

Executive Staff Report

BAKER COUNTY COMMISSIONERS  
BAKER COUNTY, OREGON  
HONORABLE MEMBERS IN SESSION

April 7, 2021

**SUBJECT:** Proposed revisions to the Baker County Zoning Ordinance

**DEPARTMENT:** Planning

**RECOMMENDATION:** The Planning Commission has recommended the Board of Commissioners approve the attached draft of revisions to the Baker County Zoning Ordinance

**CONTACT PERSON:** Holly Kerns, Planning Director

**FOR COMMISSION SESSIONS ON:** April 21 and May 5, 2021

**BACKGROUND SUMMARY:** Updates to the Zoning Ordinance are needed periodically to reflect changes within our community and to state law/administrative rule. The revisions before you have been compiled by the Planning Commission, staff, and citizens over the last seven years. They were decided on after 32 public works sessions and two public hearings held by the Planning Commission. Highlights include:

<b>PROPOSED REVISIONS:</b>	<b>PROPOSED ADDITIONS:</b>
<ul style="list-style-type: none"> <li>▪ Clarification/consolidation of application requirements</li> <li>▪ Streamline standards for land divisions and property line adjustments</li> <li>▪ Allow access easements to satisfy road frontage requirements for newly-created parcels</li> <li>▪ Updates to allowed uses and process revisions in Exclusive Farm Use (EFU) and Timber-Grazing (TG) Zones based on state laws</li> <li>▪ Updates to floodplain development standards required by the Federal Emergency Management Agency (FEMA)</li> <li>▪ Organizational revisions to increase user-friendliness of zoning ordinance</li> </ul>	<ul style="list-style-type: none"> <li>▪ Allowance for 'special event' permits in non-resource zones</li> <li>▪ Allowing "cabins" in the Recreational Residential (RR-2) Zone</li> <li>▪ Siting standards for Wind Power Generation Facilities</li> <li>▪ Siting standards for Solar Power Generation Facilities</li> <li>▪ Allowance for Planned Unit Developments within rural residential, commercial and industrial zones</li> </ul>

Four sets of written comments were received at or after the Planning Commission hearings regarding the proposed revisions, each of which the Planning Commission addressed in the attached *Recommendation and Staff Report*. Oral testimony was provided to the Planning Commission as well, reflected in the minutes from September 8 and October 12, 2020 and was addressed during the Planning Commission hearing. Staff worked closely with the Department of Land Conservation and Development (DLCD) to ensure the proposed revisions and draft are in keeping with land use provisions contained within Oregon Revised Statutes and Oregon Administrative Rules.

**COMMITTEE ACTION:** On October 13<sup>th</sup>, 2020, the Baker County Planning Commission recommended approval of the draft by a 4-0 vote.

**POLICY CONSIDERATIONS:** Adoption of this ordinance will enact the revisions to the Baker County Zoning Ordinance shown in Exhibit A of Ordinance 2021-01.

**FINANCIAL/BUDGETARY CONSIDERATIONS:** None

Respectfully Submitted,



Holly Kerns,  
Planning Director

Attached:

- Exhibit 1 Recommendation and Staff Report from the Baker County Planning Commission  
for PA-20-227, including exhibits
- Exhibit 2 Minutes from Planning Commission Hearing on September 8, 2020
- Exhibit 3 Minutes from Planning Commission Hearing on October 13, 2020
- Exhibit 4 Testimony submitted by Ronald Bailey, Sumpter Valley Railroad Restoration, Inc., received on  
February 1, 2021
- Exhibit 5 Testimony submitted by Ken Rockwell, received on January 4, 2021

# BAKER CITY-COUNTY PLANNING DEPARTMENT



1995 Third Street | Suite 131 | Baker City, OR | 97814  
Phone: (541) 523-8219 | Fax: (541) 523-8340



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**Recommendation to the BAKER COUNTY BOARD OF COMMISSIONERS  
from the Baker County Planning Commission for  
REVISIONS TO THE BAKER COUNTY ZONING ORDINANCE  
County Case No. PA-20-227**

**Report Date:** December 23<sup>rd</sup>, 2020

**Report Prepared by:** Eva Henes, Senior Planner and Holly Kerns, Planning Director

**Hearing Dates:** January 6 and January 20, 2020

- I. PURPOSE & CONTEXT:** This staff report details the proposed revisions to the Baker County Zoning Ordinance recommended by the Baker County Planning Commission to the Baker County Board of Commissioners, and includes findings for how the changes are in compliance with applicable Zoning Ordinance standards, Comprehensive Plan policies, and statewide planning goals. Updates in the Exclusive Farm Use and Timber Grazing zones were made to maintain consistency with state statute or administrative rule.
- II. BACKGROUND:** Amendments are necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law. Some of the proposed revisions were identified by Planning Department staff, while others were brought to the attention of the Planning Commission by citizens. The full set of proposed revisions is included as Exhibit A of Ordinance 2021-01.

The revisions were developed during 32 Planning Commission work sessions held: in 2013 on July 25<sup>th</sup>, August 15<sup>th</sup>, September 24<sup>th</sup>, October 24<sup>th</sup>, November 12<sup>th</sup> and November 21<sup>st</sup>; in 2014 on March 27<sup>th</sup> and May 22<sup>nd</sup>; in 2015 on April 23<sup>rd</sup>; in 2016 on January 28<sup>th</sup>, February 18<sup>th</sup>, May 9<sup>th</sup>, May 26<sup>th</sup>, August 25<sup>th</sup>, September 22<sup>nd</sup>, October 27<sup>th</sup>, November 30<sup>th</sup> and December 15<sup>th</sup>; in 2017 on July 11<sup>th</sup>, August 8<sup>th</sup> and September 12<sup>th</sup>; in 2018 on February 13<sup>th</sup>; March 8<sup>th</sup>, August 4<sup>th</sup>, September 25<sup>th</sup> and November 6<sup>th</sup>; and in 2019 on January 8<sup>th</sup>, February 12<sup>th</sup>, June 11<sup>th</sup>, July 9<sup>th</sup>, August 13<sup>th</sup> and September 10<sup>th</sup>.

**III. APPLICABLE CRITERIA & FINDINGS:**

Legislative land use decisions must comply with applicable provisions of the statewide planning goals, applicable statutes and administrative rules, and applicable provisions of the Baker County Comprehensive Plan and Zoning Ordinance. The following goals, rules, plan policies, and development code text are the criteria applicable to review of the proposal:

***Baker County Zoning Ordinance***

***BCZO Chapter 260 – Plan Amendments:***

*BCZO Section 260.02 – Authorization to Initiate Amendments. An amendment to the text of this Ordinance or Comprehensive Land Use Plan, or to the zoning map or Comprehensive Land Use Plan Map may be initiated by the Board of Commissioners, or Planning Commission, or by application of a property owner.*

**Recommended Findings:** The proposed revisions to the Baker County Zoning Ordinance are proposed by the Baker County Planning Commission.

**Conclusion:** Based on the findings above, the criteria **are/are not** met.

*BCZO Section 260.03 – Legislative Amendments*

- A. Definition: A Legislative Amendment is one that applies broadly and thus, requires the legislative body of the County, i.e., the Board of Commissioners, to approve the change. By this definition, all amendments to the text of this Ordinance are legislative in nature, with the exception of typographical errors. Modifications of the zoning map that affect a class of property owners as opposed to a single property owner are also legislative in nature.*
- B. Process: Legislative Text and Zoning Map Amendments shall be undertaken by means of a Type IV procedure, as governed by Section 205.07 of this Ordinance as governed by the approval criteria in Section 260.05(A), with the exception of typographical errors. Typographical errors may be corrected at the request of the Planning Commission by means of a Type II procedure, as governed by Section 205.05 of this Ordinance.*

**Recommended Findings:** The proposed revisions to the Baker County Zoning Ordinance are legislative in nature and are going through the Type IV procedure set forth in BCZO Sections 205.07 and using the criteria in 260.05(A). No zoning map amendments are proposed.

**Conclusion:** Based on the findings above, the criteria **are/are not** met.

*BCZO 260.05 – Approval Criteria*

- A. Legislative Text and Zoning Map Amendments. The Board of Commissioners shall approve Legislative Text and Zoning Map Amendments upon findings that the proposed amendment complies with the following approval Criteria:*
  - 1. The amendment complies with all applicable policies of the Comprehensive Plan; and*

**Recommended Findings:** 1) Compliance with applicable policies of the Comprehensive Plan are evaluated on page 11 of this report.

**Conclusion:** Based on the findings above, the criteria **are/are not** met.

2. *The amendment does not create a conflict with other provisions of this ordinance or other ordinances or regulations.*

BCZO Chapter 205 – Decision-Making Procedures

*BCZO 205.07 – Type IV Procedure*

A. Pre-application conference...

B. Submission requirements...

C. Notice of hearing:

1. *Required hearings. Three hearings, one before the Planning Commission and two before the Board of Commissioners, are required for all Type IV actions.*
2. *Notification requirements. The Planning Director shall give notice of the public hearings for the request in the following manner:*
  - a. *At least 45 days prior to the first scheduled evidentiary hearing date, notice shall be sent to the Department of Land Conservation and Development.*
  - b. *At least 20 days prior to the scheduled hearing date, notice shall be sent to:*
    - i. *The applicant;*
    - ii. *Any affected governmental agency;*
    - iii. *Any neighborhood or community organization recognized by the County and whose boundaries include the site;*
    - iv. *Any person who requests notice in writing and pays a fee if established by Board of Commissioners resolution.*
  - c. *At least 14 days prior to the scheduled public hearing date, notice shall be published in a newspaper of general circulation in the County.*
  - d. *At least 7 days prior to the hearing, the Planning Director shall mail the staff report to the Board of Commissioners or Planning Commission, and make the case-file materials and staff report available to the public.*
  - e. *The Planning Director shall:*
    - i. *For each mailing of notice, cause a notarized affidavit of mailing to be filed and made a part of the record which demonstrates the date that the required notice was mailed to the necessary parties.*

- ii. *For each published notice, cause an affidavit of publication to be filed and made part of the record.*

**Recommended Findings:** A) A pre-application meeting was determined not to be applicable to this proposal.

B) As the proposed revisions were generated and put forth by the County, the standard application form and fee was not collected.

C-1) A public hearing for the proposed revisions was scheduled on Tuesday, September 8<sup>th</sup>, 2020. The Planning Commission accepted comments at this hearing, and continued the public hearing until Tuesday, October 13<sup>th</sup>, 2020 at 5:00pm in order to accept additional comments and make a recommendation to the Board of Commissioners. The first Board of Commissioner's hearing is tentatively scheduled for November 4<sup>th</sup>, 2020 at 9:00am. Additional hearings will be scheduled as necessary.

C-2a) A mailed notice in conformance with ORS 227.175 was sent to all property owners within Baker County on August 14<sup>th</sup>, 2020, which provided residents and community members with notification of the proposed revisions to the Baker County Zoning Ordinance. All property owners were contacted using the mailing address listed in the Baker County Assessor's records. Notice was also provided to affected government agencies in the area and the owners of the Baker City Municipal airport. No persons requested specific notice in writing.

C-2b) Public notice of the proposed revisions and scheduled public hearings was published in the August 25<sup>th</sup>, 2020 edition of the Baker City Herald. A second notice will be published in the September 22<sup>nd</sup>, 2020 edition of the Baker City Herald.

C-2c) An affidavit of mailing for the mailed notice was filed in the record on August 14<sup>th</sup>, 2020. An affidavit of publication for the published notice was filed in the record on August 25<sup>th</sup>, 2020, and a second will be filed on September 22<sup>nd</sup>, 2020.

C-2d) The Oregon Department of Land Conservation and Development was first notified in writing of the proposed revisions on August 17<sup>th</sup>, 2020, with revisions submitted on September 8<sup>th</sup>, 2020. These notices were submitted online.

C-2e) The proposed revisions do not include an annexation request.

**Conclusion:** Based on the findings above, the criteria **are/are not** met.

3. *Content of notice. The notice given to persons entitled to mailed or published notice pursuant to this section shall include the following information:*

- a. *The name of the County representative to contact and the telephone number where additional information may be obtained.*



Baker City Herald. A second notice will be published in the September 22<sup>nd</sup>, 2020 edition of the Baker City Herald.

**Conclusion:** Based on the findings above, the criteria **are/are not** met.

*D. Hearing process and procedure.*

- 1. Unless otherwise provided in the rules of procedure adopted by the Board of Commissioners:*
  - a. The presiding officer of the Planning Commission or of the Board of Commissioners, as applicable, shall have the authority to:*
    - i. Regulate the course, sequence, and decorum of the hearing;*
    - ii. Dispose of procedural requirements or similar matters; and*
    - iii. Impose reasonable time limits for oral presentations.*
  - b. No person shall address the Planning Commission or the Board of Commissioners without:*
    - i. Receiving recognition from the presiding officer; and*
    - ii. Stating their full name and residence address.*
  - c. Disruptive conduct such as audience demonstrations in the form of applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.*
- 2. The Planning Commission and the Board of Commissioners shall conduct the hearing as follows:*
  - a. The hearing shall be opened by a statement from the presiding officer setting forth the nature of the matter before the body, a general summary of the procedures set forth in this section, a summary of the standards for decision-making, and whether the decision which will be made is a recommendation to the Board of Commissioners (at the hearing of the Planning Commission) or whether it will be the final decision of the Board of Commissioners.*
  - b. A presentation of the Planning Director's report and other applicable staff reports shall be given.*
  - c. The public shall be invited to testify.*

- d. *The public hearing may be continued to allow additional testimony or it may be closed.*
  - e. *The body's deliberation may include questions to the staff, comments from the staff, or inquiries directed to any person present.*
- E. Continuation of the public hearing. *The Planning Commission or Board of Commissioners may continue any hearing and no additional notice shall be required if the matter is continued to a specific place, date, and time.*

**Recommended Findings:**

D) All public hearings shall be conducted in accordance with the standards listed above.

E) A public hearing for the proposed revisions was scheduled on Tuesday, September 8<sup>th</sup>, 2020. The Planning Commission accepted comments at this hearing, and continued the public hearing until Tuesday, October 13<sup>th</sup>, 2020 at 5:00pm in order to accept additional comments and make a recommendation to the Board of Commissioners. Notice of this continuance was published in the September 22<sup>nd</sup>, 2020 edition of the Baker City Herald and online on the Baker County Planning Department website (<http://bakercity.com/2157/Planning-Department>). Future continuation of the public hearing may be permitted if the matter is continued to a specific place, date and time, in accordance with subsection (E) above. The first Board of Commissioner's hearing is scheduled for November 4<sup>th</sup>, 2020 at 9:00am. Additional hearings will be scheduled as necessary.

