



Deschutes County Board of Commissioners
1300 NW Wall St, Bend, OR 97703

(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

AGENDA REQUEST & STAFF REPORT

For Board of Commissioners Work Session of October 24, 2016

DATE: October 17, 2016

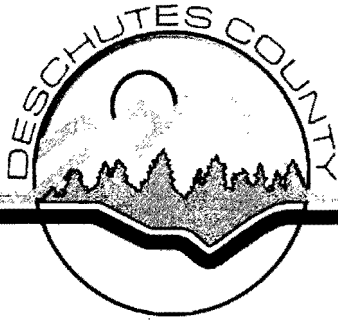
FROM: Peter Gutowsky, Community Development, 541-385-1709

TITLE OF AGENDA ITEM:
Discussion of Aceti LUBA Remand

PUBLIC HEARING ON THIS DATE?: No

ATTENDANCE: Peter Gutowsky

SUMMARY: Applicant requests a proceeding on remand to repeal the portion of the prior decision that approved an exception to Goal 14, reaffirms its prior decision to change the plan designation and zoning for the property. A hearing with the Board of County Commissioners is scheduled for October 31.



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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STAFF REPORT

The Deschutes County Hearings Officer will hold a Public Hearing on October 31, 2016 at 10:00 a.m. in the Barnes and Sawyer Rooms of the Deschutes Services Center, located at 1300 NW Wall Street in Bend, to consider the following request:

FILE NUMBERS: 247-16-000593-A; 247-14-000456-ZC; 247-14-000457-PA

SUBJECT: Applicant requests a proceeding on remand to repeal the portion of the prior decision that approved an exception to Goal 14, reaffirms its prior decision to change the plan designation and zoning for the property, and adopting appropriate findings and conclusions.

This hearing is scheduled pursuant to the Oregon Land Use Board of Appeals decision, after review by the Oregon Court of Appeals, remanding the Deschutes County Hearings Officer decision approving the applications.

OWNER: Anthony Aceti
21235 Tumalo Place
Bend, OR 97703

APPLICANT: Anthony Aceti

LOCATION: The property subject to this application is identified on County Assessor's map 16-12-27-D, as tax lot 104 and 16-12-26C, as tax lot 201

STAFF CONTACT: Peter Gutowsky, Peter.Gutowsky@deschutes.org

I. STANDARDS AND APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, Zoning Ordinance:

Chapter 18.16, Exclusive Farm Use Zone
Chapter 18.100, Rural Industrial Zone
Chapter 18.136, Amendments

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

Title 23, Deschutes County Comprehensive Plan

- Chapter 2, Resource Management
 - * Section 2.2, Agricultural Lands Policies
- Chapter 3, Rural Growth
 - *Section 3.4, Rural Economy
 - *Section 3.7, Transportation System Plan

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

- Division 12, Transportation Planning Rule
 - *OAR 660-012-0060, Plan and Land Use Regulation Amendments
- Division 15, Statewide Planning Goals and Guidelines
- Division 33, Agricultural Land
 - *OAR 660-033-0010, Purpose
 - *OAR 660-033-0020, Definitions
 - *OAR 660-033-0030, Identifying Agricultural Land

Oregon Revised Statutes, ORS Chapter 215, County Planning

ORS 215.010, Definitions

II. BASIC FINDINGS:

- A. LOCATION:** The subject property is located at 21235 Tumalo Place, Bend, and is further identified as Tax Lot 201 on Deschutes County Assessor's Map 16-12-26C, and Tax Lot 104 on Assessor's Map 16-12-27D. The property is located at the intersection of Highway 97 and Tumalo Road in the area commonly known as Deschutes Junction.
- B. ZONING AND PLAN DESIGNATION:** Tax Lots 201 and 104 are zoned Exclusive Farm Use Tumalo/Redmond/Bend Subzone (EFU-TRB) and are designated Agriculture under the Deschutes County Comprehensive Plan. 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 Lots 201 and 104 combined – are approximately 21.59 acres in size. The on-off ramps to southbound Highway 97 form the north boundary of the subject property. The property is bordered by Highway 97 on the east (the right of way is fenced along the Aceti property) and Tumalo Road bisects the portion of the property identified as Tax Lot 201. The section line between Sections 26 and 27 forms the western property line. Tumalo Road constitutes the access from Highway 97 to the community of Tumalo. Highway 97 is a four-lane divided highway that runs north-south and is maintained by the Oregon Department of Transportation (ODOT). The west half of the Deschutes Junction Highway 97 overpass crosses the subject property. The approach to the overpass on the property is approximately 800 feet long and tapers from 93 feet wide at the west end to 170 feet wide at the east end of the property. The perimeter of the property is fenced with metal fence posts and three strands of barbed wire. The Applicant presented photographic and video evidence of damage to the fencing due to destruction by vehicles crashing through it, particularly at the northern property line that is adjacent to the on/off ramps to Highway 97 on Tumalo Place and in the approach to the overpass. The County has fenced both sides of the right-of-way for the approach to the overpass on the property with metal agricultural

fence posts and three-strand barbed wire. Some culverts divert precipitation from the roadway to the subject property.

