots 1-10, Block 25, AWBREY BUTTE HOMESITES, PHASE TWENTY-FIVE, City of Bend, recorded June 17, 1998, in Cabinet E, Page 41, Deschutes County, Oregon.

Lot 1, Block 26, AWBREY BUTTE HOMESITES, PHASE TWENTY-FIVE, City of Bend, recorded June 17, 1998, in Cabinet E, Page 41, Deschutes County, Oregon.

Lots 1-2, Block 27, AWBREY BUTTE HOMESITES, PHASE TWENTY-FIVE, City of Bend, recorded June 17, 1998, in Cabinet E, Page 41, Deschutes County, Oregon.

#### **PHASE TWENTY-SIX**

Lots 10-22, Block 24, AWBREY BUTTE HOMESITES, PHASE TWENTY-SIX, City of Bend, recorded September 22, 1998, in Cabinet E, Page 88, Deschutes County, Oregon.

Lots 11-16, Block 25, AWBREY BUTTE HOMESITES, PHASE TWENTY-SIX, City of Bend, recorded September 22, 1998, in Cabinet E, Page 88, Deschutes County, Oregon.

Lots 2-10, Block 26, AWBREY BUTTE HOMESITES, PHASE TWENTY-SIX, City of Bend, recorded September 22, 1998, in Cabinet E, Page 88, Deschutes County, Oregon.

Lots 3-7, Block 27, AWBREY BUTTE HOMESITES, PHASE TWENTY-SIX, City of Bend, recorded September 22, 1998, in Cabinet E, Page 88, Deschutes County, Oregon.

Lots 1-6, Block 28, AWBREY BUTTE HOMESITES, PHASE TWENTY-SIX, City of Bend, recorded September 22, 1998, in Cabinet E, Page 88, Deschutes County, Oregon.

#### **PHASE TWENTY-SEVEN**

Lots 1-12, AWBREY BUTTE HOMESITES, PHASE TWENTY-SEVEN, City of Bend, recorded January 24, 2000, in Cabinet E, Page 379, Deschutes County Records, Deschutes County, Oregon.

#### **PHASE TWENTY-EIGHT**

Lots 1-31, AWBREY BUTTE HOMESITES, PHASE TWENTY-EIGHT, City of Bend, recorded October 7, 1999, in Cabinet E, Page 331, Deschutes County, Oregon.

#### **PHASE TWENTY-NINE**

Lots 1-39, AWBREY BUTTE HOMESITES, PHASE TWENTY-NINE, City of Bend, recorded August 2, 2000, in Cabinet E, Page 497, Deschutes County Records, Deschutes County, Oregon.

### PHASE THIRTY

Lots 1-30, AWBREY BUTTE HOMESITES, PHASE THIRTY, City of Bend, June 28, 2001, in Cabinet E, Page 657, Deschutes County Records, Deschutes County, Oregon.

### PHASE THIRTY-ONE

Lots 1-39, AWBREY BUTTE HOMESITES, PHASE THIRTY-ONE, recorded September 27, 2001, in Cabinet E, Page 706, Deschutes County Records, Deschutes County, Oregon.

### PHASE THIRTY-TWO

Lots 1-24, AWBREY BUTTE HOMESITES, PHASE THIRTY-TWO, recorded October 31, 2002, in Cabinet F, Page 297, Deschutes County Records, Deschutes County, Oregon.

### PHASE THIRTY-THREE

Lots 1-8, AWBREY BUTTE HOMESITES, PHASE THIRTY-THREE, recorded May 12, 2005, in Cabinet G, Page 675, Deschutes County, Oregon.

### ADDITIONAL PROPERTY

Beginning at a 5/8" iron rod with a plastic cap which marks the most easterly corner of Lot 14, Block 5, Awbrey Butte Homesites, Phase II and is on the northerly right-of-line of Three Sisters Drive per said plat of Awbrey Butte Homesites, Phase II which bears South 74°49'14" East a distance of 1513.22 feet from a 5/8" iron rod marking the Northwest Section Corner of said Section 30 and which bears North 33°37'23" East a distance of 2693.86 feet from a 3" Brass Cap in a 2" iron pipe marking the West One-Quarter Corner of said Section 30; thence along the northeasterly lot line of said Lot 14, Block 5 North 57°31'26" West a distance of 351.85 feet; thence along the northwesterly line of said Lot 14, Block 5 South 60°35'31" West a distance of 295.00 feet; thence North 73°17'37" West a distance of 175.00 feet; thence North 07°08'10" West a distance of 163.38 feet; thence North 48°38'24" East a distance of 274.92 feet; thence North 84°57'41" East a distance of 236.16 feet; thence South 10°48'29" East a distance of 228.02 feet; thence South 57°31'26" East a distance of 263.02 feet; thence South 75°26'33" East a distance of 129.32 feet; thence South 03°50'10" East a distance of 36.19 feet to the northeast corner of the extension of said Three Sisters Drive; thence along the northerly right-of-way line of said extension of said Three Sisters Drive the following 1 curve and 1 bearing and distance:

following the arc of a 180.00 foot radius curve left a distance of 47.66 feet (chord bears South 78°34'41" West 47.53 feet);  
South 70°59'32" West a distance of 48.15 feet to the Point of Beginning, the terminus of this description.

TOGETHER WITH the easement from Paul H. Altrocchi to Brooks Resources Corporation recorded April 1, 1987 in Book 143, Page 2075, Deschutes County Official Records.

## **EXHIBIT "B"**

### **BYLAWS OF AWBREY BUTTE OWNERS ASSOCIATION, INC.**

#### **ARTICLE I DEFINITIONS**

The following terms shall have the meanings specified in this Article I. Any capitalized terms used in these Bylaws and not defined in this Article I shall have the respective meanings given to them in the Declaration.

1.1 Articles. "Articles" mean the Articles of Incorporation of the Association filed or to be filed with the Corporation Division of the Oregon Secretary of State, as amended from time to time.

1.2 Association. "Association" means Awbrey Butte Owners Association, Inc., an Oregon nonprofit mutual benefit corporation, formed or to be formed upon filing the Articles with the Corporation Division of the Oregon Secretary of State.

1.3 Board. "Board" means the Board of Directors of the Association constituted in accordance with Article V of these Bylaws.

1.4 Declarant. "Declarant" means Brooks Resources Corporation, an Oregon corporation, and its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of Declarant with respect to the Lots acquired by such successor or assign.

1.5 Declaration. "Declaration" means the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Awbrey Butte Homesites recorded or to be recorded in the official records of Deschutes County, Oregon, as amended from time to time in accordance with the terms thereof.

1.6 Director. "Director" means a member of the Board as described in and elected in accordance with Article V of these Bylaws.

1.7 Lot. "Lot" means any of the plots of land indicated on a Plat creating single-family home sites, together with all Improvements thereon, but excluding areas deeded to a governmental authority or utility. Lot shall also include any plot of land identified as such in any of the Original Declaration Documents.

1.8 Member. "Member" means each record owner, whether one (1) or more persons or entities, of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.9 Nonprofit Corporation Act. "Nonprofit Corporation Act" means the Oregon Nonprofit Corporation Act (ORS 65.001 to ORS 65.990), as amended from time to time, and any applicable successor statutes thereto.

1.10 Officer. "Officer" means an officer of the Association as described in and elected in accordance with Article IX of these Bylaws.

1.11 Plat. "Plat" means a duly recorded partition plat or subdivision plat covering some or all of the Property, including any amendments thereto.

1.12 Planned Community Act. "Planned Community Act" means the Oregon Planned Community Act (ORS 94.550 to ORS 94.783), as amended from time to time, and any applicable successor statutes thereto.

1.13 Property. "Property" means the real property described in Exhibit A to the Declaration and any other real property that may be brought within the jurisdiction of the Association and made subject to the Declaration pursuant to the terms and provisions of the Declaration.

1.14 Rules and Regulations. "Rules and Regulations" means any of the rules and regulations governing the use and operation of the Property adopted by the Board in accordance with Article XV of these Bylaws.

## **ARTICLE II OFFICES**

2.1 Principal Office. The principal office of the Association shall initially be located at 409 NW Franklin Ave., Bend, Oregon 97701 or at such other location within the Bend, Oregon metropolitan area that the Board may designate from time to time.

2.2 Registered Office. The initial registered office of the Association is located at 409 NW Franklin Ave., Bend, Oregon 97701 and the initial registered agent of the Association at that address is Mr. Jade Mayer. The registered agent and registered office of the Association may be changed from time to time by the Board. If the Board elects to change the registered agent or the registered office, then the Board shall notify the Oregon Secretary of State of the change by following the procedures set forth in the Nonprofit Corporation Act with regard to a change of registered agent or registered office and shall document the change in the corporate records of the Association.

## **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

3.1 Membership. Each Owner of a Lot shall be a Member of the Association. Membership in the Association shall be appurtenant to and shall not be separated from ownership of a Lot. Membership in the Association shall commence, exist, and continue simply by virtue of ownership of a Lot, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership. The Association shall have one (1) class of membership, which shall include all Members.

3.2 Voting Rights. Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person is an Owner of a Lot, all such persons shall be Members. However, in no event shall more than one (1) vote be cast for each Lot. The vote for any Lot with more than one (1) Owner shall be exercised as the Owners of the Lot determine among themselves. If the Owners of a Lot cannot agree upon the vote, the vote of the Lot shall be disregarded in determining the proportion of votes with respect to the particular matter at issue.

3.3 Suspension of Voting Rights. All voting rights of a Member shall be suspended during any period in which the Member is delinquent in the payment of any assessment, charge, fine or other amount duly established pursuant to the Declaration or the Member or any of the Member's family

members, tenants, guests, licensees or invitees or any other co-Owner of the Lot is otherwise in default of these Bylaws or the Declaration or in violation of any of the Rules and Regulations.

#### **ARTICLE IV ELECTION AND QUALIFICATION OF DIRECTORS; TERM OF OFFICE**

4.1 Number of Directors. The affairs of the Association shall be managed by the Board. The Board shall consist of five (5) Directors. Notwithstanding the foregoing, until the Turnover, there shall be three (3) initial Directors (the "Initial Directors"), who shall be appointed, and may be removed (with or without cause) and replaced, by Declarant. Turnover shall occur upon the earlier to occur of (i) December 31, 2008; and (ii) the date on which a majority of the Directors elected by the Members at the first annual meeting of Members requests in writing that the Initial Directors resign. Upon Turnover, the Initial Directors shall resign, the Declarant shall have no further rights to appoint or remove Directors and administrative control for the Association shall vest in the Directors elected by the Members.

4.2 Qualifications of Directors. Except for the Initial Directors appointed by Declarant, the Directors shall be Members. For purposes of this Section 4.2, the officers, directors or employees of a corporation, the trustee of a trust, the partners of a partnership, or the members, managers, officers or employees of a limited liability company that owns a Lot shall be eligible to serve as Directors.

4.3 Nominations. Except for the Initial Directors appointed by Declarant, all nomination for election to the Board may be made by a nominating committee ("Nominating Committee"). Nominations may also be made from the floor at the annual meeting of the Members or any other meeting of the Members called for the purpose of election of Directors. If a Nominating Committee is formed, it shall consist of a Chairman and two (2) or more Members. The Chairman of the Nominating Committee shall not have to be a Director before and at the initial meeting of the Members. However, from and after the initial meeting of the Members, the Board may only appoint a Director to be the Chairman of the Nominating Committee. Declarant may organize a Nominating Committee and appoint the members thereof prior to the initial meeting of the Members for the purpose of nominating Directors to be elected at the initial meeting of the Members. Thereafter, the Board may organize a Nominating Committee and appoint the members thereof prior to each annual meeting of the Members for the purpose of nominating Directors to be elected at the annual meeting of the Members. If organized by Declarant or the Board as provided herein, the Nominating Committee may make as many nominations for election to the Board as it shall determine, in its discretion, but not less than the number of vacancies that are to be filled.

4.4 Election of Directors. At the initial meeting of the Members, the Members shall elect three (3) Directors for a term of four (4) years and two (2) Directors for a term of two (2) years. Thereafter, at each biannual meeting of the Members, the Members shall elect a number of Directors equal to the number whose terms are then expiring, each to serve a term of four (4) years. Election of Directors shall be by plurality with the persons receiving the highest vote totals being elected to the Board. The three (3) persons receiving the most votes at the initial meeting of the Members shall serve for the longer terms. Election of Directors shall be held by secret ballot. Members shall be entitled to cast the number of votes described in Section 3.2 above for each vacancy. However, voting for Directors shall not be cumulative.

4.5 Term of Office. Initial Directors may be removed and replaced by Declarant with or without cause. All Initial Directors appointed by Declarant shall be deemed automatically removed as of December 31, 2008. All other Directors shall serve on the Board for the terms described in Section 4.4 above unless they are otherwise disqualified or removed as provided in this Article IV. Each Director's term of office shall be adjusted accordingly so that it expires on the date that the annual meeting of the

Members is held. The Directors elected at the initial meeting of the Members shall take office January 1, 2009 unless a majority request in writing that the initial Directors appointed by the Declarant sooner resign. In that case, the elected directors shall take office upon such resignation. All other Directors elected at the annual meeting of the Members or at any other meeting held for the purpose of election of Directors shall assume all of the duties of office effective as of the date of the meeting at which they are elected. The resignations of the Directors in office prior to such meeting whose terms are expiring or who otherwise are being replaced shall be deemed effective as of the date of the meeting, and they shall have no further powers as Directors. A Director may serve more than one (1) term and such terms may be successive.

4.6 Removal. A Director may be removed, with or without cause, by the affirmative majority vote of the Members present and entitled to vote at any meeting of the Members at which a quorum is constituted. No removal of a Director is effective unless the matter of removal is included in the notice of the meeting. At such meeting, the Members shall elect a replacement Director to serve the remainder of the replaced Director's term.

4.7 Resignation. A Director may resign at any time by sending a written notice of such resignation to the secretary of the Association. Unless otherwise specified in the notice, a resignation shall take effect upon receipt of the notice by the secretary.

4.8 Vacancies. This Section 4.8 shall not apply to the Initial Directors. Vacancies on the Board caused by the death, resignation or disqualification of a Director shall be filled by the affirmative majority vote of the remaining Directors, even if they constitute less than a quorum. Any Director so elected shall serve the remainder of the replaced Director's term. Vacancies on the Board caused by the removal of Directors pursuant to Section 4.6 above shall be filled in accordance with the procedures set forth therein.

4.9 Compensation. No Director shall receive compensation for any service he or she may render to the Association. However, a Director may be reimbursed for his or her actual expenses reasonably incurred in the performance of his or her duties.

## **ARTICLE V MEETINGS OF THE BOARD**

5.1 Initial Meeting. The Initial Directors shall meet as a Board when and to the extent they deem it necessary. The Initial Directors appointed by the Declarant shall serve until the earlier of (i) December 31, 2008; and (ii) the date on which the Members first elect a Board. The initial meeting of the Board elected by the Members shall occur upon the earlier of (i) January 1, 2009; or (ii) on the date that is seven (7) days after a majority of the Directors who were elected at the first annual meeting of the Members requests in writing that the Initial Directors resign. The initial meeting of the Board shall be held for the purpose of electing Officers.

5.2 Annual Meetings. The Board shall meet at least annually, within thirty (30) days after each annual meeting of the Members. At each annual meeting, in addition to the actions required by the Declaration, the treasurer of the Association shall present to the Board a report on the financial condition of the Association, including a report of receipts and disbursements for the preceding calendar year, the allocation thereof to each Lot, and the estimated receipts and expenses for the coming year.

5.3 Special Meetings. Special meetings of the Board may be called at any time by the president of the Association or two (2) Directors. Such meetings shall be scheduled by the secretary of



the Association at least three (3) but not more than thirty (30) days after the secretary's receipt of a written request signed by the president or at least two (2) Directors; provided that if the purpose of a special meeting is to elect a successor secretary pursuant to Section 9.5 or to consider removal of the secretary pursuant to Section 9.2, such meeting may be scheduled by the president or, if the meeting is also for the purpose of electing a successor president or removing the president, any other Director.

5.4 Place of Meetings. Meetings of the Board shall be held at such place within Deschutes County, Oregon, as may be designated from time to time by the Board.

5.5 Notice of Meetings. The secretary of the Association shall deliver or cause to be delivered to each Director written notice of each Board meeting at least three (3) but not more than thirty (30) days prior to the date set for the meeting, stating the purpose, time, and place of the meeting. Notice of a meeting may be waived by a Director at any time. No Director who is present at a meeting may object to the adequacy or timeliness of the notice given. When a meeting is adjourned for fewer than thirty (30) days, whether or not a quorum is present at the adjourned meeting, no notice of the resumption or reconvening of such adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place. All meetings of the Board shall be open to the Members, except for matters allowed by law to be considered in executive session. Except in emergencies, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the president of the Association shall state the general nature of the action to be considered and when and under what circumstances the deliberations can be disclosed to the Members. The statement, motion, or decision to meet in executive session must be included in the minutes of the meeting. A contract or action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in an open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes. For other than emergency meetings, notice of Board meetings shall be: (i) sent to the Members not less than ten (10) days before the date of the meeting; (ii) posted at a place or places on the Property at least three (3) days prior to the date of the meeting; or (iii) provided by another method otherwise reasonably calculated to inform the Members of the meeting. Emergency meetings may be held without notice, if the reason for the emergency is stated in the minutes of the meeting. Only emergency meetings of the Board may be conducted by telephonic communication or by the use of a means of communication permitted by ORS 94.640(8).

5.6 Voting by the Board. Each Director shall have one (1) vote. All voting rights of a Director shall be suspended during any period in which the Director is delinquent in the payment of any assessment, charge, fine or other amount duly established pursuant to the Declaration or the Director or any of the Director's family members, tenants, guests, licensees or invitees or any other co-Owner of the Lot is otherwise in default under the Declaration, these Bylaws or the Rules and Regulations. If a quorum is constituted, the vote of Directors together holding more than fifty percent (50%) of the total votes of the Directors present at the meeting and entitled to vote shall be a binding vote of the Board for all purposes, unless a greater percentage is required by any other provision of these Bylaws, the Declaration or any applicable law. A Director who is present at a Board meeting at which action is taken on any Association matter is presumed to have assented to the action unless the Director votes against the action or abstains from voting on the action because the Director claims a conflict of interest. When action is taken on any matter at a Board meeting, the vote or abstention of each Director present shall be recorded in the minutes of the meeting. The Directors may not vote by proxy or by secret ballot at Board meetings, except that the Directors may elect Officers by secret ballot.

5.7 Quorum. The presence in person of a majority of the Directors shall constitute a quorum for voting at a Board meeting. The Board shall have the power to adjourn a meeting even if less than a quorum is present.

5.8 Action without a Meeting. Any action which these Bylaws, the Declaration or any applicable law permit the Board to take at a meeting may be taken without a meeting if a written consent setting forth the action so taken is signed by all of the Directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the Board, shall be filed in the meeting minutes or corporate records of the Association. Notwithstanding the foregoing, a written consent shall not substitute for a meeting of the Board if the agenda includes the amendment or repeal of any of the provisions of these Bylaws by the Directors without Member consent, in which case a meeting of the Board shall be called for such purpose in accordance with Article XVIII below.

## **ARTICLE VI POWERS AND DUTIES OF THE BOARD**

6.1 Powers. The Board shall have the power:

(a) To adopt and publish Rules and Regulations governing the use and operation of the Property and the personal conduct of the Members and their family members, tenants, guests, licensees or invitees thereon, and to establish penalties for the infraction thereof, all in accordance with Article XV below.

(b) To exercise on behalf of the Association all power, duties and authority vested in or delegated to the Association and not reserved for the Members pursuant to these Bylaws, the Articles or the Declaration.

(c) To declare the office of a Director to be vacant in the event such Director is absent from three (3) consecutive regular meetings of the Board without just cause having been furnished to and accepted by the Board.

(d) To establish, disburse and maintain such funds as necessary to carry out the functions of the Association pursuant to these Bylaws, the Declaration and the Articles.

(e) To engage the services of a manager, an independent contractor, or such employees as it deems necessary, and to prescribe the conditions, compensation and duties of their work. Such power shall include authority to enter into management agreements with other parties to manage, operate or perform all or any part of the affairs and business of the Association.

(f) To exercise all other powers delegated to the Board under these Bylaws, the Declaration, the Articles or any applicable law. The Board may also exercise the powers of the Awbrey Butte Architectural Review Committee under the Declaration.

(g) To exercise, on behalf of the Association, the powers of a nonprofit corporation pursuant to the Nonprofit Corporation Act and the powers of a homeowners association pursuant to the Planned Community Act.

(h) To appoint, remove (with or without cause) and replace members of the ARC.

(i) To exercise any additional or different powers necessary or desirable for the purpose of carrying out the functions of the Association pursuant to these Bylaws, the Declaration or the Articles or otherwise promoting the general benefit of the Members.

6.2 Duties. It shall be the duty of the Board:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the votes of the Members who are entitled to vote.

(b) To supervise all Officers, agents and employees of the Association, and to see that their duties are properly performed.

(c) To establish assessments, fines and other charges and to assess the Members for the same, in accordance with the Declaration and these Bylaws.

(d) To procure and maintain on behalf of the Association liability and hazard insurance with respect to the Common Maintenance Areas (if any) and such other insurance as deemed necessary or desirable by the Board, all in accordance with the insurance requirements set forth in Article XIV below. The Board shall review the insurance coverage of the Association at least annually.

(e) To cause all Officers and employees or agents of the Association who have fiscal responsibility to be bonded, as the Board may deem appropriate.

(f) To cause the Common Maintenance Areas (if any) to be maintained.

(g) To maintain a current mailing list of the Association.

(h) To adopt an annual budget for the Association. Within thirty (30) days after adopting the annual budget, the Board shall provide a summary of the annual budget to all Owners.

(i) To cause to be filed any necessary tax returns for the Association.

(j) To perform all duties of the Association and the Board as set forth in the Declaration, the Articles, or these Bylaws.

(k) In performing its duties, the Board shall be governed by ORS 94.640 and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377.

## **ARTICLE VII COMMITTEES**

7.1 Establishment of Committees. In addition to the Awbrey Butte Owners Association Architectural Review Committee required to be established pursuant to the Declaration and the Nominating Committee described in Section 4.3 above, the Board may appoint such additional committees as deemed appropriate in carrying out its purposes.

7.2 Committee Functions. It shall be a function of each committee to receive complaints from the Members on any matter involving Association duties and activities within its field of

responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or Officer as is further concerned with the matter presented.

## **ARTICLE VIII MEETINGS OF MEMBERS**

8.1 Initial Meeting. The initial meeting of the Members shall be held on October 30, 2008. The initial meeting of the Members shall be held for the purpose of electing Directors and to consider and act upon any other matters identified in the notice of the meeting.

8.2 Annual Meetings. A meeting of the Members shall be held annually. The first annual meeting of the Association shall be held within one (1) year from the date of incorporation of the Association and each subsequent regular annual meeting of the Members shall be held annually on a date within thirty (30) days of the anniversary date of the first annual meeting of the Members. Subject to the foregoing, the date and time of the annual meeting shall be set by the Board. If the date of the annual meeting is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday. At the annual meeting, the president of the Association, and any other Officer or person whom the president may designate, shall report on the activities and financial condition of the Association. The Members shall also elect a number of Directors equal to the number whose terms are then expiring and shall consider and act upon any other matter identified in the notice of the meeting.

8.3 Special Meetings. Special meetings of the Members may be called at any time by the president of the Association, by a majority of the Board, or by the president or secretary of the Association upon receipt of a written request of the Members holding at least twenty-five percent (25%) of the outstanding votes of the Association. If the Members request a special meeting as provided herein and notice of the meeting is not given to the Members within thirty (30) days after the date the written request for the meeting was delivered to the president or the secretary, a Member who signed the request may set the time and place of the meeting and give the required notice. Business transacted at a special meeting shall be restricted to the purposes set forth in the notice of the meeting.

8.4 Notice of Meetings. Except as otherwise provided in these Bylaws, written notice of each meeting of the Members shall be sent by, or at the direction of, the secretary of the Association or the person authorized to call the meeting, to each Member entitled to vote at the meeting at least ten (10) but not more than fifty (50) days before the date of the meeting. The notice shall specify the place, day and hour of the meeting and the items on the agenda, including without limitation, the general nature of any proposed amendment to the Declaration or these Bylaws or any proposal to remove a Director. Notice of a meeting may be waived by a Member at any time. A Member who is present at a meeting may not object to the adequacy or timeliness of the notice given.

8.5 Quorum. The presence at any Member meeting of a number of Members, whether in person, by proxy or by absentee ballot (if authorized by the Board), who are entitled to cast at least one-third (1/3) of the outstanding votes of the Association shall constitute a quorum for any action unless a higher quorum requirement is specifically required by the Declaration, the Articles or any applicable law, in which case the higher quorum requirement shall apply. If a quorum is not constituted at a meeting, the Members who are present, either in person or by proxy, and entitled to vote, shall have power to adjourn the meeting until another date and time, without notice other than announcement at the meeting. The quorum requirement for any such subsequent meeting shall be reduced to a number of Members, whether in person, by proxy or by absentee ballot (if authorized by the Board), who are entitled to cast at least one-fifth (1/5) of the outstanding votes of the Association.

8.6 Proxies and Absentee Ballots. At all meetings of the Members, each Member may vote in person, by proxy or, at the discretion of the Board, by absentee ballot. All proxies shall be in writing, dated and signed by the Member, filed with the secretary of the Association and in compliance with all other proxy requirements of the Planned Community Act. Proxies may only be revoked upon the giving of actual notice of revocation to the person presiding over the meeting of the Association or to the Board if a vote is being conducted by written ballot. Proxies shall automatically cease upon cessation of membership or restriction of the Member's voting rights. If the Board authorizes voting by absentee ballot, then the absentee ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for absentee ballots shall include instructions for return delivery of the completed absentee ballot and information about whether or not the absentee ballot may be canceled if it is returned in accordance with the instructions. If an absentee ballot is delivered to a Member, the Member may vote in person at the meeting if the Member returned the absentee ballot and canceled the absentee ballot, if cancellation was permitted in the instructions included with the absentee ballot.

8.7 Majority Vote; Withdrawal of Quorum. If a quorum is constituted, the affirmative vote of a majority of the Members present in person, by proxy or by absentee ballot (if authorized by the Board), and entitled to vote at the meeting shall be a binding vote of the Members unless a higher voting percentage is specifically required by another provision of these Bylaws, the Declaration, the Articles or any applicable law, in which case the higher voting percentage shall apply. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

8.8 Action without a Meeting. Any action which applicable law, the Declaration or these Bylaws require or permit the Members to take at a meeting may be taken without a meeting by written ballot if the procedures set forth in ORS 94.647 are followed. For votes of the Members by written ballot, the Board shall provide the Members with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. The notice shall state the general subject matter of the vote by written ballot, the right of Members to request secrecy procedures as specified in ORS 94.647, the date after which ballots may be distributed, the date and time by which any petition requesting secrecy procedures must be received by the Board, and the address where such a petition may be delivered. If, at least three (3) days before written ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the Members petition the Board requesting secrecy procedures, a written ballot must be accompanied by a secrecy envelope, a return identification envelope to be signed by the Member, and instructions for mailing and returning the ballot. The secrecy procedures and the requirement to provide a secrecy envelope and return identification envelope shall not apply to the written ballot of a Member if the consent or approval of that particular Member is required under these Bylaws, the Declaration or the Planned Community Act. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed. All written ballots must set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall state the number of responses needed to satisfy any applicable quorum requirement, the required percentage of votes needed for approval, and the period during which the Association will accept written ballots for counting. Any vote that may be conducted by written ballot may also be conducted by electronic ballot subject to the procedures and requirements set forth in the Planned Community Act for electronic ballots. An electronic ballot shall mean any ballot given by electronic mail, facsimile transmission, posting on a website or other means of electronic communication approved by the Board. Approval by written or electronic ballot shall be valid only when the number of votes cast by written or electronic ballot equals or exceeds any quorum required to be present if a meeting was held to authorize the action and the number of approvals equals or exceeds the number of votes required to approve the matter if a meeting was held to authorize the action. Notwithstanding the

foregoing, action by written or electronic ballot may not substitute for: (i) the annual meeting of the Members; (ii) a meeting of the Members if the agenda includes a proposal to remove a Director; or (iii) a special meeting of the Members called at the request of the Members under ORS 94.650(2).

## **ARTICLE IX OFFICERS AND THEIR DUTIES**

9.1 Enumeration of Officers. The Officers shall be a president, a vice-president, a secretary, and a treasurer, and such other Officers as the Board may from time to time elect. The president and vice-president shall at all times be Directors. All other Officers must be Members.

9.2 Election of Officers. The Officers shall be elected by the Board and shall hold office at the pleasure of the Board and until their successors are elected and qualified. If any office becomes vacant, the Board shall elect a successor to fulfill the unexpired term at a special meeting of the Board called for such purpose.

9.3 Term. The Officers shall be elected annually by the Board and shall hold office for one (1) year unless an Officer sooner resigns, is removed, or is otherwise disqualified from serving as an Officer.

9.4 Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall have such authority and perform such duties as the Board may, from time to time, determine.

9.5 Resignation and Removal. An Officer may be removed from office with or without cause by the Board and a successor may be elected at a special meeting of the Board called for such purpose. An Officer may resign at any time by giving notice to the Board or the president or secretary of the Association. The resignation shall take effect on the date of receipt of the notice or at any later time specified in the resignation notice. Acceptance of the resignation shall not be necessary to make it effective.

9.6 Vacancies. A vacancy in any office may be filled by election at a special meeting of the Board called for such purpose. The Officer elected to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

9.7 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 9.4 above.

9.8 Duties. The duties of the Officers are as follows:

(a) President. The president shall preside at all meetings of the Board, shall see that orders and resolutions of the Board are carried out, sign all leases, contracts, mortgages, deeds, and other written instruments on behalf of the Association, and sign checks, payment vouchers and promissory notes on behalf of the Association in accordance with Section 9.9 below.

(b) Vice-President. The vice-president shall act in the place and stead of the president in his or her absence or inability or refusal to act, sign checks, payment vouchers and promissory notes on behalf of the Association in accordance with Section 9.9 below, and exercise and discharge such other duties as may be required of him or her by the Board.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, keep the corporate seal of the Association and affix it on all papers requiring said seal, serve notice of meetings of the Board and of the Members, maintain a current list of the names and addresses of the Members and Directors and perform such other duties as required by the Board.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all funds of the Association and disburse such funds as directed by resolution of the Board, sign checks, payment vouchers and promissory notes on behalf of the Association in accordance with Section 9.9 below, keep proper books of account, cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year in accordance with Section 11.2 if required by ORS 94.670(4) and prepare an annual budget and a statement of income and expenditures to be adopted by the Board and presented to the membership at its regular annual meeting.

9.9 Signature of Checks and Other Negotiable Instruments. The president (together with either the vice-president or treasurer) shall co-sign all checks in an amount over One Thousand Dollars (\$1,000.00) and all payment vouchers and promissory notes of the Association. The Board may delegate the signing of checks in an amount of One Thousand Dollars (\$1,000.00) or less to a professional property manager if the Association has a contract with a property manager for the professional management of the Association. Otherwise, all checks in an amount of One Thousand Dollars (\$1,000.00) or less shall be signed by either the president, vice-president or treasurer.

9.10 Compensation. Other than reimbursement of out-of-pocket expenses incurred on behalf of the Association, no Officer shall receive any compensation from the Association for acting as an Officer.

9.11 Suspension of Powers and Duties. All powers and duties of an Officer shall be suspended during any period in which that Officer is delinquent in the payment of any amount duly established pursuant to the Declaration or the Officer or any of the Officer's family members, tenants, guests, licensees or invitees or any other co-Owner of the Lot is otherwise in default under the Declaration, these Bylaws or the Rules and Regulations.

## **ARTICLE X ASSESSMENTS**

The Association shall levy, collect, and enforce the payment of assessments in accordance with the Declaration. The amount of assessments shall be based upon an annual budget adopted by the Board with respect to the projected expenses anticipated to be incurred in connection with the maintenance, repair and replacement of the Common Maintenance Areas (if any), the administration and management of the Association and the performance of the rights, powers and duties of the Association or the Board pursuant to these Bylaws, the Declaration or the Articles. Expenses that may be subject to assessment are described in the Declaration. Proceeds from assessments shall not be used to reimburse Declarant for any capital expenditures incurred in the construction of any common facilities or other common improvements (if any) or for any expenses incurred in the operation or maintenance of such facilities prior to formation of the Association and the vesting in the Association of responsibility for the operation and maintenance of any such common facilities or improvements in accordance with the Declaration.

## **ARTICLE XI BOOKS AND RECORDS**



11.1 Books and Records. The Association shall maintain accurate and complete books and records of the Association in accordance with the requirements of the Planned Community Act. The books and records shall be retained at the principal office of the Association or such other location within the state of Oregon designated by the Board. Except for those items which are exempt from disclosure under ORS 94.670, the books and records of the Association shall be made available for inspection and duplication by any Member or mortgagee of a Lot who requests access to the information in good faith and for a proper purpose. Without limiting the generality of the foregoing, the Association shall maintain a copy of each of the following documents that is suitable for duplication at the principal office of the Association or such other location within the state of Oregon designated by the Board: these Bylaws, the Declaration, the Articles, the Plat (if feasible), the Rules and Regulations, the architectural guidelines for the Property (if any), any and all amendments to the foregoing documents and the most recent financial statement and current operating budget for the Association. The Association shall make the documents described in the preceding sentence available for duplication within ten (10) business days after receipt of a written request from a Member to furnish such documents. Subject to the foregoing, the Board may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of the books and records of the Association and the imposition of a reasonable fee for furnishing copies thereof.

11.2 Financial Statements. Within ninety (90) days after the end of each fiscal year, the Board shall distribute to each Member and, upon request, any mortgagee of a Lot, a copy of the annual financial statement of the Association, consisting of a balance sheet and income and expense statement for the preceding fiscal year. Additionally, if the annual assessments of the Association exceed Seventy-Five Thousand Dollars (\$75,000) for the year (or such other amount designated in the Planned Community Act from time to time), then the Board of Directors shall cause such financial statements to be reviewed within one hundred eighty (180) days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, provided, however, the Board of Directors need not cause such a review to be performed if so directed by an affirmative vote of at least sixty percent (60%) of the Members, not including votes of Declarant with respect to Lots owned by Declarant. If the annual assessments of the Association are Seventy-Five Thousand Dollars (\$75,000) or less (or such other amount designed in the Planned Community Act from time to time), then the Board of Directors shall cause such review to be performed within one hundred eighty (180) days after receipt of a petition requesting such review signed by at least a majority of Members. The terms of this Section 11.2 are intended to comply with the requirements of ORS 94.670, as the same may be amended and/or supplemented from time to time, and all other applicable provisions of the Planned Community Act and shall be deemed modified, as applicable, to comply therewith.

11.3 Tax Returns. The Board shall cause to be filed the necessary income tax returns for the Association.

11.4 Statement of Assessments Due. The Association shall provide, within ten (10) business days of receipt of a written request from a Member, a written statement that provides (i) the amount of assessments due from the Member and unpaid at the time the request was received, such as regular and special assessments, fines, accrued interest, late payment charges and other charges, (ii) the percentage rate at which interest accrues on unpaid assessments and (iii) the percentage rate or fixed charge for late payments. The Association need not provide the amount of assessments due as provided herein (i) if the Association has commenced litigation by filing a complaint against the Member and (ii) the litigation is pending when the statement would otherwise be due.

## **ARTICLE XII FISCAL YEAR**

The Fiscal Year of the Association shall begin on the first (1<sup>st</sup>) day of January and end on the thirty-first (31<sup>st</sup>) day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

## **ARTICLE XIII INDEMNIFICATION AND LIMITATION ON LIABILITY**

13.1 Indemnification. To the fullest extent permitted by law, the Association shall indemnify all current and former Directors, Officers and members of committees established by the Board pursuant to these Bylaws or the Declaration (each an "Indemnified Party" and collectively, the "Indemnified Parties") against all expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which an Indemnified Party may be a party by reason of being or having been a Director, Officer or committee member, so long as the Director, Officer or committee member acted or failed to act, in good faith, with regard to the act or omission at issue. Any right to indemnification provided for herein shall not be exclusive of any other rights to which a current or former Director, Officer or committee member may be entitled. In addition to the foregoing, the Association may, to the extent authorized from time to time by the Board, indemnify an employee or agent of the Association in accordance with the provisions of this Section 8.1.

13.2 Limitation on Liability. To the fullest extent permitted by law, neither the Association nor any Indemnified Party shall be liable to a Member for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act by the Association or the Indemnified Party, provided that the Association or Indemnified Party acted in good faith and in a manner reasonably believed to be in the best interest of the Association and its Members.

## **ARTICLE XIV INSURANCE**

14.1 By the Association. The Association shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in Oregon, public liability insurance in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons, and property damage, arising out of the performance of the Association's powers, authority and duties pursuant to these Bylaws, the Declaration, the Articles or any applicable law, whether caused by the negligence of the Association or otherwise; provided, however, that such liability policy(ies) shall not be for an amount of less than \$1,000,000 per person, per occurrence, and that such liability policy(ies) shall provide that the coverage thereunder cannot be canceled or substantially modified without at least ten (10) days prior written notice to the Association. The Association shall also obtain, and maintain in effect, from reputable insurance companies authorized to do business in Oregon, property damages and fire and extended coverage casualty insurance, including coverage for vandalism and malicious mischief, with respect to all insurable Improvements within the Common Maintenance Areas in an amount equal to one hundred percent (100%) of the replacement cost thereof, if available at a reasonable cost, as determined by the Board in its sole discretion. The Association may obtain such other and further policies of insurance as the Board deems appropriate or advisable. The insurance coverage obtained by the Association shall not be brought into contribution with any insurance obtained by a Member or a mortgagee of a Lot. Any insurance policy obtained by the Association shall identify the Association as the named insured and shall, if available on commercially reasonable terms, be written by

an insurer with an A.M. Best's Rating of "B" and an A.M. Best's Financial Size Category (FSC) of "III." The insurance policies obtained by the Association may contain reasonable deductibles, provided that no such deductible shall exceed the greater of: (i) the maximum deductible acceptable to the Federal National Mortgage Association; or (ii) Ten Thousand Dollars (\$10,000), and the amount thereof shall be added to the face amount of the policy in determining whether the casualty insurance coverage equals the required full replacement cost. The Board shall use commercially reasonable efforts to obtain a policy that contains, if available, cross-liability endorsements or other appropriate provisions for the benefit of the Board, the Owners and other named insureds, as their interests may be determined by the Board, insuring each named insured against liability from the other named insureds as well as from other third parties. Any proceeds of insurance policies owned by the Association shall be received, held in a segregated account and distributed to all interested parties, as determined by the Board.

14.2 By the Members. Each Member is encouraged to obtain, and maintain in effect, from reputable insurance companies authorized to do business in Oregon, public liability and property damage insurance with respect to such Member's Lot and fire and extended coverage casualty insurance with respect to the Unit in an amount equal to one hundred percent (100%) of the replacement cost thereof. Each Member shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to the Member's personal property, if such Member elects to do so. No Member shall be obligated to obtain any of the insurance coverages described in this Section or in Section 14.1 above, nor shall any insurance coverage obtained by a Member (or such Member's mortgagee) be brought into contribution with insurance obtained by the Association.

14.3 Director and Officer Insurance. At the discretion of the Board, the Association may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Association, or is or was serving at the request of the Association, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under these Bylaws or the Articles.

14.4 General Provisions. Premiums for insurance obtained by the Board on behalf of the Association pursuant to this Article XIV shall be a common expense of the Association. Allocation of responsibility for the payment of any deductibles on the insurance policies obtained on behalf of the Association shall be prescribed by resolution adopted by the Board. The Board shall annually review the insurance coverage of the Association. If available on commercially reasonable terms, the Board shall obtain insurance policies with the waiver of subrogation provisions specified in ORS 94.690 and with an "inflation guard" endorsement.

## **ARTICLE XV RULES AND REGULATIONS**

The Board shall have the power to adopt, modify, revoke and publish Rules and Regulations governing the use and operation of the Property and the personal conduct of the Members and their family members, tenants, guests, licensees or invitees thereon, as the Board deems necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property; provided, however, that the Rules and Regulations may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to those Rules and Regulations applicable to less than all of the Property, by a majority of the Owners in the portions affected. The Board shall also have the authority to establish penalties for violations or infractions of the Rules and Regulations. The Rules and Regulations may be adopted, modified, revoked by a written resolution signed by all of the Directors or upon a majority vote of the Directors present and entitled to vote at a meeting of the Board at which a quorum is constituted. If

a Board meeting is held, notice of the meeting shall be given in accordance with Section 5.5 above and the notice shall include a verbatim copy of the proposed Rules and Regulations or amendments thereto. Upon adoption by the Board, a copy of the Rules and Regulations or a copy of the applicable amendment, modification or revocation thereof, shall be sent to each Member and shall become binding on the Members, including their family members, tenants, guests, licensees and invitees, on the date of delivery. Any Rule or Regulation which conflicts with these Bylaws or the Declaration shall be null and void.

#### **ARTICLE XVI SHARES OF STOCK AND DIVIDENDS PROHIBITED**

The Association shall not have or issue shares of stock. No dividends shall be paid and no part of the income of the Association shall be distributed to the Directors or Officers, or to the Members. Notwithstanding the foregoing, the Directors and Officers are entitled to reimbursement for certain out-of-pocket expenses as provided in Sections 4.9 and 9.10 above.

#### **ARTICLE XVII NOTICES**

17.1 Notices. All notices given to a Member or a Director under these Bylaws, the Declaration, the Articles, the Planned Community Act or any other applicable law or statute shall be delivered by: (i) messenger service (or hand delivery); (ii) overnight courier service; (iii) regular U.S. Mail; or (iv) electronic mail, facsimile transmission or any other form of electronic communication acceptable to the Board and permissible under the Planned Community Act. Notices delivered by messenger service (or hand delivery), overnight courier service or regular U.S. Mail shall be sent to each Director's or Member's mailing address last appearing on the books of the Association. Notices delivered by facsimile or email shall be sent to the email address or facsimile number of the Member or Director last appearing on the books of the Association. Notwithstanding the foregoing, electronic mail, facsimile or other form of electronic communication may not be used to notify a Member of: (i) the failure to pay an assessment; (ii) the foreclosure of an Association lien under ORS 94.709; or (iii) an action the Association may take against a Member. Additionally, a Member or Director may decline to receive notice by electronic mail, facsimile or other form of electronic communication by giving written notice thereof to the Board. Notices shall be deemed given on the date the notices are sent in accordance with the procedures outlined herein.

17.2 Waiver. Whenever any notice is required to be given under the provisions of these Bylaws, the Declaration or any applicable law or statute, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

#### **ARTICLE XVIII AMENDMENTS**

These Bylaws may be amended upon the approval of a majority of the Directors present and entitled to vote at a meeting of the Board at which a quorum is constituted. Notice of the meeting must be given to the Members in accordance with Section 5.5 above and the notice must include a copy or summary of the amendment. Notwithstanding the foregoing, the Board shall have no authority to amend or repeal any provision of these Bylaws relating to the election, qualifications, powers, duties or terms of Directors without the approval of a majority of the Members. Additionally, any amendment that imposes an additional disproportionate burden upon or takes away or impairs an existing right particular to any one Lot or group of like-affected Lots shall require the vote of a majority of the Members who own the

affected Lots. An amendment shall not be effective unless it is certified by the president and secretary of the Association as having been adopted in accordance with these Bylaws and ORS 94.625, acknowledged in the manner provided for acknowledgement of deeds, and recorded in the official records of Deschutes County, Oregon. No amendment of these Bylaws shall be inconsistent with the Declaration unless the Declaration is also amended as provided therein.

#### **ARTICLE XIX GENDER AND GRAMMAR**

The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

#### **ARTICLE XX ENFORCEMENT**

If the Association institutes legal action to enforce any restrictive covenant or other condition of the Declaration, the Articles or these Bylaws, and the violator voluntarily corrects or abates such violation after litigation has been filed, the Association shall not dismiss or abandon such legal action until it has been reimbursed all of its expenses, including reasonable attorneys' fees and court costs.

#### **ARTICLE XXI LOANS TO DIRECTORS AND OFFICERS PROHIBITED**

21.1 No Loans to Directors or Officers. The Association shall not make any loans to the Directors or Officers. The Directors who vote for or assent to the making of a loan to a Director or Officer, and the Officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

21.2 Contribution; Subrogation. Any Director against whom a claim is asserted under or pursuant to this Article XXI shall be entitled to contribution from the other Directors who voted for the action upon which the claim is asserted. To the extent that any Director is required to pay such claim, he or she shall be subrogated to the rights of the Association against the debtor on the loan.

#### **ARTICLE XXII DISPUTE RESOLUTION**

Before initiating litigation or an administrative proceeding in which the Association and a Member have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to resolve the problem through a dispute resolution program pursuant to ORS 94.630(4).

#### **ARTICLE XXIII CONFLICTS AND PARTIAL INVALIDITY**

23.1 Conflicts. These Bylaws are intended to comply with applicable law and the Declaration. In case of any irreconcilable conflict, applicable law and the Declaration shall control over these Bylaws and any amendments hereto, and the Rules and Regulations adopted hereunder.

23.2 Partial Invalidity. The invalidation of any one of the provisions of these Bylaws by judgment or court order shall in not affect the enforceability of any other provisions, which shall remain in full force and effect.

#### ARTICLE XXIV STATUTORY REFERENCES

Any reference in these Bylaws to a specific section of the Oregon Revised Statutes shall mean such section as it is constituted at the time of execution of these Bylaws and as it may hereafter be amended, added to or otherwise changed, and it shall also include any applicable successor provision or any other provision of similar purpose which may hereafter become applicable.

Declarant hereby certifies that the foregoing Bylaws were adopted by the owners within Awbrey Butte Homesites in accordance with applicable Oregon law on June 4, 2008.

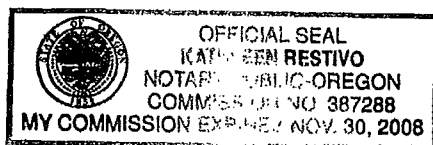
BROOKS RESOURCES CORPORATION,  
an Oregon corporation

By: [Signature]  
Name: Jade Mayer  
Title: CFO

STATE OF OREGON            )  
COUNTY OF Deschutes )

The foregoing instrument was acknowledged before me this 9 day of June 2008, by Jade Mayer as CFO of Brooks Resources Corporation, on behalf of the corporation.

Kathleen Restivo  
Notary Public for the State of Oregon  
My Commission Expires: 11-30-08



## Damian Syrnyk

---

**From:** Steven Hultberg <SHultberg@radlerwhite.com>  
**Sent:** Friday, January 24, 2014 11:26 AM  
**To:** Brian Rankin; Damian Syrnyk  
**Cc:** Jon Skidmore  
**Subject:** TRF and CC&Rs

Brian and Damian,

I will be unable to make today's RTF meeting. I have read your most recent memorandum recommending that the City move forward with an analysis of relevant subdivisions and CC&Rs to determine whether underlying restrictions would prohibit further land division or infill development. I fully support the recommendation. Please share my comments with the RTF.

As you are well aware, the accuracy of the BLI is critical to adopting a UGB that reflects the actual supply of available land within the current UGB. If the BLI overestimates the infill capacity of the UGB, the City will adopt and undersized UGB. It is a mathematical fact. Having spent nearly a decade working on the UGB, I cannot fathom why the City would ignore this issue and knowingly adopt a BLI that greatly overstates the infill potential of the current UGB. As a practical matter, I do not believe that the City has the luxury of ignoring this issue. The mere fact that the RTF has raised this issue means that it is in the record and must be addressed in the City's findings.

My belief is that this will not be a costly or long endeavor. I am relatively certain that one or more of the title companies in town could provide significant assistance to the City in obtaining the relevant CC&Rs at little or no cost.

Thank you for consideration of these comments.

Regards,

Steve

**RADLER WHITE PARKS**  **ALEXANDER** LLP  
ATTORNEYS AT LAW

**Steven P. Hultberg**  
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Bend, Oregon 97709  
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We advise you that any discussion of federal tax matters in this email is not intended or written to be used, and may not be used by you or any taxpayer, to (a) avoid penalties under the Internal Revenue Code, or (b) promote, market or recommend to any other party any transaction or matter addressed herein. All taxpayers should seek independent tax advice.

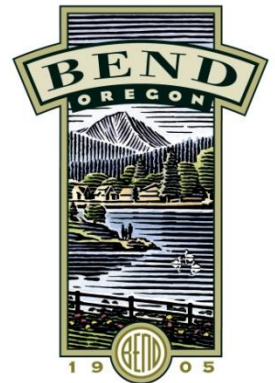


# AGENDA

## UGB Remand Task Force (RTF)

Monday, February 10, 2014  
3:00 p.m.

DeArmond Room  
Deschutes Services Building  
1300 NW Wall St, Bend, OR 97701



710 NW WALL  
STREET  
PO BOX 431  
BEND, OR 97701  
[541] 388-5505 TEL  
[541] 385-6676 FAX  
BENDOREGON.GOV

1. Call to Order
2. Approval of Minutes – January 13, 2014 meeting
3. Recap of January 13, 2014 meeting:
  - a. Recap of BLI
  - b. Update on further work on infill lands and CCRs
4. Presentation and Discussion – UGB Remand Task 2.3 – Housing Needs Analysis (See pages 1-25 of Draft Housing Needs Analysis and Findings)
  - a. Staff presentation and requested action
  - b. Overview of Housing Needs Analysis
  - c. Review of Step 1 – Housing Unit Forecast
  - d. Review of Step 2 – National and State Trends
  - e. Questions, RTF, Staff
  - f. Public Comments
  - g. RTF discussion, deliberation, and action  
**Requested Action:** Approve work products for Steps 1 and 2 of Housing Needs Analysis
5. Future schedule for RTF meetings

March 17, 2014 – Steps 3 and 4 of HNA and Report back on Infill lands work for BLI

April 21, 2014 – Steps 5 and 6 of HNA
6. Adjourn

JIM CLINTON  
*Mayor*

JODIE BARRAM  
*Mayor Pro Tem*

VICTOR CHUDOWSKY  
*City Councilor*

DOUG KNIGHT  
*City Councilor*

SALLY RUSSELL  
*City Councilor*

MARK CAPELL  
*City Councilor*

SCOTT RAMSAY  
*City Councilor*

ERIC KING  
*City Manager*

**1. Call to Order**

Vice Chair Barram called the meeting to order at 3:08 PM. Present were the RTF members, Bill Wagner, Doug Knight, Sally Russell, Jodie Barram, Victor Chudowsky, Jim Clinton, Scott Ramsay and Mark Capell.

**2. Appointment of Chair, Vice Chair**

Mr. Clinton nominated Mr. Chudowsky to be Chair and Ms. Russell seconded the motion. It was unanimously passed. Mr. Clinton then nominated Mr. Wagner as Vice Chair and Ms. Russell seconded the vote. It passed unanimously.

**3. Approval of Minutes - November 18, 2013**

The minutes were unanimously approved with Ms. Russell moving and Mr. Knight seconding the vote.

**4. Recap of Presentation from November 18, 2013**

Mr. Syrnyk discussed our last meeting. He mentioned the tracking table and that we would like to use it as a tracking sheet so we can check off items as we move forward. Today, we'll focus on one task 2.2.

**5. Presentation and Discussion-UGB Remand 2.2-Buildable Lands Inventory**

The first slide discussed the definition of the BLI and the task we have before us. The second slide discussed why we need to inventory the buildable land. The third slide explained substantial evidence and what that means. The fourth slide discussed the different classifications of land and Mr. Syrnyk went over each one in more detail. The next slide was a table outlining summary data and explained preliminary acres in BLI and capacity (housing units). The next slide explained the importance of findings and addressed the statutes and the administrative rules. The last one explained the next steps on the use of the BLI.

Mr. Syrnyk then discussed infill and whether CC&Rs limit the size of lots in developments and whether it limits development on those lots. Chair Chudowsky mentioned that we have this number out there that may not be accurate and he is concerned about a possible legal challenge. Vice Chair Wagner wondered if we should see if CC&Rs were changed during that time? Can we expect a similar trend? Would it be worth the effort of seeing what happened? Mr. Syrnyk responded that some of the

older subdivisions would have the potential for developing further. We didn't look at it prior to the 2009 BLI. Ms. Winters mentioned that the RTF would need to decide if it's enough to just look at trends or should we have to review those CC&Rs individually. Mr. Capell clarifies that we do not have to do this but we could do it to get an accurate number and it could potentially increase or decrease the number of housing units that would then increase the amount of land outside the UGB that would need to be added. Mr. Syrnyk thought a GIS analysis might be easiest. The discussion ensued whether we should do this - would it be a good investment of our time? The maps handed out today may help to decide whether it is worth our time. Mr. Syrnyk thinks it may be possible. We might have the time before the consultant comes on board.

Public Comment:

Dale Van Valkenburg believes that it's easy for him to get his hands on the CC&Rs for Brooks Resources. He feels there is a value in reevaluating the numbers. Mr. Syrnyk mentions we should focus on the planning period and be consistent.

Mr. Hultberg echoes Mr. Van Valkenburg's comments. He believes they should look at all the infill and we should be consistent. Though we are not required to do it, we may be forced to face that issue down the road. We are looking at big subdivisions, not small ones.

Mr. Capell asks if we would go back to the partially vacant and vacant land to which Mr. Hultberg mentions there aren't a lot of acres there. Mr. Syrnyk would need to talk with Mr. Van Valkenburg to see how long it could take.

Mr. White mentions that he is concerned we are going to overstate the potential for redevelopment and that we'll have a UGB that's too small. He agrees that it is advisable to look at CC&Rs. He believes it is a big issue and you would want more input from citizens and at least talk with neighborhood associations. We can chart our own course.

Mr. Capell mentions that he hears that they would like us to look at CC&Rs but he is not hearing that there's a cry to go after the vacant to which Mr. White mentions that he believes we should go after both.

Ms. Russell asks for clarification regarding going the route of the remand and if we had to accept and work with certain data.

Ms. Swirsky from the DLCD mentions that their position throughout is that if we want to use a different number other than 5,151, we would have to do a new population forecast. Mr. Syrnyk clarifies the limited work the staff would do. Ms. Winters then mentions that if we get challenged, we would be in the best situation if we look at the

CC&Rs themselves. We should make really good findings. Ms. Swirsky mentions that if we could come up with a really good plan, we could fly it by the DLCD.

Robin Vora asks how the Central Area Plan has to do with this to which Mr. Syrnyk mentions that the numbers could change.

Liz Dickson mentions that she looked at the problem originally. She thinks it is more than just looking at CC&Rs. There are many lots in Bend that have easements through them, for example. There are a lot reasons that lots don't get developed. She believes you can't just change some numbers and not others - it's complex.

Mr. Chudowksy proposes that we come up with a methodology and do a recount and get a better grip on how complicated it is and whether it's worth the return. Mr. Capell comments that he doesn't know what the staff drain is on this project. Can Mr. Syrnyk determine the time it will take and run it by Ms. Swirsky?

Mr. Wagner asks if we could craft a motion to specify what we'd like done to which Mr. Cappell mentions that he doesn't think we have to do a motion. Mr. Syrnyk thinks we'd have the time to determine whether this is something staff could do without taking too much time.

Mr. Chudowksy comments that he's ok with all the other numbers. Mr. Wagner also feels the same.

Ms. Barram asks how we can be fair and not just use Brooks' properties. Ms. Winters mentions that it's not about being fair, it's about having an adequate factual basis. Mr. Syrnyk mentions it might help us verify what we see in the trend data. Ms. Barram would like a more accurate number but doesn't want it to drag it out. Mr. Knight says again that he believes we should rely on the data we have to keep it streamlined. He might be on board if it takes a week. Mr. Clinton mentions that it's complicated. We have more knowledge today and some of these numbers are wrong because we see them differently now because things have happened. If a number is wrong in 2008, it's wrong now. Mr. Capell still feels he's not willing to slow the project down substantially unless we have a good, solid reasoning and if it doesn't happen quickly, he says no. Ms. Russell likes if we can do it in 2 weeks but wouldn't be happy if it takes 6 months. Mr. Ramsay doesn't want it to slow us down.

