



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

February 6, 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 014-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: February 20, 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
Ruth Wahl, Deschutes County

<paa> ya/

FORM 2

DEPT OF

IAN 3.1 2007

LAND CONSERVATION
AND DEVELOPMENT

D L C D 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

(See reverse side for submittal requirements)

Jurisdiction: Deschutes County Local File No.: ZC-07-4
(If no number, use none)

Date of Adoption: January 23 2008 Date Mailed: 1/30/08
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: _____

- Comprehensive Plan Text Amendment
- Comprehensive Plan Map Amendment
- Land Use Regulation Amendment
- Zoning Map Amendment
- New Land Use Regulation
- Other: _____
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."
a zone change from Terrebonne Residential (TeR) to Terrebonne Commercial (TeC) in the commercial expansion area.

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 : _____ to _____

Zone Map Changed from: TeR Residential to TeC Commercial

Location: 14-B-1600; 103 + 2700 Acres Involved: 8.17

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: _____

Was an Exception Adopted? Yes: No:

DLCD File No.: 014-07 (16252)

Did the Department of Land Conservation and Development **receive** a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**. Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

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

Domestic Water District

Local Contact: Ruth Wall Area Code + Phone Number: 541-388-6555

Address: 117 NW Lafayette City: Bend, OR 97701

Zip Code+4: 97701 Email Address: ruthw@dlcd.declutes.or.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 18, the Deschutes *
County Zoning Map, to Change the Zone * ORDINANCE NO. 2008-004
Designation for Certain Property From Terrebonne *
Residential (TeR) to Terrebonne Commercial (TeC). *

WHEREAS, Jack and Janet Abbas and Ike Abbas applied for a zone change to Title 18, Deschutes County Zoning Map, to rezone certain property from Terrebonne Residential (TeR) to Terrebonne Commercial (TeC); and

WHEREAS, The Deschutes County Hearings Officer conducted a Public Hearing on September 11, 2007 to consider the request, and

WHEREAS, the Deschutes County Hearings Officer approved the zone change necessary to change the zone and remove the Terrebonne Residential zone by a written decision dated December 3, 2007; and

WHEREAS, because no appeal was filed and the Board of County Commissioners ("Board") did not initiate review of the application, pursuant to Deschutes County Code ("DCC") 22.28.030(B), the Board must approve this zone change, which changes the zone; now therefore,

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

Section 1. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "B", attached and by this reference incorporated herein, from Terrebonne Residential (TeR) to Terrebonne Commercial (TeC).

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached to Ordinance 2008-004 as Exhibit "C", and by this reference incorporated herein.

Dated this _____ of _____, 2007

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

DENNIS R. LUKE, CHAIR

TAMMY BANEY, VICE CHAIR

ATTEST:

Recording Secretary

MICHAEL M. DALY, COMMISSIONER

Date of 1st Reading: _____ day of _____, 2007.

Date of 2nd Reading: _____ day of _____, 2008.

Record of Adoption Vote				
Commissioner	Yes	No	Abstained	Excused
Michael M. Daly	_____	_____	_____	_____
Dennis R. Luke	_____	_____	_____	_____
Tammy Baney	_____	_____	_____	_____

Effective date: _____ day of _____, 2007.

ATTEST:

Recording Secretary



EXHIBIT A

A parcel of land containing 8.17 acres, more or less, located in the Southeast One-quarter (SE1/4) of Section 16, Township 14 South, Range 13 East, Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

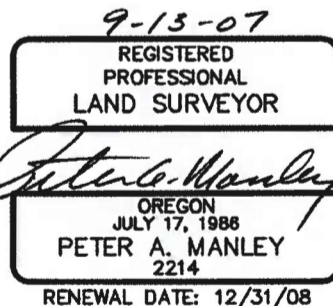
The portion of the plat of 'Hillman' vacated July 3, 1912 as described in deed recorded in Volume 400, Page 2205 of Deschutes County Official Records together with the lands described in quitclaim deed recorded in Volume 2000, Page 12924 of Deschutes County Official Records, all being more particularly described as follows:

