

Hannah Elliott



From: Robin Hayakawa <robin@colw.org>
Sent: Tuesday, November 4, 2025 1:40 PM
To: Katie McDonald
Cc: Plan
Subject: LandWatch Written Comments - Settle NFD Appeal
Attachments: COLW Comments - Settle NFD - 217-25-000233-01.pdf; Exhibit 1 - Crook County Ordinance No. 18, Amendment 53.pdf

Hi Crook County,

On behalf of Central Oregon LandWatch, please add the attached written comments and exhibit to the record for the 11/12/2025 Planning Commission Hearing on Application File No. 217-25-00233-PLNG-01.

Our address is 2843 NW Lolo Drive, #200, Bend, OR 97703. Thank you.

Robin Hayakawa

Associate Staff Attorney

[Central Oregon LandWatch](#)

2843 NW Lolo Dr. Ste. 200, Bend, OR 97703

541-647-2930 x807 | robin@colw.org

To advocate for fair, sustainable land use, visit our [Take Action](#) page!

[CAUTION: This email originated from outside of the organization. DO NOT CLICK LINKS or open attachments unless you recognize the sender and know the content is safe]



November 12, 2025

Filed by email: Katie.McDonald@crookcountyor.gov

Crook County Planning Commission
% Katie McDonald, Assistant Planner
320 NE Court Street
Prineville, OR 97754

Re: Application File No. 217-25-000233-PLNG-01; Settle NFD

Dear Chair Warren and Crook County Planning Commission:

Central Oregon LandWatch submits these written comments in support of our appeal of the Crook County Development Department's August 15, 2025, decision to approve Application File No. 217-25-000233-PLNG for a non-farm dwelling on the property located at 2901 SE Myrtlewood Lane (Tax Lot 1816040005300). The record does not demonstrate compliance with Crook County Code (CCC) 18.16.040(7) and Wildlife Policy 2 of the Crook County Comprehensive Plan, which limits residential density within mapped deer General Winter Range to one dwelling per 80 acres. As a result, Central Oregon LandWatch respectfully requests that the Planning Commission reverse the Staff Decision and deny this application.

Introduction

Central Oregon LandWatch is a nonprofit public interest organization dedicated to protecting Central Oregon's farmland, water, wildlife habitats, and livable communities through advocacy, land use monitoring, and legal action.

While the subject property likely has agricultural value as dry rangeland, we recognize that the parcelized nature of the region and lack of irrigation rights renders farm use a challenge. As a result, we have limited our appeal to the County's determination that the CCC 18.16.040(7) and Wildlife Policy 2 of the Crook County Comprehensive Plan are satisfied. Our motivation for this appeal is grounded in a desire to preserve valuable wildlife habitat in an area already heavily impacted by rural development activities.

Background

The approval criteria for this decision includes CCC 18.16.040(7), which specifically requires compliance with the residential density limitations found in Wildlife Policy 2 of the Crook County Comprehensive Plan. Wildlife Policy 2 limits residential density in the General Winter Deer Range to no more than one residence per 80 acres. Residential density may be demonstrated by calculating a one-mile radius (or 2,000 acre) study area of the surrounding land.



We defend and plan for Central Oregon's livable future

A potential development density equation (PDDE) is then used to determine whether adding an additional dwelling would result in the study area exceeding the limitations of Wildlife Policy 2.

The County's decision relies on the Applicant's PDDE, Exhibit F, which finds that the proposed dwelling results in a total of 6 dwellings, representing only 32% of the maximum allowable 19 residences within the study area. The Applicant reached this conclusion by excluding over 2,900 acres of EFU-JA zoned land (and the dwellings developed therein) to the North, West, and East of the subject property.

The density analysis is fatally flawed and inadequate to demonstrate compliance with CCC 18.16.040(7) and Wildlife Policy 2 based on the following issues:

Appeal Issue 1: CCC 18.16.040(7) - Applicant's Exhibit F Does Not Demonstrate Compliance with Wildlife Policy 2 because the potential development density equation excludes numerous EFU-JA zoned properties already developed with dwellings.

The fundamental issue here is whether County erred in allowing the Applicant to exclude the dwellings developed in the approximately 2,900 acres of land zoned EFU-JA within the study area. The answer is yes. Because Juniper Acres is not part of an acknowledged exception area, it cannot be excluded from the applicant's PDDE, and Wildlife Policy 2 is not satisfied.

The County's decision confirms that the subject property is mapped within the big game winter habitat (general deer) and that the density calculation relied upon by the Applicant excluded the acreage within the Exclusive Farm Use – Juniper Acres (EFU-JA) subdivision. The application asserts that approximately 2,973 acres within the study area are classified as Juniper Acres and "categorized" as non-resource land, making the exclusion from the density calculation proper. Applicant's Burden of Proof at p. 8.

The Staff Decision agreed and concluded that the Applicant's analysis excluding EFU-JA from the necessary PDDE calculations was permissible based on the County's "Program to Achieve the Goal" in the County's Comprehensive Plan, which states:

In order to protect the big game habitat, the Comprehensive Plan policies must be carried over and enacted directly into the County Zoning Ordinance for the EFU-1, EFU-2, EFU-3, and F-1 zones.



By placing the density requirement standards in the specific resource zone, the acknowledged exception areas are exempted from these requirements.

(CCCP at p. 155).

The County relied on the Program and concluded:

“Staff finds the density calculation to be correct in excluding Juniper Acres, wildlife policy 2 in the Comprehensive Plan was drafted after Juniper Acres was zoned EFUJA, therefore concluding it would not be applicable in that area. As demonstrated by the Applicant, in the response, the County is consistent in the application of Wildlife Policy 2.”

(Staff Decision at p. 9)

The County’s finding that EFU-JA properties are exempt from consideration under CCC 18.16.040(7) is incorrect for the following reasons:

- 1. The County’s Program to Achieve the Goal was developed before the creation of EFU-JA:** Failure to include EFU-JA within the County’s Program to Achieve the Goal does not mean that the County intended to make Wildlife Policy 2 inapplicable to EFU-JA properties. The County’s Program to Achieve the Goal was made effective 7/28/1992 under Ordinance No. 1992.

