



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 August 18, 2015, at 6:30 p.m. in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend, to consider the following request:

FILE NUMBERS: 247-15-000272-ZC and 217-15-000273-PA

SUBJECT: The applicant requests a Plan Amendment and Zone Change to change the zoning from Tumalo Residential-5 Acre Minimum (TuR5) to Tumalo Industrial (Tul) and the plan designation from Residential 5-Acre Minimum (TuR5) to Industrial (Tul) for the subject 5.39 acre property.

APPLICANT: C.R. Contracting, LLC

OWNER: CLR, Inc.

AGENT: Sharon R. Smith
Bryant Lovlien & Jarvis, PC

LOCATION: The property has an assigned address of 64435 Strickler Avenue, Bend, and is further identified as Tax Lot 401 on the County Assessor's Map 16-12-31.

I. APPLICABLE STANDARDS AND CRITERIA:

Title 18, the County Zoning Ordinance
Chapter 18.04 Title, Purpose and Definition.
Chapter 18.56 Surface Mining Impact Area Combining (SMIA)
Chapter 18.67 Tumalo Rural Community Zoning District
Chapter 18.136 Amendments
Title 22, the Deschutes County Development Procedures Ordinance
Title 23, the Deschutes County Comprehensive Plan
Chapter 3 Rural Growth Management
Appendix B Tumalo Community Plan

Oregon Administrative Rules Chapter 660:
Division 12 Transportation Planning Rule
Division 14 Urbanization
Division 15 Statewide Planning Goals and Guidelines
Division 18 Plan and Land Use Regulation

II. **FINDINGS OF FACT:**

- A. **Location:** The property has an assigned address of 64435 Strickler Avenue, Bend, and is further identified as tax lot 401 on the County Assessor's Map 16-12-31.
- B. **Lot of Record:** Pursuant to the findings in Lot of Record Determination LR-04-28, the subject property is recognized as legal lot of record.
- C. **Zoning and Plan Designation:** The Subject Property is zoned Tumalo Residential 5 Acre Minimum District (TUR5) and is within the Surface Mining Impact Area (SMIA) Combining Zone. It is designated Residential 5- Acre Minimum (TUR5) on the Comprehensive Plan Map.
- D. **Site Description:** The subject property is approximately 5.39 acres and generally rectangular in shape except for an irregularly shaped southeast corner. Vegetation consists of scattered juniper and pine trees with sage, bitterbrush, and other native ground cover. The topography is generally flat with portions sloping to the south. The property is unused but developed with a well, pump house, and gravel driveways traversing the property.



View Looking South/Southwest

- E. **Surrounding Land Use:** Properties to the north and west are zoned TUR5 and developed with residential uses, some with small scale agriculture, and elevated significantly higher than the subject property. The properties to the south are zoned Exclusive Farm Use (EFU) and developed with residential and agricultural uses. The property adjacent to the east is zoned TUI and is currently being developed with a mini storage facility (land use file 247-14-000413-SP). The properties to the southeast and further east are zoned Surface Mining (SM) and developed with the Knight River facility.
- F. **Proposal:** Applicant requests a Zone Change and Plan Amendment for the subject property to change the zoning from Tumalo Residential-5 Acre Minimum (TuR5) to

Tumalo Industrial (Tul) and the plan designation from TuR5 to Tul. No specific development is proposed for the property at this time.

- G. Public/Private Agency Comments:** The Planning Division mailed notice to several agencies and as of the date of this Staff Report has received the following comments:

Bend Fire Department: The proposed land use application may create an incompatible condition to the detriment of the proposed industrial areas. Industrial use that is not compatible with adjacent residential occupancies or zoning may compromise future Industrial land use for storage of substances that is regulated by the Fire Code and Local Fire Safety Ordinances.

Deschutes County Transportation Planner: I have reviewed the transmittal materials for 247-15-000272-ZC/273-PA to rezone a 5.4-acre parcel from Tumalo Residential (TuR5) to Tumalo Industrial (Tul) at 64435 Strickler Ave., aka 16-12-31, Tax Lot 401. Staff has worked with the applicant's traffic engineer on trip generation assumptions and methodology. While staff finds the narrative conclusions of the May 26, 2015, memo submitted by Clemow and Associates to be highly plausible, the submittal does not meet the analytical requirements of Deschutes County Code (DCC) 18.116.310(G). Specifically, the applicant needs to provide volume/capacity ratios for the affected State highway intersections for both pre- and post-rezoning and the same for Level of Service of affected County intersections.

