

**FINDINGS AND RECOMMENDATIONS OF
DESCHUTES COUNTY HEARINGS OFFICER**

FILE NUMBERS: 247-15-000333-CU
247-15-000334-SP

**APPLICANT/
PROPERTY OWNER:** Bend Park and Recreation District
799 S.W. Columbia Avenue
Bend, Oregon 97702

REQUEST: The applicant requests conditional use and site plan approval to establish a regional park, to be known as the Riley Ranch Nature Reserve, on a 184-acre property located west of O.B. Riley Road, at the west end of Glen Vista Road, and on the east side of the Deschutes River north of Bend. The proposed park would include undisturbed open space, trails, boardwalks, parking areas, gathering areas, restroom facilities, overlooks, river access areas, environmental education and programming facilities, road improvements, and a bridge across the Deschutes River.

STAFF REVIEWER: Anthony Raguine, Senior Planner

HEARING DATE: September 8, 2015

RECORD CLOSED: September 24, 2015

I. APPLICABLE STANDARDS AND CRITERIA:

A. Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance

1. Chapter 18.04, Title, Purpose and Definitions

*** Section 18.04.030, Definitions**

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

1. Chapter 19.04, Title, Purpose, Compliance and Definitions

*** Section 19.04.040, Definitions**

2. Chapter 19.12, Urban Area Reserve Zone – UAR-10

*** Section 19.12.030, Conditional Uses**

*** Section 19.12.040, Height Regulations**

*** Section 19.12.050, Lot Requirements**

*** Section 19.12.060, Off-Street Parking**

3. Chapter 19.16, Surface Mining Zone - SM

*** Section 19.16.030, Conditional Uses Permitted**

*** Section 19.16.050, Use Setbacks**

4. **Chapter 19.72, Flood Plain Combining Zone - FP**
 - * **Section 19.72.020, Application of FP Zone**
 - * **Section 19.72.040, Alteration of Watercourses**
 - * **Section 19.72.090, Land Development Standards in a Flood Hazard Area**
 - * **Section 19.72.110, Utilities Standards in a Flood Hazard Area**
 - * **Section 19.72.120, Floodways**
5. **Chapter 19.76, Site Plan Review**
 - * **Section 19.76.070, Site Plan Criteria**
 - * **Section 19.76.080, Required Minimum Standards**
 - * **Section 19.76.090, Deschutes River Corridor Design Review**
6. **Chapter 19.80, Off-Street Parking and Loading**
 - * **Section 19.80.020, Off-Street Loading**
 - * **Section 19.80.030, Off-Street Parking**
 - * **Section 19.80.040, Number of Spaces Required**
 - * **Section 19.80.050, General Provisions for Off-Street Parking**
 - * **Section 19.80.060, Development and Maintenance Standards for Off-Street Parking Areas**
 - * **Section 19.80.070, Off-Street Parking Lot Design**
 - * **Section 19.80.080, Required Bicycle Parking**
 - * **Section 19.80.090, Bicycle Parking Location and Design; Other Required Conditions**
7. **Chapter 19.88, Provisions Applying to Special Use Standards**
 - * **Section 19.88.240, Fill and Removal**
8. **Chapter 19.100, Conditional Use Permits**
 - * **Section 19.100.030, General Conditional Use Criteria**
- C. **Title 22 of the Deschutes County Code, the Development Procedures Ordinance**
 1. **Chapter 22.22, Deschutes River Corridor Design Review Procedures**
 - * **Section 22.22.010, Deschutes River Corridor Design Review Procedures**
 2. **Chapter 22.24, Land Use Action Hearings**
 - * **Section 22.24.140, Continuances and Record Extensions**
- D. **Bend Area General Plan**

II. FINDINGS OF FACT:

- A. Location:** The subject property is located west of O.B. Riley Road, at the west end of Glen Vista Road, and on the east side of the Deschutes River north of Bend. The property is further identified as: Tax Lot 111 on Deschutes County Assessor's map 17-12-18 (63599 O.B. Riley Road); Tax Lots 200 (19975 Glen Vista Road) and 201 (no assigned address) on Assessor's map 17-12-18D; and Tax Lot 202 (no assigned address) on Assessor's map 17-12-19.
- B. Zoning and Plan Designation:** The majority of the subject property is zoned Urban Area Reserve (UAR-10), and is designated Urban Reserve Area (URA) on the Deschutes County Comprehensive Plan map. Portions of the property adjacent to the Deschutes River are zoned Flood Plain (FP). In addition, a portion of the property's Deschutes River frontage is designated River Areas of Special Interest on the Bend Area General Plan (BAGP) map. Finally, as discussed in the findings below, the applicant proposes to construct a bridge across the river, the western half of which would be located on adjacent property zoned and designated Surface Mining (SM), listed as SM Site 308 on the county's Goal 5 inventory of significant mineral and aggregate sites, and actively engaged in surface mining.¹
- C. Site Description:** The subject property is 184 acres in size and irregular in shape. It has varying topography including meadows, rock outcrops, rimrock, and canyon areas. The property also has significant frontage on the Deschutes River. The adjacent stretch of the river is within the Middle Deschutes River State Scenic Waterway.² Vegetation consists of pasture and native grasses, and scattered ponderosa pine, juniper and deciduous trees, and native brush and grasses. The property is undeveloped except for the former Jeffers house, garage, outbuildings, entry driveway from Glen Vista Road, and surrounding landscaping located near the southeast corner of the property, as well as an irrigation pond and canal/pipe system located in the most easterly northeast portion of the site. The record indicates the subject property historically was engaged in farm use consisting of irrigated pasture and livestock grazing. The subject property has 56 acres of irrigation water rights administered by the Swalley Irrigation District (Swalley).

The Bend Park and Recreation District (BPRD or applicant) purchased the subject property in 2010. As part of its master planning for the proposed regional park, BPRD identified seven management units within the subject property that have particular characteristics, described in the applicant's burden of proof as follows:

Riparian Management Unit. This unit is a 100-foot-wide linear area immediately adjacent to the Ordinary High Water Mark (OHWM) of the Deschutes River. It comprises approximately 20 acres of the property. Immediately adjacent to the river, vegetation is composed of deciduous trees, shrubs, emergent grasses, and forbs. Moving away from the river, coniferous trees are more prevalent in the overstory. The southern portion of the unit tends to include more coniferous trees in the canopy, while the northern portion of the unit tends to include a greater proportion of deciduous trees in the canopy. The southeast portion of this unit has steep slopes that begin at the water's edge.

¹ Included in the applicant's burden of proof is a letter dated June 9, 2015, from representatives of Shevlin Sand & Gravel, LLC, owner of SM Site 308, consenting to inclusion of the site in the applicant's proposal.

² Oregon Administrative Rule (OAR) 736-0040-0072 designates the abutting stretch of river as a "Recreational River Area."

Canyon Floor Management Unit. This unit consists of a 34-acre area in the northwest portion of the site and a small, two-acre area in the southeast. The area is a bench between the base of the Rimrock Cliffs Management Unit and the Riparian Management Unit. The canyon floor has a mix of soft soils, rolling terrain, dense stands of ponderosa pine and juniper, and open areas. In addition, it contains a rocky high point, which separates the side-channel of the Deschutes River from the river's current channel. Existing development is minimal in this area; the north unit contains several old jeep roads, two power poles, and the remains of an old well, fencing, and two historic structures. The small two-acre section of canyon floor located in the southeast lies at the base of the cliffs and riparian area, and has no existing development.

Rimrock Cliffs Management Unit. This unit is a linear band of cliffs that extends from the north to the south of the site. The area comprises approximately 30 acres. This steeply sloping area weaves through the property, dividing the lower elevation management units in the northwest of the site from the higher units in the southeast. The Rimrock Cliffs Unit is a rugged, exposed landscape at the terminal edge of large prehistoric lava flows from Newberry Volcano. Existing development is minimal in the area, consisting of a jeep road in the north that extends to the adjacent tax lot to the northeast, and a jeep road connecting the Canyon Floor Management Unit with the Rimrock Flats Management Unit.

Rimrock Flats Management Unit. This unit is a broad basalt ledge located at the top of the rimrock cliffs. The area comprises approximately 20 acres of the 184-acre site. This management unit extends from the center to the south of the site, following the eastern, upper edge of the cliffs. Existing development within the unit is minimal, and consists of a small section of jeep road in the west.

Meadow Management Unit. This unit is an open area located in the center of the proposed nature reserve. It comprises approximately 30 acres of the property. The unit is relatively flat and is framed by stands of juniper and pine. Agricultural uses, over-grazing, and invasive plant species have led to the degradation of native plant communities here. Recently, BPRD has begun active restoration and the area is being managed with prescribed fire and strategic herbicide applications. Existing development in the unit consists of several jeep roads and a fence extending along the eastern edge

Juniper Flats Management Unit. This unit is located on the eastern side of the site, to the north of the Rural Residential unit. It comprises approximately 30 acres of the property. The area contains a mix of juniper stands and native shrub patches. Existing development in the unit consists of ranch roads, fencelines, and gates.

Rural Residential Management Unit. This unit is located in the southeast portion of the site. It comprises approximately 15 acres of the property. The unit includes the former Jeffers house, garage, outbuildings, entry driveway from Glen Vista Road, and the surrounding informal landscape. This unit contains the irrigation pond and canal system located in the northeast portion of the site.

- D. Surrounding Zoning and Land Uses:** To the north are large privately-owned tracts zoned UAR-10, some of which are vacant and some of which are developed with residential uses. To the east are other lands zoned UAR-10 and Suburban Low Density Residential (SR-2.5) outside the Bend city limits and developed with rural residential

uses. To the southeast and south across the Deschutes River are residential uses on lands zoned Residential Standard (RS) within the Bend city limits. To the west is Surface Mining Site No. 308 zoned SM and engaged in surface mining. A portion of the Deschutes River Trail is located along the south and west sides of the river across from the subject property.

- E. Procedural History:** The subject applications were submitted on June 25, 2015 and were deemed complete on July 27, 2015. Therefore, the 150-day period for issuance of a final local land use decision under ORS 215.178 would have expired on December 23, 2015. A public hearing on the applications was scheduled for September 8, 2015. On August 26, 2015, the Hearings Officer conducted a site visit to the subject property and vicinity accompanied by Senior Planner Anthony Raguine. At the public hearing, the Hearings Officer disclosed her observations and impressions from the site visit, received testimony and evidence, left the written evidentiary record open through September 22, 2015, and allowed the applicant through September 29, 2015 to submit final argument pursuant to ORS 197.763. By an electronic mail messaged dated September 24, 2015, the applicant waived the filing of final argument and the record closed on that date. Because the applicant agreed to extend the written record from the public hearing through September 24, 2015, under Section 22.24.140 of the development procedures ordinance the 150-day period was tolled for 16 days and now expires on January 8, 2016. As of the date of this decision, there remain 87 days in the extended 150-day period.
- F. Proposal:** The applicant requests conditional use and site plan approval to establish a regional park to be called the Riley Ranch Nature Reserve (hereafter “Riley Ranch” or “the park”) on the 184-acre subject property. The applicant’s burden of proof summarizes its proposal in relevant part as follows:

“BPRD has developed a phased Master Plan for the site which will focus on the restoration and preservation of the unique natural and cultural features on the site. The site will provide passive recreation and environmental/nature educational opportunities. Developed park facilities would include typical park amenities such as trails, parking lots, gathering areas, and restroom facilities and would be phased over a ten-year period of time. The existing house and associated outbuildings will be renovated to make them ADA [Americans with Disabilities Act] accessible and usable to support park programming operations.

* * *

The project also includes a new bridge across the Deschutes River to connect the park with the Deschutes River Trail. The east end of the bridge is on the Riley Ranch Nature Reserve property and the west end is on property owned by the Coats family and zoned Surface Mining.”

Attachment 4 to the applicant’s burden of proof includes a chart summarizing the proposed locations, characteristics, and phasing of the various developed elements of the park, as well as a detailed narrative describing those elements, including: the park entrance, parking areas, trails and boardwalks, gathering areas, restroom facilities, overlooks, water access areas, the Jeffers house and associated outbuildings, the bridge over the Deschutes River, and road improvements. These elements are

discussed in the site plan and conditional use findings below.

- G. Public/Private Agency Comments:** The Planning Division sent written notice of the applicant's proposal to a number of public and private agencies and received responses from: the Deschutes County Building Division, Road Department (road department), and Senior Transportation Planner; the City of Bend Planning Division, Engineer, and Fire Department; the Oregon Department of Fish and Wildlife (ODFW); the Oregon Parks and Recreation Department (OPRD); and Swalley. These comments are set forth verbatim at pages 3-9 of the staff report and are included in the record. The following agencies did not respond or submitted a "no comment" response: the Deschutes County Assessor and Environmental Health Division; the Oregon Department of State Lands; and U.S. Fish and Wildlife Service. Agency comments are addressed in the findings below.
- H. Public Notice and Comments:** On July 6, 2015, the Planning Division mailed individual written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property. However, the staff report states this notice identified the subject property as including only Tax Lot 111 and should also have included Tax Lots 200, 201 and 202. On July 10, 2015, a revised notice including all four tax lots was mailed to all property owners entitled to notice. The record indicates the revised notice was mailed to the owners of record of twenty-five tax lots. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed, the county had received 10 letters from the public in response to these notices. Four members of the public testified at the public hearing. Public comments are addressed in the findings below.
- I. Lot of Record:** The staff report states the county considers Tax Lots 200 and 202 to be separate legal lots of record based on a 2010 lot-of-record determination (LR-12-10). The staff report also states that under a 2012 lot line adjustment (LL-12-35), a 7.542-acre portion of Tax Lot 200 was removed and added to Tax Lot 202, and subsequently segregated into its own tax lot – Tax Lot 201. With respect to Tax Lot 111, the staff report states it formerly was known as Tax Lot 107 on Assessor's map 17-12-18, and also formerly was a portion of Parcel 1 of MJP-79-8 (County Survey 02268). The staff report states Tax Lot 111 was given its current configuration as a result of several lot line adjustments (LL-10-35, LL-10-36, LL-10-37, LL-10-45, and LL-13-28). Based on staff's description of the history and configuration of the tax lots comprising the subject property, the Hearings Officer finds the subject property consists of legal lots of record.

III. SUMMARY:

The Hearings Officer has found the applicant's proposed regional park satisfies, or with imposition of conditions of approval can satisfy, most of the applicable standards and approval criteria in Title 19. However, I have found I cannot recommend that the Deschutes County Planning Commission (DCPC) approve the applicant's proposal because it includes a bridge that does not meet the minimum applicable setbacks in the UAR-10 and SM Zones, and because the applicant has not adequately addressed or demonstrated compliance with all standards and approval criteria applicable to other elements of the proposed park. I have found that with respect to those other elements, the applicant may be able to provide sufficient additional information to the DCPC to allow it to approve the park without the proposed bridge. And because the applicant

does not propose to construct the bridge for several years, I have found the applicant may be able to resolve the bridge setback issues during that interim period.

IV. CONCLUSIONS OF LAW:

A. Title 22 of the Deschutes County Code, the Development Procedures Ordinance

1. Chapter 22.22. Deschutes River Corridor Design Review Procedures

a. Section 22.22.010, Deschutes River Corridor Design Review Procedures

For all property subject to the Deschutes River design review process under DCC Title 19, the following procedures shall apply:

A. There shall be two types of review for design review depending on the level and type of activity proposed.

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2. Notwithstanding DCC 22.24.020(A), Type II review shall be performed by the Bend Urban Area Planning Commission for the following activities:

- a. Appeal of a Type I decision.**
- b. New construction and new development.**
- c. Master Plan approval for large-scale projects.**
- d. Variances to application under DCC 19.76.090.**
- e. Fill and removal activities associated with new development or for creation of firebreaks in association with appropriate fire prevention authorities.**

FINDINGS: Section 19.04.040 defines the Deschutes River Corridor as “all property within 100 feet of the ordinary high water mark of the Deschutes River.” The record shows that much of the subject property, and many of the proposed developed areas, are located within the Deschutes River Corridor. The staff report states, and the Hearings Officer agrees, that the applicant’s proposal constitutes a Type II review under this section because it involves new development, a “master plan” for a large-scale project, and fill and removal activities for the proposed bridge. Therefore, I find these design review provisions apply to the applicant’s proposal.

