



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

March 4, 2008

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 008-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: March 18, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

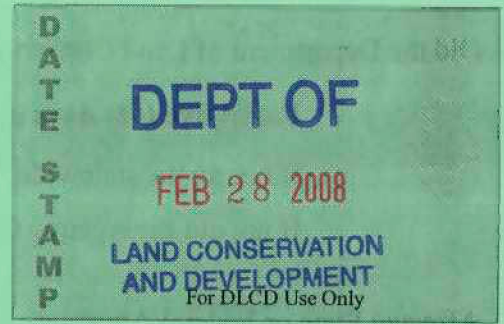
***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Chris Bedsaul, Deschutes County

<paa> ya

FORM 2 Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: DESCHUTES COUNTY Local file number: PA07-2/ZC07-2
Date of Adoption: 2-6-08 Date Mailed: _____
Date original Notice of Proposed Amendment was mailed to DLCD: 5-23-07

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation

- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____



Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached"

ZONE CHANGE FROM SM TO RR-10. PLAN MAP AMENDMENT TO CHANGE SURFACE MINE TO RURAL RESIDENTIAL EXCEPTION AREA, AMEND COMPREHENSIVE TEXT IN DCC CHAPTER 23.120, REMOVE SM SITE 294 FROM SOAL 5 INVENTORY

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

- SAME -

Plan Map Changed from: SURFACE MINE to: RURAL RESIDENTIAL
Zone Map Changed from: SM to: RR-10
Location: MAP 17-11-13, TLB19-827 ^{PAR} 817 Acres Involved: 160 +/-
Specify Density: Previous: 1 New: 14
Applicable Statewide Planning Goals: 1, 2, 3, 5, 6, 12, 13
Was and Exception Adopted? YES NO

DLCD File No.: 008-07 (16118)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

TUMALO IRRIGATION DISTRICT, ODFEW DOGAMI, OREGON
WATER SOURCE DEPARTMENT, DESCHUTES COUNTY

Local Contact: CHRIS BEDSAUL Phone: (541) 383-6719 Extension: _____

Address: 117 NW LAFALETTE AV City: BEND

Zip Code + 4: 97701- Email Address: CHRISBED@CO.DESCHUTESOR.US

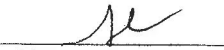
ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 23, the Deschutes *
County Comprehensive Plan, to Adopt an Exception * ORDINANCE NO. 2008-001
to Goal 3 and To Change the Plan Designation for *
Certain Property From Agricultural to Rural *
Residential Exception Area. *

WHEREAS, Harris C and Nancy Kimble and CLR, Inc. proposed a Goal Exception to Goal 3 and a Plan Amendment to Title 23.120 of the Deschutes County Code (DCC), Goal Exception Statement, to change the comprehensive plan designation of certain property originally designated Agriculture from Surface Mine to Rural Residential Exception Area; and

WHEREAS, the Board of County Commissioners (Board) after reviewing all the evidence presented at the public hearing on January 7, 2008, agrees with the findings of the Hearings Officer; and

WHEREAS, the Board, after review conducted in accordance with applicable law, approved the Goal Exception to Goal 3, changing the Plan designation from Surface Mine, SM to Rural Residential Exception Area; and

WHEREAS, the subject property is listed as Surface Mining Site 294 on the County's inventory of mineral and aggregate resource sites, as set forth in DCC 23.100.070; and

Section 1. ADDING. DCC Chapter 23.120.260, Harris C and Nancy Kimble and CLR, Inc. property, is added to read as shown on Exhibit "A" attached to this ordinance and by reference incorporated herein, to adopt an exception statement for certain property as described in Exhibit "B", attached to this ordinance and by reference incorporated herein.

Section 2. AMENDMENT. DCC Title 23, the Deschutes County Comprehensive Plan Map is hereby amended to change the plan designation for certain property originally designated Agriculture described in Exhibit "B" and depicted on the map set forth as Exhibit "C," attached and by this reference incorporated herein, from Surface Mine to Rural Residential Exception Area.

Section 3. AMENDMENT. DCC Chapter 23.100.070, Surface Mining, Goal 5 Inventory, is amended to delete that part of Surface Mining Site 294 described on Exhibit "A" from the County's Goal 5 inventory of mineral and aggregate sites as set forth on Exhibit "D," attached hereto and incorporated herein by this reference with deletions shown in ~~strikethrough~~ text.

Section 4. FINDINGS. The Board adopts as its findings in support of this ordinance, its decision, Exhibit "E," attached and by this reference incorporated herein.

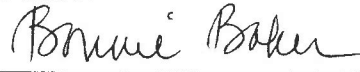
Dated this 6th of February 2008

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, CHAIR


TAMMY (BANEY) MELTON, VICE CHAIR

ATTEST:


Recording Secretary


MICHAEL M. DALY, COMMISSIONER

Date of 1st Reading: 23rd day of January, 2008.

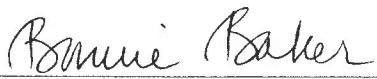
Date of 2nd Reading: 6th day of February 2008.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 6th day of May, 2008.

ATTEST:


Recording Secretary

NOTE: “* * *” denotes sections of the county code not affected by this ordinance.

Chapter 23.120. GOAL EXCEPTION STATEMENT

- 23.120.010. Introduction.
- 23.120.020. Methodology.
- 23.120.030. Agricultural lands.
- 23.120.040. Forest lands.
- 23.120.050. Exceptions analysis.
- 23.120.060. Exception Area Plan.
- 23.120.070. Bend Municipal Airport Exceptions Statement.
- 23.120.080. La Pine UUC Boundary.
- 23.120.090. Spring River Rural Service Center.
- 23.120.100. Burgess Road and Highway 97.
- 23.120.110. Rural Industrial Zone.
- 23.120.120. Prineville Railway.
- 23.120.130. Resort Communities.
- 23.124.140. Barclay Meadows Business Park.
- 23.120.150. Sisters School District #6.
- 23.120.160. Sisters Organization of Activities and Recreation and Sisters School District #6.
- 23.120.170. Oregon Water Wonderland Unit 2 Sewer District.
- 23.120.180. 2004 City of Bend Urban Growth Boundary Amendment (Juniper Ridge).
- 23.120.190. Joyce Coats Revocable Trust Johnson Road and Tumalo Reservoir Road Properties.
- 23.120.200. Watson/Generations Development Inc.
- 23.120.210. Oregon Department of Transportation.
- 23.120.220. Conklin / Eady Property.
- 23.120.230. City of Sisters Property.
- 23.120.240. McKenize Meadows Property.
- 23.120.250. Bend Metro Park and Recreation District Properties
- 23.120.260. Harris and Nancy Kimble Property and Portion of CLR, Inc. Property

* * *

23.120.260. Harris and Nancy Kimble Property and Portion of CLR, Inc. Property, A.K.A., the Klippel Pit Property.

In conjunction with approval of PA-07-2/ZC-07-2, an “irrevocably committed” exception to Statewide Planning Goal 3, Agricultural Lands was taken to allow for the rezoning of all of Surface Mine Site 294 from Surface Mining (SM) to Rural Residential (RR-10). The interim plan designation of Surface Mine (SM) was removed from the comprehensive plan map. The underlying plan designations were Agriculture and Rural Residential Exceptions Area (RREA). The vast majority of Surface Mine Site 294 was designated RREA. The plan designation of the part of the property designated Agriculture was changed so that it would match the plan designation of the majority of the subject property and surrounding development in the Klippel Road goal exception area. Additionally, the County determined that a part of the area with an underlying plan designation of Agriculture is non-resource land. Reasons justifying why the state policy embodied in Goal 3 should not apply in this situation are set forth in Exhibit “D” to Ordinance 2008-001, which findings are incorporated herein.

**DESCRIPTION OF LANDS TO BE INCLUDED IN PLAN AMENDMENT AS
RURAL RESIDENTIAL EXCEPTION AREA**

A parcel of land located in Section 13, Township 17 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

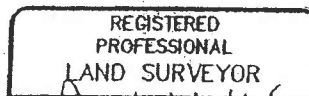
Description #1

Beginning at the north quarter corner of said Section 13; thence along the north line of the northeast quarter of said Section 13 South 89°47'50" East a distance of 111.45 feet to the True Point of Beginning of this description; thence continuing along said north line South 89°47'50" East a distance of 480.26 feet; thence leaving said north line South 00°03'25" West a distance of 648.84 feet; thence South 89°47'50" East a distance of 295.47 feet; thence South 00°00'00" West a distance of 166.21 feet; thence North 89°47'50" West a distance of 490.52 feet; thence South 00°15'50" West a distance of 580.85 feet; thence North 84°33'35" West a distance of 397.15 feet to the north-south centerline of said Section 13; thence along said north-south centerline North 00°05'07" East a distance of 1248.04 feet; thence leaving said north-south centerline North 45°06'14" East a distance of 157.56 feet to the True Point of Beginning, the terminus of this description.

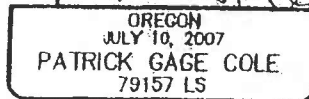
Description #2

Beginning at the north quarter corner of said Section 13, thence along the north-south centerline of said Section 13 South 00°05'07" West a distance of 2714.87 feet to the True Point of Beginning of this description; thence leaving said north-south centerline South 89°52'12" East a distance of 58.61 feet to Tumalo Creek; thence along Tumalo Creek South 41°11'03" West a distance of 3.34 feet and South 61°41'31" West a distance of 64.13 feet; thence leaving Tumalo Creek North 00°05'07" East a distance of 33.06 feet to the True Point of Beginning, the terminus of this description.

Subject to: All easements, restrictions and right-of-ways of record and those common and apparent on the land.



Patrick Gage Cole



12/20/07

RENEWAL DATE: 12/31/07

LANDS TO BE DESIGNATED RREA

NORTH QUARTER CORNER
SEC. 13, T 17 S, R 11 E

S89°47'50"E 111.45'

TPOB

S89°47'50"E 480.26'

SECTION 12
SECTION 13

N45°08'14"E 157.50'

SECTION A, 52.51' x 200.00'

DESCRIPTION #1

S89°47'50"E 295.47'

S00°00'00"E 164.21'

N89°47'50"W 193.62'

SECTION A, 205.51' x 200.00'

N00°05'07"E 1248.04'

3714.87'

S00°05'07"W

N84°33'05"W 367.15'

N-S CENTERLINE
OF SECTION 13

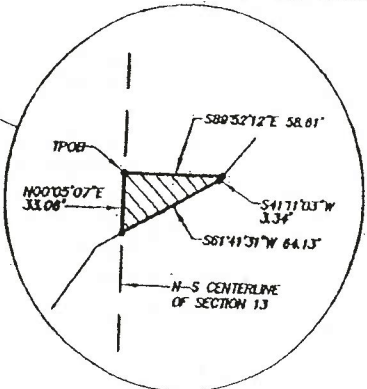


NORTH
SCALE: 1"=400'

E-W CENTERLINE
OF SECTION 13

DESCRIPTION #2

TUMALO CREEK



DETAIL
1"=100'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 10, 2007
PATRICK GAGE COLE
79187 LS

RENEWAL DATE: 12/31/07

12/20/07

Goal 5 Inventory – Mineral and Aggregate Sites

SITE NO.	LEGAL DESCRIPTION	NAME	TYPE	QUANTITY*	QUALITY	ACCESS/LOCATION
347	161101-00-00300	Deschutes County	Dirt	10,000	Good	
351	161112-00-01401, 1700, 2000	Gisler/Russell	Cinders	150,000	Good	Innes Mkt/Innes Butte
357	161136-D0-00100, 161100-00-10400, 10300	Tumalo Irrigation	Cinders	1 M		Johnson Road/Tumalo
357	161136-D0-00100, 161100-00-10400, 10300	Tumalo Irrigation	S & G	500,000	Good	
357	161136-D0-00100, 161100-00-10400, 10300	Tumalo Irrigation	Pumice	500,000	Good	
358	161231-D0-01100	Gisler	S & G	100,000	ODOT Specs	Hwy 20/Tumalo
361	161222-C0-02800	Oregon State Hwy	Cinders	700,000	Good	
366	161230-00-00000	Oregon State Hwy	S & G	40,000	ODOT Specs	
368	161220-00-00200	Bend Aggregate	S & G	570,000	Excellent	Twin Bridges/Tumalo
370	161231-D0-00400	Bend Aggregate Plant Site	Storage			
379	181100-00-01600	Oregon State Hwy	S & G	500,000	ODOT Specs	
381	181125-C0 12600, 181126-00-01600	Pieratt Bros	Cinders	50,000	Good	
390	181214-00-00500, 100	Deschutes County	Dirt	2 M		Landfill
391	181221-00-00200	Central OR	Cinders	500,000	Good	
		Pumice				
392	181223-00-00300	Rose	Rock	10 M Est	Mixed	
392	181223-00-00300	Rose	Dirt	7.5 M	Good	
393	181225-00-01400	LT Contractors	Cinders	12.5 M	Good	Arnold Mkt Rd/SE of Bend
394	181200-00-04400, 04411	Windlinx	Cinders	270,000	Coarse	Hwy 97/South of Bend
395	181200-00-04300	Oregon State Hwy	Cinders		100,000	Good
400	181300-00-04501, 04502	Eric Coats	S & G	2.5 M	ODOT Specs	
404	191400-00-00200	Moon	S & G	1.3 M	Good	
404	191400-00-00200	Moon	Rock	800,000 - 2 M	Good	Hwy 20/East of Bend
405	191400-00-00600	Oregon State Hwy	Aggregate	50,000	ODOT Specs	
408	191600-00-01500	RL Coats	S & G	3 M	Good	
413	201500-00-01400	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
414	201500-00-01500	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
415	201716-00-00700	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
416	201716-00-00200	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
417	201716-00-00900	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
418	201716-00-01000	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
419	201716-00-01300	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
421	212000-00-00900	RL Coats	S & G	500,000	Excellent	Hwy 20/Tumalo
423	211106-C0-00700	Ray Rothbard	S & G	100,000	Good	
426	211100-00-00702	La Pine Redi-Mix	S & G	1 M	Good	
427	211100-00-00701	Bill Bagley	S & G	40,000	Good	
431	221100-00-00600	Russell	Cinders/ Rock	12 M/1 2 M	Good	Finley Butte
432	221100-00-00500	State of Oregon	Cinders	160,000	Good	
433	211300-00-00101	La Pine Pumice	Lump Pumice	10 M	Excellent	
441	150903-00 00300	Willamette Ind	S & G	11 M	Good	
442	150909-00-00400	Willamette Ind	S & G	6 M	Good	
443	150917-00-00600	Willamette Ind	Rock	150,000	Fair	
453	161209, 10-00-00600, 301	Robert Fullbart	S & G	704,000	ODOT Specs	
459	141131-00-05200	Deschutes County	Cinders	50,000	Good	
461	141300-00-01500, 1501, 1502, 1503, 1505	Nolan	S & G	350,000	Good	
461	141200-00-01501, 1502, 1503, 1505, 1600	Franklin Nolan	Diatomite	2 M	Good	

Goal 5 Inventory – Mineral and Aggregate Sites

SITE NO.	LEGAL DESCRIPTION	NAME	TYPE	QUANTITY*	QUALITY	ACCESS/LOCATION
465	141333-00-00900	Oregon State Hwy	Cinders	100,000	Good	
466	141333-00-00600	Fred Elliott	Cinders	5.5 M	Good	
467	141333-00-00601	Knorr Rock Co	Cinders	5 M	Good	
469	141131-00-00100	Deschutes County	Cinders	2 M	Fair	
475	151012-00-00600	Deschutes County	Cinders	200,000	Good	Cloverdale Road
482	151300-00-00103	Deschutes County	Dirt	2 M	Good	Negus Landfill
488	161230-00-00100, 600, 2000, 2100	Bend Aggregate	S & G	400,000	ODOT Specs	
496	191400-00-00500	Taylor	S & G	1.8M	Mixed	Hwy 20
498	191400-00-02200	Oregon State Hwy	S & G	200,000	ODOT Specs	
499	191533-00-00200	Oregon State Hwy	S & G	50,000	ODOT Specs	
500	191500-00-00099	Oregon State Hwy	S & G	130,000	ODOT Specs	
501	191500-00-01600	Oregon State Hwy	S & G	50,000	ODOT Specs	
503	191600-00-01300	Oregon State Hwy	S & G	200,000	ODOT Specs	
505	201600-00-00400	Oregon State Hwy	S & G	275,000	ODOT Specs	
506	201600-00-00600, 700, 800	Oregon State Hwy	S & G	36,000	ODOT Specs	
508	201700-00-01000	State of Oregon	S & G	100,000	ODOT Specs	
515	201801-00-00100	Oregon State Hwy	S & G	100,000	ODOT Specs	
522	211900-00-01000	Oregon State Hwy	S & G	300,000	ODOT Specs	
524	212000-00-01900	Oregon State Hwy	S & G	300,000	ODOT Specs	
528	222110-00-00600	Oregon State Hwy	S & G	45,000	ODOT Specs	
529	221100-00-00300	Oregon State Hwy	S & G	31,000	ODOT Specs	
533	222100-00-00800	Oregon State Hwy	S & G	1 M	ODOT Specs	
541	141035-00-02000, 2100, 2200, 2300, 2400, 2500, 2600	Cyrus	Aggregate	528,000	Good	Inc Portions of TL 1800/1900
542	151001-00-02700	Swarens	Aggregate	80,000	Good	
543	151013-00-00100	Cyrus	Aggregate	1.1 M	Good	
600	191400-00-00700	Robinson	S & G	3.8 M	Good	Hwy 20/East of Bend
601	211100-00-00700	La Pine Redi Mix	S & G	479,000	DEQ Specs	Paulina Lake Road

* quantity in cubic yards unless noted

(Ord. 2005-031 § 3, 2005; Ord. 2003-019 § 1, 2003; Ord. 2002-005 § 1, 2002; Ord. 2001-047 § 4, 2001, Ord. 2001-038 § 2, 2001, Ord. 2001-027 § 1, 2001, Ord. 2000-017 § 1, 2000; Ord. 99-028, 1999; Ord. 99-019, 1999; Ord. 96-076, 1996; Ord. 95-041, 1995; Ord. 94-050, 1994, Ord. 90-025, 1990; PL-20, 1979)

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

**DECISION OF DESCHUTES COUNTY
BOARD OF COUNTY COMMISSIONERS**

FILE NUMBERS: PA-07-2 and ZC-07-2

APPLICANT: Harris Kimble
63560 Johnson Market Road
Bend, Oregon 97701

PROPERTY OWNERS: Harris C. and Nancy Kimble
63560 Johnson Market Road
Bend, Oregon 97701
(Tax Lots 819, 820, 821, 822, 823, 824, 825, 826 and 827)

CLR, Inc.
703 NW Stonepine Drive
Bend OR 97701
(Tax Lot 817)

**APPLICANT'S
ENGINEER:** Hickman, Williams & Associations, Inc.
698 N.W. York Drive
Bend, Oregon 97701

**APPLICANT'S
ATTORNEY:** Liz Fancher
644 N.W. Broadway Street
Bend Oregon 97701

REQUEST: The applicant is requesting approval of a plan amendment from SM and Agriculture to Rural Residential Exception Area, a goal exception to Statewide Planning Goal 3, Agricultural Lands, and a zone change from SM to RR-10, for ten tax lots totaling 158.95 acres and located between Johnson Market Road and Tumalo Creek north of Buck Drive west of Bend.

