



# Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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Salem, Oregon 97301-2540

Phone: (503) 373-0050

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[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



## NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: 01/14/2015  
Jurisdiction: Deschutes County  
Local file no.: PZ-14-2 & ZC-14-2  
DLCD file no.: 005-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 01/05/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 46 days prior to the first evidentiary hearing.

### Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

### DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us)



# NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

**FOR DLCD USE**  
File No.: 005-14 {19967}  
Received: 1/5/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

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Jurisdiction: Deschutes County

Local file no.: **PA-14-2 and ZC-14-2**

Date of adoption: 12/29/14

Date sent: 1/5/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 11/6/14

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

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Local contact (name and title): Will Groves, Senior Planner

Phone: 541-388-6518

E-mail: [willg@deschutes.org](mailto:willg@deschutes.org)

Street address: PO Box 6005, 117 NW Lafayette Ave.

City: Bend

Zip: 97708-6005

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## PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

### For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

Ordinance 2014-027 Amending Deschutes County Code, Title 23, and Amending Deschutes County Comprehensive Plan, Sections 5.10 and 5.12, to Adopt an Exception to Goal 14 and To Change the Plan Designation for Certain Property From Agriculture to Rural Industrial.

### For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from Ag to Rural Industrial 2.65 acres. A goal exception was required for this change.

Change from to acres. A goal exception was required for this change.

Change from to acres. A goal exception was required for this change.

Change from to acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

**If the comprehensive plan map change is a UGB amendment** including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**If the comprehensive plan map change is an urban reserve** amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

Change from EFU	to RI	Acres: 2.65
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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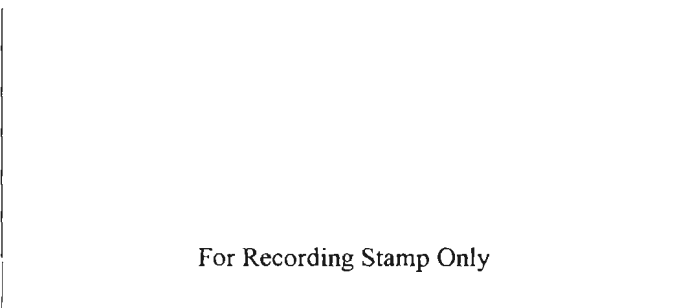
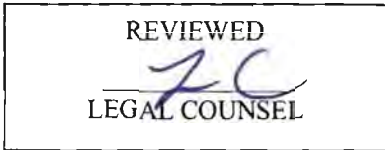
Location of affected property (T, R, Sec., TL and address): 16-12-26C TL 107

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List affected state or federal agencies, local governments and special districts:

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code, \*
Title 23, and Amending Deschutes County \* ORDINANCE NO. 2014-027
Comprehensive Plan, Sections 5.10 and 5.12, to \*
Adopt an Exception to Goal 14 and To Change the \*
Plan Designation for Certain Property From \*
Agriculture to Rural Industrial \*

WHEREAS, Claudia Powell, Trustee of the Frances Ramsey Trust Agreement dated May 23, 1979 proposed an "irrevocably committed" exception to Goal 14 and a Plan Amendment to Deschutes County Code ("DCC"), Section 23.01.010, Introduction, and Deschutes County Comprehensive Plan, Section 5.10, Goal Exception Statements, and Section 5.12, Legislative History, to change the comprehensive plan designation of certain property from Agriculture to Rural Industrial; and

WHEREAS, after notice was given in accordance with applicable law, public hearings were held on June 10, 2014, July 29, 2014, and August 19, 2014 before the Deschutes County Hearings Officer, and on October 16, 2014 the Hearings Officer recommended approval of the exception to Goal 14 and a Plan Amendment; and

WHEREAS, after notice was given in accordance with applicable law, a de novo public hearing was held on December 15, 2014 before the Board of County Commissioners ("Board"), and

WHEREAS, the Board, after review conducted in accordance with applicable law, approved the goal exception to Goal 14 to change the comprehensive plan designation from Agriculture to Rural Industrial; now, therefore,

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

Section 1. AMENDMENT. DCC Section 23.01.010, Introduction, is amended to read as described in Exhibit "A", attached and incorporated by reference herein, with new language underlined and deleted language set forth in strikethrough.

Section 2. AMENDMENT. Deschutes County Comprehensive Plan Section 5.10, Goal Exception Statements, is amended to read as described in Exhibit "B", attached and incorporated by reference herein with new language underlined and deleted language set forth in strikethrough.

Section 3. AMENDMENT. Deschutes County Comprehensive Plan Section 5.12, Legislative History, is amended to read as described in Exhibit "C", attached and incorporated by reference herein with new language underlined and deleted language set forth in strikethrough.

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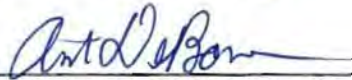
Section 4. AMENDMENT. The Deschutes County Comprehensive Plan Map, is amended to change the plan designation for certain property described in Exhibit "D" and depicted on the map set forth as Exhibit "E", with both exhibits attached and incorporated by reference herein, from Agriculture to Rural Industrial.

Section 5. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, Exhibit "F," attached and incorporated by reference herein.

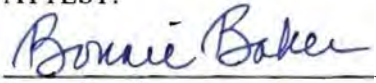
Dated this 29<sup>th</sup> of Dec., 2014

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
\_\_\_\_\_  
TAMMY BANEY, Chair

  
\_\_\_\_\_  
ANTHONY DeBONE, Vice Chair

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
ALAN UNGER, Commissioner

Date of 1<sup>st</sup> Reading: 15<sup>th</sup> day of Dec., 2014.

Date of 2<sup>nd</sup> Reading: 29<sup>th</sup> day of Dec., 2014.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony DeBone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alan Unger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 31<sup>st</sup> day of March, 2015

## Chapter 23.01 COMPREHENSIVE PLAN

### 23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.  
(Ord. 2014-027 §1, 2014; Ord. 2014-021 §1, 2014; Ord. 2014-12 §1, 2014; Ord. 2014-006 §2, 2014; Ord. 2014-005 §2, 2014; Ord. 2013-012 §2, 2013; Ord. 2013-009 §2, 2013; Ord. 2013-007 §1, 2013; Ord. 2013-002 §1, 2013; Ord. 2013-001 §1, 2013; Ord. 2012-016 §1, 2012; Ord. 2012-013 §1, 2012; Ord. 2012-005 §1, 2012; Ord. 2011-027 §1 through 12, 2011; Ord. 2011-017 repealed; Ord. 2011-003 §3, 2011)

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/compplan>)

# Section 5.10 Goal Exception Statements

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## Background

The purpose of this section is to identify the lands where Deschutes County demonstrated an exception to meeting the requirements of the Statewide Planning Goals. The intent of goal exceptions is to allow some flexibility in rural areas under strictly defined circumstances. Goal exceptions are defined and regulated by Statewide Planning Goal 2 and Oregon Administrative Rule 660-004 (excerpt below).

*660-004-0000(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met.*

## Statewide Planning Goals with Deschutes County Exceptions

- Goal 3 Agricultural Lands
- Goal 4 Forest Lands
- Goal 11 Public Facilities and Services
- Goal 14 Urbanization

Three types of exceptions are permitted by Oregon Administrative Rule 660-004

- Irrevocably committed
- Physically developed
- Reasons

The summary below identifies approved goal exceptions and identifies the adopting ordinance for those interested in further information. The ordinances listed are incorporated by reference into this Plan.

## 1979 Exceptions

### *Comprehensive Plan entire County – PL 20 - 1979*

During the preparation of the 1979 Comprehensive Plan it was apparent that many rural lands had already received substantial development and were committed to non-resource uses. Areas were examined and identified where Goal 3 and 4 exceptions were taken. At this time exceptions to Goals 11 and 14 were not required.

The total area excepted was 41,556 acres. These lands were residentially developed, committed to development or needed for rural service centers.

## Additional Exceptions

### *Bend Municipal Airport – Ordinances 80-203, 1980 and 80-222, 1980*

The Bend Municipal Airport received an exception to Goal 3 to allow for the necessary and expected use of airport property.

### *La Pine UUC Boundary – Ordinance 98-001, 1998*

Exceptions to Goals 3, 11 and 14 were taken to allow lands to be included in the La Pine UUC boundary and planned and zoned for commercial use.

*Spring River Rural Service Center – Ordinances 90-009, 1990; 90-010, 1990; 96-022, 1996; 96-045,, 1996*

A reasons exception was taken to Goal 14 to allow the establishment of the Spring River Rural Service Center on residentially designated lands.

*Burgess Road and Highway 97 – Ordinance 97-060, 1997*

An exception was taken to Goal 4 to allow for road improvements.

*Rural Industrial Zone – Ordinances 2010-030, 2010; 2009-007, 2009*

Two separate ordinances for rural industrial uses. The 2009 exception included an irrevocably committed exception to Goal 3 and a reasons exception to Goal 14 with a Limited Use Combining Zone for storage, crushing, processing, sale and distribution of minerals. The 2010 exception took a reasons exception to Goal 14 with a Limited Use Combining Zone for storage, crushing, processing, sale and distribution of minerals.

*Prineville Railway – Ordinance 98-017*

An exception was taken to Goal 3 to accommodate the relocation of the Redmond Railway Depot and the use of the site for an historic structure to be utilized in conjunction with the Crooked River Dinner Train operations.

*Resort Communities – Ordinance 2001-047, 2001*

An exception was taken to Goal 4 for Black Butte Ranch and Inn of the 7<sup>th</sup> Mountain/Widgi Creek during the designation of those communities as Resort Communities under OAR 660-22.

*Barclay Meadows Business Park – Ordinance 2003-11, 2003*

A reasons exception was taken to Goal 3 to include certain property within the Sisters Urban Growth Boundary.

*Sisters School District # 6 – Ordinance 2003-11, 2003*

A reasons exception was taken to Goal 3 to include certain property within the Sisters Urban Growth Boundary.

*Sisters Organization of Activities and Recreation and Sisters School District #6 – Ordinance 2003-017, 2003*

A reasons exception was taken to Goal 4 to include certain property within the Sisters Urban Growth Boundary.

*Oregon Water Wonderland Unit 2 Sewer District – Ordinances 2010-015, 2010; 2003-015, 2003*

A reasons exception was taken to Goals 4 and 11 to allow uses approved by the Board of County Commissioners in PA-02-5 and ZC-02-3 as amended by PA-09-4.

*City of Bend Urban Growth Boundary Amendment (Juniper Ridge) – Ordinance 97-060. 1997*

An exception was taken to Goal 3 to allow an amendment of the Bend Urban Growth Boundary to incorporate 513 acres for industrial uses.

*Joyce Coats Revocable Trust Johnson Road and Tumalo Reservoir Road Properties – Ordinance 2005-015, 2005*

An irrevocably committed exception was taken to Goal 3 to allow a change of comprehensive plan designation from Surface Mining to Rural Residential Exception Area and zoning from Surface Mining to Multiple Use Agriculture for Surface Mine Sites 306 and 307.



*Watson/Generation Development inc – Ordinance 2005-015*

An exception was taken to Goal 3 to include a portion of agricultural property.

*Oregon Department of Transportation – Ordinance 2005-019, 2005*

An exception was taken to Goal 3 to include a portion of agricultural property.

*Conklin/Eady Property – Ordinance 2005-035, 2005*

An exception was taken to Goal 3 to include a portion of agricultural property.

*City of Sisters Property – Ordinance 2005-037, 2005*

An exception was taken to Goal 4 to include a portion of forest property.

*McKenzie Meadows Property – Ordinance 2005-039, 2005*

An exception was taken to Goal 4 to include a portion of forest property.

*Bend Metro Park and Recreation District Properties – Ordinance 2006-025*

A reasons exception was taken to Goal 3 to include a portion of agricultural property.

*Harris and Nancy Kimble Property and Portion of CLR, Inc Property A.K.A. the Klippel Pit Property – Ordinance 2008-001, 2008*

An irrevocably committed exception was taken to Goal 3 to allow reclassification and zoning from Surface Mine to Rural Residential Exception Area and Rural Residential 10 acre for Surface Mine Site 294.

*Sunriver Service District, Sunriver Fire Department – Ordinance 2014-021, 2014*

A reasons exception was taken to Goal 4 to include a portion of forest property. To ensure that the uses in the Sunriver Utility District Zone on the approximate 4.28 acre site of Tax Lot 102 on Deschutes County Assessor's Map 19-11-00 are limited in nature and scope to those justifying the exception to Goal 4 for the site, the Sunriver Forest (SUF) zoning on the subject site shall be subject to a Limited Use Combining Zone, which will limit the uses on the subject site to a fire training facility and access road for the Sunriver Service District and Sunriver Fire Department.

*Frances Ramsey Trust Property – Ordinance 2014-027, 2014*

An "irrevocably committed" exception was taken to Goal 14 to allow for reclassification and rezoning from agricultural property to Rural Industrial for a 2.65 acre portion of a parcel zoned EFU/RI.

# Section 5.12 Legislative History

## Background

This section contains the legislative history of this Comprehensive Plan.

