



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT



February 13, 2006

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 011-05

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: February 22, 2006

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.625 (1), 197.830 (2), and 197.830 (9) 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 ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Doug White, DLCD Community Services Specialist
Catharine White, Deschutes County

<paa> ya/

FORM 2

DEPT OF

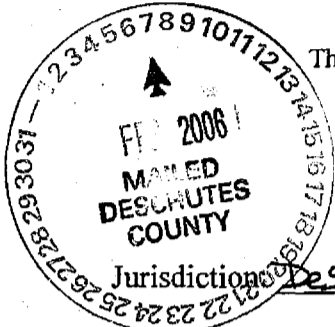
D L C D NOTICE OF ADOPTION

FEB 09 2006

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

LAND CONSERVATION
AND DEVELOPMENT

(See reverse side for submittal requirements)



Jurisdiction: Deschutes County

Local File No.: 2C-04-5
(If no number, use none)

Date of Adoption: 2/1/06
(Must be filed in)

Date Mailed: 2/7/06
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 2/14/05

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

Summarize the adopted amendment. Do not use technical terms. Do not write ASee Attached.≡

Hap Taylor & Sons, Inc. proposed a zoned change from the Residential District (TuR) to the Industrial District (TuI) in the Tumalo Rural Community Zoning Districts. The zone change reflects the historical and current surface mining uses of the property and future industrial uses related to mining activities.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write ASame.≡ If you did not give notice for the proposed amendment, write AN/A.≡

Same

Plan Map Changed from: NA to _____

Zone Map Changed from: Residential (TuR) to Industrial (TuI)

Location: 64445 OB Riley Rd, Bend Acres Involved: 19.29 ac

Specify Density: Previous: NA New: _____

Applicable Statewide Planning Goals: NA

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 011-05 (14468)

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: ODOT, DOGAMI, State Parks

Local Contact: Catherine White Area Code + Phone Number: (541) 383-6719



Address: 117 NW Lafayette City: Bend

Zip Code+4: 97701 Email Address: Cathyw@desawtes.org

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 ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice 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 Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

REVIEWED  LEGAL COUNSEL
REVIEWED  CODE REVIEW COMMITTEE

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 Designation on Certain Property from the Residential District (TuR) to the Industrial District (TuI) in the Tumalo Rural Community Zoning District and Declaring an Emergency.	* * * * * *	ORDINANCE NO. 2006-013
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WHEREAS, Hap Taylor & Sons, Inc. has proposed a Zone Change to Title 18, the Deschutes County Zoning Map, to rezone certain property from the Residential District (TuR) to the Industrial District (TuI) in the Tumalo Rural Community Zoning District; and

WHEREAS, a public hearing was held on August 2, 2005, after notice was given in accordance with applicable law before the Deschutes County Hearings Officer; and

WHEREAS, the Deschutes County Hearings officer, after review conducted in accordance with applicable law, approved the proposed Zone Change to the Deschutes County Zoning Map; and

WHEREAS, the Hearings Officer's decision was not appealed; 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 certain property described by the legal description attached hereto as Exhibit "A," and the map set forth as Exhibit "B" and by this reference incorporated herein, from the Residential District (TuR) to the Industrial District (TuI) in the Tumalo Rural Community Zoning District.

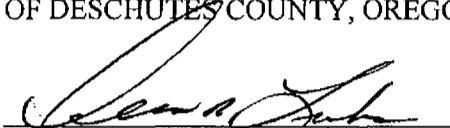
Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached as Exhibit "C," and by this reference incorporated herein.

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Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 1st Day of February 2006.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, Chair


BEV CLARNO, Vice Chair


MICHAEL M. DALY, Commissioner

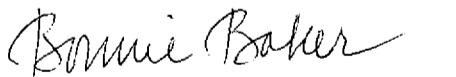
Date of 1st Reading: 1st day of Feb., 2006.

Date of 2nd Reading: 1st day of Feb., 2006.

Record of Adoption Vote				
Commissioner	Yes	No	Abstained	Excused
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bev Clarno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 1st day of February 2006.

ATTEST:


Recording Secretary



920 SW Emkay, Suite C100
Bend, Oregon 97702-1041
541.388.4255
Fax 541.388.4229

EXHIBIT "A"
Hap Taylor & Sons, Inc.
Tumalo Yard Property

Two parcels of land located within the 1904 plat of Laidlaw (Tumalo), located within the Southeast one-quarter of Section 31, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, said parcels being more particularly described as follows:

Parcel One:

Beginning at the point of intersection of the East line of the 1904 plat of Laidlaw with the westerly right-of-way of the relocated McKenzie-Bend Highway (Highway 20) said point also being the point of beginning of that parcel of land described in Deed, recorded in Volume 2001, Page 3960 of the Deschutes County Official Records; thence following the easterly and southerly lines of that parcel of land described in said Volume 2001, Page 3960 for the following four courses; thence along said East line of the 1904 plat of Laidlaw, South 00°00'41" East, 898.53 feet to the southerly line of 14th Street extended; thence along the southerly line of 14th Street extended, South 89°59'20" West, 17.53 feet to the northeast corner of Block 62 of said 1904 plat of Laidlaw; thence along the southeasterly line of said Block 62 and said southeasterly line extended, South 22°38'40" West, 356.95 feet to the centerline of 15th Street; thence along said centerline of 15th Street, South 89°57'31" West, 255.53 feet to the easterly line of Cook Avenue; thence continuing along the centerline of said 15th Street, South 89°57'31" West, 163.20 feet to the easterly right-of-way of O.B. Riley Road, said right-of-way being described in Deed of Dedication recorded in Volume 2002, Page 07278, Deschutes County Official Records, said point being a point of non-tangent curvature; thence along said easterly right-of-way of O.B. Riley Road, as dedicated in said Volume 2002, Page 07278, Deschutes County Official Records, for the following 13 courses; thence along the arc of a 590.00 foot radius curve to the left, through a central angle of 07°14'29", an arc distance of 74.57 feet (the chord of which bears North 47°20'25" West, 74.52 feet) to a point of compound curvature; thence along the arc of a 1,040.00 foot curve to the left, through a central angle of 10°34'26", an arc distance of 191.93 feet (the chord of which bears North 56°14'53" West, 191.66 feet) to a point of tangency; thence North 61°32'06" West, 149.33 feet to a point of curvature; thence along the arc of a 560.00 foot radius curve to the right, through a central angle of 65°11'01", an arc distance of 637.09 feet (the chord of which bears North 28°56'35" West, 603.29 feet) to a point of tangency; thence North 03°38'55" East, 511.11 feet; thence North 06°30'40" East, 200.25 feet; thence North 00°09'55" West, 150.33 feet; thence North 03°38'55" East, 180.12 feet to a point of curvature; thence along the arc of a 560.00 foot radius curve to the right, through a central angle of 20°59'50", an arc distance of 205.22 feet (the chord of which bears North 14°08'50" East, 204.08 feet) to a point of non-tangency; thence North 35°34'34" East, 92.93 feet to a point of non-tangent curvature; thence along the arc of a 550.00 foot

Exhibit A
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landscape architects

non-tangent radius curve to the right, through a central angle of 26°53'52", an arc distance of 258.20 feet (the chord of which bears North 47°38'38" East, 255.84 feet) to a point of tangency; thence North 61°05'34" East, 238.91 feet; thence North 80°11'36" East, 30.56 feet to a point on the westerly right-of-way of said relocated McKenzie-Bend Highway (Highway 20) as defined in Deed recorded in Volume 2002, Page 07276, Deschutes County Official Records; thence along said westerly right-of-way South 28°23'21" East, 228.95 feet to the point of intersection of the centerline of the vacated 9th Street and said westerly right-of-way; thence leaving said westerly right-of-way and along said 9th Street centerline South 89°56'15" West, 104.67 feet; thence along the westerly line of Parcels 1, 2, and 3 as described in Deed recorded in Volume 2001, Page 3961 of the Deschutes County Official Records for the following two courses, South 28°23'13" East, 403.87 feet; thence South 34°47'02" East, 457.54 feet to a point on the centerline of the vacated Wharton Avenue; thence along the southeast line of said Parcel 1 and along said centerline of Wharton Avenue, North 00°09'30" West, 86.73 feet to the westerly right-of-way of said relocated McKenzie-Bend Highway (Highway 20) as described in said Deed recorded in Volume 2001, Page 3960, Deschutes County Official Records; thence along said westerly right-of-way, South 28°23'13" East, 326.88 feet to the East line of the 1904 plat of Laidlaw and the **True Point of Beginning**.

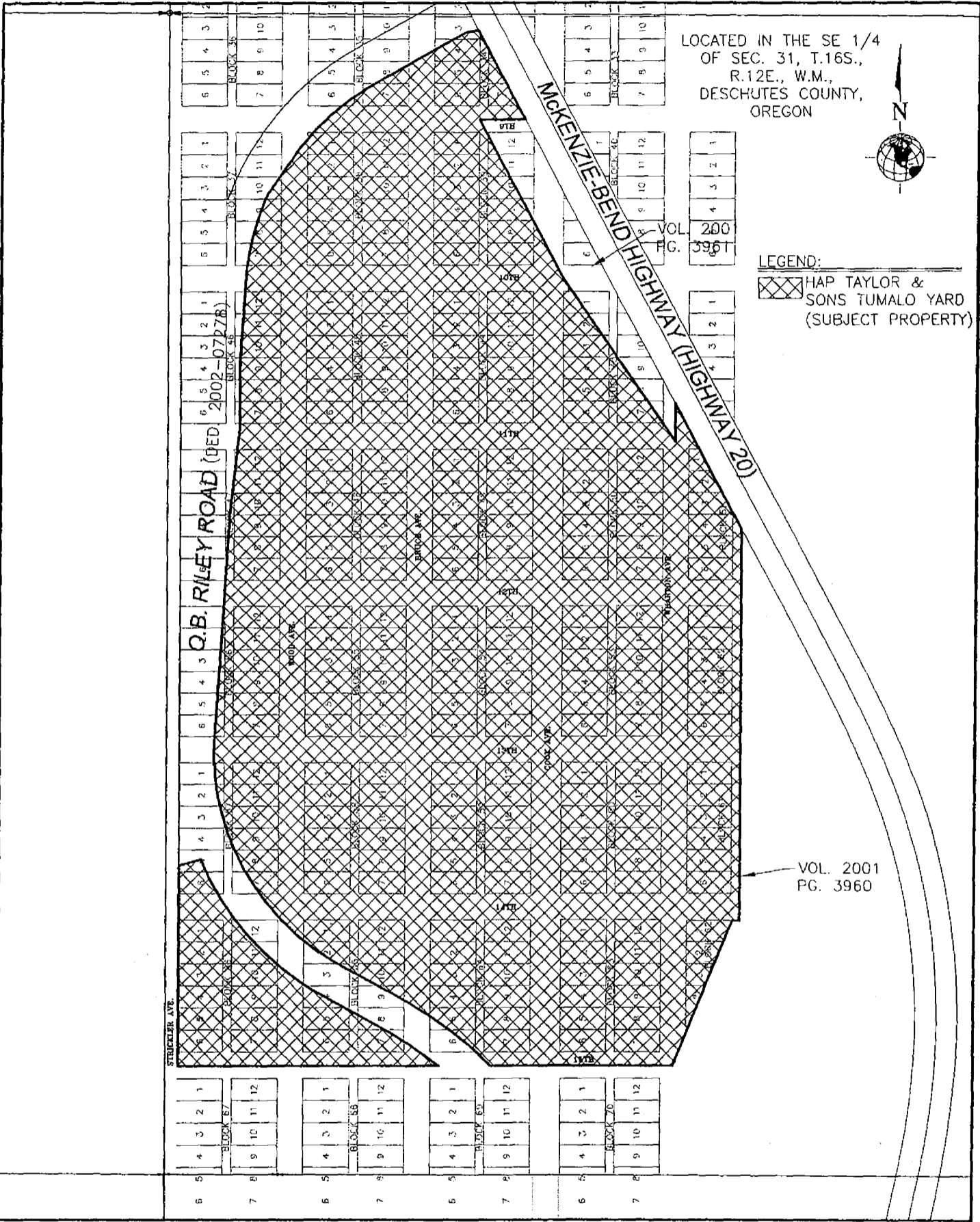
Said parcel contains 48.35 acres, more or less.