Section 19.04.040 defines “planning commission” as “the Planning Commission of the Bend Urban Area.” However, the staff report states the Bend Urban Area Planning Commission (BUAPC) no longer exists. The staff report states the county considers the DCPC to have assumed the responsibilities of the BUAPC, and therefore a Type II review of the applicant’s proposal would be conducted by the DCPC. Nevertheless, because a public hearing before the Hearings Officer was scheduled and noticed before the county determined the DCPC is the

appropriate review authority, the county requested that I make findings and recommendations on the applicant's proposal for the DCPC to consider at public hearing to be held at a future date.³ Neither the applicant nor interested parties objected to this procedure. Therefore, I find it is appropriate for me to review the subject applications and to issue findings and recommendations for the DCPC in this decision.

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

UAR-10 ZONE STANDARDS

1. Chapter 19.12, Urban Area Reserve Zone (UAR-10)

a. Section 19.12.030, Conditional Uses

The following conditional uses may be permitted subject to a conditional use permit and the provisions of DCC 19.76 and 19.100.

*** * ***

J. Parks and recreation facilities, fire stations, libraries, museums, but not including storage or repair yards, warehouses or similar uses.

FINDINGS: All of the subject property is zoned UAR-10. The applicant proposes to establish a 184-acre regional public park, a conditional use in the UAR-10 Zone. The proposal's compliance with the site plan approval criteria in Chapter 19.76 and the conditional use approval criteria in Chapter 19.100 is discussed in the findings below.

b. Section 19.12.040, Height Regulations

No building or structure shall be hereafter erected, enlarged or structurally altered to exceed 30 feet in height.

FINDINGS: New structures proposed for the regional park include vault toilets, overlook decks, boardwalks, information kiosks, and a bridge. The applicant's burden of proof states the tallest of these structures will be the vault toilets with a proposed height of 15 feet 2 inches. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

c. Section 19.12.050, Lot Requirements

The following requirements shall be observed:

A. Lot Area. Each lot shall have a minimum area of 10 acres.

B. Lot Width. Each lot shall have a minimum average width of 300 feet with a minimum street frontage of 150 feet.

FINDINGS: The subject property is larger than 10 acres and wider than 300 feet, but the record indicates it does not have 150 feet of street frontage. Rather, it has access to Glen Vista Road

³ The record indicates the DCPC has scheduled a hearing on the applicant's proposal for October 22, 2015.

via a private easement. The staff report states the county believes the criteria in these two paragraphs apply only to the creation of new lots and therefore they are not applicable to the applicant's proposal. However, the staff report states the county considers the criteria in Paragraphs C, D, E and F of this section, discussed below, to apply to *both* existing and new lots.

The Hearings Officer finds there is nothing in the text of Section 19.12.050 that limits its application to new lots. Nevertheless, I understand that the county has a long history of applying this section in the manner described in the staff report. Under these circumstances, I find it is appropriate to examine the context of these provisions – i.e., the rest of Title 19 – to discern whether the drafters of Section 19.12.050(A) and (B) intended these paragraphs to apply to existing lots as well as to new lots.

Title 19 addresses minimum lot sizes in most zones through three code language variations. The first -- the "lot requirements" language in Section 19.12.050 – is found in Section 19.40.050 (Neighborhood Commercial (CN) Zone, and Section 19.44.050 (Limited Commercial (CL) Zone). In the second variation, the "lot requirements" provision expressly establishes minimum lot sizes for particular types and densities of residential uses (Section 19.32.050 (Urban Medium Density Residential (RM) Zone) and Section 19.36.050 (Urban High Density Residential (RH) Zone). In the third variation, the zones include both the "lot requirements" provision and a "land division" provision that expressly establishes minimum lot sizes for *new* lots (Section 19.20.055 (SR 2 ½ Zone), Section 19.24.055 (Urban Low Density Residential (RL) Zone), and Section 19.28.055 (Urban Standard Density Residential (RS) Zone). In the three zones with both lot requirement and land division sections, the same base minimum lot size is established in both sections, but the land division section specifically allows deviations from the base minimum lot size for particular types of new developments. The Hearings Officer finds this context suggests that in zones like the UAR-10 Zone that do not include land division provisions, or provisions expressly establishing minimum lot sizes for certain new developments, the lot requirements provisions were intended to apply to *both* new and existing lots.

Title 19 provides additional relevant context in the "lot of record" provisions. The county allows development of an existing lot that does not meet minimum lot sizes and/or dimensions in the particular zone if it is a "lot of record," defined in Section 19.04.040 as "a lot or parcel at least 5,000 square feet in area and at least 50 feet wide" and which conformed to statutes and ordinances in effect at the time it was created. As discussed in the Findings of Fact above, the county has determined the subject property is comprised of more than one lot of record.

Considering the above-described context, the Hearings Officer finds the most reasonable reading of Section 19.12.050 is that it applies, *in its entirety*, to *both* existing and new lots. However, I find that if an existing lot does not satisfy the lot size and dimension requirements in the zone, it may nevertheless be developed if it is a lot of record. Therefore, I find that because the subject property is comprised of lots of record, it need not satisfy the lot size and dimension requirements in the lot-of-record definition.

- C. Front Yard. The front yard shall be a minimum of 50 feet from the existing street right of way line or the ultimate street right of way as adopted on the Comprehensive Plan or Official Map, except that any lot of record less than one acre in size lawfully created prior to (effect date of this title) shall have a minimum front yard of 30 feet.**

D. Side Yard. There shall be a minimum side yard of 10 feet.

E. Rear Yard. There shall be a minimum rear yard of 50 feet.

FINDINGS: The applicant's submitted site plan shows all proposed built elements of the regional park except the bridge over the Deschutes River will be located at least 100 feet from all property lines. The proposed bridge will cross the property line between the subject property and the adjacent SM Site 308 to the west, and therefore will not meet the applicable minimum yard setbacks in the UAR-10 Zone.⁴ The question is whether these setbacks apply to the proposed bridge. The Hearings Officer finds the answer to that question also turns on an analysis of the text and context of Section 19.12.050. I find there is nothing in the text of the section that expressly exempts the proposed bridge, or any other uses, from the yard setbacks. And while there may be lots of record that are too small to meet the yard setbacks – e.g., a 5,000-square-foot lot that is 100 feet by 500 feet lot – I find the remedy for that situation is a variance and not an interpretation of Section 19.12.050 that eliminates the setback requirements for all lots of record, regardless of their size.

The Hearings Officer finds the context of Section 19.12.050 also includes the following definitions in Section 19.04.040:

“Setback” means the minimum allowable horizontal distance from a given point or line of reference, such as a property line, to the nearest vertical wall or other element of a building or structure as defined herein.

“Yard” means an open space on a lot which is unobstructed from the ground upward except as otherwise provided in DCC Title 19. In determining the required yard for properties abutting the Deschutes River, the edge of the river shall be determined by the ordinary high water mark which shall be the mark on the Deschutes River that will be found by examining the banks and ascertaining where the presence and action of water are so common and usual, and so long contained in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, and as it may naturally change.

“Yard, front” means an open space extending the full width of the lot between a building and the front lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in DCC Title 19. Distances referred to throughout DCC Title 19 shall constitute building setback requirements.

“Yard, rear” means an open space extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in DCC Title 19.

“Yard, side” means an open space extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in DCC Title 19.

“Building” means any structure built and maintained for the support, shelter, or

⁴ The Hearings Officer finds it is not clear whether the side or rear setback would apply to the property line between the subject property and SM Site 308.

enclosure of persons, animals, chattels or property of any kind meeting the requirements of State Structural Specialty Code and Fire and Life Safety Code.

“Structure” means anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which required location on the ground or is attached to something having a location on the ground, including swimming and wading pools and covered patios, excepting outdoor areas such as paved areas, driveways, walks and fences. (Emphasis added.)

The applicant argues the proposed bridge is not subject to the minimum yard setbacks in Section 19.12.050 because it falls within the exception to “structures” for “driveways” and “walks.” Specifically, the applicant argues that because the bridge will connect sections of park trails and the Deschutes River Trail, it is part of a “driveway” or “walk.” The Hearings Officer disagrees. Although it is not entirely clear from the “structure” definition, I find the exemption appears to apply to features that are either level with the ground or are insubstantial such as fences. In contrast, as demonstrated in the design drawings included in the record as Attachment 8 to the applicant’s burden of proof and as Hearing Exhibit 1, the proposed bridge is neither a ground-level structure nor insubstantial. It will be over 100 feet in length and 12 feet wide, constructed of prefabricated steel trusses anchored to abutments and bollards on each bank, and of sufficient height to span the river above its base flood elevation.

For the foregoing reasons, the Hearings Officer finds the bridge falls squarely within the definitions of “building” and “structure” in Title 19 because it would be “built and maintained for the support, shelter, or enclosure of persons, animals, chattels or property of any kind,” and its abutments would require “location on the ground” and would be “attached to something having a location on the ground” – i.e., abutments and bollards.⁵

The Hearings Officer is aware that other bridges spanning the Deschutes River have been approved by the City of Bend and the former BUAPC. The record includes copies of two decisions approving bridges: the foot bridge crossing the Deschutes River south of the Bill Healy Memorial Bridge (File No. 05-17); and the foot bridge crossing the river near the First Street Rapids (File No. PZ-12-0220). Both bridges were reviewed under the Bend Development Code. In both cases, the bridges were held not to be subject to the minimum 100-foot setback from the river based on a finding that they were not “buildings.” However, the definitions of “building” and “structure” in the Bend Development Code differ significantly from those in Title 19. Chapter 1.2 of the Development Code defines “building” as “a structure which is designated and suitable for the habitation or shelter of human beings or animals or the shelter or storage of property.” The code definition of “structure” is identical to the definition in Title 19 except for the addition of the following sentence:

“Building” and “structure” are not interchangeable terms. A building is one type of structure that shelters humans, animals and the like.⁶

⁵ Although the Building Division’s comments on the applicant’s proposal do not address which proposed structures within the park would require a building permit, the Hearings Officer understands it is likely none of the proposed park structures, including the bridge, would require a building permit. I note the definition of “building” in Section 19.04.040 includes the phrase “meeting the requirements of State Structural Specialty Code and Fire and Life Safety Code.” However, I find this reference does not limit the definition of “building” to structures requiring a building permit.

In other words, unlike Title 19, the Bend Development Code distinguishes between “buildings” and “structures” in applying minimum yards and setbacks only to the former. Therefore, the Hearings Officer finds these bridge approvals are distinguishable from the circumstances presented here.

For the foregoing reasons, the Hearings Officer finds from the text and context of Section 19.12.050 that the proposed bridge is subject to the minimum yards and setbacks therein. Therefore, because the bridge cannot satisfy those setbacks, I find I cannot recommend that the DCPD approve the bridge. Nevertheless, because the proposed bridge is only one element of the regional park, and is proposed to be built in a later phase of park development following the cessation of adjacent mining on SM Site 308 (projected to occur in five years), I find it is appropriate for me to review the rest of the proposed park without the bridge for compliance with the applicable standards and criteria.⁷

F. Solar Setback. The solar setback shall be as prescribed in DCC 19.88.210.

FINDINGS: For the reasons set forth in the findings above concerning yard setbacks, the Hearings Officer finds the solar setback also is applicable to the applicant’s proposed regional park. As discussed above, the height of the tallest proposed new structures – the vault toilets -- would be 15 feet 2 inches. The staff report states a structure of that height would require a setback of approximately 20 feet from the northern property line to satisfy the county’s solar access requirements. Because the submitted site plan shows all structures will be located at least 100 feet from the northern property lines, I find the applicant’s proposal will satisfy the solar access standards in Section 19.88.210.

d. Section 19.12.060, Off-street Parking

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

FINDINGS: Compliance with off-street parking requirements is addressed in the findings below under Chapter 19.80.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposal does not satisfy all applicable criteria in the UAR-10 Zone because the proposed bridge does not meet the minimum setbacks. Nevertheless, I find all other elements of the proposed park will satisfy the UAR-10 Zone standards. Therefore, I find that if the applicant’s proposal is approved by the DCPC, it should be approved without the bridge.

SURFACE MINING ZONE STANDARDS

2. Chapter 19.16, Surface Mining Zone (SM)

⁶ These definitions, found in Chapter 1.2 of the current Bend Development Code, have been the same since before the 2005 foot bridge decision was issued.

⁷ The Hearings Officer believes it may be feasible for the applicant to obtain a setback variance for the bridge under the variance criteria in Chapter 19.108. The applicant also may be able to resolve the setback issue through a lot line adjustment of the property line between the subject property and the adjacent SM Site 308.

a. **Section 19.16.030, Conditional Uses Permitted**

In an SM Zone, the following uses and their accessory uses are permitted when authorized in accordance with the provisions subject to DCC 19.76 and 19.100:

* * *

G. Low intensity recreational uses in SM zones within the Inner Urban Growth Boundary, (IUGB), such as BMX bicycle tracks, ball fields, and parks and open space, subject to the criteria set forth in DCC 19.100.030 and the following:

FINDINGS: The only element of the proposed park located in the SM Zone is the bridge across the Deschutes River, the western half of which would be located on the adjacent SM-zoned Site 308 that is actively engaged in surface mining. Therefore, the Hearings Officer finds the applicant's proposal constitutes a conditional use in the SM Zone and the bridge is subject to the provisions of the SM Zone.

- 1. The surface mining shall have been completed on the area to be utilized for recreational purposes and the site reclaimed prior to or in conjunction with the proposed recreational use. These preconditions shall not apply where no resource exists on the area to be used.**

FINDINGS: As discussed in the Findings of Fact above, the applicant proposes to construct the bridge after surface mining activities above the bridge on SM Site 308 have been completed and that section of the mine has been reclaimed. In a letter dated June 9, 2015 and included in the record as Attachment 3 of the applicant's burden of proof, Eric and Robin Coats representing Shevlin Sand & Gravel, LLC, the owner of SM Site 308, stated in relevant part:

"We will continue to work with the District to formalize the details of the bridge and associated trail connections discussed in the District's application contingent upon the following conditions:

- 1. Access will not be finalized and the bridge will not be constructed until such time as quarry operations on the rimrock immediately above the bridge site have been terminated and reclaimed. Quarry operations will be relocated to provide park and trail users a safe buffer from ongoing quarry operations and all quarry operations will be fenced from adjacent lands to restrict public access to the quarry.*
- 2. The final replacement of the bridge abutments, proposed trail connections, fencing and terms of any agreement for vehicular access for construction, repair and maintenance work will be mutually agreed upon by the parties prior to construction of the bridge.*

We expect to begin relocation of quarry operations in this area within the next 1-2 years, with a goal of completion in 5 years."

In order to accommodate these specifications, the applicant proposes to construct the bridge during a later phase of park development. As discussed in the findings above under the UAR-10 Zone, the Hearings Officer has found I cannot recommend approval of the bridge because it does not comply with the minimum setbacks in that zone. Therefore, I have recommended that if the DCPC approves the proposed park, such approval should not include the bridge. I further find that if the DCPC elects to approve the applicant's proposal *with* the bridge, such approval should be subject to the conditions of approval set forth above.

2. **A showing that with respect to the proposed recreational use, the adjacent mining operation, as currently operated and as may foreseeably be operated in the future, will be able to operate without violating DEQ noise and dust standards applicable to noise or dust sensitive uses.** (Emphasis added.)

FINDINGS: The Hearings Officer finds this criterion focuses on impacts on noise- and dust-sensitive uses. Title 19 does not define these terms. However, Section 18.04.030 of Title 18 defines these uses as "real property normally used for sleeping or normally used as schools, churches, hospitals or public libraries." I find that in the absence of definitions in Title 19, it is appropriate to use the definitions in Title 18 in applying this subsection. I find the proposed regional park does not constitute a noise- or dust-sensitive use, and therefore the applicant's proposal will satisfy this criterion.