The Tumalo Road approach to Highway 97 crosses the subject property and is owned by Deschutes County. A 16x16 foot tunnel was constructed during the Deschutes Junction Overpass project to allow vehicles and livestock to move directly between the northern and southern portions of the property without crossing the overpass approach. Three 40-foot by 120-foot long asphaltic concrete entry roads into the subject property were constructed by the County when the roads were realigned and the overpass was constructed. One is on each side of the approach to the overpass and the third is on the north property line. Each entrance has a dedicated turn lane to aid entrances from Tumalo Place and Tumalo Road.

Tax Lot 104 was created when the overpass was constructed and was declared remnant land. TL 104 is adjacent to TL 201 to the west, and is situated to the north of Tumalo Road. Tumalo Place forms the northern border of the property. The property is generally level, and has an existing large warehouse building and gravel parking areas on three sides of the building. There is also a loading bay on the west end of the building. The site is accessed from existing driveways off of Tumalo Place and Tumalo Road.

- D. PROPOSAL:** Applicant requests a proceeding on remand to repeal the portion of the prior decision that approved an exception to Goal 14, reaffirms its prior decision to change the plan designation and zoning for the property, and adopting appropriate findings and conclusions.
- E. SURROUNDING LAND USES:** Zoning in the area is generally residential (RR-1 0 and MUA-1 0) to the north with farm use (EFU-TRB) to the south and west. Northeast of the subject property is an approximately 2-acre Rural Commercial zone (RC) developed with a building/landscaping supply business. East of Highway 97 and beyond a strip of EFU-TRB zoned land, is approximately 60 acres zoned Rural Industrial (RI).

Property to the south (161226C000200) is zoned EFU-TRB and is developed with a rural residence. To the southwest (16122700011 00) is an undeveloped parcel in farm tax deferral and assessed as having 26 acres of irrigation rights. To the west (16122700001 00) is the Three Sisters Adventist School. Property to the north and northwest is zoned MUA-10 and is vacant or developed with single family dwellings. Property to the northeast is Rural Commercial (RC) and is developed with a building/landscaping supply business.

Across Highway 97 to the east and beyond the EFU zoned strip of land adjacent to the Highway, are RI zoned lands developed with Willamette Graystone, a concrete products manufacturing facility and a second business site, (formerly United Pipe) on the west side of Graystone Lane, is vacant. Farther to the east is the Burlington Northern-Santa Fe (BNSF) railroad tracks. Across Highway 97 to the southeast is land zoned RI and used for mineral processing.

- F. PUBLIC COMMENTS:** Notice of this application was provided to the parties who testified at the Board hearing on November 23, 2015.
- G. LAND USE HISTORY:** The subject property has been part of the following land use applications:

- LR-89-148, Lot of Record determination for tax lot 201 (included two other tax lots).
- RN-91-11, Road name change from Nichols Market Road to Tumalo Road (affected all of Nichols Market Road).
- LM-95-63, Landscape Management Review for a barn.
- CU-96-45, Replace the intersection of Deschutes Market Road and Tumalo Road with a grade separated interchange (Deschutes County was the applicant).
- CU-97-72/SP-97-49, Conditional Use Permit and Site Plan for commercial uses in conjunction with farm use.
- LL-99-19, Property Line Adjustment for the property
- MC-99-1, Modification to CU-97-72/SP-97-49 to include the word processing in the approval and expand the hours of operation and daily truck-trailer operations.
- MC-02-12, Modify CU-97-72/SP-97-49 to expand the commercial activity in conjunction with farm use. This application was denied.
- MC-07-5, Modify CU-97-72/SP-97-49 to expand commercial uses at the site.

H. REVIEW PERIOD:

Deschutes County Code (DCC 22.34.030), states a final decision must be made within 120 days of the date the remand order becomes effective. The 120th day is January 28, 2017.

III. CONCLUSIONARY FINDINGS:

SCOPE OF PROCEEDINGS ON REMAND

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

1. Chapter 22.34, Proceedings on Remand

a. Section 22.34.010, Purpose

DCC 22.34 shall govern the procedures to be followed where a decision of the County has been remanded by LUBA or the appellate courts or a decision has been withdrawn by the County following an appeal to LUBA.

FINDINGS: This matter is before the Board of County Commissioners (Board) on remand from LUBA. Therefore, the procedures in Chapter 22.34 are applicable.

b. Section 22.34.020, Hearings Body

The Hearings Body for a remanded or withdrawn decision shall be the Hearings Body from which the appeal to LUBA was taken, except that in voluntary or stipulated remands, the Board may decide that it will hear the case on remand. If the remand is to the

Hearings Officer, the Hearings Officer's decision may be appealed under DCC Title 22 to the Board, subject to the limitations set forth herein.