**Table 5.11.1 Comprehensive Plan Ordinance History**

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

<u>Ordinance</u>	<u>Date Adopted/ Effective</u>	<u>Chapter/Section</u>	<u>Amendment</u>
2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
<u>2014-027</u>	<u>12-15-14/TBD</u>	<u>23.01.010, 5.10</u>	<u>Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial</u>

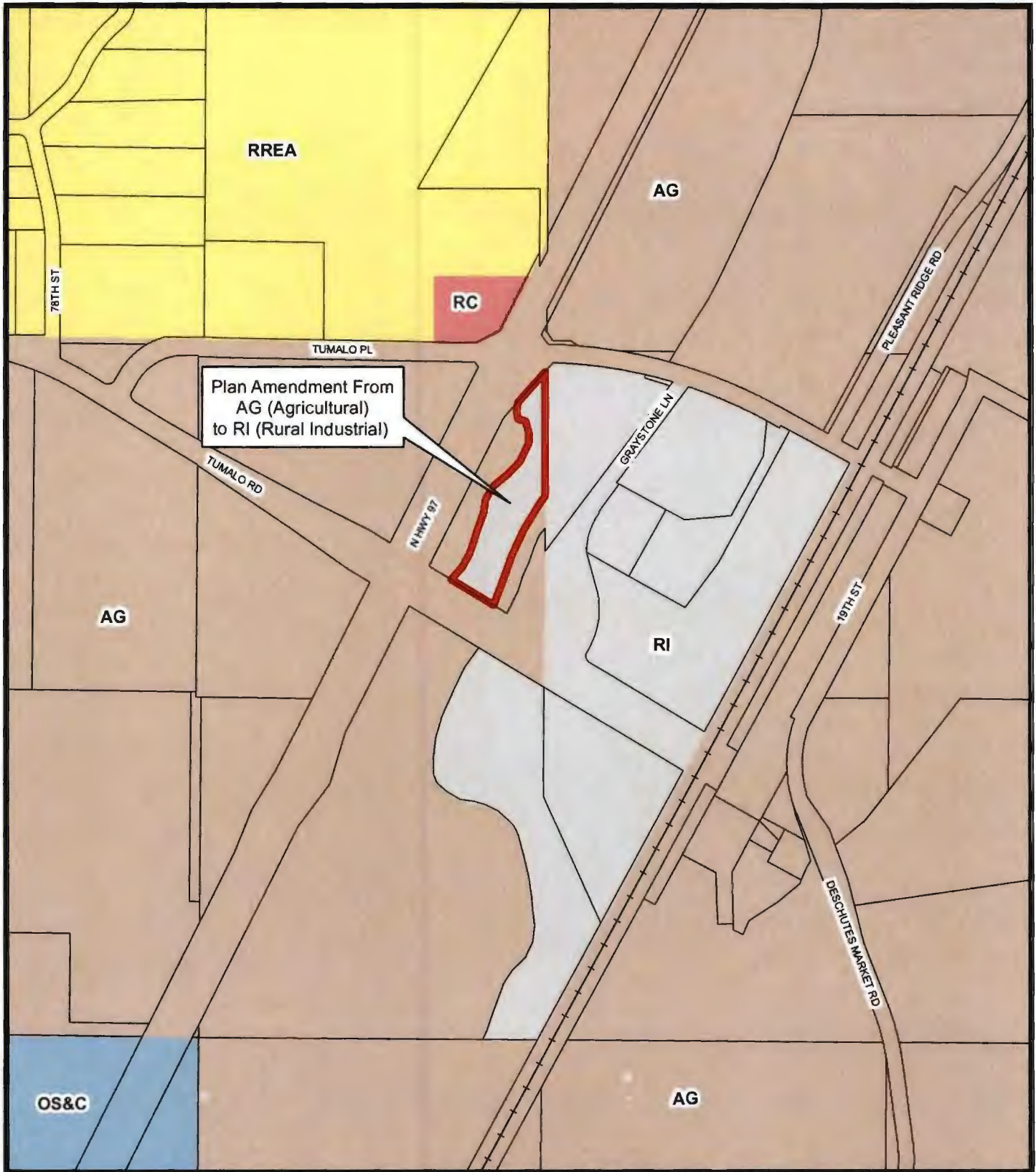
## EXHIBIT "D"

### LEGAL DESCRIPTION

#### ZONE CHANGE

A portion of a that tract of land as described Book 481, Page 0474, recorded February 20, 1998, Deschutes County Official Records, located in the Northwest one-quarter of the Southwest one-quarter of Section 26, Township 16 South, Range 12 East, W.M., Deschutes County, Oregon, being more particularly described as follows:

Commencing at the point of beginning for the adjusted Tax Lot 107 as described in said Book 481, Page 0474, Deschutes County Official Records; thence South 36°18'28" West 794.37 feet to a 1/2" iron rod on the west boundary of the Northeast quarter of said southwest quarter of Section 26; thence North 00°23'04" West 83.06 feet along said west boundary to the centerline of the Pilot Butte Canal and the **POINT OF BEGINNING**; thence leaving said west boundary and southwesterly along said centerline of the Pilot Butte Canal to the northerly boundary of Parcel 1, as described in Volume 474, Page 1863, Official Records, Deschutes County; thence along said northerly boundary North 59°54'08" West 250.63 feet; thence leaving said northerly boundary along the following courses and distances; thence North 39°48'20" East 62.23 feet; thence North 27°45'31" East 56.37 feet; thence North 20°13'29" East 53.16 feet; thence North 13°14'26" East 45.85 feet; thence North 20°33'22" East 67.29 feet; thence North 10°47'03" East 56.12 feet; thence North 33°01'26" East 62.62 feet; thence North 46°19'56" East 79.84 feet; thence North 41°38'01" East 63.22 feet; thence North 22°37'12" East 68.26 feet; thence North 36.75 feet; thence North 14°44'37" West 51.58 feet; thence North 73°18'03" West 27.41 feet; thence North 16°41'57" West 27.41 feet; thence North 11°18'36" East 42.02 feet; thence North 41°02'33" East 155.37 feet to a point on the west boundary of the Northeast quarter of the Southwest quarter of Section 26; thence along said westerly boundary South 00°23'04" East 606.24 feet to the centerline of the Pilot Butte Canal and the **POINT OF BEGINNING**.



**Legend**

Subject Property 16-12-26-C0-00107

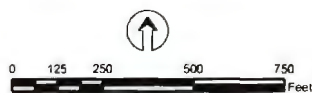
**Comprehensive Plan**

- Agriculture
- Open Space & Conservation
- Rural Residential Exception Area
- Rural Commercial
- Rural Industrial

**PROPOSED PLAN AMENDMENT**

Claudia Powell, Trustee - Frances Ramsey Trust

Exhibit "E"  
to Ordinance 2014-027



November 3, 2014

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Jimmy Baney, Chair  
  
Tony DeBono, Vice Chair  
  
Alan Unger, Commissioner  
  
Bonnie Baker  
ATTEST: Recording Secretary  
Dated this 29<sup>th</sup> Dec 2014  
Effective Date: Mar 31 2015

**DECISION OF DESCHUTES COUNTY HEARINGS OFFICER**

**APPLICANT/**

**PROPERTY OWNER:** Claudia Powell, Trustee  
Frances Ramsey Trust Agreement dated May 23, 1979  
c/o Bryant Lovlien & Jarvis, PC  
591 S.W. Mill View Way  
Bend, Oregon 97702

**APPLICANT'S  
ATTORNEY:**

Sharon R. Smith  
Bryant Lovlien & Jarvis PC  
591 S.W. Mill View Way  
Bend, Oregon 97702

**REQUEST:** The applicant requests approval of a plan amendment and zone change from EFU to RI, and a goal exception, for a 2.65-acre site located at Deschutes Junction north of Bend.

**STAFF REVIEWER:** Will Groves, Senior Planner

**HEARING DATES:** June 10, July 29, and August 19, 2014

**RECORD CLOSED:** August 26, 2014

**I. APPLICABLE STANDARDS AND CRITERIA:**

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

- 1. Chapter 18.136, Amendments**
  - \* Section 18.136.020, Rezoning Standards**

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

- 1. Chapter 22.20, Review of Land Use Action Applications**
- 2. Chapter 22.24, Land Use Action Hearings**
  - \* Section 22.24.140, Continuances and Record Extensions**

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

- 1. Chapter 2, Resource Management**
  - \* Section 2.2, Agricultural Lands Policies**
- 2. Chapter 3, Rural Growth**
  - \* Section 3.7, Transportation System Plan**

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

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

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

\* OAR 660-004-0018, Planning and Zoning for Exception Areas

\* OAR 660-004-0020, Goal 2, Part II (c), Exception Requirements

\* OAR 660-004-0022, Reasons Necessary to Justify An Exception Under Goal 2, Part II (c)

\* OAR 660-004-0028, Exception Requirements for Land Irrevocably Committed to Other Uses

**2. Division 12, Transportation Planning Rule**

\* OAR 660-012-0060, Plan and Land Use Regulation Amendments

**3. Division 14, Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands**

\* OAR 660-014-0040, Establishment of New Urban Development on Undeveloped Rural Lands

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

**5. Division 33, Agricultural Land**

\* OAR 660-033-0010, Purpose

\* OAR 660-033-0020, Definitions

\* OAR 660-033-0030, Identifying Agricultural Land

**E. Oregon Revised Statutes, ORS Chapter 215, County Planning**

**1. ORS 215.010, Definitions**

**II. FINDINGS OF FACT:**

**A. Location:** The subject property is located at 64970 Deschutes Pleasant Ridge Road, Bend, and is further identified as Tax Lot 107 on Deschutes County Assessor's Map 16-12-26C. The property is located at the southeast corner of the intersection of Highway 97 and Deschutes Pleasant Ridge Road in the area known as Deschutes Junction.

**B. Zoning and Plan Designation:** Tax Lot 107 has split zoning and plan designation, with the western portion zoned Exclusive Farm Use-Tumalo, Redmond Bend Subzone (EFU-TRB) and designated Agriculture, and the eastern portion zoned Rural Industrial (RI) and designated Exception Area. The property also is located within a Landscape Management Combining (LM) Zone because of its proximity to Highway 97.

C. **Site Description:** The entire subject property – Tax Lot 107 -- is 9.05 acres in size and roughly rectangular in shape. The property is bordered by Highway 97 on the west, Deschutes Pleasant Ridge Road on the north, Deschutes Market Road on the south, and the Pilot Butte Canal operated by the Central Oregon Irrigation District (COID) and Graystone Lane on the east. The portion of the property subject to these applications (subject site) is approximately 2.65 acres in size and is generally level with a natural berm on the portion zoned EFU. The RI-zoned portion of the subject site previously was used by United Pipe and Supply for the manufacture, storage, and sale of industrial piping. The EFU-zoned portion is undeveloped and is not engaged in farm use. A majority of the EFU-zoned portion contains rock and gravel, and scattered juniper trees, native brush, and grasses along the property's border with Highway 97.

D. **Soils:** According to the most recent National Resource Conservation Service (NRCS) Web Soil Survey data, the subject property consists of a single soil unit:

**Deskamp-Gosney Complex, 38B, 0-8% Slopes.** The NRCS data shows 50 percent of this soil unit consists of Deskamp soils, 35 percent consists of Gosney soils, and 15 percent consists of contrasting inclusions. The Deskamp soils have a land capability classification of Class III with irrigation and Class VI without irrigation. The Gosney soils have a capability rating of Class IV with irrigation and Class VII without irrigation.

As discussed in detail in the findings below, the applicant submitted a more detailed soil study of the subject property conducted by Roger Borine (hereafter "Borine study"). The Borine study concluded the subject property is predominantly non-agricultural soils.

E. **Surrounding Zoning and Land Uses:** Land surrounding the subject property consists of a mixture of industrial uses on land zoned RI and farm uses and rural residences on land zoned EFU-TRB. To the east across the Pilot Butte Canal and Graystone Lane is Willamette Graystone, a concrete products manufacturing facility. Farther to the east are the Burlington Northern-Santa Fe (BNSF) railroad tracks. Across Deschutes Market Road to the southeast is land zoned RI and used for pumice processing, and to the south is undeveloped land zoned EFU-TRB and not engaged in farm use. To the north across Deschutes Pleasant Ridge Road is land zoned EFU-TRB and developed with a dwelling and a quasi-commercial park and gift/antique shop called the "Funny Farm." Property to the east of the "Funny Farm" and the canal is Tax Lot 202 on Assessor's Map 16-12-26A which is zoned EFU-TRB and has 18 irrigated acres. Across Highway 97 south of Tumalo Road is land zoned EFU-TRB currently engaged in farm use consisting of hay production and hay sales, as well as the Three Sisters Adventist School and scattered rural residences. Across Highway 97 north of Tumalo Road is a building/landscaping supply business on land zoned Rural Commercial (RC).

F. **Land Use History:** The record indicates most of the 9.05-acre subject property has been zoned RI since at least 1980. The county granted conditional use and site plan approval for United Pipe and Supply in 1980 (CU-80-145) and 1981 (SP-81-3), respectively. The county granted a lot line adjustment in 1997 (LL-97-83, LL-97-86) that increased the size of the property from 4.42 to 9.05 acres. The record indicates that since 1981 the subject property has been used exclusively by United Pipe and Supply for industrial purposes.

G. **Procedural History:** The applications for a plan amendment, zone change and "reasons" goal exception were submitted on April 15 2014 and were accepted by the



county as complete on May 15, 2014. Because the request involves a plan amendment, under Section 22.20.040(D) the applications are not subject to the 150-day period for issuance of a final local land use decision under ORS 215.427. The initial public hearing on the applications was scheduled for June 10, 2014. By a letter dated June 9, 2014, the applicant requested that the hearing be continued in order for the applicant to address issues raised in the staff report. At the June 10<sup>th</sup> public hearing the Hearings Officer continued the hearing to July 29, 2014, and directed planning staff to mail notice of the continued public hearing to all parties entitled to notice.

On July 24, 2014, the applicant submitted its Second Supplemental Burden of Proof in support of an "irrevocably committed" exception as an alternative basis for a goal exception. By a letter dated July 29, 2014, Larry French from DLCD advised the Planning Division that in light of the applicant's supplemental burden of proof, in DLCD's opinion the applicant should be required to withdraw its original application for a "reasons" exception and the county should send a new 35-day notice to DLCD for the proposed "irrevocably committed" exception. The applicant submitted a memorandum dated July 29, 2014, arguing that a new 35-day notice to DLCD was not required, and that a 10-day notice to DLCD would suffice.

At the continued public hearing on July 29, 2014, Senior Planner Will Groves advised the Hearings Officer of the notice issue raised by DLCD. The Hearings Officer agreed to continue the hearing to a date to be determined in order to provide additional notice. The continued hearing date subsequently was set as August 19, 2014. By a memorandum dated August 6, 2014, Christopher Bell, Assistant Deschutes County Legal Counsel, advised Will Groves that in his opinion a 10-day notice to DLCD was required.

At the continued public hearing on August 19, 2014, the Hearings Officer determined the applicant's Second Supplemental Burden of Proof did not constitute a modification of application requiring a new application because it did not propose a new "use." The Hearings Officer received testimony and evidence on the applicant's requested plan amendment and zone change and on both bases for the requested goal exception, and left the written evidentiary record open through August 26, 2014. The applicant waived submission of final argument, and the record closed on August 26, 2014.