Nine years later, Juniper Acres received EFU-JA zoning designation on 1/24/2001 under Ordinance No. 18, Amendment No. 53. **LandWatch Exhibit 1.**

Contrary to Staff’s claims, at the time the Program to Achieve the Goal was developed in 1992, EFU-JA did not exist and could not have been considered.

Instead, the more reliable indicator of the intent of the Program to Achieve the Goal is the second sentence, which provides that density requirements will be placed in specific resource zones, and only “acknowledged exception areas are exempted from these requirements.” CCC 18.112.051 places density requirements directly into EFU-JA. Moreover, Juniper Acres is not an acknowledged exception area, and it is not exempt from the requirements of the Program to Achieve the Goal.



2. **Applicability of Policy:** Even if correct, the County's rationale for exclusion—that Juniper Acres is zoned EFUJA (an exception area) and the Program to Achieve the Goal was drafted later—does not override the current inclusion of EFU-JA zones in the applicability criteria (CCC 18.112.051).

CCC 18.112.051 clearly and explicitly states that the Policy is applicable within EFU-JA.

CCC 18.112.051 (Wildlife Policy Applicability)

All new nonfarm dwellings on existing parcels within the deer and elk winter ranges must meet the residential density limitations found in Wildlife Policy 2 of the Crook County comprehensive plan. Compliance with the residential density limitations may be demonstrated by calculating a one-mile radius (or 2,000-acre) study area. An applicant may use a different study area size or shape to demonstrate compliance with Wildlife Policy 2 provided the methodology and size of the study area are explained and are found to be consistent with the purpose of Crook County comprehensive plan Wildlife Policy 2. (Ord. 236 § 1 (Exh. A), 2010)

CCC 18.112.051 was placed into the Crook County Code in 2010 via Ordinance 236. CCC 18.112.051 is irrefutable evidence that the Crook County Board of Commissioners intends to make Wildlife Policy 2 applicable to EFU-JA land.

3. **Ordinance 18 Policies:** The EFU-JA zoning designation was created in 2001 under Ordinance No. 18, Amendment No. 53. Ordinance 18 explained the County's rationale for creating the zone and included a series of related Policy declarations. The Staff Decision approving this application is inconsistent with the policies associated with Ordinance No. 18 and the EFU-JA zone.

One policy¹ states:

- The Juniper Acres subdivision will retain its exclusive farm use designation until such time as it is no longer necessary and deemed legally proper to be removed.

The Ordinance's Policy language is clear. EFU-JA is an exclusive farm use zone and properly considered resource land. Any attempt to characterize it as non-resource or some sort of exception area is incorrect.

¹ Ordinance No. 18 Exhibit A at p. 2.



Another policy² states:

- Development near the periphery of Juniper Acres shall be discouraged.

This is a recognition that Juniper Acres does not exist in some sort of third-place in between resource land and a formal exception area. By allowing relatively more intense residential development within Juniper Acres, the policies of Ordinance No. 18 acknowledge that development outside of the EFU-JA should be minimized or “discouraged.” Approval of this application does the opposite. It encourages and allows maximum development around the periphery of EFU-JA by exempting existing development from the density requirements of CCC 18.16.040(7).

The Policies contained within Ordinance 18 recognize that Juniper Acres is resource land, and development outside of EFU-JA must be limited accordingly.

4. **Exclusion of Developed Parcels:** Finally, the Staff Decision’s improper exclusion of EFU-JA acreage and dwellings renders the density study inaccurate, as numerous EFU-JA parcels within the study area are already developed with dwellings.

Examples of developed EFU-JA zoned properties that should have been included in the density study are Map/Taxlots 1816040004000, 1816040004800, 1816090000600, 1816040003300, and 1816040004300.

This list is far from comprehensive. The Applicant did not consider these Taxlots in their PDDE and as a result, the County erred in determining that they have satisfied their burden of proof to show that the Application complies with CCC 18.16.040(7).

Without an accurate PDDE that includes all developed EFU-JA properties within the one-mile study area as mandated by the County Code, the Commission cannot make a defensible finding that the development density requirement under CCC 18.16.040(7) and Wildlife Policy 2 is met.

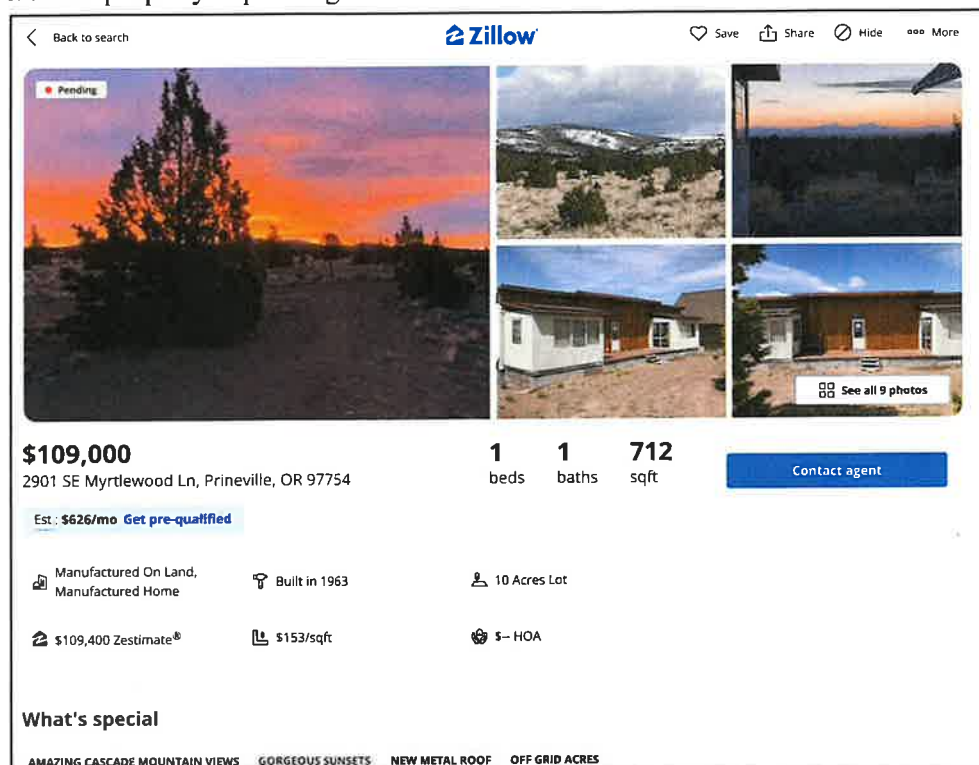
² Ordinance No. 18 Exhibit A at p. 30 other dwellings within the Applicant’s PDDE study area are.