FINDINGS: The Board, after conducting a public hearing last fall, adopted the proposal to change the plan designation and zoning at Deschutes Junction from EFU to Rural Industrial (247-14-000456-ZC; 247-14-000457-PA). This decision was subsequently appealed to LUBA and remanded. Therefore, the Board is the appropriate Hearings Body.

c. Section 22.34.030, Notice and Hearing Requirements

- A. The County shall conduct a hearing on any remanded or withdrawn decision, the scope of which shall be determined in accordance with the applicable provisions of DCC 22.34 and state law. Unless state law requires otherwise, only those persons who were parties to the proceedings before the County shall be entitled to notice and be entitled to participate in any hearing on remand.**
- B. The hearing procedures shall comply with the minimum requirements of state law and due process for hearings on remand and need comply with the requirements of DCC 22.24 only to the extent that such procedures are applicable to remand proceedings under state law.**
- C. A final decision shall be made within 120 days of the date the remand order becomes effective.**

FINDINGS: As discussed in the Findings of Fact above, written notices of the remand initiation request and public hearing were provided to the parties who testified before the Board at a public hearing on November 23, 2015. Only those parties are allowed to participate in the hearing on remand. The public hearing complies with the requirements for land use hearings in Deschutes County Code, Chapters 22.24 and 22.34. A final county decision on remand will be made within 120 days of the date the applicant requested initiation of the remand proceedings.

d. Section 22.34.040, Scope of Proceeding

- A. On remand, the Hearings Body shall review those issues that LUBA or the Court of Appeals required to be addressed. In addition, the Board shall have the discretion to reopen the record in instances in which it deems it to be appropriate.**
- B. At the Board's discretion, a remanded application for a land use permit may be modified to address issues involved in the remand or withdrawal to the extent that such modifications would not substantially alter the proposal and would not have a significantly greater impact on surrounding neighbors. Any greater modification would require a new application.**
- C. If additional testimony is required to comply with the remand, parties may raise new, unresolved issues that relate to new**

evidence directed toward the issue on remand. Other issues that were resolved by the LUBA appeal or that were not appealed shall be deemed to be waived and may not be reopened.

FINDINGS: The Board will need to determine the scope of the remand proceedings as testimony will likely be received from others expressing disagreement. Determining the proper scope involves an examination of the LUBA opinion. Staff summarizes and includes as an attachment, the applicant's remand burden of proof.

Background

The Board of County Commissioners, after conducting a hearing on November 23, 2015 deliberated and adopted Ordinance Nos. 2016-001 and 002, approving a plan amendment and zone change from Exclusive Farm Use to Rural Industrial, and a goal exception to Goal 14 (Urbanization).

LUBA Remand

After the Board of County Commissioners decision, Central Oregon Landwatch (COLW) appealed to LUBA.

- **First Assignment of Error:** LUBA denied COLW's argument that the County erred in a number of ways when it determined that the subject property is not agricultural land. LUBA ruled that there is substantial evidence in the record that the subject property does not qualify agricultural land under Statewide Goal 3 (Agricultural Lands) and Oregon Administrative Rule (OAR).
- **Second Assignment of Error:** LUBA affirmed COLW's argument that the County erred by approving an irrevocably committed exception. The County must supply the reasoning that supports the conclusion that the rural use of the property is impracticable, with the result that it is committed to urban uses.

Goal 3 is a resolved issue in this proceeding. The outstanding issue is the appropriate plan designation and zoning for the property. The applicant requests that it is rural industrial.

Applicant's Remand Burden of Proof

The applicant submitted a seven and two page letter, LUBA opinion, draft ordinances, draft findings, and Deschutes County Code, Chapter 18.100, Rural Industrial Zone.¹ They are attached with this Staff report. According to the applicant, LUBA clearly explained that an exception to Goal 14 is not required to allow the County's acknowledged rural industrial zoning on rural land. Rural industrial uses are rural uses, not urban uses.

The applicant cites the following to support this position:

1. A prior Hearings Officer's decision in 2014 required a Goal 14 exception to be taken for the purposes of limiting the industrial uses to rural levels of use, and the County

¹ Dan Terrell, the applicant's attorney submitted a seven page letter to the Board, dated September 29, 2016 and a two page letter to Peter Gutowsky, Planning Manager, dated September 29, 2016.

accepted that decision as binding precedent (ZC-14-2/PA-14-2). An exception was therefore needed in this instance.

2. In reviewing this application, a different Hearings Officer accepted the decision in ZC-14-2/PA-14-2 as precedent and modeled her decision after the analysis provided in the ZC-14-2/PA-14-2 decision. The precedent being followed from that case was that the county required a Goal 14 exception for any plan and zone change to allow rural industrial uses on rural land, and the purpose of the exception was to limit the uses allowed to rural uses.
3. During the LUBA proceedings and at oral argument, LUBA expressed some concern about the decision's stated intention and the approach that was taken to implement that intention. While LUBA ultimately concluded that the findings were not sufficient to comply with the requirements for an exception to Goal 14, LUBA provided some explanation concerning the Goal 14 exceptions process as guidance for County consideration on remand
4. LUBA raised the point that if the purpose was to ensure that only industrial uses that constitute rural uses are permitted on the property, then the County may need to do no more than impose the Rural Industrial Zone, because the code states that the R-I zone allows uses that are rural in nature, not urban.
5. The Rural Industrial Zone was adopted to allow rural industrial uses and ensure that uses allowed in the Rural Industrial Zone are rural uses rather than urban in nature.