3. **The applicant and/or proprietor of the recreational use shall sign and record in the Deschutes County Book of Records a statement declaring that the applicant and the applicant's successors will not now or in the future complain about permitted surface mining activities on the adjacent surface mining site.**

FINDINGS: The Hearings Officer finds that if the DCPC approves the applicant's proposal, it should be subject to a condition of approval requiring the applicant to sign and record a waiver of remonstrance as required by this paragraph.

4. **The proposed recreational use shall be set back 250 feet from existing surface mining operations and those that may foreseeably be located on the site in the future.**

FINDINGS: As discussed in the findings above, the proposed bridge would cross the property line between the subject property and SM Site 308 which is actively engaged in surface mining. The applicant has proposed to construct the bridge after mining activities on the portion of SM Site 308 above the bridge have been completed and that section of the mine has been reclaimed. The Hearings Officer has found the bridge cannot be approved because it does not meet the minimum setbacks in the UAR-10 Zone. However, I also have found that if the applicant's proposal is approved by the DCPC *with the bridge*, it should be subject to the conditions of approval set forth above concerning the timing of bridge construction. I find imposition of such conditions will assure compliance with this criterion as long as the bridge is set back at least 250 feet from remaining areas of active surface mining.

b. Section 19.16.050, Use Setbacks

- A. Uses within an SM Zone shall maintain a 100 foot setback from the property line when adjacent to a residential dwelling.**
- B. Three hundred foot setback shall be maintained from the property lines adjoining roads that are in Landscape Management Areas as defined in the Comprehensive Plan, as well as from any stream or lake.**
- C. Solar Setback. The solar setback shall be as prescribed in DCC 19.88.210. (Emphasis added.)**

FINDINGS: The record indicates the proposed bridge will be located well over 100 feet from any residential dwelling, therefore satisfying the setback requirement in Paragraph (A). The record also indicates the proposed bridge would be located at least 2,000 feet from the nearest public road located in the Landscape Management (LM) Zone, but would span the Deschutes River and therefore would not be set back 300 feet from the Deschutes River.

The staff report questions whether the 300-foot setback applies to the proposed bridge or only to *surface mining uses* – e.g., extraction, processing, etc. The Hearings Officer finds the language in Paragraph (B) is somewhat ambiguous because it doesn't reference any particular uses, and the language in Paragraph (A), which may have been intended to apply to all three paragraphs in this section, states it applies to "uses within an SM Zone." Section 19.04.040 defines "use" broadly to include "the purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained."

Attached to staff's October 14, 2015, memorandum is a copy of the county's Ordinance 90-038 amending the Title 19 to add low-intensity recreational uses as a conditional use in the SM Zone. Staff suggests that because the 300-foot setback in the SM Zone predated this amendment, and because the SM Zone is the only zone in Title 19 that includes such a large setback, the 300-foot setback in Paragraph (B) must have been intended to apply only to *surface mining uses* – e.g., extraction, processing, etc. -- which would be expected to create the types of impacts on surrounding land justifying such a large setback.

The Hearings Officer cannot argue with staff's logic. But the relevant question is whether staff's interpretation is supported by the text and context of Section 19.16.050. I find the text does not support it because it does not exempt any use from the 300-foot setback, but instead appears to apply to all "uses in the SM Zone." Nor does the context lend much support to staff's interpretation because the SM Zone allows other relatively low-impact uses that also are subject to the 300-foot setback – e.g., "caretaker's residence" as an outright permitted use under Section 19.16.020 and "utility facility" as a conditional use under Section 19.16.030. For these reasons, I find the setbacks in Section 19.16.050 apply to the proposed bridge, and the bridge does not satisfy the 300-foot setback from the Deschutes River.

With respect to the solar setback, as discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the proposed bridge will satisfy the solar access standards in Section 19.88.210 because it will be located well over 100 feet from the north property line of the subject property.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal does not satisfy all applicable criteria in the SM Zone because the proposed bridge does not meet the minimum 300-foot setback from the Deschutes River. As discussed above, I have found that if the DCPC approves the proposed park, such approval should exclude the bridge.⁸

FLOOD PLAIN ZONE STANDARDS

3. Chapter 19.72, Flood Plain Zone (FP)

a. Section 19.72.020, Application of FP Zone

- A. The FP Combining Zone shall apply to the area identified on the Flood Insurance Rate Map (FIRM) as special flood hazard areas inundated by 100 year flood and floodway areas. The FIA Flood Insurance Study for Bend and the FIRM map are hereby adopted and by this reference included herein. The A and AE zones shown on the FIRM map are hereby zoned FP.**
- B. When base flood elevation data has not been provided on the FIRM, the Planning Director shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source in order to administer DCC 19.72.020.**
- C. Information to be obtained and maintained:**
 - 1. Where base flood elevation data is provided through the Flood Insurance Study or as required in DCC 19.72.020(B), record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and whether or not the structure contains a basement.**
 - 2. For all new or substantially improved flood proofed structures, record the actual elevation (in relation to mean sea level) of the structure's lowest floor. Obtain and maintain the flood proofing certifications required in DCC 19.72.070(B).**

FINDINGS: A portion of the subject property is identified on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) No. 41017C0655D. The staff report notes that "special flood hazard areas" subject to the FP Zone are those areas below a specified base flood elevation (BFE) in the Flood Insurance Study. However, the staff report states areas downstream of River Mile 162 on the subject property, including the proposed bridge location, are identified by the Flood Insurance Study as not having a BFE and as having a perfectly even grade. The staff report states, and based on the Hearings Officer's site visit

⁸ The Hearings Officer believes the applicant may be able to obtain a variance from the SM Zone setback under the variance criteria in Chapter 19.108, or may be able to resolve this setback issue through a lot line adjustment. It may also be possible for the applicant to obtain a text amendment to Title 19 to reduce or eliminate the 300-foot setback for low-intensity recreational uses in the SM Zone.

observations I agree, that it is highly unlikely that there is no gradient in this stretch of the river.

The applicant's burden of proof addresses this criterion in relevant part as follows:

*"The stretch of the Deschutes River is mapped by FEMA as Zone A, approximate. This means that there is no regulatory 100-year base flood elevation (BFE) available. The calculated 100-year BFE is estimated at 3,281.8 feet, North American Vertical Datum of 1988 (NAVD88). The floodplain is shown on **Figure 8**. The only project elements within the floodplain would be soft surface trails (Trails Type 2).*

*The Riley Ranch Bridge will span the 100-year floodplain. The low cord elevation of Riley Ranch Bridge is proposed to be not lower than 3,285.8 feet NAVD88; the estimated BFE allows 4.0 feet of freeboard between the BFE and the low cord elevation. This puts the Riley Ranch Bridge outside of the 100-year floodplain. The bridge abutments will be located outside of the 100-year flood plain. See plan sheets in **Attachment 8**." (Bold emphasis in original.)*

Based on EX2 of Attachment 8 to the applicant's burden of proof, the Hearings Officer understands the "low cord" elevation to be the elevation of the bottom of the bridge span. I find from Attachment 8 that the proposed bridge can be constructed outside of the flood plain and at least four feet above the BFE.

The staff report recommended that the applicant be required as a condition of approval to submit a report by a licensed professional surveyor concerning the elevation of the BFE. In response, at the public hearing the applicant submitted a "Hydraulic Analysis Memorandum" for the proposed bridge dated June 16, 2015, prepared by Stephanie Serpico of HDR Engineering, and included in the record as Hearing Exhibit 2. This analysis confirmed the BFE calculations in Attachment 8 to the applicant's burden of proof. Therefore, the Hearings Officer finds the proposed bridge would be located outside the FP Zone.

b. Section 19.72.040, Alteration of Watercourses

- A. Prior to any alteration or relocation of a watercourse, notice of the proposed alteration shall be given to affected, adjacent communities and the State Department of Water Resources and evidence of such notification submitted to the Federal Insurance Administration.**
- B. The applicant shall maintain the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.**

FINDINGS: The Hearings Officer finds these criteria are not applicable because the applicant's burden of proof and proposed site plan indicate no alteration of a watercourse is proposed.

c. Section 19.72.090, Land Development Standards in a Flood Hazard Area

- A. In addition to the terms of DCC 19.72.070 and 19.72.080, a subdivision or other land development, including all utility facilities, within an FP zone shall be designed and**

constructed to minimize flood damage, including special provisions for adequate drainage to reduce exposure to flood hazards.

FINDINGS: The applicant does not propose a subdivision. The proposed park would include only soft-surface trails within the FP Zone. The Hearings Officer finds that limiting development within the flood plain to soft-surface trails will minimize flood damage, therefore satisfying this criterion.

B. A land development which will alter or relocate a watercourse shall be designed, constructed and maintained to retain the flood carrying capacity of the watercourse.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant's burden of proof and proposed site plan indicate alteration of a watercourse is not proposed.

C. A proposed land development of greater than either 50 lots or five acres shall include data showing the base flood elevation.

FINDINGS: The proposed park would occupy 184 acres and therefore is subject to this criterion. The applicant's calculated 100-year BFE, depicted on Attachment 8 to the applicant's burden of proof and Hearing Exhibit 2, shows the proposed bridge would be located outside the flood plain and therefore outside the FP Zone.

d. Section 19.72.110, Utilities Standards in a Flood Hazard Area

A. A public utility or facility associated with a land development within an FP zone shall be designed, located and constructed to minimize or eliminate flood damage and to avoid raising the water elevation in a regulatory floodway.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose any public utility or utility facility.

B. Any new or replacement water supply system shall be designed, located and constructed to minimize or eliminate infiltration of floodwaters into the system.

C. Any new or replacement sewerage system shall be designed, located and constructed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into the floodwaters.

FINDINGS: The Hearings Officer finds these criteria are not applicable because the applicant does not propose any new or replacement water supply system or sewerage system. The applicant proposes that on-site restroom facilities will consist of vault toilets.

e. Section 19.72.120, Floodways

Located within areas of special flood hazard established in DCC

19.72.020(A) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

- A. Encroachments, including fill, new construction, substantial improvements and other development are prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.**
- B. If DCC 19.72.120(A) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of DCC 19.72.070.**

FINDINGS: The Hearings Officer finds that because the applicant's calculations show the proposed bridge would be located outside of the flood plain, it also will be located outside the floodway. I further find that based on the design and ground-level elevation of the proposed soft-surface trails in the flood plain, no impact to a floodway will occur, therefore satisfying these criteria.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies all applicable approval criteria in the FP Zone.

SITE PLAN APPROVAL CRITERIA

4. Chapter 19.76, Site Plan Review

a. Section 19.76.070, Site Plan Criteria

Approval of a site plan shall be based on the following criteria:

- A. Safety and Privacy. Residential site plans shall be designed to provide a safe living environment while offering appropriate opportunities for privacy and transitions from public to private spaces.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose residential development.

- B. Special Needs of Disabled. When deemed appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs, drop curbs and disabled parking stalls.**

FINDINGS: The applicant's submitted site plan shows the proposed park would include six accessible parking spaces split among the three parking areas. The applicant also proposes to provide accessible paths identified as Trail Type I on the site plan. These paths would provide accessibility to the Juniper, Meadow and Point Loop Trails. In addition, the burden of proof states the Jeffers House and associated outbuildings eventually will be remodeled for

accessibility, and the Hearings Officer finds compliance with the ADA for this remodel will be reviewed by the Building Division during the plan review/building permit process for the Jeffers House. For these reasons, I find the applicant's proposal satisfies this criterion.

- C. Preservation of Natural Landscape. The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve the applicant's functions. Preserved trees and shrubs shall be protected during construction.**

FINDINGS: The applicant proposes to retain 181 of the 184 acres comprising the subject property in their current undeveloped state. The applicant's master plan for the proposed park identifies seven management units with the goal within each management unit to preserve native vegetation and landscape. The burden of proof states that only minimal grading will be necessary to develop the proposed trails, and that where possible the applicant will improve existing trails. The only portions of the proposed park that would have more intensive development are the three proposed paved parking areas and access road, and the proposed lookouts and boardwalks. The Hearings Officer finds that in light of the very small amount of physical development proposed in the park, the applicant's proposal satisfies this criterion.

- D. Pedestrian and Vehicular Circulation and Parking. The location and number of points of access to the site, the interior circulation patterns, designs of parking areas and the separation between pedestrians and moving and parked vehicles shall be designed to promote safety and avoid congestion on adjacent streets.**

FINDINGS:

1. Access. The proposed park will have access from O.B. Riley Road and Glen Vista Road, both public roads, via an easement across the adjacent property identified as 20020 Glen Vista Road and as Tax Lot 400 on Assessor's map 17-12-17C. A copy of the easement is included in the record as Attachment 2 to the applicant's burden of proof. The applicant proposes to pave the access drive to create what essentially would be an extension of Glen Vista Road. As discussed in detail in the findings below, incorporated by reference herein, the Hearings Officer has found this access will be adequate to handle traffic anticipated to be generated by the proposed park, but that the applicant has not demonstrated there will be adequate sight distance, or a demonstrably feasible plan to provide adequate sight distance, at the Glen Vista/O.B. Riley Road intersection.

2. Interior Circulation. The applicant proposes a single internal access road for the park that would provide access to all three parking areas. As discussed in detail in the site plan and off-street parking findings below, incorporated by reference herein, the Hearings Officer has found the access drive and parking areas will provide sufficient area for access, egress, and maneuvering of vehicles.

3. Design of Parking Areas. As discussed in detail in the findings below concerning off-street parking standards, incorporated by reference herein, the Hearings Officer has found the size, design and location of the three proposed parking areas will allow convenient access to all proposed trailheads, gathering areas, overlooks and the Jeffers House. The submitted site plan

shows the parking areas are separated from the pedestrian trails except at the trailheads, and will be at least 900 feet from any public roadway. However, I also have found that the applicant failed to adequately address the question raised by opponent Edward Elkins as to whether proposed Parking Area A should be relocated so it does not interfere with existing irrigation pipes and easements.

4. Separation of Pedestrians and Vehicles. Except at the trailheads, the proposed trails are separated from parking areas and the access road by at least 100 feet. Additionally, the proposed trails cross the vehicular access road in only one location.

For the foregoing reasons, the Hearings Officer finds that the design of the interior vehicle circulation, parking areas and pedestrian paths will satisfy this criterion. However, I have found the lack of adequate sight distance or a demonstrably feasible plan for creating adequate sight distance at the Glen Vista/O.B. Riley Road intersection, and the lack of an adequate response to Mr. Elkins' concern about potential conflicts between Parking Area A and existing irrigation facilities, prevents the applicant's proposal from satisfying this criterion with respect to access.

E. Buffering and Screening. Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires and the like), loading and parking and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts to the site and neighboring properties.

FINDINGS: The applicant proposes to retain 181 of the 184 acres of the subject property in its current undeveloped state. For this reason, and based on the Hearings Officer's review of the submitted site plan and my site visit observations, I find the proposed parking areas, gathering areas, lookouts, and vault toilets will be substantially screened from adjoining properties by intervening distance, topography, and vegetation. In addition, I find additional screening will be accomplished by placement of the majority of the more intense development -- such as the access road and parking areas -- on the eastern portion of the site farthest from the Deschutes River and residences to the south and north. For these reasons, the Hearings Officer finds sufficient buffering and screening will be retained to minimize adverse impacts to the site and neighboring properties, thus satisfying this criterion.

F. Utilities. All utility installations above ground, if such are allowed, shall be located so as to minimize adverse impacts on the site and neighboring properties.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose any above-ground utilities.

G. Public Facilities. The proposed use shall not be an undue burden on public facilities, such as the street, sewer or water system.

FINDINGS: The Hearings Officer finds the public facilities and services that could be impacted by the proposed park are sewer and water systems, public streets, and police and fire protection. Each of these systems is addressed in the findings below.

1. Sewer System. The applicant proposes to provide restroom facilities for park users in the form of vault toilets. The applicant proposes that in the future the Jeffers House will be used for educational programming. The record indicates the Jeffers site currently is served by an on-site septic system. If/when the applicant seeks to change the use of the Jeffers house for educational programming, additional septic approval may be required. The applicant does not propose any connection to a public sewer system. For these reasons, the Hearings Officer finds the proposed park will not be an undue burden on the public sewer system.