STAFF REVIEWER: Chris Bedsaul, Associate Planner

HEARING DATE: July 24, 2007

RECORD CLOSED: September 14, 2007

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. **Chapter 18.52, Surface Mining (SM)**
 - * Section 18.52.200, Termination of the Surface Mining Zoning and Surrounding Surface Mining Combining Zone
2. **Chapter 18.60, Rural Residential (RR-10)**
 - * Section 18.60.010, Purpose
3. **Chapter 18.136, Amendments**
 - * Section 18.136.020, 010, Amendments
 - * Section 18.136.020, Rezoning Standards

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

1. **Chapter 22.20, Review of Land Use Action Applications**
 - * Section 22.20.040, Final Action in Land Use Actions
2. **Chapter 22.24, Land Use Action Hearings**
 - * Section 22.24.030, Notice of Hearing or Administrative Action
 - * Section 22.24.140, Continuances or Record Extensions
3. **Chapter 22.28, Land Use Action Decisions**
 - * Section 22.28.030, Decision on Plan Amendments and Zone Changes

C. Title 23, the Deschutes County Comprehensive Plan

1. **Chapter 23.24, Rural Development**
 - * Section 23.240.020, Goals
2. **Chapter 23.60, Transportation**
 - * Section 23.60.010, Transportation

2. **Chapter 23.68, Public Facilities**

* **Section 23.68.020, Policies**

3. **Chapter 23.96, Open Space, Areas of Special Concern, and Environmental Quality**

* **Section 23.96.030, Policies**

D. **Oregon Administrative Rules (OAR) Chapter 660, Land Conservation and Development Commission**

1. **Division 4, Interpretation of Goal 2 Exception Process**

2. **Division 5, Agricultural Lands**

3. **Division 6, Forest Lands**

4. **Division 12, Transportation Planning**

5. **Division 15, Statewide Planning Goals and Guidelines**

6. **Division 23, Procedures and Requirements For Complying With Goal 5**

II. **FINDINGS OF FACT:**

A. **Location:** The Board adopts the Hearings Officer's findings except that the lots are identified on Deschutes County Assessor's Map 17-11-13.

B. **Zoning and Plan Designation:** The subject property consists of the SM-zoned parts of the following legal lots of record that have a mixture of zoning districts and plan designations as follows:

- Tax Lot 817 – 13.69 acres (including Tax Lot 809)(Tax Lots 817 and 809 are one lot of record), designated RREA, split-zoned SM and RR-10;
- Tax Lot 819 – 32.45 acres designated Agriculture and Rural Residential Exception Area (RREA), zoned Surface Mining (SM);
- Tax Lot 820 – 9.03 acres designated Agriculture and RREA, zoned SM;
- Tax Lot 821 – 8.78 acres designated Agriculture and RREA, zoned SM;¹

¹ The zoning ordinance that zoned the subject property SM, Ordinance No. 90-029, included a tax assessor's map to shows the subject property and that indicates that the area is being rezoned from SMR to SM. In fact, land zoned RR-10, as well as land zoned SMR, was also rezoned. These RR-10-zoned areas include the north central 45% of Tax Lot 819, the northwest corner of Tax Lot 820, the east part of Tax Lot 821 the west part of Tax Lot 822 adjacent to the part of this lot that retained RR-10 zoning, areas along the west boundary of Tax Lot 823, the south and east parts of Tax Lot 824, Tax Lot 825, the north east part of Tax Lot 826, Tax Lot 827 That area is surrounded by a bold line. Some parts of Tax Lot 821 burdened by the easement for Klippel Road may be located outside of the SM zoning boundary. The quality of the map used to rezone the property is poor so it is not clear whether the zoning boundary is intended to follow parcel boundaries or the road easement. The County's LAVA system, however, shows the entire lot as being zoned SM. For the sake of clarity

- Tax Lot 822 – 24.01 acres (including Tax Lot 11401) designated RREA and split-zoned RR-10 and SM;
- Tax Lot 823 – 44.95 acres designated RREA, zoned SM;
- Tax Lot 824 – 21.38 acres designated RREA, zoned SM;
- Tax Lot 825 – .68 acres designated RREA, zoned SM;
- Tax Lot 826 – 10.04 acres designated RREA, zoned SM; a small, .02 acre part of this lot is designated Agriculture; and
- Tax Lot 827 -- .96 acres designated RREA, zoned SM.

For Tax Lot 821, the zoning ordinance that zoned the subject property SM, Ordinance No. 90-029, included a tax assessor's map showing the subject property and indicating that the area is being rezoned from SMR to SM. In fact, land zoned RR-10, as well as land zoned SMR, was also rezoned. These RR-10-zoned areas include the north central 45% of Tax Lot 819, the northwest corner of Tax Lot 820, the east part of Tax Lot 821, the west part of Tax Lot 822 adjacent to the part of this lot that retained RR-10 zoning, areas along the west boundary of Tax Lot 823, the south and east parts of Tax Lot 824, Tax Lot 825, the north east part of Tax Lot 826, Tax Lot 827 That area is surrounded by a bold line. Some parts of Tax Lot 821 are burdened by the easement for Klippel Road may be located outside of the SM zoning boundary. The quality of the map used to rezone the property is poor; thus it is not clear whether the zoning boundary is intended to follow parcel boundaries or the road easement. The County's LAVA system, however, shows the entire lot as being zoned SM. For the sake of clarity and to make sure that the entire area is rezoned to have the same zoning, the entire lot is discussed as having SM zoning and is included in the legal descriptions for the zone change from SM to RR-10.

The SM zoning for all the lots is the result of much of the subject property's inclusion as SM Site 294 on the county's Goal 5 inventory of significant mineral and aggregate sites. The portions of the subject property located within one-quarter mile from Johnson Market Road and Tumalo Creek are zoned Landscape Management (LM). And the entire subject property is zoned Wildlife Area Combining Zone (WA) because of its location within the Tumalo Deer Winter Range. The majority of the subject property, including all of the property zoned RR-10 and most of the property zoned SM, is designated Rural Residential Exception Area (RREA). A small portion of the northeast quadrant of the subject property that is zoned SM is designated Agriculture. A very small, .02 acre, part of Tax Lot 826 is also designated Agriculture.

C. Site Description: The Board adopts the Hearings Officer's findings but amends the second paragraph to read "The record indicates some or all of these water rights are currently leased for in-stream use."

D. Soils: According to the Natural Resource Conservation Service (NRCS) data in the record, the majority of the subject property is comprised of the following four soil units:

and to make sure that the entire area is rezoned to have the same zoning, the entire lot is discussed as having SM zoning and is included in the legal descriptions for the zone change from SM to RR-10.

1. **Soil Unit 85A, Lundgren.** This soil unit consists of deep, well-drained sandy loam soil over gravel and sands from glacial out-wash. The size of the gravel varies from a few inches to 5-feet in diameter. This soil unit is classified as Class VI soil with or without irrigation.
2. **Soil Unit 61C, Henkle-Fryrear-Lava flows.** This soil complex typically contains a majority of soils that are rated Class VII or worse, with or without irrigation.
3. **Soil Unit 62D, Henkle-Lava Flow-Fryrear complex.** This soil unit consists of shallow, gravelly soil over basalt lava flows. This soil unit is classified as Class VII.
4. **Soil Unit 157C, Wanoga-Fremkle-Rock outcrop.** This soil unit consists of well drained sandy loam over cinders that range in size from 1” to 4” diameter. This soil unit is classified as Class VI soil with or without irrigation. The rock outcrop part of this soil complex is Class VIII.

The site-specific soils analysis shows the property is comprised of a variety of soil types classified as Class VI, VII and VIII with or without irrigation. The site-specific soils analysis submitted by the applicant refined the areas where soils that are a part of a complex are located. For instance, it determined that the northeast part of the property mapped by NRCS as Soil Unit 157C is Soil Class 155C. The Soil Unit 155C soil unit is Class VI soil with or without irrigation. Other, similar refinements were made for the other soil complexes found on the site. The results of the soil survey are provided in the findings, below.

E. Surrounding Zoning and Land Uses: The subject property is surrounded by approximately 20 tax lots described as follows:

North: A little over one half of the subject property’s north boundary adjoins two lots that are zoned RR-10 and plan designated RREA. These lots are Tax Lot 809 owned by CLR, Inc. and Tax Lot 1500 owned by The Joyce E. Coats Revocable Trust. The east part of the north boundary of the subject property adjoins land zoned SM and planned for Surface Mining. The land to the north of Tax Lot 817, the CLR, Inc. land included in the zone change, is zoned EFU-TRB and designated Agriculture. Further to the north and northeast is land designated Agriculture and zoned EFU-TRB. Land further to the northwest is designated Forest and zoned F-2.

South: Abutting and surrounding land to the south is designated RREA and zoned RR-10 and consists of the Klippel Acres Subdivision developed with single-family dwellings on lots ranging in size from 2.5 to 10 acres.

East: Abutting land to the east consists of approximately 8 tax lots zoned designated RREA, zoned RR-10, and developed with rural residences and in one or two cases with very small-scale farming activity. In addition, the small portion of the subject property abutting Tumalo Creek adjoins land across the creek that is within the Bend urban reserve area.

West: Abutting and surrounding land to the west is designated RREA, zoned RR-10, and

developed with rural residences, many of which are located within the Klippel Acres Subdivision. Further to the west across Johnson Market Road is land zoned RR-10 and F-2.

F. **Procedural History:** The Board of County Commissioners (“Board”) adopts the Hearings Officer’s findings and adds that this comprehensive plan amendment does involve a goal exception for land designated farm or forest use. No appeal of the Hearings Officer’s decision was filed by a party of interest or a review was not initiated by the Board for PA07-2 and ZC07-2. Therefore, DCC 22.28.030(C) requires that the Board conduct a de novo public hearing. The Board conducted a de novo public hearing on January 7, 2008.

- G. **Proposal:** The Board adopts the Hearings Officer’s findings.

H. **Public Agency Comments:** The Board adopts the Hearings Officer’s findings.

I. **Public Notice and Comments:** The Board adopts the Hearings Officer’s findings and adds that notice of the hearing before the Board was published in the The Bulletin and sent to those that appeared in person or in writing before the Hearings Officer.

J. **Lot of Record:** The Board adopts the Hearings Officer’s findings.

III. CONCLUSIONS OF LAW:

PROCEDURES

Notice

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

1. **Chapter 22.24, Land Use Action Hearings**

a. **Section 22.24.030, Notice of Hearing or Administrative Action**

A. **Individual Mailed Notice**

1. **Except as otherwise provided for herein, notice of a land use application shall be mailed at least 20 days prior to the hearing for those matters set for hearing * * *. Written notice shall be sent by mail to the following persons:**

* * *

b. **Owners of record of property as shown on the most recent property tax assessment roll of property located:**

* * *

2. Within 250 feet of the property that is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4).

B. Posted Notice

1. Notice of a land use application for which prior notice procedures are chosen shall be posted on the subject property for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way.

* * *

C. Published Notice

In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 20 days prior to the hearing.

Continuance and Record Extension

b. Section 22.24.140, Continuances or Record Extensions

A. Grounds

1. Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request. * * *
2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:
 - a. Where additional documents or evidence are submitted by any party; or
 - b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony. * * *
3. The grant of a continuance or record extension in any other circumstances shall be at the discretion of the Hearings Officer.

FINDINGS: The Board adopts the Hearings Officer's findings and adds that any notice irregularities for the Hearings Officer proceedings are harmless error in that all parties have another opportunity to present testimony before the Board without the necessity of an appeal.

Process for Approval of Plan Amendment and Zone Change

2. Chapter 22.28, Land Use Action Decisions

c. Section 22.28.030, Decision on Plan Amendments and Zone Changes

* * *

- B. In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.**
- C. Plan amendments and zone changes requiring an exception to the goals concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board made under DCC Title 22.**
- D. Notwithstanding DCC 22.28.03(C), when a plan amendment subject to a DCC 22.28.030(C) hearing before the Board of County Commissioners has been consolidated for hearing before the Hearings Officer with a zone change or other permit application not requiring a hearing before the board under DCC 22.28.030(C), any party wishing to obtain review of the Hearings Officer's decision on any of those other applications shall file an appeal. The plan amendment shall be heard by the board consolidated with the appeal of those other applications.**

FINDINGS: The Board adopts the Hearings Officer's finding and adds that the Board heard this matter on January 7, 2008.

PLAN AMENDMENT

FINDINGS:

The Board adopts the Hearings Officer's finding and adds that the very small part of Tax Lot 826 adjacent to Tumalo Creek (.02 acres) that is designated Agriculture. Furthermore, the Board amends

the third sentence of paragraph 2 to read, "However, most of the subject property also was zoned SMR to reflect its surface mining history. The rest of the subject property was zoned RR-10."

COMPREHENSIVE PLAN GOALS AND POLICIES

B. Title 23 of the Deschutes County Code, the Deschutes County Comprehensive Plan

1. Chapter 23.24, Rural Development

a. Section 23.24.020, Goals

- 1. To preserve and enhance the open spaces, rural character, scenic values and natural resources of the County.**

FINDINGS: The Board adopts the Hearings Officer's findings.

- 2. To guide the location and design of rural development so as to minimize the public costs of facilities and services, to avoid unnecessary expansion of service boundaries, and to preserve and enhance the safety and viability of rural land uses.**

FINDINGS: The Board adopts the Hearings Officer's findings.

- 3. To provide for the possible long-term expansion of urban areas while protecting the distinction between urban (urbanizing) land and rural lands.**

FINDINGS: The Board adopts the Hearings Officer's findings.

2. Chapter 23.60, Transportation

a. Section 23.60.010, Transportation

*** * ***

The purpose of DCC 23.60 is to develop a transportation system that meets the needs of Deschutes County residents while also considering regional and state needs at the same time. This plan addresses a balanced transportation system that includes automobile, bicycle, rail, transit, air, pedestrian and pipelines. It reflects existing land use plans, policies and regulations that affect the transportation system.

FINDINGS: The Board adopts the Hearings Officer's findings.

3. Chapter 23.68, Public Facilities

a. Section 23.68.020, Policies

1. Public facilities and services shall be provided at levels and in areas appropriate for such uses based upon the carrying capacity of the land, air and water, as well as the important distinction that must be made between urban and rural services. In this way public services may guide development while remaining in concert with the public's needs.
2. Future development shall depend on the availability of adequate local services in close proximity to the proposed site. Higher densities may permit the construction of more adequate services than might otherwise be true. Cluster and planned development shall be encouraged.
3. New development shall not be located so as to overload existing or planned facilities, and developers or purchasers should be made aware of potentially inadequate power facilities in rural areas.

* * *

9. New development shall not be located so as to overload existing or planned facilities, and developers or purchasers should be made aware of potentially inadequate power facilities in rural areas.

FINDINGS: The Board adopts the Hearings Officer's findings.

4. Chapter 23.96, Open Space, Areas of Special Concern, and Environmental Quality

a. Section 23.96.030, Policies

* * *

10. As part of subdivision or other development review, the County shall consider the impact of the proposal on the air, water, scenic and natural resources of the County. Specific criteria for such review should be developed. Compatibility of the development with those resources shall be required as deemed appropriate at the time given the importance of those resources to the County while considering the public need for the proposed development.

FINDINGS: The Board adopts the Hearings Officer's findings.

STATEWIDE GOALS AND ADMINISTRATIVE RULES

Agriculture to RREA

Agricultural Lands

FINDINGS: The Board adopts the Hearings Officer's findings but amends the paragraph to say "(2) the portion of the Agriculture-designated land that *does* qualify as "agricultural land" based on soil classification nevertheless is unsuitable for farm use because the soils are unproductive, and the land it is too small in size, isolated and too far removed to be put to productive farm use in conjunction with nearby EFU-zoned land.

C. Oregon Administrative Rules (OAR) Chapter 660, Land Conservation and Development Commission

1. Division 15, State-wide Planning Goals and Guidelines

a. OAR 660-015-0000(3), Agricultural Lands

GOAL 3

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

DEFINITIONS

***Agricultural Land* -- * * * In eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.**

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4. (Emphasis added.)

2. Division 33, Agricultural Land

a. OAR 660-033-0030, Agricultural Land

- (1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.

FINDINGS: The threshold question is whether the Agriculture-designated portion of the subject property qualifies as "agricultural land" under Goal 3 and OAR 660-033-0020(1). According to Exhibits "A" and "B" to Ordinance No. 92-060, 17.52 acres of the following lots are Agriculture-designated land. According to soils information provided by the applicant's soils expert, the subject property was comprised of the following acreage and soil classifications:

<u>Lot</u>	<u>Size of Area</u>	<u>% of Soil Type VII-VIII</u>
Tax Lot 819 (part)	1.50 acres	None
Tax Lot 820 (part)	7.40 acres	None
Tax Lot 821 (most)	8.50 acres	61% of entire parcel ²
Tax Lot 826	.02 acres	100%

This evidence shows that 8.9 acres of the subject property designated Agriculture (in Tax Lots 819 and 820) included Class VI or better soils and therefore constituted "agricultural lands," and 8.52 acres of the subject property (in Tax Lots 821 and 826) are predominantly or exclusively Class VII and VIII soils and, therefore, did not constitute "agricultural lands."