Parcel Two:

Beginning at the intersection of the centerline of the vacated Bruce Avenue with the centerline of the vacated 15th Street as defined by the 1904 plat of Laidlaw; thence along said centerline of the vacated 15th Street, South 89°57'31" West, 550.23 feet to the East right-of-way of Stickler Avenue; thence leaving said centerline and along said East right-of-way, North 00°04'14" West, 455.94 feet to a point on the southerly right-of-way of the O.B. Riley Road realignment, as described in Deed of Dedication recorded in Volume 2002, Page 07278, Deschutes County Official Records; thence along said southerly right-of-way for the following four courses; thence North 73°43'22" East, 52.32 feet to a point of non-tangent curvature; thence along the arc of a 640.00 foot non-tangent radius curve to the left, through a central angle of 38°30'18", an arc distance of 430.10 feet (the chord of which bears South 42°16'57" East, 422.06 feet) to a point of tangency; thence South 61°32'06" East, 149.33 feet to a point of curvature; thence along the arc of a 960.00 foot radius curve to the right, through a central angle of 09°27'57", an arc distance of 158.60 feet (the chord of which bears South 56°48'08" East, 158.42 feet) to a point of non-tangency and a point on the centerline of said vacated 15th Street; thence along said 15th Street centerline, South 89°57'28" West, 47.23 feet to the centerline of said vacated Bruce Avenue and the **True Point of Beginning**.


Said parcel contains 2.86 acres, more or less.

Office: BEND / System: WHP-BND-4PTCP31 / User: SHANNAS / Time: 12/19/2005 11:12:07



LOCATED IN THE SE 1/4
OF SEC. 31, T.16S.,
R.12E., W.M.,
DESCHUTES COUNTY,
OREGON



LEGEND:
 HAP TAYLOR &
SONS TUMALO YARD
(SUBJECT PROPERTY)

VOL. 2000
PG. 3961

VOL. 2001
PG. 3960

DESIGNED BY: SRH	CHECKED BY:				
DRAWN BY: SRH	APPROVED BY:				
LAST EDIT:	PLOT DATE: 12/19/05				
DATE	BY	REV#	REVISION	CK'D	APPR

W&H PACIFIC
 820 Emkey, Suite C-100
 Bend, Oregon
 97702-1041
 (541)308-4226
 (541)308-4220 Fax
 w&hpacific.com

HAP TAYLOR & SONS
 TUMALO YARD **Exhibit A**
SUBJECT PROPERTY **Page 3 of 7**
EXHIBIT MAP Ordinance **2006-013**

TUMALO OREGON
 SCALE: 1"=300'
 PROJECT NO. 31688.1001
 DRAWING FILE NAME: 31688-ZC-LEGAL
 SHEET EX1



920 SW Emkay, Suite C100
Bend, Oregon 97702-1041
541.388.4255
Fax 541.388.4229

EXHIBIT "B"
ZONE CHANGE LEGAL DESCRIPTION

Four parcels of land located within the 1904 plat of Laidlaw (Tumalo), located within the Southeast one-quarter of Section 31, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, said parcels being more particularly described as follows:

Parcel One:

Beginning at the intersection of the southerly right-of-way of the relocated O.B. Riley Road and the westerly right-of-way of the relocated McKenzie-Bend Highway (Highway 20); thence along said westerly right-of-way, as described in Deed recorded in Volume 2002, Page 07276, Deschutes County Official Records, South 28°23'21" East, 228.95 feet to the centerline of the vacated 9th Street and the northerly boundary of the SM Zone as defined by Deschutes County Zone Maps; thence leaving said westerly right-of-way and along said centerline of 9th Street, and along said northerly boundary of the SM Zone, South 89°56'15" West, 459.48 feet to the southerly right-of-way of said relocated O.B. Riley Road; thence leaving said centerline and said northerly boundary of the SM Zone, and along said southerly right-of-way, as described in Deed of Dedication recorded in Volume 2002, Page 07278, Deschutes County Official Records for the following three courses; thence along the arc of a 550.00 foot non-tangent radius curve to the right, through a central angle of 14°23'49", an arc distance of 138.20 feet (the chord of which bears North 53°53'39" East, 137.84 feet) to a point of tangency; thence North 61°05'34" East, 238.91 feet; thence North 80°11'36" East, 30.56 feet to the westerly right-of-way of said relocated McKenzie-Bend Highway (Highway 20) and the **True Point of Beginning**.

Said parcel contains 1.17 acres, more or less.

Parcel Two:

Beginning at the intersection of the easterly right-of-way of the relocated O.B. Riley Road and the centerline of the vacated Bruce Avenue; thence along said easterly right-of-way of the relocated O.B. Riley Road, as described in Deed of Dedication recorded in Volume 2002, Page 07278, Deschutes County Official Records, for the following ten courses; thence along the arc of a 1,040.00 foot radius curve to the left, through a central angle of 02°59'25", an arc distance of 54.28 feet (the chord of which bears North 60°02'23" West, 54.27 feet) to a point of tangency; thence North 61°32'06" West, 149.33 feet to a point of curvature; thence along the arc of a 560.00 foot radius curve to the right, through a central angle of 65°11'01", an arc distance of 637.09 feet (the chord of which bears North 28°56'35" West, 603.29 feet) to a point of tangency; thence North 03°38'55" East, 511.11 feet; thence North 06°30'40" East, 200.25 feet; thence North 00°09'55" West, 150.33 feet; thence North 03°38'55" East, 180.12 feet to a point of curvature;

thence along the arc of a 560.00 foot radius curve to the right, through a central angle of 20°59'50", an arc distance of 205.22 feet (the chord of which bears North 14°08'50" East, 204.08 feet) to a point of non-tangency; thence North 35°34'34" East, 92.93 feet to a point of non-tangent curvature; thence along the arc of a 550.00 foot non-tangent radius curve to the right, through a central angle of 01°24'49", an arc distance of 13.57 feet (the chord of which bears North 34°54'06" East, 13.57 feet) to the centerline of the vacated Wood Avenue and a point of non-tangency, said point also being on the westerly boundary of the SM Zone as defined by the Deschutes County Zone Maps; thence along said west boundary of the SM Zone for the following ten courses; thence along the centerline of said vacated Wood Avenue, South 00°04'15" East, 279.96 feet to the centerline of the vacated 10th Street; thence continuing along said centerline of Wood Avenue, South 00°04'14" East, 360.02 feet to the centerline of the vacated 11th Street; thence along said centerline of 11th Street, North 89°55'26" East, 144.93 feet to the centerline of the vacated alley within Block 48 of the 1904 plat of Laidlaw; thence along the centerline of said vacated alley within Block 48, South 00°04'18" East, 359.92 feet to the centerline of the vacated 12th Street; thence along said centerline of 12th Street, North 89°55'10" East, 144.77 feet to the centerline of the vacated Bruce Avenue; thence along the centerline of said Bruce Avenue, South 00°04'53" East, 360.14 feet to the centerline of the vacated 13th Street; thence along said centerline of 13th Street, South 89°55'56" West, 144.83 feet to the centerline of the vacated alley within Block 58 of said 1904 plat of Laidlaw; thence along said centerline of vacated alley within Block 58, South 00°04'18" East, 360.11 feet to the centerline of the vacated 14th Street; thence along said centerline of 14th Street, North 89°56'44" East, 144.89 feet to the centerline of said vacated Bruce Avenue; thence along said centerline of Bruce Avenue, South 00°04'53" East, 230.14 feet to a point on said easterly right-of-way of O.B. Riley Road and the **True Point of Beginning.**

Said parcel contains 11.03 acres, more or less.

Parcel Three:

Beginning at the point of intersection of the East line of the 1904 plat of Laidlaw with the westerly right-of-way of the relocated McKenzie-Bend Highway (Highway 20) said point also being the point of beginning of that parcel of land described in Deed, recorded in Volume 2001, Page 3960 of the Deschutes County Official Records; thence following the easterly and southerly lines of that parcel of land described in said Volume 2001, Page 3960 for the following four courses; thence along said East line of the 1904 plat of Laidlaw, South 00°00'41" East, 898.53 feet to the southerly line of 14th Street extended; thence along the southerly line of 14th Street extended, South 89°59'20" West, 17.53 feet to the northeast corner of Block 62 of said 1904 plat of Laidlaw; thence along the southeasterly line of said Block 62 and said southeasterly line extended, South 22°38'40" West, 356.95 feet to the centerline of 15th Street; thence along said centerline of 15th Street, South 89°57'31" West, 28.14 feet to a point on the east boundary of the SM Zone as defined by the Deschutes County Zone Map; thence along said easterly boundary of the SM zone for the following four courses; thence North 00°01'05" West, 22.06 feet; thence North 40°37'06" East, 32.77 feet; thence North 00°15'59" East, 1,381.91 feet to

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the intersection of the centerline of the vacated Wharton Avenue with the centerline of the vacated 11th Street; thence along the centerline of said vacated Wharton Avenue North 00°09'30" West, 86.73 feet to a point on said westerly right-of-way of the relocated McKenzie-Bend Highway (Highway 20); thence leaving said centerline and along said westerly right-of-way, as described in Deed recorded in Volume 2001, Page 3960, South 28°23'13" East, 326.88 feet to said East line of the 1904 plat of Laidlaw and the **True Point of Beginning**.

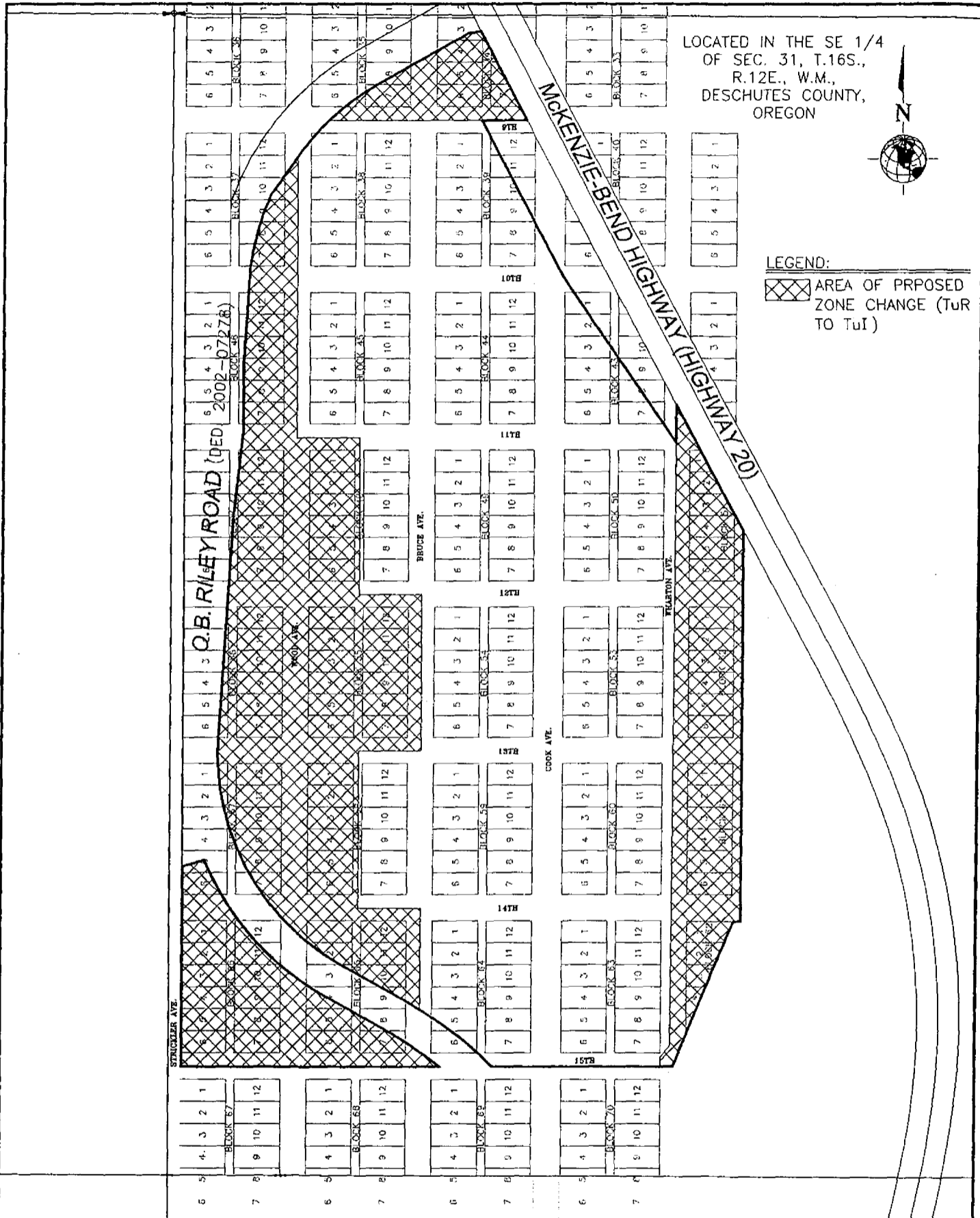
Said parcel contains 4.36 acres, more or less.