Mr. Syrnyk will develop a methodology and will email to the RTF - no need to wait for next meeting. Mr. Capell says if we can do this before the next meeting, let's do it.

Mr. Syrnyk adds that we should look into it, see if we can have it done quickly, see if it is something DLCD supports, and then let's bring it back to the next RTF meeting.

Ms. Russell asks that Mr. Syrnyk be ready to discuss at the next joint planning commission meeting -- to check in.

Mr. Cappell asks staff to look at developed land with infill potential and determine if it's something that can be done quickly without putting a delay on the process, have it done before the next meeting and check in next week (the 24<sup>th</sup>). Present something on the 24<sup>th</sup>. They'll then decide if it's worth going forward.

**6. Adjourn at 4:46**

DRAFT



## MEMORANDUM

710 WALL STREET  
PO BOX 431  
BEND, OR 97709  
[541] 388-5505  
TEL  
[541] 388-5519  
FAX  
bendoregon.gov

TO: **BEND UGB REMAND TASK FORCE**  
FROM: **DAMIAN SYRNYK, SENIOR PLANNER**  
SUBJECT: **FEBRUARY 10, 2014 TASK FORCE MEETING**  
DATE: **FEBRUARY 6, 2014**

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### Purpose

This memorandum provides an overview of the meeting agenda and the actions that Staff will request from the RTF during the February 10, 2014 meeting.

### Remand Task 2.3, Housing Needs Analysis

Your meeting materials include two products related to this Task 2.3. This task involves one of the key products needed for both estimating future housing needs and the amount of land needed for housing. One product is a housing needs analysis dated January 2014. This report includes the results of prior remand work reviewed by the RTF in 2011 and 2012. You will also find enclosed a set of findings that address the legal requirements the City must satisfy for the housing needs analysis.

Staff proposes that the RTF conduct the review of these products in stages, beginning with Monday's meeting. For this meeting, Staff will present an overview of the HNA and its step and components. Staff will ask for public review of the first two steps of the HNA. You will find these materials at pages 1 through 25 of the January HNA.

### Next meeting and steps

In March, Staff recommends returning to meeting on the 3<sup>rd</sup> Monday of the month, which will be March 17, 2014. The following meeting would be schedule for April 21, 2014. Staff will confirm these dates with you at the Monday meeting.

# City of Bend Housing Needs Analysis 2008-2028



Community Development Department  
Damian Syrnyk, AICP Senior Planner  
January 2014 draft





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## I N T R O D U C T I O N

This report presents a housing needs analysis (HNA) for the City of Bend. The purpose of this analysis is to address the requirements for planning for needed housing in urban areas under ORS 197.296(3) and (5). These requirements include, but are not limited to, an inventory of buildable lands for housing, an analysis of national, state, and local demographic and economic trends, and recommendations for a mix and density of needed housing types. This work relies upon data current as of 2008, and considers housing needs over a 2008 to 2028 planning period. This report builds on prior housing need analyses, including the city's 2005 housing needs analysis, and updates to this analysis adopted in 2009 with the City's 2009 urban growth boundary (UGB) expansion proposal. The City prepared this HNA to respond to Order 001775 from the Land Conservation and Development Commission (LCDC) through which LCDC remanded certain work related to the city's housing needs analysis. Sub-Issue 2.3 of the UGB Remand Order requires the City to prepare a revised HNA consistent with provisions in state law.

In an effort to address all requirements in statutes and administrative rules for an HNA, this document follows the suggested framework of "Planning for Residential Growth," a guide book prepared in 1997 by the Oregon Transportation and Growth Management (TGM) Program to assist local governments in developing an HNA that complies fully with applicable portions of ORS 197.296 and 197.303, as well as OAR 660-008.<sup>1</sup>

Statewide Planning Goal 10, Housing, is to provide for the housing needs of the citizens of the state<sup>2</sup>. Goal 10 requires cities to inventory lands for residential use and to develop plans that encourage the development 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.

ORS 197.296 provides further requirements for complying with Goal 10. ORS 197.296 requires the city to conduct an analysis of housing need by type and density range in accordance with ORS 197.303 and statewide planning goals and rules relating to housing. The purpose of this is to determine the amount of land needed for each needed housing type for the next 20 years.

### **ORS 197.296**

*(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.*

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<sup>1</sup> The guidebook is available on-line at [http://www.oregon.gov/LCD/docs/publications/planning\\_for\\_residential\\_growth.pdf](http://www.oregon.gov/LCD/docs/publications/planning_for_residential_growth.pdf).

<sup>2</sup> See OAR 660-0015-0000(10)

*(3) In performing the duties under subsection (2) of this section, a local government shall:*

*(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and*

*(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.*

*4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, “buildable lands” includes:*

*(A) Vacant lands planned or zoned for residential use;*

*(B) Partially vacant lands planned or zoned for residential use;*

*(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and*

*(D) Lands that may be used for residential infill or redevelopment.*

*(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:*

*(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;*

*(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and*

*(C) The presence of a single family dwelling or other structure on a lot or parcel.*

*(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.*

*(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:*

*(A) The number, density and average mix of housing types of urban residential development that have actually occurred;*

*(B) Trends in density and average mix of housing types of urban residential development;*

*(C) Demographic and population trends;*

*(D) Economic trends and cycles; and*

*(E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.*

*(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.*

*(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.*

In addition, ORS 197.303 and 197.307 define needed housing and what actions a local government must take to ensure an adequate supply of land is available for the development of needed housing. The pertinent sections of these statutes are:

**197.303 “Needed housing” defined.** (1) *As used in ORS 197.307, until the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing” means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing” also means:*

- (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;*
- (b) Government assisted housing;*
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;*  
*and*
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.*

**197.307 Effect of need for certain housing in urban growth areas; approval standards for certain residential development; placement standards for approval of manufactured dwellings.**

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*(3)(a) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing, including housing for farmworkers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.*

LCDC has adopted an administrative rule at OAR 660-008 to assure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries and to provide greater certainty in the development process so as to reduce housing costs<sup>3</sup>. This rule is intended to define standards for compliance with Goal 10 and to implement ORS 197.303 through 197.307.

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<sup>3</sup> See OAR 660-008-0000, Purpose.

## ***Housing Needs Analysis Steps***

In 1997, the Oregon Department of Land Conservation and Development (DLCD) published a guidebook, "Planning for Residential Growth," that outlined what steps to perform to complete a housing needs analysis that satisfies state law<sup>4</sup>. These six steps include:

Step 1 – Project the number of new housing units needed in the next 20 years.

Step 2 – Identify relevant national, state, and local demographic and economic trends and factors that may affect the 20-year project of structure type mix.

Step 3 – Describe the demographic characteristics of the population, and, if possible, household trends that related to demand for different types of housing.

Step 4 – Determine the types of housing that are likely to be affordable to the projected households based on household income

Step 5 – Estimate the number of additional needed units by structure type.

Step 6 – Determine the needed density ranges for each plan designation and the average needed net density for all structure types.

To summarize, the City is required to consider its needs for future housing based on type and density over a 20-year planning period. This analysis of housing must examine current and future demographic and economic trends that will influence the types of housing produced and purchased or rented. In addition, this analysis must consider the types of housing needed at various price ranges and rent levels. One of the final steps in this process is an estimate of the number of additional units that will be needed by structure type. Once the City has done this, the City must show that adequate land has been or will be planned and zoned within the existing UGB, and if necessary any area added through an expansion, to demonstrate that the General Plan satisfies Goal 10<sup>5</sup>.

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<sup>4</sup> See pages 25 through 33, Planning for Residential Growth: A Workbook for Oregon's Urban Areas. Transportation and Growth Management Program, Lane Council of Governments, and ECO-Northwest (1997) -: [http://www.oregon.gov/LCD/docs/publications/planning\\_for\\_residential\\_growth.pdf](http://www.oregon.gov/LCD/docs/publications/planning_for_residential_growth.pdf).

<sup>5</sup> See Remand Order pages 33 through 36. Remand Task 2.4 requires the City to demonstrate, after completing a buildable land inventory and work on residential efficiency measures, that we have planned for an adequate supply of land for needed types of housing.

## ***Prior Housing Needs Analyses and Remand Tasks***

The purpose of this section is to provide a brief review of the city's past work on completing a housing needs analysis consistent with Goal 10. The City provided this information to DLCD and LCDC in January of 2010 as a component of the City's Appeal of the Director's January 8, 2010 Order and Report on the City's Proposed UGB Expansion.

In 2005, the City completed a buildable lands inventory (2005 BLI) (see Supp. Rec. 1987) and a housing needs analysis (2005 HNA). (Rec. 2046) The City followed DLCD's Goal 10 guidebook to develop both products. After further work with a technical advisory committee (TAC), the City updated the 2005 HNA in April 2006. (Supp. Rec. 2157.) Based on the findings of the 2005 HNA and the analysis of trends, the City concluded that manufactured homes would be provided on separate lots in the future, not in parks. The City also concluded that a more relevant factor for estimating current and future housing needs is type of housing unit (attached/detached) rather than tenure (rent/own).

In 2007, consultant Angelo Planning Group prepared a final report that presented land need estimates for housing, schools, parks, and institutional uses. (Rec. 2137.) This 2007 report also presented a series of forecasts for residential land needs, following ORS 197.296 and DLCD's Goal 10 workbook. Another consultant, Cogan Owens, prepared a draft General Plan housing element that, along with the 2007 Angelo land need report, were submitted to DLCD with a 45-day notice on June 11, 2007. (Supp. Rec. 1587, 1789.) Following the initial public hearings in July and August of 2007, the City, working in public work sessions of the Bend Planning Commission and with liaisons of the Deschutes County Planning Commission, reviewed and amended the proposed elements of the UGB expansion, including the work that supported the housing element.

From September 2007 through October 2008, the Bend Planning Commission held 35 public work sessions on the UGB expansion. Through these work sessions, which included extensive public input, the City revised its draft buildable lands inventory, housing needs analysis, and residential land need estimate. This work resulted in 2008 versions of the buildable lands inventory, housing needs analysis (Rec. 1280, 1728), and residential land needs analysis that were incorporated in the 2008 version of the housing element submitted to DLCD in 2009.

On November 2, 2010, LCDC issued its final order of remand and partial acknowledgement on the UGB expansion and its components. The final order was not appealed, and became final in January 2011. With respect to the HNA adopted as part of the UGB expansion, the Commission's order remands the city's decision for it to revise its findings and chapter 5 of its comprehensive plan consistent with a detailed analysis contained in the order<sup>6</sup>. That analysis is based on the January 2010 Director's Report and Order which specifies that the City must:

1. Prepare a final housing needs analysis (HNA) that complies with ORS 197.296, ORS 197.303, OAR 660 Division 8, and OAR 660-024-0040(4). This product would replace the product adopted in 2008 and would be adopted as an element of the city's general plan. The final HNA must:

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<sup>6</sup> See Remand and Partial Acknowledgment Order ACKNOW-001795, LCDC, November 2, 2010, Sub-Issue 2.3, p. 33.



- a. analyze housing needs for at least three types, including: attached and detached single family housing, multi-family attached housing, and manufactured housing;
  - b. identify the types of housing that will meet the city's needs are allowed or proposed to be allowed in one or more residential zoning districts, and;
  - c. explain the city's policy choices for the final housing mix that includes at least three types of housing, and how this proposed mix has been translated into types that are allowed in one or more residential zoning districts.
2. Prepare new findings that show whether the proposed housing needs analysis, mix, and types of housing are consistent with the housing policies in Chapter 5 of the Bend Area General Plan, in particular Housing Policies 4, 17, and 21. The new findings must also address Remand Task 3.2 and show that the proposed and any new measures will demonstrably increase the likelihood that residential development will occur at types and densities.
3. Prepare new findings that address Remand Task 3.2 and ORS 197.296(7) and (9). These findings must show how the proposed measures allow types of housing that will be needed over the 20-year planning period, and point to zoning districts that allow these types of housing. A key element of this task will be preparing a reasonable estimate of the potential numbers of units the city could see develop under these measures and supporting these estimates with adequate findings and a Goal 2 adequate factual base.

This HNA is intended to specifically address (1)(a) through (1)(c) above. The work required under (1)(c) is also addressed under Remand Task 2.4, which requires the City to show that we have planned for an adequate supply of land for all types of needed housing. This HNA addresses (1)(a) through (1)(c) and Task 2.3 by presenting the forecast of housing units, analysis of national, state, and local demographic and economic trends, and the consideration of demographic changes in Bend's population that will influence the supply of and the demand for housing during the planning period. The City is addressing Items 2 and 3 by preparing and adopting findings that address Remand Task 3.2, compliance with General Plan housing policies, and ORS 197.296(7).

## ***Factual Base and Data Sources***

The City has developed this HNA using a number of data sources and materials, with a related goal of demonstrating that the HNA satisfies Statewide Planning Goal 2, Land Use Planning. This goal requires that legislative decisions, such as those related to updating a comprehensive plan with respect to housing, must be supported by an adequate factual base. An adequate factual base must be supported by substantial evidence, which refers to evidence that exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. This HNA relies on a number of data sources and documents that include, but are not limited to, the following documents with their record references from the proceedings before the Land Conservation and Development Commission.

1. 2000 to 2025 Deschutes County Coordinated Population Forecast, Rec. 1980
2. 2005 Buildable Lands Inventory, Supp. Rec. 1987
3. 2005 Housing Needs Analysis, Rec. 2046 - 2113
4. 2007 Residential Land Need report, Rec. 1798-1835, 2137
5. 2008 Housing Chapter of BAGP (Ch. 5), Rec. 1720, including 2008 Housing Needs Analysis at Rec. p 1728
6. Draft Revised Buildable Lands Inventory, Memo to UGB Remand Task Force, August 31, 2011.
7. July 22, 2011 memorandum to the Remand Task Force on the housing needs analysis and its legal requirements
8. September 2, 2011 memorandum to the Remand Task Force: Steps 1 through 3 of the HNA process
9. November 3, 2011 memorandum to the Remand Task Force: Steps 4 and 5 of the HNA process
10. March 27, 2012 memorandum to the Remand Task Force: Step 6 of the HNA process

The analysis presented on Steps 2 and 3 also relies on data from the 2000 Census and the 2007 American Community Survey. This data is available online through [factfinder2.census.gov](http://factfinder2.census.gov). The remainder of this report also draws from a number of technical memoranda that have been presented to the UGB Remand Task Force and help form the foundation for this product's adequate factual base.

## ***Explanation of Time Periods***

The City has relied upon two periods of time to look back and to look forward to complete the HNA.

**Trend Period.** ORS 197.296(3)(b) requires the HNA to be based on data relating to land within the City's UGB that has been collected since the last periodic review or five years, whichever is greater. In Bend's situation, the last periodic review ended in 1998 with the adoption of the Bend Area General Plan. This HNA relies on data collected from 1998 to 2008.

**Planning Period.** ORS 197.296(2) further requires the City to ensure a 20-year supply of buildable land for needed housing. The statute states that the 20-year period shall commence on the date initially scheduled for completion of the legislative review. For this HNA, the 20-year period begins in 2008 and ends in 2028.

## STEP 1: PROJECT THE NUMBER OF NEW HOUSING UNITS NEEDED IN THE NEXT 20 YEARS

The first step in the HNA process is to forecast the number of housing units that will be needed to house the projected population growth over the planning period<sup>7</sup>. In 2008, the City developed and relied on a 2028 population forecast for Bend of 115,063, reflecting an increase in population of 38,512 people between 2008 and 2028. The January 2010 DLCD Director's Report and Order on the UGB Expansion concluded that the forecast complied with applicable law<sup>8</sup>. The 2028 population forecast for Bend was prepared using the 2004 Coordinated Population Forecast for Bend as a base. The Coordinated Population Forecast for Bend is 109,389 people by 2025<sup>9</sup>. Staff extended the forecast out another three (3) years to 2028 using the same growth rate used to forecast population beyond 2025 in the Housing Needs Analysis<sup>10</sup>.

The City relied on this 2028 population forecast to develop a housing unit forecast for Bend from 2008 to 2028. The DLCD Director also concluded that the housing unit forecast of 16,681 new units between 2008 and 2028 complied with the applicable law in his January 2010 Report and Order<sup>11</sup>. The following table presents the 2008 to 2028 housing unit forecast for the City of Bend.

<b>Table 1-1: Housing Unit Forecast: 2008 to 2028</b>	
Population forecast for 2028	115,063
(-) Less Population on 7/1/08	76,551
(=) New population 2008 to 2028	38,512
(-) Less population in group quarters (2.3%)	886
(=) New population in households	37,626
(/) Divided by household size (2.4)	
(=) Equals new occupied housing units	15,678
(+) Plus vacancy factor (6.4%)	1,003
<b>= New housing units 2008 to 2028</b>	<b>16,681</b>

<sup>7</sup> See September 2, 2011 memorandum to the Remand Task Force, presented at the RTF's September 8, 2011 meeting.

<sup>8</sup> See page 25 of 156, January 8, 2010 Director's Report and Order

<sup>9</sup> See Exhibit L-2, Deschutes County Coordinated Population Forecast 2000-2025 (2004) to 45-Day notice

<sup>10</sup> See Exhibit L-3, City of Bend Housing Needs Analysis (2005) to 45-day notice, pages 7-8.

<sup>11</sup> See page 31 of 156, January 8, 2010 Director's Report and Order

Staff used the same method for forecasting housing units already used in the record<sup>12</sup>. The household size, group quarters percentage, and vacancy factor are all based on the 2000 Census results for Bend<sup>13</sup>. The housing units forecast relies on the 2028 population forecast of 115,063. Subtracting the population forecast for 2008 leaves a remainder of 38,512; this represents the new population growth between 2008 and 2028. Subtracting the population in group quarters (2.3% or 886) leaves the new population in households in 2028. Dividing the population in households by a household size of 2.4 persons per household provides the number of new occupied housing units between 2008 and 2028, 15,678. The final forecast is obtained by adding another 1,003 units to account for vacant units (a rate of 6.4%), which increase the forecast to 16,681 needed new housing units between 2008 and 2028.

## **STEP 2: IDENTIFY RELEVANT NATIONAL, STATE AND LOCAL DEMOGRAPHIC AND ECONOMIC TRENDS AND FACTORS THAT MAY AFFECT THE 20-YEAR PROJECTIONS OF STRUCTURE TYPE MIX**

ORS 197.296(5) requires communities to examine demographic and economic trends that will inform the city's analysis of what types of housing will be needed in the future. This section presents an examination of relevant national, state, and local demographic and economic trends and factors that may affect the 20-year projection of the types and mix of housing<sup>14</sup>. The analysis of trends focuses on the period following the acknowledgement of the 1998 Bend Area General Plan to 2007. For many variables, this analysis will include data from 1998 or 1999 to 2007; for others, two periods will be presented to look at trends. These periods will include 1990 to 2000, between the two Censuses, and from 2000 to 2007. For 2007, the City is relying on data collected for the nation, the State of Oregon, and Bend from the American Community Survey<sup>15</sup>. In addition, this analysis incorporates previous work from the 2005 Housing Needs Analysis and the 2007 Residential Land Need Analysis<sup>16</sup>.

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<sup>12</sup> See Residential Land Needs 2005-2030 Memorandum (April 25, 2007); Table 3, Page 5.

<sup>13</sup> See the 2000 Demographic profile for Bend at: <http://censtats.census.gov/data/OR/1604105800.pdf>.

<sup>14</sup> See September 2, 2011 memorandum to the UGB Remand Task Force, presented at their September 8, 2011 meeting.

<sup>15</sup> For more information about the American Community Survey (ACS), See <http://www.census.gov/acs/www/>. The ACS data can be accessed from the Census Bureau's American Factfinder website at [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en).

<sup>16</sup> See 2005 Housing Needs Analysis at Rec p 2046 and 2007 Residential Land Need Analysis at Rec. P. 2114.

## *National Demographic Trends*

This section begins with a brief overview of national demographic trends that may affect the 20-year projection for new housing. This discussion summarizes the most recent information and data from several sources. The trends covered here include those that describe household characteristics that influence housing changes, in particular the type of household and household size. The Census Bureau released a brief on Households and Families based on the results of the 2000 Census<sup>17</sup>. This report provides further data on trends of households and families that may affect the 20-year forecast for housing:

- ❖ Family households increased by 11 percent, from 64.5 million to 71.8 million between 1990 and 2000;
- ❖ Nonfamily households increased by 23 percent, from 27.4 million to 33.7 million between 1990 and 2000;
- ❖ Family households represent about 68 percent of all households nationally;
- ❖ The average household size decreased from 2.63 to 2.59;
- ❖ The average family size remained fairly constant, declining from 3.16 to 3.14, and;
- ❖ Female family households (family households with no husband present) increased from 6.0 million (6.6 percent of total households) in 1990 to 7.6 million (7.2 percent of all households) in 2000.

The Census Bureau also published a subsequent report on families and living arrangements in November 2004<sup>18</sup>. This report examined trends in families and living arrangements between 1970 and 2003. The following summarizes the demographic trends identified in this report that are related to housing:

- ❖ Family households, those households with at least two members related by birth, marriage, or adoption, represented 81 percent of all households in 1970. By 2003 that proportion had decreased to 68 percent of all households;
- ❖ Married couple households with children represented 40 percent of all households in 1970. By 2003, this proportion declined to 23 percent of all households;
- ❖ In 2003,
  - The average household size 2.57 persons,
  - The average family household size was 3.19 persons,
  - The average non-family household size was 1.24 persons,
- ❖ Households with children represented 45 percent of all households in 1970. This proportion decreased to 32 percent of all households in 2003, and;

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<sup>17</sup> Households and Families: 2000 A Census 2000 Brief (2001) US Census Bureau [www.census.gov](http://www.census.gov).

<sup>18</sup> America's Families and Living Arrangements: 2003 (2004) US Census Bureau [www.census.gov](http://www.census.gov).

- ❖ In 2003, of the 111,278,000 households in the United States:
  - 26.4 percent were one person households
  - 33.3 percent were 2 person households
  - 16.1 percent were 3 person households
  - 14.3 percent were 4 person households
  - 9.8 percent were 5 or more person households.

Despite the decreases in the proportions of households that are either family or married couple with children households, 40 percent of households in 2003 were occupied by three or more people. The following table provides some summary data on key housing variables for the United States, comparing the results of the 2000 Census with the 2007 American Community Survey (ACS). This report includes similar tables presenting data for Oregon and Bend for comparison.

<b>Table 2-1: United States - 2000 to 2007</b>				
	<b>Census</b>	<b>ACS</b>	<b>Change</b>	<b>% Change</b>
	2000	2007	2000-2007	2000-2007
Population	281,421,906	301,621,159	20,199,253	7%
Household Size	2.59	2.62	0.03	1%
Family Size	3.14	3.2	0.06	2%
Age of Householder <sup>19</sup>				
Under 25 years	5,533,613	5,272,168	(261,445)	-5%
25 to 44 years	42,266,048	40,775,077	(1,490,971)	-4%
45 to 64 years	35,539,686	43,295,140	7,755,454	22%
65 years and over	22,140,754	23,666,713	1,525,959	7%
Households by Type				
Total Households	105,480,101	112,377,977	6,897,876	7%
Family households (families)	71,787,347	75,119,260	3,331,913	5%
Married-couple family	54,493,232	55,867,091	1,373,859	3%
Nonfamily households	33,692,754	37,258,717	3,565,963	11%
Householder living alone	27,230,075	30,645,140	3,415,065	13%
Householder 65 years and over	9,722,857	10,264,914	542,057	6%
Median household income	\$41,994	\$50,740	\$8,746	21%
Median family income	\$50,046	\$61,173	\$11,127	22%
<b>Sources:</b> 2000 Census data and 2007 American Community Survey (ACS) data from American Factfinder - <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .				

<sup>19</sup> The data for Age of Householder presents the number of households where a householder falls within one of the above-listed age ranges.

- ❖ Over past seven years, the nation's population grew by seven percent.
- ❖ The average household size increased by one percent; the average family size by two percent
- ❖ Households headed by individuals between the ages of 45 and 64 increased by 22 percent during this same period. Conversely, households headed by individuals less than 45 years of age decreased by four percent during this period.
- ❖ Non-family households grew by a greater percentage than family households, increasing by 11 percent. The number of households with a householder living alone increased by 13 percent.
- ❖ Median household and family income grew by at least 21%.

In addition to the American Community Survey, the Joint Center for Housing Studies of Harvard University publishes an annual State of the Nation's Housing (SON). The following summarizes the 2008 report's findings on drivers of housing demand<sup>20</sup>. The Center's findings focus on households and household characteristics.

- ❖ From 1994 to 2004, the national homeownership rate surged by 5.0 percentage points, peaking at 69.0 percent. In the three subsequent years, homeownership rates have fallen back for most groups, including a nearly 2.0-point drop among black households and a 1.4-point drop among young households.
- ❖ The number of renter households increased by more than 2 million from 2004 to 2007, lowering the national homeownership rate to 68.1 percent in 2007.
- ❖ Thanks to higher rates of immigration and natural increase, minorities contributed over 60 percent of household growth in 2000–2006. Minorities now account for 29 percent of all households, up from 17 percent in 1980 and 25 percent in 2000. The minority share is likely to reach about 35 percent by 2020.
- ❖ In 2007, fully 29 percent of heads of households with children were unmarried. Within this group, about 18 percent lived with partners and another 21 percent lived with other non-partner adults.
- ❖ Education still remains the key to higher earnings. For example, the median earnings of college-educated male workers aged 35 to 54 rose from \$71,700 in 1986 to \$75,000 in 2006 in constant 2006 dollars, while those for same-age males who only completed high-school fell from \$48,000 to \$39,000.

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<sup>20</sup> Joint Center for Housing Studies of Harvard University (2008) [The State of the Nation's Housing 2008](http://www.jchs.harvard.edu). <http://www.jchs.harvard.edu>.



- ❖ Among homeowners who bought units between 1999 and 2005, fully 85 percent saw an increase in wealth, with their median net wealth rising from \$11,100 to \$88,000 in real terms. Among households that already owned homes, 75 percent also saw an increase in their wealth, with their median net wealth nearly doubling from \$152,400 to \$289,000.
- ❖ Changes in the number and age distribution of the adult population should lift household growth from 12.6 million in 1995–2005 to 14.4 million in 2010–2020.
- ❖ Minority household growth among 35 to 64 year-olds should remain strong in 2010–2020. In contrast, the number of white middle-aged households will start to decline after 2010 as the baby boomers begin to turn 65. White household growth in the next decade will be almost entirely among older couples without minor children and among older singles (usually widowed or divorced).
- ❖ In total, persons living alone are expected to account for 36 percent of household growth between 2010 and 2020. Three-quarters of the more than 5.3 million projected increase in single-person households in 2010-2020 will be among individuals aged 65 and older—a group that has shown a marked preference for remaining in their homes as they age.
- ❖ Unmarried partners are projected to head 5.6 million households in 2020, up from 5.2 million in 2005. Of these households, 36 percent will include children under the age of 18.

Finally, the 2008 report highlights a number of challenges households face with the affordability of their housing<sup>21</sup>.

- ❖ In 2006, the number of severely-burdened households—paying more than half their income for housing—surged by almost four million to 17.7 million households.
- ❖ Between 2001 and 2006, the number of severely-burdened renters in the bottom-income quartile increased by 1.2 million, while the number of severely-burdened homeowners in the two middle-income quartiles ballooned by 1.4 million.
- ❖ Fully 47 percent of households in the bottom-income quartile were severely burdened in 2006, compared with 11 percent of lower middle-income households and just 4 percent of upper middle-income households.
- ❖ In 2006, approximately 20 percent of all middle-income homeowners with second mortgages paid more than half their incomes for housing. This is nearly twice the share among those with only a first mortgage.
- ❖ More than a quarter of severely-burdened households have at least one full-time worker and 64 percent at least one full- or part-time worker. Even households with two or more full-time workers are not exempt, making up fully 19 percent of the severely burdened.

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<sup>21</sup> See pages 27-31, *State of the Nation's Housing 2008* – <http://www.jchs.harvard.edu>.

- ❖ More than a third of households with incomes one to two times the full-time equivalent of the minimum wage have severe housing cost burdens. Even among the 15.3 million households earning two to three times the full-time minimum wage equivalent, 15 percent pay more than half their incomes for housing.
- ❖ More than one out of six children—12.7 million—in the United States live in households paying more than half their incomes for housing.
- ❖ In 2006, severely-burdened households with children in the bottom-expenditure quartile had only \$548 per month on average for all other needs. As a result, these families spent 32 percent less on food, 56 percent less on clothes, and 79 percent less on healthcare than families with low housing outlays.
- ❖ Nearly one in five low-income families—and nearly one in four low-income minority families—reported living in structurally inadequate housing in 2005. These families have a slightly higher incidence of severe cost burdens than otherwise similar families living in adequate units.
- ❖ Veterans with disabilities make up 29 percent of the 16.4 million veteran households, but 42 percent of the more than 1.5 million veterans with severe housing cost burdens.
- ❖ From 1997 to 2007, housing assistance programs fell from 10 percent to 8 percent of the nation's dwindling domestic discretionary outlays, even as the number of households with severe burdens rose by more than 20 percent from 2001 to 2005.
- ❖ About 14 percent of the low-cost rental stock—with rents under \$400—built before 1940 was permanently removed between 1995 and 2005.
- ❖ Older, lower-cost rentals are also being lost to rent inflation, with rents in more than half shifting up to a higher range between 2003 and 2005.
- ❖ From 1995 to 2005, the supply of rentals affordable to households earning less than \$16,000 in constant 2005 dollars shrank by 17 percent.
- ❖ Today, there are only about 6 million rentals affordable to the nearly 9 million households with the lowest incomes, and nearly half of these are either inhabited by higher-income households or stand vacant.
- ❖ The homeless population is up to 744,000 on any given night, and is estimated to be between 2.3 million and 3.5 million over the course of a year. Homelessness affects more than 600,000 families and more than 1.35 million children every year.
- ❖ Veterans are overrepresented among the homeless. While accounting for only 10 percent of all adults, veterans are somewhere between 23 percent and 40 percent of homeless adults. Moreover, veterans make up an estimated 63,000 of the 170,000 chronically homeless.

## *State Demographic Trends*

The State of Oregon reached an estimated population of 3,791,075 on July 1, 2008, an estimated increase of 369,676 from the April 1, 2000 Census<sup>22</sup>.

- ❖ Oregon's population grew at a rate of 1.2 percent per year from 2000 to 2008.
- ❖ The population grew at increasing annual rates between 2000 and 2005. Growth rates stabilized between 2006 and 2007; growth rates slowed between 2007 and 2008.
- ❖ Between 2000 and 2008, net migration (in-migration minus out-migration) accounted for an estimated 237,481 in population growth, an estimated 64% of Oregon's population growth. Natural increase (births minus deaths) accounted for 132,180 or 36% of the state's population growth.
- ❖ Deschutes County's 2008 population was an estimated 167,015. Between 2000 and 2008, the county's population grew by 44.8%, or 51,648. Of this growth, net migration accounted for 45,887 in population growth, or 89% of the population growth between 2000 and 2008. Natural increase accounted for 11% of the county's population growth between 2000 and 2008.
- ❖ Deschutes County's estimated population growth of 51,648 represents 14% of the state's population growth between 2000 and 2008.

The following table presents data for Oregon from 2000 Census and the 2007 ACS, much like the forgoing table presented for the nation.

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<sup>22</sup> 2008 Oregon Population Report, Population Research Center, Portland State University  
[www.pdx.edu/prc](http://www.pdx.edu/prc).

<b>Table 2-2: Oregon - 2000 to 2007</b>				
	<b>Census</b>	<b>ACS</b>	<b>Change</b>	<b>% Change</b>
	2000	2007	2000-2007	2000-2007
Population	3,421,399	3,747,455	326,056	10%
Household Size	2.51	2.49	-0.02	-1%
Family Size	3.02	3.05	0.03	1%
Age of Householder <sup>23</sup>				
Under 25 years	83,213	74,928	-8,285	-10%
25 to 44 years	505,578	520,849	15,271	3%
45 to 64 years	466,637	575,969	109,332	23%
65 years and over	278,295	300,219	21,924	8%
Households by Type				
Total Households	1,333,723	1,471,965	138,242	10%
Family households (families)	877,671	940,771	63,100	7%
Married-couple family	692,532	734,363	41,831	6%
Nonfamily households	456,052	531,194	75,142	16%
Householder living alone	347,624	414,031	66,407	19%
Householder 65 years and over	121,200	132,319	11,119	9%
Median household income	\$40,916	\$48,730	\$7,814	19%
Median family income	\$48,680	\$59,152	\$10,472	22%
<b>Sources:</b> 2000 Census data and 2007 American Community Survey (ACS) data from American Factfinder - <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .				

- ❖ The Census Bureau estimates the state's population has grown by 10 percent over the last seven years.
- ❖ The state's average household size decreased slightly, while the average family size increased slightly.
- ❖ Like the rest of the nation, households headed by a householder between the ages of 45 and 65 increased by 23%.
- ❖ The number of households headed by a householder between the ages of 25 and 44 stayed about the same, increasing by three percent.
- ❖ The number of households with the householder living alone increased by 19%.
- ❖ Median household and family income increased by at least 22%.

<sup>23</sup> The data for Age of Householder presents the number of households where a householder falls within one of the above-listed age ranges.

## *Summary of National and State Demographic Trends*

- ❖ Households headed by individuals between the ages of 45 and 64 grew the most both nationally and at the state level.
- ❖ Conversely, households headed by younger individuals (e.g. 25 years or less of age) declined during the same period.
- ❖ Household and family sizes did not change significantly.
- ❖ Non-family households continue to represent a larger proportion of all households, particularly those with the householder living alone. The SON predicts this trend will continue between 2010 and 2020.
- ❖ Households are changing in composition, but not so much in size.
- ❖ Despite increases in household and family income, a number of households are still cost-burdened with respect to housing.

## *National Economic Trends and Cycles*

This report draws from the State of the Nation's Housing (2008), produced by the Joint Center for Housing Studies at Harvard University<sup>24</sup>. The report focuses on two key economic trends that have and will continue to affect the production of housing across the county. These trends are the downturn in the housing market in the latter part of the decade, and the increasing number of foreclosures that were, in part, a contributing factor.

### **Downturn in the housing market**

- ❖ Sales fell sharply for the second year in a row. Existing home sales fell 13 percent in 2007 to 4.9 million, while sales of new homes plummeted 26 percent to 776,000, the lowest level since 1996.
- ❖ For the first time since recordkeeping began in 1968, the national median single-family home price as reported by the National Association of Realtors® fell for the year in nominal terms, by 1.8 percent on an annual basis to \$217,900.
- ❖ The National Association of Realtors® (NAR) national median single-family home price declined 6.1 percent from the fourth quarter of 2006 to the fourth quarter of 2007, while the S&P/Case Shiller® US National Home Price Index registered a fourth-quarter to fourth-quarter nominal decline of 8.9 percent.

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<sup>24</sup> See pages 6-10, The State of the Nation's Housing: 2008 - <http://www.jchs.harvard.edu/research/publications/state-nations-housing-2008>.

- ❖ At the start of 2007, quarterly nominal median sales prices were still rising in 85 of 144 metros. By the end of the year, however, prices were increasing in only 26 metros. Fourth-quarter nominal house prices in 2007 fell back to 2006 levels in 12 metros, to 2005 levels in 35 metros, to 2004 levels in 19 metros, and to 2003 or earlier levels in 16 metros.
- ❖ The homeowner vacancy rate jumped from 2.0 percent in the last quarter of 2005 to 2.8 percent in the last quarter of 2007 as the number of vacant units for sale shot up by more than 600,000. In addition, the number of vacant homes held off the market other than for seasonal or occasional use surged from 5.7 million units in 2005 to 6.2 million in 2007.
- ❖ Assuming the vacancy rate prevailing in 1999–2001 was close to equilibrium, the oversupply of vacant for-sale units at the end of last year was around 800,000 units.
- ❖ Nationwide, the number of housing permits issued fell 35 percent from 2005 to 2007, including a 42 percent reduction in single-family permits. Florida topped the list of states with the sharpest cutbacks 2005–2007 at 64 percent, followed by Michigan at 61 percent and Minnesota at 51 percent.
- ❖ Completions of for-rent units in multifamily structures fell to just 169,000, down 15 percent from 2006 and 38 percent from 2000. The rental share of all multifamily completions dipped below 60 percent for the first time in the 43-year history of recordkeeping.
- ❖ The months' supply of unsold new single-family homes rose to more than 11 months in late 2007 and early 2008—a level previously not seen since the late 1970s—before dropping back slightly. The months' supply of existing single-family homes for sale rocketed to 10.7 months by April 2008.
- ❖ By the end of 2007, the nation had 232,000 fewer construction jobs than a year earlier, dragging down employment growth in many states with previously booming housing markets such as Florida (74,000 construction jobs lost vs. 52,000 other jobs added) and Arizona (25,000 construction jobs lost vs. 23,000 other jobs added).

## Foreclosures

- ❖ The number of homes in foreclosure proceedings nearly doubled to almost one million by the end of 2007, while the number entering foreclosure topped 400,000 in the fourth quarter alone.
- ❖ The share of all loans in foreclosure jumped from less than 1.0 percent in the fourth quarter of 2005 to more than 2.0 percent by the end of last year.
- ❖ In the fourth quarter of 2007, Ohio had the country's highest foreclosure rate of 3.9 percent—equivalent to 1 in 25 loans—followed closely by Michigan and Indiana.

- ❖ The foreclosure rate on all subprime loans soared from 4.5 percent in the fourth quarter of 2006 to 8.7 percent a year later, while the rate on adjustable-rate subprime loans more than doubled from 5.6 percent to 13.4 percent. Foreclosure rates on adjustable subprime mortgages were over five times higher than those on adjustable prime loans.
- ❖ Because of their abysmal performance, subprime loans fell from 20 percent of originations in 2005–2006 to just 3.1 percent in the fourth quarter of 2007. The real dollar volume plummeted from \$139 billion in the fourth quarter of 2006 to \$14 billion at the end of last year.
- ❖ Interest-only and payment-option loans fell from 19.3 percent of originations in 2006 to 10.7 percent in 2007, with especially large declines in the nation's most expensive metro areas where loans with affordability features were most common. States with high 2006 shares and large 2007 declines include Nevada (from 41 percent to 25 percent), Arizona (29 percent to 18 percent), Florida (25 percent to 13 percent), and Washington, DC (26 percent to 15 percent).
- ❖ The dollar volume of all non-prime investor loans plunged by two-thirds from the first quarter of 2006 to the third quarter of 2007, and of just subprime investor loans by a whopping seven-eighths.
- ❖ According to the Mortgage Bankers Association, loans to absentee owners also accounted for almost one in five loans entering foreclosure in the third quarter of 2007.
- ❖ In 2006, more than 40 percent of loans on one- to four-unit properties originated in low-income census tracts were high cost, as were 45 percent of such loans originated in low-income minority communities. By comparison, high-cost loans accounted for only 23 percent of originations in middle-income white areas and 15 percent in high-income white areas.

## US Housing Market

The US Department of Housing and Urban Development's U.S. Housing Market Conditions (1<sup>st</sup> Quarter 2008) reported on the following trends in the national housing market, as of first quarter 2008<sup>25</sup>.

- ❖ The housing market performed very poorly during the first quarter of 2008, continuing two (2) years of decline. The number of single-family building permits, starts, and completions all declined in the first quarter and new and existing home sales decreased as well. Excessive inventories of both new and existing homes amounted to nearly 10 months' supply. The multifamily sector was somewhat mixed: permits and starts decreased, but completions increased.

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<sup>25</sup> US Housing Market Conditions (1<sup>st</sup> Quarter 2008) U.S. Department of Housing and Urban Development, Office of Policy Development and Research - <http://www.huduser.org/portal/periodicals/ushmc.html>.



- ❖ The subprime meltdown continues, with foreclosure rates on subprime adjustable-rate mortgages (ARMs) doubling over the past year. On the rental side, the vacancy rate increased, but the absorption rate showed some improvement.
- ❖ The overall economy posted a Gross Domestic Product (GDP) growth rate of only 0.6 percent in the first quarter of 2008. The housing component of GDP decreased by 26.7 percent, which reduced GDP growth by 1.2 percentage points.
- ❖ Housing affordability improved in the first quarter of 2008, according to the index published by the NATIONAL ASSOCIATION OF REALTORS®. The composite index indicates that the family earning the median income had 132.3 percent of the income needed to purchase the median-priced, existing single-family home using standard lending guidelines. This value is up 11.5 points from the fourth quarter of 2007 and up 17.8 points from the first quarter of 2007. The increase from the fourth quarter is attributable to a decline (4.6 percent) in the median price of an existing single-family home, an increase (0.2 percent) in median family income, and a 40 basis-point decrease in the mortgage interest rate. The first quarter homeownership rate was 67.8 percent, unchanged from the fourth quarter 2007 rate but 0.6 percentage point below the rate of the first quarter of 2007.
- ❖ The multifamily (five or more units) sector performed better than the single-family sector did in the first quarter of 2008. Production indicators were mixed; building permits and starts decreased, but completions increased. The absorption of new rental units improved, but the rental vacancy rate increased.

### *State Economic Trends and Cycles*

Worksource Oregon's Oregon Labor Trends (May 2008) included the following summary of employment trends in Oregon through the first quarter of 2008<sup>26</sup>.

- ❖ Oregon's seasonally adjusted unemployment rate was 5.7 percent in March and the revised figure for February was 5.4 percent. This puts Oregon's rate well above the 5.0 percent figure reached during March 2007, which was the lowest in over five years.
- ❖ In March, seasonally adjusted payroll employment dropped by 2,700, the first decline in six months. February's figure was revised upward to show a gain of 900 jobs.
- ❖ In March, several major industries recorded substantial seasonally adjusted job declines: trade, transportation, and utilities (-1,600 jobs), manufacturing (-1,300), construction (-700), and leisure and hospitality (-700). These losses were partially balanced by seasonally adjusted job gains in educational and health services (+1,300 jobs) and government (+1,100).

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<sup>26</sup> See Oregon Labor Trends, available on-line at <http://www.qualityinfo.org/pubs/olt/08/olt-0508.pdf>.

- ❖ Despite the weak March employment in trade, transportation, and utilities, over the past few months' retail trade has shown modest growth, with employment up 2,900, or 1.5 percent, since March 2007. On the other hand, wholesale trade has been hurt by declines in manufacturing and is down 300 jobs during the past 12 months.
- ❖ Manufacturing continued to trend downward in March as durable goods manufacturing shed 1,200 jobs. Durable goods have declined at a rapid rate since reaching a multi-year peak of 156,900 jobs in August 2006. Conversely, nondurable goods manufacturing has expanded over the last two years and has gained 900 jobs since March 2007.
- ❖ Construction posted no employment change during a month in which 700 jobs typically would be added. The March construction employment total of 93,700 was down 6,800 jobs from the year-ago figure. The residential side saw substantial cutbacks in March as residential building construction shed 500 jobs and building foundation and exterior contractors also cut 500 jobs.
- ❖ Seasonally adjusted construction employment peaked at 105,200 in August 2007 and is now down to 97,900 jobs, a loss of nearly 7 percent in seven months' time.
- ❖ The trend in leisure and hospitality shows continued growth. This industry, dominated by restaurant employment, had an over-the-year gain of 5,200 jobs, or close to 3 percent.
- ❖ Educational and health services continued to be the fastest growing major industry, adding 1,700 jobs in March. Since March 2007, it is up 8,400 jobs, or 4.0 percent. Employment trends over the past two years accelerated gradually as older baby boomers moved into their early 60s and as the age 65+ group increased by more than 2 percent per year.
- ❖ Government added 2,400 jobs in March nearly double its expected seasonal gain. It was up 8,100 jobs since March 2007, a gain of 2.8 percent. Local governments have expanded both their educational employment component as well as their other segments. In March, local government employed 195,600, a gain of 5,500, or 2.9 percent, from March 2007.

### *Summary of National and State Economic Trends*

- ❖ Nationally, by the first quarter of 2008, the rapid rate of housing construction that occurred during the 2004-2007 period almost stopped with a slow down in construction and sales.
- ❖ Inventories of units for sale and rent increased to 10 to 11 months' worth of inventory.
- ❖ The rapid rise of home values and prices had started to finally ease, and in some areas decline to more affordable levels.

- ❖ One outcome of this change in the housing market was the increase in the number of homes facing foreclosure.
- ❖ The number of homes facing foreclosure added to inventories of homes for sale, which represented 10 months of supply.
- ❖ The slowdown in home construction and sales had a positive effect for potential consumers with prices decreasing and become more affordable to a greater number of household.
- ❖ However, in Oregon, seasonally adjusted payroll employment was beginning to drop.
- ❖ Concurrent trends of an increasing supply of housing that was potentially becoming more affordable due to prices decreasing to spur sales at the same time payroll employment was declining.
- ❖ Due to circumstances such as foreclosure, more pressure will be placed on the rental housing markets as households that owned or were buying housing need to transition into renting housing.
- ❖ The challenge for planning for housing is exacerbated because households that were cost-burdened a few years ago now face the additional challenges of a supply of housing prices not dropping enough, unemployment, and incomes not keeping paces with increases in the price of housing.

### **S T E P 3 : I D E N T I F Y T H E L O C A L D E M O G R A P H I C C H A R A C T E R I S T I C S O F T H E P O P U L A T I O N A N D , I F P O S S I B L E , H O U S E H O L D T R E N D S T H A T R E L A T E T O D E M A N D F O R D I F F E R E N T T Y P E S O F H O U S I N G**

The forgoing portion of the HNA examined the relevant national and state demographic and economic trends and their influence on the future mix of housing in Bend. This section continues this examination of trends by looking at demographic and economic trends in Bend, including a description of Bend's population in 2007. This examination of trends begins with a brief examination of how the characteristics of Bend's population have changed since the 2000 Census. This section then focuses on key demographic variables that provide information on households and their housing choices including: 1) Households by type, size, age of householder, and household income; 2) Tenure – whether households are owner or renter occupied, and; 3) Types of housing, including the changes composition of the housing supply.

## Characteristics of Bend's Population

The following table presents data on how Bend's population changed from 2000 to 2007. This table compares the data from 2000 Census with the 2007 American Community Survey.

<b>Table 3-1: Bend - 2000 to 2007</b>				
	<b>Census</b>	<b>ACS</b>	<b>Change</b>	<b>% Change</b>
	<b>2000</b>	<b>2007</b>	<b>2000-2007</b>	<b>2000-2007</b>
Population	52,029	73,368	21,339	41%
Household Size	2.42	2.34	-0.08	-3%
Family Size	2.92	2.79	-0.13	-4%
Age of Householder				
Under 25 years	1,674	2,188	514	31%
25 to 44 years	8,615	12,739	4,124	48%
45 to 64 years	6,770	10,534	3,764	56%
65 years and over	4,003	5,156	1,153	29%
Households by Type				
Total Households	21,062	30,617	9,555	45%
Family households (families)	13,396	18,666	5,270	39%
Married-couple family	10,563	14,977	4,414	42%
Nonfamily households	7,666	11,951	4,285	56%
Householder living alone	5,497	7,512	2,015	37%
Householder 65 years and over	1,819	1,834	15	1%
Median household income	\$40,857	\$56,053	\$15,196	37%
Median family income	\$49,387	\$66,740	\$17,353	35%
<b>Sources:</b> 2000 Census data and 2007 American Community Survey (ACS) data from American Factfinder - <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .				

- ❖ Bend's population grew by an estimated 41% between 2000 and 2007, at a rate much faster than that of the populations of the nation or the state.
- ❖ While household and family sizes remained stable nationally and at the state level, both the average household and family sizes each decreased by an estimated three percent.
- ❖ The number of households with a householder between 45 and 64 years of age increased by 56% over the last seven years, representing the largest percentage increase among all householder age groups.
- ❖ The total number of households increased by 45%, with non-family households increasing by 56%.
- ❖ Both the median household and family incomes in Bend increased by at least 35% between 2000 and 2007.

Bend's population has grown significantly since 1990. Between 1990 and 2000, Bend's population grew from 20,469 to 52,029. This change represents an increase of 31,560 people, or 154%. Of these 31,560 new people, approximately 17,060 people were annexed to the city between 1990 and 1998. Actual population growth accounted for an increase of 14,500 people, or 71% over the city's population in 1990.

Bend grew significantly again between 2000 and 2007. The city's population grew by 25,751 over this seven year period, and without being influenced by annexation<sup>27</sup>. Bend's average annual growth rate from 2000 to 2007 was 4.5% per year. This reflects the period of high population growth from 2004 to 2006, and slower growth in 2006 and 2007 that mirrored the downturn in the economy.

<b>Table 3-2 : Population Growth of Oregon, Deschutes County, and Bend; 1990 to 2007</b>					
<b>Area</b>	<b>April 1, 1990</b>	<b>April 1, 2000</b>	<b>July 1, 2007</b>	<b>Change 1990 - 2007</b>	<b>Percent Change</b>
Oregon	2,842,321	3,421,399	3,745,455	903,134	32%
Deschutes County	74,958	115,367	160,810	85,852	115%
Bend	20,469	52,029	77,780	57,311	280%
<b>Source:</b> Population Research Center, Portland State University – <a href="http://www.pdx.edu/prc/">http://www.pdx.edu/prc/</a> .					

The following table presents data showing the changes in the composition of Bend's population, based on age groups. Each group includes a number of persons by age, and their numbers in 1990, 2000, and 2007. The percent distribution of the population by age is shown at the end of each table.

<b>Table 3-3: Age of Population in Bend: 1990, 2000, and 2007</b>					
<b>Age Group</b>	<b>1990</b>	<b>2000</b>	<b>Change</b>	<b>%Change</b>	<b>2000 Distribution</b>
<b>Under 25 years</b>	7,225	18,058	10,833	150%	35%
<b>25 to 44 years</b>	7,413	16,171	8,758	118%	31%
<b>45 to 54 years</b>	1,771	7,459	5,688	321%	14%
<b>55 to 59 years</b>	628	2,209	1,581	252%	4%
<b>60 to 64 years</b>	672	1,701	1,029	153%	3%
<b>65 to 74 years</b>	1,436	3,109	1,673	117%	6%
<b>75 years and over</b>	1,324	3,322	1,998	151%	6%
<b>Total</b>	20,469	52,029	31,560	154%	100%

<sup>27</sup> See 2007 Oregon Population Report, Population Research Center, Portland State University, available online at: <http://www.pdx.edu/prc/annual-oregon-population-report>.

Age Group	2000	2007	Change	%Change	2007 Distribution
Under 25 years	18,058	21,683	3,625	20%	30%
25 to 44 years	16,171	25,296	9,125	56%	34%
45 to 54 years	7,459	9,331	1,872	25%	13%
55 to 59 years	2,209	5,332	3,123	141%	7%
60 to 64 years	1,701	3,292	1,591	94%	4%
65 to 74 years	3,109	4,110	1,001	32%	6%
75 years and over	3,322	4,324	1,002	30%	6%
<b>Total</b>	<b>52,029</b>	<b>73,368</b>	<b>21,339</b>	<b>41%</b>	<b>100%</b>
<b>Sources:</b> 2000 Census data and 2007 American Community Survey for Bend through American Factfinder: <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .					

- ❖ Between 1990 and 2000, the age group that experienced the greatest percentage increase in population growth was people between the ages of 45 and 59 years of age.
- ❖ That trend continued between 2000 and 2007, where the greatest increases in population occurred with people between the ages of 55 to 64 years of age.
- ❖ The proportion of the population under 25 years of age decreased from 35% to 30%.
- ❖ The proportion of the population between 25 and 44 years increased from 31% to 34%.

The next tables present data on tenure, whether housing is owned or rented, by type of households. This presentation includes data on family households and nonfamily households, and breaks this data down further by the age of the householder.

<b>Table 3-4: Tenure by Type of Households (2007)</b>				
	<b>Owner occupied households</b>		<b>Renter occupied households</b>	
	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>
Total Households	18,032	100%	12,585	100%
Family households:	13,031	72%	5,635	45%
Married-couple family:	11,847	66%	3,130	25%
Householder 15 to 34 years	1,889	10%	1,371	11%
Householder 35 to 64 years	7,406	41%	1,610	13%
Householder 65 years and over	2,552	14%	149	1%
Other family:	1,184	7%	2,505	20%
Male householder, no wife present:	196	1%	485	4%
Householder 15 to 34 years	-	0%	271	2%
Householder 35 to 64 years	196	1%	214	2%
Householder 65 years and over	-	0%	-	0%
Female householder, no husband present:	988	5%	2,020	16%
Householder 15 to 34 years	86	0%	1,072	9%
Householder 35 to 64 years	427	2%	870	7%

Householder 65 years and over	475	3%	78	1%
Nonfamily households:	5,001	28%	6,950	55%
Householder living alone:	3,968	22%	3,544	28%
Householder 15 to 34 years	593	3%	785	6%
Householder 35 to 64 years	2,247	12%	2,053	16%
Householder 65 years and over	1,128	6%	706	6%
Householder not living alone:	1,033	6%	3,406	27%
Householder 15 to 34 years	58	0%	2,837	23%
Householder 35 to 64 years	907	5%	569	5%
Householder 65 years and over	68	0%	-	0%
<b>Source:</b> 2007 American Community Survey data for Bend city, Oregon, available online at: <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .				

- ❖ By 2007, 72% of family households were owner occupied households; 45% of family households were renter-occupied households. Put another way: 72% of family households owned or were buying their housing; 45% of family households were renting their housing.
- ❖ 28% of non-family households were living in owner occupied housing, and 55% of renter occupied households were non-family households.
- ❖ The total number of households grew from 21,062 in 2000 to an estimated 30,617, an increase of 9,555 households, or 45%.

In addition to the forgoing data on tenure, this report considers household types (family or nonfamily) by size. The purpose for doing so is to consider data on household size and whether households are purchasing or renting housing. The following table compares data on households by type and size for 2000 and 2007. Following this data is a table that compares households by size and the proportions that were owner-occupied and renter-occupied.

<b>Table 3-5: Household Types by Household Size: Estimated Change between 2000 and 2007</b>						
	<b>2000 Census</b>		<b>2007 ACS</b>		<b>Change</b>	<b>% Change</b>
	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>		
Total:	21,050		30,617		9,567	45%
Family households:	13,554	100%	18,666	100%	5,112	38%
2-person household	6,200	46%	9,118	49%	2,918	47%
3-person household	3,159	23%	3,540	19%	381	12%
4-person household	2,656	20%	4,255	23%	1,599	60%
5-person household	1,049	8%	1,257	7%	208	20%
6-person household	407	3%	496	3%	89	22%
7-or-more person household	83	1%	0	0%	-83	-100%
Nonfamily households:	7,496	100%	11,951	100%	4,455	59%
1-person household	5,516	74%	7,512	63%	1,996	36%
2-person household	1,536	20%	3,115	26%	1,579	103%
3-person household	352	5%	1,066	9%	714	203%
4-person household	66	1%	258	2%	192	291%
5-person household	16	0%	0	0%	-16	-100%
6-person household	5	0%	0	0%	-5	-100%
7-or-more person household	5	0%	0	0%	-5	-100%
<b>Source:</b> 2000 Census data and 2007 American Community Survey data for Bend city, Oregon, available online at: <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .						

- ❖ The number of family households grew by 38% between 2000 and 2007; non-family households grew by 59%.
- ❖ Among family households the number of 2-person households grew the most, but 4-person households increased by a greater percentage.
- ❖ Among non-family households, households with 3 to 4 persons increased the most on a percentage basis; 1 and 2 person households grew the most in number.



**Table 3-6: Tenure by Household size for 2000 and 2007 for Bend**

	2000 Census		2007 ACS		Change	
	Number	Distribution	Number	Distribution	Number	Percent
Total Households:	21,062		30,617		9,555	45%
Owner occupied:	13,244	100	18,032	100%	4,788	36%
1-person household	2,921	22.1	3,968	22%	1,047	36%
2-person household	5,348	40.4	8,801	49%	3,453	65%
3-person household	2,044	15.4	1,600	9%	-444	-22%
4-person household	1,937	14.6	2,772	15%	835	43%
5-person household	724	5.5	777	4%	53	7%
6-person household	184	1.4	114	1%	-70	-38%
7-or-more person household	86	0.6	0	0%	-86	-100%
Renter occupied:	7,818	100	12,585	100%	4,767	61%
1-person household	2,576	32.9	3,544	28%	968	38%
2-person household	2,451	31.4	3,432	27%	981	40%
3-person household	1,417	18.1	3,006	24%	1,589	112%
4-person household	838	10.7	1,741	14%	903	108%
5-person household	336	4.3	480	4%	144	43%
6-person household	125	1.6	382	3%	257	206%
7-or-more person household	75	1	0	0%	-75	-100%

**Source:** 2000 Census data and 2007 American Community Survey data for Bend city, Oregon, available online at: [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en).