- (2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in OAR 660-033-0020(1). (Emphasis added.)

• FINDINGS:

² A small part of Tax Lot 821, the easternmost part of the panhandle, is designated RREA. The soil study analyzed the soil of the entire tax lot and found that 61% of the tax lot was comprised of soil rated Class VII. The soil in the panhandle area is rated Class VI. When it is excluded from the part of the property designated "Agriculture" by the plan map, the overall percentage of the lot that is designated Agriculture that is Class VII soil increases above 61%.

The Board adopts the Hearings Officer's findings and adds to the bulleted list that the eastern part of Tax Lot 821 is designated RREA.

- (3) **Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.**

FINDINGS: Tax Lot 821 adjoins land designated RREA and, in small part, Agriculture and zoned RR-10 on the east that is not own by the applicant. Tax Lot 821 adjoins land designated Agriculture and zoned SM on the north (part of Tax Lots 819 and 820) owned by the applicant and for portions of which the applicant has requested approval of an exception to Goal 3. The west boundary of Tax Lot 821 adjoins a part of Tax Lot 819 owned by the applicant that is designated RREA and zoned SM. The record indicates, and the Hearings Officer's site visit observations confirmed, that one or two parcels east of the subject property could be considered "hobby farms" with small areas of cultivated pasture. However, the owners of these parcels have not offered to utilize the portions of Tax Lots 819, 820 and 821 in conjunction with their "farm use." the Board finds that the Agriculture-designated portions of the subject property and the hobby farms in the area are both too small to be put to productive farm use alone or in conjunction with one another. Therefore, for these reasons, and for the reasons set forth in the goal exception findings below, the Board finds that the portions of Tax Lots 819, 820 and 821 designated Agriculture are not necessary to permit farm practices on the rest of the subject property or other surrounding property owned by others.

- (4) **When inventoried land satisfies the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.**

FINDINGS: The Board finds this criterion is not applicable because the soil capability classifications for the Agriculture-designated portions of Tax Lots 821 and 826 and for Tax Lot 821 in its entirety do not satisfy the definition of agricultural land (Class VII and VIII), and the Board agrees with the Hearings Officer that the Class VI soils on the remainder of Tax Lot 821 and Tax Lots 819 and 820 do not qualify as "forest land."

- (5) **Notwithstanding the definition of "farm use" in ORS 215.203(2)(a), profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3, "Agricultural Land," is applicable.**

FINDINGS: The Board finds that because the subject property is not engaged in farm use, has not been engaged in farm use since it was zoned SM, and is predominantly designated RREA, there is no

basis from which to determine whether or not it could be profitably put to farm use. However, for the reasons discussed in the findings above and below, the Board finds the Agriculture-designated portions of the subject property simply cannot be put to productive farm use alone or in conjunction with other lands designated or zoned for agriculture, and therefore profitability and gross income considerations are not relevant.

The quoted section of the administrative rule, OAR 660-033-0030 (5), has been held to be invalid by the Oregon Supreme Court in the case of *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007). It determined that gross income and profitability are relevant considerations in determining whether land is "Agricultural Land," as defined by Goal 3. The Supreme Court held that "farm use" is an activity conducted by a person who intends to make a profit in money by undertaking the activity. Thus, profitability and gross income are relevant considerations. In this case, a prudent farmer would not acquire the land and put it to farm use with an expectation of making a profit in money from the endeavor.

- (6) **More detailed data on soil capability than is contained in the U.S. Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the U.S. Natural Resources Conservation Service (NRCS) land capability classification system.**

FINDINGS: In support of its applications, the applicant submitted a report entitled "Soil Survey of Harris Kimble Property" dated December 2006 and prepared by Steve Wert, a certified soil scientist with Wert and Associates, Inc. The study indicates the Kimble part of the subject property is comprised of three major soils types, described as follow:

1. **Soil Unit 85A, Lundgren.** The Board adopts the Hearings Officer's findings and adds that this soil is found on 38% or 58.51 acres of the Kimble part of the subject property.
2. **Soil Unit 62D, Henkle-Lava Flow.** The Board adopts the Hearings Officer's findings and adds that this soil is found on 9% or 13.60 acres of the Kimble part of the subject property.
3. **Soil Unit 155C, Wanoga.** The Board adopts the Hearings Officer's findings and adds that this soil is found on 6% or 8.66 acres of the Kimble part of the subject property.

Mr. Wert also identified six other soils on the subject property: (1) Lundgren-sand phase; (2) surface mined; (3) steep side slopes; (4) unnamed soil; (5) pond bottom; and (6) road. According to the soils map attached to Mr. Wert's soils analysis, he found that 19 percent of the subject property owned by Mr. Kimble consists of Class VII or VIII soils. Based on his detailed soils analysis for the portion of the subject property designated Agriculture, Mr. Wert found that much of this area is comprised of Class VII soils. The applicant argues, and the Board agrees, that based on Mr. Wert's site-specific soils analysis the majority of soils on Tax Lot 821 and all of the Agriculture-designated portion of Tax Lot 826 do not constitute "agricultural land." The rest of the area designated Agriculture contains Class VI soils that are not high value when irrigated and requires approval of a goal exception, as discussed below.

Exception to Goal 3

3. Division 4, Interpretation of Goal 2 Exception Process

a. OAR 660-004-0010, Application of the Goal 2 Exception Process to Certain Goals

(1) * * * The exceptions process is generally applicable to all or part of those statewide goals which prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands;" * * *.

* * *

FINDINGS: The applicant is seeking approval of an exception to Goal 3 for the portions of Tax Lots 819, 820 and 821 designated Agriculture that constitute "agricultural land." As shown in the table set forth on page 14 above, approximately 8.9 acres on these three tax lots are comprised of soils classified as Class VI or better. The applicant has also asked that the County map the nonagricultural lands in the exception area to make it clear that these lands are no longer designated Agriculture or to include a designation on the comprehensive plan map that the nonagricultural lands are no longer designated Agriculture.

b. OAR 660-004-0018, Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outline in this rule.

FINDINGS: The applicant is requesting an exception to Goal 3 for that part of the subject property that was not included in the exception areas mapped in 1979 and 1992 on the basis that this area is irrevocably committed to rural residential use and because part of the area consists of land that is not agricultural land..

- (2) For “physically developed” and “irrevocably committed” exceptions to the goals, plan and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
 - (a) That are the same as the existing land uses on the exception site;

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (b) That meet the following requirements:
 - (A) The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals and are consistent with all other applicable Goal requirements; and

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

FINDINGS:The Board adopts the Hearings Officer’s findings but amends a portion of the section as follows:

The record indicates the closest EFU-zoned land is located north of the portion of Tax Lot 817 located in Section 13, on Tax Lot 800, Assessor’s Map 17-11-12. However, there are two intervening RR-10 zoned tax lots – Tax Lots 809 and 1500 – that would provide a buffer between rural residences on the subject property and farm use on Tax Lot 800. Finally, the record indicates the closest forest-zone land touches the northwest corner of the portion of Tax Lot 817 in Section 13. The RREA-designated Tax Lots 809, 817, 819 (part in W ½ of Section 13), 822 and 1500 all separate the part of the property designated Agriculture from the forest zone. The applicant argues, and the Board agrees, that approval of the proposed goal exception will not commit this land to nonresource uses because most of the F-2 zoned land is located on the west side of Johnson Market Road, and there is an RR-10 zoned parcel developed with a residence and RR-10 zoned lots suited for development with residences located between the Agricultural-designated part of the subject property and Johnson Market Road. For these reasons, the Board finds the proposed goal exception is consistent with this criterion.

- (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, “Planning and Zoning

of Unincorporated Communities,” if applicable; or

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exceptions area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in Section (4) of this rule and OAR 660-004-0020 through 660-004-0022.

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (4) “Reasons” Exceptions:

* * *

FINDINGS: The Board adopts the Hearings Officer’s findings.

- b. OAR 660-004-0015, Inclusion as Part of the Plan

* * *

FINDINGS: The Board adopts the Hearings Officer’s findings.

- c. OAR 660-004-0028, Exception Requirements for Land Irrevocably Committed to Other Uses

- (1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (a) A “committed exception” is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule:

FINDINGS: The Board adopts the Hearings Officer's findings.

- (b) **For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken;**

FINDINGS: The Board adopts the Hearings Officer's findings.

- (c) **An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.**

FINDINGS: The Board adopts the Hearings Officer's findings.

- (2) **Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:**

FINDINGS: As discussed in the findings above, there is one area on the subject property designated Agriculture for which the applicant is requesting an exception to Goal 3 and for which an exception is required by State law. This is an area that is approximately 8.9 acres in size located on Tax Lots 819 and 820. The applicant's burden of proof notes that both of these areas are part of legal lots of record that already are, in part, included in the existing RREA. The applicant is also requesting the goal exception include the Agriculture-designated parts of Tax Lot 826 and Tax Lot 821 that consist of land that is not "agricultural land" within the larger RREA to avoid confusion in the future and to reflect the character and development in the surrounding area.

- (a) **The characteristics of the exception area;**
- (b) **The characteristics of the adjacent lands;**
- (c) **The relationship between the exception area and the lands adjacent to it; and**

FINDINGS: The small portion of Tax Lot 826 subject to the proposed goal exception is a strip of land located between Tumalo Creek and the eastern boundary of the existing RREA, essentially consisting of rimrock within Tumalo Creek Canyon. The applicant's burden of proof notes this land may in fact have been included in the RREA but may have inadvertently not been included in the RREA map.

The portions of Tax Lots 819, 820 and 821 subject to the proposed goal exception consist of part of the reclaimed SM Site 294 and each lot is, in part, located in the existing RREA. As discussed above, Tax Lot 819 already is developed with a single-family dwelling. And as discussed in detail in the findings above, these areas include poor quality Class VI soils or Class VII and VIII (non-agricultural) soils. In addition, the record indicates Klippel Road is located adjacent to or on Tax Lots 819, 820 and 821. The lands adjacent to the portions of these tax lots subject to the proposed goal exception are designated RREA, zoned RR-10 or SM, are smaller than the 10-acre minimum lot size in the RR-10 Zone and have been, or are eligible to be, developed with rural residences.

- (d) The other relevant factors set forth in OAR 660-004-0028(6).

FINDINGS: The factors of OAR 660-004-0028(6) are addressed in the findings below.

- (3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is “impossible.” For exceptions to Goals 3 and 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

- (a) Farm use as defined in ORS 215.203:

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and
- (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (6) Findings for a committed exception shall address the following factors:

- (a) Existing adjacent uses;

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (b) Existing public facilities and services (water and sewer lines, etc.):

FINDINGS: The Board adopts the Hearings Officer’s findings.

- (c) Parcel size and ownership patterns of the exception area and adjacent lands:

- (A) Consideration of parcel size and ownership patterns

under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land decisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

FINDINGS: The Board adopts the Hearings Officer's findings.

- (B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual size. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amongst larger farm or forest operations, or are buffered from such operations.

FINDINGS: The Board adopts the Hearings Officer's findings except that the Board finds that Tax Lot 819 is owned by Harris and Nancy Kimble rather than by Harris Kimble only.

- (d) **Neighborhood and regional characteristics;**

FINDINGS: The Board adopts the Hearings Officer's findings.

- (e) **Natural and man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements or rights-of-way that effectively impede practicable resource use of all or part of the exception area;**

FINDINGS: The Board adopts the Hearings Officer's findings.

- (f) **Physical development according to OAR 660-004-0025; and**

FINDINGS: OAR 660-004-0025 authorizes "physically developed" goal exceptions for circumstances in which land has been physically developed with structures, roads, sewer and water facilities and utility facilities. The applicant has not requested a "physically developed" goal exception, but correctly notes that physical development is a factor to be considered for an "irrevocably committed" goal exception. The record indicates the only development on the part of the subject property designated Agriculture consists of an existing single-family dwelling on Tax Lot 819, one private road -- Klippel Road -- and a surface mine on a significant portion of the property. The applicant argues, and the Board agrees, that while these developments standing alone do not justify the proposed goal exception, they provide support for the applicant's proposal in conjunction with the other factors discussed in these findings that indicate the subject property is irrevocably committed to nonresource -- i.e., rural residential -- use.

- (g) **Other relevant factors.**

FINDINGS: The Board adopts the Hearings Officer's findings.

Forest Lands

- 4. **Division 6, Forest Lands**
 - a. **OAR 660-15-0000(4), Forest Lands**

FINDINGS: Goal 4 provides as follows:

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest

operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

b. OAR 660-06-001, Purpose

- (1) The purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700.**
- (2) To accomplish the purpose of conserving forest lands, the governing body shall:**
 - (a) Designate forest lands on the comprehensive plan map as forest lands consistent with Goal 4 and OAR Chapter 660, Division 6;**
 - (b) Zone forest lands for uses allowed pursuant to OAR Chapter 660, Division 6 on designated forest lands; and**
 - (c) Adopt plan policies consistent with OAR Chapter 660, Division 6.**
- (3) This rule provides for a balance between the application of Goal 3 "Agricultural Lands" and Goal 4 "Forest Lands," because of the extent of lands that may be designated as either agricultural or forest land.**

FINDINGS: The Board adopts the Hearings Officer's findings.

Surface Mining Lands

5. Division 23, Procedures and Requirements for Complying with Goal 5

a. OAR 660-023-010, Definitions

As used in this division, unless the context requires otherwise:

* * *

- (5) "PAPA" is a "post-acknowledgement plan amendment." The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.**

FINDINGS: The Board adopts the Hearings Officer's findings.

Transportation

6. Division 12, Transportation

a. OAR 660-15-0000(12), Transportation

FINDINGS: The Board adopts the Hearings Officer's findings.

Compliance with Other Statewide Goals

Goal 1, Citizen Involvement. The Board adopts the Hearings Officer's findings.

Goal 2, Land Use Planning. The Board adopts the Hearings Officer's findings.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. The Board adopts the Hearings Officer's findings.

Goal 6, Air, Water and Land Resources Quality. The Board adopts the Hearings Officer's findings.

Goal 7, Areas Subject to Natural Disasters and Hazards. The Board adopts the Hearings Officer's findings.

Goal 8, Recreational Needs. The Board adopts the Hearings Officer's findings.

Goal 9, Economy of the State. The Board adopts the Hearings Officer's findings.

Goal 10, Housing. The Board adopts the Hearings Officer's findings.

Goal 11, Public Facilities and Services. The Board adopts the Hearings Officer's findings.

Goal 13, Energy Conservation. The Board adopts the Hearings Officer's findings.

Goal 14, Urbanization. The Board adopts the Hearings Officer's findings.

Goals 15 through 19. The Board adopts the Hearings Officer's findings.

ZONE CHANGE

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

FINDINGS: The Board adopts the Hearings Officer's findings.

1. Chapter 18.52, Surface Mining Zone (SM)

a. **Section 18.52.200, Termination of the Surface Mining Zoning and Surrounding Surface Mining Impact Area Combining Zone**

A. **When a surface mining site has been fully or partially mined, and the operator demonstrates that a significant resource no longer exists on the site, and that the site has been reclaimed in accordance with the reclamation plan approved by DOGAMI or the reclamation provisions of this title, the property shall be rezoned to the subsequent use zone identified in the surface mining element of the Comprehensive Plan.**

B. **Concurrent with such rezoning, any surface mining impact area combining zone which surrounds the rezoned surface mining site shall be removed. Rezoning shall be subject to chapter 18.136 and all other applicable sections of this title, the Comprehensive Plan and Deschutes County Code Title 22, the Uniform Development Procedures Ordinance.**

FINDINGS: The Board adopts the Hearings Officer's findings.

2. **Chapter 18.136, Amendments**

a. **Section 18.136.010, Amendments**

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDINGS: The Board adopts the Hearings Officer's findings.

b. **Section 18.136.020, Rezoning Standards**

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

A. **That the change conforms with the Comprehensive Plan, and the change is consistent with the plan's introductory statement and goals.**

FINDINGS: The Board adopts the Hearings Officer's findings.

- B. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.

FINDINGS: The Board adopts the Hearings Officer's findings.

- C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:

- 1. The availability and efficiency of providing necessary public services and facilities.

FINDINGS: The Board adopts the Hearings Officer's findings.

- 2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

FINDINGS: The Board adopts the Hearings Officer's findings.

1. *Not Compatible with Character of Area.* The Board adopts the Hearings Officer's findings.

2. *Impacts on Wildlife.* The Board adopts the Hearings Officer's findings.

3. *Street System Impacts.* The Board adopts the Hearings Officer's findings.


4. *Impact on Wells.* The Board adopts the Hearings Officer's findings.

- D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDINGS: The Board adopts the Hearings Officer's findings.

IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board hereby APPROVES the applicant's proposed plan amendment from Agriculture and Surface Mining to Rural Residential Exception Area and proposed zone change from SM to RR-10

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18, the Deschutes *
County Zoning Map, to Change the Zone * ORDINANCE NO. 2008-006
Designation on Certain Property from Surface *
Mining (SM) to Rural Residential (RR-10). *

WHEREAS, Harris C and Nancy Kimble and CLR, Inc. have proposed a zone change to Title 18, Deschutes County Zoning Map, to rezone certain property from Exclusive Farm Use (EFU) and Surface Mining (SM) to Rural Residential (RR-10) Zone; and

WHEREAS, notice was given and hearing conducted on January 7, 2008, before the Board of County Commissioners ("Board") in accordance with applicable law; and

WHEREAS, the Board after reviewing all the evidence presented at the public hearing, agrees with the findings of the Hearings Officer, and

WHEREAS, on this same date, the Board adopted Ordinance 2008-001 amending Title 23 of the Deschutes County Code by adopting an exception to Goal 3, changing the plan designation of the property from Agricultural to Rural Residential Exception Area; and

WHEREAS, the Deschutes County Board of Commissioners, after review conducted in accordance with applicable law, approved the proposed change to the County Zoning Map; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Title 18, Zoning Map, is hereby amended to change the zone designation of the subject property, as described by the legal description attached as Exhibit "B" to Ordinance 2008-001 and depicted on the map set forth as Exhibit "C" to Ordinance 2008-001, and by this reference incorporated herein, from SURFACE MINING (SM), RURAL RESIDENTIAL (RR-10) Zone.