Parcel Four:

Beginning at the intersection of the centerline of the vacated Bruce Avenue with the centerline of the vacated 15th Street as defined by the 1904 plat of Laidlaw; thence along said centerline of the vacated 15th Street, South 89°57'31" West, 550.23 feet to the East right-of-way of Stickler Avenue; thence leaving said centerline and along said East right-of-way, North 00°04'14" West, 455.94 feet to a point on the southerly right-of-way of the O.B. Riley Road realignment, as described in Deed of Dedication recorded in Volume 2002, Page 07278, Deschutes County Official Records; thence along said southerly right-of-way for the following four courses; thence North 73°43'22" East, 52.32 feet to a point of non-tangent curvature; thence along the arc of a 640.00 foot non-tangent radius curve to the left, through a central angle of 38°30'18", an arc distance of 430.10 feet (the chord of which bears South 42°16'57" East, 422.06 feet) to a point of tangency; thence South 61°32'06" East, 149.33 feet to a point of curvature; thence along the arc of a 960.00 foot radius curve to the right, through a central angle of 09°27'57", an arc distance of 158.60 feet (the chord of which bears South 56°48'08" East, 158.42 feet) to a point of non-tangency and a point on the centerline of said vacated 15th Street; thence along said 15th Street centerline, South 89°57'28" West, 47.23 feet to the centerline of said vacated Bruce Avenue and the **True Point of Beginning**.


Said parcel contains 2.86 acres, more or less.

Office: BEND | System: WHP-BND-4PTC31 | User: SHANNAS | Time: 12/19/2005 11:11:31



LOCATED IN THE SE 1/4
OF SEC. 31, T.16S.,
R.12E., W.M.,
DESCHUTES COUNTY,
OREGON



LEGEND:
 AREA OF PROPOSED
 ZONE CHANGE (TuR
 TO TuI)

DESIGNED BY:	SRH	CHECKED BY:	
DRAWN BY:	SRH	APPROVED BY:	
LAST EDIT:		PLOT DATE:	12/19/05
DATE	BY	REV	REVISION
			CK'D APPR

WHP
PACIFIC

920 Emkay, Suite C-100
Bend, Oregon
97702-1041

(541)388-4255
(541)388-4256 Fax
whpacific.com

HAP TAYLOR & SONS
TUMALO YARD
Zone Change
EXHIBIT MAP

Exhibit A
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Ordinance 2006-013

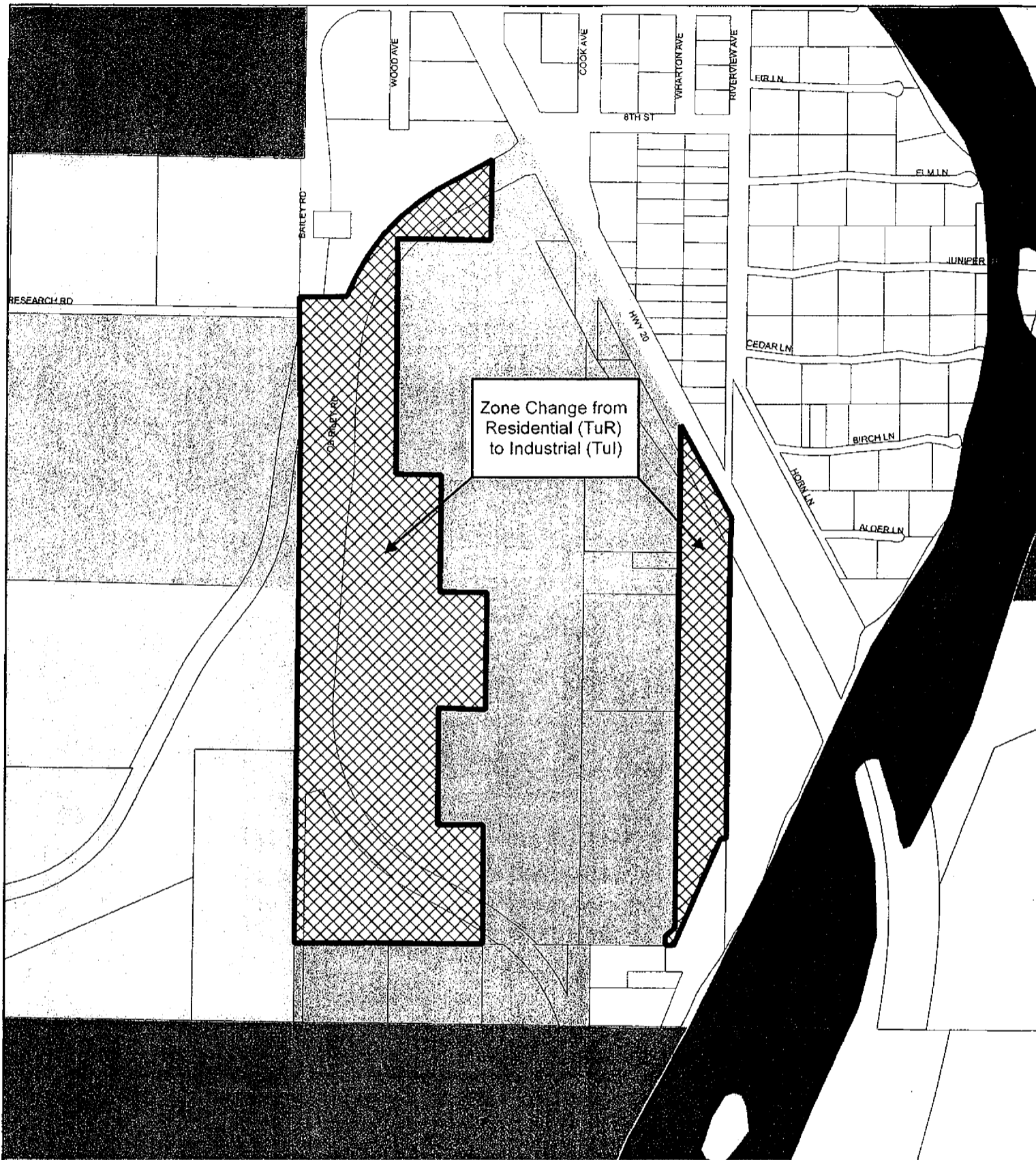
TUMALO OREGON

SCALE: 1"=300'

PROJECT NO. 31688.1001

DRAWING FILE NAME: 31688-ZC-LEGAL

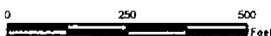
SHEET EX2



Zone Change from
Residential (TuR)
to Industrial (TuI)

PROPOSED ZONING MAP
File No. ZC-04-05

Exhibit B
to Ordinance 2006-013



January 23, 2006

- County Zoning**
- EFUTRS - Tumalo/Redmond Bend Subzone
 - FP - Flood Plain
 - MUA10 - Multiple Use Agricultural
 - OSAC - Open Space & Conservation
 - SM - Surface Mining
- Tumalo Zoning**
- TuRE - Research & Development
 - TuR - Residential District
 - TuRS - Rural Residential 5 Acre Minimum
 - TuC - Commercial
- Property Subject to Zone Change

DISCLAIMER:
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BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Dennis R. Luke, Chair

Bev Clarno, Commissioner

Michael M. Daly, Commissioner

ATTEST: Recording Secretary

Dated this ____ day of February, 2006

Effective Date February ____, 2006

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DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: ZC-04-5, SP-05-38, LM-05-129

**APPLICANT/
PROPERTY OWNER:** Hap Taylor & Sons, Inc.
P.O. Box 83
Bend, Oregon 97709

ATTORNEYS: Nancy Craven
Kristin Udvari
Ball Janik LLP
101 S.W. Main Street, Suite 1100
Portland, Oregon 97204

REQUEST: The applicant is requesting approval of a zone change from TuR to TuI, and site plan and LM review and approval for its Tumalo facility on a 47-acre parcel located between O.B. Riley Road and Highway 20.

STAFF CONTACT: Catharine White, Associate Planner

HEARING DATE: August 2, 2005

RECORD CLOSED: August 16, 2005

I. APPLICABLE STANDARDS AND CRITERIA:

A. Title 18 of the Deschutes County Zoning Ordinance:

1. Chapter 18.04, Title, Purpose and Definitions

* Section 18.04.030, Definitions

2. Chapter 18.52, Surface Mining Zone (SM)

* Section 18.52.020, Application of Ordinance

* Section 18.52.040, Uses Permitted Outright Subject to Site Plan Review

* Section 18.52.090, Minimum Use Setbacks

* Section 18.52.110, General Operation Standards

* Section 18.52.160, Preexisting Sites, Nonconforming Sites and Registration

3. Chapter 18.56, Surface Mining Impact Area (SMIA) Combining Zone

* Section 18.56.020, Location

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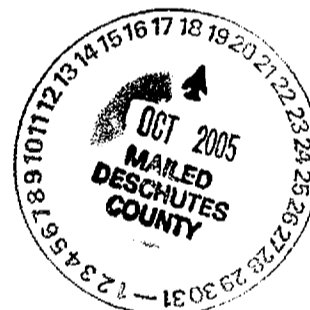


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- * Section 18.56.030, Application of Provisions
- * Section 18.56.080, Use Limitations
- 4. Chapter 18.67, Tumalo Rural Community Zoning Districts
 - * Section 18.67.020, Residential (TuR) District
 - * Section 18.67.060, Industrial (TuI) District
 - * Section 18.67.080, Standards for All Districts
 - * Section 18.67.090, Right-of-Way Development Standards
- 5. Chapter 18.84, Landscape Management Combining Zone (LM)
 - * Section 18.84.050, Use Limitations
 - * Section 18.84.080, Design Review Standards
 - * Section 18.84.090, Setbacks
 - * Section 18.84.095, Scenic Waterways
- 6. Chapter 18.116, Supplementary Provisions
 - * Section 18.116.030, Off-Street Parking and Loading
- 7. Chapter 18.124, Site Plan Review
 - * Section 18.124.060, Approval Criteria
 - * Section 18.124.070, Required Minimum Standards
- 8. Chapter 18.136, Amendments
 - * Section 18.136.020, Rezoning Standards
- B. Title 22 of the Deschutes County Code, the Development Procedures Ordinance
 - 1. Chapter 22.24, Land Use Action Hearings
 - * Section 22.24.140, Continuances or Record Extensions
- C. Title 23 of the Deschutes County Code, the Deschutes County Comprehensive Plan
 - 1. Chapter 23.40, Unincorporated Communities

II. BASIC FINDINGS:

- A. **Location:** The subject property is located at 64445 O.B. Riley Road, Bend and is further identified as Tax Lots 400, 1400, 2301, 2302, 2400, and 2600 on Deschutes County Assessor's Map 16-12-31D.

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- B. Zoning and Plan Designation:** The majority of the subject property is zoned Surface Mining (SM), identified as Surface Mining Site 370 on the county's comprehensive plan Goal 5 Inventory of Mineral and Aggregate Resources, and designated SM on the comprehensive plan map. A portion of the subject property along its western boundary is zoned TuR, Tumalo Residential District, and designated Tumalo Rural Community on the comprehensive plan map. The project site also is zoned Landscape Management Combining Zone (LM) because of its proximity to both the Deschutes River and Highway 20. Finally, the portion of the subject property located outside the SM Zone is zoned Surface Mining Impact Area Combining Zone (SMIA).
- C. Site Description:** The subject property is approximately 47 acres in size and irregular in shape. Highway 20 abuts the eastern property boundary, and O.B. Riley Road abuts most of the northern and western boundaries. A portion of the property is located across O.B. Riley Road to the southwest. The property currently is developed with the applicant's Tumalo facility which includes the following uses: transfer and processing of mineral and aggregate materials from off-site, stockpiling, loading, storage of equipment, crushing, vehicle fueling, related buildings, structures, and equipment, truck shop, pavement shop, redi-mix plant, tire shed, truck scale, office, concrete bins filled with wholesale and retail landscaping and aggregate materials including stockpiles of wood and bark chips, compost, gravel and river rock. The portion of the property located across O.B. Riley Road to the southwest is used as a storage space for construction equipment and materials. The property has two business signs, one on Highway 20 and one on O.B. Riley Road. The Staff Report states the sign on Highway 20 was approved by sign permit S-99-15, and the sign on O.B. Riley Road was not permitted. The property has three points of access from O.B. Riley Road and one point of access from Highway 20.
- D. Surrounding Zoning and Land Uses:** All of the surrounding property is located within the Tumalo Rural Community. To the north are commercial uses including two restaurants and a trailer sales establishment on land zoned commercial (TuC). To the east are Highway 20 and additional commercial development on land zoned TuC. To the southeast is vacant land zoned residential (TuR) and owned by the Oregon State Parks and Recreation Department (hereafter "parks department"). Further to the southeast is the Deschutes River. To the south is land zoned residential (TuR) and developed with residences. Further to the south is Tumalo State Park. To the west is land with mixed zoning including residential (TuR), Tumalo Research and Development (TuRE) occupied by Bend Research, and Exclusive Farm Use-Tumalo/Redmond/Bend Subzone (EFU-TRB) developed with rural residences and small-scale farms.
- E. Procedural History:** The record indicates the subject property has been used for surface mining activities for decades. A letter dated November 19, 2002 from Ben Mundie from the Oregon Department of Geology and Mineral Industries (hereafter "DOGAMI") and included in the record states mining activities began in the 1940's and that as of 1968 47 acres had been disturbed by mining activity. The letter states the previous owner of the property, Bend Aggregate and Paving Company, received a Grant of Total Exemption for 47 acres of the property. The record indicates the applicant purchased the property in

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1999 and established the property as its heavy truck facility. In August 2000, the applicant received SM and LM site plan approval for additions to two existing shops and for future development of a pipe shop, new office, and future expansion of the existing heavy equipment shop and paving shop (SP-00-27, LM-00-111). This approval was subject to nine conditions which the applicant had two years to initiate. In September 2002, the county approved a one-year extension to SP-00-27 and LM-00-111 (E-02-40) which extended the deadline for initiating the use to August 29, 2003. In August 2004 the applicant was granted a second one-year extension (E-03-31). The record indicates the approved uses were not initiated before the second extension expired.