- H. **Proposal:** The applicant requests approval of a plan amendment and zone change from Agriculture and EFU-TRB to RI and Exception Area, respectively, for 2.65 acres of the subject property. The application does not include a development proposal.
- I. **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 Senior Transportation Planner; the Bend Fire Department; COID; DLCD; and the Oregon Department of Transportation (ODOT). These comments are set forth verbatim at page 3 of the staff report and are addressed in the findings below. The following agencies did not respond to the request for comments or responded with "no comment:" the Deschutes County Assessor and Environmental Soils Division; the Oregon Department of Water Resources, Watermaster-District 11; the Oregon Department of Agriculture; and Avion Water Company.
- J. **Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal, the initial public hearing on June 10, 2014, and the continued public hearing on July 29, 2014 to the owners of record of all property located within 750

feet of the subject property. The record indicates these notices were mailed to the owners of 20 tax lots. In addition, notice of the initial public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed the county had received no comments from the public. No members of the public testified at the public hearings.

- K. **Lot of Record:** The staff report notes that this Hearings Officer's previous decision in *Belveron* (ZC-08-04) held a property's legal lot-of-record status is not relevant to an application for a plan amendment and zone change. The Hearings Officer adheres to that holding here. The staff report states the county recognizes the entire subject property as a legal lot of record due to issuance of previous permits (e.g., CU-80-145, B9781, S2979).

### III. CONCLUSIONS OF LAW:

#### **PLAN AMENDMENT AND ZONE CHANGE**

##### **County Code Standards**

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

##### 1. Chapter 18.136, Amendments

##### a. Section 18.136.010, Amendments

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

**FINDINGS:** The applicant requests a quasi-judicial map amendment and submitted applications for a plan amendment, zone change and goal exception. The applications are being reviewed under the procedures of Title 22 of the Deschutes County Code.

##### b. Section 18.136.020, Rezoning Standards

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

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

**FINDINGS:** In numerous previous decisions the Hearings Officer has found this paragraph establishes two requirements: (1) that the zone change conforms with the plan; and (2) that it is

consistent with the plan's introductory statement and the plan's goals. Each of these requirements is discussed below.

**1. Conformance with Comprehensive Plan.** The applicants have requested approval of a plan amendment to redesignate the subject property from Agriculture to Rural Industrial, and therefore the proposed rezoning from EFU-TRB to RI will be consistent with its proposed new plan designation.

**2. Consistency with the Plan's Introductory Statement and Goals.** In several previous decisions, the Hearings Officer has made the following findings concerning this requirement:

*"Comprehensive plan statements, goals and policies typically are not intended to, and do not, constitute mandatory approval criteria for quasi-judicial land use permit applications. Save Our Skyline v. City of Bend, 48 Or LUBA 192 (2004). There, LUBA held:*

*'As intervenor correctly points out, local and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. [Citations omitted.] Local governments and this Board have frequently considered the text and context of cited parts of the comprehensive plan and concluded that the alleged comprehensive plan standard was not an applicable approval standard. [Citations omitted.] Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. [Citation omitted.] Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations. [Citations omitted.]'*

*LUBA went on to hold in Save Our Skyline that it is appropriate to 'consider first whether the comprehensive plan itself expressly assigns a particular role to some or all of the plan's goals and policies.'* Section 23.08.020 of the county's comprehensive plan provides as follows:

*The purpose of the Comprehensive Plan for Deschutes County is not to provide a site-specific identification of the appropriate land uses which may take place on a particular piece of land but rather it is to consider the significant factors which affect or are affected by development in the County and provide a general guide to the various decisions which must be made to promote the greatest efficiency and equity possible, while managing the continuing growth and change of the area. Part of that process is identification of an appropriate land use plan, which is then interpreted to make decisions about specific sites (most often in zoning and subdivision administration) but the plan must also consider the sociological,*

*economic and environmental consequences of various actions and provide guidelines and policies for activities which may have effects beyond physical changes of the land. (Emphasis added.)*

*The Hearings Officer finds the above-underscored language strongly suggests the county's plan statements, goals and policies are not intended to establish approval standards for quasi-judicial land use permit applications.*

*In Bothman v. City of Eugene, 51 Or LUBA 426 (2006), LUBA found it appropriate also to review the language of specific plan policies to determine whether and to what extent they may in fact establish decisional standards. The policies at issue in that case included those ranging from aspirational statements to planning directives to the city to policies with language providing 'guidance for decision-making' with respect to specific rezoning proposals. In Bothman LUBA concluded the planning commission erred in not considering in a zone change proceeding a plan policy requiring the city to '[r]ecognize the existing general office and commercial uses located \* \* \* [in the geographic area including the subject property] and discourage future rezonings of these properties.' LUBA held that:*

*\* \* \* even where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require \* \* \* consistency with applicable plan provisions.'(Emphasis added.)*

*The county's comprehensive plan includes a large number of goals and policies. The applicant's burden of proof addresses goals for rural development, economy, transportation, public facilities, recreation, energy, natural hazards, destination resorts, open spaces, fish and wildlife, and forest lands. The Hearings Officer finds these goals are aspirational in nature and therefore are not intended to create decision standards for the proposed zone change."*

The Hearings Officer adheres to these findings here, and again finds the above-referenced introductory statements and goals are not approval criteria for the proposed plan amendment and zone change. Nevertheless, depending upon their language, some plan provisions may require "consideration" even if they are not applicable approval criteria. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192, 209 (2004). Staff and the applicant have identified the following plan goals and policies as potentially requiring such consideration.

## **Chapter 2, Resource Management**

### **Section 2.2, Agricultural Lands Policies**

#### **Goal 1, Preserve and maintain agricultural lands and the agricultural industry.**

**FINDINGS:** The Hearings Officer finds this is an aspirational goal and not an approval criterion. Nevertheless, as discussed in detail in the findings below, I have found the subject property

does not constitute agricultural land that must be preserved based on the applicant's site-specific soil study showing the property is comprised predominantly non-agricultural soils.

**Policy 2.2.2, Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study shown in the table below, unless adequate legal findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.**

**FINDINGS:** The Hearings Officer finds this policy is directed at the county rather than at an individual application. In any case, the applicant is not requesting an amendment to the subzone (EFU-TRB) that applies to the subject property.

**Policy 2.2.3, Allow comprehensive plan and zoning map amendments for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.**

**FINDINGS:** The Hearings Officer finds this policy also is directed at the county rather than an individual applicant. Nevertheless, the applicant has requested a quasi-judicial plan amendment and zone change to remove the EFU designation and zoning from the subject property and has not requested an exception to Goal 3. As discussed in detail in the findings below, I have found the applicant's proposal is authorized by policies in the comprehensive plan and is permitted under state law.

**Policy 2.2.13, Identify and retain accurately designated agricultural lands.**

**FINDINGS:** The Hearings Officer finds this policy also is directed at the county. As discussed in detail in the findings below, I have found the subject property does not constitute agricultural land.

**Policy 2.2.4, Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.**

**FINDINGS:** The Hearings Officer finds this policy also is directed at the county rather than at an individual application. In any event, in my decision in *NNP* (PA-13-1, ZC-13-1) I held any failure on the county's part to adopt comprehensive plan policies and code provisions describing the circumstances under which EFU-zoned land may be converted to a non-resource designation and zoning does not preclude the county from considering quasi-judicial plan amendment and zone change applications to remove EFU zoning. I adhere to that holding here.

## **Section 2.5, Water Resource Policies**

**2.5.24, Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.**

**FINDINGS:** Again, the Hearings Officer finds this policy is directed at the county. Nevertheless, in my decision in *NNP* I held it is not clear from this plan language what "water impacts" require review -- impacts to water supplies from use or consumption on the subject property, or impacts to off-site water resources from development on the subject property. As a result, I addressed both issues in that decision, and I do so here as well. The applicant has not proposed any particular land use or development, and any subsequent applications for development of the

subject property would be reviewed under the county's land use regulations which include consideration of a variety of on- and off-site impacts.

The applicant's requested zone change to RI would allow a variety of land uses on the subject property. As discussed in the Findings of Fact above, much of the land surrounding the subject property is zoned RI and developed with industrial uses. Consequently, I find it is likely similar development would occur on the subject property if it were re-designated and rezoned to RI. Moreover, in light of existing uses in the surrounding area, and the fact that Avion Water Company provides water service in the Deschutes Junction area, I find future development of the subject property with uses permitted in the RI Zone will have water service.

Finally, the record indicates the subject property has no irrigation water rights and therefore the proposed plan amendment and zone change will not result in the loss or transfer of water rights. In its comments on the applicant's proposal, COID stated it does not foresee any issues with the change of use on the subject site because it does not have, and has not for many years had, water rights and the property has been used in a nonfarm commercial manner for a number of years. COID stated its open and piped facilities must remain whole with any future development.

### **3.4, Rural Economy**

**Goal 1, Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.**

**Policy 3.4.23, To assure that urban uses are not permitted on rural industrial lands, land use regulations in the Rural Industrial zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successors.**

**Policy 3.4.27, Land use regulations shall ensure that new uses authorized within the Rural Industrial sites do not adversely affect agricultural and forest uses in the surrounding area. (Emphasis added.)**

**FINDINGS:** The Hearings Officer finds the above-underscored language indicates these policies are directed at the county and not at individual applications. In any case, the applicant's proposal does not change the land use regulations in the RI Zone.

**Policy 3.4.28, New industrial uses shall be limited in size to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural areas, for which there is no floor area per use limitation.**

**Policy 3.4.31, Residential and industrial uses shall be served by DEQ approved on-site sewage disposal systems.**

**Policy 3.4.32, Residential and industrial uses shall be served by on-site wells or public water systems.**

**FINDINGS:** The Hearings Officer finds the language of these policies suggests they were intended to apply to quasi-judicial applications. The staff report notes these policies are codified in Chapter 18.100 governing the RI Zone and are implemented through those provisions. The applicant's proposal does not change the land use regulations in the RI Zone.

## Section 3.7, Transportation System Plan

### Executive Summary

### Arterial and Collector Road Plan

#### Goal 4

4. **Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.**

#### Policies

##### 4.1 **Deschutes County shall:**

- a. **Consider the road network to be the most important and valuable component of the transportation system.**

- 4.3 **Deschutes County shall make transportation decisions with consideration of land use impacts, including but not limited to, adjacent land use patterns, both existing and planned, and their designated uses and densities.**

- 4.4 **Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system. (Emphasis added.)**

**FINDINGS:** The Hearings Officer finds the above-underscored language indicates these plan policies provide direction *to the county* but do not create approval criteria for a quasi-judicial plan amendment and zone change. In any case, the applicant submitted two transportation impact analyses (hereafter “traffic studies”). The original traffic study, dated December 6, 2012 and prepared by Group Mackenzie, is included in the record as Exhibit 5 to the applicant’s burden of proof. The supplemental traffic study, dated July 29, 2014 and prepared by Clemow & Associates, is included in the record as Exhibit 8 to the applicant’s burden of proof. As discussed in detail in the findings below concerning compliance with the Transportation Planning Rule (TPR), both traffic studies conclude that traffic generated by development of the subject property with RI-zone uses in the reasonable “worst-case” scenario will not significantly affect a transportation facility and therefore will comply with the TPR.

## Section 3.10, Area Specific Policies

### Deschutes Junction

**Policy 3.10.11, Maximize protection of the rural character of neighborhoods in the Deschutes Junction area while recognizing the intended development of properties designated for commercial, industrial and agricultural uses. (Emphasis added.)**

**FINDINGS:** The Hearings Officer finds the above-underscored language indicates this policy is directed at the county and not intended to be an approval criterion for quasi-judicial plan amendment and zone change applications for land in the Deschutes Junction area. In any case, I agree with staff's observation that because the subject property is shielded from existing residential uses in the Deschutes Junction area by existing industrial development, roads, and the natural berm along 97, additional industrial development on the subject property would not negatively impact the rural character of the area.

**Policy 3.10.12, Review cumulative impacts of future development and future traffic improvements in the Deschutes Junction area in a manner consistent with Deschutes County traffic study requirements at 17.16.115, the Oregon Highway Plan, access management standards of OAR Chapter 734, Division 51, and OAR Chapter 660, Division 12, the Transportation Planning Rule (TPR).** (Emphasis added.)

**Policy 3.10.13, Support safe and efficient travel around Deschutes Junction, including a frontage road extending north from Tumalo Road on the west side of Highway 97.** (Emphasis added.)

**FINDINGS:** The Hearings Officer finds the above-underscored language in these policies indicates they are directed at the county rather than establishing approval criteria for quasi-judicial plan amendment and zone change applications. In any case, as discussed in detail in the findings below, based on the applicant's submitted traffic studies and comments from ODOT and the county's Senior Transportation Planner, I have found the applicant's proposed plan amendment and zone change from EFU to RI complies with the TPR.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal is consistent with all applicable comprehensive plan policies.

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

**FINDINGS:** Section 18.100.010 states the purpose of the RI Zone is:

**\* \* \* to encourage employment opportunities in rural areas and to promote the appropriate economic development of rural service centers which are rapidly becoming urbanized and soon to be full-service incorporated cities, while protecting the existing rural character of the area as well as preserving or enhancing the air, water and land resources of the area.**

The Hearings Officer finds the applicant's proposed plan amendment and zone change from EFU to RI would create employment opportunities in rural areas in general and in the Deschutes Junction area in particular. The staff report raises concerns about potential impacts to the rural character of the area, and potential impacts to the air, water and land resources of the area, from potential industrial uses on the subject property. However, I find the provisions of the RI Zone, as well as the conditional use and/or site plan approval criteria that apply to development in the RI Zone, are designed to minimize adverse impacts on air and water quality and other land resources in the area.



- C. **That changing the zoning will presently serve the public health, safety and welfare considering the following factors:**
1. **The availability and efficiency of providing necessary public services and facilities.**

**FINDINGS:** The Hearings Officer finds necessary public facilities and services are available to serve future industrial development on the subject property. The property receives fire protection from the Deschutes County Rural Fire District No. 1 through the City of Bend Fire Department. In its comments on the applicant's proposal, the fire department stated it supports the applicant's proposal. The property receives police protection from the Deschutes County Sheriff. The record indicates Pacific Power provides electrical service and Avion Water Company provides water service to the Deschutes Junction area. The record also indicates the existing RI portion of the property has a septic system for sewage treatment. Finally, as discussed in the findings below, I have found from the applicant's traffic studies and comments from ODOT and the county's Senior Transportation Planner that the applicant's proposal satisfies the TPR. Therefore, I find 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.**

**FINDINGS:** The proposal's compliance with the relevant comprehensive plan goals and policies is addressed in the findings above. The Hearings Officer has found the applicant's proposal is consistent with all applicable goals and policies.