IV. NEXT STEPS

At the conclusion of the hearing, the Board can choose one of the following options:

1. Continue the hearing to a date certain.
2. Close the hearing and begin deliberation.
3. Close the hearing and leave the written record open to a date certain. Deliberations will be scheduled at a date to be determined.
4. Close the hearing and then allow a specified amount of time for a rebuttal period; and a specified time for final argument. Deliberations will be scheduled at a date to be determined.
5. Close the hearing, allowing the applicant a specified amount of time for final argument. Deliberations will be scheduled at a date to be determined

Attachments

1. Applicant's Burden of Proof
 - Two letters
 - LUBA decision
 - Two draft ordinances
 - Findings
 - DCC 18.100, Rural Industrial Zone
 - Updated findings
2. Ordinance 2016-027 (repeals Ordinance 2016-001)
 - Exhibit A
3. Ordinance 2016-028 (repeals Ordinance 2016-002)
4. Ordinance 2016-029 (plan amendment)
 - Exhibit A
 - Exhibit B
 - Exhibit C
5. Ordinance 2016-030 (zone change)
 - Exhibit A
 - Exhibit B

Dated this 18th day of October, 2016

Mailed this 18th day of October, 2016

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance repealing Ordinance 2016-001,
and Declaring an Emergency.

*
*

ORDINANCE NO. 2016-027

WHEREAS, on January 6, 2016, the Board of County Commissioners (“Board”) adopted Ordinance 2016-001 to amend Title 23 of the Deschutes County Code to approve a goal exception to Goal 14 and to change the comprehensive plan designation of certain property from Agriculture to Rural Industrial; and

WHEREAS, the Land Use Board of Appeal on August 10, 2016 remanded an “irrevocably committed” exception to Goal 14 and a Plan Amendment to change the comprehensive plan designation of certain property from Agriculture to Rural Industrial;

WHEREAS, on remand, Anthony Aceti proposed a Plan Amendment to Deschutes County Code (“DCC”), Section 23.01.010, Introduction, and Deschutes County Comprehensive Plan, Section 5.12, Legislative History, to change the comprehensive plan designation of certain property from Agriculture to Rural Industrial; and

WHEREAS, the Board of County Commissioners considered this matter after a duly noticed public hearing on October 31, 2016, and concluded that the public will benefit from the repeal of Ordinance No. 2016-001; now, therefore,

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

Section 1. REPEALED. Ordinance 2009-001 is hereby repealed in its entirety.

Section 2. AMENDMENT. Deschutes County Code 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 ~~striketrough~~.

Section 2. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

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Dated this _____ of _____, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, Chair

TAMMY BANEY, Vice Chair

ATTEST:

Recording Secretary

ANTHONY DeBONE, Commissioner

Date of 1st Reading: _____ day of _____, 2016.

Date of 2nd Reading: _____ day of _____, 2016.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Alan Unger	_____	_____	_____	_____
Tammy Baney	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____

Effective date: _____ day of _____, 2016.

Chapter 23.01 COMPREHENSIVE PLAN

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.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
- T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.

| (~~Ord. 2016-027 §1, 2016;~~ Ord. 2016-022 §1, 2016; Ord. 2016-001 §1, 2016; Ord. 2015-010 §1, 2015; Ord. 2015-018 § 1, 2015; Ord. 2015-029 § 1, 2015; Ord. 2015-021 § 1, 2015; 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>)

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance repealing Ordinance 2016-002, * ORDINANCE NO. 2016-028
and Declaring an Emergency. *

WHEREAS, on January 6, 2016, the Board of County Commissioners (“Board”) adopted Ordinance 2016-002 to change Deschutes County Code (“DCC”) Title 18, Zoning Map, to rezone certain property from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (“EFU-TRB”) to Rural Industrial (“R-I”); and

WHEREAS, the Land Use Board of Appeal on August 10, 2016 remanded a Zone Change to the Deschutes County Code (“DCC”) Title 18, Zoning Map, to rezone certain property from EFU-TRB to R-I;

WHEREAS, on remand, Anthony Aceti applied for a Zone Change to DCC Title 18, Zoning Map, to rezone certain property from EFU-TRB to R-I; and

WHEREAS, the Board of County Commissioners considered this matter after a duly noticed public hearing on October 31, 2016, and concluded that the public will benefit from the repeal of Ordinance No. 2016-001; now, therefore,

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

WHEREAS, the Board considered this matter after a duly noticed joint public hearing with the Bend City Council on August 25, 2016, and concluded that the public will benefit from the repeal of Ordinance No. 2009-002; now, therefore,

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

Section 1. REPEALED. Ordinance 2016-002 is hereby repealed in its entirety.

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Section 2. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this _____ of _____, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, Chair

TAMMY BANEY, Vice Chair

ATTEST:

Recording Secretary

ANTHONY DeBONE, Commissioner

Date of 1st Reading: ____ day of _____, 2016.

Date of 2nd Reading: ____ day of _____, 2016.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Alan Unger	_____	_____	_____	_____
Tammy Baney	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____

Effective date: ____ day of _____, 2016.

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code, *
Title 23, and Amending Deschutes County *
Comprehensive Plan, Sections 5.12, and to Change * ORDINANCE NO. 2016-029
the Plan Designation for Certain Property From *
Agriculture to Rural Industrial. *

WHEREAS, the Land Use Board of Appeal on August 10, 2016 remanded an “irrevocably committed” exception to Goal 14 and a Plan Amendment to change the comprehensive plan designation of certain property from Agriculture to Rural Industrial;

WHEREAS, on remand, Anthony Aceti proposed a Plan Amendment to Deschutes County Code (“DCC”), Section 23.01.010, Introduction, and Deschutes County Comprehensive Plan, 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, a public hearing was held on October 31, 2016 before the Board of County Commissioners (“Board”); and,

WHEREAS, the Board, after review conducted in accordance with applicable law, approved 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.