- ❖ Owner occupied households grew by 36% between 2000 and 2007; the number of renter occupied households grew at a greater rate, by 61%.
- ❖ Among owner occupied households, 2-person households grew the most; the number of 3-person households decreased
- ❖ Among renter-occupied households, the number of 3 and 4 person households each increased by at least 108%, the number of 6 person households increasing by 206%
- ❖ The largest group of owner occupied households are those with 2 persons; the large among renter occupied households are those with 3 persons

The next group of tables presents data on age of household by household income<sup>28</sup>. This is an important variable to consider when planning for housing. These two variables are valuable indicators for identifying housing choices households are making at different points in life and based on what they can afford.

<sup>28</sup> For Tables 3-6 through 3-8, the source data is the American Community Survey (ACS) data, available on-line through American Factfinder <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<b>Table 3-7: Distribution of Households by Age of Householder and Household Income (2007)</b>				
	<b>Under 25 years</b>	<b>25 to 44 years</b>	<b>45 to 64 years</b>	<b>65 years and over</b>
<b>Total</b>	100%	100%	100%	100%
<b>Less than \$10,000</b>	0%	2%	2%	1%
<b>\$10,000 to \$14,999</b>	8%	0%	2%	8%
<b>\$15,000 to \$19,999</b>	4%	3%	8%	5%
<b>\$20,000 to \$24,999</b>	24%	8%	5%	5%
<b>\$25,000 to \$29,999</b>	6%	9%	4%	6%
<b>\$30,000 to \$34,999</b>	0%	2%	6%	4%
<b>\$35,000 to \$39,999</b>	0%	4%	2%	5%
<b>\$40,000 to \$44,999</b>	18%	5%	2%	11%
<b>\$45,000 to \$49,999</b>	11%	7%	5%	2%
<b>\$50,000 to \$59,999</b>	19%	9%	10%	9%
<b>\$60,000 to \$74,999</b>	10%	16%	12%	13%
<b>\$75,000 to \$99,999</b>	0%	17%	11%	16%
<b>\$100,000 to \$124,999</b>	0%	9%	10%	9%
<b>\$125,000 to \$149,999</b>	0%	3%	6%	3%
<b>\$150,000 to \$199,999</b>	0%	3%	8%	1%
<b>\$200,000 or more</b>	0%	4%	6%	2%
<b>Source:</b> 2007 ACS data for Bend, available on-line through American Factfinder – <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .				

- ❖ For households with a householder under 25 years of age, 36% of these households had household incomes under \$25,000; 58% of these households had incomes between \$40,000 and \$74,999.
- ❖ For households with a householder between 25 and 44 years of age, 33% of these households had incomes between \$60,000 and \$99,999.
- ❖ For households with a householder between 45 and 64 years of age, 43% of these households had incomes between \$50,000 and \$124,999.
- ❖ For households with a household that was 65 years of age and over, 51% of these households had incomes between \$40,000 and \$99,999.

The next tables present data on occupancy and tenure trends for Bend between 1990 and 2007. The data on occupancy presents numbers of housing units occupied and vacant. The data on tenure informs the analysis by describing the numbers of units that are owner-occupied and renter occupied. Please note that the number of units described by tenure are occupied and also describe household choices on whether to purchase or rent housing.

<b>Table 3-8: Occupancy and Tenure for Bend: 1990 to 2000</b>						
	<b>1990</b>		<b>2000</b>		<b>Change 1990-2000</b>	<b>%Change 1990-2000</b>
<b>Occupancy</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>		
All housing units	9,004	100%	22,507	100%	13,503	150%
Occupied housing units	8,526	95%	21,062	94%	12,536	147%
Vacant housing units	478	5%	1,445	6%	967	202%
<b>Tenure</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>Change 1990-2000</b>	<b>%Change 1990-2000</b>
Occupied housing units	8,526	100%	21,062	100%	12,536	147%
Owner-occupied housing units	4,614	54%	13,244	63%	8,630	187%
Renter-occupied housing units	3,912	46%	7,818	37%	3,906	100%

**Source:** US Census Bureau STF3 (1990) and SF3 (2000) through American Factfinder, available online at [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

- ❖ The proportions of units occupied and vacant did not change significantly between 1990 and 2000.
- ❖ The tenure split did shift during the decade, with the proportion of owner occupied housing increasing by nine (9) percentage points, and the proportion of renter-occupied housing decreasing by a similar amount.

<b>Table 3-9: Occupancy and Tenure for Bend: 2000 to 2007</b>						
	<b>2000</b>		<b>2007</b>		<b>Change 2000-2007</b>	<b>%Change 2000-2007</b>
<b>Occupancy</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>		
All housing units	22,507	100%	34,160	100%	11,653	52%
Occupied housing units	21,062	94%	30,617	90%	9,555	45%
Vacant housing units	1,445	6%	3,543	10%	2,098	145%

	<b>2000</b>		<b>2007</b>		<b>Change 2000-2007</b>	<b>%Change 2000-2007</b>
<b>Tenure</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>		
Occupied housing units	21,062	100%	30,617	100%	9,555	45%
Owner-occupied housing units	13,244	63%	18,032	59%	4,788	36%
Renter-occupied housing units	7,818	37%	12,585	41%	4,767	61%

**Source:** 2000 Census and 2007 American Community Survey (ACS) data for Bend from American Factfinder - [http://factfinder2.census.gov/home/saff/main.html?\\_lang=en](http://factfinder2.census.gov/home/saff/main.html?_lang=en).

- ❖ During the last seven years, the vacancy rate for housing units increased from six percent in 2000 to 10 percent in 2007. The number of vacant housing unit increased 145% over this seven year period.
- ❖ The tenure split shifted in a direction opposite of what happened between 1990 and 2000. The proportion of owner occupied units decreased from 63% to 59%, while the proportion of renter occupied units increased from 37% to 41%.
- ❖ These shifts in occupancy and tenure occurred during the height of the housing bubble and the beginning of its decline, reflecting the number households seeking rental housing.

The next series of tables presents data on the distribution of housing by type, or the number of units in each structure. For example, single family detached housing is identified as “1-unit, detached.” The purpose for considering this data is to see whether the distribution of housing has changed, thereby reflecting different housing choices among Bend households. The first table presents the data on changes in units in structure from 1990 to 2000 followed a table that reflects the same data for 2000 to 2007. The data considers all housing units regardless of whether they are occupied or vacant. This data is followed by a table that further breaks down the data by whether housing was owned or renter occupied, and how these distributions changed between 2000 and 2007.

<b>Table 3-10: Change in Units in Structure for City of Bend 1990 to 2000<sup>29</sup></b>						
<b>Units in Structure</b>	<b>1990</b>	<b>2000</b>	<b>Change</b>	<b>% Change</b>	<b>% Distribution</b>	
	<b>Census</b>	<b>Census</b>			<b>1990</b>	<b>2000</b>
1-units detached	5,907	15,027	9,120	154%	66%	67%
1-unit attached	281	792	511	182%	3%	4%
2 to 4 units	990	1,723	733	74%	11%	8%
5 to 9 units	365	1,001	636	174%	4%	4%
10 or more units	978	1,681	703	72%	11%	7%
Mobile home, trailer, or other	483	2,274	1,791	371%	5%	10%
Total units	9,004	22,498	13,494	150%		
<b>Source:</b> US Census Bureau, SFT3 (1990) and SF3 (2000)						

- ❖ Due to both housing construction and annexation, the supply of housing units in Bend grew by 150% between 1990 and 2000.
- ❖ The distribution of units by type did not change significantly over this decade; single family detached dwellings represented 66% to 67% of the supply of housing units.

<sup>29</sup> The annexation of the unincorporated areas of the Bend UGB was passed during the general election of November 1998. The annexation took effect on July 1, 1999. The annexation included 13,648 people and 5,286 housing units. A large proportion of these units was manufactured homes, and represented the source of the increase in manufactured homes between 1990 and 2000.

- ❖ Single family attached units increased slightly from 3% to 4% of the housing units.
- ❖ Multi-family attached units (all other units), decreased slightly, from 31% and 29%, of all units.

<b>Table 3-11: Change in Units in Structure for City of Bend: 2000 to 2007</b>						
Units in Structure	2000	2007	Change		% Distribution	
	Census	ACS	Number	Percent	2000	2007
1-units detached	15,027	23,853	8,826	59%	67%	70%
1-unit attached	792	1,151	359	45%	4%	3%
2 to 4 units	1,723	3,326	1,603	93%	8%	10%
5 to 9 units	1,001	1,362	361	36%	4%	4%
10 or more units	1,681	2,697	1,016	60%	7%	8%
Mobile home, trailer, or other	2,274	1,771	-503	-22%	10%	5%
Total units	22,498	34,160	11,662	52%	100%	100%
<b>Source:</b> 2000 Census and 2007 American Community Survey data for Bend through American Factfinder, available online at <a href="http://www.factfinder.census.gov">www.factfinder.census.gov</a> .						

- ❖ From 2000 to 2007, the supply of housing units increased by 11,662 units, or 52%, and not through annexation.
- ❖ The proportion of housing that was single family detached increased from 67% to 70% of all housing units.
- ❖ The proportion of single family attached increased by 45%, but represented a smaller proportion of the city's housing supply.
- ❖ The proportion of all housing that were multi-family attached also decreased from 29% in 2000 to 27% in 2007.

<b>Table 3-12: Tenure of units in structure for Bend in 2000 and 2007</b>						
	2000 Census		2007 ACS		Change 2000 to 2007	
	Number	Distribution	Number	Distribution	Number	Percent
Total:	21,049	100%	30,617	100%	9,568	45%
<b>Owner-occupied housing units:</b>	13,339	63%	18,032	59%	4,693	35%
1, detached or attached	11,475	55%	16,279	53%	4,804	42%
2 to 9 units	117	1%	360	1%	243	208%
10 or more units	18	0%	50	0%	32	178%
Mobile home and all other types of units	1,729	8%	1,343	4%	(386)	-22%
<b>Renter-occupied housing units:</b>	7,710	37%	12,585	41%	4,875	63%
1, detached or attached	3,379	16%	6,039	20%	2,660	79%
2 to 9 units	2,464	12%	3,946	13%	1,482	60%
10 or more units	1,541	7%	2,386	8%	845	55%
Mobile home and all	326	2%	214	1%	(112)	-34%

other types of units						
<b>Source:</b> 2000 Census and 2007 American Community Survey (ACS) data for Bend from American Factfinder - <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .						

- ❖ The proportion of single family detached and attached units that were owner occupied decreased over the last seven years. Conversely, the proportion of these types of dwellings that were renter-occupied increased over this same period.
- ❖ While the numbers of owner occupied units that were multi-family attached (2 to 9, 10 or more) increased significantly on a percentage basis, they still represented a very small portion of the supply of owner occupied housing.
- ❖ The proportion both owner and renter occupied units that were mobile or manufactured homes, and other types of housing, decreased over this period.

### *Local Demographic and Economic Trends*

The forgoing sections on local trends examined the characteristics of Bend's population and the changes in these characteristics will influence the demand for housing. This section draws from the city's 2008 General Plan Housing Chapter and 2008 Economic Opportunities Analysis to examine local demographic and economic trends that will influence both the supply of and demand for housing<sup>30</sup>.

- ❖ Bend's population grew rapidly from 2000 to 2007, increasing by 41% and growing at an annualized rate of 5% per year.
- ❖ By 2007, Bend's population represented 48% of the population in Deschutes County.
- ❖ Most of the population growth in the county occurred through positive net migration; the number of people moving in exceeded the number of people moving out. Between 2000 and 2007, net migration represented 89% of the county's growth in population.
- ❖ Bend's population is forecasted to grow to 115,063 people by 2028; this would represent 45% of the county's population by 2028. According to the 2008 EOA, the county's population and that of the Bend urban area are both expected to grow, and at a higher rate than the rest of the state. Most of this growth will occur due to in-migration exceeding out-migration (more people moving in than moving out). The children and grandchildren of the baby-boomer generation will make up the largest percentage of the population and workforce.
- ❖ Bend has higher percentages of college educated workers compared to Deschutes County and the state. This is expected to generate more higher-paying jobs, increase average incomes, and be more responsive to changes in economic trends.

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<sup>30</sup> See Section 3: Review of National, State, Regional, and Local Trends at pages 12 through 59 of the 2008 EOA. See 2008 General Plan, Chapter 5, Housing and Residential Lands, Rec. 1280

- ❖ The recent job growth in Bend and Deschutes County has not come at the expense of other jurisdictions. The increase in the area's labor force is expected to keep pace with population growth. The in-migration of younger individuals combined with the baby boomer generation of workers will create a large potential labor force in the peak of its work and income producing years.
- ❖ Recent unemployment rates in Deschutes County tend to be higher than the U.S., and similar to the State of Oregon, suggesting Bend and Deschutes County unemployment rates may track with national and state trends in the future, remaining above those rates.
- ❖ Unemployment rates in Deschutes County show more pronounced affects from changes in seasonal employment than in the U.S. and Oregon.
- ❖ Structural unemployment does not appear to have been an issue in Deschutes County and Bend, suggesting no major disconnect between the capabilities of resident workers and economic changes and growth over the past decades.
- ❖ Bend's incomes for households were consistent with those of the county, state, and nation. However, Bend had 10% more households with incomes of \$50,000 to \$74,999.
- ❖ The construction industry makes up a significant portion of the county's jobs and payroll, and downturns in the broader housing industry will have a negative affect local construction jobs.
- ❖ In the midst of the housing and construction slowdown, Deschutes County's diversified economy has continued to add jobs, albeit at a slower rate.
- ❖ Continued diversification of the local economy will tend to create a more stable local economy as individual industries experience rapid gains or losses.
- ❖ The industrial sector in Bend is much more diverse than in the past. The predominant pattern of smaller firms needing smaller sites and/or flexible building spaces will continue during the planning period. The continued erosion of jobs in lumber and wood products will be replaced by other jobs in durable and non-durable manufacturing. High technology manufacturing and research and development firms create a new trend for industrial space that function and look more like office developments. The growth in retail and service jobs will be driven by several factors: population increase, demographic mix, and tourism. Competitive advantages in the region, and particularly Bend, will continue to attract entrepreneurs from outside the area.

- ❖ Maintaining an adequate supply of land available and zoned appropriately to provide opportunities for a range of housing types is needed in Bend in the face of rapid recent and expected continuing population growth. Bend's population increased by 154% between 1990 and 2000 and by another 50% between 2000 and 2005. "The Regional Economist for the Worksource Oregon Employment Department stated that Central Oregon has the highest net migration in the state (29 new residents for every 1,000 in population in 2004)." The inadequate supply of land led to a lack of multi-family units, as high land costs influenced development of luxury townhomes rather than more affordable apartments or condominiums.<sup>31</sup> Note also that some of the increase in housing units between 1990 and 2000 was due to the annexation of the unincorporated areas of the Bend UGB that took effect on July 1, 1999. This annexation brought 5,286 housing units, many of which were manufactured homes, into the city. These units were then included in the total number of housing units included in Bend's Census for 2000.
- ❖ The rapid increase in population resulted in a growth in demand for workforce housing that outpaced the production of workforce housing units. Between 2000 and 2005, job growth created a demand for 9,057 units of workforce housing while only 8,230 units were produced.<sup>32</sup>
- ❖ The housing and land markets appreciated significantly at the beginning of the decade, driving the cost of housing up significantly and leaving relatively few market opportunities for low-cost owner-occupied housing. Land prices reportedly increased three to four-fold during the past ten years and the median home price increased by 54% between 2001 and 2005. Many housing developers, advocates, other community stakeholders city officials commented on the difficulty of finding land with a purchase price that will allow for the construction of affordable housing.
- ❖ Affordable housing for service workers, both for individuals and families, is in short supply in Bend. The combination of rapid increases in home prices combined with growth in the (low wage) service sector make it difficult for much of Bend's workforce to live in the city. The Worksource Oregon Employment Department forecasts that between 2004 and 2014, Central Oregon jobs will grow by approximately 24.4% or 17,520 new jobs.<sup>33</sup> There are limited affordable housing grants, down payment assistance programs or other support systems to aid residents in attaining affordable housing. Further complicating the issue is the seasonality of many jobs in the region, such as those in the construction, hospitality and leisure industries. In Deschutes County, approximately 5,000 more jobs exist in the summer than in the winter, making it difficult for the region to meet peak housing needs.

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<sup>31</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

<sup>32</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

<sup>33</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.



- ❖ The lack of affordable housing for the workforce had a negative effect on employers in Central Oregon. In a survey of 118 private and public sector employers, more than half felt that insufficient availability of affordable housing for the workforce was the most critical problem or one of the more serious problems in the region. These problems affect many aspects of a business, including service levels, hours of operation, and customer satisfaction.<sup>34</sup>
- ❖ The lack of housing affordable to low and moderate income households led to many area workers purchasing homes and living in other communities, such as Redmond and Prineville. A survey of employers suggests that 23.3% of Bend's workforce lives outside the City of Bend.<sup>35</sup> Census data show from 1990 to 2000 shows an increasing number of workers commuting to Deschutes County from other counties.<sup>36</sup> Census data on travel times to work further suggest significant numbers of commuters in other Central Oregon cities were commuting to Bend for work.<sup>37</sup> This trend exacerbated traffic congestion and other issues caused by rapid growth in the community.
- ❖ Increasing land prices also influenced the conversion of manufactured home parks as land owners sold their land for a large profit or developed the land for a higher return. No new manufactured home parks were developed in Bend since 1998 and the supply of manufactured homes in manufactured home parks decreased from 2,159 units in 2000 to 1,403 units in 2005.<sup>38</sup> High land values also stimulated the conversion of rental apartments to condominiums. These processes result in a lack of affordable rental housing at a time when there is a limited amount of rental development.
- ❖ Special needs populations faced gaps in service delivery, including transitional housing for low-income families, supportive transitional housing for people with substance abuse problems and mental illnesses and some emergency housing. These gaps may be exacerbated by the State of Oregon's budget shortfall.

### *Summary of Bend's population characteristics, and local demographic and economic trends*

- ❖ Bend's population grew much faster than the nation's or the state's between 2000 and 2007.
- ❖ This growth included an increase in the number of smaller households, and households with a householder between 45 and 64 years of age.
- ❖ This growth in population also includes an aging of the population; between 2000 and 2007, the number of persons in Bend between 55 and 59 years of age increase by 141%. The number of persons 60 to 64 years of age increased by 94%.

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<sup>34</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

<sup>35</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

<sup>36</sup> Commuting Patterns Within Central and South Central Oregon (2003). Steve Williams, Oregon Employment Department. [www.qualityinfo.org/olmisj](http://www.qualityinfo.org/olmisj).

<sup>37</sup> City of Bend Housing Needs Analysis and Residential Lands Study. June 30, 2005.

<sup>38</sup> See City of Bend Buildable Lands Inventory (2005).

- ❖ Nonfamily households grew at a greater rate (59% to 39%) than family households.
- ❖ More households were renting their housing in 2007 than in 2000, but owner occupied households still represented 59% of households in 2007.
- ❖ With the downturn in the housing market, the number of vacant housing units increased from 6% in 2000 to 10% in 2007.
- ❖ The distribution of housing units also changed with single family detached units representing a greater proportion of units in 2007; the proportion of multi-family units decreased from 29% to 27% of the supply of housing units by 2007.
- ❖ By 2007, there were more households with householders between the ages of 45 and 64 that also had household incomes greater than \$50,000 a year.
- ❖ Land prices had increased rapidly between 2001 and 2005, and during a time when growth in employment occurred in industries with lower wages and income.
- ❖ These same industries are expected to see more growth between 2004 and 2014, and requiring housing affordable for the wages and income that could be earned.
- ❖ Much of the apparently serious affordable housing situation observed during 2005-06 was the result of unique economic conditions that were beginning to moderate during 2006-08, and are unlikely to be repeated during the planning period.<sup>39</sup>
- ❖ Even under the unique economic conditions of 2000-2005, 91% of needed “workforce housing units” were produced in Bend.<sup>40</sup>
- ❖ In response to dwindling numbers of affordable mobile home units, City Council has adopted a program to promote re-zoning of closed manufactured home parks to higher-density zoning to provide an incentive for park owners to replace those units with affordable rental housing.
- ❖ By 2007, 41% of all single-family units were occupied as rental units. It appears that a significant share of demand for rental housing is being met by these single-family units. This suggests a continuing need for an adequate supply of land for single-family housing to meet a significant portion of the demand for rental housing.
- ❖ The proportion of single-family detached and single-family attached units that were owner-occupied decreased (55% to 53%) between 2000 and 2007, and the proportion of these dwellings that were renter-occupied increased (16% to 20%). This appears to be a trend toward a higher proportion of rental housing needs being met by SF units rather than by MF units.
- ❖ The overall proportion of single-family units increased slightly between 2000 and 2007, from 67% to 70%. This ratio has held relatively constant since 1990, changing only from 66% in 1990 to 67% in 2000.

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<sup>39</sup> <sup>39</sup> See updated Buildable Lands Inventory, memo to UGB Remand Task Force, August 31, 2011, p. 12.

<sup>40</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

- ❖ In 1990 the ratio of owner-occupied units to renter-occupied units was 54:46. By 2000 this ratio had changed in favor of owner-occupied units to 63:37. However, this trend was reversed from 2000-07. During that period the ratio went from 63:37 to 59:41 (Table 13). Also during that period, the number of owner-occupied units increased by only 36% while the number renter-occupied units increased by 61%. This suggests a trend toward increasing opportunities in the single-family detached rental market.
- ❖ Between 2000-2007 households with householders 45-64 years old increased faster than any other age group (56%). This same age group also had the highest proportion of households earning \$50,000 or greater (63%). This suggests that the fastest growing segment of the population has more purchasing power, and therefore has options in selecting housing type and tenure.

#### STEP 4. DETERMINE THE TYPES OF HOUSING THAT ARE LIKELY TO BE AFFORDABLE TO THE PROJECTED POPULATION BASED ON HOUSEHOLD INCOME.

a. Identify the types of housing that are likely to be affordable to the projected population based on household income.

LCDC's November 2010 order identifies the types of housing the City must consider through this housing needs analysis. The Commission's disposition of this matter was based, in part, on ORS 197.303(3)(a), which identifies "needed housing:"

- (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;*
- (b) Government assisted housing;*
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and*
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.*

The Commission's rules further define the three types of housing that must be considered in the housing needs analysis. The following table lists these three types of housing and how they are classified under the Bend Development Code.

Table 4-1: Comparison of OAR 660, Division 8 Definitions with Types of Housing Allowed under the Bend Development Code.	
OAR 660-008-005, Definitions	Bend Development Code (See BDC Chapter 1.2)
"Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot. OAR 660-008-0005(1).	Dwelling, single family attached

<i>“Detached Single Family Housing” means a housing unit that is free standing and separate from other housing units. OAR 660-008-0005(3).</i>	Courtyard housing Dwelling, single family detached Manufactured home on individual lot
<i>“Multiple Family Housing” means attached housing where each dwelling unit is not located on a separate lot. OAR 660-008-0005(5).</i>	Condominium Two and three family housing (duplex and triplex) Multi-family housing (more than 3 units) Manufactured homes in parks <sup>41</sup>

The following table displays the changes in the mix of housing in Bend between 1998 and 2008. It includes the mix of housing as of 1998, after the adoption of the current General Plan, between 1998 and 2008, and in 2008. The presentation of housing mix describes three types of housing, consistent with the Commission’s Order and OAR 660-008-005<sup>42</sup>.

<b>Table 4-2: Presentation of Housing Mix</b>						
<b>Type of Housing</b>	<b>Pre-1998</b>		<b>1998-2008</b>		<b>2008</b>	
	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>
SFD	13,439	70%	11,528	73%	24,967	71%
SFA	48	0%	610	4%	658	2%
MFA	5,708	30%	3,596	23%	9,304	27%
Total	19,195	100%	15,734	100%	34,929	100%
<b>Notes:</b> SFD – Single family detached: includes detached single family dwellings and manufactured homes on individual lots SFA – Single family attached: includes attached single family housing such as row houses MFA – Multi-family attached: includes Condominiums, multi-family housing, duplexes, and manufactured homes in parks <b>Source:</b> City of Bend building and land use permit records						

b. Organize data gathered on household incomes by income range categories (e.g., high, medium, and low. Calculate the percent of total households that fall into each category.)

Table 4-3 below summarizes data from the 1990 Census and the 2000 Census for household income in Bend. This table shows the distribution of households by household income, and the change in this distribution between 1990 and 2000. Please note that by 2000, 62% of Bend’s households had household incomes less than \$50,000. A total of 31% of households had incomes between \$50,000 and \$99,999. The remaining 9% of households had incomes of \$100,000 or more. The median household income in 2000 was \$40,857.

<sup>41</sup> This form of housing is included under “Multiple-family housing” because the density of parks is similar to that of other forms of multi-family housing.

<sup>42</sup> See OAR 660-008-005, Definitions, online at [http://arcweb.sos.state.or.us/pages/rules/oars\\_600/oar\\_660/660\\_008.html](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_008.html).

<b>Table 4-3: Change in Bend Household Incomes 1990 to 2000</b>			
Household Income	% of Total Households in 1990	% of Total Households in 2000	% Change between 1990 and 2000
Less than \$10,000	15%	7%	12%
\$10,000 to \$14,999	11%	7%	50%
\$15,000 to \$19,999	10%	7%	54%
\$20,000 to \$24,999	11%	7%	41%
\$25,000 to \$29,999	11%	8%	71%
\$30,000 to \$34,999	9%	8%	118%
\$35,000 to \$39,999	7%	6%	114%
\$40,000 to \$44,999	6%	6%	144%
\$45,000 to \$49,999	3%	6%	339%
\$50,000 to \$59,999	6%	10%	289%
\$60,000 to \$74,999	4%	11%	494%
\$75,000 to \$99,999	3%	10%	853%
\$100,000 to \$124,999	1%	4%	1,009%
\$125,000 to \$149,999	0%	2%	869%
\$150,000 or more	1%	3%	1,107%
Median Household Income	\$35,787	\$40,857	58%
<b>Source:</b> US Census Bureau STF3 (1990) and SF3 (2000) available through American Factfinder <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .			

Table 4-4 shows the distribution of households by income based on the 2007 ACS data for Bend. In 2007, the median household income had increased to \$56,053, or about 37%, since the 2000 Census. At that time 42% of Bend's households earned less than \$50,000. An estimated 37% of Bend's households had incomes between \$50,000 and \$99,999, and the remaining 21% had incomes of more than \$100,000.

<b>Table 4-4: Number of Households by Household Income in 2007</b>		
Income Category	Number	Percent
Total:	30,617	100%
Less than \$10,000	477	2%
\$10,000 to \$14,999	863	3%
\$15,000 to \$19,999	1,631	5%
\$20,000 to \$24,999	2,399	8%
\$25,000 to \$29,999	1,984	6%
\$30,000 to \$34,999	1,080	4%
\$35,000 to \$39,999	1,002	3%
\$40,000 to \$44,999	1,733	6%
\$45,000 to \$49,999	1,648	5%
\$50,000 to \$59,999	3,061	10%
\$60,000 to \$74,999	4,161	14%
\$75,000 to \$99,999	4,208	14%

\$100,000 to \$124,999	2,695	9%
\$125,000 to \$149,999	1,224	4%
\$150,000 to \$199,999	1,263	4%
\$200,000 or more	1,188	4%
<b>Source:</b> American Community Survey data for Bend (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .		

The following tables display the data in Table 4-4 in one of three categories: lower, middle, and higher. The purpose for this organization of the data is to better estimate the types of housing that will be affordable to each group based on household income. The households in the “lower” category are those that have household incomes of less than \$50,000; these households represent 42% of all households in 2007. The households in the “middle” category are those that have household incomes between \$50,000 and \$99,999; these households represent 37% of all households in 2007. The households in the “higher” category have household incomes of \$100,000 or more; these households represent 21% of all household in 2007.

<b>Table 4-5: “Lower” household incomes – number of households by income category - 2007</b>		
Categories	Number of Households	Distribution among all households
Less than \$10,000	477	1.56%
\$10,000 to \$14,999	863	2.82%
\$15,000 to \$19,999	1,631	5.33%
\$20,000 to \$24,999	2,399	7.84%
\$25,000 to \$29,999	1,984	6.48%
\$30,000 to \$34,999	1,080	3.53%
\$35,000 to \$39,999	1,002	3.27%
\$40,000 to \$44,999	1,733	5.66%
\$45,000 to \$49,999	1,648	5.38%
<b>Subtotals</b>	<b>12,817</b>	<b>42%</b>

<b>Table 4-6: “Middle” household incomes – number of households by income category - 2007</b>		
Categories	Number of Households	Distribution among all households
\$50,000 to \$59,999	3,061	10.00%
\$60,000 to \$74,999	4,161	13.59%
\$75,000 to \$99,999	4,208	13.74%
<b>Subtotals</b>	<b>11,430</b>	<b>37%</b>

<b>Table 4-7: “Higher” household incomes – number of households by income category - 2007</b>		
Categories	Number of Households	Distribution among all households
\$100,000 to \$124,999	2,695	8.80%
\$125,000 to \$149,999	1,224	4.00%
\$150,000 to \$199,999	1,263	4.13%
\$200,000 or more	1,188	3.88%
<b>Subtotals</b>	<b>6,370</b>	<b>21%</b>

The organization of households by income into of these three groups is based in part on the distribution of the data. The ACS reports the number of households within a certain income range (e.g. \$50,000 to \$59,999). The data does not include a distribution by the actual value – household income – for organizing households into categories.

c. Considering local housing prices for the same timeframe as the income data, identify the structure types financially attainable by each income.<sup>43</sup>

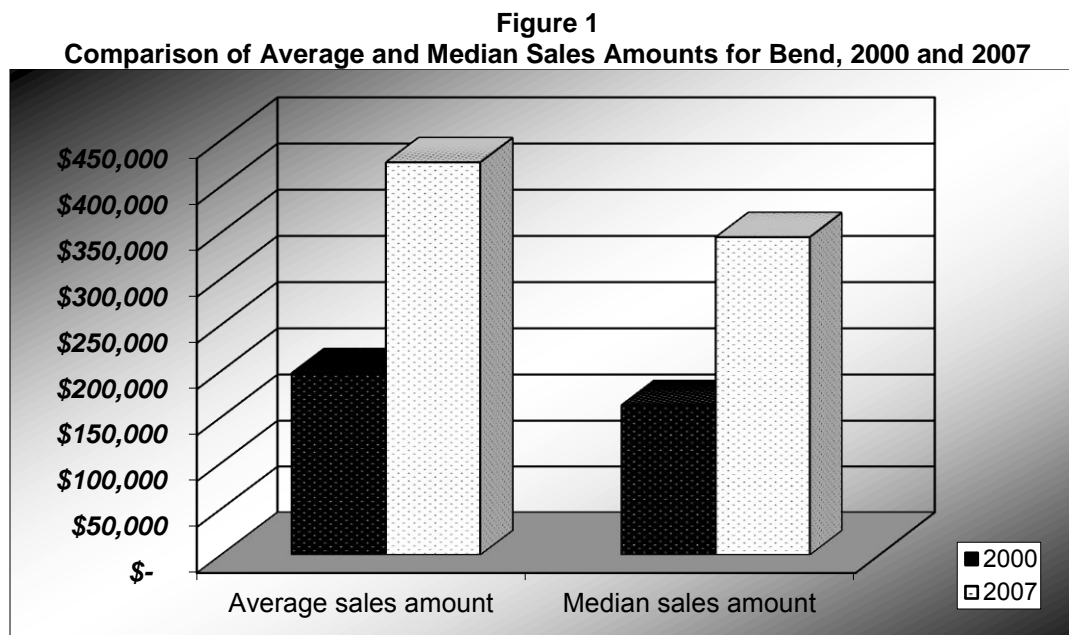
The following data describes local housing prices as of 2007 and early 2008. The data sources include the American Community Survey, which reported limited data on this topic in 2007<sup>44</sup>. The ACS reports values of owner-occupied units, but not by type of unit (e.g. single family detached).

<sup>43</sup> Please note that the 1997 guidebook directs the reader to consider structure types and tenure. For the purpose of this analysis, LCDC concluded that the city is not required to consider tenure in this HNA because the City does not regulate housing by tenure. See Order pages 26-33.

<sup>44</sup> The 2007 ACS data is available online at [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

<b>Table 4-8: Value of Owner-Occupied Units</b>				
	Number of Units		Distribution Owner-Occupied Units	Distribution All Housing Units
Total:	18,032		100%	53%
Less than \$50,000	658		4%	2%
\$50,000 to \$99,999	306		2%	1%
\$100,000 to \$149,999	186		1%	1%
\$150,000 to \$199,999	815		5%	2%
\$200,000 to \$299,999	3,520		20%	10%
\$300,000 to \$499,999	7,375		41%	22%
\$500,000 to \$999,999	4,232		23%	12%
\$1,000,000 or more	940		5%	3%
<b>Source:</b> American Community Survey data for Bend (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .				

Table 4-8 shows that by 2007, 41% of the owner occupied units in Bend were valued between \$300,000 and \$499,999. An estimated 28% of the owner occupied units were \$500,000 or more in value. Approximately 32% of the owner occupied housing units in 2007 were valued at \$299,999 or less. Figure 1 below shows the changes in average and median sale values for housing in 2000 and in 2007<sup>45</sup>.



**Note:** Data presented end of calendar years 2000 and 2007

**Source:** Central Oregon Association of Realtors - <http://www.centraloregonrealtors.com/index.cfm>

<sup>45</sup> See Central Oregon Association of Realtors for quarterly and yearly sales data at <http://www.centraloregonrealtors.com/index.php?action=resources.stats>.



The price of housing has continued to rise between 2000 and 2007. In 2000, the median sales amount for residential property in Bend was \$163,000. By end of 2007, the median sales amount was \$345,000, an increase of \$182,000, or 112%, over this seven year period.

<b>Table 4-9: Change in Housing Prices in Bend, 2<sup>nd</sup> qtr 2004 through 2<sup>nd</sup> qtr 2008</b>						
<b>Median Sales Amounts for...</b>	<b>Through Second Quarter of...</b>					<b>% Change '07-'08</b>
	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	
Single family	\$217,500	\$258,000	\$343,950	\$349,250	\$307,000	- 12.10%
Condo/Townhome	\$197,500	\$239,050	\$316,750	\$315,000	\$322,500	+ 2.38%
Manufactured Homes	\$125,000	\$138,500	\$198,450	\$185,000	\$172,500	- 6.76%

**Source:** Central Oregon Association of Realtors - <http://www.centraloregonrealtors.com/index.cfm>

The data reflect a shift in the housing market between 2006 and 2008. The median prices for single family homes increased between the 2<sup>nd</sup> quarter of 2004 and the 2<sup>nd</sup> quarter of 2007 by \$131,750 or 61%. Prices for new single family homes showed a decrease of 12% between 2<sup>nd</sup> quarter 2007 and 2<sup>nd</sup> quarter 2008. Table 4-10 shows the change in all types of housing units available for rent by their monthly cash rent between 2000 and 2007.

<b>Table 4-10: Contract Rent (number of housing units rented for cash)</b>				
	<b>2000 Census</b>		<b>2007 ACS</b>	
	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>
Total:	7698	100%	12,585	100%
With cash rent:	7552	98%	12,507	99%
Less than \$200	245	3%	203	2%
\$200 to \$299	199	3%	83	1%
\$300 to \$499	2146	28%	897	7%
\$500 to \$749	3031	39%	5,098	41%
\$750 to \$999	1655	21%	3,845	31%
\$1,000 or more	276	4%	2,381	19%
No cash rent	146	2%	78	1%
<b>Note:</b> The number of units included in this table includes all types of units available for rent in Bend in 2000 and 2007. <b>Source:</b> American Community Survey data for Bend (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .				

The units for rent for \$499 or less decreased between 2000 and 2007. By 2007, these units represented 10% of the units for which cash rent was sought; in 2000, the stock of rental units available for these rents represented 34% of the units rented. Conversely, the proportion of units available for rent for \$500 or more increased between 2000 and 2007. By 2007, this proportion of rental units represented 92% of the units rented. The data does not show a clear link between household income and the type of housing being purchased or rented (e.g. households with income x living in housing type y). Based on the forgoing analysis of household and economic trends, the City concludes that the following types of housing will be those types that are needed and financially attainable by each income group listed above in Tables 4-6 through 4-8.

For “Lower” income category households (\$49,999 or less in household income):

- More likely to rent.
- More likely to require some assistance to make monthly housing payments for those households with lower incomes in this category.
- This assistance may include vouchers to make monthly rent payments, and possibly subsidized housing.
- More likely to rent multi-family attached housing, including mobile homes in parks.

For “Middle” income category households (\$50,000 to \$99,999):

- More likely to rent depending on incomes and household sizes.
- More likely to buy at higher end of this range.
- More likely to rent single family detached, multi-family attached housing.
- More likely to buy single family detached housing, particularly single family dwellings on their own lot.

For “higher” income category households (\$100,000 or more):

- Have more choices in housing market because of more purchasing power.
- More likely to buy single family detached housing, particularly single family dwellings on their own lots.
- May buy single family attached housing or multi-family attached housing if households are smaller.

**S T E P 5 . E S T I M A T E T H E N U M B E R O F  
A D D I T I O N A L N E E D E D U N I T S B Y  
S T R U C T U R E T Y P E .**

a. Describe the relationship between household size and structure type and tenure. Estimate likely shifts in the number of households by household size in 20 years and the implications for housing choice.

The sizes of households and families remained stable nationally and in Oregon between 2000 and 2007. For Bend, household sizes remained fairly stable between 1980 and 2000. In 2000, the Census reported a household size of 2.42 persons per household in Bend. The 2007 ACS estimated household size at 2.34, a decrease of about 0.08 persons per household or 4% since the 2000 Census. Family size has also decreased in Bend during this period from 2.92 persons per family to 2.79 persons per family, a decrease of 5%. The 2007 ACS also estimates that the average household sizes of owner-occupied housing at 2.31 persons per household, and 2.4 persons per household for renter-occupied housing.

<b>Table 5-1: Persons Per Household in Bend in 1990 and 2000</b>					
Type of Household	1990	2000	Change	% Change	% of Total
1 person	2,515	5,516	3,001	119%	26%
2 persons	3,031	7,736	4,705	155%	37%
3 persons	1,353	3,511	2,158	159%	17%
4 persons	1,087	2,722	1,635	150%	13%
5 persons	377	1,065	688	182%	5%
6 persons	98	412	314	320%	2%
7 or more persons	75	88	13	17%	0%
Total households	8,536	21,050	12,514	147%	100%
<b>Source:</b> US Census Bureau STF3 (1990) and SF3 (2000)					

As shown in Table 5-2 below, as of 2007, 1-person households still represented roughly one-quarter of all households in Bend. The proportion of 2-person households increased from 37% to 40% of all households. The proportions of 3- and 4-person households did not change significantly, each representing about 15% of Bend's households in 2007.

<b>Table 5-2: Persons Per Household in Bend 2007</b>		
Household Size	Number of Households	Distribution
1-person household	7,512	25%
2-person household	12,233	40%
3-person household	4,606	15%
4-person household	4,513	15%
5-person household	1,257	4%
6-person household	496	2%
<b>Source:</b> American Community Survey data for Bend (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .		

The following table describes household size by tenure; the proportions of households by size that were purchasing or renting housing in 2007. The tenure split shown in Table 5-3 is noteworthy because it indicates that while 59% of all units were owner-occupied, the remaining 41% were renter-occupied. This contrasts with the housing type split for single-family dwellings and for multi-family dwellings as of 2007, shown in Table 4-2. That table indicates that the ratio of single-family dwellings to all other types of housing was 70:30. This confirms that a significant share of Bend's rental housing demand was being met through single-family detached units by 2007.

<b>Table 5-3: Households by tenure and household size (2007)</b>			
	Number of Households	% Distribution of all Households	% Distribution by Tenure Category
<b>Total:</b>	<b>30,617</b>	<b>100%</b>	
<b>Owner occupied:</b>	<b>18,032</b>	<b>59%</b>	<b>100%</b>
1-person household	3,968	13%	22%
2-person household	8,801	29%	49%

3-person household	1,600	5%	9%
4-person household	2,772	9%	15%
5-person household	777	3%	4%
6-person household	114	0%	1%

**Table 5-4: Households by tenure and household size (2007)**

	Number of Households	% Distribution of all Households	% Distribution by Tenure Category
<b>Renter occupied:</b>	<b>12,585</b>	<b>41%</b>	<b>100%</b>
1-person household	3,544	12%	28%
2-person household	3,432	11%	27%
3-person household	3,006	10%	24%
4-person household	1,741	6%	14%
5-person household	480	2%	4%
6-person household	382	1%	3%
<b>Source:</b> American Community Survey (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .			

By 2007, almost half (49%) of owner-occupied households were 2 person households. Approximately 71% of all owner occupied households were 1 to 2 persons in size. The remaining 29% of owner occupied households were 3 or more persons in size. An estimated 79% of all renter occupied households were between 1 and 3 persons in size in 2007, with the remaining 21 percent between 3 and 6 persons in size. The following table shows the proportions of Bend households by size in 1990, 2000, and 2007. Please note, that during this period, 1 and 2 person households have remained the majority of all households.

<b>Table 5-5: Changes in Distribution of Households by Size</b>			
	1990	2000	2007
1-person households	29%	26%	25%
2-person households	36%	37%	40%
3-4 person households	29%	30%	30%
5 or more person households	6%	7%	6%
	100%	100%	100%
<b>Source:</b> 1990 and 2000 Census data, 2007 American Community Survey data for Bend through American Factfinder – <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> . Percentages may not add to 100% due to rounding.			

**1-person households** have represented between 25% and 29% of Bend's households from 1990-2007. The number of these households increased between 2000 and 2007, and their proportion of all households has remained around one-quarter of all households.

**2 person households** have represented between 36% and 40% of all households, with the proportion of these households increasing between 2000 and 2007.

**3- and 4-person households** combined have represented between 30% and 40% of all households between 1990 and 2007. The proportion of all households that are 3 or 4 persons in size has decreased from 39% in 1990 to 30% in 2007.

**5 or more person households** have consistently represented between 6% and 7% of all households between 1990 and 2007.

Over the next 20 years, households with 1 to 2 persons per household are expected to represent the largest category of households by size. To consider the types of housing households are choosing, by their size, we can turn to the ACS data on family and nonfamily households. The data on household size by units in structure (e.g. single family detached), is limited. The data available includes family and nonfamily households, by their size, and some data on their choice of housing in 2007. In 2007, the ACS estimated a total of 30,617 households in Bend, of which 18,666 households were family households. Table 5-5 displays the data on the distribution of these households by size, and then by their chosen form of housing.

**Table 5-6: Family Households in Bend (2007)**

Family Households By Size			Family Households By Housing Type		
Size	Number	Distribution	Type	Number	Distribution
2-person	9,118	49%	1-unit structures	15,297	82%
3-person	3,540	19%	2-or-more-unit structures	2186	12%
4-person	4,255	23%	Mobile homes and all other types	1,183	6%
5-person	1,257	7%			
6+-person	496	3%			

**Source:** 2007 American Community Survey data for Bend through American Factfinder – [www.factfinder2.census.gov](http://www.factfinder2.census.gov)

The ACS shows that just less than half of family households were 2-person households. Approximately 42% of family households were 3- or 4-person households. Compare this data to what types of housing they inhabited; 82% of family households were living in 1-unit structures, while 12% were living in structures with two or more units<sup>46</sup>. This is surprising given the large proportion of family households that are 2-person households. This suggests that family households are choosing single-family detached units to purchase or rent. In 2007, the ACS estimated a total of 11,951 nonfamily households in Bend. The following table displays the same data for nonfamily households in 2007.

<sup>46</sup> See Table 4-2 on mix of housing types in Bend. Most single family units in Bend were single family detached units.

**Table 5-7: Nonfamily Households in Bend (2007)**

Nonfamily Households By Size			Nonfamily Households By Housing Type		
Size	Number	Distribution	Type	Number	Distribution
1-person	7,512	63%	1-unit structures	7,021	59%
2-person	3,115	26%	2-or-more-unit structures	4,556	38%
3-person	1,066	9%	Mobile homes and all other types	374	3%
4-person	258	2%			

**Source:** 2007 American Community Survey data for Bend through American Factfinder – [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

The largest category of nonfamily households was 1-person households. Households composed of 2-persons represented a quarter of all non-family households. Like family households, a majority of non-family households were living in 1-unit structures (e.g. single family dwellings), with a smaller proportion living in 2 or more unit structures. Although the shares are somewhat different for family households and non-family households, Table 5-7 also suggests that a large majority of non-family households (63%) are occupying single-family detached units, whether owned or rented. For both family and non-family households, a small proportion of households were living in mobile homes and all other types of housing.

b. Age of household head: Based on the data gathered under 3a, describe the relationship between age of household head and structure type and tenure. Estimate likely shifts in the number of households by age of household head in 20 years and the implications for housing choice.

Table 5-8 shows the distribution of households in Bend in 2007 by the age of their householder.

Table 5-8: Distribution of Households by Age of Householder (2007)	
Householder 15 to 24 years	7%
Householder 25 to 34 years	22%
Householder 35 to 44 years	19%
Householder 45 to 54 years	18%
Householder 55 to 59 years	10%
Householder 60 to 64 years	6%
Householder 65 to 74 years	8%
Householder 75 to 84 years	7%
Householder 85 years and over	2%

**Source:** 2007 American Community Survey data for Bend – [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

Table 5-8 shows that most households in Bend – approximately 70% - were headed by a householder between 25 and 59 years of age. Approximately 28% of all householders were 45 to 59 years of age. Table 5-9 shows the distribution of which households – based on age of householder – were purchasing or renting housing in 2007.

<b>Table 5-9: Distribution of Households by Age of Householder and Tenure (2007)</b>		
Age of Householder	Owner-occupied Households	Renter-occupied Households
Householder 15 to 24 years	1%	16%
Householder 25 to 34 years	14%	34%
Householder 35 to 44 years	19%	21%
Householder 45 to 54 years	21%	13%
Householder 55 to 59 years	13%	7%
Householder 60 to 64 years	9%	2%
Householder 65 to 74 years	12%	3%
Householder 75 to 84 years	11%	2%
Householder 85 years +	1%	3%
<b>Source:</b> 2007 American Community Survey data for Bend through American Factfinder – <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .		

By 2007, owner-occupied households were almost evenly split between householders 54 and younger and 55 and older. At this time, 55% of the owner-occupied households were headed by a householder 54 years of age or less. The remaining 46% of households were headed by householders 55 years of age and older. For renter-occupied households, most households were headed by householders less than 34 years of age. An estimated 50% of householders renting housing were 34 years of age or less; the remaining 50% were 35 years of age and older. The following table expands on this analysis to the choices households made to purchase or rent housing by the type of housing.

<b>Table 5-10: Distribution of Households by Tenure and Housing Type</b>		
Type	Owner occupied Households	Renter occupied Households
1, detached or attached	90%	48%
2 to 9 units	2%	31%
10 or more units	1%	19%
Mobile home and all other types	7%	2%
<b>Source:</b> 2007 American Community Survey data from American Factfinder – <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .		

For both owner occupied households and renter occupied households, the form of housing most often purchased or rented was a single family detached or attached unit. Table 4-2 shows most of the single family units were detached units. Very few owner occupied households were living in structures with 2 or more units in 2007, and only seven (7) percent of owner occupied households were living in manufactured homes. For renter occupied households, 48% of all households were living in 1-unit structures, detached or attached. The second largest group was renter occupied households residing in structures with 2 to 9 units. This suggests that when considering meeting future housing needs, single family detached and attached units were chosen by either owner or renter occupied households before other types of housing, including those with 2 to 9 units in a structure. For both categories of household, structures with 10 or more units were chosen less than these other types. This trend also suggests that single family detached housing was rented more often because of a lack of supply of other forms of rental housing (e.g. duplexes, apartments).

c. Based on the analysis in Steps 5a and 5b, and on knowledge about national, state, and local housing condition and trends and analysis in Step 4, describe how the characteristics of the projected households will likely affect housing choice. Consider trends in housing and land prices. Document conclusions drawn from the analysis, including a description of how and why local conditions and/or trends are expected to differ from the national and state trends.

Smaller households with lower household incomes, including family households, will have limited options for housing. These households will be more likely to rent detached single family dwellings and multi-family attached dwellings. Households toward the lower end of the income scale may still require some kind of assistance to meet monthly housing costs (e.g. rent, energy), regardless of land supply or the mix of housing provided by the market. Younger households, those with a household head less than 34 years of age, will more likely rent multi-family attached.

Two-person households are increasing in number, and becoming a larger proportion of all households. The data shows that these households are purchasing or renting single family detached housing more frequently than other forms of housing. Three and four person households represent 30% of Bend's households; more of these households are renting rather than buying housing. Large majorities of both family and non-family households in Bend are choosing single family structures – both detached and attached – for housing. In 2007, 82% of family households and 59% of non-family households were living in 1-unit structures (See Tables 5-5 and 5-6).

This discussion of Bend households and their characteristics highlights one of many differences between local conditions and how they differ from national and state trends<sup>47</sup>. As indicated earlier, while household and family sizes increased over the last seven years nationally and statewide, Bend saw decreases. From 2000 to 2007, average household size decreased by 3% and average family size by 4% in Bend. Bend saw greater growth in households headed by householders between the ages of 25 and 44 and householders between the ages of 45 and 64 than the nation and the state. This was also related to greater growth in households in Bend, on a percentage basis, than the nation and the state. Growth in family and nonfamily households occurred at a faster rate in Bend. Finally, while median household and family income grew

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<sup>47</sup> See Tables 2, 3, and 4, September 2, 2011 memorandum to the Remand Task Force on Steps 1-3 of the Housing Needs Analysis.



around 22% nationally and statewide, Bend saw median household income grew by 37% and median family income grow by 35% since 2000.

d. Describe trends in construction by structure type and how future construction trends will likely be affected by changing demographics.

While the City will be forecasting housing needs using three structure types (single family attached, single family detached, and multi-family attached), the following table presents data on units permitted through building permits from 1999 to 2007<sup>48</sup>.

<b>Table 5-11: Types of Housing Permitted in Bend, 1999-2007</b>				
<b>Structure Type</b>	<b>Total Units 1999-2007</b>	<b>Annual Average</b>	<b>Total Distribution 1999-2007</b>	<b>Annual Average Distribution</b>
<b>Single family detached</b>	10,589	1,177	69%	73%
<b>Single family attached</b>	466	52	3%	3%
<b>Two-family dwellings</b>	1,037	115	7%	7%
<b>3 and 4 family dwellings</b>	371	41	2%	3%
<b>5 or more family dwellings</b>	1,588	176	10%	11%
<b>Mobile Homes</b>	425	47	3%	3%
<b>Totals</b>	14,476	1,608	100%	100%
<b>Source:</b> City of Bend building statistics, available on-line through: <a href="http://www.ci.bend.or.us/depts/community_development/building_division_2/building_statistics.html">http://www.ci.bend.or.us/depts/community_development/building_division_2/building_statistics.html</a>				

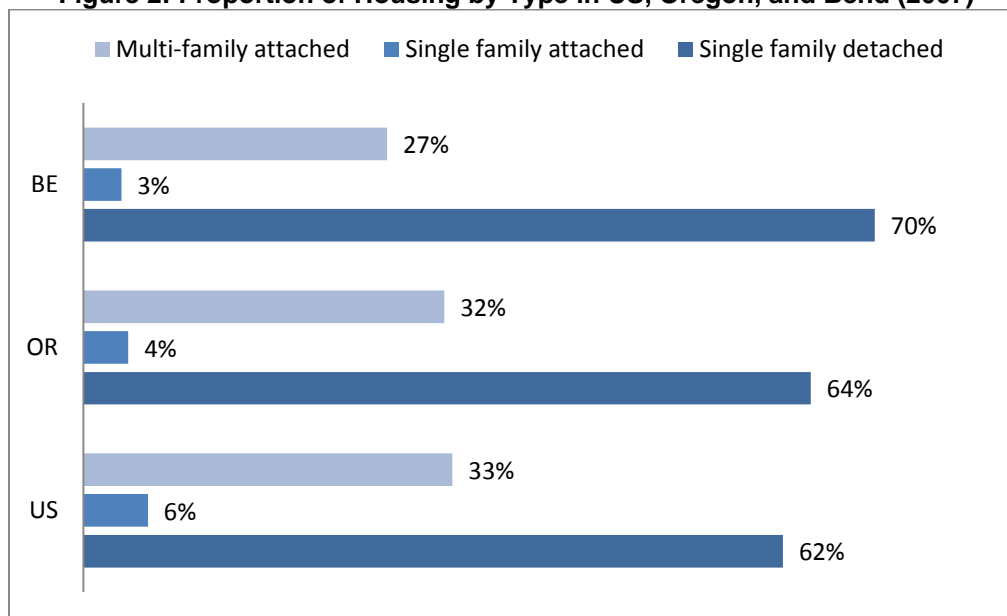
Most of the housing units permitted were single family detached dwellings. The second largest category behind SFD's was multi-family attached housing with five or more units. The third largest group was two-family dwellings, a.k.a. duplexes. Duplexes represented 7% of the units permitted between 1999 and 2007. In 2000, the Census counted 1,723 units, 8% of all housing units that were duplexes, triplexes, and fourplexes. During this time (1999-2007) 1,037 units, or about 7% of all units permitted, were duplexes. Adding triplexes and fourplexes in with duplexes represents 1,408 units, or 10% of all units. This suggests that some of Bend's demand for non-single-family detached types of housing could be met with these types of housing. While the proportions of single family detached, two-family dwellings, and 5 or more family dwellings increased, the proportions of single family attached, 3 and 4 family dwellings, and mobile homes have remained the same or slightly decreased. The 2005 Buildable Lands Inventory also reported that no new manufactured home parks had developed after 1998 and 2005<sup>49</sup>. This trend has also continued, with manufactured homes being placed in existing manufactured home parks and manufactured home subdivisions.

<sup>48</sup> See discussion in Commission's Order at pages 31 through 33.

<sup>49</sup> See 2005 Buildable Lands Inventory at Supp. Rec. 1987; specific discussion at Supp Rec. 2000.

With respect to changing demographics, household size has been decreasing in Bend since 2000. At the same time, the number of households headed by a householder between the age of 45 and 64 increased. Households with 1 or 2 persons are still the largest segment of households in Bend. These demographic trends might suggest potential demand for more attached housing, perhaps more single family attached housing. However, construction trends in Bend have shown that most of the units permitted between 2000 and 2007 have been single family detached. Multi-family attached housing represented 19% of the permitted units. Single family attached units represented three (3) percent of the permitted units. This is one trend where Bend's housing stock is changing in ways different from the nation or the state. The following figure shows the proportion of housing by type comparing the nation, state, and Bend.

**Figure 2: Proportion of Housing by Type in US, Oregon, and Bend (2007)**



**Source:** American Community Survey – [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

By 2007, approximately 70% of the housing in Bend was single family detached housing. This proportion of single family detached housing was higher than the Nation's or the State's. While demographic trends indicate that smaller and older households would suggest greater demand for attached housing, these trends are occurring at the same time single family detached housing has been permitted more often than other types of housing. By 2007, 82% of family households and 59% of nonfamily households were living in one-unit structures. According to the data on mix of housing, the majority of single unit structures in Bend were single family detached housing. This trend suggests that the market will produce single family detached units at a rate greater than other forms of housing.

e. Estimate the number of additional units by structure type needed for new households. Allow for a vacancy rate to provide for housing choice.