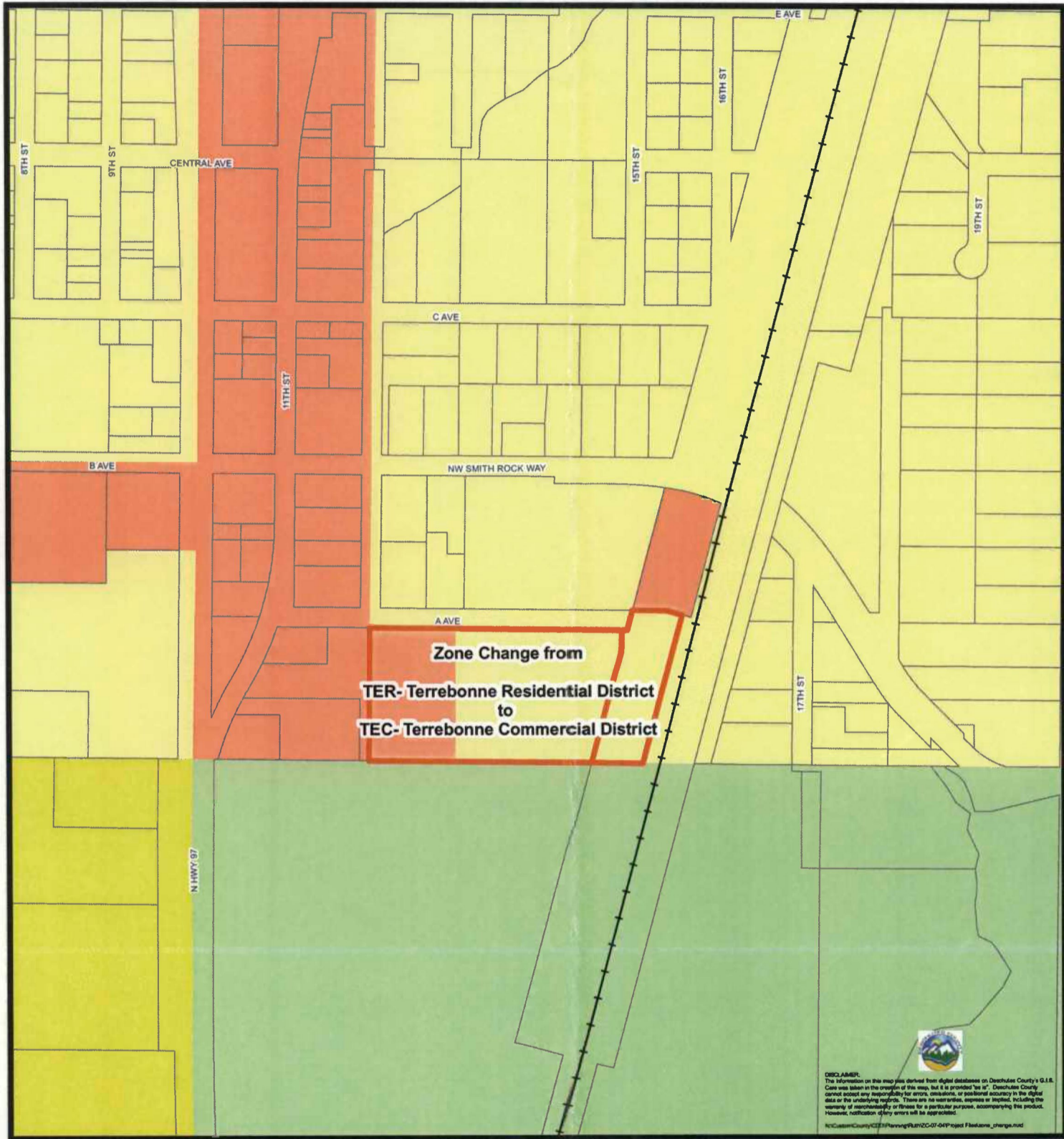
Beginning at the intersection of the centerline of 12th Street with the south boundary of said Section 16; thence along said centerline North 00°05'05" East a distance of 400.00 feet to a point on the south right-of-way line of 'A' Avenue; thence along said south right-of-way line South 89°53'35" East a distance of 764.09 feet to the westerly right-of-way line of the Burlington Northern Railroad; thence along said westerly right-of-way line North 14°33'46" East a distance of 61.96 feet to the northwest corner of the parcel described in said Volume 2000, Page 12924; thence along the boundary of said Volume 2000, Page 12924 the following three (3) courses:

South 89°53'35" East a distance of 103.27 feet;
South 75°26'14" East a distance of 50.00 feet;
South 14°33'46" West a distance of 462.15 feet to a point on the south boundary of said Section 16;

Thence along said south boundary North 89°53'35" West a distance of 815.72 feet to the 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.





PROPOSED ZONING MAP

File No. ZC-07-4

Exhibit "B"
to Ordinance 2007-004



December 05, 2007

Legend

- +— Railroad
- Subject Property
- TER5 - Terrebonne 5 Acre Minimum District
- EFU - TERREBONNE SUBZONE
- TEC - Terrebonne Commercial District
- TER - Terrebonne Residential District

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Michael M. Daly, Chair

Dennis R. Luke, Vice Chair

Tammy Baney, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of January, 2008
Effective Date: January _____, 2008

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBER: ZC-07-4

APPLICANTS/

PROPERTY OWNERS: Jack and Janet Abbas
P.O. Box 2147
Terrebonne, Oregon 97760

Ike Abbas
P.O. Box 2147
Terrebonne, Oregon 97760



APPLICANTS' AGENT: Heidi Kennedy
64180 Old Bend-Redmond Highway
Bend, Oregon 97701

REQUEST: The applicants request approval of a zone change from TeR to TeC for an 8.17-acre parcel located within the Terrebonne Rural Community.

STAFF REVIEWER: Ruth Wahl, Associate Planner

**HEARING DATE/
RECORD CLOSED:** September 11, 2007

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. Chapter 18.66, Terrebonne Rural Community Zoning Districts

- * Section 18.66.020, Residential (TeR) District
- * Section 18.66.040, Commercial (TeC) District