Appeal Issue 2: CCC 18.16.040(7) - Applicant's Exhibit F is further inadequate to demonstrate compliance with Wildlife Policy 2 because it fails to account for EFU-1 zoned properties within the study area developed with dwellings, including the subject property itself.

The PDDE requires the identification of all existing dwellings within the study area. The applicant's findings list the "total number of applicable existing dwellings on resource parcels in the Study Area, General Winter Deer Range" as 4. This is incorrect. Aerial imagery and other evidence in the record is that there are other dwellings within the Applicant's PDDE study area that are uncouncted.

1. **Subject Property Dwelling Exclusion:** The subject property itself (zoned EFU-1) is developed with an existing "1963 manufactured dwelling." Central Oregon LandWatch notes that an active listing on [Zillow.com](https://www.zillow.com) contains photos of the manufactured home and that the property is pending sale.³



Back to search **Zillow** Save Share Hide More

Pending

\$109,000
2901 SE Myrtlewood Ln, Prineville, OR 97754

Est. \$626/mo [Get pre-qualified](#)

Manufactured On Land, Manufactured Home Built in 1963 10 Acres Lot

\$109,400 Zestimate® \$153/sqft \$- HOA

What's special

AMAZING CASCADE MOUNTAIN VIEWS GORGEOUS SUNSETS NEW METAL ROOF OFF GRID ACRES

1 beds 1 baths 712 sqft [Contact agent](#)

See all 9 photos

³ Source: https://www.zillow.com/homedetails/2901-SE-Myrtlewood-Ln-Prineville-OR-97754/232167629_zpid/, Accessed on November 4, 2025.





The existing dwelling on the subject parcel must be counted as an existing dwelling unit affecting density until it is formally removed or demolished.

2. **Flawed Density Calculation:** The 1963 manufactured dwelling on the subject property is described by the Staff Decision on p. 6 as “a nonconforming dwelling.” A nonconforming dwelling is a form of existing dwelling, and yet it is not included in the PDDE that staff relied on in approving this application. As a result, the total number of dwellings currently present in the resource area is further understated and the PDDE is substantially flawed.

Therefore, because the PDDE methodology relied upon by the County fails to consistently account for developed parcels within the EFU-JA zone as required by code (Issue 1) and appears to improperly undercount existing dwellings, including the dwelling on the subject EFU-1 parcel itself (Issue 2), the application fails to demonstrate compliance with the residential density limitations contained in CCC 18.16.040(7) and Wildlife Policy 2.

For the reasons set forth above, Central Oregon LandWatch respectfully requests that the Crook County Planning Commission reverse the staff decision and deny the application.

Thank you for your consideration.

Sincerely,

/s/ Robin Hayakawa
Associate Staff Attorney
Central Oregon LandWatch
2843 NW Lolo Drive Ste 200
Bend, OR 97703
robin@colw.org



ORDINANCE NO. 18 AMENDMENT NO. 53

AN ORDINANCE OF THE CROOK COUNTY COURT TO AMEND THE COUNTY'S COMPREHENSIVE PLAN ADOPTING POLICIES FOR THE JUNIPER ACRES AREA, AND AUTHORIZING A TRANSFER OF DEVELOPMENT CREDIT PROGRAM; TO AMEND THE COUNTY'S ZONING ORDINANCE TO ESTABLISH AN EXCLUSIVE FARM USE JUNIPER ACRES (EFU-JA) ZONE WHICH AMONG OTHER MATTERS CONTAINS PROVISIONS AUTHORIZING THE DEVELOPMENT OF DWELLINGS, PER ACRES, AND TO ESTABLISH A TRANSFER OF DEVELOPMENT CREDIT PROGRAM WITH A SENDING AREA IN THE EFU-JA ZONE AND A RECEIVING AREA IN THE RRM-5 ZONE; TO AMEND THE ZONING MAP TO REFLECT THE BOUNDARIES OF THE EFU-JA ZONE; AND TO DECLARE AN EMERGENCY

WHEREAS, Juniper Acres was established in 1962 pursuant to the laws then in effect;

WHEREAS, the Juniper Acres consists of more than 500 parcels of which 25 have been developed with a dwelling, and an additional 25 parcels have been approved for the development of a dwelling;

WHEREAS, since 1962 numerous changes in state land use laws and regulations have made it extremely difficult, if impossible, to obtain approval for the placement of dwellings in Juniper Acres;

WHEREAS, ranching interests and state agencies have opposed the approval of dwellings in Juniper Acres under the present regulatory scheme;

WHEREAS, the County wants to permit some residential development in Juniper Acres and still satisfy the concerns of ranching interests and state agencies;

WHEREAS, the County Court recognizes that present law and the balancing of interests will not permit the development of all of the 500 parcels, and so fairness requires that those property owners be eligible who are not able to develop their parcels receive certain economic benefits;

WHEREAS, these additional economic benefits include expanded opportunities to locate recreational vehicles on parcels in Juniper Acres, and to ability to sell development credits through a transfer of development credit program;

WHEREAS, the Crook County Planning Commission has recommended adoption of the EFU-JA Zone and Transfer of Development Credit Program;

AND WHEREAS, the County has mailed notice of this ordinance to property owners in Juniper Acres, and Juniper Canyon;

164779 (26 pcp)

NOW, THEREFORE, this 24th day of January 2001, the County Court ordains as follows:

SECTION ONE. The County Comprehensive Plan is amended to include the policies contained in Exhibit A which will govern the future development of Juniper Acres, and authorizes the adoption of a transfer of development credit program.