The housing unit forecast for Bend is 16,681 new housing units to house 38,512 people between 2008 and 2028. This forecast included a 6.4% vacancy rate<sup>50</sup>. In 2007, the mix of housing in Bend was 71% single family detached, 2% single family attached, and 27% multi-family attached (See Table 4-2). The current distribution of households by income shows 42% of households in Bend have household incomes of less than \$50,000. This data suggests a need for additional housing affordable for these households. In addition, household composition is changing, with more non-family households and greater number of smaller (1 to 2 person) households. This change in demographics would suggest a stronger demand for multi-family attached housing. However, the trend data on recent construction and tenure suggest both owner and renter occupied households, including smaller households, are purchasing or renting single family detached housing. The City has considered both these past and future trends in proposing a mix of housing for the 2008-2028 planning period. This mix of housing is proposed to ensure that an adequate supply of land is available for all forms of needed housing, including multi-family attached housing. In addition, the proposed mix also reflects that a significant proportion of future needed housing will continue to be single family detached.

Table 5-12: Proposed Mix of Housing for 2008 to 2028		
Type	Proportion	Number
Single family detached	65%	10,842
Single family attached	2%	334
Multi-family attached	33%	5,505
Totals	100%	16,681
<b>Note:</b> the total number of housing units reflected in the third column is the 2008-2028 housing unit forecast of 16,681 units.		

“Single family detached housing” includes both site-built single family detached dwellings and manufactured homes on their own lots. This category includes those dwellings classified as detached single family dwellings under OAR 660-008-005(3). The proposed proportion of 65% is intended to ensure an adequate supply of land for detached single family units. This proportion is based on an assumption that, consistent with demographic and economic trends, including recent construction trends, most of the housing produced during this planning period will be single family detached. Going forward, the City also assumes that this proportion for single family detached will include adequate land for smaller detached housing units such as cottage housing and courtyard housing. This assumption is based on demographic trends that show continued growth in households that are 1 and 2 person non-family households and 2-person family households. These forms of detached housing are examples of single family detached housing that can be developed at higher densities (e.g. 8 to 12 units/acre) in the RM Zone and RM-10 Zone. These examples of medium density single family detached housing will provide options for smaller households (1 and 2 person) and for older households where the age of the householder is between 45 and 64 years.

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<sup>50</sup> Please note that this rate was the City’s vacancy rate reported in the 2000 Census results for Bend – [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

This proportion (65%) is less than the current proportion (71%) of single family detached dwellings in Bend. This proposed proportion of 65% is not based on assumption that demand for single family detached dwellings will significantly decrease over the planning period. While the future trends in demographics suggest increasing numbers of smaller households, these changes have not yet influenced the production of single family dwellings in Bend. The proposed proportion recognizes that the supply of this type of housing exists to meet the projected need and that the proportion of other types of housing must be adjusted to ensure an adequate supply of land for other types of housing.

“Single family attached housing” consists of attached single family housing under the Bend Development Code. This category includes those dwellings classified as attached single family dwellings under OAR 660-008-005(1). The proposed proportion of 2% recognizes that this proportion of the housing stock has decreased over time, and with changing household characteristics – e.g. smaller and older households – has not increased in proportion. This proposed proportion is also based on an assumption, reflected in the forgoing discussions of housing mix, that other forms of housing are needed more than single family attached housing.

“Multi-family attached housing” consists of all other types of housing, including condominiums, duplexes, multi-family attached housing (3 or more units under Bend Development Code), and manufactured homes in parks. This category includes those dwellings classified as multiple family housing under OAR 660-008-005(5)<sup>51</sup>. This report proposes increasing the assumed proportion of housing to 33% multi-family attached to increase and ensure an adequate supply of land for such housing. The proportion of 33% is also recommended to provide the opportunity to increase the supply of this form housing for some households with household incomes of less than \$50,000. Going forward, the City assumes that multi-family attached housing will not include new manufactured homes in parks<sup>52</sup>.

If at least 33% of new units constructed between 2008 and 2028 were multi-family attached units, this new construction would yield 5,505 new units of such housing. These 5,505 additional units represent an increase of 59% over the supply of 9,304 multi-family attached units in 2008. Between 1999 and 2007, on an annual basis, 73% of new housing units permitted were single family detached dwellings and 21% were multi-family attached dwellings<sup>53</sup>. Using a higher proportion of multi-family attached housing in the proposed housing mix will support increasing the supply of land for multi-family attached housing.

**Table 5-13, Estimated Change in Mix of Housing Units by 2028**

Housing Type	2008 Distribution	2008 to 2028 New Units	2028 Distribution	% Distribution by 2028	% Change 2008-2028
<b>SFD</b>	24,967	10,842	35,809	69%	43%
<b>SFA</b>	658	334	992	2%	51%
<b>MFA</b>	9,304	5,505	14,809	29%	59%
	34,929	16,681	51,610	100%	

**Note:** SFD = single family detached; SFA = single family attached, and; MFA = multi-family attached

**Source:** Data in Tables 4-2 and 5-11

<sup>51</sup> See Table 4-1 of this report.

<sup>52</sup> See 2005 Buildable Lands Inventory report. Old Supp. Rec. 1995-2001

<sup>53</sup> See Table 5-10 of this report.

## Step 6. Determine the needed net density range for each plan designation and the average needed net density range for all designations.

a: “Examine the relationship between lot size and square feet of living space over time, using county assessor’s data to determine local trends in housing density.”

Attachment A of the draft update of the Buildable Lands Inventory illustrates historic trends in housing density by plan designation.<sup>54</sup> Table 6-1, below, summarizes these trends.<sup>55</sup>

**Table 6-1: Historic and Current Average Net Densities**

	RL			RS			RM			RH		
	Pre-1998	1998-2008	2008	Pre-1998	1998-2008	2008	Pre-1998	1998-2008	2008	Pre-1998	1998-2008	2008
Single-family detached housing	2.0	2.1	2.0	3.1	4.6	3.8	4.7	8.6	5.6	6.6	13.4	7.2
Single-family attached housing	0	0	0	5.1	8.7	8.4	21.5	12.5	13.1	0	0	0
Multi-family attached housing	8.8	0	8.8	9.7	14.2	11.3	16.6	16.1	16.6	20.9	17.1	18.8
Average Density – All Housing Types	2.1	2.1	2.1	3.2	4.9	3.9	8.5	13.4	9.9	14.4	16.9	15.5

As indicated in Table 6-1, average net densities have increased over time in most zones. The overall density in the low-density RL zone has held steady at 2.1 units/net acre (the RL zone contains less than 10% of total housing units), but it has increased somewhat in all other zones. The RS, RM, and RH zones showed increases in overall density from the pre-1998 period to 2008. The unusually high pace of construction activity during 1998-2008 is reflected in higher densities for that period in all zones, except RL. The unique economic conditions of that decade

<sup>54</sup> In this memo, the terms, plan designation” and “zoning designation” are used interchangeably. In general, zoning designations are consistent with plan designations. Where these designations are not consistent, data from both designations are included in the analysis.

<sup>55</sup> Table 6-1 contains data for four housing types. The three types shown in Table 1 are those that must, at a minimum, be considered in the Housing Needs Analysis (see Remand Sub-Issue 2.3). In order to determine average net densities for these three housing types, the category “Manufactured Homes – On Lots” shown in Attachment A has been combined with data for the “Single Family – Detached” category. Likewise, Attachment A data for “Manufactured Homes – In Parks” has been combined with the “Multiple Family Housing” category.

are not expected to repeat during the 2008-2028 planning period.<sup>56</sup> The City expects that an increase in the demand for housing other than single family detached will increase due to changing household composition and the increasing number of households earning less than \$50,000 a year in household income.

The most abundant housing type built, both before 1998 and during the 1998-2008 period, has been single-family detached. The majority of these detached single-family units have been built in the RS zone, during both historical periods. Table 6-1 indicates that the size of lots for single-family detached units in the RS zone has decreased historically as densities have increased. Average net density in the RS zone has increased from historical levels of 3.1 units/acre to 3.8 units/acre as of 2008.

Table 6-1 also indicates that the average net density for multi-family units in the RM zone held steady at 16.6 units/net acre from 1998 to 2008, and decreased slightly in the RH zone from 20.9 to 18.8 units/net acre. At the same time, multi-family density in the RS zone (consisting primarily of duplex units) increased from 9.7 to 11.3 units per net acre during that period.

Single-family attached units are relatively new to Bend's housing inventory. Only 48 units (less than 1% of total housing units) existed prior to 1998. During 1998-2008 they made up 9.5% (610) of total new housing units permitted. Most of those (71%) were built in the RS zone, with the rest built in the RM zone. As indicated in Table 6-1, average net density for single-family attached units in the RS zone increased from 5.1 to 8.7 units per net acre during 1998-2008, an increase of 71%. Overall, the average density of SFA units in all zones increased from 7.8 units/net acre prior to 1998 to 9.4 units/net acre in 2008.

Across all zones, for single-family detached units the average density increased by 24%, from 2.9 units/net acre before 1998 to 3.6 units/net acre by 2008. For single-family attached units across all zones, average density increased by 21%, during the same period. The change in average density for multi-family attached units across all zones was more modest, increasing by 2% from 15.5 units/net acre before 1998 to 15.8% by 2008.

b: "Describe the likely effect of land price, availability, and location and future housing prices on these trends..."

Data analyzed in Task 3, Steps 4 and 5, of the "Planning for Residential Growth" handbook, and the updated Buildable Lands Inventory suggest the following conclusions:

- The housing type in greatest need during the planning period will be single-family detached units.
- Demand for these single-family detached units will be greatest in the RS zone, with smaller numbers of units being built in the RL and RM zones.
- Land prices within these zones, and within residential zones generally, can be expected to increase moderately in response to a gradually shrinking inventory of buildable residential land within the current UGB.
- Prices can be expected to increase moderately for all forms of housing as a result of increasing land costs and inflation.

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<sup>56</sup> See updated Buildable Lands Inventory, memo to UGB Remand Task Force, August 31, 2011, p. 12.

- Land and housing price escalations are unlikely to return to levels seen during the height of the recent housing bubble (2001-2005).
- Some smaller and older households will seek housing types that occupy less land area, but offer the privacy of detached single-family units, e.g. cottage or cluster housing.
- A significant share of the market for rental housing for all households will continue to be met by single-family detached units in the RS, RL, and RM zones.<sup>57</sup>
- The increasing share of households headed by older persons will lead to greater interest in higher-density housing types with convenient access to shopping and services, e.g. the central core area, transit corridors, and mixed-use neighborhoods.

c: "Allocate future needed housing units to the respective plan designation in which it is anticipated they will be developed."

Based on Steps 1-5 of the revised Housing Needs Analysis,<sup>58</sup> Table 6-2, below, summarizes the number of housing units needed by type during the 2008-2028 planning period.

<b>Table 6-2: Proposed Mix of Housing for 2008 to 2028</b>		
<b>Type</b>	<b>Proportion</b>	<b>Number</b>
Single family detached	65%	10,842
Single family attached	2%	334
Multi-family attached	33%	5,505
	100%	16,681

For initial comparison purposes, Table 6-3 below allocates needed housing units to plan and zone designations under a scenario based on the distribution of units by type during 1998-2008. For example, during the 1998-2008 period 90% of detached single-family units were built in the RS zone, 8% were built in the RM zone, and 2% were built in the RL zone. Those same proportions for detached single-family units, and corresponding proportions for single-family attached and multi-family attached units built during 1998-2008 are replicated in Table 3.

**Table 6-3: Scenario 1: Distribution of Needed Housing Units by Zone 2008-28**

	<b>RL</b>		<b>RS</b>		<b>RM</b>		<b>RH</b>		<b>TOTAL</b>	
	<b>%</b>	<b>Units</b>	<b>%</b>	<b>Units</b>	<b>%</b>	<b>Units</b>	<b>%</b>	<b>Units</b>	<b>%</b>	<b>Units</b>
SF Detached	2%	217	90%	9,758	8%	867	0%	0	100%	10,842
SF Attached	0%	0	10%	33	50%	167	40%	134	100%	334
MF Attached	0%	0	14%	771	71%	3,909	15%	826	100%	5,505
<b>TOTAL</b>	<b>1%</b>	<b>217</b>	<b>63%</b>	<b>10,562</b>	<b>30%</b>	<b>4,943</b>	<b>6%</b>	<b>959</b>	<b>100%</b>	<b>16,681</b>

For reasons outlined in response to Step 6.b, above, and based on conclusions from Steps 1-5, a distribution of needed housing units among zones that mirrors proportions observed during 1998-2008 (as shown above in Table 6-3) is unlikely, and would not adequately respond to changing economic and demographic conditions.

<sup>57</sup> See Memo to UGB Remand Task Force from Damian Syrnyk, September 2, 2011, p. 24, Table 16. As of 2007, 41% of all single-family units were renter-occupied. Between 2000 and 2007, the proportion of single-family units that were owner-occupied decreased from 55% to 53%. During that same period, the proportion of renter-occupied single-family units increased from 16% to 20%.

<sup>58</sup> See Memo to Bend UGB Remand Task Force from Damian Syrnyk, November 3, 2011, p. 16.

Table 6-4, below, illustrates an alternative scenario for distribution of needed housing units by zone that more effectively addresses issues identified in Steps 1-5 of the HNA. Assumptions built into Table 4 include the following:

- While single-family detached units will continue to be the most needed form of housing overall, the proportion of new units built in the RS zone will decrease from 90% during 1998-2008 to 80% during the planning period.
- The demand for single-family detached units at somewhat higher densities (e.g. cottage cluster housing or smaller-lot subdivisions) will increase, resulting in more of these units being built in the RM zone. The RM zone will account for 18% of total single-family detached units, up from 8% during 1998-2008.
- This increase in smaller, detached housing units will reflect a departure from the trend of larger homes being developed through 2005. Smaller, older households with higher incomes will have the option of purchasing smaller detached units in lieu of renting retirement housing or purchasing larger SFD homes.
- Consistent with the pattern seen during 1998-2008, and in order to be closer to jobs, shopping, and services, 90% of projected single-family attached units will be located in the RM and RH zones. The remaining 10% will be built in the RS zone.
  - Consistent with the 1998-2008 period, 15% of new multi-family units will be built in the RS zone. These will consist mostly of duplex and triplex developments. Currently, these units are allowed conditionally in the RS zone.
  - Larger-scale multi-family developments will locate in the RM and RH zones; reflecting historical trends, these developments will be of relatively modest size, typically consisting of less than 50 units.
  - Although most future multi-family units will be built in the RM zone, the proportion of new units between RM and RH zones will shift somewhat from what was observed during 1998-2008: The share of units built in the RM zone will decline from 71% to 60%, and the share of units built in the RH zone will increase from 14% to 25%.

Given these assumptions, future needed housing units for Scenario 2 are allocated to plan designations as shown in Table 6-4, below:

**Table 6-4**  
**Scenario 2: Distribution of Needed Housing Units by Zone 2008-2028**

	RL		RS		RM		RH		TOTAL	
	%	Units	%	Units	%	Units	%	Units	%	Units
SF Detached	2%	217	80%	8,674	18%	1,952	0%	0	100%	10,842
SF Attached	0%	0	10%	33	50%	167	40%	134	100%	334
MF Attached	0%	0	15%	826	60%	3,303	25%	1,376	100%	5,505
<b>TOTAL</b>	<b>1%</b>	<b>217</b>	<b>57%</b>	<b>9,533</b>	<b>33%</b>	<b>5,422</b>	<b>9%</b>	<b>1,510</b>	<b>100%</b>	<b>16,681</b>



d: “Estimate the needed net density range for each plan designation, based on the types of structures that would be allowed in each designation; and on an estimate of the density at which each structure type is likely to develop in the community based on recent housing developments and current local policies.”

Table 6-5, below, shows the current allowable density ranges for each of Bend’s residential zones.<sup>59</sup> These ranges are shown as both gross and net densities. Table 5 also shows actual average density (net) for each housing type by zone as of 2008 for comparison purposes.

**Table 6-5**  
**Allowed and Actual Built Residential Densities by Zone**<sup>60</sup>

	RL	RS	RM	RH
<b>Allowable Density By Zone (Units/Gross Acre)</b>	1.1 - 2.2	2.0 - 7.3	7.3 - 21.7	21.7 - 43.0
<b>Allowable Density By Zone (Units/Net Acre)</b>	1.4 - 2.8	2.5 - 9.1	9.1 - 27.1	23.9 – 47.3
<b>Average Built Density 2008 (Units/Net Acre)</b>	2.1	3.9	9.9	15.5

The City’s policy, with respect to densities programmed to meet a wide range of housing needs, is summarized for each zone as follows in Chapter 2.1 of the Bend Development Code:

**Low Density Residential (RL):** The Low Density Residential District consists of large urban residential lots that are served with a community water system and DEQ permitted community or municipal sewer systems. The residential density range in this district is 1.1 to 2.2 dwelling units per gross acre.

**Standard Density Residential (RS):** The Standard Density Residential District is intended to provide opportunities for a wide variety of residential housing types at the most common residential densities in places where community sewer and water services are available. The residential density range in this district is 2.0 to 7.3 dwelling units per gross acre.

**Medium Density Residential (RM):** The Medium Density Residential District is intended to provide primarily for the development of multiple family residential housing in areas where sewer and water service are available. The residential density range in the District

<sup>59</sup> Chapter 2.1 of the Bend Development Code lists minimum and maximum densities for each zone as gross density figures. The net density figures shown in Table 5 have been derived by multiplying gross density by 1.25 to reflect dedication of future rights-of-ways and other development standards.

<sup>60</sup> The conversion from gross to net density is achieved for the RL, RS, and RM zones by multiplying the gross density ranges by 1.25 to account for 25% of gross site area typically dedicated for streets and utilities. For the RH zone, a 10% dedication factor is used, acknowledging that a typical multi-family housing site in that zone may already have existing street frontage, thus the additional amount needed for dedication is less.

is 7.3 to 21.7 units per gross acre and shall provide a transitional use area between other residential districts and other less restrictive areas.

High Density Residential (RH): The High Density Residential District is intended to provide land for primarily high density residential multiple family housing in locations close to shopping and services, transportation and public open space. The density range of the district is 21.7 to 43 units per gross acre and shall provide a transitional use area between other residential districts and other less restrictive areas.

Data shown in Table 6-5 show that the currently allowable densities in the RL, RS, and RM zones are well suited for accommodating the types of housing that are needed and expected during the 2008-2028 planning period. However, the actual, average built density for housing units in the RH zone (15.5 units/net acre) appears to be lower than the minimum allowed density in that zone (23.9 units/net acre). This does not necessarily indicate a mismatch between historical densities and the current range of allowable densities in the RH zone. Part of the reason for the discrepancy is that the minimum allowed density for the RH zone was not in effect until adoption of the current Bend Development Code in 2006. As more multi-family housing is built in the RH zone meeting the minimum density requirement, this average density figure will increase. But the relatively low built density of multi-family developments in the RH zone does suggest that the market was successful in developing multi-family housing at RM density levels, or slightly higher, rather than at the higher densities allowed in the RH zone. The City expects this trend to continue. Even during the height of the housing boom of 1998-2008 the average net density of multi-family developments in the RH zone was only 17.1 units/net acre. Although multi-family housing will make up a larger share of total needed units during the planning period, and more of it will be built in the RH zone, it will generally be built at moderate densities, close to the minimum allowed that zone.

e: "Estimate land needs by dividing the number of needed units of each structure type by the net density at which it is most likely to be developed (from the analysis in Step 6.d) and apportion the acres into each residential plan designation."

f: "Estimate the average needed net density by dividing the total number of needed net acres by the total number of needed units."

This response addresses both 6e and 6f above. Table 6-6, below, shows the number of needed housing units by housing type for the 2008-2028 planning period distributed by zone, as shown in Table 4, Scenario 2. The number of buildable net acres needed to accommodate needed housing under this scenario is 3,092. Table 6-6 also indicates expected average net densities for each housing type by zone, based on actual built densities for 2008 as shown in Table 1 for the RL, RS, and RM zones. For the RH zone, a net density assumption of 23.9 units/acre is used, since that corresponds to the minimum allowable net density in that zone. Finally, Table 6-6 includes a calculation of overall average net density needed to accommodate the projected housing types, as called for by Step 6.f. That overall average density is estimated at 5.4 units per net acre. This represents a 42% increase in the average density of housing since 1998. The proposed density of 5.4 units per acre represents a 23% increase over the current density of 4.4 units per acre over the 20-year planning period.

**Table 6-6  
Needed Acres by Housing Type and by Zone 2008-2028**

Zone	RL			RS			RM			RH			TOTAL		
Housing Type	Net Density	Units	Net Acres Needed	Net Density	Units	Net Acres Needed	Net Density	Units	Net Acres Needed	Net Density	Units	Net Acres Needed	Average Net Density	Units	Net Acres Needed
SF Detached	2.0	217	109	3.8	8,674	2,283	5.6	1,952	349	0.0	0	0	4.0	10,843	2,740
SF Attached	NA	0	0	8.4	33	4	13.1	167	13	23.9	134	6	15.0	334	22
MF Attached	NA	0	0	11.3	826	73	16.6	3,303	199	23.9	1,376	58	16.7	5,505	330
<b>TOTAL</b>	<b>2.0</b>	<b>217</b>	<b>109</b>	<b>4.0</b>	<b>9,533</b>	<b>2,360</b>	<b>9.7</b>	<b>5,422</b>	<b>560</b>	<b>23.9</b>	<b>1,510</b>	<b>63</b>	<b>5.4</b>	<b>16,682</b>	<b>3,092</b>

## Conclusions

The City has prepared this housing needs analysis in a sequential and transparent fashion consistent with state law and the method for preparing such an analysis. The analysis relies upon a number of data sources for a period from 1999 to 2007, including past housing needs analyses, buildable lands inventories, and more recent data for 2000 and 2007.

This HNA relies upon a 2008-2028 housing unit forecast of 16,681 units. The City used the method recommended for preparing such a forecast in the Planning for Residential Growth Guidebook. This same forecast was also found to comply with state law under the 2010 Director's Report and Order on the Bend UGB Expansion.

The trend analysis examined national and state demographic and economic that will influence the supply of and the demand for different types of housing. In particular, this analysis considered changes on household characteristics (e.g. smaller households, more non-family households) that may affect the demand for certain types of housing. In addition, this analysis considered economic trends that will affect the 20-year projection of housing, including the downturn in the real estate market, and the related effects to employment and foreclosures.

The examination of local demographic characteristics shows household growth in Bend, with particular growth in smaller households, and those where the householder was between 45 and 64 years of age. While these trends would suggest potential demand for smaller attached housing units, the trends in building permits show 72 percent of the new units permitted were single family detached dwellings. Taken together, these trends suggest a re-examination of the types of housing allowed on the Development Code to ensure it allows smaller, detached housing units to accommodate these growing segments of the population.

The analysis includes a proposed housing mix of 65% single family detached, 2% single family attached, and 33% multi-family attached to ensure an adequate supply of land for these types of housing during the planning period. This proposed mix is intended to accomplish a number of objectives, including ensuring a supply of land for single family detached housing, particularly new types detached housing that may accommodate smaller and older households. In addition, this proposed mix is intended to ensure that more land is available for multi-family attached housing. The proposed proportion of 33% multi-family attached is intended to also ensure a supply of housing with those incomes less than \$50,000, and need additional housing that is available to rent.

### Remand Sub-issue 2.3 - Conclusion

“Based on the foregoing reasons, the Commission upholds the appeals of the City and Newland with regard to whether the City was required to analyze housing need by tenure. Based on the foregoing reasons, the Commission denies the appeals of the City and Newland with regard to the remaining subissues under this section, affirms the Director's Decision with regard to those other subissues (including the Director's disposition of objections for the reasons set forth in the Director's Decision), and remands the city's decision for it to revise its findings and chapter 5 of its comprehensive plan consistent with the preceding analysis.”<sup>1</sup>

### Summary of Analysis – Sub-issue 2.3

The Commission found that the City had already carried out much of the analysis required by the Commission's rules and the needed housing statutes. The City is not required to analyze housing needs based on tenure, based on OAR 660-008-0040. The Commission found that the City must identify housing needs for at least the three (3) types of housing identified under Oar 660-008-005, including single family attached and detached and multi-family attached. The City must also consider past and future trends in identifying future housing needs and whether changes in mix and/or density of housing will be needed to meet future housing needs.

### Applicable Legal Standards

The following statutes and rules are the applicable legal standards that must be met to satisfy Remand Task 2.3<sup>2</sup>.

#### **1. ORS 197.296, Factors to establish sufficiency of buildable lands within urban growth boundary; analysis and determination of residential housing patterns**

ORS 197.296(2)-(3) and (5) state that:

“(2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

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<sup>1</sup> See November 2, 2010 “Remand and Partial Acknowledgement Order 10-Remand-Partial Acknow-001795,” pages 26-33.

<sup>2</sup> Ibid pages 27-30

## FINDINGS FOR REMAND SUB-ISSUE 2.3 – HOUSING NEEDS ANALYSIS

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(3) In performing the duties under subsection (2) of this section, a local government shall:

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(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

\*\*\*

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) Demographic and population trends;

(D) Economic trends and cycles; and

(E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph."

### 2. ORS 197.303, "Needed housing" defined

ORS 197.303 provides, in pertinent part, that:

"(1) As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:

(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions."

Goal 10 provides that:

"Buildable lands for residential use shall be inventoried and plans shall 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."

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**"Needed Housing Units** – means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing units" also includes government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, 'needed housing units' also includes (but is not limited to) attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters."<sup>3</sup>

### 3. OAR 660, Division 008, Interpretation of Goal 10, Housing

#### 660-008-0000

##### Purpose

- (1) The purpose of this division is to ensure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries, and to provide greater certainty in the development process so as to reduce housing costs. This division is intended to provide standards for compliance with Goal 10 "Housing" and to implement ORS 197.303 through 197.307.

#### 660-008-0005

##### Definitions

For the purpose of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions shall apply:

- (1) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.

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- (3) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.
- (4) "Housing Needs Projection" refers to a local determination, justified in the plan, of the mix of housing types, amounts and densities that will be:
  - (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;
  - (b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative rules; and
  - (c) Consistent with Goal 14 requirements.
- (5) "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot.
- (6) "Needed Housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:
  - (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
  - (b) Government assisted housing;
  - (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

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<sup>3</sup> "Needed housing units" is defined under Goal 10 (OAR 660-0015-0000(10)) and ORS 197.303.

## **FINDINGS FOR REMAND SUB-ISSUE 2.3 – HOUSING NEEDS ANALYSIS**

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- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and
- (e) Housing for farmworkers.

### **OAR 660-008-0040**

#### **Restrictions on Tenure**

Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall include a determination of housing need according to tenure as part of the local housing needs projection.

## **4. OAR 660, Division 24, Urban Growth Boundaries (2007)**

### **OAR 660-024-0040**

#### **Land Need**

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- (4) "[t]he determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

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- (7) The following safe harbors may be applied in determining housing needs under this division:
  - (a) Local government may estimate persons per household for the 20-year planning period using the persons per household for the urban area indicated in the most current data for the urban area published by the U.S. Census Bureau.
  - (b) If a local government does not regulate government-assisted housing differently than other housing types, it is not required to estimate the need for government-assisted housing as a separate housing type.
  - (c) If a local government allows manufactured homes on individual lots as a permitted use in all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not necessary to provide an estimate of the need for manufactured dwellings on individual lots.
  - (d) If a local government allows manufactured dwelling parks required by ORS 197.475 to 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a separate estimate of the need for manufactured dwelling parks is not required.

## **City's Position**

Remand Sub-Issue 2.3 requires the City to revise its housing needs analysis and findings consistent with Commission's analysis of this sub-issue at pages 26 through 33 of the order. The Commission agreed with the City's position that the housing needs analysis does not need to consider and analyze housing needs by tenure; whether housing is rented or owned. The City understands that the Remand Order requires the following revisions to the housing needs analysis:

1. Identify needed housing in the housing mix by using the following three (3) types:
  - a. Attached single family
  - b. Detached single family
  - c. Multi-family attached housing



2. Tie together how the types and amounts of housing for which the City will be planning will be affordable for future residents
3. Consider both past and future trends and show whether these trends will require the City to achieve a different density and/or mix of housing for current and future residents
4. If future needs require a different density or mix of housing types than those developed in the past, ORS 197.296(7) requires the City to then show how new measures demonstrably increase the likelihood that the needed density and/or mix will be achieved.

The City has revised the housing needs analysis by addressing the issues raised above and incorporating past housing needs analyses and related products into a single housing needs analysis report for 2008 to 2028<sup>4</sup>. The City intends to rely upon this analysis to then address Remand Sub-issues 2.4, 3.1, and 3.2 regarding efficiency measures and their use in ensuring an adequate supply of land for all types of needed housing. The City understands that measures adopted to satisfy ORS 197.296(7) and these sub-issues are intended to address the needed housing requirements of Goal 10 and the land use efficiency requirements of Goal 14.

### **Substantial Evidence**

The City bases the subsequent findings on the following evidence. This evidence has been reviewed by the Remand Task Force during their meetings in July, September, and November 2011 and April 2012. The January 2014 draft Housing Needs Analysis incorporates those products previously reviewed by the RTF and incorporates them in one product.

1. July 22, 2011 memorandum to the RTF on the housing needs analysis.
2. September 2, 2011 memorandum to the RTF presenting draft work products on Steps 1 through 3 of the housing needs analysis.
3. November 3, 2011 memorandum to the RTF presenting draft work products on Steps 4 and 5 of the housing needs analysis.
4. March 2012 draft HNA including the results of Steps 1 through 5 of the housing needs analysis.
5. March 27, 2012 memorandum to the RTF presenting the draft work product on Step 6 of the housing needs analysis.

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<sup>4</sup> See discussion at page 8 of 2008-2028 Housing Needs Analysis (January 2014 draft). This page lists the prior housing need analysis products and their page number in the 2009 UGB record.



6. January 2014 draft Housing Needs Analysis, including the results of Steps 1 through 6. This draft incorporates the products listed under 4 and 5 above.

### Findings

The following findings have been prepared to address the statutes and rules cited above with respect to planning for needed housing. These findings also include findings to demonstrate satisfaction with the requirements of Sub-issue 2.3 of the Remand Order. They address either the statute/rule and/or remand order where appropriate.

#### **1. ORS 197.296, Factors to establish sufficiency of buildable lands within urban growth boundary; analysis and determination of residential housing patterns**

***"(2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.***

***(3) In performing the duties under subsection (2) of this section, a local government shall:***

***\*\*\****

***(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.***

***\*\*\****

***(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:***

***(A) The number, density and average mix of housing types of urban residential development that have actually occurred;***

***(B) Trends in density and average mix of housing types of urban residential development;***

***(C) Demographic and population trends;***

***(D) Economic trends and cycles; and***

***(E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.***

***\*\*\****

## FINDINGS FOR REMAND SUB-ISSUE 2.3 – HOUSING NEEDS ANALYSIS

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**FINDING:** These findings address how the proposed housing needs analysis satisfies the requirements of ORS 197.296 (3)(b) and (5) cited above. The proposed HNA is consistent with ORS 197.296(3)(b) because it includes an analysis of housing need by type and density range. This report includes subsequent findings that address the consistency of this proposed HNA with ORS 197.303 and with Goal 10. With respect to ORS 197.296(3)(b), the City has prepared this HNA following the steps outlined in the guidebook titled “Planning for Residential Growth: A Workbook for Oregon’s Urban Areas.”<sup>5</sup> This workbook outlines a methodology and steps for updating an urban area’s comprehensive plan to comply with Goal 10, including one for conducting a housing needs analysis.

This HNA is based on a 2008-2028 housing unit forecast of 16,681 housing units<sup>6</sup>. The housing unit forecast was prepared according to the steps outlined in the guidebook referred to above, and is the same forecast presented to and found by the Director of the Department of Land Conservation and Development to be consistent with state law<sup>7</sup>. The proposed housing unit forecast relied on one of the safe harbors outlined under OAR 660-024-0040(7) (2007). The City relied upon the persons per household for Bend reported in the results of the 2000 Census for Bend<sup>8</sup>. The January 2014 draft evaluated the future needs for housing by three types, consistent with the Remand Order and ORS 197.303, and presents a needed mix and density of housing for Bend (See Steps 4 through 6 of the January 2014 draft).

The HNA satisfies ORS 197.296(5) because it relies on a number of sources of data to identify relevant national, state, and local demographic and economic trends and factors that may affect the 20-year projection of structure type mix. These sources include, but are not limited to, data from the US Census Bureau available through American Factfinder, including the results of past censuses, and the American Community Survey. The HNA further considered national demographic and economic trends that may affect the 20-year projection of housing structure type and mix<sup>9</sup>. These trends include those summarized in the following findings.

- a. The national trends show that household growth is expected to continue, and that household composition is forecasted to change by households decreasing in size over time. The national economic trends show that the downturn in the housing market, including the subsequent increase in foreclosures, has dampened production of new units, reduced employment in these related employment sectors, and dampened new starts of all types of housing units.
- b. The state demographic trends were more consistent with national demographic trends in that population growth was more robust with a stronger economy. Statewide, the number of households grew at a rate

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<sup>5</sup> See “Planning for Residential Growth: A Workbook for Oregon’s Urban Areas” - [http://cms.oregon.gov/LCD/docs/publications/planning\\_for\\_residential\\_growth.pdf](http://cms.oregon.gov/LCD/docs/publications/planning_for_residential_growth.pdf).

<sup>6</sup> See September 2, 2011 memorandum to the UGB Remand Task Force.

<sup>7</sup> See page 31 of the January 8, 2010 Director’s Report and Order 001775.

<sup>8</sup> See OAR 660-024-0040(7)(a).

<sup>9</sup> See pages 12 through 24, 2008-2028 Housing Needs Analysis (January 2014 draft) for national and state trends.

similar to that of the nation, and household size continued to decrease. The growth in non-family households exceeded the growth of family households. The state economic trends show that by early 2008, employment growth was slowing, but the unemployment rate was the lowest in five years.

- c. In Bend, the population had grown rapidly since the 2000 Census, reaching an estimated population of 73,368 people by 2007<sup>10</sup>. This growth represented a 41% increase in population. During this period of rapid population growth, household and family size decreased and more so than households nationwide and statewide. Household growth occurred at a rate in Bend greater than national and statewide rates. Between 2000 and 2007, the number of households grew by 45%. Non-family households grew by a greater rate than family households – 56% compared to 39%. By 2007, 25% of Bend households were 1 person households; 40% were 2 person households, and; 36% were 3 or more persons in size. Households headed by a householder between the age of 45 years and 64 years also increased by 56% during this period. Both median and mean household income in Bend grew at rates greater than that of the Nation and the State.
- d. In Bend, the distribution of housing changed between 2000 and 2007. In 2000, 67% of the housing supply was single family detached housing. By 2007, this proportion had increased, representing 71% of all housing units. Single family attached and multi-family attached housing represented small proportions of the housing stock in 2007. Single family attached housing represented 2% of the housing stock; multi-family attached housing represented 27% of the housing stock.
- e. With respect to household income, by 2007, an estimated 42% of Bend households had household incomes of \$50,000 or less. By 2007, 37% of Bend households had household incomes between \$50,000 and \$99,999; 21% of households had incomes of \$100,000 or more.
- f. At a time when more households had lower household incomes than in 2000, housing prices had increased. Sale prices reported in the 2<sup>nd</sup> quarter of 2008 showed the median sales prices of a single family home at \$307,500. This price was 12% less than what it was in 2007, but still 41% higher than what it was in 2004. By 2007, rents of renter occupied housing had increased to a point where 41% of the units available for rent were renting for \$500 to \$749 a month, with 48% of units renting for \$750 or more for month. With respect to the housing choices households were making, 90% of owner-occupied households and 48% of renter-occupied households were living in single family detached housing.
- g. Between 1999 and 2007, single family detached housing represented 69% of the new units permitted with building permits. Single family attached units represented 3% of the permitted units; Multi-family attached units represented 22% of the permitted units. While households were growing

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<sup>10</sup> See pages 25 through 40, 2008-2028 Housing Needs Analysis (January 2014 draft) for the discussion of local demographic characteristics and demographic and economic trends.

smaller, and headed by older householders, the majority of new housing units permitted were single family detached units.

- h. The documented changes in households and their characteristics suggest that these changes in household composition would be consistent with an increase in demand for smaller and more attached housing units. However, as indicated above, single family detached dwellings were permitted more often than other types of housing. To recognize this trend, and ensure that Bend has an adequate supply of land for all types of needed housing, the City proposes the following housing mix for estimating future land needs for needed housing: 65% single family detached, 2% single family attached, and; 33% multi-family attached. The City proposes to use this housing mix and the housing unit forecast of 16,681 units to estimate the future land need for housing between 2008 and 2028.
- i. The forgoing finding that proposes a 65/2/33 housing mix is based upon substantial evidence that has already been cited above and in the Housing Needs analysis. The City is pursuing this policy choice to ensure an adequate supply of land is available for development of multi-family attached housing for households that have annual incomes of less than \$50,000. The City is also pursuing this policy choice because most of the housing produced over the last 10 years has been single family detached housing, and this form of housing has been chosen more often by both owner-occupied and renter-occupied households. With respect to renter-occupied households, the City believes that this may be due, in part, to the lack of supply of other forms of housing that are affordable to renter households.
- j. The City provides the following findings to address the issue of housing mix, and, consistent with the Remand Order and ORS 197.296, proposes changes in the mix of future housing to ensure that an adequate supply of land is available for needed housing<sup>11</sup>.
- k. Relying upon a proportion of 65% for single family detached housing in the future housing mix will ensure an adequate supply of land for detached single family units. This proportion is based on an assumption that, consistent with demographic and economic trends, including recent construction trends, most of the housing produced will be single family detached. This proportion (65%) is less than the current proportion (71%) of single family detached dwellings in Bend. This proposed proportion of 65% is not based on assumption that demand for single family detached dwellings will decrease over time. It indicates that the supply of this type of housing exists to meet the projected need and that the proportion of housing in other categories must be adjusted to ensure an adequate supply of land for these types of housing. This proportion of single family detached dwellings is similar to that reported in the 1990 and the 2000 Census results for Bend<sup>12</sup>.

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<sup>11</sup> See Discussion of Step 5 at pages 48 through 58 of 2008-2028 Housing Needs Analysis (January 2014 draft). The presentation of the proposed housing mix begins at page 57.

<sup>12</sup> See Table 3-10, page 34 of the January 2014 draft Housing Needs Analysis

- l. Relying upon a proportion of two percent (2%) for attached single family housing in the future housing mix recognizes that this proportion of the housing stock has decreased over time, and with changing household characteristics – e.g. smaller and older households – has not increased in proportion. This proposed proportion is also based on an assumption, reflected in the forgoing discussions of housing mix, that other forms of housing are needed more than single family attached housing.
- m. Relying upon a proportion of 33% multi-family attached housing in the future housing mix will ensure an adequate supply of land for duplexes, condominiums, and multi-family attached housing. The proportion of 33% is also recommended to provide the opportunity to increase the supply of this form housing for some households with annual household incomes of less than \$50,000. Going forward, this proposed proportion also assumes less housing will be provided in the form of new manufactured homes in parks. If at least 33% of the forecasted housing units are developed as multi-family attached units, this would result in at least 5,505 new units of multi-family attached housing and an increase of 59% over the supply of 9,304 units in 2008.
- n. Consistent with ORS 197.296(3), the City has considered the density and mix of housing that existing in 1998, occurred between 1998 and 2008, and existed in 2008. This analysis of the density and mix of housing was conducted using data from the buildable lands inventory and the inventory of housing by type in 2008. Relying on the 2028 housing unit forecast of 16,681 units, and the housing mix of 65% single family detached, 2% single family attached, and 33% multi-family attached, the City estimated needed acres of land by plan designation and housing type. This distribution was first shown in a Scenario 1, and distributed housing as it was developed during the 1998-2008 period for consideration. The City concluded, after considering this distribution, the buildable lands inventory, and the housing needs analysis, that this distribution would not help the City meet its housing needs under Goal 10.
- o. The City developed and considered another alternative, referred to as Scenario 2 that considered a different distribution of housing units by zone. This scenario assumed more single family attached and multi-family attached housing in the RS Zone, more single family detached in the RM Zone, and more multi-family attached housing in the RH Zone. Under this scenario, the City would see the proportion of future housing units increase in the RS, RM, and RH units. The City considered and compared the current density of housing by zone. Table 6-5 of the HNA shows that average built density of housing by zone in 2008. These densities range from 2.1 units/acre in the RL Zone to 15.5 units/acre in the RH Zone.
- p. The City proceeded to complete Steps 6e and 6f and used the forgoing data to estimate net acres needed for housing. The City developed Table 6-6 of the HNA to estimate needed acres by housing type and by zone. The City relied upon the distribution and mix of housing by zone presented in Scenario 2 (See Table 6-4). In addition to this data, the City relied on the mix of



housing identified above to assume that needed housing will develop at minimum densities in Chapter 2.1 that were not in effect until 2006. Going forward, housing must be developed at these minimum densities, and the City further assumed that single family detached housing in the RS zone would develop at densities higher than the minimum of 2.3 units to the gross acre.

- q. The results presented in Table 6-6 show future needed housing developing at a density of 5.4 units to the net acre, and requiring a total of 3,092 total acres for needed housing. This assumed density of 5.4 units to the net acre represents an increase of 42% in density over the density of housing in Bend as of 2008.

### 2. Compliance with ORS 197.303 and OAR 660-008.

**ORS 197.303 provides, in pertinent part, that:**

***"(1) As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:***

- (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;***
- (b) Government assisted housing;***
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and***
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions."***

### **OAR 660, Division 008, Interpretation of Goal 10, Housing**

#### **660-008-0000**

##### **Purpose**

- (1) The purpose of this division is to ensure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries, and to provide greater certainty in the development process so as to reduce housing costs. This division is intended to provide standards for compliance with Goal 10 "Housing" and to implement ORS 197.303 through 197.307.***

#### **660-008-0005**

##### **Definitions**

***For the purpose of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions shall apply:***

- (1) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.***

**\*\*\***

- (3) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.***

- (5) *“Multiple Family Housing” means attached housing where each dwelling unit is not located on a separate lot.*
- (6) *“Needed Housing” means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:*
  - (a) *Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;*
  - (b) *Government assisted housing;*
  - (c) *Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;*
  - (d) *Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and*
  - (e) *Housing for farmworkers.*

### **660-008-0040**

#### ***Restrictions on Housing Tenure***

***Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall include a determination of housing need according to tenure as part of the local housing needs projection.***

**FINDING:** This finding addresses ORS 197.303(A) and those portions of OAR 660-008 cited above. By satisfying the applicable requirements of OAR 660-008, the City finds that the proposed HNA also satisfies Goal 10, Housing, as provided for under OAR 660-008-0000(1).

The HNA satisfies ORS 197.303(A) because the City considered data for three types of housing: single family detached, single family attached, and multi-family attached<sup>13</sup>. This satisfies the direction outlined in the remand order under Sub-issue 2.3, and those definitions cited above from OAR 660-008-005(1),(3), and (5). The City considered those units meeting the definitions of Courtyard housing, Dwelling, single family detached, and manufactured homes on individual lots or parcels, under the Bend Development Code, as “single family detached” units. Those units meeting the definition of “Dwelling, single family attached” under the Bend Development Code were considered as single family attached units. Those units meeting the definitions of Condominium, Two and three family housing, multi-family housing, and manufactured homes in parks were classified as “multi-family housing<sup>14</sup>.” The City’s classification further satisfies OAR 660-008-0005(6) because the City relied on these three types of needed housing in the housing needs analysis. In these findings, the terms multi-family housing and multi-family attached housing are used interchangeably.

The proposed HNA is consistent with OAR 660-008-0005(4) because it satisfies both (a) and (b) of this definition.

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<sup>13</sup> See Table 4-1 at pages 41 and 42 of January 2014 draft Housing Needs Analysis.

<sup>14</sup> While manufactured home parks do not include attached units, for the purpose of estimating land need and because they are similar in density, they have been included under multi-family attached housing.

The proposed HNA is consistent with OAR 660-008-0040 because it does not analyze future housing needs by tenure; whether housing is owned or rented. This is consistent with this rule and the Commission's decision on this rule<sup>15</sup>.

### 3. Compliance with OAR 660-008-0005(4) and OAR 660-024

OAR 660-008-0005(4) provides that:

**(4) "Housing Needs Projection" refers to a local determination, justified in the plan, of the mix of housing types, amounts and densities that will be:**

- (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;**
- (b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative rules; and**
- (c) Consistent with Goal 14 requirements.**

OAR 660-024-0040(4)(2007) provides that:

**"[t]he determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.**

OAR 660-024-0040(7)(2007) provides that:

**The following safe harbors may be applied in determining housing needs under this division:**

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**(b) If a local government does not regulate government-assisted housing differently than other housing types, it is not required to estimate the need for government-assisted housing as a separate housing type.**

**(c) If a local government allows manufactured homes on individual lots as a permitted use in all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not necessary to provide an estimate of the need for manufactured dwellings on individual lots.**

**(d) If a local government allows manufactured dwelling parks required by ORS 197.475 to 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a separate estimate of the need for manufactured dwelling parks is not required.**

**FINDING:** The proposed HNA satisfies OAR 660-008-0005(4) and OAR 660-024-0040(4) because it provides a justification for a future mix of housing, amount, and density of housing. This justification satisfies OAR 660-008-0005(4) because it further addresses the types of housing that will be commensurate with the financial capabilities of present and future households. The HNA is consistent with OAR 660-008-005(4)(b) because as shown in the findings, it has been developed consistent with state statutes (ORS 197.296 and 197.303), administrative rules (OAR 660-008 and 660-024) and is consistent with Goal 14. The City relied upon its acknowledged

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<sup>15</sup> See pages 32-33 of 2010 Remand Order



## FINDINGS FOR REMAND SUB-ISSUE 2.3 – HOUSING NEEDS ANALYSIS

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population forecast to then forecast housing, and used this housing forecast to then allocate future housing in a mix for 2008 to 2028.

With respect to OAR 660-024-0040(7)(b), the City provides this finding to show the proposed HNA complies with this criterion. With respect to (7)(b), the City is not required to estimate the need for government-assisted housing because the City does not regulate government-assisted housing as a separate housing type. The Bend Development Code outlines the types of housing allowed by zone in the City, and development standards for housing in these zones<sup>16</sup>. However, the Development Code does not further regulate government-assisted housing in a manner different from other types of housing.

With respect to OAR 660-024-0040(7)(c) and (d), the City is not required to separately estimate the need for manufactured homes on lots or in parks because the Development Code already allows these types of housing according to the terms of (7)(c) and (d). Manufactured homes on lots are allowed in the same districts as single family dwellings, which allow 10 or fewer units per net buildable acre. Manufactured homes on parks are allowed in the RM-10 Zone, which allows units to be developed in parks at a density of six to 12 units per acre.

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<sup>16</sup> See Bend Development Code (BDC) Chapter 2.1, Residential Districts - <http://www.codepublishing.com/OR/bend/?BendDCNT.html>.

the planning period. This latter issue is addressed further in connection with the requirement in Goal 14 to "reasonably accommodate" future land needs within the existing UGB prior to expanding onto new lands, beginning at page 50, below.

***e. Conclusion***

The Commission denies the city's and Newland's appeals on this subissue, upholds the Director's Decision, including the director's disposition of objections (for the reasons set forth in the Director's Decision) and remands the city's decision with instructions for it to develop a record and adopt a buildable lands inventory supported by findings that are consistent with state law. The city's findings must explain what criteria it uses (based on ORS 197.296, OAR 660-024 and 660-008) to determine whether particular lands are vacant or redevelopable, examine the amount and type of development that has occurred on the vacant and redevelopable lands since its last periodic review, and project the capacity of the city's buildable lands (prior to additional measures being implemented) based on that analysis (and as further detailed in connection with Goal 14, below). If the amount of redevelopment and infill within the city's UGB is projected to differ significantly from past trends, the City must explain why, and provide an adequate factual and policy basis to support that change.

The city's buildable lands inventory may not exclude lots and parcels smaller than 0.5 acres with no improvements without specific findings consistent with OAR 660-008-0005. Similarly, the City may not exclude lots and parcels subject to CC&Rs unless it adopts specific findings, supported by an adequate factual base, that show why the lands are not available for development or redevelopment during the planning period. In addition, the City has agreed to reexamine lands it identified as "constrained" to determine whether the lands are buildable under OAR 660-008-0005.

Finally, the Commission denies the objection of Newland for the reasons set forth in the Director's Decision, which are incorporated herein by this reference. Director's Decision, at 42-43.

***2.3. Whether the City's Housing Needs Analysis and Comprehensive Plan Identify Needed Housing as Required by Goal 10 and the Needed Housing Statutes. Whether the City is Required to Analyze Housing Need by Tenure, Given that it Does Not Regulate Tenure (OAR 660-008-0040). Whether ORS 197.296 Requires an Analysis of Housing Needs for Owner-occupied and Rental Housing?***

***a. Summary of Issue and Objectors/Appellants***

Newland objected to the City's housing needs analysis, arguing that it must be based only on the factors of ORS 197.296(5), and that the City's use of its "Housing Needs Model" in developing its projections is "outside the scope" of that statute. Newland Objection, at 27-29. DSL objected to the City's housing needs analysis, arguing that it did not comply with ORS 197.296(3)(b) or 197.303. DSL Objection, at 1-2. DSL objected that the City was required to analyze housing need by tenure. *Id.* DSL also objected that the City had failed to show that it planned for needed housing in locations appropriate for needed housing types, or zoned in density ranges likely to be achieved by the market, as required by ORS 197.296(9). *Id.*<sup>11</sup> Swalley also objected to the City's housing needs analysis. Swalley Objection, at 65-68.

The Director found that the City's housing needs analysis failed to comply with Goal 10 and the needed housing statutes (Director's Decision at 32-37), and the City and Newland appealed. City Appeal, at 22-23. Newland Appeal, at 9.

***b. Legal Standard***

ORS 197.296(2)-(3) and (5) state that:

"(2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years. (5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

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<sup>11</sup> This specific objection is addressed separately, as part of the next issue area.

- (C) Demographic and population trends;
- (D) Economic trends and cycles; and
- (E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

- (A) The number, density and average mix of housing types of urban residential development that have actually occurred;

- (B) Trends in density and average mix of housing types of urban residential development;

- (C) Demographic and population trends;

- (D) Economic trends and cycles; and

- (E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph."

ORS 197.303 provides, in pertinent part, that:

"(1) As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" means housing

types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:

- (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- (b) Government assisted housing;
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions."

Goal 10 provides that:

"Buildable lands for residential use shall be inventoried and plans shall 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."

\* \* \*

***"Needed Housing Units*** – means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing units" also includes government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, 'needed housing units' also includes (but is not limited to) attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters."<sup>12</sup>

OAR 660-008-0040 provides that:

Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall include a determination of housing need according to tenure as part of the local housing needs projection.

Finally, OAR 660-024-0040(7)(2007) provides that:

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<sup>12</sup> Guideline 1 for Goal 10 provides that:

1. In addition to inventories of buildable lands, housing elements of a comprehensive plan should, at a minimum, include: (1) a comparison of the distribution of the existing population by income with the distribution of available housing units by cost; (2) a determination of vacancy rates, both overall and at varying rent ranges and cost levels; (3) a determination of expected housing demand at varying rent ranges and cost levels; (4) allowance for a variety of densities and types of residences in each community; and (5) an inventory of sound housing in urban areas including units capable of being rehabilitated.

The following safe harbors may be applied in determining housing needs under this division:

(a) Local government may estimate persons per household for the 20-year planning period using the persons per household for the urban area indicated in the most current data for the urban area published by the U.S. Census Bureau.

(b) If a local government does not regulate government-assisted housing differently than other housing types, it is not required to estimate the need for government-assisted housing as a separate housing type.

(c) If a local government allows manufactured homes on individual lots as a permitted use in all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not necessary to provide an estimate of the need for manufactured dwellings on individual lots.

(d) If a local government allows manufactured dwelling parks required by ORS 197.475 to 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a separate estimate of the need for manufactured dwelling parks is not required.

***c. Summary of Local Actions, Director's Decision, and Appeal(s)***

The City of Bend completed three housing needs analyses: an analysis based on past trends since its last periodic review (a "HB 2709 or Trend Forecast"), an analysis of expected future housing needs (a "Housing Needs Forecast"), and a "Transition Forecast" that projects that the City will move from a 77/23 single-family/multi-family mix (during the 1998 to 2007 period) to a 55/45 mix over a period longer than 20 years (and to a 65/35 mix over the 20-year planning period). R. at 1078. Under all three forecasts, the City analyzed its projected housing need for single family housing in one category (combining single family attached and detached housing). In some of the forecasts, the City also analyzed the need for manufactured homes, plexes (2, 3 & 4 units); and multi-family (5 or more unit buildings). R. at 1075.

***d. Analysis***

The City has carried out much of the analysis required by the commission's rules and the needed housing statutes. In particular, the City has provided an analysis of needed housing based on actual development trends since its last periodic review. That analysis is provided in the most detail in the City of Bend Residential Lands Study (2007). R. at 1798-1835. Some analysis based on actual development trends (the so-called HB 2709 analysis) is also included in the 2005 City of Bend Housing Needs Analysis, R. at 1742-1797, and is summarized in the city's findings. R. at 1075.

With regard to whether the City must separately analyze housing need for rental and owner-occupied housing types, the Commission agrees with the City that its rules do not require

such an analysis in this case. OAR 660-008-0040 provides that such an analysis is required *if* a local government "restricts the construction of either rental or owner occupied housing on or after its first periodic review." The City argued in its appeal that it does not regulate housing according to tenure and, as a result, is not required to analyze housing types by tenure. The Commission agrees, and upholds the city's appeal on this issue based on the wording of OAR 660-008-0040.

However, the needed housing statutes do require the City to identify housing need by *at least* three categories of housing types: single-family detached, single-family attached, and multi-family (a city *may* identify additional types). In turn, the commission's rules define these three basic types of needed housing as follows:

- "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot. OAR 660-008-0005(1).
- "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units. OAR 660-008-0005(3).
- "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot. OAR 660-008-0005(5).

While the city's 2007 Residential Lands Study contains much, if not all, of the required *data* concerning these housing types, the city's analysis and findings (including chapter 5 of its comprehensive plan) use different categories of housing types and collapse multiple categories. For instance, the city's findings analyze the amounts of new housing built in the City since its last periodic review by single family dwellings (combining both attached and detached single-family housing into one category), and "plexes" and "multi-family" (more than 5 units) (separating out what the commission's rules define as multi-family into two categories). R. at 1074. While the City is free to *separate* the three basic housing types required to be analyzed by statute into subcategories, it may not *combine* categories as this effectively makes it impossible to do the analysis required by statute.

Goal 10, the Goal 10 implementing rule, and the needed housing statutes also require that the City analyze needed housing types at particular price ranges and rent levels commensurate with the financial capabilities of present and future residents of area residents. The city's record contains much information on projected population and income levels, but neither its adopted plan policies nor its findings clearly tie together how the types and amounts of housing that it is planning for will be affordable for future residents of the area. This issue is addressed in more

detail in the next subsection.

Newland argues that the City *only* may consider past housing trends in its housing needs analysis. Newland Objection at 27-29. The Commission does not agree. ORS 197.296(3)(b) directs local governments to determine the amount of land needed for each housing type for the next 20 years in accordance with ORS 197.303 and the statewide planning goals and rules relating to housing. OAR 660-024-0040(4) provides that:

"[t]he determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

OAR 660-008-0005(4) defines the “Housing Needs Projection” required by Goal 10 and ORS 197.296 as:

"\* \* \* a local determination, justified in the plan, of the mix of housing types and densities that will be:

(a) Commensurate with the financial capabilities of present *and future area residents* of all income levels *during the planning period*.

While past development trends are clearly one required part of a local government's housing needs projection, ORS 197.296(5)(a), under Goals 10 and 14 the City also must consider the *future* housing needs of area residents during the (twenty-year) planning period. The purpose of the analysis of both past trends and future needs is that -- if there is a difference -- the local government must show how it is planning to alter those past trends in order to meet the future needs. Specifically, if the *future* needs require a different density or mix of housing types than has occurred in the past, then ORS 197.296(7) requires the local government to show how new measures demonstrably increase the likelihood that the needed density and/or mix will be achieved.

***e. Conclusion***

Based on the foregoing reasons, the Commission upholds the appeals of the City and Newland with regard to whether the City was required to analyze housing need by tenure. Based on the foregoing reasons, the Commission denies the appeals of the City and Newland with regard to the remaining subissues under this section, affirms the Director's Decision with regard



to those other subissues (including the Director's disposition of objections for the reasons set forth in the Director's Decision), and remands the city's decision for it to revise its findings and chapter 5 of its comprehensive plan consistent with the preceding analysis.