This higher level of high detail for a traffic analysis is required due to the type of land use application, which is a plan amendment and zone change. The applicant cites the traffic level thresholds at DCC 18.116.310(C) as to why no further level of analysis is needed, but those apply to land uses proposed under existing zoning. Note also that DCC 18.116.310(E)(4) specifically calls for a 20-year analysis.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$3,852 per p.m. peak hour trip. While no SDCs are assessed at this time as there is no specific use being simultaneously proposed, the traffic study does anticipate four additional p.m. peak hour trips over the current zoning, which results in a SDC of \$15,408.

The following agencies did not respond to the request for comments: Deschutes County Assessor, Deschutes County Environmental Soils, Laidlaw Water District, and Oregon Department of Transportation.

- H. Public Notice and Comments:** The Planning Division mailed written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property. As of the date of the staff report, the Planning Division has received one written public comment from Mary Ross and Michael Resnick on the subject application. The comments received express concerns that the proposed zone change may contaminate and limit access to the shared well they use that is located on the subject property. These concerns are addressed herein. The comments also express concern of potential noise and impact on property values. While receptive to these concerns, staff notes that noise and property values impacts are not factors addressed by the criteria applicable to this proposal.

- I. **Review Period:** These applications were submitted on May 28, 2013. A public hearing has been set for August 18, 2015. Because the request involves a comprehensive plan amendment, under DCC 22.20.040(D), these applications are not subject to the 150-day review period.
- J. **Land Use History:** There are no previous land use approvals for the subject property.

III. **CONCLUSIONS OF LAW:**

Chapter 18.136, Amendments

1. 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.

FINDING: The applicant has requested a quasi-judicial map amendment and filed the applications for a plan amendment/zone change. The applications are being reviewed under the procedures of DCC Title 22.

2. 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.***

FINDING: Staff believes that the following are the applicable portions of the comprehensive plan (Title 23 of the DCC):

Chapter 4, Urban Growth Management

Section 4.1, Introduction

...

Purpose

The Urban Growth Management chapter, in concert with the other chapters of this Plan, specifies how Deschutes County will work with cities and unincorporated communities to accommodate growth while preserving rural character and resource lands.

...

Section 4.7

Background

The Tumalo Community Plan was adopted in Ordinance 2010-027 is hereby incorporated into this Plan as Appendix B.

FINDING: This chapter establishes no approval criteria. The Tumalo Community Plan is discussed below.

Tumalo Community Plan

Land Use

Land Use Designations and Inventory

FINDING: The Tumalo Community Plan has several omissions and needed updates with respect to industrial uses. As part of the proposal, the applicant seeks to amend the Tumalo Community Plan to patch these deficiencies. There are 3 text amendments addressed, 2 proposed by the applicant and one minor amendment noted by staff. Each is individually discussed below.

Amendment #1

Although not included in Table 4, the TUI designation is discussed on page 9 of the Tumalo Community Plan and the designation was approved by Ordinance 2005-017. The proposed amendment addresses this omission and corrects the table so the Comprehensive Plan designations and Zoning Districts match. The table below includes the proposed changes with the added text identified by underline and the deleted text identified by ~~striketrough~~.

Table 4 - Tumalo Land Use Designations

Comprehensive Plan Designations	Zoning Districts
Commercial (TUC)	Commercial District (TUC)
Floodplain (FP)	Floodplain (FP)
Research and Development (TURE) <u>Industrial (TUI)</u>	Industrial District (TUI)
Residential (TUR) <u>Research and Development (TURE)</u>	Research and Development District (TURE)
Residential 5 Acre Minimum (TUR5) <u>Residential (TUR)</u>	Residential District (TUR)
<u>Residential 5 Acre Minimum (TUR5)</u>	Residential Five Acre Minimum District (TUR5)

Amendment #2

Approval of the proposed plan amendment and zone change requires amendment of the Table 5 changing the total number of TUR5 and TUI zoned parcels. The table below includes the proposed changes with the added text identified by underline and the deleted text identified by ~~striketrough~~.