B. Title 23 of the Deschutes County Code, the Deschutes County Year 2000 Comprehensive Plan

1. Chapter 23.40, Unincorporated Communities

- * Section 23.40.030, Terrebonne Rural Community

C. Oregon Administrative Rules (OAR) Chapter 660, Division 12, Transportation Planning

1. OAR 660-012-0060, Plan and Land Use Regulation Amendments

II. FINDINGS OF FACT:

- A. Location:** The subject property has an assigned address of 760 "A" Avenue, Terrebonne, and is further identified as Tax Lots 103 and 2700 on Deschutes County Assessor's Map 14-13-16DD. The property also is identified as (vacated) Blocks 109, 126, 127 and 144 of Hillman town site, and vacated portions of 13th, 14th and 15th Streets.
- B. Zoning and Plan Designation:** Tax Lot 103 is zoned Terrebonne Residential District (TeR). Tax Lot 2700 is zoned TeR and Commercial District (TeC). Both tax lots are designated Commercial Expansion Area on Deschutes County Comprehensive Plan Map for Terrebonne.
- C. Site Description:** The subject property is 8.17 acres in size and roughly rectangular in shape. It abuts "A" Avenue on the north, 12th Street on the west, and the Burlington Northern-Santa Fe (BNSF) railroad right-of-way on the east. The property is generally level and is developed with several structures located near the northeast corner of the property that currently is zoned TeC. These structures are being used for the applicants' well drilling business. In addition, the subject property is developed with a manufactured home located near the northeast corner of the property.
- D. Surrounding Zoning and Land Uses:** Land across "A" Avenue to the north is zoned TeR and developed with single-family dwellings. Land to the east along the BNSF right-of-way is zoned TeC and is developed with the Terrebonne Depot restaurant which was approved following a 2004 zone change (ZC-04-1). Land to the west is zoned TeC and is developed with a variety of commercial uses along US Highway 97. Land to the south is outside the Terrebonne Rural Community and is zoned Exclusive Farm Use-Terrebonne Subzone (EFU-TE) and developed with farm uses and rural residences.
- E. Procedural History:** The subject zone change application was submitted on June 7, 2007 and was accepted by the county as complete on July 9, 2007. Therefore the 150-day period for issuance of a final local land use decision under ORS 215.477 expires on December 6, 2007. A public hearing on the application was held on September 11, 2007. At the hearing the Hearings Officer received testimony and evidence and closed the evidentiary record. The applicants waived the filing of final argument pursuant to ORS 197.763. As of the date of this decision there remain three days in the 150-day period.
- F. Proposal:** The applicants request approval of a zone change from TeR to TeC for the majority of the subject property which currently is zoned TeR in order to conform the zoning of the entire property with its commercial plan designation. The applicants have stated they would like the opportunity to develop the property with any allowable commercial use, and may choose to expand their existing well drilling business or develop a recreational vehicle park on the property. However, no commercial development is proposed in conjunction with this zone change application, and site plan review and approval from the Planning Division will be required for any proposed commercial use if the zone change is approved.

- G. Public/Private Agency Comments:** The Planning Division sent written notice of the applicants' proposal to a number of public and private agencies and received responses from: the Deschutes County Road Department (road department); the Terrebonne Water District; and the Oregon Department of Transportation (ODOT). These comments are set forth verbatim at pages 2-3 of the staff report and are included in the record.
- H. Public Notice and Comments:** The Planning Division mailed individual written notice of the applicants' proposal and the public hearing to the owners of record of all property located within 250 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 no letters from the public in response to these notices. No members of the public testified at the public hearing.
- I. Lot of Record:** The staff report states the county recognizes the subject property – Tax Lot 103 and 2700 – as two legal lots of record. Tax Lot 103 is considered a lot of record on the basis of a previously issued conditional use permit for a home occupation (CU-95-37), and Tax Lot 2700 is considered a lot of record on the basis of a previously issued manufactured home permit (MH14607).

III. CONCLUSIONS OF LAW:

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

1. Chapter 18.136, Amendments

FINDINGS: The staff report does not address the provisions of this chapter because Section 23.40.30 of the Deschutes County Comprehensive Plan establishes the standards and criteria for rezoning land within Terrebonne from TeR to TeC, and states these standards apply in place of the rezoning standards in Section 18.136.020. Therefore, the Hearings Officer finds the provisions of Chapter 18.136 do not apply to the applicants' proposed zone change.

B. Title 23 of the Deschutes County Code, the Deschutes County Year 2000 Comprehensive Plan

1. Chapter 23.40, Unincorporated Communities

a. Section 23.40.030, Terrebonne Rural Community

* * *

B. Land Use Planning

* * *

2. Comprehensive Plan Designations.

The Deschutes County Comprehensive Plan for the Terrebonne Rural Community has the following five comprehensive plan designations:

- a. Residential. The land designated Residential on the Terrebonne comprehensive plan map includes the highest density area of Terrebonne, corresponding with the boundary of the old Hillman Plat. It is intended to accommodate higher density residential uses, served by community water.**

*** * ***

- d. Commercial Expansion Area. The Commercial Expansion Area designates the only area for future expansion of the Commercial plan designation and Commercial zoning district. The Commercial Expansion Area is intended for future expansion of the Terrebonne commercial center with a connected road network and good pedestrian access, directed away from the highway to discourage highway strip-commercial development.**

