

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

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

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

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

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

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

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

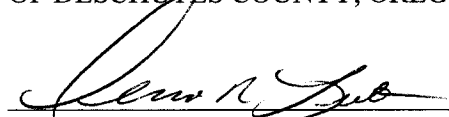
Section 2. AMENDMENT. DCC Title 23, the Deschutes County Comprehensive Plan Map is hereby amended to change the plan designation for certain property originally designated Agriculture described in Exhibit "B" and depicted on the map set forth as Exhibit "C," attached and by this reference incorporated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

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

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

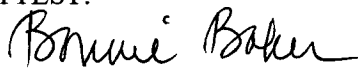
Dated this 6<sup>th</sup> of February 2008

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
DENNIS R. LUKE, CHAIR

  
TAMMY (BANEY) MELTON, VICE CHAIR

ATTEST:

  
Recording Secretary

  
MICHAEL M. DALY, COMMISSIONER

Date of 1<sup>st</sup> Reading: 23<sup>rd</sup> day of January, 2008.

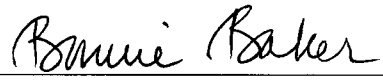
Date of 2<sup>nd</sup> Reading: 6<sup>th</sup> day of February 2008.

Record of Adoption Vote

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

Effective date: 6<sup>th</sup> day of May, 2008.

ATTEST:

  
Recording Secretary

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

Chapter 23.120. GOAL EXCEPTION STATEMENT

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

\* \* \*

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

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

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

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

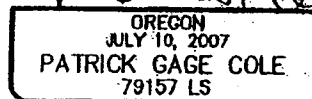
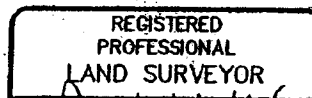
**Description #1**

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

**Description #2**

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

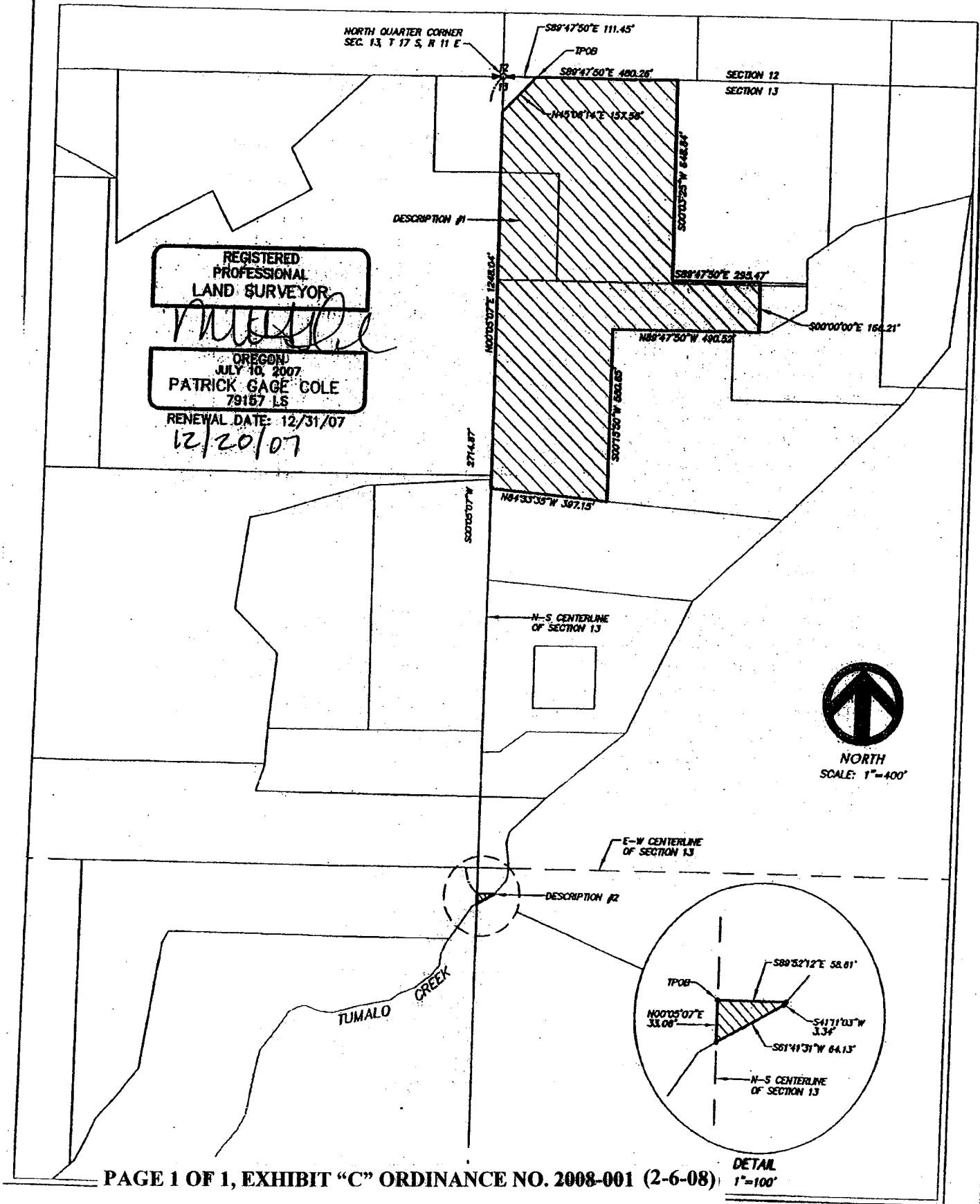
**Subject to:** All easements, restrictions and right-of-ways of record and those common and apparent on the land.