Table 5 - Tumalo Land Use Inventory *

Zone	Residential Units	Commercial / Industrial Developments	Undeveloped Parcels	Total Number of Parcels
TUC	28	17	57	102
TUR	93	0	37	127
TUR5	75	0	28 <u>27</u>	400 <u>99</u>
TURE	0	2	1	3
TUI	0	2	0 <u>1</u>	2 <u>3</u>
Total	196	21	123	334
* Assessor's Data 2009				

Amendment #3

The text description of the TUI designation is currently very specific and this amendment is necessary to allow for properties other than the Knife River operation to be designated as Industrial. The text below includes the proposed changes with the added text identified by underline and the deleted text identified by ~~strike through~~.

Industrial (TUI). An "Industrial" designation allows a limited range of industrial uses to serve Tumalo and the surrounding area. The designation recognizes nonconforming industrial uses ~~related to surface mining activities located outside of Tumalo in a Surface Mining zone.~~ and properties suitable for limited amounts of additional industrial development. ~~It applies to~~ This designation is concentrated around the Knife River operation that fronts O.B. Riley Road and U.S. 20.

Goals and Policies

Land Use Goal

Protect and enhance the rural small-town character of Tumalo by supporting public services, healthy active lifestyles and social connections among residents and stakeholders.

FINDING: Staff believes that the proposed zone change and plan amendment to industrial use would not adversely impact the rural small-town character of Tumalo as it is limited to the 5.39 acre subject property.

Community Policies

- 1. Consider adding Tumalo State Park to the Tumalo Rural Community boundary.***

FINDING: Tumalo State Park is not subject to the proposed plan amendment and zone change. Furthermore, neither the subject property owner nor Oregon State Parks Department can be required to modify the Tumalo Rural Community boundary as part of this request.

- 2. Coordinate with community groups and organizations that are working to improve the livability, economy and access to Tumalo.***

FINDING: Notice of the public hearing was provided in compliance with the county procedures ordinance. Notice was mailed to the Tumalo Business Association and no comments were submitted. Staff also attempted to contact the Tumalo Community Association and learned the group is no longer active.

3. *Support economic development initiatives and tourism in the Tumalo area.*

FINDING: The applicant argues the proposal will enhance economic development as it will allow for greater economic opportunities than the present TUR5 zoning. Staff agrees.

4. *Review the Tumalo community goals and policies every five years to determine if they meet the current and future needs of the area.*

FINDING: This policy is not applicable to this proposal.

5. *Support the school district in improving opportunities to use Tumalo Community School facilities for education, recreation and enrichment programs for students, parents and area residents.*

FINDING: This policy is not applicable to this proposal.

Open Space and Recreation Policies

- 6. *Establish Tumalo as a regional bicycle destination through land use, transportation and recreation policies and programs.***
- 7. *Encourage parks and open space, and where feasible, acquire land for open space.***
- 8. *Preserve public access to the river.***
- 9. *Preserve publically owned lands along the Deschutes River by designating them as open space.***
- 10. *Support infrastructure improvements including formal river access points, public signage, lighting, sanitary facilities and improved parking conditions.***
- 11. *Establish a multi-use trail system from Tumalo State Park to Tumalo.***
- 12. *Support community efforts to create and maintain local parks.***
- 13. *Coordinate implementation of bikeways with signs and best maintenance practices on County arterials and collectors.***
- 14. *Support community efforts to designate the segment of the Deschutes River through Tumalo as an Oregon Scenic Waterway for its recreational values.***
- 15. *Support the development of a trails and recreation master plan.***
- 16. *Explore the future expansion of the Bend Metro Park and Recreation District to include the Tumalo area.***

FINDING: Staff believes these open space and recreational policies are not applicable to this proposal because there are no identified bicycle, trail, park, open space, or river standards or requirements associated with the subject property.

Land Use Policies

1. ***Conform land use regulations to the requirements of Unincorporated Communities as defined in OAR 660 Division 22 or any successor.***

FINDING: Conformance with the requirements of Unincorporated Communities as defined in OAR 660 Division 22 is addressed below.