2. Water System. The record indicates the subject property has existing water rights through the Swalley Irrigation District. The applicant states these water rights are adequate to provide both potable and irrigation water for the park. The applicant does not propose any connection to a public water system. For these reasons, the Hearings Officer finds the proposed park will not be an undue burden on a public water system.

3. Public Streets. The proposed park would have access from O.B. Riley Road and Glen Vista Road – both public roads -- via an easement over the adjacent private property. In his July 13, 2015 comments on the applicant’s proposal, County Engineer George Kolb stated the first 0.2 mile of Glen Vista Road is under the jurisdiction of the City of Bend and the remaining 0.32 mile of the road is under the jurisdiction of the county. Mr. Kolb stated the existing road width is 22 feet.⁹ The applicant’s materials indicate Glen Vista Road has a 40-foot right-of-way. The Hearings Officer observed during my sight visit that there are no curbs, sidewalks or bike paths on Glen Vista Road.

In order to determine the capacity of these public streets to handle traffic generated by the proposed park, the applicant engaged the traffic engineering firm of Kittelson & Associates, Inc. Kittelson submitted two traffic analyses. The first is included in the record as Attachment 10 to its burden of proof, and is a memorandum dated March 27, 2015 (hereafter “traffic study”). The second is a memorandum dated September 15, 2015 (hereafter “supplemental traffic study”). Each of these studies is addressed in the findings below.

a. Traffic Study. The purpose of the traffic study was to determine potential traffic impacts on affected streets and intersections from the proposed park. In order to predict traffic impacts, Kittelson used both the Institute of Traffic Engineers Trip Generation Manual (ITE Manual) trip generation rates for city, county, state and regional parks, as well as a site-specific trip generation study of several similar parks in Oregon, including Sawyer Park in Bend, Graham Oaks Nature Park in Wilsonville, Powell Butte Nature Park in Portland, and Minto-Brown Island Park in Salem. Kittelson conducted traffic counts at the access points for each of these parks, and also compared the size, amenities and features in these parks with the proposed Riley Ranch park. Based on the traffic counts from existing parks and the comparative park analysis, Kittelson concluded that using the most reasonable trip generation rate (calculated excluding the Minto-Brown Island park because of its greater size and higher-intensity uses), the proposed Riley Ranch park would generate between 11 and 13 new p.m. peak hour (4:00 p.m. to 6:00 p.m.) vehicle trips.

The traffic study also analyzed the impact of the projected new trips on the intersection of Glen Vista Road and O.B. Riley Road. The traffic study concluded that sight distance at the intersection does not meet the minimum AASHTO standard of 390 feet looking to the north (based on the posted speed limit of 35 miles per hour) due to the presence of trees, shrubs and

⁹ The applicant’s supplemental traffic study, discussed in the findings below, states the pavement width of Glen Vista Road ranges from 20 to 24 feet with gravel shoulders ranging from 2 to 4 feet wide.

fences that reduce the view north to approximately 325 feet. However, the traffic study noted that because current traffic on O.B. Riley road typically exceeds the posted speed, additional site distance would be required for intersection safety. The traffic study also noted that the existing right-turn-only “pork chop” feature on the Hardy Road (east) side of the O.B. Riley/Glen Vista intersection complicates the function of the intersection because many drivers go around the “pork chop” to make a left turn from Hardy Road onto O.B. Riley Road.

The traffic study concluded site distance could be improved at the intersection through a number of measures depicted in a diagram entitled “Conceptual Intersection Treatments Deschutes County, Oregon.” The recommended measures include: (1) the installation of several signs; (2) recessed pavement markers (RPMs); (3) removal of the existing “pork chop” right-turn-only feature on Hardy Road on the west side of the Glen Vista/O.B. Riley Road intersection; (4) trimming and removal of vegetation and repair of fences within the right-of-way and on private property adjacent to the west side of O.B. Riley Road; and (5) removal of mail boxes on private property on the east side of O.B. Riley Road north of Glen Vista Road.

In his July 14, 2015 comments on the traffic study, the county’s Senior Transportation Planner Peter Russell stated he had reviewed the traffic study and agreed with its assumptions, conclusions and recommendations. In his July 13, 2015 comments on the traffic study, George Kolb stated he believes a site distance of 390 feet to the north would meet AASHTO standards that identify a minimum sight distance of 360 feet for a posted speed of 45 miles per hour. He stated that any improvements to the segment of O.B. Riley Road within the county’s jurisdiction must be reviewed and approved by the county road department.

In his September 15, 2015 comments on the traffic study, City Engineer Russell Grayson stated he had no objections to the applicant’s proposal, but had the following comments on the applicant’s conceptual intersection treatments:

- “1. *The proposed design is conceptual and a Right-of-Way permit will be required to be submitted to the City of Bend Private Development Engineering Department for review and approval. All designs shall comply with the City’s Standards and Specifications.*
2. *The City does not want the proposed installed RPM’s in the pavement. These typically become a long term maintenance issue.*
3. *The City will make a final determination of the proposed speed reduction pavement markings when the permit is submitted for review and approval*
4. *The City has no objection to the proposed LED flashers and dynamic speed feedback signs but will not maintain these improvements. We agree that they would be an additional benefit to the design the County would have to agree to maintain those improvements.*
5. *All vegetation and obstructions located within the AASHTO travel sight distance area shall be properly trimmed or removed to allow appropriate sight distances. This is a critical element to the safety of this intersection. This includes all fences, trees and shrubs. All coordination with the adjacent property owners for the removal and relocation of these obstructions shall be the responsibility of BPRD.*

6. *No objections to the additional improvements indicated on the conceptual plan.”*

In his own September 15, 2015 memo, Mr. Kolb responded to the City Engineer’s comments as follows:

“The only comment I would have concerns item no. 4. We would only agree to maintain any signs that are within our jurisdiction and we will want to review and discuss the type of signs being installed before we will commit to the maintenance of the signs. If these signs are strictly for the benefit of BPRD, then we would want them to be responsible for the maintenance. Any signs within the City of Bend will be maintained by either the City or BPRD.”

b. Supplemental Traffic Study. The stated purpose of the supplemental traffic study was to address questions and comments about the traffic study raised by the Hearings Officer, staff and members of the public at the public hearing. This study states traffic counts on O.B. Riley Road were taken during the month of September 2014 “to capture typical system conditions” – i.e., school traffic combined with afternoon park use during the time of year when daylight hours extend beyond the typical late afternoon commute period. The supplemental traffic study also described the results of an “operational analysis” of the Glen Vista/O.B. Riley Road intersection, including traffic counts, during the weekday p.m. peak hour. Based on that analysis, Kittelson concluded the intersection currently operates at Level of Service (LOS) A.¹⁰ indicating the intersection has the capacity to accommodate “significantly higher traffic volumes based on its geometric configuration.” The supplemental traffic study states that with the addition of traffic generated by a projected annual growth rate of 2 percent and full development of the park, the intersection will continue to operate at LOS A.

c. Opponent Testimony. In his written and oral testimony, opponent Dan Kiesow, who lives in a residence on Glen Vista Road, argued the proposed park should not be approved unless and until the city completely redesigns and reconstructs the Glen Vista/O.B. Riley Road intersection in order to accommodate not only park-generated traffic but also future traffic generated by additional residential development anticipated to occur with normal growth in the area as well as if land in the surrounding area is included in the Bend Urban Growth Boundary (UGB). The Hearings Officer is aware that some land north of the city limits is being considered for inclusion in the UGB. While I understand Mr. Kiesow’s position, I find I cannot constitutionally deny approval of the park for lack of major intersection improvements that are neither needed for, nor proportionate to, the traffic projected to be generated by the park.

d. Conclusions. The Hearings Officer finds from the applicant’s traffic studies that the very low volume of traffic anticipated to be generated by the proposed park will not exceed the *capacity* of Glen Vista Road or its intersection with O.B. Riley Road. I find it is theoretically feasible to increase the sight distance at the Glen Vista/O.B. Riley Road intersection looking north in order to meet minimum AASHTO standards. However, most of the recommended remediation measures either involve cooperation with private property owners who did not participate in this proceeding, or require approval from both the city and county engineers, each of whom has expressed concern about the cost, function and maintenance of some of these measures. For these reasons, I find there is enough uncertainty as to if, when and by whom the recommended sight distance remediation measures will be completed that I cannot find the applicant has met

¹⁰ The supplemental traffic study notes the county considers anything above LOS D to be an acceptable level of service.

its burden of proof to demonstrate the proposed park will not create an undue burden on the public street system. Since this application must be reviewed by the DCPC, the applicant may have the opportunity during that review to remove some of this uncertainty through further conversations with the city and county engineers and affected property owners.

4. Police Protection. The subject property would have police protection from the Deschutes County Sheriff's Office, which did not comment on the applicant's proposal.

5. Fire Protection. The subject property would have fire protection from the City of Bend Fire Department ("fire department"). Larry Medina, Deputy Chief and Fire Marshal for the fire department, submitted detailed comments dated July 20, 2015, on the applicant's proposal. His comments addressed the applicable fire code requirements for apparatus access roads, fire protection water supplies, and other fire service features such as address numbers.

The applicant's August 26, 2015 submission responded to each of the fire department's comments, identifying the means by which the park would satisfy the identified fire code requirements. In particular, the applicant stated that fire apparatus access would be provided to within 150 feet of all buildings except the Jeffers House which would be equipped with an automatic sprinkler system. The applicant also stated the park access road will meet all requirements for a fire apparatus access road including the ability to support loads of 60,000 pounds gross vehicle weight with an asphalt surface, and that when the Jeffers House is remodeled for use as an education programming space the applicant will submit to the fire department detailed fire protection plans showing adequate water for fire flow from the park's water system. Finally, the applicant stated the address number of the site will be placed on the entrance gateway sign at the end of Glen Vista Road, and the applicant will install all required Knox Boxes/keys on the buildings and security gates. The Hearings Officer finds that if the DCPC approves the applicant's proposal, it should be subject to a condition of approval requiring the applicant to satisfy all applicable provisions of the fire code identified by the fire department, and that prior to opening the park to the public the applicant must submit to the Planning Division written documentation from the fire department that all requirements have been met.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal does not satisfy this criterion.

b. Section 19.76.080, Required Minimum Standards

A. Minimum Landscaping Standards. All developments subject to site plan approval shall meet the following minimum standards for landscaping:

- 1. A minimum of 15 percent of the area of a project shall be landscaped for multifamily, commercial and industrial developments, subject to site plan approval and the following requirements:**

FINDINGS: The Hearings Officer finds this criterion does not apply because the applicant does not propose a multi-family, commercial or industrial development.

- 2. Street Trees. The placement, spacing and pruning of street trees shall be as follows, although the Planning**

Director or Hearings Body may adjust the placement standard for special site conditions:

FINDINGS: As discussed in the findings above, the subject property does not have frontage on a public street. Therefore, the Hearings Officer finds this criterion is not applicable.

- B. Shared Areas. Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development as follows:**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose a residential development.

- C. Storage. Areas shall be provided in residential developments for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose residential development.

- D. Drainage. Surface drainage shall be contained on site.**

FINDINGS: According to the applicant's burden of proof, hardscape in the proposed park would be limited to the access road, three parking areas, the boardwalk and the overlooks. The applicant proposes to improve the access road so that surface water from the road will drain to either side of the road. The Hearings Officer finds that in light of the amount of undeveloped land on either side of the road, runoff from the road will be contained on-site. The applicant's parking lot plans, shown on Sheets L1.1 and L1.2 of the applicant's site plan, indicate runoff from the parking areas will be directed to adjacent areas specifically designed to accept runoff. For this reason, I find runoff from the parking areas also will be contained on-site. And because of the small area of impervious surface associated with the boardwalk and overlooks compared to the surrounding undisturbed lands, I find runoff from the boardwalk and overlooks will be contained onsite. Therefore, I find the applicant's proposal will satisfy this criterion.

- E. Bicycle Parking. The development shall provide the number and type of bicycle parking facility as required in DCC 19.80.080 and 19.80.090. The location and design of bicycle parking facilities shall be shown on the site plan.**

FINDINGS: Compliance with the bicycle parking standards in Sections 19.80.080 and 19.80.090 is addressed in the findings below.

- F. Internal Pedestrian Circulation. Internal pedestrian circulation shall be provided in new office parks and commercial developments through the clustering of buildings, construction of hard surface pedestrian walkway, and similar techniques.**

Walkways shall connect building entrances to one another and from building entrances to public street and existing or planned transit stops. On site walkways shall connect with

walkways, sidewalks, bikeways, and other pedestrian or bicycle connection on adjacent properties planned or used for commercial, multifamily, institutional or park use.

FINDINGS: The Hearings Officer finds the criteria in the first paragraph are not applicable to the regional park because the applicant does not propose an office park or commercial development. With respect to the second paragraph, I find the only applicable criterion is the requirement that on-site walkways connect building entrances to one another. I find from my site visit observations that the only part of the proposed park where this requirement would apply is at the Jeffers House. Based on my site visit observations, I find there are paved driveways and walkways on that part of the park that will provide connections between the Jeffers House and its association outbuildings. The record indicates there are no existing or planned transit stops in the area to which the proposed walkways could connect. For these reasons, I find the applicant's proposal satisfies this criterion.

G. Public Transit Orientation. New retail, office and institutional buildings on parcels within 600 feet of existing or planned transit routes shall provide preferential access to transit through the following measures:

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose a new retail, office or institutional building.

c. Section 19.76.090, Deschutes River Corridor Design Review

A. Purpose. It is the purpose of the Deschutes River Corridor Design Review to ensure compliance with the objectives of DCC Title 19 and the goals and policies relating to the Deschutes River in the Bend Area General Plan. The purpose shall also be to:

- 1. Recognize and respect the unusual natural beauty and character of the Deschutes River.**
- 2. Conserve and enhance the existing riparian zone along the Deschutes River.**
- 3. Allow the community flexibility in reviewing development proposals within the Areas of Special Interest that are designated on the Bend Area General Plan.**
- 4. Maintain the scenic quality of the canyon and rimrock areas of the Deschutes River.**
- 5. Conserve and enhance property values.**

In considering a Design Plan the Bend Urban Area Planning Commission shall take into account the impact of the proposed development on nearby properties, on the capacity of the street system, on

**land values and development potential of the area, and
on the appearance of the street and community.**
(Emphasis added.)

FINDINGS: In numerous previous decisions, the Hearings Officer has found purpose statements generally do not establish approval criteria for quasi-judicial land use applications. That is because they typically include language that is aspirational and/or describes general county policies. However, I find the language of this purpose statement, by requiring the DCPC to “take into account” certain factors, effectively creates approval criteria for the proposed park with which the applicant must demonstrate compliance.

a. Impact on Nearby Properties. The subject property is surrounded by a mix of urban and rural development. Based on the Hearings Officer’s site visit observations and an examination of the aerial maps in the record, I find the closest dwellings are located to the south across the Deschutes River and to the east along Glen Vista Road. However, the staff report states the closest dwellings would be located approximately 300 feet from any development within the park. The applicant’s burden of proof states the applicant intends to conduct educational programming at the Jeffers House, but attendance would be limited to 30 people and no other events such as birthday parties or weddings would be allowed at the house.

Neighboring property owners raised five issues concerning potential negative impacts on surrounding property: (1) the appearance and location of the proposed bridge; (2) the appearance and location of the vault toilet near the bridge; (3) potential interference with irrigation systems; (4) park users parking on streets in neighboring subdivisions; and (5) adverse impacts on Glen Vista Road and its intersection with O.B. Riley Road. Each of these issues is addressed in the findings below.

(1) Bridge. The Hearings Officer finds from the applicant’s submitted site plan and the aerial photos in the record that the proposed bridge would be located approximately 300 feet due west of the residence of opponent Edward Elkins on the adjacent property to the north known as Gopher Gulch Ranch, and approximately 200 feet below the residence at the bottom of the river canyon. Mr. Elkins stated he intends to develop his property in the future with a residential cluster development and doesn’t want homeowners in such a development to have to look at the bridge. Mr. Elkins also expressed concern about the visual impact of lighting on the bridge. In its August 26, 2015 comments, the applicant stated bridge lighting would be solar powered and the lights would be on for only for a brief period before and after dusk in order to illuminate the bridge and bicycle parking areas to assure pedestrians and bicyclists could safely exit the park at closing time.