RENEWAL DATE: 12/31/07

12/20/07

# LANDS TO BE DESIGNATED RREA



**Goal 5 Inventory – Mineral and Aggregate Sites**

SITE NO.	LEGAL DESCRIPTION	NAME	TYPE	QUANTITY*	QUALITY	ACCESS/LOCATION
347	161101-00-00300	Deschutes County	Dirt	10,000	Good	
351	161112-00-01401, 1700, 2000	Gisler/Russell	Cinders	150,000	Good	Innes Mkt/Innes Butte
357	161136-DO-00100, 161100-00-10400, 10300	Tumalo Irrigation	Cinders	1 M		Johnson Road/Tumalo
357	161136-DO-00100, 161100-00-10400, 10300	Tumalo Irrigation	S & G	500,000	Good	
357	161136-DO-00100, 161100-00-10400, 10300	Tumalo Irrigation	Pumice	500,000	Good	
358	161231-DO-01100	Gisler	S & G	100,000	ODOT Specs	Hwy 20/Tumalo
361	161222-CO-02800	Oregon State Hwy	Cinders	700,000	Good	
366	161230-00-00000	Oregon State Hwy	S & G	40,000	ODOT Specs	
368	161220-00-00200	Bend Aggregate	S & G	570,000	Excellent	Twin Bridges/Tumalo
370	161231-DO-00400	Bend Aggregate Plant Site	Storage			
379	181100-00-01600	Oregon State Hwy	S & G	500,000	ODOT Specs	
381	181125-CO-12600, 181126-00-01600	Pieratt Bros	Cinders	50,000	Good	
390	181214-00-00500, 100	Deschutes County	Dirt	2 M		Landfill
391	181221-00-00200	Central OR Pumice	Cinders	500,000	Good	
392	181223-00-00300	Rose	Rock	10 M Est	Mixed	
392	181223-00-00300	Rose	Dirt	7.5 M	Good	
393	181225-00-01400	LT Contractors	Cinders	12.5 M	Good	Arnold Mkt Rd/SE of Bend
394	181200-00-04400, 04411	Windlinx	Cinders	270,000	Coarse	Hwy 97/South of Bend
395	181200-00-04300	Oregon State Hwy	Cinders		100,000	Good
400	181300-00-04501, 04502	Eric Coats	S & G	2.5 M	ODOT Specs	
404	191400-00-00200	Moon	S & G	1.3 M	Good	
404	191400-00-00200	Moon	Rock	800,000 - 2 M	Good	Hwy 20/East of Bend
405	191400-00-00600	Oregon State Hwy	Aggregate	50,000	ODOT Specs	
408	191600-00-01500	RL Coats	S & G	3 M	Good	
413	201500-00-01400	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
414	201500-00-01500	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
415	201716-00-00700	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
416	201716-00-00200	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
417	201716-00-00900	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
418	201716-00-01000	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
419	201716-00-01300	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
421	212000-00-00900	RL Coats	S & G	500,000	Excellent	Hwy 20/Tumalo
423	211106-CO-00700	Ray Rothbard	S & G	100,000	Good	
426	211100-00-00702	La Pine Redi-Mix	S & G	1 M	Good	
427	211100-00-00701	Bill Bagley	S & G	40,000	Good	
431	221100-00-00600	Russell	Cinders/ Rock	12 M/1.2 M	Good	Finley Butte
432	221100-00-00500	State of Oregon	Cinders	160,000	Good	
433	211300-00-00101	La Pine Pumice	Lump Pumice	10 M	Excellent	
441	150903-00-00300	Willamette Ind	S & G	11 M	Good	
442	150909-00-00400	Willamette Ind	S & G	6 M	Good	
443	150917-00-00600	Willamette Ind	Rock	150,000	Fair	
453	161209, 10-00-00600, 301	Robert Fullhart	S & G	704,000	ODOT Specs	
459	141131-00-05200	Deschutes County	Cinders	50,000	Good	
461	141300-00-01500, 1501, 1502, 1503, 1505	Nolan	S & G	350,000	Good	
461	141200-00-01501, 1502, 1503, 1505, 1600	Franklin Nolan	Diatomite	2 M	Good	