FINDINGS: As discussed in the Findings of Fact above, the subject property is designated Commercial Expansion Area on the comprehensive plan and has two zoning districts. The majority of the property is zoned TeR, and a very small area is zoned TeC. The property has access from "A" Avenue, a designated rural local road, to 11th Street, a designated rural collector road. In addition, the property abuts the BNSF railroad tracks. The record indicates "A" Avenue is not improved to the county's standards for rural local roads, is not maintained by the county, and currently has a single-lane dirt surface. In addition, the record indicates the road crosses an 18-foot-wide irrigation canal. However, as discussed in the findings below, the proposed zone change will not itself have any traffic impacts on "A" Avenue or other Terrebonne streets.

3. Land Use Policies.

- a. General Land Use Policies.**

*** * ***

- 2. County plans and land use regulations shall ensure that new uses authorized within the Terrebonne Rural Community do not adversely affect agricultural uses in the surrounding Exclusive Farm Use**

(EFU) zones. Zoning regulations shall require any new structure on land contiguous to EFU-zoned land which is receiving special assessment for farm use to set back 100 feet from the common property line.

FINDINGS: The record indicates the abutting property to the south is zoned EFU-TE and therefore any new structure on the subject property must be set back at least 100 feet from the southern property line. However, no new structures are proposed with this zone change.

c. Commercial Area Policies.

1. Allow small-scale, low-impact commercial and industrial uses in conformance with the requirements of OAR Chapter 660, Division 22, and larger commercial uses, if such uses are intended to serve the community and the surrounding rural area or the travel needs of the people passing through the area.

* * *

3. Design standards in the commercial districts should encourage new development that is compatible with the rural character of the commercial district.

4. Where there is a choice to use a road other than 97 for access, access shall not be taken from Highway 97.

* * *

7. Stand-alone residential uses or residences in conjunction with uses listed in the commercial districts shall be allowed, but they are not intended to predominate or set the development standards for other uses in the area.

8. Land divisions or replatting for residential purposes shall not be allowed in the commercial districts.

9. Livestock shall not be permitted in the commercial districts.

FINDINGS: The Hearings Officer finds these policies address land divisions and specific types of uses on commercial-zoned land in Terrebonne, and therefore do not apply to this zone change application. As discussed in the Findings of Fact above, the applicants have stated that if the proposed zone change is approved they may seek to develop the subject property with an RV park, and have submitted a Traffic Impact Analysis (traffic study) for an RV park. However, future development of the subject property is not before me in this proceeding.

d. Commercial expansion area policies.

- 1. The Commercial or Commercial-Rural plan designations shall not expand on the west side of Highway 97.**
- 2. The area designated Commercial shall only expand to the designated Commercial Expansion Area on the Terrebonne comprehensive plan map (See Map B1). No expansion of the Commercial Expansion Area shall be considered until next periodic review.**
- 3. Rezoning the Commercial Expansion Area from Residential District to Commercial District shall be allowed only if no land currently zoned Commercial District can reasonably accommodate the proposed use.**

FINDINGS: The subject property is located on the east side of Highway 97 within the Terrebonne Commercial Expansion Area. The applicants' proposed zone change would not expand the area within Terrebonne designated commercial. The applicants' burden of proof argues their proposed zone change satisfies the requirement in Paragraph (d)(3) for the following additional reasons:

"[T]here is only one vacant property currently zoned commercial that is left in the Terrebonne community that is currently available for commercial expansion or development. The property is identified on Assessor's Map 14-13-16, as tax lot 1301 and is further identified as 8715 11th Street. Due to the applicant's expanding business and their desire to stay in the Terrebonne community they see no practical alternative but to expand from their existing parcel especially given the fact that it is already within the Commercial Expansion Area and has the physical size to accommodate their future business growth."