In addition, in his September 4, 2015 letter, Mr. Elkins stated he believes that rather than creating bridge connecting the proposed park with a dirt road on the west side of the river, the applicant should utilize an existing “Jeep road” located at the southeast corner of the park because that road would have minimal impact on the river canyon. Mr. Elkins also suggested the applicant could construct a pedestrian bridge near the Jeffers House. However, the Hearings Officer finds I lack authority to consider, or require construction of, a bridge at an alternate site. The question before me is whether the applicant’s proposed bridge location satisfies the applicable criteria.

The Hearings Officer understands Mr. Elkins’ concerns about visual impacts from the bridge on existing and potential future residential development on his property. However, I find the distance and elevation difference between the bridge and Mr. Elkins’ residence, as well as the

significant intervening vegetation consisting of mature pine trees -- depicted on the aerial photograph of Mr. Elkins' residence included in the record as Hearing Exhibit 4 and as an attachment to Mr. Elkins' September 14, 2015 letter -- will attenuate the visual impacts from the bridge and its short-duration lighting such that the bridge will appear relatively small in relation to the rest of the river canyon and have relatively little visual impact. Moreover, the aerial photos of Mr. Elkins' residence show it is located directly across the river from SM Site 308 which the record indicates, and my site visit observations confirmed, is a very large and active surface mine with expansive unvegetated areas and material stockpiles, and on which heavy equipment operates on a regular basis. I find that the visual impacts on Mr. Elkins' residence from the bridge will be minimal in comparison with those from the mine.

(2) Vault Toilet. Mr. Elkins stated he believes the proposed toilet near the bridge would be located 375 feet from the rear patio of his house, close enough to create offensive odors at his residence. He also stated he believes the toilet would be located within the flood plain. In its August 26, 2015 comments, the applicant responded that proposed toilet would be located outside of the flood plain and over 100 feet from the river's edge. The applicant stated the toilet is part of the trailhead at this location that will provide future connections to the Deschutes River Trail, and is necessary to assure that park visitors do not use the undeveloped park areas to relieve themselves. Finally, the applicant stated the toilet would not be visible from Mr. Elkins' residence because it would be separated from the residence by 275 horizontally and approximately 195 vertically.

Again, the Hearings Officer understands Mr. Elkins' concern about odors. However, I agree with the applicant that the distance and elevation separating the toilet from Mr. Elkins' residence will attenuate any odors to the degree that they will not be discernible from the residence.

(3) Interference With Irrigation Systems. In his July 14, 2015 letter, Mr. Elkins stated the proposed Parking Lot A would be located on top of several existing irrigation easements and concrete irrigation pipes that could be damaged, or would be inaccessible in the event repairs are needed, and therefore that parking area must be relocated. Mr. Elkins attached copies of the irrigation easements to his letter. The easements are linear and consist of slightly less than one-half acre of land on the subject property. Mr. Elkins also attached to his September 14, 2015 letter an aerial photograph of the northeastern portion of the subject property on which are drawn the locations of the irrigation easements. The Hearings Officer has compared the applicant's submitted site plan with Mr. Elkins' aerial photo/diagram and cannot determine whether or to what extent proposed Parking Lot A would be located over any irrigation easement.

In response to Mr. Elkins' testimony and exhibits, the applicant stated that as part of final design for Parking Lot A, all existing irrigation ditches and pipes would be located and surveyed, and the pipes would be inspected for structural integrity and replaced as needed. The Hearings Officer understands this response to mean the proposed parking area would not be relocated even if it is determined to rest on top of irrigation pipes, but the irrigation pipes would be replaced prior to construction to assure no breakage. I find the applicant's proposed approach to this issue is appropriate inasmuch as the asphalt surface of the parking area can be removed if/when necessary to provide access to irrigation pipes located beneath the parking area.

(4) Parking on Neighborhood Streets. George Findling, president of the Wyndermere Association ("WA"), the homeowners' association for the nearby Wyndermere Subdivision, and Wes Smith, WA secretary, submitted written and oral testimony expressing concern that development of the proposed park with a new bridge would cause an increase in unauthorized

parking by Deschutes River Trail users on private Wyndemere Streets. In particular, they stated the presence of the bridge might encourage more people to use the Deschutes River Trail across the river from the subject property because it would provide access via the bridge to the regional park. Mr. Findling and Mr. Smith stated that the closest current public parking area for river trail access is at Sawyer Park, several miles to the south, and that as a result river trail users currently park on Archie Briggs Road, a public road, and on private Wyndemere streets. Mr. Findling and Mr. West recommended the proposed park not be approved without a plan for parking on the south side of the river across from the subject property.

The Hearings Officer is sympathetic to the parking concerns of Wyndemere residents. However, I am not persuaded the addition of the proposed bridge necessarily would provoke increased parking on the south side of the river. The bridge would not facilitate any sort of “loop” trail through the park as there are no other existing or planned river crossings associated with the park. While I concur with Mr. Findling and Mr. Smith that there may be a need for additional parking for Deschutes River Trail users on the south side of the river to relieve pressure on public and private streets, I find that need currently exists and there is not sufficient evidence in this record to demonstrate either the regional park or the bridge will increase that need.

(5) Impacts on Glen Vista/O.B. Riley Road Intersection. The function of this intersection is addressed in detail in the findings above. As stated in those findings, incorporated by reference herein, the Hearings Officer has found the applicant has not demonstrated sight distance at the Glen Vista/O.B. Riley intersection will be remediated in order for it to operate safely with the addition of traffic generated by the regional park.

For the foregoing reason, the Hearings Officer finds that with the exception of impacts on the Glen Vista/O.B. Riley Road intersection, the proposed park will have little of any impact on nearby properties considering the significant distance to the nearest residential uses, the applicant’s intent to retain most of the subject property in its natural state, the very limited physical development within the park, the low intensity of uses at the park and the Jeffers House, and the low volume of expected traffic. However, I have found the applicant has not demonstrated the intersection will function safely with the addition of park-generated traffic that may exacerbate existing deficiencies, and those deficiencies may have a negative impact on nearby properties.

2. Capacity of Street System. Access to the proposed park would be from O.B. Riley Road and Glen Vista Road via an easement across adjacent private property. As discussed in detail in the findings above, incorporated by reference herein, the Hearings Officer has found from the applicant’s traffic studies that the very low volume of traffic anticipated to be generated by the proposed park will not exceed the *capacity* of Glen Vista Road or its intersection with O.B. Riley Road. However, I have found that with respect to the *safety* of the intersection, the applicant has failed to demonstrate it is feasible to undertake the recommended remediation measures for sight distance at the Glen Vista/O.B. Riley Road intersection because they require either cooperation with private property owners who have not participated in this proceeding, or require approval from both the city and county engineers, each of whom has expressed concern about the cost, function and maintenance of some of these measures.¹¹

3. Land Values and Development Potential of the Area. The vast majority of the proposed

¹¹ Since this application must be reviewed by the DCPC, the applicant may have the opportunity during that review to remove some of this uncertainty through further conversations with the city and county engineers and affected property owners.

park will be retained in its current undeveloped state. Proposed uses within the park will be of low intensity, and will generate a low number of vehicle trips. The developed areas of the park will be located more than 200 feet from the nearest dwellings. In a letter dated September 4, 2015, opponent Edward Elkins stated that in his opinion construction of the proposed bridge “will have a negative impact on land values located along the rim and within view of the bridge.” However, Mr. Elkins did not submit any evidence to support his opinion. The applicant and supporters of the proposed park suggest, and the Hearings Officer agrees, that by creating opportunities for Bend area residents to experience the natural world close to home, it is likely the proposed park will enhance the value of surrounding properties. For these reasons, I find the proposed park will not have negative impacts on land values or development potential in the area.

4. Appearance of the Street and Community. The park does not front on a street. And as discussed in the findings above, I have found the proposed park will have little impact on the capacity of the nearby public street system. For this reason, the Hearings Officer finds the park will not have a negative impact on the appearance of nearby streets.

With respect to the appearance of the community, the Hearings Officer assumes the relevant “community” for purposes of this criterion is the surrounding neighborhoods rather than the city or county as a whole. As discussed above, the vast majority of the proposed park would be retained in its current undeveloped state, the developed areas in the park would be located significant distances from the nearest dwellings, uses in the park would be of low intensity, and the park would generate very little traffic. The applicant’s traffic engineer has proposed minimal park entrance signage on O.B. Riley Road, and any such signage would require county review and approval. For these reasons, I find the proposed park will not have a negative impact on the appearance of the community.

B. The following areas and uses are exempt from the Deschutes River Design Review process:

- 1. Public streets and utility facilities existing as of the date of adoption of DCC Title 19. Notwithstanding anything to the contrary in DCC Title 19, a variance may be granted to the mandatory 40 foot setback for future public streets and utility facilities.**
- 2. Irrigation facilities, canals and flumes existing as of the date of adoption of DCC Title 19.**

FINDINGS: The Hearings Officer finds applicant does not propose any areas or uses that are exempt from the Deschutes River Design Review process.

C. Design Review Procedure. All new development, structures, additions and exterior alterations to structures, including outside storage and off street parking lots within the Deschutes River Corridor, are subject to a Design Review process.

- 1. Prior to filing a design review application, the applicant shall confer with the Planning Director concerning the requirements of formal application.**

FINDINGS: The staff report states the applicant met with county planning staff prior to filing the subject conditional use permit and site plan review applications, therefore satisfying this requirement.

2. **The design review application shall be filed on a form provided by the Planning Division and shall be accompanied by drawings and information as specified by the Planning Division. Copies of the plan shall be submitted and such additional information as is deemed necessary for the Planning Director or Bend Urban Area Planning Commission to adequately review the application.**

FINDINGS: The record includes the applicant's application form, burden of proof statement, attachments and supplemental materials. Based on the documents in the record, the Hearings Officer finds the applicant has submitted all of the necessary forms, plan sheets, and supporting information necessary for a decision to be rendered, therefore satisfying this requirement.

3. **The Bend Urban Area Planning Commission or Planning Director shall in accordance with DCC Title 19 and DCC Title 22 approve, approve with conditions, or disapprove the design plan. In approving the plan, the Bend Urban Area Planning Commission or Planning Director shall find that all provisions of DCC Title 19 are complied with and that all buildings and facilities, access points, parking loading facilities, lighting, and walls or fences are so arranged that traffic congestion is avoided and pedestrian and vehicular safety and welfare are protected, and there will be minimal adverse effect on surrounding property and the river corridor. The decision of the Bend Urban Area Planning Commission or Planning Director shall be final unless appealed in accordance with applicable provisions of DCC Title 22.**

FINDINGS: As discussed in the Findings of Fact above, the Hearings Officer is considering the applicant's proposal in order to provide recommended findings and conclusions to the DCPC. I find the numerous factors listed in this paragraph are addressed in detail in the findings on compliance with Title 19. I have recommended that if the DCPC approves the applicant's proposal, it should be subject to a number of conditions of approval set forth throughout this decision.

D. Minimum Standards. All development within the Deschutes River Corridor shall meet the following minimum standards for development:

1. **Building Setbacks. For the areas described below, the setback for all new development shall be a minimum of 100 feet from the ordinary high water mark unless the applicant can demonstrate that a lesser setback is**

warranted, due to lot size and shape, topography, preservation of natural vegetation, view corridors, and subject to the criteria in DCC 19.76.090(E). In no case shall the setback be less than 40 feet from the ordinary high water mark of the Deschutes River. The term "new development" shall not include rebuilding an existing structure provided that the rebuilt structure is comparable in size, profile, use and location to the structure that previously existed.

- a. The east and west banks from the southern boundary of the City of Bend to the southern boundary of the Bend Urban Area;
- b. The east and west banks from the northern boundary of the City of Bend to the northern boundary of the Bend Urban Area.

FINDINGS: Section 19.04.040 defines the Bend Urban Area as "that area lying inside the adopted Bend Urban Growth Boundary and outside of the City of Bend boundaries." The Hearings Officer finds no portion of the subject property lies within the areas identified in Subsections (a) and (b) above. Therefore, I find the applicant's proposal is not subject to the building setbacks in this paragraph.

2. **Building Heights.** Maximum structure height shall be limited to 30 feet at the minimum setback line. The Bend Urban Area Planning Commission may allow increases in building heights up to the allowed height in the underlying zone the farther the building sets back from the river. The Bend Urban Area Planning Commission may limit building height the closer to the river a building is allowed. The building height shall be measured from the lowest natural grade facing the river to the highest measurable point on or projecting from the roof of the structure.

FINDINGS: The proposed park would include new structures such as vault toilets, information kiosks, outlook decks and the bridge. As discussed in the findings above, the vault toilets would be the tallest structures with a maximum height of approximately 15 feet. Therefore, the Hearings Officer finds the applicant's proposal satisfies the building height limitation.

- E. **Site and Design Review Criteria.** In addition to the minimum standards above, the Bend Urban Area Planning Commission shall review the development using the following design criteria:

1. **Conservation of natural features.** Major rock outcrops, stands of trees or other prominent natural features are an important part of the visual character and duality of the community. The Bend Urban Area Planning Commission shall review the applicant's proposal for

impacts on these resources and may limit the amount of removal, require additional screening, or moving or reducing in size the development addition or structure in order to preserve to the greatest extent possible, existing natural features.

FINDINGS: The applicant proposes to maintain 181 of the 184 acres comprising the subject property in their current undeveloped state, preserving their natural features which include rock outcrops, terrain, tree cover, and natural benches. In addition, the applicant's burden of proof states that wherever possible, existing trails would be improved to minimize the construction of new trails, and existing trails not necessary for the park would be eradicated and revegetated. New structures would be limited to vault toilets, overlooks, boardwalks and the bridge. The proposed park rules would prohibit dogs and would limit bicycle use to a short segment of trail north of the proposed bridge. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

- 2. Compatibility with existing area. The Bend Urban Area Planning Commission shall consider the relationship of the proposed development with the existing surroundings, in terms of building bulk, height, location, separation, shape, parking areas, lighting, fences, landscaping, open space, visual and physical corridors to the river and adjacent land use. The Bend Urban Area Planning Commission may establish increased setbacks, limitations of building heights, and limitations on the bulk and length of buildings, limitations on lighting, landscaping, fences, size and shape of windows facing the river, size and location of parking, and outdoor storage areas in order to carry out the purpose of DCC Title 19.**

FINDINGS: As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the proposed park will have no negative impacts on land values, potential development, or appearance of the surrounding community. For the reasons set forth in those findings, I find the applicant's proposal satisfies this criterion.

- 3. Colors and Materials. The Bend Urban Area Planning Commission shall consider colors and materials. The Bend Urban Area Planning Commission may require new structures and additions to existing structures to be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site or colors that are compatible with adjacent buildings.**
- 4. No large areas, including roofs, shall be finished with bright or reflective materials. Metal roofing material is permitted if it is nonreflective and of a color which blends with the surrounding vegetation and landscape.**

FINDINGS: The applicant’s burden of proof includes “Concept Image Boards” showing all structural elements of the proposed park will be constructed of stone and wood with natural finishes and no areas finished with bright or reflective material. For this reason, the Hearings Officer finds the applicant’s proposal satisfies these criteria.

For the foregoing reasons, the Hearings Officer finds the applicant has not demonstrated the proposed park satisfies all applicable site plan approval criteria.