SECTION TWO. The attached Exhibit B is adopted. That exhibit establishes the Exclusive Farm Use-Juniper Acres Zone and zoning regulations governing that zone which implement the policies contained in Section One of this ordinance.

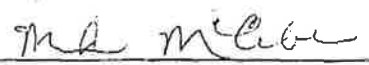
SECTION THREE. The Crook County Zoning Map shall be amended to reflect the boundaries of the EFU-JA Zone to include that land contained in Exhibit C.

SECTION FOUR. The attached Exhibit D establishing a transfer of development credit program is hereby adopted.

SECTION FIVE. This ordinance is immediately effective, as an emergency exists. This emergency exists as there are property owners who have been delayed in their ability to obtain land use approval for their applications for dwellings.

CROOK COUNTY


Judge Scott Cooper


Commissioner Mike McCabe


Commissioner Jerry Crafton

EXHIBIT "A"

COMPREHENSIVE PLAN
AMENDMENTS

Juniper Acres

Findings:

Juniper Acres is an existing partitioned area established in 1962. It is located in the western portion of the county, about 20 miles south of Prineville and 6 miles east of the Crook County/Deschutes County line. The area is characterized by native vegetation common to the Oregon High Desert. No irrigation water is present. There are at this time no domestic wells in the area. This portion of Crook County is not included in a Livestock District and is recognized as Open Range. The subdivision is bordered by federal property managed by the Bureau of Land Management (BLM) and commercial ranching interests. Juniper Acres includes about 5700 acres primarily divided into 10-acre lots. The subdivision exhibits a sparse settlement pattern. Currently (summer, 2000), about 30 legal dwellings either exist or have received building approval. Another 23 properties have received either septic tank approval or septic site evaluation.

Infrastructure in Juniper Acres is severely limited. A road system has been platted but is largely unimproved. Cascade Way acts as the principal entrance to the subdivision, a portion of which is maintained on a volunteer basis. No official road maintenance responsibility exists. Juniper Acres is not provided with power or telephone service. Neither mail delivery service, nor school bus service extends into Juniper Acres, however these services are available at Cascade Way and Reservoir Road. Many of the residents receive mail through Post Office Boxes in Bend or Prineville. Aquifer levels are deep and well drilling attempts are commonly unsuccessful. Nearly all residents rely on cisterns as a source of domestic water. The area does not suffer limitations regarding establishment of individual subsurface sewage disposal systems.

Ownership patterns in Juniper Acres vary. Many ownerships consist of a single lot. Ownerships consisting of multiple lots are also common. The following is list of the number of ownership of two or more lots.

Number of lots	Number of different owners
2 lots	35
3 lots	19
4 lots	3
5 lots	2
6 lots	1
37 lots	1

Recent developmental activity in Juniper Acres has resulted in concern among various interested parties, including the county and neighboring ranchers. Primary concerns focus on impacts to commercial livestock practices and the ability for the county to provide services. The county has received a number of concerns describing conflicts experienced by area ranchers. The State Department of Fish and Wildlife has expressed concerns over wildlife habitat in the area. The apprehension of concerned parties is elevated by the prospect of future development.

Policies:

- Full build-out of Juniper Acres is not desirable. Such a high level of development in this remote area would compromise existing livestock operations, place demands on the county to provide services and dramatically affect the existing landscape found particularly desirable by Juniper Acres residents.
- The Juniper Acres subdivision will retain its exclusive farm use designation until such time as it is no longer necessary and deemed legally proper to be removed.
- The county will not approve dwellings in Juniper Acres that result in an amount to exceed 150 total legally established residences. This policy shall be reviewed when 80% of this threshold has been reached or at the county's next periodic review, which ever occurs first.
- The county will develop a strategy for managing growth and reviewing development proposals in Juniper Acres. This strategy will be carried forward by the establishment and application of the Exclusive Farm Use, EFU-JA Zone (Juniper Acres).
- The EFU-JA Zone (Juniper Acres) shall apply to sections 28,29,30 31,32 and 33 in Township 17S Range 16E and sections 4,5,6,7,8,9,16,17 and 18 in Township 18S Range 16E.
- The county shall strive to strike a balance to the benefit of affected interests.
- Consolidation of lots shall be encouraged.
- Development near the periphery of Juniper Acres shall be discouraged.
- Development in Juniper Acres should not exceed the county's ability to provide emergency services to the area.
- The county will not accept the Juniper Acres transportation network into the county road system and will not provide road maintenance support to this area.
- The expense of establishment or extension of new services to Juniper Acres should be born by property owners in the subdivision and not financed by Crook County taxpayers at large or the citizens of the State of Oregon.

- Due to the entire area being in a Crook County designated deer winter range, the area may not eligible for lot of record as set forth in ORS 215.705, in the future.
- In order to control the development pattern in Juniper Acres a maximum of 25 building permits a year shall be allowed by the Crook County Building Department.
- For the purpose of administration approximately 3,900 acres of public and private lands are included in the EFU-JA (Juniper Acres) zone.

<coulu/crook/JA/JA F&P>

Application of the Materially Altered Standard to Juniper Acres

State and County land use standards require requests to establish nonfarm dwellings to be considered against several discretionary land use criteria. The "materially altered" standard requires the county to identify a specific study area and to predict whether future development will have the effect of altering the land use pattern of the area to the detriment of agriculture in the area. In order to make this prediction the County must identify the existing land use pattern, including the existing farm and ranch practices, existing development, and the potential for nonfarm development.

The "materially altered" analysis is generally applied on a case-by-case basis. In view of the unique circumstances surrounding Juniper Acres, however, the County finds that it is appropriate to apply this standard to the area as a whole. The findings included in this document are in direct response to the unusual and existing condition of the Juniper Acres Partitioning that occurred in 1962. The reasoning applied in these findings does not apply to other areas in Crook County not sharing these characteristics. The County finds that a maximum of 150 residential dwellings will not materially alter the stability of the overall land use pattern in the Crook County EFU-JA (Juniper Acres) for the following reasons.