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

**FINDINGS:**

**1. Mistake.** The Hearings Officer finds the original EFU zoning of the subject property was not a mistake. Rather, I find the property's EFU designation and zoning were appropriate in light of the soil data available to the county in the late 1970's when the comprehensive plan and map were adopted.

**2. Change in Circumstances.** The applicant's burden of proof identifies three changes in circumstances justifying the proposed plan amendment and zone change from EFU to RI:

a. new soils data in the applicant's submitted soil study showing the property does not have agricultural soils;

b. the increase in traffic in the vicinity of the subject property as a result of construction of the Highway 97 overpass at Deschutes Market/Tumalo Road, making farm use more difficult on some properties; and

c. a reduction in the supply of undeveloped RI-zoned land in the county.

The Hearings Officer agrees with the applicant that the new site-specific soils data for the subject property is a change of circumstances justifying the proposed plan amendment and

zone change from EFU to RI. The soil study, discussed in detail in the findings below, shows the subject property is comprised predominantly of Class VII and Class VIII – non-agricultural – soils that are unsuitable for farm use.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies the applicable provisions of the comprehensive plan.

### **Statewide Land Use Planning Goals**

#### **B. Oregon Administrative Rules, Chapter 660, Land Conservation and Development Commission**

##### **1. Division 15, Statewide Planning Goals and Guidelines**

#### **FINDINGS:**

**Goal 1, Citizen Involvement.** The Planning Division provided notice of the proposed plan amendment and zone change to the public through individual mailed notices to nearby property owners, publication of notice in the Bend "Bulletin" newspaper, and posting of the subject property with a notice of proposed land use action sign. In addition, three public hearings were held before the Hearings Officer on the proposal, and a public hearing on the proposal will be held by the Deschutes County Board of Commissioners ("board").

**Goal 2, Land Use Planning.** Goals, policies and processes related to plan amendment and zone change applications are included in the county's comprehensive plan and land use regulations in Titles 18 and 22 of the Deschutes County Code and have been applied to the review of these applications.

**Goal 3, Agricultural Lands.** Goal 3 is "[t]o preserve and maintain agricultural lands." The Hearings Officer has found the applicant's submitted soil study demonstrates the subject property does not constitute "agricultural land" because it is comprised predominantly of Class VII and VIII soils that are not suitable for farm use. Therefore, I find the applicant's proposal is consistent with Goal 3.

**Goal 4, Forest Lands.** The Hearings Officer finds this goal is not applicable because the subject property does not include any lands that are zoned for, or that support, forest uses.

**Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources.** The Hearings Officer finds this goal is not applicable because the record indicates there are no identified Goal 5 resources on the subject property.

**Goal 6, Air, Water and Land Resources Quality.** The Hearings Officer finds the applicant's proposal to rezone the property from EFU-TRB to RI, in and of itself, will not impact the quality of the air, water, and land resources of the county. Any future RI Zone development of the property would be subject to local, state, and federal regulations protecting these resources.

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

**Goal 8, Recreational Needs.** The Hearings Officer finds this goal is not applicable because the proposed plan amendment and zone change do not affect recreational needs, and no specific development of the property is proposed.

**Goal 9, Economy of the State.** This goal is to provide adequate opportunities throughout the state for a variety of economic activities. The Hearings Officer finds the proposed plan amendment and zone change is consistent with this goal because it will provide opportunities for economic development in the county in general, and in the Deschutes Junction area in particular, by allowing the currently undeveloped and unused property to be put to a more productive use.

**Goal 10, Housing.** The Hearings Officer finds this goal is not applicable because the proposed plan amendment and zone change will not affect existing or needed housing.

**Goal 11, Public Facilities and Services.** This goal requires planning for public services, including public services in rural areas, and generally has been held to prohibit extension of urban services such as sewer and water to rural lands outside urban growth boundaries. The Hearings Officer finds this goal is not applicable to the applicant's proposal because it will not result in the extension of urban services to rural areas. And as discussed in the findings above, public facilities and services necessary for development of the subject property in accordance with the RI Zone are available and will be adequate.

**Goal 12, Transportation.** As discussed in the detail in the findings below concerning compliance with the TPR, incorporated by reference herein, the Hearings Officer has found the applicant's proposal will not significantly affect a transportation facility and therefore it complies with the TPR. Accordingly, I find it also is consistent with Goal 12.

**Goal 13, Energy Conservation.** The Hearings Officer finds the applicant's proposed plan amendment and zone change, in and of themselves, will have no effect on energy use or conservation since no specific development has been proposed in conjunction with the subject applications. In any case, I find that providing additional economic opportunities on the subject property may decrease vehicle trips for persons working in the Deschutes Junction area, therefore conserving energy.

**Goal 14, Urbanization.** Goal 14 is "[t]o provide for an orderly and efficient transition from rural to urban land use." The Hearings Officer finds the proposed plan amendment and zone change could result in the "urbanization" of the subject site by allowing development with RI Zone uses that are more "urban" in nature including both retail and service uses. For this reason, I have found an exception to Goal 14 is required for the proposed plan amendment and zone change. As discussed in detail in the findings below, I have found the applicant has demonstrated its proposal qualifies for an "irrevocably committed" exception to Goal 14.

**Goals 15 through 19.** The Hearings Officer finds these goals, which address river, ocean, and estuarine resources, are not applicable because the subject property is not located in or adjacent to any such areas or resources.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal is, or with an exception to Goal 14 will be, consistent with the statewide planning goals.

**Transportation Planning Rule**

**2. Division 12, Transportation Planning Rule**

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

**(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:**

**(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan;**

**(b) Change standards implementing a functional classification system; or**

**(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.**

**(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**

**(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or**

**(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.**

**(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function,**

capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
- (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.
- (c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
- (d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.
- (e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if the provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.

- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:
- (a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
  - (b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;
  - (c) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and
  - (d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.

**FINDINGS:** The Hearings Officer finds the TPR is applicable to the applicant's proposal because it requests an amendment to an acknowledged plan. As discussed in the findings above, the applicant submitted an original traffic study dated December 2012 ("2012 traffic study") and a supplemental traffic study dated July 29, 2014 ("2014 traffic study"). Each of these traffic studies is addressed in the findings below.

**2012 Traffic Study.** The traffic study noted the four intersections located near the subject property currently operate at acceptable levels of service. The study predicted RI Zone development on the subject site would generate an additional 24 p.m. peak hour vehicle trips (4:00 p.m. to 6:00 p.m. weekdays), based on the assumption that development of the site with 15,000 square feet of light industrial space and uses would represent the "worst case"

development scenario. The traffic study predicted that with the addition of this traffic the four nearby affected intersections would continue to operate at acceptable levels of service and therefore no improvements to those intersections would be required, and the applicant's proposal would not "significantly affect" a transportation facility.

In his comments on the 2012 traffic study, Senior Transportation Planner Peter Russell stated in relevant part:

*"The applicant has submitted a traffic study to address the Transportation Planning Rule (TPR) 660-012-0060, but has not used the highest trip generator in the analysis that would be allowed under the proposed RI zone. There are two possible solutions. One, would be to redo the traffic analysis based on the actual worst case use allowed for RI under Deschutes County Code (DCC) 18.100.010. Two, would be for the applicant to propose a trip cap that would restrict any future land use to the amount of traffic assumed under the traffic study, which is three p.m. peak hour trips.*

*The traffic study used the most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook and based the traffic study on General Light Industrial (LU 110), which makes complete sense. General Light Industrial has a p.m. peak hour trip rate of 0.97 trips per 1,000 square feet. However, there are uses with higher trip rates in the ITE that are allowed outright under the RI zone. DCC 18.100.010(E) would allow Building and Materials Lumber Store (LU 812) with 4.49 p.m. peak hour trips and Tractor Supply Store (LU 810) at 1.40 peak hour trips per 1,000 square feet. DCC 18.100.010(L) allows Animal/Hospital Veterinary Clinic (LU 640) with 4.72 p.m. peak hour trips per 1,000 square feet.*

*Additionally, the traffic study assumes two new buildings of 7,500 square feet to accompany the existing 10,000-square-foot United Pipe building which exists, but is vacant. DCC 18.100.040(H)(1) sets a maximum size of 7,500 square feet for a new building that is not used for primary processing of raw materials and a building that was lawfully established on or before Feb. 25, 2003, may be expanded to 10,000 square feet. The 2.65-acre lot equates to 115,434 square feet of which approximately 106,000 square feet is developable, yet the traffic study only assumes 15,000 square feet of new development. In talking with Will Groves, after subtracting for landscaping, parking, yard setbacks, etc., the site could accommodate five (5) new buildings of 7,500 square feet each. Thus the traffic study should be revised to address 1) the potential greater number of trips given the outright permitted uses of 18.100.010 and 2) the number of potential buildings in the traffic analysis needs to be increased as well."*

In his May 28, 2014 comments on the applicant's proposal, James Bryant of ODOT stated in relevant part:

*"I have spoken with Chris Clemow, the applicant's traffic engineer, regarding the traffic study for PA-14-2/ZC-14-2 and what uses and sizes are allowed in the sought-after Rural Industrial (RI) zone. Based on our conversations, the outright permitted uses, the setback requirements, and what the market would reasonably be expected to bear, we arrived at the following land use assumptions to be analyzed with a planning horizon of 20 years. There will be five buildings of 7,500 square feet each; three of the buildings will be General*

*Light Industrial, one will be building materials supply store, and one will be a veterinary clinic. This is a reasonable worst-case assumption.”*

The road department did not comment on the applicant’s proposal.

**2014 Traffic Study.** In response to Mr. Russell’s and ODOT’s comments, the applicant submitted the supplemental traffic study using higher trip generating uses – 7,500 square feet of veterinary clinic space and 7,500 square feet of lumber store – as well as 7,500 square feet of light industrial, to predict traffic impacts from RI zoning of the subject site. The study predicts that these uses developed on the subject site would generate 86 new p.m. peak hour trips. The 2014 study concluded that with this higher level of additional traffic, the four affected intersections would continue to function at acceptable levels of service through the 20-year planning period for the required analysis.

In his July 29, 2014 comments on the 2014 traffic study, Peter Russell stated in relevant part:

*“I have reviewed the updated traffic analysis, which was prepared consistent with County staff direction regarding the type, number, and size of potential land uses on the site based on the proposed zoning. I agree with the study’s methodology and conclusions that the proposed rezone will not result in any significant effects to the affected intersections.”*

Based on the applicant’s 2014 traffic study and the comments from ODOT and Peter Russell, and the lack of any concern expressed by the road department, the Hearings Officer finds the applicant’s proposed plan amendment and zone change will not significantly affect a transportation facility. However, in order to assure continuing compliance with the TPR, I find that as a condition of approval, the applicant will be required to limit RI Zone development on the subject site to a total of three 7,500-square-foot buildings and to limit traffic impacts from the development to 86 p.m. peak hour vehicle trips.

- (4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.**

**FINDINGS:** As discussed in the Findings of Fact above, the Planning Division sent written notice of the applicant’s proposal to a number of public and private agencies, including the City of Bend Fire Department, the county road department and ODOT. The staff report states, and the Hearings Officer agrees, this notice provided adequate opportunity for coordination with affected transportation and service providers and local governments.

For the foregoing reasons, the Hearings Officer finds the proposal complies with the TPR.

### **Agricultural Land**

#### **3. Division 33, Agricultural Land**

**FINDINGS:** The applicant requests approval of a plan amendment and zone change for the subject property. At the outset, the applicant argues the subject property does not constitute “agricultural land” requiring protection under Goal 3 and therefore no exception to that goal is required. The standards and procedures for identifying and inventorying agricultural land are found in OAR Chapter 660, Division 33, discussed in the findings below.



a. **OAR 660-033-0010, Purpose**

The purpose of this division is to preserve and maintain agricultural lands as defined by Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799.

**FINDINGS:** Goal 3 defines “agricultural land” in relevant part as follows:

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

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

b. **OAR 660-033-0020, Definitions**

**For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR chapter 660 shall apply. In addition, the following definitions shall apply:**

**FINDINGS:** This rule defines “agricultural land” by essentially the same terminology used in the language of Goal 3, and describes it as consisting of:

- land that is predominantly Class I-VI soils (in Eastern Oregon) without a goal exception;
- land that is predominantly Class VII and VIII soils and that is “suitable for farm use” considering the factors set forth in OAR 660-033-0020(1)(a)(B) of this rule;
- land that is necessary to permit farm practices on adjacent or nearby agricultural lands; and
- Class VII and VIII land that is adjacent to or intermingled with Class I-VI land within a farm unit.

The applicant argues the subject property does not constitute “agricultural land” under any of these categories, each of which is discussed in the findings below.

**Predominantly Class I-VI Soils**

(1) (a) “Agricultural Land” as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class

## I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

### FINDINGS:

**Appropriate Unit of Land.** In the Hearings Officer's decision in *NNP* (PA-13-1, ZC-13-1), I held the "predominant soils" prong of the agricultural land definition cannot be applied until an appropriate unit of land is selected to determine whether Class I-VI soils are predominant within that unit of land based on the decision of the Land Use Board of Appeals (LUBA) in *Wetherell v. Douglas County*, 50 Or LUBA 71 (2005). I find the entire 9.05-acre subject property is the appropriate unit of land because it is a single tax lot under single ownership and is physically separated from the nearest EFU-zoned parcels by industrial uses, roads, and the COID canal.

**Predominant Soils.** The NRCS soils maps for the subject property show it is composed of a single soil unit: Deskamp-Gosney Complex, 38B, 0-8% Slopes. The Deskamp soils are designated Class III when irrigated and Class VI without irrigation. The Gosney soils are designated Class IV when irrigated and Class VII without irrigation. Therefore, the NRCS data shows the subject property is predominantly Class I-VI soils with or without irrigation and therefore "agricultural land."