OFF-STREET PARKING AND LOADING STANDARDS

5. Chapter 19.80, Off-Street Parking and Loading

a. Section 19.80.020, Off-Street Loading

* * *

B. Restaurants, office buildings, hotels, motels, hospitals and institutions, schools and colleges, public buildings, recreation or entertainment facilities and any similar use which has a gross floor space of 30,000 square feet or more shall provide off street truck loading or unloading berths in accordance with the following table:

Square Feet of Floor Area	No. of Berths Required
Less than 30,000	0
30,000-100,000	1
100,000 and Over	2

FINDINGS: The applicant proposes a regional park which is a recreational facility subject to this criterion. The applicant’s burden of proof states the following with respect to floor area. The existing buildings on-site, including the Jeffers House, garage, shop, stable, and kennel, have a combined floor area of 6,584 square feet. The three proposed restrooms will total 294 square feet of floor area. Therefore, the total floor area of existing and proposed buildings is less than 7,000 square feet, and therefore the Hearings Officer finds no loading berth is required.

b. Section 19.80.030, Off-Street Parking

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

FINDINGS: The parking requirements for the proposed park are addressed in the findings below. The Hearings Officer finds that if the DCPC approves the applicant’s proposal, it should be subject to a condition of approval requiring pavement thickness of at least two inches for all off-street parking areas.

b. Section 19.80.040, Number of Spaces Required

Off street parking shall be provided as follows:

* * *

- H. Other uses not specifically listed above shall furnish parking as required by the Planning Commission. The Planning Commission shall use the above list as a guide for determining requirements for said other uses.**

FINDINGS: The Hearings Officer finds “park” use is not identified in table of uses in this section. Therefore, the DCPC must determine the appropriate number of required parking spaces based on the nature of the proposed use and guided by the list of uses in this paragraph. The applicant has proposed a total of 66 off-street parking spaces spread among three parking areas. The applicant’s burden of proof states this parking space number was proposed based on usage and parking spaces in Shevlin Park, the applicant’s other regional park. I note that Shevlin Park includes a large rental space (Aspen Hall) and a larger number of developed park areas (e.g., picnic and gathering areas) than are proposed for Riley Ranch, and that would require more parking than the proposed regional park. For this reason, I find the proposed 66 parking spaces are sufficient for the use.

d. Section 19.80.050, General Provisions Off-street Parking

- A. More Than One Use on One or More Parcels. In the event several uses occupy a single structure or parcel of land, the total requirement for off street parking shall be the sum of the requirements of the several uses computed separately.**
- B. Joint Use of Facilities. The off street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap in point of time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.**

FINDINGS: The applicant does not propose more than one use on one or more parcels, nor sharing parking facilities with multiple uses. Therefore, the Hearings Officer finds these criteria are not applicable.

- C. Location of Parking Facilities. Off street parking spaces for dwellings shall be located on the same lot with the dwellings. All other off street parking shall be located on the lot with the use or, if not located on the same lot, shall be first approved as a conditional use. The applicant must prove that the parking located on another parcel is functionally located and that there is safe vehicular and pedestrian access to and from the use. The burden of proving the existence of such off**

premises parking arrangements rests upon the person who has the responsibility of providing parking.

FINDINGS: The three proposed parking areas will be located on the same property as the park use, therefore satisfying this criterion.

- D. Use of Parking Facilities.** Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only, and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or use.

FINDINGS: The Hearings Officer finds that if the DCPC approves the applicant's proposal, it should be subject to a condition of approval requiring all parking to comply with this criterion.

- E. Parking, Front Yard.** Unless otherwise provided, required parking and loading spaces for multifamily dwellings, commercial and industrial use shall not be located in a required front yard, but such space may be located within a required side or rear yard.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose a multi-family, commercial or industrial use.

- F. Disabled Parking.** The number, location and design of disabled parking spaces shall be as required by the building code. Buildings and uses in existence on April 30, 1993 that are retroactively required to provide disabled parking facilities may place the disabled spaces in the front yard setback area if it is not possible to locate the parking elsewhere on the site.

FINDINGS: The applicant proposes a total of six accessible parking spaces split among the three parking areas. The Hearings Officer finds that if the DCPC approves the applicant's proposal, it should be subject to a condition of approval requiring the applicant to obtain approval of these parking spaces from the Building Division to assure compliance with the ADA and the applicable building code(s).

- G. Shopping Center Parking.** The motor vehicle parking areas shall be located and designed to facilitate safe and convenient pedestrian and bicycle movement to and from public sidewalks, streets, or transit stops.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose a shopping center.

- H. Maximum parking.** The maximum number of parking spaces for a commercial development with a gross floor area of 30,000 square feet or greater, or a site with more than six acres shall not exceed 150 percent of the required parking.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose a commercial development.

- I. **Reduction In Required Parking. The total number of required motor vehicle parking spaces for an industrial, commercial, and office use may be reduced by five percent for each of the activities listed below provided by the owners or operators, up to a maximum 10 percent reduction in the total number of motor vehicle spaces.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose an industrial, commercial or office use.

- J. **Parking Pods. Developments that provide more than 75 parking spaces shall:**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose a parking pod that provides more than 75 parking spaces.

- e. **Section 19.80.060, Development and Maintenance Standards for Off Street Parking Areas**

Every parcel of land hereafter used as a public or private area, including commercial parking lots, shall be developed as follows:

- A. **An off street parking area for more than five vehicles shall be effectively screened by a site obscuring fence, hedge or planting on each side which adjoins a residential use or property situated in a residential zone or the premises of any school or like institution.**

FINDINGS: The record indicates the subject property adjoins residential zones to the north, east, southeast, south, and southwest.¹² The Hearings Officer finds the applicant's submitted site plan demonstrates the proposed location of the three parking areas will take advantage of existing vegetative cover because the applicant proposes to retain the vast majority of existing vegetation on the property. In addition, the site plan shows the proposed parking areas will be located a significant distance from the adjoining residential zones. Therefore, I find the applicant's proposal satisfies this criterion.

- B. **Any lighting used to illuminate the off street parking areas shall be so arranged that it will not project light rays directly upon any adjoining property in an R zone.**

FINDINGS: The burden of proof states the proposed parking area lighting will consist of fixtures and installations meeting this criterion. In particular, the parking area lighting will be similar to the proposed lighting for the bike rack area, consisting of solar lights that will be illuminated only for a short duration before and after dusk. The Hearings Officer finds that if the DCPC approves

¹² To the north and east are properties zoned UAR-10. To the southeast, south, and southwest across the Deschutes River are properties zoned SR-2.5. Both are considered residential zones.

the applicant's proposal, it should be subject to a condition of approval requiring compliance with this criterion.

- C. Except for single family and duplex dwellings, groups of more than two parking spaces shall be so located and served by a driveway that their use will require no backing movements or other maneuvering within a street or right of way other than an alley.**

FINDINGS: Based on the applicant's submitted site plan, the Hearings Officer finds the distance between the proposed first parking area and Glen Vista Road will assure no backing movements or other maneuvering will be required within the street right-of-way, therefore satisfying this criterion.

- D. Areas used for standing and maneuvering of vehicles shall be paved surfaces maintained adequately for all weather use and so drained as to contain any flow of water on the site.**

FINDINGS: The applicant proposes a paved access road and three paved parking areas. As discussed in the findings above, the Hearings Officer has found runoff from the access road and the parking areas will be contained on-site. I find that if the DCPC approves the applicant's proposal, it should be subject to a condition of approval requiring compliance with this criterion.

- E. Except for parking to serve residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents.**

FINDINGS: As discussed above, the three proposed parking areas will be separated from adjoining residential zones and uses by significant distances and by intervening vegetation and terrain. The Hearings Officer has found the proposed parking area lighting will be required to meet the standard set forth Paragraph B above. For these reasons, I find the applicant's proposal satisfies this criterion.

- F. Access aisles shall be of sufficient width for all vehicular turning and maneuvering.**

FINDINGS: As shown on site plan Sheets L1.1 and L1.2, the applicant proposes 24-foot-wide access aisles for the three parking areas. The Hearings Officer finds these aisles will meet the minimum access aisle standard in the Off-Street Parking Lot Design table at the end of Chapter 19.80, therefore satisfying this criterion.

- G. Service drives to off street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and maximum safety of pedestrians and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will accommodate and serve the traffic anticipated. Service drives shall be clearly and permanently marked and defined throughout by the use of rails, fences, walls or other barriers or markers. Service drives to drive in establishments shall be**

designed to avoid backing movements or other maneuvering within a street other than an alley.

FINDINGS: The applicant proposes one service or access drive that connects the subject property to Glen Vista Road. This service drive leads to the three parking areas and ultimately ends at the Jeffers House. Given the low expected traffic volume generated by the park, the Hearings Officer finds this single service drive is sufficient to serve the park and parking areas. The applicant proposes to pave the service drive with asphalt and maintain its border with existing native vegetation, providing a clear path for vehicles. The pedestrian trails are proposed to be separated from the access road by a distance of over 100 feet. The applicant proposes only one pedestrian crossing over the service drive which will reduce the number of vehicle and pedestrian conflict points. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

H. Service drives shall have a minimum vision clearance area formed by the intersection of the driveway center line, the street right of way line and a straight line joining said lines through points 30 feet from their intersection.

FINDINGS: The proposed service drive does not form an intersection with Glen Vista Road. Rather, it is configured to serve as a continuance of Glen Vista Road over an easement. For this reason, the Hearings Officer finds there is no clear vision area associated with the proposed service drive.

I. Parking spaces along the outer boundaries of a parking area shall be contained by a curb or bumper rail so placed to prevent a motor vehicle from extending over an adjacent property line, pedestrian walkway, bikeway, or a street right of way.

FINDINGS: The Hearings Officer finds this criterion is not applicable because all proposed parking areas will be at least 150 feet from any property line. However, I note the applicant proposes to use boulders or other wheel stops to prevent a vehicle from extending over an adjacent walkway or landscaped area.

f. Section 19.80.070, Off Street Parking Lot Design

All off street parking lots shall be designed in accordance with county standards for stalls and aisles set forth in the following drawings and table:

SEE TABLE AT END OF CHAPTER 19.80

FINDINGS: As shown on Plan Sheet L1.1 and L1.2, the applicant's proposal will meet the minimum required stall width of nine feet and stall length of 20 feet for 90-degree parking. The proposed drive aisle width within the parking areas is 24 feet which also meets the minimum width for two-way travel. The applicant proposes to clearly mark parking stalls with a combination of striping, boulders (or other wheel stops) and landscaping. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

g. Section 19.80.080, Required Bicycle Parking

- A. **On site bicycle parking shall be provided as listed below. Fractional spaces shall be rounded to the next highest number. Bicycle parking for multiple uses or large commercial developments may be provided in one or more locations.**

Public or private recreational facility	1 space for every 10 employees plus 1 space for every 20 motor vehicle spaces
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FINDINGS: The applicant does not propose any full-time employees on-site. However, the park would include 66 vehicular parking spaces, requiring at least three bicycle parking spaces. The applicant proposes to provide parking for 40 bicycles split into three distinct parking areas depicted on Figure 4 of the submitted site plan. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

- h. **Section 19.80.090, Bicycle Parking Location And Design; Other Required Conditions.**

- A. **Each required bicycle parking space shall be on asphaltic concrete, portland cement, or similar hard surface material and each space shall be at least two feet wide by six feet long with a minimum vertical clearance of seven feet. An access aisle at least five feet wide shall be provided and maintained beside or between each row of bicycle parking.**

FINDINGS: The applicant's burden of proof states the bicycle parking areas will be on a hard surface material, and each space will be at least two feet wide by six feet long, with a minimum vertical clearance of seven feet. The burden of proof states that where necessary, the access aisles will be at least five feet wide. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

- B. **Bicycle parking facilities shall offer security in the form of either a lockable enclosure in which the bicycle can be stored or a stationary rack upon which the bicycle can be locked. Bicycle rack design must accommodate both U shaped locks and cables and include, but are not limited to, such shapes as an inverted "U" design or a "ribbon." Racks shall be securely anchored to a walkway, parking lot, building, or other approved structure.**

FINDINGS: The applicant proposes to provide bicycle racks which can accommodate both U-shaped locks and cables. The applicant proposes to anchor the bike racks to the hard surface material. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

- C. **Where required, covered bicycle parking may be provided underneath an awning, eave, or other structural overhang, inside the main building or an accessory parking structure, or other facility as determined by the Site Plan Review that protects the bicycle from direct exposure to the elements.**

FINDINGS: According to the bicycle space calculation table in Section 19.80.090, no covered spaces are required for private or public recreation facilities. Therefore, the Hearings Officer finds the applicant is not required to comply with this criterion.

- D. Except as noted below, all required bicycle parking shall be located on site within 50 feet of well used entrances and not farther than the closest motor vehicle parking space. Bicycle parking for multiple uses such as a commercial center or college may be clustered in one or more locations that are convenient for bicyclists but must meet all requirements for bicycle parking.**

FINDINGS: As shown on Figure 4 and Plan Sheet L1.2, bicycle parking spaces are proposed within 50 feet of the Jeffers House, and not farther from the house than the associated vehicle parking area. The remaining bicycle spaces are provided at trailheads. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

- E. Lighting shall be provided in a bicycle parking area so that all facilities are thoroughly illuminated and visible from adjacent sidewalks or motor vehicle parking lots. Bicycle parking shall be at least as well lit as motor vehicle parking.**

FINDINGS: The applicant proposes solar lighting fixtures at all bicycle parking areas that will be illuminated for a limited time before and after dusk and will allow the spaces to be visible from an adjacent vehicular parking area and trailhead. The applicant proposes to use the same type of lighting in the vehicular parking areas. The Hearings Officer finds the proposed lighting satisfies this criterion.

- F. New commercial developments and public buildings in which 25 or more persons will be employed, shall provide changing room(s) and shower(s) for employees who bicycle to work. Such facilities may be incorporated into restrooms, exercise rooms or similar facilities in the building.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because no employees are proposed on-site. And even if the applicant ultimately employs an on-site caretaker, I find the presence of a single employee is not enough to trigger changing rooms or showers.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies, or with imposition of conditions of approval will satisfy, all applicable off-street parking requirements.

SPECIAL USE STANDARDS

6. Chapter 19.88, Provisions Applying to Special Use Standards

a. Section 19.88.240, Fill and Removal

Except as otherwise provided in DCC Title 19, no person shall fill or remove any material or remove any vegetation, regardless of the amount, within the bed and banks of any stream or river, or in any

wetland, unless such fill or removal is approved as a conditional use in accordance with the following standards: (Emphasis added.)

- A. An application shall be filed containing a plan with the following information.**
 - 1. A detailed explanation of the planned fill or removal including the amount of material to be filled or removed.**
 - 2. An explanation of why the fill or removal is necessary.** (Emphasis added.)

FINDINGS: The Hearings Officer finds the threshold question under this section is whether any activities proposed by the applicant constitute “fill and removal.” Section 19.04.040 defines “fill” as “the deposit by artificial means of material at a location within the waters of any lake, river or stream, or in wetlands or riparian areas.” The applicant submitted an application for conditional use and site plan approval for the proposed regional park, including the following activities in or near the Deschutes River.

Bridge. The proposed new bridge would be constructed in the same location as the old bridge which the record indicates was removed decades ago. According to the submitted design elevation drawing for the bridge (EX2 of Attachment 8 to the applicant’s burden of proof), some of the timbers used as abutments for the old bridge are located within the bed and banks of the river. The applicant’s burden of proof states these timbers must be removed for construction of the new bridge. The burden of proof states the new bridge abutments would not be located in the bed or banks of the river or in a wetland. EX2 shows the bottom of the proposed bridge span would be located above the BFE, flood plain and wetlands. The Hearings Officer finds removal of the old timbers constitutes “removal” within the bed and banks of the river requiring conditional use approval. However, I find there would be no “fill” as defined by Section 19.04.040 associated with the bridge.

Trail and Water Access Points. The submitted site plan shows the proposed park would have a trail along much of its river frontage, and there would be three water access areas providing safe access to and egress from the river for kayakers and others using the river. The burden of proof states that in order to provide a clear trail and adequate and safe river access points, a small amount of vegetation must be pruned or removed along the trail and water access areas. The Hearings Officer finds removal of vegetation at the water access areas likely constitutes “removal” within the banks of the river and/or associated riparian areas requiring conditional use approval. I also find that to the extent the trail would be located within the bed and banks of the river and/or associated wetlands – such as where it connects with the water access areas -- it also constitutes “removal” requiring conditional use approval.