**Goal 5 Inventory – Mineral and Aggregate Sites**

SITE NO.	LEGAL DESCRIPTION	NAME	TYPE	QUANTITY*	QUALITY	ACCESS/LOCATION
465	141333-00-00900	Oregon State Hwy	Cinders	100,000	Good	
466	141333-00-00600	Fred Elliott	Cinders	5.5 M	Good	
467	141333-00-00601	Knorr Rock Co	Cinders	5 M	Good	
469	141131-00-00100	Deschutes County	Cinders	2 M	Fair	
475	151012-00-00600	Deschutes County	Cinders	200,000	Good	Cloverdale Road
482	151300-00-00103	Deschutes County	Dirt	2 M	Good	Negus Landfill
488	161230-00-00100, 600, 2000, 2100	Bend Aggregate	S & G	400,000	ODOT Specs	
496	191400-00-00500	Taylor	S & G	1.8M	Mixed	Hwy 20
498	191400-00-02200	Oregon State Hwy	S & G	200,000	ODOT Specs	
499	191533-00-00200	Oregon State Hwy	S & G	50,000	ODOT Specs	
500	191500-00-00099	Oregon State Hwy	S & G	130,000	ODOT Specs	
501	191500-00-01600	Oregon State Hwy	S & G	50,000	ODOT Specs	
503	191600-00-01300	Oregon State Hwy	S & G	200,000	ODOT Specs	
505	201600-00-00400	Oregon State Hwy	S & G	275,000	ODOT Specs	
506	201600-00-00600, 700, 800	Oregon State Hwy	S & G	36,000	ODOT Specs	
508	201700-00-01000	State of Oregon	S & G	100,000	ODOT Specs	
515	201801-00-00100	Oregon State Hwy	S & G	100,000	ODOT Specs	
522	211900-00-01000	Oregon State Hwy	S & G	300,000	ODOT Specs	
524	212000-00-01900	Oregon State Hwy	S & G	300,000	ODOT Specs	
528	222110-00-00600	Oregon State Hwy	S & G	45,000	ODOT Specs	
529	221106-00-00300	Oregon State Hwy	S & G	31,000	ODOT Specs	
533	222100-00-00800	Oregon State Hwy	S & G	1 M	ODOT Specs	
541	141035-00-02000, 2100, 2200, 2300, 2400, 2500, 2600	Cyrus	Aggregate	528,000	Good	Inc Portions of TL 1800/1900
542	151001-00-02700	Swarens	Aggregate	80,000	Good	
543	151013-00-00100	Cyrus	Aggregate	1.1 M	Good	
600	191400-00-00700	Robinson	S & G	3.8 M	Good	Hwy 20/East of Bend
601	211100-00-00700	La Pine Redi Mix	S & G	479,000	DEQ Specs	Paulina Lake Road