Section 2. AMENDMENT. Deschutes County Comprehensive Plan Section 5.12, Legislative History, is amended to read as described in Exhibit “B,” attached and incorporated by reference herein with new language underlined.

Section 3. AMENDMENT. The Deschutes County Comprehensive Plan Map, is amended to change the plan designation for certain property described in Exhibit “C” 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 4. FINDINGS. The Board adopts as its findings in support of this Ordinance, the Decision of the Hearings Officer, Exhibit “D,” and incorporated by reference herein.

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Dated this _____ of _____, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, CHAIR

TAMMY BANEY, VICE CHAIR

ATTEST:

Recording Secretary

ANTHONY DEBONE, COMMISSIONER

Date of 1st Reading: ____ day of _____, 2016.

Date of 2nd Reading: ____ day of _____, 2016.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	_____	_____	_____	_____
Alan Unger	_____	_____	_____	_____
Tammy Baney	_____	_____	_____	_____

Effective date: ____ day of _____, 2016.

ATTEST:

Recording Secretary

Chapter 23.01 COMPREHENSIVE PLAN

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.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
- T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.

V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.

(Ord. 2016-029 §1, 2016; Ord. 2016-022 §1, 2016; Ord. 2016-001 §1, 2016; Ord. 2015-010 §1, 2015; Ord. 2015-018 § 1, 2015; Ord. 2015-029 § 1, 2015; Ord. 2015-021 § 1, 2015; 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 5.12 Legislative History

Background

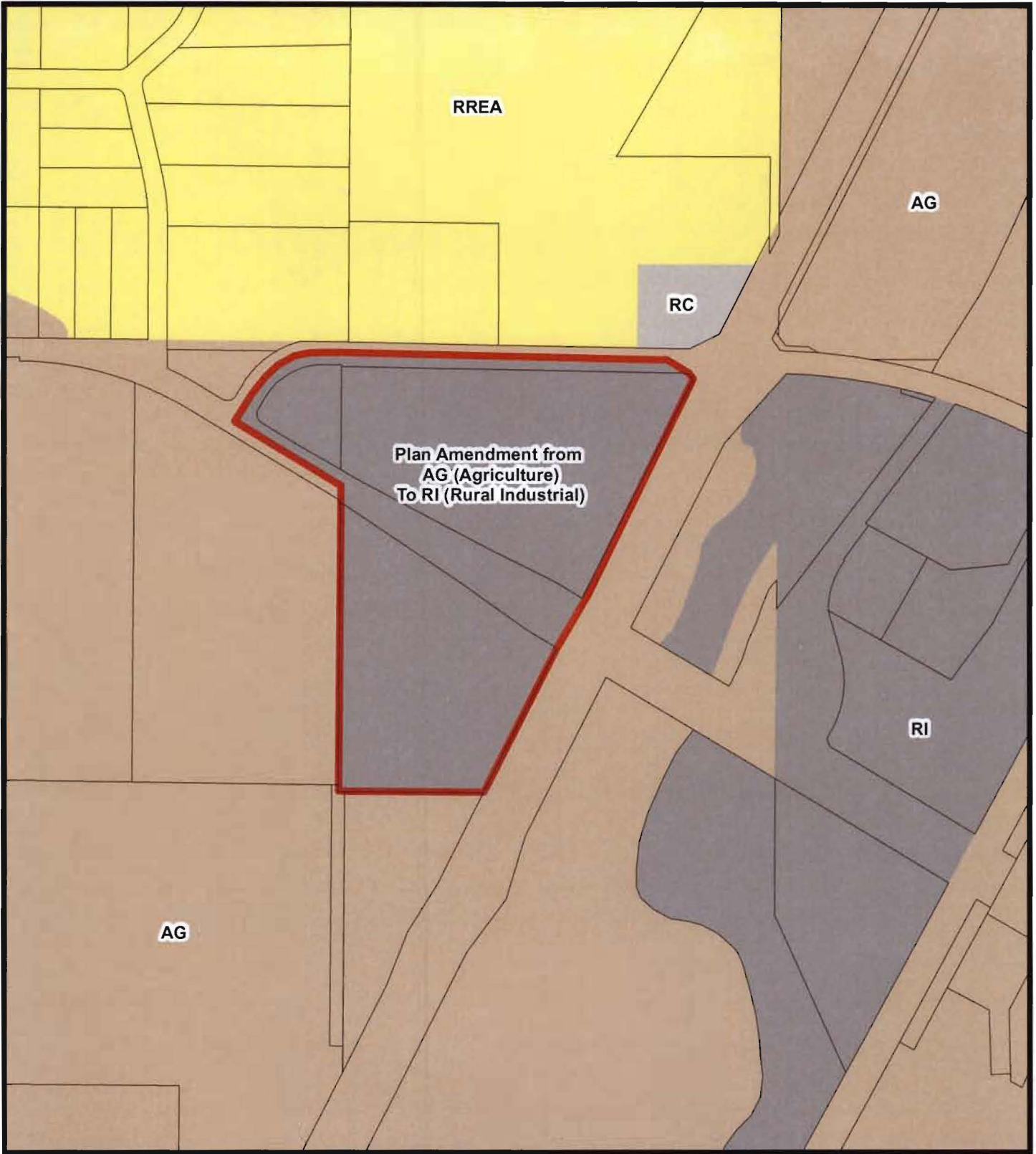
This section contains the legislative history of this Comprehensive Plan.