Section 2. AMENDMENT. The effect of rezoning the subject property to RR-10 zoning, together with the concurrent rezoning of the rest of Surface Mine Site 294 is to remove the Surface Mining Impact Area (SMIA) combining zone classification created to protect Surface Mine Site 294 from any parcel, or portion thereof, located within one-half mile of the subject property described in Section 1 above without affecting other SMIA combining zones in the area.

///

Section 3. FINDINGS. The Board adopt as its findings in support of this decision, the Decision of the Board of County Commissioners, attached as Exhibit "E" to Ordinance 2008-001 and by this reference incorporated herein.


Dated this 6th of February, 2008

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, CHAIR


TAMMY (BANEY) MELTON, VICE CHAIR

ATTEST:


Recording Secretary


MICHAEL M. DALY, COMMISSIONER

Date of 1st Reading: 23rd day of January, 2008.


Date of 2nd Reading: 6th day of February, 2008.

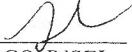
Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 6th day of May, 2008.

ATTEST:


Recording Secretary

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18, the Deschutes *
County Zoning Map, to Change the Zone * ORDINANCE NO. 2008-009
Designation on Certain Property from Surface *
Mining (SM) to Rural Residential (RR-10). *

WHEREAS, Harris C. and Nancy Kimble and CLR, Inc. proposed to change the zoning designation of certain property from Surface Mine, SM to Rural Residential, RR-10; and

WHEREAS, on same date, the Board of County Commissioners (“Board”) adopted Ordinance 2008-010 amending DCC 23.100.070 to remove the subject property from Deschutes County’s Goal 5 inventory list; and

WHEREAS, an amendment to the county’s zoning map is necessary to implement the comprehensive plan change in Ordinance 2008-010; and

WHEREAS, no appeal of this decision was filed and the Board did not initiate a review of the hearings officer’s decision and the time for filing an appeal and initiating review has passed; and

WHEREAS, DCC 22.28.030 (A) requires that all quasi-judicial zone changes be adopted by the Board of County Commissioners; and

WHEREAS, DCC 22.28.030 (B) says that in the absence of an appeal or initiation of review by the Board that the Board adopt the Hearings Officer’s decision and that no argument or further testimony shall be taken by the Board; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON ORDAINS as follows:

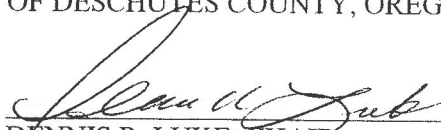
Section 1. AMENDMENT. DCC Title 18, Zoning Map, is hereby amended to change the plan designation for certain property described as all land described on Exhibit “A” and depicted on Exhibit “B,” attached and by this reference incorporated herein, from Surface Mine to Rural Residential Exception Area less that part of the property described on Exhibit “B” of Ordinance 2008-001 and depicted on the map set forth as Exhibit “C” to Ordinance 2008-001, both documents incorporated by reference herein.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision the Decision of the Hearings Officer, attached as Exhibit "E" to Ordinance 2008-001 and incorporated by reference herein.

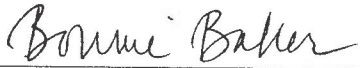
Dated this 6th of February, 2008

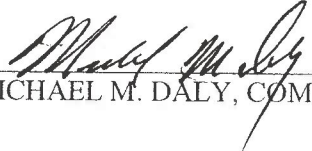
BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, CHAIR


TAMMY (BANEY) MELTON, VICE CHAIR

ATTEST:


Recording Secretary


MICHAEL M. DALY, COMMISSIONER

Date of 1st Reading: 23rd day of January, 2008.

Date of 2nd Reading: 6th day of February, 2008.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 6th day of May, 2008.

ATTEST:

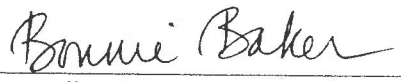

Recording Secretary

EXHIBIT A

DESCRIPTION OF LANDS TO BE REZONED TO RR-10

A parcel of land located in Section 13, Township 17 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at the north quarter corner of said Section 13; thence along the north line of the northeast quarter of said Section 13 South 89°47'50" East a distance of 591.71 feet; thence leaving said north line South 00°03'25" West a distance of 648.84 feet; thence South 89°47'50" East a distance of 454.57 feet; thence South 00°44'20" East a distance of 87.74 feet; thence South 59°07'40" West a distance of 152.05 feet; thence North 89°47'50" West a distance of 520.24 feet; thence South 00°15'50" West a distance of 580.85 feet; thence North 84°33'35" West a distance of 401.64 feet; thence North 00°16'00" East a distance of 29.81 feet; thence South 86°25'08" West a distance of 415.77 feet; thence South 72°40'52" West a distance of 329.65 feet; thence South 76°41'24" West a distance of 74.15 feet; thence South 07°21'14" West a distance of 313.32 feet; thence South 44°18'46" East a distance of 208.94 feet; thence South 05°22'46" West a distance of 230.63 feet; thence South 03°06'11" West a distance of 147.80 feet; thence South 17°39'06" West a distance of 89.16 feet; thence South 89°30'44" East a distance of 978.27 feet to Tumalo Creek; thence along Tumalo Creek the following seven (7) courses:

South 47°16'27" West a distance of 163.55 feet;
South 16°23'29" West a distance of 38.04 feet;
South 08°06'29" East a distance of 84.34 feet;
South 10°21'41" West a distance of 39.16 feet;
South 41°11'03" West a distance of 62.05 feet;
South 61°41'31" West a distance of 82.32 feet;
South 35°16'06" West a distance of 128.61 feet;

thence leaving Tumalo Creek North 89°30'44" West a distance of 936.06 feet; thence South 30°19'53" West a distance of 43.22 feet; thence South 08°35'23" West a distance of 403.92 feet; thence South 40°03'23" West a distance of 212.60 feet; thence South 24°36'23" West a distance of 144.06 feet; thence South 46°27'23" West a distance of 166.22 feet; thence South 22°55'23" West a distance of 20.94 feet; thence South 89°31'42" East a distance of 422.86 feet to Tumalo Creek; thence along Tumalo Creek the following six (6) courses:

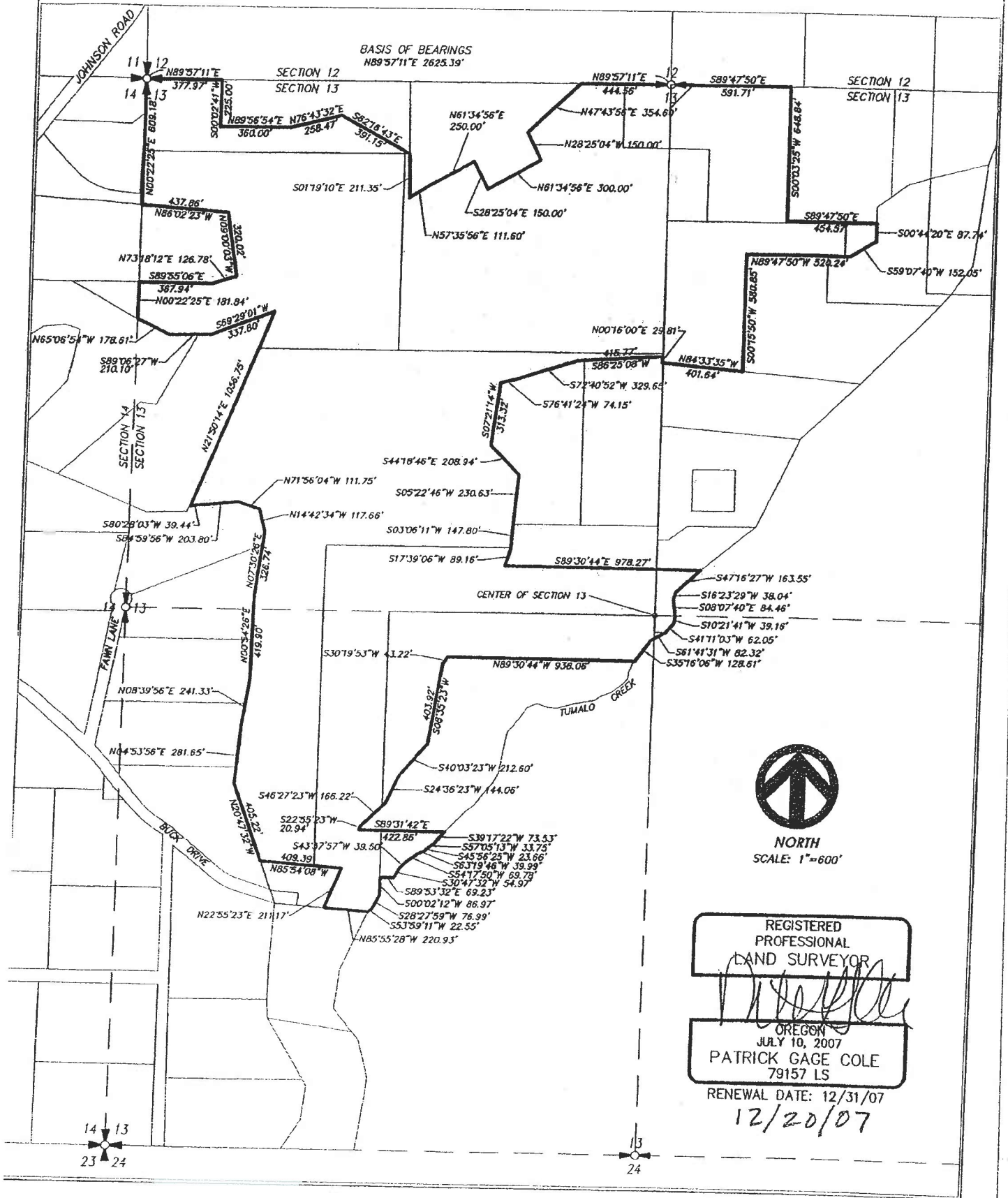
South 39°17'22" West a distance of 73.53 feet;
South 57°05'13" West a distance of 33.75 feet;
South 45°56'25" West a distance of 23.66 feet;
South 63°19'46" West a distance of 39.99 feet;
South 54°17'50" West a distance of 69.78 feet;
South 43°37'57" West a distance of 39.50 feet;
South 30°47'32" West a distance of 54.97 feet;

December 18, 2007

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EXHIBIT "B"

LANDS TO BE RE-ZONED TO RR-10



REVIEWED



LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 23, the Deschutes *
County Comprehensive Plan, to Remove Kimble * ORDINANCE NO. 2008-010
Property from Goal 5 Surface Mining Inventory. *

WHEREAS, Harris C. and Nancy Kimble and CLR, Inc. proposed to change the comprehensive plan designation of certain property from Surface Mine to Rural Residential Exception Area; and

WHEREAS, this property is the part of Surface Mine Site 294 that was designated by Exhibits A and B of Ordinance No. 92-60 as a goal exception area; and

WHEREAS, now that Surface Mine Site 294 has been fully mined and reclaimed under the authority of SP-91-163 the subject property must be removed from Deschutes County's Goal 5 Inventory in the county's comprehensive plan; and

WHEREAS, the County's land use hearings officer conducted a land use hearing and rendered a decision approving the application; and

WHEREAS, no appeal of this decision was filed and the Board of County Commissioners ("Board") did not initiate a review of the hearings officer's decision and the time for filing an appeal and initiating review has passed; and

WHEREAS, DCC 22.28.030 (A) requires that all quasi-judicial plan amendments be adopted by the Board; and

WHEREAS, DCC 22.28.030 (B) says that in the absence of an appeal or initiation of review by the Board that the Board adopt the Hearings Officer's decision and that no argument or further testimony shall be taken by the Board; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON
ORDAINS as follows:

Section 1. AMENDMENT. DCC Title 23, The Deschutes County Comprehensive Plan Map is hereby amended to change the plan designation for certain property described as all land described on Exhibit "A" and depicted on Exhibit "B," attached and by this reference incorporated herein, from Surface Mine to Rural Residential Exception Area less that part of the property described in Exhibit "B" of Ordinance 2008-001 and depicted on the map set forth as Exhibit "C" to Ordinance 2008-001, both documents being incorporated by reference herein.

Section 2. AMENDMENT. DCC 23.100.070. Goal 5 Inventory is amended as in Exhibit "D", attached to Ordinance 2008-001 and incorporated by reference herein.

Section 3. FINDINGS. The Board adopts as its findings in support of this decision the Decision of the Hearings Officer, attached as Exhibit "E" to Ordinance 2008-001 and incorporated by reference herein.

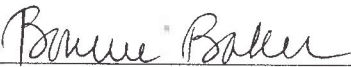
Dated this 6th of February 2008

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, CHAIR


TAMMY (BANEY) MELTON, VICE CHAIR

ATTEST:


Recording Secretary


MICHAEL M. DALY, COMMISSIONER

Date of 1st Reading: 23rd day of January, 2008.

Date of 2nd Reading: 6th day of February 2008.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 6th day of May, 2008.

ATTEST:

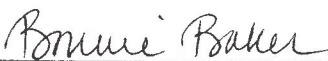

Recording Secretary

EXHIBIT A

DESCRIPTION OF LANDS TO BE REZONED TO RR-10

A parcel of land located in Section 13, Township 17 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at the north quarter corner of said Section 13; thence along the north line of the northeast quarter of said Section 13 South $89^{\circ}47'50''$ East a distance of 591.71 feet; thence leaving said north line South $00^{\circ}03'25''$ West a distance of 648.84 feet; thence South $89^{\circ}47'50''$ East a distance of 454.57 feet; thence South $00^{\circ}44'20''$ East a distance of 87.74 feet; thence South $59^{\circ}07'40''$ West a distance of 152.05 feet; thence North $89^{\circ}47'50''$ West a distance of 520.24 feet; thence South $00^{\circ}15'50''$ West a distance of 580.85 feet; thence North $84^{\circ}33'35''$ West a distance of 401.64 feet; thence North $00^{\circ}16'00''$ East a distance of 29.81 feet; thence South $86^{\circ}25'08''$ West a distance of 415.77 feet; thence South $72^{\circ}40'52''$ West a distance of 329.65 feet; thence South $76^{\circ}41'24''$ West a distance of 74.15 feet; thence South $07^{\circ}21'14''$ West a distance of 313.32 feet; thence South $44^{\circ}18'46''$ East a distance of 208.94 feet; thence South $05^{\circ}22'46''$ West a distance of 230.63 feet; thence South $03^{\circ}06'11''$ West a distance of 147.80 feet; thence South $17^{\circ}39'06''$ West a distance of 89.16 feet; thence South $89^{\circ}30'44''$ East a distance of 978.27 feet to Tumalo Creek; thence along Tumalo Creek the following seven (7) courses:

South $47^{\circ}16'27''$ West a distance of 163.55 feet;
South $16^{\circ}23'29''$ West a distance of 38.04 feet;
South $08^{\circ}06'29''$ East a distance of 84.34 feet;
South $10^{\circ}21'41''$ West a distance of 39.16 feet;
South $41^{\circ}11'03''$ West a distance of 62.05 feet;
South $61^{\circ}41'31''$ West a distance of 82.32 feet;
South $35^{\circ}16'06''$ West a distance of 128.61 feet;

thence leaving Tumalo Creek North $89^{\circ}30'44''$ West a distance of 936.06 feet; thence South $30^{\circ}19'53''$ West a distance of 43.22 feet; thence South $08^{\circ}35'23''$ West a distance of 403.92 feet; thence South $40^{\circ}03'23''$ West a distance of 212.60 feet; thence South $24^{\circ}36'23''$ West a distance of 144.06 feet; thence South $46^{\circ}27'23''$ West a distance of 166.22 feet; thence South $22^{\circ}55'23''$ West a distance of 20.94 feet; thence South $89^{\circ}31'42''$ East a distance of 422.86 feet to Tumalo Creek; thence along Tumalo Creek the following six (6) courses:

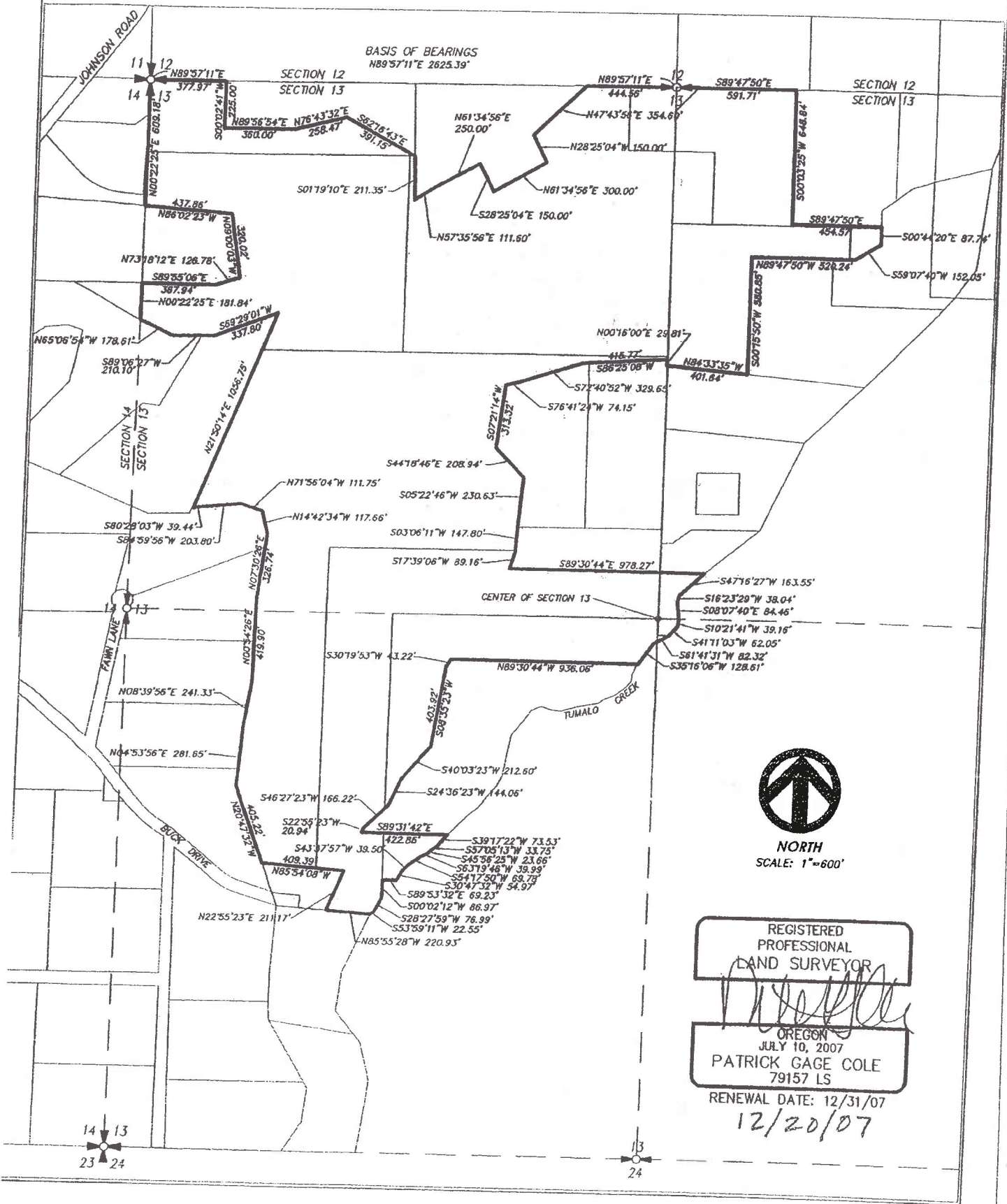
South $39^{\circ}17'22''$ West a distance of 73.53 feet;
South $57^{\circ}05'13''$ West a distance of 33.75 feet;
South $45^{\circ}56'25''$ West a distance of 23.66 feet;
South $63^{\circ}19'46''$ West a distance of 39.99 feet;
South $54^{\circ}17'50''$ West a distance of 69.78 feet;
South $43^{\circ}37'57''$ West a distance of 39.50 feet;
South $30^{\circ}47'32''$ West a distance of 54.97 feet;

December 18, 2007

S:\Land Projects\041125-Klippel Ranch\docs\LEGAL - RR10 zone boundary.doc

EXHIBIT "B"

LANDS TO BE RE-ZONED TO RR-10



DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: PA-07-2 and ZC-07-2

APPLICANT: Harris Kimble
63560 Johnson Market Road
Bend, Oregon 97701

PROPERTY OWNERS: Harris C. and Nancy Kimble
63560 Johnson Market Road
Bend, Oregon 97701
(Tax Lots 819, 820, 821, 822, 823, 824, 825, 826 and 827)

CLR, Inc.
703 NW Stonepine Drive
Bend OR 97701
(Tax Lot 817)

APPLICANT'S ENGINEER: Hickman, Williams & Associations, Inc.
698 N.W. York Drive
Bend, Oregon 97701

APPLICANT'S ATTORNEY: Liz Fancher
644 N.W. Broadway Street
Bend Oregon 97701

REQUEST: The applicant is requesting approval of a plan amendment from SM and Agriculture to Rural Residential Exception Area, a goal exception to Statewide Planning Goal 3, Agricultural Lands, and a zone change from SM to RR-10, for ten tax lots totaling 158.95 acres and located between Johnson Market Road and Tumalo Creek north of Buck Drive west of Bend.

STAFF REVIEWER: Chris Bedsaul, Associate Planner

HEARING DATE: July 24, 2007

RECORD CLOSED: September 14, 2007

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. Chapter 18.52, Surface Mining (SM)



*** Section 18.52.200, Termination of the Surface Mining Zoning and Surrounding Surface Mining Combining Zone**

2. Chapter 18.60, Rural Residential (RR-10)

*** Section 18.60.010, Purpose**

3. Chapter 18.136, Amendments

*** Section 18.136.020, 010, Amendments**

*** Section 18.136.020, Rezoning Standards**

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

1. Chapter 22.20, Review of Land Use Action Applications

*** Section 22.20.040, Final Action in Land Use Actions**

2. Chapter 22.24, Land Use Action Hearings

*** Section 22.24.030, Notice of Hearing or Administrative Action**

*** Section 22.24.140, Continuances or Record Extensions**

3. Chapter 22.28, Land Use Action Decisions

*** Section 22.28.030, Decision on Plan Amendments and Zone Changes**

C. Title 23, the Deschutes County Comprehensive Plan

1. Chapter 23.24, Rural Development

*** Section 23.240.020, Goals**

2. Chapter 23.60, Transportation

*** Section 23.60.010, Transportation**

2. Chapter 23.68, Public Facilities

*** Section 23.68.020, Policies**

3. Chapter 23.96, Open Space, Areas of Special Concern, and Environmental Quality

*** Section 23.96.030, Policies**

D. Oregon Administrative Rules (OAR) Chapter 660, Land Conservation and Development Commission

- 1. Division 4, Interpretation of Goal 2 Exception Process**
- 2. Division 5, Agricultural Lands**
- 3. Division 6, Forest Lands**
- 4. Division 12, Transportation Planning**
- 5. Division 15, Statewide Planning Goals and Guidelines**
- 6. Division 23, Procedures and Requirements For Complying With Goal 5**

II. FINDINGS OF FACT:

A. Location: The subject property consists of ten tax lots (Tax lots 817, 819, 820, 821, 822, 823, 824, 825, 826 and 827 on Deschutes County Assessor's Map 17-11-1). Tax Lot 817 is owned by CLR and contains 6.67 acres. The remaining tax lots are owned by the applicant and contain 152.28 acres. The property is located east of Johnson Market Road and the Klippel Acres Subdivision, west of the Tumalo Irrigation District (TID) irrigation canal and Tumalo Creek, and north of Buck Drive west of Bend.

B. Zoning and Plan Designation: The subject property has a mixture of zoning districts and plan designations as follows:

- Tax Lot 817 – 13.69 acres (including Tax Lot 809), designated RREA, split-zoned SM and RR-10;
- Tax Lot 819 – 32.45 acres designated Agriculture and Rural Residential Exception Area (RREA), split-zoned Surface Mining (SM) and Rural Residential (RR-10);
- Tax Lot 820 – 9.03 acres designated Agriculture and RREA, split-zoned SM and RR-10;
- Tax Lot 821 – 8.78 acres designated Agriculture and RREA, split-zoned SM and RR-10;
- Tax Lot 822 – 24.01 acres (including Tax Lot 11401) designated RREA and split-zoned RR-10 and SM;
- Tax Lot 823 – 44.95 acres designated RREA, split-zoned RR-10 and SM;
- Tax Lot 824 – 21.38 acres designated RREA, split-zoned RR-10 and SM;
- Tax Lot 825 – .68 acres designated RREA, zoned RR-10;
- Tax Lot 826 – 10.04 acres designated RREA, split-zoned SM and RR-10; and
- Tax Lot 827 -- .96 acres designated RREA, zoned RR-10.

The SM zoning is the result of much of the subject property's inclusion as SM Site 294

on the county's Goal 5 inventory of significant mineral and aggregate sites. The portions of the subject property located within one-quarter mile from Johnson Market Road and Tumalo Creek are zoned Landscape Management (LM). And the entire subject property is zoned Wildlife Area Combining Zone (WA) because of its location within the Tumalo Deer Winter Range. The majority of the subject property, including all of the property zoned RR-10 and most of the property zoned SM, is designated Rural Residential Exception Area (RREA). A small portion of the northeast quadrant of the subject property that is zoned SM is designated Agriculture.

- C. **Site Description:** The subject property is approximately 159 acres in size and very irregular in shape. A significant portion of the property has been disturbed due to previous surface mining and reclamation activities. The disturbed area consists of reclaimed extraction pits and berms created from overburden removed from the extraction sites. The undisturbed portions of the property have varying topography and a mixture of native vegetation including scattered stands of pine and juniper trees, as well as native brush and grasses, and pasture grasses seeded as part of the surface mine reclamation. Part of the eastern border of the subject property is located in the canyon of Tumalo Creek and includes steep slopes and rock outcrops. The record indicates the subject property has 58.91 acres of irrigation water rights administered by TID and broken down as follows:

- Tax Lot 817 – 5.36 acres;
- Tax Lot 819 – 14.2 acres;
- Tax Lot 820 -- .15 acres;
- Tax Lot 821 – 5.43 acres;
- Tax Lot 822 – 10.57 acres;
- Tax Lot 823 – 16.59 acres; and
- Tax Lot 824 – 6.61 acres.

The record indicates some of these water rights currently are leased for in-stream use. There is a small irrigation ditch that traverses the subject property within an easement.

Tax Lot 819 is developed with a single-family dwelling that was approved by the county as a replacement dwelling in June 2006 (CU-06-34), as well as a barn and outbuildings. The property has frontage on Johnson Market Road across Tax Lot 11401 on Assessor's Map 17-11-14 which is adjacent to the most northerly northwest corner of the subject property and is owned by the applicant. The subject property also may have access via a private road easement from the eastern terminus of Buck Drive.

- D. **Soils:** According to the Natural Resource Conservation Service (NRCS) data in the record as well as a site-specific soils analysis submitted by the applicant the majority of the subject property is comprised of the following three soil units:

1. **Soil Unit 85A, Lundgren.** This soil unit consists of deep, well-drained sandy loam soil over gravel and sands from glacial out-wash. The size of the gravel

varies from a few inches to 5-feet in diameter. This soil unit is classified as Class VI soil with or without irrigation.

2. **Soil Unit 62D, Henkle-Lava Flow.** This soil unit consists of shallow, gravelly soil over basalt lava flows. This soil unit is classified as Class VII.
3. **Soil Unit 155C, Wanoga.** This soil unit consists of well drained sandy loam over cinders that range in size from 1" to 4" diameter. This soil unit is classified as Class VI soil with or without irrigation.

The site-specific soils analysis shows the rest of the property is comprised of a variety of soil types classified as Class VI, VII and VIII with or without irrigation.

E. Surrounding Zoning and Land Uses: The subject property is surrounded by approximately 20 tax lots described as follows:

North: Most of the land north and northeast of the subject property is designated Agriculture and zoned SM, and includes Tax Lot 809 owned by CLR, Inc. and Tax Lot 1500 owned by The Joyce E. Coats Revocable Trust. Land further to the north and northeast is designated Agriculture and zoned EFU-TRB. Land further to the northwest is designated Forest and zoned F-2.

South: Abutting and surrounding land to the south is designated RREA and zoned RR-10 and consists of the Klippel Acres Subdivision developed with single-family dwellings on lots ranging in size from 2.5 to 10 acres.

East: Abutting land to the east consists of approximately 8 tax lots zoned designated RREA, zoned RR-10, and developed with rural residences and in one or two cases with very small-scale farming activity. In addition, the small portion of the subject property abutting Tumalo Creek adjoins land across the creek that is within the Bend urban reserve area.

West: Abutting and surrounding land to the west is designated RREA, zoned RR-10, and developed with rural residences within the Klippel Acres Subdivision. Further to the west across Johnson Market Road is land zoned RR-10 and F-2.

F. Procedural History: The subject plan amendment and zone change applications were submitted on May 2, 2007 and were accepted by the county as complete on May 17, 2007. Under Section 22.20.040(D) of the county's development procedures ordinance the 150-day period for issuance of a final local land use decision under ORS 215.477 does not apply because the applicant is requesting approval of a plan amendment and the proposed zone change is dependent on approval of the plan amendment. A public hearing on the applications was held on July 24, 2007. At the hearing, the Hearings Officer received testimony and evidence, left the written evidentiary record open through August 28, 2007, and allowed the applicant through September 7, 2007 to submit final argument pursuant to ORS 197.763. On July 30, 2007 the Hearings Officer conducted a site visit to

the subject property and vicinity and issued a written site visit report on July 31, 2007. By a letter dated August 22, 2007 the applicant requested that the written evidentiary record be extended through September 7, 2007 to allow additional time for the applicant's engineers to submit evidence. By an order dated August 24, 2007, the Hearings Officer extended the written record through September 7, 2007 and allowed the applicant through September 14, 2007 to submit final argument.

- G. Proposal:** The applicant has submitted the subject plan amendment and zone change applications in order to bring some uniformity to the property's plan designation and zoning, and to reflect the fact that surface mining and reclamation has been completed on SM Site 294. Specifically, the applicant requests approval to:
- amend the comprehensive plan to remove SM Site 294 from the county's Goal 5 inventory of significant mineral and aggregate resources;
 - amend the county's zoning map to change the SM-zoned portions of the subject property to RR-10;
 - amend the county's zoning map to remove the Surface Mining Impact Area (SMIA) Combining Zone associated with Site 294; and
 - amend the comprehensive plan map to change the plan designation from Agriculture to RREA through an exception to Goal 3 for those portions of the subject property currently designated Agriculture that have not been included in an exception area.
- H. Public Agency Comments:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the Deschutes County Assessor, Senior Transportation Planner, Building Division, and Property Address Coordinator; the Oregon Department of Geology and Mineral Industries (DOGAMI); and the Oregon Department of Water Resources, Watermaster-District 11. These comments are set forth verbatim at pages 4-5 of the staff report and/or are included in the record. The following agencies did not respond to the request for comments: the Deschutes County Environmental Health Division and Road Department; the Bend Fire Department; TID; and the Oregon Department of Land Conservation and Development (DLCD).
- I. Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 750 feet of the subject property. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed the county had received five letters and a petition signed by 25 people in response to these notices. In addition, six members of the public testified at the public hearing. Public comments are addressed in the findings below.

- J. **Lot of Record:** The record indicates the subject property consists of all or part of nine legal lots of record as a result of two lot-of-record determinations – LR-05-08 and LR-98-42.

III. CONCLUSIONS OF LAW:

PROCEDURES

Notice

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

1. Chapter 22.24, Land Use Action Hearings

a. Section 22.24.030, Notice of Hearing or Administrative Action

A. Individual Mailed Notice

- 1. Except as otherwise provided for herein, notice of a land use application shall be mailed at least 20 days prior to the hearing for those matters set for hearing * ***
***. Written notice shall be sent by mail to the following persons:**

*** * ***

- b. Owners of record of property as shown on the most recent property tax assessment roll of property located:**

*** * ***

- 2. Within 250 feet of the property that is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4).**

B. Posted Notice

- 1. Notice of a land use application for which prior notice procedures are chosen shall be posted on the subject property for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public**

way.

* * *

C. Published Notice

In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 20 days prior to the hearing.

Continuance and Record Extension

b. Section 22.24.140, Continuances or Record Extensions

A. Grounds

1. Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request. * * *
2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:
 - a. Where additional documents or evidence are submitted by any party; or
 - b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony. * * *
3. The grant of a continuance or record extension in any other circumstances shall be at the discretion of the Hearings Officer.

FINDINGS: The record indicates the county provided timely notice under all three of the required notice categories prescribed in Section 22.24.030. Nevertheless, opponents argue the county's notices did not provide them with adequate time prior to the hearing to analyze the applicant's request or respond to it, and that they were prejudiced thereby. At the public hearing, opponents requested that the public hearing be continued 60 to 90 days to afford them additional time to hire legal counsel and prepare rebuttal. The Hearings Officer declined to continue the public hearing, but at the close of the hearing left the written evidentiary record open for 36 days, and subsequently issued an order extending the written record for an additional 7 days, for a total of 43 days following the close of the hearing. I find these record extensions provided opponents with ample time to respond to the applicant's proposal, and the record indicates they submitted evidence during the period the written record was open. Therefore, I find opponents' substantive rights were not prejudiced.

Process for Approval of Plan Amendment and Zone Change

2. Chapter 22.28, Land Use Action Decisions

c. Section 22.28.030, Decision on Plan Amendments and Zone Changes

* * *

- B. In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.**
- C. Plan amendments and zone changes requiring an exception to the goals concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board made under DCC Title 22.**
- D. Notwithstanding DCC 22.28.03(C), when a plan amendment subject to a DCC 22.28.030(C) hearing before the Board of County Commissioners has been consolidated for hearing before the Hearings Officer with a zone change or other permit application not requiring a hearing before the board under DCC 22.28.030(C), any party wishing to obtain review of the Hearings Officer's decision on any of those other applications shall file an appeal. The plan amendment shall be heard by the board consolidated with the appeal of those other applications.**

FINDINGS: The Hearings Officer finds the applicant's proposed plan amendment, zone change and goal exception will be considered by the Board of County Commissioners (board) at a public hearing. That is because a portion of the applicant's proposed plan amendment from Agriculture to RREA requires an exception to Goal 3. In addition, I find the remaining portions of the applicant's proposed plan amendment and zone change will be heard by the board because they were consolidated for hearing before me and are likely to be appealed to the board.

PLAN AMENDMENT

FINDINGS: The applicant has requested approval of a plan amendment to remove SM Site 294 from the county's Goal 5 inventory of significant mineral and aggregate sites, and to re-designate to RREA the small portion of the subject property located in its northeast quadrant currently

designated Agriculture. As discussed above, the proposed plan amendment, coupled with the proposed exception to Goal 3 and zone change from SM to RR-10, would make the subject property's plan designation and zoning consistent and reflect the fact that SM Site 294 has been completely mined and reclaimed and no longer has a significant mineral and aggregate resource.