2. ***Ensure County plans and land use regulations require that new uses authorized within Tumalo do not adversely affect agricultural uses in the surrounding exclusive farm use zones.***

FINDING: Staff conducted a site visit to the area and reviewed aerial photos. These inspections revealed some agricultural uses occurring on nearby EFU zoned lands. The distance of the subject property from these agricultural uses on EFU zoned properties, along with the Tumalo Industrial Zone (DCC 18.67.060) allowing "...a limited arrange of industrial use," will minimize impacts. Furthermore, the County can impose conditions of approval for specific site-development proposals to ensure compatibility with adjacent agricultural uses.

3. ***Apply setbacks for homes built along the rim forming the Deschutes River Canyon and Laidlaw Butte to protect scenic views visible from the community.***

FINDING: This policy is not applicable to this proposal.

4. ***Coordinate with Tumalo Community Association, Tumalo Business Association and similar local organizations on land use issues, where appropriate.***

FINDING: The Tumalo Business Association was mailed notice of the public hearing and did not comment. The Tumalo Community Association is not currently active. No other local organizations were identified to receive notice.

5. ***Encourage the preservation of historical structures such as the Tumalo Community Church (1905) and the Laidlaw Bank and Trust (1910).***

FINDING: This policy is not applicable to this proposal.

Residential Area Policies

6. ***Designate residential lands on the comprehensive plan map with a corresponding residential district on the zoning map.***
7. ***Designate residential lands so they are proximate to the commercial area.***
8. ***Designate Residential 5 acre lands on the perimeter of the community.***
9. ***Designate higher density residential lands in the bowl formed by the Deschutes River canyon.***

FINDING: The applicant is not proposing residential designation or zoning. Therefore, these policies are not applicable to this proposal.

10. ***Permit livestock in the residential districts subject to use limitations.***

FINDING: This policy is not applicable to this proposal.

11. ***Plan and zone for a diversity of housing types and densities suited to the capacity of the land to accommodate water and sewage requirements.***

FINDING: The proposed zone change will decrease the amount of land available for housing by one single family dwelling pursuant to current TUR5 zoning. As the Tumalo Community Plan indicates, residential uses are the predominate use within Tumalo and there are presently a large number of vacant residential lots within Tumalo. The applicant argues that removing one TUR5 lot will not inhibit the ability to provide a diversity of housing types and densities in Tumalo. Staff agrees.

Commercial Area Policies

12. ***Limit access from U.S. 20 so it is safe and economically viable.***
13. ***Encourage design standards in the commercial district so new development is compatible with the rural character of the community and reduces negative impacts on adjacent residential districts.***
14. ***Prohibit livestock from being permanently stabled in the commercial districts.***
15. ***Prohibit additional lands from being designated commercial until an economic analysis review is completed.***
16. ***Allow residential uses and mixed residential/commercial uses, while preventing residential uses from dominating or setting development standards in the commercial district.***
17. ***Utilize approval standards for conditional uses in the commercial district to consider the impact on nearby residential and commercial uses and the capacity of public facilities and services.***
18. ***Prohibit replatting for exclusively residential purposes in the commercial district.***

FINDING: The applicant is not proposing commercial designation or zoning. Therefore, these policies are not applicable to this proposal.

Industrial Area Policies

19. ***Allow only the following new or expanded industrial uses in the Tumalo rural community boundary:***
 - a. ***Uses authorized under Goals 3 and 4 (farm and forest uses);***
 - b. ***Expansion of a use existing on the date of this rule;***
 - c. ***Small-scale, low impact uses;***
 - d. ***Uses that require proximity to rural resource, as defined in OAR 660-004-0022(3)(a);***
 - e. ***New uses that will not exceed the capacity of water and sewer service available to the site on the effective date of this rule; or, if such services are not available to the site, the capacity of the site itself to provide water and absorb sewage;***
 - f. ***New uses more intensive than those allowed under subsection (a) through (e) of this section, provided an analysis set forth in the Comprehensive Plan demonstrates, and land use regulations ensure:***