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

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
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
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2016-001	12-21-15/04-5-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)

2016-022	TBD	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
<u>2016-029</u>	<u>TBD</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial</u>



PROPOSED PLAN AMENDMENT

Legend

- Subject Property
- AG - Agriculture
- RREA - Rural Residential Exception Area
- RI - Rural Industrial
- RC - Rural Commercial

Anthony J. Aceti
21235 Tumalo Place, Bend

Exhibit "C"
to Ordinance 2016-029



October 10, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Alan Unger, Chair

Tammy Baney

Anthony DeBone

ATTEST: Recording Secretary

Dated this _____ day of October, 2016
Effective Date: _____, 2016

///

Dated this _____ of _____, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER , CHAIR

TAMMY BANEY , VICE CHAIR

ATTEST:

Recording Secretary

ANTHONY DEBONE , COMMISSIONER

Date of 1st Reading: _____ day of _____, 2016.

Date of 2nd Reading: _____ day of _____, 2016.

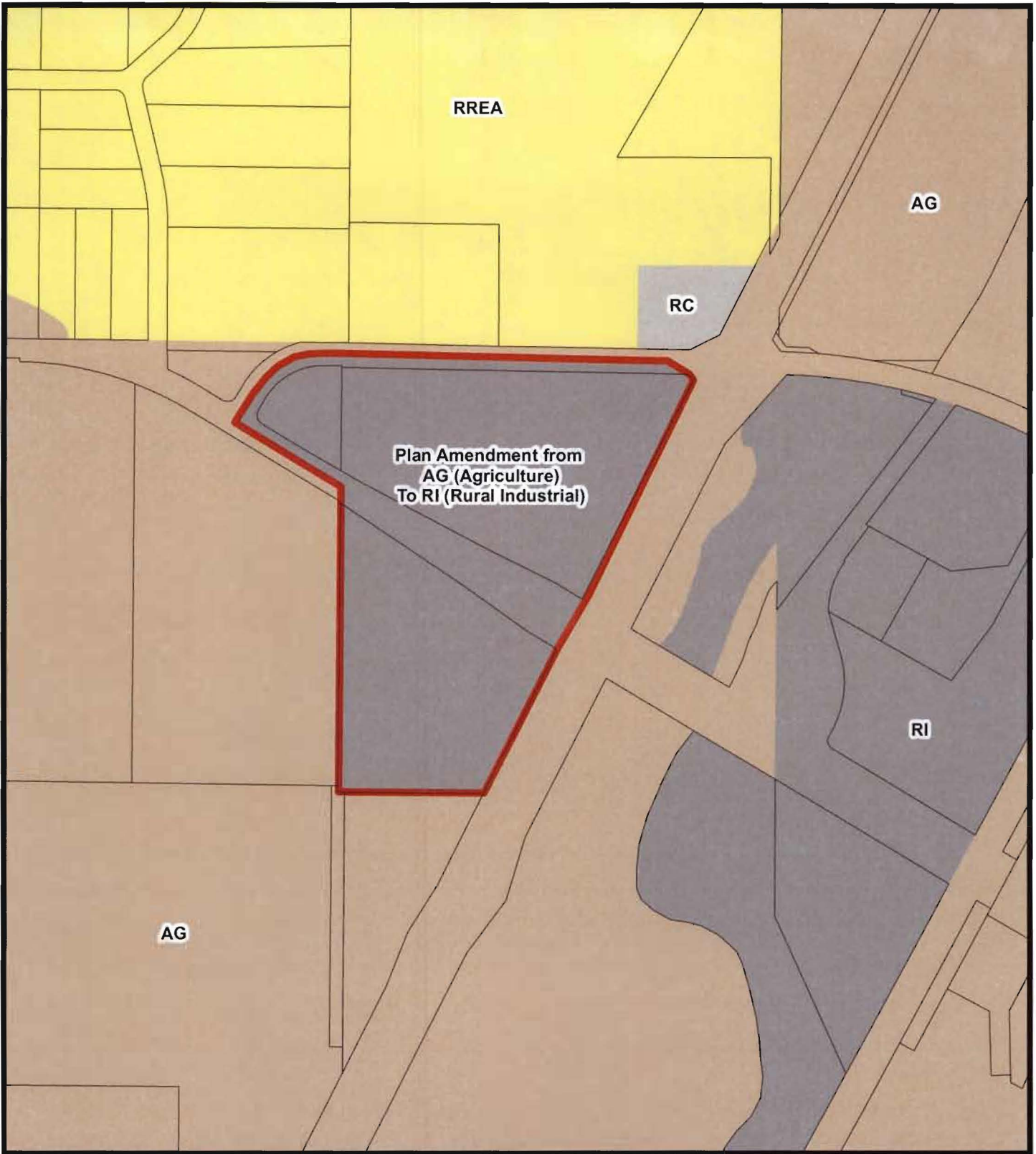
Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	_____	_____	_____	_____
Alan Unger	_____	_____	_____	_____
Tammy Baney	_____	_____	_____	_____

Effective date: _____ day of _____, 2016.