At the outset, it is useful to review the rather convoluted history of the subject property's plan designation.¹ When the county adopted its original comprehensive plan maps in 1979 it included a large part of the subject property in an RREA to reflect the then-existing rural residential development in the area. However, most of the subject property also was zoned SM to reflect its surface mining history. In the late 1980's the Land Conservation and Development Commission's (LCDC's) acknowledgement of the county's comprehensive plan provisions addressing mineral and aggregate resources under Goal 5 was reversed and remanded by the Court of Appeals in Coats v. LCDC, 67 Or App 504 (1984). Pursuant to a subsequent LCDC order the county undertook a lengthy process to inventory mineral and aggregate resources in the county, to develop a plan to preserve and protect those resources, and to amend the county's comprehensive plan and zoning ordinance to adopt the inventory and measures to protect sites. These plans were adopted through several 1990 ordinances and included placement of Site 294 on the inventory, adoption of a site-specific ESEE (Economic, Social, Environmental and Energy) analysis for Site 294, and adoption of Ordinance No. 90-029 zoning the subject property SM and some of the surrounding land SMIA. However, the ESEE analysis for Site 294 did not identify the appropriate zoning designation following surface mining and reclamation.²

In 1992, as part of the county's state-mandated periodic review, the county adopted ordinances amending its original 1979 comprehensive plan map to conform it to the county's adopted and acknowledged zoning map. In particular, the 1992 map amendments were intended to assure that the areas designated and mapped RREA included all land zoned RR-10 on the zoning map because it appeared that some of the RR-10-zoned areas had been inadvertently omitted from the 1979 comprehensive plan map. Rural Residential Exception Areas adopted in the 1992 comprehensive plan map include significant portions of the subject property. The 1992 modifications to the RREAs on the 1979 plan map are reflected in the maps labeled Exhibits "A" and "B" to Ordinance No. 92-060. The Exhibit "B" map, a scanned version of which is included in this record as Exhibit M to the applicant's burden of proof, shows the portions of the subject property in the RREA adopted in 1992 -- including those portions of the property already included in the RREA adopted in 1979 and those portions added to the RREA in 1992 to conform with the zoning map's RR-10 zoning.

As discussed in detail in the findings below, as a result of the adoption of the 1992 amended maps, a small portion of the subject property -- approximately 17.42 acres -- was not included in the RREA and remained designated Agriculture. Some of that acreage includes agricultural soils; some does not. The applicant has requested approval of an exception to Goal 3, Agricultural

¹ This is a summary. A much more detailed history is set forth on pages 7-11 of the applicant's burden of proof.

² In a letter dated August 19, 2007, Ben Mundie, Reclamationist for DOGAMI, stated DOGAMI's mining and reclamation permits identified the post-mining use of Site 294 for "pasture, residential homesites, agricultural, or best beneficial use of the area."

Kimble

PA-07-2, ZC-07-2

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Lands, to re-designate this Agriculture-designated land to RREA so that the entire property has the same plan designation.

The Hearings Officer finds the comprehensive plan does not include specific approval standards for plan amendments. Staff and the applicant have identified the following plan policies they believe are relevant to the proposed plan amendment.

COMPREHENSIVE PLAN GOALS AND POLICIES

B. Title 23 of the Deschutes County Code, the Deschutes County Comprehensive Plan

1. Chapter 23.24, Rural Development

a. Section 23.24.020, Goals

- 1. To preserve and enhance the open spaces, rural character, scenic values and natural resources of the County.**

FINDINGS: The Hearings Officer finds the rural development goals and policies in this chapter would be satisfied by the proposed plan amendment from Agriculture to RREA for a portion of the subject property in light of the county's 1992 adoption of a comprehensive plan including the majority of the subject property within the designated RREAs.³ Opponents argue the better way to preserve the rural character of the area surrounding the subject property is to leave the current Agriculture designation intact, to re-designate the rest of the property to Agriculture, and to re-zone the entire property to EFU. The Hearings Officer disagrees. The record indicates only a small amount of land in the surrounding area is zoned EFU and the vast majority is zoned RR-10 and developed with residential lots and single-family dwellings. Therefore, I find the rural character of the area is predominantly one of rural residential development and not agriculture.

- 2. To guide the location and design of rural development so as to minimize the public costs of facilities and services, to avoid unnecessary expansion of service boundaries, and to preserve and enhance the safety and viability of rural land uses.**

FINDINGS: The Hearings Officer finds the applicant's proposed plan amendment from Agriculture to RREA for a portion of the subject property is consistent with this comprehensive plan goal because it is adjacent to large areas of land, including the majority of the subject property, that is designated RREA, and near RR-10-zoned land developed with rural residences. Therefore, the proposed plan amendment from Agriculture to RREA will not require unnecessary expansion of service boundaries.

- 3. To provide for the possible long-term expansion of urban**

³ As discussed in the findings below, the applicant's proposed plan amendment to remove SM Site 294 from the county's Goal 5 inventory of significant mineral and aggregate resource sites is subject to other plan policies.

areas while protecting the distinction between urban (urbanizing) land and rural lands.

FINDINGS: The Hearings Officer finds the applicant's proposed plan amendment is consistent with this comprehensive plan policy because the proposed re-designation from Agriculture to RREA will preserve the subject property as rural land. In addition, as discussed in the Findings of Fact above, the subject property includes a small area that adjoins Bend's urban reserve area and the entire property is located close to the Bend Urban Growth Boundary (UGB). For this reason, I find that development of the subject property at RR-10 density will facilitate redevelopment of the property at urban density if and when it is annexed into the UGB. Finally, I concur with staff that the relatively low density of RR-10 development on the subject property will provide a clear demarcation between rural and urban lands. As discussed in the findings below, the minimum lot size in the RR-10 zone is ten acres.

2. Chapter 23.60, Transportation

a. Section 23.60.010, Transportation

* * *

The purpose of DCC 23.60 is to develop a transportation system that meets the needs of Deschutes County residents while also considering regional and state needs at the same time. This plan addresses a balanced transportation system that includes automobile, bicycle, rail, transit, air, pedestrian and pipelines. It reflects existing land use plans, policies and regulations that affect the transportation system.

FINDINGS: The subject property has access from Johnson Market Road, a designated rural collector road maintained by the county, across Tax Lot 11401 owned by the applicant and located between the most northerly northwest corner of the subject property and the road. The proposed plan amendment from Agriculture to RREA and zone change from SM to RR-10 would allow the subject property to be developed with up to 13 rural residences that would generate minimal additional traffic.⁴ As discussed in the findings below, the Hearings Officer has found that for this reason the proposed plan amendment and zone change will not significantly affect a transportation facility and therefore will be consistent with the Transportation Planning Rule (TPR) in OAR Chapter 660 Division 12. For these reasons, I also find the proposed plan amendment will be consistent with the comprehensive plan's transportation policies.

3. Chapter 23.68, Public Facilities

a. Section 23.68.020, Policies

⁴ Although the subject property is approximately 159 acres in size, the applicant estimates no more than 13 dwellings would be permitted in a subdivision developed on the property taking into account the amount of land needed for roads and other infrastructure.

1. **Public facilities and services shall be provided at levels and in areas appropriate for such uses based upon the carrying capacity of the land, air and water, as well as the important distinction that must be made between urban and rural services. In this way public services may guide development while remaining in concert with the public's needs.**
2. **Future development shall depend on the availability of adequate local services in close proximity to the proposed site. Higher densities may permit the construction of more adequate services than might otherwise be true. Cluster and planned development shall be encouraged.**
3. **New development shall not be located so as to overload existing or planned facilities, and developers or purchasers should be made aware of potentially inadequate power facilities in rural areas.**

* * *

9. **New development shall not be located so as to overload existing or planned facilities, and developers or purchasers should be made aware of potentially inadequate power facilities in rural areas.**

FINDINGS: Most of the land abutting and surrounding the subject property is zoned RR-10 and developed with rural residences. The staff report states, and the Hearings Officer agrees, that the existing rural residential development indicates public facilities and services currently are available in the area. The record indicates the subject property is located within the boundaries of the Deschutes Rural Fire Protection District #2 (RFPD) and would receive fire protection from the Bend Fire Department under a contract with the RFPD. In addition, the property would receive police protection from the Deschutes County Sheriff, and can be served by existing utility providers. The existing rural development also indicates dwellings on the subject property can be served by on-site individual or community wells and individual on-site septic systems. Finally, as discussed above, the subject property has frontage on and access from Johnson Market Road. For these reasons, I find the proposed plan amendment is consistent with the comprehensive plan's public facilities policies.

4. **Chapter 23.96, Open Space, Areas of Special Concern, and Environmental Quality**

a. **Section 23.96.030, Policies**

* * *

10. **As part of subdivision or other development review, the**

County shall consider the impact of the proposal on the air, water, scenic and natural resources of the County. Specific criteria for such review should be developed. Compatibility of the development with those resources shall be required as deemed appropriate at the time given the importance of those resources to the County while considering the public need for the proposed development.

FINDINGS: The Hearings Officer finds this plan policy is not applicable because the applicant's proposal does not involve a subdivision or other development review. I find the compatibility analysis identified in this policy is implemented through the county's zoning ordinance provisions, such as the LM Zone that applies along Johnson Market Road and Tumalo Creek and the WA Zone applicable to the entire subject property. The standards in these zones will apply to any development on the subject property following re-designation to RREA and rezoning to RR-10.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed plan amendment from Agriculture to RREA is consistent with all applicable comprehensive plan goals and policies concerning rural development, transportation, public facilities and opens space identified by the applicant and staff.

STATEWIDE GOALS AND ADMINISTRATIVE RULES

Agriculture to RREA

Agricultural Lands

FINDINGS: The applicant argues his proposed plan amendment to re-designate a portion of the subject property from Agriculture to RREA is justified for the following reasons under the statewide goals and administrative rules: (1) some of the Agriculture-designated land does not qualify as "agricultural land" based on soil classification; (2) the portion of the Agriculture-designated land that *does* qualify "agricultural land" based on soil classification nevertheless is unsuitable for farm use because the soils are unproductive, and the land it is too small size and isolated to put it to productive farm use in conjunction with nearby EFU-zoned land; and (3) the unsuitable Agriculture-designated land qualifies for an exception to Goal 3. These arguments are discussed in the findings below.

C. Oregon Administrative Rules (OAR) Chapter 660, Land Conservation and Development Commission

1. Division 15, State-wide Planning Goals and Guidelines

a. OAR 660-015-0000(3), Agricultural Lands

GOAL 3

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

DEFINITIONS

Agricultural Land -- * * * In eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4. (Emphasis added.)

2. Division 33, Agricultural Land

a. OAR 660-033-0030, Agricultural Land

- (1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.

FINDINGS: The threshold question is whether the Agriculture-designated portion of the subject property qualifies as "agricultural land" under Goal 3 and OAR 660-033-0020(1). According to Exhibits "A" and "B" to Ordinance No. 92-060, the 17.52 acres of Agriculture-designated land on the subject property was comprised of the following acreage and soil classifications:

<u>Lot</u>	<u>Size of Area</u>	<u>% of Soil Type VII-VIII</u>
Tax Lot 819	1.50 acres	None
Tax Lot 820	7.40 acres	None
Tax Lot 821	8.50 acres	100
Tax Lot 825	.00 acres	
Tax Lot 826	.02 acres	100

In other words, in 1992 the county determined 8.9 acres of the subject property (in Tax Lots 819 and 820) included Class VI or better soils and therefore constituted "agricultural lands," and 8.52 acres of the subject property (in Tax Lots 821 and 826) included Class VII and VIII soils and therefore did not constitute "agricultural lands."

- (2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in OAR 660-033-0020(1). (Emphasis added.)

FINDINGS: The applicant argues the Agriculture-designated portions of the subject property with Class VII and VIII soils are not "suitable for farm use" because they are not necessary to permit farm practices on adjacent or nearby lands. Specifically, the applicant argues the small portion of Tax Lot 826 designated "Agriculture" is located on steep land within the Tumalo Creek Canyon, and the portion of Tax Lot 821 designated "Agriculture" is not "suitable for farm use" because:

- it is too small and isolated to be put to farm use in conjunction adjacent and nearby lands;
- it is comprised of Class VII and VIII soils that are not productive for either the production of farm crops or livestock;
- although the subject property has irrigation water rights, the record indicates these rights have been leased for in-stream use;;
- any agricultural use of the property would require significant energy inputs and expense that would not be cost-effective and in any event would have to be limited due to the proximity to existing rural residential development (such as use of fertilizers and pesticides; and
- the existing land use pattern is rural residential and not agricultural.

Opponents argue the entire subject property should be considered "agricultural land" regardless of soil classification because historically it was part of the Klippel Ranch and was engaged in

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farm use, and because the leased water rights could be returned to the subject property to make it more productive. The Hearings Officer disagrees. As discussed above, the majority of the subject property already is designated RREA, indicating the county determined any historical farm use on the subject property did not make it "agricultural." In addition, the applicant argues that even if the in-stream water rights were transferred back onto the subject property they would not make this land more productive since these Class VII and VIII soils are not rated with irrigation. In addition, opponents argue the capability of the soils on the subject property could be improved if the applicant were required to replace the topsoil removed during mining operations and used to create buffering berms on the perimeter of the extraction areas. I find this argument has no support in this record. The applicant's site-specific soils analysis shows the soils on the subject property have been significantly altered by mining and reclamation activity, and the topsoil is comprised of the same soil types identified elsewhere on the subject property that as Class VI, VII and VIII soils have very limited agricultural capability.

- (3) **Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.**

FINDINGS: Tax Lot 821 adjoins land designated Agriculture and zoned RR-10 on the east that is not own by the applicant. Tax Lot 821 adjoins land designated Agriculture and zoned SM on the north and west (Tax Lots 819 and 820) owned by the applicant and for portions of which the applicant has requested approval of an exception to Goal 3. The record indicates, and the Hearings Officer's site visit observations confirmed, that one or two parcels east of the subject property could be considered "hobby farms" with small areas of cultivated pasture. However, the owners of these parcels have not offered to utilize the portions of Tax Lots 819, 820 and 821 in conjunction with their "farm use." I find the Agriculture-designated portions of the subject property and the hobby farms in the area are both too small to be put to productive farm use alone or in conjunction with one another. Therefore, for these reasons, and for the reasons set forth in the goal exception findings below, I find the portions of Tax Lots 819, 820 and 821 designated Agriculture are not necessary to permit farm practices on the rest of the subject property or other surrounding property owned by others.

- (4) **When inventoried land satisfies the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the soil capability classifications for the Agriculture-designated portions of Tax Lots 821 and 826 do not satisfy the definition of agricultural land (Class VII and VIII), and I have found the Class VI

soils on the remainder of Tax Lot 821 and Tax Lots 819 and 820 do not qualify as "forest land."

- (5) **Notwithstanding the definition of "farm use" in ORS 215.203(2)(a), profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3, "Agricultural Land," is applicable.**

FINDINGS: The Hearings Officer finds that because the subject property is not engaged in farm use, has not been engaged in farm use since it was zoned SM, and is predominantly designated RREA, there is no basis from which to determine whether or not it could be profitably put to farm use. However, for the reasons discussed in the findings above and below, I find the Agriculture-designated portions of the subject property simply cannot be put to productive farm use alone or in conjunction with other lands designated and zoned for agriculture, and therefore profitability and gross income considerations are not relevant.

- (6) **More detailed data on soil capability than is contained in the U.S. Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the U.S. Natural Resources Conservation Service (NRCS) land capability classification system.**

FINDINGS: In support of its applications, the applicant submitted a report entitled "Soil Survey of Harris Kimble Property" dated December 2006 and prepared by Steve Wert, a certified soil scientist with Wert and Associates, Inc. The study indicates the entire subject property is comprised of three major soils types, described as follow:

- 1. Soil Unit 85A, Lundgren.** This soil unit consists of deep, well-drained sandy loam soil over gravel and sands from glacial out-wash. The size of the gravel varies from a few inches to 5-feet in diameter. This soil unit has a capability rating of Class VI.
- 2. Soil Unit 62D, Henkle-Lava Flow.** This soil unit consists of shallow, gravelly soil over basalt lava flows and has a soil capability classification of Class VII.
- 3. Soil Unit 155C, Wanoga.** This soil unit consists of well drained sandy loam over cinders that range in size from 1" to 4" diameter. This soil unit has a capability rating of Class VI.

Mr. Wert also identified six other soils on the subject property: (1) Lundgren-sand phase; (2) surface mined; (3) steep side slopes; (4) unnamed soil; (5) pond bottom; and (6) road. According to the soils map attached to Mr. Wert's soils analysis, he found that 19 percent of the subject property consists of Class VII or VIII soils. Based on his detailed soils analysis for the portion of the subject property designated Agriculture Mr. Wert found that with one exception all of this area is comprised of Class VII soils. The applicant argues, and the Hearings Officer agrees, that based on Mr. Wert's site-specific soils analysis the majority of soils on the Agriculture-designated portions of the property do not constitute "agricultural land."

Exception to Goal 3

3. Division 4, Interpretation of Goal 2 Exception Process

a. OAR 660-004-0010, Application of the Goal 2 Exception Process to Certain Goals

- (1) * * * The exceptions process is generally applicable to all or part of those statewide goals which prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands;" * * *

* * *

FINDINGS: The applicant is seeking approval of an exception to Goal 3 for the portions of Tax Lots 819, 820 and 821 designated Agriculture that *do* constitute "agricultural land." As shown in the table set forth on page 14 above, approximately 8.9 acres on these three tax lots are comprised of soils classified as Class VI or better.

b. OAR 660-004-0018, Planning and Zoning for Exception Areas

- (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outline in this rule.

FINDINGS: The applicant is requesting an exception to Goal 3 for that part of the subject property that was not included in the exception areas mapped in 1979 and 1992 on the basis that this area is irrevocably committed to rural residential use.

- (2) For "physically developed" and "irrevocably committed" exceptions to the goals, plan and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:

- (a) That are the same as the existing land uses on the exception site;

FINDINGS: The applicant has requested approval of a zone change for the subject property to RR-10. This zone prescribes a 10-acre minimum lot size and maximum density that does not exceed the maximum density established in the WA Zone for partitions and subdivisions. The uses permitted in the RR-10 Zone are the same as the existing uses on the surrounding RREA zoned RR-10 to which the applicant proposes to add the subject property – i.e., rural residences – and therefore the applicant’s proposal is consistent with this criterion.

- (b) That meet the following requirements:

- (A) The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals and are consistent with all other applicable Goal requirements; and

FINDINGS: As discussed in the zone change findings below, the purpose of the RR-10 Zone is to provide for rural uses and to preserve the rural character of the area. In addition, as discussed in findings elsewhere in this decision, the WA Zone which applies to the subject property places additional restrictions on density of development in the RR-10 Zone to assure preservation of wildlife habitat. As a result, the rural uses, density and public facilities and services on the subject property following approval of the proposed goal exception and zone change would allow only “rural uses” consistent with this criterion.