- i. That such uses are necessary to provide employment that does not exceed the total projected work force within the community and the surrounding rural area;*
- ii. That such uses would not rely upon a work force employed by uses within urban growth boundaries; and*
- iii. That the determination of the work force of the community and surrounding rural area considers the total industrial and commercial employment in the community and is coordinated with employment projections for nearby urban growth boundaries.*

FINDING: These policies are taken from OAR 660-022-0030 (Planning and Zoning of Unincorporated Communities). Subsection (g)(A)(B) were not adopted into the Tumalo Community Plan. Even though they do not apply, they are as follows:

- (g) Industrial uses, including accessory uses subordinate to industrial development, as provided under either paragraph (A) or (B) of this subsection:
 - (A) Industrial developments sited on an abandoned or diminished industrial mill site, as defined in ORS 197.719 that was engaged in the processing or manufacturing of wood products, provided the uses will be located only on the portion of the mill site that is zoned for industrial uses; or
 - (B) Industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, in an area 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.

There is no development proposal for the subject property at this time. Compliance with the use criteria and standards of the TUI zone (DCC 18.67.060) will be reviewed upon application for site-specific development. A subsequent application will need to demonstrate that Policy 19(e) is met.

Public Facilities Goal

Ensure water and sewage treatment systems encompass the appropriate scale and cost.

FINDING: The Tumalo Rural Community is not presently served by a community sewage treatment system and only a portion of the community, not including the subject property is served domestic water by the Laidlaw Company.

Public Facility Policies

- 1. Determine residential minimum lot sizes by the capacity of the land to accommodate available water and wastewater facilities.***

FINDING: No residential use or zoning is proposed. Therefore, this policy is not applicable to this proposal.

2. *Encourage high quality fire protection in Tumalo and the surrounding area.*

FINDING: Fire protection for the subject property is currently provided by the Bend Rural Fire Protection District #2.

3. *Encourage early planning and acquisition of sites needed for public facilities (e.g. school, roads, water supply facility, parks).*

FINDING: The policy is not applicable to this proposal.

4. *Coordinate development within the Laidlaw Water District to determine if connection to its water system is required.*

FINDING: Notice of these applications was sent to the Laidlaw Water District and no comments were received.

5. *Support replatting of lots in the area comprising the Laidlaw Plat and other lands designated commercial to create lots large enough to accommodate a DEQ approved on-site sewage disposal system.*

FINDING: The subject property is not part of the Laidlaw Plat.

6. *Support the protection of the Tumalo Town Ditch easement and its distribution system.*

7. *Support the development and management of the domestic water system for Tumalo so that cumulative development will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.*

8. *Coordinate with the Tumalo residents and business owners on the creation of a sewer district, if the community initiates district formation.*

FINDING: These policies are not applicable to this proposal.

Transportation Goal

Provide a safe and efficient system for all modes of transportation, including active modes, to support local economic development, recreational uses, and community health.

FINDING: The applicant argues that, as demonstrated by the attached Traffic Study, the proposed zone change will not significantly affect the transportation system. The applicant adds that given its location, the proposed zone change will not inhibit the ability for Tumalo to accommodate active modes of transportation. However, the Deschutes County Transportation Planner identified deficiency in the analysis of the anticipated traffic impacts as discussed below.

Road Network Policies

1. *Review the existing Transportation System Plan policies and standards for Tumalo.*

2. ***Review existing roadway design requirements to ensure complete streets which accommodate all modes of travel.***

FINDING: These policies are not applicable to this proposal.

Road and Sidewalk Policies

3. ***Implement road development standards for Tumalo that minimize pavement width and are consistent with the small-scale character of the community.***
4. ***Utilize land development and grant funding opportunities to improve street segments identified for improvement in the Transportation System Plan.***
5. ***Provide functional, cost effective sidewalks that are consistent with the rural character of the community.***
6. ***Provide sidewalks or multi-use paths where they are needed for safety, as set forth in the Transportation System Plan.***
7. ***Construct sidewalks specified on community roads without curbs and gutters, distant from property lines, to allow room for utilities.***

FINDING: The provision of sidewalks/paths will be addressed in a future development application.