***2.4. Whether the City Has Planned for an Adequate Land Supply for Needed Housing Types as Required by Goal 10 and the Needed Housing Statutes.***

***a. Summary of Issue Objectors/Appellants***

DSL and Bayard objected that the City had failed to plan for an adequate amount of buildable lands to meet its identified housing needs. DSL Objection, at 1-2. Bayard Objection, at 63. The Director found that the City failed to plan for an adequate amount of land in appropriate plan designations to meet its future housing needs as shown in its housing needs projection. The City of Bend appealed the Director's Decision on this issue. The City asserted that it has already set ambitious targets for multi-family and higher density housing, by planning for housing types that have a higher density than housing that has been built in the City since its last periodic review. City Appeal, at 23-26.

***b. Legal Standard***

ORS 197.307 and Goal 10 require that when a need has been shown for housing at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts with sufficient buildable lands to satisfy that need. ORS 197.307(3)(a).<sup>13</sup>

***c. Local Action, Director's Decision and Appeals***

As described above, the City carried out three different analyses of housing needs, adopting the third "Transition Forecast." R. at 1077-1081. The Transition Forecast essentially acknowledges that the City will not meet its projected housing needs under Goal 10 and ORS 197.307(3)(a). The Director remanded this aspect of the city's decision because he found it did

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<sup>13</sup> ORS 197.307(3)(a) provides that:

"(3)(a) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing, including housing for farmworkers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need."

Goal 10 provides that:

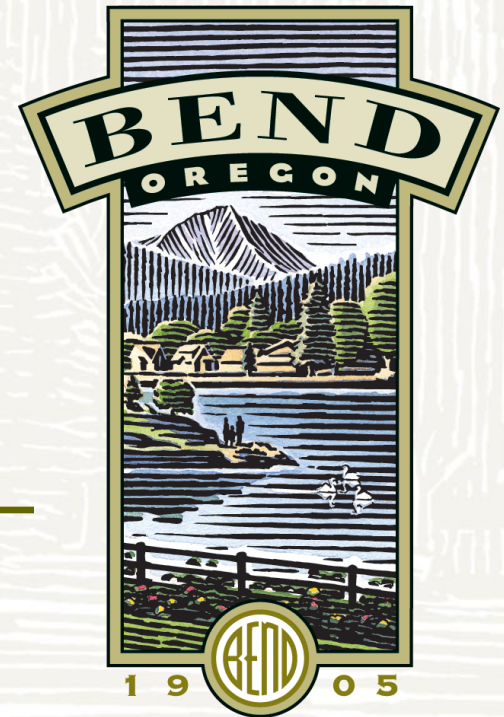
"Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

# UGB Remand Task Force: Review of Task 2.3 – Housing Needs Analysis

*DeArmond Room*

*Deschutes Services Building*

*1300 NW Wall Street, Bend*



*Damian Syrnyk  
Senior Planner*

*February 10, 2014*

# Steps to Complete HNA

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**Step 1** – Project number of new housing units needed in the next 20 years.

**Step 2** – Identify relevant national, state, and local demographic and economic trends and factors that may affect the 20-year projection of structure type mix.

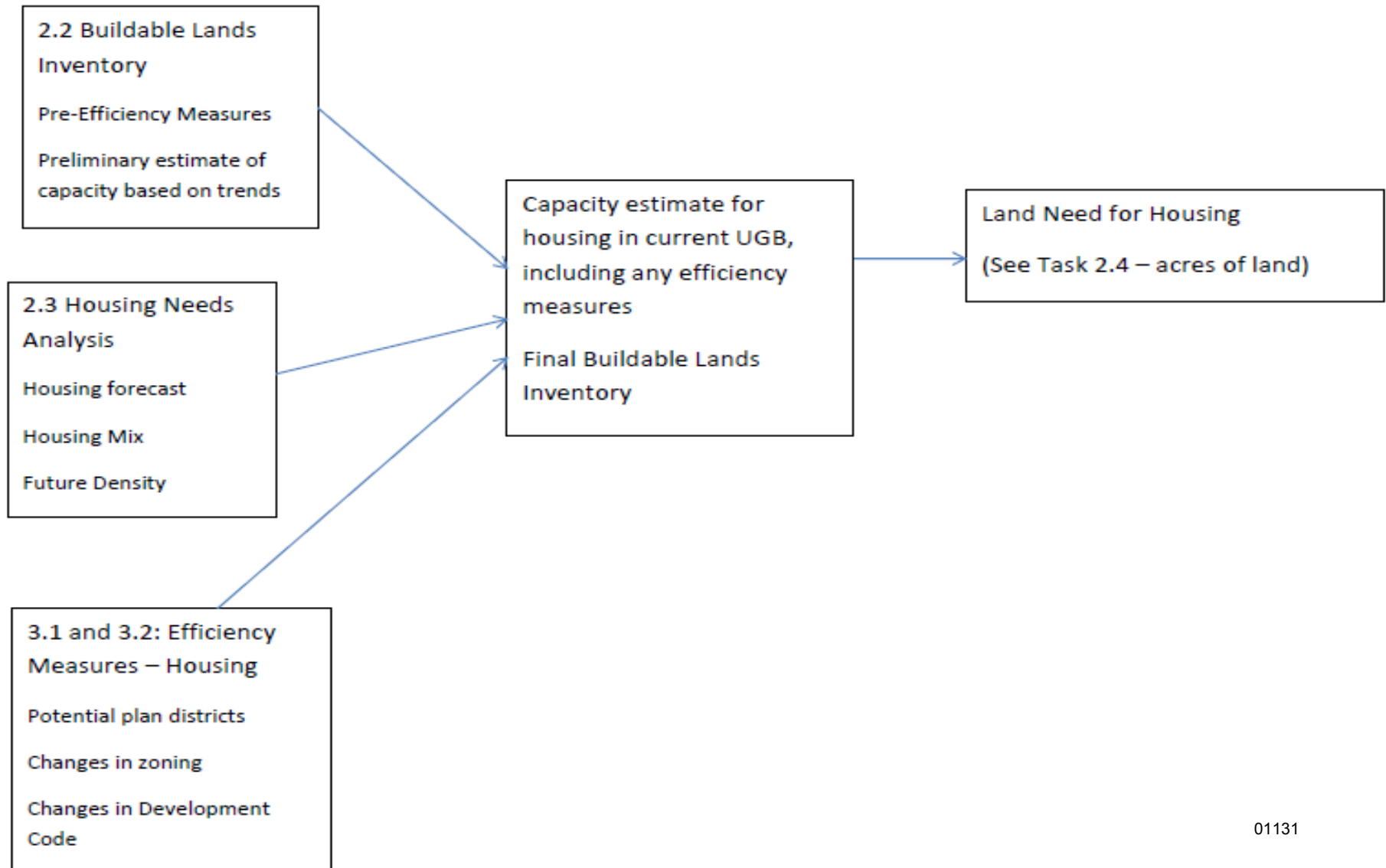
**Step 3** – Describe demographic characteristics of population, and, if possible, household trends that relate to demand for different types of housing.

**Step 4** – Determine types of housing that are likely to be affordable to projected households based on household income.

**Step 5** – Estimate the number of additional needed units by structure type.

**Step 6** – Determine the needed density ranges for each plan designation and the average needed net density for all structure types.

# Planning Process



# AGENDA

## UGB Remand Task Force (RTF)

Monday, March 17, 2014  
3:00 p.m.

Community Room  
Bend Metro Parks and Recreation District  
799 SW Columbia Street, Bend.



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PO BOX 431  
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JIM CLINTON  
*Mayor*

JODIE BARRAM  
*Mayor Pro Tem*

VICTOR CHUDOWSKY  
*City Councilor*

DOUG KNIGHT  
*City Councilor*

SALLY RUSSELL  
*City Councilor*

MARK CAPELL  
*City Councilor*

SCOTT RAMSAY  
*City Councilor*

ERIC KING  
*City Manager*

1. Call to Order
2. Approval of Minutes:
  - a. January 24, 2014 meeting
  - b. February 10, 2014 meeting
3. Update on further work on infill lands and CCRs (Task 2.2, BLI)
4. Presentation and Discussion – UGB Remand Task 2.3 – Housing Needs Analysis (See pages 26-65 of Draft Housing Needs Analysis and Findings)
  - a. Staff presentation and requested action
  - b. Review of Step 4 – Affordable housing types
  - c. Review of Step 5 – Housing Mix
  - d. Review of Step 6 – Needed Net Density
  - e. Questions, RTF, Staff
  - f. Public Comments
  - g. RTF discussion, deliberation, and action  
**Requested Action:** Approve or provide Staff direction on changes to work products for Steps 4, 5, and 6 of Housing Needs Analysis
5. Update on Proposals for Planning Services on the UGB Remand
6. Adjourn



**1. Call to Order**

Vice Chair Barram called the meeting to order at 3:08 PM. Present were the RTF members, Bill Wagner, Doug Knight, Sally Russell, Jodie Barram, Victor Chudowsky, Jim Clinton, Scott Ramsay and Mark Capell.

**2. Appointment of Chair, Vice Chair**

Mr. Clinton nominated Mr. Chudowsky to be Chair and Ms. Russell seconded the motion. It was unanimously passed. Mr. Clinton then nominated Mr. Wagner as Vice Chair and Ms. Russell seconded the vote. It passed unanimously.

**3. Approval of Minutes - November 18, 2013**

The minutes were unanimously approved with Ms. Russell moving and Mr. Knight seconding the vote.

**4. Recap of Presentation from November 18, 2013**

Mr. Syrnyk discussed our last meeting. He mentioned the tracking table and that we would like to use it as a tracking sheet so we can check off items as we move forward. Today, we'll focus on one task 2.2.

**5. Presentation and Discussion-UGB Remand 2.2-Buildable Lands Inventory**

The first slide discussed the definition of the BLI and the task we have before us. The second slide discussed why we need to inventory the buildable land. The third slide explained substantial evidence and what that means. The fourth slide discussed the different classifications of land and Mr. Syrnyk went over each one in more detail. The next slide was a table outlining summary data and explained preliminary acres in BLI and capacity (housing units). The next slide explained the importance of findings and addressed the statutes and the administrative rules. The last one explained the next steps on the use of the BLI.

Mr. Syrnyk then discussed infill and whether CC&Rs limit the size of lots in developments and whether it limits development on those lots. Chair Chudowsky mentioned that we have this number out there that may not be accurate and he is concerned about a possible legal challenge. Vice Chair Wagner wondered if we should see if CC&Rs were changed during that time? Can we expect a similar trend? Would it be worth the effort of seeing what happened? Mr. Syrnyk responded that some of the

older subdivisions would have the potential for developing further. We didn't look at it prior to the 2009 BLI. Ms. Winters mentioned that the RTF would need to decide if it's enough to just look at trends or should we have to review those CC&Rs individually. Mr. Capell clarifies that we do not have to do this but we could do it to get an accurate number and it could potentially increase or decrease the number of housing units that would then increase the amount of land outside the UGB that would need to be added. Mr. Syrnyk thought a GIS analysis might be easiest. The discussion ensued whether we should do this - would it be a good investment of our time? The maps handed out today may help to decide whether it is worth our time. Mr. Syrnyk thinks it may be possible. We might have the time before the consultant comes on board.

#### Public Comment:

Dale Van Valkenburg believes that it's easy for him to get his hands on the CC&Rs for Brooks Resources. He feels there is a value in reevaluating the numbers. Mr. Syrnyk mentions we should focus on the planning period and be consistent.

Mr. Hultberg echoes Mr. Van Valkenburg's comments. He believes they should look at all the infill and we should be consistent. Though we are not required to do it, we may be forced to face that issue down the road. We are looking at big subdivisions, not small ones.

Mr. Capell asks if we would go back to the partially vacant and vacant land to which Mr. Hultberg mentions there ~~isn't a lot of acres~~ aren't a lot of acres there. Mr. Syrnyk would need to talk with Mr. Van Valkenburg to see how long it could take.

Mr. White mentions that he is concerned we are going to overstate the potential for redevelopment and that we'll have a UGB that's too small. He agrees that it is advisable to look at CC&Rs. He believes it is a big issue and you would want more input from citizens and at least talk with neighborhood associations. We can chart our own course.

Mr. Capell mentions that he hears that they would like us to look at CC&Rs but he is not hearing that there's a cry to go after the vacant to which Mr. White mentions that he believes we should go after both.

Ms. Russell asks for clarification regarding going the route of the remand and if we had to accept and work with certain data.

Ms. Swirsky from the DLCD mentions that their position throughout is that if the City wanted we want to use a different number other than 5,151, that they needed to demonstrate to us why those lots were not available for infill. Ms. Winters then goes on to say that if we want to use a new planning period, we would have to do a new population forecast, to which Ms. Swirsky expressed her agreement. Mr. Syrnyk clarifies

the limited work the staff would do. Ms. Winters then mentions that if we get challenged, we would be in the best situation if we look at the CC&Rs themselves. We should make really good findings. Ms. Swirsky mentions that if we could come up with a really good plan, we could fly it by the DLCD.

Robin Vora asks how the Central Area Plan has to do with this to which Mr. Syrnyk mentions that the numbers could change.

Liz Dickson mentions that she looked at the problem originally. She thinks it is more than just looking at CC&Rs. There are many lots in Bend that have easements through them, for example. There are a lot reasons that lots don't get developed. She believes you can't just change some numbers and not others - it's complex.

Mr. Chudowksy proposes that we come up with a methodology and do a recount and get a better grip on how complicated it is and whether it's worth the return. Mr. Capell comments that he doesn't know what the staff drain is on this project. Can Mr. Syrnyk determine the time it will take and run it by Ms. Swirsky?

Mr. Wagner asks if we could craft a motion to specify what we'd like done to which Mr. ~~Cappell~~Capell mentions that he doesn't think we have to do a motion. Mr. Syrnyk thinks we'd have the time to determine whether this is something staff could do without taking too much time.

Mr. Chudowksy comments that he's ok with all the other numbers. Mr. Wagner also feels the same.

Ms. Barram asks how we can be fair and not just use Brooks' properties. Ms. Winters mentions that it's not about being fair, it's about having an adequate factual basis. Mr. Syrnyk mentions it might help us verify what we see in the trend data. Ms. Barram would like a more accurate number but doesn't want it to drag it out. Mr. Knight says again that he believes we should rely on the data we have to keep it streamlined. He might be on board if it takes a week. Mr. Clinton mentions that it's complicated. We have more knowledge today and some of these numbers are wrong because we see them differently now because things have happened. If a number is wrong in 2008, it's wrong now. Mr. Capell still feels he's not willing to slow the project down substantially unless we have a good, solid reasoning and if it doesn't happen quickly, he says no. Ms. Russell likes if we can do it in 2 weeks but wouldn't be happy if it takes 6 months. Mr. Ramsay doesn't want it to slow us down.

Mr. Syrnyk will develop a methodology and will email to the RTF - no need to wait for next meeting. Mr. Capell says if we can do this before the next meeting, let's do it.



Mr. Syrnyk adds that we should look into it, see if we can have it done quickly, see if it is something DLCD supports, and then let's bring it back to the next RTF meeting.

Ms. Russell asks that Mr. Syrnyk be ready to discuss at the next joint planning commission meeting -- to check in.

| Mr. ~~Cappell~~Capell asks staff to look at developed land with infill potential and determine if it's something that can be done quickly without putting a delay on the process, have it done before the next meeting and check in next week (the 24<sup>th</sup>). Present something on the 24<sup>th</sup>. They'll then decide if it's worth going forward.

**6. Adjourn at 4:46**

## **UGB Remand Task Force (RTF)**

Friday, January 24, 2014

1:00 p.m.

Council Chambers

Bend City Hall

710 NW Wall St, Bend, OR 97701

### **1. Call to Order 1:07**

Victor Chudowsky called to order.

Welcomed Rex Wolf as a new member.

RTF members: Rex Wolf, Bill Wagner, Tammy Baney, Mayor Jim Clinton, Councilor Scott Ramsay, Councilor Mark Capell, Councilor Victor Chudowsky, Councilor Doug Knight, Councilor Sally Russell. Councilor Jodie Barram was excused.

Staff: Damian Syrnyk, Brian Rankin

Additional materials:

- 1/22/14 letter from Dale VanValkenberg
- 1/24/14 email from Steve Hultburg

### **2. Confirm direction on infill lands from January 13, 2014 meeting**

### **3. Present recommended direction to address CCRS and their effect on lands classified as infill**

- a. Discussion with RTF
- b. Public Comment
- c. RTF deliberation and final direction to Staff

There was discussion about the impact to the project timeline.

#### Public Comment

Brian Reese, member of the previous task force. He said the work needed to be done because the current map was inaccurate. The work had been done but was not correctly documented. He said the realtors and title companies would help. He asked for the process to be more transparent than it has been for the last two years.

Bruce White, stressed the importance of getting the foundation right.

Deborah McMahon, commented on work she had done “ground-truthing” the map. It didn’t take long to verify what GIS couldn’t do. The base maps are very good and it won’t take long.

Chair Chudowsky stated that the RTF agreed with the staff recommendation.

#### 4. Update on Request for Proposals

Brian reviewed the RFP process. April 16-May 7 to Council for approval and budget adjustment.

#### 5. Adjourn

1:42

**1. Call to Order**

The Remand Task Force meeting was called to order in the Deschutes County Building at 3:05 PM. Present were the Remand Task Force members: Chair Victor Chudowsky, Vice Chair Bill Wagner, Doug Knight, Sally Russell, Jodie Barram, Jim Clinton, Scott Ramsay and Mark Capell.

**2. Approval of Minutes**

Karen Swirksy asked that we change one part in last month's minutes to reflect what she said. Mr. Knight approved the minutes, with that change, and Mr. Capell seconded.

**3. Recap of January 13, 2014 Meeting**

To follow up on the CC&Rs issue, Mr. Syrnyk and Mr. Rankin met with a group of volunteers on January 30 and talked about how to go through the CC&Rs research. They divvied up the list of approximately 800 subdivisions. We have not yet received the information back from them but we will follow up.

**4. Presentation and Discussion - UGB Remand Task 2.3 - Housing Needs Analysis**

Mr. Syrnyk presented an overview of the housing needs analysis and then he focused on the steps that were necessary to complete the housing needs analysis. Those steps include: project number of new housing units needed in the next 20 years; identify relevant demographic and economic trends and factors; describe the demographic characteristics of population; determine types of housing that are likely to be affordable; estimate the number of additional needed units by structure type; and determine the needed density ranges for each plan designation.

He also explained the trend period and the planning period. He then went on to discuss the planning process and the various steps needed. We're following a methodology that was developed by a stakeholder group and then published as a guidebook by the Department of Land Conservation and Development (DLCD) in 1997. It was completed after a bill was passed, House Bill 2709. We're using methodology that is still good but we are making sure we're relying on current state law as well.

Mr. Capell asked for clarification on expected household sizes for single family vs. multi-family. Single families might have more kids and could impact density. Mr. Syrnyk responded that it's an average of family households or non-family households. It might report the household average for when the housing is rented or owned. We will talk

about the census data a little more but the density figure has been holding steady at about 2.4 persons per household for a while now.

Rex Wolf asks that since we're a quarter of the way through this forecast period, what is the current number of housing units to which Mr. Syrnyk responded by saying he doesn't have the information at this meeting but there's a number from 2007 that he can point to when they get to it. In 2008, we had about 31,000 units.

Mr. Syrnyk then discussed national and state trends, highlighted a few of the trends, and presented a few different tables.

### **RTF Discussion**

Mr. Wagner asked if we are going to look at land values outside of the UGB when we're deciding where to expand, not just how much, so we can accommodate various housing types that have been called for such as affordable housing. Mr. Syrnyk says that yes, one of the tasks that goes with considering land to be brought inside the UGB is looking at whether it meets our needs. That will apply for all land uses, for housing and for employment land, and with that data, we can then use that for analyzing different sites for inclusion.

Mr. Chudowsky asks about the types of housing. We did an inventory of the three types of housing but we didn't plan for it in advance as to what types of housing would be needed by those three types. Please explain how we address that problem.

Mr. Syrnyk responded that that we were asked in the Remand Order to express our analysis for using different types of housing by using at least three types: single-family detached, single-family attached, and multi-family attached. Multi-family attached is a very broad category and includes duplexes, apartments and it also includes manufactured homes in parks. Under our development code, we treat manufactured homes that sit on their own lot like single-family homes. The Department recommended including your estimate of land need for manufactured homes and parks needed in mobile housing areas in the multi-family category so that it is captured somewhere.

Mr. Chudowsky asked about the relationship between income and housing. How does it impact your decisions about what type of housing is needed and are we making these assumptions that people with lower incomes will need apartments instead of houses, or something similar. Mr. Syrnyk replied that the methodology breaks them up into low, medium and high and we consider what units are available for rent and what's for sale, and draw some inferences from that.

Mr. Wolf asked how we deal with dormitories to which Mr. Syrnyk mentions that those are considered group quarters so we don't have to do a lot of detailed analysis for it. We

do need to consider households of that size as part of our work in terms of looking into the distribution, however.

Mr. Wagner mentions U.S. trends. One of the trends is households over 65 years of age and it shows a 6% change. Does the trend analysis take into account other factors such as people are living longer and staying in their houses rather than going to a retirement center? He also points out discrepancies in the census data.

Mr. Syrnyk mentions that he'd have to go look at the census data and see if that's something that's reflected. Also, Mr. Syrnyk points out that this is done over the phone (ACS data collected through phone survey) and if it's a low number being reported, it's not always reflected so we might have some zeroes in the tables.

### **Public Comments**

None

Mr. Chudowsky asks about when the BLI study will be finished to which Mr. Syrnyk mentions that various upcoming meeting dates. We hope to cover Tasks 4, 5 and 6 at the next meeting.

Mr. Rankin mentions that the RFP is out as of today. He mentions the various timeframes involved and that the RFP will be out for 30 days and the proposals are due by March 11.

Mr. Wagner asks that they receive a PDF of the RFP or put it on the website.

**6. Adjourn at 3:52 PM.**

# City of Bend Housing Needs Analysis 2008-2028



Community Development Department  
Damian Syrnyk, AICP Senior Planner  
January 2014 draft



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## I N T R O D U C T I O N

This report presents a housing needs analysis (HNA) for the City of Bend. The purpose of this analysis is to address the requirements for planning for needed housing in urban areas under ORS 197.296(3) and (5). These requirements include, but are not limited to, an inventory of buildable lands for housing, an analysis of national, state, and local demographic and economic trends, and recommendations for a mix and density of needed housing types. This work relies upon data current as of 2008, and considers housing needs over a 2008 to 2028 planning period. This report builds on prior housing need analyses, including the city's 2005 housing needs analysis, and updates to this analysis adopted in 2009 with the City's 2009 urban growth boundary (UGB) expansion proposal. The City prepared this HNA to respond to Order 001775 from the Land Conservation and Development Commission (LCDC) through which LCDC remanded certain work related to the city's housing needs analysis. Sub-Issue 2.3 of the UGB Remand Order requires the City to prepare a revised HNA consistent with provisions in state law.

In an effort to address all requirements in statutes and administrative rules for an HNA, this document follows the suggested framework of "Planning for Residential Growth," a guide book prepared in 1997 by the Oregon Transportation and Growth Management (TGM) Program to assist local governments in developing an HNA that complies fully with applicable portions of ORS 197.296 and 197.303, as well as OAR 660-008.<sup>1</sup>

Statewide Planning Goal 10, Housing, is to provide for the housing needs of the citizens of the state<sup>2</sup>. Goal 10 requires cities to inventory lands for residential use and to develop plans that encourage the development 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.

ORS 197.296 provides further requirements for complying with Goal 10. ORS 197.296 requires the city to conduct an analysis of housing need by type and density range in accordance with ORS 197.303 and statewide planning goals and rules relating to housing. The purpose of this is to determine the amount of land needed for each needed housing type for the next 20 years.

### **ORS 197.296**

*(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.*

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<sup>1</sup> The guidebook is available on-line at [http://www.oregon.gov/LCD/docs/publications/planning\\_for\\_residential\\_growth.pdf](http://www.oregon.gov/LCD/docs/publications/planning_for_residential_growth.pdf).

<sup>2</sup> See OAR 660-0015-0000(10)

*(3) In performing the duties under subsection (2) of this section, a local government shall:*

*(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and*

*(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.*

*4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, “buildable lands” includes:*

*(A) Vacant lands planned or zoned for residential use;*

*(B) Partially vacant lands planned or zoned for residential use;*

*(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and*

*(D) Lands that may be used for residential infill or redevelopment.*

*(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:*

*(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;*

*(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and*

*(C) The presence of a single family dwelling or other structure on a lot or parcel.*

*(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.*

*(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:*

*(A) The number, density and average mix of housing types of urban residential development that have actually occurred;*

*(B) Trends in density and average mix of housing types of urban residential development;*

*(C) Demographic and population trends;*

*(D) Economic trends and cycles; and*

*(E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.*

*(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.*

*(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.*

In addition, ORS 197.303 and 197.307 define needed housing and what actions a local government must take to ensure an adequate supply of land is available for the development of needed housing. The pertinent sections of these statutes are:

**197.303 “Needed housing” defined.** (1) *As used in ORS 197.307, until the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing” means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing” also means:*

- (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;*
- (b) Government assisted housing;*
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;*  
*and*
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.*

**197.307 Effect of need for certain housing in urban growth areas; approval standards for certain residential development; placement standards for approval of manufactured dwellings.**

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*(3)(a) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing, including housing for farmworkers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.*

LCDC has adopted an administrative rule at OAR 660-008 to assure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries and to provide greater certainty in the development process so as to reduce housing costs<sup>3</sup>. This rule is intended to define standards for compliance with Goal 10 and to implement ORS 197.303 through 197.307.

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<sup>3</sup> See OAR 660-008-0000, Purpose.

## ***Housing Needs Analysis Steps***

In 1997, the Oregon Department of Land Conservation and Development (DLCD) published a guidebook, "Planning for Residential Growth," that outlined what steps to perform to complete a housing needs analysis that satisfies state law<sup>4</sup>. These six steps include:

Step 1 – Project the number of new housing units needed in the next 20 years.

Step 2 – Identify relevant national, state, and local demographic and economic trends and factors that may affect the 20-year project of structure type mix.

Step 3 – Describe the demographic characteristics of the population, and, if possible, household trends that related to demand for different types of housing.

Step 4 – Determine the types of housing that are likely to be affordable to the projected households based on household income

Step 5 – Estimate the number of additional needed units by structure type.

Step 6 – Determine the needed density ranges for each plan designation and the average needed net density for all structure types.

To summarize, the City is required to consider its needs for future housing based on type and density over a 20-year planning period. This analysis of housing must examine current and future demographic and economic trends that will influence the types of housing produced and purchased or rented. In addition, this analysis must consider the types of housing needed at various price ranges and rent levels. One of the final steps in this process is an estimate of the number of additional units that will be needed by structure type. Once the City has done this, the City must show that adequate land has been or will be planned and zoned within the existing UGB, and if necessary any area added through an expansion, to demonstrate that the General Plan satisfies Goal 10<sup>5</sup>.

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<sup>4</sup> See pages 25 through 33, Planning for Residential Growth: A Workbook for Oregon's Urban Areas. Transportation and Growth Management Program, Lane Council of Governments, and ECO-Northwest (1997) -: [http://www.oregon.gov/LCD/docs/publications/planning\\_for\\_residential\\_growth.pdf](http://www.oregon.gov/LCD/docs/publications/planning_for_residential_growth.pdf).

<sup>5</sup> See Remand Order pages 33 through 36. Remand Task 2.4 requires the City to demonstrate, after completing a buildable land inventory and work on residential efficiency measures, that we have planned for an adequate supply of land for needed types of housing.

## ***Prior Housing Needs Analyses and Remand Tasks***

The purpose of this section is to provide a brief review of the city's past work on completing a housing needs analysis consistent with Goal 10. The City provided this information to DLCD and LCDC in January of 2010 as a component of the City's Appeal of the Director's January 8, 2010 Order and Report on the City's Proposed UGB Expansion.

In 2005, the City completed a buildable lands inventory (2005 BLI) (see Supp. Rec. 1987) and a housing needs analysis (2005 HNA). (Rec. 2046) The City followed DLCD's Goal 10 guidebook to develop both products. After further work with a technical advisory committee (TAC), the City updated the 2005 HNA in April 2006. (Supp. Rec. 2157.) Based on the findings of the 2005 HNA and the analysis of trends, the City concluded that manufactured homes would be provided on separate lots in the future, not in parks. The City also concluded that a more relevant factor for estimating current and future housing needs is type of housing unit (attached/detached) rather than tenure (rent/own).

In 2007, consultant Angelo Planning Group prepared a final report that presented land need estimates for housing, schools, parks, and institutional uses. (Rec. 2137.) This 2007 report also presented a series of forecasts for residential land needs, following ORS 197.296 and DLCD's Goal 10 workbook. Another consultant, Cogan Owens, prepared a draft General Plan housing element that, along with the 2007 Angelo land need report, were submitted to DLCD with a 45-day notice on June 11, 2007. (Supp. Rec. 1587, 1789.) Following the initial public hearings in July and August of 2007, the City, working in public work sessions of the Bend Planning Commission and with liaisons of the Deschutes County Planning Commission, reviewed and amended the proposed elements of the UGB expansion, including the work that supported the housing element.

From September 2007 through October 2008, the Bend Planning Commission held 35 public work sessions on the UGB expansion. Through these work sessions, which included extensive public input, the City revised its draft buildable lands inventory, housing needs analysis, and residential land need estimate. This work resulted in 2008 versions of the buildable lands inventory, housing needs analysis (Rec. 1280, 1728), and residential land needs analysis that were incorporated in the 2008 version of the housing element submitted to DLCD in 2009.

On November 2, 2010, LCDC issued its final order of remand and partial acknowledgement on the UGB expansion and its components. The final order was not appealed, and became final in January 2011. With respect to the HNA adopted as part of the UGB expansion, the Commission's order remands the city's decision for it to revise its findings and chapter 5 of its comprehensive plan consistent with a detailed analysis contained in the order<sup>6</sup>. That analysis is based on the January 2010 Director's Report and Order which specifies that the City must:

1. Prepare a final housing needs analysis (HNA) that complies with ORS 197.296, ORS 197.303, OAR 660 Division 8, and OAR 660-024-0040(4). This product would replace the product adopted in 2008 and would be adopted as an element of the city's general plan. The final HNA must:

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<sup>6</sup> See Remand and Partial Acknowledgment Order ACKNOW-001795, LCDC, November 2, 2010, Sub-Issue 2.3, p. 33.

- a. analyze housing needs for at least three types, including: attached and detached single family housing, multi-family attached housing, and manufactured housing;
  - b. identify the types of housing that will meet the city's needs are allowed or proposed to be allowed in one or more residential zoning districts, and;
  - c. explain the city's policy choices for the final housing mix that includes at least three types of housing, and how this proposed mix has been translated into types that are allowed in one or more residential zoning districts.
2. Prepare new findings that show whether the proposed housing needs analysis, mix, and types of housing are consistent with the housing policies in Chapter 5 of the Bend Area General Plan, in particular Housing Policies 4, 17, and 21. The new findings must also address Remand Task 3.2 and show that the proposed and any new measures will demonstrably increase the likelihood that residential development will occur at types and densities.
3. Prepare new findings that address Remand Task 3.2 and ORS 197.296(7) and (9). These findings must show how the proposed measures allow types of housing that will be needed over the 20-year planning period, and point to zoning districts that allow these types of housing. A key element of this task will be preparing a reasonable estimate of the potential numbers of units the city could see develop under these measures and supporting these estimates with adequate findings and a Goal 2 adequate factual base.

This HNA is intended to specifically address (1)(a) through (1)(c) above. The work required under (1)(c) is also addressed under Remand Task 2.4, which requires the City to show that we have planned for an adequate supply of land for all types of needed housing. This HNA addresses (1)(a) through (1)(c) and Task 2.3 by presenting the forecast of housing units, analysis of national, state, and local demographic and economic trends, and the consideration of demographic changes in Bend's population that will influence the supply of and the demand for housing during the planning period. The City is addressing Items 2 and 3 by preparing and adopting findings that address Remand Task 3.2, compliance with General Plan housing policies, and ORS 197.296(7).

## ***Factual Base and Data Sources***

The City has developed this HNA using a number of data sources and materials, with a related goal of demonstrating that the HNA satisfies Statewide Planning Goal 2, Land Use Planning. This goal requires that legislative decisions, such as those related to updating a comprehensive plan with respect to housing, must be supported by an adequate factual base. An adequate factual base must be supported by substantial evidence, which refers to evidence that exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. This HNA relies on a number of data sources and documents that include, but are not limited to, the following documents with their record references from the proceedings before the Land Conservation and Development Commission.

1. 2000 to 2025 Deschutes County Coordinated Population Forecast, Rec. 1980
2. 2005 Buildable Lands Inventory, Supp. Rec. 1987
3. 2005 Housing Needs Analysis, Rec. 2046 - 2113
4. 2007 Residential Land Need report, Rec. 1798-1835, 2137
5. 2008 Housing Chapter of BAGP (Ch. 5), Rec. 1720, including 2008 Housing Needs Analysis at Rec. p 1728
6. Draft Revised Buildable Lands Inventory, Memo to UGB Remand Task Force, August 31, 2011.
7. July 22, 2011 memorandum to the Remand Task Force on the housing needs analysis and its legal requirements
8. September 2, 2011 memorandum to the Remand Task Force: Steps 1 through 3 of the HNA process
9. November 3, 2011 memorandum to the Remand Task Force: Steps 4 and 5 of the HNA process
10. March 27, 2012 memorandum to the Remand Task Force: Step 6 of the HNA process

The analysis presented on Steps 2 and 3 also relies on data from the 2000 Census and the 2007 American Community Survey. This data is available online through [factfinder2.census.gov](http://factfinder2.census.gov). The remainder of this report also draws from a number of technical memoranda that have been presented to the UGB Remand Task Force and help form the foundation for this product's adequate factual base.

## ***Explanation of Time Periods***

The City has relied upon two periods of time to look back and to look forward to complete the HNA.

**Trend Period.** ORS 197.296(3)(b) requires the HNA to be based on data relating to land within the City's UGB that has been collected since the last periodic review or five years, whichever is greater. In Bend's situation, the last periodic review ended in 1998 with the adoption of the Bend Area General Plan. This HNA relies on data collected from 1998 to 2008.

**Planning Period.** ORS 197.296(2) further requires the City to ensure a 20-year supply of buildable land for needed housing. The statute states that the 20-year period shall commence on the date initially scheduled for completion of the legislative review. For this HNA, the 20-year period begins in 2008 and ends in 2028.



## STEP 1: PROJECT THE NUMBER OF NEW HOUSING UNITS NEEDED IN THE NEXT 20 YEARS

The first step in the HNA process is to forecast the number of housing units that will be needed to house the projected population growth over the planning period<sup>7</sup>. In 2008, the City developed and relied on a 2028 population forecast for Bend of 115,063, reflecting an increase in population of 38,512 people between 2008 and 2028. The January 2010 DLCD Director's Report and Order on the UGB Expansion concluded that the forecast complied with applicable law<sup>8</sup>. The 2028 population forecast for Bend was prepared using the 2004 Coordinated Population Forecast for Bend as a base. The Coordinated Population Forecast for Bend is 109,389 people by 2025<sup>9</sup>. Staff extended the forecast out another three (3) years to 2028 using the same growth rate used to forecast population beyond 2025 in the Housing Needs Analysis<sup>10</sup>.

The City relied on this 2028 population forecast to develop a housing unit forecast for Bend from 2008 to 2028. The DLCD Director also concluded that the housing unit forecast of 16,681 new units between 2008 and 2028 complied with the applicable law in his January 2010 Report and Order<sup>11</sup>. The following table presents the 2008 to 2028 housing unit forecast for the City of Bend.

<b>Table 1-1: Housing Unit Forecast: 2008 to 2028</b>	
Population forecast for 2028	115,063
(-) Less Population on 7/1/08	76,551
(=) New population 2008 to 2028	38,512
(-) Less population in group quarters (2.3%)	886
(=) New population in households	37,626
(/) Divided by household size (2.4)	
(=) Equals new occupied housing units	15,678
(+) Plus vacancy factor (6.4%)	1,003
<b>= New housing units 2008 to 2028</b>	<b>16,681</b>

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<sup>7</sup> See September 2, 2011 memorandum to the Remand Task Force, presented at the RTF's September 8, 2011 meeting.

<sup>8</sup> See page 25 of 156, January 8, 2010 Director's Report and Order

<sup>9</sup> See Exhibit L-2, Deschutes County Coordinated Population Forecast 2000-2025 (2004) to 45-Day notice

<sup>10</sup> See Exhibit L-3, City of Bend Housing Needs Analysis (2005) to 45-day notice, pages 7-8.

<sup>11</sup> See page 31 of 156, January 8, 2010 Director's Report and Order

Staff used the same method for forecasting housing units already used in the record<sup>12</sup>. The household size, group quarters percentage, and vacancy factor are all based on the 2000 Census results for Bend<sup>13</sup>. The housing units forecast relies on the 2028 population forecast of 115,063. Subtracting the population forecast for 2008 leaves a remainder of 38,512; this represents the new population growth between 2008 and 2028. Subtracting the population in group quarters (2.3% or 886) leaves the new population in households in 2028. Dividing the population in households by a household size of 2.4 persons per household provides the number of new occupied housing units between 2008 and 2028, 15,678. The final forecast is obtained by adding another 1,003 units to account for vacant units (a rate of 6.4%), which increase the forecast to 16,681 needed new housing units between 2008 and 2028.

## **STEP 2: IDENTIFY RELEVANT NATIONAL, STATE AND LOCAL DEMOGRAPHIC AND ECONOMIC TRENDS AND FACTORS THAT MAY AFFECT THE 20-YEAR PROJECTIONS OF STRUCTURE TYPE MIX**

ORS 197.296(5) requires communities to examine demographic and economic trends that will inform the city's analysis of what types of housing will be needed in the future. This section presents an examination of relevant national, state, and local demographic and economic trends and factors that may affect the 20-year projection of the types and mix of housing<sup>14</sup>. The analysis of trends focuses on the period following the acknowledgement of the 1998 Bend Area General Plan to 2007. For many variables, this analysis will include data from 1998 or 1999 to 2007; for others, two periods will be presented to look at trends. These periods will include 1990 to 2000, between the two Censuses, and from 2000 to 2007. For 2007, the City is relying on data collected for the nation, the State of Oregon, and Bend from the American Community Survey<sup>15</sup>. In addition, this analysis incorporates previous work from the 2005 Housing Needs Analysis and the 2007 Residential Land Need Analysis<sup>16</sup>.

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<sup>12</sup> See Residential Land Needs 2005-2030 Memorandum (April 25, 2007); Table 3, Page 5.

<sup>13</sup> See the 2000 Demographic profile for Bend at: <http://censtats.census.gov/data/OR/1604105800.pdf>.

<sup>14</sup> See September 2, 2011 memorandum to the UGB Remand Task Force, presented at their September 8, 2011 meeting.

<sup>15</sup> For more information about the American Community Survey (ACS), See <http://www.census.gov/acs/www/>. The ACS data can be accessed from the Census Bureau's American Factfinder website at [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en).

<sup>16</sup> See 2005 Housing Needs Analysis at Rec p 2046 and 2007 Residential Land Need Analysis at Rec. P. 2114.

## *National Demographic Trends*

This section begins with a brief overview of national demographic trends that may affect the 20-year projection for new housing. This discussion summarizes the most recent information and data from several sources. The trends covered here include those that describe household characteristics that influence housing changes, in particular the type of household and household size. The Census Bureau released a brief on Households and Families based on the results of the 2000 Census<sup>17</sup>. This report provides further data on trends of households and families that may affect the 20-year forecast for housing:

- ❖ Family households increased by 11 percent, from 64.5 million to 71.8 million between 1990 and 2000;
- ❖ Nonfamily households increased by 23 percent, from 27.4 million to 33.7 million between 1990 and 2000;
- ❖ Family households represent about 68 percent of all households nationally;
- ❖ The average household size decreased from 2.63 to 2.59;
- ❖ The average family size remained fairly constant, declining from 3.16 to 3.14, and;
- ❖ Female family households (family households with no husband present) increased from 6.0 million (6.6 percent of total households) in 1990 to 7.6 million (7.2 percent of all households) in 2000.

The Census Bureau also published a subsequent report on families and living arrangements in November 2004<sup>18</sup>. This report examined trends in families and living arrangements between 1970 and 2003. The following summarizes the demographic trends identified in this report that are related to housing:

- ❖ Family households, those households with at least two members related by birth, marriage, or adoption, represented 81 percent of all households in 1970. By 2003 that proportion had decreased to 68 percent of all households;
- ❖ Married couple households with children represented 40 percent of all households in 1970. By 2003, this proportion declined to 23 percent of all households;
- ❖ In 2003,
  - The average household size 2.57 persons,
  - The average family household size was 3.19 persons,
  - The average non-family household size was 1.24 persons,
- ❖ Households with children represented 45 percent of all households in 1970. This proportion decreased to 32 percent of all households in 2003, and;

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<sup>17</sup> Households and Families: 2000 A Census 2000 Brief (2001) US Census Bureau [www.census.gov](http://www.census.gov).

<sup>18</sup> America's Families and Living Arrangements: 2003 (2004) US Census Bureau [www.census.gov](http://www.census.gov).

- ❖ In 2003, of the 111,278,000 households in the United States:
  - 26.4 percent were one person households
  - 33.3 percent were 2 person households
  - 16.1 percent were 3 person households
  - 14.3 percent were 4 person households
  - 9.8 percent were 5 or more person households.

Despite the decreases in the proportions of households that are either family or married couple with children households, 40 percent of households in 2003 were occupied by three or more people. The following table provides some summary data on key housing variables for the United States, comparing the results of the 2000 Census with the 2007 American Community Survey (ACS). This report includes similar tables presenting data for Oregon and Bend for comparison.

<b>Table 2-1: United States - 2000 to 2007</b>				
	<b>Census</b>	<b>ACS</b>	<b>Change</b>	<b>% Change</b>
	2000	2007	2000-2007	2000-2007
Population	281,421,906	301,621,159	20,199,253	7%
Household Size	2.59	2.62	0.03	1%
Family Size	3.14	3.2	0.06	2%
Age of Householder <sup>19</sup>				
Under 25 years	5,533,613	5,272,168	(261,445)	-5%
25 to 44 years	42,266,048	40,775,077	(1,490,971)	-4%
45 to 64 years	35,539,686	43,295,140	7,755,454	22%
65 years and over	22,140,754	23,666,713	1,525,959	7%
Households by Type				
Total Households	105,480,101	112,377,977	6,897,876	7%
Family households (families)	71,787,347	75,119,260	3,331,913	5%
Married-couple family	54,493,232	55,867,091	1,373,859	3%
Nonfamily households	33,692,754	37,258,717	3,565,963	11%
Householder living alone	27,230,075	30,645,140	3,415,065	13%
Householder 65 years and over	9,722,857	10,264,914	542,057	6%
Median household income	\$41,994	\$50,740	\$8,746	21%
Median family income	\$50,046	\$61,173	\$11,127	22%
<b>Sources:</b> 2000 Census data and 2007 American Community Survey (ACS) data from American Factfinder - <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .				

<sup>19</sup> The data for Age of Householder presents the number of households where a householder falls within one of the above-listed age ranges.

- ❖ Over past seven years, the nation's population grew by seven percent.
- ❖ The average household size increased by one percent; the average family size by two percent
- ❖ Households headed by individuals between the ages of 45 and 64 increased by 22 percent during this same period. Conversely, households headed by individuals less than 45 years of age decreased by four percent during this period.
- ❖ Non-family households grew by a greater percentage than family households, increasing by 11 percent. The number of households with a householder living alone increased by 13 percent.
- ❖ Median household and family income grew by at least 21%.

In addition to the American Community Survey, the Joint Center for Housing Studies of Harvard University publishes an annual State of the Nation's Housing (SON). The following summarizes the 2008 report's findings on drivers of housing demand<sup>20</sup>. The Center's findings focus on households and household characteristics.

- ❖ From 1994 to 2004, the national homeownership rate surged by 5.0 percentage points, peaking at 69.0 percent. In the three subsequent years, homeownership rates have fallen back for most groups, including a nearly 2.0-point drop among black households and a 1.4-point drop among young households.
- ❖ The number of renter households increased by more than 2 million from 2004 to 2007, lowering the national homeownership rate to 68.1 percent in 2007.
- ❖ Thanks to higher rates of immigration and natural increase, minorities contributed over 60 percent of household growth in 2000–2006. Minorities now account for 29 percent of all households, up from 17 percent in 1980 and 25 percent in 2000. The minority share is likely to reach about 35 percent by 2020.
- ❖ In 2007, fully 29 percent of heads of households with children were unmarried. Within this group, about 18 percent lived with partners and another 21 percent lived with other non-partner adults.
- ❖ Education still remains the key to higher earnings. For example, the median earnings of college-educated male workers aged 35 to 54 rose from \$71,700 in 1986 to \$75,000 in 2006 in constant 2006 dollars, while those for same-age males who only completed high-school fell from \$48,000 to \$39,000.

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<sup>20</sup> Joint Center for Housing Studies of Harvard University (2008) [The State of the Nation's Housing 2008](http://www.jchs.harvard.edu). <http://www.jchs.harvard.edu>.

- ❖ Among homeowners who bought units between 1999 and 2005, fully 85 percent saw an increase in wealth, with their median net wealth rising from \$11,100 to \$88,000 in real terms. Among households that already owned homes, 75 percent also saw an increase in their wealth, with their median net wealth nearly doubling from \$152,400 to \$289,000.
- ❖ Changes in the number and age distribution of the adult population should lift household growth from 12.6 million in 1995–2005 to 14.4 million in 2010–2020.
- ❖ Minority household growth among 35 to 64 year-olds should remain strong in 2010–2020. In contrast, the number of white middle-aged households will start to decline after 2010 as the baby boomers begin to turn 65. White household growth in the next decade will be almost entirely among older couples without minor children and among older singles (usually widowed or divorced).
- ❖ In total, persons living alone are expected to account for 36 percent of household growth between 2010 and 2020. Three-quarters of the more than 5.3 million projected increase in single-person households in 2010-2020 will be among individuals aged 65 and older—a group that has shown a marked preference for remaining in their homes as they age.
- ❖ Unmarried partners are projected to head 5.6 million households in 2020, up from 5.2 million in 2005. Of these households, 36 percent will include children under the age of 18.

Finally, the 2008 report highlights a number of challenges households face with the affordability of their housing<sup>21</sup>.

- ❖ In 2006, the number of severely-burdened households—paying more than half their income for housing—surged by almost four million to 17.7 million households.
- ❖ Between 2001 and 2006, the number of severely-burdened renters in the bottom-income quartile increased by 1.2 million, while the number of severely-burdened homeowners in the two middle-income quartiles ballooned by 1.4 million.
- ❖ Fully 47 percent of households in the bottom-income quartile were severely burdened in 2006, compared with 11 percent of lower middle-income households and just 4 percent of upper middle-income households.
- ❖ In 2006, approximately 20 percent of all middle-income homeowners with second mortgages paid more than half their incomes for housing. This is nearly twice the share among those with only a first mortgage.
- ❖ More than a quarter of severely-burdened households have at least one full-time worker and 64 percent at least one full- or part-time worker. Even households with two or more full-time workers are not exempt, making up fully 19 percent of the severely burdened.

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<sup>21</sup> See pages 27-31, *State of the Nation's Housing 2008* – <http://www.jchs.harvard.edu>.

- ❖ More than a third of households with incomes one to two times the full-time equivalent of the minimum wage have severe housing cost burdens. Even among the 15.3 million households earning two to three times the full-time minimum wage equivalent, 15 percent pay more than half their incomes for housing.
- ❖ More than one out of six children—12.7 million—in the United States live in households paying more than half their incomes for housing.
- ❖ In 2006, severely-burdened households with children in the bottom-expenditure quartile had only \$548 per month on average for all other needs. As a result, these families spent 32 percent less on food, 56 percent less on clothes, and 79 percent less on healthcare than families with low housing outlays.
- ❖ Nearly one in five low-income families—and nearly one in four low-income minority families—reported living in structurally inadequate housing in 2005. These families have a slightly higher incidence of severe cost burdens than otherwise similar families living in adequate units.
- ❖ Veterans with disabilities make up 29 percent of the 16.4 million veteran households, but 42 percent of the more than 1.5 million veterans with severe housing cost burdens.
- ❖ From 1997 to 2007, housing assistance programs fell from 10 percent to 8 percent of the nation's dwindling domestic discretionary outlays, even as the number of households with severe burdens rose by more than 20 percent from 2001 to 2005.
- ❖ About 14 percent of the low-cost rental stock—with rents under \$400—built before 1940 was permanently removed between 1995 and 2005.
- ❖ Older, lower-cost rentals are also being lost to rent inflation, with rents in more than half shifting up to a higher range between 2003 and 2005.
- ❖ From 1995 to 2005, the supply of rentals affordable to households earning less than \$16,000 in constant 2005 dollars shrank by 17 percent.
- ❖ Today, there are only about 6 million rentals affordable to the nearly 9 million households with the lowest incomes, and nearly half of these are either inhabited by higher-income households or stand vacant.
- ❖ The homeless population is up to 744,000 on any given night, and is estimated to be between 2.3 million and 3.5 million over the course of a year. Homelessness affects more than 600,000 families and more than 1.35 million children every year.
- ❖ Veterans are overrepresented among the homeless. While accounting for only 10 percent of all adults, veterans are somewhere between 23 percent and 40 percent of homeless adults. Moreover, veterans make up an estimated 63,000 of the 170,000 chronically homeless.

## *State Demographic Trends*

The State of Oregon reached an estimated population of 3,791,075 on July 1, 2008, an estimated increase of 369,676 from the April 1, 2000 Census<sup>22</sup>.

- ❖ Oregon's population grew at a rate of 1.2 percent per year from 2000 to 2008.
- ❖ The population grew at increasing annual rates between 2000 and 2005. Growth rates stabilized between 2006 and 2007; growth rates slowed between 2007 and 2008.
- ❖ Between 2000 and 2008, net migration (in-migration minus out-migration) accounted for an estimated 237,481 in population growth, an estimated 64% of Oregon's population growth. Natural increase (births minus deaths) accounted for 132,180 or 36% of the state's population growth.
- ❖ Deschutes County's 2008 population was an estimated 167,015. Between 2000 and 2008, the county's population grew by 44.8%, or 51,648. Of this growth, net migration accounted for 45,887 in population growth, or 89% of the population growth between 2000 and 2008. Natural increase accounted for 11% of the county's population growth between 2000 and 2008.
- ❖ Deschutes County's estimated population growth of 51,648 represents 14% of the state's population growth between 2000 and 2008.

The following table presents data for Oregon from 2000 Census and the 2007 ACS, much like the forgoing table presented for the nation.

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<sup>22</sup> 2008 Oregon Population Report, Population Research Center, Portland State University  
[www.pdx.edu/prc](http://www.pdx.edu/prc).



<b>Table 2-2: Oregon - 2000 to 2007</b>				
	<b>Census</b>	<b>ACS</b>	<b>Change</b>	<b>% Change</b>
	2000	2007	2000-2007	2000-2007
Population	3,421,399	3,747,455	326,056	10%
Household Size	2.51	2.49	-0.02	-1%
Family Size	3.02	3.05	0.03	1%
Age of Householder <sup>23</sup>				
Under 25 years	83,213	74,928	-8,285	-10%
25 to 44 years	505,578	520,849	15,271	3%
45 to 64 years	466,637	575,969	109,332	23%
65 years and over	278,295	300,219	21,924	8%
Households by Type				
Total Households	1,333,723	1,471,965	138,242	10%
Family households (families)	877,671	940,771	63,100	7%
Married-couple family	692,532	734,363	41,831	6%
Nonfamily households	456,052	531,194	75,142	16%
Householder living alone	347,624	414,031	66,407	19%
Householder 65 years and over	121,200	132,319	11,119	9%
Median household income	\$40,916	\$48,730	\$7,814	19%
Median family income	\$48,680	\$59,152	\$10,472	22%
<b>Sources:</b> 2000 Census data and 2007 American Community Survey (ACS) data from American Factfinder - <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .				

- ❖ The Census Bureau estimates the state's population has grown by 10 percent over the last seven years.
- ❖ The state's average household size decreased slightly, while the average family size increased slightly.
- ❖ Like the rest of the nation, households headed by a householder between the ages of 45 and 65 increased by 23%.
- ❖ The number of households headed by a householder between the ages of 25 and 44 stayed about the same, increasing by three percent.
- ❖ The number of households with the householder living alone increased by 19%.
- ❖ Median household and family income increased by at least 22%.

<sup>23</sup> The data for Age of Householder presents the number of households where a householder falls within one of the above-listed age ranges.

## *Summary of National and State Demographic Trends*

- ❖ Households headed by individuals between the ages of 45 and 64 grew the most both nationally and at the state level.
- ❖ Conversely, households headed by younger individuals (e.g. 25 years or less of age) declined during the same period.
- ❖ Household and family sizes did not change significantly.
- ❖ Non-family households continue to represent a larger proportion of all households, particularly those with the householder living alone. The SON predicts this trend will continue between 2010 and 2020.
- ❖ Households are changing in composition, but not so much in size.
- ❖ Despite increases in household and family income, a number of households are still cost-burdened with respect to housing.

## *National Economic Trends and Cycles*

This report draws from the State of the Nation's Housing (2008), produced by the Joint Center for Housing Studies at Harvard University<sup>24</sup>. The report focuses on two key economic trends that have and will continue to affect the production of housing across the county. These trends are the downturn in the housing market in the latter part of the decade, and the increasing number of foreclosures that were, in part, a contributing factor.

### **Downturn in the housing market**

- ❖ Sales fell sharply for the second year in a row. Existing home sales fell 13 percent in 2007 to 4.9 million, while sales of new homes plummeted 26 percent to 776,000, the lowest level since 1996.
- ❖ For the first time since recordkeeping began in 1968, the national median single-family home price as reported by the National Association of Realtors® fell for the year in nominal terms, by 1.8 percent on an annual basis to \$217,900.
- ❖ The National Association of Realtors® (NAR) national median single-family home price declined 6.1 percent from the fourth quarter of 2006 to the fourth quarter of 2007, while the S&P/Case Shiller® US National Home Price Index registered a fourth-quarter to fourth-quarter nominal decline of 8.9 percent.

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<sup>24</sup> See pages 6-10, The State of the Nation's Housing: 2008 - <http://www.jchs.harvard.edu/research/publications/state-nations-housing-2008>.

- ❖ At the start of 2007, quarterly nominal median sales prices were still rising in 85 of 144 metros. By the end of the year, however, prices were increasing in only 26 metros. Fourth-quarter nominal house prices in 2007 fell back to 2006 levels in 12 metros, to 2005 levels in 35 metros, to 2004 levels in 19 metros, and to 2003 or earlier levels in 16 metros.
- ❖ The homeowner vacancy rate jumped from 2.0 percent in the last quarter of 2005 to 2.8 percent in the last quarter of 2007 as the number of vacant units for sale shot up by more than 600,000. In addition, the number of vacant homes held off the market other than for seasonal or occasional use surged from 5.7 million units in 2005 to 6.2 million in 2007.
- ❖ Assuming the vacancy rate prevailing in 1999–2001 was close to equilibrium, the oversupply of vacant for-sale units at the end of last year was around 800,000 units.
- ❖ Nationwide, the number of housing permits issued fell 35 percent from 2005 to 2007, including a 42 percent reduction in single-family permits. Florida topped the list of states with the sharpest cutbacks 2005–2007 at 64 percent, followed by Michigan at 61 percent and Minnesota at 51 percent.
- ❖ Completions of for-rent units in multifamily structures fell to just 169,000, down 15 percent from 2006 and 38 percent from 2000. The rental share of all multifamily completions dipped below 60 percent for the first time in the 43-year history of recordkeeping.
- ❖ The months' supply of unsold new single-family homes rose to more than 11 months in late 2007 and early 2008—a level previously not seen since the late 1970s—before dropping back slightly. The months' supply of existing single-family homes for sale rocketed to 10.7 months by April 2008.
- ❖ By the end of 2007, the nation had 232,000 fewer construction jobs than a year earlier, dragging down employment growth in many states with previously booming housing markets such as Florida (74,000 construction jobs lost vs. 52,000 other jobs added) and Arizona (25,000 construction jobs lost vs. 23,000 other jobs added).