**Conclusion:** Based on the findings above, the criteria **are/are not** met.

F. Decision-making considerations. *The recommendation by the Planning Commission and the decision by the Board of Commissioners shall be based on consideration of the following factors:*

1. *The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;*
2. *Any federal or state statutes or regulations found applicable;*
3. *Any applicable Comprehensive Plan policies; and*
4. *Any applicable provisions of the County's implementing Ordinances.*

**Recommended Findings:** 1) See findings for Oregon Statewide Planning Goals, beginning on page 38.

- 2) Updates throughout the Zoning Ordinance, primarily in the Exclusive Farm Use and Timber Grazing zones, were made to maintain consistency with state statute and administrative rule.
- 3) See findings for the Baker County Comprehensive Plan, beginning on page 11.
- 4) The proposed revisions were reviewed in accordance with Chapters 205 and 260 of the Baker County Zoning Ordinance, as detailed in this report.

**Conclusion:** Based on the findings above, the criteria **are/are not** met.

G. Approval process and authority.

1. *The Planning Commission shall:*
  - a. *After notice and a public hearing, formulate a recommendation to the Board of Commissioners to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative; and*
  - b. *Within 10 days of determining a recommendation, cause the written recommendation to be signed by the presiding officer of the Commission and to be filed with the Planning Director.*
2. *Any member of the Planning Commission who voted in opposition to the recommendation by the Planning Commission on a proposed change may file a written statement of opposition with the Planning Director prior to any Board of Commissioners public hearing on the proposed change. The Planning Director shall transmit a copy to each member of the Board of Commissioners and place a copy in the record.*
3. *If the Planning Commission fails to formulate a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative to a proposed legislative change within 60 days of its first public hearing on the proposed change, the Planning Director shall:*
  - a. *Report the failure together with the proposed change to the Board of Commissioners; and*
  - b. *Cause notice to be given, the matter to be placed on the Board of Commissioner's agenda, a public hearing to be held, and a decision to be made by the Board of Commissioners. No further action shall be taken by the Planning Commission.*
4. *The Board of Commissioners shall:*

- a. *Have the responsibility to approve, approve with modifications, approve with conditions, deny or adopt an alternative to an application for the proposed change or to remand to the Planning Commission for rehearing and reconsideration on all or part of an application transmitted to it under this ordinance;*
- b. *Consider the recommendation of the Planning Commission, however, the Board of Commissioners is not bound by the Planning Commission's recommendation;*
- c. *Act by Ordinance, which shall be signed by at least two of the Board of Commissioners after the Board of Commissioner's adoption of the Ordinance.*

**Recommended Findings:** 1) Mailed notice to property owners was sent via post on August 14<sup>th</sup>, 2020. A public hearing for the proposed revisions was scheduled on Tuesday, September 8<sup>th</sup>, 2020. The Planning Commission accepted comments at this hearing, and continued the public hearing until Tuesday, October 13<sup>th</sup>, 2020 at 5:00pm in order to accept additional comments and make a recommendation to the Board of Commissioners. The Baker County Board of Commissioners will approve, approve with modifications, approve with conditions, deny the proposed revisions or adopt an alternative. The Planning Commission chair has signed the written recommendation, which will be filed with the Baker County Planning Department prior to presentation to the Baker County Board of Commissioners.

2) No member of the Planning Commission voted in opposition to the proposal.

3) The Planning Commission has adopted a recommendation and forwarded that to the Baker County Board of Commissioners for a public hearing and final decision.

4) The Baker County Board of Commissioners shall make the decision to approve, modify or deny the proposed revisions, regardless of the Planning Commission's recommendation. If approved, the proposed revisions shall be implemented by ordinance, signed by the Chair after Board of Commissioner adoption.

**Conclusion:** Based on the findings above, the criteria **can/cannot** be met in accordance with the procedures outlined above.

**H. Vote required:**

1. *A vote by a majority of the qualified voting members of the Planning Commission present shall be required for a recommendation for approval, approval with modifications, approval with conditions, denial or adoption of an alternative.*
2. *A vote by a majority of the qualified members of the Board of Commissioners present shall be required to decide any motion made with respect to the proposed change.*

- I. Notice of decision. Notice of a Type IV Decision shall be mailed to the applicant and to all parties of record within 5 days after the decision is filed by the Board of Commissioners with the Planning Director. The County shall also provide notice to all persons according to other applicable laws.
- J. Final decision and effective date. A Type IV decision shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.
- K. Record of the public hearing:
1. A verbatim record of the proceeding shall be made by stenographic or mechanical means. It shall not be necessary to transcribe testimony. The minutes and other evidence presented as a part of the hearing shall be a part of the record.
  2. All exhibits received and displayed shall be marked so as to provide identification and shall be part of the record.
  3. The official record shall include:
    - a. All materials considered by the Decision Making Body;
    - b. All materials submitted by the Planning Director to the Decision Making Body with respect to the application;
    - c. The verbatim record made by the stenographic or mechanical means, the minutes of the hearing, and other documents considered;
    - d. The Final Ordinance;
    - e. All correspondence; and
    - f. A copy of the notice that was given, accompanying affidavits and list of persons who were sent mailed notice.
- L. Appeal. There is no local appeal for a Type IV decision at the local level. A Type IV decision can be appealed to the Land Use Board of Appeals (LUBA) or the Land Conservation and Development Commission (LCDC) depending on the nature of the appeal.

**Recommended Findings:** H) The voting Planning Commissioners present on October 13, 2020 unanimously recommended approval of this proposal. Approval or denial of the proposed revisions by the Board of Commissioners must be made by majority decision.

I) After a decision is rendered by the Board of Commissioners, notice will be mailed to all participants of record and the Department of Land Conservation and Development within five business days.

J) If approved without delay, the proposed revisions will take effect on December 18<sup>th</sup>, 2020, unless modified by the Board of Commissioners at the final public hearing.

K) A digital recording is made by Planning Department staff of all public hearings conducted by the department. The digital recording, transcribed minutes, exhibits received and displayed, adopting ordinance, all correspondence relating to the proposed revisions and copies of public notices all become part of the public record, which is available for review at the Baker City-County Planning Department.

**Conclusion:** Based on the findings above, the criteria **are/are not** met.

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All Land Use Planning Goals and applicable policies from the Baker County Comprehensive Plan are included below and are satisfied as follows:

### ***THE BAKER COUNTY COMPREHENSIVE PLAN***

**GOAL 1:** *CITIZEN INVOLVEMENT – To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

A. *Citizen Involvement Policies.* *The county governing body finds and declares that:*

- 1. The county governing body shall assign to the Planning Commission which is broadly representative of the various geographic areas and land use interests in the county the responsibility for implementation and evaluation of the adopted Citizen Involvement Program.*
- 2. The County Planning Commission shall have authority to make recommendations to the county governing body as to the Citizen Involvement Program and its implementation.*
- 3. The "Baker County Citizen Involvement Program, 1978" as adopted by the county governing body, shall be annually reviewed and revised as necessary.*
- 4. The county governing body may appoint Area Advisory Committees to contribute input to the planning process. Pine Valley Land Use Advisory Committee has been appointed and is recognized hereby as one of those Area Advisory Committees.*

B. *Public Meeting Policies.* *The county governing body finds and declares that:*

1. *All meetings or hearings in the county involving land use planning and zoning actions or decisions shall be open, public meetings.*
2. *The Planning Commission, hearings officer, or any other commission or committee having land use planning and zoning functions, advisory or otherwise, shall take necessary action calculated to notify the public of the time and place and purpose of its meetings. Such action shall include making the required information available to a newspaper of general circulation in the county.*

**Recommended Findings:** The Baker County Planning Commission is comprised of seven members from various areas throughout Baker County. Planning Department staff organized public work sessions with the Baker County Planning Commission and the public to develop and review the proposed revisions. These work sessions were held in 2013 on July 25<sup>th</sup>, August 15<sup>th</sup>, September 24<sup>th</sup>, October 24<sup>th</sup>, November 12<sup>th</sup> and November 21<sup>st</sup>; in 2014 on March 27<sup>th</sup> and May 22<sup>nd</sup>; in 2015 on April 23<sup>rd</sup>; in 2016 on January 28<sup>th</sup>, February 18<sup>th</sup>, May 9<sup>th</sup>, May 26<sup>th</sup>, August 25<sup>th</sup>, September 22<sup>nd</sup>, October 27<sup>th</sup>, November 30<sup>th</sup> and December 15<sup>th</sup>; in 2017 on July 11<sup>th</sup>, August 8<sup>th</sup> and September 12<sup>th</sup>; in 2018 on February 13<sup>th</sup>, March 8<sup>th</sup>, August 4<sup>th</sup>, September 25<sup>th</sup> and November 6<sup>th</sup>; and in 2019 on January 8<sup>th</sup>, February 12<sup>th</sup>, June 11<sup>th</sup>, July 9<sup>th</sup>, August 13<sup>th</sup> and September 10<sup>th</sup>. A mailed notice was sent to all property owners within Baker County on August 14<sup>th</sup>, 2020, which provided residents and community members with notification of the proposed revisions and that these revisions may impact their property or neighborhood. This notice was sent to affected property owners at the address listed in the Assessor's records. Public notice of the proposed revisions and scheduled public hearings was published in the August 25<sup>th</sup>, 2020 edition of the Baker City Herald. A second notice will be published in the September 22<sup>nd</sup>, 2020 edition of the Baker City Herald. Additionally, five public open houses were held on August 20<sup>th</sup>, 24<sup>th</sup>, 27<sup>th</sup>, 31<sup>st</sup>, and September 8<sup>th</sup>, 2020, which provided opportunities for early public engagement and citizen involvement in the land use process. Moving forward, the County will hold at least two public hearings on this proposal. These hearings will provide an additional opportunity for citizens to be involved in the proposed revisions and adoption process. These hearings were scheduled and held on Tuesday, September 8<sup>th</sup> and Tuesday, October 13<sup>th</sup>, 2020. The Baker County Board of Commissioners will hold their first public hearing on the matter on Wednesday, November 4<sup>th</sup>, 2020.

**Conclusion:** Based on the findings above, the intent of Goal 1 **is/is not** satisfied.

**GOAL 2:** *LAND USE PLANNING – To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

*The county governing body finds and declares that:*

**A. Technical Information and Inventory Data Policies**

1. *The county governing body shall provide for the accumulation and publication of relevant technical information and inventory data for land use planning in the county.*
2. *The Technical Information and Inventory Data for Land Use, Baker County, as originally adopted by county government shall be annually reviewed and revised as necessary.*
3. *The Planning Director of the county shall have primary responsibility for reviewing and revising such data and information provided however, that any updated or revised draft thereof shall be subject to the approval of the county governing body.*

**B. Comprehensive Plan Policies**

1. *This land use plan, including any changes or revisions, and implementing ordinances shall be made available to the public at the County Library.*
2. *Copies of all significant supporting maps and other documents relating to this land use plan shall be made available for public inspection at the County Planning Office.*
3. *The manner of use of supporting maps in land use decisions shall be set forth under appropriate goals.*
4. *Lot sizes in Sparta Recreation Lands Subdivision (Site 36), Skyline Acres Subdivision (Site 66) and Lower Unity Lake (Site 72) shall be frozen as originally platted to minimize development impact on surrounding resource uses.*

**C. Other Land Use Policies.** *In addition to this land use plan, the following land use regulations, among others, shall be enacted to carry out this plan:*

1. *Land use zoning pursuant to ORS Chapters 213 and 215.*
2. *Subdivision and other land partitioning pursuant to ORS Chapter 92.*
3. *Airport zoning pursuant to ORS Chapter 492.*
4. *Ordinances adopting urban growth boundaries.*
5. *Sumpter Valley Management Plan and Ordinances.*
6. *A plan map.*
7. *A zoning map.*
8. *Exceptions areas.*
9. *Flood Plain Ordinance.*

*Consideration will be given to adopting a solid waste management ordinance at a future date. Current practices and facilities are described under Goal 11.*

#### **D. Coordination Policies**

1. *This land use plan, including any changes or revisions, and implementing ordinances shall be coordinated with the land use plans of affected governmental units in the county.*
2. *Coordination of land use planning shall include the sending of copies of proposed plans and ordinances to affected governmental units and allowing a reasonable period of time for response before adoption. However, a "coordinated plan" shall be a plan as provided in Part I, and IV of this plan.*
3. *"Affected governmental units" are those local governments, state and federal agencies and special districts which have problems, land ownerships, or responsibilities within the area included in this land use plan.*
4. *The County objects to the language of the Oregon Fish and Wildlife Commission's current State Agency Coordination Program, wherein only fee simple acquisition of lands valued at \$50,000 or more to be used as wildlife management areas is subject to a public hearing and Oregon Fish and Wildlife Commission approval. We insist that easement or long-term lease acquisition, regardless of value, for the purpose of management areas or feeding sites be added to the language because of the likelihood of these alternative methods being used by the Oregon Department of Fish and Wildlife to seek additional management areas/feeding sites. We further seek to remove the dollar value as a qualifier so that change of land use, not the value of the transaction, will be the trigger for a public hearing and approval process.*
5. *This land use plan shall be reviewed and revised as necessary at least every five years after the date of compliance with applicable state law and land use planning goals provided however, that revisions in this plan and ordinances may be made at any time at the discretion of the county governing body.*

**Recommended Findings:** A) The proposed revisions to the Baker County Zoning Ordinance do not include revisions to technical data or inventories.

B) A draft copy of the Baker County Zoning Ordinance, including the proposed revisions, was made available at the Baker County Library. All materials relating to the proposed revisions are available for public review at, or from, the Baker City-County Planning Department. No revisions are proposed to the maps contained within the Baker County Comprehensive Plan or Zoning Ordinance. No changes to the minimum lot size allowances in the Sparta Recreation Lands Subdivision (Site 36), Skyline Acres Subdivision (Site 66) and Lower Unity Lake (Site 72) are proposed.

C) The proposed revisions to the Baker County Zoning Ordinance include revisions to Chapters 410 – *Exclusive Farm Use Zone* and 420 – *Timber Grazing Zone*, to reflect allowed

uses set forth by ORS 215. Additionally, revisions to Chapter 310 – *Property Line Adjustments*, Chapter 320 – *Partitions*, and Chapter 330 – *Subdivisions* are proposed, all of which are consistent with requirements in ORS 92. No revisions are proposed relating to airport zoning, urban growth boundaries within the county, the Sumpter Valley Management Plan and Ordinance, plan or zoning maps, or exception areas. Revisions to Chapter 630 – *Flood Damage Prevention* are proposed in an effort to bring floodplain development standards in line with those required by the Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program (NFIP). The adoption of a solid waste management ordinance is not proposed with this set of revisions.