As noted in the Findings of Fact above, the applicant submitted a site-specific "Agricultural Soils Capability Assessment" of the subject property – the Borine study. This study is dated September 25, 2013, was prepared by Roger Borine of Sage West, LLC, and is included in the record as Exhibit 3 to the applicant's original burden of proof. The record indicates that in April of 2013 Mr. Borine submitted the soil study to DLCD for certification pursuant to OAR 660-033-0030(5). By an electronic mail message dated March 7, 2014 from Katherine Daniels of DLCD to Deschutes County Community Development Director Nick Lelack, DLCD certified the study. Mr. Borine's submission and the certification document are included in the record as part of Exhibit 3 to the applicant's original burden of proof. DLCD's certification states in relevant part:

*"The department has reviewed the attached soils assessment prepared by a professional soil classifier under OAR 660-033-0030 and 0045, as well as the submittal, release and report requirement forms. A completeness check indicates that the soils assessment is consistent with reporting requirements. The county may make its own determination as to the accuracy and acceptability of the soils assessment. As a side note, this property could alternatively be considered for a commitment exception under OAR Division 4."*

The Borine study identified the same soil unit on the subject property as is identified on the NRCS maps. However, Mr. Borine conducted an on-site investigation to provide a more detailed soil analysis and mapping. His methodology is described at page four of the soil study in relevant part as follows:

*"An Order 1 soil survey is prudent to accurately define soils, mapping units, and miscellaneous areas and accurately locate their boundaries. Methods to investigate the soil included the use of shovel and auger. Point observations were used to identify soil characteristics, map unit composition and accurately located soil boundaries."*

\* \* \*

The initial inventory and study identified Miscellaneous Areas, and the Gosney series. Extremely stony areas and a very shallow soil was described and identified as potential major components at an Order 1 level. For clarity the very shallow contrasting soil will be referenced as Zeta soil for this study only and is a non-correlated soil series name. The miscellaneous areas of Urban Land, Irrigation canal/dikes and roads, and Mined land were also identified as potential major components at an Order 1 level.

\* \* \*

In this study area the soil depth, available water capacity (AWC), surface stoniness and developed/disturbed areas were the primary criteria for designing soil mapping units. Where roots are excluded by bedrock this is considered the effective soil depth for plant growth. AWC is the volume of water that should be available to plants in a soil holding water at full potential. Surface stones restrict cultivation and plant growth. The Oregon LCC [land capability class] Guide rates soils less than 10 inches deep, soils having an AWC less than 2 inches, and soils with extremely stony surfaces as LCC 7. Rock outcrop, developed and highly disturbed areas are considered non-soil and are LCC 8.”

Table 2 of the soil study, set forth below, shows that of the 9.05 acres comprising the subject property only 2.17 acres (23.9%) consist of Soil Unit 38B and Zeta soils and the remaining 76.1% of the subject property consists of urban land (already developed with industrial uses), the irrigation canal, and mined land. As seen in Table 2, Mr. Borine concluded all soils on the subject property are Class VII or VIII soils and therefore predominantly non-agricultural soils.

Symbol	Revised Map Units	Soil	%	LCC NIRR	TL 107 West ½		TL 107 East ½		TL 107 Total	
					ac	%	ac	%	ac	%
A	Urban Land	None	100	8	1.52	16.8	2.05	22.7	3.57	39.5
B	Irrigation Canal/Dike/Road	None	100	8	0.72	8.0	-	-	0.72	8.0
C	Gosney-Zeta complex, 3-15% slopes	Gosney	65	7	1.46	16.1	-	-	1.46	16.1
		Zeta	25	7						
D	Zeta-Gosney-Rock outcrop complex, 0-3% slopes	Zeta	50	7	0.60	6.6	0.11	1.2	0.71	7.8
		Gosney	30	7						
		Rock outcrop	15	8						
E	Mined Land	Infertile soil substratum	100	7	0.68	7.5	1.91	21.1	2.59	28.6
Totals					4.98	55.0	4.07	45.0	9.05	100

Table 3 below depicts the types of soils identified within the EFU and RI zoning designations on the subject property:

Symbol	Revised Map Units	Soil	%	LCC NIRR	TL 107 EFU (West)		TL 107 RI (East)	
					ac	%	ac	%
A	Urban Land	None	100	8	1.52	30.5	2.05	50.4
B	Irrigation Canal/Dike/Road	None	100	8	0.72	14.5	-	-
C	Gosney-Zeta complex, 3-15% slopes	Gosney	65	7	1.46	29.3	-	-
		Zeta	25	7				
D	Zeta-Gosney-Rock outcrop complex, 0-3% slopes	Zeta	50	7	0.60	12.0	0.11	2.7
		Gosney	30	7				
		Rock outcrop	15	8				
E	Mined Land	Infertile soil substratum	100	7	0.68	13.7	1.91	46.9
Totals					4.98	100	4.07	100

Based on the Borine study, the Hearings Officer finds the soils on the subject property do not meet the definition of "agricultural land." However, the administrative rule provides that such soils nevertheless may be considered "agricultural land" under certain circumstances, addressed in the findings below.

- (B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

**FINDINGS:** Because the applicant's soil study shows the subject property is predominantly Class VII and VIII soils, the next question under this administrative rule is whether the Class VII and VIII soils on the subject property nevertheless constitute "agricultural land" based on the seven factors listed in this paragraph.

**Soil Fertility.** The Borine study states the following with respect to soil fertility:

*"The EFU portion of tax lot 107 is approximately 4.98 acres with 2.06 acres or 41% in natural conditions. This area is not irrigated and does not have water rights. The soils are very shallow and shallow with extremely stony surface layers. These soils are unsuitable for cultivation due to limited and inconsistent soil depth and surface stoniness throughout.*

The Hearings Officer is aware that DLCD's administrative rules define Class VII and VIII soils as having very severe limitations that make them unsuited for cultivation.

**Suitability for Grazing and Climatic Conditions.** The Borine study states the following with respect to the subject property's suitability for grazing and climate conditions:

*"Landscape, climate and soil characteristics determine the suitability for grazing of livestock. Limitations that are recognized on this site include poor ecological site conditions, cold climate and soil temperatures that delay growth of forage*

*and shorten the growing season. Reestablishment of the native vegetation is likely impossible due to the pumice ash surface layer, very shallow and shallow soils and surface stoniness.”*

**Existing and Future Availability of Water for Farm Irrigation Purposes.** The record indicates the subject property has no water rights. The Hearings Officer finds that even if irrigation water were available, the subject property’s soils are too poor to justify irrigating them.

**Existing Land Use Patterns.** As discussed in the Findings of Fact above, the existing land use pattern in the area surrounding the subject property consists of a mixture of EFU-zoned land engaged in farm use and developed with rural residences, and RI-zoned land developed with rural industrial uses. And as the Borine study notes, the majority of the 9.05-acre subject property is either already developed with industrial uses and the irrigation canal, or it has previously been mined, leaving large areas adjacent to the subject site incapable of cultivation.

**Technological and Energy Inputs Required.** The Hearings Officer finds excessive technological and energy inputs – including heavy use of fertilizer and soil amendments and frequent irrigation – would be required to make the soils on the subject property productive given the soil’s very poor quality.

**Accepted Farming Practices.** The Hearings Officer finds it is not an accepted farm practice in Central Oregon to irrigate and cultivate poor quality Class VII and VIII soils – particularly where, as here, those soils are adjacent to rural industrial uses.

For the foregoing reasons, the Hearings Officer finds the subject property is not suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, and accepted farming practices.

**(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.**

**FINDINGS:** As discussed in the Findings of Fact above, much of the subject property and surrounding lands are engaged in rural industrial or non-farm uses. The record indicates that to the east of Graystone Lane is Willamette Graystone, a concrete products manufacturing facility. Across Deschutes Pleasant Ridge Road is land zoned EFU-TRB and developed with a quasi-commercial park and gift/antique shop called “The Funny Farm.” To the south across Deschutes Market Road is land zoned RI and used for pumice processing, and farther south is EFU-zoned land along the Highway 97. Across the highway to the west are the Three Sisters Adventist School and rural residences. West of Highway 97 and north of Tumalo Road is a building/landscaping supply business on land zoned RC. Although there are some lands across Highway 97 that are engaged in farm use, the Hearings Officer finds the subject property is not land necessary to permit farm practices to be undertaken on those lands because none of those farm uses is dependent upon the subject property.

**(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed.**

**FINDINGS:** As discussed in the findings above, the Borine study found the entire subject property consists of Class VII and VIII soils and therefore the soils on the subject site are not

adjacent to or intermingled with higher capability soils. In addition, the Hearings Officer finds the subject property is neither a farm unit itself nor part of a larger farm unit.

- (c) **“Agricultural Land” does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goals 3 or 4.**

**FINDINGS:** The subject property is not within an acknowledged urban growth boundary (UGB) or acknowledged exception area.

For the foregoing reasons, the Hearings Officer finds the subject property does not constitute “agricultural land” under any of the factors listed in this administrative rule.

**b. OAR 660-033-0030, Identifying Agricultural Land**

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

**FINDINGS:** The Hearings Officer finds the applicant has shown through the Borine study that the subject property is predominantly Class VII and VIII soils. The findings above address the sub-factors in OAR 660-033-0020(1)(a)(B).

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

**FINDINGS:** The Hearings Officer has found the Borine study shows the subject property is predominantly non-agricultural land based on the soil’s capability classification. The findings above address the factors under OAR 660-033-0020(1). I have considered the conditions existing outside the subject property as listed in the above analysis, and have found the subject property is not needed to permit farm practices to be undertaken on adjacent or nearby lands.

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

**FINDINGS:** The Hearings Officer has taken into account the ownership of surrounding lots or parcels in determining whether the subject site and/or the entire subject property is suitable for farm use or necessary to permit farm practices on adjacent or nearby lands. I have found the subject property is not needed for any farm use to occur on other lands in the area.

(5) (a) More detailed data on soil capability that is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.

(b) If a person concludes that more detailed soils information that that contained in the Internet soil survey of soil data and information produced by the National Cooperative Soil Survey operated by the NRCS of the USDA as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.

**FINDINGS:** The applicant submitted the Borine study discussed in the foregoing findings. The record indicates this study was reviewed and certified by DLCD in accordance with the process in OAR 660-033-0045 and the NRCS land capability classification system. The Hearings Officer finds the Borine study is credible based on Mr. Borine's qualifications and the methodology and detailed analysis in the study.

(c) This section and OAR 660-033-0045 apply to:

(A) A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land;

**FINDINGS:** The applicant proposes a change in plan designation from farm use to non-resource use. The Borine soil study was reviewed and certified by DLCD.

(d) This section and OAR 660-033-0045 implement Oregon Laws 2010, chapter 44, section 1, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.

- (e) This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and 660-033-0020.

**FINDINGS:** As indicated in foregoing findings, the Borine study was reviewed and certified by DLCDC pursuant to OAR 660-033-0045.

Based on the foregoing findings and conclusions, the Hearings Officer finds the subject property does not constitute "agricultural land" as defined in Goal 3 and OAR 660-033-0020, and therefore no exception to Goal 3 is required for the applicant's proposed plan amendment and zone change from EFU to RI.

**GOAL EXCEPTIONS**

- 4. Division 4, Interpretation of Goal 2 Exception Process
  - a. OAR 660-004-0010, Application of the Goal 2 Exception Process to Certain Goals
    - (1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals which prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

**GOAL 3**

- (a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses permitted in an Exclusive Farm Use Zone under ORS Chapter 215 and OAR chapter 660 division 033, "Agricultural Lands"

**FINDINGS:** The subject property is zoned EFU-TRB. The applicant has requested a plan amendment and zone change from EFU to RI. As discussed in detail in the findings above, the Hearings Officer has found an exception to Goal 3 is not required for the proposed plan amendment and zone change because the Borine study demonstrates the subject property does not constitute "agricultural land."

**GOAL 14**

- (c) Goal 14 "Urbanization" as provided for in the applicable paragraph (1)(c)(A), (B) or (C) of this rule:

\* \* \*



- (D) For an exception to Goal 14 to allow urban development on rural lands, a local government must follow the applicable requirements of OAR 660-014-0030 or 660-014-0040, in conjunction with applicable requirements of this division:

**FINDINGS:** As discussed in the findings above, Goal 14 is:

**To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.**

The Statewide Planning Goals define “rural land” as:

**Land outside urban growth boundaries that is:**

**(a) Non-urban agricultural, forest or open space,**

**(b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or**

**(c) In an unincorporated community.**

The applicant argues no exception to Goal 14 is required for its proposed plan amendment and zone change because the subject property is rural land and the proposed RI designation and zoning is by definition *rural* development. The applicant’s Supplemental Burden of Proof states in relevant part:

*“A primary indicator of the rural nature of the proposed uses is the County’s establishment of the ‘Rural Industrial’ zone and its identification in the County Code of certain permitted uses. In establishing the permitted uses for the RI zone, the County has already made a policy choice of what constitute non-urban uses. Furthermore, the permitted uses in the Rural Industrial Zone are limited in scope to maintain the rural nature of the RI zoned properties and the surrounding area. Namely, there are limits on the proximity to residential development, limits on trip generation, limits on parking, and limits on the size of buildings. All of these limitations substantially restrict the uses, densities and impacts of the allowable industrial development to preserve the rural character of the zone and adjoining properties. The allowable uses are also rural because they support rural activities (i.e. veterinary clinic or tractor supply store), and because many of the permitted uses are incompatible with an urban setting.*

*The additional area proposed for rural industrial development will be limited to 2.65 acres. Given the limited size, allowable uses, intensity and lack of need for urban facilities the proposed use is a rural use and not an urban use.”*

At the outset, the Hearings Officer agrees with staff that the applicant’s original proposal for a “reasons” exception to Goal 14 for a broad range of industrial uses cannot be justified. In *Columbia River Keeper v. Columbia County*, LUBA No. 2014-017/018 (Aug. 27, 2014), LUBA held that a “reasons” exception is “a more limited vehicle” for an exception than “physically developed” and “irrevocably committed” exceptions because there must be a “close, direct

relationship between the reason for the goal exception and the corresponding proposed use(s). Slip Opinion at p. 11-12. There, as here, the applicant proposed a broad range of industrial uses without identifying how each proposed use satisfied the criteria for a “reasons” exception to Goal 14. LUBA held the breadth of potential industrial uses “vastly complicated an already difficult process” to justify a “reasons” exception and made it virtually impossible for the county to make adequate findings supporting the goal exception. I find the applicant’s original proposal for a “reasons” exception for a broad, undefined collection of industrial uses is similarly unsupportable.