The Hearings Officer finds that under the circumstances presented here, where the portion of the subject property zoned TeC already is developed with commercial activity consisting of the applicants' well-drilling business, and the applicants propose to expand that business as well as to undertake additional commercial ventures, they have demonstrated "no land currently zoned Commercial District can reasonably accommodate the proposed use."

4. **Rezoning the Commercial Expansion from Residential District to Commercial District may be done without a Plan Amendment and shall be allowed only if the Terrebonne Domestic Water District facilities provide, or will provide, adequate water quantity and pressure for commercial or domestic use to serve the area being rezoned; and the road rights of way serving the area being rezoned have been, or will be, improved to applicable county right of way standards for the Terrebonne Rural Community. An applicant for a zone change must be able to demonstrate that:**

- i. Road right of way improvements and public water facilities to the property are in place or will be in place when the development occurs; or
- ii. Road right of way improvements and public water facilities to the property are under construction when a permit is issued; or
- iii. Road right of way improvements and public water facilities to the property have been in a local government or special district budget.

These standards shall apply in place of the county standards for rezoning contained in Title 18, section 18.136.020 of the Deschutes County Code.

FINDINGS: 1. Water. The applicants submitted as part of their burden of proof for the proposed zone change a copy of the "Verification of Domestic Water Source for Properties in

Water Districts” form signed by the manager of the Terrebonne Domestic Water District. This document states in pertinent part:

“The Terrebonne Domestic Water District has been requested to provide a letter regarding waterline capacity on A Avenue in Terrebonne for future development. The subject property is 760 A Avenue. The waterline in A Avenue is an 8” waterline that is part of the main supply grid in Terrebonne. This waterline should be adequate for most residential or commercial uses allowed in this area.”
(Emphasis added.)

Paragraph (d)(4) establishes the requirement that must be met for a zone change as demonstrating that the Terrebonne Water District “will provide adequate water quantity and pressure for commercial or domestic use” (emphasis added). The above-underscoring language in the Terrebonne Water District’s letter provides less than an unqualified certification that sufficient water capacity will be available for commercial development on the subject property. Nevertheless, the Hearings Officer finds this language is sufficient to meet the applicants’ burden of proof because, with few exceptions, the commercial uses permitted in the TeC Zone under Section 18.66.040 of the zoning ordinance require site plan and/or conditional use approval requiring additional scrutiny concerning the availability and adequacy of infrastructure. In particular, Section 18.66.040(C) lists “recreational vehicle park” as a conditional use in the TeC Zone subject to both site plan review and compliance with the conditional use approval criteria in Chapter 18.128 of the zoning ordinance.

For the foregoing reasons, the Hearings Officer finds the applicants have met their burden of demonstrating public water facilities are in place to the subject property in the form of the existing 8-inch water line in “A” Avenue.

2. Roads. As discussed in the findings above, “A” Avenue is a designated rural local road but currently is not improved to the county’s standards for rural local roads and consists of a one-lane dirt road. In its comments on the applicants’ proposed zone change, the road department stated:

“[The applicants] will be required to improve A Avenue to the standards outlined in DCC 17.48, Table A, Terrebonne unincorporated Community, Local Commercial, TeC, which will include paving the road to a width of 24 feet with 2 foot gravel shoulders. Typical section of the road will be 3 inches of A.C. on top of 8 inches of aggregate base. A five foot property tight sidewalk and drainage swale is also required. The crossing over the canal will have to be reconstructed to provide a width of 24 feet versus the 18 feet.”

The Hearings Officer interprets the road department’s comments to mean any future commercial development of the subject property following the proposed zone change will be subject to a condition of approval requiring the applicants or their successors to improve “A” Avenue to the county’s standards for rural local roads. Based on these comments, I find the applicants have met their burden of demonstrating road right-of-way improvements will be in place when the future commercial development occurs.

C. Public Facility Planning.

* * *

2. Public Facility Policies.

* * *

b. Water Facility Policies.