- (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

FINDINGS: As discussed in the findings above, most parcels abutting and surrounding the subject property are zoned RR-10 and developed with rural residences, and therefore they are nonresource land. The only nearby land that could be considered “resource land” is Tax Lot 700 on Assessor’s Map 14-11-12 located north of the subject property, zoned SM and engaged in surface mining activities. However, the applicant’s burden of proof states, and the Hearings Officer agrees, that the proposed goal exception that would add portions of the subject property to the existing RREA would not commit Tax Lot 700 to nonresource use because the SMIA Zone associated with this surface mining site applies and will protect the surface mining from conflicting uses through minimum setbacks between the surface mine and dwellings or other noise- or dust-sensitive uses permitted in the RR-10 Zone. The record indicates Tax Lot 700 is located far enough from the subject property that the SMIA Zone will not preclude the siting of rural residences on the subject property. The record indicates the closest EFU-zoned land is located on the portion of Tax Lot 817 located in Section 12, north of the subject property. However, there are two intervening RR-10 zoned tax lots – Tax Lots 809 and 1500 – that would provide a buffer between rural residences on the subject property and farm use on Tax Lot 817. Finally, the record indicates the closest forest-zone land touches the northwest corner of the

portion of Tax Lot 817 in Section 12 to the north. The applicant argues, and I agree, that approval of the proposed goal exception will not commit this land to nonresource uses because most of the F-2 zoned land is located on the west side of Johnson Market Road, and there are RR-10 zoned parcels developed with residences located between the subject property and the road. For these reasons, I find the proposed goal exception is consistent with this criterion.

- (C) **The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;**

FINDINGS: The Hearings Officer finds the proposed goal exception is consistent with this criterion because the uses, densities, and public facilities and services permitted in the RR-10 Zone will be compatible with the nearby resource lands and uses because the RR-10 Zone strictly limits uses to rural uses at low density without urban services.

- (c) **For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities," if applicable; or**

FINDINGS: The subject property does not adjoin an unincorporated community, and the applicant is not requesting a goal exception to include the subject property in an unincorporated community. Therefore, the Hearings Officer agrees with the applicant that this criterion is not applicable.

- (d) **That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exceptions area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the proposed goal exception is not requested for, and would not allow, industrial development or uses.

- (3) **Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in Section (4) of this rule and OAR 660-004-0020 through 660-004-0022.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because I have found the proposed goal exception satisfies the requirements of Section (2) of this rule.

- (4) **"Reasons" Exceptions:**

* * *

FINDINGS: The Hearings Officer finds the provisions of this subsection are not applicable because the applicant is not seeking approval of a "reasons" exception to Goal 3.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the proposed exception to Goal 3 for the portions of the subject property designated Agriculture that were not included in the exception areas mapped in 1979 and 1992 satisfies all requirements for an "irrevocably committed" exception.

b. OAR 660-004-0015, Inclusion as Part of the Plan

* * *

FINDINGS: This rule requires that if the county approves the exception to Goal 3 proposed by the applicant, it must adopt "findings of fact and a statement of reasons which demonstrate that the standards for an exception have been met." The Hearings Officer finds the findings immediately above and below demonstrate compliance with the standards in Goal 2, Part II(c), OAR 660-004-0020(2) and OAR 660-004-0022.

c. OAR 660-004-0028, Exception Requirements for Land Irrevocably Committed to Other Uses

- (1) **A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:**

FINDINGS: The applicant has requested approval of an "irrevocably committed" exception for the portions of the subject property designated Agriculture but not included in the RREAs mapped in 1979 and 1992 because of existing plan designation, zoning and uses in the surrounding rural residential land. Compliance with the factors in this rule are addressed in the findings below.

- (a) **A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule:**

FINDINGS: The applicant correctly notes that the language of the statute and the Goal 2 administrative rule are virtually identical because both allow an exception "because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable."

- (b) **For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken;**

FINDINGS: The applicant is requesting an exception to Goal 3 to add to the existing RREA that

nearly surrounds the subject property those small areas on the property designated Agriculture and not previously included in the RREAs mapped in 1979 and 1992.

- (c) An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

FINDINGS: The applicable goal in this case is Goal 3 because it would apply to the Agriculture-designated portions of the subject property if the proposed goal exception were not approved.

- (2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

FINDINGS: As discussed in the findings above, there are two areas on the subject property designated Agriculture for which the applicant is requesting an exception to Goal 3 -- .02 acres on Tax Lot 826 and 8.5 acres on Tax Lots 819, 820 and 821. The applicant's burden of proof notes that both of these areas are part of legal lots of record that already are included in the existing RREA. The applicant is requesting the goal exception to include these small areas within the larger RREA to avoid confusion in the future and to reflect the character and development in the surrounding area.

- (a) The characteristics of the exception area;
- (b) The characteristics of the adjacent lands;
- (c) The relationship between the exception area and the lands adjacent to it; and

FINDINGS: The small portion of Tax Lot 826 subject to the proposed goal exception is a strip of land located between Tumalo Creek and the eastern boundary of the existing RREA, essential consisting of rimrock within Tumalo Creek Canyon. The applicant's burden of proof notes this land may in fact have been included in the RREA but may have inadvertently not been included in the RREA map.

The portions of Tax Lots 819, 820 and 821 subject to the proposed goal exception consist of part of the reclaimed SM Site 294 as well as portions of the existing RREA. As discussed above, Tax Lot 819 already is developed with a single-family dwelling. And as discussed in detail in the findings above, these areas include poor quality Class VI soils or Class VII and VIII (non-agricultural) soils. In addition, the record indicates Klippel Road is located adjacent to or on Tax Lots 819, 820 and 821. The lands adjacent to the portions of these tax lots subject to the proposed goal exception are designated RREA, zoned RR-10 or SM, are smaller than the 10-acre

minimum lot size in the RR-10 Zone and have been, or are eligible to be, developed with rural residences.

- (d) The other relevant factors set forth in OAR 660-004-0028(6).

FINDINGS: The factors of OAR 660-004-0028(6) are addressed in the findings below.

- (3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 and 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

- (a) Farm use as defined in ORS 215.203:

FINDINGS: ORS 215.203(2) defines "farm use" as follows:

As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267(3) or 321.824(3).

The site-specific soils analysis prepared by Steve Wert and discussed in detail in the findings above shows that soils on the portion of Tax Lot 826 are classified Class VII nonagricultural soil, and therefore the Hearings Officer finds they are not suitable for "farm use." The soils analysis shows that although the portions of Tax Lots 819, 820 and 821 subject to the proposed goal exception include both Class VI and Class VII soils, the Class VI soils are of poor quality and have been significantly altered by surface mining and reclamation activities on SM Site 294. In addition, I have found these areas are simply too small to be put to productive farm use either alone or in conjunction with nearby farm uses on farm land. The applicant also argues, and I agree, that the fact these areas are surrounded by RREAs and roads makes farming them impracticable.

- (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and
- (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

FINDINGS: As discussed in the findings below concerning compliance with Goal 4, the Hearings Officer has found the subject property generally, and the portions of the property subject to the proposed goal exception in particular, are not suited to the propagation and harvesting of forest products. These areas have not been mapped, designated or zoned for forest use, they do not have forest soils, and the existing poor quality Class VI soils have been significantly altered by previous mining and reclamation activities on SM Site 294.

- (6) Findings for a committed exception shall address the following factors:
 - (a) Existing adjacent uses;

FINDINGS: Existing adjacent uses have been identified and discussed in the findings above.

- (b) Existing public facilities and services (water and sewer lines, etc.):

FINDINGS: The applicant is not relying on existing public facilities and services such as water and sewer lines to support his proposed "irrevocably committed" exception to Goal 3. The record indicates the existing rural residential development on surrounding land is served by rural services including on-site sewage disposal systems and on-site private or community wells. As discussed in findings elsewhere in this decision the surrounding land also is served by electrical and telephone service.

- (c) Parcel size and ownership patterns of the exception area and adjacent lands:
 - (A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall

include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land decisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

FINDINGS: As discussed in the findings above, the subject property is approximately 159 acres in size and is comprised of all or part of ten tax lots varying in size from .68 to 44.95 acres. The record indicates these tax lots comprise lots of record that were lawfully created before the county's land use regulations were adopted or acknowledged, and therefore goal findings were not required at that time. The record indicates all of these lots were created by deeds. Therefore, none of these lots was created through a land use action such as a partition or subdivision, or through application of the goals. The record indicates that in 1979 and 1992 portions of the subject property were included in an adopted RREA for which goal findings were made, based upon the existing pattern of development with rural lots predominantly smaller than ten acres and developed with rural residences. As a result of this history, the applicant argues, and the Hearings Officer concurs, that these prior land divisions, RREA designations and RR-10 zoning justify the proposed goal exception because they demonstrate irrevocable commitment to nonresource uses.

- (B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual size. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in

separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amongst larger farm or forest operations, or are buffered from such operations.

FINDINGS: As discussed in the findings above, the portions of the subject property proposed for a goal exception have been considered as a potential single farm unit. However, the applicant notes that because Tax Lot 819 is owned by CLR, Inc. it would be reasonable not to consider it part of a single potential farm unit because it is not in the same ownership. Nevertheless, the applicant argues, and the Hearings Officer agrees, that even considering the Agriculture-designated portions of all four tax lots as a single unit for purposes of this goal exception criterion, I find these lands are simply too small to be put to productive farm use alone or in conjunction with farm operations in the surrounding area due primarily to its poor quality soil, significant alterations to the soil as the result of previous mining and reclamation activities, and the proximity of significant rural residential development and roads serving that development. Moreover, I agree with the applicant that the fact this potential farm "unit" is not contiguous to any other Agriculture-designated land makes it even more appropriate for the proposed exception.

(d) Neighborhood and regional characteristics;

FINDINGS: As discussed in the findings above, the Hearings Officer has found the character of the neighborhood is rural residential in light of the large surrounding RREA and area zoned RR-10 and developed with rural residences. The larger "region" – from Tumalo Creek and the Bend urban area reserve on the east to the western boundary of the Saddleback Subdivision on the west side of Johnson Market Road – contains little resource land other than surface mining sites. As discussed above, the nearest farm and forest lands are separated from the subject property by intervening RR-10 zoned land and roads.

(e) Natural and man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

FINDINGS: The record indicates there are no Goal 3 resource lands adjacent to the subject property. The applicant argues, and the Hearings Officer agrees, that the lack of adjacent resource lands makes appropriate for approval of a goal exception the portions of the subject property proposed for such an exception.

(f) **Physical development according to OAR 660-004-0025;
and**

FINDINGS: OAR 660-004-0025 authorizes "physically developed" goal exceptions for circumstances in which land has been physically developed with structures, roads, sewer and water facilities and utility facilities. The applicant has not requested a "physically developed" goal exception, but correctly notes that physical development is a factor to be considered for an "irrevocably committed" goal exception. The record indicates the only development on the subject property consists of an existing single-family dwelling on Tax Lot 819, two private roads -- Klippel Road and Palla Lane -- and a surface mine on a significant portion of the subject property. The applicant argues, and the Hearings Officer agrees, that while these developments standing alone do not justify the proposed goal exception, they provide support for the applicant's proposal in conjunction with the other factors discussed in these findings that indicate the subject property is irrevocably committed to nonresource -- i.e., rural residential -- use.

(g) **Other relevant factors.**

FINDINGS: The applicant identifies the following other factors relevant to his proposed "irrevocably committed" goal exception:

- the subject property contains many areas that would be considered suitable for nonfarm dwellings, so even if the property were re-zoned to EFU it would not be developed with farm uses;
- portions of Tax Lots 819, 820, 821 and 826 consist of land already included in an RREA;
- the mapping history of the subject property strongly suggests the county erred in not including in the RREA identified in 1979 the Agriculture-designated portions of the property subject to this proposed goal exception, and that all portions of Section 13 located west of Tumalo Creek should have been included in the RREA area and zoned RR-10; and
- even if the county did not err in failing to include the Agriculture-designated portions of Tax Lots 819, 820, 821 and 826 in the RREA, the small size of their total acreage in relation to the size of the subject property and the existing RREA makes these portions of the property appropriate for re-designation to RREA.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated his proposed exception to Goal 3 for the portions of Tax Lots 819, 820, 821 and 826 designated Agriculture satisfy all approval criteria for an "irrevocably committed" exception.

Forest Lands

4. Division 6, Forest Lands

a. OAR 660-15-0000(4), Forest Lands

FINDINGS: Goal 4 provides as follows:

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

b. OAR 660-06-001, Purpose

- (1) The purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700.
- (2) To accomplish the purpose of conserving forest lands, the governing body shall:
 - (a) Designate forest lands on the comprehensive plan map as forest lands consistent with Goal 4 and OAR Chapter 660, Division 6;
 - (b) Zone forest lands for uses allowed pursuant to OAR Chapter 660, Division 6 on designated forest lands; and
 - (c) Adopt plan policies consistent with OAR Chapter 660, Division 6.
- (3) This rule provides for a balance between the application of Goal 3 "Agricultural Lands" and Goal 4 "Forest Lands," because of the extent of lands that may be designated as either agricultural or forest land.

FINDINGS: No portion of the subject property is designated or zoned for forest use. The record indicates that at the time the majority of the subject property was zoned SM none of the subject property was designated or zoned for forest use. There is no evidence in the record that the subject property ever has been engaged in commercial forest activities such as growing and harvesting commercial tree species. The record indicates, and the Hearings Officer's site visit observations confirmed, that the un-mined portions of the subject property contain scattered stands of ponderosa pine and juniper trees. As discussed in the findings above, in his site-specific

soils analysis Steve Wert concluded the previous mining and reclamation activities on the subject property significantly altered the soil characteristics. The soils analysis concluded that the soil units identified on the subject property that are potentially suitable for forest uses would produce 50 cubic feet/acre or less wood fiber, and therefore would not be considered suitable for the production of commercial forest products. For these reasons, I find the Agriculture-designated portions of the subject property do not constitute "forest land."

Surface Mining Lands

5. Division 23, Procedures and Requirements for Complying with Goal 5

a. OAR 660-023-010, Definitions

As used in this division, unless the context requires otherwise:

*** * ***

- (5) "PAPA" is a "post-acknowledgement plan amendment." The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.**

FINDINGS: In the Hearings Officer's previous decision in *Stott* (PA-98-12/ZC-98-6), I held the term "significant resource" is not defined in Title 18 or the comprehensive plan, but that a plan amendment and zone change to "de-list" and rezone an inventoried surface mining site constitutes a "PAPA," and therefore the provisions of OAR 660-023-0180 concerning mineral and aggregate resources apply to such an application to the extent they reasonably can be applied to a decision to *remove* a site from the county's adopted inventory. I further found OAR 660-023-180(3) identifies the pertinent standards for determining the "significance" of a mineral and aggregate resource as follows:

- (3) An aggregate resource shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, . . . :**
- (a) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 tons outside the Willamette Valley;**

- (b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or
- (c) The aggregate site is on an inventory of significant aggregate sites in an acknowledged plan on the applicable date of this rule. (Emphasis added.)

In *Stott and Coats* (PA-04-4, ZC-04-2), the Hearings Officer found that the applicant only needs to meet one of the three options for the site to be considered significant. SM site 294 is included on the county's Goal 5 inventory of significant mineral and aggregate sites, and therefore it satisfies at least one of these criteria for "significance." However, in *Stott and Coats* I held that applying criteria (c) to preclude moving a reclaimed surface mining site from the county's inventory:

"... would create a 'Catch-22' where, as here, the applicant is seeking to remove a site from the inventory as no longer 'significant.' Consequently, I find the 'significant' standard in paragraph (c) should not be applied to PAPAs requesting removal of a site from an acknowledged inventory."

The Hearings Officer adheres to that holding here. The county's Goal 5 inventory of significant mineral and aggregate resources describes SM Site 294 as follows:

SITE NO.	LEGAL DESC.	NAME	TYPE	QUANTITY*	QUALITY	ACCESS/ LOCATION
294	171113-00-00817	Bend Aggregate	S&G	777,000	Excellent	Klippel Acres/Bend

*Quantity in cubic yards unless noted.

The Hearings Officer finds the notation "S&G" means "sand and gravel," and the notation "777,000" refers to cubic yards.

The applicant's burden of proof sets forth the following history of mining on the site. The first mining permit was issued by DOGAMI in 1977 (No. 09-0079). The subject property was mined for about one year following issuance of the permit. Although mining activities ceased the mining permit was renewed annually. In 1993, after Site 294 received county surface mining site plan approval, mining activities began again. From 1993 through 2004, approximately 1,320,192 cubic yards of material were extracted from the site. Copies of DOGAMI's reports for Site 294 are included as exhibits Q through AA to the applicant's burden of proof. This number is based on the following table included in the applicant's burden of proof:

Year of Permit	Amount extracted
6/30/93 – 6/30/94	23,000 cubic yards
6/30/94 – 6/30/95	122,000 cubic yards
6/30/95 – 6/30/96	125,000 cubic yards
6/30/96 – 6/30/97	8,000 tons (17, 280 cubic yards)

6/1/97 – 5/31/98	33,400 cubic yards
6/1/98 – 5/31/99	75,000 tons (162,000 cubic yards)
6/1/99 – 5/31/00	100,000 tons (216,000 cubic yards)
6/1/00 – 5/31/01	50,000 tons (108,000 cubic yards)
6/1/01 – 5/31/02	80,000 tons (172, 800 cubic yards)
5/1/02 – 4/30/03	98,200 tons (212,112 cubic yards)
6/1/03 – 5/31/04	75,000 tons (162,000 cubic yards)
TOTAL	1,320,192 cubic yards

Based upon these annual production figures, 1,320,192 cubic yards of resources were extracted from this mine site. Based upon the conversion figures for this site supplied by Ben Mundie of DOGAMI, 611,200 tons were extracted from the site. The County's inventory shows that approximately 359,722 tons (777,000 cubic yards) of resources were originally identified as being available on this site. Because well over that amount of resources have been mined, the applicant argues, and the Hearings Officer agrees, that no significant resource remains on SM Site 294. Therefore, I find the applicant's proposed plan amendment to remove Site 294 from the county's Goal 5 inventory of significant mineral and aggregate resource sites is consistent with Goal 5 and its implementing administrative rules concerning surface mining sites.