U.S. 20 Policies

8. ***Coordinate with the Tumalo community and Oregon Department of Transportation to implement both short and long-term improvements to solve transportation problems, including at the Cook Avenue and U.S. 20 intersection.***
9. ***Enhance the roadside environment, through tree planting, signage or other means.***
10. ***Promote safe access and slower speeds on U.S. 20 through Tumalo.***
11. ***Retain and enhance access across U.S. 20 using above, below, or at grade crossings to support pedestrian, bicycle and equestrian access to recreation and community services.***

FINDING: The subject property does not take access from U.S. 20. Notice of the applications was sent to the Oregon Department of Transportation and no comments were received. Comments received from the County Transportation Planner indicate that while the analysis provided in the submitted traffic study are plausible, it does not meet the analytical requirements of Deschutes County Code (DCC) 18.116.310(G). Specifically, the applicant needs to provide volume/capacity ratios for the affected State highway intersections for both pre- and post-rezoning and the same for Level of Service of affected County intersections. Therefore, staff cannot determine compliance with these policies. The applicant has indicated they will address this issue with a supplementary submittal.

2. Section 18.136.020, Rezoning Standards (Continued)

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

FINDING: The purpose of the TUI zone is listed under DCC 18.67.060 as follows:

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

FINDING: There is currently no development proposed but the applicant intends to use the property to relocate its current business operations. Those operations include storage of equipment used in road paving and related office uses. Likely development includes a 10-12,000 square foot, maintenance and storage building with an office as well as a paved storage/circulation area. Equipment storage associated with industrial activities (such as road paving) is one of the limited permitted uses in the TUI zone.

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

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

FINDING: The applicant indicates public services and facilities will not be required to utilize the property for the storage of industrial equipment. Bend Rural Fire provides fire protection, water could be provided by private on-site well, and septic could be provided on-site. As previously indicated, the submitted traffic study is deficient in its analysis therefore staff cannot evaluate if the anticipated traffic impacts have been adequately mitigated. The applicant intends to address this with a supplemental submittal.

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

FINDING: No specific development of the proposed at this time so specific impacts cannot be assessed. However, the relevant plan goals and policies are addressed herein.

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

FINDING: There have been several changes of circumstances since the property was zoned TUR5 in 1997 through Ordinance No. 97-032 that justify the proposed zone change:

- (1) The Knife River properties were rezoned from Tumalo Residential to TUI via ZC-04-5.
- (2) The primary Knife River Facility has undergone substantial development including the construction of an office building and truck shop (SP-05-6), a ready-mix concrete recycling facility (SP-05-38), and alterations of both of those facilities (SP-06-5 and SP-08-36 respectively).
- (3) The Creative Real Estate Solutions LLC property was approved for 40,000 square feet of mini-storage (247-14-000413) on the adjacent property to the east.

The applicant argues this substantial amount of industrial development adjacent to the subject property has decreased the suitability of the site for residential development and increased its utility as an industrial site. Staff agrees.

Oregon Administrative Rules

OAR 660, Division 12, Transportation Planning Rule

OAR 660-012-060, Plan and Land Use Regulation Amendments.

- (1) ***Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. This shall be accomplished by either:***

 - (a) ***Limiting allowed land uses to be consistent with the planned function, capacity and performance standards of the transportation facility;***
 - (b) ***Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;***
 - (c) ***Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or***
 - (a) ***Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multimodal travel choices are provided.***
- (2) ***A plan or land use regulation amendment significantly affects a transportation facility if it:***

 - (a) ***Changes the functional classification of an existing or planned transportation facility;***
 - (b) ***Changes standards implementing a functional classification system;***
 - (c) ***Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or***
 - (d) ***Would reduce the performance standards of the facility below the minimum level identified in the TSP.***
- (3) ***Determinations under subsections (1) and (2) of this section shall be coordinated with affected transportation facility and service providers and other affected local governments.***

FINDING: This above language is applicable to the applicant's proposal because it involves an amendment to an acknowledged plan. The applicant is not proposing any land use development of the property at this time and has indicated that future development may include industrial development. The applicant has submitted a transportation impact analysis (TIA) with the application.

As discussed above, comments received from the County Transportation Planner indicate that while the analysis provided in the submitted traffic study are plausible, it does not meet the analytical requirements of Deschutes County Code (DCC) 18.116.310(G). Specifically, the

applicant needs to provide volume/capacity ratios for the affected State highway intersections for both pre- and post-rezoning and the same for Level of Service of affected County intersections. Therefore, staff cannot determine compliance with these policies. The applicant has indicated they will address this issue with a supplementary submittal.