* * *

- 2. The county shall support improvement of the community water system to meet health and safety needs.**

* * *

- 4. New uses or expansion of existing uses requiring land use approval in the Terrebonne Domestic Water District service area shall be approved only upon confirmation from the District that the District can provide water for domestic or commercial uses to the property.**

FINDINGS: As discussed in the findings above, the Terrebonne Water District has submitted a letter stating its existing 8-inch water line in "A" Avenue will be sufficient to provide adequate water quantity and pressure to serve domestic and commercial uses on the subject property.

c. Sewer facility policies.

- 1. Only uses and densities that can be served by a DEQ [Department of Environmental Quality] approved on-site sewage disposal system shall be allowed in the Terrebonne Rural Community until such time as a community sewer system is available.**

FINDINGS: The applicants' burden of proof acknowledges that any future residential or commercial development of the subject property following the proposed zone change from TeR to TeC will be subject to compliance with all requirements of the DEQ and the county's Environmental Health Division.

D. Transportation Planning.

* * *

4. Transportation Policies.

a. Road Network Policies.

1. Roads.

* * *

- v. Existing road rights of way shall be preserved.**

* * *

FINDINGS: The applicants do not propose any changes to the "A" Avenue right-of-way.

- viii. Commercial uses that generate more than 20 vehicle trips to and from the premises, including automobiles, truck-trailers and other heavy equipment, during the peak hour of the day, shall demonstrate that the affected roads are adequate to serve the proposed use, considering the function, capacity and level of service of those roads.**

FINDINGS: The Hearings Officer finds the applicants' proposed zone change from TeR to TeC for the majority of the subject property will not, in and of itself, have any impacts on affected transportation facilities. However, because the applicants have stated their interest in developing the subject property with an RV park following approval of the proposed zone change, they submitted a traffic study for development of 200-space RV park.¹ The traffic study is dated August 2007 and was prepared by Sage Engineering Associates LLC. The study predicts a 200-space RV park would generate 824 ADTs, of which 46 trips would use the intersection of 11th Street and Highway 97. The traffic study concluded the intersection of "A" Avenue and 11th Street would operate at Level of Service (LOS) B, and the intersection of "A" Avenue and the RV park driveway would operate at LOS A with the additional of traffic generated by the RV park.² The traffic study also concluded these intersections would meet minimum intersection

¹ Section 17.16.115 of the subdivision ordinance requires a traffic study if a proposed development will generate more than 100 average daily vehicle trips (ADTs) per day or requires a zone change.

² The Hearings Officer is aware the Institute of Transportation Engineers recognizes six levels of service for intersection performance, ranging from LOS A to LOS F, with LOS A representing the highest level of service with minimal delays and LOS F representing the lowest level of service with serious delays.

Abbas

ZC-07-4

Page 10 of 14

sight distance standards and therefore no turn lanes would be required. Finally, the traffic study concluded that traffic generated by a 200-space RV park "will not cause any significant additional safety or capacity problems to Deschutes County's transportation system."

The staff report states the county's Senior Transportation Planner Peter Russell and County Engineer George Kolb both concluded the applicants' traffic study was adequate for a proposed 200-space RV park, but any other proposed use with higher traffic generation would require another traffic study. In addition, they noted that because 11th Street intersects with Highway 97 west of the subject property ODOT would have to review any proposed RV park for traffic impacts on that intersection. In an electronic mail message dated September 10, 2007, James R. Bryant of ODOT stated the agency had no concerns about the proposed *zone change* because the 46 trips the applicants' traffic study predicts would use the 11th Street/Highway 97 intersection falls below the 50-trip threshold for ODOT to require a more extensive traffic analysis.

Based on the applicants' traffic study for a 200-space RV park, and the county's comments on that report, the Hearings Officer finds the applicants have met their burden of demonstrating "the affected roads are adequate to serve the proposed use, considering the function, capacity and level of service of those roads."