## Foreclosures

- ❖ The number of homes in foreclosure proceedings nearly doubled to almost one million by the end of 2007, while the number entering foreclosure topped 400,000 in the fourth quarter alone.
- ❖ The share of all loans in foreclosure jumped from less than 1.0 percent in the fourth quarter of 2005 to more than 2.0 percent by the end of last year.
- ❖ In the fourth quarter of 2007, Ohio had the country's highest foreclosure rate of 3.9 percent—equivalent to 1 in 25 loans—followed closely by Michigan and Indiana.

- ❖ The foreclosure rate on all subprime loans soared from 4.5 percent in the fourth quarter of 2006 to 8.7 percent a year later, while the rate on adjustable-rate subprime loans more than doubled from 5.6 percent to 13.4 percent. Foreclosure rates on adjustable subprime mortgages were over five times higher than those on adjustable prime loans.
- ❖ Because of their abysmal performance, subprime loans fell from 20 percent of originations in 2005–2006 to just 3.1 percent in the fourth quarter of 2007. The real dollar volume plummeted from \$139 billion in the fourth quarter of 2006 to \$14 billion at the end of last year.
- ❖ Interest-only and payment-option loans fell from 19.3 percent of originations in 2006 to 10.7 percent in 2007, with especially large declines in the nation's most expensive metro areas where loans with affordability features were most common. States with high 2006 shares and large 2007 declines include Nevada (from 41 percent to 25 percent), Arizona (29 percent to 18 percent), Florida (25 percent to 13 percent), and Washington, DC (26 percent to 15 percent).
- ❖ The dollar volume of all non-prime investor loans plunged by two-thirds from the first quarter of 2006 to the third quarter of 2007, and of just subprime investor loans by a whopping seven-eighths.
- ❖ According to the Mortgage Bankers Association, loans to absentee owners also accounted for almost one in five loans entering foreclosure in the third quarter of 2007.
- ❖ In 2006, more than 40 percent of loans on one- to four-unit properties originated in low-income census tracts were high cost, as were 45 percent of such loans originated in low-income minority communities. By comparison, high-cost loans accounted for only 23 percent of originations in middle-income white areas and 15 percent in high-income white areas.

## US Housing Market

The US Department of Housing and Urban Development's U.S. Housing Market Conditions (1<sup>st</sup> Quarter 2008) reported on the following trends in the national housing market, as of first quarter 2008<sup>25</sup>.

- ❖ The housing market performed very poorly during the first quarter of 2008, continuing two (2) years of decline. The number of single-family building permits, starts, and completions all declined in the first quarter and new and existing home sales decreased as well. Excessive inventories of both new and existing homes amounted to nearly 10 months' supply. The multifamily sector was somewhat mixed: permits and starts decreased, but completions increased.

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<sup>25</sup> US Housing Market Conditions (1<sup>st</sup> Quarter 2008) U.S. Department of Housing and Urban Development, Office of Policy Development and Research - <http://www.huduser.org/portal/periodicals/ushmc.html>.

- ❖ The subprime meltdown continues, with foreclosure rates on subprime adjustable-rate mortgages (ARMs) doubling over the past year. On the rental side, the vacancy rate increased, but the absorption rate showed some improvement.
- ❖ The overall economy posted a Gross Domestic Product (GDP) growth rate of only 0.6 percent in the first quarter of 2008. The housing component of GDP decreased by 26.7 percent, which reduced GDP growth by 1.2 percentage points.
- ❖ Housing affordability improved in the first quarter of 2008, according to the index published by the NATIONAL ASSOCIATION OF REALTORS®. The composite index indicates that the family earning the median income had 132.3 percent of the income needed to purchase the median-priced, existing single-family home using standard lending guidelines. This value is up 11.5 points from the fourth quarter of 2007 and up 17.8 points from the first quarter of 2007. The increase from the fourth quarter is attributable to a decline (4.6 percent) in the median price of an existing single-family home, an increase (0.2 percent) in median family income, and a 40 basis-point decrease in the mortgage interest rate. The first quarter homeownership rate was 67.8 percent, unchanged from the fourth quarter 2007 rate but 0.6 percentage point below the rate of the first quarter of 2007.
- ❖ The multifamily (five or more units) sector performed better than the single-family sector did in the first quarter of 2008. Production indicators were mixed; building permits and starts decreased, but completions increased. The absorption of new rental units improved, but the rental vacancy rate increased.

### *State Economic Trends and Cycles*

Worksource Oregon's Oregon Labor Trends (May 2008) included the following summary of employment trends in Oregon through the first quarter of 2008<sup>26</sup>.

- ❖ Oregon's seasonally adjusted unemployment rate was 5.7 percent in March and the revised figure for February was 5.4 percent. This puts Oregon's rate well above the 5.0 percent figure reached during March 2007, which was the lowest in over five years.
- ❖ In March, seasonally adjusted payroll employment dropped by 2,700, the first decline in six months. February's figure was revised upward to show a gain of 900 jobs.
- ❖ In March, several major industries recorded substantial seasonally adjusted job declines: trade, transportation, and utilities (-1,600 jobs), manufacturing (-1,300), construction (-700), and leisure and hospitality (-700). These losses were partially balanced by seasonally adjusted job gains in educational and health services (+1,300 jobs) and government (+1,100).

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<sup>26</sup> See Oregon Labor Trends, available on-line at <http://www.qualityinfo.org/pubs/olt/08/olt-0508.pdf>.

- ❖ Despite the weak March employment in trade, transportation, and utilities, over the past few months' retail trade has shown modest growth, with employment up 2,900, or 1.5 percent, since March 2007. On the other hand, wholesale trade has been hurt by declines in manufacturing and is down 300 jobs during the past 12 months.
- ❖ Manufacturing continued to trend downward in March as durable goods manufacturing shed 1,200 jobs. Durable goods have declined at a rapid rate since reaching a multi-year peak of 156,900 jobs in August 2006. Conversely, nondurable goods manufacturing has expanded over the last two years and has gained 900 jobs since March 2007.
- ❖ Construction posted no employment change during a month in which 700 jobs typically would be added. The March construction employment total of 93,700 was down 6,800 jobs from the year-ago figure. The residential side saw substantial cutbacks in March as residential building construction shed 500 jobs and building foundation and exterior contractors also cut 500 jobs.
- ❖ Seasonally adjusted construction employment peaked at 105,200 in August 2007 and is now down to 97,900 jobs, a loss of nearly 7 percent in seven months' time.
- ❖ The trend in leisure and hospitality shows continued growth. This industry, dominated by restaurant employment, had an over-the-year gain of 5,200 jobs, or close to 3 percent.
- ❖ Educational and health services continued to be the fastest growing major industry, adding 1,700 jobs in March. Since March 2007, it is up 8,400 jobs, or 4.0 percent. Employment trends over the past two years accelerated gradually as older baby boomers moved into their early 60s and as the age 65+ group increased by more than 2 percent per year.
- ❖ Government added 2,400 jobs in March nearly double its expected seasonal gain. It was up 8,100 jobs since March 2007, a gain of 2.8 percent. Local governments have expanded both their educational employment component as well as their other segments. In March, local government employed 195,600, a gain of 5,500, or 2.9 percent, from March 2007.

### *Summary of National and State Economic Trends*

- ❖ Nationally, by the first quarter of 2008, the rapid rate of housing construction that occurred during the 2004-2007 period almost stopped with a slow down in construction and sales.
- ❖ Inventories of units for sale and rent increased to 10 to 11 months' worth of inventory.
- ❖ The rapid rise of home values and prices had started to finally ease, and in some areas decline to more affordable levels.

- ❖ One outcome of this change in the housing market was the increase in the number of homes facing foreclosure.
- ❖ The number of homes facing foreclosure added to inventories of homes for sale, which represented 10 months of supply.
- ❖ The slowdown in home construction and sales had a positive effect for potential consumers with prices decreasing and become more affordable to a greater number of household.
- ❖ However, in Oregon, seasonally adjusted payroll employment was beginning to drop.
- ❖ Concurrent trends of an increasing supply of housing that was potentially becoming more affordable due to prices decreasing to spur sales at the same time payroll employment was declining.
- ❖ Due to circumstances such as foreclosure, more pressure will be placed on the rental housing markets as households that owned or were buying housing need to transition into renting housing.
- ❖ The challenge for planning for housing is exacerbated because households that were cost-burdened a few years ago now face the additional challenges of a supply of housing prices not dropping enough, unemployment, and incomes not keeping paces with increases in the price of housing.

### **S T E P 3 : I D E N T I F Y T H E L O C A L D E M O G R A P H I C C H A R A C T E R I S T I C S O F T H E P O P U L A T I O N A N D , I F P O S S I B L E , H O U S E H O L D T R E N D S T H A T R E L A T E T O D E M A N D F O R D I F F E R E N T T Y P E S O F H O U S I N G**

The forgoing portion of the HNA examined the relevant national and state demographic and economic trends and their influence on the future mix of housing in Bend. This section continues this examination of trends by looking at demographic and economic trends in Bend, including a description of Bend's population in 2007. This examination of trends begins with a brief examination of how the characteristics of Bend's population have changed since the 2000 Census. This section then focuses on key demographic variables that provide information on households and their housing choices including: 1) Households by type, size, age of householder, and household income; 2) Tenure – whether households are owner or renter occupied, and; 3) Types of housing, including the changes composition of the housing supply.

## Characteristics of Bend's Population

The following table presents data on how Bend's population changed from 2000 to 2007. This table compares the data from 2000 Census with the 2007 American Community Survey.

<b>Table 3-1: Bend - 2000 to 2007</b>				
	<b>Census</b>	<b>ACS</b>	<b>Change</b>	<b>% Change</b>
	<b>2000</b>	<b>2007</b>	<b>2000-2007</b>	<b>2000-2007</b>
Population	52,029	73,368	21,339	41%
Household Size	2.42	2.34	-0.08	-3%
Family Size	2.92	2.79	-0.13	-4%
Age of Householder				
Under 25 years	1,674	2,188	514	31%
25 to 44 years	8,615	12,739	4,124	48%
45 to 64 years	6,770	10,534	3,764	56%
65 years and over	4,003	5,156	1,153	29%
Households by Type				
Total Households	21,062	30,617	9,555	45%
Family households (families)	13,396	18,666	5,270	39%
Married-couple family	10,563	14,977	4,414	42%
Nonfamily households	7,666	11,951	4,285	56%
Householder living alone	5,497	7,512	2,015	37%
Householder 65 years and over	1,819	1,834	15	1%
Median household income	\$40,857	\$56,053	\$15,196	37%
Median family income	\$49,387	\$66,740	\$17,353	35%
<b>Sources:</b> 2000 Census data and 2007 American Community Survey (ACS) data from American Factfinder - <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .				

- ❖ Bend's population grew by an estimated 41% between 2000 and 2007, at a rate much faster than that of the populations of the nation or the state.
- ❖ While household and family sizes remained stable nationally and at the state level, both the average household and family sizes each decreased by an estimated three percent.
- ❖ The number of households with a householder between 45 and 64 years of age increased by 56% over the last seven years, representing the largest percentage increase among all householder age groups.
- ❖ The total number of households increased by 45%, with non-family households increasing by 56%.
- ❖ Both the median household and family incomes in Bend increased by at least 35% between 2000 and 2007.



Bend's population has grown significantly since 1990. Between 1990 and 2000, Bend's population grew from 20,469 to 52,029. This change represents an increase of 31,560 people, or 154%. Of these 31,560 new people, approximately 17,060 people were annexed to the city between 1990 and 1998. Actual population growth accounted for an increase of 14,500 people, or 71% over the city's population in 1990.

Bend grew significantly again between 2000 and 2007. The city's population grew by 25,751 over this seven year period, and without being influenced by annexation<sup>27</sup>. Bend's average annual growth rate from 2000 to 2007 was 4.5% per year. This reflects the period of high population growth from 2004 to 2006, and slower growth in 2006 and 2007 that mirrored the downturn in the economy.

<b>Table 3-2 : Population Growth of Oregon, Deschutes County, and Bend; 1990 to 2007</b>					
<b>Area</b>	<b>April 1, 1990</b>	<b>April 1, 2000</b>	<b>July 1, 2007</b>	<b>Change 1990 - 2007</b>	<b>Percent Change</b>
Oregon	2,842,321	3,421,399	3,745,455	903,134	32%
Deschutes County	74,958	115,367	160,810	85,852	115%
Bend	20,469	52,029	77,780	57,311	280%
<b>Source:</b> Population Research Center, Portland State University – <a href="http://www.pdx.edu/prc/">http://www.pdx.edu/prc/</a> .					

The following table presents data showing the changes in the composition of Bend's population, based on age groups. Each group includes a number of persons by age, and their numbers in 1990, 2000, and 2007. The percent distribution of the population by age is shown at the end of each table.

<b>Table 3-3: Age of Population in Bend: 1990, 2000, and 2007</b>					
<b>Age Group</b>	<b>1990</b>	<b>2000</b>	<b>Change</b>	<b>%Change</b>	<b>2000 Distribution</b>
<b>Under 25 years</b>	7,225	18,058	10,833	150%	35%
<b>25 to 44 years</b>	7,413	16,171	8,758	118%	31%
<b>45 to 54 years</b>	1,771	7,459	5,688	321%	14%
<b>55 to 59 years</b>	628	2,209	1,581	252%	4%
<b>60 to 64 years</b>	672	1,701	1,029	153%	3%
<b>65 to 74 years</b>	1,436	3,109	1,673	117%	6%
<b>75 years and over</b>	1,324	3,322	1,998	151%	6%
<b>Total</b>	20,469	52,029	31,560	154%	100%

<sup>27</sup> See 2007 Oregon Population Report, Population Research Center, Portland State University, available online at: <http://www.pdx.edu/prc/annual-oregon-population-report>.

Age Group	2000	2007	Change	%Change	2007 Distribution
Under 25 years	18,058	21,683	3,625	20%	30%
25 to 44 years	16,171	25,296	9,125	56%	34%
45 to 54 years	7,459	9,331	1,872	25%	13%
55 to 59 years	2,209	5,332	3,123	141%	7%
60 to 64 years	1,701	3,292	1,591	94%	4%
65 to 74 years	3,109	4,110	1,001	32%	6%
75 years and over	3,322	4,324	1,002	30%	6%
<b>Total</b>	<b>52,029</b>	<b>73,368</b>	<b>21,339</b>	<b>41%</b>	<b>100%</b>
<b>Sources:</b> 2000 Census data and 2007 American Community Survey for Bend through American Factfinder: <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .					

- ❖ Between 1990 and 2000, the age group that experienced the greatest percentage increase in population growth was people between the ages of 45 and 59 years of age.
- ❖ That trend continued between 2000 and 2007, where the greatest increases in population occurred with people between the ages of 55 to 64 years of age.
- ❖ The proportion of the population under 25 years of age decreased from 35% to 30%.
- ❖ The proportion of the population between 25 and 44 years increased from 31% to 34%.

The next tables present data on tenure, whether housing is owned or rented, by type of households. This presentation includes data on family households and nonfamily households, and breaks this data down further by the age of the householder.

<b>Table 3-4: Tenure by Type of Households (2007)</b>				
	<b>Owner occupied households</b>		<b>Renter occupied households</b>	
	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>
Total Households	18,032	100%	12,585	100%
Family households:	13,031	72%	5,635	45%
Married-couple family:	11,847	66%	3,130	25%
Householder 15 to 34 years	1,889	10%	1,371	11%
Householder 35 to 64 years	7,406	41%	1,610	13%
Householder 65 years and over	2,552	14%	149	1%
Other family:	1,184	7%	2,505	20%
Male householder, no wife present:	196	1%	485	4%
Householder 15 to 34 years	-	0%	271	2%
Householder 35 to 64 years	196	1%	214	2%
Householder 65 years and over	-	0%	-	0%
Female householder, no husband present:	988	5%	2,020	16%
Householder 15 to 34 years	86	0%	1,072	9%
Householder 35 to 64 years	427	2%	870	7%

Householder 65 years and over	475	3%	78	1%
Nonfamily households:	5,001	28%	6,950	55%
Householder living alone:	3,968	22%	3,544	28%
Householder 15 to 34 years	593	3%	785	6%
Householder 35 to 64 years	2,247	12%	2,053	16%
Householder 65 years and over	1,128	6%	706	6%
Householder not living alone:	1,033	6%	3,406	27%
Householder 15 to 34 years	58	0%	2,837	23%
Householder 35 to 64 years	907	5%	569	5%
Householder 65 years and over	68	0%	-	0%
<b>Source:</b> 2007 American Community Survey data for Bend city, Oregon, available online at: <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .				

- ❖ By 2007, 72% of family households were owner occupied households; 45% of family households were renter-occupied households. Put another way: 72% of family households owned or were buying their housing; 45% of family households were renting their housing.
- ❖ 28% of non-family households were living in owner occupied housing, and 55% of renter occupied households were non-family households.
- ❖ The total number of households grew from 21,062 in 2000 to an estimated 30,617, an increase of 9,555 households, or 45%.

In addition to the forgoing data on tenure, this report considers household types (family or nonfamily) by size. The purpose for doing so is to consider data on household size and whether households are purchasing or renting housing. The following table compares data on households by type and size for 2000 and 2007. Following this data is a table that compares households by size and the proportions that were owner-occupied and renter-occupied.

<b>Table 3-5: Household Types by Household Size: Estimated Change between 2000 and 2007</b>						
	<b>2000 Census</b>		<b>2007 ACS</b>		<b>Change</b>	<b>% Change</b>
	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>		
Total:	21,050		30,617		9,567	45%
Family households:	13,554	100%	18,666	100%	5,112	38%
2-person household	6,200	46%	9,118	49%	2,918	47%
3-person household	3,159	23%	3,540	19%	381	12%
4-person household	2,656	20%	4,255	23%	1,599	60%
5-person household	1,049	8%	1,257	7%	208	20%
6-person household	407	3%	496	3%	89	22%
7-or-more person household	83	1%	0	0%	-83	-100%
Nonfamily households:	7,496	100%	11,951	100%	4,455	59%
1-person household	5,516	74%	7,512	63%	1,996	36%
2-person household	1,536	20%	3,115	26%	1,579	103%
3-person household	352	5%	1,066	9%	714	203%
4-person household	66	1%	258	2%	192	291%
5-person household	16	0%	0	0%	-16	-100%
6-person household	5	0%	0	0%	-5	-100%
7-or-more person household	5	0%	0	0%	-5	-100%
<b>Source:</b> 2000 Census data and 2007 American Community Survey data for Bend city, Oregon, available online at: <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .						

- ❖ The number of family households grew by 38% between 2000 and 2007; non-family households grew by 59%.
- ❖ Among family households the number of 2-person households grew the most, but 4-person households increased by a greater percentage.
- ❖ Among non-family households, households with 3 to 4 persons increased the most on a percentage basis; 1 and 2 person households grew the most in number.

**Table 3-6: Tenure by Household size for 2000 and 2007 for Bend**

	2000 Census		2007 ACS		Change	
	Number	Distribution	Number	Distribution	Number	Percent
Total Households:	21,062		30,617		9,555	45%
Owner occupied:	13,244	100	18,032	100%	4,788	36%
1-person household	2,921	22.1	3,968	22%	1,047	36%
2-person household	5,348	40.4	8,801	49%	3,453	65%
3-person household	2,044	15.4	1,600	9%	-444	-22%
4-person household	1,937	14.6	2,772	15%	835	43%
5-person household	724	5.5	777	4%	53	7%
6-person household	184	1.4	114	1%	-70	-38%
7-or-more person household	86	0.6	0	0%	-86	-100%
Renter occupied:	7,818	100	12,585	100%	4,767	61%
1-person household	2,576	32.9	3,544	28%	968	38%
2-person household	2,451	31.4	3,432	27%	981	40%
3-person household	1,417	18.1	3,006	24%	1,589	112%
4-person household	838	10.7	1,741	14%	903	108%
5-person household	336	4.3	480	4%	144	43%
6-person household	125	1.6	382	3%	257	206%
7-or-more person household	75	1	0	0%	-75	-100%

**Source:** 2000 Census data and 2007 American Community Survey data for Bend city, Oregon, available online at: [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en).

- ❖ Owner occupied households grew by 36% between 2000 and 2007; the number of renter occupied households grew at a greater rate, by 61%.
- ❖ Among owner occupied households, 2-person households grew the most; the number of 3-person households decreased
- ❖ Among renter-occupied households, the number of 3 and 4 person households each increased by at least 108%, the number of 6 person households increasing by 206%
- ❖ The largest group of owner occupied households are those with 2 persons; the large among renter occupied households are those with 3 persons

The next group of tables presents data on age of household by household income<sup>28</sup>. This is an important variable to consider when planning for housing. These two variables are valuable indicators for identifying housing choices households are making at different points in life and based on what they can afford.

<sup>28</sup> For Tables 3-6 through 3-8, the source data is the American Community Survey (ACS) data, available on-line through American Factfinder <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<b>Table 3-7: Distribution of Households by Age of Householder and Household Income (2007)</b>				
	<b>Under 25 years</b>	<b>25 to 44 years</b>	<b>45 to 64 years</b>	<b>65 years and over</b>
<b>Total</b>	100%	100%	100%	100%
<b>Less than \$10,000</b>	0%	2%	2%	1%
<b>\$10,000 to \$14,999</b>	8%	0%	2%	8%
<b>\$15,000 to \$19,999</b>	4%	3%	8%	5%
<b>\$20,000 to \$24,999</b>	24%	8%	5%	5%
<b>\$25,000 to \$29,999</b>	6%	9%	4%	6%
<b>\$30,000 to \$34,999</b>	0%	2%	6%	4%
<b>\$35,000 to \$39,999</b>	0%	4%	2%	5%
<b>\$40,000 to \$44,999</b>	18%	5%	2%	11%
<b>\$45,000 to \$49,999</b>	11%	7%	5%	2%
<b>\$50,000 to \$59,999</b>	19%	9%	10%	9%
<b>\$60,000 to \$74,999</b>	10%	16%	12%	13%
<b>\$75,000 to \$99,999</b>	0%	17%	11%	16%
<b>\$100,000 to \$124,999</b>	0%	9%	10%	9%
<b>\$125,000 to \$149,999</b>	0%	3%	6%	3%
<b>\$150,000 to \$199,999</b>	0%	3%	8%	1%
<b>\$200,000 or more</b>	0%	4%	6%	2%
<b>Source:</b> 2007 ACS data for Bend, available on-line through American Factfinder – <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .				

- ❖ For households with a householder under 25 years of age, 36% of these households had household incomes under \$25,000; 58% of these households had incomes between \$40,000 and \$74,999.
- ❖ For households with a householder between 25 and 44 years of age, 33% of these households had incomes between \$60,000 and \$99,999.
- ❖ For households with a householder between 45 and 64 years of age, 43% of these households had incomes between \$50,000 and \$124,999.
- ❖ For households with a household that was 65 years of age and over, 51% of these households had incomes between \$40,000 and \$99,999.

The next tables present data on occupancy and tenure trends for Bend between 1990 and 2007. The data on occupancy presents numbers of housing units occupied and vacant. The data on tenure informs the analysis by describing the numbers of units that are owner-occupied and renter occupied. Please note that the number of units described by tenure are occupied and also describe household choices on whether to purchase or rent housing.

<b>Table 3-8: Occupancy and Tenure for Bend: 1990 to 2000</b>						
	<b>1990</b>		<b>2000</b>		<b>Change</b>	<b>%Change</b>
<b>Occupancy</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>1990-2000</b>	<b>1990-2000</b>
All housing units	9,004	100%	22,507	100%	13,503	150%
Occupied housing units	8,526	95%	21,062	94%	12,536	147%
Vacant housing units	478	5%	1,445	6%	967	202%
<b>Tenure</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>Change</b>	<b>%Change</b>
Occupied housing units	8,526	100%	21,062	100%	12,536	147%
Owner-occupied housing units	4,614	54%	13,244	63%	8,630	187%
Renter-occupied housing units	3,912	46%	7,818	37%	3,906	100%

**Source:** US Census Bureau STF3 (1990) and SF3 (2000) through American Factfinder, available online at [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

- ❖ The proportions of units occupied and vacant did not change significantly between 1990 and 2000.
- ❖ The tenure split did shift during the decade, with the proportion of owner occupied housing increasing by nine (9) percentage points, and the proportion of renter-occupied housing decreasing by a similar amount.

<b>Table 3-9: Occupancy and Tenure for Bend: 2000 to 2007</b>						
	<b>2000</b>		<b>2007</b>		<b>Change</b>	<b>%Change</b>
<b>Occupancy</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>2000-2007</b>	<b>2000-2007</b>
All housing units	22,507	100%	34,160	100%	11,653	52%
Occupied housing units	21,062	94%	30,617	90%	9,555	45%
Vacant housing units	1,445	6%	3,543	10%	2,098	145%

	<b>2000</b>		<b>2007</b>		<b>Change</b>	<b>%Change</b>
<b>Tenure</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>2000-2007</b>	<b>2000-2007</b>
Occupied housing units	21,062	100%	30,617	100%	9,555	45%
Owner-occupied housing units	13,244	63%	18,032	59%	4,788	36%
Renter-occupied housing units	7,818	37%	12,585	41%	4,767	61%

**Source:** 2000 Census and 2007 American Community Survey (ACS) data for Bend from American Factfinder - [http://factfinder2.census.gov/home/saff/main.html?\\_lang=en](http://factfinder2.census.gov/home/saff/main.html?_lang=en).

- ❖ During the last seven years, the vacancy rate for housing units increased from six percent in 2000 to 10 percent in 2007. The number of vacant housing unit increased 145% over this seven year period.
- ❖ The tenure split shifted in a direction opposite of what happened between 1990 and 2000. The proportion of owner occupied units decreased from 63% to 59%, while the proportion of renter occupied units increased from 37% to 41%.
- ❖ These shifts in occupancy and tenure occurred during the height of the housing bubble and the beginning of its decline, reflecting the number households seeking rental housing.

The next series of tables presents data on the distribution of housing by type, or the number of units in each structure. For example, single family detached housing is identified as “1-unit, detached.” The purpose for considering this data is to see whether the distribution of housing has changed, thereby reflecting different housing choices among Bend households. The first table presents the data on changes in units in structure from 1990 to 2000 followed a table that reflects the same data for 2000 to 2007. The data considers all housing units regardless of whether they are occupied or vacant. This data is followed by a table that further breaks down the data by whether housing was owned or renter occupied, and how these distributions changed between 2000 and 2007.

<b>Table 3-10: Change in Units in Structure for City of Bend 1990 to 2000<sup>29</sup></b>						
<b>Units in Structure</b>	<b>1990</b>	<b>2000</b>	<b>Change</b>	<b>% Change</b>	<b>% Distribution</b>	
	<b>Census</b>	<b>Census</b>			<b>1990</b>	<b>2000</b>
1-units detached	5,907	15,027	9,120	154%	66%	67%
1-unit attached	281	792	511	182%	3%	4%
2 to 4 units	990	1,723	733	74%	11%	8%
5 to 9 units	365	1,001	636	174%	4%	4%
10 or more units	978	1,681	703	72%	11%	7%
Mobile home, trailer, or other	483	2,274	1,791	371%	5%	10%
Total units	9,004	22,498	13,494	150%		
<b>Source:</b> US Census Bureau, SFT3 (1990) and SF3 (2000)						

- ❖ Due to both housing construction and annexation, the supply of housing units in Bend grew by 150% between 1990 and 2000.
- ❖ The distribution of units by type did not change significantly over this decade; single family detached dwellings represented 66% to 67% of the supply of housing units.

<sup>29</sup> The annexation of the unincorporated areas of the Bend UGB was passed during the general election of November 1998. The annexation took effect on July 1, 1999. The annexation included 13,648 people and 5,286 housing units. A large proportion of these units was manufactured homes, and represented the source of the increase in manufactured homes between 1990 and 2000.



- ❖ Single family attached units increased slightly from 3% to 4% of the housing units.
- ❖ Multi-family attached units (all other units), decreased slightly, from 31% and 29%, of all units.

<b>Table 3-11: Change in Units in Structure for City of Bend: 2000 to 2007</b>						
Units in Structure	2000	2007	Change		% Distribution	
	Census	ACS	Number	Percent	2000	2007
1-units detached	15,027	23,853	8,826	59%	67%	70%
1-unit attached	792	1,151	359	45%	4%	3%
2 to 4 units	1,723	3,326	1,603	93%	8%	10%
5 to 9 units	1,001	1,362	361	36%	4%	4%
10 or more units	1,681	2,697	1,016	60%	7%	8%
Mobile home, trailer, or other	2,274	1,771	-503	-22%	10%	5%
Total units	22,498	34,160	11,662	52%	100%	100%
<b>Source:</b> 2000 Census and 2007 American Community Survey data for Bend through American Factfinder, available online at <a href="http://www.factfinder.census.gov">www.factfinder.census.gov</a> .						

- ❖ From 2000 to 2007, the supply of housing units increased by 11,662 units, or 52%, and not through annexation.
- ❖ The proportion of housing that was single family detached increased from 67% to 70% of all housing units.
- ❖ The proportion of single family attached increased by 45%, but represented a smaller proportion of the city's housing supply.
- ❖ The proportion of all housing that were multi-family attached also decreased from 29% in 2000 to 27% in 2007.

<b>Table 3-12: Tenure of units in structure for Bend in 2000 and 2007</b>						
	2000 Census		2007 ACS		Change 2000 to 2007	
	Number	Distribution	Number	Distribution	Number	Percent
Total:	21,049	100%	30,617	100%	9,568	45%
<b>Owner-occupied housing units:</b>	13,339	63%	18,032	59%	4,693	35%
1, detached or attached	11,475	55%	16,279	53%	4,804	42%
2 to 9 units	117	1%	360	1%	243	208%
10 or more units	18	0%	50	0%	32	178%
Mobile home and all other types of units	1,729	8%	1,343	4%	(386)	-22%
<b>Renter-occupied housing units:</b>	7,710	37%	12,585	41%	4,875	63%
1, detached or attached	3,379	16%	6,039	20%	2,660	79%
2 to 9 units	2,464	12%	3,946	13%	1,482	60%
10 or more units	1,541	7%	2,386	8%	845	55%
Mobile home and all	326	2%	214	1%	(112)	-34%

other types of units						
<b>Source:</b> 2000 Census and 2007 American Community Survey (ACS) data for Bend from American Factfinder - <a href="http://factfinder.census.gov/home/saff/main.html?_lang=en">http://factfinder.census.gov/home/saff/main.html?_lang=en</a> .						

- ❖ The proportion of single family detached and attached units that were owner occupied decreased over the last seven years. Conversely, the proportion of these types of dwellings that were renter-occupied increased over this same period.
- ❖ While the numbers of owner occupied units that were multi-family attached (2 to 9, 10 or more) increased significantly on a percentage basis, they still represented a very small portion of the supply of owner occupied housing.
- ❖ The proportion both owner and renter occupied units that were mobile or manufactured homes, and other types of housing, decreased over this period.

### *Local Demographic and Economic Trends*

The forgoing sections on local trends examined the characteristics of Bend's population and the changes in these characteristics will influence the demand for housing. This section draws from the city's 2008 General Plan Housing Chapter and 2008 Economic Opportunities Analysis to examine local demographic and economic trends that will influence both the supply of and demand for housing<sup>30</sup>.

- ❖ Bend's population grew rapidly from 2000 to 2007, increasing by 41% and growing at an annualized rate of 5% per year.
- ❖ By 2007, Bend's population represented 48% of the population in Deschutes County.
- ❖ Most of the population growth in the county occurred through positive net migration; the number of people moving in exceeded the number of people moving out. Between 2000 and 2007, net migration represented 89% of the county's growth in population.
- ❖ Bend's population is forecasted to grow to 115,063 people by 2028; this would represent 45% of the county's population by 2028. According to the 2008 EOA, the county's population and that of the Bend urban area are both expected to grow, and at a higher rate than the rest of the state. Most of this growth will occur due to in-migration exceeding out-migration (more people moving in than moving out). The children and grandchildren of the baby-boomer generation will make up the largest percentage of the population and workforce.
- ❖ Bend has higher percentages of college educated workers compared to Deschutes County and the state. This is expected to generate more higher-paying jobs, increase average incomes, and be more responsive to changes in economic trends.

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<sup>30</sup> See Section 3: Review of National, State, Regional, and Local Trends at pages 12 through 59 of the 2008 EOA. See 2008 General Plan, Chapter 5, Housing and Residential Lands, Rec. 1280

- ❖ The recent job growth in Bend and Deschutes County has not come at the expense of other jurisdictions. The increase in the area's labor force is expected to keep pace with population growth. The in-migration of younger individuals combined with the baby boomer generation of workers will create a large potential labor force in the peak of its work and income producing years.
- ❖ Recent unemployment rates in Deschutes County tend to be higher than the U.S., and similar to the State of Oregon, suggesting Bend and Deschutes County unemployment rates may track with national and state trends in the future, remaining above those rates.
- ❖ Unemployment rates in Deschutes County show more pronounced affects from changes in seasonal employment than in the U.S. and Oregon.
- ❖ Structural unemployment does not appear to have been an issue in Deschutes County and Bend, suggesting no major disconnect between the capabilities of resident workers and economic changes and growth over the past decades.
- ❖ Bend's incomes for households were consistent with those of the county, state, and nation. However, Bend had 10% more households with incomes of \$50,000 to \$74,999.
- ❖ The construction industry makes up a significant portion of the county's jobs and payroll, and downturns in the broader housing industry will have a negative affect local construction jobs.
- ❖ In the midst of the housing and construction slowdown, Deschutes County's diversified economy has continued to add jobs, albeit at a slower rate.
- ❖ Continued diversification of the local economy will tend to create a more stable local economy as individual industries experience rapid gains or losses.
- ❖ The industrial sector in Bend is much more diverse than in the past. The predominant pattern of smaller firms needing smaller sites and/or flexible building spaces will continue during the planning period. The continued erosion of jobs in lumber and wood products will be replaced by other jobs in durable and non-durable manufacturing. High technology manufacturing and research and development firms create a new trend for industrial space that function and look more like office developments. The growth in retail and service jobs will be driven by several factors: population increase, demographic mix, and tourism. Competitive advantages in the region, and particularly Bend, will continue to attract entrepreneurs from outside the area.

- ❖ Maintaining an adequate supply of land available and zoned appropriately to provide opportunities for a range of housing types is needed in Bend in the face of rapid recent and expected continuing population growth. Bend's population increased by 154% between 1990 and 2000 and by another 50% between 2000 and 2005. "The Regional Economist for the Worksource Oregon Employment Department stated that Central Oregon has the highest net migration in the state (29 new residents for every 1,000 in population in 2004)." The inadequate supply of land led to a lack of multi-family units, as high land costs influenced development of luxury townhomes rather than more affordable apartments or condominiums.<sup>31</sup> Note also that some of the increase in housing units between 1990 and 2000 was due to the annexation of the unincorporated areas of the Bend UGB that took effect on July 1, 1999. This annexation brought 5,286 housing units, many of which were manufactured homes, into the city. These units were then included in the total number of housing units included in Bend's Census for 2000.
- ❖ The rapid increase in population resulted in a growth in demand for workforce housing that outpaced the production of workforce housing units. Between 2000 and 2005, job growth created a demand for 9,057 units of workforce housing while only 8,230 units were produced.<sup>32</sup>
- ❖ The housing and land markets appreciated significantly at the beginning of the decade, driving the cost of housing up significantly and leaving relatively few market opportunities for low-cost owner-occupied housing. Land prices reportedly increased three to four-fold during the past ten years and the median home price increased by 54% between 2001 and 2005. Many housing developers, advocates, other community stakeholders city officials commented on the difficulty of finding land with a purchase price that will allow for the construction of affordable housing.
- ❖ Affordable housing for service workers, both for individuals and families, is in short supply in Bend. The combination of rapid increases in home prices combined with growth in the (low wage) service sector make it difficult for much of Bend's workforce to live in the city. The Worksource Oregon Employment Department forecasts that between 2004 and 2014, Central Oregon jobs will grow by approximately 24.4% or 17,520 new jobs.<sup>33</sup> There are limited affordable housing grants, down payment assistance programs or other support systems to aid residents in attaining affordable housing. Further complicating the issue is the seasonality of many jobs in the region, such as those in the construction, hospitality and leisure industries. In Deschutes County, approximately 5,000 more jobs exist in the summer than in the winter, making it difficult for the region to meet peak housing needs.

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<sup>31</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

<sup>32</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

<sup>33</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

- ❖ The lack of affordable housing for the workforce had a negative effect on employers in Central Oregon. In a survey of 118 private and public sector employers, more than half felt that insufficient availability of affordable housing for the workforce was the most critical problem or one of the more serious problems in the region. These problems affect many aspects of a business, including service levels, hours of operation, and customer satisfaction.<sup>34</sup>
- ❖ The lack of housing affordable to low and moderate income households led to many area workers purchasing homes and living in other communities, such as Redmond and Prineville. A survey of employers suggests that 23.3% of Bend's workforce lives outside the City of Bend.<sup>35</sup> Census data show from 1990 to 2000 shows an increasing number of workers commuting to Deschutes County from other counties.<sup>36</sup> Census data on travel times to work further suggest significant numbers of commuters in other Central Oregon cities were commuting to Bend for work.<sup>37</sup> This trend exacerbated traffic congestion and other issues caused by rapid growth in the community.
- ❖ Increasing land prices also influenced the conversion of manufactured home parks as land owners sold their land for a large profit or developed the land for a higher return. No new manufactured home parks were developed in Bend since 1998 and the supply of manufactured homes in manufactured home parks decreased from 2,159 units in 2000 to 1,403 units in 2005.<sup>38</sup> High land values also stimulated the conversion of rental apartments to condominiums. These processes result in a lack of affordable rental housing at a time when there is a limited amount of rental development.
- ❖ Special needs populations faced gaps in service delivery, including transitional housing for low-income families, supportive transitional housing for people with substance abuse problems and mental illnesses and some emergency housing. These gaps may be exacerbated by the State of Oregon's budget shortfall.

### *Summary of Bend's population characteristics, and local demographic and economic trends*

- ❖ Bend's population grew much faster than the nation's or the state's between 2000 and 2007.
- ❖ This growth included an increase in the number of smaller households, and households with a householder between 45 and 64 years of age.
- ❖ This growth in population also includes an aging of the population; between 2000 and 2007, the number of persons in Bend between 55 and 59 years of age increase by 141%. The number of persons 60 to 64 years of age increased by 94%.

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<sup>34</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

<sup>35</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

<sup>36</sup> Commuting Patterns Within Central and South Central Oregon (2003). Steve Williams, Oregon Employment Department. [www.qualityinfo.org/olmisj](http://www.qualityinfo.org/olmisj).

<sup>37</sup> City of Bend Housing Needs Analysis and Residential Lands Study. June 30, 2005.

<sup>38</sup> See City of Bend Buildable Lands Inventory (2005).

- ❖ Nonfamily households grew at a greater rate (59% to 39%) than family households.
- ❖ More households were renting their housing in 2007 than in 2000, but owner occupied households still represented 59% of households in 2007.
- ❖ With the downturn in the housing market, the number of vacant housing units increased from 6% in 2000 to 10% in 2007.
- ❖ The distribution of housing units also changed with single family detached units representing a greater proportion of units in 2007; the proportion of multi-family units decreased from 29% to 27% of the supply of housing units by 2007.
- ❖ By 2007, there were more households with householders between the ages of 45 and 64 that also had household incomes greater than \$50,000 a year.
- ❖ Land prices had increased rapidly between 2001 and 2005, and during a time when growth in employment occurred in industries with lower wages and income.
- ❖ These same industries are expected to see more growth between 2004 and 2014, and requiring housing affordable for the wages and income that could be earned.
- ❖ Much of the apparently serious affordable housing situation observed during 2005-06 was the result of unique economic conditions that were beginning to moderate during 2006-08, and are unlikely to be repeated during the planning period.<sup>39</sup>
- ❖ Even under the unique economic conditions of 2000-2005, 91% of needed “workforce housing units” were produced in Bend.<sup>40</sup>
- ❖ In response to dwindling numbers of affordable mobile home units, City Council has adopted a program to promote re-zoning of closed manufactured home parks to higher-density zoning to provide an incentive for park owners to replace those units with affordable rental housing.
- ❖ By 2007, 41% of all single-family units were occupied as rental units. It appears that a significant share of demand for rental housing is being met by these single-family units. This suggests a continuing need for an adequate supply of land for single-family housing to meet a significant portion of the demand for rental housing.
- ❖ The proportion of single-family detached and single-family attached units that were owner-occupied decreased (55% to 53%) between 2000 and 2007, and the proportion of these dwellings that were renter-occupied increased (16% to 20%). This appears to be a trend toward a higher proportion of rental housing needs being met by SF units rather than by MF units.
- ❖ The overall proportion of single-family units increased slightly between 2000 and 2007, from 67% to 70%. This ratio has held relatively constant since 1990, changing only from 66% in 1990 to 67% in 2000.

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<sup>39</sup> <sup>39</sup> See updated Buildable Lands Inventory, memo to UGB Remand Task Force, August 31, 2011, p. 12.

<sup>40</sup> Central Oregon Workforce Housing Needs Assessment (2006). Rees Consulting, Inc.

- ❖ In 1990 the ratio of owner-occupied units to renter-occupied units was 54:46. By 2000 this ratio had changed in favor of owner-occupied units to 63:37. However, this trend was reversed from 2000-07. During that period the ratio went from 63:37 to 59:41 (Table 13). Also during that period, the number of owner-occupied units increased by only 36% while the number renter-occupied units increased by 61%. This suggests a trend toward increasing opportunities in the single-family detached rental market.
- ❖ Between 2000-2007 households with householders 45-64 years old increased faster than any other age group (56%). This same age group also had the highest proportion of households earning \$50,000 or greater (63%). This suggests that the fastest growing segment of the population has more purchasing power, and therefore has options in selecting housing type and tenure.

#### STEP 4. DETERMINE THE TYPES OF HOUSING THAT ARE LIKELY TO BE AFFORDABLE TO THE PROJECTED POPULATION BASED ON HOUSEHOLD INCOME.

a. Identify the types of housing that are likely to be affordable to the projected population based on household income.

LCDC's November 2010 order identifies the types of housing the City must consider through this housing needs analysis. The Commission's disposition of this matter was based, in part, on ORS 197.303(3)(a), which identifies "needed housing:"

- (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- (b) Government assisted housing;
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.

The Commission's rules further define the three types of housing that must be considered in the housing needs analysis. The following table lists these three types of housing and how they are classified under the Bend Development Code.

Table 4-1: Comparison of OAR 660, Division 8 Definitions with Types of Housing Allowed under the Bend Development Code.	
OAR 660-008-005, Definitions	Bend Development Code (See BDC Chapter 1.2)
"Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot. OAR 660-008-0005(1).	Dwelling, single family attached

<i>“Detached Single Family Housing” means a housing unit that is free standing and separate from other housing units. OAR 660-008-0005(3).</i>	Courtyard housing Dwelling, single family detached Manufactured home on individual lot
<i>“Multiple Family Housing” means attached housing where each dwelling unit is not located on a separate lot. OAR 660-008-0005(5).</i>	Condominium Two and three family housing (duplex and triplex) Multi-family housing (more than 3 units) Manufactured homes in parks <sup>41</sup>

The following table displays the changes in the mix of housing in Bend between 1998 and 2008. It includes the mix of housing as of 1998, after the adoption of the current General Plan, between 1998 and 2008, and in 2008. The presentation of housing mix describes three types of housing, consistent with the Commission’s Order and OAR 660-008-005<sup>42</sup>.

<b>Table 4-2: Presentation of Housing Mix</b>						
<b>Type of Housing</b>	<b>Pre-1998</b>		<b>1998-2008</b>		<b>2008</b>	
	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>
SFD	13,439	70%	11,528	73%	24,967	71%
SFA	48	0%	610	4%	658	2%
MFA	5,708	30%	3,596	23%	9,304	27%
Total	19,195	100%	15,734	100%	34,929	100%
<b>Notes:</b> SFD – Single family detached: includes detached single family dwellings and manufactured homes on individual lots SFA – Single family attached: includes attached single family housing such as row houses MFA – Multi-family attached: includes Condominiums, multi-family housing, duplexes, and manufactured homes in parks <b>Source:</b> City of Bend building and land use permit records						

b. Organize data gathered on household incomes by income range categories (e.g., high, medium, and low. Calculate the percent of total households that fall into each category.)

Table 4-3 below summarizes data from the 1990 Census and the 2000 Census for household income in Bend. This table shows the distribution of households by household income, and the change in this distribution between 1990 and 2000. Please note that by 2000, 62% of Bend’s households had household incomes less than \$50,000. A total of 31% of households had incomes between \$50,000 and \$99,999. The remaining 9% of households had incomes of \$100,000 or more. The median household income in 2000 was \$40,857.

<sup>41</sup> This form of housing is included under “Multiple-family housing” because the density of parks is similar to that of other forms of multi-family housing.

<sup>42</sup> See OAR 660-008-005, Definitions, online at [http://arcweb.sos.state.or.us/pages/rules/oars\\_600/oar\\_660/660\\_008.html](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_008.html).



<b>Table 4-3: Change in Bend Household Incomes 1990 to 2000</b>			
Household Income	% of Total Households in 1990	% of Total Households in 2000	% Change between 1990 and 2000
Less than \$10,000	15%	7%	12%
\$10,000 to \$14,999	11%	7%	50%
\$15,000 to \$19,999	10%	7%	54%
\$20,000 to \$24,999	11%	7%	41%
\$25,000 to \$29,999	11%	8%	71%
\$30,000 to \$34,999	9%	8%	118%
\$35,000 to \$39,999	7%	6%	114%
\$40,000 to \$44,999	6%	6%	144%
\$45,000 to \$49,999	3%	6%	339%
\$50,000 to \$59,999	6%	10%	289%
\$60,000 to \$74,999	4%	11%	494%
\$75,000 to \$99,999	3%	10%	853%
\$100,000 to \$124,999	1%	4%	1,009%
\$125,000 to \$149,999	0%	2%	869%
\$150,000 or more	1%	3%	1,107%
Median Household Income	\$35,787	\$40,857	58%
<b>Source:</b> US Census Bureau STF3 (1990) and SF3 (2000) available through American Factfinder <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .			

Table 4-4 shows the distribution of households by income based on the 2007 ACS data for Bend. In 2007, the median household income had increased to \$56,053, or about 37%, since the 2000 Census. At that time 42% of Bend's households earned less than \$50,000. An estimated 37% of Bend's households had incomes between \$50,000 and \$99,999, and the remaining 21% had incomes of more than \$100,000.

<b>Table 4-4: Number of Households by Household Income in 2007</b>		
Income Category	Number	Percent
Total:	30,617	100%
Less than \$10,000	477	2%
\$10,000 to \$14,999	863	3%
\$15,000 to \$19,999	1,631	5%
\$20,000 to \$24,999	2,399	8%
\$25,000 to \$29,999	1,984	6%
\$30,000 to \$34,999	1,080	4%
\$35,000 to \$39,999	1,002	3%
\$40,000 to \$44,999	1,733	6%
\$45,000 to \$49,999	1,648	5%
\$50,000 to \$59,999	3,061	10%
\$60,000 to \$74,999	4,161	14%
\$75,000 to \$99,999	4,208	14%

\$100,000 to \$124,999	2,695	9%
\$125,000 to \$149,999	1,224	4%
\$150,000 to \$199,999	1,263	4%
\$200,000 or more	1,188	4%
<b>Source:</b> American Community Survey data for Bend (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .		

The following tables display the data in Table 4-4 in one of three categories: lower, middle, and higher. The purpose for this organization of the data is to better estimate the types of housing that will be affordable to each group based on household income. The households in the “lower” category are those that have household incomes of less than \$50,000; these households represent 42% of all households in 2007. The households in the “middle” category are those that have household incomes between \$50,000 and \$99,999; these households represent 37% of all households in 2007. The households in the “higher” category have household incomes of \$100,000 or more; these households represent 21% of all household in 2007.

<b>Table 4-5: “Lower” household incomes – number of households by income category - 2007</b>		
Categories	Number of Households	Distribution among all households
Less than \$10,000	477	1.56%
\$10,000 to \$14,999	863	2.82%
\$15,000 to \$19,999	1,631	5.33%
\$20,000 to \$24,999	2,399	7.84%
\$25,000 to \$29,999	1,984	6.48%
\$30,000 to \$34,999	1,080	3.53%
\$35,000 to \$39,999	1,002	3.27%
\$40,000 to \$44,999	1,733	5.66%
\$45,000 to \$49,999	1,648	5.38%
<b>Subtotals</b>	<b>12,817</b>	<b>42%</b>

<b>Table 4-6: “Middle” household incomes – number of households by income category - 2007</b>		
Categories	Number of Households	Distribution among all households
\$50,000 to \$59,999	3,061	10.00%
\$60,000 to \$74,999	4,161	13.59%
\$75,000 to \$99,999	4,208	13.74%
<b>Subtotals</b>	<b>11,430</b>	<b>37%</b>

<b>Table 4-7: “Higher” household incomes – number of households by income category - 2007</b>		
Categories	Number of Households	Distribution among all households
\$100,000 to \$124,999	2,695	8.80%
\$125,000 to \$149,999	1,224	4.00%
\$150,000 to \$199,999	1,263	4.13%
\$200,000 or more	1,188	3.88%
<b>Subtotals</b>	<b>6,370</b>	<b>21%</b>

The organization of households by income into of these three groups is based in part on the distribution of the data. The ACS reports the number of households within a certain income range (e.g. \$50,000 to \$59,999). The data does not include a distribution by the actual value – household income – for organizing households into categories.

c. Considering local housing prices for the same timeframe as the income data, identify the structure types financially attainable by each income.<sup>43</sup>

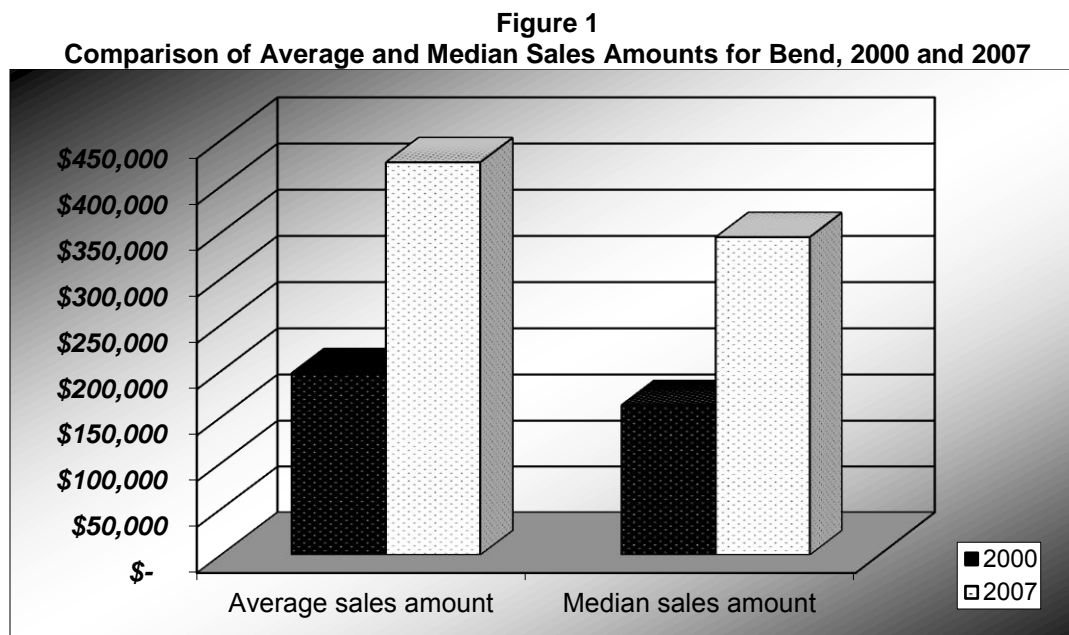
The following data describes local housing prices as of 2007 and early 2008. The data sources include the American Community Survey, which reported limited data on this topic in 2007<sup>44</sup>. The ACS reports values of owner-occupied units, but not by type of unit (e.g. single family detached).

<sup>43</sup> Please note that the 1997 guidebook directs the reader to consider structure types and tenure. For the purpose of this analysis, LCDC concluded that the city is not required to consider tenure in this HNA because the City does not regulate housing by tenure. See Order pages 26-33.

<sup>44</sup> The 2007 ACS data is available online at [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

<b>Table 4-8: Value of Owner-Occupied Units</b>				
	Number of Units		Distribution Owner-Occupied Units	Distribution All Housing Units
Total:	18,032		100%	53%
Less than \$50,000	658		4%	2%
\$50,000 to \$99,999	306		2%	1%
\$100,000 to \$149,999	186		1%	1%
\$150,000 to \$199,999	815		5%	2%
\$200,000 to \$299,999	3,520		20%	10%
\$300,000 to \$499,999	7,375		41%	22%
\$500,000 to \$999,999	4,232		23%	12%
\$1,000,000 or more	940		5%	3%
<b>Source:</b> American Community Survey data for Bend (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .				

Table 4-8 shows that by 2007, 41% of the owner occupied units in Bend were valued between \$300,000 and \$499,999. An estimated 28% of the owner occupied units were \$500,000 or more in value. Approximately 32% of the owner occupied housing units in 2007 were valued at \$299,999 or less. Figure 1 below shows the changes in average and median sale values for housing in 2000 and in 2007<sup>45</sup>.



**Note:** Data presented end of calendar years 2000 and 2007

**Source:** Central Oregon Association of Realtors - <http://www.centraloregonrealtors.com/index.cfm>

<sup>45</sup> See Central Oregon Association of Realtors for quarterly and yearly sales data at <http://www.centraloregonrealtors.com/index.php?action=resources.stats>.

The price of housing has continued to rise between 2000 and 2007. In 2000, the median sales amount for residential property in Bend was \$163,000. By end of 2007, the median sales amount was \$345,000, an increase of \$182,000, or 112%, over this seven year period.

<b>Table 4-9: Change in Housing Prices in Bend, 2<sup>nd</sup> qtr 2004 through 2<sup>nd</sup> qtr 2008</b>						
<b>Median Sales Amounts for...</b>	<b>Through Second Quarter of...</b>					<b>% Change '07-'08</b>
	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	
Single family	\$217,500	\$258,000	\$343,950	\$349,250	\$307,000	- 12.10%
Condo/Townhome	\$197,500	\$239,050	\$316,750	\$315,000	\$322,500	+ 2.38%
Manufactured Homes	\$125,000	\$138,500	\$198,450	\$185,000	\$172,500	- 6.76%

**Source:** Central Oregon Association of Realtors - <http://www.centraloregonrealtors.com/index.cfm>

The data reflect a shift in the housing market between 2006 and 2008. The median prices for single family homes increased between the 2<sup>nd</sup> quarter of 2004 and the 2<sup>nd</sup> quarter of 2007 by \$131,750 or 61%. Prices for new single family homes showed a decrease of 12% between 2<sup>nd</sup> quarter 2007 and 2<sup>nd</sup> quarter 2008. Table 4-10 shows the change in all types of housing units available for rent by their monthly cash rent between 2000 and 2007.

<b>Table 4-10: Contract Rent (number of housing units rented for cash)</b>				
	<b>2000 Census</b>		<b>2007 ACS</b>	
	<b>Number</b>	<b>Distribution</b>	<b>Number</b>	<b>Distribution</b>
Total:	7698	100%	12,585	100%
With cash rent:	7552	98%	12,507	99%
Less than \$200	245	3%	203	2%
\$200 to \$299	199	3%	83	1%
\$300 to \$499	2146	28%	897	7%
\$500 to \$749	3031	39%	5,098	41%
\$750 to \$999	1655	21%	3,845	31%
\$1,000 or more	276	4%	2,381	19%
No cash rent	146	2%	78	1%
<b>Note:</b> The number of units included in this table includes all types of units available for rent in Bend in 2000 and 2007. <b>Source:</b> American Community Survey data for Bend (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .				