Transportation

6. Division 12, Transportation

a. OAR 660-15-0000(12), Transportation

FINDINGS: Goal 12 provides:

To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Goal 12 is implemented by the Transportation Planning Rule (TPR), OAR 660-012-0060, Plan and Land Use Regulation Amendments, which provides in pertinent part as follows:

(1) Where an amendment to a functional plan, an acknowledged comprehensive

plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

In support of his application, the applicant has provided a traffic analysis dated July 12, 2007, 2007 and prepared by Scott Ferguson of Scott Ferguson & Associates. The traffic study's analyzed the impact of net traffic impacts on Johnson Market Road from traffic generated by 16 single-family dwellings less traffic generated by surface mining activity under the current SM zoning of the subject property. The traffic study found surface mining activity would generate up to 16 p.m. peak hour trips (between 4:00 and 6:00 p.m. weekdays, and that 16 dwellings would generate approximately 160 average daily vehicle trips (ADTs) of which approximately 16 would occur during the p.m. peak hour. Therefore, Mr. Ferguson concluded the applicant's proposed plan amendment to RREA and zone change to RR-10 would not result in a net increase in traffic, and therefore the applicant's proposal would not significantly affect a transportation facility. In his comments on the applicant's proposal, the county's Senior Transportation Planner Peter Russell stated he concurs with Mr. Ferguson's analysis and conclusions. For these reasons, the Hearings Officer finds the applicant's proposed plan amendment and zone change comply with the TPR.

Compliance with Other Statewide Goals

Goal 1, Citizen Involvement. The Hearings Officer finds the proposed plan amendment satisfies this goal because the Planning Division provided public notice of the applicant's proposal through individual mailed notice to affected property owners, posting of the subject property with a notice of proposed land use action sign, and published notice of the public hearing in the "Bend Bulletin" newspaper. In addition, two public hearings will be held before the proposed plan amendment is approved, one before the Hearings Officer and one before the Deschutes County Board of Commissioners (board). Finally, the staff report and my decision will provide the public with information concerning the proposed plan amendment.

Goal 2, Land Use Planning. The Hearings Officer finds this goal is met because at least two public hearings will be held on the proposed plan amendment and zone change.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. The applicant's proposal would remove the SM-designated and zoned portion of the subject site from the county's Goal 5 inventory of significant mineral and aggregate resource sites. As discussed in detail in the findings above, the Hearings Officer has found the subject site no longer contains a resource meeting the minimum threshold for significance under the Goal 5 administrative rules, and therefore the applicant's proposal is consistent with Goal 5. In addition, as discussed elsewhere in this decision, the WA Zone provisions applicable to the subject property will require any division of the property to be a planned or cluster development in which at least 80 percent of the land must be preserved as open space, protecting the wildlife habitat values that are protected by the WA Zone. For these reasons, I find the proposed plan amendment will be consistent with this goal.

Goal 6, Air, Water and Land Resources Quality. As discussed in detail in the findings below, SM Site 294 has been reclaimed and mining activities have ceased. As discussed above, the proposed plan amendment and zone change would allow the subject property to be developed with up to 13 new single-family dwellings on approximately 159 acres, and therefore will have little if any impact on the quality of the air, water, and land resources. The staff report states, and the Hearings Officer agrees, that cessation of mining on the subject property has eliminated the toxic pollution created by large diesel trucks that previously traveled to and from the subject property, and therefore approval of the proposed plan amendment and zone change will actually improve air quality. Therefore, I find the proposed plan amendment will be consistent with this goal.

Goal 7, Areas Subject to Natural Disasters and Hazards. The Hearings Officer finds this goal is not applicable because the subject property is not located in a known natural disaster or hazard area.

Goal 8, Recreational Needs. The Hearings Officer finds this goal is not applicable because the proposed plan amendment and zone change do not reduce or eliminate any opportunities for recreational facilities either on the subject property or in the impact area.

Goal 9, Economy of the State. This goal is to provide adequate opportunities throughout the

state for a variety of economic activities. The Hearings Officer finds this goal is met because the subject property no longer constitutes a significant mineral and aggregate resource, and therefore allowing it to be re-designated and rezoned for rural residential development will not have adverse economic impacts.

Goal 10, Housing. The Hearings Officer finds the proposed plan amendment is consistent with this goal because it would allow the subject property to be developed with up to 13 new single-family dwellings.

Goal 11, Public Facilities and Services. As discussed in detail elsewhere in this decision, the Hearings Officer has found the subject property can be served by adequate public facilities and services. Therefore, I find the proposed plan amendment will be consistent with this goal.

Goal 13, Energy Conservation. The Hearings Officer finds the applicant's proposal will have no effect on energy use or conservation because changing the plan designation and zoning of the subject property, thereby allowing it to be developed with rural residences, will not have an energy impact related to those activities.

Goal 14, Urbanization. The Hearings Officer finds this goal is not applicable because the applicant's proposal does not affect property within an urban growth boundary and does not promote the urbanization of rural land.

Goals 15 through 19. The Hearings Officer finds these goals are not applicable because they address river, ocean, and estuarine resources that are not affected by the applicant's proposal.

ZONE CHANGE

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

FINDINGS: The applicant has requested approval of a zone change from SM to RR-10 for the subject property and to remove SM Site 294 from the county's Goal 5 inventory of significant mineral and aggregate resource sites.

1. Chapter 18.52, Surface Mining Zone (SM)

a. Section 18.52.200, Termination of the Surface Mining Zoning and Surrounding Surface Mining Impact Area Combining Zone

- A. When a surface mining site has been fully or partially mined, and the operator demonstrates that a significant resource no longer exists on the site, and that the site has been reclaimed in accordance with the reclamation plan approved by DOGAMI or the reclamation provisions of this title, the property shall be rezoned to the subsequent use zone identified in the surface mining element of the Comprehensive Plan.**

- B. **Concurrent with such rezoning, any surface mining impact area combining zone which surrounds the rezoned surface mining site shall be removed. Rezoning shall be subject to chapter 18.136 and all other applicable sections of this title, the Comprehensive Plan and Deschutes County Code Title 22, the Uniform Development Procedures Ordinance.**

FINDINGS: The Hearings Officer finds this section requires the applicant to demonstrate that the site:

- has been fully or partially mined;
- no longer has a significant resource; and
- has been reclaimed in accordance with the DOGAMI-approved reclamation plan.

1. Fully or Partially Mined.

2. No Longer a Significant Resource.

As discussed in the findings above concerning the applicant's proposed plan amendment to remove Site 294 from the county's Goal 5 inventory of significant mineral and aggregate sites, incorporated by reference herein, the Hearings Officer finds Site 294 has been fully mined and no longer has a significant resource.

3. Reclaimed in Accordance with DOGAMI-Approved Reclamation Plan.

In support of his proposed zone change the applicant submitted into the record two letters from Ben Mundie, a reclamation specialist for DOGAMI – dated September 2005 and August 2007 and included as Exhibits CC and DD to the applicant's burden of proof, respectively – stating reclamation of Site 294 as required by DOGAMI has been completed. Opponents do not dispute this approval. Rather, they argue the applicant's proposed zone change should not be approved because the reclamation of Site 294 did not comply with all requirements established by the county when the site was zoned SM.

Section 18.52.200(A) provides that a surface mining site shall be rezoned when a surface mining site "has been reclaimed in accordance with the reclamation plan approved by DOGAMI or the reclamation provisions of this title." (Emphasis added.) In other words, compliance with any county reclamation requirements is not a prerequisite for a zone change when, as here, the reclamation required by DOGAMI has been completed. The county's decision approving the surface mining site plan for Site 294 includes the following condition of approval:

"Developer shall apply to Deschutes County to rezone the subject property after the site had been reclaimed in accordance with the reclamation plan approved by DOGAMI and the County." (Bold emphasis added.)

The Hearings Officer finds this condition of approval does not control because it is inconsistent with the language in Section 18.52.200(A). In addition, the applicant's September 4, 2007 rebuttal memorandum points out that the record shows the county adopted a *site plan* for Site 294 but did not adopt a separate reclamation plan *other than the DOGAMI reclamation plan*. In addition, attached to the applicant's September 4 rebuttal memorandum is a copy of Ordinance No. 90-28 that specifically states the county will only approve surface mining site plans and that reclamation plans will be approved only by DOGAMI.

Finally, the applicant argues, and the Hearings Officer agrees, that there is nothing in the county's code that establishes compliance with previous land use decisions as a precondition to approval of a subsequent application. In other words, even if the county had adopted its own reclamation plan with which the applicant and/or his predecessor had failed to comply, such noncompliance would not preclude approval of the proposed plan amendment and zone change.⁵ Opponents also argue that even if all required reclamation has been completed, the subject property should be rezoned to EFU rather than to RR-10 because the ESEE analysis for Site 294, included in the record as Exhibit K to the applicant's burden of proof, does not designate a subsequent beneficial use or zone for the site. As noted above, Ben Mundie's August 2007 letter stated DOGAMI identified post-mining use of Site 294 to include both agriculture and rural residential use. The applicant argues, and the Hearings Officer agrees, that where, as here, the county's ESEE analysis does not identify a post-mining zoning, the appropriate analysis is the one utilized by the applicant in this case – i.e., identifying and evaluating both the nature and capability of subject property and the existing zoning and development in the surrounding area to determine the proper plan designation and zoning. And as discussed in detail in the findings above, I have found for a number of reasons that re-designating and re-zoning the subject property for agriculture is not justified by the character of the subject property or the surrounding area.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies the requirements in Section 18.52.200 to terminate the SM zoning of the subject property and the surrounding SMIA zoning.

2. Chapter 18.136, Amendments

a. Section 18.136.010, Amendments

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

⁵ Similarly, compliance with other aspects of the county-approved site plan for Site 294 – such as use of irrigation water, compliance with a wildlife conservation plan, providing vegetative screening – is not a precondition for the proposed plan amendment and zone change. And as the applicant points out in his September 4, 2007 rebuttal memorandum, these site plan conditions *applied to surface mining activity* on Site 294 and not to post-mining uses.

FINDINGS: The applicant requests approval of a zone change from SM to RR-10 for the subject property. The applicant submitted an application for a quasi-judicial zone change for the subject property on county land use application forms. The Hearings Officer finds the proposed zone change is being reviewed pursuant to the procedures in Title 22 of the county code.

b. Section 18.136.020, Rezoning Standards

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

- A. That the change conforms with the Comprehensive Plan, and the change is consistent with the plan's introductory statement and goals.**

FINDINGS: The Hearings Officer finds the county's comprehensive plan is implemented by the provisions of the zoning ordinance. Therefore, I find compliance with the zoning ordinance will assure compliance with the comprehensive plan.

- B. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.**

FINDINGS: Section 18.60.010 sets forth the purpose of the RR-10 Zone as follows:

The purposes of the Rural Residential Zone are to provide rural residential living environments; to provide standards for rural land use and development consistent with desired rural character and the capability of the land and natural resources; to manage the extension of public services; to provide for public review of nonresidential uses; and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and standards.

As discussed in the findings above, most of the land abutting and surrounding the subject property is designated and zoned RR-10. Much of this land consists of lots in the Klippel Acres Subdivision developed with single-family dwellings. Approval of the proposed zone change would allow the subject property to be developed with uses permitted in the RR-10 Zone including rural residences on large lots. And as also discussed above, because the subject property is within the WA Zone, any partition or subdivision development would be subject to the WA Zone requirements of clustering dwellings and preserving at least 80 percent of the property as open space. The Hearings officer finds such development will be consistent with the purposes of the RR-10 Zone and will provide a suitable rural residential living environment with adequate services.

- C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:**

1. The availability and efficiency of providing necessary public services and facilities.

FINDINGS: As discussed in the findings above, the subject property has transportation access from Johnson Market Road, a designated rural collector road. The applicant's submitted traffic study indicates traffic anticipated to be generated by rural residential development on the subject property permitted in the RR-10 Zone will not exceed the capacity of this road. In addition, the subject property will receive police protection from the Deschutes County Sheriff and fire protection from the Bend Fire Department. The record indicates any new residential development of the subject property will be served by on-site individual or community wells, and will require approval of on-site septic systems. The existence of nearby rural residential development indicates electrical and telephone service will be available to rural residential development on the subject property. For these reasons, the Hearings Officer finds the applicant's proposed zone change satisfies this criterion.

2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

FINDINGS: This zone change approval criterion requires impacts on surrounding land from the zone change to be "consistent" with the goals and policies. The comprehensive plan goals and policies do not establish mandatory zone change approval criteria. The proposed zone change, in and of itself, will have no impact on surrounding lands because it will simply change the county's zoning map. Development of the subject property following the proposed zone change to RR-10 will be subject to development approval standards in the RR-10 and WA Zones, some of which require compatibility with surrounding land uses. For these reasons, the Hearings Officer finds this criterion does not require me to determine whether the proposed zone change would be compatible with surrounding land uses. Nevertheless, because opponents have raised several compatibility issues, I will address them under this approval criterion.

1. Not Compatible with Character of Area. Opponents argue the proposed zone change to RR-10 will permit development incompatible with the surrounding area. As discussed in the findings above, most of the surrounding area is designated and zoned Rural Residential and is developed with rural residences, many of which are on lots in the Klippel Acres Subdivision that are smaller than the 10-acre minimum lot size in the RR-10 Zone and on which many opponents live. Therefore, I find residential development of the subject property will be very similar to the majority of surrounding development. In addition, as also discussed above, because the subject property also is zoned WA, any partitioning or subdividing of the subject property following the zone change to RR-10 will be subject to the WA Zone requirements that dwellings be clustered and that at least 80 percent of the land be preserved as open space. For these reasons, I find the applicant's proposed zone change from SM to RR-10 will allow development compatible with the existing rural residential character of the surrounding area.

2. Impacts on Wildlife. The subject property is zoned WA because it is located in the Tumalo Deer Winter Range. Therefore, development of the subject property under the proposed RR-10 Zone also would be subject to the WA Zone requirements, including limitations on partitions and

subdivisions requiring the clustering of dwellings and preservation of large areas of open space to protect wildlife habitat. For these reasons, the Hearings Officer finds the applicant's proposed zone change to RR-10 will not allow development inconsistent with the wildlife habitat values protected by the WA Zone.

3. Street System Impacts. Opponents argue the applicant's proposed zone change will allow development generating traffic that will exceed the capacity of affected streets. As discussed in the findings above, the subject property has frontage on and access to Johnson Market Road, and the applicant submitted a traffic study concluding that the addition of traffic generated by rural residential development of the subject property under the RR-10 Zone would not exceed the capacity of this road. Opponents also have expressed concern that roads in the Klippel Acres Subdivision – Buck Drive and Klippel Road in particular – cannot safely handle additional traffic. The Hearings Officer made the following observations about Klippel Road in my site visit report.

“Klippel Road is a narrow, winding, undulating gravel road to the point I estimated to be approximately one-quarter mile east of Johnson Market Road where the road has a narrow, poorly maintained paved surface. It was my impression that both the paved and unpaved segments of Klippel Road are no more than 12 to 15 feet wide.”

The applicant argues, and the Hearings Officer agrees, that access to the subject property will be adequate from Johnson Market Road, and that that if and when an application for partition or subdivision approval for the subject property under RR-10 zoning is submitted the county will evaluate the capacity of other roads to handle partition or subdivision traffic, and may require as a condition of development approval that the applicant to improve local roads to handle additional traffic.

4. Impact on Wells. Opponents raised concerns about the impact of developed at RR-10 Zone density of the subject property on existing wells in the area. The record indicates there is an existing well on the subject property, and that Klippel Acres Subdivision lots are served by a community well. There is no evidence in the record that use of the existing well on the subject property has had any effect on the Klippel Acres well or other wells in the surrounding area. And in any event, the adequacy of groundwater water for domestic uses and fire protection will be evaluated at the time of any application for partition or subdivision approval for the subject property.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed zone change from SM to RR-10 satisfies this approval criterion.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDINGS: The applicant argues the proposed zone change from SM to RR-10 is justified by changes in circumstance consisting of the depletion of the subject property's inventoried mineral

and aggregate resources through mining activity such that the subject property no longer contains a significant resource. As discussed in the plan amendment findings above, the applicant argues the proposed zone change is *required* under Section 18.52.200 because mining and reclamation have been completed and no significant resource remains on Site 294. Finally, as also discussed in the findings above, the Hearings Officer has found the RR-10 Zone is the appropriate zone for the subject property following completion of mining and reclamation because of the character of the surrounding area which is predominantly rural residential. For these same reasons, the Hearings Officer finds the proposed zone change from SM to RR-10 is justified by changes in circumstance since the subject property was zoned SM. And I find that approval of this zone change will concurrently remove the associated SMIA Zone.

IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby recommends **APPROVAL** of the applicant's proposed plan amendment from Agriculture and Surface Mining to Rural Residential Exception Area and proposed zone change from SM to RR-10, **SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL:**

1. Prior to final approval of the plan amendment, goal exception and zone change, the applicant shall provide to the Planning Division:
 - a. a metes-and-bounds legal description of the portions of the subject property to be designated Rural Residential Exception Area and zoned RR-10;
 - b. a map at a scale no smaller than 1 inch equals 300 feet showing the portions of the subject property designated Rural Residential Exception Area under this decision; and
 - c. a map at a scale no smaller than 1 inch equals 300 feet showing the portions of the subject property zoned RR-10 under this decision.

Dated this 8th day of November, 2007.

Mailed this 9th day of November, 2007.


Karen H. Green, Hearings Officer



Deschutes County Community Development Department

117 NW LAFAYETTE AVENUE
BEND, OREGON 97701-1925
(541) 388-6575

DEPT OF LAND CONSERVATION &
DEVELOPMENT
ATTN: PLAN AMENDMENT SPECIALIST
635 CAPITOL STREET, NE, SUITE 150
SALEM, OR 97301-2540

DEPT OF

FEB 28 2008

**LAND CONSERVATION
AND DEVELOPMENT**