2. Sidewalks and bicycle facility policies.

- i. Provide functional, cost effective sidewalks that are in keeping with the rural character of the community.**
- ii. Provide sidewalks where they are warranted for pedestrian safety, as set forth in Map D3.**
- iii. Where sidewalks are specified along county public roads, they shall be constructed without curbs and gutters, set back from the road surface behind a drainage swale at a distance from property lines to allow room for utilities.**
- iv. Sidewalks identified on Map D3 shall be constructed either at the time of development, subject to site plan review, or later through formation of a local improvement district (LID). Applicants for conditional use permits or site plan approval electing to defer**

constructing sidewalks, shall be required to submit and have recorded in the County Clerk's office a waiver of remonstrance, signed by the land owner. The waiver shall waive the land owner's right to have his/her objection count against the formation of an LID.

FINDINGS: The road department's comments state the applicants will be required to install five-foot-wide property-tight sidewalks along "A" Avenue when it is improved to the county's standards for rural local roads in conjunction with commercial development on the subject property.

b. Road Development Standards Policies.

* * *

2. The county shall implement road development standards for the Terrebonne community that minimize pavement width and are consistent with the operational needs of the transportation facility.
3. Specific road, bicycle and pedestrian facility improvement projects for the Terrebonne community are listed in Tables D2, D3 and D4 respectively. The projects are ranked high, medium and low priority based on perceived need. These priorities shall be flexible to take advantage of development opportunities and funding.

FINDINGS: The road standards for Terrebonne are listed on Table 18.66-A of Title 18. Table D3 lists the areas proposed for sidewalks, and Table D4 lists the areas for shoulders along roads. As discussed above, the Hearings Officer has found that at the time of commercial development of the subject property following approval of the proposed zone change, the applicants will be required to improve "A" Avenue to the county's standards for rural local roads.

For the foregoing reasons, the Hearings Officer finds the applicants' proposed zone change from TeR to TeC for the majority of the subject property satisfies all applicable requirements in Section 23.40.030.

C. Oregon Administrative Rules (OAR), Chapter 660

1. Division 12, Transportation Planning

a. OAR 660-012-0060, Plan and Land Use Regulation Amendments

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulations 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 on 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 standards 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.

FINDINGS: The Hearings Officer finds the Transportation Planning Rule (TPR) applies to the applicant's proposed zone change because it involves an amendment to the county's zoning

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ZC-07-4

Page 13 of 14

ordinance and map. I have found the proposed zone change from TeR to TeC, in and of itself, will have no impact on affected transportation facilities. However, as discussed above, the applicants have indicated their desire to develop the subject property with a 200-space RV park if their proposed zone change is approved, and they submitted a traffic study for such development that shows it will not cause safety or capacity problems to the affected transportation system. Based on these findings, incorporated by reference herein, I also find from the applicants' traffic study that the applicants' proposed zone change will not significantly affect an existing or planned transportation facility.

2. Division 15, Statewide Planning Goals and Guidelines

FINDINGS: The applicants' burden of proof and the staff report address the statewide goals and guidelines. However, the Hearings Officer finds the goals do not apply to the applicants' proposal because it does not involve a plan amendment, and because their proposed zone change is being reviewed under the provisions of the county's comprehensive plan which is acknowledged as in compliance with the goals and guidelines. Therefore, I will not address the goals and guidelines in OAR Division 15.

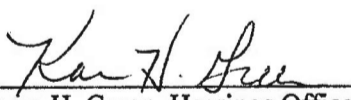
IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicants' proposed zone change from TeR to TeC for the majority of the subject property, **SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL:**

1. Prior to the hearing before the Deschutes County Board of Commissioners to consider approval of the proposed zone change, the applicants/owners shall submit to the Planning Division a metes and bounds description of, and surveyed acreage calculation for, the portion of the subject property subject to the zone change.

Dated this 3rd day of December, 2007.

Mailed this 4th day of December, 2007.



Karen H. Green, Hearings Officer