D) Mailed notice of the proposed revisions was provided to affected governmental agencies operating within Baker County as described in the findings for Goal I. Written comments were received in regard to the proposed revisions (Exhibits A, B, C and D). No revisions to management areas, feeding sites, or big game regulations are proposed. The Baker County Zoning Ordinance was last revised in 2014.

Comments were received from Diane Stone (Exhibit A), proposing various revisions to grammar, punctuation and sentence structure throughout the ordinance. The Planning Commission elected to include this group of proposed revisions as they did not alter the intent of the ordinance.

**Conclusion:** Based on the findings above, the intent of Goal 2 **is/is not** satisfied.

**GOAL 3:** *AGRICULTURAL LANDS – To preserve and maintain agricultural lands.*

*The county governing body declares that:*

- 1. Inventoried agricultural lands in the county shall be administered in accordance with the EFU provisions of ORS 215, and shall be planned, zoned and administered in a manner consistent with the requirements of Goals 3 and 9.*
- 2. In addition to these goals and laws that require the protection and preservation of agricultural lands, Baker County sees the necessity of adding the more stringent requirement of actually promoting increased productivity throughout our agricultural lands.*
- 3. Recognizing that current Goal 3 language deals with "existing commercial agricultural practices," Baker County is determined to allow for changing technology in agricultural enterprises of the future. Toward that objective, the County shall provide for a minimum parcel size that affordably allows for innovative, smaller-scale, commercial agricultural operations. For the purposes of agricultural lands policies, "commercial" shall be defined as meaning the making of a profit or the intent to make a profit of \$2000 per 40 acres of agricultural lands per year.*

4. *Pre-existing, substandard sized parcels will be reviewed against criteria within the zoning ordinance in a public hearing to determine whether they are commercial farm units or nonfarm units.*
5. *Farm use shall be understood to mean grazing as well as tillage of land as defined by ORS 215.203.*
6. *All divisions of agricultural lands in Baker County shall be appropriate for the promotion of increased production of our agricultural resource base pursuant to Goals 3 and 9. See pages 9-2 of this Plan.*
7. *Based upon previous findings, the County contends that forty acres, with sufficient irrigation water, or more land if less water is available, is a commercial unit.*
8. *Agricultural lands or forest lands containing an existing or potential multiple use reservoir site may be rezoned for such a reservoir. Such rezoning shall be based upon the application of the Goal 5 Administrative Rule (OAR 660-16-000).*
9. *Agricultural lands or forest lands that are essentially mineral and aggregate resource lands may be rezoned for mining and processing of such resources. Such rezoning shall be based upon the application of the Goal 5 Administrative Rule (OAR 660-16-000).*
10. *Agricultural lands or forest lands that are partitioned and built upon to such extent that, for practical purposes, the statutory agricultural land use policy cannot be applied may be rezoned for other rural uses compatible with farm or forest use. Such rezoning shall require a Goal 3 Exception demonstrating that said lands are physically built upon or irrevocably committed to or needed for non-resource use. Lands so justified are found in the Exceptions Areas portion of this document.*
11. *Agricultural lands or forest lands that are subject to a superseding federal law or regulation may be zoned in a manner consistent with such law or regulations. Please see the Mineral Extraction Overlay Zone portion of this document.*
12. *Agricultural land or forest lands that are essentially recreational lands may be rezoned for such recreational uses and other uses compatible with recreational uses. Such rezoning shall require a Goal 2 exception demonstrating that said lands are physically built upon, or needed for non-resource use.*
13. *There shall be no subdivisions of irrigated farmland in the EFU Zone of Baker County.*
14. *When contiguous farms are consolidated under one ownership, dwellings and outbuildings can be partitioned by either the buyer or the seller, providing:*
  - a. *The house is not needed and will not be needed in the foreseeable future as a farm*

*related dwelling.*

- b. The partitioned lot shall be only as large as necessary to accommodate the nonfarm residential use and shall, insofar as is practicable, remove no productive land from active farming.*
  - c. The remainder of the property shall remain in farm use and shall not be eligible for a new dwelling for a period of at least 10 years.*
  - d. The remainder of the property shall not be partitioned except in accordance with the criteria set forth in the Zoning Ordinance.*
  - e. The partition is consistent with ORS 215.283(3).*
- 15. Retirement farmsteads shall be permitted only when all of the following criteria are met:*
- a. Complies with the criteria of ORS 215.283(3).*
  - b. The proposed use complies with the purpose and intent of the Baker County Comprehensive Plan*
  - c. A maximum two-acre parcel may be partitioned which includes the original farmstead parcel. The farmstead parcel shall be only as large as necessary to accommodate the residential use, including consideration for replacement area for the drainfield.*
  - d. The person making the request has resided on the property 10 years or more.*
  - e. The first right of refusal for repurchase of the farmstead parcel is given to the parent parcel.*
  - f. The remainder of the parcel shall not be partitioned for a similar purpose.*
  - g. The purpose of the farmstead partition shall be for retirement thereon. Retirement, for purposes of this section, shall mean the farmstead applicant has reached the age of 55 years.*

- 16. Temporary Mobile Home Placements: One mobile home may be permitted 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 [ORS 215.283(2)(L)].*

*Nothing in this section shall be construed to require the granting of such a temporary mobile home placement.*

*Circumstances for granting a temporary mobile home placement: A mobile home may be temporarily located on a building site or lot where there exists a personal, but not necessarily financial hardship on the part of the applicant, whereby it is necessary to have someone living on the same premises as the applicant's dwelling or mobile home. The installation of a separate subsurface sewage disposal system for a temporary mobile home shall be allowed but shall not become justification for converting a temporary mobile home to a permanent status.*

*Conditions: The following conditions shall be applied by the Hearings Officer in evaluating an application for Temporary Mobile Home Placement:*

- a. *Approval shall clearly set forth the conditions under which temporary mobile home placement is allowed.*
- b. *Approval shall be for a period of one year, which may be renewed, or for a temporary but undefined duration. However, the mobile home shall be removed thirty (30) days after the original need has ceased.*
- c. *The Hearings Officer may require doctor's certification for application based upon dependency due to medical reasons.*
- d. *The location of a temporary mobile home on a parcel of land shall not be considered a separate dwelling site and the lot area, frontage and access requirements of the applicable zone shall not apply.*
- e. *In granting a Temporary Mobile Placement, the Hearings Officer may impose additional reasonable conditions to meet the purposes of this section and the goals and policies of the Comprehensive Plan. Guarantees and evidence of compliance with conditions may be required.*

17. *The County shall allow "mortgage" or "financial segregations" to facilitate loans secured by a substandard sized tax lot, providing both the parent lot and the lot segregated for mortgage purposes otherwise remain in the same name. The rationale for this policy is derived from ORS 92.010(8).*

18. *The County will examine the Marginal Lands Bill (SB 237) within the next planning update period to determine its usefulness to Baker County.*

**Recommended Findings:** 1-7) The proposed revisions to the Baker County Zoning Ordinance include revisions to Chapter 410 – Exclusive Farm Use Zone. The majority of the revisions are proposed in an effort to reflect allowed uses set forth by ORS 215. No changes to the minimum parcel size requirements of the EFU Zone are proposed, nor are revisions to the term “*commercial agricultural practice*”. Revisions are proposed to the term “*farm use*” in order to reflect the definition set forth by ORS 215.

8-12) No zone changes are proposed with these revisions.

13-15) The proposed revisions do not include an allowance for the subdivision of irrigated farm land, revisions to the minimum parcel size or partition requirements within the EFU Zone, or the addition of allowances for retirement farmsteads.

16) No revisions are proposed to the standards regarding temporary hardship dwellings, as outlined in BCZO Chapter 410.

17) No restrictions for “mortgage” or “financial segregations” are proposed with these revisions.

18) A review of the applicability of the Marginal Lands Bill was not included in these proposed revisions.

**Conclusion:** Based on the findings above, the intent of Goal 3 **is/is not** satisfied.

**GOAL 4:** *FOREST LANDS – To conserve forest lands for forest uses.*

A. Forest Lands Policies. *The County Governing body declares that:*

1. *A Timber Grazing Zone and a Primary Forest Zone will be implemented to retain non-primary and primary forest lands in Baker County for forest uses.*
2. *No jurisdiction is assumed by the county for land use decisions within the federally managed Primary Forest Zone.*
3. *Except as authorized by the County Zoning Ordinance, divisions of inventoried forest land of less than 80 acres shall be subject to a public hearing and ordinance criteria.*
4. *Non-forest dwellings on forest land will be allowed but will require a public hearing to assure that the criteria of the ordinance are satisfied.*
5. *Forest related dwellings will be limited to those necessary for and accessory to commercial forest use and to those parcels of an adequate size to support commercial forest use. Consequences to forest uses other than the production and processing of timber shall be considered in the siting of such dwellings.*
6. *A forest management plan for commercial development of the parcel will be required for partitions of forest land for the establishment of a forest related dwelling. Planned access to interior tracts of timberland shall be encouraged when dealing with road-front parcels.*
7. *In addition to other criteria, before a building permit for any dwelling on inventoried forest land will be given zoning approval, each owner shall fully tree farm the land in a 265' radius from the proposed dwelling except when the ownership boundary is nearer to the dwelling than 265'. In the latter instance, a greater radius will be required so that in all cases a minimum of 5 acres is tree farmed. For pre-existing, non-conforming sized forest parcels of less than 5 acres, the entire ownership shall be fully tree farmed before zoning approval will be given for a building permit.*
8. *All dwellings on inventoried forest land shall be required to be roofed with fire retardant materials.*
9. *All developments on inventoried forest land shall be encouraged to use the protective guidelines of Fire Safety Considerations for Developments in Forested Areas, available from the Oregon State Department of Forestry.*

10. *Home occupations shall be reviewed as a conditional use using the criteria described in B(3) above to assure that they are compatible with forest uses.*
11. *Before the county grants zoning approval for a land use incompatible with defined forest uses, a Goal 2 exception and plan amendment will be required.*
12. *As a result of mixed agriculture and forest uses that exist within the Timber Grazing Zone, the county designates the forest land under its jurisdiction as a mixed use forest zone.*
13. *It is the intent of Baker County that the Timber/Grazing Zone shall be constructed and administered in a manner qualifying it for tax assessment under ORS 321 or 308.*

**Recommended Findings:** 1-2) The proposed revisions to the Baker County Zoning Ordinance include revisions to Chapter 420 – Timber-Grazing (TG) Zone. The majority of the revisions are proposed in an effort to reflect allowed uses set forth by ORS 215 and OAR 660-006. No changes to the minimum parcel size requirements of the TG Zone are proposed. No changes to the standards of the Primary Forest (PF) Zone are proposed. No zone changes are proposed with these revisions.

3) No changes to the minimum parcel size requirements of the TG Zone are proposed, including those relating to the siting of dwellings.

4-6) Revisions to the standards surrounding dwellings in the TG Zone are proposed in an effort to reflect allowances and requirements in ORS 215.705 and OAR 660-006. No additional allowances for dwellings in the TG Zone are proposed. Road frontage and access standards are required to be satisfied for all newly-created parcels, regardless of the zone.

7) No changes are proposed that would impact this policy.

8-9) All developments in timbered areas are required to meet the Fire Siting Standards as listed in OAR 660-006-0035, as well as the access specifications listed under Fire Safety Design Standards for Roads in OAR 660-006-0040. The establishment of permitted developments are coordinated with the Oregon Department of Forestry prior to final approval.

10) No changes to home occupation standards in the TG Zone are proposed with these revisions.

11) No changes to the requirements for Goal 2 exceptions are proposed with these revisions.

12) No change to the classification of forest land as a mixed used forest zone is proposed with these revisions.

13) No change to taxation of forest land is proposed with these revisions.

Comments were received from Diane Stone (Exhibit A), requesting revision to access standards for lot of record dwellings in the TG Zone. As these standards are set forth by OAR 660-006-0027(1), modifications to these standards cannot be made at the local level.

Comments were received from Diane Stone (Exhibit A) requesting a revision to the definition of "forest area". The conversion of "5 meters" to a measurement in feet is proposed to be added to the definition.

**Conclusion:** Based on the findings above, the intent of Goal 4 **is/is not** satisfied.

*GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES – To conserve open space and protect natural and scenic resources.*

Open Spaces and Scenic Areas Policies [none]

Wild and Scenic Waterways; Recreation Trails Policies [none]

Natural Areas Policies [none]

Historic and Cultural Resources Policies [none]

Fish & Wildlife and Big Game Habitat Policies...