- 3. A site plan, drawn to scale and accompanied by such drawings, sketches and descriptions as are necessary to describe and illustrate the proposed fill or removal. The site plan shall, at a minimum, include:**
 - a. An inventory of existing vegetation.**

- b. The proposed modifications, if any, to the vegetation.
- c. Existing and proposed site contours.
- d. Location of property lines, easements and high water marks.
- e. Other site elements or information which will assist in the evaluation of the proposed fill or removal.

FINDINGS: The applicant's burden of proof includes a site plan and the following specific information addressing this criterion:

a. Inventory of Existing Vegetation.

Bridge. Vegetation around the bridge consists of red-osier dogwood, willow, and Douglas spirea.

Trail. The trail goes through the floodplain to the water access areas. At all three water access areas, the vegetation along the trail transitions to Ponderosa pine, bitterbrush, and Idaho fescue plant community beyond the water's edge.

Water Access Area 1. A small patch of reed canary grass, four red alder trees, a few red-osier dogwood and snowberry shrubs are located at this area.

Water Access Area 2. Vegetation in this area is very sparse but includes red alder, red-osier dogwood, Douglas spirea, and nootka rose along the water's edge.

Water Access Area 3. There is no vegetation growing along the water's edge at this water access area.

b. Proposed Modifications to Vegetation.

Bridge. Some vegetation may need to be pruned for construction of the bridge.

Trail. The trail already exists. Some vegetation may need to be pruned, but not removed.

Water Access Area 1. A small patch of reed canarygrass will be removed. Four red alder trees and a few red-osier dogwood shrubs may need to be pruned. This vegetation is along the bank of the river.

Water Access Area 2. Three red alder trees and a few red-osier dogwood shrubs may be removed or pruned. The alder trees are above the bed and bank of the river. The dogwood shrubs are along the river bank.

Water Access Area 3. No vegetation will be removed at Access Area 3.

3. Existing and Proposed Site Contours.

Bridge. Existing and proposed site contours are shown on Attachment 8 to the applicant's burden of proof (EX1 and EX2).

Trail. The trail already exists. Existing and proposed site contours will remain the same.

Water Access Area 1. Existing and proposed site contours will remain the same.

Water Access Area 2. Existing and proposed site contours will remain the same.

Water Access Area 3. Existing and proposed site contours will remain the same.

4. Location of Property Lines, Easements and High Water Marks.

The locations of property lines and the OHWM are shown on the applicant's submitted site plan.

5. Other Site Elements or Information Which Will Assist in the Evaluation of the Proposed Fill or Removal.

As discussed in the findings above, the Hearings Officer has found from the applicant's design elevation drawing for the proposed bridge, and the BFE and OHWM information thereon, that the bridge and abutments will be placed outside of the floodplain and above the OHWM.

- B. Public facility and service uses, such as construction or maintenance of roads, bridges, electric, gas, telephone, sewer or water transmission and distribution lines and related facilities controlled by public utilities or cooperative associations shall not be granted conditional use permits to fill or remove unless the following findings are made:**

FINDINGS: The Hearings Officer finds this criterion is not applicable because no public facility or services uses are proposed.

- C. Fill or removal required for public park and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, public boat launching ramps, public docks and public walkways shall not be allowed as a conditional use unless the following findings are made:**

- 1. That all necessary state and federal permits will be obtained as a condition of approval of the conditional use permit.**

FINDINGS: The applicant's burden of proof states the applicant has applied for the following permits and that no other permits are required:

* Removal-Fill Permit from the Department of State Lands;

* Section 404 (Clean Water Act) Permit from the U.S. Army Corps of Engineers; and

* State Scenic Waterway Permit from OPRD.

2. **That only the minimum removal of vegetation or material and dredging or excavation necessary for construction and maintenance will be done.**

FINDINGS: The applicant proposes to remove the old timbers from the old bridge and possibly a small amount of vegetation below the bridge span. The applicant also proposes to remove or prune a small amount of vegetation to create a clear path for the trail and for safe access to the designated water access areas. For these reasons, the Hearings Officer finds the proposed amount of vegetation and construction material removal is the minimum necessary for the proposed bridge, trail and water access areas.

3. **That the specific location of the site will require the minimum amount of disturbance to the natural environment, considering alternative locations in the area and methods of construction.**

FINDINGS: The applicant's burden of proof states, and the Hearings Officer agrees, that placing the proposed new bridge at the location of the old bridge will minimize the amount of disturbance to the natural environment. In addition, as discussed above, the bottom of the bridge span will be located above the floodplain and the OHWM. I find that for the three proposed water access areas and associated trail segments, no grading or other earthmoving is proposed, and only a small amount of vegetation will be removed or pruned. For these reasons, I find the applicant's proposal satisfies this criterion.

4. **That such construction and maintenance is designed and done in such a manner as to minimize the adverse impact on the site.**

FINDINGS: As discussed above, the applicant proposes only a small impact on the bed and banks of the river and riverside vegetation from construction of the bridge, trail and water access points. Given the very small amount of removal required, the Hearings Officer finds the applicant's proposal will minimize adverse impacts on the site.

5. **That erosion will be adequately controlled during and after construction.**

FINDINGS: The applicant's burden of proof states erosion control measures will be in place to minimize construction impacts to the river. At the public hearing, the applicant submitted a detailed "Erosion Control and Demolition Plan" for the proposed bridge, including in the record as Hearing Exhibit 3. The Hearings Officer finds this plan is sufficient to demonstrate that erosion will be adequately controlled during removal of the old bridge timbers and construction of the new bridge.

6. **That the impacts on fish and wildlife habitat by the fill or removal will be minimized to the greatest extent practical. The Oregon Department of Fish and Wildlife will be requested to review and comment on the application.** (Emphasis added.)

FINDINGS: ODFW submitted comments on the applicant's proposal in a letter dated July 21, 2015 from Sara Gregory, Wildlife Habitat Biologist for ODFW's Deschutes Watershed District. The letter states ODFW recommends limiting development within the park to areas "away from the riparian corridor" to help "reduce wildlife habitat degradation in an area used by a high diversity of species." The letter also includes several recommendations for park development, set forth below along with the applicant's responses to each of these recommendations, and the Hearings Officer's analysis.

1. Reduce trail density. The Plan categorizes low density trails as less than 10 linear miles per square mile. Seek opportunities to reduce this density target to 2.5 linear miles per square mile. When possible, use existing trails for public access. This will minimize fragmentation of wildlife habitat and wildlife avoidance of the property.

The applicant submitted the following response:

"In developing the trail network, existing trails and jeep roads will be used. There are only two new trail corridors proposed: (1) out to the overlook on the rim rock; and (2) up the small butte to another proposed overlook. Total developed trails and roads will be 4.6 miles. At full build-out, this will result in a net reduction (0.9 mi) of trails and roads that currently exist on the site (5.5 miles). Total trail and road development that would occur in Phase 1 is 3.37 miles. Trail usage will be monitored over time. BPRD will look at ways to reduce trail miles proposed in future phases. Other than in the Rural Residential Unit, construction of additional trails shown on the Master Plan will only be added when there is a demand for additional access or capacity."

The Hearings Officer is persuaded that the applicant has minimized the impacts of the trails subject to the fill and removal requirements to the greatest extent practical by limiting such trails to existing trails.

2. Install wildlife friendly (wooden rail) fencing or other barriers where needed along the riverbank to discourage additional social trails to the Deschutes River and Tumalo Creek.

The applicant submitted the following response:

"BPRD has recently employed the use of split-rail wood fencing along the Deschutes River and Tumalo Creek in other parks successfully. The public's use of Riley Ranch Nature Reserve will be closely monitored and corrective actions, such as split-rail fencing, will be employed as the need arises."

The Hearings Officer understands ODFW's recommendation of fence installation. However, I find the applicant's decision to delay fence installation in order to evaluate whether or not it is needed to protect riparian habitat is appropriate and will itself minimize impacts on the trails subject to the fill and removal criteria.

3. Explicitly sign river access points along trails and on maps to further discourage establishment of unwanted river access.

The applicant submitted the following response:

“River access, trail usage and other park policies will be explicitly signed throughout the park and closely monitored. Corrective actions will be employed as the need arises.”

The Hearings Officer finds the applicant's proposed signage will minimize impacts on the riparian areas and habitat.

4. Maintain all trails at least 200' away from the Deschutes River and Tumalo Creek.

The applicant submitted the following response:

“The Master Plan includes one trail that parallels the Deschutes River. The distance from the trail to the river varies from the river's edge to over 200 feet away. This trail provides access to the three river access points and to the bridge. This trail already exists. Creation of a new trail would fragment habitat. Not providing a riverfront trail experience would encourage visitors to make their own trail(s) which would have a greater negative impact on habitat and water quality. River access, trail usage and other park policies will be explicitly signed throughout the park and closely monitored. Corrective actions will be employed as the need arises.”

The Hearings Officer is persuaded by the applicant's response that using the existing river trail will minimize impacts on the riparian area to the greatest extent practical, and along with the signage discussed above will discourage park visitors from damaging riparian habitat by making their own trails to the river.

5. Remove no riparian vegetation to accommodate structures (e.g. bridge).

The applicant submitted the following response:

“At this time, no riparian vegetation has been identified as needing to be removed to accommodate structures.”

The applicant's burden of proof states some vegetation may need to be removed from the bed and banks where the bridge abutments would be constructed. In addition, the applicant submitted as an attachment to its August 27, 2015 memorandum a document entitled “A Plan for Alternative Practice, Riley Ranch Nature Reserve (Gopher Gulch)” that was submitted to ODFW in 2014 and that identifies the applicant's plan for managing the designated “Riparian Management Area” on the subject property, and in particular what vegetation would be retained and removed on the property. The applicant's memorandum indicates this plan was submitted to ODFW and has been largely carried out. The Hearings Officer finds that if the applicant determines removal of vegetation is necessary at the time of bridge construction it will be minimal and likely consistent with its alternative practices plan.

6. Prioritize education and public outreach regarding wildlife and the sensitive habitats on the property to encourage responsible use.

The applicant submitted the following response:

“The education programming for the park has not been established yet. However, BPRD recognizes the sensitive habitats on the site and has already decided to limit the size of visiting groups. BPRD will work with our partnering agencies to develop appropriate educational programming for the site. Development of the site will include interpretive signs and displays that educate users about the cultural and natural resources of the site. Our public outreach for the park has focused on the richness and uniqueness of the site and the policies that will be implemented to help preserve those qualities.”

The Hearings Officer is persuaded by the applicant’s response that it will prioritize education concerning sensitive riparian habitats on the subject property that, along with signage, will serve to minimize impacts thereon.

7. Consider closures or reduction in public use of the property on a seasonal basis. During the late winter and early spring wildlife are typically under the most physiological stress. Appropriately timed reductions in human presence will enhance wildlife use of the property.

The applicant submitted the following response:

“BPRD has installed wildlife cameras on the site and has been monitoring them for wildlife usage. We are open to working with ODFW and discussing seasonal closures as needed. BPRD has a history of working with ODFW to protect sensitive wildlife habitat, such as the seasonal road closures at Shevlin Park. BPRD’s Natural Resources division will closely coordinate with ODFW.”

The Hearings Officer is persuaded by the applicant’s response that to the degree deemed necessary in consultation with ODFW and others, it will implement seasonal closures to protect wildlife habitat including habitat in riparian areas.

8. In order to achieve the goals of the Plan and to maintain the Riley Ranch as a true Nature Reserve it will be critical to have an employee on site consistently during high public use periods. Finding funding to support this position should be one of the first priorities in the development of the property.

The applicant submitted the following response:

“BPRD has recently increased our stewardship program. The usage of Riley Ranch Nature Reserve will be closely monitored and corrective actions, such as needing to increase stewardships at the park will be employed as the need arises. The District is also considering employing a seasonal site host similar to those engaged by Oregon Parks and Recreation Department (OPRD).”

The Hearings Officer finds that the presence of an on-site caretaker may provide additional protection for sensitive riparian and river habitat. However, I find the sheer size of the proposed park will require monitoring by more than a single person – i.e., volunteers – as is being considered by the applicant.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposal will satisfy this criterion by minimizing the impacts on fish and wildlife habitat from the applicant’s proposed vegetation removal to the greatest extent practical.

- D. **Except for uses identified in DCC 19.88.240(B) and (C), an application for a conditional use permit for activity involving fill or removal of material or vegetation within the bed and banks of a stream, river or wetland: . . .**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the proposed park is a use identified in Section 19.88.240(C).

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies, or with imposition of recommended conditions of approval will satisfy, all applicable special use standards.

CONDITIONAL USE APPROVAL CRITERIA

7. Chapter 19.100, Conditional Use Permits

a. Section 19.100.030, General Conditional Use Criteria

A conditional use permit may be granted only upon findings by the Planning Director or Hearings Body that the proposal meets all of the criteria in DCC 19.100.030, as well as all other applicable criteria contained in DCC Title 19. The general criteria are:

- A. That the location, size, design and operating characteristics of the proposed use are such that it will have minimal adverse impact on the property value, livability and permissible development of the surrounding area. Consideration shall be given to compatibility in terms of scale, coverage and density with the alteration of traffic patterns and the capacity of surrounding streets and to any other relevant impact of the proposed use.**

FINDINGS:

1. Location. The subject property is located in a mostly rural area north of the Bend UGB on land that previously was engaged in farm use. The property is bordered by residential uses to the north, east and south, and by the Deschutes River and SM Site 308 on the west. The property has access from O.B. Riley Road and Glen Vista Road via an easement across adjacent private property.

2. Size. The subject property is 184 acres in size.

3. Design. The applicant proposes to retain approximately 181 acres of the 184-acre subject property in their current undeveloped state. Most of the proposed developed areas of the park would be located on the eastern portion of the property including the access drive, three parking areas, trailheads, toilets, and the Jeffers House. The submitted site plan indicates most developed park areas would be located at least 100 feet from the nearest property lines and farther from the nearest residences.

The submitted site plan shows the proposed park has been designed to take advantage of

existing topography and natural features and vegetation. The applicant proposes, where possible, to use and improve existing trails on-site. The applicant proposes to rehabilitate and revegetate existing trails that will not be incorporated into the park. The applicant also proposes to re-purpose the Jeffers House and associated outbuildings and grounds for educational programming, and park maintenance and administration. Lookout areas would be constructed on existing high ground on the property to eliminate the need to elevate ground or structures for viewing opportunities. Finally, the applicant proposes to construct a new bridge across the Deschutes River at the location of an old bridge.

4. Operating Characteristics. The applicant proposes that the park would be open from dawn to dusk, with solar lighting providing illumination in vehicle and bicycle parking areas and on the bridge during the period shortly before and after dusk to ensure safe egress from the vehicular and bicycle parking areas. No dogs will be permitted in the park, and bicycle use will be prohibited except for a short segment of trail north of the bridge. The applicant would limit educational programming groups to no more than 30 people. No overnight stays or rental of the property for events such as birthdays or weddings will be allowed. Because the park will not include typical developed recreational amenities such as ball fields, dog parks, and event venues, use of the park will be of low intensity, and traffic generated by the proposed park will be low.

5. Property Value in Surrounding Area. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found there is no evidence in the record that the proposed park will have a negative impact on neighboring property values.

6. Livability in Surrounding Area. The Hearings Officer finds that in general, the presence of the park will provide an amenity for the surrounding neighborhood as well as the rest of the Bend urban area. As discussed in the findings above, I have found there is one area in which the proposed park may have a negative impact on the surrounding area – i.e., adding traffic to the Glen Vista/O.B. Riley Road intersection where the sight distance is inadequate for safe operation. I have found I cannot recommend to the DCPC that it approve the applicant's proposal unless and until the applicant credibly demonstrates its recommended remediation measures for increasing sight distance can be accomplished.

7. Permissible Development in the Surrounding Area. The surrounding area south of the subject property already is developed with urban residential development. The Hearings Officer finds the proposed park will not interfere with future redevelopment of SM Site 308 to non-mining uses once mining and reclamation of the site have been completed. Property to the north and east of the subject property is zoned for low-density residential development. I find the proposed park will not prevent higher or urban density development of this land should it be rezoned and/or included within the Bend UGB.