\* quantity in cubic yards unless noted

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

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

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

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

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

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

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

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

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

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

**STAFF REVIEWER:** Chris Bedsaul, Associate Planner

**HEARING DATE:** July 24, 2007

**RECORD CLOSED:** September 14, 2007

**I. APPLICABLE STANDARDS AND CRITERIA:**

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

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

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

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

**C. Title 23, the Deschutes County Comprehensive Plan**

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

2. **Chapter 23.68, Public Facilities**

\* **Section 23.68.020, Policies**

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

\* **Section 23.96.030, Policies**

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

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

2. **Division 5, Agricultural Lands**

3. **Division 6, Forest Lands**

4. **Division 12, Transportation Planning**

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

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

**II. FINDINGS OF FACT:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- F. Procedural History:** The Board of County Commissioners (“Board”) adopts the Hearings Officer’s findings and adds that this comprehensive plan amendment does involve a goal exception for land designated farm or forest use. No appeal of the Hearings Officer’s decision was filed by a party of interest or a review was not initiated by the Board for PA07-2 and ZC07-2. Therefore, DCC 22.28.030(C) requires that the Board conduct a de novo public hearing. The Board conducted a de novo public hearing on January 7, 2008.
- **G. Proposal:** The Board adopts the Hearings Officer’s findings.
- H. Public Agency Comments:** The Board adopts the Hearings Officer’s findings.
- I. Public Notice and Comments:** The Board adopts the Hearings Officer’s findings and adds that notice of the hearing before the Board was published in the The Bulletin and sent to those that appeared in person or in writing before the Hearings Officer.
- J. Lot of Record:** The Board adopts the Hearings Officer’s findings.

**III. CONCLUSIONS OF LAW:**

***PROCEDURES***

**Notice**

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

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

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

**A. Individual Mailed Notice**

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

\* \* \*

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

\* \* \*

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

**B. Posted Notice**

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

\* \* \*

**C. Published Notice**

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

**Continuance and Record Extension**

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

**A. Grounds**

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

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

**Process for Approval of Plan Amendment and Zone Change**

**2. Chapter 22.28, Land Use Action Decisions**

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

\* \* \*

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

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

**PLAN AMENDMENT**

**FINDINGS:**

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

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

## **COMPREHENSIVE PLAN GOALS AND POLICIES**

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

#### **1. Chapter 23.24, Rural Development**

##### **a. Section 23.24.020, Goals**

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

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

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

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

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

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

#### **2. Chapter 23.60, Transportation**

##### **a. Section 23.60.010, Transportation**

**\* \* \***

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

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

#### **3. Chapter 23.68, Public Facilities**

**a. Section 23.68.020, Policies**

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

**\* \* \***

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

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

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

**a. Section 23.96.030, Policies**

**\* \* \***

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

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

**STATEWIDE GOALS AND ADMINISTRATIVE RULES**

**Agriculture to RREA**

***Agricultural Lands***

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

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

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

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

**GOAL 3**

**To preserve and maintain agricultural lands.**

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

**DEFINITIONS**

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

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

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

2. Division 33, Agricultural Land

a. OAR 660-033-0030, Agricultural Land

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

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

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

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

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

• FINDINGS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Exception to Goal 3*

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

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

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

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

\* \* \*

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

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

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

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

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

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

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

- (b) That meet the following requirements:

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

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

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

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

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

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

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

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

of Unincorporated Communities,” if applicable; or

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

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

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

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

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

- (4) “Reasons” Exceptions:

\* \* \*

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

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

\* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Existing adjacent uses;

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

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

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

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

- (A) Consideration of parcel size and ownership patterns

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

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

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

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

- (d) Neighborhood and regional characteristics;

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

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

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

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

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

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

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

***Forest Lands***

**4. Division 6, Forest Lands**

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

**FINDINGS:** Goal 4 provides as follows:

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

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

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

**b. OAR 660-06-001, Purpose**

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

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

***Surface Mining Lands***

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

**a. OAR 660-023-010, Definitions**

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

**\* \* \***

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

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

*Transportation*

**6. Division 12, Transportation**

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

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

**Compliance with Other Statewide Goals**

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

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

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

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

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

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

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

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

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

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

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

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

***ZONE CHANGE***

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

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

**1. Chapter 18.52, Surface Mining Zone (SM)**

- a. **Section 18.52.200, Termination of the Surface Mining Zoning and Surrounding Surface Mining Impact Area Combining Zone**
  - A. **When a surface mining site has been fully or partially mined, and the operator demonstrates that a significant resource no longer exists on the site, and that the site has been reclaimed in accordance with the reclamation plan approved by DOGAMI or the reclamation provisions of this title, the property shall be rezoned to the subsequent use zone identified in the surface mining element of the Comprehensive Plan.**
  - B. **Concurrent with such rezoning, any surface mining impact area combining zone which surrounds the rezoned surface mining site shall be removed. Rezoning shall be subject to chapter 18.136 and all other applicable sections of this title, the Comprehensive Plan and Deschutes County Code Title 22, the Uniform Development Procedures Ordinance.**

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

**2. Chapter 18.136, Amendments**

**a. Section 18.136.010, Amendments**

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

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

**b. Section 18.136.020, Rezoning Standards**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **IV. DECISION:**

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