The units for rent for \$499 or less decreased between 2000 and 2007. By 2007, these units represented 10% of the units for which cash rent was sought; in 2000, the stock of rental units available for these rents represented 34% of the units rented. Conversely, the proportion of units available for rent for \$500 or more increased between 2000 and 2007. By 2007, this proportion of rental units represented 92% of the units rented. The data does not show a clear link between household income and the type of housing being purchased or rented (e.g. households with income x living in housing type y). Based on the forgoing analysis of household and economic trends, the City concludes that the following types of housing will be those types that are needed and financially attainable by each income group listed above in Tables 4-6 through 4-8.

For “Lower” income category households (\$49,999 or less in household income):

- More likely to rent.
- More likely to require some assistance to make monthly housing payments for those households with lower incomes in this category.
- This assistance may include vouchers to make monthly rent payments, and possibly subsidized housing.
- More likely to rent multi-family attached housing, including mobile homes in parks.

For “Middle” income category households (\$50,000 to \$99,999):

- More likely to rent depending on incomes and household sizes.
- More likely to buy at higher end of this range.
- More likely to rent single family detached, multi-family attached housing.
- More likely to buy single family detached housing, particularly single family dwellings on their own lot.

For “higher” income category households (\$100,000 or more):

- Have more choices in housing market because of more purchasing power.
- More likely to buy single family detached housing, particularly single family dwellings on their own lots.
- May buy single family attached housing or multi-family attached housing if households are smaller.

## **S T E P 5 . E S T I M A T E T H E N U M B E R O F A D D I T I O N A L N E E D E D U N I T S B Y S T R U C T U R E T Y P E .**

a. Describe the relationship between household size and structure type and tenure. Estimate likely shifts in the number of households by household size in 20 years and the implications for housing choice.

The sizes of households and families remained stable nationally and in Oregon between 2000 and 2007. For Bend, household sizes remained fairly stable between 1980 and 2000. In 2000, the Census reported a household size of 2.42 persons per household in Bend. The 2007 ACS estimated household size at 2.34, a decrease of about 0.08 persons per household or 4% since the 2000 Census. Family size has also decreased in Bend during this period from 2.92 persons per family to 2.79 persons per family, a decrease of 5%. The 2007 ACS also estimates that the average household sizes of owner-occupied housing at 2.31 persons per household, and 2.4 persons per household for renter-occupied housing.

<b>Table 5-1: Persons Per Household in Bend in 1990 and 2000</b>					
Type of Household	1990	2000	Change	% Change	% of Total
1 person	2,515	5,516	3,001	119%	26%
2 persons	3,031	7,736	4,705	155%	37%
3 persons	1,353	3,511	2,158	159%	17%
4 persons	1,087	2,722	1,635	150%	13%
5 persons	377	1,065	688	182%	5%
6 persons	98	412	314	320%	2%
7 or more persons	75	88	13	17%	0%
Total households	8,536	21,050	12,514	147%	100%
<b>Source:</b> US Census Bureau STF3 (1990) and SF3 (2000)					

As shown in Table 5-2 below, as of 2007, 1-person households still represented roughly one-quarter of all households in Bend. The proportion of 2-person households increased from 37% to 40% of all households. The proportions of 3- and 4-person households did not change significantly, each representing about 15% of Bend's households in 2007.

<b>Table 5-2: Persons Per Household in Bend 2007</b>		
Household Size	Number of Households	Distribution
1-person household	7,512	25%
2-person household	12,233	40%
3-person household	4,606	15%
4-person household	4,513	15%
5-person household	1,257	4%
6-person household	496	2%
<b>Source:</b> American Community Survey data for Bend (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .		

The following table describes household size by tenure; the proportions of households by size that were purchasing or renting housing in 2007. The tenure split shown in Table 5-3 is noteworthy because it indicates that while 59% of all units were owner-occupied, the remaining 41% were renter-occupied. This contrasts with the housing type split for single-family dwellings and for multi-family dwellings as of 2007, shown in Table 4-2. That table indicates that the ratio of single-family dwellings to all other types of housing was 70:30. This confirms that a significant share of Bend's rental housing demand was being met through single-family detached units by 2007.

<b>Table 5-3: Households by tenure and household size (2007)</b>			
	Number of Households	% Distribution of all Households	% Distribution by Tenure Category
<b>Total:</b>	<b>30,617</b>	<b>100%</b>	
<b>Owner occupied:</b>	<b>18,032</b>	<b>59%</b>	<b>100%</b>
1-person household	3,968	13%	22%
2-person household	8,801	29%	49%

3-person household	1,600	5%	9%
4-person household	2,772	9%	15%
5-person household	777	3%	4%
6-person household	114	0%	1%

**Table 5-4: Households by tenure and household size (2007)**

	Number of Households	% Distribution of all Households	% Distribution by Tenure Category
<b>Renter occupied:</b>	<b>12,585</b>	<b>41%</b>	<b>100%</b>
1-person household	3,544	12%	28%
2-person household	3,432	11%	27%
3-person household	3,006	10%	24%
4-person household	1,741	6%	14%
5-person household	480	2%	4%
6-person household	382	1%	3%
<b>Source:</b> American Community Survey (2007) available online at <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .			

By 2007, almost half (49%) of owner-occupied households were 2 person households. Approximately 71% of all owner occupied households were 1 to 2 persons in size. The remaining 29% of owner occupied households were 3 or more persons in size. An estimated 79% of all renter occupied households were between 1 and 3 persons in size in 2007, with the remaining 21 percent between 3 and 6 persons in size. The following table shows the proportions of Bend households by size in 1990, 2000, and 2007. Please note, that during this period, 1 and 2 person households have remained the majority of all households.

<b>Table 5-5: Changes in Distribution of Households by Size</b>			
	<b>1990</b>	<b>2000</b>	<b>2007</b>
1-person households	29%	26%	25%
2-person households	36%	37%	40%
3-4 person households	29%	30%	30%
5 or more person households	6%	7%	6%
	100%	100%	100%
<b>Source:</b> 1990 and 2000 Census data, 2007 American Community Survey data for Bend through American Factfinder – <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> . Percentages may not add to 100% due to rounding.			

**1-person households** have represented between 25% and 29% of Bend's households from 1990-2007. The number of these households increased between 2000 and 2007, and their proportion of all households has remained around one-quarter of all households.



**2 person households** have represented between 36% and 40% of all households, with the proportion of these households increasing between 2000 and 2007.

**3- and 4-person households** combined have represented between 30% and 40% of all households between 1990 and 2007. The proportion of all households that are 3 or 4 persons in size has decreased from 39% in 1990 to 30% in 2007.

**5 or more person households** have consistently represented between 6% and 7% of all households between 1990 and 2007.

Over the next 20 years, households with 1 to 2 persons per household are expected to represent the largest category of households by size. To consider the types of housing households are choosing, by their size, we can turn to the ACS data on family and nonfamily households. The data on household size by units in structure (e.g. single family detached), is limited. The data available includes family and nonfamily households, by their size, and some data on their choice of housing in 2007. In 2007, the ACS estimated a total of 30,617 households in Bend, of which 18,666 households were family households. Table 5-5 displays the data on the distribution of these households by size, and then by their chosen form of housing.

**Table 5-6: Family Households in Bend (2007)**

Family Households By Size			Family Households By Housing Type		
Size	Number	Distribution	Type	Number	Distribution
2-person	9,118	49%	1-unit structures	15,297	82%
3-person	3,540	19%	2-or-more-unit structures	2186	12%
4-person	4,255	23%	Mobile homes and all other types	1,183	6%
5-person	1,257	7%			
6+-person	496	3%			

**Source:** 2007 American Community Survey data for Bend through American Factfinder – [www.factfinder2.census.gov](http://www.factfinder2.census.gov)

The ACS shows that just less than half of family households were 2-person households. Approximately 42% of family households were 3- or 4-person households. Compare this data to what types of housing they inhabited; 82% of family households were living in 1-unit structures, while 12% were living in structures with two or more units<sup>46</sup>. This is surprising given the large proportion of family households that are 2-person households. This suggests that family households are choosing single-family detached units to purchase or rent. In 2007, the ACS estimated a total of 11,951 nonfamily households in Bend. The following table displays the same data for nonfamily households in 2007.

<sup>46</sup> See Table 4-2 on mix of housing types in Bend. Most single family units in Bend were single family detached units.

**Table 5-7: Nonfamily Households in Bend (2007)**

Nonfamily Households By Size			Nonfamily Households By Housing Type		
Size	Number	Distribution	Type	Number	Distribution
1-person	7,512	63%	1-unit structures	7,021	59%
2-person	3,115	26%	2-or-more-unit structures	4,556	38%
3-person	1,066	9%	Mobile homes and all other types	374	3%
4-person	258	2%			

**Source:** 2007 American Community Survey data for Bend through American Factfinder – [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

The largest category of nonfamily households was 1-person households. Households composed of 2-persons represented a quarter of all non-family households. Like family households, a majority of non-family households were living in 1-unit structures (e.g. single family dwellings), with a smaller proportion living in 2 or more unit structures. Although the shares are somewhat different for family households and non-family households, Table 5-7 also suggests that a large majority of non-family households (63%) are occupying single-family detached units, whether owned or rented. For both family and non-family households, a small proportion of households were living in mobile homes and all other types of housing.

b. Age of household head: Based on the data gathered under 3a, describe the relationship between age of household head and structure type and tenure. Estimate likely shifts in the number of households by age of household head in 20 years and the implications for housing choice.

Table 5-8 shows the distribution of households in Bend in 2007 by the age of their householder.

Table 5-8: Distribution of Households by Age of Householder (2007)	
Householder 15 to 24 years	7%
Householder 25 to 34 years	22%
Householder 35 to 44 years	19%
Householder 45 to 54 years	18%
Householder 55 to 59 years	10%
Householder 60 to 64 years	6%
Householder 65 to 74 years	8%
Householder 75 to 84 years	7%
Householder 85 years and over	2%

**Source:** 2007 American Community Survey data for Bend – [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

Table 5-8 shows that most households in Bend – approximately 70% - were headed by a householder between 25 and 59 years of age. Approximately 28% of all householders were 45 to 59 years of age. Table 5-9 shows the distribution of which households – based on age of householder – were purchasing or renting housing in 2007.

<b>Table 5-9: Distribution of Households by Age of Householder and Tenure (2007)</b>		
Age of Householder	Owner-occupied Households	Renter-occupied Households
Householder 15 to 24 years	1%	16%
Householder 25 to 34 years	14%	34%
Householder 35 to 44 years	19%	21%
Householder 45 to 54 years	21%	13%
Householder 55 to 59 years	13%	7%
Householder 60 to 64 years	9%	2%
Householder 65 to 74 years	12%	3%
Householder 75 to 84 years	11%	2%
Householder 85 years +	1%	3%
<b>Source:</b> 2007 American Community Survey data for Bend through American Factfinder – <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .		

By 2007, owner-occupied households were almost evenly split between householders 54 and younger and 55 and older. At this time, 55% of the owner-occupied households were headed by a householder 54 years of age or less. The remaining 46% of households were headed by householders 55 years of age and older. For renter-occupied households, most households were headed by householders less than 34 years of age. An estimated 50% of householders renting housing were 34 years of age or less; the remaining 50% were 35 years of age and older. The following table expands on this analysis to the choices households made to purchase or rent housing by the type of housing.

<b>Table 5-10: Distribution of Households by Tenure and Housing Type</b>		
Type	Owner occupied Households	Renter occupied Households
1, detached or attached	90%	48%
2 to 9 units	2%	31%
10 or more units	1%	19%
Mobile home and all other types	7%	2%
<b>Source:</b> 2007 American Community Survey data from American Factfinder – <a href="http://www.factfinder2.census.gov">www.factfinder2.census.gov</a> .		

For both owner occupied households and renter occupied households, the form of housing most often purchased or rented was a single family detached or attached unit. Table 4-2 shows most of the single family units were detached units. Very few owner occupied households were living in structures with 2 or more units in 2007, and only seven (7) percent of owner occupied households were living in manufactured homes. For renter occupied households, 48% of all households were living in 1-unit structures, detached or attached. The second largest group was renter occupied households residing in structures with 2 to 9 units. This suggests that when considering meeting future housing needs, single family detached and attached units were chosen by either owner or renter occupied households before other types of housing, including those with 2 to 9 units in a structure. For both categories of household, structures with 10 or more units were chosen less than these other types. This trend also suggests that single family detached housing was rented more often because of a lack of supply of other forms of rental housing (e.g. duplexes, apartments).

c. Based on the analysis in Steps 5a and 5b, and on knowledge about national, state, and local housing condition and trends and analysis in Step 4, describe how the characteristics of the projected households will likely affect housing choice. Consider trends in housing and land prices. Document conclusions drawn from the analysis, including a description of how and why local conditions and/or trends are expected to differ from the national and state trends.

Smaller households with lower household incomes, including family households, will have limited options for housing. These households will be more likely to rent detached single family dwellings and multi-family attached dwellings. Households toward the lower end of the income scale may still require some kind of assistance to meet monthly housing costs (e.g. rent, energy), regardless of land supply or the mix of housing provided by the market. Younger households, those with a household head less than 34 years of age, will more likely rent multi-family attached.

Two-person households are increasing in number, and becoming a larger proportion of all households. The data shows that these households are purchasing or renting single family detached housing more frequently than other forms of housing. Three and four person households represent 30% of Bend's households; more of these households are renting rather than buying housing. Large majorities of both family and non-family households in Bend are choosing single family structures – both detached and attached – for housing. In 2007, 82% of family households and 59% of non-family households were living in 1-unit structures (See Tables 5-5 and 5-6).

This discussion of Bend households and their characteristics highlights one of many differences between local conditions and how they differ from national and state trends<sup>47</sup>. As indicated earlier, while household and family sizes increased over the last seven years nationally and statewide, Bend saw decreases. From 2000 to 2007, average household size decreased by 3% and average family size by 4% in Bend. Bend saw greater growth in households headed by householders between the ages of 25 and 44 and householders between the ages of 45 and 64 than the nation and the state. This was also related to greater growth in households in Bend, on a percentage basis, than the nation and the state. Growth in family and nonfamily households occurred at a faster rate in Bend. Finally, while median household and family income grew

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<sup>47</sup> See Tables 2, 3, and 4, September 2, 2011 memorandum to the Remand Task Force on Steps 1-3 of the Housing Needs Analysis.

around 22% nationally and statewide, Bend saw median household income grew by 37% and median family income grow by 35% since 2000.

d. Describe trends in construction by structure type and how future construction trends will likely be affected by changing demographics.

While the City will be forecasting housing needs using three structure types (single family attached, single family detached, and multi-family attached), the following table presents data on units permitted through building permits from 1999 to 2007<sup>48</sup>.

<b>Table 5-11: Types of Housing Permitted in Bend, 1999-2007</b>				
<b>Structure Type</b>	<b>Total Units 1999-2007</b>	<b>Annual Average</b>	<b>Total Distribution 1999-2007</b>	<b>Annual Average Distribution</b>
<b>Single family detached</b>	10,589	1,177	69%	73%
<b>Single family attached</b>	466	52	3%	3%
<b>Two-family dwellings</b>	1,037	115	7%	7%
<b>3 and 4 family dwellings</b>	371	41	2%	3%
<b>5 or more family dwellings</b>	1,588	176	10%	11%
<b>Mobile Homes</b>	425	47	3%	3%
<b>Totals</b>	14,476	1,608	100%	100%
<b>Source:</b> City of Bend building statistics, available on-line through: <a href="http://www.ci.bend.or.us/depts/community_development/building_division_2/building_statistics.html">http://www.ci.bend.or.us/depts/community_development/building_division_2/building_statistics.html</a>				

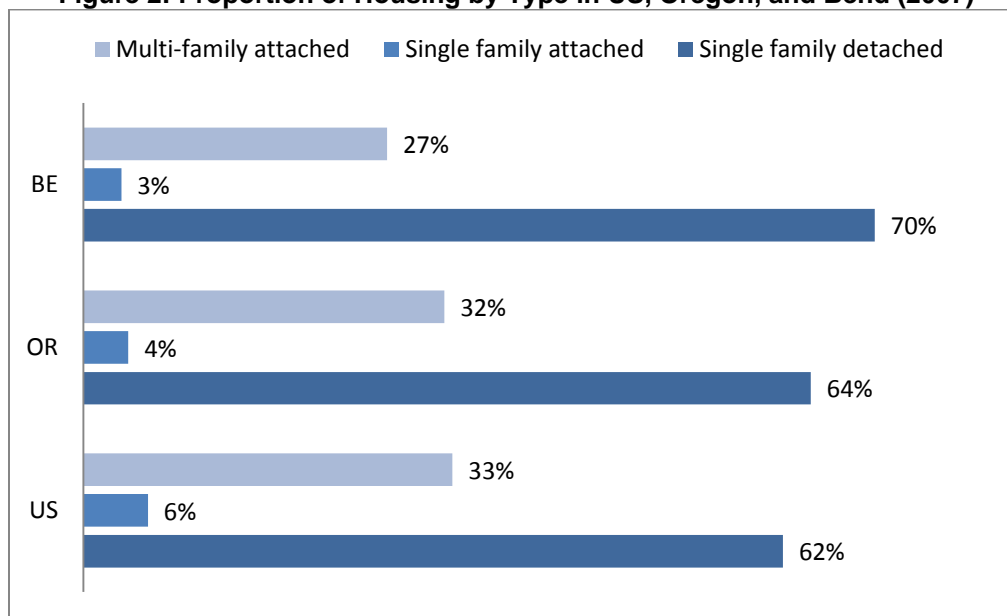
Most of the housing units permitted were single family detached dwellings. The second largest category behind SFD's was multi-family attached housing with five or more units. The third largest group was two-family dwellings, a.k.a. duplexes. Duplexes represented 7% of the units permitted between 1999 and 2007. In 2000, the Census counted 1,723 units, 8% of all housing units that were duplexes, triplexes, and fourplexes. During this time (1999-2007) 1,037 units, or about 7% of all units permitted, were duplexes. Adding triplexes and fourplexes in with duplexes represents 1,408 units, or 10% of all units. This suggests that some of Bend's demand for non-single-family detached types of housing could be met with these types of housing. While the proportions of single family detached, two-family dwellings, and 5 or more family dwellings increased, the proportions of single family attached, 3 and 4 family dwellings, and mobile homes have remained the same or slightly decreased. The 2005 Buildable Lands Inventory also reported that no new manufactured home parks had developed after 1998 and 2005<sup>49</sup>. This trend has also continued, with manufactured homes being placed in existing manufactured home parks and manufactured home subdivisions.

<sup>48</sup> See discussion in Commission's Order at pages 31 through 33.

<sup>49</sup> See 2005 Buildable Lands Inventory at Supp. Rec. 1987; specific discussion at Supp Rec. 2000.

With respect to changing demographics, household size has been decreasing in Bend since 2000. At the same time, the number of households headed by a householder between the age of 45 and 64 increased. Households with 1 or 2 persons are still the largest segment of households in Bend. These demographic trends might suggest potential demand for more attached housing, perhaps more single family attached housing. However, construction trends in Bend have shown that most of the units permitted between 2000 and 2007 have been single family detached. Multi-family attached housing represented 19% of the permitted units. Single family attached units represented three (3) percent of the permitted units. This is one trend where Bend's housing stock is changing in ways different from the nation or the state. The following figure shows the proportion of housing by type comparing the nation, state, and Bend.

**Figure 2: Proportion of Housing by Type in US, Oregon, and Bend (2007)**



**Source:** American Community Survey – [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

By 2007, approximately 70% of the housing in Bend was single family detached housing. This proportion of single family detached housing was higher than the Nation's or the State's. While demographic trends indicate that smaller and older households would suggest greater demand for attached housing, these trends are occurring at the same time single family detached housing has been permitted more often than other types of housing. By 2007, 82% of family households and 59% of nonfamily households were living in one-unit structures. According to the data on mix of housing, the majority of single unit structures in Bend were single family detached housing. This trend suggests that the market will produce single family detached units at a rate greater than other forms of housing.

e. Estimate the number of additional units by structure type needed for new households. Allow for a vacancy rate to provide for housing choice.

The housing unit forecast for Bend is 16,681 new housing units to house 38,512 people between 2008 and 2028. This forecast included a 6.4% vacancy rate<sup>50</sup>. In 2007, the mix of housing in Bend was 71% single family detached, 2% single family attached, and 27% multi-family attached (See Table 4-2). The current distribution of households by income shows 42% of households in Bend have household incomes of less than \$50,000. This data suggests a need for additional housing affordable for these households. In addition, household composition is changing, with more non-family households and greater number of smaller (1 to 2 person) households. This change in demographics would suggest a stronger demand for multi-family attached housing. However, the trend data on recent construction and tenure suggest both owner and renter occupied households, including smaller households, are purchasing or renting single family detached housing. The City has considered both these past and future trends in proposing a mix of housing for the 2008-2028 planning period. This mix of housing is proposed to ensure that an adequate supply of land is available for all forms of needed housing, including multi-family attached housing. In addition, the proposed mix also reflects that a significant proportion of future needed housing will continue to be single family detached.

Table 5-12: Proposed Mix of Housing for 2008 to 2028		
Type	Proportion	Number
Single family detached	65%	10,842
Single family attached	2%	334
Multi-family attached	33%	5,505
Totals	100%	16,681
<b>Note:</b> the total number of housing units reflected in the third column is the 2008-2028 housing unit forecast of 16,681 units.		

“Single family detached housing” includes both site-built single family detached dwellings and manufactured homes on their own lots. This category includes those dwellings classified as detached single family dwellings under OAR 660-008-005(3). The proposed proportion of 65% is intended to ensure an adequate supply of land for detached single family units. This proportion is based on an assumption that, consistent with demographic and economic trends, including recent construction trends, most of the housing produced during this planning period will be single family detached. Going forward, the City also assumes that this proportion for single family detached will include adequate land for smaller detached housing units such as cottage housing and courtyard housing. This assumption is based on demographic trends that show continued growth in households that are 1 and 2 person non-family households and 2-person family households. These forms of detached housing are examples of single family detached housing that can be developed at higher densities (e.g. 8 to 12 units/acre) in the RM Zone and RM-10 Zone. These examples of medium density single family detached housing will provide options for smaller households (1 and 2 person) and for older households where the age of the householder is between 45 and 64 years.

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<sup>50</sup> Please note that this rate was the City’s vacancy rate reported in the 2000 Census results for Bend – [www.factfinder2.census.gov](http://www.factfinder2.census.gov).

This proportion (65%) is less than the current proportion (71%) of single family detached dwellings in Bend. This proposed proportion of 65% is not based on assumption that demand for single family detached dwellings will significantly decrease over the planning period. While the future trends in demographics suggest increasing numbers of smaller households, these changes have not yet influenced the production of single family dwellings in Bend. The proposed proportion recognizes that the supply of this type of housing exists to meet the projected need and that the proportion of other types of housing must be adjusted to ensure an adequate supply of land for other types of housing.

“Single family attached housing” consists of attached single family housing under the Bend Development Code. This category includes those dwellings classified as attached single family dwellings under OAR 660-008-005(1). The proposed proportion of 2% recognizes that this proportion of the housing stock has decreased over time, and with changing household characteristics – e.g. smaller and older households – has not increased in proportion. This proposed proportion is also based on an assumption, reflected in the forgoing discussions of housing mix, that other forms of housing are needed more than single family attached housing.

“Multi-family attached housing” consists of all other types of housing, including condominiums, duplexes, multi-family attached housing (3 or more units under Bend Development Code), and manufactured homes in parks. This category includes those dwellings classified as multiple family housing under OAR 660-008-005(5)<sup>51</sup>. This report proposes increasing the assumed proportion of housing to 33% multi-family attached to increase and ensure an adequate supply of land for such housing. The proportion of 33% is also recommended to provide the opportunity to increase the supply of this form housing for some households with household incomes of less than \$50,000. Going forward, the City assumes that multi-family attached housing will not include new manufactured homes in parks<sup>52</sup>.

If at least 33% of new units constructed between 2008 and 2028 were multi-family attached units, this new construction would yield 5,505 new units of such housing. These 5,505 additional units represent an increase of 59% over the supply of 9,304 multi-family attached units in 2008. Between 1999 and 2007, on an annual basis, 73% of new housing units permitted were single family detached dwellings and 21% were multi-family attached dwellings<sup>53</sup>. Using a higher proportion of multi-family attached housing in the proposed housing mix will support increasing the supply of land for multi-family attached housing.

**Table 5-13, Estimated Change in Mix of Housing Units by 2028**

Housing Type	2008 Distribution	2008 to 2028 New Units	2028 Distribution	% Distribution by 2028	% Change 2008-2028
<b>SFD</b>	24,967	10,842	35,809	69%	43%
<b>SFA</b>	658	334	992	2%	51%
<b>MFA</b>	9,304	5,505	14,809	29%	59%
	34,929	16,681	51,610	100%	

**Note:** SFD = single family detached; SFA = single family attached, and; MFA = multi-family attached

**Source:** Data in Tables 4-2 and 5-11

<sup>51</sup> See Table 4-1 of this report.

<sup>52</sup> See 2005 Buildable Lands Inventory report. Old Supp. Rec. 1995-2001

<sup>53</sup> See Table 5-10 of this report.



## Step 6. Determine the needed net density range for each plan designation and the average needed net density range for all designations.

a: “Examine the relationship between lot size and square feet of living space over time, using county assessor’s data to determine local trends in housing density.”

Attachment A of the draft update of the Buildable Lands Inventory illustrates historic trends in housing density by plan designation.<sup>54</sup> Table 6-1, below, summarizes these trends.<sup>55</sup>

**Table 6-1: Historic and Current Average Net Densities**

	RL			RS			RM			RH		
	Pre-1998	1998-2008	2008	Pre-1998	1998-2008	2008	Pre-1998	1998-2008	2008	Pre-1998	1998-2008	2008
Single-family detached housing	2.0	2.1	2.0	3.1	4.6	3.8	4.7	8.6	5.6	6.6	13.4	7.2
Single-family attached housing	0	0	0	5.1	8.7	8.4	21.5	12.5	13.1	0	0	0
Multi-family attached housing	8.8	0	8.8	9.7	14.2	11.3	16.6	16.1	16.6	20.9	17.1	18.8
Average Density – All Housing Types	2.1	2.1	2.1	3.2	4.9	3.9	8.5	13.4	9.9	14.4	16.9	15.5

As indicated in Table 6-1, average net densities have increased over time in most zones. The overall density in the low-density RL zone has held steady at 2.1 units/net acre (the RL zone contains less than 10% of total housing units), but it has increased somewhat in all other zones. The RS, RM, and RH zones showed increases in overall density from the pre-1998 period to 2008. The unusually high pace of construction activity during 1998-2008 is reflected in higher densities for that period in all zones, except RL. The unique economic conditions of that decade

<sup>54</sup> In this memo, the terms, plan designation” and “zoning designation” are used interchangeably. In general, zoning designations are consistent with plan designations. Where these designations are not consistent, data from both designations are included in the analysis.

<sup>55</sup> Table 6-1 contains data for four housing types. The three types shown in Table 1 are those that must, at a minimum, be considered in the Housing Needs Analysis (see Remand Sub-Issue 2.3). In order to determine average net densities for these three housing types, the category “Manufactured Homes – On Lots” shown in Attachment A has been combined with data for the “Single Family – Detached” category. Likewise, Attachment A data for “Manufactured Homes – In Parks” has been combined with the “Multiple Family Housing” category.

are not expected to repeat during the 2008-2028 planning period.<sup>56</sup> The City expects that an increase in the demand for housing other than single family detached will increase due to changing household composition and the increasing number of households earning less than \$50,000 a year in household income.

The most abundant housing type built, both before 1998 and during the 1998-2008 period, has been single-family detached. The majority of these detached single-family units have been built in the RS zone, during both historical periods. Table 6-1 indicates that the size of lots for single-family detached units in the RS zone has decreased historically as densities have increased. Average net density in the RS zone has increased from historical levels of 3.1 units/acre to 3.8 units/acre as of 2008.

Table 6-1 also indicates that the average net density for multi-family units in the RM zone held steady at 16.6 units/net acre from 1998 to 2008, and decreased slightly in the RH zone from 20.9 to 18.8 units/net acre. At the same time, multi-family density in the RS zone (consisting primarily of duplex units) increased from 9.7 to 11.3 units per net acre during that period.

Single-family attached units are relatively new to Bend's housing inventory. Only 48 units (less than 1% of total housing units) existed prior to 1998. During 1998-2008 they made up 9.5% (610) of total new housing units permitted. Most of those (71%) were built in the RS zone, with the rest built in the RM zone. As indicated in Table 6-1, average net density for single-family attached units in the RS zone increased from 5.1 to 8.7 units per net acre during 1998-2008, an increase of 71%. Overall, the average density of SFA units in all zones increased from 7.8 units/net acre prior to 1998 to 9.4 units/net acre in 2008.

Across all zones, for single-family detached units the average density increased by 24%, from 2.9 units/net acre before 1998 to 3.6 units/net acre by 2008. For single-family attached units across all zones, average density increased by 21%, during the same period. The change in average density for multi-family attached units across all zones was more modest, increasing by 2% from 15.5 units/net acre before 1998 to 15.8% by 2008.

b: "Describe the likely effect of land price, availability, and location and future housing prices on these trends..."

Data analyzed in Task 3, Steps 4 and 5, of the "Planning for Residential Growth" handbook, and the updated Buildable Lands Inventory suggest the following conclusions:

- The housing type in greatest need during the planning period will be single-family detached units.
- Demand for these single-family detached units will be greatest in the RS zone, with smaller numbers of units being built in the RL and RM zones.
- Land prices within these zones, and within residential zones generally, can be expected to increase moderately in response to a gradually shrinking inventory of buildable residential land within the current UGB.
- Prices can be expected to increase moderately for all forms of housing as a result of increasing land costs and inflation.

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<sup>56</sup> See updated Buildable Lands Inventory, memo to UGB Remand Task Force, August 31, 2011, p. 12.

- Land and housing price escalations are unlikely to return to levels seen during the height of the recent housing bubble (2001-2005).
- Some smaller and older households will seek housing types that occupy less land area, but offer the privacy of detached single-family units, e.g. cottage or cluster housing.
- A significant share of the market for rental housing for all households will continue to be met by single-family detached units in the RS, RL, and RM zones.<sup>57</sup>
- The increasing share of households headed by older persons will lead to greater interest in higher-density housing types with convenient access to shopping and services, e.g. the central core area, transit corridors, and mixed-use neighborhoods.

c: "Allocate future needed housing units to the respective plan designation in which it is anticipated they will be developed."

Based on Steps 1-5 of the revised Housing Needs Analysis,<sup>58</sup> Table 6-2, below, summarizes the number of housing units needed by type during the 2008-2028 planning period.

<b>Table 6-2: Proposed Mix of Housing for 2008 to 2028</b>		
<b>Type</b>	<b>Proportion</b>	<b>Number</b>
Single family detached	65%	10,842
Single family attached	2%	334
Multi-family attached	33%	5,505
	100%	16,681

For initial comparison purposes, Table 6-3 below allocates needed housing units to plan and zone designations under a scenario based on the distribution of units by type during 1998-2008. For example, during the 1998-2008 period 90% of detached single-family units were built in the RS zone, 8% were built in the RM zone, and 2% were built in the RL zone. Those same proportions for detached single-family units, and corresponding proportions for single-family attached and multi-family attached units built during 1998-2008 are replicated in Table 3.

**Table 6-3: Scenario 1: Distribution of Needed Housing Units by Zone 2008-28**

	<b>RL</b>		<b>RS</b>		<b>RM</b>		<b>RH</b>		<b>TOTAL</b>	
	<b>%</b>	<b>Units</b>	<b>%</b>	<b>Units</b>	<b>%</b>	<b>Units</b>	<b>%</b>	<b>Units</b>	<b>%</b>	<b>Units</b>
SF Detached	2%	217	90%	9,758	8%	867	0%	0	100%	10,842
SF Attached	0%	0	10%	33	50%	167	40%	134	100%	334
MF Attached	0%	0	14%	771	71%	3,909	15%	826	100%	5,505
<b>TOTAL</b>	<b>1%</b>	<b>217</b>	<b>63%</b>	<b>10,562</b>	<b>30%</b>	<b>4,943</b>	<b>6%</b>	<b>959</b>	<b>100%</b>	<b>16,681</b>

For reasons outlined in response to Step 6.b, above, and based on conclusions from Steps 1-5, a distribution of needed housing units among zones that mirrors proportions observed during 1998-2008 (as shown above in Table 6-3) is unlikely, and would not adequately respond to changing economic and demographic conditions.

<sup>57</sup> See Memo to UGB Remand Task Force from Damian Syrnyk, September 2, 2011, p. 24, Table 16. As of 2007, 41% of all single-family units were renter-occupied. Between 2000 and 2007, the proportion of single-family units that were owner-occupied decreased from 55% to 53%. During that same period, the proportion of renter-occupied single-family units increased from 16% to 20%.

<sup>58</sup> See Memo to Bend UGB Remand Task Force from Damian Syrnyk, November 3, 2011, p. 16.

Table 6-4, below, illustrates an alternative scenario for distribution of needed housing units by zone that more effectively addresses issues identified in Steps 1-5 of the HNA. Assumptions built into Table 4 include the following:

- While single-family detached units will continue to be the most needed form of housing overall, the proportion of new units built in the RS zone will decrease from 90% during 1998-2008 to 80% during the planning period.
- The demand for single-family detached units at somewhat higher densities (e.g. cottage cluster housing or smaller-lot subdivisions) will increase, resulting in more of these units being built in the RM zone. The RM zone will account for 18% of total single-family detached units, up from 8% during 1998-2008.
- This increase in smaller, detached housing units will reflect a departure from the trend of larger homes being developed through 2005. Smaller, older households with higher incomes will have the option of purchasing smaller detached units in lieu of renting retirement housing or purchasing larger SFD homes.
- Consistent with the pattern seen during 1998-2008, and in order to be closer to jobs, shopping, and services, 90% of projected single-family attached units will be located in the RM and RH zones. The remaining 10% will be built in the RS zone.
  - Consistent with the 1998-2008 period, 15% of new multi-family units will be built in the RS zone. These will consist mostly of duplex and triplex developments. Currently, these units are allowed conditionally in the RS zone.
  - Larger-scale multi-family developments will locate in the RM and RH zones; reflecting historical trends, these developments will be of relatively modest size, typically consisting of less than 50 units.
  - Although most future multi-family units will be built in the RM zone, the proportion of new units between RM and RH zones will shift somewhat from what was observed during 1998-2008: The share of units built in the RM zone will decline from 71% to 60%, and the share of units built in the RH zone will increase from 14% to 25%.

Given these assumptions, future needed housing units for Scenario 2 are allocated to plan designations as shown in Table 6-4, below:

**Table 6-4**  
**Scenario 2: Distribution of Needed Housing Units by Zone 2008-2028**

	RL		RS		RM		RH		TOTAL	
	%	Units	%	Units	%	Units	%	Units	%	Units
SF Detached	2%	217	80%	8,674	18%	1,952	0%	0	100%	10,842
SF Attached	0%	0	10%	33	50%	167	40%	134	100%	334
MF Attached	0%	0	15%	826	60%	3,303	25%	1,376	100%	5,505
<b>TOTAL</b>	<b>1%</b>	<b>217</b>	<b>57%</b>	<b>9,533</b>	<b>33%</b>	<b>5,422</b>	<b>9%</b>	<b>1,510</b>	<b>100%</b>	<b>16,681</b>

d: “Estimate the needed net density range for each plan designation, based on the types of structures that would be allowed in each designation; and on an estimate of the density at which each structure type is likely to develop in the community based on recent housing developments and current local policies.”

Table 6-5, below, shows the current allowable density ranges for each of Bend’s residential zones.<sup>59</sup> These ranges are shown as both gross and net densities. Table 5 also shows actual average density (net) for each housing type by zone as of 2008 for comparison purposes.

**Table 6-5**  
**Allowed and Actual Built Residential Densities by Zone<sup>60</sup>**

	RL	RS	RM	RH
<b>Allowable Density By Zone (Units/Gross Acre)</b>	1.1 - 2.2	2.0 - 7.3	7.3 - 21.7	21.7 - 43.0
<b>Allowable Density By Zone (Units/Net Acre)</b>	1.4 - 2.8	2.5 - 9.1	9.1 - 27.1	23.9 – 47.3
<b>Average Built Density 2008 (Units/Net Acre)</b>	2.1	3.9	9.9	15.5

The City’s policy, with respect to densities programmed to meet a wide range of housing needs, is summarized for each zone as follows in Chapter 2.1 of the Bend Development Code:

**Low Density Residential (RL):** The Low Density Residential District consists of large urban residential lots that are served with a community water system and DEQ permitted community or municipal sewer systems. The residential density range in this district is 1.1 to 2.2 dwelling units per gross acre.

**Standard Density Residential (RS):** The Standard Density Residential District is intended to provide opportunities for a wide variety of residential housing types at the most common residential densities in places where community sewer and water services are available. The residential density range in this district is 2.0 to 7.3 dwelling units per gross acre.

**Medium Density Residential (RM):** The Medium Density Residential District is intended to provide primarily for the development of multiple family residential housing in areas where sewer and water service are available. The residential density range in the District

<sup>59</sup> Chapter 2.1 of the Bend Development Code lists minimum and maximum densities for each zone as gross density figures. The net density figures shown in Table 5 have been derived by multiplying gross density by 1.25 to reflect dedication of future rights-of-ways and other development standards.

<sup>60</sup> The conversion from gross to net density is achieved for the RL, RS, and RM zones by multiplying the gross density ranges by 1.25 to account for 25% of gross site area typically dedicated for streets and utilities. For the RH zone, a 10% dedication factor is used, acknowledging that a typical multi-family housing site in that zone may already have existing street frontage, thus the additional amount needed for dedication is less.

is 7.3 to 21.7 units per gross acre and shall provide a transitional use area between other residential districts and other less restrictive areas.

High Density Residential (RH): The High Density Residential District is intended to provide land for primarily high density residential multiple family housing in locations close to shopping and services, transportation and public open space. The density range of the district is 21.7 to 43 units per gross acre and shall provide a transitional use area between other residential districts and other less restrictive areas.

Data shown in Table 6-5 show that the currently allowable densities in the RL, RS, and RM zones are well suited for accommodating the types of housing that are needed and expected during the 2008-2028 planning period. However, the actual, average built density for housing units in the RH zone (15.5 units/net acre) appears to be lower than the minimum allowed density in that zone (23.9 units/net acre). This does not necessarily indicate a mismatch between historical densities and the current range of allowable densities in the RH zone. Part of the reason for the discrepancy is that the minimum allowed density for the RH zone was not in effect until adoption of the current Bend Development Code in 2006. As more multi-family housing is built in the RH zone meeting the minimum density requirement, this average density figure will increase. But the relatively low built density of multi-family developments in the RH zone does suggest that the market was successful in developing multi-family housing at RM density levels, or slightly higher, rather than at the higher densities allowed in the RH zone. The City expects this trend to continue. Even during the height of the housing boom of 1998-2008 the average net density of multi-family developments in the RH zone was only 17.1 units/net acre. Although multi-family housing will make up a larger share of total needed units during the planning period, and more of it will be built in the RH zone, it will generally be built at moderate densities, close to the minimum allowed that zone.

e: "Estimate land needs by dividing the number of needed units of each structure type by the net density at which it is most likely to be developed (from the analysis in Step 6.d) and apportion the acres into each residential plan designation."

f: "Estimate the average needed net density by dividing the total number of needed net acres by the total number of needed units."

This response addresses both 6e and 6f above. Table 6-6, below, shows the number of needed housing units by housing type for the 2008-2028 planning period distributed by zone, as shown in Table 4, Scenario 2. The number of buildable net acres needed to accommodate needed housing under this scenario is 3,092. Table 6-6 also indicates expected average net densities for each housing type by zone, based on actual built densities for 2008 as shown in Table 1 for the RL, RS, and RM zones. For the RH zone, a net density assumption of 23.9 units/acre is used, since that corresponds to the minimum allowable net density in that zone. Finally, Table 6-6 includes a calculation of overall average net density needed to accommodate the projected housing types, as called for by Step 6.f. That overall average density is estimated at 5.4 units per net acre. This represents a 42% increase in the average density of housing since 1998. The proposed density of 5.4 units per acre represents a 23% increase over the current density of 4.4 units per acre over the 20-year planning period.

**Table 6-6  
Needed Acres by Housing Type and by Zone 2008-2028**

Zone	RL			RS			RM			RH			TOTAL		
Housing Type	Net Density	Units	Net Acres Needed	Net Density	Units	Net Acres Needed	Net Density	Units	Net Acres Needed	Net Density	Units	Net Acres Needed	Average Net Density	Units	Net Acres Needed
SF Detached	2.0	217	109	3.8	8,674	2,283	5.6	1,952	349	0.0	0	0	4.0	10,843	2,740
SF Attached	NA	0	0	8.4	33	4	13.1	167	13	23.9	134	6	15.0	334	22
MF Attached	NA	0	0	11.3	826	73	16.6	3,303	199	23.9	1,376	58	16.7	5,505	330
<b>TOTAL</b>	<b>2.0</b>	<b>217</b>	<b>109</b>	<b>4.0</b>	<b>9,533</b>	<b>2,360</b>	<b>9.7</b>	<b>5,422</b>	<b>560</b>	<b>23.9</b>	<b>1,510</b>	<b>63</b>	<b>5.4</b>	<b>16,682</b>	<b>3,092</b>

## Conclusions

The City has prepared this housing needs analysis in a sequential and transparent fashion consistent with state law and the method for preparing such an analysis. The analysis relies upon a number of data sources for a period from 1999 to 2007, including past housing needs analyses, buildable lands inventories, and more recent data for 2000 and 2007.

This HNA relies upon a 2008-2028 housing unit forecast of 16,681 units. The City used the method recommended for preparing such a forecast in the Planning for Residential Growth Guidebook. This same forecast was also found to comply with state law under the 2010 Director's Report and Order on the Bend UGB Expansion.

The trend analysis examined national and state demographic and economic that will influence the supply of and the demand for different types of housing. In particular, this analysis considered changes on household characteristics (e.g. smaller households, more non-family households) that may affect the demand for certain types of housing. In addition, this analysis considered economic trends that will affect the 20-year projection of housing, including the downturn in the real estate market, and the related effects to employment and foreclosures.

The examination of local demographic characteristics shows household growth in Bend, with particular growth in smaller households, and those where the householder was between 45 and 64 years of age. While these trends would suggest potential demand for smaller attached housing units, the trends in building permits show 72 percent of the new units permitted were single family detached dwellings. Taken together, these trends suggest a re-examination of the types of housing allowed on the Development Code to ensure it allows smaller, detached housing units to accommodate these growing segments of the population.

The analysis includes a proposed housing mix of 65% single family detached, 2% single family attached, and 33% multi-family attached to ensure an adequate supply of land for these types of housing during the planning period. This proposed mix is intended to accomplish a number of objectives, including ensuring a supply of land for single family detached housing, particularly new types detached housing that may accommodate smaller and older households. In addition, this proposed mix is intended to ensure that more land is available for multi-family attached housing. The proposed proportion of 33% multi-family attached is intended to also ensure a supply of housing with those incomes less than \$50,000, and need additional housing that is available to rent.

### Remand Sub-issue 2.3 - Conclusion

“Based on the foregoing reasons, the Commission upholds the appeals of the City and Newland with regard to whether the City was required to analyze housing need by tenure. Based on the foregoing reasons, the Commission denies the appeals of the City and Newland with regard to the remaining subissues under this section, affirms the Director's Decision with regard to those other subissues (including the Director's disposition of objections for the reasons set forth in the Director's Decision), and remands the city's decision for it to revise its findings and chapter 5 of its comprehensive plan consistent with the preceding analysis.”<sup>1</sup>

### Summary of Analysis – Sub-issue 2.3

The Commission found that the City had already carried out much of the analysis required by the Commission's rules and the needed housing statutes. The City is not required to analyze housing needs based on tenure, based on OAR 660-008-0040. The Commission found that the City must identify housing needs for at least the three (3) types of housing identified under Oar 660-008-005, including single family attached and detached and multi-family attached. The City must also consider past and future trends in identifying future housing needs and whether changes in mix and/or density of housing will be needed to meet future housing needs.

### Applicable Legal Standards

The following statutes and rules are the applicable legal standards that must be met to satisfy Remand Task 2.3<sup>2</sup>.

#### **1. ORS 197.296, Factors to establish sufficiency of buildable lands within urban growth boundary; analysis and determination of residential housing patterns**

ORS 197.296(2)-(3) and (5) state that:

“(2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

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<sup>1</sup> See November 2, 2010 “Remand and Partial Acknowledgement Order 10-Remand-Partial Acknow-001795,” pages 26-33.

<sup>2</sup> Ibid pages 27-30



## FINDINGS FOR REMAND SUB-ISSUE 2.3 – HOUSING NEEDS ANALYSIS

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(3) In performing the duties under subsection (2) of this section, a local government shall:

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(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

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(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) Demographic and population trends;

(D) Economic trends and cycles; and

(E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph."

### 2. ORS 197.303, "Needed housing" defined

ORS 197.303 provides, in pertinent part, that:

"(1) As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:

(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions."

Goal 10 provides that:

"Buildable lands for residential use shall be inventoried and plans shall 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."

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**"Needed Housing Units** – means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing units" also includes government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, 'needed housing units' also includes (but is not limited to) attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters."<sup>3</sup>

### 3. OAR 660, Division 008, Interpretation of Goal 10, Housing

#### 660-008-0000

##### Purpose

- (1) The purpose of this division is to ensure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries, and to provide greater certainty in the development process so as to reduce housing costs. This division is intended to provide standards for compliance with Goal 10 "Housing" and to implement ORS 197.303 through 197.307.

#### 660-008-0005

##### Definitions

For the purpose of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions shall apply:

- (1) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.

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- (3) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.
- (4) "Housing Needs Projection" refers to a local determination, justified in the plan, of the mix of housing types, amounts and densities that will be:
  - (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;
  - (b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative rules; and
  - (c) Consistent with Goal 14 requirements.
- (5) "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot.
- (6) "Needed Housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:
  - (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
  - (b) Government assisted housing;
  - (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

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<sup>3</sup> "Needed housing units" is defined under Goal 10 (OAR 660-0015-0000(10)) and ORS 197.303.

## **FINDINGS FOR REMAND SUB-ISSUE 2.3 – HOUSING NEEDS ANALYSIS**

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- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and
- (e) Housing for farmworkers.

### **OAR 660-008-0040**

#### **Restrictions on Tenure**

Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall include a determination of housing need according to tenure as part of the local housing needs projection.

## **4. OAR 660, Division 24, Urban Growth Boundaries (2007)**

### **OAR 660-024-0040**

#### **Land Need**

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- (4) "[t]he determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

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- (7) The following safe harbors may be applied in determining housing needs under this division:
  - (a) Local government may estimate persons per household for the 20-year planning period using the persons per household for the urban area indicated in the most current data for the urban area published by the U.S. Census Bureau.
  - (b) If a local government does not regulate government-assisted housing differently than other housing types, it is not required to estimate the need for government-assisted housing as a separate housing type.
  - (c) If a local government allows manufactured homes on individual lots as a permitted use in all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not necessary to provide an estimate of the need for manufactured dwellings on individual lots.
  - (d) If a local government allows manufactured dwelling parks required by ORS 197.475 to 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a separate estimate of the need for manufactured dwelling parks is not required.

## **City's Position**

Remand Sub-Issue 2.3 requires the City to revise its housing needs analysis and findings consistent with Commission's analysis of this sub-issue at pages 26 through 33 of the order. The Commission agreed with the City's position that the housing needs analysis does not need to consider and analyze housing needs by tenure; whether housing is rented or owned. The City understands that the Remand Order requires the following revisions to the housing needs analysis:

1. Identify needed housing in the housing mix by using the following three (3) types:
  - a. Attached single family
  - b. Detached single family
  - c. Multi-family attached housing

2. Tie together how the types and amounts of housing for which the City will be planning will be affordable for future residents
3. Consider both past and future trends and show whether these trends will require the City to achieve a different density and/or mix of housing for current and future residents
4. If future needs require a different density or mix of housing types than those developed in the past, ORS 197.296(7) requires the City to then show how new measures demonstrably increase the likelihood that the needed density and/or mix will be achieved.

The City has revised the housing needs analysis by addressing the issues raised above and incorporating past housing needs analyses and related products into a single housing needs analysis report for 2008 to 2028<sup>4</sup>. The City intends to rely upon this analysis to then address Remand Sub-issues 2.4, 3.1, and 3.2 regarding efficiency measures and their use in ensuring an adequate supply of land for all types of needed housing. The City understands that measures adopted to satisfy ORS 197.296(7) and these sub-issues are intended to address the needed housing requirements of Goal 10 and the land use efficiency requirements of Goal 14.

### **Substantial Evidence**

The City bases the subsequent findings on the following evidence. This evidence has been reviewed by the Remand Task Force during their meetings in July, September, and November 2011 and April 2012. The January 2014 draft Housing Needs Analysis incorporates those products previously reviewed by the RTF and incorporates them in one product.

1. July 22, 2011 memorandum to the RTF on the housing needs analysis.
2. September 2, 2011 memorandum to the RTF presenting draft work products on Steps 1 through 3 of the housing needs analysis.
3. November 3, 2011 memorandum to the RTF presenting draft work products on Steps 4 and 5 of the housing needs analysis.
4. March 2012 draft HNA including the results of Steps 1 through 5 of the housing needs analysis.
5. March 27, 2012 memorandum to the RTF presenting the draft work product on Step 6 of the housing needs analysis.

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<sup>4</sup> See discussion at page 8 of 2008-2028 Housing Needs Analysis (January 2014 draft). This page lists the prior housing need analysis products and their page number in the 2009 UGB record.

## FINDINGS FOR REMAND SUB-ISSUE 2.3 – HOUSING NEEDS ANALYSIS

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6. January 2014 draft Housing Needs Analysis, including the results of Steps 1 through 6. This draft incorporates the products listed under 4 and 5 above.

### Findings

The following findings have been prepared to address the statutes and rules cited above with respect to planning for needed housing. These findings also include findings to demonstrate satisfaction with the requirements of Sub-issue 2.3 of the Remand Order. They address either the statute/rule and/or remand order where appropriate.

#### **1. ORS 197.296, Factors to establish sufficiency of buildable lands within urban growth boundary; analysis and determination of residential housing patterns**

***"(2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.***

***(3) In performing the duties under subsection (2) of this section, a local government shall:***

***\*\*\****

***(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.***

***\*\*\****

***(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:***

***(A) The number, density and average mix of housing types of urban residential development that have actually occurred;***

***(B) Trends in density and average mix of housing types of urban residential development;***

***(C) Demographic and population trends;***

***(D) Economic trends and cycles; and***

***(E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.***

***\*\*\****



## FINDINGS FOR REMAND SUB-ISSUE 2.3 – HOUSING NEEDS ANALYSIS

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**FINDING:** These findings address how the proposed housing needs analysis satisfies the requirements of ORS 197.296 (3)(b) and (5) cited above. The proposed HNA is consistent with ORS 197.296(3)(b) because it includes an analysis of housing need by type and density range. This report includes subsequent findings that address the consistency of this proposed HNA with ORS 197.303 and with Goal 10. With respect to ORS 197.296(3)(b), the City has prepared this HNA following the steps outlined in the guidebook titled “Planning for Residential Growth: A Workbook for Oregon’s Urban Areas.”<sup>5</sup> This workbook outlines a methodology and steps for updating an urban area’s comprehensive plan to comply with Goal 10, including one for conducting a housing needs analysis.

This HNA is based on a 2008-2028 housing unit forecast of 16,681 housing units<sup>6</sup>. The housing unit forecast was prepared according to the steps outlined in the guidebook referred to above, and is the same forecast presented to and found by the Director of the Department of Land Conservation and Development to be consistent with state law<sup>7</sup>. The proposed housing unit forecast relied on one of the safe harbors outlined under OAR 660-024-0040(7) (2007). The City relied upon the persons per household for Bend reported in the results of the 2000 Census for Bend<sup>8</sup>. The January 2014 draft evaluated the future needs for housing by three types, consistent with the Remand Order and ORS 197.303, and presents a needed mix and density of housing for Bend (See Steps 4 through 6 of the January 2014 draft).

The HNA satisfies ORS 197.296(5) because it relies on a number of sources of data to identify relevant national, state, and local demographic and economic trends and factors that may affect the 20-year projection of structure type mix. These sources include, but are not limited to, data from the US Census Bureau available through American Factfinder, including the results of past censuses, and the American Community Survey. The HNA further considered national demographic and economic trends that may affect the 20-year projection of housing structure type and mix<sup>9</sup>. These trends include those summarized in the following findings.

- a. The national trends show that household growth is expected to continue, and that household composition is forecasted to change by households decreasing in size over time. The national economic trends show that the downturn in the housing market, including the subsequent increase in foreclosures, has dampened production of new units, reduced employment in these related employment sectors, and dampened new starts of all types of housing units.
- b. The state demographic trends were more consistent with national demographic trends in that population growth was more robust with a stronger economy. Statewide, the number of households grew at a rate

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<sup>5</sup> See “Planning for Residential Growth: A Workbook for Oregon’s Urban Areas” - [http://cms.oregon.gov/LCD/docs/publications/planning\\_for\\_residential\\_growth.pdf](http://cms.oregon.gov/LCD/docs/publications/planning_for_residential_growth.pdf).

<sup>6</sup> See September 2, 2011 memorandum to the UGB Remand Task Force.

<sup>7</sup> See page 31 of the January 8, 2010 Director’s Report and Order 001775.

<sup>8</sup> See OAR 660-024-0040(7)(a).

<sup>9</sup> See pages 12 through 24, 2008-2028 Housing Needs Analysis (January 2014 draft) for national and state trends.

similar to that of the nation, and household size continued to decrease. The growth in non-family households exceeded the growth of family households. The state economic trends show that by early 2008, employment growth was slowing, but the unemployment rate was the lowest in five years.

- c. In Bend, the population had grown rapidly since the 2000 Census, reaching an estimated population of 73,368 people by 2007<sup>10</sup>. This growth represented a 41% increase in population. During this period of rapid population growth, household and family size decreased and more so than households nationwide and statewide. Household growth occurred at a rate in Bend greater than national and statewide rates. Between 2000 and 2007, the number of households grew by 45%. Non-family households grew by a greater rate than family households – 56% compared to 39%. By 2007, 25% of Bend households were 1 person households; 40% were 2 person households, and; 36% were 3 or more persons in size. Households headed by a householder between the age of 45 years and 64 years also increased by 56% during this period. Both median and mean household income in Bend grew at rates greater than that of the Nation and the State.
- d. In Bend, the distribution of housing changed between 2000 and 2007. In 2000, 67% of the housing supply was single family detached housing. By 2007, this proportion had increased, representing 71% of all housing units. Single family attached and multi-family attached housing represented small proportions of the housing stock in 2007. Single family attached housing represented 2% of the housing stock; multi-family attached housing represented 27% of the housing stock.
- e. With respect to household income, by 2007, an estimated 42% of Bend households had household incomes of \$50,000 or less. By 2007, 37% of Bend households had household incomes between \$50,000 and \$99,999; 21% of households had incomes of \$100,000 or more.
- f. At a time when more households had lower household incomes than in 2000, housing prices had increased. Sale prices reported in the 2<sup>nd</sup> quarter of 2008 showed the median sales prices of a single family home at \$307,500. This price was 12% less than what it was in 2007, but still 41% higher than what it was in 2004. By 2007, rents of renter occupied housing had increased to a point where 41% of the units available for rent were renting for \$500 to \$749 a month, with 48% of units renting for \$750 or more for month. With respect to the housing choices households were making, 90% of owner-occupied households and 48% of renter-occupied households were living in single family detached housing.
- g. Between 1999 and 2007, single family detached housing represented 69% of the new units permitted with building permits. Single family attached units represented 3% of the permitted units; Multi-family attached units represented 22% of the permitted units. While households were growing

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<sup>10</sup> See pages 25 through 40, 2008-2028 Housing Needs Analysis (January 2014 draft) for the discussion of local demographic characteristics and demographic and economic trends.

smaller, and headed by older householders, the majority of new housing units permitted were single family detached units.