As discussed above, the applicant’s revised traffic study identified a much more limited list of proposed RI Zone uses for the subject site – i.e., 7,500 square feet each of light industrial, building supply/lumber store, and veterinary clinic – for the purpose of demonstrating compliance with the TPR. The Hearings Officer finds it is possible to conduct a meaningful “reasons” exception analysis focused on these uses.

In *Shaffer v. Jackson County*, 17 Or LUBA 922 (1989), LUBA held that industrial uses are not inherently urban in nature, and “whether a particular industrial use of rural land is urban or rural requires a case-by-case determination, based on factors identified in the case law.” *Id.*, at 931. In *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 724 P2d 268 (1986), the Supreme Court identified three factors to be considered in determining whether a use is “urban” or “rural” for purposes of a Goal 14 exception:

- (a) the size of the area in relationship to the developed use (density);
- (b) its proximity to an acknowledged UGB and whether the proposed use is likely to become a magnet attracting people from outside the rural area; and
- (c) the types and levels of services which must be provided to it.

In *Oregon Shores Conservation Coalition v. Coos County*, 55 Or LUBA 545 (2008), LUBA held the court intended the *Curry County* factors to be analyzed together rather than in isolation.

With respect to the first *Curry County* factor, as discussed in the findings above, the subject site is 2.65 acres in size and comprises approximately one-third of the subject property. The subject site is surrounded by large parcels zoned RI and developed with rural industrial uses. For these reasons, the Hearings Officer finds the size of the subject property is relatively small compared to the developed industrial uses on the subject property and surrounding area.

With respect to the second factor, the record indicates the subject site is located a considerable distance from the nearest UGBs -- approximately 3 miles north of the Bend UGB and approximately 6 miles south of the Redmond UGB. The staff report observes that types of potential uses identified by the applicant in its revised traffic study – i.e., general light industrial uses, a building supply/lumber store, and a veterinary clinic – could attract customers from outside the Deschutes Junction area. On the other hand, the Hearings Officer is aware these types of uses are developed within the Bend and Redmond UGBs. Therefore, residents of Bend and Redmond might not choose to travel to the subject site to do business, resulting in the subject property serving primarily residents of the surrounding rural area.

With respect to the third factor, the record indicates the subject property will be served by an existing rural fire protection district and the county sheriff, and by a private water company that serves rural and suburban uses in the Bend area. Sewage disposal is provided by an on-site

septic system currently serving existing industrial uses on the subject property. The Hearings Officer is aware that Bend's municipal water and sewer systems do not extend north of the UGB, and in light of the distance between the UGB and the subject property I find it is unlikely either of these systems would be extended to serve the subject site.

Considering the three *Curry County* factors, the Hearings Officer finds the proposed uses identified in the applicant's revised traffic study could be considered "urban" in nature. However, the subject site's small size, relatively large distance from the nearest UGBs, and unique location and setting, suggest uses on the subject site may be more likely to serve only *rural* residents in the Deschutes Junction area. Therefore, I find the question of whether the proposed uses are "urban" or "rural" is a close one. The staff report states, and I agree, that it is appropriate to require an exception to Goal 14 for the uses identified in the revised traffic study so that I can determine if the proposed "reasons" match the proposed uses, and so that I can establish development limitations as part of the goal exception to assure the subject site is not developed with "urban" uses.

The applicant submitted evidence and argument supporting both "reasons" and "irrevocably committed" exceptions. Compliance with the requirements for those exceptions to Goal 14 is addressed in the findings below.

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

\* \* \*

- (3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.**

**"REASONS" EXCEPTION**

- (4) "Reasons" Exceptions:**
  - (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;**

**FINDINGS:** The applicant requests a "reasons" exception to Goal 14 to allow the subject 2.65-acre site to be rezoned to RI. This criterion requires that the RI zoning, if approved through a "reasons" exception, must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception. As discussed in the findings above, for purposes of demonstrating compliance with the TPR, the applicant's revised traffic study identified the "worst case scenario" for industrial development on the subject site to include equal amounts of space

(7,500 square feet each) for general industrial, building materials/lumber store, and veterinary clinic development. The Hearings Officer finds my analysis of the applicant's proposed "reasons" exception will focus on those proposed uses. No new public services or facilities are proposed.

- (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required;**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the subject property is not located in a previously approved "reasons" exception area.

**c. OAR 660-004-020, Goal 2, Part II(c), Exception Requirements:**

- (1) If a jurisdiction determines there are reasons consistent with OAR 660-04-022 to use resource lands for uses not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.**

**FINDINGS:** The proposal's compliance with OAR 660-04-022 is discussed in the findings below.

- (2) The four factors of Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:**
  - (a) "Reasons justify why the state policy embodied in the applicable goals should not apply": The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land:**

**FINDINGS:** The Hearings Officer finds that to comply with this administrative rule the applicant must demonstrate or explain: (1) the basis for determining that state policy embodied in the applicable goals should not apply; (2) the amount of land that is required for the use being planned; and (3) why the use requires a location on resource land. Each of these factors is addressed separately in the findings below:

**1. Basis for Determining State Policy Embodied in the Goals Should Not Apply.**

The state policy embodied in Goal 14, Urbanization, includes providing an orderly transition from rural to urban uses and assuring efficient use of the land. The subject property is considered "rural" because it is not located within a UGB or an Urban Unincorporated Area.

The applicant argues the policy embodied in Goal 14 should not apply to the subject property because of its location adjacent to and surrounded by existing industrial operations and its non-agricultural soils that make its use for agriculture inefficient. Staff responds that rezoning the subject site to RI could allow urban-density development in a rural area, resulting in a disorderly transition from rural to urban uses.

As discussed above, the Hearings Officer has found the subject property is unique because it is bounded on all sides by roads, an irrigation canal and railroad tracks, and because it is virtually surrounded by existing industrial and quasi-commercial development. The subject property has no irrigation water rights, appears never to have been cultivated, and is comprised of non-agricultural soils. Therefore, I agree with the applicant that it is not efficient to use the subject site for agriculture. However, the existing Deschutes Junction area consists primarily of long-standing industrial uses requiring large lots for processing and materials storage with little or no retail or service or traffic. In contrast, if the proposed plan amendment and zone change to RI are approved, the applicant intends to develop the subject property with new uses including retail and service uses. Nevertheless, because of the unique nature and location of the subject site, and its distance from the Bend and Redmond UGBs, and the use limitations required for a goal exception, I find such development is not likely to result in a disorderly transition from rural to urban development, and therefore the state policy embodied in Goal 14 should not apply.

## **2. The Amount of Land Required for the Use Being Planned.**

As discussed above, the applicant did not propose any particular development in conjunction with its applications for a plan amendment and zone change, but rather proposed that the subject site could be developed with a wide range of industrial uses. However, the applicant's revised traffic study identified a "worst case" development scenario to demonstrate compliance with the TPR that would include 7,500 square feet of light industrial uses, 7,500 square feet of building material/lumber store, and 7,500 square feet of veterinary clinic, for a total of 22,500 square feet of building floor area on the 2.65-acre subject site. That proposal leaves approximately 21,000 square feet of area for outside storage of goods, parking and maneuvering of vehicles, etc., which the Hearings Officer finds would be adequate. The applicant's burden of proof notes a portion of the remainder of the subject property currently zoned EFU-TRB – a vegetated area along Highway 97 – is not included in this application because it "is not usable and provides a buffer from the highway." For these reasons, the Hearings Officer finds the amount of land proposed for rezoning is appropriate because it appears to be large enough for the proposed uses but is not excessive.

## **3. Why the Use Requires a Location on Resource Land.**

As discussed in the findings above, the Hearings Officer has found that based on the Borine study the subject property does not constitute agricultural land because it consists entirely of Class VII and VIII soils. Based on the soil study the applicant argues the subject property is not "resource land." However, the staff report states, and I agree, that because the subject property presently is zoned EFU-TRB it is resource land and the applicant must address this factor.

The subject property and surrounding area are developed with industrial and quasi-commercial uses that virtually surround the subject site. For these reasons the applicant argues it is appropriate to include the subject site in the existing RI designation and zoning because of its unique location and characteristics, and so that it can be used in conjunction with the remainder of the subject property. While the Hearings Officer can't argue with that logic, I find it is not sufficient to demonstrate the proposed uses identified in the applicant's revised traffic study, or other uses permitted in the RI Zone, *require* a location on resource land.

- (b) Areas which do not require a new exception cannot reasonably accommodate the use:**

**FINDINGS:** The applicant argues that areas that don't require an exception cannot accommodate the proposed uses because: (1) there is limited land in the county zoned RI; and (2) other RI-zoned land either is fully developed or is located in La Pine which the applicant argues is too far away to utilize in conjunction with existing uses on the subject property. However, the staff report notes that the approximately 2.5-acre eastern portion of the subject property zoned RI also is an alternative area that does not require a new exception and the existing building on that land is presently available for rental. In addition, the staff report states, and the Hearings Officer agrees, that the applicant cannot limit its review under this factor to land currently zoned RI inasmuch as other land zoned for industrial use within the Bend and Redmond UGBs may be available and therefore should be included in the analysis.

Although the applicant has stated its intent to utilize the subject site "in conjunction with the remaining parcel," as discussed throughout this decision if the subject site is designated and zoned RI it has the potential to be developed with a variety of uses that do not require proximity to the existing industrial use, such as the building supply/lumber store and veterinary clinic uses identified in the applicant's revised traffic study. Moreover, the applicant's supplemental burden of proof states it intends to "pursue multiple permitted RI uses on the subject property" that could not be clustered on other RI-zoned properties. The Hearings Officer finds that in the absence of more specific identification of proposed uses, a more thorough analysis of where such uses could be permitted outright or conditionally, and an explanation of why other portions of the subject property zoned RI are not suitable, I am not persuaded that there are no areas not requiring an exception that could accommodate those uses.

- (A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;**
- (B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:**
  - (i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?**
  - (ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing**

**the density of uses on committed lands?  
If not, why not?**

- (iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?**

**FINDINGS:** The applicant submitted a map identifying the area for which the exception is proposed, as well as a map showing four RI-zoned properties that are alternative areas the applicant considered for the use. These properties include: (1) a 35.52-acre parcel owned by the Oregon Military Department near Redmond Airport; (2) a 31-acre parcel owned by 4-R Equipment located northeast of the Bend UGB; (3) a 13.4-acre parcel owned by Simpson/Glazebrook located north of the Bend UGB; and (4) an 11.9-acre parcel owned by Vic Russell Construction and located near LaPine. The applicant states the 13.4-acre parcel could not reasonably accommodate the proposed uses because it is fully developed. With respect to the other three parcels, the applicant argues they cannot reasonably accommodate the proposed uses because they are not close enough to the subject property to allow coordinated use thereof. However, as discussed elsewhere in this decision, the industrial uses identified in the applicant's revised traffic study do not require proximity to the remainder of the subject property. Moreover, the applicant does not indicate whether or to what extent the other three RI-zoned parcels are available for purchase or lease. The Hearings Officer finds that in the absence of such evidence, the applicant has failed to demonstrate the proposed uses cannot be reasonably accommodated on non-resource land. *Columbia River Keeper v. Columbia County*. In addition, I have found the applicant has failed to show the uses identified in the revised traffic study could not be reasonably accommodated within the Bend and/or Redmond UGBs. Therefore, I find the applicant has not demonstrated compliance with these three factors.

- (iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?**

**FINDINGS:** The Hearings Officer finds this factor is not applicable because no public facilities or services are proposed.

- (C) The alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support to support the assertion that the sites are more**

reasonable by another party during the local exceptions proceeding.

**FINDINGS:** For the reasons set forth in the findings above concerning the exception factors in paragraphs (i), (ii) and (iii), incorporated by reference herein, the Hearings Officer finds the applicant has not demonstrated compliance with this paragraph.

For the foregoing reasons, the Hearings Officer finds the applicant has not demonstrated compliance with this exception criterion.

- c) **The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;**

**FINDINGS:**

**Environmental.** The applicants argue, and the Hearings Officer agrees, that the subject property's poor quality soils and lack of irrigation make it unsuitable for agriculture. Moreover, I agree with the applicant that the environmental impacts from industrial use of the subject site would be substantially limited given the subject property's location near Highway 97, the BNSF railroad tracks, and other industrial property and its relatively small size. The applicant argues that any RI use of the property would have lower environmental impacts than would result from



utilizing a remote property for that use, due to “coordinated and centralized operations”. However, the staff report states, and I agree, that inasmuch as the applicant has not limited its proposal to uses coordinating with the uses on the existing RI-zoned portion of the subject property, reduced vehicle trips are not guaranteed. I also concur with staff’s concern that some uses permitted outright and conditionally in the RI Zone – such as pulp and paper manufacturing operations – have the potential to produce adverse environmental impacts to agricultural and residential uses.

**Economic.** The applicant argues the subject property has little or no economic value in its current EFU zoning because it is unsuitable for agriculture and because of its location between Highway 97 and the rest of the rural industrial property. The staff report states, and the Hearings Officer agrees, that while rezoning the subject site to RI certainly would create expanded economic opportunity, the site’s existing EFU zoning provides economic opportunities through uses including a facility for the primary processing of forest products, a landscape contracting business, and a commercial dog boarding kennel.

**Social.** Previous applications for plan amendments and zone changes requiring goal exceptions have analyzed impacts to nearby residences. The Assessor’s data in the record show a dwelling located on the “Funny Farm” property across Deschutes Pleasant Ridge Road to the north. The Hearings Officer shares staff’s concern that some RI Zone uses could have adverse impacts on that dwelling. The Assessor’s data show other nearby dwellings are located over 1,500 feet from the subject property and buffered by existing rural industrial lands, and for that reason I agree with staff’s observation that the impacts on those dwellings would be minimal due to the subject property’s location. I also agree with staff’s observation that the RI Zone establishes some development restrictions that would protect adjacent neighbors from adverse impacts.