In January 2003, the applicant submitted another application for SM and LM site plan review for several of the previously proposed improvements (SP-03-1, LM-03-6). After discussions with county planning staff concerning conflicts with the current zoning of the subject property, the applicant withdrew these applications. In August 2004 the applicant submitted applications for a text amendment to establish an industrial district in the Tumalo Rural Community and to allow the uses occurring on and planned for the subject property (TA-04-7) a zone change from TuR to TuI (ZC-04-5), and applications to modify the previously submitted site plan and LM applications. The Deschutes County Board of Commissioners (hereafter "board") approved the text amendment in 2005 (Ordinances 2005-016 and 2005-017).

In January 2005 the applicant submitted applications for SM and LM site plan approval for an office building and truck shop. In March 2005 the county issued an administrative decision granting approval subject to eight conditions (SP-05-6, LM-05-5). The applicant appealed the decision, challenging one of the conditions of approval (A-05-2). In June 2005, this Hearings Officer affirmed the administrative decision on appeal but modified one of the conditions of approval concerning removal or conversion of certain structures.

By letter dated June 8, 2005, the applicant requested that the county re-commence its review of the zone change application. By letter dated July 1, 2005 the applicant resubmitted the site plan and LM review applications. The county accepted the site plan and LM review applications as complete on July 25, 2005. Therefore, under ORS 215.427 the 150-day period for issuance of a final local land use decision on the site plan and LM applications would have expired on December 22, 2005. The staff report states, and the Hearings Officer agrees, that the zone change application is not subject to the 150-day period because it was submitted with, and based upon, the previously approved text amendment. In addition, at the public hearing, the applicant's representative agreed that the zone change application should be processed concurrently with the site plan applications so that the 150-day period for all three applications would be the same. For these reasons, the Hearings Officer finds the 150-day period for all three applications would have expired on December 22, 2005.

A public hearing on the applications was held on August 2, 2005. At the hearing, the Hearings Officer received testimony and evidence, left the written evidentiary record open through August 9, 2005, and allowed the applicant through August 16, 2005 to

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submit final argument pursuant to ORS 197.763. The applicant did not submit final argument, so the record closed on August 9, 2005. Because the applicant agreed to extend the written record from August 2 through August 9, 2005, under Section 22.24.140(E) of the county's land use procedures ordinance the 150-day period was extended for seven days and now expires on December 29th. As of the date of this decision there remain ** days in the 150-day period.

- F. Proposal:** The applicant is requesting approval of a zone change from TuR to the newly-created TuI zone for the portion of the subject property currently zoned TuR, as well as site plan and LM review and approval for revisions to the general layout of the applicant's operations on subject property. The applicant's burden of proof states these applications reflect its efforts to adjust the zoning and site plan for the subject property to allow both historic and current uses of the property.

The applicant's burden of proof describes the components of the proposed site plan as follows:

1. vacation of Cook Avenue, which occurred April 29, 2002 by Deschutes County (Order No. 2002-070) (completed following issuance of SP-00-27);
2. re-alignment of O.B. Riley Road and lot line adjustment with Deschutes County (completed following issuance of SP-00-27);
3. three new access points to site on O.B. Riley Road (completed following issuance of SP-00-27);
4. relocation of manufactured office building and scales to O.B. Riley Road entrance (completed following issuance of SP-00-27);
5. existing well/pump house location (completed following issuance of SP-00-27);
6. proposed additional aggregate storage bins along Highway 20 at north end of property;
7. proposed expansion of manufactured office building;
8. proposed new concrete dispatch office;
9. proposed landscape materials storage bins along O.B. Riley Road at north and northwest end of property; and
10. new paved areas to accommodate additional truck parking, equipment storage, and employee and client parking.

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The burden of proof goes on to state the preexisting uses in the new TuI Zone include the processing and stockpiling of aggregate and accessory uses. The proposed new uses in the new TuI Zone include:

1. relocated scales and manufactured office building;
2. proposed expansion of the manufactured office building;
3. proposed landscape materials storage bins; and
4. relocated O.B. Riley Road and associated entrances.

The burden of proof states the proposed new uses in the SM Zone include:

1. new 2,400-square foot concrete dispatch office;
2. new paved areas for truck parking, employee and client parking, and equipment storage; and
3. additional aggregate materials storage bins.

The staff report also notes the site plan shows a future sign and flagpole at the main entrance to the property from O.B. Riley Road and another future sign and flagpole at the gated entrance near the intersection of O.B. Riley Road and Highway 20. The site plan indicates these signs and flagpoles are to be reviewed under a separate permit to be submitted.

Finally, the applicant proposes to provide water to the property from the Laidlaw Water District and to provide sewage disposal through an on-site septic system.

G. Public/Private 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 Property Address Coordinator, Assessor, Road Department, Building Division, and Code Enforcement; the City of Bend Fire Department; and the Oregon Department of Water Resources, Watermaster-District 11; These comments are set forth verbatim at pages 5-7 of the staff report and/or are included in the record. The following agencies did not respond to the notice: the Deschutes County Transportation Planner; and the Oregon Departments of Transportation (ODOT), Environmental Quality (DEQ), Parks and Recreation; and DOGAMI.

H. 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 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

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with a notice of proposed land use action sign.¹ As of the date the record in this matter closed, the county had received no letters in response to these notices. One member of the public testified at the public hearing.

- I. Lot of Record:** The staff report states the subject property consists of several legal lots that were created as part of the Laidlaw Townsite.

III. CONCLUSIONS OF LAW:

ZONE CHANGE

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

1. Chapter 18.136, Amendments

a. 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: As discussed in the findings above, the majority of the subject property currently is designated Surface Mining on the county's comprehensive plan map. The portion of the property zoned TuR is designated Tumalo Rural Community. As also discussed above, the county approved the applicant's requested plan amendment consisting of a text amendment to the Tumalo Rural Community to create the TuI Zone to reflect the current and historic industrial and surface mining uses on the site. Therefore, the Hearings Officer finds the proposed rezoning from TuR to TuI for a portion of the subject property would be consistent with the existing plan designation for this area. In addition, as noted in the staff report, in a recent zone change decision (Coats, PA-04-4, ZC-04-2), I held:

" * * [T]he plans goals and policies do not constitute mandatory approval criteria for the proposed zone change, but rather are implemented through the zoning ordinance. Therefore, if the proposed zone change is consistent with the applicable provisions of the zoning ordinance it also will be consistent with the plan. As discussed in the findings below, I have found the proposed zone change from SM to MUA-10 satisfies all applicable approval criteria."*

¹ The Staff Report states the original notice published on July 13, 2005 contained errors and a corrected notice was published on July 15, 2005.

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I adhere to that holding here and find the applicant's proposal satisfies this criterion as I have interpreted it.

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

FINDING: The applicant proposes to rezone a portion of the subject property from TuR to TuI. Section 18.67.060 states the purpose of the TuI Zone is:

*** * * to allow a limited range of industrial uses to serve the community and the surrounding area.**

Section 18.67.020 states the purpose of the TuR Zone is:

*** * * to allow new residential development that is compatible with the rural character of the area.**

The Hearings Officer finds the applicant's proposal to rezone to TuI the portion of the property currently zoned TuR is consistent with the purpose of the zone because it will allow the applicant to continue operating the surface mining and industrial uses that have occurred on the property for decades. I concur with the applicant that these activities clearly are not consistent with the purpose of the TuR Zone. For these reasons, I find the applicant's proposal satisfies this criterion.

- 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.**

FINDING: The record indicates public services and facilities necessary to serve the existing industrial uses on the subject property already are in place, including water, sewage disposal, electricity, telephone, fire and police protection. As discussed in the findings above, the primary access to the property is from O.B. Riley Road. The record indicates ODOT recently realigned the intersection of O.B. Riley Road and Highway 20 and the county realigned a segment of O.B. Riley Road adjacent to the subject property to improve the safety of these facilities. As a result of this realignment the main entrance to the subject property also was moved to improve its function. For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

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

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FINDING: As discussed in the Findings of Fact above, the land surrounding the portion of the subject property to be rezoned to TuI consists of Highway 97, O.B. Riley Road, and a broad mixture of land uses including surface mining to the east, commercial development to the north and east across the highway, vacant park land to the southeast, vacant residential land to the south and southwest, and rural residences, small-scale farms, and a research facility to the west. Although the subject property is located relatively close to residential and park uses, the record indicates it has been used for surface mining and industrial operations for decades. The staff report states, and the Hearings Officer concurs, that the proposed rezoning will not change the existing impact of the site on surrounding land uses. The staff report also notes that the new TuI Zone set forth in Section 18.67.060 includes specific regulations designed to minimize impacts on surrounding land uses, including approval criteria and setback standards to ensure that the site continues to operate in a manner that is compatible with the residential uses to the north and west and the research and development uses to the west. For these reasons, I find the applicant's proposal satisfies this 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.**

FINDING: The applicant does not argue there has been a change in circumstances justifying the proposed zone change. Rather, the applicant's burden of proof argues the original zoning of a portion of the property to TuR was a mistake for the following reasons:

"It appears that the site was zoned TuR when the Tumalo Rural Community was established because the site was part of an old subdivision plat, the Laidlaw Plat. However, the Laidlaw lots within the site have never been developed for residential use, and the site has historically been devoted to industrial uses. At the present time, the site continues to function in conjunction with the SM-zoned property to the east and west. Thus, the application of the TuR zone to the site was erroneous and did not reflect the former, current, or anticipated future use of the property."

The Hearings Officer agrees with the applicant that the TuR zoning of a portion of the subject property clearly was a mistake given the historic and ongoing surface mining and industrial use of the subject property. It may have been that the county believed the property eventually would redevelop to residential uses if and when the SM designation and zoning were no longer needed to protect aggregate resources. However, as discussed in the Findings of Fact above, the subject property has been operated as a surface mining and industrial site long after all on-site aggregate resources were exhausted. Therefore, I find the applicant's proposal satisfies this criterion.

For the reasons set forth in the findings above, the Hearings Officer finds the applicant has satisfied all approval criteria for the proposed zone change from TuR to TuI.

SITE PLAN

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2. Chapter 18.52, Surface Mining (SM) Zone

a. Section 18.52.020, Application of Ordinance

Except as provided in section 18.52.160, the setbacks, operation standards and conditions set forth in sections 18.52.090, 18.52.110 and 18.52.140, respectively, apply to every surface mining site and activity to the extent that setbacks, standards and conditions are not expressly provided for in the site-specific ESEE analysis within the surface mining element of the Comprehensive Plan. When there is a conflict between the site-specific ESEE analysis and the provisions of this title, the site-specific ESEE analysis shall control.

b. Section 18.52.160, Preexisting Sites, Nonconforming Sites and Registration

A. Except for preexisting and nonconforming sites, DCC 18 shall apply to all surface mining activities which occur on or after the effective date of Ordinance No. 90-014.

B. Preexisting Sites. Mineral and aggregate sites which have a valid DOGAMI permit or exemption and/or County permit on the effective date of Ordinance No. 90-014, and which are zoned SM, are "preexisting sites."

FINDINGS: The applicant is requesting site plan approval for the following uses in the SM Zone:

1. a new 2,400-square foot concrete dispatch office;
2. new paved areas for truck parking, employee and client parking, and equipment storage;
3. relocated truck scales;² and
4. additional aggregate materials storage bins.