ATTEST:

Recording Secretary



PROPOSED PLAN AMENDMENT

Legend

-  Subject Property
-  AG - Agriculture
-  RREA - Rural Residential Exception Area
-  RI - Rural Industrial
-  RC - Rural Commercial

Anthony J. Aceti
21235 Tumalo Place, Bend

Exhibit "C"
to Ordinance 2016-029



October 10, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Alan Unger, Chair

Tammy Baney

Anthony DeBone

ATTEST: Recording Secretary

Dated this ____ day of October, 2016
Effective Date: _____, 2016

LEGAL DESCRIPTIONS
TAX LOTS 16-12-26-C-00201 & 16-12-27-D-00104

A parcel of land located in the Southwest one-quarter of Section 26 and the Southeast one-quarter of Section 27, Township 16 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, more fully described as follows:

TAX LOTS 16-12-26-C-00201:

Commencing at a brass disk at the 1/4 corner between said Sections 26 and 27; thence along the east-west centerline of said Section 27, North 89°49'46" West 20.00 feet; thence leaving said east-west centerline, South 00°03'15" East, parallel to and 20 feet westerly of the line common to said Sections 26 and 27, 40.35 feet to a point on the southerly line of the 15.00 foot dedication to the southerly 30.00 foot right-of-way of Tumalo Road per Deed No. 98-29504, and the **Point of Beginning** for this description; thence along said 15-foot dedication line, 67.90 feet along the arc of a 12818.89 foot radius curve right (the long chord of which bears South 89°35'07" East 67.90 feet); thence South 89°26'01" East 997.75 feet to the westerly right-of-way of the Dalles-California Highway per Deed recorded March 22, 1991, in Book 231, Page 81, Deschutes County Records; thence leaving said 15-foot dedication line and along said westerly right-of-way, South 37°03'52" East 23.10 feet, said point being 85.00 feet from the centerline of said Dalles-California Highway; thence continuing along said 85-foot right-of-way line, South 26°22'14" West 1419.88 feet to a point on the south line of the property described in Deed No. 97-45542; thence leaving said 85-foot right-of-way line and along said south line, South 89°56'45" West 447.62 feet to the southwest corner of said 97-45542 property, said point lying 20.00 feet westerly of the line common to Sections 26 and 27; thence leaving said south line, North 00°03'15" West 1301.34 feet to the point of beginning;

EXCEPTING THEREFROM: the new alignment of Tumalo Road per Deed No. 98-32048, further modified for turn lanes per Deed No. 2001-22023, fully described as follows:

Commencing at a brass disk at the 1/4 corner between said Sections 26 and 27; thence along the east-west centerline of said Section 27, North 89°49'46" West 20.00 feet; thence leaving said east-west centerline, South 00°03'15" East, parallel to and 20 feet westerly of the line common to said Sections 26 and 27, 357.34 feet to the northerly right-of-way of the new road alignment, and the **Point of Beginning** for this description; thence leaving said parallel line and along the new right-of-way line, South 59°39'01" East 50.46 feet; thence South 62°39'40" East 442.65 feet; thence South 63°56'22" East 250.70 feet; thence South 59°39'01" East 95.51 feet to the westerly 85 foot right-of-way line of the Dalles-California Highway; thence leaving said new road right-of-way and along said westerly 85 foot right-of-way line, South 26°22'14" West 170.41 feet to the southerly right-of-way line of the new road; thence leaving said westerly 85 foot right-of-way line and along said southerly right-of-way line, North 59°39'01" West 107.34 feet; thence North 55°21'40" West 250.70 feet; thence North 56°38'22" West 442.65 feet, said point lying 20.00 feet westerly of the line common to Sections 26 and 27; thence North 00°03'15" East 99.71 feet to the point of beginning.

Net area for this property is 20.46 acres.

October 14, 2015
Prepared by Baxter Land Surveying, Inc.
P.O. Box 7022, Bend, OR 97708 (541) 382-1962

2015186-Desc.doc

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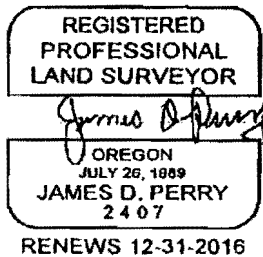
TAX LOTS 16-12-27-D-00104:

That portion of Deed No. 97-40139 described as "Parcel 3," further modified by the excepting of Tract 1 and Tract 2 of Deed No. 98-32049, and more fully described as follows:

Beginning at the Point of Beginning for the previous description of TAX LOT 16-12-27-C- 00201, said point being on the southerly 45 foot right-of-way of Tumalo Road and lying 20.00 feet westerly of the line common to Sections 26 and 27; thence along said 20 foot westerly line, North 00°03'15" West 5.00 feet to a point on a 40.00 foot right-of-way of Tumalo Road, per said 98-32049 Deed; thence leaving said 20 foot line, 31.74 feet along the arc of a 12823.89 foot radius curve left (the long chord of which bears North 89°48'29" West 31.74 feet); thence North 89°52'44" West 26.42 feet; thence 219.07 feet along the arc of a 210.00 foot radius curve left (the long chord of which bears South 60°14'07" West 209.27 feet); thence South 30°20'59" West 40.03 feet; thence 47.12 feet along the arc of a 30.00 foot radius curve left (the long chord of which bears South 14°39'01" East 42.43 feet); thence South 59°39'01" East 145.00 feet; thence South 60°51'23" East 142.53 feet to a point lying 20.00 feet westerly of the line common to said Sections 26 and 27; thence North 00°03'15" West 317.00 feet to the point of beginning for this description;

Contains 1.30 acres.