Conclusions and Policies: Open Space, Scenic and Historic Areas, and Natural Resources.  
*The County Governing body declares that a program for conserving and protecting the resources of this land use goal shall include:*

1. *The appropriate planning and regulation of land for compatible primary uses. For purposes of ORS 496.012, "primary uses" are those uses permitted outright under the local Zoning Ordinance.*
2. *The use of land exchanges, fee acquisition of land, conservation easements or tax incentives where appropriate and necessary to conserve and protect a natural resource.*
3. *The support of air, land, and water quality laws where appropriate and necessary to protect a natural resource.*
4. *The protection of potential sites for energy production, reservoirs, mineral resources and other particular resource sites against irreversible loss.*
5. *The implementation of policy to expand existing commercial gravel pits in preference*

- to creating new gravel pits.*
- 6. Mining upon patented mining claims within the Mineral Extraction Zone shall be an outright use.*
  - 7. Mining of previously mined land within the Sumpter Valley Overlay Zone shall be an outright use.*
  - 8. Gravel pits inventoried as valuable resources within a residential zone shall be protected by the application of a Surface Mining Zone (SMZ).*
  - 9. The county continues to commend the voluntary spirit of resource conservation and protection practiced by county landowners. The notification policy and public hearing process is intended to provide notice to the public sector of a pending action affecting a cultural, historic or natural resource. The County shall require the preservation of a resource when it is found to be in the public's best interest to do so.*
  - 10. The county will encourage training for its Planning Commission and staff in historic and cultural preservation.*
  - 11. The county shall encourage and support the coordination of Museum Commissions, Boards, Chambers of Commerce, Historical Societies, Libraries, Sumpter Valley Railroad Restoration, Inc., Historic Baker City, Inc., local governments and the media regarding the preservation of our community's natural heritage.*
  - 12. Natural Areas designated as 2A sites are to be protected to ensure the preservation of the resource site.*
  - 13. Natural Areas identified as 3C sites shall be reviewed against criteria found in the Zoning Ordinance to allow conflicting uses, but in a limited way so as to protect the resource site to some desired extent.*
  - 14. Customary resources uses (i.e., grazing and tillage practices) are not considered to be conflicts requiring regulation in Baker County's program to achieve Natural Area protection.*
  - 15. The County shall encourage, as appropriate, the signing of properties to recognize Natural Areas that are significant and for which protection is either totally or partially required.*
  - 16. Baker County encourages the future participation of landowners in both the Riparian Land Tax Incentive Program and the Fish Enhancement Property Tax Program which offer tax advantages as well as protection for natural resources.*
  - 17. Baker County's adoption and implementation of a Flood Plain Ordinance will provide*

*further protection to riparian areas since construction in flood prone areas will be regulated.*

- 18. For new construction of dwellings, agricultural buildings, commercial structures and new roads accessory to such development, the County will impose setbacks adequate to protect and preserve riparian values.*
- 19. Baker County recognizes the roles played by various state and federal agencies in the protection of our natural resources, including riparian areas, including but not limited to the Division of State Lands, the Department of Environmental Quality, the Oregon Department of Fish and Wildlife, the Oregon Forest Protection Act, and the Oregon Department of Agriculture.*
- 20. Those resources collectively known as scenic views and sights are identified, after review, as not in known conflict with other land uses and as having no impact areas. The County will promote land uses designed to conserve the natural splendor of the region.*
- 21. Water areas, wetlands, watershed and groundwater resources are often described as the limiting factor in the development of productivity in our region. For this reason, water resources shall receive protection from competing uses through the Goal 5 process.*
- 22. Conversion of industrially-zoned aggregate and mineral sites to new industrial uses shall only be allowed if the aggregate and mineral resource is not jeopardized.*
- 23. Riparian zones along the stream corridors of Baker County are essential to both maintenance of stream quality and protection of aquatic terrestrial wildlife.*
  - a. One of the inventoried conflicts in riparian zones, feedlots, is regulated through cooperative agreement by the Oregon Department of Agriculture and the Department of Environmental Quality pursuant to the Animal Waste Control Provisions of the "208" program for Water Quality.*
  - b. Another inventoried conflict, stream channelization/bank stabilization, is regulated through the Division of State Lands and the Oregon Department of Fish and Wildlife under fill/removal regulations.*
  - c. Road construction associated with forest operations as a conflict in riparian zones is addressed by the Oregon Forest Practices Act. Other types of road construction are regulated in some instances by County setback requirements relative to access for new construction.*
  - d. Inventoried conflict between new construction and riparian zones is addressed by setback requirements in the land development ordinance.*

- e. *For those land owners who choose to participate in the State's Riparian Zone Tax Incentive Program, additional protection will be available to riparian zones once the County's Comprehensive Plan is acknowledged.*
- f. *The County's Floodplain Ordinance, as adopted, will provide additional setbacks from floodways which are also riparian areas.*

**Recommended Findings:** No changes to standards relating to Big Game Habitat are proposed with these revisions. The proposed revisions do not include any modifications to code language or zoning that would restrict or negatively affect identified natural resources, scenic areas, or open spaces.

- 1) Revisions are proposed to permitted “*primary uses*” within resource zones, namely EFU and TG. These revisions are proposed in an effort to reflect allowed uses and associated standards set forth by ORS 215, OAR 660-033 and OAR 660-006.
- 2) No changes are proposed relating to allowances for land exchanges, fee acquisition of lands, conservation easements or tax incentives.
- 3) Adherence to local, state and federal laws regarding air, land and water quality is required by current language in the BCZO. This is not proposed to change with the proposed revisions; however, explicit language in BCZO Sections 360.02(B)(4) and 660.03(B) is proposed to be revised to remove the requirement for all development to be setback from identified wetlands 25 feet, as the Department of State Lands does not restrict development within wetlands but instead may require mitigation.
- 4) No revisions to the inventory of potential sites for energy production are proposed.
- 5) No new gravel pits, nor the expansion of existing gravel pits, are proposed with these revisions.
- 6-7) No changes are proposed relating to mining on patented claims
- 8) No changes are proposed to the Surface Mining (SM) Zone.
- 9) No changes are proposed to identified significant cultural, historic or natural resources, or how proposed modifications to such resources are brought to the attention of residents in Baker County.
- 10) Proposed revisions to the Baker County Zoning Ordinance will have no effect on this policy.
- 11) Most revisions to the Baker County Zoning Ordinance will have no effect on this policy. Comments and suggested language revisions were received from the Sumpter

Valley Railroad Restoration, Inc., specific to permitted uses within the Sumpter Valley Management Area (SVMA). These proposed revisions are included within BCZO Chapter 540.03.

12-13) No changes are proposed to identified Natural Resource 2A or 3A sites.

14-16) No changes are proposed to identified Natural Areas, or associated protection measures or incentives.

17) The proposed revisions include updates to floodplain development standards mandated at the state and federal levels. No procedural changes to the floodplain management program in Baker County are proposed. Few modifications to current floodplain development standards are proposed, though a revision relating to Goal 5 has been identified in the removal of the allowance for a variance for historic structures. While this revision removes the opportunity for historic structures to seek a variance to floodplain standards, the intent of this revision seeks to align Baker County's floodplain development standards with federal guidelines and to increase public safety and property values by ensuring that all structures within the floodplain meet floodplain development standards. The state of Oregon has, in ORS 197.175, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry. The proposed revisions to floodplain development standards seek to ensure these values, and to ensure federal guidelines are met in order for the community to participate in and maintain eligibility for flood insurance and disaster relief. No modifications to the County's inventory of historic sites and structures, including those buildings within identified historic districts or those included otherwise on the National Register of Historic Places, are proposed.

18) See findings for subsection (3) above.

19) No changes are proposed to the procedures required for notifying affected local, state or federal agencies of potential impacts to natural resources.

20) The proposed revisions do not include any modifications to code language or zoning that would restrict or negatively affect identified scenic views or sites.

21) No changes are proposed to the inventory of water resources, or associated protection measures.

22) No changes are proposed to the protection processes in place for significant aggregate and mineral resources.

23) (a-c) No changes are proposed to the standards in place for the protection of riparian zones along stream corridors. Adherence to local, state and federal laws regarding air, land and water quality laws is required by current language in the BCZO.

(d) Adherence to local, state and federal laws regarding air, land and water quality laws is required by current language in the BCZO. This is not proposed to change with the proposed revisions; however, explicit language in BCZO Sections 360.02(B)(4) and 660.03(B) is proposed to be revised to remove the requirement for all development to be setback from identified wetlands 25ft, as the Department of State Lands does not restrict development within wetlands but instead may require mitigation.

(e) No changes are proposed to language contained in the Baker County Comprehensive Plan.

(f) Additional floodway setbacks are not proposed with these revisions. See findings for subsection (17) above.

**Conclusion:** Based on the findings above, the intent of Goal 5 **is/is not** satisfied.

*GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY – To maintain and improve the quality of the air, water and land resources of the county.*

*The County governing body declares that:*

*A. Air resources quality shall be maintained, among other things, by:*

- 1. Reasonable and effective administration of applicable state and federal laws and standards.*
- 2. Encouraging the formulation and dissemination of best management practices for agricultural operations designed to maintain soil stability and protect air and water quality.*
- 3. Encouraging the development and use of watersheds and of watershed reservoirs to reduce springtime flooding and erosion and to maintain stream flows in the low runoff periods.*
- 4. Adopting zoning restrictions for noise polluting sites to reduce incompatible uses in the area and consideration during conditional use process of such techniques as buffering and restricted hours of operation to minimize noise incompatibility.*
- 5. Conditioning all Conditional Use Permits involving air, water, or land quality regulations so they are subject to DEQ permits, particularly in mining proposals.*
- 6. Where DEQ approval is essential to a Conditional Use proposal copying DEQ Pendleton Staff with the application in advance of the public hearing to allow for their recommendations.*

7. *Cooperating with SWCD, Baker Valley Irrigation District, ODFW, SCS, and private landowners in reducing high water problems by opening up existing drainways and constructing new drains.*
  8. *Seeking assistance and information from the State Water Resources Department or the local watermaster's office when specific and current information relative to water rights for surface and ground water or stream flow is pertinent to a land use decision. Maintained in the local watermaster's office is a map showing river mile designations that correspond to references in the documents cited in Chapter 21 of the Technical Information and Inventory Data for Land Use Planning in Baker County.*
  9. *Fully cooperating with DEQ staff in providing them office space, telephone service, dispensing of applications and certain types of information and receiving complaints from county residents.*
- B. *Water resources quality shall be maintained, among other things, by:*
1. *Reasonable and effective administration of applicable state and federal laws and standards.*
  2. *Encouraging the formulation and dissemination of best management practices for agricultural operations designed to maintain soil stability and protect air and water quality.*
  3. *Encouraging the development and use of watersheds and of watershed reservoirs to reduce springtime flooding and erosion and to maintain stream flows in the low runoff periods.*
  4. *Adopting zoning restrictions for noise polluting sites to reduce incompatible uses in the area and consideration during conditional use process of such techniques as buffering and restricted hours of operation to minimize noise incompatibility.*
  5. *Conditioning all Conditional Use Permits involving air, water, or land quality regulations so they are subject to DEQ permits, particularly in mining proposals.*
  6. *Where DEQ approval is essential to a Conditional Use proposal copying DEQ Pendleton Staff with the application in advance of the public hearing to allow for their recommendations.*
  7. *Cooperating with SWCD, Baker Valley Irrigation District, ODFW, SCS, and private landowners in reducing high water problems by opening up existing drainways and constructing new drains.*

- C. *Land resources quality shall be maintained, among other things, by:*
1. *Reasonable and effective administration of applicable state and federal laws and standards.*
  2. *Encouraging the formulation and dissemination of best management practices for agricultural operations designed to maintain soil stability and protect air and water quality.*
  3. *Encouraging the development and use of watersheds and of watershed reservoirs to reduce springtime flooding and erosion and to maintain stream flows in the low runoff periods.*
  4. *Adopting zoning restrictions for noise polluting sites to reduce incompatible uses in the area and consideration during conditional use process of such techniques as buffering and restricted hours of operation to minimize noise incompatibility.*
  5. *Conditioning all Conditional Use Permits involving air, water, or land quality regulations so they are subject to DEQ permits, particularly in mining proposals.*
  6. *Where DEQ approval is essential to a Conditional Use proposal copying DEQ Pendleton Staff with the application in advance of the public hearing to allow for their recommendations.*
  7. *Cooperating with SWCD, Baker Valley Irrigation District, ODFW, SCS, and private landowners in reducing high water problems by opening up existing drainways and constructing new drains.*

**Recommended Findings:** The proposed revisions do not include any modifications to code language or zoning that would restrict or negatively affect air, water or land resource quality. No policies within Goal 6 of the Baker County Comprehensive Plan were identified to directly apply to or conflict with the proposed revisions.

It should be noted that adherence to local, state and federal laws regarding air, land and water quality is required by current language in the BCZO. This is not proposed to change with the proposed revisions; however, explicit language in BCZO Sections 360.02(B)(4) and 660.03(B) is proposed to be revised to remove the requirement for all development to be setback from identified wetlands 25 feet, as the Department of State Lands does not restrict development within wetlands but instead may require mitigation.

**Conclusion:** Based on the findings above, the intent of Goal 6 **is/is not** satisfied.

**GOAL 7:** *AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS – To protect life and property from natural disasters and hazards.*

A. *The County governing body declares that:*

1. *Such areas involved in this land use goal have been inventoried. However, it is recognized that in some instances a more detailed and conclusive inventory should be done. In particular, regulations currently adopted and implemented will be enhanced at periodic updates of this plan as further information becomes available.*
2. *The county governing body declares that developments subject to damage or that could result in loss of life shall not be planned or located in known areas of natural disasters and hazards without appropriate safeguards.*

**Recommended Findings:** The proposed revisions include updates to floodplain development standards mandated at the state and federal levels. No procedural changes to the floodplain management program or floodplain maps in Baker County are proposed. Few modifications to current floodplain development standards are proposed. Areas of significant change have been identified as follows:

- Allowance for variances related to historic structures has been removed;
- Accessory structures may be exempt from floodplain standards based on size and use; and
- Attached and detached garages may be constructed with the lowest floor at the identified Base Flood Elevation

The state of Oregon has, in ORS 197.175, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry. The proposed revisions to floodplain development standards seek to ensure these values, and to ensure federal guidelines are met in order for the community to participate in and maintain eligibility for flood insurance and disaster relief.

No policies within the Baker County Comprehensive Plan's *Areas Subject to Natural Disasters and Hazards* chapter were identified to directly apply to or conflict with the proposed revisions.

**Conclusion:** Based on the findings above, the intent of Goal 7 **is/is not** satisfied.

**GOAL 8:** *RECREATIONAL NEEDS – To satisfy the recreational needs of the citizens of the state and visitors.*

A. *The County governing body declares that:*

1. *It shall continue to assess the recreational needs of the County, including those inventoried by the State Comprehensive Outdoor Recreation Program, and to serve*

*those needs that befit the public interest.*

- 2. It shall serve the public interest for the County to work cooperatively with Idaho Power Company, the BLM, and volunteer citizen advocates of, at least, minimal sanitation facilities along the Snake River Road.*
  - 3. Continued support for the Sumpter Valley Recreational Railroad shall be encouraged.*
  - 4. Whenever the promotion of a recreational facility is not allowed by a resource goal, Baker County will require an exception from the applicable goal.*
  - 5. Uses of private lands within the boundaries of the Hells Canyon National Recreation Area and within interim or designated Wilderness Areas shall be regulated by the applicable resource goal, either Goal 3 or 4, depending on vegetative cover, and through the federal regulations that pertain.*
  - 6. Based on findings regarding the need for planned recreational areas along the Snake River, slack waters of the Powder River, and Unity Lake, the County supports the development of water-based recreational opportunities.*
- B. The County governing body declares that in relation to destination resorts:*
- 1. A Destination Resort Overlay Zone (DR) shall be established and made part of and an amendment to the Comprehensive Plan and its implementing ordinance. The County's desire is to establish a zone to enhance the economic and recreational diversification of the County in a way that is consistent with the environmental attributes of our area.*
  - 2. The county will adopt a map of eligible areas as part of the Comprehensive Plan and Zoning Ordinance.*
  - 3. The county shall ensure that destination resorts are compatible with the site and adjacent land uses through implementing ordinances.*
  - 4. Improvements and activities shall be located and designed to avoid or minimize adverse effects on uses of surrounding lands. In particular, farming and forest operations in the area need to be protected.*
  - 5. Important natural features are required to be mapped during the resort approval process and these features must to be protected during all phases of development. The overall values of important natural features must be maintained.*
  - 6. Uses in destination resorts will be limited to visitor-oriented accommodations, overnight lodgings, developed recreational facilities, commercial uses limited to*

*types and levels necessary to meet the needs of visitors to the resort, and uses consistent with resource preservation and maintenance of open space.*

7. *The map of eligible sites will be revised and refined to reflect changes in the county at the time of periodic review.*
8. *Resorts shall be required to be self-contained and self-sufficient. Developers must provide all services needed to serve guests and visitors. If a resort wishes to connect to an outside system for water and/or sewer, the developer must pay all of the costs of service extension and increased capacity.*
9. *A feasibility study will be required to ensure that a proposed destination resort has the market to succeed.*
10. *The County will monitor the effects that increased tourism, and destination resorts in particular, have on the economy, social and natural environments, and overall quality of life and will revise its policies according to the successes or problems measured in these areas.*

**Recommended Findings:** No policies within the Baker County Comprehensive Plan's *Recreational Needs* chapter were identified to directly conflict with the proposed revisions. A portion of the proposed revisions serve to indirectly benefit the recreational needs of the citizens of Baker County and its visitors, namely:

- The addition of standards allowing “cabins” to be sited on properties located within the Recreational Residential (RR-2) Zone
- The creation of a “*Tourist Commercial Limited Use Overlay Zone (TCLUOZ)*” via plan amendment application PA-16-001, submitted by Rich & Lori Daniels and approved, with conditions, by the Baker County Board of Commissioners via Ordinance 2017-04
- The addition of language in BCZO Section 540.03 suggested by the Sumpter Valley Railroad Restoration, Inc. to include more uses within the SVMA Zone, as their required uses have changed since the last code update in 2014, and to reflect changes in industry standards and operational requirements
- Proposed addition of standards through newly-created Chapter 235 – *Special Event Permits*, which would permit agri-tourism events within all zones, except EFU and TG. A definition for “*agri-tourism*” is proposed to be added to the BCZO with these revisions.