**Energy.** The applicant argues the proposed use would have lower energy impacts than would result from utilizing a remote property for the proposed industrial uses due to “reduce[d] vehicle miles traveled in comparison to utilizing remote alternative sites”. However, as discussed in the findings above, the Hearings Officer has found that inasmuch as the applicant’s proposed plan amendment and zone change do not limit proposed development of the subject site to uses in conjunction with uses on the existing RI-zoned portion of the subject property, it is not appropriate to assume reduced vehicle trips through centralized or coordinated operations.

For the foregoing reasons, the Hearings Officer finds the applicant has not demonstrated compliance with this exception criterion.

- (d) **The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resource and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.**

**FINDINGS:** As discussed above, the record indicates there is a dwelling on the “Funny Farm” property to the north across Deschutes Pleasant Ridge Road and other dwellings located much

farther from the subject site. The Hearings Officer has found that impacts from industrial development on the more distance dwellings from RI Zone uses on the subject site will be minimal but that certain RI Zone uses could create negative impacts on the dwelling immediately to the north. Because the applicant has not identified the particular light industrial uses that would occur on the subject site with RI zoning, I cannot find the applicant has demonstrated compliance with this criterion.

- (4) For the expansion of an unincorporated community defined under OAR 660-022-0010. The exception requirements of subsections (2)(b), (c), and (d) of this rule are modified to also include the following:**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the subject site and subject property do not constitute an “unincorporated community,” defined in OAR 660-022-0010(10)(e) and Section 18.04.030 of the county code as land having a zoning designation “Urban Unincorporated Community,” “Rural Service Center,” “Resort Community” or Rural Community.”

- d. OAR 660-04-022, Reasons Necessary to Justify an Exception Under Goal 2, Part II(c):**

**An exception under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:**

\* \* \*

- (3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts include but are not limited to the following:**
  - (a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports; or \* \* \***

**FINDINGS:** The applicant argues that because the soils on the subject property are non-agricultural soils the subject property is not “resource land.” The Hearings Officer has rejected that argument because the subject site currently is zoned EFU-TRB. I find the applicant has not shown the RI Zone uses with which the subject site could be developed are “significantly dependent upon a unique resource” on the subject property.

- (b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or**

**FINDINGS:** As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant had not demonstrated the uses identified for the subject site with RI zoning cannot be located within the Bend and/or Redmond UGB.

- (c) **The use would have a significant comparative advantage due to its location (e.g. near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision.**

**FINDINGS:**

**Location.** The applicant argues increasing industrial density on the subject property would allow for coordinated, centralized operations and favorable clustering of industrial uses at Deschutes Junction, which in turn would expand job opportunities and increase land values to the benefit of the county economy. The staff report observes, and the Hearings Officer agrees, that the applicant's argument is based on an unsupported assumption that use of the subject site following rezoning to RI would be in conjunction with the use on the remainder of the subject property currently zoned RI. As discussed in the findings above, the applicant has stated its intent to develop the subject site with multiple RI Zone uses.

**Benefit to County Economy.** The Hearings Officer concurs with the applicant that industrial use on the subject site will benefit the county's economy by allowing the applicant to expand its business operations thereon and by increasing the assessed value of the rezoned site. However, I agree with staff that because the applicant has not identified a particular use of the site it has not demonstrated that industrial development of the site would be of any greater benefit than similar development on another industrial-zoned site.

**Minimal Loss of Productive Resource Lands.** The Hearings Officer finds that because the subject property is composed entirely of Class VII and VIII soils, has no irrigation water rights, and appears never to have been in farm use, rezoning the subject site from EFU to RI would not result in the loss of productive resource lands.

For the foregoing reasons, the Hearings Officer finds the applicant has not demonstrated compliance with this exception criterion.

**Based on the foregoing findings, the Hearings Officer finds the applicant has not demonstrated its proposal qualifies for a "reasons" exception to Goal 14.**

***"IRREVOCABLY COMMITTED" EXCEPTION***

- d. **OAR 660-004-0028, Exception Requirements for Land Irrevocably Committed to Other Uses**
  - (1) **A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to**

**uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:**

- (a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).
- (b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.
- (c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken. (Emphasis added.)

**FINDINGS:** The applicant argues it is entitled to an "irrevocably committed" exception to Goal 14 because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable. Compliance with the requirements for such an exception are addressed in the findings below.

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

- (a) **The characteristics of the exception area;**

**FINDINGS:** As set forth above, the "exception area" is the area for which the exception is being requested – i.e., the subject site. As discussed in the findings above, the subject property is undeveloped. It is composed of Class VII and VIII soils, has no irrigation water rights, and appears never to have been in farm use. The subject site is not and apparently never has been used in conjunction with nearby farm units or activities, and the Hearings Officer has found such use impracticable in light of the subject site's location and isolation from farms in the surrounding area. As also discussed above, the subject site is isolated from all but the remainder of the subject property by roads, the Pilot Butte Canal, and the BNSF railroad tracks. The applicant states, and I agree, that the subject site is virtually surrounded by industrial development and major roadways, has limited access, and is of limited value or practical use in its current EFU zoning.

- (b) **The characteristics of the adjacent lands;**

**FINDINGS:** The area surrounding the subject property consists primarily of existing industrial zoning and uses and EFU zoning and uses. To the east across Graystone Lane is Willamette Graystone, a concrete products manufacturing facility. To the north across Deschutes Pleasant Ridge Road is EFU-zoned land developed with the "Funny Farm," a quasi-commercial park and gift/antique shop. On the northern part of the "Funny Farm" is small-scale farm use on 11 irrigated acres of pasture. The adjacent property to the east of the "Funny Farm" and the canal, Tax Lot 202 of Assessor's Map 16-12-26A, has 18 irrigated acres. To the south across

Deschutes Market Road is RI-zoned land used for pumice processing as well as vacant EFU-zoned land along the Highway 97 frontage. Across Highway 97 to the west are some EFU-zoned land currently engaged in farm use. Also west of the highway are the Three Sisters Adventist School, rural residences, and a building/landscaping supply business on land zoned RC north of Deschutes Pleasant Road. Based on this information, the Hearings Officer finds the adjacent properties are predominately engaged in non-resource uses.

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

**FINDINGS:** The record indicates the subject Property does not abut any residential or resource uses. As discussed in detail in findings elsewhere in this decision, the subject site is surrounded by industrial uses and is separated and isolated from resource and residential uses by roads, the canal, and the BNSF railroad tracks. The Hearings Officer finds the relationship between the exception area and the lands adjacent to it leads to the conclusion that the site is essentially a part of the existing Deschutes Junction industrial complex. These adjacent uses include mining operations, aggregate processing, heavy equipment operations, and cement products manufacturing. The applicant states, and I agree, that these surrounding uses, coupled with the poor quality of the site's soils and the lack of irrigation, make the subject site unsuitable for agricultural or residential uses.

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

**FINDINGS:** The relevant factors in OAR 660-004-0028(6) are addressed below.

- (3) **Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:**

- (a) **Farm use as defined in ORS 215.203;**
- (b) **Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and**
- (c) **Forest operations or forest practices as specified in OAR 660-006-0025(2)(a). (Emphasis added.)**

**FINDINGS:** The applicant is requesting an exception to Goal 14, Urbanization, to rezone and re-designate the subject site to RI and Rural Exception Area, respectively, on the basis that the

subject site is irrevocably committed to non-resource use due to its characteristics and its relationship to the surrounding land, most of which is engaged in non-resource (industrial) uses. The site's current EFU-TRB zoning allows outright or conditionally a variety of uses. The Hearings Officer finds the farm and forest uses allowed in the EFU Zone – along with uses related to or dependent upon those uses -- would be impracticable due to its small size, the poor quality of the site's soils, and the site's lack of irrigation. I find the other resource-related uses allowed in the EFU Zone – e.g., mining, wetland creation, wildlife habitat conservation – would be impracticable considering the subject site's size and location. The road-related uses allowed in the EFU Zone would be impracticable given the site's isolated location and small size.

With respect to residential and related uses (e.g., nonfarm dwelling, church, community center, park, room-and-board facility, etc.) The Hearings Officer finds the site's location surrounded by industrial uses, roads and railroad tracks would make the establishment of such uses impracticable. With respect to irrigation-related uses, I concur with the applicant that the Pilot Butte Canal's location at a lower elevation than the subject property would make the establishment of irrigation-related facilities on the subject site impracticable. Finally, I find the assortment of utility and similar uses allowed in the EFU Zone (e.g., utility facilities, transmission towers, personal use airports, solar power generating facilities, etc.) also would be impracticable on the subject site due to its small size and isolated location.

- (4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.**

**FINDINGS:** Compliance with the factors in section (6) is addressed in the findings below.

- (5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.**

**FINDINGS:** The applicant's proposed exception area consists of a portion of a single split-zoned parcel that is undeveloped except for gravel roads and vehicle maneuvering areas.

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

**FINDINGS:** As discussed in detail in the findings above, uses adjacent the proposed exception area consist of existing industrial uses, roads, an irrigation canal and railroad tracks. The applicant states, and the Hearings Officer agrees, that taking an exception to Goal 14 for the subject site will have little if any effect on these adjacent uses. I also agree such an exception may benefit the adjacent industrial uses by allowing new rural industrial uses compatible with the existing uses. And even assuming the "Funny Farm" and the adjacent farm-zoned property to the east could be considered "adjacent" uses since they are located across Deschutes

Pleasant Ridge Road from the subject site, the applicant correctly notes these properties have been located in close proximity to existing industrial uses in Deschutes Junction for many years with little or no conflicts.

**(b) Existing public facilities and services (water and sewer lines, etc.);**

**FINDINGS:** The record indicates there are no public water or sewer facilities in the vicinity of the subject property. The subject property is served by an on-site septic system and water from a private water company. Moreover, the applicant's proposal to develop the subject site with RI Zone uses will not require public water or sewer facilities. The subject property will continue to receive fire and police protection from the Deschutes Rural Fire Protection District and the Deschutes County Sheriff.

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

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

**FINDINGS:** The applicant's Second Supplemental Burden of proof states the Deschutes Junction area and the establishment of its industrial uses resulted from a combination of goal exceptions and legislative zone changes. In addition, the applicant notes that some of the existing uses – e.g., Cascade Pumice and Willamette Graystone -- pre-existed adoption of the county's initial zoning ordinance. The record indicates the existing RI zoning on the subject property resulted from the county's granting of an exception to Goal 3 and subsequent zone change from EFU to RI on the basis of findings that the soils were not suitable for agriculture.

The applicant states, and the Hearings Officer agrees, that the existing exception area at Deschutes Junction did not become irrevocably committed to industrial uses on account of a land division, but rather from pre-existing industrial development occurred on adjacent lands, the county's 1980 approval of an industrial use on the RI-zoned portion of the subject property (CU-80-145), and construction of the Deschutes Market/Tumalo Road/Highway 97 overpass. I concur with the applicant that these developments effectively isolated the existing Deschutes Junction exception area between physical barriers and adjacent industrial development.

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

**FINDINGS:** The record indicates the RI-zoned parcels in Deschutes Junction range in size from 1.41 to 18.69. The record also indicates that Jack Robinson and Sons and 4-R Equipment, a related owner, own the majority of the RI-zoned land (approximately 63 of 77 RI-zoned acres). The applicant argues, and the Hearings Officer agrees, that although some of the existing RI-zoned parcels are small, it is not the size of the RI-zoned parcels that makes the exception area – the subject site -- irrevocably committed to non-resource uses. Rather, the exception area is irrevocably committed because it is a relatively small and isolated parcel surrounded by contiguous RI-zoned parcels and uses and physical barriers. I concur with the applicant's observation that the RI-zoned parcels do not stand alone amidst larger farm or forest operations because no such operations existing in the surrounding area.

- (d) Neighborhood and regional characteristics;**

**FINDINGS:** The region surrounding Deschutes Junction can be characterized as predominantly agricultural with small and medium-sized farms and rural residences. The Deschutes Junction neighborhood consists of a pocket of industrial and quasi-commercial uses mixed with a few farms and rural residences. The applicant argues, and the Hearings Officer agrees, that although there are farm uses in the neighborhood, the subject property and site are physically separated from them by roads, the canal, the railroad tracks, and existing industrial uses so that approval of the proposed exception to add land to the existing exception area would result in little if any change in the character of the neighborhood.

- (e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not**



limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

**FINDINGS:** As discussed throughout this decision, the proposed exception area – the subject site -- is physically separated from resource lands by several man-made impediments including roads, an irrigation canal, a railroad, and industrial development.

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

**FINDINGS:** The record indicates the only physical development on the exception area consists of gravel roads and vehicle maneuvering areas and outdoor storage. The applicant states, and the Hearings Officer agrees, that although this development is minimal it does effectively preclude resource uses -- agriculture and forestry – in the exception area.

**(g) Other relevant factors.**

**FINDINGS:** The applicant argues, and the Hearings Officer agrees, that another relevant factor for finding the proposed exception area is irrevocably committed to non-resource uses is the existence of a road system that supports significant traffic, detracting from the suitability of the subject site for resource or other uses permitted in the EFU Zone.

- (7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.**

**FINDINGS:** The applicant's submitted materials include maps and aerial photographs of the subject property and surrounding area as well as ground-level photos of the subject site. The Hearings Officer finds these maps and photos support the proposed exception by demonstrating the isolated nature of the subject site and the significant existing industrial development on surrounding land.

**e. OAR 660-014-0030, Rural Lands Irrevocably Committed to Urban Levels of Development**

- (1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.**

**FINDINGS:** Based on the foregoing findings of fact and reasons, the Hearings Officer finds the proposed exception area – the subject site – is irrevocably committed to non-resource uses in general, and to industrial and quasi-commercial uses at urban levels in particular. I concur with the applicant’s argument that the exception area is unsuitable for rural uses because of its size, poor quality soils, lack of irrigation, and location virtually surrounded by existing industrial development which makes use of the site with rural uses impracticable. Because I find the exception area has been irrevocably committed, I need not address the four factors in Goal 2 and OAR 660-004-0020(2) for the requested exception to Goal 14. However, I have addressed those factors in the findings at pages 32-37 above.