The effective date of Ordinance No. 90-014 was July 16, 1990. The ESEE analysis for SM Site 370 (the subject property) identified the 1990 zoning as SM. As discussed in the findings above, Ben Mundie's November 19, 2002 letter and attached aerial photograph indicate that 47 acres had been disturbed by mining and are subject to a general exemption that was maintained by the previous property owner and renewed by the applicant. The record indicates the 47-acre area covers both areas zoned SM and TuR. The aerial photograph submitted with Ben Mundie's letter

² The staff report notes that the submitted site plan shows a portion of the existing truck scales is located in both the SM and TuI Zones.

shows both the area DOGAMI considers to have exempt status (outlined in yellow) as well as the area disturbed by mining as of 1999 (outlined in white). Both of these areas include approximately 47 acres but do not coincide exactly. And both areas do not exactly match the boundaries of the subject property. As a result, a few small areas appear to be located outside of the exempt area, and some exempt and disturbed areas are located outside the property boundary. Mr. Mundie identified an area of about one acre located outside the boundary of the subject property near its southwest corner where mining disturbance had occurred in the past and that therefore would be eligible for exempt status. In order to begin to clarify this rather confusing situation, the Hearings Officer finds that as a condition of zone change approval the applicant will be required to submit to the county metes and bounds descriptions of both the entire subject property and the area to be rezoned from TuR to TuI.

The staff report states that based on a county-generated zoning map utilizing GPS (global positioning system) data as well as Mr. Mundie's November 19, 2002, letter and attached aerial photograph, the SM-zoned area on the subject property had exempt status from DOGAMI on the effective date of Ordinance 90-014. Therefore, the proposed improvements described above are located on property that had a valid DOGAMI permit and/or exemption on that date and that are zoned surface mining. Therefore, the activities qualify as occurring on a preexisting site.

- C. **Registration. Operators of all preexisting and nonconforming sites shall register the sites with the Planning Division within 180 days of the effective date of Ordinance No. 90-014. The registration shall include a copy of the operator's permit or exemption and a map or legal description showing the boundaries of the surface mining area covered by the permit or exemption.**

FINDINGS: The staff report states the county may not have developed a register of preexisting and nonconforming sites. However, as discussed above, the record clearly indicates the area on the subject property on which the applicant proposes to establish new uses falls within a DOGAMI exemption.

E. **Expansion**

Any expansion of the surface mining activity on a preexisting site beyond the boundaries of the surface mining area covered by the DOGAMI permit or exemption or County permit, or any surface mining activity requiring a new DOGAMI or County permit, shall comply with all applicable requirements of DCC 18.

FINDINGS: The applicant is not requesting approval to expand surface mining activities beyond the boundaries of the preexisting site. However, as discussed in the findings below, the Hearings Officer has found the proposed uses require site plan review.

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c. **Section 18.52.040, Uses Permitted Outright Subject to Site Plan Review**

The following uses are permitted outright subject to site plan review as provided in this section:

- A. **Extraction of minerals.**
- B. **Stockpiling and storage of minerals.**
- C. **Screening, washing and sizing of minerals.**
- D. **Sale of minerals and mineral products extracted and produced on the parcel or contiguous parcels in the same ownership.**
- E. **Buildings, structures, apparatus, equipment and appurtenances necessary for the above uses to be carried on.**

FINDINGS: As discussed in the findings above, SM Site 370 historically has been used for mineral and aggregate processing as well as for stockpiling and storage of these materials. The applicant's burden of proof states, and the Hearings Officer finds, that the proposed new uses -- dispatch office, parking, equipment storage, and aggregate bins -- are intended to and will support the activities listed in this section and therefore are uses allowed outright subject to site plan review.

d. **Section 18.52.090, Minimum Use Setbacks**

A. **Except as otherwise provided in this section, all surface mining activities and uses, including structures, shall be located and conducted at least 250 feet from a noise-sensitive or dust-sensitive use or structure. Exceptions to this standard shall be allowed for the following:**

- 1. **Access roads approved as part of site plan review.**
- 2. **Dwellings located on the parcel on which the surface mining is to occur, including replacements or expansions thereof.**
- 3. **Pursuant to a written agreement for a lesser setback made between the owner of the noise-sensitive or dust-sensitive use or structure located within 250 feet of the proposed surface mining activity and the owner or operator of the proposed surface mine. Such agreement shall be notarized and recorded in the Deschutes County Book of Records and shall run with the land.**

Such agreement shall be submitted and considered at the time of site plan review or site plan modification.

FINDINGS: The record indicates the residence closest to the subject property is located to the south on Tax Lot 4600. According to the applicant's submitted site plan, the nearest proposed surface mining use is the proposed truck parking/equipment storage area located in the southeast corner of the subject property. The Hearings Officer finds this activity will be located over 250 feet from the nearest residence, therefore satisfying this standard.

- B. Storage and processing of mineral and aggregate material, and storage of operational equipment which creates noise and dust, shall not be allowed closer than one-quarter mile from any noise or dust sensitive use or structure existing on the effective date of Ordinance No. 90-014, unless the applicant demonstrates that:**
- 1. Due to the parcel size, topography, existing vegetation or location of conflicting uses or resources, there is no on-site location for the storage and processing of material or storage of equipment which will have less noise or dust impact; and**
 - 2. All noise control and air quality standards of this title can be met by the proposed use for which the exception is requested.**
- C. Additional setbacks may be determined as part of the site reclamation review process. Additional setbacks also may be required by DOGAMI.**
- D. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the county under chapter 15.04 of the Deschutes County Code shall be met.**

FINDINGS: As discussed above, the nearest residence to the surface mining activity on the subject property is located on Tax Lot 4600 to the south. The record indicates this residence is located within one-quarter mile of the surface mining site. The staff report states that county records show a building permit for that residence received final approval in September 1986, prior to the effective date of Ordinance No. 90-014. The applicant's burden of proof states:

"The boundaries of the DOGAMI permit extend to both the northern southern boundaries of the property depicted on the site plan. Thus, all existing mining uses within the DOGAMI permit area are considered preexisting and are exempt from this standard. The development improvements proposed by this application

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are within this area and are located more than one-quarter mile (1,320 feet) from the nearest residence."

The Hearings Officer concurs with the applicant that the existing storage and processing activities are preexisting uses on the subject property. However, neither the burden of proof nor the submitted site plan indicates whether the proposed equipment storage area in the southeast corner of the property that is within a quarter mile of the dwelling is for "operational equipment which creates noise and dust" subject to this standard. At the public hearing, the applicant's representatives testified that no equipment would be "operated" on the proposed storage area but merely would be driven or towed on and off the area. Therefore, I find the equipment storage area within one-quarter mile of the nearest residence is not subject to this standard.

f. Section 18.52.110, General Operation Standards

Prior to the start of any surface mining activity and no later than site plan review if such review is required under this section, the applicant shall demonstrate that the following standards are or can be met by the surface mining operation:

FINDINGS: As discussed above, the record indicates SM-Site 370 is a preexisting surface mine that has operated for over 60 years. The applicant does not propose to expand the boundaries of the site. Therefore, the Hearings Officer finds the standards in this section are not applicable to the existing uses on the site. However, I find the proposed new uses are subject to the site plan approval criteria, discussed in the findings below.

A. Access.

1. **All on-site roads used in the mining operation, and access roads from the site to a public road maintained by a government agency, are designed and constructed to accommodate the vehicles and equipment which will use them, and shall meet the following minimum standards:**
 - a. **All access roads within 100 feet of a paved county road or state highway are paved unless the applicant demonstrates that other methods of dust control, including application of oil or water, will be implemented in a manner which provides for the safety and maintenance of the county road or state highway.**
 - b. **Roads within the surface mining parcel which are used as part of the surface mining operation are constructed and maintained in a manner by**

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which all applicable DEQ standards for vehicular noise control and ambient air quality are or can be satisfied.

- c. All roads used for mining are paved and will be adequately maintained at all points within 250 feet of a dwelling or other dust-sensitive use existing on the effective date of Ordinance No. 90-014.

2. Improvements or fees in lieu of improvements of public roads, county roads and state highways may be required when the Planning Director or Hearings Body, in consultation with the appropriate road authority, determines that the increased traffic on the roads resulting from the surface mining activity will damage the road sufficiently to warrant off-site improvement. If a fee in lieu of improvements is required, the amount of the fee shall reflect the applicant's prorate share of the actual total cost of the capital expenditure of the road construction or reconstruction project necessitated by and benefiting the surface mining operation. Discounts for taxes and fees already paid for such improvements, such as road taxes for vehicles and for property already dedicated or improved, shall be applied.

FINDINGS: Surface mining activities have occurred on the subject property for over 60 years. As discussed above, in conjunction with the recent realignment of O.B. Riley Road, the applicant relocated the main entrance to this operation from Highway 20 to O.B. Riley Road. The record indicates the main interior access roads including the road within 100 feet of O.B. Riley Road are paved. The applicant's burden of proof indicates the few interior roadways surfaced with gravel are watered on a daily basis to maintain dust control. For these reasons, the Hearings Officer concurs with staff that no additional improvements are required.

B. Screening.

1. The site is screened to meet the standards specified in paragraph (2) below, unless one of the exceptions in paragraph (6) below applies.
2. Performance Standard. When screening is required by paragraph (1), it obscures the view of the screened uses from the protected uses with the methods and to the extent described in paragraph (5) below.

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3. Protected Uses.

- a. Noise-sensitive or dust-sensitive uses existing on the effective date of Ordinance No. 90-014.
- b. Public parks and waysides.
- c. Frontage on roads designated by the Comprehensive Plan as collectors, arterials and highways.
- d. Areas zoned Landscape Management Combining.
- e. Those portions of state and federal scenic waterways from which the surface mining activity is visible from the perspective of a person standing at the high water mark on either bank of the waterway.

4. Screened Uses.

- a. All equipment stored on the site.
- b. All crushing and processing equipment.
- c. All excavated areas except: Areas where reclamation is occurring; roadways existing on the effective date of Ordinance No. 90-014; new roadways approved as part of the site plan; material excavated to create berms; and material excavated to change the level of the mining site to an elevation which provides natural screening.

5. Types of Screening.

- a. Natural Screening. Existing vegetation or other landscape features which are located on the surface mining site within 50 feet of the boundary of the site, and which obscure the view of the screened uses from the protected uses, shall be preserved and maintained.
- b. Supplied Screening. Supplied vegetative screening is screening not already existing and which is added to the site, such as hardy plant

species. Plantings shall not be required to exceed either a density of six feet on center or a height of six feet at the commencement of mining. Supplied earthen screening shall consist of berms covered with earth and stabilized with ground cover.

6. **Exceptions.** Supplied screening shall not be required when and to the extent that any of the following circumstances occurs:
 - a. The natural topography of the site offers sufficient screening to meet the performance standard in paragraph (2).
 - b. Supplied screening cannot meet the performance standard in paragraph (2) due to topography.
 - c. The applicant demonstrates that supplied screening cannot reliably be established or cannot survive for a 10 year period due to soil, water or climatic conditions.
 - d. Screened uses that are visible from the protected uses will be concluded and will either be removed or reclaimed within 18 months.
 - e. The surface miner and the owner or authorized representative of the owner of the protected use execute and record in the Deschutes County Book of Records a mitigation agreement that waives screening requirements and describes and adopts an alternate program or technique.
7. **Continued Maintenance.** Vegetative screening shall be maintained and replaced as necessary to assure the required screening throughout the duration of the mining activity.

FINDINGS: As discussed above, the surface mining site, including the processing equipment, is a preexisting site subject to a DOGAMI exemption. The staff report states, and the Hearings Officer concurs, that the only proposed *new* surface mining use that qualifies as a "screened use" for purposes of these standards is the proposed equipment storage area located in the southeast corner of the property. In addition, I agree with staff that there are several "protected uses" from which the proposed equipment storage area must be screened, including: the residence on Tax

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Lot 4600, Tumalo State Park, O.B. Riley Road (a designated collector street), Highway 20, and the LM-zoned area on the property.

The applicant's burden of proof states with respect to compliance with these criteria:

"With respect to the new uses proposed by this application, the Applicant has proposed to screen the uses to the maximum extent practicable by installing several landscaping areas along Highway 20 and O.B. Riley Road. As discussed in the 2000 County decision, the Applicant has also agreed not to remove any vegetation from those portions of the property fronting Highway 20. In addition, because the site is already developed with a variety of aggregate processing and storage uses, the new uses will not appear to be visually significant within the context of the preexisting development. Finally, because the site is topographically recessed compared to the surrounding parcels, the site's topography effectively screens the uses from adjacent properties."

The Hearings Officer agrees that the existing topography, vegetation, and development associated with the surface mining activities (including the stockpiling and storage of minerals and existing structures and large mining equipment) will provide sufficient screening of the equipment storage area from the protected uses. Therefore, I find the applicant's proposal satisfies these standards.