No changes to the BCZO are proposed relating to standards for destination resorts. Standards for destination resorts have not been adopted into the BCZO.

Comments relating to proposed standards for *Special Event Permits* were received from Dorothy Mason (Exhibit B) requesting revisions to the maximum number of permitted attendees, noise allowances and DEQ permitting requirements. The Planning Commission determined that a maximum number of permitted attendees was warranted based on the potential impacts to nearby property owners. As such, a cap of 400 attendees was added to the standards for a Type I Special Event Permit. Based on past discussions relating to standard noise cut-off restrictions in various industries, the Planning Commission elected not to change the 10:00pm noise restriction, as requested. Finally, the Planning Commission elected to add language requiring compliance with DEQ standards for solid waste disposal, as suggested by Ms. Mason.

Ms. Mason also requested a provision for the solicitation of neighborhood input as an application requirement (Exhibit B). Planning Department staff described the current structure of the land use planning system and the public comment process. The Planning Commission elected not to make the requested revisions, concerned it would impose a hardship on applicants.

**Conclusion:** Based on the findings above, the intent of Goal 8 **is/is not** satisfied.

*GOAL 9: ECONOMY – To diversify and improve the economy of the County.*

*C. Land Use Policies. The County governing body declares that:*

- 1. The overall economic policy of the county shall be as provided by law in ORS Chapter 184.*
- 2. The agricultural land use economy can be improved and diversified by, among other things:*
  - a. Developing small watersheds and water impoundments to increase irrigation water availability. This can be aided by encouraging the reservation of water for economic development activities.*
  - b. Improving the conservation and the primary distribution of water to include potentially productive unirrigated lands.*
  - c. Improving the primary distribution facilities for irrigation water, including but not limited to pumps, pipelines, and canals.*
  - d. Establishing drainage areas or districts to improve areas of high alkalinity or salinity.*
  - e. Improving irrigation practices to reduce water waste and soil erosion.*

- f. Improving and expanding noxious weed eradication and control.*
  - g. Improving crop diversification within the constraints imposed by soil and climate conditions.*
  - h. Expanding and importing the facilities for processing and marketing of locally grown agricultural products.*
  - i. Using and reclaiming allowable commercial mineral and aggregate sites.*
  - j. Allowing commercial processing activities and recreational activities in conjunction with farm use.*
  - k. Encouraging the state to continue to use tax incentives to encourage the retention of land for farm use and tax disincentives to discourage the change from farm use.*
  - l. Improving range management practices to increase forage production.*
  - m. Discouraging encroachments of conflicting land uses into farmlands.*
- 3. The forest land use economy can be improved and diversified by, among other things:*
- a. Managing and harvesting forest tree species on a sustained yield basis, including periodic reforestation of the most productive forest lands with improved species.*
  - b. Increasing use of commercial wood fiber, including logging and mill wastes.*
  - c. Increasing harvest and use of diseased and fire killed trees.*
  - d. Using and reclaiming allowable commercial mineral and aggregate sites.*
  - e. Using allowable commercial processing activities and recreational activities in conjunction with forest use.*
  - f. Encouraging the state to continue to use tax incentives to encourage the retention of land in land for forest use and tax disincentives to discourage the change from forest use.*
- 4. Other land use in the County, other than farm or forest lands, can be diversified and improved by:*

- a. *Expansion of tourist and recreational facilities particularly in support of but not limited to the Hells Canyon National Recreational Area, Anthony Lakes Ski Area, and the Sumpter Valley Recreational Railroad (see related policies 6 and 7 on page VIII -4- of this Plan.)*
  - b. *Expansion of secondary processing facilities for commercial wood fiber and agricultural products.*
  - c. *Utilization and reclamation of commercial mineral and aggregate sites.*
  - d. *Expansion of secondary processing facilities for mineral and aggregate resources.*
  - e. *Expansion of facilities for industrial fabrication or assembly.*
5. *Although rail access must still be considered an important transportation asset, interstate access is more desirable for new commercial and industrial development which need road access to distant markets. Industrially-zoned property within the county, which meets this transportation criteria is extremely limited. The County shall re-evaluate its industrial inventory to consider different modes of transportation. New sites shall ensure compatibility with Goal 12. As new industries develop, the cities and the county need to address local access opportunities.*

**Recommended Findings:** 1-2) No policies within subsection (1) or (2) of the Baker County Comprehensive Plan's *Economy* chapter were identified to directly conflict with the proposed revisions. Portions of the proposed revisions were found to directly support the following policies:

- (h) Proposed revisions to Chapter 410 – *Exclusive Farm Use Zone* to include farm stands, in keeping with ORS 215.283
- (i) The creation of Chapter 690 – *Mining Activity Buffer Overlay Zone (MABOZ)* via plan amendment application PA-16-003 (adopted by the Baker County Board of Commissioners via Ordinance 2017-02), which allows for mining within the identified area of the overlay zone and contains standards specific to reclamation of lands disturbed by mining
- (j) The creation of Chapter 700 – *Mining Impact Mitigation Overlay Zone (MIMOZ)* via plan amendment application PA-17-002 (adopted by the Baker County Board of Commissioners via Ordinance 2018-02), which allows for mining within the identified area of the overlay zone and contains standards specific to reclamation of lands disturbed by mining
- (k) Proposed revisions to Chapter 410 – *Exclusive Farm Use Zone* to include several uses (winery, cidery, brewery, etc.), in keeping with ORS 215.283

- 3) A portion of the proposed revisions include modifications to the allowed uses in the TG Zone. These revisions are proposed in an effort to reflect allowed uses set forth by ORS 215 and OAR 660-006.
- 4) No policies within subsection (4) of the Baker County Comprehensive Plan's *Economy* chapter were identified to conflict with the proposed revisions. Portions of the proposed revisions were found to directly support the following policies:
  - (a) The inclusion of the "Tourist Commercial Limited Use Overlay Zone (TCLUOZ)" via plan amendment application PA-16-001, submitted by Rich & Lori Daniels and approved, with conditions, by the Baker County Board of Commissioners via Ordinance 2017-04
  - (c) See findings for subsections (2)(i)
- 5) No policies within subsection (5) of the Baker County Comprehensive Plan's *Economy* chapter were identified to directly conflict with the proposed revisions.

Comments requesting an increase to the number of vehicles permitted with a Home *Occupation Permit* were received from Cindy & Jerry Endicott (Exhibit C). The Planning Commission determined that an increase was not warranted based on the potential negative impacts to nearby property owners.

**Conclusion:** Based on the findings above, the intent of Goal 9 **is/is not** satisfied.

*GOAL 10: HOUSING – To provide for the housing needs of citizens of the state.*

*The county governing body declares that lands shall be made available for a variety of housing needs in the county, which variety shall include:*

1. *The need to accommodate the several income levels of the citizens.*
2. *The need to reduce transportation costs to and from places of employment.*
3. *The need to support and maintain agricultural, industrial, commercial, mining and processing, and tourist and recreational use of land.*

**Recommended Findings:** No policies within the Baker County Comprehensive Plan's *Housing* chapter were identified to directly apply to or conflict with the proposed revisions. The land under the jurisdiction of this Zoning Ordinance is not classified as urbanizable land, as urban growth boundaries are governed by agreement with the cities.

Revisions to allowances for dwellings in the EFU Zone (Chapter 410) are proposed in an effort to reflect allowed uses set forth by ORS 215. Similarly, revisions to allowances for dwellings in the TG Zone (Chapter 420) are proposed in an effort to reflect allowed uses set forth by ORS 215 and OAR 660-006. Finally, the addition of the allowance for Planned Unit Developments (PUDs) in the Rural Residential (RR-5) Zone is proposed (currently referenced as permitted use in Chapter 230 – *Planned Unit Developments* but not listed as permitted use in Chapter 510.04 – *Rural Residential Zone*), as well as the addition of the allowance for PUDs in commercial and industrial zones. The two latter proposed additions provide further, diversified housing opportunities within Baker County.

Comments were received from Dorothy Mason (Exhibit B) requesting that no commercial venues be permitted in the RR5 Zone, specifically siting concerns with the proposed allowance for PUDs and *Commercial-Scale Solar Power Generation Facilities*. The Planning Commission clarified for the record that the addition of the allowance for PUDs in the RR5 zone was included as a cross-referencing correction. The Planning Commission determined the intent of the allowance for *Commercial-Scale Solar Power Generation Facilities* in the RR-5 Zone was to provide a pathway for residents who may operate a farm, home-based business (home occupation), or other such commercial use permitted in the RR-5 Zone to provide self-generated power for their business. It was clarified that *Utility-Scale Solar Power Generation Facilities*, where power is generated for sale, are not proposed to be permitted within the RR-5 Zone.

Comments were received from Dorothy Mason (Exhibit B) relating to changes to the minimum lot size allowed in the RR-5 Zone. It should be clarified that no changes to minimum lot size are proposed with these revisions.

Comments were received from the Fair Housing Council of Oregon and Housing Land Advocates (Exhibit D). The comments raised the following issues: (1) “When a decision is made affecting the residential land supply, the County must refer to its Housing Needs Analysis (HNA) and Buildable Lands Inventory (BLI) in order to show that an adequate number of needing housing units... will be supported by the residential land supply after enactment of the proposed change.” (2) Goal 10 compliance is not demonstrated through the findings in the staff report due to the findings not being based on an HNA/BLI.

The text of Goal 10 includes the definition of buildable lands: “*refers to land in urban and urbanizable areas that are suitable, available and necessary for residential use.*” Oregon Administrative Rule 660-008-0005 (2) defines buildable land in this way: “*means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses*”. (Emphasis added).

The proposed updates to the Baker County Zoning Ordinance (no updates to the

Comprehensive Plan are proposed with this Plan Amendment) are specific to rural lands. Lands within the city limits of Baker County's incorporated cities are not governed by this Zoning Ordinance, and the areas within those city's Urban Growth Boundaries are governed by the development code policies of that city, not by the Zoning Ordinance policies of Baker County. Baker County does not have other areas that are considered urban or urbanizable lands; all lands governed by the Baker County Zoning Ordinance are considered rural. A local government is not required to keep an inventory of buildable lands, nor to provide a housing needs analysis, for rural lands. The implementation of Goal 10 would not allow counties to re-designate rural lands as residential simply because a shortage of any type of housing were identified; the supply of land to meet residential needs projections is focused within the urban growth boundary of a city through Goal 10.

The proposed amendments to the Zoning Ordinance will not alter the number of dwelling units that could be allowed in Baker County's rural lands, although, as noted above, the opportunity for an applicant to utilize a Planned Unit Development option will provide greater flexibility in the design for developing commercial or industrial lands in the county; however, those zones are not specifically designed to support residential uses.

**Conclusion:** Based on the findings above, the intent of Goal 10 **is/is not** satisfied.

*GOAL 11: PUBLIC FACILITIES AND SERVICE – To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

*The county governing body declares that:*

- 1. The county shall cooperate with the several cities, as to their solid waste disposal programs, by zoning land for disposal sites, and as it concerns the smaller cities, by contributing to the construction of such sites.*
- 2. The county shall provide for the regulation of solid waste disposal on lands in the county as required by law.*
- 3. Standards and criteria for regulating the various densities of land use and development shall be provided in appropriate zoning and land partitioning regulations.*
- 4. The county shall provide for rural services appropriate to the type and level of rural development described in the Comprehensive Plan and to the degree desired by the area residents and fundable by county government.*

**Recommended Findings:** No policies within the Baker County Comprehensive Plan's *Public Facilities and Service* chapter were identified to directly apply to or

conflict with the proposed revisions.