- h. The documented changes in households and their characteristics suggest that these changes in household composition would be consistent with an increase in demand for smaller and more attached housing units. However, as indicated above, single family detached dwellings were permitted more often than other types of housing. To recognize this trend, and ensure that Bend has an adequate supply of land for all types of needed housing, the City proposes the following housing mix for estimating future land needs for needed housing: 65% single family detached, 2% single family attached, and; 33% multi-family attached. The City proposes to use this housing mix and the housing unit forecast of 16,681 units to estimate the future land need for housing between 2008 and 2028.
- i. The forgoing finding that proposes a 65/2/33 housing mix is based upon substantial evidence that has already been cited above and in the Housing Needs analysis. The City is pursuing this policy choice to ensure an adequate supply of land is available for development of multi-family attached housing for households that have annual incomes of less than \$50,000. The City is also pursuing this policy choice because most of the housing produced over the last 10 years has been single family detached housing, and this form of housing has been chosen more often by both owner-occupied and renter-occupied households. With respect to renter-occupied households, the City believes that this may be due, in part, to the lack of supply of other forms of housing that are affordable to renter households.
- j. The City provides the following findings to address the issue of housing mix, and, consistent with the Remand Order and ORS 197.296, proposes changes in the mix of future housing to ensure that an adequate supply of land is available for needed housing<sup>11</sup>.
- k. Relying upon a proportion of 65% for single family detached housing in the future housing mix will ensure an adequate supply of land for detached single family units. This proportion is based on an assumption that, consistent with demographic and economic trends, including recent construction trends, most of the housing produced will be single family detached. This proportion (65%) is less than the current proportion (71%) of single family detached dwellings in Bend. This proposed proportion of 65% is not based on assumption that demand for single family detached dwellings will decrease over time. It indicates that the supply of this type of housing exists to meet the projected need and that the proportion of housing in other categories must be adjusted to ensure an adequate supply of land for these types of housing. This proportion of single family detached dwellings is similar to that reported in the 1990 and the 2000 Census results for Bend<sup>12</sup>.

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<sup>11</sup> See Discussion of Step 5 at pages 48 through 58 of 2008-2028 Housing Needs Analysis (January 2014 draft). The presentation of the proposed housing mix begins at page 57.

<sup>12</sup> See Table 3-10, page 34 of the January 2014 draft Housing Needs Analysis



- l. Relying upon a proportion of two percent (2%) for attached single family housing in the future housing mix recognizes that this proportion of the housing stock has decreased over time, and with changing household characteristics – e.g. smaller and older households – has not increased in proportion. This proposed proportion is also based on an assumption, reflected in the forgoing discussions of housing mix, that other forms of housing are needed more than single family attached housing.
- m. Relying upon a proportion of 33% multi-family attached housing in the future housing mix will ensure an adequate supply of land for duplexes, condominiums, and multi-family attached housing. The proportion of 33% is also recommended to provide the opportunity to increase the supply of this form housing for some households with annual household incomes of less than \$50,000. Going forward, this proposed proportion also assumes less housing will be provided in the form of new manufactured homes in parks. If at least 33% of the forecasted housing units are developed as multi-family attached units, this would result in at least 5,505 new units of multi-family attached housing and an increase of 59% over the supply of 9,304 units in 2008.
- n. Consistent with ORS 197.296(3), the City has considered the density and mix of housing that existing in 1998, occurred between 1998 and 2008, and existed in 2008. This analysis of the density and mix of housing was conducted using data from the buildable lands inventory and the inventory of housing by type in 2008. Relying on the 2028 housing unit forecast of 16,681 units, and the housing mix of 65% single family detached, 2% single family attached, and 33% multi-family attached, the City estimated needed acres of land by plan designation and housing type. This distribution was first shown in a Scenario 1, and distributed housing as it was developed during the 1998-2008 period for consideration. The City concluded, after considering this distribution, the buildable lands inventory, and the housing needs analysis, that this distribution would not help the City meet its housing needs under Goal 10.
- o. The City developed and considered another alternative, referred to as Scenario 2 that considered a different distribution of housing units by zone. This scenario assumed more single family attached and multi-family attached housing in the RS Zone, more single family detached in the RM Zone, and more multi-family attached housing in the RH Zone. Under this scenario, the City would see the proportion of future housing units increase in the RS, RM, and RH units. The City considered and compared the current density of housing by zone. Table 6-5 of the HNA shows that average built density of housing by zone in 2008. These densities range from 2.1 units/acre in the RL Zone to 15.5 units/acre in the RH Zone.
- p. The City proceeded to complete Steps 6e and 6f and used the forgoing data to estimate net acres needed for housing. The City developed Table 6-6 of the HNA to estimate needed acres by housing type and by zone. The City relied upon the distribution and mix of housing by zone presented in Scenario 2 (See Table 6-4). In addition to this data, the City relied on the mix of

housing identified above to assume that needed housing will develop at minimum densities in Chapter 2.1 that were not in effect until 2006. Going forward, housing must be developed at these minimum densities, and the City further assumed that single family detached housing in the RS zone would develop at densities higher than the minimum of 2.3 units to the gross acre.

- q. The results presented in Table 6-6 show future needed housing developing at a density of 5.4 units to the net acre, and requiring a total of 3,092 total acres for needed housing. This assumed density of 5.4 units to the net acre represents an increase of 42% in density over the density of housing in Bend as of 2008.

### 2. Compliance with ORS 197.303 and OAR 660-008.

**ORS 197.303 provides, in pertinent part, that:**

***"(1) As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:***

- (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;***
- (b) Government assisted housing;***
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and***
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions."***

### **OAR 660, Division 008, Interpretation of Goal 10, Housing**

#### **660-008-0000**

##### **Purpose**

- (1) The purpose of this division is to ensure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries, and to provide greater certainty in the development process so as to reduce housing costs. This division is intended to provide standards for compliance with Goal 10 "Housing" and to implement ORS 197.303 through 197.307.***

#### **660-008-0005**

##### **Definitions**

***For the purpose of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions shall apply:***

- (1) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.***

**\*\*\***

- (3) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.***

- (5) “Multiple Family Housing” means attached housing where each dwelling unit is not located on a separate lot.*
- (6) “Needed Housing” means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:*
  - (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;*
  - (b) Government assisted housing;*
  - (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;*
  - (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and*
  - (e) Housing for farmworkers.*

### **660-008-0040**

#### **Restrictions on Housing Tenure**

*Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall include a determination of housing need according to tenure as part of the local housing needs projection.*

**FINDING:** This finding addresses ORS 197.303(A) and those portions of OAR 660-008 cited above. By satisfying the applicable requirements of OAR 660-008, the City finds that the proposed HNA also satisfies Goal 10, Housing, as provided for under OAR 660-008-0000(1).

The HNA satisfies ORS 197.303(A) because the City considered data for three types of housing: single family detached, single family attached, and multi-family attached<sup>13</sup>. This satisfies the direction outlined in the remand order under Sub-issue 2.3, and those definitions cited above from OAR 660-008-005(1),(3), and (5). The City considered those units meeting the definitions of Courtyard housing, Dwelling, single family detached, and manufactured homes on individual lots or parcels, under the Bend Development Code, as “single family detached” units. Those units meeting the definition of “Dwelling, single family attached” under the Bend Development Code were considered as single family attached units. Those units meeting the definitions of Condominium, Two and three family housing, multi-family housing, and manufactured homes in parks were classified as “multi-family housing<sup>14</sup>.” The City’s classification further satisfies OAR 660-008-0005(6) because the City relied on these three types of needed housing in the housing needs analysis. In these findings, the terms multi-family housing and multi-family attached housing are used interchangeably.

The proposed HNA is consistent with OAR 660-008-0005(4) because it satisfies both (a) and (b) of this definition.

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<sup>13</sup> See Table 4-1 at pages 41 and 42 of January 2014 draft Housing Needs Analysis.

<sup>14</sup> While manufactured home parks do not include attached units, for the purpose of estimating land need and because they are similar in density, they have been included under multi-family attached housing.

The proposed HNA is consistent with OAR 660-008-0040 because it does not analyze future housing needs by tenure; whether housing is owned or rented. This is consistent with this rule and the Commission's decision on this rule<sup>15</sup>.

### 3. Compliance with OAR 660-008-0005(4) and OAR 660-024

OAR 660-008-0005(4) provides that:

**(4) "Housing Needs Projection" refers to a local determination, justified in the plan, of the mix of housing types, amounts and densities that will be:**

- (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;**
- (b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative rules; and**
- (c) Consistent with Goal 14 requirements.**

OAR 660-024-0040(4)(2007) provides that:

**"[t]he determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.**

OAR 660-024-0040(7)(2007) provides that:

**The following safe harbors may be applied in determining housing needs under this division:**

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**(b) If a local government does not regulate government-assisted housing differently than other housing types, it is not required to estimate the need for government-assisted housing as a separate housing type.**

**(c) If a local government allows manufactured homes on individual lots as a permitted use in all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not necessary to provide an estimate of the need for manufactured dwellings on individual lots.**

**(d) If a local government allows manufactured dwelling parks required by ORS 197.475 to 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a separate estimate of the need for manufactured dwelling parks is not required.**

**FINDING:** The proposed HNA satisfies OAR 660-008-0005(4) and OAR 660-024-0040(4) because it provides a justification for a future mix of housing, amount, and density of housing. This justification satisfies OAR 660-008-0005(4) because it further addresses the types of housing that will be commensurate with the financial capabilities of present and future households. The HNA is consistent with OAR 660-008-005(4)(b) because as shown in the findings, it has been developed consistent with state statutes (ORS 197.296 and 197.303), administrative rules (OAR 660-008 and 660-024) and is consistent with Goal 14. The City relied upon its acknowledged

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<sup>15</sup> See pages 32-33 of 2010 Remand Order

## FINDINGS FOR REMAND SUB-ISSUE 2.3 – HOUSING NEEDS ANALYSIS

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population forecast to then forecast housing, and used this housing forecast to then allocate future housing in a mix for 2008 to 2028.

With respect to OAR 660-024-0040(7)(b), the City provides this finding to show the proposed HNA complies with this criterion. With respect to (7)(b), the City is not required to estimate the need for government-assisted housing because the City does not regulate government-assisted housing as a separate housing type. The Bend Development Code outlines the types of housing allowed by zone in the City, and development standards for housing in these zones<sup>16</sup>. However, the Development Code does not further regulate government-assisted housing in a manner different from other types of housing.

With respect to OAR 660-024-0040(7)(c) and (d), the City is not required to separately estimate the need for manufactured homes on lots or in parks because the Development Code already allows these types of housing according to the terms of (7)(c) and (d). Manufactured homes on lots are allowed in the same districts as single family dwellings, which allow 10 or fewer units per net buildable acre. Manufactured homes on parks are allowed in the RM-10 Zone, which allows units to be developed in parks at a density of six to 12 units per acre.

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<sup>16</sup> See Bend Development Code (BDC) Chapter 2.1, Residential Districts - <http://www.codepublishing.com/OR/bend/?BendDCNT.html>.

the planning period. This latter issue is addressed further in connection with the requirement in Goal 14 to "reasonably accommodate" future land needs within the existing UGB prior to expanding onto new lands, beginning at page 50, below.

***e. Conclusion***

The Commission denies the city's and Newland's appeals on this subissue, upholds the Director's Decision, including the director's disposition of objections (for the reasons set forth in the Director's Decision) and remands the city's decision with instructions for it to develop a record and adopt a buildable lands inventory supported by findings that are consistent with state law. The city's findings must explain what criteria it uses (based on ORS 197.296, OAR 660-024 and 660-008) to determine whether particular lands are vacant or redevelopable, examine the amount and type of development that has occurred on the vacant and redevelopable lands since its last periodic review, and project the capacity of the city's buildable lands (prior to additional measures being implemented) based on that analysis (and as further detailed in connection with Goal 14, below). If the amount of redevelopment and infill within the city's UGB is projected to differ significantly from past trends, the City must explain why, and provide an adequate factual and policy basis to support that change.

The city's buildable lands inventory may not exclude lots and parcels smaller than 0.5 acres with no improvements without specific findings consistent with OAR 660-008-0005. Similarly, the City may not exclude lots and parcels subject to CC&Rs unless it adopts specific findings, supported by an adequate factual base, that show why the lands are not available for development or redevelopment during the planning period. In addition, the City has agreed to reexamine lands it identified as "constrained" to determine whether the lands are buildable under OAR 660-008-0005.

Finally, the Commission denies the objection of Newland for the reasons set forth in the Director's Decision, which are incorporated herein by this reference. Director's Decision, at 42-43.

***2.3. Whether the City's Housing Needs Analysis and Comprehensive Plan Identify Needed Housing as Required by Goal 10 and the Needed Housing Statutes. Whether the City is Required to Analyze Housing Need by Tenure, Given that it Does Not Regulate Tenure (OAR 660-008-0040). Whether ORS 197.296 Requires an Analysis of Housing Needs for Owner-occupied and Rental Housing?***

***a. Summary of Issue and Objectors/Appellants***

Newland objected to the City's housing needs analysis, arguing that it must be based only on the factors of ORS 197.296(5), and that the City's use of its "Housing Needs Model" in developing its projections is "outside the scope" of that statute. Newland Objection, at 27-29. DSL objected to the City's housing needs analysis, arguing that it did not comply with ORS 197.296(3)(b) or 197.303. DSL Objection, at 1-2. DSL objected that the City was required to analyze housing need by tenure. *Id.* DSL also objected that the City had failed to show that it planned for needed housing in locations appropriate for needed housing types, or zoned in density ranges likely to be achieved by the market, as required by ORS 197.296(9). *Id.*<sup>11</sup> Swalley also objected to the City's housing needs analysis. Swalley Objection, at 65-68.

The Director found that the City's housing needs analysis failed to comply with Goal 10 and the needed housing statutes (Director's Decision at 32-37), and the City and Newland appealed. City Appeal, at 22-23. Newland Appeal, at 9.

***b. Legal Standard***

ORS 197.296(2)-(3) and (5) state that:

"(2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years. (5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

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<sup>11</sup> This specific objection is addressed separately, as part of the next issue area.



- (C) Demographic and population trends;
- (D) Economic trends and cycles; and
- (E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

- (A) The number, density and average mix of housing types of urban residential development that have actually occurred;

- (B) Trends in density and average mix of housing types of urban residential development;

- (C) Demographic and population trends;

- (D) Economic trends and cycles; and

- (E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph."

ORS 197.303 provides, in pertinent part, that:

"(1) As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" means housing



types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:

- (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- (b) Government assisted housing;
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions."

Goal 10 provides that:

"Buildable lands for residential use shall be inventoried and plans shall 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."

\* \* \*

**"Needed Housing Units** – means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing units" also includes government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, 'needed housing units' also includes (but is not limited to) attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters."<sup>12</sup>

OAR 660-008-0040 provides that:

Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall include a determination of housing need according to tenure as part of the local housing needs projection.

Finally, OAR 660-024-0040(7)(2007) provides that:

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<sup>12</sup> Guideline 1 for Goal 10 provides that:

1. In addition to inventories of buildable lands, housing elements of a comprehensive plan should, at a minimum, include: (1) a comparison of the distribution of the existing population by income with the distribution of available housing units by cost; (2) a determination of vacancy rates, both overall and at varying rent ranges and cost levels; (3) a determination of expected housing demand at varying rent ranges and cost levels; (4) allowance for a variety of densities and types of residences in each community; and (5) an inventory of sound housing in urban areas including units capable of being rehabilitated.

The following safe harbors may be applied in determining housing needs under this division:

(a) Local government may estimate persons per household for the 20-year planning period using the persons per household for the urban area indicated in the most current data for the urban area published by the U.S. Census Bureau.

(b) If a local government does not regulate government-assisted housing differently than other housing types, it is not required to estimate the need for government-assisted housing as a separate housing type.

(c) If a local government allows manufactured homes on individual lots as a permitted use in all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not necessary to provide an estimate of the need for manufactured dwellings on individual lots.

(d) If a local government allows manufactured dwelling parks required by ORS 197.475 to 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a separate estimate of the need for manufactured dwelling parks is not required.

***c. Summary of Local Actions, Director's Decision, and Appeal(s)***

The City of Bend completed three housing needs analyses: an analysis based on past trends since its last periodic review (a "HB 2709 or Trend Forecast"), an analysis of expected future housing needs (a "Housing Needs Forecast"), and a "Transition Forecast" that projects that the City will move from a 77/23 single-family/multi-family mix (during the 1998 to 2007 period) to a 55/45 mix over a period longer than 20 years (and to a 65/35 mix over the 20-year planning period). R. at 1078. Under all three forecasts, the City analyzed its projected housing need for single family housing in one category (combining single family attached and detached housing). In some of the forecasts, the City also analyzed the need for manufactured homes, plexes (2, 3 & 4 units); and multi-family (5 or more unit buildings). R. at 1075.

***d. Analysis***

The City has carried out much of the analysis required by the commission's rules and the needed housing statutes. In particular, the City has provided an analysis of needed housing based on actual development trends since its last periodic review. That analysis is provided in the most detail in the City of Bend Residential Lands Study (2007). R. at 1798-1835. Some analysis based on actual development trends (the so-called HB 2709 analysis) is also included in the 2005 City of Bend Housing Needs Analysis, R. at 1742-1797, and is summarized in the city's findings. R. at 1075.

With regard to whether the City must separately analyze housing need for rental and owner-occupied housing types, the Commission agrees with the City that its rules do not require

such an analysis in this case. OAR 660-008-0040 provides that such an analysis is required *if* a local government "restricts the construction of either rental or owner occupied housing on or after its first periodic review." The City argued in its appeal that it does not regulate housing according to tenure and, as a result, is not required to analyze housing types by tenure. The Commission agrees, and upholds the city's appeal on this issue based on the wording of OAR 660-008-0040.

However, the needed housing statutes do require the City to identify housing need by *at least* three categories of housing types: single-family detached, single-family attached, and multi-family (a city *may* identify additional types). In turn, the commission's rules define these three basic types of needed housing as follows:

- "Attached Single Family Housing" means common-wall dwellings or roughhouses where each dwelling unit occupies a separate lot. OAR 660-008-0005(1).
- "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units. OAR 660-008-0005(3).
- "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot. OAR 660-008-0005(5).

While the city's 2007 Residential Lands Study contains much, if not all, of the required *data* concerning these housing types, the city's analysis and findings (including chapter 5 of its comprehensive plan) use different categories of housing types and collapse multiple categories. For instance, the city's findings analyze the amounts of new housing built in the City since its last periodic review by single family dwellings (combining both attached and detached single-family housing into one category), and "plexes" and "multi-family" (more than 5 units) (separating out what the commission's rules define as multi-family into two categories). R. at 1074. While the City is free to *separate* the three basic housing types required to be analyzed by statute into subcategories, it may not *combine* categories as this effectively makes it impossible to do the analysis required by statute.

Goal 10, the Goal 10 implementing rule, and the needed housing statutes also require that the City analyze needed housing types at particular price ranges and rent levels commensurate with the financial capabilities of present and future residents of area residents. The city's record contains much information on projected population and income levels, but neither its adopted plan policies nor its findings clearly tie together how the types and amounts of housing that it is planning for will be affordable for future residents of the area. This issue is addressed in more

detail in the next subsection.

Newland argues that the City *only* may consider past housing trends in its housing needs analysis. Newland Objection at 27-29. The Commission does not agree. ORS 197.296(3)(b) directs local governments to determine the amount of land needed for each housing type for the next 20 years in accordance with ORS 197.303 and the statewide planning goals and rules relating to housing. OAR 660-024-0040(4) provides that:

"[t]he determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

OAR 660-008-0005(4) defines the “Housing Needs Projection” required by Goal 10 and ORS 197.296 as:

"\* \* \* a local determination, justified in the plan, of the mix of housing types and densities that will be:

(a) Commensurate with the financial capabilities of present *and future area residents* of all income levels *during the planning period*.

While past development trends are clearly one required part of a local government's housing needs projection, ORS 197.296(5)(a), under Goals 10 and 14 the City also must consider the *future* housing needs of area residents during the (twenty-year) planning period. The purpose of the analysis of both past trends and future needs is that -- if there is a difference -- the local government must show how it is planning to alter those past trends in order to meet the future needs. Specifically, if the *future* needs require a different density or mix of housing types than has occurred in the past, then ORS 197.296(7) requires the local government to show how new measures demonstrably increase the likelihood that the needed density and/or mix will be achieved.

***e. Conclusion***

Based on the foregoing reasons, the Commission upholds the appeals of the City and Newland with regard to whether the City was required to analyze housing need by tenure. Based on the foregoing reasons, the Commission denies the appeals of the City and Newland with regard to the remaining subissues under this section, affirms the Director's Decision with regard

to those other subissues (including the Director's disposition of objections for the reasons set forth in the Director's Decision), and remands the city's decision for it to revise its findings and chapter 5 of its comprehensive plan consistent with the preceding analysis.

***2.4. Whether the City Has Planned for an Adequate Land Supply for Needed Housing Types as Required by Goal 10 and the Needed Housing Statutes.***

***a. Summary of Issue Objectors/Appellants***

DSL and Bayard objected that the City had failed to plan for an adequate amount of buildable lands to meet its identified housing needs. DSL Objection, at 1-2. Bayard Objection, at 63. The Director found that the City failed to plan for an adequate amount of land in appropriate plan designations to meet its future housing needs as shown in its housing needs projection. The City of Bend appealed the Director's Decision on this issue. The City asserted that it has already set ambitious targets for multi-family and higher density housing, by planning for housing types that have a higher density than housing that has been built in the City since its last periodic review. City Appeal, at 23-26.

***b. Legal Standard***

ORS 197.307 and Goal 10 require that when a need has been shown for housing at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts with sufficient buildable lands to satisfy that need. ORS 197.307(3)(a).<sup>13</sup>

***c. Local Action, Director's Decision and Appeals***

As described above, the City carried out three different analyses of housing needs, adopting the third "Transition Forecast." R. at 1077-1081. The Transition Forecast essentially acknowledges that the City will not meet its projected housing needs under Goal 10 and ORS 197.307(3)(a). The Director remanded this aspect of the city's decision because he found it did

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<sup>13</sup> ORS 197.307(3)(a) provides that:

"(3)(a) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing, including housing for farmworkers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need."

Goal 10 provides that:

"Buildable lands for residential use shall be inventoried and plans shall 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."

Actual percentage of SFD =  $\text{SFD total units} \div \text{total units, all types}$   
Actual percentage of SFD = 33 percent ( $15 \div 45$ )

**STEP 6 Calculate the average actual density of each housing type.**

- 6.a For each housing type, add the net acres of each development site to obtain total net acres of land used for that housing type.
- 6.b Add the number of units of each housing type to obtain total number of units.
- 6.c Divide the total number of units by total net acres to obtain the average actual net density for each housing type.

**Example: For single-family detached**

Site #	# Units	Net Acres	Net Density—Units per Acre
1245	5	1	5
1509	12	1.71	7
<b>Total:</b>	17	2.71	6.27
Single-family detached actual average net density = 6.27 units per acre ( $17 \div 2.71$ )			

**STEP 7 Calculate the average actual net density of all housing types.**

Divide the total number of units by the total net acres.



**Task 3. Conduct a Housing Needs Analysis.**

**Purpose** The purpose of this task is to conduct an analysis of housing needs by type and density to determine the amount of land needed in the urban growth boundary for each needed housing type for the next 20 years.<sup>16</sup>

<sup>16</sup>ORS 197.303 and 197.296(3)(c); OAR Chapter 660, Division 8.

Provisions of ORS 197.296 for increasing housing densities and adding residential land to UGBs reinforce the importance of conducting a thorough housing needs analysis. Although Oregon cities have conducted housing needs analyses in the past, many of these analyses have not fully captured the needs for housing in these communities. A housing needs analysis should include a comprehensive analysis of factors affecting housing needs and an up-to-date knowledge of trends affecting housing. For instance, the size of households has generally been decreasing and the age of household heads increasing. Such factors, along with household income and cost information, affect the need for various housing types in a community.

## Overview of Process

The housing needs analysis is a complex task and many jurisdictions will not have ready or easy access to the required data. For this reason, jurisdictions conducting their first comprehensive housing needs analysis will have to be creative in developing methods that provide the necessary information. Appendix C contains information on national and state housing trends, a sample demand analysis, and sample data sheets to assist in this process.<sup>17</sup>

The following six steps generally describe the process for a housing needs analysis. The tables in the Eugene-Springfield analysis in Appendix C correspond to these steps. When a community conducts its own analysis, it will not draw conclusions from any one step. Rather, it will draw conclusions after all steps have been conducted. This will provide a comprehensive picture of the likely future housing needs.

- STEP 1** Project the number of new housing units needed in the next 20 years.
- STEP 2** Identify relevant national, state and local demographic and economic trends and factors that may affect the 20-year projection of structure type mix.
- STEP 3** Describe the demographic characteristics of the population and, if possible, household trends that relate to demand for different types of housing.
- STEP 4** Determine the types of housing that are likely to be affordable to the projected households based on household income.
- STEP 5** Estimate the number of additional needed units by structure type.

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<sup>17</sup>The sample demand analysis in Appendix C is the residential demand portion of the *Market Demand Study for Nodal Development*, which was prepared for the update of TransPlan, Eugene-Springfield's metropolitan transportation plan. Although this study was conducted to determine the market demand for nodal development, the analysis in Appendix C specifically addresses market demand for residential real estate in Eugene-Springfield. Therefore, the sample presents useful information for other jurisdictions conducting a housing needs analysis.

- STEP 6** Determine the needed density ranges for each plan designation and the average needed net density for all structure types.

## Steps to Follow

**STEP 1** Project the number of new housing units needed in the next 20 years.

- 1.a Obtain the most recent population estimate for the community from the Portland State University Center for Population, Research and Census. Subtract the population living in large group quarters (e.g., college dormitories, prisons, etc.) Factor in the population inside the UGB and outside the city limits, if applicable.
- 1.b Obtain the population forecast from the coordinating body (see Chapter I, Introduction). Subtract projected population living in large group quarters. Factor in the population inside the UGB and outside the city limits, if applicable.<sup>18</sup>
- 1.c Project the average household size, based on past trends. In general, average household size is decreasing gradually. The state average is forecast to drop to 2.5 in 20 years (see National and State Housing Trends in Appendix C).
- 1.d Project the total number of households by dividing the projected population in households by the average household size.

**Example:**

Projected Population	-	Group Quarters Population	=	Projected Population in Households
(85,100)		(100)		(85,000)
Projected Population In Households	+	Projected Household Size	=	Projected Total Number of Households
(85,000)		(2.6)		(32,692)

<sup>18</sup>Age cohort population forecasts help estimate the number of additional potential renters or home buyers and help forecast the propensity for certain housing types (see pages C-9 and C-10, Sample Analysis, Appendix C).



- 1.e Calculate the projected total number of new housing units needed in the community in the next 20 years by subtracting the projected number of households from a current estimate of households.

Possible data sources:

- ☐ 1990 Census of Population and Housing CD ROM STF1a for 1990 city population, households, and number of persons in group quarters;
- ☐ 1990 Census of Population and Housing CD ROM STF1b for population inside the UGB and outside the city limits;
- ☐ Center for Population Research and Census, Portland State University for recent population estimates; and
- ☐ Population projections from the coordinating body. These are developed through coordination between the city and county unless otherwise specified or delegated (see ORS 195.036).

**STEP 2 Identify relevant national, state and local demographic and economic trends and factors that may affect the 20-year projection of structure type mix.**

To complete Task 3, it is necessary to determine how the projected number of new households from Step 1.e will be distributed among different structure types in 20 years. In order to make this determination, it will be necessary to analyze factors that will likely influence housing choice in the future (e.g., the decision to buy a single family home as opposed to renting an apartment).

**Examples:**

- Community A: A large portion of the population growth is due to immigration of retirees.
- Community B: The economic outlook indicates increased employment in higher income industries.

Begin this step by reviewing the national and state housing trends starting on page C-1 in Appendix C of this workbook. This review should be supplemented by a review of possible local economic and housing conditions and trends to consider in the analysis. The local economist at the region office of the Oregon Employment Division can help identify local conditions and trends. For an example, see conditions and trends for Eugene-Springfield, page C-6, Sample Analysis, Appendix C.

**STEP 3 Identify local demographic characteristics of the population and, if possible, household trends that relate to demand for different types of housing.**

These factors are important because certain *household* types tend to choose certain *housing* types. The factors you use will vary depending on community characteristics and the availability of data.

**Examples:**

- Households with a head aged 15 to 24 tend to be apartment renters.
- Households with higher incomes tend to live in single family houses.

Factors analyzed in the sample analysis in Appendix C include population growth, household size, age of household head, marital status and presence of children, household income, and net worth; and "supply factors," including the availability and price of buildable land; the location of residential land; the cost of construction; the availability of financing; and the availability of builders of alternative housing (for example, see factors that affect the market in Eugene-Springfield, page C-7, Sample Analysis, Appendix C).

- 3.a The best indicators of housing needs are household incomes by household size and age of head of household.<sup>19</sup> It is not always possible to get these three pieces of information cross-tabulated. However, decennial census data do report each item separately. Contact the local state data center for information (see Appendix C). The cross-tabulation of these data can be obtained from Public Use Micro Data (PUM) from the 1990 Census for larger metropolitan areas. An alternative is to conduct a survey to obtain this information. Data and/or trends on tenure and percentage of income paid for housing are also useful in this analysis.
- 3.b If possible, develop trends of these variables and population growth using 1970, 1980, and 1990 census data (for example, see tables on pages C-8 through C-10, Sample Analysis, Appendix C).

Possible data sources include the following:

- ❑ 1990 Census data from the report, *Demographic, Housing and Socioeconomic Characteristics of ( ) County, Its Cities and Census Tracts*, prepared by Center for Population, Research and Census (CPRC), Portland State University, for counties and cities. Social and Economic Characteristics or Summary Tape File 3 on CD ROM (see example of table in Appendix C);

<sup>19</sup>See Appendix C for a sample data sheet on statewide average income from the 1990 U.S. Census.

- ☐ 1970 and 1980 Census Information. For assistance, contact a member of Oregon State Data Center (see list of members in Appendix C);
- ☐ Larger metropolitan areas can use Public Use Micro Data from 1990 Census of Population and Housing;
- ☐ A local community housing survey;
- ☐ *Provisional Projections of the Population of Oregon and Its Counties, 1990-2020*, CPRC, Portland State University for projecting age of head of household;
- ☐ State Employment Division's local economist in each community for information on local economic trends that would provide insights into how incomes will likely be distributed in the community in 20 years; and
- ☐ Sourcebook of County Demographics 1995: a reference book at the library with profiles of households.

**STEP 4 Determine the types of housing that are likely to be affordable to the projected population based on household income.<sup>20</sup>**

4.a Identify the types of housing to address. State law requires the housing needs analysis to identify the following types, at a minimum.

1. Single-family and manufactured housing, detached;
2. Manufactured housing units in parks;
3. Multiple or single-family units, attached; and
4. Government assisted housing (below market-rate housing).

Government assisted housing is not a specific housing type, but jurisdictions must make provisions (inventories and policies) for government assisted housing in their comprehensive plans and ordinances. In addition, some communities may want to identify seasonal units.

4.b Organize data gathered on household incomes by income range categories, e.g., high, medium, and low. Calculate the percent of total households that fall into each category.

4.c Considering local housing prices for the same timeframe as the income data, identify the structure types and tenure financially attainable by each income

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<sup>20</sup>The size and location of the lot can have a large impact on affordability. To keep it simple, these and other "supply" factors are analyzed in Step 5, but these steps are generally conducted simultaneously.

group and project out 20 years, if possible (for example, see tables on pages C-11 and C-13, Sample Analysis, Appendix C).

#### **STEP 5 Estimate the number of additional needed units by structure type.**

This analysis could be based on the relationships among general trends (as shown in the sample analysis and national and state trends in Appendix C); or, if possible, a jurisdiction could conduct its own analysis as explained below.<sup>21</sup>

- 5.a Household size: Based on the data gathered in 3.a, describe the relationship between household size and structure type and tenure. Estimate likely shifts in the number of households by household size in 20 years and the implications for housing choice (for example, see tables on pages C-14 and C-15, Sample Analysis, Appendix C).
- 5.b Age of household head: Based on the data gathered in 3.a, describe the relationship between age of household head and structure type and tenure. Estimate likely shifts in the number of households by age of household head in 20 years and the implications for housing choice (for example, see table on page C-17, Sample Analysis, Appendix C).
- 5.c Based on the analysis in Steps 5.a and 5.b, and on knowledge about national, state and local housing conditions and trends and analysis in Step 4, describe how the characteristics of the projected households will likely affect housing choice. Also consider trends in housing and land prices. Document conclusions drawn from the analysis, including a description of how and why local conditions and/or trends are expected to differ from the national and state trends (for example, see pages C-18 through C-21, Sample Analysis, Appendix C).
- 5.d Describe trends in construction by structure type, using building permit data, and describe how future construction trends will likely be affected by changing demographics (for example, see table on page C-22, Sample Analysis, Appendix C).
- 5.e Estimate the number of additional units by structure type needed for new households, allowing for a vacancy rate (e.g., 2 percent for owner-occupied and

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<sup>21</sup>The extent to which the existing housing stock may meet specific housing needs (e.g., affordable housing) may also be taken into consideration, although it was not factored into the Sample Analysis in Appendix C.

5 percent for rented) to provide housing choice (for example, see table on page C-23, Sample Analysis, Appendix C).<sup>22</sup>

**STEP 6 Determine the needed net density range for each plan designation and the average needed net density for all designations.**

- 6.a Examine the relationship between lot size and square feet of living space over time, using county assessor's data to determine local trends in housing density (for example, see graphics on page C-24, Sample Analysis, Appendix C).
- 6.b Describe the likely effect of land price, availability, and location and future housing prices on these trends (for example, see pages C-25 through C-28, Sample Analysis, Appendix C).
- 6.c Allocate future needed housing units to the respective plan designation in which it is anticipated they will be developed.

Obtain the needed housing units by structure type from the results of Step 5.e. Based on the type of structures allowed in each plan designation, allocate those units to the respective plan designation. For most cities, this will not be a simple matter because there is frequently overlap of housing types by plan designation (i.e., more than one type of housing is allowed in each plan designation category). If new housing types are needed that are not identified in the existing plan (e.g., row houses), modify the assumptions to accommodate the need for these housing types (see example).

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<sup>22</sup>The example in Appendix C does not account for a vacancy rate. However, this would need to be included in the analysis.

<b>Example:<sup>23</sup></b>				
<b>Plan Designation</b>				
<b>Housing Type</b>	<b>Needed Units</b>	<b>Low Density</b>	<b>Medium Density</b>	<b>High Density</b>
<b>Single family detached</b>	18,000	18,000		
<b>Manufactured housing in parks</b>	6,750	6,750		
<b>Apartments</b>	15,750		7,750	8,000
<b>Single family attached (condos, etc.)</b>	4,500		4,500	
<b>Total</b>	45,000	24,750	12,250	8,000

- 6.d Estimate the needed net density range for each plan designation, based on the types of structures that would be allowed in each designation; and on an estimate of the density at which each structure type is likely to develop in the community, based on recent housing developments and current local policies (for example, see pages C-29 through C-32, Sample Analysis, Appendix C). **If these ranges are different from those in the adopted comprehensive plan and zoning code, an amendment to the plan and code will be necessary.**
- 6.e Estimate land needs<sup>24</sup> by dividing the number of needed units of each structure type by the net density at which it is most likely to be developed (from the analysis in Step 6.d) and apportion the acres into each residential plan designation.

<sup>23</sup>This example uses the data in the Sample Analysis in Appendix C. However, this is not how the structure types were actually allocated to plan designations in the Eugene-Springfield residential lands study.

<sup>24</sup>Note that the land needs identified in this step will be compared to the buildable acres in Task 7.

<b>Example:</b>			
<b>Housing Types</b>	<b>Needed Units</b>	<b>Forecasted Net Density</b>	<b>Land Needed in Net Acres</b>
Single-family, detached	18,000	9.00	2,000.00
Mfr'd homes in parks	6,750	9.50	710.53
Single-family, attached	4,500	18.00	250.00
Apartments, medium density	7,750	25.00	310.00
Apartments, high density	8,000	30.00	266.67
<b>Totals:</b>	<b>45,000</b>	<b>N/A</b>	<b>3,537.20</b>

- 6.f Estimate the average needed net density by dividing the total number of needed net acres by the total number of needed units.

Possible data sources:

- ☐ Local building permit information;
- ☐ Field survey (counting the number of houses by type);
- ☐ County Assessor's data for assessed value for tax lots in residential use;
- ☐ Census data for number of units by type which is referred to as "units by address" in Census report, *Demographic, Housing and Socioeconomic Characteristics of ( ) County, Its Cities and Census Tracts*, CPRC. In addition, this report provides number of units by rent charged, number of units by value and median value;
- ☐ Local appraisal firms and property management firms for information on current housing market, e.g., types of housing being sold, sales price, square foot price of new construction;
- ☐ Assessor's Sales Ratio Study from the County Assessor and Multiple Listing Service Report from a real estate broker;

- ☐ County Housing Authority for information on subsidized units in each jurisdiction; and
- ☐ Local Geographic Information System (GIS) data, if available.



#### **Task 4. Is *needed* density the same as or less than *actual* density? Is *needed* mix the same as *actual* mix?**

**Purpose** The purpose of this task is to ascertain whether or not the average *needed* density is the same as or less than the density of recent development; whether the mix of *needed* housing types is different from the mix of recent development; and whether any measures are required. If the needed housing mix for new development is different from the recent housing mix or if the needed density for new development is greater than density of recent development, a jurisdiction must take measures that are likely to achieve the needed mix and densities.<sup>25</sup>

#### **Overview of Process**

This task builds on the results of calculations in Tasks 2 and 3. In the following analysis, actual density and mix means the density and mix that has actually occurred in a community in the last five years or since the last periodic review, whichever is greater. There are four steps to completing this task.

- STEP 1** Compare the *actual* housing mix with the *needed* housing mix.
- STEP 2** Compare the average *actual* net density with the average *needed* net density.
- STEP 3** Compare the *actual* net density for specific housing types with the *needed* net density ranges.
- STEP 4** Determine if measures are required to achieve either the needed housing mix or needed densities, or both.

#### **Steps to Follow**

- STEP 1** Compare the *actual* housing mix with the *needed* housing mix.

<sup>25</sup>ORS 197.296(5)



## Damian Syrnyk

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**From:** Robin Vora <robinvora1@gmail.com>  
**Sent:** Friday, February 28, 2014 5:44 PM  
**To:** CouncilAll; Brian Rankin; Damian Syrnyk  
**Subject:** Support for Jim Clinton's Proposal to Pay for UGB Expansion

I urge you to support Mayor Jim Clinton's proposal for payment of the Urban Growth Boundary (UGB) expansion process by those who benefit from it. A recent poll showed that most Bend residents do not view increased population as desirable. Most existing residents will likely have a reduced quality of life because of UGB expansion and so should not be paying the bill for it.

I suggest that when landowners subdivide within the the UGB expansion area they should pay a fee that covers their proportional share of the cost of UGB expansion, including roads, fire, police and other services, as well as planning and litigation costs associated with the expansion process. Landowners should not be charged or included in that proportional calculation if they choose not to subdivide. We need to maintain open space and do not want to discourage property owners from keeping their property whole.

Thank you for your time and consideration.

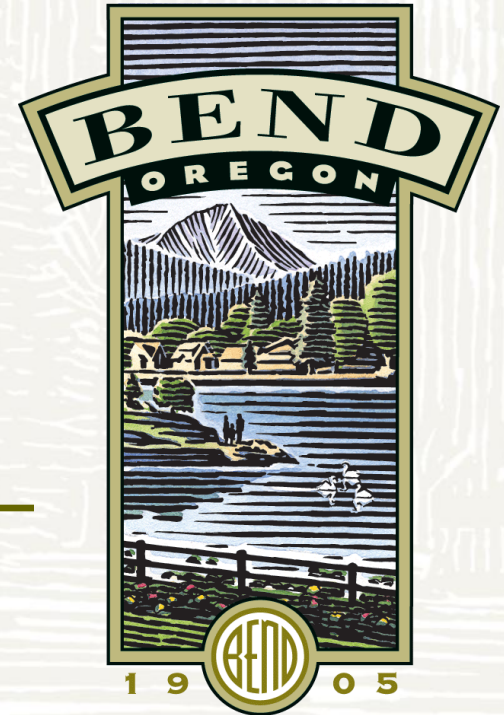
Robin Vora  
1679 NE Daphne Dr.  
Bend, OR 97701

# UGB Remand Task Force Review of Steps 4-6 of Housing Needs Analysis

*Bend Metro Parks and Recreation*

*Community Room*

*799 SW Columbia St, Bend*



*Brian Rankin, Principal Planner*

*Damian Syrnyk, Senior Planner*

*March 17, 2014*

# HNA in the “Big Picture”



BLI

- Capacity of residential lands inside UGB (Issue 2.2)

HNA

- Housing mix, allocation, acres of residential land need (Issue 2.3 and 2.4)

Efficiency  
Measures

- Consider new efficiency measures (Issue 3.1 and 3.2)

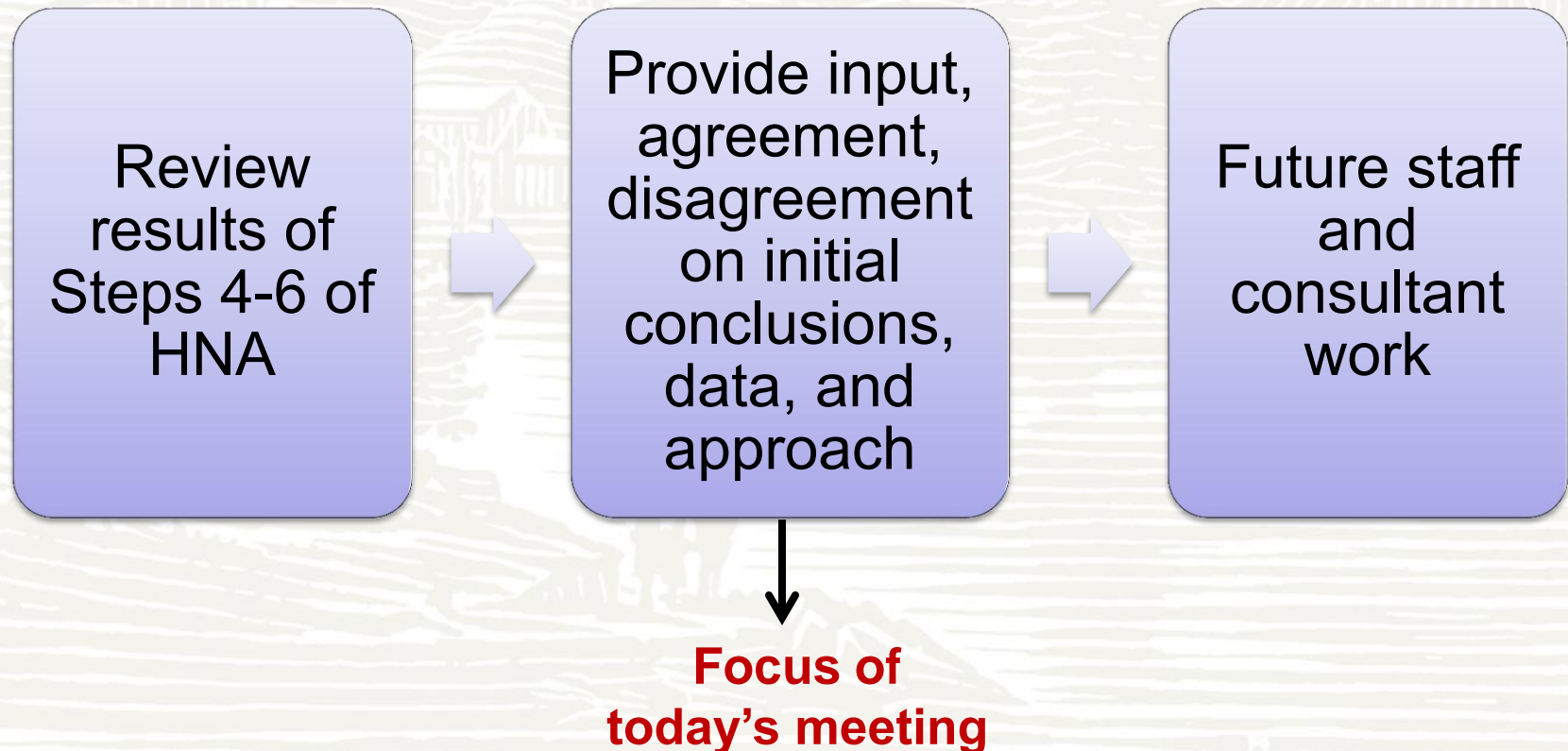
University

- Goal 9 special sites including the 225 acre university site (includes 35-50+ acres or 570-1300+ housing units) and other Goal 9 employment land needs (Issue 9.1)

Goal 14

- Create and evaluate different combinations of efficiency measures and UGB expansions to meet housing, employment, special sites, school, park, etc. land needs (Issues 9.1-9.10)

# Purpose of Meeting





# Steps to Complete HNA



- C** **Step 1** – Project number of new housing units needed in the next 20 years.
- O**
- M** **Step 2** – Identify relevant national, state, and local demographic and economic trends and factors that may affect the 20-year projection of structure type mix.
- P**
- L**
- E**
- T** **Step 3** – Describe demographic characteristics of population, and, if possible, household trends that relate to demand for different types of housing.
- E**
- D**

**Step 4** – Determine types of housing that are likely to be affordable to projected households based on household income.

**Step 5** – Estimate the number of additional needed units by structure type.

**Step 6** – Determine the needed density ranges for each plan designation and the average needed net density for all structure types.

# Key Steps & Outcomes for Steps 4-6



Determine affordable housing types for future households

Estimate unit forecast and housing mix for 2008-2028

Estimate needed net density for each plan designation

Estimate land need for each plan designation based on mix and needed density

# Step 4: Affordable Housing Types



## a. Identify types of housing likely to be affordable based on household income:

- Single family detached
- Single family attached
- Multiple family attached – duplex, triplex, multiplex

These three types are those required by state law and the Remand Order

## b. Organize data on household income by range categories

- Low – less than or equal to \$49,999
- Medium - \$50,000 to 99,999
- High - \$100,000 or more

Income data from 2007 ACS presented as numbers of households with income within a range



# Step 4: Affordable Housing Types

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## **c....Identify structure types financially attainable by each income**

- Low (0 to \$49,999)
  - Multiple family attached, mobile homes in parks, renting SDF, duplexes, triplexes
- Medium (\$50,000 to \$99,999)
  - Rent multiple family attached, single family detached, single family attached
  - Buy single family attached and detached
- High (\$100,000 or more)
  - Buy single family detached, particularly those on their own lot
  - May buy single family attached in a condominium



# Step 5: Estimate Units by Type



Estimate the number of units by type

- Single family detached
- Single family attached
- Multiple family attached

Estimate relies on these three types and housing unit forecast of 16,681 to estimate future land need for housing

- Need to allocate a **proportion of housing forecast to each type**
- Use these proportions to **allocate units to zones** and estimate needed acres

This “housing mix” is not predictive – not intended to predict changes in behavior

- Not used to change behavior
- Used to ensure that future units have adequate land on which to be built

# Step 5: Trends in Key Variables



**1. Housing Units Forecast:** 16,681 units 2008-2028 (Step 1)

## **2. Household Variables (data from 1990-2007/08):**

- Household income - Generally increased household incomes (Tables 4-3, 4-4)
- Age of household head - Generally aging (Table 6, Step 3)
- Household size - Generally stable, slight increase in smaller and decrease in larger households (Tables 5-1& 5-5)
- Household types - Generally increasing proportion of non-family (Table 8, Step 3)
- Tenure (households buying vs. renting) - Generally more owners than renters, the number of renters is growing, and both owners and renters live in single-family detached units (Table 5-3 and Table 9, Step 3)

# Step 5: Trends in Key Variables



## 1. Housing Variables:

- Housing unit inventory (total number of units by type)
  - 2008 distribution of units by type
    - 71% Single-family detached
    - 2% Single-family attached
    - 27% Multi-family attached
  - Between 1998 and 2008, the percent of SFD slightly increased and the percent of MFA slightly decreased (Table 4-2)
  - At a similar time (2007), 42% of households made less than \$50,000 per year
- Housing prices and rents
  - Increased dramatically (Tables 4-8 through 4-10)
- Housing units permitted by type 1999-2008
  - Similar to the above mix, with slightly more SFD being constructed (Table 5-11)



# C.O. Workforce Housing Needs Assessment



- Demand for workforce housing outpaced the production of workforce housing units.
- Many housing developers, advocates, other community stakeholders city officials commented on the difficulty of finding land with a purchase price that will allow for the construction of affordable housing.
- Affordable housing for service workers, both for individuals and families, is in short supply in Bend. Rapid increases in home prices have combined with growth in the (low wage) service sector to make it difficult for much of Bend's workforce to live in the city.
- The lack of affordable housing for the workforce had a negative effect on employers in Central Oregon. In a survey of 118 private and public sector employers, more than half feel that insufficient availability of affordable housing for the workforce is the most critical problem or one of the more serious problems in the region.

# C.O. Workforce Housing Needs Assessment



- The increasing lack of housing affordable to low and moderate income households is resulting in many area workers purchasing homes and living in other communities, including Redmond, Prineville and others. **A survey of employers suggests that 23.3% of Bend's workforce lives outside the City of Bend.**
- Census data show from **1990 to 2000 shows an increasing number of workers commuting to Deschutes County from other counties.** Census data on travel times to work further suggest significant numbers of commuters in other Central Oregon cities have been commuting to Bend for work.
- **Conversion** of manufactured home parks and rental units.
- **Special needs populations** face gaps in service delivery, including transitional housing for low-income families, supportive transitional housing for people with substance abuse problems and mental illnesses and some emergency housing.



# Direction from Remand

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- Explain housing mix and provide sufficient buildable land in each plan district to meet anticipated housing
  - City needs to express housing mix using at least three types (Remand Order, p. 31 and 32).
  - City findings must explain its policy choice to adopt housing mix related (Remand Order, p. 34).
- Housing Mix is a critical variable in planning for residential lands:
  - Must satisfy Goal 10, Housing with respect to planning for all types of needed housing and ensuring that adequate land is zoned for these types.
  - Must satisfy Goal 14, Urbanization by ensuring that any land zoned to meet future needs of housing ensures that land is used efficiently for meeting these needs.
  - Task 2.4 ties this together – adequate supplies of land (current UGB, measures, expansion) provide sufficient buildable lands for all housing needs (Remand Order, p 35-36).

# Step 5: Estimate Units by Type



## e. Estimate number of additional by type needed for new households.

65% Single Family Detached (SFD)

- Similar in proportion to what Bend had in 1990 and 2000
- Recognizes that this type was produced more than others from 1999 to 2007

2% Single Family Attached (SFA)

- Not produced as often as SFA or MFA units
- Lower proportion intended to support an increase in supply of multiple family attached units

33% Multi-Family Attached (MFA)

- Increase in this proportion proposed to ensure an adequate land supply
- More land available for types of rental housing

**Does the data suggest the mix should increase or decrease the supply of SFD?**

# Step 6: Needed, Average Net Density

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**a. Examine relationship between lot size and square feet of living space over time, using county assessor's data to determine local trends in housing density**

- Focusing on changes in density as surrogate measure for lot size and living space
- Historic and current average net densities (Table 6-1):
  - Stayed constant in RL (2.1)
  - Increased in RS and RM (3.2-3.9 in RS, and 8.5-9.9 in RM)
  - Increased slightly in RH (14.4 – 15.5), but still below minimum density (due to minimum adopted in 2006)



# Housing Forecast to Mix



- Table 6-2 (like Table 5-10) uses Housing Mix to allocate housing unit forecast to one of the three types

**Table 6-2: Proposed Mix of Housing for 2008 to 2028**

Type	Proportion	Number
Single family detached	65%	10,842
Single family attached	2%	334
Multi-family attached	33%	5,505
	100%	16,681

- Table 6-3 allocates the mix shown according to current distribution of units (as of 2008)

# **Step 6: Needed, Average Net Density**



## **b. Describe likely effects of land price, availability, and location of future housing prices on these trends.**

- Changes in household characteristics (e.g. smaller, older households, more households earning less than \$50K) have not resulted in a dramatic increase in demand for more diverse housing products
- Trends suggest that as land prices increased, particularly in RS and RM zoned areas, most housing produced would be single family detached, with a trend towards smaller, more dense, single family detached
- More requests for changes in zoning to allow higher density development (e.g. RS to RM or RH) would signal increased market demand for more dense types of housing development
- Future work on efficiency measures (Tasks 3.1 and 3.2) should examine where areas exist that might be good candidates for rezoning

# Step 6: Needed, Average Net Density

c. Allocate future needed housing units to the respective plan designation in which it is anticipated they will be developed

- Observed (1998-2008):

6-3	RL	RS	RM	RH	Total
SFD	2%	90%	8%	0%	100%
SFA	0%	10%	50%	40%	100%
MFA	0%	14%	71%	15%	100%

- Proposed (based on trends from last slide):

6-4	RL	RS	RM	RH	Total
SFD	2%	80%	18%	0%	100%
SFA	0%	10%	50%	40%	100%
MFA	0%	15%	60%	25%	100%

**Why?:**

- Expected demand for smaller SFD at higher densities in RS and RM due to more smaller, older households with high incomes
- Observed increase in built densities
- More MFA in RH than RM



# Step 6: Needed, Average Net Density

d. Estimate needed net density range for each plan designation...

Table 6-5	RL	RS	RM	RH
Allowable Density by Zone	1.4 - 2.8	3.8 – 9.1	9.1 – 27.1	23.9 – 47.3
Average Built Density in 2008	2.1	3.9	9.9	15.5

Minimums in place in 2006

- Built densities are at the lower end of the allowed range (trend)
- All plan designations have adequate ranges of allowed density (minimum – maximum) for needed densities
- Minimum density standards adopted in 2006 will help ensure new development meets designation minimums

# Step 6: Needed, Average Net Density



e. Estimate land needs by dividing the number of needed units of each structure type by the net density at which it is most likely to be developed and apportion the acres into each residential plan designation.

f. Estimate the average needed net density by dividing the total number of needed net acres by the total number of needed units.

- Table 6-6 allocates 16,681 needed units by new housing mix (Step 5) and anticipated changes in allocations within zones (Step 6)

Zone	RL			RS			RM			RH			TOTAL		
Housing Type	Net Density	Units	Net Acres Needed	Net Density	Units	Net Acres Needed	Net Density	Units	Net Acres Needed	Net Density	Units	Net Acres Needed	Average Net Density	Units	Net Acres Needed
SF Detached	2.0	217	109	3.8	8,674	2,283	5.6	1,952	349	0.0	0	0	4.0	10,843	2,740
SF Attached	NA	0	0	8.4	33	4	13.1	167	13	23.9	134	6	15.0	334	22
MF Attached	NA	0	0	11.3	826	73	16.6	3,303	199	23.9	1,376	58	16.7	5,505	330
<b>TOTAL</b>	<b>2.0</b>	<b>217</b>	<b>109</b>	<b>4.0</b>	<b>9,533</b>	<b>2,360</b>	<b>9.7</b>	<b>5,422</b>	<b>560</b>	<b>23.9</b>	<b>1,510</b>	<b>63</b>	<b>5.4</b>	<b>16,682</b>	<b>3,092</b>

# Original Proposal vs. New HNA

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## 2008 Proposal

- Started with 2008 mix of 71% detached and 29% attached housing
- Proposed mix of 65% detached and 35% attached housing
- Relied on 2008 allocations by zone for future allocation of land need
- Did not provide adequate findings to support needed shift in mix

## 2014 Proposal

- Proposed mix allocates housing to one of three types: 65% SFD, 2% SFA, and 33% MFA
- Proposes new allocation to ensure adequate land is zoned for each of these three types (Tables 6-3 and 6-4)
- Proposes to allocate more land for development of MFA units
- Overall average density at 5.4 units/net ac.. 42% increase since 1998, 23% increase over current density of 4.4 units



# RTF & Public Feedback & Direction

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- Does HNA link data regarding trends with conclusions on **housing mix and distribution** of needed housing by zone?
- Has HNA responded to Remand Order?
- Do any assumptions and inferences need to be better documented? Which ones and why?
- Next step is to compare needed acres with available acres from BLI (still being refined) to determine residential land need to be met through efficiency measures and expansion.