- i. The Study area includes the approximately 20,000 acres between Reservoir Road and West Butte with about one third of that area lying west of Cascade Way and the remainder lying to the east of Cascade Way. Within that area lies the Juniper Acres Partitioning. The EFU-JA (Juniper Acres) zone includes 5,060 acres, an area originally partitioned in 1962 (Sections 28, 29, 30, 31, 32 and 33 of TWP 17S, Range 16E and Sections 4, 5, 6, 7, 8, 9, 16, 17 and 18 of TWP 18S Range 16E). The lands to the North, West and South are for the most part BLM. The lands to the East are for the most part private lands that are a mixture of large ranch lands and smaller individual ownerships. The topography is primarily flat sagebrush land. There is no soil survey for the area at this time. The Natural Resource Conservation Services (NRCS) plans to have a soil survey done by mid 2001. The soils in Deschutes County, approximately 6 miles to the West, and the South slopes of Powell Butte, approximately 8 miles to the Northwest have been classified as soil class VI. Therefore until the NRCS soil survey is completed, it appears that the predominant soil in the EFU-JA zone is class VI.

The selected study area is representative of land uses occurring in the area of Juniper Acres and is therefore adequate to conduct the "materially altered" analysis. The study shares common geographical, topographical, and vegetative characteristics. Property ownership includes both private parties and federal agencies.

- ii. Types of Land Uses Within the Study Area. The study area includes the 5,060 acres of the EFU-JA zone and additional 13,000 acres, which are adjacent to Juniper Acres and zoned EFU-1. These lands are a mixture of BLM and private and have the same characteristics of the EFU-JA lands. There are 2 ranch

dwellings in the additional 13,000 acres and no nonfarm dwellings since 1993. Beyond the EFU-JA zone there are approximately 35 ownerships that vary in size of 10 acres to several hundred acres. Livestock grazing is the sole agricultural management practice in the study area. The study area also includes a BLM off-road recreational area.

- iii. Stability of the Land Use Pattern. The approval of 150 residential (existing and future) will not materially alter the stability of the land use pattern in the area of the EFU-JA zone. Due to a density of approximately 1 unit per 40 acres that current agricultural and wildlife activities will be able to continue at the present level of activity. This level of development at this location will not reduce the number of tracts in farm use, and the opportunities for existing livestock operations to expand will not diminish.

The County also finds that the study area contains no irrigated lands. Based upon poor soil conditions, an absence of cleared land and an extreme depth to subsurface groundwater the county finds that it is not realistic to expect application for irrigation wells to be submitted for any property within the EFU-JA Zone.

Finally, the County finds that a total of 150 nonfarm related dwellings authorized in the EFU-JA Zone will not disrupt the existing land use pattern of the area because the level of development distributed over 512 existing parcels will permit residential and agricultural uses to coexist. Residential uses will be suitably absorbed by the volume of undeveloped lands. Open range status and right-to-farm statutes will also help to ensure that agricultural practices are not compromised.

From this point forward the county will rely on the findings of fact and conclusions of law contained in this document to determine whether an individual application for a nonfarm dwelling is or is not able to satisfy the "materially-altered" standard.

Transfer of Development Credit

Finding:

A Transfer of Development Credit (TDC) is one where a TDC credit is given to a property owner, who may use that credit to allow development in an existing acknowledged exception area to create a smaller lot or allow more than one dwelling on an existing lot or parcel.

In order to establish a TDC program, sending areas and receiving areas must be established. A sending area is a location where development credits originate. A receiving area is a location where development credits are actually transferred and perfected.

To carry out this program, the county shall establish a specific TDC Overlay Sending Area District and a list of Receiving Areas:

TDC Sending Area Overlay District

A TDC overlay district shall be applied to an area where development credits will originate (Sending Area). Identification as a Sending Area will be based upon the county's determination that limiting or discouraging residential development in the area is necessary and desirable based upon the potential for one or more of the following:

- a) The establishment or increase of negative impacts to nearby or adjacent farming or forest practices.
- b) Increased costs to the citizens of Crook County and the State of Oregon.
- c) Deterioration of a valued landscape.

Sending Areas shall be limited to agricultural or forest zones.

Inclusion in a Sending Area does not in any way establish a development right. Instead, vacant lots or parcels existing as of January 1, 2000 and included in a Sending Area may be awarded a developmental credit applicable to be perfected in a Receiving Area. Eligibility for a developmental credit shall be contingent upon the property in the Sending Area being consolidated with another contiguous lot or parcel, or receiving an irrevocable deed restriction prohibiting all future residential development.

Property in a Sending Area, once a TDC has been approved, shall remain in the ownership of the person who applied for the TDC, unless otherwise transferred, and shall meet the following:

- a) No residential dwelling shall be allowed on the property.
- b) Agricultural buildings that are not enclosed on more than 3 sides are permitted.
- c) Recreational vehicles are allowed as long as they meet the standards in section 4.230.

- d) Storage building of 120 square feet or less.

TDC Receiving Areas

Designation as a Receiving Area shall be based on the following factors:

- a) Receiving Areas shall be limited to existing exception areas, however, exception areas established as part of the Powell Butte Nonresource lands project shall not be eligible to receive transferred development credits.
- b) Receiving Areas shall not be established on lands located outside of a rural fire protection district.
- c) Receiving Areas shall not be established on lands known to have severe limitation for the installation of individual subsurface sewage disposal systems.
- d) Receiving Areas shall not be established on lands included in a 100-year flood plain.

Receiving Areas shall allow one dwelling per lot or parcel unless a transfer of development credit(s) is involved, then two dwellings may be allowed on a single lot or parcel.

Receiving Areas shall require a 5-acre minimum lot size for land divisions that do not involve a transfer of development credit. Land divisions involving a transfer of development credit shall be eligible for a 2-acre minimum lot size.