**Conclusion:** Based on the findings above, the intent of Goal 11 **is/is not** satisfied.

*GOAL 12: TRANSPORTATION – To provide and encourage a safe, convenient and economic transportation system.*

*The County Governing Body declares that:*

- 1. Seldom are transportation improvements under the exclusive direction of county government. Therefore, some of the following policies are adopted by the County as recommendations to other public agencies.*
  - a. The Secretary of Agriculture, pursuant to Section 8(c) of Public Law 94-199, December 31, 1975, should provide improved roads from Baker County to scenic views of and from the Western rim of Hells Canyon. It should be noted that the Hells Canyon National Recreation Area Comprehensive Management Plan is under appeal to the Secretary of Agriculture. The USFS preferred alternative to "C" includes access to P.O. Saddle and beyond to Lookout Mountain. Beyond that to Saddle Creek is non-vehicular access until access begins at Sour Apple Flat and on to Lord Flat. In short, the rim of the canyon does have improved access to and along part of the rim but not its entire length.*
  - b. Burnt River Canyon Road should be included in the Oregon State Highway System. Such road should provide improved access from Highway 245 on the southern slope of Dooley Mountain to the Interstate Highway at Durkee. It is noted that no plans exist within the State Department of Transportation to include this road in the state system as it does not meet their standards.*
  - c. Lands surrounding the airport shall be protected from development that is incompatible with the airport.*
  - d. Serious consideration shall be given to the formation of a broad based Airport Authority or Port District to own and operate the Baker Municipal Airport.*
  - e. U.S. Forest Service should be encouraged to complete the North Pine Road to an improvement standard similar to the connecting forest service road in Wallowa County.*
  - f. Local terminals for industrial and commercial consumption of pipeline products should be made available when needed to support economic development of the county.*
  - g. Interstate rail and bus passenger and freight service should continue to be available in the county.*

- h. Local mass transit (private) passenger services shall be expanded as the need and economic practicality becomes apparent.*
  - i. Public subsidized bus transportation shall be continued for the transportation disadvantaged as the need is demonstrated and budgetary priorities will allow.*
  - j. The rural nature of Baker County exerts very limited demand for either foot or bicycle paths. To the degree that such demand exists, Baker County will cooperate with the State Department of Transportation in supporting these features.*
  - k. Baker County supports the attempt to reinstate a regularly scheduled commuter airline serving Baker County residents and businesses.*
- 2. It shall be County policy to plan, construct and maintain county roads to acceptable standards having first considered safety, use, and economics.*

**Recommended Findings:** No policies within the Baker County Comprehensive Plan's *Transportation* chapter were identified to directly apply to or conflict with the proposed revisions.

Comments were received from Diane Stone (Exhibit A) relating to development of property and types of access permits listed in BCZO Chapter 340. After review of the listed access permit types with staff, as well as discussion of other types of access not under County jurisdiction, the Planning Commission elected not to make any modifications to existing language.

**Conclusion:** Based on the findings above, the intent of Goal 12 **is/is not** satisfied.

*GOAL 13: ENERGY CONSERVATION - To conserve energy.*

*The county governing body declares that:*

- 1. Potential energy producing sites shall be protected from irreversible loss and encouraged to be developed.*
- 2. The exploration for, and development of geothermal heat sources shall be encouraged.*
- 3. The conversion of wood wastes (logging and milling residue) to usable heat energy shall be encouraged.*
- 4. The use of available heat energy from natural warm water springs shall be*

*encouraged.*

5. *The development of high density land uses along high capacity transportation corridors shall be encouraged.*
6. *The location of residences proximal to places of employment shall be encouraged.*
7. *The siting and design of buildings to utilize incident solar radiation for supplemental heat energy shall be encouraged.*
8. *The use of construction materials and methods designed to reduce energy requirements for heating and cooling of buildings shall be encouraged.*
9. *Recycling of usable metallic and nonmetallic waste and scrap shall be encouraged where, or when, such recycling is economically practical.*

**Recommended Findings:** The proposed revisions do not include any modifications to code language or zoning that are expected to increase energy consumption. No policies within the Baker County's Comprehensive Plan's *Energy Conservation* chapter were identified to directly apply to or conflict with the proposed revisions.

Standards for wind and solar power generation are proposed to be added to the Baker County Zoning Ordinance in chapters 750 and 770, respectively. The standards within these chapters were developed by the Baker County Planning Commission during work sessions, open and advertised to the public, and have been drafted in accordance with OAR 660-033 and OAR 345-022.

Comments were received from Dorothy Mason (Exhibit B) requesting an increase to the proposed 2-mile setback requirement for wind power generation facilities to residential zones, cities and existing dwellings. The Planning Commission reviewed past work session discussions, noting that the 2-mile setback was settled upon as a compromise to greater and shorter distances proposed by members of the Planning Commission and the public. As such, the Planning Commission elected not to modify the proposed language.

Additional comments were received from Dorothy Mason (Exhibit B) requesting that no commercial venues be permitted in the RR5 Zone, specifically siting concerns with the proposed allowance for *Commercial-Scale Solar Power Generation Facilities*. The Planning Commission determined the intent of the allowance for *Commercial-Scale Solar Power Generation Facilities* in the RR-5 Zone was to provide a pathway for residents who may operate a farm, home-based business (home occupation), or other such commercial use permitted in the RR-5 Zone to provide self-generated power for their business. It was clarified that *Utility-Scale Solar Power Generation Facilities*, where power is generated for sale, are not proposed to be permitted within the RR-5 Zone.

**Conclusion:** Based on the findings above, the intent of Goal 13 **is/is not** satisfied.

*GOAL 14: URBANIZATION – To provide for an orderly and efficient transition from rural to urban land use.*

*The county governing body declares that:*

- 1. County ordinances adopting the various urban growth boundaries of the several cities shall rule in the case of conflicts as to the location of such boundaries.*
- 2. Subject to any agreements between the county and any city in the county, the county shall administer the land use regulations applicable to urbanizable lands in the county. For the purpose of such administration the county shall use the substantive standards and requirements of the land use regulations of the appropriate city.*
- 3. Any change in any of the urban growth boundaries as established by this plan shall be a cooperative process between the county and the city involved.*

**Recommended Findings:** The proposed revisions do not include any modifications to code language or zoning that are expected to restrict or negatively affect urbanization or the transition from rural to urban land use.

No policies within the Baker County Comprehensive Plan's *Urbanization* chapter were identified to directly apply to or conflict with the proposed revisions.

**Conclusion:** Based on the findings above, Goal 14 **is/is not** applicable to the proposed revisions.

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## **STATEWIDE PLANNING GOALS**

- GOAL 1: CITIZEN INVOLVEMENT – To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*
- GOAL 2: LAND USE PLANNING – To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.*
- GOAL 3: AGRICULTURAL LANDS – To preserve and maintain agricultural lands.*
- GOAL 4: FOREST LANDS – To conserve forest lands for forest use.*
- GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES – To protect natural resources and conserve scenic and historic areas and open spaces.*
- GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY – To maintain and improve the quality of the air, water and land resources of the state.*
- GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS – To protect people and property from natural hazards.*
- GOAL 8: RECREATIONAL NEEDS – To satisfy the recreational needs of the citizens of the state and visitors.*

- GOAL 9: ECONOMY OF THE STATE - To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*
- GOAL 10: HOUSING – To provide for the housing needs of citizens of the state.*
- GOAL 11: PUBLIC FACILITIES AND SERVICE – To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*
- GOAL 12: TRANSPORTATION – To provide and encourage a safe, convenient and economic transportation system.*
- GOAL 13: ENERGY CONSERVATION - To conserve energy.*
- GOAL 14: URBANIZATION - To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

**Recommended Findings:** The Baker County Comprehensive Plan Goals 1-14 mirror the intent of Oregon Statewide Planning Goals 1-14. Please see findings for Baker County Comprehensive Plan Goals 1-14, beginning on page 11.

**Conclusion:** Based on the findings above, the intent of Goals 1-14 of the Baker County Comprehensive Plan **are/are not** satisfied.

*GOALS 15-19*

**Recommended Findings:** These Statewide Planning goals are not applicable as Baker County is not located within the Willamette River Greenway, and is not located within or adjacent to any coastal or estuarine resources.

**Conclusion:** Based on the findings above, Goals 15 to 19 **are/are not** applicable to the proposed revisions.

**IV. SUMMARY CONCLUSIONS & BOARD OF COMMISSIONERS DECISION**

The proposed revisions to the Baker County Zoning Ordinance contained within PA-20-227 may be allowed if the request is determined to be consistent with all applicable statewide planning goals, applicable policies of Baker County Comprehensive Plan and Baker County Zoning Ordinance Chapter 260. As summarized herein, this staff report for PA-20-227 **HAS/HAS NOT** demonstrated that the proposed revisions meet or are able to meet through Conditions of Approval, all of the applicable review criteria and development standards.

Therefore, based on the information contained in Sections I through III of this report, and the above review criteria, findings of fact and conclusions and public testimony received, the Baker County Board of Commissioners **APPROVES/DENIES** the proposed revisions to the Baker County Zoning Ordinance.

**EXHIBITS:**

- A Comments from Diane Stone
- B Comments from Dorothy Mason
- C Comments from Cindy & Jerry Endicott
- D Comments from Fair Housing Council of Oregon and Housing Land Advocates

## **Exhibit A**

### **Comments from Diane Stone**

To: <planning@bakercounty.org>  
From: "Diane Stone" <dianesnowbird2020@gmail.com>  
Date: 08/24/2020 03:02PM  
Subject: Proposed Updates to the Baker County Zoning Ordinance

In the 30-plus years since I left Baker County, many changes have occurred which are being addressed by the proposed amendments. Hard work, well done. Since I still own rural land in Baker County, I read through the draft changes with great interest. My comments fall into two groups: the first are those of substance; the second relate to grammar, spelling, and clarity. Still important, but mostly to ex-teachers, like me!

First Group:

Page 148      Access management standards do not address access for development of parcels that are served by a public road that is neither a city, county nor state road. Is there a missing cross reference to another section of the ordinance for access standards for developing parcels adjacent to such public roads?

Page 220      For access to Lot of Record dwellings, existing language seems to completely disallow the use of B.L.M. roads for access. Was that the intent? And for those parcels that would be served by a U.S.F.S. road, the required improvements regarding road width and surfacing are conflicting and excessive compared to

those of many forest roads. Note that the general language in "f" allows road surfaces to be either paved or rocked whereas subsequent language in "ii" disallows rocked surfaces.

For equity and consistency, I submit the following change: In accordance with ORS 215.720, the tract on which the dwelling will be sited is composed of

soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road, as defined under ORS 368.001 that provides or will

provide access to the subject tract. The **private access** road shall be **constructed and** maintained ~~and either paved or surfaced~~

~~with rock and shall not be:~~

~~i. A United States Bureau of Land Management (BLM) road;~~

~~ii. A United States Forest Service (USFS) road unless the road is paved to a minimum width of~~

~~18 feet, there is at least one defined lane in each direction and a maintenance agreement~~

~~exists between the USFS and landowners adjacent to the road, a local government or a state~~

**agency in accordance with standards commensurate with the width and surfacing of the adjacent public road. Such standards shall be established by and set forth in a required maintenance agreement between**

the entity having jurisdiction over the public road and the Lot of Record owner(s).

Second Group:

Page 7            130.04    First sentence. Remove the apostrophe in "it's". Possessive form required, not contraction.

Page 20           Forest area. Why is tree height only expressed in meters? Common usage would call for feet. Clarity: Before the trees, whether they're planted or natural, reach a height of 5 meters, is the land not considered forest area? If not, what is it considered?

Page 33           PUD    property owner's versus property owners'. Both are possessive. What was intended re: singular or plural?

Page 46/47    C            second sentence unclear as to meaning; third sentence is wordy

Page 66           I            eliminate the stray hyphen before the word procedure

Page 72           A            second sentence ELDs not ELD's. Plural, not possessive form, is required

Page 73           same comment as above re: LLDs not LLD's

- Page 108      8b      properly, not property
- Page 110      number sequence is wonky; 110 is followed by 98
- Page 98      245.01      wordy. Eliminate words "for, the, of" so the sentence reads: standards for granting modifications...
- Page 116      280.05 A Suggestion: break the paragraph into two sentences by putting a period after satisfied
- Page 118      D      dedication of land or right of way is required, not are required. The conjunction or requires a singular verb.
- Page 127      D      same comment as above
- Page 129      C 3      The paragraph as written is confusing and contains an unintended fragment.
- Page 131      H 2      The condition for an exception is unclear. It sounds as if parcels larger than the minimum required no longer need DEQ approval. Was that the intent?

Given the pandemic, will any or all of the scheduled public hearings allow participation via zoom? If so, please email details to me at [dianesnowbird2020@gmail.com](mailto:dianesnowbird2020@gmail.com).

Thank you for giving me the opportunity to comment.

Diane Stone

# EXHIBIT B

Dorothy Mason  
PO Box 446  
Baker City OR 97814  
Sept 6, 2020

Eva Henes | Senior Planner | CFM  
Baker City-County | Planning Department  
1995 Third Street | Baker City, OR 97814

RE: Proposed revised Planning Regulations for Baker County

Dear Eva:

I live in RR-5 zone at 42915 Pocahontas Rd Baker City OR. I have reviewed the proposed revisions and have the following comments. I submit these and request they be included in the evaluation of public comments for these proposed changes.

In the section proposed below, I read that there is a cap for events of 3000 attendees. I am shocked that up to 3000 people would be allowed to gather, without some requirement for the size of the land where it might be held. I recommend that there be also a size requirement to allow for safe distribution of people. This proposed discussion should be amended to specified density limits as well as number of people.

### **235.05 Approval Criteria**

*A. Type I Special Event Permit. The following criteria shall be met for two (2) or fewer events in a calendar year:*

*1. Maximum Number of Attendees. No more than 3000 attendees are permitted per event. An event with more than 3000 attendees is subject to the State's Mass Gathering Statute (ORS 433.735 - 433.770).*

On the second requirement below regarding noise, I request that noise should not be allowed past 9pm. Please change the 10pm to 9pm. Also, the decibels should be limited to a reasonable amount. Please use a number instead of leaving it out.

*2. Noise. All noise associated with the event(s), amplified or unamplified, shall be restricted to the hours of 7:00am to 10:00pm.*

In item 8 it just says 'properly dispose of solid waste'. I urge you to include a reference to the standards that must be met. People have different ideas of 'properly dispose'.

*8. Sanitary and Solid Waste Disposal Plan.*

*a. Toilet facilities shall be portable with available hand-sanitizing or hand-washing facilities. Use of a dwelling's on-site septic facilities is not allowed for an event, except by residents or over-night guests of the dwelling.*

*b. All solid waste shall be properly disposed of.*

In this section I did not see required assessment of neighbor's concerns in the report. Rather than leave it up to the applicant, specify they discuss and get documentation as to what each of the neighbors say about the proposed change of use in this zone. This should be included in their application paperwork to assist the planner in review.

In the section Rural Residential 510.04 I offer these comments and requests for revision:

***RR-5 is defined as ' Minimum Lot Size. In the RR-5 Zone, the minimum lot or parcel size shall be five acres'.*** However there are multiple places where it is proposed to allow uses if the size is 2 acres. This is wrong. I request that lot sizes be retained at a minimum of 5 acres.