For the foregoing reasons, the Hearings Officer finds the location, size, design and operating characteristics of the proposed regional park are such that the park will have minimal adverse impact on the property value, livability and permissible development of the surrounding area.

B. That the site planning of the proposed use will, as far as reasonably possible, provide an aesthetically pleasing and functional environment to the highest degree consistent with the nature of the use and the given setting.

FINDINGS: The applicant proposes to preserve the vast majority of the subject property in its current undeveloped state, to improve existing trails where possible, and to rehabilitate and revegetate existing trails that will not be used. As discussed in the findings above, the Hearings Officer has found the proposed developed portions of the park will minimize impacts on wildlife habitat to the maximum extent practical. I have found that little earthmoving or grading will be required for park development. The applicant proposes to repurpose the Jeffers House and associated outbuildings and grounds rather than to construct a new educational program space. For these reasons, I find the applicant's proposal satisfies this criterion.

- C. That if the use is permitted outright in another zone, there is substantial reason for locating the use in an area where it is only conditionally allowed, as opposed to an area where it is permitted outright.**

FINDINGS: Parks are permitted outright in the Public Facilities (PF) Zone. However, the record indicates there are no vacant PF-zoned parcels that could accommodate a regional park. Therefore, the Hearings Officer finds there is substantial reason for the proposed park to be located on the UAR-10 zoned property, satisfying this criterion.

- D. That the proposed use will be consistent with the purposes of DCC Title 19, the Comprehensive Plan, Statewide Goals and any other applicable statutes, ordinances or policies.**

FINDINGS:

1. Title 19 Purposes. The purposes of Title 19 are set forth in Section 19.04.020. The Hearings Officer finds these purposes are carried out through the other provisions of Title 19, including the zone standards and other approval criteria. Therefore, I find that if the applicant's proposal satisfies the applicable standards and criteria in Title 19 it also will be consistent with the purposes of the title.

2. Comprehensive Plan. Aspirational language in comprehensive plans generally does not constitute mandatory approval criteria for quasi-judicial land use permits. *MEK Properties LLC v. Crook County*, 61 Or LUBA 360 (2010); *Kingsley v. City of Sutherlin*, 49 Or LUBA 242 (2005). Similarly, plan language that mandates action by a county or city generally also are not approval criteria. *City of Damascus v. Clackamas County*, 50 Or LUBA 514 (2005). Nevertheless, in *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004), LUBA held a comprehensive plan is a "potential" source of approval standards for quasi-judicial land use permit applications because ORS 197.175(2)(d) provides that where a local government's comprehensive plan and land use regulations have been acknowledged the local government must make land use decisions in compliance with the acknowledged plan. However, LUBA stated that local requirements that land use decisions be "consistent" with the comprehensive plan "do not mean that all parts of the comprehensive plan necessarily are approval standards." LUBA described the proper analysis of the effect of plan provisions as follows:

"Local governments and this Board have frequently considered the text and context of cited parts of comprehensive plans and concluded that the alleged comprehensive plan standard was not an applicable approval standard. Stewart v. City of Brookings, 31 Or LUBA 325, 328 (1996); Friends of Indian Ford v. Deschutes County, 31 Or LUBA 248 258 (1996); Wissusik v. Yamhill County, 20 Or LUBA 246, 254-55 (1990). Even if the comprehensive plan includes

provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. Bennett v. City of Dallas, 17 Or LUBA at 456. Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations. See Waker Associates, Inc. v. Clackamas County, 111 Or App 189, 194, 826 P2d 20 (1992) ('a balancing process that takes account of relative impacts of particular uses on particular [comprehensive plan] goals and of the logical relevancy of particular goals to particular uses is a decisional necessity').

Before considering whether particular plan provisions must be applied as approval standards when considering individual land use permit applications, it is appropriate, as the hearings officer did in this case, to consider first whether the comprehensive plan itself expressly assigns a particular role to some or all of the plan's goals and policies. Downtown Comm. Assoc. v. City of Portland, 80 Or App 336, 339, 722 P2d 1258 (1986); Eskadarian v. City of Portland, 26 Or LUBA 98, 103 (1993); Schellenberg v. Polk County, 21 Or LUBA 425, 429 (1991); Miller v. City of Ashland, 17 Or LUBA 147, 167-69 (1988). We review the hearings officer interpretation of the BAGP [Bend Area General Plan] to determine if her interpretation is correct. McCoy v. Linn County, 90 Or App 271, 275-76, 752 P2d 323 (1988)."

In *Bothman v. City of Eugene*, 51 Or LUBA 426 (2006), LUBA reaffirmed its holding in *Save Our Skyline* that plan language that might not constitute an independently applicable mandatory approval criterion nevertheless may represent a relevant and necessary *consideration* that must be reviewed *and balanced with other relevant considerations* pursuant to ordinance provisions that require "consistency" with applicable plan provisions.

Based on the analyses in these cases, the Hearings Officer finds that in determining whether the BAGP establishes approval criteria for the applicant's proposed regional park, I must examine the text and context of the plan language to ascertain the drafter's intent. And if I find there is no language in these documents that constitutes an independently applicable mandatory approval criterion, I must determine if the plan language nevertheless represents "a relevant and necessary *consideration* that must be reviewed *and* balanced with other relevant considerations."

Chapter 2: Natural Features and Open Space

1. The city and Bend Metro Park and Recreation District will inventory and maintain a list of natural features and open space lands that are important to the community.

2. The city and Bend Metro Park and Recreation District shall share the responsibility to inventory, purchase, and manage public open space, and shall be supported in its efforts by the city and county.

FINDINGS: The Hearings Officer finds these policies do not establish approval criteria for the proposed park because they direct the city and the BPRD to undertake certain long-range park

and open space planning activities.

15. The Bend Metro Park and Recreation District shall designate areas in parks with significant natural values as undeveloped, managed open spaces for natural habitat, educational, aesthetic and passive recreational use, and provide opportunities for trails, observation platforms, boardwalks, and interpretive signage.

16. The Bend Metro Park and Recreation District shall acquire strategic areas along the rivers, streams, and canals to protect and conserve scenic, recreational, and natural values, and make such areas accessible to the community.

17. The Bend Metro Park and Recreation District shall acquire park sites and open space lands where possible to establish pedestrian, bikeway and greenway linkages between parks, open spaces, neighborhoods, and schools.

FINDINGS: The Hearings Officer finds these policies do not establish approval criteria for the proposed park because they direct the BPRD to undertake certain long-range planning activities.

25. The visual impact of excavations or structures that will be erected or substantially modified along the rimrocks bordering the Deschutes River or Tumalo Creek shall be minimized.

FINDINGS: The Hearings Officer finds the language of this policy suggests it was intended to apply to quasi-judicial land use applications involving rimrock along the Deschutes River and Tumalo Creek. The applicant does not propose any excavations along such rimrock, and the only new structures proposed for rimrock areas are two overlooks that will be low-profile deck structures made of native materials and designed to blend into the rimrock.¹³ In addition, as discussed above, the applicant has applied for a State Scenic Waterway Permit from OPRD. For the foregoing reasons, I find the proposed park will be consistent with this policy.

Chapter 3: Community Connections

5. The Bend Metro Park and Recreation District, with the support of the city and county, shall ensure an equitable distribution of parks and open spaces throughout the District's jurisdiction.

6. The Bend Metro Park and Recreation District shall identify "park deficient" areas of the community and shall acquire park and open space property in these areas.

FINDINGS: The Hearings Officer finds these policies do not establish approval criteria for the proposed park but rather direct the BPRD to undertake certain long-range planning activities.

7. The Bend Metro Park and Recreation District shall design parks and facilities that: excel in performance, function, image and affordability; facilitate social gathering opportunities and provide a balance of active and passive recreational opportunities, with an emphasis on multiple use and park "basics," including picnic areas, play areas, and multi-use turf and courts; and are good neighbors to adjacent properties.

¹³ The applicant proposes in the future to repurpose the existing Jeffers House, located on or near rimrock, for educational programming.

FINDINGS: The Hearings Officer finds the language of this policy suggests it may have been intended to establish approval criteria for BPRD's proposed regional park. The applicant's burden of proof states it has 84 parks and 16 natural areas and manages 65 miles of developed trails. In addition, the burden of proof states the applicant has three community/recreation centers, three community meeting centers, an administration facility, support facilities and caretaker facilities. Currently the applicant is in the process of constructing both a "Safe Passage" project along the Deschutes River in Bend, and a multi-purpose recreation center in Bend that will provide ice skating activities not currently available in the applicant's other facilities. The applicant's burden of proof states Shevlin Park is the applicant's only nature park. Although Shevlin Park offers primarily passive recreation opportunities, it also hosts "Cougar Camp," an outdoor education program with limited overnight camping, and other programs at locations like Aspen Hall and Aspen Meadow that are available for rental by large groups.

The applicant's burden of proof states the proposed Riley Ranch park will be its first park devoted exclusively to passive recreation and natural resource management/stewardship. It will provide wildlife viewing, fishing, and pedestrian trails, opportunities for small groups to gather, and winter kayaking take-out locations.

The Hearings Officer finds the applicant's proposal is consistent with this policy because the proposed park has been designed to meet the stated goal of providing a passive recreational facility which focuses on the restoration and preservation of natural and cultural features.

8. The Bend Metro Park and Recreation District shall provide comprehensive sports complexes at dispersed locations throughout the community.

FINDINGS: The Hearings Officer finds this policy does not establish an approval criterion for the proposed regional park because it directs the applicant to undertake certain long-range planning activities.

9. The Bend Metro Park and Recreation District shall orient riverfront parks to the river and to the riparian values of the river corridors.

FINDINGS: The Hearings Officer finds the language of this policy creates an approval criterion for "riverfront parks" which would appear to include the proposed regional park since it borders the Deschutes River. The proposed park offers three water access areas and an overlook providing views of the river. The applicant proposes to limit physical disturbance along the river by improving existing trails rather than constructing new trails, prohibiting dogs on-site, prohibiting bicycles except in limited areas north of the proposed bridge, and removing a small amount of vegetation for construction of the bridge and water access areas. For these reasons, I find the applicant's proposed park orients visitors to the river while preserving the riparian values of the river corridor, consistent with this policy.

10. The Bend Metro Park and Recreation District shall employ "soft" engineering practices when developing or revitalizing park sites, utilizing on-site storm water swales and retention ponds rather than piping water off-site, and shall restore wetland whenever possible.

FINDINGS: The Hearings Officer finds the language of this policy creates an approval criterion requiring "soft" engineering practices for parks. The only impermeable surfaces proposed for the park will be the paved access road and parking areas. As discussed in the findings above, runoff from the road will drain to ground on either side of the road. Given the vast expanse of

open space on either side of the road, I find runoff will be contained on-site. The applicant proposes that the parking areas be drained to specified vegetated areas within and around the parking spaces. For these reasons, I find the applicant's proposal is consistent with this policy.

11. The Bend Metro Park and Recreation District shall include operation efficiency, patron safety, and barrier-free access when designing or revitalizing park sites.

FINDINGS: The Hearings Officer finds it is unclear from the language of this policy whether it was intended to create an approval criterion or simply to direct the applicant to consider efficiency, safety and access when planning for parks. In any event, I find the applicant's proposal satisfies this policy because the applicant's burden of proof states the proposed park will comply with the applicant's "Facilities Inventory and Accessibility Plan."

12. When it is consistent with the needs identified in the Park and Recreation District's Comprehensive Management and Development Plan, park land may be acquired from a willing developer during the land subdivision process.

FINDINGS: The Hearings Officer finds this policy does not establish approval criteria but rather gives the applicant policy direction concerning acquisition of additional park land.

13. The city, county and Park and Recreation District shall develop a new zone for public parks and recreation facilities within the planning area.

FINDINGS: The Hearings Officer finds this policy does not establish approval criteria because it is directed at long-range planning activities by the applicant, city and county.

15. The Park and Recreation District shall strive to develop neighborhood parks or community parks within a convenient distance of every residence in the community.

FINDINGS: The Hearings Officer finds the language of this policy is aspirational and does not establish approval criteria for the applicant's proposal.

3. Statewide Goals. The Hearings Officer finds the Statewide Planning Goals and Guidelines are implemented through the acknowledged BAGP and therefore do not apply directly to the proposed park.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal does not satisfy all applicable conditional use approval criteria.

IV. RECOMMENDATION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS THE DESCHUTES COUNTY PLANNING COMMISSION DENY** the applicant's request for conditional use and site plan approval for its proposed regional park because the applicant has not demonstrated its proposal satisfies all applicable standards and approval criteria.

If the Deschutes County Planning Commission approves the applicant's proposal, the Hearings Officer **RECOMMENDS SUCH APPROVAL BE SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

1. This conditional use and site plan approval for Riley Ranch Nature Reserve is based on the applicant's burden of proof, site plan, exhibits, supplemental materials, and written and oral testimony. Any substantial change to the approved use will require a new land use application and approval.

PRIOR TO OPENING THE PARK TO THE PUBLIC:

2. The applicant/owner shall execute and record with the Deschutes County Clerk a statement declaring that the applicant/owner and its successors will not now or in the future complain about permitted surface mining activities on the adjacent surface mining site.
3. The applicant/owner shall obtain the following permits to the extent they are required:
 - a. Removal-Fill Permit from the Department of State Lands;
 - b. Section 404 (Clean Water Act) Permit from the U.S. Army Corps of Engineers; and
 - c. State Scenic Waterway Permit from the Oregon Parks and Recreation Department.
4. The applicant/owner shall satisfy all applicable provisions of the fire code identified by the Bend Fire Department, and shall submit to the Planning Division written documentation from the Bend Fire Department that all requirements have been met.
5. The applicant/owner shall obtain all require approvals from the City of Bend and affected property owners, and shall construct and install all remediation measures to increase sight distance at the intersection of Glen Vista Road and O.B. Riley Road, identified in the March 27, 2015 Kittelson traffic study.

WITH CONSTRUCTION OF THE PARK:

6. The applicant/owner shall install signage identifying uses that are prohibited in the park (such as dogs except service dogs) or restricted in the park (such as bicycling), and park use policies. This signage shall, at a minimum, be located at each trailhead, vehicular parking area, and bicycle parking area. Where these facilities occur in a common situation, such signage may be consolidated.
7. All paved areas including the access road, vehicle parking areas, and areas for standing and maneuvering of vehicles, shall have paved surfaces with at least two inches of asphalt, maintained for all-weather use, and drained as to contain surface water on site.
8. The applicant/owner shall install disabled parking spaces in the numbers, locations and designs required by the building code.

PRIOR TO CONSTRUCTION OF THE BRIDGE OVER THE DESCHUTES RIVER:

9. All mining on the portion of SM Site 308 above the bridge shall be completed and the area reclaimed.

DURING CONSTRUCTION/DEVELOPMENT OF THE BRIDGE:

10. The applicant/owner shall implement its "Erosion Control and Demolition Plan" for the proposed bridge, included in the record as Hearing Exhibit 3.

PRIOR TO INITIATING EDUCATIONAL PROGRAMMING IN THE JEFFERS HOUSE:

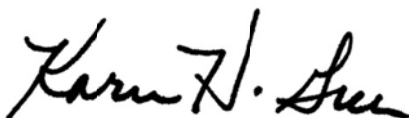
11. The applicant/owner shall obtain all required building plan review and permits, and septic review and permits.

AT ALL TIMES:

12. The applicant/owner shall not rent any part of the park for birthday parties, weddings, family reunions, corporate parties, or similar events.
13. The applicant/owner shall limit educational programming groups to no more than 30 people.
14. The applicant/owner shall assure all parking spaces are available for the parking of operable passenger automobiles of customers, patrons and employees only, and shall not be used for the storage of vehicles or materials, or for the parking of trucks used in conducting the business or use.
15. The applicant/owner shall assure that any lighting used to illuminate the off-street parking areas, bicycle parking areas, and the bridge is designed and installed so that it will not project light rays directly upon any adjoining property.
16. The applicant/owner shall not move its Swalley Irrigation District water right without obtaining a water right transfer through the irrigation district.

Dated this 15th day of October, 2015.

Mailed this 15th day of October, 2015.



Karen H. Green, Hearings Officer