The county shall maintain a list of areas subject to the TDC Receiving Area Overlay District.

Policies

Crook County shall establish a Transfer of Development Sending area for the lands included in the EFU-JA (Juniper Acres) area.

Crook County shall establish a Transfer of Development Receiving area in the RR(M)-5 zone (Juniper Canyon) area.

The Crook County Planning Department shall administer the TDC program.

EXHIBIT "B"

EFU-JA ZONING
DISTRICT

**SECTION 3.230. EXCLUSIVE FARM USE ZONE, EFU-JA
(JUNIPER ACRES)**

SECTION 3.230. Exclusive Farm Use Zone, EFU-JA. In an EFU-JA Zone, the following regulations shall apply.

PURPOSE. The purpose of this zoning district is to ameliorate the consequences of the establishment of the Juniper Acres Partitioning in 1962 by permitting a level of residential development that would not ordinarily be permitted in an exclusive farm use zone given the large number of private owners of numerous legally created parcels, and to modulate the timing of the residential development. In that regard, it is anticipated that the provisions of this district relating to annual limits on nonfarm dwellings shall be reviewed not later than January 30, 2003. The Court recognizes that a soil survey of the EFU-JA zone is currently being conducted by the National Resources Conservation Service (NRCS). In the event that the soil survey shall show that the soil in the EFU-JA zone is predominantly Class VII and VIII, this ordinance shall cease to be effective after June 30, 2002. In the event that the soil survey shall show that the soil in the EFU-JA ordinance is predominantly Class VI or better, or should the soil survey not be completed for any reason prior to June 30, 2002, this ordinance shall continue in force until modified or repealed by the Crook County Court. It is anticipated that in the event that the soils are Class VII or VIII that the zoning designation of this district may be changed to a residential or nonresource nature.

1. Uses Permitted Outright: In an EFU-JA Zone, the following uses and accessory uses thereof are permitted outright. While some uses may prompt an inquiry to, and/or action by, the Planning Director, authorization of such uses does not require notice to adjacent property owners or other interested parties and does not constitute a land use decision pursuant to ORS 197.015(10).

- A. Farm use, as defined in ORS 215.203(2).
- B. Operations for the exploration of geothermal resources as defined by ORS 522.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).
- C. Climbing and passing lanes within the right-of-way existing as of July 1, 1987.

- D. Temporary public roads or detours that will be abandoned and restored to original condition or use at such time as no longer needed.
- E. Exploration for minerals as defined by Oregon Revised Statutes 517.750.
- F. Minor betterment of existing public roads and highway related facilities such as maintenance yards, weigh stations and rest areas within the right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
- G. Creation, restoration or enhancement of wetlands.
- H. Alteration, restoration or replacement of a lawfully established dwelling that:
 - a. Has intact exterior walls and roof structure;
 - b. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
 - c. Has interior wiring for interior lights;
 - d. Has a heating system; and
 - e. In the case of replacement, the dwelling shall be removed, demolished or converted to an allowable nonresidential use within three months of completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for Crook County a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed record for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the

provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph.

f. The county shall require as a condition of approval that the landowner for the dwelling sign and record in the deeds records for the county a document binding the land owner and the landowner's successor's in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

- I. The breeding, kenneling and training of greyhounds for racing.
- J. Seasonal farm worker housing as defined in ORS 197.675.
- K. Winery as described in ORS 215.452.
- L. Recreational Vehicle (RV) on an individual lot. The owner of the lot and up to one invitee may place a RV on a lot for up to 14 days in a 90-day period. Subject to the provisions of this ordinance.

2. Administrative Uses Permitted. In the EFU-JA Zone, the following uses and their accessory uses may be permitted if determined by the Planning Director to satisfy the applicable criteria and provisions of law. Authorization of these uses constitutes a land use decision pursuant to ORS 197.015(10). Notice and an opportunity for a hearing must be provided in the manner described in ORS 215.416. These uses may be referred to the Planning Commission for review if deemed appropriate by the Planning Director. Appeals of a Planning Director administrative decision shall be appealed to the Planning Commission as set forth in Section 9.110 of this ordinance.

- A. Dwellings provided in conjunction with farm use pursuant to Section 3.015.4.
- B. Dwellings not provided in conjunction with farm use pursuant to Section 3.015.5.
- C. Sending area for transfer of development credits pursuant to Section 4.240.
- D. Recreational Vehicle (RV) on an individual lot.
 - a. The owner of the lot may place a RV on a lot for up to 180 days in a calendar year with an approved septic system. The RV must be removed from the site when not in use. Each year when commencing occupancy of the parcel with an RV, the property owner shall at no cost register with the County Planning

Department to enable that Department to regulate and enforce the 180 day limitation.

b. All RV owners found to be using an RV in violation of this ordinance shall be subject to immediate citation for violation of the Crook County Ordinances and be subject to fines or other remedies.

3. Conditional Uses Permitted. In the EFU-JA Zone, the following uses and their accessory uses may be permitted if determined by the Hearings Officer or Planning Commission hearing must be provided in the manner described in ORS 215.416. A decision regarding these uses does constitute a land use decision pursuant to ORS 197.015(10).

- A. Private parks and campgrounds. Campgrounds in private parks shall only be those allowed by this subsection. Except on lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campsites may be occupied by a tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6-month period. Approval of a use pursuant to this subsection is subject to the review criteria of Section 3.032.6, and any other applicable criteria or provisions of law.
- B. Community centers owned and operated by a government agency or a nonprofit community organization. Approval of a use pursuant to this subsection is subject to the review criteria of Section 3.032.6.
- C. Home occupations carried on by the resident as an accessory use within dwellings or other buildings referred to in ORS 215.203(2)(b)(F) or (G) as provided in ORS 215.448. Approval of a use pursuant to this subsection is subject to the review criteria of Section 3.032.6, and any other applicable criteria or provisions of law.