***510.04 Rural Residential Zone (RR-5)***

*C. Uses Permitted Through a Type III Procedure. In the RR-5 Zone, the following uses may be permitted when authorized in accordance with the provisions of Section 205115.076. These uses shall also require a Conditional Use Permit as described in Chapter 210:*

*10. A Commercial-Scale Solar Power Generation Facility, if measuring more than 3 acres and with net-metering not exceeding 50% of the average expected annual energy production, subject to the provisions of Chapter 770.*

*11. Planned Unit Developments, subject to the requirements of Chapter 230, provided that the average lot size for all dwellings is at least two acres.*

*D. Minimum Lot Size. In the RR-5 Zone, the minimum lot or parcel size shall be five acres, subject to the approval of the Department of Environmental Quality (DEQ) regarding sub-surface sewage disposal. Local distribution and major utility facilities are exempt from this requirement.*

1. *Legal lots of record with less than two acres created prior to October 4, 2000 (date of adoption of OAR 660-004-0040) may develop per the requirements and restrictions of this Section, except that the lots will be non-conforming for size.*

2. *Legal lots of record with less than two acres created after October 4, 2000 (date of adoption of OAR 660-004-0040) may not be developed under the provisions of this Section.*

I suggest that NO COMMERCIAL venues be allowed in RR-5 and certainly no subdivisions bringing the lot size below 5 acres. This is changing the use of the RR-5 Zone and should require a major Environmental Impact Analysis including public comments etc. I think the zones should be honored where they are established. The property value is based on these standards and if commercial venues are allowed, or lot size is reduced then significant impacts to residents are made.

In the proposed regulations for the siting of wind power generation facilities, I concur with the wording EXCEPT I would suggest the setback requirements be 3 miles instead of 2 for each of the sections below.

**750.01 Purpose.** *The purpose of this chapter is to clarify rules governing the siting and development of wind power generation facilities*

*C. No portion of a Commercial or Small-Scale Wind Power Generation Facility shall be within 2 miles of:*

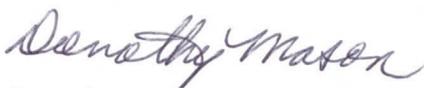
*1. Properties designated on the Comprehensive Land Use Plan Map as residential [those zoned Rural Residential (RR-5) or Recreation Residential (RR-2) only], or*

*2. The city limits of an incorporated city, unless a resolution specifically supporting placement of a wind power generation facility within 2 miles of the city limits has been passed by the city council of that city.*

*D. Furthermore, no portion of a wind turbine generator that is part of a Commercial Wind Power Generation Facility shall be located within 2 miles of an existing dwelling unless an Affidavit of Consent has been signed by all property owners with an existing dwelling within 2 miles of the wind turbine generator. This Affidavit of Consent shall be recorded with the deed records in the Baker County Clerk's Office.*

Thank you for your assistance in providing materials for review in a timely manner, also for holding public information meetings and finally for your consideration of my comments and requests for changes.

Sincerely,



Dorothy Mason

Concerned Citizen

## EXHIBIT C

From: "Cindy Endicott" <cindyendicott05@gmail.com>  
To: tandrews@bakercounty.org  
Date: 09/08/2020 12:52 PM  
Subject: Proposed Zoning Additions

---

Dear Baker County Planning Department,

Regarding approval for Event Venues.

We are in favor of approval. It will not only provide additional options for local residents to keep business within our County, it also brings additional revenue as guests frequent our local lodging including vacation rentals and bed and breakfasts, restaurants, gift shops and other shopping, bakeries, photographers, music, wedding planners, caterers, rental companies and more.

Currently our County is limited in this area and many are choosing other Counties to hold their events in bringing revenue to those Counties.

Outdoor Venues are a very seasonal business and outside of the 2 to 4 hours of music, does not generate much noise.

The suggestion we would have is the limited daily parking allowance currently in effect for a home occupation is very limited. It seems meant for a five day per week full time business. If a full time business can park 20 vehicles per day, five to seven days per week, we would hope that revisions could be made for a Venue, to either be able to park more than 20 vehicles during an event, or be able to purchase a one day parking permit to allow for more vehicles to be parked during an event. A wedding for example does have setup which does not generate the same amount of parking needed as would the short duration of the event itself. A limitation of 20 vehicles does not make sense for an event.

Venues bring many streams of revenue to many local businesses and are a very positive thing for our County. It is also a good employment option for someone who is disabled.

Thank you for your time and consideration,

Sincerely, Jerry and Cindy Endicott

## Exhibit D



**RE: PA-20-227**

**Louise Dix** to: ehenes@bakercounty.org  
Cc: "Young, Kevin (kevin.young@state.or.us)"

10/14/2020 12:34 PM

History: This message has been forwarded.

Eva,

Please see the attached letter regarding PA- 20-227. Thank you for the opportunity to comment.

Louise Dix

| Louise Dix | AFFH Specialist |  
| Fair Housing Council of Oregon |  
| 1221 SW Yamhill Street, Suite 305 | Portland, Oregon 97205-2110  
| t. 503.223.8197 x115 | 800.424.3247 | f. 503.223.3396 |  
| email: [ldix@fhco.org](mailto:ldix@fhco.org) |



*Like the Fair Housing Council on Facebook*



HLA and FHCO 10-14-20 Comment Letter Baker County PA-20-227.PDF



October 14, 2020

Baker County Commission  
1995 3rd (Suite #101)  
Baker City OR 97814

**Re: Code Amendments - PA-20-227**

Dear Commission Members:

This letter is submitted jointly by Housing Land Advocates (HLA) and the Fair Housing Council of Oregon (FHCO). Both HLA and FHCO are non-profit organizations that advocate for land use policies and practices that ensure an adequate and appropriate supply of affordable housing for all Oregonians. FHCO's interests relate to a jurisdiction's obligation to affirmatively further fair housing. Please include these comments in the record for the above-referenced proposed amendment.

As you know, and as reflected in the staff report, all amendments to the County's Comprehensive Plan and Zoning map must comply with the Statewide Planning Goals. ORS 197.175(2)(a). When a decision is made affecting the residential land supply, the County must refer to its Housing Needs Analysis (HNA) and Buildable Land Inventory (BLI) in order to show that an adequate number of needed housing units (both housing type and affordability level) will be supported by the residential land supply after enactment of the proposed change.

The purpose of the staff report for PA-20-227 is to provide the Commission and concerned citizens an adequate factual basis to decide whether the proposed changes comply/do not comply with applicable criteria, including with Statewide Planning Goal 10. However, the simple opportunity for more "diversified housing" does not result in automatic Goal 10 compliance. For example, over what type of land will these amendments effect housing, i.e. urbanized, within the Urban Growth Boundary, etc.? In what areas does Goal 10 apply? Goal 10 findings must demonstrate that the changes do not leave the County with less than adequate residential land supplies in the types, locations, and affordability ranges affected. *See Mulford v. Town of Lakeview*, 36 Or LUBA 715, 731 (1999) (rezoning residential land for industrial uses); *Gresham*



*v. Fairview*, 3 Or LUBA 219 (same); see also, *Home Builders Assn. of Lane Cty. v. City of Eugene*, 41 Or LUBA 370, 422 (2002) (subjecting Goal 10 inventories to tree and waterway protection zones of indefinite quantities and locations). Further, because the purpose of the proposed amendments is to increase the supply of housing units within the County, it is imperative that the County has an up to date HNA to illustrate the need for these amendments. Only with a complete analysis showing the County's status and plans to provide needed housing as dictated by a current HNA and compared to the BLI, the public understand whether the County is achieving its goals through PA-20-227.

HLA and FHCO urge the Commission to defer approval of PA-20-227 until adequate Goal 10 findings can be made, and the proposal evaluated under the HNA and BLI. Thank you for your consideration. Please provide written notice of your decision to, FHCO, c/o Louise Dix, at 1221 SW Yamhill Street, #305, Portland, OR 97205 and HLA, c/o Jennifer Bragar, at 121 SW Morrison Street, Suite 1850, Portland, OR 97204. Please feel free to email Louise Dix at [ldix@fhco.org](mailto:ldix@fhco.org) or reach her by phone at (541) 951-0667.

Thank you for your consideration.

A handwritten signature in cursive script that reads "Louise Dix".

Louise Dix  
AFFH Specialist  
Fair Housing Council of Oregon

/s/ Jennifer Bragar

Jennifer Bragar  
President  
Housing Land Advocates

cc: Kevin Young ([kevin.young@state.or.us](mailto:kevin.young@state.or.us))

Baker County Planning Commission  
Baker County Courthouse  
1995 Third Street, Ste. 131  
Baker City, Oregon 97814  
Phone: (541) 523-8219, Fax: (541) 523-8340

The minutes are only a third party summary of the original meeting. For a complete transcript, an audio recording is available. Please contact the Baker City-County Planning Department for further information.

Baker County Planning Commission  
Public Hearing  
September 8<sup>th</sup>, 2020, 5:00 p.m.  
Baker County Courthouse and via Teleconference

I. Call to Order

A. Introduction of Planning Commission Members

Present: Kevin Luckini and Robert Crawford

Present via Teleconference: Alice Trindle

Absent: Suzan Ellis Jones, Jim Grove and Tom VanDiepen

B. Introduction of Staff

Holly Kerns and Eva Henes

C. Ex Parte Contact, Bias & Conflicts of Interest

- None

D. Agenda Amendments

- VAR-20-175 was withdrawn, by the applicant, prior to the public hearing

II. Approval of Minutes

- August 11<sup>th</sup>, 2020

Commissioner Crawford made a **MOTION**, seconded by Commissioner Luckini, to approve the minutes of the August 11<sup>th</sup>, 2020 meeting as presented. **MOTION CARRIED UNANIMOUSLY.**

### III. Public Hearing

*Chair Trindle opened the public hearing and read the Public Hearing Statement.*

*PA-20-227: Proposed revisions to the Baker County Zoning Ordinance*

Chair Trindle requested confirmation of who was joining the hearing via teleconference. The following individuals identified themselves via phone:

Laura Larson  
Jerry Endicott  
Rachel Raspini  
Diane Stone

Planning Director Holly Kerns provided a summary of the proposed revisions and the series of public work sessions and hearings held prior to this point. Director Kerns entered the following exhibits into the record:

Exhibit A – Comments from Diane Stone  
Exhibit B – Comments from Dorothy Mason  
Exhibit C – Comments from Cindy & Jerry Endicott

#### *Public Testimony*

**Maria Bludworth**  
52286 Miller Road  
Scappoose, OR 97056

Ms. Bludworth stated that she was interested in learning more about the proposed revisions to allowed uses in the EFU and TG Zones.

Director Kerns shared that the proposed revisions to those zones were brought about to keep the zoning ordinance in compliance with state statutes.

**Pat Van Alstyn**  
15883 Summerfield Drive  
Baker City, OR 97814

Ms. Van Alstyn stated she was interested in proposed revisions relating to planned unit developments and residential zones.

Director Kerns provided a brief description of planned unit developments.

**Ronald Bailey**  
Sumpter Valley Railroad

PO Box 4897  
Sunriver, OR 97707

Mr. Bailey stated he was in support of the proposed revisions to the Sumpter Valley Management Area.

Diane Stone  
1717 South Black Avenue  
Bozeman, MT 59715

Laura Larsson  
502 Cambridge Drive  
Bozeman, MT 59715

Ms. Stone and Ms. Larsson expressed concern about access standards for lot of record dwellings in the TG Zone.

Director Kerns shared that standards for lot of record dwellings in forest zones are set by the state, but stated that staff would confirm the language included within the draft was in keeping with those standards. Director Kerns offered to provide the statutory reference for lot of record dwellings in forest zones to Ms. Stone and Ms. Larsson after the hearing, which they agreed to.

*Chair Trindle closed the public hearing.*

***Motion***

*Commissioner Luckini made a **MOTION**, seconded by Commissioner Crawford, to CONTINUE THE PUBLIC HEARING of PA-20-227 until the next regularly scheduled public hearing on October 13<sup>th</sup>, 2020. **MOTION CARRIED UNANIMOUSLY.***

IV. **Other Business**

None.

V. **Set Date of Next Meeting**

The next regularly scheduled meeting will be on October 13<sup>th</sup>, 2020 at 5:00pm.

VI. **Adjourn**

Commissioner Crawford made a **MOTION**, seconded by Commissioner Luckini, to **adjourn**.  
**MOTION CARRIED UNANIMOUSLY.**

Meeting adjourned at 6:05 p.m.

Respectfully submitted,

Holly Kerns  
Baker City-County Planning Department

**Baker County Planning Commission  
Baker County Courthouse  
1995 Third Street, Ste. 131  
Baker City, Oregon 97814  
Phone: (541) 523-8219, Fax: (541) 523-8340**

The minutes are only a third party summary of the original meeting. For a complete transcript, an audio recording is available. Please contact the Baker City-County Planning Department for further information.

**Baker County Planning Commission  
Public Hearing  
October 13<sup>th</sup>, 2020, 5:00 p.m.  
Baker County Courthouse and via Teleconference**

I. **Call to Order**

A. **Introduction of Planning Commission Members**

**Present:** Kevin Luckini and Robert Crawford

**Present via Teleconference:** Alice Trindle and Denise Cairnes

**Absent:** Suzan Ellis Jones, Jim Grove and Tom VanDiepen

B. **Introduction of Staff**

Holly Kerns and Eva Henes

C. **Ex Parte Contact, Bias & Conflicts of Interest**

- None

D. **Agenda Amendments**

- None

II. **Approval of Minutes**

- September 8, 2020 minutes.

Commissioner Crawford moved to accept, Commissioner Luckini seconded. There was no discussion. **Motion passed unanimously.**

III. **Public Hearing**

***Chair Trindle opened the public hearing and read the Public Hearing Statement.***

**LOR-14-002: *Determination of vesting***

Eva Henes provided a summary of the application for a determination of vesting for a Lot of Record approval that was given in 2014. The property owners, the Oliver family, have done significant work on the property to meet the conditions of approval in order to build a home. The lot of record expired in 2018, and no extension was requested. Additional exhibits were entered into the record: Attachment K- additional road improvements narrative, Attachment J- area detail map, Attachment I- additional photographs, Attachment L- comments from Mark and Julie Pollock in support of the application. The application is before the Planning Commission to determine if the dwelling is considered “established.” Chair Trindle asked Ms. Henes to provide the definition of established from the proposed Zoning Ordinance, which is not adopted. Ms. Henes read the definition.

### **Public Testimony**

Mr. and Mrs. Oliver provided testimony explaining their work on the property, and life events that led to them missing the extension deadline.

Mr. Tom Oliver described the upgrades to the road.

Mr. Michael Oliver described the work they’ve put into the property, and the importance of the property to them.

Chair Trindle invited others to testify. No additional testimony was provided. **Chair Trindle closed the public hearing.**

### **Discussion**

Chair Trindle stated that it is clear the Oliver family has made significant strides in developing the property. Chair Trindle proposed a condition of approval that Gary Timm meet with the property owners to approve the driveway or determine what needs to happen to approve the driveway. Holly Kerns provided clarification that additional conditions of approval or creation of new process for driveway approval is outside of the scope of this hearing. Commissioner Crawford said without a definition for established, it does provide some opportunity for interpretation. The applicants are determined to move forward. Commissioner Luckini and Commissioner Cairnes agreed.