- C. Air Quality. The discharge of contaminants and dust created by the mining operation and accessory uses to mining does not exceed any applicable DEQ ambient air quality and emissions standards.**

FINDINGS: As discussed above, the site is a preexisting surface mining site on which mining operations have occurred for over 60 years. The applicant's burden of proof states it has consistently maintained compliance with applicable DEQ air quality standards, and that the addition of the proposed new uses will not impact that compliance. As noted in the Findings of Fact above, the county sent notice of the applicant's proposal to DEQ but did not receive a response. For these reasons, the Hearings Officer finds the applicant's proposal will satisfy this criterion.

- D. Erosion Control. Sedimentation and erosion resulting from the mining operation does not affect any perennial stream so as to violate DEQ's water quality standards.**

FINDINGS: The applicant does not propose to expand the preexisting surface mining site boundaries, and no excavation is occurring or is proposed. The applicant's burden of proof states the applicant consistently maintains compliance with all applicable DEQ water quality standards. The Hearings Officer concurs with the applicant that the addition of the proposed new structures and uses will not impact water quality compliance, and therefore its proposal will comply with this criterion.

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- E. Streams and Drainage.** Unless agreed to, in writing, by the adjoining property owner(s), existing natural drainages on the site are not changed in a manner which substantially interferes with drainage patterns on adjoining property or which drains waste materials or waste water onto adjoining property or perennial streams. Where the surface mining site abuts a lake, perennial stream or other perennial body of water, all existing vegetation within 100 feet of the mean high water mark shall be retained unless mining activity is allowed within this area by the site-specific ESEE analysis in the surface mining element of the Comprehensive Plan.

FINDINGS: The record indicates the surface mining site is at a lower elevation than surrounding properties. Although it is in the vicinity of the Deschutes River, it does not abut the river or any lake or other perennial body of water. The Hearings Officer finds the applicant's proposed new and expanded buildings and uses will not change the existing drainage patterns on the site in a manner that would substantially interfere with drainage patterns on adjoining properties, thus satisfying this criterion.

- F. Equipment Removal.** All surface mining equipment and related structures will be removed from a mining site within 30 days of completion of all mining and reclamation.

FINDINGS: As discussed in the Findings of Fact above, the county recently issued an administrative decision granting site plan approval for additional buildings on the site subject to several conditions, one of which required the applicant to remove the buildings following completion of surface mining activities (A-05-2, SP-05-6, LM-05-5). In this Hearings Officer's decision affirming the administrative decision, I held this criterion does not require removal of structures "related to" surface mining uses if the structures reasonably can be converted to uses permitted in a post-SM zone. The applicant argues, and I agree, that the proposed new and expanded buildings and uses subject to site plan review can be used in a post-SM zone -- i.e., parking, general materials storage, dispatch office -- and therefore site plan approval in this matter can be subject to a condition of approval similar to the one I imposed in A-05-2. I find that with imposition of such a condition the applicant's proposal will satisfy this criterion.

- G. Flood Plain.** Any mining operations conducted in a flood plain, as defined in this title, will satisfy all applicable conditional use criteria of sections 18.96.030 through 18.96.060.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not located in a flood plain.

- H. Noise.** Noise created by a mining operation, vehicles, equipment or accessory uses which is audible off the site does not exceed DEQ noise control standards, due to topography or

other natural features, or by use of methods to control and minimize off-site noise, including, but not limited to: Installation of earth berms; placing equipment below ground level; limiting hours of operation; using a size or type of vehicle or equipment which has been demonstrated to meet applicable DEQ noise control standards; relocation of access roads, and other measures customarily used in the surface mining industry to meet DEQ noise standards.

FINDINGS: The applicant's burden of proof states it currently complies with all applicable DEQ noise standards, and that in any event the proposed site plan modifications will only result in a rerouting of truck traffic to and from the site and not an increase in the amount or type of traffic. Therefore, the applicant argues, there will be no significant change in noise created by mining activity on the property. In addition, as discussed above, the surface mining site is lower in elevation than surrounding properties, thus having the potential for topography to attenuate noise. For these reasons, the Hearings Officer finds the applicant's proposal meets this criterion.

I. Hours of Operation.

1. Mineral and aggregate extraction, processing and equipment operation is limited to the following operating hours:
 - a. Surface mining sites located within one-half mile of any noise-sensitive or dust-sensitive use or structure existing on the effective date of Ordinance No. 90-014: 7:00 a.m. to 6:00 p.m. - Monday through Friday and 8:00 a.m. to 5:00 p.m. - Saturday.
 - b. All other sites: 7:00 a.m. to 10:00 p.m. - Monday through Saturday.
2. No surface mining activity shall be conducted on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day.

FINDINGS: As discussed above, the applicant is not proposing to expand the boundaries of SM Site 370 which is a preexisting site on which processing and equipment operation already are taking place. The proposed new and expanded buildings and uses subject to site plan review will not expand extraction, processing or equipment operation. Therefore, the Hearings Officer agrees with staff and the applicant that this criterion is not applicable to the applicant's proposal.

J. Drilling and Blasting.

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1. **Drilling and blasting are allowed under the site-specific ESEE analysis in the surface mining element of the Comprehensive Plan.**
2. **Drilling and blasting which are to be conducted within one-half mile of any noise-sensitive or dust-sensitive use or structure or agricultural use involving the raising of animals meet or can meet the following standards:**
 - a. **DEQ noise standards for drilling and blasting.**
 - b. **A plan addressing the potential for earth movement, flying rocks and other effects on surrounding uses has been submitted to and approved by the county.**
 - c. **Blasting will be restricted to the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and no blasting will occur on Saturdays, Sundays or legal holidays identified in paragraph (I)(2) above.**
 - d. **A plan has been submitted to and approved by the county describing how the operator will notify the owners and inhabitants of the protected uses identified in paragraph (J)(2), above, which are located within one-half mile of the blasting site of proposed blasting by written notice:**
 - i. **Delivered in a manner calculated to be received by each person entitled to notice at least 48 hours prior to the time the blasting activity will occur;**
 - ii. **Containing a statement providing that the recipient property owner must provide the notice to tenants and inhabitants on the subject property;**
 - iii. **In the case of ongoing blasting, given at least once each month and specifying the days and hours that blasting will occur; and**

- iv. **Retained by the operator, along with a list of persons notified, for at least one year after blasting occurs.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant is not proposing any drilling or blasting.

- K. **Extraction Site Size.** The size of the area in which extraction is taking place as part of a surface mine does not exceed five acres. For the purpose of this title, the extraction site size does not include access roads, equipment storage areas, processing equipment sites, stockpiles, areas where reclamation is in progress and similar accessory uses which are necessary to the mining operation. An exception to this standard may be allowed as part of site plan review if the applicant demonstrates that mining techniques normally associated with the specific type of mining in question and commonly used in the surface mining industry require a larger extraction site size.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant is not proposing to extract material on-site.

L. **Fish and Wildlife Protection.**

1. **Fish and wildlife values and habitat required by the site-specific ESEE analysis to be conserved and protected are conserved and protected by use of methods including, but not limited to: Seasonal operations and access road closures; retention of or creation of vegetative cover and riparian habitat; and erection of fencing or other barriers to protect wildlife from steep extraction site slopes.**
2. **Mitigation, as defined in this title, will be provided to compensate for any loss of fish and wildlife habitat caused by the surface mining activity which habitat is required to be protected by the site-specific ESEE analysis. When mitigation is provided, the type and effectiveness of mitigation required has been determined by the Planning Director or Hearings Body to be appropriate from available evidence and in consultation with the Oregon Department of Fish and Wildlife.**

FINDINGS: The ESEE for SM Site 370 states the subject site is located outside any deer winter range and that no wildlife resource conflicts exist on the site. Therefore, the Hearings Officer finds this criterion is not applicable to the applicant's proposal.

- M. **Surface water management is provided in a manner which meets all applicable DEQ water quality standards and DOGAMI requirements, and which demonstrates that all water necessary for the proposed operation of the surface mine, including dust control, landscaping and processing of material, has been appropriated to the surface mining site and is legally available for such use. The applicant must provide written documentation of any water rights from the respective water district and Oregon Watermaster's office prior to any mining of the site.**

FINDINGS: As discussed above, this is a preexisting site which the applicant states has consistently complied and will continue to comply with all applicable DEQ and DOGAMI requirements, including standards affective surface water management and dust control. In addition, as discussed above, the proposed new and expanded buildings and activities will have no impact on operations that could affect surface water management. Therefore, the Hearings Officer finds this criterion is not applicable.

- N. **Storage of equipment, structures and other materials at the site is limited to that which is necessary and appurtenant to the mining operation or other uses permitted on the site.**

FINDINGS: As discussed above, the applicant's burden of proof states, and the Hearings Officer has found, that the proposed storage equipment area located near the southeast corner of the property as well as the proposed mineral and aggregate material storage bins along the eastern boundary of the site are appurtenant to the mining operation and related uses on the site. Therefore, I find the applicant's proposal satisfies this criterion.

- O. **A security plan for the subject site has been submitted and approved by the county and, where appropriate, by DOGAMI which addresses the following issues:**
1. **lighting;**
 2. **fencing;**
 3. **gates at access points;**
 4. **water impoundments;**
 5. **sloping; and**

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6. security of vehicles and equipment.

FINDINGS: The staff report states, and the Hearings Officer agrees, that because the applicant is not proposing to expand the boundaries of this preexisting surface mining site this criterion does not apply. However, the applicant's burden of proof states the applicant has installed a new 6-foot security fence with 3-ring barbed-wire around the perimeter of the site, and has installed new gates at all entrances to the site, as part of its site plan upgrades. For this reason, I find that to the extent this criterion applies to the proposed new site plan elements the applicant's proposal satisfies it.

P. All impacts of the mining activities identified in the ESEE analysis for the specific site are addressed and have been resolved at the time of site plan approval or before the start of mining activity.

FINDINGS: SM Site 370 was placed on the county's comprehensive plan mineral and aggregate resource inventory as a preexisting site and an ESEE analysis was prepared that identified the surface mining activities and potential impacts, described below:

- Since the entire site is committed to surface mining activities, it precludes the use of the site for other uses provided for in the SM zone or for other uses other than the SM zone.
- Noise impacts from heavy equipment, truck traffic, blasting, processing, and drilling in surrounding noise-sensitive uses.
- Impacts of dust on dust-sensitive uses.
- Truck traffic on roads and public safety.
- Impacts to aesthetic values.
- Short-term impact on surrounding property values.
- Potential cost of road repairs on public roads due to heavy traffic use.
- Social Impacts, such as livability, scenic quality and compatibility of other uses in the vicinity of the project.
- Environmental impacts, such as noise, dust, and physical scarring of the landscape.

The 1990 board found that both the mineral resource and the conflicting resources and uses were important relative to one another. The board adopted a "Program to Meet the Goal" to address potential impacts which states in pertinent part:

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"The Board finds that in order to protect both the aggregate resource and the conflicting resources and uses, the site will be zone for surface mining, subject to the following ESEE conditions:

- (a) Setbacks shall be required for potential conflicting residential and other development; and*
- (b) DEQ noise and dust standards shall be adhered to."*

As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant's proposed new surface mining site plan elements meet the minimum required setbacks established in the SM Zone, and that to the extent they are applicable DEQ's noise and dust standards are or will be met. Therefore, I find the applicant's proposal satisfies this criterion.

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

3. Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

a. Section 18.56.020, Location

The SMIA Zone shall apply to all property located within one-half mile of the boundary of a surface mining zone. However, the SMIA Zone shall not apply to any property located within an urban growth boundary, city or other county. The extent and location of the SMIA Zone shall be designated at the time the adjacent surface mining zone is designated.

b. Section 18.56.030, Application of Provisions

The standards set forth in DCC 18.56 shall apply in addition to those specified in DCC Title 18 for the underlying zone. If a conflict in regulations or standards occurs, the provisions of DCC 18.56 shall govern.

c. Section 18.56.080, Use Limitations

No dwellings or additions to dwellings or other noise-sensitive or dust-sensitive uses or structures shall be erected in an SMIA Zone without first obtaining site plan approval under the standards and criteria set forth in DCC 18.56.090 through 18.56.120.

FINDINGS: Section 18.04.03 defines "noise-sensitive use" and "dust-sensitive use" as real property that is not normally used for industrial uses. For this reason, the staff report states, and

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the Hearings Officer concurs, that the SMIA Zone does not apply to the applicant's proposal which includes only surface mining and industrial uses.

4. Chapter 18.67, Tumalo Rural Community Zoning Districts

a. Section 18.67.060, Industrial (TuI) District

The purpose of the Industrial District is to allow a limited range of industrial uses to serve the community and the surrounding area.

FINDINGS: As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant has demonstrated the proposed zone change from TuR to TuI satisfies all applicable zone change criteria, and therefore I can approve the zone change. Accordingly, I will review the applicant's proposal for compliance with the applicable provisions of the TuI Zone.