OAR 660, Division 15, Statewide Planning Goals and Guidelines

FINDING: Findings regarding the Statewide Planning Goals and Guidelines are provided below:

Goal 1, Citizen Involvement. The Planning Division has provided notice of the proposed plan amendment and zone change to the public through individual notice to affected property owners, the applicant will be posting a “proposed land use action sign,” and notice of the public hearing will be in the “Bend Bulletin” newspaper. In addition, a public hearing will be held on the proposed plan amendment/zone change.

Goal 2, Land Use Planning. Goals, policies, and processes related to zone change applications are included in the Deschutes County Comprehensive Plan, and Title 18 of the Deschutes County Code. The application of these processes and policies/regulations are documented within this staff report.

Goal 3, Agricultural Lands. Because the property is within an unincorporated community it is not agricultural land or zoned EFU. As discussed herein, staff believes the proposed zone change will not adversely affect agricultural uses on surrounding EFU lands on account of the limited range of industrial uses permitted in the TUI. Additional mitigation measures could be imposed as upon review of a future site-specific development proposal.

Goal 4, Forest Lands. The existing site and surrounding areas do not include any lands that are zoned for, or that support, forest uses.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. The existing site and surrounding areas are not included in the County’s Goal 5 inventory.

Goal 6, Air, Water and Land Resources Quality. No specific development is proposed at this time. Development of the property would not likely result in significant adverse impacts to air, water, or land resources quality due to the small size of the site and that any future development would be subject to local, state, and federal regulations protecting these resources. With that said, comments received from adjacent property owners Mary Ross and Michael Resnick express concerns with contamination of and access to the shared well they use that is located on the subject property. Recognizing and understanding their concerns, staff notes that the rezoning of the property will not impact water quality or access to the well. These impacts will be dictated by any future use of the property and the provisions of the private well agreement. The applicant has indicated they will address these comments in a supplemental submittal.

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

Goal 8, Recreational Needs. The proposed plan amendment and zone change do not affect recreational needs.

Goal 9, Economy of the State. This goal is to provide adequate opportunities throughout the state for a variety of economic activities. By increasing the types and intensity of industrial uses available to the property, staff believes the proposal will increase economic opportunities on the property.

Goal 10, Housing. The goal of Goal 10 is “To provide for the housing needs of citizens of the state” and is further explained stating:

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

The applicant argues that because Goal 10 defines needed housing as housing within urban growth boundaries and the subject property is outside a UGB then Goal 10 is not applicable. Staff agrees with this conclusion.

In the event the hearings officer does not agree, staff adds that, as the Tumalo Community Plan indicates, residential uses are the predominate use within Tumalo and there are presently a large number of vacant residential lots within Tumalo. Removing one TUR5 lot will not inhibit the ability for Tumalo to provide a diversity of housing types and densities. Therefore, staff believes this proposal will have no adverse impact on the availability of housing on the area.

Goal 11, Public Facilities and Services. The applicant’s proposal will have no adverse effect on the provision of public facilities and services to the subject site.

Goal 12, Transportation. This report states in a foregoing finding that the transportation impacts of proposed plan amendment and zone change were not adequately addressed in the materials submitted to date.

Goal 13, Energy Conservation. Staff believes that the proposal will not have an effect on energy use or conservation, until such time as it is developed.

Goal 14, Urbanization. The subject property is within the Tumalo Rural Community boundary. This proposal does not change the types or intensity of uses allowed in, nor does it change the boundary of, the Tumalo Rural Community.

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

IV. CONCLUSION AND RECOMMENDATION:

Staff believes that the applicant has not demonstrated that the proposed plan amendment and zone change complies with all applicable regulations. Specifically, the required analysis of the traffic impacts has not been adequately addressed. Therefore, based on the submitted information to date, staff recommends denial of the proposed plan amendment and zone change. This recommendation could change if additional information is submitted showing the proposal complies with the applicable regulations.

Dated this 12th day of August, 2015.

Mailed this 12th day of August, 2015.