### **Motion**

**Commissioner Crawford moved to consider the application as “established”, Commissioner Cairnes seconded. Motion passed unanimously.** Eva Henes explained the process for appeal and the decision becoming final.

### **PA-20-227: Proposed revisions to the Baker County Zoning Ordinance**

Chair Trindle asked if anyone new has joined on the phone. Ronald Bailey with Sumpter Valley Railroad Restoration joined. Chair Trindle read the public hearings statement.

Eva Henes provided a summary of the application, and noted the written comments that were reviewed by the Planning Commission at the previous meeting. No additional written comments had been received. Ms. Henes discussed staff proposed revisions, including recommended updates from DLCD to maintain compliance with state statute and consistency with administrative rule; clarification that the special event permit section is not applicable to the Exclusive Farm Use and Timber Grazing zones; using

a map instead of outdated tax lot references in the Old Mill Limited Use Combining; revising chapter references throughout the ordinance, replacing his/her with “their”, and updates to the staff report to add some additional findings addressing comments received from the Fair Housing Council of Oregon.

### **Public Testimony**

**Chair Trindle opened the floor to public testimony.**

Ronald Bailey said he had no further testimony.

**Kathleen Rayl  
235 4<sup>th</sup> Street  
Baker City, OR 97814**

Ms. Rayl had questions about the floodplain chapter updates. She asked about whether a house would need to be elevated in order to make a substantial improvement. Her property is within City limits. Commissioner Luckini described the process for determining options, including working with an engineer to determine flood elevation and then a structural engineer to determine feasibility. No changes were recommended to the Zoning Ordinance.

No other new testimony was provided.

### **Discussion**

The Planning Commission then addressed the testimony they received in September. Comments from Diane Stone, Exhibit A, addressed issuing access permits. The text of the draft Zoning Ordinance refers to access from county roads, state highways, or city roadways. Staff was unable to identify which other access permits may need to be mentioned in this list. The comments about access permits may couple with her comments about BLM and USFS roads, and staff and the Planning Commission concluded that access for federally managed roads is given through a different process that would not be effected by this Zoning Ordinance. Ms. Stone also provided comments about page 220 in the draft Zoning Ordinance. Staff clarified that the existing language mirrors administrative rule, and the requested changes are not changes that can be made at the County level. The Planning Commission consensus was to leave the language as is in both places, and recognize that decision in the staff report. The Planning Commission agreed by consensus to approve the grammar revisions proposed by Ms. Stone. Ms. Stone recommended the definition of ‘Forest Area’ use a more standard measurement than 5 meters, and represent that measurement in feet. The Planning Commission agreed to make that change. Ms. Stone’s testimony recommended changes to sentence construction regarding the determination of application type. The Planning Commission decided the intent is clear, and left the language as is by consensus. Ms. Stone proposed removing words for clarity in Section 245.01. The Planning Commission agreed to make those changes by consensus. Wording revisions were recommended on page 129 to the Zoning Ordinance draft section that pertains to design exceptions for roads, and these recommended revisions were approved by consensus. On page 131, Ms. Stone proposed revisions to the wording regarding exceptions to lot size as it relates to sewer/well standards within the subdivision section. The recommended revisions were approved by consensus.

The Planning Commission then addressed written comments from Dorothy Mason, Exhibit B. Ms. Mason's comments recommended decreasing the number of allowed attendees of special events from 3,000. Ms. Henes explained why 3,000 was chosen as a threshold, as it corresponds to state definitions. Kevin Luckini and Rob Crawford agreed that they would prefer to default to the state number rather than picking an arbitrary number. The Planning Commission chose to make permits for 400 people or less a Type I process, and between 401-3,000 people a Type III process. Ms. Mason recommended making the cutoff time for noise from special events to 9PM, not 10PM. The Planning Commission agreed that they had discussed the issue thoroughly when this language was drafted and opted to stay with the current language. They reached the same conclusion regarding the suggested language revisions for decibels. Ms. Mason recommended changes to the sanitary services wording specific to events. The Planning Commission opted to change the language to say "disposed of in accordance with Department of Environmental Quality standards."

In Chapter 510, Ms. Mason had concerns that the minimum lot size in the residential zone was being changed. Ms. Henes clarified that change is not proposed. Ms. Mason listed concerns about commercial scale solar power. Ms. Henes explained that the commercial scale power section was intended to cover farms/ranches/small commercial ventures that would provide power for themselves. Ms. Mason recommended changes to the wind power section, and recommended increasing the residential setback from two miles to three. The Planning Commission noted the reasoning for her request wasn't noted, the Planning Commission had discussed this issue extensively at the time this language was drafted, and the number in the draft reflected a careful compromise. Ms. Mason requested a change that would require documentation of support from neighbors for an application. The Planning Commission and staff noted this request was inconsistent with the land use process, the hearing/notice process provided the opportunity for all to address relevant points and concerns.

The Planning Commission reviewed Cindy and Jerry Endicott's comments, Exhibit C. Mr. and Mrs. Endicott requested an increase to the number of vehicles that can be allowed as part of event venues. The Planning Commission decided to keep the number of vehicles in the Home Occupation chapter as currently written.

The Planning Commission decided to remove the definition of establishment for a dwelling, and make such determinations a Planning Commission decision. Staff will amend the draft language.

### **Motion**

**Commissioner Luckini moved, and Commissioner Cairnes seconded, to recommend this document to the Planning Commission. Motion passed unanimously.** Chair Trindle thanked the Planning Commission, staff, as well as previous Planning Commissioners and staff, for their dedication and time to get this document ready to move forward.

### **IV. Other Business**

Director Kerns reviewed an email that was sent by her to the Planning Commission requesting a volunteer to be a part of the Technical Advisory Committee for the North Baker Transportation Improvement Project. No Planning Commission members were ready to volunteer. She also let Planning Commissioners know that the home occupation application submitted by Mr. and Mrs. Endicott had been appealed to the Board of Commissioners.

V. Adjourn

**Commissioner Luckini moved to adjourn, Commissioner Crawford seconded the motion. Motion passed unanimously. Meeting adjourned at 7:20 PM.**

Respectfully Submitted,

Holly Kerns  
Baker City-County Planning Department

Exhibit 4

January 27, 2021

The Honorable Bill Harvey, Bruce Nichols, Mark E. Bennett,  
Baker County Board of Commissioners  
1995 Third Street  
Baker City, OR 97814

Commissioners,

On behalf of the Sumpter Valley Railroad Restoration, Inc. I would like to express our support for adoption of ORDINANCE NO. 2021-01, which would amend THE BAKER COUNTY ZONING ORDINANCE 2014-01.

It has been our privilege to work with your staff and the members of the Planning Commission to develop an Update to the current Baker County Zoning Ordinance regarding the provisions applicable to the Sumpter Valley Railroad Restoration. We express our thanks to Baker County Planning Director, Holly Kerns, and her staff; and Alice Trindle, Chair, and the members of the Baker County Planning Commission, for their help with this process.

While the original language of the Baker County Zoning Ordinance was clearly intended to permit the normal operations of a steam-powered railroad, the Update corrects some minor omissions in the text of the Ordinance with regard to repair and maintenance of historic rolling stock, operation of historic diesel-electric locomotives in support of the continued preservation and operation of historic steam locomotives, and facilities for the support of volunteers who donate their time and services to the Restoration.

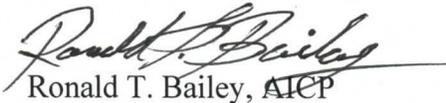
The Update is not intended to involve any major changes or expansion in the current operation or character of the Sumpter Valley Railroad. The Update will facilitate the proposed construction of an archives building at the McEwen property. Over the years, the Sumpter Valley Railroad Restoration, Inc. has collected a significant archive of photographs, correspondence, records and other materials relating to history of the Sumpter Valley Railroad, abandoned logging railroads that connected with the Sumpter Valley, and lands and facilities immediately adjacent to the existing and former right-of-way of the historic Sumpter Valley Railroad. The proposed archives building is intended to protect and store these historic materials and to provide space for the continued cataloging and curation of the collection.

The Update to the Zoning Ordinance will also facilitate at some future date the construction at McEwen of a storage building and restoration shop for the Railroads historic wooden rolling stock including passenger coaches, cabooses, and charter cars. Many of these historic cars currently have to be stored outside through the harsh winter, and the new building will protect these historic pieces from damage.

Other changes to the text of the Zoning Ordinance will simply reflect more accurately existing operations and current practices of a heritage railroad and museum. The Sumpter Valley Railroad Restoration, Inc. is committed to maintaining a high-quality historical resource and attraction for Baker County. The proposed Update will facilitate continued efforts to preserve the outstanding historical legacy of the County, while providing a significant recreational opportunity for residents and visitors.

In summary, the Sumpter Valley Railroad Restoration, Inc. supports the proposed Ordinance to amend the Baker County Zoning Ordinance, which will benefit the continued preservation and operation of the historic Sumpter Valley heritage railroad.

Sincerely

A handwritten signature in cursive script, appearing to read "Ronald T. Bailey".

Ronald T. Bailey, AICP

On Behalf of the Sumpter Valley Railroad Restoration, Inc.

Cc: SVRR Board of Directors  
Chair, SVRR Archives Committee Chair  
Heidi Martin, Executive Assistant, Baker County Board of Commissioners  
Holly Kerns, Baker County Planning Director

January 3, 2021

Subject: Chapter 770 Solar Generating Facility  
From: Ken Rockwell, Baker County Resident and Solar Power Producer  
To: Baker County Board of Commissioners

Board of Commissioners and Planning Director Kerns

In the interest of eliminating what I believe to be confusing provisions in the current draft of Chapter 760 Solar Generating Facility, I would like the board to consider the following. My goal is to make implementation easier and more equitable.

In June 2019 I provided input to the drafting of Chapter 770 (now 760), a letter describing some suggestions for the update, and the County Planning Commissioners considered this input at their August (or September) 2019 planning meeting. Not all of my suggestions were adopted by the Planning Commission, but I was satisfied with the decisions the Commission made regarding the solar draft at that meeting, based on the minutes on-file dated August 13, 2019. So, I did not provide any further input either then, nor when the draft-changes were presented at the public meetings in the summer of 2020.

When I saw the notice that the Baker County Board of Commissioners were going to be deciding whether to adopt the changes to the Code, I took one last look at the latest draft version of Chapter 760. I was surprised to see one change the Planning Commission decided on in 2019, and identified in the minutes, is not in this version.

Specifically, what I expected to see is the following:

- Director Kerns suggested language to limit small scale facilities to generate up to 150% of expected energy need for a primary use. There was consensus.

Please allow me to make the following suggestions.

My first suggestion is to revise how you constrain *Small-Scale Solar Power Generation Facilities* in 760.02 B. The text reads: *Net-metering is permitted with small-scale solar power generating facilities if it does not exceed 150% of the average expected annual energy production.* Compare this to Director Kerns' suggested language above. Using net-metering in this context is confusing. I believe we are trying to provide a way to limit the size of the solar-producing infrastructure (more so than establishing a maximum level of energy production), but net-metering is really just an accounting tool the power company uses ... comparing energy consumed with energy produced, that is "net", and calculating monetary credits and debits. I do not see how permitting, or not, how the power company does its accounting accomplishes our goal of constraining infrastructure. Also, constraining energy production to 150% of average annual energy production is confusing. Did we intend to say 150% of annual "consumption" (or "expected energy need")? Additionally, though you can limit production/infrastructure following this method, it raises other problems. First, residences off-grid do not use net metering, so the provision provides no direction for that situation. Second, all power companies may not continue to offer net-metering which would render this provision meaningless. Director Kerns' suggested revision solved the problem.

But a problem remains. The proposed revised provision discriminates against small-scale producers who conserve or do not consume a lot of electric power, because they are not allowed to produce as much energy as someone who has a higher average annual energy need, because of the 150% limitation. I believe all small-scale producers should be held to a single standard for maximum production, and, in fact, so do our local power companies. Currently, Idaho Power allows solar generation connected to their grid for systems up to 25 kW, and OTEC the same. That is also the maximum (aka system capacity limit) identified by Oregon PUC. As a user/producer I can tell you that it would not make economic sense for to me produce that much power, because the rate at which I am compensated for what I produce over what I consume is based on the OTEC wholesale

## Exhibit 5

rate, which for me would not pay (in my lifetime) for the cost of the added infrastructure. But that is an economic decision I should make, not the County. I suggest you work 25 kW into your definition instead of the 150% limitation. Some of the planning commissioners were concerned such a specific limit might get in the way of advances in technology. If we were to say ... “25 kW or the current maximum allowed by the applicable power utility company at the time of permitting” ... that would provide some future flexibility without changing the intent of the ordinance.

You may be wondering what a 25 kW system would look like. My 4.7 kW system has historically generated roughly 7,100 kWh annually. My gross energy consumption averages about 13,000 kWh annually. That is my current expected energy need for primary use. If allowed to increase that by 50% (per the Planning Commission consensus) for the purpose of determining a limit on my production, the amount would be approximately 19,000 kWh, or about 2.7 times the production capability of my current 4.7 kW system. Such a system would need to be roughly 12.5 kW, about only half of what the power companies currently allow. If the County wants me to be able to produce more energy if I chose to, up to the maximum the power companies allow, then 150% of my expected energy need is too limiting.

The solar-panel infrastructure to produce 25 kW, based on the footprint of my system (see details at bottom of page), would cover about 1500 sq ft horizontally, somewhat less if angled toward the sun, about a 30<sup>th</sup> of an acre. In other words, not much more of a footprint than a large shop.

If you agree with the above, the Commercial Facilities provisions should be similarly revised, and there are many provisions within the Chapter where the 150% net metering wording would need to be changed.

I noticed a possible editing error in 760.03 A.3. I believe it should read “, or with net metering exceeding 150% ...” rather than “, *and* with net metering *not* exceeding 150% ...”.

Thank you for your consideration and allowing me to continue to work with you on perfecting this Ordinance.

Ken Rockwell

For information, let me describe my solar production facility. My system is a roof-mounted 4.7 kW solar photovoltaic power system, consisting of 17 non-reflecting panels (2 rows of 7, 1 row of 3), measuring about 16' by 24' overall (roughly 300 sq ft footprint), pitched 39 degrees from horizontal, oriented SSE (146 degrees), capable of generating 30+ kWh a day in the summer, which is enough to offset my consumption during the most-sunny 5 months of the year. Annual production is about 7100 kWh, monthly range of 200 – 900 kWh. Annual energy consumption is roughly 13,000 kWh. I live on a 5-acre lot.