A. Uses permitted outright. The following uses and their accessory uses are permitted outright:

1. Industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994);
2. Office buildings associated with industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994);

* * *

5. Equipment storage associated with industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994);

B. Uses Permitted, Subject to Site Plan Review. The following uses and their accessory uses are permitted in a building or buildings not to exceed 40,000 square feet of floor area, subject to the applicable provisions of DCC 18.67, 18.116, and 18.124.

1. Expansion or replacement of uses allowed under DCC 18.67.060(A);
2. Office buildings associated with industrial uses;

* * *

5. **Equipment storage associated with industrial uses;**
6. **Primary processing, packaging, treatment, bulk storage and distribution of the following products:**
 - a. **Agricultural products, including foodstuffs, animal and fish products, and animal feeds.**
 - b. **Ornamental horticultural products and nurseries.**
 - c. **Softwood and hardwood products excluding pulp and paper manufacturing.**
 - d. **Sand, gravel, clay and other mineral products.**

* * *

- C. **Conditional Uses. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.116, 18.124, and 18.128:**

* * *

3. **Stockpiling, storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete;**
4. **Buildings, structures, apparatus, equipment and appurtenances necessary for the above uses to be carried on.**

* * *

FINDINGS: As discussed in the Findings of Fact above, in 2004 the applicant submitted an application for, and in 2005 received approval of a text amendment to Chapter 18.67, the Tumalo Rural Community, to add Section 18.67.060 establishing the TuI Zone, the uses permitted within it, and the regulations applicable to such uses. The Hearings Officer finds all of the uses identified in the submitted site plan that exist or are proposed to be placed on the TuI-zoned portion of the subject property fall within one or more of the uses permitted outright or subject to site plan review in the TuI Zone. I further find that none of the existing or proposed uses in the TuI Zone constitutes a conditional use, and that those that would fall into the above-described categories are occurring on the SM-zoned portion of the property.

- E. **Dimensional standards. In the Industrial Zone, the following**

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dimensional standards shall apply:

* * *

2. The minimum building setback between a structure and a street, road or railroad right-of-way line shall be 25 feet unless a greater setback is required for compliance with Comprehensive Plan policies.
3. The minimum setback between a structure and a property line adjoining a residential lot or use in a platted subdivision or residential zone shall be 50 feet.
4. The minimum setback between a structure and an existing use shall be three feet from the property line and six feet from a structure on the adjoining property.
5. The maximum building height shall be 45 feet on any lot adjacent to a residential use or lot in a platted subdivision or residential zone.
6. The minimum lot frontage shall be 50 feet.
7. Exception to Yard Standards. Any new structure requiring a building permit on a lot adjacent to EFU-zoned land that is receiving special assessment for farm use shall be set back a minimum of 100 feet from the common property line.

FINDINGS: The applicant proposes to relocate the truck scales, place a new manufactured office building, and expand the existing office space, in an area near the center of the subject property within the TuI Zone. The submitted site plan shows these features would be located more than 25 feet from O.B. Riley Road and Highway 20, and more than 50 feet from the nearest residence on Tax Lot 4600 to the south and the nearest boundary of the TuR Zone. The submitted site plan also shows the TuI-zoned portion of the subject property is not located adjacent to EFU-zoned land. The applicant's burden of proof states the proposed landscape material storage bins are located at least 25 feet from O.B. Riley road. The Hearings Officer finds these bins fall within the definition of "structure" under Section 18.04.030 and therefore are subject to the minimum 25-foot setback.³ Finally, the applicant's burden of proof states all structures are well below the 45-foot height limit. For these reasons, I find the applicant's proposal satisfies this criterion.

³ Section 18.04.030 defines "structure" as "something constructed or built having a fixed base on, or fixed connection to, the ground or another structure."

- F. Industrial Site Design.** The site design of any permitted use shall make the most effective use reasonably possible of the site topography, existing landscaping and building placement so as to preserve existing trees and natural features, preserve vistas and other views from public ways and neighboring residential uses and to minimize intrusion into the character of existing developments in the immediate vicinity of the proposed use.

FINDINGS: The staff report states, and the Hearings Officer agrees, that because the subject property has been used for surface mining activities for over 60 years, the topography, vegetation and views have long since been disturbed and degraded, and therefore they have become a part of the neighborhood character. There are few trees and no other natural features on the property that require preservation. As discussed in the findings above, the applicant's burden of proof states the subject applications reflect the applicant's ongoing efforts to create an attractive site plan that reflects historic and current surface mining and industrial activity on the site while creating an efficient and effective use of the site for these operations that also minimizes potential intrusion into the immediate vicinity of the proposed uses. Therefore, I find the applicant's proposal satisfies this criterion.

- G. Design and Use Criteria.** In the consideration of an application for a new industrial use, the Planning Director or Hearings Body shall take into account the impact of the proposed use on nearby residential and commercial uses, on resource carrying capacities and on the capacity of transportation and other public facilities and services.

FINDINGS: The staff report questions whether paragraph (G) should apply to the applicant's proposal since the applicant does not propose a "new industrial use" but rather seeks site plan review for existing uses that -- with approval of a zone change from TuR to TuI -- are allowed subject to site plan approval. The Hearings Officer finds that under the unique circumstances presented by this application -- new and relocated industrial uses on a preexisting surface mining site -- it is appropriate not to apply paragraph (G). And I concur with staff and the applicant that in any event the uses proposed for the TuI-zoned portion of the property are much less intense in their impacts than many of the historic and current uses of the SM-zoned portion of the property.

- I. For purposes of this chapter, a new industrial use does not include industrial uses in existence on the date of Ordinance 2005-16. Unless expanded or altered, industrial uses in existence on the date of adoption of the TUI District are not subject to the requirements of 18.67.060(B) or 18.67.060(C).**

FINDINGS: As discussed in the findings above, the applicant proposes the following uses on the TuI-zone portion of the subject property:

1. relocated scales and manufactured office building;

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2. expansion of the manufactured office building;
3. landscape materials storage bins; and
4. relocated O.B. Riley Road and associated entrances.

The applicant's burden of proof states:

"The new or modified uses within the Tul area, and the appropriate use categories for each, are:

- *The relocated scales and manufactured office building: DCC § 18.67.060(B)(1) permits the expansion or replacement of uses allowed under DCC § 18.67.060(A). DCC § 18.67.060(A)(1) and (2) permit 'industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994)' and 'office buildings associated with industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994).' The subject scales are an industrial use that has been in existence prior to 1994, and the office building is an office use associated with industrial scales. The scales and office building have simply been relocated to a portion of the site that is zoned partially SM and partially Tul. Due to their new location, they are subject to site plan review per DCC 18.67.060(B)(1).*
- *The proposed expansion of the manufactured office building: As explained above, the manufactured office building is an office building associated with an industrial use in existence prior to 1994. Therefore, the relocation and expansion of the office building is permitted under DCC § 18.67.060(B)(1).*
- *The proposed landscape materials storage bins are a new use proposed in the Tul zone. The bins are permitted with site plan review by DCC § 18.67.060(B)(5), which allows the 'primary processing, packaging, treatment, bulk storage and distribution of...(b) Ornamental horticultural products and nurseries; and (c) Softwood and hardwood products excluding pulp and paper manufacturing.'*
- *The relocated O.B. Riley Road and associated entrances are permitted under DCC § 18.67.060(B)(1) because they are a replacement of a use permitted under DCC 18.67.060(A), namely a Class II street project (DCC 18.67.060(A)(5).*

Thus, all new, expanded, or relocated uses are permitted with site plan review. All other elements of the site located within the Tul area are preexisting aggregate processing, stockpiling, and accessory uses. This application does not change the preexisting status of those uses and structures."

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The Hearings Officer concurs with the applicant's analysis. The staff report questions to what extent my findings and conclusions in this case will set a precedent for the establishment of future uses in the TuI Zone since this is the first time the provisions of Section 18.67.060 have been interpreted and applied. While I have found the applicant's analysis persuasive, nevertheless I and other hearings officers must review each subsequent application in the TuI Zone and its circumstances against the criteria in the zoning ordinance.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated its proposal satisfies all applicable criteria in the TuI Zone.

5. Chapter 18.124, Site Plan Review

a. Section 18.124.060, Approval Criteria

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

- A. The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.**

FINDINGS: As discussed in the findings above, the circumstances presented here are unique since the subject property has been used for surface mining activities for decades, and the topography, vegetation, and natural features of the site were significantly disturbed long before the applicant submitted these applications. Therefore, the visual impacts from the site on existing development in the surrounding area have long been degraded. The staff report states, and the Hearings Officer concurs, that the central location of the proposed office building and expansion, relocated scales, and landscape storage will allow these features to relate harmoniously to the existing development. Moreover, I find it likely these features, coupled with the other site improvements the applicant has undertaken on the subject property, will actually improve the overall appearance of the site -- particularly through the use of earth-tone building colors, and new landscaping to soften the appearance of the entrance, scales and other equipment and storage areas.

- B. The landscape and existing topography shall be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected.**

FINDINGS: The Hearings Officer finds the subject property's landscape and existing topography reflect decades of surface mining activity with significant removal of vegetation and alteration of topography. As a consequence of previous mining activity there are few natural features on the site that can be preserved. However, the applicant's burden of proof states the remaining sagebrush and trees on the site will be preserved as depicted on the site plan, and existing introduced landscaping will be maintained. The staff report recommends, and I concur,

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that to assure continued compliance with this criterion the applicant will be required as a condition of approval to preserve and maintain existing vegetation.

- C. The site plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces.**

FINDINGS: Because the subject property is developed with an existing surface mining and industrial site with on-going heavy truck and equipment operations during business hours, it is challenging to create "opportunities for privacy and transition from public to private spaces." However, safety concerns are more significant on such a site as they might be on many others. As discussed in the findings above, to enhance safety the applicant added new entrances on O.B. Riley Road in order to reduce truck traffic entering and exiting the site from Highway 20 which is a busy state highway, and to eliminate the former road alignment that brought "civilian" traffic directly through the site. The applicant's burden of proof states the recent realignment of O.B. Riley Road also allowed it to fence the entire perimeter of the site, thereby increasing safety and security for employees and the public. The submitted site plan shows, and staff's site visit confirmed, that the main interior roads are paved or surfaced with gravel and are well marked. Finally, the Hearings Officer is aware that the applicant has safely operated surface mining and industrial sites for many years. For these reasons, I find the applicant's proposal satisfies this criterion.

- D. When appropriate, the site plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and Braille signs.**

FINDINGS: The applicant's burden of proof states, and the Hearings Officer concurs, that accommodations for handicapped persons generally are not appropriate within surface mining and heavy industrial sites operated by private entities. However, the applicant has proposed to accommodate handicapped person where appropriate in new and expanded structures. I find the county's Building Safety Division must review all building construction plans for compliance with the Americans with Disabilities Act (ADA). I find the applicant will be required as a condition of approval to satisfy all applicable ADA requirements.

- E. The location and number of points of access to the site, interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures shall be harmonious with proposed and neighboring buildings and structures.**

FINDINGS: The applicant's burden of proof states the recent realignment of O.B. Riley Road prompted a reconfiguration of the site, including creating new access points and relocating others. This reconfiguration has resulted in elimination of the former road alignment that brought "civilian" traffic directly through the middle of the site, and has set the stage for the eventual

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elimination of access from Highway 20. The reconfiguration also has allowed the applicant to improve internal vehicle circulation patterns and to create adequate parking and loading areas so that congestion both on- and off-site is greatly reduced. For these reasons, the Hearings Officer finds the applicant's proposal will enhance the relationship between the site and existing buildings, thus satisfying this criterion.

- F. Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.**

FINDINGS: As discussed, the Hearings Officer has found that because the subject property is located at a lower elevation than the surrounding area surface drainage remains on-site and does not affect neighboring properties. The submitted site plan shows surface water drains to areas of "surface infiltration" throughout the site. For these reasons, I find the applicant's proposal satisfies this criterion.

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

FINDINGS: The staff report identifies the proposed uses subject to this screening requirement as including the landscape material storage bins near the northwest corner of the site and the proposed parking area associated with the new office. The staff report adds to this list the proposed construction equipment and material storage area located at the southwest corner of the site across O.B. Riley Road on the basis that this is a new storage area. Each of these areas is addressed separately in the findings below.

1. Landscape Material Storage Bins. The submitted site plan shows these features will be visible from O.B. Riley Road. The staff report states, and the Hearings Officer agrees, that while these bins are unsightly, in light of the long-standing historic surface mining and industrial use of the subject property, and the relatively steep bank that separates the subject property from property west of O.B. Riley Road, their off-site impacts will be negligible.