Note: All corners are marked with monuments per recorded survey No. CS14491 by Michael Berry.

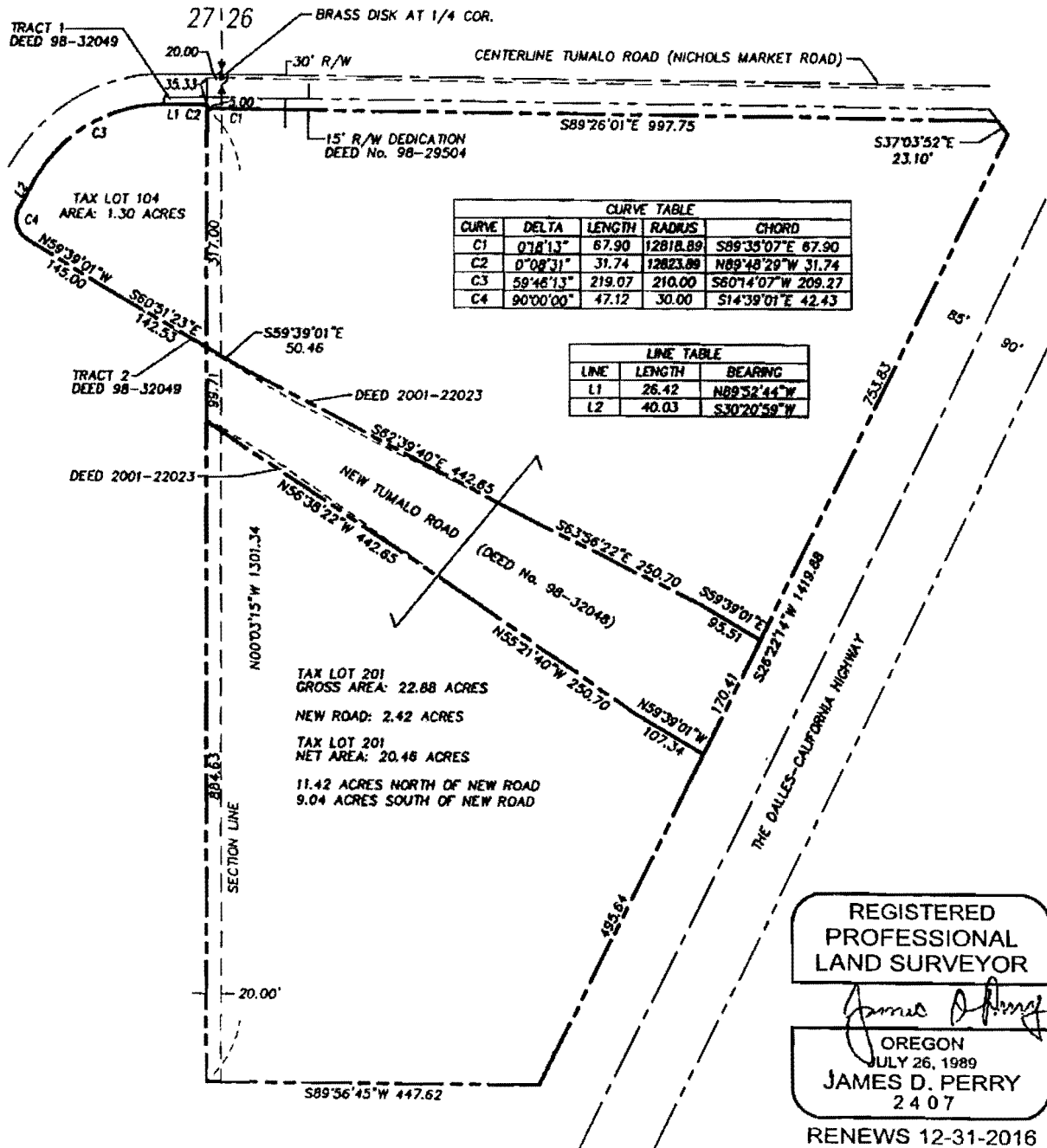


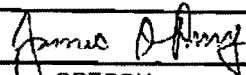
October 14, 2015
Prepared by Baxter Land Surveying, Inc.
P.O. Box 7022, Bend, OR 97708 (541) 382-1962

2015186-Desc.doc



EXHIBIT MAP
TAX LOTS 16-12-26-C-00201
AND 16-12-27-D-00104
 Located in the SW1/4 Sec. 26 and the SE1/4 Sec. 27,
 T.16S., R.12E., W.M.,
DESCHUTES COUNTY, OREGON



REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

 OREGON
 JULY 26, 1989
JAMES D. PERRY
 2407
 RENEWS 12-31-2016

PREPARED BY BAXTER LAND SURVEYING, INC. P.O. BOX 7022 BEND, OR 97708
 20370 EMPIRE AVE. SUITE C-3, BEND, OR 97701 (541) 382-1962

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