- D. One manufactured dwelling, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling shall be removed or demolished, or in the case of an existing building, the building shall be removed, demolished or returned to an allowable non-residential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(C)(11)(1)(f) of this section. Approval of a use pursuant to this subsection is subject to the review criteria of Section 3.032.6, and any other applicable criteria or provisions of law.

a. The county shall require as a condition of approval that the landowner for the dwelling sign and record in the deeds records for the county a document binding the land owner and the landowner's successor's in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

- E. Personal-use airports for airplanes and helicopter pads, including associated hanger, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies to use by the owner, and on an infrequent occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip.

- F. Wildlife habitat conservation and management plans pursuant to ORS 215.800-215.808.

4. Dwellings Provided in Conjunction with Farm Use. In the EFU-JA Zone, a dwelling in conjunction with farm use may be approved if:

See requirements for farm dwellings in Section 3.010 (EFU-1)

5. Dwellings Not Provided in Conjunction with Farm Use. In the EFU-JA zone a dwelling not provided in conjunction with farm use may be authorized if the following approval criteria are satisfied.

- A. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm or forest use;

- B. The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.
- a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and
- b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel, or portion of a lot or parcel, is presumed suitable for farm use if it is predominantly composed of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or
- C. The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the overall land use pattern of the area, the county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard the county shall rely on the comprehensive plan provision regarding Juniper Acres and identifying the land use pattern of the area. Pursuant to the applicable comprehensive plan provision and accompanying policies, authorization of dwellings not provided in conjunction with farm use shall be limited to 150 dwellings.
- D. The County finds and determines that the establishment of 150 dwellings in this zone will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm or forest use; will not materially alter the stability of the overall land use pattern of the area.
- E. No more than 25 dwellings not provided in conjunction with farm use may be approved during the calendar year of 2001. No more than 10 dwellings per year may be approved each calendar year thereafter until the 150 dwelling limit is reached.
- F. Prior to final approval of a building permit, for a dwelling not provided in conjunction with farm use, governed by this subsection, the entire lot or parcel upon which the nonfarm dwelling will be located must be

disqualified from special Assessment at value for farm use pursuant to ORS 215.236.

6. Specific Criteria. In the EFU-JA Zone certain uses are subject to specific criteria, in addition to any other applicable criteria. The specific provisions of this subsection apply only when referenced within the list of uses included in Subsection 3.015.2 and 3.

- A. The use may be approved only where the county finds that the use will not:
 - a. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
 - b. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

7. Land Divisions. Divisions of land shall be allowed only when consistent with the requirements of this section.

- A. No new parcels may be created in the EFU-JA Zone.
- B. All parcels existing at the time of the adoption of this ordinance shall be considered legal parcels.

8. Setbacks

- A. The minimum setback of a non-farm use from the property line adjacent to a farm use not owned by the applicant shall be 100 feet.
- B. The minimum setback for front side and rear yards from the property line shall be 30 feet.

9. Signs

The following non-illuminated signs are permitted:

- A. One name plate for each dwelling unit of not more than sixteen (16) square feet in area;
- B. One temporary sign advertising the sale, lease or rental of the property, livestock or goods, not more than nine (9) square feet in area;

- C. One sign identifying an enterprise other than a farm or ranch, which is a conditional use, not more than thirty-two (32) square feet in area and located at least thirty-five (35) feet from a property line.

10. Lighting

- A. Illumination of uses in the EFU-JA Zone is allowed in a way that preserves rural vistas and is confined to the property from which it is generated.
- B. All nonexempt outdoor lighting fixtures shall have shielding so the illumination is confined to the property on which the light is located.
- C. Exemptions:
 - a. All outdoor light fixtures lawfully installed prior to the adoption of the EFU-JA Zone. All replacement of outdoor lighting fixtures, after the adoption of the EFU-4 Zone, shall comply with this section.
 - b. Lights used for holiday decorations for no more than 45 days.
 - c. Temporary lights for agricultural uses.

EXHIBIT "C"

ZONING MAP
AMENDMENT

5

The Exclusive Farm Use- Juniper Acres (EFU-JA) Zone shall consist of the
platted Juniper Acres Partitioning which consists of portions of the following sections:
TWP 17S R 16E Sections 28, 29, 30, 31, 32 and 33, and TWP 18S R16E Sections 4, 5, 6,
7, 8, 9, 16, 17 and 18. This rezoned area is depicted on the attached map.

15

EXHIBIT "D"

TRANSFER
DEVELOPMENT CREDIT
OVERLAY ZONE

Amended by Amendment No. of Ordinance #18

Section 4.240 Transfer of Development Credits Option - TDC

Purpose:

This section establishes an equitable method for the reduction of density of designated areas through the establishment of a Transfer of Development Credits (TDC) option. The TDC option provides an opportunity to the landowners in the designated areas to retain land in agricultural areas through the option of selling the development credits associated with their land in-lieu-of development and an opportunity to other landowners in areas designated suitable for development with the option of increasing the density of development of their land with the acquisition of such development credits.

It is the specific purpose of Crook County to implement the provisions of section 4.240 to:

1. Manage growth by providing incentives to designated areas of Crook County for concentrated development through the establishment of receiving areas where development credits purchased through the TDC option, may supplement development established by the existing rural residential zones (RR-5 and RR(M)2);
2. Permanently preserve agricultural areas, and wildlife habitat through the establishment of designated sending areas by which development credits may be sold in lieu of residential development;
3. Provide an equitable method to compensate landowners in the designated sending areas who voluntarily forbear from developing land which mark the present land pattern; and
4. Effectively achieve the goals and objectives identified in the Comprehensive Plan.

A. Definitions

1. Base Area. The area displayed on the official zoning map in which a given tract of land is located.
2. Deed of Transfer of Development Credits. A legal instrument which records the conveyance of Transfer of Development Credits from a tract of land in a designated sending area.
3. Development Credits. The right to construct a specified amount of development according to Section 4.240 of the Crook Co. Zoning.
4. Development Credits Transferable (TDC). The attaching of development credits to specified lands which are desired to be kept undeveloped, but permitting those credits to be transferred from those lands so that the development potential which they represent may occur on other lands where more intensive development is deemed to be appropriate.