- (2) **A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.**

**FINDINGS:** The findings and conclusions supporting the Hearings Officer’s determination that the subject site is irrevocably committed to an urban level of development are set forth in detail in the findings above. As discussed in those findings, the applicant submitted maps and aerial photos depicting the subject site, and I find that as a condition of approval for the proposed plan amendment, zone change and goal exception the applicant will be required to submit to the Planning Division a metes-and-bounds description of the exception area.

- (3) **A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:**

**FINDINGS:** The Hearings Officer has addressed the factors in this paragraph in the findings above. However, for purposes of review, I make the following findings.

- (a) **Size and extent of commercial and industrial uses;**

**FINDINGS:** The exception area is 2.65 acres in size. It is not currently developed with industrial or commercial uses, but has gravel areas for vehicle maneuvering and materials and equipment storage supporting adjacent industrial uses on the remainder of the subject property, and is surrounded by industrial development.

- (b) **Location, number and density of residential dwellings;**

**FINDINGS:** The record indicates there is one rural residence on the “Funny Farm” property approximately 600 feet to the north across Deschutes Pleasant Ridge Road, and several rural residences on surrounding lands located at least 1,500 feet from the exception area.

**(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and**

**FINDINGS:** The record indicates there are no public water or sewer facilities on or near the subject property. The Hearings Officer is aware that the closest of such facilities are located within the Bend UGB which is at its closest point 3 miles south of the exception area.

**(d) Parcel sizes and ownership patterns.**

**FINDINGS:** As discussed in the findings above, RI-zoned parcels in the Deschutes Junction area total approximately 77 acres in several tax lots, with most properties under 10 acres in size. The 2.65-acre exception area comprises less than 3.5% of the Deschutes Junction industrial area. Most of the RI-zoned land is owned by two related businesses, and consists of aggregate processing, and the construction of concrete products and supplies. As also discussed above, Deschutes Junction includes several acres of RC zoning on the west side of Highway 97, as well as quasi-commercial uses at the "Funny Farm."

**(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.**

**FINDINGS:** As discussed extensively in the findings above, the Hearings Officer has found the proposed exception area – the subject site -- is irrevocably committed to non-resource uses and urban development because: (1) it does not constitute agricultural land and is not suitable for farm or forest use; (2) it is a relatively small parcel isolated from other EFU-zoned land; (3) it is virtually surrounded by industrial uses; and (4) it is isolated by man-made barriers including roads, the Pilot Butte Canal, the BNSF railroad tracts, and extensive industrial development. I have found that public facilities and services – e.g., water and sewer -- are not available to the exception area but that there is sufficient private infrastructure in place to support the level of "urban" uses that predominate at Deschutes Junction and that could be developed on the subject property with RI zoning.

**(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.**

**FINDINGS:** The Hearings Officer finding the detailed findings and reasons set forth in the findings above in support of the proposed exception demonstrate the subject site is irrevocably committed to urban development. The applicant also notes that the subject property, of which the proposed exception area is a part, already is built with industrial uses.

For the foregoing reasons, and with imposition of the condition of approval described above, the Hearings Officer finds the applicant's proposed exception complies with the criteria in this rule.

**3. Division 14, Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands**

a. **OAR 660-014-0040, Establishment of New Urban Development on Undeveloped Rural Lands**

- (1) **As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.**

**FINDINGS:** The applicant argues its proposal is not subject to this administrative rule because it is not for new urban development on "undeveloped rural land" since the subject site is committed to urban development. The Hearings Officer agrees. Based on the detailed reasons set forth in the findings above, I have found the applicant has demonstrated the subject site is "irrevocably committed" to urban development. Moreover, as also discussed in the findings above, I have found the applicant did not demonstrate it is entitled to a "reasons" exception to Goal 14. Therefore I find this rule is not applicable to the applicant's proposal.

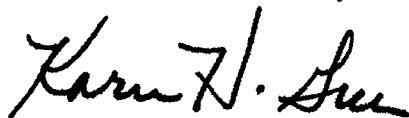
**IV. DECISION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicant's proposed plan amendment from Agriculture to Rural Exception Area, zone change from EFU-TRB to RI, and "irrevocably committed" exception to Goal 14, for the subject site, **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

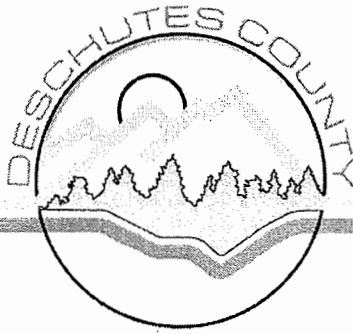
1. This approval is based upon the applicant's submitted burdens of proof, supplemental materials, and written and oral testimony. Any substantial change to the approved plan amendment, zone change, and goal exception will require new land use application(s) and approval(s).
2. Prior to the public hearing on the plan amendment, zone change and goal exception before the Board of Commissioners, the applicant/owner shall submit to the Planning Division a metes-and-bounds description of the subject site to be re-designated and rezoned.
3. The applicant/owner shall limit RI Zone development on the subject site to no more than three 7,500-square-foot buildings and to limit traffic impacts from the development to no more than 86 (eighty-six) new p.m. peak hour vehicle trips.

Dated this 15th day of October, 2014.

Mailed this 16<sup>th</sup> day of October, 2014.



Karen H. Green, Hearings Officer



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### CERTIFICATE OF MAILING

**FILE NUMBERS:** ZC-14-2 and PA-14-2

**DOCUMENT/S MAILED:** Hearings Officer's Decision

**LOOKUP AREA:** 750 Feet

**MAP/TAX LOT NUMBER:** 16-12-26C Tax Lot 107

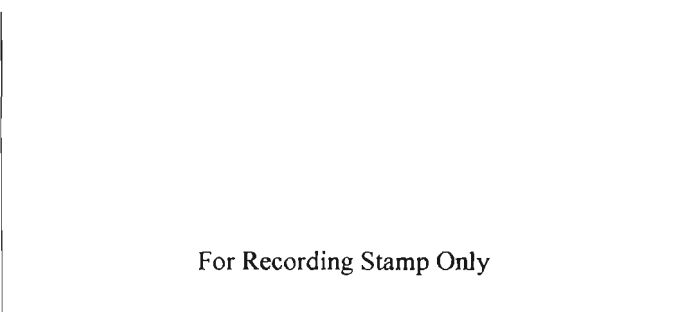
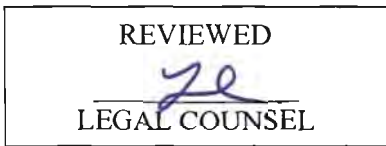
I certify that on the 16<sup>th</sup> day of October, 2014, the attached notice(s)/report(s), dated October 16, 2014, was/were mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth on the attached list.

Dated this 16<sup>th</sup> day of October, 2014.

### COMMUNITY DEVELOPMENT DEPARTMENT

By: Sher Buckner

Claudia Powell, Trustee Frances Ramsey Trust c/o Bryant Lovlien & Jarvis, PC 591 SW Mill View Way Bend, OR 97702	Sharon R. Smith Bryant Lovlien & Jarvis PC 591 SW Mill View Way Bend, OR 97702
Hearings Officer Karen Green	



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code \*
Title 18, the Deschutes County Zoning Map to \* ORDINANCE NO. 2014-028
Change the Zone Designation for Certain Property \*
From Exclusive Farm Use to Rural Industrial. \*

WHEREAS, Claudia Powell, Trustee of the Frances Ramsey Trust Agreement dated May 23, 1979 applied for a zone change to the Deschutes County Code ("DCC") Title 18, Zoning Map, to rezone certain property from Exclusive Farm Use ("EFU") to Rural Industrial ("RI"); and

WHEREAS, after notice was given in accordance with applicable law, public hearings were held on June 10, 2014, July 29, 2014, and August 19, 2014 before the Deschutes County Hearings Officer, and on October 16, 2014 the Hearings Officer recommended approval of the exception to Goal 14, a Plan Amendment, and a Zone Change; and

WHEREAS, after notice was given in accordance with applicable law, a de novo public hearing was held on December 15, 2014 before the Board of County Commissioners ("Board"), and

WHEREAS, on this same date, the Board adopted Ordinance 2014-027, adopting a goal exception to Statewide Planning Goal 14 and amending DCC Title 23, the County Comprehensive Plan, changing the plan designation of the property from Agriculture to Rural Industrial; and

WHEREAS, a change to the Deschutes County Zoning Map is necessary to implement the amendment adopted in Ordinance 2014-027; now therefore,

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

Section 1. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from Exclusive Farm Use ("EFU") to Rural Industrial ("RI") for certain property depicted on the map set forth as Exhibit "A," attached and incorporated by reference herein , and described in Exhibit "D" to Ordinance 2014-027, incorporated by reference herein.

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached to Ordinance 2014-027 as Exhibit "F" and incorporated by reference herein.

Dated this 29<sup>th</sup> of Dec., 2014

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
TAMMY BANEY, Chair

  
ANTHONY DeBONE, Vice Chair

ATTEST:

  
Recording Secretary

  
ALAN UNGER, Commissioner

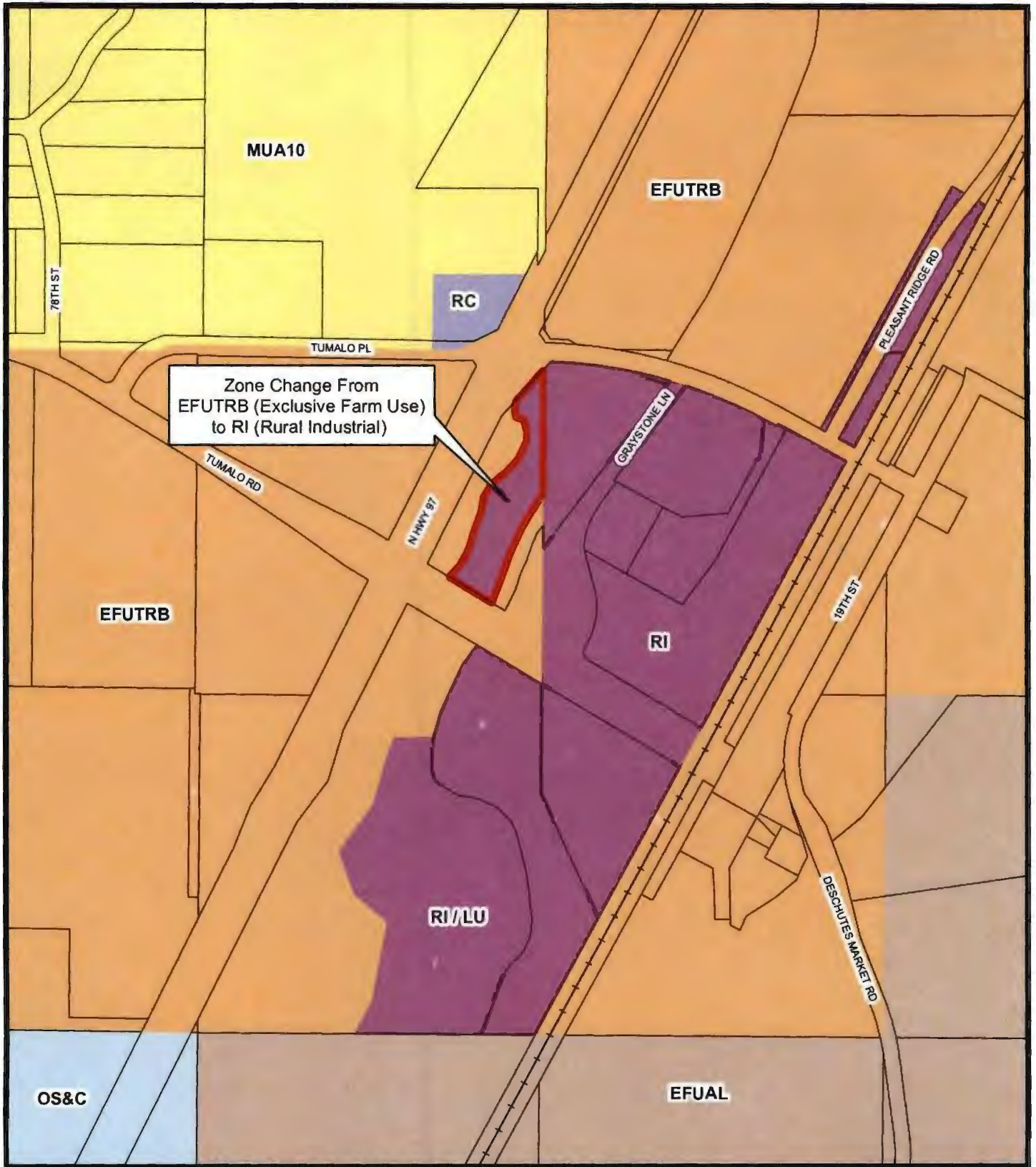
Date of 1<sup>st</sup> Reading: 15<sup>th</sup> day of Dec., 2014.

Date of 2<sup>nd</sup> Reading: 29<sup>th</sup> day of Dec., 2014.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	<u>✓</u>	—	—	—
Anthony DeBone	<u>✓</u>	—	—	—
Alan Unger	<u>✓</u>	—	—	—

Effective date: 31<sup>st</sup> day of March, 2014.



Zone Change From  
EFUTRB (Exclusive Farm Use)  
to RI (Rural Industrial)

**Legend**

Subject Property 16-12-26-C0-00107

**County Zoning**

- EFUAL - Alfalfa Subzone
- EFUTRB - Tumalo/Redmond/Bend Subzone
- MUA10 - Multiple Use Agricultural
- OS&C - Open Space & Conservation
- RI - Rural Industrial
- RC - Rural Commercial

**PROPOSED ZONING MAP**  
Claudia Powell, Trustee - Frances Ramsey Trust

Exhibit "A"  
to Ordinance 2014-028



November 3, 2014

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Jimmy Binby, Chair  
 Tony DeBona, Vice Chair  
 Alan Unger, Commissioner  
 Bonnie Baker  
 ATTEST: Recording Secretary  
 Dated this Dec 29, 2014  
 Effective Date Mar 31, 2015