2. Parking Area. The Hearings Officer finds the parking near the new office is centrally located, blends in with the industrial use of the site, and will be effectively screened to minimize adverse impacts on- and off-site by its location and the presence of other structures between it and the boundaries of the site.

3. Southwest Storage Area. The staff report notes the applicant did not include this storage area as part of the TuI Zone site plan review although neither the county's nor DOGAMI's maps show any existing equipment stored at this location. At the public hearing, the applicant's attorney testified that this area historically *has* been used for equipment storage. The applicant's

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representative Todd Taylor also testified that this area had been used for equipment storage but the equipment had been recently removed and would be replaced with excess equipment parts. The Hearings Officer is aware that this area was contiguous to the rest of the site before the recent realignment of O.B. Riley Road. Assuming for purposes of discussion that this storage area is in fact new and therefore subject to the screening and buffering requirement in this paragraph, I find the existing vegetation south of this area and the vacant land owned by the parks department will buffer and screen this area from land to the south. In addition, I find the intervening distance, vegetation, storage areas, and parking between this area and Highway 20 will provide screening and buffering of this area from the highway.

- H. All above-ground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.**

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

- I. Specific criteria are outlined for each zone and shall be a required part of the site plan (e.g. lot setbacks, etc.).**

FINDINGS: The applicable provisions of the TuI and LM Zones are addressed elsewhere in this decision.

- J. All exterior lighting shall be shielded so that direct light does not project off-site.**

FINDINGS: The applicant's burden of proof states all new lighting will be shielded so that direct light does not project off site. The Hearings Officer finds the applicant will be required as a condition of approval to install any new outdoor lighting to comply with the county's outdoor lighting ordinance.

b. Section 18.124.070, Required Minimum Standards

* * *

B. Required Landscaped Areas

- 1. The following landscape requirements are established for multi-family, commercial and industrial developments, subject to site plan approval:**
 - a. A minimum of 15 percent of the lot area shall be landscaped.**
 - b. All areas subject to the final site plan and not**

otherwise improved shall be landscaped.

FINDINGS: The applicant's burden of proof argues this section is not applicable for the following reasons:

"Because the majority of the Tul portion of the site is occupied by valid nonconforming uses and structures, the minimum landscaping standards generally do not apply. However, the Applicant has added significant landscaping near the O.B. Riley Road entrances, and in the vicinity of the manufactured office building and scales."

The Hearings Officer has found the applicant is not proposing any new "industrial development" in the Tul Zone but rather is proposing approval of a site plan that reflects historic and existing surface mining and industrial uses and the relocation of the office and scales to the center of the property. For that reason, I agree with the applicant that the landscaping requirements in this section do not apply to existing development. And to the extent the requirements apply to relocated features, I agree with the applicant that the additional landscaping depicted on the site plan will satisfy this criterion.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated its proposal satisfies all applicable site plan approval criteria.

6. Chapter 18.84, Landscape Management Combining Zone (LM)

a. Section 18.84.050, Use Limitations

- A. Any new structure or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 and DCC 18.124, Site Plan Review, prior to construction. As used in DCC 18.84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.**

FINDINGS: As discussed in the Findings of Fact above, portions of the subject property are located within the LM Zone due to their proximity to the Deschutes River and Highway 20.⁴ The applicant is requesting LM site plan approval for the proposed (and expanded) office building and the dispatch office, both of which are located in the LM Zone.

⁴ The staff report notes that the county's comprehensive plan and zoning ordinance provide the LM Zone is to be located outside rural service centers along Highway 20. The Hearings Officer is aware the rural service centers have been replaced by urban unincorporated communities. The Tumalo Rural Community Zoning Map adopted by the board in 1997 (Ordinance 97-034) includes that section of Highway 20 west of the Deschutes River through the Tumalo junction area. The record indicates the section of Highway 20 closest to the subject property is west of the river.

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- B. Structures which are not visible from the designated roadway, river, or stream and which are assured of remaining not visible because of vegetation, topography, or existing development are exempt from the provisions of Section 18.84.080 (Design Review Standards) and Section 18.84.090 (Setback Standards). An applicant for site plan review in the Landscape Management Combining Zone shall conform with the provisions of this Chapter, or may submit evidence that the proposed structure will not be visible from the designated road, river, or stream. Structures not visible from the designated road, river, or stream must meet the setback standards of the underlying zone.**

FINDINGS: The applicant's submitted site plan shows the proposed dispatch office and the portion of the office building in the SM Zone will be located in the LM Zone. The staff report notes the river is located at a lower elevation than the surface mining site. In addition, the submitted site plan shows that in the significant space between these two buildings and the river are an earthen berm and mature juniper trees. For these reasons, the Hearings Officer finds the new and expanded buildings will not be visible from river, and therefore are exempt from the setback standards in the LM Zone. However, the staff report notes these structures will be visible from a number of locations along Highway 20 and therefore the LM design review criteria are applicable to them.

b. Section 18.84.080, Design Review Standards

- A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act or agricultural use of the land.**

FINDINGS: As discussed above, vegetation on the subject property is minimal due to site disturbance caused by long-term use of the site for surface mining activities. However, the submitted site plan shows there are a few patches of existing mature trees located near the eastern portion of the property. In addition, the record indicates the parks department's land southeast of the subject property has dense and mature existing vegetation that provides considerable screening. The Hearings Officer finds that given the proximity of this undisturbed property to Tumalo State Park it is highly unlikely this existing vegetation will be removed. The staff report recommends, and I agree, that to assure the existing trees and shrubs on the subject property are retained, the applicant will be required as a condition of approval to retain all

existing tree and shrub cover that provides screening of the proposed office building and dispatch office from Highway 20.

- B. **It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.**

FINDINGS: The applicant's burden of proof states that both buildings will be constructed with earth tones and muted colors. The Hearings Officer finds the applicant will be required as a condition of approval to use these finishes on the buildings.

- C. **No large areas, including roofs, shall be finished with white, bright or reflective materials. Metal roofing material is permitted if it is non-reflective and of a color which blends with the surrounding vegetation and landscape. This subsection shall not apply to attached additions to structures lawfully in existence on April 8, 1992, unless substantial improvement to the roof of the existing structure occurs.**

FINDINGS: The applicant's burden of proof states the roofs of the proposed buildings will have earth tones or neutral tones which the Hearings Officer finds are not white, bright, or reflective. I find that as a condition of approval the applicant will be required to use these finishes on the building roofs.

- D. **Subject to applicable rimrock setback requirements or rimrock setback exception standards in Section 18.84.090, all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream. When more than one nonagricultural structure is to exist and no vegetation, trees or topographic features exist which can reduce visual impact of the subject structure, such structure shall be clustered in a manner which reduces their visual impact as seen from the designated road, river, or stream.**

FINDINGS: Inasmuch as there very little vegetation remaining on the subject property due to its long-term use for surface mining and industrial activity, it is difficult to site buildings on the property to take advantage of vegetation. However, as discussed above, some mature vegetation remains on the eastern boundary of the property, similar to the vegetation on the adjacent park department property. The proposed structures will be constructed near the center of the site, and as discussed above will be partially screened from Highway 20 by the existing vegetation. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

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- E. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM zone along a state scenic waterway or federal wild and scenic river, the height of a structure shall include chimneys, antennas, flag poles or other projections from the roof of the structure. This section shall not apply to agricultural structures located at least 50 feet from a rimrock.

FINDINGS: The applicant did not submit elevation drawings of the proposed office building and dispatch office. However, the burden of proof states the structures will not exceed 30 feet in height. The Hearings Officer is aware the building height will be verified at the time of building permit issuance. In order to assure compliance with this criterion, I find the applicant will be required to limit the height of the buildings to 30 feet as a condition of approval.

- F. New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.

FINDINGS: The Hearings Officer finds this criterion does not apply because the applicant does not propose any new access to Highway 20.

- G. New residential exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river or stream.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant is not proposing any residential exterior lighting.

- H. The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points or views of mountains, forests and other open and scenic areas as seen from the designated landscape management road, river or stream. Use of native species shall be encouraged.

FINDINGS: The staff report recommends, and the Hearings Officer agrees, that to assure compliance with this criterion with respect to the proposed new and expanded buildings the applicant will be required to add landscaping along the northern and eastern sides of the proposed new and expanded buildings to provide additional screening, as well as to retain and maintain existing landscaping.

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- I. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (no trespassing, no hunting, etc.) are permitted.

FINDINGS: The Hearings Officer finds this criterion is not applicable to the applicant's proposal because it does not include any signs. As discussed in the Findings of Fact above, the record indicates one of the existing signs on the site was permitted by the county but the other apparently was not and must be permitted through a separate process.

- J. A conservation easement as defined in Section 18.04.030, "Conservation Easement" and specified in Section 18.116.220, shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, Squaw Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not adjacent to the Deschutes River.

c. Section 18.84.090, Setbacks

* * *

- B. Road Setbacks. All new structures or additions to existing structures on lots fronting a designated landscape management road shall be set back at least 100 feet from the edge of the designated road unless the Planning Director or Hearings Body finds that...

FINDINGS: The applicant's submitted site plan shows the proposed office building and dispatch office will be set back over 100 feet from Highway 20, thus satisfying this standard for these buildings. The site plan shows the proposed aggregate storage bins are not set back at least 100 feet from the highway. However, Section 18.84.050(A) states site plan approval is required only for structures requiring a building permit. The Hearings Officer concurs with staff that the storage bins will not require a building permit and therefore are not subject to the road setbacks in this paragraph.

d. Section 18.84.095, Scenic Waterways

Approval of all structures in a State Scenic Waterway shall be conditioned upon receipt of approval of the Oregon Department of Parks and Recreation.

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FINDINGS: The Hearings Officer is aware that portions of the Deschutes River are designated state scenic waterways. As discussed in the Findings of Fact above, the parks department did not comment on the applicant's proposal. I find that to assure compliance with this criterion, the applicant will be required as a condition of approval and prior to obtaining any building permits for the new and expanded buildings to obtain any required approval from the parks district, or to submit documentation from the parks department that no approval is required.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby:

APPROVES the proposed zone change from TuR to TuI for a portion 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 applicant/owner shall submit to the Planning Division a metes and bounds description of, and surveyed acreage calculation for, both the entire subject property and that portion of the property subject to the zone change.

APPROVES the proposed site plan and LM review, **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

2. This approval is based on the submitted site plan entitled "Hap Taylor and Sons Tumalo Facility Site Plan" dated 12-09-04, as well as the applicant's burden of proof statements and supplemental materials. Any substantial change to the approved plan in addition to that required by this decision shall require a new land use application and approval.
3. The applicant/owner shall maintain and replace as necessary existing on-site vegetation, including existing vegetation shown on the site plan, located between Highway 20 and the proposed and expanded office building and dispatch office. The applicant/owner shall provide additional landscaping along the northern and eastern sides of the office building and dispatch building designed to screen these buildings from Highway 20. This landscaping shall be planted within six (6) months of the issuance of the building permit for each of these buildings.
4. Prior to obtaining a building permit for the office building and/or dispatch building, the applicant/owner shall:
 - a. comply with all requirements of the City of Bend Fire Department for buildings and grounds identified in the fire department's transmittal to the county concerning the applicant's proposal, and shall provide to the Planning Division a letter from the fire department verifying compliance with these requirements;
 - b. comply with all requirements of the Deschutes County Environmental Health Division, including obtaining an approved site evaluation for the drainfield(s) to

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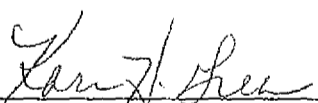
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serve the office building expansion and dispatch office; and

- c. obtain either written approval from the Oregon Parks and Recreation Department for the proposed structures within the LM Zone, or a letter from the parks department stating no approval is required.
5. The applicant/owner shall install all new outdoor lighting for the proposed and expanded office building and dispatch office so that it is shielded and downcast so that it is not visible from Highway 20.
 6. The applicant/owner shall obtain a sign permit from Deschutes County for all new signs located on the subject property that do not have sign permits.
 7. Within thirty (30) days of the date on which surface mining uses permitted on the subject property pursuant to Section 18.52.040 of the Deschutes County Code cease and all required reclamation is completed, the applicant/owner shall demonstrate compliance with Section 18.52.110(F) through one of the following courses of action:
 - a. The applicant/owner shall demolish or physically remove that portion of the relocated scales, dispatch office, equipment storage, and aggregate materials storage bins if these structures cannot be converted to a use allowed by the post-SM zoning designation; or
 - b. The applicant/owner shall provide written evidence to the Planning Division demonstrating that the surface mining equipment and related structures described in (a) above can be converted to a use allowed by the post-SM zoning designation. Upon adoption of the new designation, the structures shall be occupied by a use allowed in the new zone.

Dated this 19th day of October, 2005.

Mailed this 19th day of October, 2005.


Karen H. Green, Hearings Officer

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