5. Lot Line Adjustment. The relocation of a common boundary line between two lots or parcels.
6. Receiving Area. An area in which concentrated development has been planned, where transfer of development credits may be applied and added to the base density.
7. Restrictive Covenant Agreement. A legal instrument which simultaneously places restrictions on future development on a specified tract of land in a designated sending zone.
8. Sending Area. An area containing designated resources to be preserved, in which transfer of development credits may be severed and sold in exchange for permanent restrictive covenants.

B. Legislative Intent and Recognition

1. Authority. The Transfer of Development Credit option is established in accordance with ORS 94.531. By authority of this ordinance, development credits shall be a separate estate in land, and declared severable and separately conveyable from the estate in fee simple.
2. Concept Recognition. Crook County hereby recognizes the severability and transferability of development credit from certain lands within Crook County, to be transferred and used in accordance with the provision of this section. The TDC option is recognized as a voluntary agreement under the terms of this ordinance between a willing buyer and a willing seller, and shall be governed by the following principles:
 - a. Lands designated for preservation shall be designated as "sending areas". The seller receives compensation from the sale of his development credits in exchange for retaining the land in EFU through a permanent deed restriction or lot line adjustment.
 - b. Land designated for additional, compact development shall be designated as "receiving areas". The buyer is permitted to use Transfer of Development Credits to increase the density of his development within receiving zones. No new lots in a "receiving area" shall be less than 2 acres.
 - c. The number of development credits shall be established by this Ordinance.
 - d. The price of development credits will be determined by the willing buyer and the willing seller under fair market conditions.

C. Establishment of Development Credits Within Sending Areas

1. Eligibility. Transfer of development credits are recognized and established for specified tracts of land in keeping with the purposes of this Ordinance. The following eligibility criteria shall apply to tracts of land in sending zones as defined by this Ordinance.
 - a. The tract of land shall be a legal lot at the time this ordinance is adopted.

b. The tract(s) shall be located within the EFU-JA zone (Juniper Acres).

2. Number of Credits. One Transfer of Development Credit shall be allowed for each existing legal parcel in the EFU-JA zone (Juniper Acres). Additional development credits will be allowed for the consolidation of parcels at the following rate: 1 additional TDC for consolidation of 2-4 parcels; 2 additional TDCs for consolidation of 5-7 parcels; 3 additional TDCs for consolidation of 8-10 parcels, etc.

3. Monitoring of Credits. At the time of adoption of this Ordinance, Crook County shall:

a. Maintain an accurate record of development credit established and transferred for each lot within the sending area through an appropriate indexing system and map, based on recorded plats. Such system shall key the information to the original tax parcel.

b. Participate in the transfer process as prescribed in Section D.

4. Right to Develop. The owner of a tract of land eligible for the transfer of development credits shall not be restricted from developing said tract in accordance with the applicable zoning district.

D. Sale of Transfer of Development Credits Within Sending Areas.

1. Sale of Credits. Development credits, as calculated in Section 3.0 above, may be conveyed to any person or legal entity, or equitable owner of tracts of land within any designated receiving area, or sold or donated to Crook County, a conservancy or land trust.

2. Deed of Transfer of Development Credits. The development credits conveyed shall be described in a deed designating the owner of the tract of land in the sending area as "grantor" and the owner or equitable owner in the receiving area as "grantee". The said deed shall be known as the "deed of transfer of development credits" which shall be recorded with the Crook County Clerk. The grantee shall obtain a sample deed of transfer of development credits from the county. Said deed shall be endorsed by the county prior to recording. Prior to approval of any transfer of development credits the County Planning Department shall certify that the net-acreage so restricted is sufficient to meet the requirement of this section.

3. Title Report. The deed shall be accompanied by a title report and plan showing such detail as may be required by the Planning Department to demonstrate that such lands are free of restrictions prescribed in Section C.

4. Restrictive Covenant Agreement. Upon sale of development credits, the grantor shall enter into a restrictive covenant agreement with Crook County. The covenant agreement shall:

a. Permanently restrict the land from future residential development. All other uses in the EFU-4 zone shall be allowed.

- b. Be approved by the Crook County Planning Department.
- c. Shall designate future owners of a lot as having responsibility of enforcement.

E. Distribution and Use of Development Credits in the Receiving Area.

1. Eligibility. Transfer of development credits may be applied to tracts of land within a receiving area, in addition to credits established under the base-zone. The following eligibility criteria shall apply to receiving zones as defined by this ordinance:
 - a. The tract of land shall be no less than 4 acres in size.
 - b. The tract(s) shall be located within existing rural residential zones (RR-5 and RR(M)5), except for the RR-5 zones in the Powell Butte study area.
2. Transfer of Credits. Landowners in receiving areas have the right to build one (1) additional dwelling unit for each development credit purchased.
3. Use in Existing Subdivisions. TDCs may be utilized in existing subdivisions, however, such use will require a replatting of the subdivision.

F. Taxation of Development Credits.

Transfer of development credits shall be considered real property. Upon sale and transfer, the instrument conveying the development credits and accompanying deed of transfer of development credits shall be recorded with the Crook County Clerk, and notification given to the Crook County Assessor so that proper reassessment may occur.

G. Public Acquisition And Sale.

Crook County may purchase development credits and may accept ownership of development credits through transfer by donation. All such development credits shall be either retired by the county or held in a TDC account for future sale to receiving area properties. Any such purchase or donation shall be accompanied by a deed of transfer of development credits as prescribed in Section D.



KEY PUNCHED
AUG 22 2001

STATE OF OREGON } SS 164779
COUNTY OF CROOK }
I CERTIFY THAT THE WITHIN INSTRUMENT WAS
RECEIVED FOR RECORD ON THE 21st DAY OF
August 2001 AT 9:45 A. M.
AND RECORDED IN CJRNL
RECORDS OF SAID COUNTY BE NO. 164779
DEANNA E. EDMAN, CROOK COUNTY CLERK
Deanna Edman DEPUTY

N/C